# CHAPTER NO. 467

# HOUSE BILL NO. 259

INTRODUCED BY TROPILA, RAMIREZ, HARPER, STOBIE

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE HOUSE

January 19, 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	Motion pass consideration.
January 29, 1979	Second reading, do pass as amended.
January 30, 1979	Correctly engrossed.
January 31, 1979	Third reading, passed. Transmitted to second house.
IN THE SEN	ATE
February 1, 1979	Introduced and referred to Committee on Judiciary.
March 16, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 19, 1979	Motion pass consideration.
March 20, 1979	Second reading, concurred in.
March 23, 1979	Third reading, concurred in as amended.

IN THE HOUSE

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March	24,	1979	Returned from second house. Concurred in as amended.
March	26,	1979	On motion consideration passed until the 71st Legislative Day.
March	28,	1979	Second reading, amendments adopted.
March	29,	1979	Third reading, amendments adopted. Sent to enrolling.
			Reported correctly enrolled.

LC 0091/01

LC 0091/01

INTRODUCED BY Jupile, Remainer Home Hele 1 2 BY REQUEST OF THE ADMINISTRATIVE CODE 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING AN AGENCY TO 5 ELECT TO USE HEARING EXAMINERS FROM THE LEGAL SERVICES UNIT 6 WITHIN THE ATTORNEY GENERAL'S OFFICE; DEFINING THE TIMELY 7 FILING OF AN AFFIDAVIT OF BIAS; AMENDING SECTION 2-4-611. 8 9 HCA. 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 Section 1. Section 2-4-611, MCA, is amended to read: 12

20 <u>12) An agency may elect to request a hearing examiner</u>
21 <u>from the legal assistance program within the allorney</u>
22 <u>general's office or from another agency. If the request is</u>
23 <u>honored, the time, date, and place of the hearing must be</u>
24 <u>set by the agency, with the concurrence of the legal</u>
25 <u>assistance program or the other agency.</u>

(2)(3) Agency members or hearing examiners presiding 1 over hearings shall-be-outhorized-to may administer oaths or 2 affirmations; issue subpoenas pursuant to 2-4-104; provide 3 for the taking of testimony by deposition; regulate the 4 5 course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs ٨ or other documents; and direct parties to appear and confer 7 to consider simplification of the issues by consent of the 8 9 parties.

10 (3) (4) A--hearing-exariner-or-adency-seeber-say-at-any time-disqualify-himselfy On the filing by a party, hearing 11 12 examiners or agency member in good faith of a timely and sufficient affidavit of personal biass lack of independence. 13 14 or other disqualification of a hearing examiner or agency 15 member, the agency shall jetermine the matter as a part of the record and decision in the case. Ine agency way 16 17 disdualify the hearing examiner or agency member and request another bearing examiner pursuant to subsection (2) or 18 assion another hearing examiner from within the agency. The 19 affidavit must state the facts and the reasons for the 20 belief that bias or prelutice exists and must be filed not 21 less than 10 days before the original date set for the 22 23 hearing."

-End-

--- HB 259 INTRODUCED BILL

## STATE OF MONTANA

Request No. 83-79

# FISCAL NOTE

Form BD-15

In compliance with a written request received <u>January 23, 1979</u>, there is hereby submitted a Fiscal Note for <u>House Bill 259</u> 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

An act permitting an agency to elect to use hearing examiners from the legal Services Unit within the Attorney General's Office.

FISCAL IMPACT

None.

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BUDGET DIRECTOR Office of Budget and Program Planning Date: /// 4/78

#### HB 0259/02

### Approved by Committee on Judiciary

1	HOUSE BILL NO. 259
2	INTRODUCED BY TROPILA, RAMIREZ, HARPER, STOBIE
3	BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING AN AGENCY TO
6	ELECT TO USE HEARING EXAMINERS FROM THE LEGAL SERVICES UNIT
7	WITHIN THE ATTORNEY GENERAL'S OFFICE; DEFINING THE TIMELY
Ą	FILING OF AN AFFIDAVIT OF BIAS; PROVIDING THAT THE DECISION
9	DETHEHEARING_EXAMINER_IS_EINAL_IN_CERTAIN_CIRCUMSTANCES:
10	AMENDING SECTION 2-4-611, NCA.*
11	
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13	Section 1. Section 2-4-611, MCA, is amended to read;
14	M2-4-611. Hearing examiners <u>legal services unit</u>
15	conduct of hearings disqualification of hearing examiners
16	and agency members. (1) An agency shallhaveauthorityto
17	may appoint hearing examiners for the conduct of hearings in
18	contested cases. <u>A bearing examiner must be assigned with</u>
19	due_regard_to_theexpertiserequired_fortheparticular
20	motter.
21	<u>12}_An_agency_may_elect_to_request_a_bearing_examiner</u>
22	fromthelegalassistanceprogramwithintheattorney
23	general's office or from another agency. If the request is
24	honored, the time, date, and place of the hearing must be

25 set by the agency, with the concurrence of the legal

## 1 assistance program or the other agency.

2 +2+131 Agency members or hearing examiners presiding 3 over hearings shall-be-outhorized-to may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide 4 5 for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for 6 7 continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer я 9 to consider simplification of the issues by consent of the 10 parties.

(3)(4) A-hearing-examiner-or-agency-member-may-at--any 11 12 time--disquelify--himself. On the filing by a party, hearing 13 examiners or agency member in good faith of a timely and 14 sufficient affidavit of personal biass lack of independences 15 **<u>DISQUALIFICATION BY LAW</u>** or other disgualification of a 16 hearing examiner or agency member, the agency shall 17 determine the matter as a part of the record and decision in 18 the case. Ine accncy may disqualify the hearing examiner or agency gember and request another hearing examiner pursuant 19 20 to subsection (2) or assign another hearing examiner from 21 within the apency. The affidaxit must state the facts and 22 the reasons for the belief that bios-corcorcjudice IBE 23 HEARING EXAMINER SHOULD BE DISQUALIFIED exists and must be 24 filed not less than 10 days before the original date set for 25 the hearing.

-2-SECOND READING HB 259

H3 0259/02

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 WHEN
 IN
 A CONTESTED CASE ALL UF THE OFFICIALS OF

 2
 IHE AGENCY WHO ARE TO BENDER THE EINAL DECISION HAVE. BEEN

 3
 DISQUALIFIED: THE AGENCY SHALL APPOINT A HEAKING EXATINES AS

 4
 PROVIDED IN THIS SECTION: AND THE DECISION DE THE HEARING

 5
 EXAMINER CONSTITUTES THE AGENCY'S FINAL ORDER. EXCEPT AS

 6
 PROVIDED IN THIS SUBSECTION: SUCH FINAL ORDER. IS SUBJECT TO

 7
 ALL PROVISIONS OF THIS CHAPTER BELATING. TO FINAL AGENCY

DECISIONS OR DRDERS. INCLUDING JUDICIAL REVIEW UNDER PART 7

9 OF INIS CHAPLER.

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-End-

HB 0259/02

Approved by Committee on Judiciary

1	HOUSE BILL NO. 259
2	INTRODUCED BY TROPILA, RAMIREZ, HARPER, STOBLE
3	BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING AN AGENCY TO
6	ELECT TO USE HEARING EXAMINERS FROM THE LEGAL SERVICES UNIT
7	WITHIN THE ATTORNEY GENERAL'S OFFICE; DEFINING THE TIMELY
8	FILING OF AN AFFIDAVIT OF BIAS; <u>Providing That The Decision</u>
9	OF THE HEARING EXAMINER IS FINAL IN CERTAIN CIRCUMSTANCES:
10	AMENDING SECTION 2-4-611. MCA.
11	
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13	Section 1. Section 2-4-611. MCA, is amended to read:
14	"2-4-611. Hearing examiners <u>— legal services unit —</u>
15	conduct of hearings disqualification of hearing examiners
16	and agency members. {1} An agency shallhaveauthorityto
17	may appoint hearing examiners for the conduct of hearings in
18	contested cases. <u>A hearing examiner must be assigned with</u>
19	due regard to the expertise required for the particular
20	matters
21	121 An agency may elect to request a hearing examiner
22	from the legal assistance program within the attorney
23	general's office or from enother agency. If the request is
24	nonored, the time, data, and place of the bearing must be
25	set by the agency, with the consurrence of the legal

#### assistance program or the other agency. 1

(2)(3) Agency members or hearing examiners presiding 2 over hearings shall-be-authorized-to may administer oaths or 3 affirmations; issue subpoenas pursuant to 2-4-104; provide 4 for the taking of testimony by deposition; regulate the 5 course of hearings, including setting the time and place for 6 7 continued hearings and fixing the time for filing of briefs 8 or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the 9 10 parties.

(3)(4) A-hearing-examiner-or-agency-member-may-at--any 11 12 time--disqualify--himself. On the filing by a party, hearing examiner, or agency member in good faith of a timely and 13 14 sufficient affidavit of personal biass lack of independences 15 DISQUALIFICATION BY LAW, or other disqualification of a hearing examiner or agency members the agency shall 16 17 determine the matter as a part of the record and decision in 18 the case. The agency may discualify the hearing examiner or 19 agency member and request another hearing examiner pursuant. 20 to subsection (2) or assign another hearing examiner from 22 within the agency. The affidavit sust state the facts and 22 the reasons for the belief that bies-er-prejudice-erists THE 23 HEARING EXAMINES SHOULD BE DISCULLIED and must be filed 24 not less inch 10 days before the original date set for the

25 hearings

Corrected SECOND PRINTING -2-HB 259 SECOND READING

- 2 - 2 - 2 - 2	(51 MHEN IN A CUNTESTED CASE ALL DE THE DEFICIALS DE THE AGENCY WHO ARE TO RENDER THE FINAL DECISION HAVE BEEN DISQUALTETED. THE AGENCY SHALL APPOINT A HEARING EXANINER AS PROVIDED IN THIS SECTION. AND THE DECISION OF THE HEARING
vo vo vo on	EXAMINER CONSTITUTES THE AGENCY'S FINAL ORDER. EXCEPT AS PROVIDED IN THIS SUBSECTION. SUCH FINAL ORDER IS SUBJECT TO ALL PROVISIONS OF THIS CHARTER RELATING TO FINAL AGENCY DECISIONS OR ORDERS. INCLUDING JUDICIAL REVIEW UNDER PART T OF THIS CHARTER."

-End-

#### 46th Legislature

NB 0259/03

ı	HOUSE BILL NO. 259
2	INTRODUCED BY TROPILA, RANIREZ, HARPER, STOBLE
3	BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING AN AGENCY TO
6	ELECT TO USE HEARING EXAMINERS FROM THE LEGAL SERVICES UNIT
7	WITHIN THE ATTORNEY GENERAL'S OFFICE <u>or from another agency;</u>
8	DEFINING THE TIMELY FILING OF AN AFFIDAVIT OF BIAS;
9	PROVIDING THAT THE DECISION OF THE HEARING EXAMINER IS FINAL
10	IN CERTAIN CIRCUNSTANCES: AMENDING SECTION 2-4-611. MCA."
11	
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13	Section 1. Section 2-4-611, MCA, is amended to read:
14	"2-4-611. Hearing examiners <u>legal_services_unit</u>
15	conduct of hearings disqualification of hearing examiners
16	and agency members. (1) An agency shallhaveauthorityto
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18	contested cases. <u>A hearing examiner must be assigned with</u>
19	due regard to the expertise required for the particular
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21	[2] An agency may elect to request a hearing examiner
22	from the legal assistance program within the attorney
23	general's office or from another agency. If the request is
24	honored, the time, date, and place of the bearing must be
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#### 1 assistance program or the other agency.

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> -2- HB 259 THIRD READING

HB 0259/03

	<u>151 PHEN IN A CONTESTED CASE ALL OF THE OFFICIALS OF</u>
~	<u>THE AGENCY WHO ARE TO RENDER THE EXMAL DECISION WAVE BEEN</u>
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*	<u>PROVIDED IN THIS SECTIONS AND THE DECISION OF THE HEARING</u>
ŝ	<u>EXAMINER CONSTITUTES THE AGENCY'S FINAL ORDER. EXCEPT AS</u>
Ŷ	PROVIDED IN THIS SUBSECTION. SUCH EIMAL ORDER IS SUBJECT ID
۲	<u>ALL PROVISIONS OF THIS CHAPTER' RELATING TO FINAL AGENCY</u>
•	DECISIONS ON ORDERS. INCLUDING JUDICIAL REVIEW UNDER PART 7
P	DE_THIS_CHAPTER."

-End-

5 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING AN AGENCY TO 6 ELECT TO USE HEARING EXAMINERS FROM THE LEGAL SERVICES UNIT 7 WITHIN THE ATTORNEY GENERAL'S OFFICE <u>OR\_FROM\_ANOTHER\_AGENCY</u>; 8 DEFINING THE TIMELY FILING OF AN AFFIDAVIT OF BIAS; 9 <u>PROVIDING\_IHAT\_THE\_DECISION\_OF\_THE\_HEARING\_EXAMINER\_IS\_FINAL</u> 10 <u>IN\_CEBIAIN\_CIRCUMSIANCES;</u> AMENOING SECTIONS 2-4-611 11 <u>AND\_2D-3-LOT</u>, MCA."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Section 1. Section 2-4-611, MCA, is amended to read: 14 #2-4-611. Hearing examiners - legal services unit \_--15 conduct of hearings -- disqualification of hearing examiners 16 17 and agency members. (1) An agency shall-have-authority-to may appoint hearing examiners for the conduct of hearings in 18 19 contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular 20 21 matter.

22 <u>121\_An\_agency\_may\_elect\_to\_request\_a\_bearing\_examiner</u>
23 <u>from\_the\_legal\_assistance\_program\_within\_the\_attorney</u>
24 <u>general's\_office\_or\_from\_another\_agencys\_lf\_the\_request\_is</u>
25 <u>honoreds\_the\_times\_dates\_and\_place\_of\_the\_bearing\_must\_be</u>

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HB 259

REFERENCE BILL

1	hearing
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2 121-INHEN-INTA-EBNIESTED-EASE-ALL-BE-THE-OFFICIALS-OF 3 IUE\_\_AGENEY\_\_WUB\_\_ARE\_IB\_RENBER\_IHE\_FINAL\_BEEISION\_HAVE-BEEN 4 <u>DISQUALIFIERTIHE\_AGENEY\_SHALL\_APPBINI-A-HEARING\_EXAMINER-AS</u> 5 PROVIDED\_IN\_IHIS\_SECTION, AND THE DECISION- OF --- THE -- HEARING 6 <u>EXAMINER\_\_EBNSTITUTES\_\_THE--AGENEYAS\_\_FINAL\_ORDER\_-EXCEPT-AS</u> 7 <u>PROVIDED\_IN\_THIS\_SUBSECTION+\_SUCH\_FINAL-ORDER\_IS\_SUBJECT-\_TO</u> 8 ALL\_\_PROVISIONS\_\_OE\_\_INIS\_\_CHAPTER\_\_RELATING\_TO\_FINAL\_AGENCY 9 10 BE-THIS-GHAPTER." 11 SECTION\_2.\_\_SECTION\_\_20-3-1074\_MCA.\_IS\_AMENDED\_TO\_READ: 12 #20-3-107. Controversy appeal. (1) The superintendent 13 of public instruction shall decide matters of controversy 14 when they are appealed from: 15 (a) a decision of a county superintendent rendered 16 under the provisions of 20-3-210; or 17 (b) a decision of a county transportation committee 18 rendered under the provisions of 20-10-132. 19 (2) The superintendent of public instruction shall make his decision on the basis of the transcript of the 20 21 fact-finding hearing conducted by the county superintendent 22 or county transportation committee and documents presented 23 at the hearing. The superintendent of public instruction may require, if he deems necessary, affidavits, verified 24 statements, or sworn testimony as to the facts in issue. The 25

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1 decision of the superintendent of public instruction shall be final, subject to the proper legal remedies in the state courts. Such proceedings shall be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

6 (3) In order to establish a uniform method of hearing 7 and determining matters of controversy arising under this 8 title, the superintendent of public instruction shall 9 prescribe and enforce rules of practice and regulations for 10 the conduct of hearings and the determination of appeals by 11 all school officials of the state.

12 [4] Whenever in a contested case the superintendent of 13 public instruction is disqualified from rendering a final 14 decision: be shall appoint a hearing examiner as provided in 15 2:4:611\_and\_the\_decision\_of\_the\_bearing\_examiner\_constitutes 16 the superintendent's final order except as provided in this 17 subsections. Such final order is subject to all the 13 provisions of litle 2: chapter 4: relating to final agency 19 decisions or orders, including judicial review\_under\_litle 20 2. chapter\_4. part\_7.\*\*

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<sup>-</sup>End-

SENATE STANDING COMMITTEE REPORT (Judiciary)

That House Bill No. 259, third reading bill, be amended as follows:

1. Title, line 10.
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS"
Following: "2-4-611"
Insert: "AND 20-3-107"

2. Page 3, lines 1 through 9. Following: line 25, page 2 Strike: subsection (5) in its entirety Insert: "Section 2. Section 20-3-107.

nsert: "Section 2. Section 20-3-107, MCA, is amended to read: "20-3-107. Controversy appeal. (1) The superintendent of public

instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210; or

(b) a decision of a county transportation committee rendered under the provisions of 20-10-132.

(2) The superintendent of public instruction shall make his decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if he deems necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to the proper legal remedies in the state courts. Such proceedings shall be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, he shall appoint a hearing examiner as provided in 2-4-611 and the decision of the hearing examiner constitutes the superintendent's final order except as provided in this subsection. Such final order is subject to all the provisions of Title 2, chapter 4, relating to final agency decisions or orders, including judicial review under Title 2, chapter 4, part 7."