

HOUSE BILL NO. 426

INTRODUCED BY SPAETH

BY REQUEST OF THE PUBLIC SERVICE COMMISSION

IN THE HOUSE

January 23, 1985	Introduced and referred to Committee on Judiciary.
January 28, 1985	Committee recommend bill do pass. Report adopted. Bill printed and placed on members' desks.
January 30, 1985	Second reading, pass consideration.
January 31, 1985	Second reading, do not pass. Ayes, 58; Noes, 37.
February 1, 1985	Motion to reconsider previous action and place bill on second reading.
February 2, 1985	Second reading, pass consideration.
February 4, 1985	On motion, pass consideration until 27th Legislative Day.
February 6, 1985	Second reading, do pass as amended. Correctly engrossed.
February 7, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 8, 1985	Introduced and referred to Committee on Judiciary.
------------------	--

March 19, 1985 Committee recommend bill be
 concurred in as amended. Report
 adopted.

March 22, 1985 Second reading, concurred in.

March 25, 1985 Third reading, concurred in.
 Ayes, 48; Noes, 1.

 Returned to House with
 amendments.

IN THE HOUSE

March 26, 1985 Received from Senate.

April 5, 1985 Second reading, amendments
 concurred in.

April 8, 1985 Third reading, amendments
 concurred in.

 Sent to enrolling.

 Reported correctly enrolled.

HOUSE BILL NO. 426

INTRODUCED BY Spaeth
BY REQUEST OF THE PUBLIC SERVICE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A REVIEWING COURT TO STAY AN AGENCY'S DECISION PENDING JUDICIAL REVIEW ONLY IF THE STATUTORY PROCEDURAL REQUIREMENTS AND SHOWING FOR A PRELIMINARY INJUNCTION ARE MET; AMENDING SECTIONS 2-4-702 AND 69-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 2-4-702, MCA, is amended to read:

"2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised

before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Proceedings for review shall be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

(b) The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant a stay on terms that it considers proper, or the reviewing court may order a stay



-2-
INTRODUCED BILL
HB 426

1 ~~upon-terms-which-it-considers-proper~~ if the requirements for
 2 issuance of a preliminary injunction prescribed in 27-19-201
 3 and Title 27, chapter 19, part 3, are met.

4 (4) Within 30 days after the service of the petition
 5 or within further time allowed by the court, the agency
 6 shall transmit to the reviewing court the original or a
 7 certified copy of the entire record of the proceeding under
 8 review. By stipulation of all parties to the review
 9 proceedings, the record may be shortened. A party
 10 unreasonably refusing to stipulate to limit the record may
 11 be taxed by the court for the additional costs. The court
 12 may require or permit subsequent corrections or additions to
 13 the record."

14 Section 2. Section 69-3-403, MCA, is amended to read:

15 "69-3-403. Injunctive relief. (1) Any party in
 16 interest, being dissatisfied with the order of the
 17 commission fixing any rate, fare, charge, classification, or
 18 joint rate or any order fixing or prescribing any rule,
 19 practice, or service, may apply to the district court having
 20 jurisdiction for an injunction, staying and suspending the
 21 operation of the order of the commission pending the final
 22 determination of the reasonableness and lawfulness of said
 23 order in the courts. Upon proper showing as prescribed by
 24 27-19-201, an injunction shall be issued by such court.

25 (2) As a condition to the granting of such injunction,

1 the court shall require of the party seeking such injunction
 2 an 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
 10 the 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 NEW SECTION. Section 3. Effective date. This act is
 14 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 426

INTRODUCED BY Spaith
BY REQUEST OF THE PUBLIC SERVICE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A REVIEWING COURT TO STAY AN AGENCY'S DECISION PENDING JUDICIAL REVIEW ONLY IF THE STATUTORY PROCEDURAL REQUIREMENTS AND SHOWING FOR A PRELIMINARY INJUNCTION ARE MET; AMENDING SECTIONS 2-4-702 AND 69-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 2-4-702, MCA, is amended to read:

"2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised

before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Proceedings for review shall be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

(b) The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant a stay on terms that it considers proper, or the reviewing court may order a stay



1 upon-terms-which-it-considers-proper if the requirements for
 2 issuance of a preliminary injunction prescribed in 27-19-201
 3 and Title 27, chapter 19, part 3, are met.

4 (4) Within 30 days after the service of the petition
 5 or within further time allowed by the court, the agency
 6 shall transmit to the reviewing court the original or a
 7 certified copy of the entire record of the proceeding under
 8 review. By stipulation of all parties to the review
 9 proceedings, the record may be shortened. A party
 10 unreasonably refusing to stipulate to limit the record may
 11 be taxed by the court for the additional costs. The court
 12 may require or permit subsequent corrections or additions to
 13 the record."

14 Section 2. Section 69-3-403, MCA, is amended to read:

15 "69-3-403. Injunctive relief. (1) Any party in
 16 interest, being dissatisfied with the order of the
 17 commission fixing any rate, fare, charge, classification, or
 18 joint rate or any order fixing or prescribing any rule,
 19 practice, or service, may apply to the district court having
 20 jurisdiction for an injunction, staying and suspending the
 21 operation of the order of the commission pending the final
 22 determination of the reasonableness and lawfulness of said
 23 order in the courts. Upon proper showing as prescribed by
 24 27-19-201, an injunction shall be issued by such court.

25 (2) As a condition to the granting of such injunction,

1 the court shall require of the party seeking such injunction
 2 an 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
 10 the 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 NEW SECTION. Section 3. Effective date. This act is
 14 effective on passage and approval.

-End-

1 HOUSE BILL NO. 426

2 INTRODUCED BY SPAETH

3 BY REQUEST OF THE PUBLIC SERVICE COMMISSION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW--A--REVIEWING
6 COURT--TO--STAY-AN-AGENCY'S-DECISION-PENDING-JUDICIAL-REVIEW
7 ONLY-IF-THE-STATUTORY-PROCEDURAL--REQUIREMENTS--AND--SHOWING
8 FOR--A--PRELIMINARY--INJUNCTION-ARE-MET ESTABLISH CONDITIONS
9 UNDER WHICH A STAY OF AN AGENCY DECISION MAY BE GRANTED;
10 AMENDING SECTIONS SECTION 2-4-702 ANB-69-3-403, MCA; AND
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 2-4-702, MCA, is amended to read:

15 "2-4-702. Initiating judicial review of contested
16 cases. (1) (a) A person who has exhausted all administrative
17 remedies available within the agency and who is aggrieved by
18 a final decision in a contested case is entitled to judicial
19 review under this chapter. This section does not limit
20 utilization of or the scope of judicial review available
21 under other means of review, redress, relief, or trial de
22 novo provided by statute.

23 (b) A party who proceeds before an agency under the
24 terms of a particular statute shall not be precluded from
25 questioning the validity of that statute on judicial review,

1 but such party may not raise any other question not raised
2 before the agency unless it is shown to the satisfaction of
3 the court that there was good cause for failure to raise the
4 question before the agency.

5 (2) (a) Proceedings for review shall be instituted by
6 filing a petition in district court within 30 days after
7 service of the final decision of the agency or, if a
8 rehearing is requested, within 30 days after the decision
9 thereon. Except as otherwise provided by statute, the
10 petition shall be filed in the district court for the county
11 where the petitioner resides or has his principal place of
12 business or where the agency maintains its principal office.
13 Copies of the petition shall be promptly served upon the
14 agency and all parties of record.

15 (b) The petition shall include a concise statement of
16 the facts upon which jurisdiction and venue are based, a
17 statement of the manner in which the petitioner is
18 aggrieved, and the ground or grounds specified in 2-4-704(2)
19 upon which the petitioner contends he is entitled to relief.
20 The petition shall demand the relief to which the petitioner
21 believes he is entitled, and the demand for relief may be in
22 the alternative.

23 (3) Unless otherwise provided by statute, the filing
24 of the petition shall not stay enforcement of the agency's
25 decision. The agency may grant a--stay-on-terms-that-it

1 ~~considers proper,~~ or the reviewing court may order a stay
 2 ~~upon terms which it considers proper if the requirements for~~
 3 ~~issuance of a preliminary injunction prescribed in 27-19-201~~
 4 ~~and Title 27, Chapter 19, part 3, are met UPON TERMS WHICH~~
 5 IT CONSIDERS PROPER, FOLLOWING NOTICE TO THE AFFECTED
 6 PARTIES AND AN OPPORTUNITY FOR HEARING. A STAY MAY BE ISSUED
 7 WITHOUT NOTICE ONLY IF THE PROVISIONS OF 27-19-315,
 8 27-19-316(4), AND 27-19-317 ARE MET.

9 * (4) Within 30 days after the service of the petition
 10 or within further time allowed by the court, the agency
 11 shall transmit to the reviewing court the original or a
 12 certified copy of the entire record of the proceeding under
 13 review. By stipulation of all parties to the review
 14 proceedings, the record may be shortened. A party
 15 unreasonably refusing to stipulate to limit the record may
 16 be taxed by the court for the additional costs. The court
 17 may require or permit subsequent corrections or additions to
 18 the record."

19 Section 2. Section 69-3-403, MCA, is amended to read:
 20 "69-3-403. Injunctive relief. (1) Any party in
 21 interest, being dissatisfied with the order of the
 22 commission fixing any rate, fare, charge, classification, or
 23 joint rate or any order fixing or prescribing any rule,
 24 practice, or service, may apply to the district court having
 25 jurisdiction for an injunction, staying and suspending the

1 ~~operation of the order of the commission pending the final~~
 2 ~~determination of the reasonableness and lawfulness of said~~
 3 ~~order in the courts. Upon proper showing as prescribed by~~
 4 ~~27-19-201, an injunction shall be issued by such court.~~

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

18 NEW SECTION. Section 2. Effective date. This act is
 19 effective on passage and approval.

-End-

SENATE

STANDING COMMITTEE REPORT

March 19 19. 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 426

third reading copy (blue)
color

(Senator Mazurek)

REQUIRE PRELIMINARY INJUNCTION SHOWING FOR COURT TO STAY AGENCY DECISION

Respectfully report as follows: That HOUSE BILL No. 426

be amended as follows:

Page 3, line 8.

Following: "27-19-316"

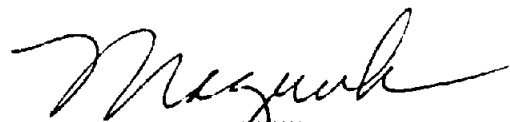
Strike: "(4)"

AND AS AMENDED

BE CONCURRED IN

~~REPASS~~

~~RECONSIDER~~



.....
Senator Joe Mazurek

Chairman.

1 HOUSE BILL NO. 426
 2 INTRODUCED BY SPAETH
 3 BY REQUEST OF THE PUBLIC SERVICE COMMISSION
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW--A--REVIEWING
 6 COURT--TO--STAY--AN--AGENCY'S--DECISION--PENDING--JUDICIAL--REVIEW
 7 ONLY--IF--THE--STATUTORY--PROCEDURAL--REQUIREMENTS--AND--SHOWING
 8 FOR--A--PRELIMINARY--INJUNCTION--ARE--MET ESTABLISH CONDITIONS
 9 UNDER WHICH A STAY OF AN AGENCY DECISION MAY BE GRANTED;
 10 AMENDING SECTIONS SECTION 2-4-702 AND 69-3-403, MCA; AND
 11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 14 Section 1. Section 2-4-702, MCA, is amended to read:
 15 "2-4-702. Initiating judicial review of contested
 16 cases. (1) (a) A person who has exhausted all administrative
 17 remedies available within the agency and who is aggrieved by
 18 a final decision in a contested case is entitled to judicial
 19 review under this chapter. This section does not limit
 20 utilization of or the scope of judicial review available
 21 under other means of review, redress, relief, or trial de
 22 novo provided by statute.
 23 (b) A party who proceeds before an agency under the
 24 terms of a particular statute shall not be precluded from
 25 questioning the validity of that statute on judicial review,

1 but such party may not raise any other question not raised
 2 before the agency unless it is shown to the satisfaction of
 3 the court that there was good cause for failure to raise the
 4 question before the agency.

5 (2) (a) Proceedings for review shall be instituted by
 6 filing a petition in district court within 30 days after
 7 service of the final decision of the agency or, if a
 8 rehearing is requested, within 30 days after the decision
 9 thereon. Except as otherwise provided by statute, the
 10 petition shall be filed in the district court for the county
 11 where the petitioner resides or has his principal place of
 12 business or where the agency maintains its principal office.
 13 Copies of the petition shall be promptly served upon the
 14 agency and all parties of record.

15 (b) The petition shall include a concise statement of
 16 the facts upon which jurisdiction and venue are based, a
 17 statement of the manner in which the petitioner is
 18 aggrieved, and the ground or grounds specified in 2-4-704(2)
 19 upon which the petitioner contends he is entitled to relief.
 20 The petition shall demand the relief to which the petitioner
 21 believes he is entitled, and the demand for relief may be in
 22 the alternative.

23 (3) Unless otherwise provided by statute, the filing
 24 of the petition shall not stay enforcement of the agency's
 25 decision. The agency may grant a--stay--on--terms--that--it



1 ~~considers proper~~ or the reviewing court may order a stay
 2 ~~upon terms which it considers proper if the requirements for~~
 3 ~~issuance of a preliminary injunction prescribed in 27-19-201~~
 4 ~~and Title 27 chapter 19 part 3 are met~~ UPON TERMS WHICH
 5 IT CONSIDERS PROPER, FOLLOWING NOTICE TO THE AFFECTED
 6 PARTIES AND AN OPPORTUNITY FOR HEARING. A STAY MAY BE ISSUED
 7 WITHOUT NOTICE ONLY IF THE PROVISIONS OF 27-19-315,
 8 27-19-316(4), AND 27-19-317 ARE MET.

9 (4) Within 30 days after the service of the petition
 10 or within further time allowed by the court, the agency
 11 shall transmit to the reviewing court the original or a
 12 certified copy of the entire record of the proceeding under
 13 review. By stipulation of all parties to the review
 14 proceedings, the record may be shortened. A party
 15 unreasonably refusing to stipulate to limit the record may
 16 be taxed by the court for the additional costs. The court
 17 may require or permit subsequent corrections or additions to
 18 the record."

19 ~~Section 2--Section 69-3-403--MEA, is amended to read:~~
 20 ~~"69-3-403--Injunctive relief--(1)--Any party--in~~
 21 ~~interest,--being--dissatisfied--with--the--order--of--the~~
 22 ~~commission fixing any rate, fare, charge, classification, or~~
 23 ~~joint rate or any order fixing or prescribing any rule,~~
 24 ~~practice, or service, may apply to the district court having~~
 25 ~~jurisdiction for an injunction, staying and suspending the~~

1 ~~operation of the order of the commission pending the final~~
 2 ~~determination of the reasonableness and lawfulness of said~~
 3 ~~order in the courts. Upon proper showing as prescribed by~~
 4 ~~27-19-201, an injunction shall be issued by such court.~~

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

18 NEW SECTION. Section 2. Effective date. This act is
 19 effective on passage and approval.

-End-