

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

June 20, 1986

The first meeting of the Senate Judiciary committee for the 49th Legislature, Third Special Session was called to order at 10:15 A.M. on June 20, 1986, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present with the exception of Senator Blaylock.

CONSIDERATION OF SB 7: Senator Van Valkenburg, Senate District 30, presented this bill to the committee at the request of the Budget Office to address a funding shortfall that has occurred as the result of a bill that came before the Judiciary Committee last session. That bill provided a revenue source for county attorney salaries and longevity pay for counties by the imposition and collection of a surcharge in all criminal cases. A shortfall of nearly \$600,000 resulted in what the state thought was going to be collected. Given the magnitude of this deficit he feels it is appropriate that the legislature go back, look at this issue and attempt to avoid another \$600,000 shortfall. He feels the concept of providing greater support for the prosecuting attorneys is a valid one that the legislature should not abandon. The previous bill raised the pay of part-time county attorneys, with the state contributing a portion. In addition the bill provided the state would pay half the salary of up to two deputy county attorneys. The bill today would leave those provisions in place, however, the state would be relieved of the obligation of paying for 1/2 of the salary of up to two deputy county attorneys. The method by which the county would pay the longevity portion would be to leave the surcharge in place and allow that to be collected and retained by the county for the payment of county attorneys and local elected officials to see that fee is collected and further will make sure that those who do collect it will get the benefit of it. He furnished the committee with a review of the county collection of the \$10 surcharge from persons convicted of criminal offenses or from those who forfeit bond or bail which was prepared by the Legislative Auditor's office. See attached Exhibit 1. He also made reference to amendments that were furnished to the committee, see attached Exhibit 2, and advised that the amendments would be fine as far as he is concerned.

PROPOSERS: David Hunter, Director, Budget and Program Planning, gave testimony in support of this bill. He

referred to a table furnished to committee members entitled County Collections Authorized by SB 116 to Fund Deputy County Attorneys Salaries and asked committee members to note the revenue that has been received. See attached Exhibit 3. He said what we are proposing is a solution to the revenue problem in FY87. He feels that we should look at solving the revenue problem by allowing counties to keep the revenue at their county and to use it for the purpose that the law provided. This will provide an incentive for those counties to collect the money.

John Northey, Legislative Auditor's Office, is in favor of this bill and the amendments furnished to the committee.

OPPONENTS: Gordon Morris, Executive Director, Montana Association of Counties, gave testimony in opposition to this bill. In the parent bill, SB 116, we took the position that the bill represented an intrusion in local government affairs and that we have been opposed to in principal. As far as what is being proposed by SB 7, as it relates to SB 116, our concern is that the county salaries were increased and that we will be required to pick up the added burden of that increased salary with SB 7. Senate Bill 116 attached a longevity provision for county attorneys and we opposed that and continue to oppose that at this time. They feel that the longevity provision should be stricken. We are not opposed to the responsibility of the funding coming back to the counties. It is a rightful local government responsibility. They have not had an opportunity to fully review the amendments presented today and therefore cannot comment on those amendments. They would like the bill amended to provide on page 4, lines 16, 17 and 18, to allow "the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries." They prefer the "and" instead of the "either/or" situation. He commented that if we do end up with more money we would at least have the option to fund other salaries.

Senator Aklestad, Senate District 6, gave testimony in opposition to this bill. He was the sponsor of SB 116 in the last session. The bill was to set up a mechanism where we could retain more qualified deputy county attorneys. He understands the problem with the shortfall in the budget. He does not like the obligation falling back on the counties. He feels at this time it would be a burden on the counties. He can see that the counties do not have the potential to collect and there could still be a shortfall in some counties

and in other counties there would be plenty of money to pay the deputy county attorneys. The original intent was to see that we retained deputy county attorneys in all counties across the state and that bill was the mechanism to obtain that objective.

QUESTIONS FROM COMMITTEE MEMBERS: Senator Towe asked Senator Van Valkenburg why the money is not being collected.

Senator Van Valkenburg said the law went into effect July 1 and the Montana Magistrate Association brought a lawsuit shortly after that time and because that was going on the counties didn't collect the surcharge although there was no injunction to stop them from collecting. Judge Honzel dismissed that lawsuit and no other party came forward to challenge the constitutionality of the legislation. As you can see from the chart furnished by Mr. Hunter, some of the counties are making a real effort to collect the money and others have made no effort at all.

Senator Towe asked if he thought it was this law suit that was the problem.

Senator Van Valkenburg said he would speculate that is the case but would have no basis for that speculation.

Senator Mazurek asked Gordon Morris if his concern was that the revenue generated in some of the counties would not be enough to pay the salaries.

Mr. Morris said he does not think that is the backbone of his concern. We are willing to accept the program back without regard to the revenue that is projected to be generated.

Senator Mazurek asked Senator Van Valkenburg if he had any objection to the amendments proposed by Gordon Morris.

Senator Van Valkenburg said that the problem with his amendment is that this surcharge is directed toward the prosecution effort. He thinks that is what it was meant to go toward.

Senator Mazurek said assuming the deputy county attorney has funds in excess of the amount necessary to grant the longevity increase to pay the salary, what then would the money go for or where would you want it to go.

Senator Van Valkenburg said to the county attorney's office.

Gordon Morris does not see a problem with the wording of his amendment. The language in the bill says initially it would be to fund deputy county attorneys first and foremost and if there is excess then it could be used in other areas.

CLOSING STATEMENT: Senator Van Valkenburg said the rural counties will get the benefit of the state's increased contribution to part-time county attorneys salaries. The state picked up an additional \$130,000 in expenses when they increased those salaries. The county can pick up their portion by virtue of collections of the surcharge. The purpose of the state government intrusion in this area is to enhance the prosecution effort in this state. The surcharge is to make sure we have the necessary funds to pay the deputy county attorneys and county attorneys.

ACTION ON SB 7: Senator Towe made a motion that the amendments (attached as Exhibit 2) presented to the committee be adopted. The motion carried unanimously.

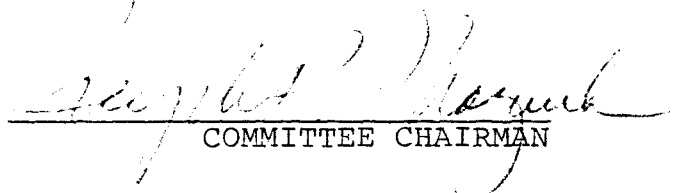
Senator Towe made a motion to amend SB 7 on page 4, lines 16, 17 and 18 as follows:

Following: "attorneys"
Strike: the remainder of line 16 through "attorneys,"
on line 17
Insert: "and"
Following: "salaries" on line 18
Insert: "in the office of the county attorney"

The motion carried with a vote of 7-2, Senator Galt and Senator Shaw were opposed. Senator Blaylock was absent from the hearing.

Senator Towe made a motion to move the bill as amended. The motion carried with a vote of 7-2, Senator Galt and Senator Shaw were opposed. Senator Blaylock was absent from the hearing.

There being no further business to come before the committee, the meeting was adjourned at 11:00 A.M.


COMMITTEE CHAIRMAN

ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th THIRD SPECIAL LEGISLATIVE SESSION - 1986

Date 6-20-86

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock			✓
Senator Bob Brown	✓		
Senator Bruce D. Crippen	✓		
Senator Jack Galt	✓		
Senator R. J. "Dick" Pinsoneault	✓		
Senator James Shaw	✓		
Senator Thomas E. Towe	✓		
Senator William P. Yellowtail, Jr.	✓		
Vice Chairman Senator M. K. "Kermit" Daniels	✓		
Chairman Senator Joe Mazurek	✓		

Each day attach to minutes.

June 20, 1986

Judiciary

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

STATE OF MONTANA

Office of the Legislative Auditor

STATE CAPITOL
HELENA, MONTANA 59620
406/444-3122

DEPUTY LEGISLATIVE AUDITORS:

JAMES GILLET
FINANCIAL COMPLIANCE AUDITS

JIM PELLEGRINI
PERFORMANCE AUDITS

LEGAL COUNSEL:

JOHN W. NORTHEY



SCOTT A. SEACAT
LEGISLATIVE AUDITOR

June 14, 1986

Senator Judy Jacobson
330 Blacktail Canyon Road
Butte, MT 59701

Dear Senator Jacobson:

At your request, we have reviewed the county collection of the \$10 surcharge from persons convicted of criminal offenses or from those who forfeit bond or bail.

The attached report summarizes our findings. Due to the fact that this subject will be discussed during the special legislative session, we have included specific recommendations.

Please feel free to call if you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "Scott A. Seacat".
Scott A. Seacat
Legislative Auditor

SAS/ks3d

Enclosure

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 6-20-86

BILL NO. SB-7

LEGISLATIVE REQUEST

COLLECTION OF SURCHARGE FROM PERSONS
CONVICTED OF CRIMINAL OFFENSES OR
WHO FORFEIT BOND OR BAIL
(SECTION 46-18-236, MCA)

June, 1986

The State Treasurer's Office recorded \$108,512 of collections from the 56 counties for the period July 1, 1985 through April 30, 1986 from the surcharge on persons convicted of criminal offenses or who forfeit bond or bail on criminal offenses. The revenue estimate related to these collections was \$826,434 for fiscal year 1985-86. These revenues are used to fund one-half of the salaries of the county attorney and no more than two deputy county attorneys. We estimate undercollections ranging from \$624,184 to \$664,711 for fiscal year 1985-86.

This report outlines concerns and problems related to the administration of this law. It also includes statistics relating to collections and implementation of the law.

86SP-51

SENATE JUDICIARY

EXHIBIT NO. 1

DATE 06-20-86

BILL NO. S.B. 7

INTRODUCTION

This report is the result of a legislative request to review the collections made by courts of a surcharge, required by section 46-18-236, MCA, to persons convicted of criminal offenses or upon forfeiture of bond or bail for criminal offenses. The objectives of our work were to:

1. determine if the courts were imposing the surcharge;
2. determine if the amount of the surcharge collected by the courts was proper; and
3. determine if collections of the surcharge due the state of Montana were properly remitted.

We selected 19 counties based on number of court cases, location, and whether the county had remitted collections on the surcharge to the state of Montana as of April, 1986. We visited 39 justices of the peace and district court judges at each of these counties. Our examination included a review of the justice of the peace collections and distribution journals and district court records to determine whether the surcharge was imposed on convictions for the test month of February, 1986. We compared the amount that was collected to what should have been collected based on state law (see Table 2).

In addition, we contacted 54 of the remaining justices of the peace and district court judges throughout the state to determine compliance with the state law establishing the surcharge. Total contacts were 93 of 118 judges.

The following sections describe the background of the collection of this surcharge, findings of our work, and potential problems or questions that we found.

BACKGROUND

Section 46-18-236, MCA, enacted by Chapter 719, Laws of 1985, requires that, effective July 1, 1985, a surcharge be imposed by all municipal, justice, and district courts on defendants

convicted of a criminal offense or upon forfeiture of bond or bail for a criminal offense. The charge imposed is \$10 in each misdemeanor case and the greater of \$20 or 10 percent of the fine levied in each felony case. If the defendant is unable to pay the fine, the court must waive payment of the surcharge. The total of the surcharge and any fine assessed may not exceed the maximum fine authorized by law for the offense. The surcharge does not apply to \$5 speeding tickets because these violations are not considered criminal offenses.

The justice and district courts must deposit the surcharges collected with the county treasurer. The statute further states that, on or before the 10th day of each month, the county treasurer shall remit the surcharges collected to the state treasurer for deposit to the state General Fund. Counties may retain up to 10 percent of the money collected under this statute to cover the costs of administering the statute. Cities may retain the charges collected in municipal courts and use the money for salaries of the city attorneys and their deputies.

As of April 30, 1986, \$108,512 was recorded as revenue in the state General Fund from these collections. The amount estimated to be collected for fiscal year 1985-86 was \$826,434. This estimate was prepared by the Department of Justice and was included in a fiscal note from the Office of Budget and Program Planning. The following table illustrates how much money was remitted to the state by each county through April 1986.

TABLE 1

COUNTY COLLECTIONS - SURCHARGE
SCHEDULE OF SURCHARGE REMITTANCE BY COUNTY
JULY 1, 1985 THROUGH APRIL 30, 1986

<u>County</u>	<u>Total</u>	<u>County</u>	<u>Total</u>
Beaverhead	\$ -0-	McCone	-0-
Big Horn	7,600	Meagher	-0-
Blaine	2,484	Mineral	288
Broadwater	3,591	Missoula	13,937
Carbon	-0-	Musselshell	-0-
Carter	45	Park	4,185
Cascade	11,619	Petroleum	-0-
Chouteau	-0-	Phillips	-0-
Custer	4,941	Pondera	378
Daniels	171	Powder River	-0-
Dawson	9,588	Powell	620
Deer Lodge	2,160	Prairie	243
Fallon	-0-	Ravalli	27
Fergus	4,914	Richland	-0-
Flathead	4,014	Roosevelt	2,871
Gallatin	-0-	Rosebud	1,654
Garfield	324	Sanders	250
Glacier	2,421	Sheridan	1,530
Golden Valley	603	Silver Bow	-0-
Granite	225	Stillwater	40
Hill	5,303	Sweet Grass	3,330
Jefferson	855	Teton	-0-
Judith Basin	-0-	Toole	-0-
Lake	162	Treasure	-0-
Lewis and Clark	1,485	Valley	198
Liberty	468	Wheatland	-0-
Lincoln	11,160	Wibaux	3,340
Madison	-0-	Yellowstone	1,488
		TOTAL	<u>\$108,512</u>

Source: Compiled by the Office of the Legislative Auditor from the collection reports recorded on the Statewide Budgeting and Accounting System.

According to Chapter 719, Laws of 1985, these revenues are used to fund one-half of the salaries of the county attorney and no more than two deputy county attorneys.

The Department of Justice projects that expenditures for salaries of deputy county attorneys authorized by the 1985 Legislature will be \$140,000 more than the appropriation for the biennium and has requested a supplemental appropriation.

COLLECTIONS

The Department of Justice estimated \$826,434 of surcharge collections during fiscal year 1985-86. As of April 1986, the state has received \$108,512. For February 1986, we computed the amount the nineteen selected counties should have remitted. The following table compares our computation of what should have been remitted to the amount the county remitted to the state. For consolidated city/county governments, surcharge collections by the city judges are included in the amount that should have been remitted.

TABLE 2

SCHEDULE OF WHAT SHOULD HAVE BEEN REMITTED
BY THE COUNTY TO WHAT WAS REMITTED TO THE STATE

February 1986			
<u>County</u>	<u>Amount remitted^A</u> <u>to the state</u>	<u>Amount that should</u> <u>have been remitted^C</u>	<u>Difference</u>
1	\$ 225	\$ 1,575	\$ 1,350
2	310	630	320
3	-0-	594	594
4	-0-	207	207
5	-0-	243	243
6	-0-	243	243
7	1,359	3,049	1,690
8	-0-	2,079	2,079
9	423	684	261
10	423	342	(81) ^B
11	-0-	468	468
12	1,784	5,634	3,850
13	-0-	432	432
14	-0-	531	531
15	-0-	846	846
16	300	522	222
17	378	720	342
18	423	423	-0-
19	-0-	153	153
Total	<u>\$5,625</u>	<u>\$19,375</u>	<u>\$13,750</u>

^A Amounts to be remitted to the state for February surcharge but not received by the state treasurer by March or April were not included.

^B County Treasurer had not remitted the correct amount during previous months, so the amount remitted is greater than the amount that should have been remitted.

^C These amounts are 90 percent of the total we computed that the counties should have collected. This allows for a county retention rate of 10 percent for administering the surcharge.

Source: Compiled by the Office of the Legislative Auditor

We utilized the information contained in Table 2 to estimate the amount of revenue the state will have received as of June 30, 1986, and a projection of revenues for fiscal year 1986-87. Our

estimates were calculated using the following assumptions. The projections are not statistically based.

1. We assumed the revenue estimate of \$826,434 is a valid estimate.
2. We assumed that February 1986 accounts for 1/12 of the statewide criminal caseload; i.e., it is representative of monthly caseload.
3. We assumed the selected counties represent a good cross-section of the state. Large, medium, and small counties were included in our sample.
4. The projection for fiscal year 1986-87 assumes 100 percent compliance with the statute.

The following illustrates the results of our projections.

Revenues which will be received by June 30, 1986	\$161,723 to \$202,250
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Revenue estimated for fiscal year 1986-87	\$685,263
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Based on the fiscal year 1985-86 revenue estimate and the estimate of actual collections based on amounts collected through April, the fiscal year 1985-86 undercollection ranges from \$624,184 to \$664,711. The undercollections are the result of the problems in administering the law as discussed in the following sections.

ADMINISTRATION OF SECTION 46-18-236, MCA

The following sections discuss the information we compiled through our discussions with the district judges, justices of the peace and the county treasurers we contacted.

Implementation

All judges did not collect the surcharge for convictions as of July 1, 1985. The following table indicates the distribution of when judges began assessing and collecting the surcharge. The table includes only those courts contacted.

TABLE 3

DISTRIBUTION OF IMPLEMENTATION DATES
CONCERNING COLLECTION OF FINE SURCHARGE

	<u>1985</u>		<u>1986</u>			<u>Not Implemented</u>	<u>Not Determined</u>
	<u>July</u>	<u>August- December</u>	<u>January- March</u>	<u>April</u>	<u>May</u>		
Justice of Peace	17	24	12	8	5	0	1
District Judges	4	3	3	2	2	7	5

Source: Compiled by the Office of the Legislative Auditor

The primary reason the surcharge was not implemented as of July 1, 1985, in the justice courts is that the justices were waiting for the outcome of a suit filed by the Magistrates' Association claiming section 46-18-236, MCA, was unconstitutional. The suit was dismissed December 11, 1985. The primary reason for non-collection at the district courts is that the judges were unaware of the statute. Other reasons given include no official notification; confusion as to how to implement the law; the need for lead time to establish procedures; and the need for notification from the county attorneys prior to assessment.

Waivers

The statute under discussion allows waiver of the surcharge if the defendant is unable to pay. District courts waive the surcharge if the defendant is indigent or if there is a prison term involved. We were informed a few of the district courts do not ever waive the surcharge. Most justice courts waive the surcharge where there is an inability to pay. The surcharge is also waived by some justice courts when a maximum fine has been assessed; when time pays are involved; when the defendant must perform public service; and when, in the case of bond forfeiture, the arresting officer does not collect the surcharge. However, some justices stated they do not ever waive the surcharge.

The law provides that only for defendants not able to pay a fine or pay within a reasonable time, may the surcharge be waived.

Statutory Clarification

During our review we noted a number of areas in which the statutory provisions are unclear or the problem is not addressed by law. These areas are discussed in the following sections.

Time Payments

When large fines are assessed, defendants are often allowed to make payments on the fine over an extended period of time. From the information gathered in visiting or contacting the counties we found that there were various ways the courts were handling the collection of the surcharge on these "time-pays."

Out of 93 judges contacted or visited, 57 indicated that they made the time payment distributions monthly or held the payments in trust until the final payment is received with the surcharge being collected on the last time payment; 5 collected the surcharge on the first time payment; 8 did not collect the surcharge; 4 inconsistently assessed the surcharge; 5 did not have any time pays; and 14 had no response.

The law on imposition of the surcharge does not address the issue of time payments on the fines. Therefore, the courts are inconsistent concerning when the surcharge is collected and sent to the state. The law should address the procedure to be used in collecting the surcharge on "time-pays."

RECOMMENDATION:

WE RECOMMEND THAT LEGISLATION BE ENACTED TO SPECIFY HOW THE SURCHARGE IS TO BE COLLECTED ON "TIME-PAY" FINES.

Bond Schedules

We asked the justices of the peace whether or not they revised their bond schedules to include the surcharge. In 41 Opinions of the Atty. Gen'l, No. 59, issued in April 1986, the Attorney General states the justices may revise their bond schedules to include the surcharge.

A revised bond schedule is most critical for those instances where a forfeiture of bond occurs, e.g., highway patrol and GVW citations. The officers collect the amount of money as provided on the schedule. According to a few justices of the peace, highway patrolmen have refused to collect the surcharge because they did not believe it was their place to do so.

In those courts where the schedule has not been revised, collection of the surcharge is handled in different ways. Some justices reduce the fine by \$10 thus providing for collection of the surcharge. Other courts send letters to the defendants requesting them to pay the surcharge. And still others instructed the patrolmen and GVW officers to collect the surcharge.

In the 67 justice courts we contacted 30 have revised their bond schedule to include the surcharge and 37 have not. In 52 of these same courts the highway patrol and GVW officers are collecting the surcharge and in 15 they are not.

Section 46-9-301, MCA, allows the county to set bail and could be amended to require the courts to specifically include the surcharge in their bond schedules.

RECOMMENDATION:

WE RECOMMEND LEGISLATION BE ENACTED TO AMEND SECTION 46-9-301, MCA, TO REQUIRE COURTS TO SPECIFICALLY INCLUDE THE SURCHARGE IN THEIR BOND SCHEDULES.

Maximum Fines

Section 46-18-236(4), MCA, states that the total of the surcharge imposed and any fine assessed may not exceed the maximum fine authorized by law for the offense. The following table illustrates how this law is being interpreted.

TABLE 4

SCHEDULE OF JUDGES PROCEDURES FOR COLLECTING SURCHARGE
WHEN MAXIMUM FINE IS IMPOSED

<u>Procedure</u>	<u>Number of Judges</u> [*]
1. Maximum fine is collected; no surcharge collected.	17
2. Maximum fine is collected; surcharge is in addition to maximum fine and is collected.	10
3. Maximum fine is lowered by the amount of the surcharge; the surcharge is collected.	36
4. No response.	32

* Two Judges are looking at the defendant's ability to pay before assessing the surcharge and are included in procedure 2 and 3.

Source: Compiled by the Office of the Legislative Auditor

In some cases, the fine which may be imposed is a specific amount with the minimum and maximum being the same. In this case either the surcharge is waived, or the fine is reduced. The practice of reducing the fine by the amount of the surcharge decreases the fine revenue to other sources, such as the crime victims' compensation fund, driver education and the highway patrol. In these situations the surcharge does not generate revenue, but transfers revenue. If the surcharges were made totally separate from the fines, these problems would not exist.

RECOMMENDATION:

WE RECOMMEND LEGISLATION BE ENACTED MAKING THE SURCHARGE SEPARATE AND APART FROM THE FINE ASSESSED.

Multiple Offenses

We noted during our work at the counties that defendants convicted of multiple offenses are charged a different amount of surcharge depending upon which county they are in. For example, if a person is stopped for driving under the influence and, at that time, the law enforcement officer notes the individual also does not have either liability insurance or a valid driver's license, the person receives three tickets. This is considered a multiple offense and, if the person is convicted for all three violations, the following surcharge could be assessed:

1. Some counties are assessing the surcharge per violation, therefore the person in the example above would be required to pay a surcharge of \$30 (three violations at \$10 misdemeanor charge).
2. Other counties are assessing the surcharge per incident. In these counties the individual would pay a surcharge of \$10.

The law states the surcharge will be imposed upon conviction of a case. "Case" has not been defined.

RECOMMENDATION:

WE RECOMMEND LEGISLATION BE ENACTED TO DEFINE "CASE" AS USED IN SECTION 46-18-236, MCA.

County Treasurers

We contacted all fifty-six county treasurers either by phone or during our visits to the counties. Seven treasurers are not remitting the surcharge collected to the State Treasurer. Lack of

guidance was the main reason the treasurers stated for not remitting. The judges have recorded the surcharge collected with the county general fund collections or in a separate column on the distribution journals. When the surcharge is included with the county general fund collections, the treasurer has to determine how much of the collection is surcharge and then remit the state's share to the State Treasurer. The seven treasurers did not know the above process and therefore, 100 percent of the surcharge collected went to the county general fund.

There was also some confusion at the counties as to what percentage of the surcharge should be remitted to the state. Some counties have remitted 100 percent of the surcharge, others 90 percent. Section 46-18-236(6), MCA, states the county may retain up to 10 percent of the funds remitted to the state treasurer to cover only the costs of administering collection of the surcharge. The counties do not have a method to determine the actual cost of collecting the surcharge and therefore, are unsure as to the amount the county should retain. If the county share of surcharge was a specific percentage of the total surcharge the actual costs of administering collection of the surcharge would not have to be determined.

RECOMMENDATION:

WE RECOMMEND LEGISLATION BE ENACTED TO PROVIDE THE COUNTIES' SHARE OF THE SURCHARGE BE A SPECIFIC PERCENTAGE OF THE TOTAL SURCHARGE.

Conflict in Deposit Dates

Section 46-18-236, MCA, indicates that on or before the 10th day of each month, the county treasurer shall remit to the state treasurer the collection of this charge. Section 15-1-504, MCA, states the county treasurer, between the 1st and 20th days of each month, must remit to the state treasurer all moneys belonging to the state which were collected by such treasurer during the

preceding month. These two laws are in conflict. By requiring the surcharge collection to be deposited with other moneys belonging to the state, the conflict would be removed.

RECOMMENDATION:

WE RECOMMEND SECTION 46-18-236, MCA, BE AMENDED SO THE TIME OF REMITTANCE OF THE SURCHARGE COLLECTIONS IS CONSISTENT WITH SECTION 15-1-504, MCA.

Consolidated Governments

Section 46-18-236, MCA, specifies surcharge collections shall be deposited to different entities depending upon whether the surcharge is collected by a city court or a justice of the peace or district court. The law is silent as to disposition of surcharge collections by a consolidated city/county government.

RECOMMENDATION:

WE RECOMMEND LEGISLATION BE ENACTED TO SPECIFY THE DISPOSITION OF SURCHARGES COLLECTED BY A CONSOLIDATED CITY/COUNTY GOVERNMENT.

CONCLUSION

Through our discussions with the various justices and judges, we determined there is a great deal of confusion and frustration surrounding the administration of this law. Specific problems concerning time payments, waivers, bond schedules, maximum fines and multiple offenses have been discussed with specific recommendations provided to address the issues.

When new legislation, such as this surcharge, is enacted, responsibility to ensure the law is effectively and efficiently implemented should be assigned to one designated state agency. This would reduce any misunderstanding and noncompliance with the law.

We addressed this need in our report, Collection of State Revenues by Montana Counties, issued in January 1986. If these recommendations are implemented, many of the problems identified may be avoided.

Based on the findings of our study on the court collection of this surcharge we again recommend that :

- A. Responsibility for the county collection process be assigned to one designated state agency;
- B. A county collections advisory council be created; and
- C. A comprehensive manual of procedures for the collection of state revenues at the county level be created and distributed.

AMENDMENTS TO SENATE BILL NO. 7

Introduced Copy

1. Title, line 9.

Following: "SECTIONS 7-4-2502"
Insert: ", 46-9-301";

2. Page 2.

Following: line 17
Insert: "Section 2. Section 46-9-301, MCA, is amended to read:

"46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;

(2) sufficient to assure compliance with the conditions set forth in the bail;

(3) sufficient to protect any person from bodily injury;

(4) not oppressive;

(5) commensurate with the nature of the offense charged;

(6) considerate of the financial ability of the accused;

(7) considerate of the defendant's prior record;

(8) considerate of the length of time the defendant has resided in the community and his ties to the community;

(9) considerate of the defendant's family relationships and ties; ~~and~~

(10) considerate of the defendant's employment status; and

(11) sufficient to include the charge imposed in 46-18-236."

Renumber: all subsequent sections

3. Page 3, line 1.

Following: "\$10"
Strike: "in"
Insert: "for"

4. Page 3, line 1.

SENATE JUDICIARY COMMITTEE-

EXHIBIT NO. 2

DATE 6-20-86

BILL NO. SB-7

Following: "misdemeanor"
Strike: "case"
Insert: "charge"

5. Page 3, line 2.

Following: "levied"
Strike: "in"
Insert: "for"

6. Page 3, line 3.

Following: "felony"
Strike: "case"
Insert: "charge"

7. Page 3, line 9.

Following: "fine"
Insert: "and must be imposed in addition to any fine,"

8. Page 3.

Following: line 11
Strike: subsection (4) in its entirety
Insert: "(4) When the payment of a fine is to be made in installments over a period of time, the charge imposed by this section must be collected from the first payment made, and each subsequent payment as necessary if the first payment is not sufficient to cover the charge."

9. Page 3, line 24.

Following: "treasurer."
Insert: "If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under (1) shall be deposited with the finance officer or treasurer of the consolidated government."

TABLE 1

COUNTY COLLECTIONS AUTHORIZED BY SB116 TO FUND DEPUTY COUNTY ATTORNEY SALARIES

COUNTY	Pop.	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	April	Annual		Number of State Deputies	Cost Salary Only.
											Total Remitted	Percent of Total		
BEAVERHEAD	8,500	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,962	\$1,962	1.403	1	\$10,725
BIG HORN	11,400	0	1,790	290	945	1,089	1,092	1,476	918	n/a	7,600	5.433	2	23,176
BLAINE	6,900	0	110	270	965	50	361	521	216	333	2,826	2.020	1	12,838
BROADWATER	3,300	0	0	0	0	0	0	0	3,591	470	4,061	2.903	0	0
CARBON	8,300	0	0	0	0	0	0	0	0	0	0	0.000	2	17,800
CARTER	1,700	0	0	0	0	0	0	36	9	27	72	0.051	0	0
CASCADE	80,100	0	2,484	1,602	945	2,295	1,332	1,602	1,359	1,791	13,410	9.587	2	33,427
CHOUTEAU	6,100	0	0	0	0	0	0	0	0	1,728	1,728	1.235	0	0
CUSTER	13,300	0	0	1,044	1,098	711	873	819	396	617	5,558	3.973	1	10,730
DANIELS	2,800	0	0	0	0	0	0	90	81	36	207	0.148	0	0
DAWSON	12,700	0	1,767	1,917	1,593	972	1,215	1,179	945	1,395	10,983	7.852	2	25,713
DEER LODGE	11,600	0	0	18	330	423	549	198	639	819	2,976	2.128	1	10,200
FALLON	3,800	0	0	0	0	0	0	0	0	0	0	0.000	0	0
FERGUS	13,000	792	306	0	1,661	0	1,003	477	675	594	5,508	3.938	2	21,888
FLATHEAD	52,300	0	0	0	0	0	0	1,683	2,331	2,520	6,534	4.671	2	40,595
GALLATIN	45,300	0	0	0	0	0	0	240	0	413	653	0.466	2	26,820
GARFIELD	1,700	0	0	153	45	108	0	9	9	45	369	0.264	0	0
GLACIER	11,000	198	378	342	450	198	315	351	189	243	2,664	1.905	1	12,875
GOLDEN VALLEY	1,100	0	0	0	0	288	99	216	0	117	720	0.515	0	0
GRANITE	2,600	0	0	0	0	0	171	27	27	99	324	0.232	0	0
HILL	18,500	0	520	510	1,783	400	640	720	310	480	5,363	3.834	2	20,776
JEFFERSON	7,300	0	0	45	0	9	153	270	378	207	1,062	0.759	1	8,362
JUDITH BASIN	2,700	0	0	0	0	0	0	0	0	0	0	0.000	0	0
LAKE	19,400	0	0	0	0	0	0	0	0	0	0	0.000	2	21,000
LEWIS & CLARK	44,300	36	189	279	126	261	261	225	227	306	1,910	1.365	2	31,610
LIBERTY	2,400	81	0	0	0	0	387	0	0	225	693	0.495	1	4,367
LINCOLN	18,000	1,080	945	1,773	1,575	1,341	2,169	1,836	441	2,160	13,320	9.523	2	24,463
MADISON	5,800	0	0	0	0	0	0	0	0	0	0	0.000	0	0
MCCONE	2,800	0	0	0	0	0	0	0	0	0	0	0.000	0	0
MEAGHER	2,200	0	0	0	0	0	0	0	0	270	270	0.193	0	0
MINERAL	3,500	0	0	0	0	0	63	81	144	n/a	288	0.206	0	0
MISSOULA	75,200	0	0	9	2,696	2,837	4,799	3,520	77	7,641	21,578	15.426	2	42,668
MUSSELSHELL	4,600	0	0	0	0	0	0	0	n/a	n/a	0	0.000	1	0
PARK	13,300	423	612	666	621	567	387	423	486	540	4,725	3.378	1	12,230
PETROLEUM	700	0	0	0	0	0	0	0	0	0	0	0.000	0	0
PHILLIPS	5,400	0	0	0	0	0	0	0	0	0	0	0.000	1	8,627
PONDERA	6,800	0	0	0	0	0	0	0	378	468	846	0.605	1	8,921
POWDER RIVER	2,500	0	0	0	0	0	0	0	0	162	162	0.116	0	0
POWELL	6,700	0	0	0	0	140	80	100	300	343	963	0.688	0	0
PRAIRIE	1,900	0	0	0	100	0	80	63	0	54	297	0.212	0	0
RAVALLI	23,500	0	0	0	0	0	0	0	27	27	54	0.039	1	21,459
RICHLAND	14,900	0	0	0	0	0	0	0	0	0	0	0.000	2	24,926
ROOSEVELT	11,300	0	0	0	567	747	612	477	468	144	3,015	2.155	1	12,875
ROSEBUD	12,200	9	0	43	343	387	288	342	243	306	1,960	1.401	1	12,838
SANDERS	9,000	0	0	0	0	0	0	0	0	0	0	0.000	0	0
SHERIDAN	6,000	0	300	190	250	430	380	0	230	400	2,180	1.558	0	0
SILVER BOW	36,600	0	0	0	0	0	0	0	0	0	0	0.000	2	34,563
STILLWATER	5,800	0	0	0	20	0	0	20	0	0	40	0.029	1	9,200
SWEET GRASS	3,300	210	580	210	570	644	549	423	144	1,062	4,392	3.140	1	10,730
TETON	6,400	0	0	0	0	0	0	0	0	90	90	0.064	0	0
TOOLE	5,700	0	0	0	0	0	0	0	0	n/a	0	0.000	1	0
TREASURE	1,000	0	0	0	0	0	0	0	0	0	0	0.000	0	0
VALLEY	9,900	0	0	9	54	0	36	45	54	n/a	198	0.142	2	16,359
WHEATLAND	2,300	0	0	0	0	0	0	0	0	0	0	0.000	0	0
WIBAUX	1,600	0	0	0	620	820	690	670	540	810	4,150	2.967	0	0
YELLOWSTONE	113,400	0	0	0	9	18	450	9	0	3,683	4,169	2.980	2	36,916
TOTAL	804,400	\$2,829	\$9,781	\$9,370	\$17,365	\$14,735	\$19,033	\$19,148	\$15,832	\$32,586	\$139,879	100.000	49	\$611,677

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PETROLEUM	700	0	0	0
PHILLIPS	5,400	8,627	0	8,627
PONDERA	6,800	8,921	8,421	500
POWDER RIVER	2,500	0	0	0
POWELL	6,700	0	0	0
PRAIRIE	1,900	0	0	0
RAVALLI	23,500	21,459	22,082	(623)
RICHLAND	14,900	12,838	10,206	2,632
		12,088	8,918	3,170
ROOSEVELT	11,300	12,875	11,433	1,442
ROSEBUD	12,200	12,838	10,971	1,867
SANDERS	9,000	0	0	0
SHERIDAN	6,000	0	0	0
SILVER BOW	36,600	14,750	15,450	(700)
		19,813	20,384	(571)
STILLWATER	5,800	9,200	7,339	1,861
SWEET GRASS	3,300	10,730	2,472	8,258
TETON	6,400	0	0	0
TOOLE	5,700	0	7,725	(7,725)
TREASURE	1,000	0	0	0
VALLEY	9,900	7,800	0	7,800
		8,559	8,559	0
WHEATLAND	2,300	0	0	0
WIBAUX	1,600	0	0	0
YELLOWSTONE	113,400	17,457	14,956	2,501
		21,459	19,339	2,120
TOTAL	753,800	\$611,677	\$534,197	\$77,480

Information provided by Terry Cannon, Department of Justice
Terry estimated the fiscal note cost by contacting each county during consideration of SB116 to determine the number and salary level of each deputy county attorney. The FY85 salaries were inflated 3% to cover anticipated salary increases. Four counties reported having no deputy county attorneys and subsequently hired one in FY86. Two counties had vacant positions as of the April pre-payroll record from which the actual salary information was drawn. The cost is estimated for salaries only and does not include benefits. The FY86 cost including benefits is about \$700,057.

SENATE JUDICIARY

EXHIBIT NO. 3

DATE 06-20-86

BILL NO. S.B. 7

STANDING COMMITTEE REPORT

PAGE 1 of 3

June 20,

19. 86

MR. PRESIDENT

We, your committee on **JUDICIARY**

having had under consideration **SENATE BILL**

No. **7**

first reading copy (**white**)
color

COUNTIES TO PAY DEPUTY COUNTY ATTORNEY SALARY AND TO KEEP PINE SURCHARGE

Respectfully report as follows: That **SENATE BILL**

No. **7**

be amended as follows:

1. Title, line 9.

Following: "SECTIONS 7-4-2502"

Insert: ", 46-9-301,"

2. Page 2.

Following: line 17

Insert: "Section 2. Section 46-9-301, MCA, is amended to read:

"46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;

(2) sufficient to assure compliance with the conditions set forth in the bail;

(3) sufficient to protect any person from bodily injury;

(4) not oppressive;

(5) commensurate with the nature of the offense charged;

(6) considerate of the financial ability of the accused;

(7) considerate of the defendant's prior record;

(8) considerate of the length of time the defendant has resided in the community and of his ties to the community;

(9) considerate of the defendant's family relationships and ties; and

~~XXXXXX~~

(continued)

~~XXXXXX~~

June 20

19... 86

(10) considerate of the defendant's employment status;
and
(11) sufficient to include the charge imposed in
46-18-236."

Renumber: all subsequent sections

3. Page 3, line 1.
Following: "\$10"
Strike: "in"
Insert: "for"
Following: "misdemeanor"
Strike: "case"
Insert: "charge"

4. Page 3, line 2.
Following: "levied"
Strike: "in"
Insert: "for"

5. Page 3, line 3.
Following: "felony"
Strike: "case"
Insert: "charge"

6. Page 3, line 9.
Following: "fine"
Insert: "and must be imposed in addition to any fine,"

7. Page 3, lines 12 through 14.
Strike: subsection (4) in its entirety
Insert: "(4) When the payment of a fine is to be made in installments over a period of time, the charge imposed by this section must be collected from the first payment made, and each subsequent payment as necessary if the first payment is not sufficient to cover the charge."

8. Page 3, line 24.
Following: "treasurer."
Insert: "If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under (1) shall be deposited with the finance officer or treasurer of the consolidated government."

(continued)

June 20 1986

9. Page 4, line 16.

Following: "attorneys"

Strike: the remainder of line 16 through "attorneys," on line 17

Insert: "and"

10. Page 4, line 18.

Following: "salaries"

Insert: "in the office of the county attorney"

DO PASS

~~XXXXXXXXXX~~

Chairman

28
6:20-86
2:55