

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 26, 1987

The fifty-third meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 26, 1987 by Vice Chairman Bruce Crippen in Room 325 of the Capitol Building.

ROLL CALL: All members were present, except Senator Mazurek, who was presenting another bill in another committee.

CONSIDERATION OF HB 737: Representative Dave Brown, House District #71, introduced HB 737, which allows a professional person at Montana State Hospital to file a petition to extend a patient's stay at the hospital either six months or one year. He said presently the law is silent as to which county has jurisdiction, however, the practice is to have it in Deer Lodge County. He stated the bill makes the current practice the law. He said there is no effect on the hospital or their budget because, presently, this is the way they have been handling this problem. He said one concern is it might cost additional money if there is no change in the law for travel and expenses of the state officials from Montana State Hospital to the counties' jurisdictions.

PROPOSERS: Curt Chisholm, Department of Institutions, testified the bill was introduced at the department's request. He said monthly they recommit between 6 and 12 patients. He said Judge Boyd holds court on the campus of Montana State Hospital because he prefers to do it that way. Mr. Chisholm said the hospital recognizes that his court has venue over these patients when it becomes necessary to recommit them for additional time besides the 90 days commitment period rendered by the court of jurisdiction. He said this bill will clarify that Deer Lodge County has jurisdiction over these patients.

Steve Waldron, Mental Health Centers, stated that it doesn't make sense to require that a professional person from the State Hospital has to testify on a case out of the county's jurisdiction because it takes up additional staff time.

OPPOSERS: None

DISCUSSION ON HB 737: Senator Crippen asked if the court records from other counties have to be transferred to the court in Deer Lodge. Mr. Chisholm answered that the committing court always sends the court order and all the supporting testimony to Deer Lodge.

Representative Brown closed.

ACTION ON HB 737: Senator Pinsoneault moved HB 737 BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HB 501: Representative Dorothy Cody, House District #20, Wolf Point/Popular, introduced HB 501, which provides an interpleader in small claims court procedures. She explained that she is in the real estate business and when a contract is formed on a real estate deal an "earnest money deposit" is taken. She said sometimes those negotiations in a contract break down and there is a question to whom the money belongs to. She said the bill would put these cases into small claims court. She said the amount of the broken contract can only be up to \$1,500 to be put in small claims. She stated the small claims court decides where the money should be dispersed and out of that decision, money would go toward the court's cost.

PROPOSERS: Helen Garrick, Board of Realty Regulation, supported the bill because it decreased the likelihood that the real estate licensee will be involved in litigation. She said it will allow someone with legal experience to make the decision as to whom the "earnest money deposit" should go to when there is a dispute. She thought it would save time and money by having it put into the small claims court rather than the district court. She thought it would add to the uniformity of how these matters are settled and it would help create guidelines for those in the industry.

Robert Holding, Montana Association of Realtors, stated he supported the bill.

OPPOSERS: None

DISCUSSION ON HB 501: Senator Halligan inquired why the House committee struck the language on page 2, lines 3 through 5, about the small claims court judge assisting claimants and preparing their claims. Representative Cody answered that the small claim courts felt they should not be involved with helping the person fill out the form. She said it was the courts' feeling that they would handle the disbursement of the money, but they wouldn't help the claimant fill out the form. Jim Haynes answered the same question by saying that the small claims court does help people fill out forms, but if the real estate representatives are intelligent enough to produce this bill, then they can fill out their own forms. He said the court doesn't help anyone else fill out a form. Senator Halligan replied he sends people to small claims and the clerk helps them fill out their complaints. Jim Haynes said his people don't tell them the wording for each legal cause of action. Senator Halligan stated he didn't think this language needed to be struck from the bill.

In closing Representative Cody said she supported putting the language back in the bill.

ACTION ON HB 501: Senator Blaylock moved the bill to BE CONCURRED IN. Senator Yellowtail stated he would like to amend into the bill that language that Senator Halligan talked about. The committee decided to wait till after the hearing.

CONSIDERATION OF HB 491: Representative Gary Spaeth, House District #84, introduced HB 491, which is a constitutional amendment to be submitted to the voters in 1988. He stated the bill would not have the residency requirements for cities and municipal judges. He said this legislation is companion legislation with HB 482. He explained the little towns don't have a very big budget and are not able to have a full time judge stay, so towns share judges. He said this way the towns get a good judge at a reasonable price and the judge gets a decent salary. He said the problem is the judge can't be a resident of every town he serves. He explained the Attorney General has ruled a municipal judge has to be a resident of the town he is working in. Representative Spaeth informed the committee the bill received 100 vote's in the House.

PROPOSERS: Alec Hanson, League of Cities and Towns, testified in support of the bill because the Attorney General's decision has become an impractical system. He said it has caused the smaller towns trouble in finding a judge and paying one. He pointed out that judges go to a school twice a year in Bozeman, which the towns can't afford to send them to if they have to individually pay for it.

Jim Haynes, Magistrate's Association, supported the bill. He gave a hand out of the Attorney General's Opinion on this subject (see Exhibit 1).

OPPOSERS: None

DISCUSSION ON HB 491: None

ACTION ON HB 491: Senator Pinsoneault moved the bill to BE CONCURRED IN. He said he would carry it also. The motion carried unanimously.

CONSIDERATION OF HB 482: Representative Ted Schye of Glendive introduced HB 482, which makes a justice court a city court. He said small towns can't afford to pay a judge and also send the judge to school twice a year. He said this bill will take care of the problem immediately, while everyone waits for HB 491 to pass a state constitutional referendum by the people of the state.

PROPOSERS: Jim Hayes, Magistrates Association, stated the amendments in the bill were added to allow the Justice of the Peace and the County Commissioners to both have a say in whether or not to work with or for a city.

Alec Hanson, League of Cities and Towns, testified in support of the bill because a small town can't afford a judge. He felt it will save some money.

OPPONENTS: None

DISCUSSION ON HB 482: Senator Blaylock said in the first part of the bill it construes around the constitution by referring to a "justice court", not a "justice of the peace" as it is called on page 2, line 5. Mr. Haynes stated the references were construing the constitution. He said he would change it on page 2, line 5, to "city judge" instead of "justice of the peace". Senator Blaylock agreed. Senator Halligan inquired why it was just the third class cities. Alec Hanson responded that it is the smaller towns and cities that are having the problem. He commented there are about 12 first and second class cities in Montana and all the rest are third class.

Representative Schye said he agreed with the amendment Senator Blaylock spoke of.

CONSIDERATION OF HB 740: Representative John Cobb, House District #42, said the bill relieves justices of the peace from overly burdensome bookkeeping and other administrative duties in regard to fines, penalties, and forfeitures paid in their courts. He pointed out the entire bill is on page 3, which shows the distributions of fines. He stated, presently, they take all the fines and divide them up into several different ways, for example, a fine could be divided up into four different ways, depending on who did the arresting, such as the highway patrolman or city police. He explained each force has different funds which the fines go into, like the General Fund, Fish and Game Fund, or the Highway Fund. He said the justice of the peace has to allocate these fines to their designated places. He stated it takes about six days to divide the money into funds and the judges are making quite a few mistakes because they are not bookkeepers. He explained the forms the justice of the peace fills out and how cumbersome the forms are because of dividing of fines into different categories. He stated the bill takes a percentage of all the fines; the bill states half of all the money, and uses it to allocate it into different funds. He said it will save time for the justice of the peace. He said the Legislature could divide the percentages up as they wish, but presently in the bill the money is allocated to certain funds with specific percentages (see page 3 of the blue copy of the bill). He commented that one Justice of the Peace from Cascade County brought in a 40 page computer lay out for one month and was trying to allocate \$2.00 fines from it.

PROPOSERS: Jim Haynes, Magistrate's Association, gave the committee a memo addressed to Representative Cobb from the Magistrate's office on this bill, and he also handed out amendments to the bill (see Exhibit 2

and 2A). He also gave written testimony from Nancy L. Sabo, President of the Magistrate's Association (see Exhibit 3, written testimony). He said HB 740 resolves the problem the Legislature discovered last legislative session when they passed Representative Connelly's joint resolution study committee to look at this problem. He said the amendments change the percentages in the bill slightly because of the passage of HB 679, which causes an additional special revenue fund. He explained he had authorization to state the county treasurers supported this bill.

Bernard F. McCarthy, Montana Magistrate's Association, supported the bill (see witness sheet).

OPPONENTS: None

DISCUSSION ON HB 740: Senator Crippen asked if the Treasurers Association had a problem with the bill. Jim Haynes stated the representative for the Treasurers was in House Taxation, but would like to go on record in support of the bill.

Representative Cobb closed.

CONSIDERATION OF HB 761: Representative Bob Thoft, House District #63, introduced HB 761, which provides that when bail is set at \$1,000 or less, the defendant may furnish bail by paying a fee to the clerk of the court in an amount of cash equal to 10 percent of the required bail and a promissory note for the total amount of the required bail, signed by the defendant in favor of the county. He said the way it is operated now is people are in jail on a weekend until the first part of the week because there is no system to get these people out of jail or keeping them from going there. He explained if a person has a \$300 DUI bail, the offender would write a check for \$30. He said then he would be released and he would sign a note for \$300. He said when the person came back for the hearing if he is judged guilty, he would pay the fine and if he is not, in either case, the note is disposed of. He stated the \$30 would go to support the court-appointed counsel. He stated this system would get rid of the crowding of jails on weekends and it would set up a system where people would not be incarcerated for minor offenses.

PROPOSERS: John W. Robinson, County Attorney for Ravalli County, stated he was the person who came to Representative Thoft. He said the cost of indigent defense is a problem. He said six years ago his office offered to do all indigent defenses in Ravalli County for \$28,000. He said the County Commissioners told his office they couldn't afford \$28,000. He pointed out that this year and last year Ravalli County spent an excess of \$155,000 to defend indigent prisoners. He pointed out this is more money than the County Attorney's budget in Ravalli County. He said that twice the jail board in Ravalli County has tried to pass a bond issue, which would build a new jail that meets the requirements of the federal

standards, but it has been voted down twice. He gave an example of a Friday night misdemeanor with a bond set at \$500. He said that misdemeanor offender will sit in jail Friday, Saturday, Sunday, and maybe Monday before the judge will set a hearing. He said at that point the offender is released on his own recognizance. He stated the cost to keep this offender is \$25 a day, thus, \$100 was spent to keep this offender in jail for the weekend. He stated HB 761 asks for 10 percent of the fine from the offender, 10 percent of \$500 is \$50, which most people can pay. He said the bill doesn't let the offender be released on his own recognizance and the county picks up \$100 because the county didn't keep the offender in jail. He pointed out the county has \$50 to pay the court-appointed defense. He said the bill would allow a new jail to be smaller if the weekend offender population is smaller, thus, a new jail will not cost as much. He felt the bill might help allow a bond issue to go through.

OPPONENTS: Myles Eaton, a Bondsman from Bozeman Montana, opposed the bill (see Exhibit 4, written testimony).

Patrick Paul, Cascade County Attorney, said the bill puts the county in the business of bail bonds. He explained it limits the amount of bail in most misdemeanor cases to about 10 percent of whatever the court had set, and he felt this will cause judges to set higher bails than what they usually do. He felt the judge would do this in order to try to compensate for the actual amounts of bail that the court would be receiving in a case without regard to the promissory note. He thought people would not worry about signing an unsecured promissory note and then leaving the county. He felt the bill would allow unsecured loans by the county up to \$1,000. He pointed out that if one sues on a bad check one can receive punitive damages that could cover costs, but in this bill it doesn't describe the penalty for defaulting on a promissory notes. He asked if the bill will require the county to collect bail on behalf of the city courts, because in the bill it says the county can collect on the note on any matter provided by law. He felt HB 761 would raise more questions than it solves. He felt this should be handled by local court rules.

Ray Wayrynen, from Helena representing himself, stated he is presently a bondsman. He felt the right to bail means you show in court, but many don't obey that. He said the effect of this bill will put many jail personnel through wasted time and expense because it does cost to arrest and book misdemeanor offenders. He thought if an offender pays the 10 percent bond and doesn't show for the hearing, the law enforcement people will lose enthusiasm for arresting these people. He said these people who are arrested will be laughing at the system with the 10 percent payment. He stated some people know all the "tricks of the trade" when it comes to getting out of jail. He stated the professional

bondsman is hurt by this bill because it takes a large part of his income away.

Bernie McCarthy, Magistrate's Association, opposed the bill (see witness sheet).

Myron Pitch, City Judge of Helena, said that when people don't show at court hearings, you have to collect somehow, so an attorney has to file a complaint. He said a deputy sheriff will serve the complaint if he finds the individual, and then tries to collect the bail. he said it is not an easy situation.

Alec Hanson, League of Cities and Towns, stated he doesn't know if it applies to the cities and if it does it will cost money because 10 percent might be all the city collects from an individual. He said the 10 percent received from the offender is taken away from the cities and is given to the counties.

James Buck, Bondsman from Helena, stated that he has the authority as a bondsman to seek out, arrest and retrieve a person who is out on bond under his authority. He felt the over worked sheriffs and court systems will have a "Pandora's Box" to deal with, which they have no training for if this bill is passed.

Jim Haynes, Montana Magistrate's Association, opposed the bill (see Exhibit 5, written testimony).

George Anderson, Anderson Bonding Company, stated HB 761 will create more taxes for the people. He stated other states don't use HB 761's method because it is impractically impossible to enforce and it is expensive. He pointed out California repealed this idea because it did not decrease the jail population. He said HB 761 will create a state of fugitives.

PROPONENT WHO WAS LATE: Representative Bill Strizich, House District #41 of Great Falls, stated that there is a jail over-crowding problem in this state. He said there is a liability problem with keeping persons who have committed misdemeanors in jail because of their inability to pay fines. He said if we don't pass the bill, people will have to build more jails.

DISCUSSION ON HB 761: Senator Pinsoneault inquired what percentage of the bondsmens' businesses are under \$1,000. Myles Eaton answered about 75 percent. Senator Pinsoneault asked if a district judge thought it was a good idea, could he uses this law. Mr. Robinson replied that he couldn't get a bondsman to come to Ravalli County for small bonds because of the remote location. He believed that it would be fine

to leave the discretion to the local judicial districts and the prosecutors if they want to use this system. Senator Pinsoneault asked if it would be alright to limit the use of this bill to the justice court. Mr. Robinson responded that would be fine. Senator Pinsoneault commented that his experience with bondsmen has been unsuccessful because many times when there has been a forfeiture of a case a bondsman refused to release the bond that he held.

Representative Thoft closed by saying if these offenders don't make a court appearance, and leave the state, maybe that is the best thing for the state. He said the Ravalli County Attorney said these offenders don't run when they are released on their own recognizance, and Representative Thoft thought it was ridiculous that the offender would run when he has an investment in the system. He stated if the committee wanted to make the bill optional for the counties, that would be fine.

CONSIDERATION OF HB 564: Representative Mel Williams, House District #85, introduced HB 564. The bill defines a city court's concurrent jurisdiction with justices' courts; providing for procedures in city court. He said the bill provides for the election and appointment of city judges. He stated the bill expands the jurisdiction of city courts and criminal civil cases. He said it also provides the rules of civil procedure to city courts. He pointed out it clarifies the authorities of municipalities to designate justice courts to serve as city courts. He said the Judiciary Committee in the House coordinated the three measures, HB 482 and HB 491 and HB 564 together.

PROPOSERS: Jim Haynes, Montana Magistrate's Association, supported the bill because it does conform some of the city court responsibilities and it does coordinate with HB 482 and HB 491. He pointed out on page 3, lines 4 through 7, there should be an amendment saying: "as long as this agreement with the city and the county is in affect." He said the agreement he was referring to is in HB 482, which is the entering into an agreement between the city/town and the justice of the peace: to provide that the city could terminate the justice of the peace if they felt it was necessary.

Alec Hanson, League of Cities and Towns, supported the bill and the amendment Mr. Haynes explained.

OPPOSERS: None

DISCUSSION OF HB 564: Senator Crippen asked if the judges approved of the bill. Representative Williams said the judges he talked to agreed with the bill. Senator Halligan asked why the House struck the language on page 2, line 23 through page 3, line 1. Representative Williams said that originally in the bill "appointed" was left out, but it was put back

in because there might be a time when a judge must be appointed. He said if you just have elections, at some point you might be without a judge. He said the House Judiciary Committee put "appointed" back into the bill.

Representative Williams closed.

The committee adjourned the hearing and preceeded with executive action.

ACTION ON HB 482: Senator Brown moved HB 482 BE CONCURRED IN. There was no discussion. The motion carried unanimously.

ACTION ON HB 564: Senator Mazurek said that page 3, line 7 is where the Magistrate's amendment would be placed. He said it is really just a technical change:

Page 3, line 7.

Following: "~~designation~~"

Insert: "(or until the agreement provided for in 3-11-205 terminates)"

2. Page 10, line 10.

Following: line 9

Insert: "NEW SECTION. Section 13. Coordination instruction. if House Bill No. 482, including the section of that bill amending 3-11-205, is not passed and passed and approved, the bracketed language in section 3(2) is void."

Renumber: subsequent section

Senator Halligan moved the amendment to pass. The motion carried. Senator Brown moved the bill AS AMENDED BE CONCURRED IN. The motion carried unanimously.

ACTION ON HB 501: Senator Halligan did not agree with the stricken language on page 2, lines 3 through 5. Senator Mazurek felt they should help the people out with an affidavit. Mr. Haynes said they do help people with their affidavits, but he asked where does it say in the law we should. Senator Mazurek said it will say right here in this bill. Senator Halligan moved:

Page 2, line 5.

Following: "~~assistance.~~"

Insert: "The small claims court judge shall assist any claimant in preparing an affidavit or may direct the clerk of court to provide such assistance."

The motion carried. Senator Blaylock moved the bill AS AMENDED BE CONCURRED IN. The motion carried.

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ACTION ON HB 761: A straw vote indicated the committee would not pass the bill. Senator Beck wanted to keep it alive for the sake of the small counties. No action was taken.

ACTION ON HB 503: Valencia Lane asked if the committee would like to amend the last sentence of the bill, so it will include touring or viewing of historical sites as suggested by the sponsor. Senator Blaylock asked what the difference was between "touring" and "viewing". Valencia said "touring" implies "passing through an area" while "viewing" is just looking. Senator Blaylock moved Dorthy Bradley's amendment:

Page 1, line 16.

Following: "hiking,"

Insert: "touring or viewing cultural and historical sites and monuments,"

He also moved:

2. Page 1, lines 17 and 18.

Following: "expeditions." on line 17.

Strike: remainder of line 17 through line 18

The motion carried. Senator Blaylock moved the bill AS AMENDED BE CONCURRED IN. The motion carried unanimously.

ACTION ON HB 748: Senator Mazurek explained the Ramirez's amendments to the committee (see Exhibit 6). Senator Mazurek asked what Title 35, chapter 15 applies to. Valencia said it applies to cooperative associations. He said the bill only applies to the liability of the officers or directors to the corporation or the shareholders. He said the bill has nothing to do with third parties. Senator Pinsoneault said on page 3 there were exceptions that obligate corporations to stay within guidelines. Senator Halligan asked if these amendments were presented in the House at all. Senator Mazurek said Representative Bardanouve asked in the House why the bill only applies to private organizations and he wanted to know why the bill would not apply to REA and others like REA. Senator Mazurek said the amendments make the same provisions applicable to other corporations. Senator Halligan moved the amendments. The motion carried. Senator Blaylock moved the bill AS AMENDED BE CONCURRED IN. The motion carried.

ACTION ON HB 207: Valencia handed out amendments to the committee that they had asked her to prepare (see Exhibit 7). Senator Halligan moved the amendments. The motion carried. Senator Pinsoneault moved the bill AS AMENDED BE CONCURRED IN. The motion carried unanimously.

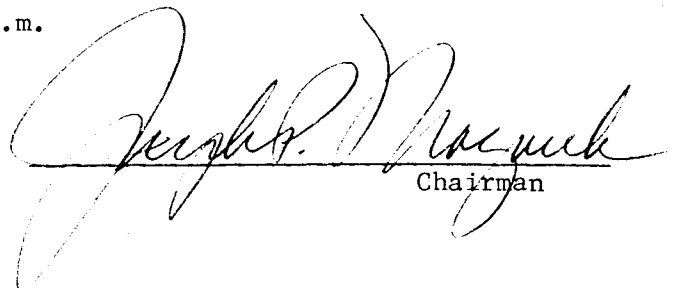
ACTION ON HB 309: Valencia explained the amendments requested by the committee (see Exhibit 8). She said the third amendment is language from the Workmen's Comp. Act, which protects the privacy of people's

records. Senator Halligan moved the amendments. The motion carried. Senator Blaylock moved the bill AS AMENDED BE CONCURRED IN. The motion carried.

ACTION ON HB 554: Valencia gave the committee amendments (see Exhibit 9). She said these amendments to the bill make sure the county is reimbursed. Senator Blaylock moved the amendments. The motion carried. Senator Halligan asked if newspapers really did pay people for a story. Senator Mazurek informed the committee that the National Inquirer was willing to pay \$20,000 for a picture of actor Patrick Duffy and his deceased parents. Senator Blaylock moved the bill AS AMENDED BE CONCURRED IN. Senator Beck asked if the bill had some constitutional problems. Senator Mazurek answered it should not have any constitutional problems. The motion carried with Senator Crippen and Senator Beck voting no.

ACTION ON HB 219: Valencia gave the committee the amendments they asked for (see Exhibit 10). Valencia explained the amendments now covered "trail riding events". Senator Mazurek said it still just contains nonprofit groups. Valencia explained the original bill had events in the fair grounds covered, then the bill had additions in the House, which included events in the "back country". Senator Yellowtail felt the amendments presented today expanded the bill too far. Senator Halligan moved the amendments. The motion carried with Senators Yellowtail and Blaylock voting no. Senator Beck felt that profit making groups should be included such as "jackpot roping" events. Senator Beck moved that the "nonprofit corporation" part be eliminated from the bill. Senator Yellowtail stated that taking that part out will cause the outfitters and the hunting guides of the state to be protected under this proposed amendment of Senator Beck's. He felt this was going too far with the liability issue. The motion failed with Senators Beck, Crippen, Pinsoneault, and Brown voting yes. Senator Beck moved the bill AS AMENDED BE CONCURRED IN. The motion carried unanimously.

The committee adjourned at 12:15 p.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 26

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>			X
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

Conroy - F.Y.I. want to review this at our meeting. E. Fisher

Crosby Attorney General Opinion Service
2210 E. 6th Helena, Montana

VOLUME NO. 41

OPINION NO. 82

COURTS, CITY - Residency requirements for justice of the peace appointed as city judge;

JUDGES - Residency requirements for justice of the peace appointed as city judge;

RESIDENCE - Residency requirements for justice of the peace appointed as city judge;

MONTANA CODE ANNOTATED - Sections 3-11-205, 7-4-4103, 7-4-4103(3);

MONTANA CONSTITUTION - Article VII, section 9(4);

OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 80 (1980).

HELD: A justice of the peace may not be appointed to serve as a city judge in a town in which he does not reside.

5 September 1986

Alex C. Morrison
Plains Town Attorney
Plains MT 59859

Dear Mr. Morrison:

You have asked my opinion on the following question:

May a justice of the peace be appointed to serve as a city judge in a town in which he does not reside?

As you have pointed out in your opinion request, section 7-4-4103, MCA, was amended in 1981 to authorize the governing body of a town to appoint a city judge or to designate a justice of the peace to act as city judge as provided in section 3-11-205, MCA. § 7-4-4103(3), MCA. ~~To the extent that a town may now appoint a city judge other than a justice of the peace, the amended statute supersedes 38 Op. Att'y Gen. No. 80 (1980).~~ That opinion, however, did not address the residency requirements for a city judge.

The Montana Constitution, article VII, section 9(4), requires that every judge other than a Supreme Court justice "shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed." Section 3-11-205,

SENATE JUDICIARY

EXHIBIT NO. 1

DATE March 26, 1987

BILL NO. HB 491

41/82/1

MCA, permits a town council to designate a justice of the peace "of the county in which the town is situated" to act as city judge. A justice of the peace is a county officer who, as you point out, obviously does not reside at the time of election in more than one city or town within the county. The question that arises then is whether the Montana Constitution, article VII, section 9(4), requires that a justice of the peace appointed by a town to serve as city judge under sections 7-4-4103(3) and 3-11-205, MCA, must be a resident of the town which appoints him.

Article VII, section 9(4) was enacted as a part of the Montana Constitution of 1972. The Constitutional Convention transcripts indicate that the residence provision was offered as an amendment from the floor on February 29, 1972, by Delegate Aronow on behalf of the Convention's Judiciary Committee. The only remarks concerning the purpose of the amendment were those of Delegate Berg, who stated:

Mr. Chairman, I simply want to point out that this amendment does cover, for example, Police Court judges and justices of the peace or any other inferior court judge, and it was the thinking of our committee that if a Police Court judge is either elected or, in the case of a commission-management form of government, appointed, he ought at least to live within the area where the taxpayers are paying his salary.

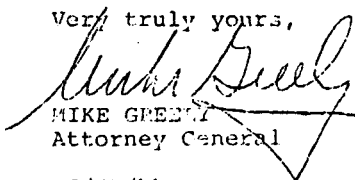
1972 Montana Constitutional Convention transcripts, February 29, 1972, p. 1121.

Although it may result in hardship to a town which does not have a county justice of the peace residing therein, my conclusion is that the language of article VII, section 9(4) does apply to city judges, whether they also happen to serve as justices of the peace or not. The language of the Constitution does not make exceptions for appointed city judges, and I cannot impute the intent to provide such an exception to the drafters of the Constitution. Delegate Berg's remarks concerning the purpose of the constitutional provision are consistent with my interpretation.

THEREFORE, IT IS MY OPINION:

A justice of the peace may not be appointed to serve as a city judge in a town in which he does not reside.

Very truly yours,


MIKE GREEN
Attorney General

LG/JB/bh

SENATE JUDICIARY

EXHIBIT NO. 1

DATE 3-26-87

BILL NO. H.B. 491

February 9, 1987

TO: Representative John Cobb - LC 602 - H.B. 740 .

FROM: Jim Haynes, Montana Magistrates's Association, Lobbyist

SUBJECT: Updated Summary of Bill Changing the Manner of Disposition
of Fees, Fines and Forfeitures of Bond in Justice Court.

The Justice of the Peace Courts currently distribute the fines and forfeitures they collect to the County Treasurer in a monthly distribution report. The Justice Court performs all the bookwork in a cumbersome monthly distribution report which the County Treasurer sends to the State Treasurer after the County receives its distribution share of the monies collected, estimated at 50% of the total amount collected. This estimate is based on June 1985 - May 1986 figures obtained from Collection Reports submitted to the State Treasurer and the monthly distribution reports prepared by the Justice Courts. 45 MCA statute sections touch upon this distribution method (attached sheet).

The estimated amount of money received by the State in 1985 for distribution was:

State General Fund	\$500,000.00
Driver Education - MHP	647,600.00
Crime Victim Comp. - MHP	373,400.00
Driver Education - GVW	151,100.00
Highway Dept.- Special Revenue	
	271,100.00
Fish, Wildlife & Parks	221,100.00
Snowmobile & Boats	11,000.00
Livestock	1,900.00

The Legislative Auditor issued a report in January, 1986, focusing in part, on loss of revenue caused by this cumbersome and confusing method of distribution, Special Purpose Audit Report on the Collection of State Revenues by Montana Counties. A cash flow problem exists as well as general ignorance and confusion under the current distribution method.

The Montana Magistrate's Association proposes legislation that changes the method of distribution. Justice Courts would simply forward the balance monthly to the County Treasurer. No more lengthy bookkeeping report would be required. The distribution process would be both streamlined and simplified.

The County Treasurer would distribute the monies received as follows:

- (1) 50% to the State Treasurer
- (2) 50% to the General Fund of the county

The State Treasurer would distribute the monies received from the County as follows:

TO: Representative John Cobb

February 9, 1987

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- (1) 23% to the General Fund of the State
- (2) 10% to the Fish & Game account
- (3) 13% to the State Highway account, special revenue fund
- (4) 36% to the Traffic Education account, special revenue fund
- (5) 1% to the Department of Livestock account
- (6) 17% to the Crime Victims account

This simplifies the accounting methods now required of the County Treasurers and Justice Courts. It would require the State Treasurer to account for percentages of monies it distributes to state funds.

This simplified distribution method is proposed only for Justice Courts. Other courts, City Courts and District Courts primarily, would remain under the same system. City Courts and District Court use of the current distribution method is minimal. If the Justice Court's method is enacted and proves workable over the next two (2) years, it is likely that all courts could move to the method proposed for Justice Courts.

Perhaps the only other method for addressing current distribution problems would be a centralized computer data spreadsheet which all 56 counties adopted and conformed to. This option currently is considered unworkable.

Necessary

3-10-601
20-7-504
20-7-505
20-9-337
20-9-332
23-2-507
23-2-644
46-17-303
46-18-231 - 235
46-18-603
53-9-109
61-9-718
61-10-148
61-12-701 - 703
81-3-231
81-4-202
87-1-104
87-1-201
87-1-601

Nice

7-23-105
7-14-2138
7-22-2117
7-22-2434
13-37-124
13-37-129
32-2-106
33-2-312
37-2-301
37-7-324
37-41-212
50-1-204
50-2-124
50-52-105
50-70-118
50-71-325
7-20-109
75-2-412
75-7-216
76-13-114
77-1-117
80-7-704
81-4-621
85-2-123
85-3-213
87-5-509

repeal. 3-10-603

SENATE JUDICIARY
EXHIBIT NO. 2
DATE 3-26-87
BILL NO. H.B. 74

BILL NO. HB 740

FROM: Jim Haynes, MMA Lobbyist

RE: H.B.740 - Coordination Amendments

- (1) Both H.B.679 and H.B.740 pass.
- (2) H.B.291 fails to pass or passes in its current amended form.
- (3) H.B.28 fails to pass or passes in amended form.

DISTRIBUTION OF FINES, FORFEITURES AND FEES
 COLLECTED BY JUSTICES' COURTS IN FY 1986
 UNDER HOUSE BILLS 740 AND 679

SOURCES OF REVENUE:

COUNTY

Fines and Fees	\$1,209,211.08	27.17%
----------------	----------------	--------

STATE

MHP Fines	\$2,151,922.90	48.35%
FWP Fines	\$260,989.51	5.86%
GVW Fines	\$825,110.18	18.54%
Livestock Fines	\$3,826.34	0.09%

TOTAL REVENUE	\$4,451,060.01	100.00%
---------------	----------------	---------

DISTRIBUTIONS:

COUNTIES	50%	\$2,225,530.01
----------	-----	----------------

STATE :	50%	\$2,225,530.01
---------	-----	----------------

General Fund	23.50%	\$522,999.55
Fish, Wildlife & Par	10.00%	\$222,553.00
Highway Department	12.50%	\$278,191.25
Traffic Education	36.00%	\$801,190.80
Livestock	0.10%	\$2,225.53
Crime Victims	16.90%	\$376,114.57
Battered Spouses	1.00%	\$22,255.30

State Subtotal	50%	\$2,203,274.70
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TOTAL DISTRIBUTIONS	100%	\$4,451,060.01
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SENATE JUDICIARY

EXHIBIT NO. 24

DATE 3-26-87

BILL NO. H.B. 740

Montana Magistrates Association

Nancy L. Sabo, President
Montana Magistrates Assn.
Courthouse Box 5023
Hamilton, Montana, 59840

March 25, 1987

Senator Joe Mazurek, Chairman
Senate Judiciary Committee
Helena, Montana, 59620

Dear Senator Mazurek,

Re: HB 740

I am unable to rearrange my court calendar to attend your hearing, so I have asked Jim Haynes to deliver this letter for your consideration.

The Montana Magistrates Association has worked on and supported this bill for the last five years. We have worked in conjunction with the Supreme Court Commission on Courts of Limited Jurisdiction in researching this problem and drafting an appropriate bill to alleviate our bookkeeping headaches.

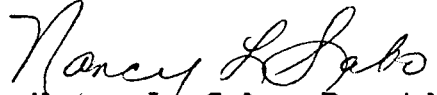
With over sixty (60) different statutes to interpret, the present system has become overly burdensome. Each legislative session, some special interest group attempts to add to our workload in order to generate revenue. We certainly do not object to many of these worthy causes, however appointing the Justices of the Peace as accountants for these special groups is unfair, in the least.

The present system requires that the clerk in Ravalli County devote six to eight days a month to list and balance the books for the two Justices of the Peace. When HB 740 is signed into law, our clerk will be able to complete the accounting process in approximately 6 hours per month. The time savings will allow the clerk to attend to the many other duties that are now being delayed to satisfy the statutory requirements for our books. This will allow us to efficiently operate our offices with the present staff and stay within our county's budgetary constraints.

HB 740 streamlines the bookkeeping system, without jeopardizing the accountability or credibility of our present procedure. Also, there is no additional workload to the county treasurers. We feel that HB 740 will alleviate our problems and provide a satisfactory solution to all parties concerned.

Thank you for your consideration! The Montana Magistrates Association would sincerely appreciate your support in passing this bill.

Very Sincerely,


Nancy L. Sabo, President
Montana Magistrates Assn.

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 3-26-87
BILL NO. H.B. 740

NAME: MYLES S EATON DATE: 3/20/87

ADDRESS: Box 1595 Broomfield MT 59721

PHONE: 406-586-3732

REPRESENTING WHOM? MINNESOTA TRUST COMPANY

APPEARING ON WHICH PROPOSAL: 761

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENTS: SEE PREPARED STATEMENT

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY

EXHIBIT NO. 4

DATE March 26, 1987

BILL NO. HB 761

DATE March 26, 1987BILL NO. HB 761

THIS STATEMENT IS AGAINST HB761. THE BILL STATES THAT WHEN BAIL IS SET AT \$1,000.00 OR LESS THE DEFENDANT MAY FURNISH BAIL BY PAYING A FEE TO THE CLERK OF COURT IN AMOUNT OF CASH EQUAL TO 10% OF THE REQUIRED BAIL AND A PROMISSORY NOTE FOR THE TOTAL AMOUNT OF THE REQUIRED BAIL.

ON THE YELLOW FORM WHERE IT STATES EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES, NO LOCAL IMPACT CAN BE DETERMINED. NO DATA AVAILABLE ON NUMBER OF CASES WHERE BAIL IS SET AT UNDER \$1,000.00. PAYMENT IS OPTIONAL BECAUSE A DEFENDANT COULD POST THE FULL CASH BOND, OR USE A BONDSMAN THERE WOULD BE AN INCREASE IN NON-TAX REVENUE FOR ALL DISTRICT COURT FUNDS.

MOST BONDS WRITTEN BY OUR OFFICE, WITH OFFICES IN HELENA, BILLINGS, MISSOULA, HAMILTON, AND BOZEMAN ARE IN THE RANGE OF \$300.00 TO \$500.00. WHAT THIS BILL IS SAYING IS THAT ALL PERSONS, (TRANSIENTS, TOURISTS, AND THE UNEMPLOYED) CAN POST A 10% CASH AMOUNT, SIGN A NOTE AND BE GONE. AS A BONDSMAN WE ALSO ISSUE THE BOND FOR A 10% FEE BUT SECURE THE BALANCE WITH PERSONAL PROPERTY, THIS IS A GUARANTEE TO THE COURT IF THE PERSON DOES NOT APPEAR ON HIS COURT DATE WE WILL PAY THE COURT THE AMOUNT DUE. THUS THERE WILL BE NO LOSS OF INCOME TO THE COURT. WHAT THIS BILL IS SAYING SINCE YOU HAVE NO SECURITY OTHER THEN A NOTE, IS PAY THE COURT 10% AND CATCH ME IF YOU CAN.

MOST OF OUR BONDS ARE WRITTEN ON DUI, AND MOST OF OUR RUNNERS ARE IN THIS RANGE OF BONDS, WHAT WILL THE COURT DO? LOOK FOR PEOPLE OUT OF STATE AND TRY AND BRING THEM BACK, AT WHAT COST? SOME COUNTY ATTORNEYS NOW, WHEN WE PAY OFF THE BOND WILL NOT EVEN PUT OUT AN ARREST WARRANT FOR THE PERSON, STATING THAT IT COSTS THEM TOO MUCH TO DO THAT.

IT IS MY UNDERSTANDING THAT THE STATE OF CALIFORNIA TRIED A SIMILAR TYPE OF PROGRAM AND REPEALED IT LAST YEAR AS NOT WORKABLE.

ANOTHER COMMITTEE IN THIS SESSION HAS HB593 UNDER REVIEW AT THIS TIME. THIS BILL IS "THE PRIVATE ENTERPRISE ACT," I UNDERSTAND THIS BILL'S INTENT IS TO STIMULATE THE GROWTH OF PRIVATE ENTERPRISE IN THE STATE "BY PROHIBITING AGENCIES FROM PROVIDING GOODS AND SERVICES". IN BRIEF IT SAYS THAT AGENCIES COULD NOT OFFER SERVICES THAT ARE ALSO OFFERED BY PRIVATE ENTERPRISE.

THIS BILL COULD WIPE OUT THE PRIVATE BONDSMAN OF HIS BREAD AND BUTTER OF THE BONDS OF LESS THEN \$1,000.00. THUS THE QUESTION WOULD BE WHERE WILL THE PUBLIC FIND A BONDSMAN TO WRITE THE BONDS FOR OVER \$1,000.00 IF HB761 HAS PUT THEM OUT OF BUSINESS?

I WOULD LIKE TO READ TO YOU AN ARTICLE BY THE PROFESSIONAL BAIL AGENTS OF THE UNITED STATES, A COPY IS ATTACHED FOR THE CLERK.

(READ LETTER)

IN CLOSING I ASK THIS GROUP DO YOU WANT TO TAKE MORE JOBS OUT OF

MONTANA? IF NOT VOTE NO ON HB761.

Thank you.

Myles S. Eaton,
A BONDSMAN IN THE STATE OF MONTANA

P.S. Bonding companies are insurance companies and thus come under the State of Montana premium tax. This is additional revenue that the state would lose under the above mentioned proposal.

SENATE JUDICIARY

EXHIBIT NO. 4

DATE 3-26-87

BILL NO. H.B. 761

Lexington, South Carolina..... Of 497 criminal cases that were released on 10% or on personal recognizance, 187 of them failed to appear. The proper county officials are now taking a second look at these easy bail procedures and the high rate of non-appearance.

Sacramento, California. . . It's been four months since 10% percentage bail on misdemeanors has not been allowed in the court system of this largest state in the Union. Do-gooders screamed that when percentage bail or "easy bail" was no longer available, that a breakdown in the system would occur. Exactly the opposite is happening. The court rooms are no longer empty and defendants now appear at a 12 times higher rate than before. California bondsmen seem to be doing their work at no cost to the taxpayers and their sole calling is appearance and their client's day in court. ~~Many good legal heads appreciate this and when a 10% routine like they had along with their many tax subsidized employees find themselves unemployed, howls occur. As long as the job by our industry is done ethically and professionally, we will survive. This is a great challenge and many pro and con groups will be giving this situation more than a quick glance. This state is a leader and pace setter for the nation. Much is involved that will have a strong bearing on the future of our industry.~~

SCRANTON, PENNSYLVANIA.....10% has failed in this county and they are changing back to surety. High non appearance was one of the main reasons along with the fact they thought this would relieve jail overcrowding, this did not happen as the jail population stayed the same. ~~The bondsman in this area is John Wasco, a professional guy who said little during these few months of its existence. They appreciate him now more than ever.~~

SACRAMENTO, CALIFORNIA Ten percent, which was voted in by the state legislature in 1979 for a five year period, will not be retained. This 10 percent bill was for misdemeanors only but turned into a major disaster. The nonappearance rate was astronomical. The Independent Bail Agents Association of California, along with its leader Cales King, III, ~~did a great job and proved to the public and the legislators the great worth of bondsmen to the justice system. We congratulate you. This is very significant for all of us in the nation as California sets the pace and example in many matters which ultimately spread across the nation.~~
(Ten percent in 1986 will be history in California.)

616

National Association Of Bailbond Underwriters

National Bail Building
8 College Avenue
Greenville, PA 16125

PROFESSIONAL BAIL AGENTS OF THE UNITED STATES

"You can depend on us"

4189 BELLAIRE BLVD., SUITE 242, HOUSTON, TEXAS 77025 (713) 661-7472

HOW EXCESSIVE JUDICIAL OPTION PRETRIAL MISUSE CAN
ENDANGER AND BE VERY EXPENSIVE
TO THE OVERBURDENED TAXPAYER!



DEFENDERS 8TH AMENDMENT

Executive Director
GERALD P. MONKS Ph.D.
Houston, Texas

President
CELES KING, III
Los Angeles, California

Executive Vice-President
KEN BOYER
Oklahoma City, Oklahoma

Vice-President
ARMANDO ROCHE
Tampa, Florida

Vice-President, International Bonding
BILL G. HUNTER
Fresno, California

Secretary
CATHY JOYCE
Atlanta, Georgia

Treasurer
BECKY BOYER
Oklahoma City, Oklahoma

Director
ANDY MORENO
Visalia, California

Director
RICK SAUVE
Washington

President, West Coast Division
MARVIN B. BYRON
Los Angeles, California

Vice-President, West Coast Division
ARTHUR E. LEE
Honolulu, Hawaii

President, Midwest Division
GERALD E. CHARLES
North Vernon, Indiana

Vice-President, Midwest Division
RONNIE LONG
Ft. Worth, Texas

President, East Coast Division
LINDA CHILDS
Arlington, Virginia

Vice-President, East Coast Division
HUGH A. WHITE
Columbia, South Carolina

President, Bail Recovery
LARRY WEST
Las Vegas, Nevada

Vice-President, Bail Recovery
JOHN GRIFFIN
Minnesota

Legislative Committee
DAN MAJORS
JOHNNY NELMS
GARY WILLIAMS

Law Enforcement Liaison
BOB GIRDLEY
DEWEY JONES

CLEMENT ROMEO
National Convention Committee

MONKS & MONKS
General Counsel

HAROLD KLEIN
Counsel

CAROLL STEWART
Public Relations

Emergent of Arms
SENATE JUDICIARY

The people of the United States have found out through experience that free enterprise at its worst always delivers more than government at its best, when free enterprise can take the risks economically. ~~The charts on the reverse side illustrate the difference between a surety company and a multiple lines insurance company. Note an insurance company pays 76% of its income dollar for losses and 26% for expenses, while a surety company pays 9% of dollar income for losses and 90% for expenses.~~

~~This dramatically illustrates that on every bail bond made in the United States, 10% of the fee goes to pay losses and 90% of the fee is used to pay expenses (what it takes to guarantee performance to the community). Therefore, on every \$10,000 bail bond, the surety company charges a 10% fee, or \$1,000. They reserve 10% for losses or \$100, and use 90% for expenses, or \$900 (required to get the job done): telephone calls, clerks, recovery agent, lawyers, gas, rent, court costs, etc.~~

Whenever a judge gives a criminal a ~~\$10,000~~^{1,000} free "cost to the overburdened TAXPAYER" bond, he immediately costs the overburdened TAXPAYER \$900 in expenses. The pseudo-liberal can rationalize all he wants to, but this expense is always there to get the job done. This 10% deposit, personal bond cost is paid out of the judicial budget, district clerk's budget, sheriff's budget, probation officer's budget, and pretrial budget, and the final cost, of course, by the overburdened TAXPAYER. The judge costs the overburdened TAXPAYER \$100 for failure to appear. The fugitive rate for 10% deposit, personal bonds is ten times greater than surety (free enterprise) bonds, so the failure to appear cost on personal bonds is \$1,000. Therefore it does not take a mathematician to recognize the further cost to the overburdened TAXPAYER, if a judge gives a 10% deposit, personal bond, is ~~\$1,900~~.

If a judge gives 100 bonds a year, the cost is ~~\$190,000~~. This is further multiplied as the expenses of personal bonds will, many times, be double or triple that of free enterprise. The use of 10% deposit, personal bonds is a misunderstood fraud perpetrated on the overburdened TAXPAYER by excessive judicial option misuse. It should be dealt with firmly - less judicial option pretrial. Hall of Fame Bail Agents (30 years experience) say JUDGES who do not use 10% deposit, personal bonds do not lose control of their courtrooms.

Sincerely,

Gerald P. Monks
Gerald P. Monks
Executive Director

P.S.: Anyone who says 10% deposit, personal bonds, pretrial release agencies will reduce jail populations is walking on the fighting side of me! It just isn't true!

EXHIBIT NO. 4

DATE 5-26-87

RH1 NO U.R. 761

SAVING VICTIM TAXPAYERS 30 BILLION DOLLARS PER YEAR

TAKEN FROM BEST INSURANCE GUIDE

All figures, except percentages, are in thousands

NAME OF COMPANY	Year	OPERATING Before Federal Taxes			
		Loss Incurred to Premiums Earned	Expense Incurred to Premiums Written	Combined Loss and Expense	Underwriting Profit or Loss
Began Business -- Capitol					
Type of Carrier					
Prin. Officers or U.S. Mgrs.					
RATINGS					
Policyholders--Financial					
Accident & Casualty	1970	74.6	25.7	100.3	-1,002
Ins. Co. (Switz)	1971	71.3	24.9	96.2	2,020
New York, N.Y.	1972	70.5	26.6	97.1	736
1975, entered U.S. 1936	1973	80.1	25.5	105.6	-2,535
Multiple Line	1974	89.7	27.3	117.0	-8,060
General Insurance					
B: AAAAA					
Totals and Average Ratios		77.2	26.1	103.9	-8,921
Bail Bonds					
Accredited Surety & Cas.	1971	4	95.8	96.2	35
Ins. Co., Orlando, FL.	1972	6.7	89.8	96.6	157
1971, 1,500,000	1973	10.6	84.9	95.6	176
Surety	1974	14.1	84.9	95.6	173
Own.&Pres. H. Snow, Jr.					
Secy. F. E. Mincey					
Eligible for Rating in 1976					
Totals and Average Ratios		9.8	86.2	96.0	542
License & Permit Bonds					
Lawyers Surety Corp.	1970	8.1	83.7	91.8	111
Dallas, Texas	1971	9.7	79.7	89.4	-20
NW Corp. Group	1972	--	--	--	232
1945 1,000,000	1973	--	--	--	--
Fidelity, Surety	1974	--	--	--	--
Pres. D. L. Powers					
A+: AAAAA					
Totals and Average Ratios		8.9	91.0	99.9	322

NOTE: How much surety companies' financial expenses and losses differ from multiple lines insurance companies

These charts show dramatically that surety companies should never pay over 10% losses because their expenses will always be about 90%. Therefore, if free enterprise is equal to socialism, the public always loses 90% expenses whenever a personal recognition bond is made, regardless of the loss. However, the losses on personal recognition bonds normally run 90%. This further increases the cost to the overburdened TAXPAYERS. The amount of pain and suffering caused to the victims has not been measured. These are just incontrovertible statistical facts. There is just no such thing as a free lunch! Misled judges and pretrial release agencies give "cost to the overburdened TAXPAYER" bail bonds. Professional bail agents make sure the criminal defendant pays the cost. All these reasons are the world's most defensible facts.

SENATE JUDICIARY

EXHIBIT NO. 4

DATE 3-26-87

Opposition to H.B. 761

The Montana Magistrate's Association opposes H.B. 761 for the following reasons:

1. Creates additional and unnecessary bail forfeiture duties for judges and sheriffs.
2. Displaces existing private bail bondsmen.
3. Allows unsecured promissory notes to replace the traditional concept of giving security in exchange for release.
4. Lacks inadequate mechanisms to accomplish its supposed goal of convenience.

The MMA suggests, at a minimum, an amendment giving county attorneys the responsibility for replacing the private bail bondsmen and performing their traditional duties. The county attorneys, not the judiciary, should oversee this public bail bonds system.

Jim Haynes, MMA lobbyist

SPONSOR'S AMENDMENTS
TO HB748

SENATE JUDICIARY

EXHIBIT NO. 6

DATE March 26, 1987

BILL NO. HB 748

1. Title, line 5.
Following: "CORPORATION"
Insert: "OR ASSOCIATION"
2. Title, line 7.
Following: "CORPORATION"
Insert: ", ASSOCIATION"
3. Title, line 9.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "35-1-202,"
Insert: "35-2-202, 35-15-201, 35-16-202, 35-17-202, 35-18-203,
and 35-20-103,"
4. Page 4, line 8.
Following: Section 1
Insert:

Section 2. Section 35-2-202, MCA, is amended to read:

35-2-202. Articles of incorporation — control over bylaws. (1)
The articles of incorporation shall set forth:

- (a) the name of the corporation;
- (b) the period of duration, which may be perpetual;
- (c) the purpose or purposes for which the corporation is organized;
- (d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;
- (e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;
- (f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;
- (g) the name and address of each incorporator.

(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding liability of directors as set forth in 35-1-202(2)(e).

(3) ~~It~~ It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

~~(4)~~⁽³⁾ Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

Section 3. Section 35-15-201, MCA, is amended to read:

35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

- (a) the name of the proposed corporation;
- (b) its capital stock;
- (c) its location;
- (d) the duration of the association; and
- (e) the particular branch or branches of industry which they intend to prosecute.

(2) In addition to provisions required therein, the statement of incorporation may also contain provisions not inconsistent with law regarding liability of directors as set forth in 35-1-202(2)(e).

~~(3)~~⁽²⁾ The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of \$20.

Section 4. Section 35-16-202, MCA, is amended to read:

35-16-202. Petition for incorporation — contents and filing — bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate. such petition to state:

- (a) the name of the corporation or district proposed to be formed;
- (b) the purpose for which it is formed;
- (c) the place where its principal business is to be transacted;
- (d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

(2) In addition to provisions required therein, the petition for incorporation may also contain provisions not inconsistent with law regarding liability of directors as set forth in 35-1-202(2)(e).

~~(3)~~ (2) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

~~(4)~~ (3) A bond in the sum of \$1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition.

Section 5. Section 35-17-202, MCA, is amended to read:

35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) In addition to provisions required therein, the petition for incorporation may also contain provisions not inconsistent with law regarding liability of directors as set forth in 35-1-202(2)(e).

~~(3)~~ (2) The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified copies thereof shall

be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association.

Section 6. Section 35-18-203, MCA, is amended to read:

35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

- (a) the name of the cooperative;
- (b) the address of its principal office;
- (c) the names and addresses of the incorporators;
- (d) the names and addresses of the persons who shall constitute its first board of trustees; and
- (e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required therein, the petition for incorporation may also contain provisions not inconsistent with law regarding liability of directors as set forth in 35-1-202(2)(e).

~~(3)(2)~~ Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

~~(4)(2)~~ It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.

Section 7. Section 35-20-103, MCA, is amended to read:

35-20-103. Document of incorporation — contents — filing. (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:

- (a) the names of the associates who attended such meeting;
- (b) the corporate name of the association determined upon by a majority of the persons who met;
- (c) the number of persons fixed upon to manage the concerns of the association;
- (d) the names of the trustees chosen at the meeting and their classification;
- (e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

(2) In addition to provisions required therein, the document of incorporation may also contain provisions not inconsistent with law regarding liability of directors as set forth in 35-1-202(2)(e).

(3)(2) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge.

Renumber: Subsequent section.

Proposed Amendments to HB 207
Third reading copy (blue)

1. Page 2, line 4.

Strike: "60"

Insert: "120"

2. Page 2, line 5.

Following: "DEPARTMENT."

Insert: "The failure of the department to make final disposition of a claim within 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this subsection."

3. Page 2, lines 7 and 8.

Following: "FOR" on line 7

Strike: the remainder of line 7 through "LESS" on line 8

Insert: "120 days"

PROPOSED AMENDMENTS TO HOUSE BILL 309
Third Reading Copy (Blue)

1. Page 4, line 23.

Strike: "subsection"

Insert: "subsections"

2. Page 4, line 24.

Following: "(2)"

Insert: "and (3)"

3. Page 5, line 9.

Following: line 8

Insert: "(3) In assuring that the right of individual privacy so essential to the well-being of a free society may not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:

(a) information of a personal nature, such as personal, medical, or similar information, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(4) If any public record of the division contains material which is not exempt under subsection (3), as well as material which is exempt from disclosure, the administrator of the division shall separate the exempt and nonexempt and make the nonexempt material available for examination."

7083a/C:JEANNE\WP:jj

PROPOSED AMENDMENTS TO HOUSE BILL 554
Third Reading Copy (Blue)

1. Page 1, line 20.

Following: "statement,"

Insert: "book, photograph, movie, television production, play,"

2. Page 1, line 21.

Following: "proceeds"

Insert: "paid or"

3. Page 2, line 8.

Following: "and"

Insert: "the county as reimbursement for any public defender or"

7083b/C:JEANNE\WP:jj

Amendments to House Bill 219

Third Reading Copy (blue)

1. Title, line 7.
Strike: "O-MOC-SEE"
Insert: "O-MOK-SEE"
2. Title, line 8.
Following: "EVENTS"
Insert: "AND FOR NONPROFIT CORPORATIONS FORMED FOR AND
SPONSORING HORSERIDING EVENTS"
3. Page 1, line 15.
Strike: "an"
Insert: "a"
4. Page 1, line 16.
Strike: "O-MOC-SEE"
Insert: "O-MOK-SEE"
5. Page 1, line 22.
Following: line 21
Insert: "(2) No nonprofit corporation formed for the
purpose of conducting events involving horseback or
horse packing activities is liable for injuries
suffered by a participant in such an event as a result
of his voluntary participation in the event except for
injuries caused by a willful or wanton act of the
organization or its employees."
Renumber: subsequent subsection

NAME: BEECARD F. McCARTHY DATE: 3/26/87

ADDRESS: L+C COUNTY CHASE 228 BROADWAY HELENA

PHONE: 443-1010 ext 202

REPRESENTING WHOM? Montana MAGISTRATES ASSOCIATION

APPEARING ON WHICH PROPOSAL: HB 740

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: We support this bill as a procedural
reform to amend the method of accounting for
fees and forfeitures. Essentially all we are
doing is taking the accounting function from
the local District Court office and placing it
with the State Treasurer. It essentially
does not change the amount of money
any agency gets only who does the work.
We urge support of HB 740

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: BERNARD F. McPHERSON DATE: 3/26/87

ADDRESS: 410 Co. Ct. HSE 228 Broadway Helena

PHONE: 423-1010 EXT 202

REPRESENTING WHOM? MONTANA MAGISTRATES ASSOCIATION

APPEARING ON WHICH PROPOSAL: HB 761

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENTS: We strongly oppose this measure. It has
a good idea behind it i.e. funding Public Defender
however, this measure does so while at the same
time not providing any security for the person to
appear. Bail is set forth in state law as having
its main purpose to assure the appearance of the
defendant in court. This bill does not do that.
All a person has to do is sign a Promissory Note
to pay after fronting 10% of the bond. If a
person fails to appear all we can do is ~~sue~~ sue
in civil court if the person has remained in the county.
The idea is fine but this method is horribly
flawed. We urge you recommend do not pass.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

March 26

87

19.....

MR. PRESIDENT

We, your committee on.....SENATE JUDICIARY.....

having had under consideration.....HOUSE BILL..... No. 207

Third blue
reading copy ()
color

**Disposition of state tort claims by agency prerequisite to court action.
Addy (Pinsonneault)**

Respectfully report as follows: That.....HOUSE BILL..... No. 207

be amended as follows:

1. Page 2, line 4.

Strike: "60"

Insert: "120"

2. Page 2, line 5.

Following: "DEPARTMENT."

Insert: "The failure of the department to make final disposition of a claim within 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this subsection."

3. Page 2, lines 7 and 8.

Following: "FOR" on line 7

Strike: the remainder of line 7 through "LESS" on line 8

Insert: "120 days"

~~XXXX PASS~~

~~XXXXXXXXXX~~
~~DO NOT PASS~~

**AND AS AMENDED
BE CONCURRED IN**

.....
Senator Mazurek

.....
Chairman.

STANDING COMMITTEE REPORT

March 26 19. 37

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 219

Third reading copy (blue)
color

**Limit civil liability of nonprofit organizations for rodeo injuries.
Holliday (Beck)**

HOUSE BILL 219

Respectfully report as follows: That..... No.....

be amended as follows:

1. Title, line 7.

Strike: "O-MOC-SEE"

Insert: "O-MOK-SEE, TRAIL RIDING, HORSE PACKING, HORSE SHOW"

2. Page 1, line 15.

Strike: "an"

Insert: "a"

3. Page 1, line 16.

Strike: "O-MOC-SEE"

Insert: "o-mok-see, trail riding, horse packing, horse show"

~~DO NOT PASS~~

~~DO NOT PASS~~

AND AS AMENDED

BE CONCURRED IN

Senator Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 26

87

19.....

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration..... HOUSE BILL No. 309

Third reading copy (blue)
color

Generally revising the crime victims compensation act.
Quilici (Bishop)

Respectfully report as follows: That..... HOUSE BILL No. 309

1. Page 4, line 23.

Strike: "subsection"

Insert: "subsections"

2. Page 4, line 24.

Following: "(2)"

Insert: "and (3)"

3. Page 5, line 9.

Following: line 8

Insert: "(3) In assuring that the right of individual privacy so essential to the well-being of a free society may not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:

(a) information of a personal nature, such as personal, medical, or similar information, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

~~XXXXXX~~
DO PASS

~~XXXXXX~~
DO NOT PASS

CONTINUED

SENATE MAZUREK

Chairman.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(4) If any public record of the division contains material which is not exempt under subsection (3), as well as material which is exempt from disclosure, the division shall separate the exempt and nonexempt and make the nonexempt material available for examination."

7083a/C:JEANNE\WP:jj

AND AS AMENDED
BE CONCURRED IN

STANDING COMMITTEE REPORT

March 26

1937

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on

HOUSE BILL

491

having had under consideration

No.

Third

blue

reading copy (

color

Amend constitution to allow residency of lower court judges be set by law.
Spaeth (Pinsoneault)

HOUSE BILL

491

Respectfully report as follows: That

No.

~~DO PASS~~

~~DO NOT PASS~~

BE CONCURRED IN A

Senator Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 26 19 37

MR. PRESIDENT

We, your committee on **SENATE JUDICIARY**

having had under consideration **HOUSE BILL 482** No.

Third reading copy (**blue**)

Allow justice court to be designated as city court.
Schye (Hammond)

Respectfully report as follows: That **HOUSE BILL 482** No.

~~DO NOT PASS~~

~~DO NOT PASS~~

BE CONCURRED IN

SENATOR MAZUREK

Chairman.

STANDING COMMITTEE REPORT

March 26 19 57

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 501

Third reading copy (blue)
color

**Interpleader in small claims court procedure.
Cody (Halligan)**

Respectfully report as follows: That HOUSE BILL No. 501

be amended as follows:

1. Page 2, line 5.

Following: "assistance"

Insert: "The small claims court judge shall assist any claimant in preparing an affidavit or may direct the clerk of court to provide such assistance."

~~DOES~~

~~DO NOT PASS~~

AND AS AMENDED
BE CONCURRED IN

~~SENATE~~ SENATOR MAZUREK

Chairman.

STANDING COMMITTEE REPORT

March 26

87

19

MR. PRESIDENT

We, your committee on **SENATE JUDICIARY**

having had under consideration **HOUSE BILL** No. **503**

Third reading copy (**blue**)
color

**Extend landowner immunity to touring of cultural and historical sites.
Bradley (Brown)**

Respectfully report as follows: That **HOUSE BILL** No. **503**

be amended as follows:

1. Page 1, line 16.

Following: "hiking,"

Insert: "touring or viewing cultural and historical sites and monuments,"

2. Page 1, lines 17 and 18.

Following: "expeditions." on line 17

Strike: remainder of line 17 through line 18

~~XXXXXXXXXX~~

~~XXXXXXXXXX~~
~~XXXXXXXXXX~~

**AND AS AMENDED
BE CONCURRED IN**

SENATOR MAZUREK

Chairman.

STANDING COMMITTEE REPORT

March 26

1987

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on

HOUSE BILL

554

having had under consideration

No.

Third ~~Extra~~

blue

reading copy ()
color

Pay crime victims the perpetrator's proceeds of the crime.
~~XXX~~ Daily ((Pinsonneault))

Respectfully report as follows: That

HOUSE BILL

No. 554

1. Page 1, line 20.

Following: "statement,"

Insert: "book, photograph, movie, television production, play,"

2. Page 1, line 21.

Following: "proceeds"

Insert: "paid or"

3. Page 2, line 8.

Following: "and"

Insert: "the county as reimbursement for any public defender or"

Amendments, HB 554

7083b/C:JBRANNE\WP:jj

~~XXXXXX~~

DO PASS

~~XXXXXXXXXX~~

DO NOT PASS

AND AS AMENDED
BE CONCURRED IN

Senator Mazurek

Chairman.

STANDING COMMITTEE REPORT

hb564.scr

March 26, 1987

MR. PRESIDENT

JUDICIARY

We, your committee on
HOUSE BILL 564

having had under consideration No.
third blue
reading copy ()
color

REVISE CITY COURT JURISDICTION AND PROCEDURE

M. WILLIAMS (BLAYLOCK)

Respectfully report as follows: That HOUSE BILL No. 564
BE AMENDED AS FOLLOWS:

1. Page 3, line 7.
Following: "designation"
Insert: "[or until the agreement provided for in 3-11-205 terminates]"
2. Page 10, line 10.
Following: line 9
Insert: "NEW SECTION. Section 13. Coordination instruction. If House Bill No. 482, including the section of that bill amending 3-11-205, is not passed and approved, the bracketed language in section 3(2) is void."
Renumber: subsequent section

AND AS AMENDED,
BE CONCURRED IN

DO PASS

DO NOT PASS

Chairman.

Senator Mazurek

STANDING COMMITTEE REPORT

March 26 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 737

Third reading copy (blue)
color

Petition for extension of commitment in court where facility is located.
Brown, Dave (Beck)

Respectfully report as follows: That HOUSE BILL No. 737

~~DO NOT PASS~~

~~DO NOT PASS~~

BE CONCURRED IN

Senator Mazurek

Chairman.

STANDING COMMITTEE REPORT

..... March 27 19... 37

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on

having had under consideration..... HOUSE BILL No. 748

Third reading copy (blue)
color

Allow Corporations to limit directors' liability.

Ramirez (17 pages)

Respectfully report as follows: That..... HOUSE BILL No. 748

1. Title, line 5.
Following: "CORPORATION"
Insert: "OR ASSOCIATION"

2. Title, line 7.
Following: "CORPORATION"
Insert: ", ASSOCIATION,"
Strike: "ITS"

3. Title, line 9.
Following: "SHAREHOLDERS"
Insert: "OF THE CORPORATION OR MEMBERS OF THE ASSOCIATION"

4. Title, line 9.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "35-1-202,"
Insert: "35-2-202, 35-15-201, 35-16-202, 35-17-202, 35-18-203,
AND ~~AND~~ 35-20-103,"

5. Page 4, line 8.
Following: line 7
Insert: "Section 2. Section 35-2-202, NCA, is amended to read:
"35-2-202. Articles of incorporation -- control over

~~CONFESS~~

~~CONFESS~~

CONTINUED

..... Senator Mazurek

..... Chairman.

bylaws. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized;

(d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;

(e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(g) the name and address of each incorporator.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(a).

~~(3)~~ (3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

~~(4)~~ (4) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling."

Section 3. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

(a) the name of the proposed corporation;

(b) its capital stock;

(c) its location;

CONTINUED

SENATE JUDICIARY

HB 743

Page 3

19.....

(d) the duration of the association; and
(e) the particular branch or branches of industry which they intend to prosecute.

(2) In addition to provisions required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(a).

~~(2)~~ (3) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of \$20."

Section 4. Section 35-16-202, MCA, is amended to read: "35-16-202. Petition for incorporation -- contents and filing -- bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

CONTINUED

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(a).

~~(2)(3)~~ Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

~~(2)(4)~~ A bond in the sum of \$1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition."

Section 5. Section 35-17-202, MCA, is amended to read:

"35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

- (a) the name of the association;
- (b) the purposes for which it is formed;
- (c) the place where its principal business will be transacted;
- (d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(a).

~~(2)(3)~~ The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified

CONTINUED

copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association."

Section 6. Section 35-18-203, MCA, is amended to read:
"35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

- (a) the name of the cooperative;
- (b) the address of its principal office;
- (c) the names and addresses of the incorporators;
- (d) the names and addresses of the persons who shall constitute its first board of trustees; and
- (e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~ (3) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

~~(3)~~ (4) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 7. Section 35-20-103, MCA, is amended to read:
"35-20-103. Document of incorporation -- contents -- filing. (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:

- (a) the names of the associates who attended such meetings;
- (b) the corporate name of the association determined upon by a majority of the persons who met;
- (c) the number of persons fixed upon to manage the concerns of the association;
- (d) the names of the trustees chosen at the meeting and their classification;

CONTINUED

(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

(3) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

(2)-(3) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge."

Renumber: subsequent section

70366/C:JEANE\WP:jj

AND AS AMENDED
BE CONCURRED IN