

House BILL NO. 494

1
2 INTRODUCED BY *[Handwritten signatures]*
3 *[Handwritten signatures]*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "FACILITY" UNDER THE
5 MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN
6 EFFECTIVE DATE."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 75-20-104, MCA, is amended to read:

11 "75-20-104. (Temporary) Definitions. In this chapter, unless the context requires otherwise, the
12 following definitions apply:

13 (1) "Addition thereto" means the installation of new machinery and equipment that would
14 significantly change the conditions under which the facility is operated.

15 (2) "Application" means an application for a certificate submitted in accordance with this chapter
16 and the rules adopted under this chapter.

17 (3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,
18 diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or
19 equipment associated with the production or delivery of the energy form or product produced by a facility,
20 except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less
21 in inside diameter.

22 (4) "Board" means the board of environmental review provided for in 2-15-3502.

23 (5) "Certificate" means the certificate of environmental compatibility and public need issued by the
24 board under this chapter that is required for the construction or operation of a facility.

25 (6) "Commence to construct" means:

26 (a) any clearing of land, excavation, construction, or other action that would affect the environment
27 of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for
28 nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation
29 conditions;

30 (b) the fracturing of underground formations by any means if such activity is related to the possible

1 future development of a gasification facility or a facility employing geothermal resources but does not
2 include the gathering of geological data by boring of test holes or other underground exploration,
3 investigation, or experimentation;

4 (c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or
5 rights-of-way upon or over which a facility may be constructed;

6 (d) the relocation or upgrading of an existing facility defined by subsection (8)(b) or (8)(c), including
7 upgrading to a design capacity covered by subsection (8)(b), except that the term does not include normal
8 maintenance or repair of an existing facility.

9 (7) "Department" means the department of environmental quality provided for in 2-15-3501.

10 (8) "Facility" means:

11 (a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip
12 and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed
13 for or capable of:

14 (i) generating ~~150~~ 50 megawatts of electricity or more or any addition thereto, except pollution
15 control facilities approved by the department and added to an existing plant;

16 (ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto,
17 except pollution control facilities approved by the department and added to an existing plant;

18 (iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition
19 thereto, except pollution control facilities approved by the department and added to an existing plant;

20 (iv) enriching uranium minerals or any addition thereto; or

21 (v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or
22 any addition thereto;

23 (b) each electric transmission line and associated facilities of a design capacity of more than 69
24 kilovolts, except that the term:

25 (i) does not include an electric transmission line and associated facilities of a design capacity of
26 230 kilovolts or less and 10 miles or less in length; and

27 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts
28 and up to and including 115 kilovolts for which the person planning to construct the line has obtained
29 right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively
30 own more than 75% of the property along the centerline;

1 (c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside
2 diameter and 30 miles in length, and associated facilities;

3 (d) any use of geothermal resources, including the use of underground space in existence or to be
4 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally
5 derived power equivalent to 25 million Btu per hour or more or any addition thereto, except pollution control
6 facilities approved by the department and added to an existing plant;

7 (e) any underground in situ gasification of coal;

8 (f) each plant, unit, or other facility and associated facilities generating less than 50 megawatts
9 of electricity that would be included in subsection (8)(a) that:

10 (i) emits more than:

11 (A) 750 tons a year of sulfur dioxide;

12 (B) 50 tons a year of particulate matter 10 microns or smaller in size;

13 (C) 510,000 tons of carbon dioxide a year; or

14 (D) 1,050 tons of nitrogen oxide a year;

15 (ii) physically disturbs more than 320 acres;

16 (iii) employs more than 500 temporary or permanent employees or 6% of the population within a
17 60-mile radius of the facility; or

18 (iv) is located in or directly affects:

19 (A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;

20 (B) a class I river or stream as designated pursuant to 33 U.S.C. 1251, et seq.;

21 (C) habitat used by a threatened or endangered species of plant or animal as designated pursuant
22 to 16 U.S.C. 1531, et seq.; or

23 (D) one of the following exclusion areas:

24 (I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;

25 (II) national primitive areas;

26 (III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;

27 (IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271,
28 et seq.; or

29 (V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.

30 (9) "Person" means any individual, group, firm, partnership, corporation, cooperative, association,

1 government subdivision, government agency, local government, or other organization or entity.

2 (10) "Transmission substation" means any structure, device, or equipment assemblage, commonly
3 located and designed for voltage regulation, circuit protection, or switching necessary for the construction
4 or operation of a proposed transmission line.

5 (11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery,
6 or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

7 **75-20-104. (Effective July 1, 1997) Definitions.** In this chapter, unless the context requires
8 otherwise, the following definitions apply:

9 (1) "Addition thereto" means the installation of new machinery and equipment that would
10 significantly change the conditions under which the facility is operated.

11 (2) "Application" means an application for a certificate submitted in accordance with this chapter
12 and the rules adopted under this chapter.

13 (3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,
14 diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or
15 equipment associated with the production or delivery of the energy form or product produced by a facility,
16 except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less
17 in inside diameter.

18 (4) "Board" means the board of environmental review provided for in 2-15-3502.

19 (5) "Certificate" means the certificate of environmental compatibility and public need issued by the
20 board under this chapter that is required for the construction or operation of a facility.

21 (6) "Commence to construct" means:

22 (a) any clearing of land, excavation, construction, or other action that would affect the environment
23 of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for
24 nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation
25 conditions;

26 (b) the fracturing of underground formations by any means if such activity is related to the possible
27 future development of a gasification facility or a facility employing geothermal resources but does not
28 include the gathering of geological data by boring of test holes or other underground exploration,
29 investigation, or experimentation;

30 (c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or

1 rights-of-way upon or over which a facility may be constructed;

2 (d) the relocation or upgrading of an existing facility defined by subsection (8)(b) or (8)(c), including
3 upgrading to a design capacity covered by subsection (8)(b), except that the term does not include normal
4 maintenance or repair of an existing facility.

5 (7) "Department" means the department of environmental quality provided for in 2-15-3501.

6 (8) "Facility" means:

7 (a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip
8 and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed
9 for or capable of:

10 (i) generating 50 megawatts of electricity or more or any addition thereto, except pollution control
11 facilities approved by the department and added to an existing plant;

12 (ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto,
13 except pollution control facilities approved by the department and added to an existing plant;

14 (iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition
15 thereto, except pollution control facilities approved by the department and added to an existing plant;

16 (iv) enriching uranium minerals or any addition thereto; or

17 (v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or
18 any addition thereto;

19 (b) each electric transmission line and associated facilities of a design capacity of more than 69
20 kilovolts, except that the term:

21 (i) does not include an electric transmission line and associated facilities of a design capacity of
22 230 kilovolts or less and 10 miles or less in length; and

23 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts
24 and up to and including 115 kilovolts for which the person planning to construct the line has obtained
25 right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively
26 own more than 75% of the property along the centerline;

27 (c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside
28 diameter and 30 miles in length, and associated facilities;

29 (d) any use of geothermal resources, including the use of underground space in existence or to be
30 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally

1 derived power equivalent to 25 million Btu per hour or more or any addition thereto, except pollution control
2 facilities approved by the department and added to an existing plant;

3 (e) any underground in situ gasification of coal;

4 (f) each plant, unit, or other facility and associated facilities generating less than 50 megawatts
5 of electricity that would be included in subsection (8)(a) that:

6 (i) emits more than:

7 (A) 750 tons a year of sulfur dioxide;

8 (B) 50 tons a year of particulate matter 10 microns or smaller in size;

9 (C) 510,000 tons of carbon dioxide a year; or

10 (D) 1,050 tons of nitrogen oxide a year;

11 (ii) physically disturbs more than 320 acres;

12 (iii) employs more than 500 temporary or permanent employees or 6% of the population within a
13 60-mile radius of the facility; or

14 (iv) is located in or directly affects:

15 (A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;

16 (B) a class I river or stream as designated pursuant to 33 U.S.C. 1251, et seq.;

17 (C) habitat used by a threatened or endangered species of plant or animal as designated pursuant
18 to 16 U.S.C. 1531, et seq.; or

19 (D) one of the following exclusion areas:

20 (I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;

21 (II) national primitive areas;

22 (III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;

23 (IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271,
24 et seq.; or

25 (V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.

26 (9) "Person" means any individual, group, firm, partnership, corporation, cooperative, association,
27 government subdivision, government agency, local government, or other organization or entity.

28 (10) "Transmission substation" means any structure, device, or equipment assemblage, commonly
29 located and designed for voltage regulation, circuit protection, or switching necessary for the construction
30 or operation of a proposed transmission line.

1 (11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery,
2 or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

3

4 NEW SECTION. **Section 2. Effective date.** [This act] is effective July 1, 1997.

5

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0494, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

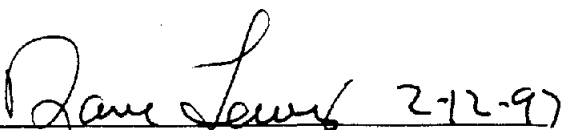
An act revising the definition of "facility" under the Montana Major Facility Siting Act.

ASSUMPTIONS:

1. The revised definition of facility would not significantly change the Department of Environmental Quality (DEQ) workload.
2. General fund monies are used for preapplication consultation. These consultations also would not significantly increase as a result of the change in definition of a facility.
3. Project review of applications and EIS or EA preparation are funded by application fees. Thus, any increase in applications would not create a fiscal impact on the department.

FISCAL IMPACT:

None.


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

JON ELLINGSON, PRIMARY SPONSOR DATE
Fiscal Note for HB0494, as introduced
HB 494