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 H	OUSE
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.

Montana Legislative Council

_	SENATE BILL NO. 71			
1				
2	INTRODUCED BY HAGER			
3				
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE			
5	PROCEDURE FOR REVIEWING CERTIFICATE OF NEED APPLICATIONS FOR			
6	HEALTH CARE FACILITIES; ELIMINATING APPEALS TO THE BOARD OF			
7	HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS			
8	50-5-302 AND 50-5-306, MCA; AND PROVIDING AN IMMEDIATE			
9	EFFECTIVE DATE."			
10				
11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:			
12	Section 1. Section 50-5-302, MCA, is amended to read:			
13	"50-5-302. (Temporary) Notice of intent application			
14	and review process. (1) The department may adopt rules			
15	including but not limited to rules for:			
16	(a) the form and content of notices of intent and			
17	applications;			
18	(b) the scheduling and consolidation of reviews of			
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				
4. J				
	M			

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 the long-range building program under Title 17, chapter 5, 5 part 4, and Title 18, chapter 2, part 1, providing the б 7 legislative findings accompanying such approval give consideration to the criteria of 50-5-304, and subject to 8 9 the provisions of [section 9]; (d) the format of public informational hearings and 10 11 reconsideration hearings; and establishment of batching periods for 12 (e) the certificate of need applications for new beds, establishment 13 14 of new services, and replacement of health care facilities. (2) At least 30 days before any person acquires or 15 16 enters into a contract to acquire an existing health care 17 facility, the person shall submit to the department and the 18 appropriate health systems agency a notice of his intent to 19 acquire the facility and of the services to be offered in the facility and its bed capacity. 20 21 (3) Any person intending to initiate an activity for 22 which a certificate of need is required shall submit a letter of intent to the department. The letter of intent 23 must be placed in the appropriate batch, if any. After 24

expiration-of-the-challenge-period--following--the--batching

25

-2- INTRODUCED BILL SB7/

1 period--in-which-the-letter-of-intent-was-submitted-or-if-no 2 batching-is-requiredy-after-receipt-of-the-letter-of-intenty 3 the-department-shall-send-the--person--an--application--form requiring-the-submission-of-information-considered-necessary 4 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 additional information within 5 working days. Upon receipt 15 16 of the additional information from the application 17 fapplicant, the department shall have 15 days to determine if the application is complete. If the department fails to 18 19 make a determination as to the completeness of the application within the prescribed 15-day period, 20 the application shall be deemed to be complete. If the 21 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

LC 0485/01

1 the application will be dropped from the current batch. 2 (5) After all-applications-in-the-current--batch--have 3 been--designated--complete--or7--if--an-application-does-not 4 require-batching,-after--it an application is designated 5 complete, notification must be sent to the applicants applicant and all other affected persons regarding the 6 7 department's projected time schedule for review of the applications application. The review 8 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 the--applicant--or--if-the-application-has-been-batched--by 11 all-applicants-in-the-batch, a hearing is required, in which 12 13 case the review must be completed within 120 days after the notice is sent or, if a challenging application has been 14 15 submitted as provided in subsection (3), within 120 days after the notice has been sent for all such challenging 16 applications. A longer period is permitted with the consent 17 of all affected applicants. All completed applications 18 pertaining to similar types of services, facilities, or 19 20 equipment affecting the same health service area may be 21 considered in relation to each other. During the review period a public hearing may be held if requested by an 22 affected person or when considered appropriate by the 23 department. Such a hearing must be conducted pursuant to 24 the provisions for informal proceedings of the Montana 25

1 Administrative Procedure Act.

(6) The department shall, after considering all 2 comments received during the review period, issue a 3 certificate of need, with or without conditions, or deny the 4 application. The department shall notify the applicant and 5 affected persons of its decision within 5 working days after 6 expiration of the review period. If the department fails to 7 reach a decision and notify the applicant of its decision 8 within the deadlines established in this section and if that 9 delay constitutes an abuse of the department's discretion, 10 the applicant may apply to district court for a writ of 11 mandamus to force the department to render a decision. 12 (Repealed effective July 1, 1987--sec. 13, Ch. 329, L. 13 1983.1" 14

Section 2. Section 50-5-306, MCA, is amended to read: 15 "50-5-306. (Temporary) Right to hearing and appeal. 16 (1) An affected person may request the department to hold a 17 public hearing and to reconsider its decision. The 18 department shall grant the request if the affected person 19 submits the request in writing showing good cause as defined 20 in rules adopted by the department and if the request is 21 received by the department within 20 calendar days after the 22 initial decision is announced. The public hearing to 23 reconsider shall be held, if warranted or required, within 24 20 calendar days after its request. The department shall 25

make its final decision and written findings of fact and
 conclusions of law in support thereof within 30 days after
 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 notice-of-appeal: 15 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 decision7--supported--by--written--findings--of---fact---and 22 23 conclusions-of-law--The-board-may-affirm--reverse--or-modify the---department_s---decision---or--remand--it--for--further 24 25 proceedings-

-5-

-6-

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 <u>NEW SECTION.</u> 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 <u>NEW SECTION.</u> Section 4. Effective date. This act is
15 effective on passage and approval.

-End-

1	SENATE BILL NO. 71
2	INTRODUCED BY HAGER
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5	PROCEDURE FOR REVIEWING CERTIFICATE OF NEED APPLICATIONS FOR
6	HEALTH CARE FACILITIES; ELIMINATING APPEALS TO THE BOARD OF
7	HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS
8	50-5-302 AND 50-5-306, MCA; AND PROVIDING AN IMMEDIATE
9	EFFECTIVE DATE."
10	
11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12	Section 1. Section 50-5-302, MCA, is amended to read:
13	"50-5-302. (Temporary) Notice of intent application
14	and review process. (1) The department may adopt rules
15	including but not limited to rules for:
16	(a) the form and content of notices of intent and
17	applications;
18	(b) the scheduling and consolidation of reviews of
19	similar proposals;
20	(c) the abbreviated review of a proposal that:
21	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

Montana Legislative Council

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];

10 (d) the format of public informational hearings and 11 reconsideration hearings; and

12 (e) the establishment of batching periods for 13 certificate of need applications for new beds, establishment of new services, and replacement of health care facilities. 14 15 (2) At least 30 days before any person acquires or enters into a contract to acquire an existing health care 16 17 facility, the person shall submit to the department and the 18 appropriate health systems agency a notice of his intent to acquire the facility and of the services to be offered in 19 the facility and its bed capacity. 20

21 (3) Any person intending to initiate an activity for 22 which a certificate of need is required shall submit a 23 letter of intent to the department. The letter of intent 24 must be placed in the appropriate batch, if any. After 25 expiration-of-the-challenge-period--following--the--batching

> -2- SECOND READING 58 7/

1 period--in-which-the-letter-of-intent-was-submitted-or-if-no 1 batching-is-requiredy-after-receipt-of-the-letter-of-intenty 3 the-department-shall-send-the--person--an--application--form 4 requiring-the-submission-of-information-considered-necessary by--the--department--to--determine--if-the-proposed-activity 5 6 meets-the-standards-in-50-5-304. Any person who applies for 7 comparative review by submitting a challenge letter of intent during the challenge period immediately following the 8 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 of the additional information from the application 16 17 fapplicant;, 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

LC 0485/01

1 the application will be dropped from the current batch.

2 (5) After all-applications-in-the-current--batch--have 3 been--designated--complete--ory--if--an-application-does-not 4 require-batching-after--it an application is designated S 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 the provisions for informal proceedings of the Montana 25

1 Administrative Procedure Act.

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

Section 2. Section 50-5-306, MCA, is amended to read: 15 "50-5-306. (Temporary) Right to hearing and appeal. 16 (1) An affected person may request the department to hold a 17 public hearing and to reconsider its decision. The 18 department shall grant the request if the affected person 19 submits the request in writing showing good cause as defined 20 in rules adopted by the department and if the request is 21 received by the department within 20 calendar days after the 22 initial decision is announced. The public hearing to 23 reconsider shall be held, if warranted or required, within 24 25 20 calendar days after its request. The department shall make its final decision and written findings of fact and
 conclusions of law in support thereof within 30 days after
 the conclusion of the reconsideration hearing.

(2) An-affected-person--may--appeal--the--department's 4 5 final--decision--to--the-board-by-filing-s-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--days7--and--the 14 hearing--shall--be--held-within-30-days-after-receipt-of-the 15 notice-of-appeal; (3)--The-hearing-before-the-board-must-be-a-hearing--de 16 17 novo-with-respect-to-the-findings-and-conclusions-identified pursuant-to-subsection-(2)-and-must-be-conducted-pursuant-to 18 19 the--contested-case-provisions-of-the-Montana-Administrative Procedure-Act:-Within-45-calendar-days-after-the--conclusion 20 of--the--public--hearing;-the-board-shall-make-and-issue-its 21 22 decision7--supported--by--written--findings--of---fact---and conclusions-of-law;-The-board-may-affirm;-reverse;-or-modify 23 24 the---department's---decision---or--remand--it--for--further 25 proceedings.

-6-

t4;--The--final--decision--of--the---board---shall---be
 considered-the-decision-of-the-department-for-purposes-of-an
 appeal--to--district--court. Any affected person may appeal
 this the department's final decision to the district court
 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 <u>NEW SECTION.</u> 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 <u>NEW SECTION.</u> Section 4. Effective date. This act is
 15 effective on passage and approval.

-End-

-7-

Montana Legislative Council

1	SENATE BILL NO. 71			
2	INTRODUCED BY HAGER			
3				
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE			
5	PROCEDURE FOR REVIEWING CERTIFICATE OF NEED APPLICATIONS FOR			
б	HEALTH CARE FACILITIES; ELIMINATING APPEALS TO THE BOARD OF			
7	HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS			
8	50-5-302 AND 50-5-306, MCA; AND PROVIDING AN IMMEDIATE			
9	EFFECTIVE DATE."			
10				
11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:			
12	Section 1. Section 50-5-302, MCA, is amended to read:			
13	"50-5-302. (Temporary) Notice of intent application			
14	and review process. (1) The department may adopt rules			
15	including but not limited to rules for:			
16	(a) the form and content of notices of intent and			
17	applications;			
18	(b) the scheduling and consolidation of reviews of			
19	similar proposals;			
20	(c) the abbreviated review of a proposal that:			
21	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];

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

(e) the establishment of batching periods for 12 13 certificate of need applications for new beds, establishment 14 of new services, and replacement of health care facilities. (2) At least 30 days before any person acquires or 15 enters into a contract to acquire an existing health care 16 facility, the person shall submit to the department and the 17 appropriate health systems agency a notice of his intent to 18 acquire the facility and of the services to be offered in 19 20 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

-2- THIRD READING 537/

1	periodin-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-thepersonanapplicationform
4	requiring-the-submission-of-information-considered-necessary
5	bythedepartmenttodetermineif-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 complete. If, after the 15 days, the application is found 13 incomplete, the department shall request the necessary 14 additional information within 5 working days. Upon receipt 15 16 of the additional information from the application fapplicant}, the department shall have 15 days to determine 17 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 information requested by the department by the deadline as 23 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.

(5) After all-applications-in-the-current--batch--have 2 3 been--designated--complete--ory--if--an-application-does-not 4 require-batching,-after--it an application is designated S complete, notification must be sent to the applicants 6 applicant and all other affected persons regarding the department's projected time schedule for review of the 7 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 the--applicant--or7--if-the-application-has-been-batched7-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 of all affected applicants. All completed applications 18 19 pertaining to similar types of services, facilities, or 20 equipment affecting the same health service area may be considered in relation to each other. During the review 21 22 period a public hearing may be held if requested by an 23 affected person or when considered appropriate by the 24 Such a hearing must be conducted pursuant to department. the provisions for informal proceedings of the Montana 25

-3-

-4-

1

2

3

1 Administrative Procedure Act.

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

Section 2. Section 50-5-306, MCA, is amended to read: 15 "50-5-306. (Temporary) Right to hearing and appeal. 16 17 (1) An affected person may request the department to hold a public hearing and to reconsider its decision. The 18 department shall grant the request if the affected person 19 20 submits the request in writing showing good cause as defined in rules adopted by the department and if the request is 21 22 received by the department within 20 calendar days after the 23 initial decision is announced. The public hearing to reconsider shall be held, if warranted or required, within 24 20 calendar days after its request. The department shall 25

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

4 (2) An-affected-person--may--appeal--the--departmentia final--decision--to--the-board-by-filing-a-written-notice-of 5 6 appeal-stating-the-specific-findings-of-fact-and-conclusions 7 of-law-being-appealed-and-the-grounds---An--affected--person does---not---have--to--request--the--department--to--hold--a 8 9 reconsideration-hearing-prior-to--filing--an--administrative appeal--to--the-board--The-notice-of-appeal-must-be-received 10 11 by-the-board-within-30-calendar-days-after-formal-notice--of 12 the--department's-final-decision-was-issued--The-board-shall give-public-notice-of-the-appeal-within--10--days7--and--the 13 14 hearing--shall--be--held-within-30-days-after-receipt-of-the notice-of-appeal. 15 (3)--The-hearing-before-the-board-must-be-a-hearing--de 16

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

LC 0485/01

-5-

-6-

t4)--The--final--decision--of--the---board---shall---be
 considered-the-decision-of-the-department-for-purposes-of-an
 appeal--to--district--court- Any affected person may appeal
 this the department's final decision to the district court
 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 <u>NEW SECTION.</u> 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 <u>NEW SECTION.</u> Section 4. Effective date. This act is
15 effective on passage and approval.

-End-

-7-

-

SB 0071/02

1	SENATE BILL NO. 71	1	any act of God;
2	INTRODUCED BY HAGER	2	(iii) is necessary to comply with licensure or
3		3	certification standards; or
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	4	(iv) has been approved by the legislature pursuant to
5	PROCEDURE FOR REVIEWING CERTIFICATE OF NEED APPLICATIONS FOR	5	the long-range building program under Title 17, chapter 5,
6	HEALTH CARE FACILITIES; ELIMINATING APPEALS TO THE BOARD OF	6	part 4, and Title 18, chapter 2, part 1, providing the
7	HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS	7	legislative findings accompanying such approval give
8	50-5-302 AND 50-5-306, MCA; AND PROVIDING AN IMMEDIATE	8	consideration to the criteria of 50-5-304, and subject to
9	EFFECTIVE DATE."	9	the provisions of [section 9];
10		10	(d) the format of public informational hearings and
11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	11	reconsideration hearings; and
12	Section 1. Section 50-5-302, MCA, is amended to read:	12	(e) the establishment of batching periods for
13	*50-5-302. (Temporary) Notice of intent application	13	certificate of need applications for new beds, establishment
14	and review process. (1) The department may adopt rules	14	of new services, and replacement of health care facilities.
15	including but not limited to rules for:	15	(2) At least 30 days before any person acquires or
16	(a) the form and content of notices of intent and	16	enters into a contract to acquire an existing health care
17	applications;	17	facility, the person shall submit to the department and the
18	(b) the scheduling and consolidation of reviews of	18	appropriate health systems agency a notice of his intent to
19	similar proposals;	19	acquire the facility and of the services to be offered in
20	(c) the abbreviated review of a proposal that:	20	the facility and its bed capacity.
21	(i) does not significantly affect the cost or use of	21	(3) Any person intending to initiate an activity for
22	health care;	22	which a certificate of need is required shall submit a
23	(ii) is necessary to eliminate or prevent imminent	23	letter of intent to the department. The letter of intent
24	safety hazards or to repair or replace a facility damaged or	24	must be placed in the appropriate batch, if any. After
25	destroyed as a result of fire, storm, civil disturbance, or	25	expiration-of-the-challenge-periodfollowingthebatching
	Λ.		-2- SB 71

Montana Legislative Council

SB 71 **REFERENCE BILL**

1 period--in-which-the-letter-of-intent-was-submitted-or-if-no 2 batching-is-requiredy-after-receipt-of-the-letter-of-intenty the-department-shall-send-the--person--an--application--form 3 requiring-the-submission-of-information-considered-necessary 4 by--the--department--to--determine--if-the-proposed-activity 5 б 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 batch must submit an application within 30 days after the 9 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 complete. If, after the 15 days, the application is found 13 14 incomplete, the department shall request the necessary additional information within 5 working days. Upon receipt 15 16 of the additional information from the application 17 fapplicant), the department shall have 15 days to determine if the application is complete. If the department fails to 18 make a determination as to the completeness of the 19 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 prescribed by department rules for considering such reviews, 24 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--ory--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 application may be no longer than 90 60 calendar days after 9 10 the notice is sent unless a longer-period-is--agreed--to--by the--applicant--ory--if-the-application-has-been-batchedy-by 11 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 after the notice has been sent for all such challenging 16 applications. A longer period is permitted with the consent 17 18 of all affected applicants. All completed applications pertaining to similar types of services, facilities, or 19 equipment affecting the same health service area may be 20 21 considered in relation to each other. During the review 22 period a public hearing may be held if requested by an affected person or when considered appropriate by the 23 department. Such a hearing must be conducted pursuant to 24 the provisions for informal proceedings of the Montana 25

-3-

SB 71

-4-

SB 71

SB 0071/02

1 Administrative Procedure Act.

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

Section 2. Section 50-5-306, MCA, is amended to read: 15 "50-5-306. (Temporary) Right to hearing and appeal. 16 (1) An affected person may request the department to hold a 17 public hearing and to reconsider its decision. The 18 department shall grant the request if the affected person 19 submits the request in writing showing good cause as defined 20 in rules adopted by the department and if the request is 21 received by the department within 20 calendar days after the 22 initial decision is announced. The public hearing to 23 reconsider shall be held, if warranted or required, within 24 20 calendar days after its request. The department shall 25

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

4 (2) An-affected-person--may--appeal--the--department's final--decision--to--the-board-by-filing-a-written-notice-of S appeal-stating-the-specific-findings-of-fact-and-conclusions 6 of-law-being-appealed-and-the-grounds---An--affected--person 7 does---not---have--to--request--the--department--to--hold--a 8 reconsideration-hearing-prior-to--filing--an--administrative 9 10 appeal--to--the-board--The-notice-of-appeal-must-be-received by-the-board-within-30-calendar-days-after-formal-notice--of 11 the--department's-final-decision-was-issued,-The-board-shall 12 give-public-notice-of-the-appeal-within--10--days7--and--the 13 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 the--contested-case-provisions-of-the-Montana-Administrative 19 20 Procedure-Act--Within-45-calendar-days-after-the--conclusion 21 of--the--public--hearing--the-board-shall-make-and-issue-its decision -- supported -- by -- written -- findings -- of --- fact --- and 22 23 conclusions-of-law--The-board-may-affirm,-reverse,-or-modify 24 the---department+s---decision---or--remand--it--for--further 25 proceedingst

-6-

~5-

SB 71

SB 71

(4)--The--final--decision--of--the---board---shall---be
 considered-the-decision-of-the-department-for-purposes-of-an
 appeal--to--district--court: Any affected person may appeal
 this the department's final decision to the district court
 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 <u>NEW SECTION.</u> 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.

<u>NEW SECTION.</u> Section 4. Effective date. This act is
 effective on passage and approval.

-End-

-7-

SB 71