

SECOND REGULAR SESSION

# HOUSE BILL NO. 2355

## 94TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVES FLOOK (Sponsor), ERVIN, BAKER (123), SCHAAF, ONDER,  
SANDER, ROBB, PAGE, YATES AND WILDBERGER (Co-sponsors).

Read 1st time March 5, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5029L.01I

---

### AN ACT

To repeal sections 197.310 and 197.330, RSMo, and to enact in lieu thereof two new sections relating to certificate of need.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 197.310 and 197.330, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 197.310 and 197.330, to read as follows:

197.310. 1. The "Missouri Health Facilities Review Committee" is hereby established.  
2 The agency shall provide clerical and administrative support to the committee. The committee  
3 may employ additional staff as it deems necessary.

4 2. The committee shall be composed of:

5 (1) [Two members of the senate appointed by the president pro tem, who shall be from  
6 different political parties] **One member who is professionally qualified in health insurance**  
7 **plan sales and administration;** and

8 (2) [Two members of the house of representatives appointed by the speaker, who shall  
9 be from different political parties] **One member who has professionally qualified experience**  
10 **in commercial development, financing, and lending;** and

11 (3) [Five members] **Two members with a doctorate of philosophy in economics;**

12 (4) **Two members who are professionally qualified as medical doctors or doctors**  
13 **of osteopathy, but who are not employees of a hospital or consultants to a hospital;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14           **(5) Two members who are professionally experienced in hospital administration,**  
15 **but are not employed by a hospital or as consultants to a hospital;**

16           **(6) One member who is a registered nurse, but who is not an employee of a hospital**  
17 **or a consultant to a hospital.**

18

19 **All members shall be** appointed by the governor with the advice and consent of the senate, not  
20 more than [three] **five** of whom shall be from the same political party. **All members shall serve**  
21 **four-year terms.**

22           3. No business of this committee shall be performed without a majority of the full body.

23           4. [The members shall be appointed as soon as possible after September 28, 1979. One  
24 of the senate members, one of the house members and three of the members appointed by the  
25 governor shall serve until January 1, 1981, and the remaining members shall serve until January  
26 1, 1982. All subsequent members shall be appointed in the manner provided in subsection 2 of  
27 this section and shall serve terms of two years.

28           5.] The committee shall elect a chairman at its first meeting which shall be called by the  
29 governor. The committee shall meet upon the call of the chairman or the governor.

30           [6.] **5.** The committee shall review and approve or disapprove all applications for a  
31 certificate of need made under sections 197.300 to 197.366. It shall issue reasonable rules and  
32 regulations governing the submission, review and disposition of applications.

33           [7.] **6.** Members of the committee shall serve without compensation but shall be  
34 reimbursed for necessary expenses incurred in the performance of their duties.

35           [8.] **7.** Notwithstanding the provisions of subsection 4 of section 610.025, RSMo, the  
36 proceedings and records of the facilities review committee shall be subject to the provisions of  
37 chapter 610, RSMo.

197.330. 1. The committee shall:

2           (1) Notify the applicant within fifteen days of the date of filing of an application as to  
3 the completeness of such application;

4           (2) Provide written notification to affected persons located within this state at the  
5 beginning of a review. This notification may be given through publication of the review  
6 schedule in all newspapers of general circulation in the area to be served;

7           (3) Hold public hearings on all applications when a request in writing is filed by any  
8 affected person within thirty days from the date of publication of the notification of review;

9           (4) Within one hundred days of the filing of any application for a certificate of need,  
10 issue in writing its findings of fact, conclusions of law, and its approval or denial of the  
11 certificate of need; provided, that the committee may grant an extension of not more than thirty  
12 days on its own initiative or upon the written request of any affected person;

13 (5) Cause to be served upon the applicant, the respective health system agency, and any  
14 affected person who has filed his prior request in writing, a copy of the aforesaid findings,  
15 conclusions and decisions;

16 (6) Consider the needs and circumstances of institutions providing training programs for  
17 health personnel;

18 (7) Provide for the availability, based on demonstrated need, of both medical and  
19 osteopathic facilities and services to protect the freedom of patient choice; and

20 (8) Establish by regulation procedures to review, or grant a waiver from review,  
21 nonsubstantive projects.

22

23 The term "filed" or "filing" as used in this section shall mean delivery to the staff of the health  
24 facilities review committee the document or documents the applicant believes constitute an  
25 application.

26 2. Failure by the committee to issue a written decision on an application for a certificate  
27 of need within the time required by this section shall constitute approval of and final  
28 administrative action on the application, and is subject to appeal pursuant to section 197.335 only  
29 on the question of approval by operation of law.

30 **3. For all hearings held by the committee, including all public hearings under**  
31 **subdivision (3) of subsection 1 of this section:**

32 (1) All testimony and other evidence taken during such hearings shall be under  
33 oath and subject to the penalty of perjury;

34 (2) The committee may, upon a majority vote of the committee, subpoena witnesses,  
35 and compel the attendance of witnesses, the giving of testimony, and the production of  
36 records;

37 (3) All ex parte communications between members of the committee and any  
38 interested party or witness which are related to the subject matter of a hearing shall be  
39 prohibited at any time prior to, during, or after such hearing;

40 (4) The provisions of sections 105.452 to 105.458, RSMo, regarding conflict of  
41 interest shall apply;

42 (5) In all hearings, there shall be a rebuttable presumption of the need for  
43 additional medical services and lower costs for such medical services in the affected region  
44 or community. Any party opposing the issuance of a certificate of need shall have the  
45 burden of proof to show by clear and convincing evidence that no such need exists or that  
46 the new facility will cause a substantial and continuing loss of medical services within the  
47 affected region or community;

48           **(6) All hearings before the committee shall be governed by rules to be adopted and**  
49 **prescribed by the committee; except that, in all inquiries or hearings, the committee shall**  
50 **not be bound by the technical rules of evidence. No formality in any proceeding nor in the**  
51 **manner of taking testimony before the committee shall invalidate any decision made by the**  
52 **committee; and**

53           **(7) The committee shall have the authority, upon a majority vote of the committee,**  
54 **to assess the costs of court reporting transcription or the issuance of subpoenas to one or**  
55 **both of the parties to the proceedings.**

✓