

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 1, 1979

AUG 10 1979
OF MONTANA

The forty-seventh meeting of the Senate Judiciary Committee was called to order on the above date in Room 331 of the Capitol Building by Senator Everett R. Lensink, chairman at 9:30 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 258:

This is an act to require typed or printed names below the signatures on an instrument which must be recorded and to prohibit the recording of any instrument not meeting such requirement. Representative Robbins gave a brief explanation of this bill and introduced John Bell, who represents the Montana Association of County Clerks and Recorders.

Mr. Bell stated that all too often signatures are totally illegible and this causes vast problems. He showed the committee an example of handwriting that could not be read.

There were no further proponents and no opponents, and Senator Lensink stated that he felt the wording should be fixed up. There being no further questions or comments, the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 242:

This is an act creating informal contested case proceedings; providing for joint waiving of formal proceedings; providing for joint waiving of administrative proceedings; restricting modification by the agency of the proposal for decision, etc. Representative Harper, District 30, Helena, stated that this was an administrative code committee bill and he gave an explanation of this bill.

Bob Pyfer, staff attorney for the Legislative Council, gave a further explanation of this bill.

There were no further proponents and no opponents.

Senator Brown questioned if section 4 was originally part of the bill, and Representative Harper said that it was. Senator Brown said that this has nothing to do with informal proceedings, and he was wondering if the title encompasses that. He stated that you are entitling them to attorney's fees which it does not do now. Representative Harper stated that this is included in

"restricting modification by the agency of the proposal for decision", but he said he would leave it up to the committee. Senator Brown asked if he would have any objection to amending this, and Representative Harper said he had no objections.

There were no further questions or comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 259:

This is an act permitting an agency to elect to use hearing examiners from the legal services unit within the attorney general's office or from another agency; defining the timely filing of an affidavit of bias, providing that the decision of the hearing examiner is final in certain circumstances, etc. Representative Tropila gave an explanation of this bill and he introduced Bob Pyfer, staff attorney for the Legislative Council.

Mr. Pyfer gave additional information in regard to this bill, and he said that the House Judiciary Committee added an amendment on page 3.

Roger Tippy, speaking for himself, gave a statement in support

There were no further proponents and no opponents.

Senator Brown questioned what would happen when four out of five of the officials have been disqualified; and by law, you must have a quorum to make a decision. Mr. Pyfer stated that this did come up and it seemed a bit awkward trying to come up with the language involved and they decided to just cover the particular problem.

Richard Gillespie, from the Department of Public Instruction, stated that his research indicates that where a majority or all the members are disqualified from the hearing, the courts have developed a thing called the "doctrine of necessity", which is alive and well in Montana. This says that the procedure cannot be frustrated and that these disqualified people may make a decision that is subject to review.

Senator Turnage noted that the amendment on page 3 had a peculiar application to the public instruction office. Senator Brown questioned if this could be amended to limit it to sole-member agencies.

Senator Turnage stated that the House struck out "bias or prejudice exists" and he felt that this should have stayed in there -- that there are no standards at all right now. Mr. Gillespie said that on lines 14 and 15 on page 2, they added "lack of independence, disqualification by law".

There were no further questions or comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 248:

This is an act to generally revise the laws relating to the prisoner furlough program, etc. Representative Menahan gave an explanation of this bill, which he stated was requested by the Department of Institutions.

A statement was given in support of this bill by Bob Rhay, Administrator of the Corrections Division of the Dept. of Institutions.

There were no further proponents.

Karen Mikota, representing the League of Women Voters, stated that they support a strong furlough program, and they feel that the present law that established this program is good. She said that on page 5, lines 8 through 20 are ambiguous; and on page 12, line 7 the word "executed" infers that action should be taken and she said that the word "developed" means there is no follow-through. She further questioned on page 13, lines 11 through 12 and they felt that this was a drastic alternative; and on page 6, lines 2 through 6, that this cuts into the heart of the work furlough program and they felt that this is a closely supervised and an effective means of rehabilitation. She further stated that they know the program works, and questioned why it should not be strengthened or left alone, and they would urge a do-not-pass on this piece of legislation.

Senator Ryan stated that he was against the concept of work furlough itself and he felt that this was a circumvention of parole. He stated that when a person is in prison, and they hand them a list of rules, they will sign them to get out the door. He said that they could give the inmates early parole rather than go through work furloughs, there is no risk involved; it just adds another bureau in the department of institutions; and he thinks the committee should consider taking agency out of it and putting in people.

Representative Menahan said that this is probably true that this is a selective group - he stated that you have to be selective. He felt that what should be developed is a furlough system and abolish the parole system, as he felt that a great many of them fail. He said that there is a gentleman who is now at vo-tech, who had been on parole, and now he says that this is the greatest program there is, and he felt that this is the type of program that is needed.

Senator Towe said that he would like to hear from Carolyn Zimmelt, Chief of Community Services Bureau, from the Dept. of Institutions and would like to know how close a supervision do the sponsors have. He was told that they have daily contact with a teacher, at the end of the first thirty days, he is looked at again to see if he needs that much supervision, and perhaps he may be changed to once every other day.

Senator Towe asked Senator Ryan how often did he see parolees. Senator Ryan stated sometimes on a daily basis and sometimes, like in the summer, every three months.

It was noted that 41.6 per cent of the furloughees have failed and have returned to prison.

Senator Turnage said that he was concerned about what constitutes escape and asked if you are going to give this fellow ten years because he didn't make his curfew. There was some discussion on what constitutes escape.

Senator Towe questioned about the effects of this bill on the prison population, and he wondered if this bill would have an adverse affect and would it make it more difficult for furlough programs.

Mr. Rhay stated that the prison population is of great concern to us; it is hard to project, it is going up at such a rate; and something has to be done. He stated that he did not feel that this would reduce the number of furlough programs except in the fringe areas and these are people they don't want out anyway.

Senator Towe questioned why on page 3, lines 17, 18, and 19 these were taken out. Day Hoy, parole coordinator, stated that these are just guidelines and people that are self-employed, logging, seasonal jobs, working on farms and ranches, that there is no way you can get a handle on this guideline and, therefore, we said to strike it.

Senator Turnage questioned in section 6, what is the real affect of this on eligibility for furlough. Mr. Rhay stated that this restricts the people who can apply.

Senator Van Valkenburg asked how many people apply for the furlough program and it was noted that about 50 per cent of the total number applying for parole, and the board denied about five or six.

Senator Towe stated that on page 9, concerning the violation of furlough agreement it says that if he fails to comply, he shall be called by the department and the supervising agency to appear before the department for a conference. He asked if that is right.

Mr. Rhay stated that, yes, this is true, it will be handled at the next hearing after he is back in prison. Senator Towe questioned why would you take this out - isn't there a constitutional problem with that. Ms. Semeck stated that that was done in the judiciary committee in the House and she stated that it appears to her that it should be reinserted and she wondered if we are giving them due process.

Senator Anderson questioned as to how many chiefs do they have to how many Indians and Mr. Hoy stated that they are supervised by volunteers in the community, friends, relatives, halfway houses, and he said that we do have an overlap.

Senator Towe questioned if they have any idea as to how much it costs on a furlough program compared to the cost in prison. Mr. Hoy said that it costs \$35.00 in the institution per man and \$28.00 for a female a day. He stated that they do not have furlough costs per day, but total cost of incarceration and subtracting cost of administration would have a saving of approximately \$117,000.00.

CONSIDERATION OF HOUSE BILL 229:

This is an act to specifically include district court judges in the county budget law, etc. Representative Sales gave an explanation of this bill which he stated should remove the doubt of whether district judges have to live within their budget.

Mike Stevens, representing the Montana Association of Cities and Counties, gave a statement in support of this bill.

There were no further proponents and no opponents.

Senator Brown gave some background information on this bill and stated that he sponsored SB 397, which he hoped is the one that is going to go.

Representative Sales stated that he did not see too much conflict between the two bills.

Senator Turnage stated that we now have invited the courts to embark on any program they want to, and HB 229 doesn't even hope to answer that problem. He said that the district courts could decide to create a whole new program not authorized by

statute. He told how they instigated the family court and then when they couldn't get it funded, they threatened the county commissioners with punishment and imprisonment. Senator Brown stated that there was a big difference - it was a question of personalities - if the court would have agreed to hire a certain individual, the commissioners would have gone ahead and funded that program. He stated that with SB 397, he thought that this would give the commissioners a much better basis for saying no.

There were some further questions and Senator Lensink stated that these can be discussed in committee. The hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 250:

This is an act to lengthen notice requirements for the adoption, amendment or repeal of an administrative rule and to require that a rule be noticed under certain circumstances, etc. Representative Stobie introduced Bob Pyfer, staff attorney for the Legislative Council.

Mr. Pyfer gave an explanation of this bill.

Don Allen, Executive Director for the Montana Petroleum Association, gave a statement in support of this bill. He said that they are controlled by three separate agencies and they need time to sort these proposals out.

There were no further proponents and no opponents.

Senator Brown stated that what you are asking for is for the agencies to ignore the rules. He said that the way he reads this, they are going to have to go back and do it again, he felt that they are going to have an endless series of hearings on these rules and he felt this would have a chilling effect on agencies who listen to comments of those at hearings.

There was some question about the language in subsection 4 and Mr. Pyfer stated that he felt that there should be a way to tighten up the language when subsection 6 (a) was called into play. Senator Brown requested some time to call some agency people and maybe they could come up with some language.

Senator Towe stated that one of his concerns is that it takes so long for administrative procedure to take place and by extending these rules, it will just take longer. Mr. Pyfer said that it takes between 45 to 50 days anyway, that this varies from agency to agency, and that this would indeed increase the minimum period.

Senator Towe stated that not enough people would be able to analyze it in thirty days and Mr. Pyfer said yes, not even the people who are affected themselves.

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Senate Judiciary Committee
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Senator Towe asked if there was still emergency procedures and Mr. Pyfer said yes, there are.

There were no further questions and comments, and the hearing on this bill was closed.

Senator Lensink announced that there would be a meeting on adjournment. There being no further business, the meeting was adjourned.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 3/1/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Please sign & return to Secretary's Office

SENATE

COMMITTEE

VISITORS' REGISTER

DATE 3/1/75

BILL _____

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOS
But Sturt	W.H. Paul Conrail	HB200	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mark Stogsdorff	MI Assoc of Counties	HB229	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BS/Kearney	Div of Corrections	HB248	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dan Hays	"	HB248	<input checked="" type="checkbox"/>	<input type="checkbox"/>
C. Jimmet	Div of Corrections	HB248	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Karin Miksa	League of Women Voters	HB248	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Richard L. Hillaris	Summit State P.M.	HB257	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Ketter	Vanderbilt		<input type="checkbox"/>	<input type="checkbox"/>
Ch. Kerpel	MI State Socies	HB259	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jan Allen	Ind. Retail Assoc.	HB255	<input checked="" type="checkbox"/>	<input type="checkbox"/>

STANDING COMMITTEE REPORT

March 2

19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 242

Respectfully report as follows: That House Bill No. 242,

third reading bill, be amended as follows:

1. Page 4, line 2.
Strike: "subsection"

2. Page 6, lines 5 through 8.
Following: "record." on line 5
Strike: remainder of line 5 through line 8

3. Page 6.
Following: line 12
Insert: "Section 5. THERE IS A NEW MCA SECTION THAT READS:
"Section 5. Codification. Section 3 is intended to be
codified as an integral part of Title 2, chapter 4, and
the provisions contained in Title 2, chapter 4, apply to
section 3."

And, as so amended,
BE CONCURRED IN

DO PASS

JD.

March 2 19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 229

Respectfully report as follows: That House Bill No. 229,

third reading bill, be amended as follows:

- 1. Title, line 6.
Following: line 5
Strike: "SECTIONS 7-6-2323 AND"
Insert: "SECTION"
- 2. Page 1, line 9 through line 13 on page 2.
Strike: section 1 in its entirety
Renumber: subsequent section
- 3. Page 2, line 21.
Following: "in"
Insert: "3-5-404,"
Following: "7-6-2325"
Insert: ",,"

And, as so amended,
BE CONCURRED IN

DEPASSY

ga

The League supports a strong furlough program. After much study, we have concluded that a furlough program aids in resocialization and rehabilitation. We feel the present law establishes a strong and workable program. Furlough has a high success rate. The state has experienced a direct savings of approximately \$150,000. If fully implemented the program could service more people and generate more savings to the state.

The League opposes HB248 for several reasons. The language has been changed leaving ambiguous meanings. Examples are found on page 5, lines 8-20. Originally the rules would include provisions for (1) working at paid employment. The new wording strikes that and adds guidelines for (3) financial arrangements with respect to paid employment and/or residence housing. This is not a mere clarification or usage of more specific words. The rules did provide for or supply the furloughee with the opportunity to work or be involved in some training. To simply write guidelines can mean listing a set of rules. Who finds the work or training? If there is no help in that essential element of setting up a furlough then why consider the rules?

Page 12, Line 7. The word executed definitely requires that action be taken once the plan is formed. Developed requires no follow-through.

Page 13, Lines 11-13. Previously the prisoner is entitled to have counsel appointed to represent him. Now he may be represented by counsel at his own expense. This is quite an

obvious and drastic alteration.

We also oppose the new time limitations for application.

Page 6, Lines 2-6. This provision cuts into the heart of the furlough program. Some applicants may take months to process. The Board of Pardons' action is not given specific timelines. The prisoner needs sufficient time to apply and be processed and still experience the program. The new time limitations alone could effectively eliminate furlough.

Furlough is a closely supervised successful rehabilitation. If our goal is to ensure that the offender does not return to a life of crime as well as remaining cost effective why insert these killing stipulations? This program has been working.

Finally, take note of the repealer. This section includes "(1) If the application is approved, the department shall within the shortest possible time, locate an agency capable of supervision of the applicant." This gives specific responsibility to the department. With HB248 who will actually get things going? The prisoner by virtue of his situation will not always be able to locate a supervising agency. I can not say this often enough. We know the program works. Why not strengthen it or at least leave it alone. HB248 in its present form will gradually phase furlough out in this state. This is avoidable and we strongly urge a DO NOT PASS.

March 1, 1979
Helena, Mont.

To: Senator Tom Towe
Senate Judiciary Committee
Rm. 331 Capitol Building

Re: HB - 248 Prisoner Furlough Program

Dear Senator Towe,


Am enclosing some statistics which may be useful in arriving at a determination of HB - 248. Yourself and other committee members had asked for specific facts and figures to which I could only make an educated guess. To the best of my recollection the following issues were discussed:

150 = total number of prisoners applying for furlough in 1978
21 = number of prisoners completing furlough process in 1978
17 = number of prisoners approved for furlough in 1978
4 = number of prisoners denied for furlough in 1978

41 = total number of prisoners released on furlough since inception of program (Sept. '75)
6 = number of prisoners returned from furlough to custody (15%)

Cost per man day @ state prison	= \$35.62
Cost per day (Women's Life Skills Center)	= \$28.00
Cost per day furlough	(1978) = 8.28
	(1977) = 5.97
	(1976) = 14.57

Respectfully,



Daniel R. Hoy, Furlough Coordinator
Department of Institutions

#47

OPINION TO MAINTAIN FURLOUGH PROGRAM

- 1). Monetary savings to state vs. continued incarceration
- 2) Protection of public primary consideration:
 - a. 4-step screening process in determination of furloughs
 - b. low recidivism rate on furlough (12 - 15%)
 - c. criminal justice and prosecuting agencies offer input to Board of Pardons
 - d. B.O.P. retains final authority to release
- 3) Provides further rehabilitative tools for use by Board of Pardons -- furlough may be granted in lieu of parole release
- 4) Motivates inmates to change -- by offering alternative to incarceration (applicants must secure own sponsors, etc.)
- 5) Provides some relief to overcrowding of prison population
- 6) Utilizes existing probation / parole system
- 7) Utilizes volunteers and community resources
- 8) Promotes support of dependents and payment of restitution or debts
- 9) Minimal state assistance to furloughed inmates while on educational programs
 - Rehab. Service Div. (80% fed. - 20% state)
 - V.A. benefits (fed.)
 - B.E.O. Grants & student loans (fed.)
 - Bureau of Indian Affairs (fed.)
- 10) During the past three years, furlough release has proven to be an effective program. The general public also derives some "spin - off" benefits such as taxes paid by employed prisoners; medical expenses assumed by furlougees and the support of dependents.

FURLOUGH STATISTICS

Average length of furlough

1976 - 171.3 days
1977 - 177.2
1978 - 198.6

Number of Furlough Days

1976 - 974 male
1977 - 1952 male / 200 female
1978 - 4132 male / 245 female

Time to Parole Eligibility

1976 - 179.8 days
1977 - 210.7 days
1978 - 353.9 days

Cost Effectiveness

1976 - \$ 12,589.53
1977 - \$ 47,865.73
1978 - \$117,764.23

Cost per Furlough day

1976 - \$ 14.57
1977 - \$ 5.97
1978 - \$ 8.28

Type of Furlough Programs

1976 - 7 school
 2 work
 1 treatment

1977 - 4 school (1 female)
 8 work (3 female)
 1 treatment (female)

1978 - 9 school
 7 work
 2 treatment

1976 FURLOUGH STATISTICS

Number of furlough days	974
Average length of furlough	171.3 days
Average time to parole eligibility	179.8 days

Type of Furlough Program
7 school
2 work
1 treatment

Cost of incarceration @ \$27.50 per man day
(974 x \$27.50) = \$26,785.00

LESS (administrative costs)

1/3 salary & benefits (Zimmet)	=	9000.00
travel	=	500.00
20% Rehab. Services Div. (\$952)	=	190.40
25% Work-Study (\$875)	=	218.75
Lighthouse Drug Treatment Program @ \$32.72/day x 131 days	=	4286.32
total state funding	=	<u>\$14,195.47</u>

<u>FEDERAL FUNDS</u>		<u>COST EFFECTIVENESS</u>
Mtn.-Plains Program		\$26,785.00
(H.E.W.)	= 340	<u>-14,195.47</u>
Vetran's Admin.	= \$1350	\$12,589.53

EARNED INCOME = \$9220

LESS

family & child support	=	1600*	
board & room	=	400	*indirect benefits
misc. bills & debts	=	2550	
20% taxes	=	1844*	\$3444.00

974 Furlough days $\left[\frac{\$14,195.47}{974} = \$14.57 \text{ / furlough day} \right]$ (total state funding)

1977 FURLOUGH STATISTICS

Number of furlough days (1952 male/ 200 female)
 Average length of furlough 177.2 days
 Average time to parole eligibility 210.7 days

Type of Furlough Program
 4 school (1 female)
 8 work (3 female)
 1 treatment (female)

Cost of Incarceration

1952 male @ \$28.24 / day	= \$55,124.48
200 female @ 28.00 / day	= 5,600.00
	<u>\$60,724.48</u>

LESS (administrative costs)

1/3 salary & benefits (Zimmet)	= 9,000.00
travel expenses	= 500.00
20% Rehab. Services Div. (\$2746.25)	= 549.25
25% Work-Study (\$3062.00)	= 765.50
Life Skills Training Center @ \$28.00/day x 73 days	= 2044.00
total state funding	<u>= \$12,858.75</u>

FEDERAL FUNDS

student loans & B.E.O.G. =\$1140
 S.S. & V.A. benefits = \$4188

COST EFFECTIVENESS

\$60,724.48
-12,858.75
 \$47,865.73

EARNED INCOME

= \$35,447.00

LESS

family & child support	11,300.00*	
board & room	4,975.00	
savings	910.00	*indirect
misc. bills & debts	1,110.98	benefits
20% taxes	7,089.40*	\$18,389.00

2152 Furlough days $\left[\frac{\$12,858.75}{2152} = \$5.97 \text{ / furlough day} \right]$ (total state funding)

CATEGORIES OF CRIME

Homicide-----	10
Aggrivated Assault-----	3
Agg. Assault & Rape-----	1
Arson & Forgery & Theft-----	1
Sale of Drugs-----	3
Sale & Possession of Drugs-----	3
Armed Robbery-----	2
Robbery & Rape-----	1
Robbery & Burg.-----	1
Burglary-----	3
Burglary & Theft-----	2
Burglary & Parole Violation-----	1
Concealed Weapon & P.V.-----	1
Forgery-----	6
Forgery & P.V.-----	1
Grand Larceny & Obt. Money False Pretense ----	1
Grand Larceny & Escape-----	1

HB 242

1. Page 4, line 2.

Strike: "subsection"

2. Page 6, lines 5 through 8.

Following: "record." on line 5

Strike: remainder of line 5 through line 8

3. Page 6.

Following: line 12

Insert: "Section 5. Codification. Section 3 is intended to be codified as an integral part of Title 2, chapter 4, and the provisions contained in Title 2, chapter 4, apply to section 3."

HB 229

1. Title, line 6.

Following: line 5

Strike: "SECTIONS 7-6-2323 AND"

Insert: "SECTION"

2. Page 1, line 9 through line 13 on page 2.

Strike: section 1 in its entirety

Reinsert: subsequent section

3. Page 2, line 21.

Following: "in"

Insert: "3-5-404,"

Following: "7-6-2325"

Insert: ", "

BILLS TO BE HEARD BY SENATE JUDICIARY, THURSDAY, MARCH 1, 1979

1.)

HB 229 (Sales)

Current law: any county official who exceeds his budget appropriation is personally liable for the excess amount.

Proposed bill: would make district court judges liable for expenditures made in excess of district court appropriations authorized by the county governing body except in cases covered by 3-5-404 where the sheriff provides court facilities.

2.)

HB 250 (Stobie)

By Request of Administrative Code Committee

Current law: Montana's Administrative Procedure Act establishes procedures which state agencies and departments must use when making rules. The Act requires agencies to publish notice of adopting, amending or repealing rules. Notice is to be published in the Montana Administrative register.

Proposed bill: lengthens the notice requirements from 30-60 days for publication notice, from 20 to 30 days for notice to interested persons and from 20 to 40 days for reply. This bill also requires that a rule be renoticed if the comments received show that a rule as changed will affect persons who were previously unaffected or is outside the original scope or purpose of the rule. Under the current law, an agency can adopt a rule in an emergency, without notice, if the emergency requires adoption upon fewer than 20 days' notice -- the bill would lengthen this time to 60 days.

3.)

HB 242 (Harper)

By Request of Administrative Code Committee

Current law: under the Montana Administrative Procedure Act, a person is entitled to a hearing if he contests an agency's ruling. Contested cases can be disposed of informally.

Proposed bill: (1) allows parties to a contested case to waive formal proceedings and use informal proceedings (2) creates informal proceedings in which the rules of evidence do not apply. (3) allows parties to waive administrative proceedings and go directly to a court if there is no dispute as to facts, and (4) restricts an agency's modification of the "proposal for decision" (which is the proposed decision in a case, which the parties must be given an opportunity to respond to in a case where the agency's members making the decision have not heard the case). In such a case, the agency can modify conclusions of law but can not modify findings of fact.

HB 242, continued

Section 1. amend 2-4-601.

Section 2. amend 2-4-603.

Section 3. NEW.

Section 4. amend 2-4-621.

Notice.

Informal disposition &
hearing -- waiver of
administrative proceedings

Informal proceedings.

When absent members
render decision -- proposa
for decision and opportuni
to submit findings and
conclusions -- modification
by agency.

HB 259 (Tropila)

By Request of Administrative Code Committee.

Current law: in contested cases, the agency can appoint a
hearing examiner to hear the case (2-4-611)-

Proposed bill: is dependent on the passage of HB 12 (in S. State
Admin. Comm.) creating a legal assistance program in the
office of the attorney general. The proposed bill would
allow an agency to choose to appoint a hearing examiner from
the legal services unit within the A.G.'s office or from
another agency. The election to request is not mandatory
and is designed to get around bias in an agency. The bill
also attempts to clarify disqualification standards for
agency members and provides that when all agency members
are disqualified, the hearing examiner's decision is final.

HB 258 (Robbins, Galt)

Proposed bill: requires typed or printed names below the
signature on instruments which are to be recorded.

6.)

HB 248: (Menahan)

This bill generally revises the law relating to the prisoner furlough program.

Section 1. Definitions. Changes "Unless the context requires otherwise" to "unless otherwise specified" so that the definitions apply unless there is a specific, express exception-- the definitions of applicant (amended), application (new), and "plan" (new) clarify the application procedure.---- deletes the definition of "jail" because it is never used; --the definition of "prison" (new) changes current law by adding adult correctional facilities which are under contract with the department of institutions. ---the definition of "record" was added by the House (see sections 12 and 14).

*Section 2. Purpose. Deletes the requirement that furlougees be paid minimum wage (similar change in section 5 (1)).

Section 3. Amendments clarify that only state officers may be guilty of official misconduct; new sentence clarifies that the crime of mistreating prisoners applies to mistreatment of furlougees by state officers.

Section 4. New sentence clarifies that good time continues to accrue while the prisoner is on furlough.

Section 5. Amendments clarify rule making authority.

Section 6. Changes requirements for eligibility to participate
* in the program; changes current law by making prisoners whose parole has been revoked eligible if other requirements are met.

Section 7. Allows board more flexibility in considering applications by deleting the requirement that the decision be made at the board's next meeting; requires the board itself to notify an applicant of its decision and deletes the requirement that notice be given immediately;
In subsection (2) a new sentence has been added to clarify what entity has the final authority in granting or revoking furloughs.

*Section 8. Provides a new appeal procedure to the department when the board rejects a prisoner's application three times.

Section 9. Amendments clarify the contents of the financial agreement between the prisoner and the supervisory agency (entered into before the application is submitted), allow
* provisions regarding restitution, and provide that the prisoner receives the balance when his furlough terminates rather than on his release as is provided in current law.

Section 10. Amendments reward and clarify terminology.

Section 11. Changes procedure for a conference when the
* prisoner is alleged to have violated his furlough agreement.

* The House deleted the post-conference hearing and changed current law by requiring the return of the prisoner to prison if the conference does not resolve the problem. As under current law, a hearing must be held after his return to prison. New sentence at end of section clarifies the prisoner

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must pay for his counsel if he has any.

Section 12. Amendment relaxed requirement that must be met before a prisoner can be returned to prison with a hearing or conference ("grave threat" vs "immediate grave threat").

** The House added "the record of" which has no meaning in this context. No hearing has been held. Therefore, no record exists.

Section 13. Amendments put 30-day time limit on a request by a prisoner for changes in his furlough plan.

Section 14. Deletes the requirement that the availability of a furloughed prisoner for employment be reported to the department of labor and industry and any union he belongs to. In subsection (3), adds a requirement that a record be made of a hearing held because the prisoner is not benefiting from the program and clarifies that the prisoner must pay for his counsel if he has any.

**Sections 15 and 16. Makes it a felony to leave supervision without permission while on furlough.

*Section 17. Repeals the section which requires the department to locate a supervising agency after approving the application. This bill amends current law so that the prisoner must find the supervising agency and enter into an agreement with it before he applies to participate in the furlough program.