

1 *Senate* BILL NO. 391
 2 INTRODUCED BY *Deine*
 3 *by Request*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
 5 70-128, R.C.M. 1947, TO SHORTEN THE TIME ALLOWED FOR AN
 6 APPEAL FROM A DECISION OF THE PUBLIC SERVICE COMMISSION AND
 7 TO SHORTEN THE TIME FOR ANSWERING THAT APPEAL; REPEALING
 8 SECTION 70-123, R.C.M. 1947, RELATING TO RECORDS KEPT BY THE
 9 COMMISSION FOR APPEALS."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 70-128, R.C.M. 1947, is amended to
 13 read as follows:

14 "70-128. Action to set aside rates or charges fixed by
 15 commission. (1) Any party in interest being dissatisfied
 16 with an order of the commission fixing any rate or rates,
 17 fares, charges, classifications, joint rate or rates, or any
 18 order fixing any regulations, practices, or services, may
 19 within ninety 30 days commence an action in the district
 20 court of the proper county against the commission and other
 21 interested parties as defendants, to vacate and set aside
 22 any such order on the ground that the rate or rates, fares,
 23 charges, classifications, joint rate or rates, fixed in such
 24 order is unlawful or unreasonable, or that any such
 25 regulation, practice, or service, fixed in such order, is

1 unlawful or unreasonable. The commission and other parties
 2 defendant shall file their answer to said complaint within
 3 thirty 20 days after the service thereof, whereupon such
 4 action shall be at issue and stand ready for trial upon
 5 twenty days' notice to either party.

6 (2) All actions brought under this section shall have
 7 precedence over any civil cause of a different nature
 8 pending in such court, and the court shall always be deemed
 9 open for the trial thereof, and the same shall be tried and
 10 determined as other civil actions; any party to such action
 11 may introduce evidence in addition to the transcript of the
 12 evidence offered to such commission. Any party in interest
 13 being dissatisfied with the order of the commission fixing
 14 any rate or rates, fares, charges, classifications, joint
 15 rate or rates, or any order fixing or prescribing any rule,
 16 regulation, practice, or service, may apply to the district
 17 court having jurisdiction, for, and upon proper showing
 18 there shall be issued by such court, an injunction, staying
 19 and suspending the operation of the order of the commission
 20 pending the final determination of the reasonableness and
 21 lawfulness of said order in the courts. All orders of the
 22 commission shall become operative within twenty days after
 23 the filing of the order by the commission subject to the
 24 right of stay and injunction as hereinbefore provided. As a
 25 condition to the granting of such injunction, the court

1 shall require of the party seeking such injunction an
 2 undertaking entered into on the part of the plaintiff,
 3 supported by responsible corporate surety, in such
 4 reasonable sum as the court shall direct, to the effect that
 5 the plaintiff will pay all damages which the opposite party
 6 may sustain by reason of the delay or prevention of the
 7 order of the commission becoming effective if said order is
 8 sustained in the final determination, or in proceedings
 9 involving rates the court may in the alternative require the
 10 difference between the existing rate and the commission
 11 ordered rate to be impounded under the direction of the
 12 court, pending the final determination of the action.

13 (3) If, upon the trial of such action, evidence shall
 14 be introduced by the plaintiff which is found by the court
 15 to be different from that offered upon the hearing before
 16 the commission, or additional thereto, the court, before
 17 proceeding to render judgment, unless the parties to such
 18 action stipulate in writing to the contrary, shall transmit
 19 a copy of such evidence to the commission, and shall stay
 20 further proceedings in said action for fifteen days from the
 21 date of such transmission. Upon receipt of such evidence,
 22 the commission shall consider the same, and may modify,
 23 amend, or rescind its order relating to such rate or rates,
 24 fares, charges, classifications, joint rate or rates,
 25 regulation, practice, or service complained of in said

1 action, and shall report its action thereon to said court
 2 within ten days from the receipt of such evidence.

3 (4) If the commission shall rescind its order
 4 complained of, the action shall be dismissed; if it shall
 5 alter, modify, or amend the same, such altered, modified, or
 6 amended order shall take the place of the original order
 7 complained of, and judgment shall be rendered thereon, as
 8 though made by the commission in the first instance. If the
 9 original order shall not be rescinded or changed by the
 10 commission, judgment shall be rendered upon such original
 11 order.

12 (5) Either party to said action, within sixty days
 13 after service of a copy of the order or judgment of the
 14 court, may appeal or take the case up on error as in other
 15 civil actions. Where an appeal is taken to the supreme court
 16 of Montana, the cause shall, on the return of the papers to
 17 the higher court, be immediately placed on the calendar of
 18 the then pending term, and shall be assigned and brought to
 19 a hearing in the same manner as other causes on the
 20 calendar.

21 (6) In all actions under this act, the burden of proof
 22 shall be upon the party attacking or resisting the order of
 23 the commission to show that the order is unlawful or
 24 unreasonable, as the case may be."

25 Section 2. Repealer. Section 70-123, R.C.M. 1947, is

LC 1436/01

1 repealed.

~~-End-~~

Approved by Committee
on Highways & Transportation

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Senate BILL NO. 391
Devin
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INTRODUCED BY _____

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

Section 1. Section 70-128, R.C.M. 1947, is amended to read as follows:

"70-128. Action to set aside rates or charges fixed by commission. (1) Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within ninety 30 days commence an action in the district court of the proper county against the commission and other interested parties as defendants, to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice, or service, fixed in such order, is

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unlawful or unreasonable. The commission and other parties defendant shall file their answer to said complaint within thirty 20 days after the service thereof, whereupon such action shall be at issue and stand ready for trial upon twenty days' notice to either party.

(2) All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions; any party to such action may introduce evidence in addition to the transcript of the evidence offered to such commission. Any party in interest being dissatisfied with the order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing or prescribing any rule, regulation, practice, or service, may apply to the district court having jurisdiction, for, and upon proper showing there shall be issued by such court, an injunction, staying and suspending the operation of the order of the commission pending the final determination of the reasonableness and lawfulness of said order in the courts. All orders of the commission shall become operative within twenty days after the filing of the order by the commission subject to the right of stay and injunction as hereinbefore provided. As a condition to the granting of such injunction, the court

1 shall require of the party seeking such injunction an
 2 undertaking entered into on the part of the plaintiff,
 3 supported by responsible corporate surety, in such
 4 reasonable sum as the court shall direct, to the effect that
 5 the plaintiff will pay all damages which the opposite party
 6 may sustain by reason of the delay or prevention of the
 7 order of the commission becoming effective if said order is
 8 sustained in the final determination, or in proceedings
 9 involving rates the court may in the alternative require the
 10 difference between the existing rate and the commission
 11 ordered rate to be impounded under the direction of the
 12 court, pending the final determination of the action.

13 (3) If, upon the trial of such action, evidence shall
 14 be introduced by the plaintiff which is found by the court
 15 to be different from that offered upon the hearing before
 16 the commission, or additional thereto, the court, before
 17 proceeding to render judgment, unless the parties to such
 18 action stipulate in writing to the contrary, shall transmit
 19 a copy of such evidence to the commission, and shall stay
 20 further proceedings in said action for fifteen days from the
 21 date of such transmission. Upon receipt of such evidence,
 22 the commission shall consider the same, and may modify,
 23 amend, or rescind its order relating to such rate or rates,
 24 fares, charges, classifications, joint rate or rates,
 25 regulation, practice, or service complained of in said

1 action, and shall report its action thereon to said court
 2 within ten days from the receipt of such evidence.

3 (4) If the commission shall rescind its order
 4 complained of, the action shall be dismissed; if it shall
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12 (5) Either party to said action, within sixty days
 13 after service of a copy of the order or judgment of the
 14 court, may appeal or take the case up on error as in other
 15 civil actions. Where an appeal is taken to the supreme court
 16 of Montana, the cause shall, on the return of the papers to
 17 the higher court, be immediately placed on the calendar of
 18 the then pending term, and shall be assigned and brought to
 19 a hearing in the same manner as other causes on the
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21 (6) In all actions under this act, the burden of proof
 22 shall be upon the party attacking or resisting the order of
 23 the commission to show that the order is unlawful or
 24 unreasonable, as the case may be.*

25 Section 2. Repealer. Section 70-123, R.C.M. 1947, is

LC 1436/01

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-End-

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25 Section 2. Repealer. Section 70-123, R.C.M. 1947, is

LC 1436/01

1 repeated.

-End-

SENATE BILL NO. 391

INTRODUCED BY DEVINE (BY REQUEST)

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SB 0391/02

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