

1 ^H BILL NO. ⁴⁴⁴
 2 INTRODUCED BY *Johnson (for MEA)*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A DEADLINE
 5 FOR ISSUING FINDINGS OF FACT AND ORDERS ON UNFAIR LABOR
 6 PRACTICE CHARGES; AMENDING SECTION 59-1607, R.C.M. 1947."

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 9 Section 1. Section 59-1607, R.C.M. 1947, is amended to
 10 read as follows:

11 "59-1607. Remedies for unfair labor practice—
 12 ~~hearing procedure.~~ Violations of the provisions of ~~section~~
 13 ~~5 [59-1605] of this act~~ are unfair labor practices
 14 remediable by the board in the following manner:

15 (1) Whenever a complaint is filed alleging that any
 16 person has engaged in or is engaging in any such unfair
 17 labor practice, the board, or any agent designated by the
 18 board for such purposes, shall issue and cause to be served
 19 upon the person a copy of the complaint and a notice of
 20 hearing before the board, a member thereof, or before a
 21 designated agent, at a time and place therein fixed, not
 22 less than ~~five (5)~~ working days after the date of service.
 23 Any complaint may be amended by the complainant at any time
 24 prior to the issuance of an order based thereon, provided
 25 that the charged party is not unfairly prejudiced thereby.

1 The person upon whom the charge is served shall file an
 2 answer to the complaint. The complainant and the person
 3 charged shall be parties and shall appear in person or
 4 otherwise give testimony at the place and time fixed in the
 5 notice of hearing. In the discretion of the board or its
 6 agent conducting the hearing, any other person may be
 7 allowed to intervene in the proceeding and present
 8 testimony. In any hearing the board is not bound by the
 9 rules of evidence prevailing in the courts.

10 (2) The testimony taken by the board or its agent
 11 shall be reduced to writing and filed with the board.
 12 Thereafter in its discretion the board upon notice may take
 13 further testimony or hear argument. If upon the
 14 preponderance of the testimony taken the board is of the
 15 opinion that any person named in the complaint has engaged
 16 in or is engaging in an unfair labor practice, it shall
 17 state its findings of fact and shall issue and cause to be
 18 served on the person an order requiring him to cease and
 19 desist from the unfair labor practice, and to take such
 20 affirmative action including reinstatement of employees with
 21 or without back pay, as will effectuate the policies of this
 22 act. The order may further require the person to make
 23 reports from time to time showing the extent to which he has
 24 complied with the order. If upon the preponderance of the
 25 testimony taken the board is not of the opinion that the

1 person named in the complaint has engaged in or is engaging
 2 in the unfair labor practice, then the board shall state its
 3 findings of fact and shall issue an order dismissing the
 4 complaint. Any findings of fact and order shall be issued
 5 not more than 90 calendar days after a complaint is filed.
 6 No notice of hearing shall be issued based upon any unfair
 7 labor practice more than ~~six~~(6) months before the filing of
 8 the charge with the board, unless the person aggrieved
 9 thereby was prevented from filing the charge by reason of
 10 service in the armed forces, in which event the ~~six~~(6)
 11 month period shall be computed from the day of his
 12 discharge. No order of the board shall require the
 13 reinstatement of any individual as an employee who has been
 14 suspended or discharged, or the payment to him of any back
 15 pay, if it is found that the individual was suspended or
 16 discharged for cause. If the evidence is presented before a
 17 member of the board, or before an examiner, the member, or
 18 the examiner as the case may be, shall issue and cause to be
 19 served on the parties to the proceeding a proposed decision,
 20 together with a recommended order, which shall be filed with
 21 the board, and if no exceptions are filed within ~~twenty~~(20)
 22 days after service thereof upon the parties, or within such
 23 further period as the board may authorize, the recommended
 24 order shall become the order of the board.

25 (3) Until the record in a proceeding has been filed in

1 district court, the board at any time, upon reasonable
 2 notice and in such manner as it considers proper, may modify
 3 or set aside, in whole or in part, any finding or order made
 4 or issued by it."

-End-

STATE OF MONTANA

REQUEST NO. 365-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 4, 19 77, there is hereby submitted a Fiscal Note for House Bill 444 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 444 proposes to establish a deadline for issuing findings of fact and orders on unfair labor practice charges.

ASSUMPTIONS:

- Existing staff can absorb approximately 1/3 of workload involved with this bill.
- The Board of Personnel Appeals can absorb some of the required supplies and space for the secretarial position.
- Using the 1976 calendar year as a guideline, the Board of Personnel Appeals would require three (3) additional staff positions - two hearing examiners and a secretary - in order to comply with this legislation.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Personal services	\$42,800	\$45,368
Operational expense	6,700	6,700
Capital outlay	<u>3,500</u>	<u>500</u>
Additional expenditures due to proposed legislation	<u>\$53,000</u>	<u>\$52,568</u>

TECHNICAL NOTE:

- Proposed legislation does not provide flexibility for time required for more definite statements, motions, producing written transcripts and for filing briefs.
- Board orders issued after 90 day period may not have any effect; thus parties to a dispute may deliberately initiate delaying tactics.
- If proposed legislation refers to final orders the Board cannot comply because of normal elapse of time between time complaint filed, findings of hearing examiner, time for filing exception, and oral argument before full Board.

Richard L. Langford
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: Feb. 8, 1977

Approved by Committee
on Labor & Employment
Relations

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2 INTRODUCED BY Legislator (for MCA)

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16 person has engaged in or is engaging in any such unfair
17 labor practice, the board, or any agent designated by the
18 board for such purposes, shall issue and cause to be served
19 upon the person a copy of the complaint and a notice of
20 hearing before the board, a member thereof, or before a
21 designated agent, at a time and place therein fixed, not
22 less than ~~five (5)~~ working days after the date of service.
23 Any complaint may be amended by the complainant at any time
24 prior to the issuance of an order based thereon, provided
25 that the charged party is not unfairly prejudiced thereby.

1 The person upon whom the charge is served shall file an
2 answer to the complaint. The complainant and the person
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6 agent conducting the hearing, any other person may be
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8 testimony. In any hearing the board is not bound by the
9 rules of evidence prevailing in the courts.

10 (2) The testimony taken by the board or its agent
11 shall be reduced to writing and filed with the board.
12 Thereafter in its discretion the board upon notice may take
13 further testimony or hear argument. If upon the
14 preponderance of the testimony taken the board is of the
15 opinion that any person named in the complaint has engaged
16 in or is engaging in an unfair labor practice, it shall
17 state its findings of fact and shall issue and cause to be
18 served on the person an order requiring him to cease and
19 desist from the unfair labor practice, and to take such
20 affirmative action including reinstatement of employees with
21 or without back pay, as will effectuate the policies of this
22 act. The order may further require the person to make
23 reports from time to time showing the extent to which he has
24 complied with the order. If upon the preponderance of the
25 testimony taken the board is not of the opinion that the

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 2 in the unfair labor practice, then the board shall state its
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