

HOUSE BILL NO. 242

INTRODUCED BY HARPER, RAMIREZ, TROPILA

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE HOUSE

January 18, 1979	Introduced and referred to Committee on Judiciary.
January 25, 1979	Committee recommend bill do pass as amended. Report adopted.
January 26, 1979	Printed and placed on members' desks.
January 27, 1979	Second reading, do pass.
January 29, 1979	Considered correctly engrossed.
January 30, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

January 31, 1979	Introduced and referred to Committee on Judiciary.
March 3, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 6, 1979	Second reading, concurred in.
March 9, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 10, 1979	Returned from second house. Concurred in as amended.
March 14, 1979	Second reading, amendments adopted.

March 15, 1979

Third reading, amendments  
adopted. Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 242

INTRODUCED BY

*Wayne Ramsey, Turpin*

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

A BILL FOR AN ACT ENTITLED: "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; AND AMENDING SECTIONS 2-4-601, 2-4-603, AND 2-4-621, MCA."

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

Section 1. Section 2-4-601, MCA, is amended to read:

"2-4-601. Notice. (1) In a contested case, all parties shall must be afforded an opportunity for hearing after reasonable notice.

(2) The notice shall must include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the statutes and rules involved;

(d) a short and plain statement of the matters asserted. If the agency or other party is unable to state

the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall must be furnished.

~~(e) a statement that a formal proceeding may be waived pursuant to 2-4-603."~~

Section 2. Section 2-4-603, MCA, is amended to read:

"2-4-603. Informal disposition and hearings -- waiver of administrative proceedings. (1) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

~~(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then utilize informal proceedings under [section 3]. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.~~

~~(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition shall contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the~~

-2- HB 242 INTRODUCED BILL

1 ~~additions it may consider necessary to fully present the~~  
2 ~~issues, may make its decision.\*~~

3 NEW SECTION. Section 3. Informal proceedings. (1) In  
4 proceedings under this section, the agency shall, in  
5 accordance with procedures adopted under 2-4-201:

6 (a) give affected persons or parties or their counsel  
7 an opportunity, at a convenient time and place, to present  
8 to the agency or hearing examiner written or oral evidence  
9 in opposition to the agency's action or refusal to act or a  
10 written statement challenging the grounds upon which the  
11 agency has chosen to justify its action or inaction;

12 (b) if the objections of the persons or parties are  
13 overruled, provide a written explanation within 7 days.

14 (2) The record must consist of:

15 (a) the notice and summary of grounds of the  
16 opposition;

17 (b) evidence offered or considered;

18 (c) any objections and rulings thereon;

19 (d) all matters placed on the record after ex parte  
20 communication pursuant to subsection 2-4-613;

21 (e) a recording of any hearing held, together with a  
22 statement of the substance of the evidence received or  
23 considered, the written or oral statements of the parties or  
24 other persons, and the proceedings. A party may object in  
25 writing to the statement or may order at his cost a

1 transcription of the recording, or both. Objections shall  
2 become a part of the record.

3 (3) Agencies shall give effect to the rules of  
4 privilege recognized by law.

5 (4) In agency proceedings under this section,  
6 irrelevant, immaterial, or unduly repetitious evidence must  
7 be excluded but all other evidence of a type commonly relied  
8 upon by reasonably prudent persons in the conduct of their  
9 affairs is admissible, whether or not such evidence is  
10 admissible in a trial in the courts of Montana. Any part of  
11 the evidence may be received in written form, and all  
12 testimony of parties and witnesses must be made under oath.  
13 Hearsay evidence may be used for the purpose of  
14 supplementing or explaining other evidence, but it is not  
15 sufficient in itself to support a finding unless it is  
16 admissible over objection in civil actions.

17 (5) A party may petition for review of an informal  
18 agency decision pursuant to part 7 of this chapter.

19 Section 4. Section 2-4-621, MCA, is amended to read:

20 \*2-4-621. When absent members render decision --  
21 proposal for decision and opportunity to submit findings and  
22 conclusions ~~-- modification by agency.~~ (1) When in a  
23 contested case a majority of the officials of the agency who  
24 are to render the final decision have not heard the case--~~or~~  
25 ~~read--the-record,~~ the decision, if adverse to a party to the

1 proceeding other than the agency itself, may not be made  
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6 (2) The proposal for decision ~~shall~~ **must** contain a  
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 10 unavailable to the agency.

11 ~~(3) The agency may adopt the proposal for decision as~~  
 12 ~~the agency's final order. The agency in its final order may~~  
 13 ~~reject or modify the conclusions of law and interpretation~~  
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 17 ~~states with particularity in the order that the findings of~~  
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 3 ~~adjudicative body may participate in the formulation of the~~  
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 5 ~~duties as hearing officer.\*~~

-End-

HB 242

STATE OF MONTANA

REQUEST NO. 66-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 19, 19 79, there is hereby submitted a Fiscal Note for HB 242 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:

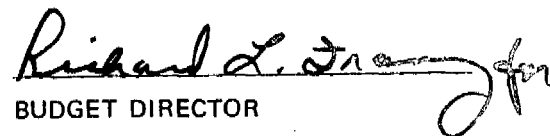
HB 242 is an act to create informal contested case proceedings; providing for joint waiving of formal proceedings; providing for joint waiving of administrative proceedings; restricting agency modifications of the proposal for decision; and amending Sections 2-4-601, 2-4-603 and 2-4-621, MCA.

FISCAL IMPACT:

The fiscal impact of this bill will be minimal.

COMMENTS:

Agency comments and OBPP investigations indicate that concrete estimates on the fiscal impact of this bill are not possible. If any fiscal impact is noted it should reduce state expenditures through reduction of formal, contested case proceedings where consultant services are acquired.



BUDGET DIRECTOR  
Office of Budget and Program Planning

Date: 1/25/79

Approved by Committee  
on Judiciary

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(2) The notice shall ~~must~~ include:

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hearing;

(b) a statement of the legal authority and  
jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the  
statutes and rules involved;

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the matters in detail at the time the notice is served, the  
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involved. Thereafter, upon application, a more definite and  
detailed statement shall ~~must~~ be furnished.

~~(e) a statement that a formal proceeding may be waived  
pursuant to 2-4-603."~~

Section 2. Section 2-4-603, MCA, is amended to read:

"2-4-603. Informal disposition ~~and hearings -- waiver  
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12 (I) WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE  
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14 (II) A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON  
 15 WHICH THE AGENCY HAS CHOSEN TO JUSTIFY ITS ACTION OR  
 16 INACTION; OR

17 (III) OTHER WRITTEN OR ORAL EVIDENCE RELATING TO THE  
 18 CONTESIED CASE;

19 (b) if the objections of the persons or parties are  
 20 overruled, provide a written explanation within 7 days.

21 (2) The record must consist of:

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12 (4) In agency proceedings under this section,  
13 irrelevant, immaterial, or unduly repetitious evidence must  
14 be excluded but all other evidence of a type commonly relied  
15 upon by reasonably prudent persons in the conduct of their  
16 affairs is admissible, whether or not such evidence is  
17 admissible in a trial in the courts of Montana. Any part of  
18 the evidence may be received in written form, and all  
19 testimony of parties and witnesses must be made under oath.  
20 Hearsay evidence may be used for the purpose of  
21 supplementing or explaining other evidence, but it is not  
22 sufficient in itself to support a finding unless it is  
23 admissible over objection in civil actions.

24 (5) A party may petition for review of an informal  
25 agency decision pursuant to part 7 of this chapter.

1 Section 4. Section 2-4-621, MCA, is amended to read:  
 2 "2-4-621. When absent members render decision --  
 3 proposal for decision and opportunity to submit findings and  
 4 conclusions -- modification by agency. (1) When in a  
 5 contested case a majority of the officials of the agency who  
 6 are to render the final decision have not heard the case -- or  
 7 read -- the record, the decision, if adverse to a party to the  
 8 proceeding other than the agency itself, may not be made  
 9 until a proposal for decision is served upon the parties and  
 10 an opportunity is afforded to each party adversely affected  
 11 to file exceptions and present briefs and oral argument to  
 12 the officials who are to render the decision.

13 (2) The proposal for decision ~~shall~~ must contain a  
 14 statement of the reasons therefor and of each issue of fact  
 15 or law necessary to the proposed decision, prepared by the  
 16 person who conducted the hearing unless he becomes  
 17 unavailable to the agency.

18 (3) The agency may adopt the proposal for decision as  
 19 the agency's final order. The agency in its final order may  
 20 reject or modify the conclusions of law and interpretation  
 21 of administrative rules in the proposal for decision but may  
 22 not reject or modify the findings of fact unless the agency  
 23 first determines from a review of the complete record and  
 24 states with particularity in the order that the findings of  
 25 fact were not based upon competent substantial evidence or

1 that the proceedings on which the findings were based did  
 2 not comply with essential requirements of law. The agency  
 3 may accept or reduce the recommended penalty in a proposal  
 4 for decision but may not increase it without a review of the  
 5 complete record. ~~in the event a court in reversing an~~  
 6 agency's order finds that the agency action was done in bad  
 7 faith or maliciously the court may award attorney fees and  
 8 costs to the aggrieved prevailing party.

9 (4) A hearing officer who is a member of an agency  
 10 adjudicative body may participate in the formulation of the  
 11 agency's final order, provided he has completed all his  
 12 duties as hearing officer."

13 SECTION 5. CODIFICATION. SECTION 3 IS INTENDED TO BE  
 14 CODIFIED AS AN INTEGRAL PART OF TITLE 2, CHAPTER 4, AND THE  
 15 PROVISIONS CONTAINED IN TITLE 2, CHAPTER 4, APPLY TO SECTION  
 16 3.

-End-

March 3, 1979

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 242 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."