

HOUSE BILL 629

Introduced by Toole, et al.

2/13	Introduced
2/13	Referred to Human Services & Aging
2/13	First Reading
2/13	Fiscal Note Requested
2/17	Hearing
2/17	Tabled in Committee
2/18	Fiscal Note Received
2/18	Fiscal Note Printed

1 House BILL NO. 629
2 INTRODUCED BY Tort
3 Bartlett
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE
5 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO CREATE A
6 HEALTH CARE FACILITY CONSTRUCTION AND RENOVATION DESIGN
7 REVIEW SYSTEM; CENTRALIZING THE REVIEW SYSTEM WITHIN THE
8 DEPARTMENT; ESTABLISHING A FEE; PROVIDING A STATUTORY
9 APPROPRIATION; AND AMENDING SECTIONS 17-7-502, 50-5-201,
10 50-60-104, 50-60-106, 50-60-202, 50-60-203, 50-61-112, AND
11 50-61-113, MCA."

12
13 STATEMENT OF INTENT

14 A statement of intent is required for this bill because
15 50-5-201 requires the department of health and environmental
16 sciences to adopt by rule a review system for health care
17 facility construction and renovation design. The legislature
18 intends that a centralized review system for construction
19 and renovation design be created within the department
20 because of the need:

- 21 (1) to ensure consistency in design review;
22 (2) to eliminate duplication because design review is
23 currently performed by more than one state agency and by
24 municipal authorities; and
25 (3) to recognize that design of health care facilities

1 constitutes a type of facility use different from all
2 others, thus requiring the attention of the state agency
3 authorized to regulate the facilities.

4 The legislature also intends that the review system be
5 funded through a fee for services. It is estimated that a
6 fee would reflect a 1% charge based on the total capital
7 expenditure of a construction or renovation project.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 50-5-201, MCA, is amended to read:

11 "50-5-201. License requirements. (1) A licensee who
12 contemplates construction of or alteration or addition to a
13 health care facility shall submit plans and specifications
14 to the department for preliminary inspection and approval
15 prior to commencing construction.

16 (2) (a) The department shall adopt by rule a design
17 review system in which the examination and approval or
18 disapproval of plans and specifications for health care
19 facilities, the inspection of health care facilities for
20 purposes of compliance, and the administration and
21 enforcement of construction regulations in the state is the
22 responsibility of the department. Under this system, the
23 department may:

24 (i) (A) examine and approve or disapprove plans and
25 specifications for the construction of a health care

1 facility when the construction is pursuant to or purports to
 2 be pursuant to the provisions of the applicable codes
 3 adopted by the department by rule; and

4 (B) direct the inspection of the buildings during
 5 construction;

6 (ii) order in writing the remedying of any condition
 7 found to exist in, on, or about any health care facility in
 8 violation of the applicable codes adopted by the department
 9 by rule;

10 (iii) in connection with a condition found to exist
 11 pursuant to subsection (2)(a)(ii), issue the order to the
 12 owner or the authorized agent of the owner personally or by
 13 sending by certified mail a copy of the order to the owner
 14 or the owner's authorized agent at the address set forth in
 15 the application for permission to construct or renovate the
 16 health care facility;

17 (iv) issue certificates of occupancy and other necessary
 18 documents in connection with the construction or renovation
 19 of the health care facilities, as required; and

20 (v) (A) adopt, amend, and repeal rules for the
 21 administration and enforcement of this section;

22 (B) collect reasonable fees commensurate with the costs
 23 of implementing this section; and

24 (C) deposit the fees in the account created by [section
 25 2].

1 (b) The commencement of the construction or renovation
 2 of a health care facility is prohibited until a permit has
 3 been issued by the local building department.

4 ~~{2}~~(3) No A person may not operate a health care
 5 facility unless the facility is licensed by the department.
 6 Licenses may be issued for a period of 1 to 3 years in
 7 duration. A license is valid only for the person and
 8 premises for which it was issued. A license may not be sold,
 9 assigned, or transferred.

10 ~~{3}~~(4) Upon discontinuance of the operation or upon
 11 transfer of ownership of a facility, the license must be
 12 returned to the department.

13 ~~{4}~~(5) Licenses ~~shall~~ must be displayed in a
 14 conspicuous place near the admitting office of the
 15 facility."

16 NEW SECTION. Section 2. Account -- health care
 17 facility plan review. There is within the state special
 18 revenue fund an account for health care facility plan
 19 review. All fees collected by the department pursuant to
 20 50-5-201 and the rules implementing that section must be
 21 deposited in the account. Money in the account is
 22 statutorily appropriated, as provided in 17-7-502, to the
 23 department for the purposes of the review system established
 24 in 50-5-201.

25 **Section 3.** Section 17-7-502, MCA, is amended to read:

1 **"17-7-502. Statutory appropriations -- definition --**
 2 **requisites for validity.** (1) A statutory appropriation is an
 3 appropriation made by permanent law that authorizes spending
 4 by a state agency without the need for a biennial
 5 legislative appropriation or budget amendment.

6 (2) Except as provided in subsection (4), to be
 7 effective, a statutory appropriation must comply with both
 8 of the following provisions:

9 (a) The law containing the statutory authority must be
 10 listed in subsection (3).

11 (b) The law or portion of the law making a statutory
 12 appropriation must specifically state that a statutory
 13 appropriation is made as provided in this section.

14 (3) The following laws are the only laws containing
 15 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 16 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
 17 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
 18 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
 19 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
 20 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;
 21 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
 22 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
 23 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
 24 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
 25 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;

1 39-71-2504; 44-12-206; 44-13-102; [section 2]; 53-6-150;
 2 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507;
 3 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103;
 4 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301;
 5 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

6 (4) There is a statutory appropriation to pay the
 7 principal, interest, premiums, and costs of issuing, paying,
 8 and securing all bonds, notes, or other obligations, as due,
 9 that have been authorized and issued pursuant to the laws of
 10 Montana. Agencies that have entered into agreements
 11 authorized by the laws of Montana to pay the state
 12 treasurer, for deposit in accordance with 17-2-101 through
 13 17-2-107, as determined by the state treasurer, an amount
 14 sufficient to pay the principal and interest as due on the
 15 bonds or notes have statutory appropriation authority for
 16 the payments. (In subsection (3): pursuant to sec. 7, Ch.
 17 567, L. 1991, the inclusion of 19-6-709 terminates upon
 18 death of last recipient eligible for supplemental benefit;
 19 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
 20 22-3-811 terminates June 30, 1993.)"

21 **Section 4.** Section 50-60-104, MCA, is amended to read:

22 **"50-60-104. Inspection fees.** The department shall
 23 establish a schedule of fees and may collect fees for the
 24 inspection of plans and specifications and for the
 25 inspection of buildings, factory-built buildings,

recreational vehicles, tramways, or any other facility or structure except health care facilities as defined in 50-5-101."

Section 5. Section 50-60-106, MCA, is amended to read:

"50-60-106. Powers and duties of municipalities. (1) The Except as provided in 50-5-201 with respect to health care facilities, the examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the municipal jurisdictional area ~~shall be~~ are the responsibility of the municipalities of the state.

(2) Each municipality may:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state or municipal building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state or municipal building code, subject to the powers of variance or modification granted to the department;

(c) order in writing the remedying of any condition

found to exist in, on, or about any building in violation of the state or municipal building code; orders may be served upon the owner or his the owner's authorized agent personally or by sending by ~~registered~~-or certified mail a copy of the order to the owner or his the owner's authorized agent at the address set forth in the application for permission for the construction of the building; any local building department, by action of an authorized officer, may grant in writing such a time as that may be reasonably necessary for achieving compliance with the order;

(d) issue certificates of occupancy, permits, licenses, and ~~such~~ other documents in connection with the construction of the buildings as required;

(e) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of reasonable fees, which ~~shall~~ must be comparable to fees imposed or prescribed by existing local building regulations;

(f) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state or municipal building code."

Section 6. Section 50-60-202, MCA, is amended to read:

"50-60-202. Department to be sole state agency to

1 promulgate building regulations -- exception. No--state
 2 agency-except Only the department may promulgate building
 3 regulations as defined in 50-60-101, except the department
 4 of justice may promulgate regulations relating to use of
 5 buildings and installation of equipment and the department
 6 of health and environmental sciences may adopt rules
 7 relating to construction, renovation, safety, design, and
 8 occupancy of health care facilities as defined in 50-5-101.
 9 The Except as otherwise provided for in 50-5-201 for design
 10 review of health care facilities, the state fire prevention
 11 and investigation program of the department of justice shall
 12 review building plans and regulations for conformity with
 13 rules promulgated by the department."

14 **Section 7.** Section 50-60-203, MCA, is amended to read:

15 "50-60-203. Department to adopt state building code by
 16 rule. (1) The department shall adopt rules relating to the
 17 construction of, the installation of equipment in, and
 18 standards for materials to be used in all buildings or
 19 classes of buildings, except health care facilities as
 20 defined in 50-5-101, including provisions dealing with
 21 safety, sanitation, and conservation of energy. The
 22 department may amend or repeal such the rules.

23 (2) The department may adopt by reference nationally
 24 recognized building codes in whole or in part, but this does
 25 not prevent the department from adopting rules more

1 stringent than those contained in such codes.

2 (3) The rules, when adopted as provided in parts 1
 3 through 4, constitute the "state building code" and are
 4 acceptable for the buildings to which they are applicable.

5 (4) The department shall adopt rules that permit the
 6 installation of below-grade liquefied petroleum gas-burning
 7 appliances in single-family dwellings."

8 **Section 8.** Section 50-61-112, MCA, is amended to read:

9 "50-61-112. Prior approval required for construction or
 10 alteration of educational and institutional occupancies. (1)
 11 Within an incorporated municipality, an educational or
 12 institutional occupancy, except a health care facility as
 13 defined in 50-5-101, whether public or private, may not be
 14 constructed or have alterations made costing \$1,500 or more
 15 until sketches or architectural plans for the construction
 16 or alteration, whichever are available, are submitted to and
 17 approved by the state fire prevention and investigation
 18 program of the department of justice.

19 (2) Outside an incorporated municipality, an assembly,
 20 educational, or institutional occupancy, except a health
 21 care facility as defined in 50-5-101, may not be constructed
 22 or have alterations made costing \$1,500 or more until a
 23 permit has been issued for the construction or alteration by
 24 the county commissioners. A fee of \$10 ~~shall~~ must be paid to
 25 the county treasurer for each permit. A copy of the permit

1 ~~shall~~ must be furnished to the county assessor. No A permit
2 may not be issued until sketches or architectural plans for
3 the construction or alteration, whichever are available, are
4 submitted to and approved by the state fire prevention and
5 investigation program of the department of justice. The
6 state fire prevention and investigation program of the
7 department of justice and county sheriffs are responsible
8 for enforcing the provisions of this subsection."

9 **Section 9.** Section 50-61-113, MCA, is amended to read:

10 "50-61-113. Prior approval required for construction of
11 state-owned building designed for human occupancy. A
12 building that is designed for human occupancy, except a
13 health care facility as defined in 50-5-101, and that is
14 owned or controlled by the state may not be constructed
15 until plans for the construction have been submitted to and
16 approved by the state fire prevention and investigation
17 program of the department of justice."

18 **NEW SECTION. Section 10.** Codification instruction.
19 [Section 2] is intended to be codified as an integral part
20 of Title 50, chapter 5, part 2, and the provisions of Title
21 50, chapter 5, part 2, apply to [section 2].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0629, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring the Department of Health and Environmental Sciences to create a health care facility construction and renovation design review system; centralizing the review system within the department; establishing a fee and providing a statutory appropriation.

ASSUMPTIONS:

1. Funds collected for plan review of health facilities by existing authorities would no longer be collected. DHES does not collect funds for this purpose.
2. Average construction and renovation expenditures for health care facilities per fiscal year is estimated at \$55 million.
3. The personnel services are based on 1 FTE at a grade 16 level. Operating costs include contracted services, travel, equipment, supplies, rent, and associated costs to develop the design review system. Additional FTE may be required if numerous reviews are required, in which case contracted services would be reduced.
4. This legislation would shift the fee revenue collection for design review from existing authorities to the new design review system, making the proposal revenue neutral, and statutorily appropriating the fees.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	0	1.0	1.0	0	1.0	1.0
Personnel Services	0	\$39,330	\$39,330	0	\$39,905	\$39,905
Operating	0	<u>\$280,670</u>	<u>\$280,670</u>	0	<u>\$280,095</u>	<u>\$280,095</u>
Total	0	\$320,000	\$320,000	0	\$320,000	\$320,000

Funding:

Special Revenue	0	\$320,000	\$320,000	0	\$320,000	\$320,000
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Revenues:

Special Revenue	0	\$320,000	\$320,000	0	\$320,000	\$320,000
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David Lewis 2-18-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

HOWARD TOOLE, PRIMARY SPONSOR

2/18/93
DATE

Fiscal Note for HB0629, as introduced

HB 629