

CHAPTER NO. 366

HOUSE BILL NO. 21

INTRODUCED BY QUILICI

BY REQUEST OF THE DEPARTMENT OF PUBLIC SERVICE REGULATION

IN THE HOUSE

| | |
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| January 4, 1979 | Introduced and referred to Committee on Business and Industry. |
| January 6, 1979 | On motion, joint rule 6-6 suspended and sponsor's signature allowed to be added to prefiled bill. |
| January 15, 1979 | Committee recommend bill do pass as amended. Report adopted. |
| January 16, 1979 | Printed and placed on members' desks. |
| January 17, 1979 | Second reading, do pass. |
| January 18, 1979 | Considered correctly engrossed. |
| January 19, 1979 | Third reading, passed. Transmitted to second house. |

IN THE SENATE

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| January 20, 1979 | Introduced and referred to Committee on Business and Industry. |
| March 9, 1979 | Committee recommend bill be concurred in as amended. Report adopted. |
| March 12, 1979 | Second reading, concurred in. |
| March 15, 1979 | Third reading, concurred in as amended. |

IN THE HOUSE

March 16, 1979

Returned from second house.
Concurred in as amended.

March 17, 1979

Second reading, amendments
adopted.

March 19, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 21
2 INTRODUCED BY _____
3 BY REQUEST OF THE DEPARTMENT OF PUBLIC SERVICE REGULATION
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REPEAL SECTION
6 69-3-404, MCA, RELATING TO THE INTRODUCTION OF NEW EVIDENCE
7 IN AN ACTION INVOLVING UTILITY REGULATION AND RESUBMISSION
8 OF THE ACTION TO THE PUBLIC SERVICE COMMISSION."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Repealer. Section 69-3-404, MCA, is
12 repealed.

-End-

INTRODUCED BILL

Approved by Committee
on Business and Industry

1 HOUSE BILL NO. 21
2 INTRODUCED BY QUILICI
3 BY REQUEST OF THE DEPARTMENT OF PUBLIC SERVICE REGULATION
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO REPEAL SECTION~~
6 ~~69-3-404, MCA, RELATING TO THE INTRODUCTION OF NEW EVIDENCE~~
7 ~~IN AN ACTION INVOLVING UTILITY REGULATION AND RESUBMISSION~~
8 ~~OF THE ACTION TO THE PUBLIC SERVICE COMMISSION; AMENDING~~
9 ~~SECTION 69-3-402, MCA; AND REPEALING SECTION 69-3-404, MCA."~~
10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 SECTION 1. SECTION 69-3-402, MCA, IS AMENDED TO READ:
13 "69-3-402. Action to challenge commission order. (1)
14 Any party in interest being dissatisfied with an order of
15 the commission fixing any rate, fare, charge,
16 classification, or joint rate or any order fixing any
17 regulation, practice, or service may, within 30 days,
18 commence an action in the district court of the proper
19 county against the commission and other interested parties
20 as defendants to vacate and set aside any such order on the
21 ground that the rate, fare, charge, classification, or joint
22 rate fixed in such order is unlawful or unreasonable or that
23 any such regulation, practice, or service fixed in such
24 order is unlawful or unreasonable.
25 (2) The commission and other parties defendant shall

1 file their answer to said complaint within 20 days after the
2 service thereof, whereupon such action shall be at issue and
3 stand ready for trial ARGUMENT upon 20 days' notice to
4 either party.

5 (3) All actions brought under this part shall have
6 precedence over any civil cause of a different nature
7 pending in such court, and the court shall always be deemed
8 open for the trial ARGUMENT thereof. The action shall be
9 tried and determined as other civil actions. Any--party--to
10 such--action--may--introduce--evidence--in--addition--to--the
11 transcript--of--the--evidence--offered--to--such--commissions

12 (4) In all actions under this part, the burden of
13 proof shall be upon the party attacking or resisting the
14 order of the commission to show that the order is unlawful
15 or unreasonable, as the case may be."

16 Section 2. Repealer. Section 69-3-404, MCA, is
17 repealed.

-End-

HOUSE BILL NO. 21

INTRODUCED BY QUILICI

BY REQUEST OF THE DEPARTMENT OF PUBLIC SERVICE REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO REPEAL~~ ~~SECTION~~
~~69-3-404~~ ~~AND~~ ~~MCA~~ RELATING TO THE INTRODUCTION OF NEW EVIDENCE
IN AN ACTION INVOLVING UTILITY REGULATION AND RESUBMISSION
OF THE ACTION TO THE PUBLIC SERVICE COMMISSION; ~~AMENDING~~
~~SECTION 69-3-402, MCA; AND REPEALING SECTION 69-3-404, MCA.~~"

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

SECTION 1. SECTION 69-3-402, MCA, IS AMENDED TO READ:"69-3-402. Action to challenge commission order. (1)

Any party in interest being dissatisfied with an order of
the commission fixing any rate, fare, charge,
classification, or joint rate or any order fixing any
regulation, practice, or service may, within 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, fare, charge, classification, or joint
rate fixed in such order is unlawful or unreasonable or that
any such regulation, practice, or service fixed in such
order is unlawful or unreasonable.

(2) The commission and other parties defendant shall

file their answer to said complaint within 20 days after the
service thereof, whereupon such action shall be at issue and
stand ready for trial ~~ARGUMENT~~ upon 20 days' notice to
either party.

(3) All actions brought under this part 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 ~~ARGUMENT~~ thereof. The action 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 commissions~~

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

Section 2. Repealer. Section 69-3-404, MCA, is
repealed.

-End-

HOUSE BILL NO. 21

INTRODUCED BY QUILICI

BY REQUEST OF THE DEPARTMENT OF PUBLIC SERVICE REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO REPEAL SECTION~~
~~69-3-404~~ RELATING TO THE INTRODUCTION OF NEW EVIDENCE
 IN AN ACTION INVOLVING UTILITY REGULATION AND RESUBMISSION
 OF THE ACTION TO THE PUBLIC SERVICE COMMISSION; ~~AMENDING~~
~~SECTION SECTIONS 69-3-402 AND 69-3-404, MEAS--AND--REPEALING~~
~~SECTION 69-3-404, MCA."~~

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

SECTION 1. SECTION 69-3-402, MCA, IS AMENDED TO READ:

"69-3-402. Action to challenge commission order. (1)

Any party in interest being dissatisfied with an order of
 the commission fixing any rate, fare, charge,
 classification, or joint rate or any order fixing any
 regulation, practice, or service may, within 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, fare, charge, classification, or joint
 rate fixed in such order is unlawful or unreasonable or that
 any such regulation, practice, or service fixed in such
 order is unlawful or unreasonable.

(2) The commission and other parties defendant shall
 file their answer to said complaint within 20 days after the
 service thereof, whereupon such action shall be at issue and
 stand ready for ~~trial~~ ARGUMENT HEARING upon 20 days' notice
 to either party.

(3) All actions brought under this part 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~~ ARGUMENT HEARING thereof. ~~The action~~
~~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.~~

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

~~Section 2. Repealer. Section 69-3-404, MCA, is~~
~~repealed.~~

SECTION 2. SECTION 69-3-404, MCA, IS AMENDED TO READ:

"69-3-404. Effect of introduction of new evidence--
 resubmission to commission. Review confined to record--
exceptions. (1) Except as otherwise provided in this
section, review shall be conducted by the court without a
jury and shall be confined to the record.

(2) In cases of alleged irregularities in procedure

1 ~~before the agency not shown in the records, evidence thereof~~
 2 ~~may be taken in the court. The court, upon request, shall~~
 3 ~~hear oral argument and receive written briefs.~~

4 ~~(2) If upon the trial of such action evidence shall be~~
 5 ~~introduced by the plaintiff which is found by the court to~~
 6 ~~be different from that offered upon the hearing before the~~
 7 ~~commission or additional thereto, before the date set for~~
 8 ~~hearings, application is made to the court for leave to~~
 9 ~~present additional evidence and it is shown to the~~
 10 ~~satisfaction of the court that the additional evidence is~~
 11 ~~material and that there were good reasons for failure to~~
 12 ~~present it in the proceeding before the agency, the court,~~
 13 ~~before proceeding to render judgment, unless the parties to~~
 14 ~~such action stipulate in writing to the contrary, shall may~~
 15 ~~transmit a copy of such evidence to the commission and, if~~
 16 ~~such transmission is made, shall stay further proceedings in~~
 17 ~~said action for 15 days from the date of such transmission.~~
 18 ~~The court shall within 7 days after the introduction of~~
 19 ~~such evidence, decide whether or not to transmit a copy of~~
 20 ~~such evidence to the commission. The court is considered to~~
 21 ~~have ruled that the evidence must be transmitted to the~~
 22 ~~commission unless it orders otherwise within such 7-day~~
 23 ~~period.~~ Upon receipt of such evidence, the commission shall
 24 consider the same and may modify, amend, or rescind its
 25 order relating to such rate, fare, charge, classification,

1 joint rate, regulation, practice, or service complained of
 2 in said action and shall report its action thereon to said
 3 court within 10 days from the receipt of such evidence.

4 ~~(2)(4)~~ If the commission shall rescind its order
 5 complained of, the action shall be dismissed. If it shall
 6 alter, modify, or amend the same, such altered, modified, or
 7 amended order shall take the place of the original order
 8 complained of and judgment shall be rendered thereon as
 9 though made by the commission in the first instance. If the
 10 original order shall not be rescinded or changed by the
 11 commission, judgment shall be rendered upon such original
 12 order."

-End-

March 9, 1979

SENATE STANDING COMMITTEE REPORT
(Business & Industry)

That House Bill No. 21 be amended as follows:

1. Title, line 9.

Following: line 8

Strike: "SECTION"

Insert: "SECTIONS"

Following: "69-3-402"

Insert: "AND 69-3-404"

Following: "69-3-402,"

Strike: "MCA; AND REPEALING SECTION 69-3-404,"

2. Page 2, line 3.

Following: "~~trial~~"

Strike: "ARGUMENT"

Insert: "hearing"

3. Page 2, line 8.

Following: "~~trial~~"

Strike: "ARGUMENT"

Insert: "hearing"

4. Page 2, lines 8 and 9.

Following: "thereof."

Strike: the remainder of line 8 through "actions." on line 9

5. Page 2, lines 16 and 17.

Following: "Section 2."

Strike: the remainder of line 16 and line 17 in its entirety

Insert: "Section 69-3-404, MCA, IS AMENDED TO READ:

"69-3-404. ~~Effect-of-introduction-of-new-evidence---resubmission to commission-~~ Review confined to record -- exceptions. (1) Except as otherwise provided in this section, review shall be conducted by the court without a jury and shall be confined to the record.

(2) In cases of alleged irregularities in procedure before the agency not shown in the record, evidence thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(3) ~~If upon the trial of such action evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission or additional thereto,~~ before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court, before proceeding to render judgment, ~~unless the parties to such action stipulate in writing to the contrary, shall~~ may transmit a copy of such evidence to the commission and, if such transmission is made, shall stay further proceedings in said action for 15 days from the date of such transmission. The court shall, within 7 days after the introduction of such evidence, decide whether or not to transmit a copy of such evidence to the commission. The court is considered to have ruled that the evidence must be transmitted to the commission unless it orders otherwise within such 7-day period.

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Upon receipt of such evidence, the commission shall consider the same and may modify, amend, or rescind its order relating to such rate, fare, charge, classification, joint rate, regulation, practice, or service complained of in said action and shall report its action thereon to said court within 10 days from the receipt of such evidence.

~~(2)~~ (4) If the commission shall rescind its order complained of, the action shall be dismissed. If it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order."