

HB 696 INTRODUCED BY HANNAH
DE NOVO REVIEW OF DECISIONS OF COMMISSION FOR HUMAN
RIGHTS

2/10 INTRODUCED
2/10 REFERRED TO JUDICIARY
2/10 FISCAL NOTE REQUESTED
2/16 FISCAL NOTE RECEIVED
2/18 HEARING
2/19 COMMITTEE REPORT--BILL PASSED
2/21 2ND READING PASSED
2/23 3RD READING PASSED

52 41
53 46

TRANSMITTED TO SENATE
3/02 REFERRED TO JUDICIARY
3/20 HEARING
3/27 TABLED IN COMMITTEE

1 House BILL NO. 696
2 INTRODUCED BY Hansen

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR APPEAL OF
5 AND TRIAL ANEW ON ALL FINAL RULINGS AND DECISIONS OF THE
6 COMMISSION FOR HUMAN RIGHTS; AND AMENDING SECTIONS 49-2-401,
7 49-2-505, 49-3-105, AND 49-3-308, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. Section 1. Appeal of commission rulings
11 and decisions. (1) Any final ruling or decision of the
12 commission under this chapter or chapter 3 of this title may
13 be appealed to the district court within 30 days after
14 service of the ruling or decision upon the appellant or, if
15 a rehearing is held, within 30 days after service of the
16 decision on rehearing. Trial in the district court must be
17 anew and conducted in all respects as other trials in the
18 district court. The provisions of this code as to trials in
19 the district courts are applicable to the appeal and trial
20 anew. There is no right to review under Title 2, chapter 4,
21 part 7.

22 (2) The record before and findings, conclusions, and
23 decision of the commission are entitled to no special weight
24 or presumption.

25 Section 2. Section 49-2-401, MCA, is amended to read:

1 "49-2-401. Procedure for claiming exemption. A person,
2 educational institution, financial institution, or
3 governmental entity or agency who or which seeks to be
4 exempted from the requirements of part 3 of this chapter may
5 petition the commission for a declaratory ruling as provided
6 in 2-4-501 of the Montana Administrative Procedure Act. The
7 ruling is reviewable under [section 1]. If the commission
8 finds that reasonable grounds for granting an exemption
9 exist, it may issue a ruling exempting the petitioner from
10 the particular provision. This section, however, shall be
11 strictly construed, and the burden is on the petitioner to
12 demonstrate that an exemption should be granted."

13 Section 3. Section 49-2-505, MCA, is amended to read:

14 "49-2-505. Contested case hearing. (1) If the informal
15 efforts to eliminate the alleged discrimination are
16 unsuccessful, the staff shall inform the commission of the
17 failure and the commission shall cause written notice to be
18 served, together with a copy of the complaint, requiring the
19 person, educational institution, financial institution, or
20 governmental entity or agency charged in the complaint to
21 answer the allegations of the complaint at a hearing before
22 the commission.

23 (2) The hearing must be held by the commission in the
24 county where the unlawful conduct is alleged to have
25 occurred unless the person, institution, entity, or agency



1 charged in the complaint or the commission requests a change
 2 of venue for good cause shown. The case in support of the
 3 complaint may be presented before the commission by the
 4 staff, the complainant, or an attorney representing the
 5 complainant. The hearing and any subsequent proceedings
 6 under this chapter must be held in accordance with the
 7 Montana Administrative Procedure Act except as provided in
 8 [section 1] and 49-2-508.

9 (3) The commission may make provisions for defraying
 10 the expenses of an indigent party in a contested case
 11 hearing held pursuant to this chapter.

12 (4) The prevailing party in a hearing under this
 13 section may bring an action in district court for attorneys'
 14 fees. The court in its discretion may allow the prevailing
 15 party reasonable attorneys' fees. An action under this
 16 section must comply with the Montana Rules of Civil
 17 Procedure."

18 Section 4. Section 49-3-105, MCA, is amended to read:

19 "49-3-105. Procedure for claiming exemption. A state
 20 or local governmental agency seeking to apply any exemption
 21 from the requirements of this chapter may petition the
 22 commission for a declaratory ruling as provided in 2-4-501
 23 of the Montana Administrative Procedure Act. The ruling is
 24 reviewable under [section 1]. If the commission finds that
 25 reasonable grounds for applying an exemption exist, it may

1 issue a ruling exempting the petitioner from the particular
 2 provision. The burden is on the petitioner to demonstrate
 3 that an exemption should be applied. Any provision in this
 4 chapter allowing an exemption from its requirements must be
 5 strictly construed."

6 Section 5. Section 49-3-308, MCA, is amended to read:

7 "49-3-308. Contested case hearing before commission.

8 (1) If the informal efforts to eliminate the discrimination
 9 alleged in a complaint filed with the commission are
 10 unsuccessful, the staff shall inform the commission of the
 11 failure and the commission shall serve written notice,
 12 together with a copy of the complaint, requiring the state
 13 or local governmental agency charged in the complaint to
 14 answer the allegations of the complaint at a hearing before
 15 the commission.

16 (2) The commission hearing must be held in the county
 17 where the unlawful conduct is alleged to have occurred
 18 unless the state or local governmental agency charged in the
 19 complaint or the commission requests a change of venue for
 20 good cause shown. The case in support of the complaint may
 21 be presented before the commission by the commission staff,
 22 the complainant, or an attorney representing the
 23 complainant. The hearing and any subsequent proceedings
 24 under this chapter must be held in accordance with the
 25 Montana Administrative Procedure Act, except as provided in

1 [section 1] and 49-3-311.

2 (3) The commission may make provisions for defraying
3 the expenses of an indigent party in a contested case
4 hearing held pursuant to this chapter.

5 (4) The prevailing party in a hearing under this
6 section may bring an action in district court for attorney
7 fees. The court in its discretion may award the prevailing
8 party reasonable attorney fees. Such action must comply
9 with the Montana Rules of Civil Procedure."

10 NEW SECTION. Section 6. Extension of authority. Any
11 existing authority of the commission for human rights to
12 make rules on the subject of the provisions of this act is
13 extended to the provisions of this act.

14 NEW SECTION. Section 7. Codification instruction.
15 Section 1 is intended to be codified as an integral part of
16 Title 49, chapter 2, and the provisions of Title 49 apply to
17 section 1.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB696, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for appeal of and trial anew on all final rulings and decisions of the Commission for Human Rights.

ASSUMPTIONS:

The Commission's case load will remain approximately the same and the Commission will hear about the same number of cases per year.

FISCAL IMPACT:

No change.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The Commission issued only 12 final orders in FY86. Even if every Commission order was appealed to a trial de novo, the fiscal impact on the courts would probably be negligible.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

None.

David L. Hunter DATE 2/14/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Tom Hannah DATE 2-16-87
TOM HANNAH, PRIMARY SPONSOR

Fiscal Note for HB696, as introduced.

HB 696

APPROVED BY COMMITTEE
ON JUDICIARY

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2 INTRODUCED BY Hammer

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15 a rehearing is held, within 30 days after service of the
16 decision on rehearing. Trial in the district court must be
17 anew and conducted in all respects as other trials in the
18 district court. The provisions of this code as to trials in
19 the district courts are applicable to the appeal and trial
20 anew. There is no right to review under Title 2, chapter 4,
21 part 7.

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23 decision of the commission are entitled to no special weight
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2 educational institution, financial institution, or
3 governmental entity or agency who or which seeks to be
4 exempted from the requirements of part 3 of this chapter may
5 petition the commission for a declaratory ruling as provided
6 in 2-4-501 of the Montana Administrative Procedure Act. The
7 ruling is reviewable under [section 1]. If the commission
8 finds that reasonable grounds for granting an exemption
9 exist, it may issue a ruling exempting the petitioner from
10 the particular provision. This section, however, shall be
11 strictly construed, and the burden is on the petitioner to
12 demonstrate that an exemption should be granted."

13 Section 3. Section 49-2-505, MCA, is amended to read:

14 "49-2-505. Contested case hearing. (1) If the informal
15 efforts to eliminate the alleged discrimination are
16 unsuccessful, the staff shall inform the commission of the
17 failure and the commission shall cause written notice to be
18 served, together with a copy of the complaint, requiring the
19 person, educational institution, financial institution, or
20 governmental entity or agency charged in the complaint to
21 answer the allegations of the complaint at a hearing before
22 the commission.

23 (2) The hearing must be held by the commission in the
24 county where the unlawful conduct is alleged to have
25 occurred unless the person, institution, entity, or agency



1 charged in the complaint or the commission requests a change
 2 of venue for good cause shown. The case in support of the
 3 complaint may be presented before the commission by the
 4 staff, the complainant, or an attorney representing the
 5 complainant. The hearing and any subsequent proceedings
 6 under this chapter must be held in accordance with the
 7 Montana Administrative Procedure Act except as provided in
 8 [section 1] and 49-2-508.

9 (3) The commission may make provisions for defraying
 10 the expenses of an indigent party in a contested case
 11 hearing held pursuant to this chapter.

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 13 section may bring an action in district court for attorneys'
 14 fees. The court in its discretion may allow the prevailing
 15 party reasonable attorneys' fees. An action under this
 16 section must comply with the Montana Rules of Civil
 17 Procedure."

18 Section 4. Section 49-3-105, MCA, is amended to read:

19 "49-3-105. Procedure for claiming exemption. A state
 20 or local governmental agency seeking to apply any exemption
 21 from the requirements of this chapter may petition the
 22 commission for a declaratory ruling as provided in 2-4-501
 23 of the Montana Administrative Procedure Act. The ruling is
 24 reviewable under [section 1]. If the commission finds that
 25 reasonable grounds for applying an exemption exist, it may

1 issue a ruling exempting the petitioner from the particular
 2 provision. The burden is on the petitioner to demonstrate
 3 that an exemption should be applied. Any provision in this
 4 chapter allowing an exemption from its requirements must be
 5 strictly construed."

6 Section 5. Section 49-3-308, MCA, is amended to read:

7 "49-3-308. Contested case hearing before commission.

8 (1) If the informal efforts to eliminate the discrimination
 9 alleged in a complaint filed with the commission are
 10 unsuccessful, the staff shall inform the commission of the
 11 failure and the commission shall serve written notice,
 12 together with a copy of the complaint, requiring the state
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 14 answer the allegations of the complaint at a hearing before
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 17 where the unlawful conduct is alleged to have occurred
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 20 good cause shown. The case in support of the complaint may
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10 NEW SECTION. Section 6. Extension of authority. Any
11 existing authority of the commission for human rights to
12 make rules on the subject of the provisions of this act is
13 extended to the provisions of this act.

14 NEW SECTION. Section 7. Codification instruction.
15 Section 1 is intended to be codified as an integral part of
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