

1 HB BILL NO. 65
 2 INTRODUCED BY Sully (Request Ad. Cole (over) Log Barnett)
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE POSITION
 5 OF ADMINISTRATIVE LAW JUDGE AND A DIVISION OF ADMINISTRATIVE
 6 ADJUDICATION; PROVIDING FOR AN ADMINISTRATIVE LAW JUDGE TO
 7 HEAR CONTESTED CASES BEFORE PROFESSIONAL AND OCCUPATIONAL
 8 LICENSING BOARDS; APPROPRIATING MONEYS; AMENDING SECTION
 9 82A-1604, R.C.M. 1947."
 10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. There is a new R.C.M. section that reads as
 13 follows:

14 Division of administrative adjudication -- appointment
 15 of administrative law judge. (1) There is a division of
 16 administrative adjudication. The division is allocated to
 17 the department of administration for administrative purposes
 18 only as prescribed in 82A-108. The division consists of one
 19 or more administrative law judges who are members of the
 20 executive branch of state government and necessary clerical
 21 personnel employed under the state classification and pay
 22 plan.

23 (2) The governor shall appoint an administrative law
 24 judge for a term of 6 years in the manner provided by 93-705
 25 through 93-717 for the appointment of district court judges.

1 A vacancy shall be filled in the same manner as the original
 2 appointment.

3 (3) To be eligible for administrative law judge, a
 4 person must have the qualifications necessary for district
 5 court judges found in Article VII, section 9, of the Montana
 6 constitution.

7 (4) Each administrative law judge shall devote full
 8 time to his official duties and may not engage in the
 9 practice of law. He shall receive the salary of a district
 10 judge but shall be a member of the public employees'
 11 retirement system and may not be a member of the Montana
 12 judges' retirement system.

13 Section 2. There is a new R.C.M. section that reads as
 14 follows:

15 Administrative law judge -- duties. (1) The division of
 16 administrative adjudication shall assign an administrative
 17 law judge to hear contested cases before a board in the
 18 department of professional and occupational licensing,
 19 assigned to hearing under 82A-1604.

20 (2) The division may assign an administrative law
 21 judge to hear and render proposed decisions in contested
 22 cases before other agencies as requested by agencies, but is
 23 not required to do so.

24 Section 3. Section 82A-1604, R.C.M. 1947, is amended
 25 to read as follows:

1 "82A-1604. Director -- duties. In addition to his
2 powers and duties under sections 82A-107 and 82A-108 of this
3 act, the director shall:

4 (1) ~~Appoint---impartial---legal---counsel---to---conduct~~
5 ~~hearings---before---each---board---within---the---department---whenever~~
6 ~~any---board---holds---a---hearing---The---legal---counsel---appointed---shall~~
7 ~~see---that---hearings---are---conducted---in---a---proper---and---legal~~
8 ~~manner. refer each request for a contested case hearing~~
9 ~~before any board to the division of administrative~~
10 ~~adjudication. The administrative law judge assigned to hear~~
11 ~~the case shall, notwithstanding 82-4212, make findings of~~
12 ~~fact and conclusions of law which the board may not alter in~~
13 ~~its final order.~~

14 (2) Whenever ~~whenever~~ the department conducts an
15 investigation of a complaint of illegal or unethical conduct
16 of a member of a particular profession or occupation as
17 prescribed in section 82A-1603(5) of this chapter, and if
18 requested by the appropriate board, appoint an impartial
19 member of that profession or occupation to assist the
20 department in its investigation. The member so appointed may
21 not be a member of the board having jurisdiction over the
22 particular profession or occupation.

23 (3) Hire hire all personnel to perform the
24 administrative and clerical functions of the department for
25 the boards. Boards within the department have no authority

1 to hire personnel."

2 Section 4. Appropriation. The following moneys are
3 appropriated for the biennium ending June 30, 1979:

4 DEPARTMENT OF ADMINISTRATION		
5	Division of	
6	administrative	
7	adjudication	Fiscal Year
8		Fiscal Year
		Ending 6/30/78
9	From the general fund	Ending 6/30/79
	\$58,057	\$52,818

-End-

STATE OF MONTANA

REQUEST NO. 41-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 10, 19 77, there is hereby submitted a Fiscal Note for HB 65 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 65 proposes the creation of an administrative law judge and a division of adjudication within the Department of Administration for the purpose of hearing disputed case before the Professional and Occupational Licensing Boards. Contains an appropriation for same.

ASSUMPTIONS:

1. Figures used in preparing appropriation information on this bill

	FY78	FY79
Administrative law judge per (93-303)	25,000	25,000
Grade 12 executive secretary	11,919	12,201
benefits @ 13%	4,801	4,836
Operating expenses @ 20% of personal serv.	8,344	8,407
Capital outlay	<u>8,003</u>	<u>2,374</u>
Total estimated expenditures	<u>58,067</u>	<u>52,818</u>

2. Sheriffs office will provide bailiff services.

3. Travel expense to hold hearings will be minimal.

4. Additional costs will be needed for clerk of court and court stenographer which would normally be included in a courts budget.

Clerk of Court	14,000	14,000
Court reporter	12,500	12,500
Benefits	3,445	3,445
Additional operating expenses	5,990	5,990
Additional equipment expenses	<u>5,500</u>	<u>2,300</u>
	<u>41,435</u>	<u>38,235</u>

5. The Professional & Occupational Licensing budget cannot be reduced due to this legislation.

FISCAL IMPACT:

Additional expenditures by category	FY78	FY79
Personal Service	71,665	71,982
Operating	14,334	14,397
Equipment	<u>13,503</u>	<u>4,674</u>
Total additional cost of legislation	<u>99,502</u>	<u>91,053</u>

Richard L. Sawyer
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-14-77

STATE OF MONTANA

REQUEST NO. 41-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 31, 19 77, there is hereby submitted a Fiscal Note for House Bill 65 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 65 provides for the creation of an impartial hearing examiner to hear contested cases before professional and occupational licensing boards, and other departments.

ASSUMPTION:

It will be necessary to hire one Lawyer III and one Legal Steno II to perform the requisites of this act.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Personal services	\$30,670	\$32,510
Operating expenses	2,970	3,530
Capital outlay	<u>1,750</u>	<u>0</u>
Total additional cost of proposed legislation	<u>\$35,390</u>	<u>\$36,040</u>

Richard L. Drury for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-3-77

Approved by Committee on Judiciary

HOUSE BILL NO. 65

INTRODUCED BY SCULLY, LDY, BARRETT

A BILL FOR AN ACT ENTITLED: ~~AN ACT TO CREATE THE POSITION OF ADMINISTRATIVE LAW JUDGE AND A DIVISION OF ADMINISTRATIVE ADJUDICATION, PROVIDING FOR AN ADMINISTRATIVE LAW JUDGE TO HEAR CONTESTED CASES BEFORE PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS, APPROPRIATING MONEYS, AMENDING SECTION 82A-1604, R.C.M. 1947 TO CREATE THE POSITION OF IMPARTIAL HEARING EXAMINER TO HEAR CONTESTED CASES BEFORE PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS, AND OTHER DEPARTMENTS; APPROPRIATING MONEYS; AMENDING SECTION 82A-1604, R.C.M. 1947.~~

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

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. There is a new R.C.M. section that reads as follows:

Position of contested case hearing examiner created.

(1) There is a position of contested case hearing examiner within the department of administration.

(2) Qualifications for the position of hearing examiner are as follows:

(a) a license to practice law in the state of Montana;

and
(b) at least 3 years experience in legal practice.
(3) Each hearing examiner shall be employed under the state classification and pay plan.

Section 2. There is a new R.C.M. section that reads as follows:

Hearing examiner duties. (1) The department of administration shall assign a hearing examiner to conduct all contested cases referred by the various boards within the department of professional and occupational licensing under 82A-1604, R.C.M. 1947.

(2) All hearings conducted by the hearing examiner are subject to the provisions of the Montana Administrative Procedure Act, (chapter 42, Title 82, R.C.M. 1947).

(3) The department of administration may hire necessary clerical personnel under the state classification and pay plan, as required by the hearing examiners.

(4) The department of administration may but is not required to assign a hearing examiner to hear and render proposed decisions in contested cases before other departments or agencies of state government upon request.

Section 3. Section 82A-1604, R.C.M. 1947, is amended to read as follows:

"82A-1604. Director -- duties. In addition to his powers and duties under sections 82A-107 and 82A-108 of this

1 act, the director shall:

2 (1) ~~Appoint an impartial legal counsel to conduct~~
3 ~~hearings before each board within the department whenever~~
4 ~~any board holds a hearing. The legal counsel appointed shall~~
5 ~~see that hearings are conducted in a proper and legal~~
6 ~~manner. REFER EACH CONTESTED CASE HEARING BEFORE ANY BOARD~~
7 ~~TO THE DEPARTMENT OF ADMINISTRATION. THE HEARING EXAMINER~~
8 ~~ASSIGNED SHALL MAKE FINDINGS OF FACT, CONCLUSIONS OF LAW,~~
9 ~~AND PROPOSED ORDERS;~~

10 (2) ~~Whenever whenever~~ the department conducts an
11 investigation of a complaint of illegal or unethical conduct
12 of a member of a particular profession or occupation as
13 prescribed in section 82A-1603(5) of this chapter, and if
14 requested by the appropriate board, appoint an impartial
15 member of that profession or occupation to assist the
16 department in its investigation. The member so appointed may
17 not be a member of the board having jurisdiction over the
18 particular profession or occupation.

19 (3) ~~Hire hire~~ all personnel to perform the
20 administrative and clerical functions of the department for
21 the boards. Boards within the department have no authority
22 to hire personnel."

-End-