



**House
Legislative
Analysis
Section**

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DPH CONSTRUCTION PERMIT REVIEW FEES

House Bill 4978 as passed by the House
Second Analysis (1-12-90)

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Sponsor: Rep. Michael J. Bennane
Committee: Public Health

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THE APPARENT PROBLEM:

The state construction code (Public Act 230 of 1972) delegates review and approval of health facility construction plans to the Department of Public Health (DPH), which established an engineering section in the Bureau of Health Facilities in 1963 to help architects and engineers in the design of health facilities. The Public Health Code of 1978 created a system of "construction permits" for health facilities which requires state review of health facility construction plans for any project requiring a certificate of need (CON). Engineering staff in the Bureau of Health Facilities review plans for proposed health care facilities (including renovations), issue permits, and provide assistance to architects and engineers to assure that health care facilities are constructed to appropriate approved standards.

Although the recent revision of CON provisions (which increased the dollar threshold to \$750,000 and \$1.5 million) has reduced the number of health facility projects legally subject to construction permit review, changes in federal policies regarding matching funds, a flat \$50 fee for all projects (regardless of the size or complexity of a project) that has not changed in 20 years, and staff reductions all have resulted in a backlog of projects to be reviewed. The DPH has taken steps to reduce this backlog (such as returning projects no longer subject to review, waiving review of other projects, and suspending the review of design changes made during the construction phase of projects), but the construction industry is concerned that these restrictions of construction permit activities not only will raise project costs and delay the opening of projects, but also may raise architect and construction firm insurance fees.

At the department's request, legislation has been introduced to create a sliding scale fee structure for both mandatory plan reviews and voluntary reviews.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code: (1) to assess a fee for project plan reviews of one-half of one percent of a proposed project's total capital expenditure; and (2) to allow the Department of Public Health to conduct, upon the request of the person "initiating" the construction project, non-mandatory reviews if the department determined that the review would promote the public health, safety, and welfare.

For projects with total capital expenditures of \$10 million or less, the new fee would be assessed on the first \$4 million; for projects costing more than \$10 million, the fee would be assessed only on the first \$6 million. The bill also would specify that "capital expenditure" would not include the cost of equipment that was not "fixed" equipment.

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FISCAL IMPLICATIONS:

The House Fiscal Agency reports that there will be fiscal implications for the state, but at this time there is no way to determine specific amounts, since no one knows how many projects will be requesting reviews and since the number and size of projects subject to mandatory review is unknown. (9-29-89)

ARGUMENTS:

For:

Issuance of a construction permit by the Department of Public Health (DPH) upon review of proposed health facility plans certifies that the design is in compliance with state laws and assures the provider (and architects) that a health facility will be able to open once it is constructed. Without state engineering support and review, providers and architects must proceed at their own risk in the construction of buildings and face the possibility that expensive construction may not meet required code requirements when the facility is otherwise ready to open. Corrections of design problems at this point usually are extremely expensive, as well as involving delays in project completion while non-conforming portions of the project are removed and rebuilt. Allowing voluntary reviews upon request would help those projects that fall below the certificate of need dollar threshold (or that for other reasons are not required to have the DPH review their plans) by helping them avoid the major expense and costly delay caused by non-compliance with complex construction code requirements.

For:

Fee increases are badly needed in order to bring the engineering staff back up to levels adequate to handle the demand for plan reviews, to counteract reduced federal support of the program, and to allow reviews of projects no longer formally subject to review.

For the past twenty years, the fee for all plan reviews, regardless of the size of the project, has been a flat \$50. Yet even as fees have remained unchanged, projects have increased in size and complexity, federal support for plan review has been reduced, and a hiring freeze has drastically reduced the number of engineers on staff. Larger projects require more staff time to complete the complex review of plans, specification, and regulations, while, during the 1980s, the engineering staff has been reduced from eleven to only four (the chief and three supporting engineers). In addition, federal matching funds have been reduced as the result of a decision at the federal level that the issuance of state construction permits before a building is built is not federally required (except in the case of Medicare design requirements) and therefore will not be recognized for federal matching funds.

A sliding scale fee (which could be capitalized over the life of a project) would ensure more timely plan reviews, more equitable funding (with larger projects paying for the more

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complex review of plans, specifications, and regulations required), would reduce delays costly to the industry and public, and would allow voluntary "courtesy" reviews of projects which do not require certificates of need (but which still request state assistance).

Against:

While fees for plan reviews may well be needed, the amount of the increase for some projects is staggering to contemplate. Even with the "caps" on large projects, one-half of one percent of a twelve million dollar project (which would be assessed only on the first six million dollars of the project) means that a plan review that now would cost \$50 would instead cost \$30,000. Surely lower and more equitable caps could be set without damaging the review program.

Response: First, the proposed fees are quite reasonable, especially when compared to engineering design fees, which typically range from 8 to 12 percent of a project's costs. But secondly, few projects would require the highest fee, since 60 to 80 percent of health construction projects fall below the certificate of need thresholds. What is more, the ten million dollar projects are rare, averaging perhaps one such project a year, so the highest fee would not often apply (though when it did, the review still would be well worth the costs, since these large projects require such large amounts of staff time). Finally, as pointed out above, these plan reviews can, in the end, pay for themselves many times over by ensuring that there will be no costly opening day "surprises."

POSITIONS:

The Department of Public Health supports the bill. (1-10-90)

The Michigan Hospital Association has no position on the bill. (1-12-90)