

SENATE BILL NO. 71

INTRODUCED BY HAGER

IN THE SENATE

January 7, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
January 12, 1985	Committee recommend bill do pass. Report adopted.
January 14, 1985	Bill printed and placed on members' desks.
January 15, 1985	Second reading, do pass.
January 16, 1985	Considered correctly engrossed.
January 17, 1985	Third reading, passed. Ayes, 46; Noes, 1. Transmitted to House.

IN THE HOUSE

January 18, 1985	Introduced and referred to Committee on Human Services and Aging.
February 2, 1985	Committee recommend bill be concurred in. Report adopted.
February 9, 1985	Second reading, concurred in.
February 11, 1985	Third reading, concurred in. Returned to Senate.

IN THE SENATE

February 13, 1985

Received from House.

Sent to enrolling.

Reported correctly enrolled.

SENATE BILL NO. 71

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A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE PROCEDURE FOR REVIEWING CERTIFICATE OF NEED APPLICATIONS FOR HEALTH CARE FACILITIES; ELIMINATING APPEALS TO THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS 50-5-302 AND 50-5-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 50-5-302, MCA, is amended to read:

"50-5-302. (Temporary) Notice of intent -- application and review process. (1) The department may adopt rules including but not limited to rules for:

(a) the form and content of notices of intent and applications;

(b) the scheduling and consolidation of reviews of similar proposals;

(c) the abbreviated review of a proposal that:

(i) does not significantly affect the cost or use of health care;

(ii) is necessary to eliminate or prevent imminent safety hazards or to repair or replace a facility damaged or destroyed as a result of fire, storm, civil disturbance, or

any act of God;

(iii) is necessary to comply with licensure or certification standards; or

(iv) has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1, providing the legislative findings accompanying such approval give consideration to the criteria of 50-5-304, and subject to the provisions of [section 9];

(d) the format of public informational hearings and reconsideration hearings; and

(e) the establishment of batching periods for certificate of need applications for new beds, establishment of new services, and replacement of health care facilities.

(2) At least 30 days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall submit to the department and the appropriate health systems agency a notice of his intent to acquire the facility and of the services to be offered in the facility and its bed capacity.

(3) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. The letter of intent must be placed in the appropriate batch, if any. After expiration-of-the-challenge-period--following--the--batching



1 ~~period in which the letter of intent was submitted or if no~~
 2 ~~batching is required, after receipt of the letter of intent,~~
 3 ~~the department shall send the person an application form~~
 4 ~~requiring the submission of information considered necessary~~
 5 ~~by the department to determine if the proposed activity~~
 6 ~~meets the standards in 50-5-304. Any person who applies for~~
 7 ~~comparative review by submitting a challenge letter of~~
 8 ~~intent during the challenge period immediately following the~~
 9 ~~batch must submit an application within 30 days after the~~
 10 ~~close of the challenge period.~~

11 (4) Within 15 calendar days after receipt of the
 12 application, the department shall determine whether it is
 13 complete. If, after the 15 days, the application is found
 14 incomplete, the department shall request the necessary
 15 additional information within 5 working days. Upon receipt
 16 of the additional information from the application
 17 {applicant}, the department shall have 15 days to determine
 18 if the application is complete. If the department fails to
 19 make a determination as to the completeness of the
 20 application within the prescribed 15-day period, the
 21 application shall be deemed to be complete. If the
 22 applicant fails to submit the necessary additional
 23 information requested by the department by the deadline as
 24 prescribed by department rules for considering such reviews,
 25 a new letter of intent and application must be submitted and

1 the application will be dropped from the current batch.

2 (5) After ~~all applications in the current batch have~~
 3 ~~been designated complete or, if an application does not~~
 4 ~~require batching, after it~~ an application is designated
 5 complete, notification must be sent to the applicants
 6 applicant and all other affected persons regarding the
 7 department's projected time schedule for review of the
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 20 equipment affecting the same health service area may be
 21 considered in relation to each other. During the review
 22 period a public hearing may be held if requested by an
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 24 department. Such a hearing must be conducted pursuant to
 25 the provisions for informal proceedings of the Montana

1 Administrative Procedure Act.

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 3 comments received during the review period, issue a
 4 certificate of need, with or without conditions, or deny the
 5 application. The department shall notify the applicant and
 6 affected persons of its decision within 5 working days after
 7 expiration of the review period. If the department fails to
 8 reach a decision and notify the applicant of its decision
 9 within the deadlines established in this section and if that
 10 delay constitutes an abuse of the department's discretion,
 11 the applicant may apply to district court for a writ of
 12 mandamus to force the department to render a decision.
 13 (Repealed effective July 1, 1987--sec. 13, Ch. 329, L.
 14 1983.)"

15 Section 2. Section 50-5-306, MCA, is amended to read:

16 "50-5-306. (Temporary) Right to hearing and appeal.

17 (1) An affected person may request the department to hold a
 18 public hearing and to reconsider its decision. The
 19 department shall grant the request if the affected person
 20 submits the request in writing showing good cause as defined
 21 in rules adopted by the department and if the request is
 22 received by the department within 20 calendar days after the
 23 initial decision is announced. The public hearing to
 24 reconsider shall be held, if warranted or required, within
 25 20 calendar days after its request. The department shall

1 make its final decision and written findings of fact and
 2 conclusions of law in support thereof within 30 days after
 3 the conclusion of the reconsideration hearing.

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 17 ~~novo with respect to the findings and conclusions identified~~
 18 ~~pursuant to subsection (2) and must be conducted pursuant to~~
 19 ~~the contested case provisions of the Montana Administrative~~
 20 ~~Procedure Act. Within 45 calendar days after the conclusion~~
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3 ~~appeal to district court.~~ Any affected person may appeal
4 this the department's final decision to the district court
5 as provided in Title 2, chapter 4, part 7.

6 †5) (3) The department may by rule prescribe in greater
7 detail the hearing and appellate procedures. (Repealed
8 effective July 1, 1987--sec. 13, Ch. 329, L. 1983.)"

9 NEW SECTION. Section 3. Extension of rulemaking
10 authority. Any existing authority of the department of
11 health and environmental sciences to make rules on the
12 subject of the provisions of this act is extended to the
13 provisions of this act.

14 NEW SECTION. Section 4. Effective date. This act is
15 effective on passage and approval.

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APPROVED BY COMMITTEE
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17 applications;

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19 similar proposals;

20 (c) the abbreviated review of a proposal that:

21 (i) does not significantly affect the cost or use of
22 health care;

23 (ii) is necessary to eliminate or prevent imminent
24 safety hazards or to repair or replace a facility damaged or
25 destroyed as a result of fire, storm, civil disturbance, or

1 any act of God;

2 (iii) is necessary to comply with licensure or
3 certification standards; or

4 (iv) has been approved by the legislature pursuant to
5 the long-range building program under Title 17, chapter 5,
6 part 4, and Title 18, chapter 2, part 1, providing the
7 legislative findings accompanying such approval give
8 consideration to the criteria of 50-5-304, and subject to
9 the provisions of [section 9];

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11 reconsideration hearings; and

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 18 if the application is complete. If the department fails to
 19 make a determination as to the completeness of the
 20 application within the prescribed 15-day period, the
 21 application shall be deemed to be complete. If the
 22 applicant fails to submit the necessary additional
 23 information requested by the department by the deadline as
 24 prescribed by department rules for considering such reviews,
 25 a new letter of intent and application must be submitted and

1 the application will be dropped from the current batch.

2 (5) After ~~all~~ applications-in-the-current--batch--have
 3 been--designated--complete--or,--if--an-application-does-not
 4 require-batching,after--it an application is designated
 5 complete, notification must be sent to the applicants
 6 applicant and all other affected persons regarding the
 7 department's projected time schedule for review of the
 8 applications application. The review period for an
 9 application may be no longer than ~~90~~ 60 calendar days after
 10 the notice is sent unless ~~a longer period is agreed to by~~
 11 ~~the applicant or, if the application has been batched, by~~
 12 ~~all applicants in the batch;~~ a hearing is required, in which
 13 case the review must be completed within 120 days after the
 14 notice is sent or, if a challenging application has been
 15 submitted as provided in subsection (3), within 120 days
 16 after the notice has been sent for all such challenging
 17 applications. A longer period is permitted with the consent
 18 of all affected applicants. All completed applications
 19 pertaining to similar types of services, facilities, or
 20 equipment affecting the same health service area may be
 21 considered in relation to each other. During the review
 22 period a public hearing may be held if requested by an
 23 affected person or when considered appropriate by the
 24 department. Such a hearing must be conducted pursuant to
 25 the provisions for informal proceedings of the Montana

1 Administrative Procedure Act.

2 (6) The department shall, after considering all
3 comments received during the review period, issue a
4 certificate of need, with or without conditions, or deny the
5 application. The department shall notify the applicant and
6 affected persons of its decision within 5 working days after
7 expiration of the review period. If the department fails to
8 reach a decision and notify the applicant of its decision
9 within the deadlines established in this section and if that
10 delay constitutes an abuse of the department's discretion,
11 the applicant may apply to district court for a writ of
12 mandamus to force the department to render a decision.
13 (Repealed effective July 1, 1987--sec. 13, Ch. 329, L.
14 1983.)"

15 Section 2. Section 50-5-306, MCA, is amended to read:

16 "50-5-306. (Temporary) Right to hearing and appeal.

17 (1) An affected person may request the department to hold a
18 public hearing and to reconsider its decision. The
19 department shall grant the request if the affected person
20 submits the request in writing showing good cause as defined
21 in rules adopted by the department and if the request is
22 received by the department within 20 calendar days after the
23 initial decision is announced. The public hearing to
24 reconsider shall be held, if warranted or required, within
25 20 calendar days after its request. The department shall

1 make its final decision and written findings of fact and
2 conclusions of law in support thereof within 30 days after
3 the conclusion of the reconsideration hearing.

4 (2) ~~An affected person may appeal the department's~~
5 ~~final decision to the board by filing a written notice of~~
6 ~~appeal stating the specific findings of fact and conclusions~~
7 ~~of law being appealed and the grounds. An affected person~~
8 ~~does not have to request the department to hold a~~
9 ~~reconsideration hearing prior to filing an administrative~~
10 ~~appeal to the board. The notice of appeal must be received~~
11 ~~by the board within 30 calendar days after formal notice of~~
12 ~~the department's final decision was issued. The board shall~~
13 ~~give public notice of the appeal within 10 days, and the~~
14 ~~hearing shall be held within 30 days after receipt of the~~
15 ~~notice of appeal.~~

16 ~~(3) The hearing before the board must be a hearing de~~
17 ~~novo with respect to the findings and conclusions identified~~
18 ~~pursuant to subsection (2) and must be conducted pursuant to~~
19 ~~the contested case provisions of the Montana Administrative~~
20 ~~Procedure Act. Within 45 calendar days after the conclusion~~
21 ~~of the public hearing, the board shall make and issue its~~
22 ~~decision, supported by written findings of fact and~~
23 ~~conclusions of law. The board may affirm, reverse, or modify~~
24 ~~the department's decision or remand it for further~~
25 ~~proceedings.~~

1 ~~(4) The final decision of the board shall be~~
2 ~~considered the decision of the department for purposes of an~~
3 ~~appeal to district court.~~ Any affected person may appeal
4 this the department's final decision to the district court
5 as provided in Title 2, chapter 4, part 7.

6 ~~(5)(3)~~ The department may by rule prescribe in greater
7 detail the hearing and appellate procedures. (Repealed
8 effective July 1, 1987--sec. 13, Ch. 329, L. 1983.)"

9 NEW SECTION. Section 3. Extension of rulemaking
10 authority. Any existing authority of the department of
11 health and environmental sciences to make rules on the
12 subject of the provisions of this act is extended to the
13 provisions of this act.

14 NEW SECTION. Section 4. Effective date. This act is
15 effective on passage and approval.

-End-