

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 SENATE

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

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.

1 HOUSE BILL NO. 259
 2 INTRODUCED BY Carpenter, Ramsey Hoyer Stebbins
 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; AMENDING SECTION 2-4-611,
 9 MCA."
 10

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

12 Section 1. Section 2-4-611, MCA, is amended to read:

13 "2-4-611. Hearing examiners -- legal services unit --
 14 conduct of hearings -- disqualification of hearing examiners
 15 and agency members. (1) An agency ~~shall have authority to~~
 16 may appoint hearing examiners for the conduct of hearings in
 17 contested cases. A hearing examiner must be assigned with
 18 due regard to the expertise required for the particular
 19 matter.

20 (2) An agency may elect to request a hearing examiner
 21 from the legal assistance program within the attorney
 22 general's office or from another agency. If the request is
 23 honored, the time, date, and place of the hearing must be
 24 set by the agency, with the concurrence of the legal
 25 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 continued hearings and fixing the time for filing of briefs
 7 or other documents; and direct parties to appear and confer
 8 to consider simplification of the issues by consent of the
 9 parties.

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

-End-

-2- AB 259
 INTRODUCED BILL

FISCAL NOTE

Form BD-15

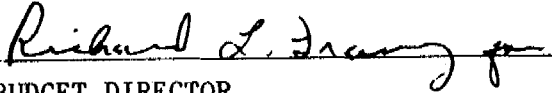
In compliance with a written request received January 23, 1979, there is hereby submitted a Fiscal Note for House Bill 259 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget 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.


BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 1/26/79

Approved by Committee
on Judiciary

HOUSE BILL NO. 259

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BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING AN AGENCY TO
ELECT TO USE HEARING EXAMINERS FROM THE LEGAL SERVICES UNIT
WITHIN THE ATTORNEY GENERAL'S OFFICE; DEFINING THE TIMELY
FILING OF AN AFFIDAVIT OF BIAS; PROVIDING THAT THE DECISION
OF THE HEARING EXAMINER IS FINAL IN CERTAIN CIRCUMSTANCES;
AMENDING SECTION 2-4-611, MCA."

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

Section 1. Section 2-4-611, MCA, is amended to read:

"2-4-611. Hearing examiners -- legal services unit --
conduct of hearings -- disqualification of hearing examiners
and agency members. (1) An agency ~~shall have authority to~~
may appoint hearing examiners for the conduct of hearings in
contested cases. A hearing examiner must be assigned with
due regard to the expertise required for the particular
matter.

(2) An agency may elect to request a hearing examiner
from the legal assistance program within the attorney
general's office or from another agency. If the request is
honored, the time, date, and place of the hearing must be
set by the agency, with the concurrence of the legal

assistance program or the other agency.

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

~~(3)(1)~~ A hearing examiner or agency member ~~may at any~~
~~time disqualify himself~~ On the filing by a party, hearing
examiner, or agency member in good faith of a timely and
sufficient affidavit of personal bias, lack of independence,
DISQUALIFICATION BY LAW, or other disqualification of a
hearing examiner or agency member, the agency shall
determine the matter as a part of the record and decision in
the case. The agency may disqualify the hearing examiner or
agency member and request another hearing examiner pursuant
to subsection (2) or assign another hearing examiner from
within the agency. The affidavit must state the facts and
the reasons for the belief that bias or prejudice THE
HEARING EXAMINER SHOULD BE DISQUALIFIED exists and must be
filed not less than 10 days before the original date set for
the hearing.

1 (5) WHEN IN A CONTESTED CASE ALL OF THE OFFICIALS OF
2 THE AGENCY WHO ARE TO RENDER THE FINAL DECISION HAVE BEEN
3 DISQUALIFIED, THE AGENCY SHALL APPOINT A HEARING EXAMINER AS
4 PROVIDED IN THIS SECTION, AND THE DECISION OF 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 RELATING TO FINAL AGENCY
8 DECISIONS OR ORDERS, INCLUDING JUDICIAL REVIEW UNDER PART 7
9 OF THIS CHAPTER.*

-End-

Approved by Committee
on Judiciary

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agency member and request another hearing examiner pursuant
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the reasons for the belief that bias or prejudice exists. THE
HEARING EXAMINER SHOULD BE DISQUALIFIED and must be filed
not less than 10 days before the original date set for the
hearing.

Corrected

1 (2) WHEN IN A CONTESTED CASE ALL OF THE OFFICIALS OF
2 THE AGENCY WHO ARE TO RENDER THE FINAL DECISION HAVE BEEN
3 DISQUALIFIED, THE AGENCY SHALL APPOINT A HEARING EXAMINER AS
4 PROVIDED IN THIS SECTION, AND THE DECISION OF 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 RELATING TO FINAL AGENCY
8 DECISIONS OR ORDERS, INCLUDING JUDICIAL REVIEW UNDER PART I
9 OF THIS CHAPTER."

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22 from the legal assistance program within the attorney
23 general's office or from another agency. If the request is
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7 continued hearings and fixing the time for filing of briefs
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9 to consider simplification of the issues by consent of the
10 parties.

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13 examiner, or agency member in good faith of a timely and
14 sufficient affidavit of personal bias, lack of independence,
15 DISQUALIFICATION BY LAW, or other disqualification 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. The agency may disqualify the hearing examiner or
19 agency member and request another hearing examiner pursuant
20 to subsection (2) or assign another hearing examiner from
21 within the agency. The affidavit must state the facts and
22 the reasons for the belief that bias or prejudice exists THE
23 HEARING EXAMINER SHOULD BE DISQUALIFIED and must be filed
24 not less than 10 days before the original date set for the
25 hearing.

1 (5) WHEN IN A CONTESTED CASE ALL OF THE OFFICIALS OF
2 THE AGENCY WHO ARE TO RENDER THE FINAL DECISION HAVE BEEN
3 DISQUALIFIED, THE AGENCY SHALL APPOINT A HEARING EXAMINER AS
4 PROVIDED IN THIS SECTION, AND THE DECISION OF 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 RELATING TO FINAL AGENCY
8 DECISIONS OR ORDERS, INCLUDING JUDICIAL REVIEW UNDER PART 7
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-End-

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DEFINING THE TIMELY FILING OF AN AFFIDAVIT OF BIAS;
~~PROVIDING THAT THE DECISION OF THE HEARING EXAMINER IS FINAL~~
~~IN CERTAIN CIRCUMSTANCES;~~ AMENDING SECTIONS 2-4-611
AND 2-4-107, MCA."

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

Section 1. Section 2-4-611, MCA, is amended to read:

"2-4-611. Hearing examiners -- ~~legal services unit~~ --
conduct of hearings -- disqualification of hearing examiners
and agency members. (1) An agency ~~shall have authority to~~
~~may~~ appoint hearing examiners for the conduct of hearings in
contested cases. ~~A hearing examiner must be assigned with~~
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hearing examiner or agency member, the agency shall
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~~agency member and request another hearing examiner pursuant~~
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 3 ~~THE AGENCY WHO ARE RENDERING THE FINAL DECISION HAVE BEEN~~
 4 ~~DISQUALIFIED THE AGENCY SHALL APPOINT A HEARING EXAMINER AS~~
 5 ~~PROVIDED IN THIS SECTION AND THE DECISION OF THE HEARING~~
 6 ~~EXAMINER CONSTITUTES THE AGENCY'S FINAL ORDER EXCEPT AS~~
 7 ~~PROVIDED IN THIS SUBSECTION SUCH FINAL ORDER IS SUBJECT TO~~
 8 ~~ALL PROVISIONS OF THIS CHAPTER RELATING TO FINAL AGENCY~~
 9 ~~DECISIONS OR ORDERS INCLUDING JUDICIAL REVIEW UNDER PART 2~~
 10 ~~OF THIS CHAPTER.~~"

11 SECTION 2. SECTION 20-3-107, 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
 20 make his decision on the basis of the transcript of the
 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
 24 require, if he deems necessary, affidavits, verified
 25 statements, or sworn testimony as to the facts in issue. The

1 decision of the superintendent of public instruction shall
 2 be final, subject to the proper legal remedies in the state
 3 courts. Such proceedings shall be commenced no later than 60
 4 days after the date of the decision of the superintendent of
 5 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, he shall appoint a hearing examiner as provided in~~
 15 ~~2-4-611 and the decision of the hearing examiner constitutes~~
 16 ~~the superintendent's final order except as provided in this~~
 17 ~~subsection. Such final order is subject to all the~~
 18 ~~provisions of Title 2, chapter 4, relating to final agency~~
 19 ~~decisions or orders, including judicial review under Title~~
 20 ~~2, chapter 4, part 1."~~

-End-

March 15, 1979

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, 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."