



CONFERENCE COMMITTEE

on House amendments to Senate Bill 260

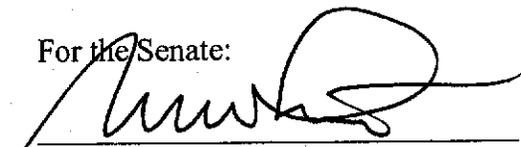
Report No. 1, April 20, 2005

Page 1 of 2

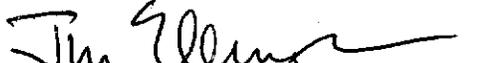
Mr. President and Mr. Speaker:

We, your Conference Committee met and considered House amendments to **Senate Bill 260** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

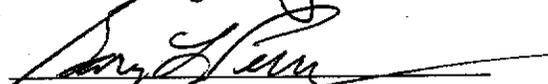
For the Senate:



Sen. Mike Wheat Chair

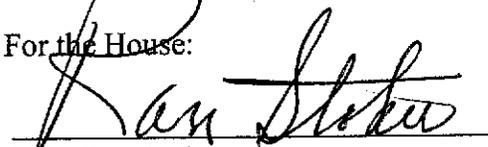


Sen. Jon Ellingson

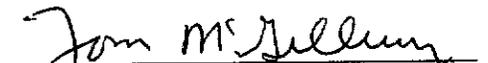


Sen. Gary Perry

For the House:



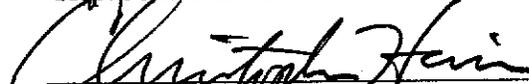
Rep. Ron Stoker



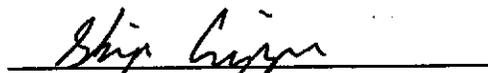
Rep. Tom McGillyray



Rep. John Parker



Rep. Christopher Harris



Amendment Coordinator

Secretary of the Senate

And, recommend that **Senate Bill 260** (reference copy -- salmon) be amended as follows:

- 1. Title, page 1, line 5 through line 7.
Strike: "AND MUST" on line 5 through "FINAL" on line 7
Insert: "; PROVIDING A PROCEDURE FOR ISSUING A FINAL WRITTEN DECISION THAT DIFFERS FROM AN ORAL PRONOUNCEMENT OF A"

2. Title, page 1, line 8.

ADOPT

Amendment # SB 260-1

REJECT



Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

3. Page 1, line 17.

Strike: "HEARING"

Insert: "is considered to be submitted for a final decision"

4. Page 1, line 18.

Strike: "90"

Insert: "30"

5. Page 1, line 19 through line 24.

Strike: subsection (b) in its entirety

Insert: "(b) If an agency intends to issue a final written decision in a contested case that grants or denies relief and the relief that is granted or denied differs materially from a final agency decision that was orally announced on the record, the agency may not issue the final written decision without first providing notice to the parties and an opportunity to be heard before the agency."

6. Page 2, line 10.

Following: line 9

Insert: "NEW SECTION. Section 3. Applicability. [This act] applies to contested case hearings commenced after [the effective date of this act]."

- END -

PROXY VOTE

I, THE UNDERSIGNED, HEREBY AUTHORIZE

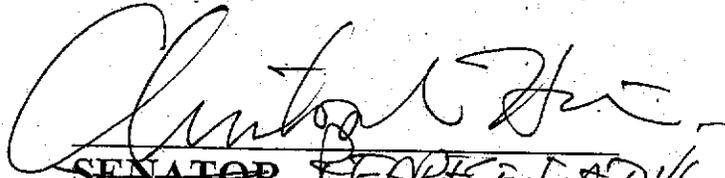
REP

SENATOR PARKER TO VOTE MY PROXY

ON ANY ISSUE BEFORE THE SENATE COMMITTEE

ON SB 260 MEETING HELD ON 04-20-05

2003.



SENATOR REPRESENTATIVE
STATE OF MONTANA

PROXY VOTE

I, THE UNDERSIGNED, HEREBY AUTHORIZE

SENATOR WHEAT TO VOTE MY PROXY

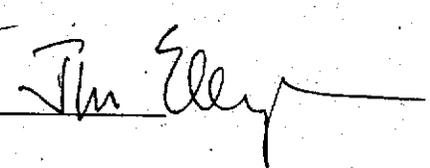
ON ANY ISSUE BEFORE THE SENATE ^{CONFERENCE} COMMITTEE

ON SB 260 MEETING HELD ON 4-20-05,

2003.



SENATOR
STATE OF MONTANA



TO: SENATOR Wheat
FROM: KATHY FABIANO
ASSISTANT SECRETARY TO THE SENATE
RE: CONFERENCE COMMITTEE

Your secretary for the conference committee on SB 2160 will be Gen Kirby (x 4440). Your staffer for the conference committee is John McMaster.

Once you have decided when the committee will meet, please contact the secretary and she will find a room for you. Please try to talk to the secretary before you announce the meeting under order of business #12. I will provide the secretary with a packet containing everything you will need for the committee meeting, including copies of the reference bill and amendments and a copy of the third reading votes in both houses. Meetings must be posted with the Secretary of the Senate's office as usual. Your secretary will notice all committee members and the staffer.

Each house votes separately and a majority of each house is needed to report the bill out of conference committee. If the committee can't reach agreement you may meet again and reconsider your action, dissolve and appoint new members, or dissolve and become a free conference committee.

Please call me at 4840 or stop by my office in room 302 if you have any questions.

Cc: Conference Committee Secretary

10- SB - Accede to Senate request to appoint a conference committee:

Date: April 19, 2005
To: Bill Lombardi, Secretary of the Senate
From: Marilyn Miller, Chief Clerk of the House

I am directed by the House of Representatives to inform the Senate that the House of Representatives this day, acceded to the request of the Senate and has authorized the Speaker to appoint a conference committee to meet with a like committee from the Senate on House amendments to Senate bill 260. The Speaker appointed the following members:

Reps. Stoker, McGillvray, Parker, and Harris appointed

SB 260 Perry, Gary 19-APR-05 (H) Conference Committee Appointed
Confirmation of written decision to oral pronouncement -- contested cases
Senate members: The President Appoints Senators Wheat, Ellingson, and Perry

SHORT TITLE: Confirmation of written decision to oral pronouncement - contested cases

SPONSOR: Sen. Perry

ORDER OF BUSINESS NO. 6
CONFERENCE COMMITTEE APPOINTMENTS

SENATOR Ellingson: MR. PRESIDENT, I MOVE THE APPOINTMENT OF A [REDACTED] CONFERENCE COMMITTEE ON SB 260 AND REQUEST THE HOUSE TO APPOINT A LIKE COMMITTEE.

President Tester: The President Appoints:

House Appoints:

SEN. Wheat CHAIR

REP. _____ VICE CHAIR

SEN. Ellingson

REP. _____

SEN. Perry

REP. _____

TO THE [REDACTED] CONFERENCE COMMITTEE ON [REDACTED] (S) BILL NO. 260

CONFERENCE COMMITTEE PROCEDURE

1. Contact chairman and set time for the meeting. Senators always chair these conference committees; Representatives are the vice-chairs.
2. Schedule a room with House or Senate Sergeant-of-Arms office.
3. Post meeting with Secretary of Senate's office--sometimes a phone call is best.
4. Send notice to all committee members and staffer.
5. Set up meeting room as you would any committee meeting:
 - A. Sign-in sheet
 - B. Bill, Fiscal Note (if applicable)
 - C. Note pad and pencil for each member
 - D. Additional proposed amendments if available
6. Submit Conference Committee Report Request (purple) to the House (if a HB) or Senate (if a SB) Amendments Coordinator. Sign clipboard as with any other meeting and place request form in "IN" basket. Vote tally is on this sheet; record the vote after each name (Y or N). You will need Y votes from at least two Senators and at least two Representatives to report the bill out of committee. If one house votes against the motion, the committee can do one of the following:
 1. Meet again
 2. Dissolve and request appointment of new members
 3. Dissolve and request a free conference committee
 4. Reconsider action by those against
7. Acquire signatures on the Conference Committee Report from each committee member that voted YES, House and Senate. The Report will come in triplicate (white, pink, and green).
8. Get report initialed in Secretary of Senate's office, keep copy of the Conference Committee Report for your minutes. This office will get the originals to correct offices.
9. Do minutes as usual. Include any amendments, exhibits, and copy of the Conference Committee Report.
10. If they cannot come to an agreement and choose to indefinitely postpone, see the Secretary's office.

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

April 15, 2005

The Honorable Jon Tester
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Gary Matthews
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Tester and Speaker Matthews:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments Senate Bill 260, **"AN ACT PROVIDING THAT A FINAL DECISION IN A CONTESTED CASE PROCEEDING MUST BE ISSUED WITHIN 90 DAYS UNLESS GOOD CAUSE IS SHOWN AND MUST BE REVISED TO CONFORM TO AN ORAL PRONOUNCEMENT OF A FINAL DECISION IF REQUESTED BY A PARTY IN WRITING WITHIN 30 DAYS AFTER FILING THE FINAL DECISION; REQUIRING MAIL NOTICE OF A DECISION; AMENDING SECTION 2-4-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE,"** for the following reasons.

Senate Bill 260, sponsored by Senator Perry, establishes a time frame within which a final decision must be issued in a contested case proceeding under the Montana Administrative Procedure Act. It also provides a procedure to follow if a written decision conflicts with an oral pronouncement of the decision, and requires that upon the occurrence of such a conflict, any party may request modification of the written decision, and the oral pronouncement of the decision will prevail. A companion bill, Senate Bill 62, also sponsored by Senator Perry, requires that all final decisions in a contested case proceeding under the Administrative Procedure Act must be in writing. I support that bill.

My proposed amendments to Senate Bill 260 alter the time within which a final decision in a contested case proceeding must be issued. Under my amendments, a written decision must be issued within 90 days after a contested case is deemed submitted for decision to the final decision maker. As the bill stands in its current form, the 90 day period begins to run from the time of the close of the contested case hearing. Because many procedural steps – such as the filing of exceptions and subsequent oral argument – may occur after the close of the hearing, and because

SB 260

Amendments to Senate Bill No. 260

Reference Copy

Requested by the Governor

For the Senate Committee of the Whole

Prepared by Greg Petesch

1. Title, lines 5 through line 8.

Following: "SHOWN" on line 5

Strike: remainder of line 5 through "DECISION" on line 8

Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

2. Page 1, line 13.

Strike: "(a)"

3. Page 1, line 17.

Strike: "HEARING"

Insert: "is considered submitted for decision to the final
decisionmaker"

4. Page 1, line 18.

Strike: "90"

Insert: "30"

5. Page 1, line 19 through line 24.

Strike: subsection (b) in its entirety

6. Page 2, line 10.

Following: line 9

Insert: "NEW SECTION. Section 3. Applicability. [This act]
applies to contested case hearings commenced after [the effective
date of this act]."

SENATE BILL NO. 260

INTRODUCED BY PERRY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A FINAL DECISION IN A CONTESTED CASE PROCEEDING MUST BE ISSUED WITHIN 90 DAYS UNLESS GOOD CAUSE IS SHOWN AND MUST BE REVISED TO CONFORM TO AN ORAL PRONOUNCEMENT OF A FINAL DECISION IF REQUESTED BY A PARTY IN WRITING WITHIN 30 DAYS AFTER FILING THE FINAL DECISION; REQUIRING MAIL NOTICE OF A DECISION; AMENDING SECTION 2-4-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 2-4-623, MCA, is amended to read:

"2-4-623. Final orders -- notification -- availability. (1) (a) A final decision or order adverse to a party in a contested case shall must be issued within 90 days after a hearing, in writing or stated in the record. A final decision shall must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A FINAL DECISION MUST BE ISSUED WITHIN 90 DAYS AFTER A CONTESTED CASE HEARING UNLESS, FOR GOOD CAUSE SHOWN, THE PERIOD IS EXTENDED FOR AN ADDITIONAL TIME NOT TO EXCEED 90 DAYS.

(b) If a written decision and an oral pronouncement of the decision as stated in the record conflict, either party may, within 30 days after filing of the written decision, request that the agency modify the written decision to conform to the oral pronouncement. The agency shall modify the written judgment to conform to the oral pronouncement at a hearing, and the parties must be present at the hearing unless a party waives the right to be present. The parties waive the right to request modification of the written decision if a request for modification of the written judgment is not filed within 30 days after the filing of the written decision.

(2) Findings of facts shall must be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law shall must be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall must include a ruling upon each proposed finding.

(5) Parties shall must be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall must be delivered or mailed forthwith in a timely manner to each party and

1 to his each party's attorney of record.

2 (6) Each agency shall index and make available for public inspection all final decisions and orders,
3 including declaratory rulings under 2-4-501. ~~No such~~ An agency decision or order is not valid or effective against
4 any person or party ~~nor may~~ and it may not be invoked by the agency for any purpose until it has been made
5 available for public inspection as herein required in this section. This provision is not applicable in favor of any
6 person or party who has actual knowledge thereof of the decision or order or when a state statute or federal
7 statute or regulation prohibits public disclosure of the contents of a decision or order."

8

9 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

10

- END -

Hon. Jon Tester
Hon. Gary Matthews
April 15, 2005
Page 2

scheduling difficulties at times prolong the completion of these steps, it is more realistic to require that the clock for issuance of the written decision begin to run after the case is deemed submitted, rather than at the close of the hearing. Because the time for issuance of the final decision is extended under these proposed amendments, in the spirit of keeping with the sponsor's intent, my amendments compensate by shortening the time within which an extension is authorized, for good cause shown, from 90 to 30 days.

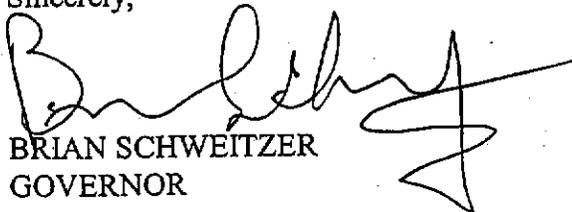
Secondly, my proposed amendments eliminate the requirement in the bill that if an oral pronouncement of the decision conflicts with a written decision, at the request of a party, the agency must modify the decision to conform to the oral pronouncement. I propose this amendment because I do not believe this provision of the bill fosters deliberate judicial decision-making. Rather, I believe that such a requirement would increase the likelihood of faulty agency decisions and unnecessary appeals, thereby increasing the costs of litigation. Additionally, particularly in light of the requirement contained in Senate Bill 62 that all final decisions in contested case hearings be in writing, I believe the requirement in this bill that an oral pronouncement of a decision would trump the written decision undermines the policy that decisions be in writing and that the written decision, and the written decision only, is the decision on which parties to a proceeding can and must rely.

I understand that the sponsor of the bill, Senator Perry, has modeled this requirement that an oral pronouncement of a decision prevails over a written decision on the criminal code. However, I am informed that criminal lawyers, both prosecutors and defense lawyers, find the criminal provision unmanageable and contrary to deliberative decision-making.

My proposed amendments also provide an applicability date, clarifying that Senate Bill 260 applies to contested case hearings commenced after the effective date of the act.

Senator Perry has been informed of my proposed amendments. The proposed amendments are attached to this letter.

Sincerely,


BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

PERRY

I: Time Frame

II: Appeal → 30 days to file = but from what

POINT? Deal or No Deal?

A: Only based on Veritas

III: Malin's Final Decision?

- 5 Minute Recess - Rep. Harris Exits

Called back to Order →

@ 8:53 by: Wheat

Perry → replace w/ word

Ann → Cuevas Law

I:

A: 90 days: submitted for final decision

B: 90 days to 30

Amend Guethner

Governor Amendments

1 → 8 to 7

2 → Strike

3 → "is considered substantially"

for Final decision

4: Accept

5 → ~~Reject~~ Accept

use: Amendment

6: Accepted

Unanimous House Senate

Ajourn → 9:09A

04/20 - SB260

K1

Called to Order → B: Clean
by Sen. Wheat

Wheat

Party → Explain what it does

I: Oral Pardonment

I: Time Frame

A: Except no legal
precedent

A: Agreement w/ 3 Absences

1: Accessible to Whistlebl

ANN

B: No Objection to Part B

- Governor's Office
Announcement Date

C: Only Part A

I: Instances w/ Decision
maker makes Oral Pardon

2: No Objections

II: Part B

A: Deal was Terrible

A: Deal made after Contol
hearing - bad case

B: Don't make more of a
reflective Process

Closed

II: Either Strike Pardonment

1: If Whistleblower Didnt
match Oral Pardonment

A: If Conflict → Party
can address Agency
fee re hearing.

Reuse Whistlebl

B: Not legally correct -
Don't want to be tied
to that opinion

a: 2 mos later

2: Unnecessary Appeals

B: Request of Party
Either Party

III: 600 cases Amend.

Wheat → ASD

A: Deal trump undermines
Whistleblower's will

A: Compromise → if in
Conflict

1: Agency must have
Written reason for
Change

Chris Tweeten → A/c office

A: Time limit → hearings
must be closed

1: 1st 600. Amend deals
with that

B: 2nd Part

1: Rule - Never seen

2: Importance Criminal
Code to NAPA

a: Not good

3: State vs Lane

a: Defendant has right
to be Present

b: Deal should trump

4: NAPA = no oral

Reannouncement or right
to be Present.

5: Better → Civil Case

a: Court can modify

Jury's Decisions

b: Process in Place

c: Rules RATH

6: Opportunity for Public
to testify

7: Procedural road map

PERRY

A: Good Suggestions

B: → Ann Bradley

1: John Conner →
Criminal Code

2: Criminal Context

HARRIS → Tweeten

A: Get rid of Oral
Reannouncement?

B: Not Final Decisions =

Just Recommendations

1: Practice Makes

2: Difficult to Enforce

3: Vote must Conform?

HARRIS

Agree w/ Tweeten

PERRY