

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Senator Ethel Harding, on January 10, 1989, at 1:00 p.m. in room 405, Capitol

ROLL CALL

Members Present: Chairman Ethel Harding; Vice Chairman Bruce D. Crippen, Senator Tom Beck, Senator Eleanor Vaughn, Senator H.W. "Swede" Hammond, Senator Mike Walker, Senator Gene Thayer, Senator Paul Boylan

Members Excused: Senator Gene Thayer

Members Absent: None

Staff Present: Connie Erickson, Legislative Council; Dolores Harris, Secretary

Announcement: Senator Thayer was excused because he was carrying a bill in the Workers Comp Committee meeting at the same time as this committee meets.

HEARING ON SENATE BILL 53

Presentation and Opening Statement by Sponsor: Senator Harp, District 4, stated that Senate Bill 53 is an act to require that monies received by a county treasurer for the payment of inheritance taxes be deposited with the state treasurer on or before the 20th day of the month following the collection. Last session SB 147 was passed and it altered the deadline date and this will bring 72-16-439, MCA, into compliance with SB 147.

List of Testifying Proponents and What Group they Represent:

Jeff Miller, Montana State Department of Revenue

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Jeff Miller, from the income tax division of the department of revenue, is a proponent of SB 543 in which it states that deposits of inheritance taxes be made to the state

treasurer instead of the department of revenue. This bill is making statutes consistent throughout. I respectfully urge your support of SB 53.

Questions From Committee Members: Senator Hammond wondered which agency would receive interest on the inheritance tax deposits. The state treasurer would accrue the investment interest.

Closing by Sponsor: Senator Harp closed.

DISPOSITION OF SENATE BILL 53

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Walker moved that Senate Bill 53 DO PASS. The vote was unanimous in favor of the motion.

HEARING ON SENATE BILL NO 69

Presentation and Opening Statement by Sponsor: Senator Pinsonneault, District 27, stated this bill is submitted by the request of Missoula county finance officer and it allows county clerks to set up accounts for state agencies or other political subdivisions for a number of different recording fees. The accounts would be billed routinely rather than paying cash for each transaction. The state agencies were given the authority in 1969 to set up accounts on a voluntary basis so that the fees can be paid on a monthly basis rather than on a cash basis.

List of Testifying Proponents and What Group they Represent:

Chuck Stearns, city of Missoula finance director

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Chuck Stearns gave a written statement in support of SB 69 from Missoula county clerk & recorder/treasurer. See exhibit 1. This bill will enable the county clerk and recorders to bill the city on a monthly basis for recording documents. The city has to pay cash at the time of each recording of documents. The city has been recording a lot of documents, especially contract documents for sewer applications where we provide sewer outside the city limits.

Questions From Committee Members: Senator Pinsoneault requested that paragraph 2, on page 3, line 16 be amended as follows: after "basis" insert", unless otherwise provided." This amendment would give a little flexibility and allow counties some discretion in their billing process. Mr. Stearns did not have any objection to this amendment as the word "must" is also in this bill. He stated some state agencies pay quarterly.

Closing by Sponsor: Senator Pinsoneault closed.

DISPOSITION OF SENATE BILL 69

Discussion: None

Amendments and Votes: Senator Pinsoneault MOVED that we AMEND SB 69 as follows:in paragraph 2, on page 3, line 16: Following: "basis" insert: ",unless otherwise provided". Committee VOTE was UNANIMOUS in FAVOR of this amendment.

Recommendation and Vote: Senator Beck made a motion to DO PASS AS AMENDED. Vote was UNANIMOUS in FAVOR of SB69.

HEARING ON SENATE BILL 68

Presentation and Opening Statement by Sponsor: Senator Tom Rasmussen stated that Senate Bill 68 relates to the fees that sheriffs charge for services in civil cases. This bill gives the sheriffs the flexibility to charge fees that are related to the actual costs of serving them. Presently the governing body does not have the ability to do that. The costs have far outrun what can be charged at this point.

List of Testifying Proponents and What Group they Represent:

Chuck O'Reilly, Sheriff of Lewis & Clark County
Linda Stoll-Anderson, Lewis & Clark County & MACO
Gordon Morris, MACO
Gary Dupuis, G.A.R.D. Process Service

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Sheriff Chuck O'Reilly of the Montana sheriffs & peace officers association gave his testimony. See exhibit 1, exhibit 2, and exhibit 3.
Linda Stoll-Anderson, a county commissioner, representing Lewis & Clark county as well as Montana association of counties supports SB 68. She agreed with the county

sheriff in advocating a fee in line with costs. County commissioners at their summer convention passed a resolution asking for this legislation and requesting work on this legislation.

Gary Dupuis, a private process server in Helena, adamantly supports this bill.

Questions From Committee Members: Senator Vaughn asked Senator Rasmussen and sheriff O'Reilly if this could make a varying fee in each county? As it is now it is the same in each county and this bill would allow each county to set their fees; is that true? Sheriff O'Reilly responded that the fees vary now because mileage costs are allowable so the fees end up being different for each service. Senator Crippen asked when was the last time your were here asking increase in fees. Sheriff O'Reilly said he's been here every session. We are not asking you to increase the fees; we're asking that the county commissioners have the option. Senator Crippen stated what governing body would elect to keep a set fee schedule?

Senator Beck asked as a private processor, do you have these same fee restrictions. Mr. Dupuis stated, no, I do not, I set my own fees. Are your fees above these fees? I charge \$25.00 per service.

Closing by Sponsor: Senator Rasmussen closed.

DISPOSITION OF SENATE BILL NO 68

Discussion: Senator Beck asked if there is a cap on this? Will this be used as a revenue source? Commissioner Stoll-Anderson responded that counties should get more information before jumping into setting dollar amounts. Competitive pricing will keep it from being a revenue source. She stated line 14 and 15 would cap the fees charged.

Amendments and Votes: None

Recommendation and Vote: Senator Vaughn made a motion to DO PASS. The vote carried with Senator Boylan dissenting.

EXECUTIVE ACTION ON SB 35

Chairman Harding brought attention to SB 35, Senator Weeding's bill on retirement homes. Senator Walker researched the laws on retirement homes and retirement homes are specific in nature and refers to people who are completely self-sufficient. They do not need any help of any kind. Staffer Connie Erickson's researched the question. Could retirement homes be added to Section 7-8-

2101 which is county buildings and equipment? The AG opinion specifically addressed that issue and said retirement homes could not be included in that section. That section refers to public buildings where the county carries on its business and a retirement home does not qualify. The other question raised was about bonding if the county wanted to build a retirement home they could do it under the use of general obligation bonds. This would require a vote of the people and would obligate the taxpayers if the income from rents did not completely support the facility.

Another questions is, if the county took over an existing home and some of the residents needed special care, could the county move them. Yes, they could following guidelines for that activity.

Rosebud county commissioners were informed by their attorney that even though they purchase an existing building, they would still have to float a bond and go to a vote of the people. Mrs. Erickson understood that Rosebud commissioners thought they could purchase the building without floating a bond since they had the funds available. Chairman Harding said she spoke to a Rosebud commissioner and he said they would have to go to a vote of the people.

Senator Beck wondered if that wasn't used as a county building if they could use revenue sharing funds on that purchase. Senator Beck stated the Rosebud commissioners wanted to go to a vote of the people. Senator Beck made a motion that this bill be passed. Senator Hammond had concerns about the public asking for this residence and a bond issue being passed, then the taxpayers would be obligated. Senator Beck asked if he would like to amend this bill to be just for Rosebud County? Senator Vaughn asked would the rents pay off the bond issue? If rents didn't cover costs, the taxpayers would pay the difference.

Senator Crippen asked is it up to the legislature to give this authority? Is a retirement home something that is really needed? Senator Hammond stated that people in Malta when they learned of this bill, would be after the commissioners to build the retirement home.

Senator Beck said Rosebud county has tried to get private industry to build a retirement home and they will not come in and look at anything less than 100 beds. This is too big for the area. The 50 bed facility would not make a profit. Urban areas do not have the problem. This is strictly a rural area bill. He believe rural areas vote bond issues they do want and do not vote for things they don't want. Senator Vaughn and Pinsoneault both felt the bill should include all counties, not just Rosebud.

Senator Walker suggested creating a district for building the retirement home, much the same as a gym or hospital or any other community building. Senator Beck mentioned

funding attached to this bill and the district may be a town instead of a county wide obligation. Senator Beck withdrew his motion. Chairman Harding decided to postpone executive action until Thursday, January 12. Committee agreed.

EXECUTIVE ACTION ON SB 37

Chairman Harding stated Connie Erickson had brought a status sheet on Senator Mazurek's bill which lists actual costs of selling property for delinquent taxes. Mrs. Erickson read the bill that Senator Mazurek requested defining the term costs for the purposes of Title 15 Chapter 17 & 18. Chairman Harding reminded the committee that this bill, SB 37 is just bringing what actually happened in the last session in 1518-211 into conformance. Counties are already charging \$25.00 based on SB 162 which came out of taxation committee and passed on the senate floor.

Senator Vaughn made a motion to PASS SB 37 in lieu of the fact that it should have been passed last time. It does say in 1518-211 that the fee for making a delinquent tax deed is \$25.00 plus actual costs. So this is making Section 7-6-2131 conform.

Recommendation and Vote:

Roll Call Vote was taken where 5 senators voted for; senators Tom Beck, Mike Walker, and Paul Boylan opposed; 1 senator was excused. (Roll call vote attached)

ADJOURNMENT

Adjournment At: 2:20 p.m.



SENATOR ETHEL HARDING, Chairman

EH/dh

minutes.110

ROLL CALL

LOCAL GOVERNMENT

COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 1-10-89

NAME	PRESENT	ABSENT	EXCUSED
Sen. Ethel Harding	X		
Sen. R.J. "Dick" Pinsoneault	X		
Sen. Tom Beck	X		
Sen. Eleanor Vaughn	X		
Sen. H.W. "Swede" Hammond	X		
Sen. Mike Walker	X		
Sen. Gene Thayer			X
Sen. Paul Boylan	X		
Sen. Bruce D. Crippen	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

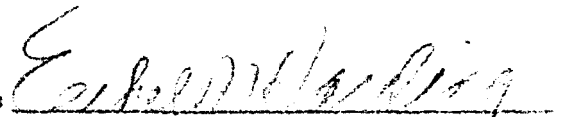
January 10, 1989

HR. PRESIDENT:

We, your committee on Local Government, having had under consideration SB 53 (first reading copy -- white), respectfully report that SB 53 do pass.

DO PASS

Signed:


Ethel M. Harding, Chairman

scrsb53.110

1-11-89
8:35

STANDING COMMITTEE REPORT

January 10, 1989

MR. PRESIDENT:

We, your committee on Local Government, having had under consideration SB 69 (first reading copy -- white), respectfully report that SB 69 be amended and as so amended do pass:

1. Page 3, line 16.
Following: "basis"
Insert: ", unless otherwise provided"

DO PASS AS AMENDED

Signed: 

Ethel M. Harding, Chairman

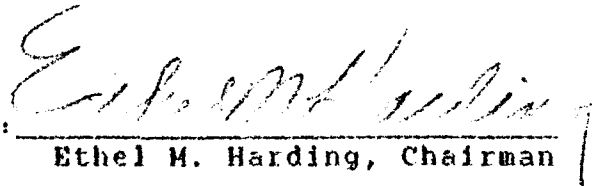
STANDING COMMITTEE REPORT

January 10, 1989

MR. PRESIDENT:

We, your committee on Local Government, having had under consideration SB 68 (first reading copy -- white), respectfully report that SB 68 do pass.

DO PASS

Signed: 

Ethel M. Harding, Chairman

eg
10/11/89
8.35

STANDING COMMITTEE REPORT

January 10, 1989

MR. PRESIDENT:

We, your committee on Local Government, having had under consideration SB 37 (first reading copy -- white), respectfully report that SB 37 do pass.

DO PASS

Signed:


Ethel H. Harding, Chairwoman

eg
1-11-89
8:35

Testimony of Sheriff Chuck O'Reilly

Lewis & Clark County

on SB 68

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 1

DATE 1-10-1989

BILL NO. 68

During these tight economic times in which we in law enforcement are continually striving to keep our heads above water, one issue repeatedly surfaces that from my point of view is improper and unfair to say the least.

Sheriffs are charged with the responsibility of serving all civil processes or notices in the manner prescribed by law (7-32-2121 MCA). The problem lies in the fact that the fees established for performing this service (7-32-2141 MCA) are artificially low and do not begin to cover our expenses. *our cost in 1988 was \$19 per service.* Generally speaking the fees set by law are \$5.00 per service. On the other hand private process servers are allowed to, and do in fact, charge whatever they deem to be sufficient. In our area that is running around \$25.00 per service.

The attorneys that prepare the services can also charge the cost of the service to their clients and I am sure they do in fact pass these costs on. It seems patently unfair to me that the county using citizens tax money should be subsidizing private industry by performing a service below cost. Obviously it impacts my departmental budget by siphoning money from other areas of my budget, such as patrol and investigations, so that I may fund our civil department. We do not have the option to

refuse to serve civil processes and re-direct them to private process servers as I have already indicated in 7-32-2121. Consequently any attorney in his right mind will seek the cheapest alternative.....Sheriff's Department!

We have tried numerous times in the past to convince the legislature to raise the fees for services to adequate levels and have only been successful on some occasions in obtaining very minimal increases. Never have we succeeded in getting fees high enough to approach our actual costs..

The bill before you today would allow counties the option of keeping the existing fees as set by legislative action or would allow the county governing body to set fees. The bill thus allows for dynamic rather than static action and would allow us to continually keep abreast of changing conditions either up or down.

With I-105 in effect law enforcement statewide is in dire straits and is fighting to survive. As an example, in my department alone during last fiscal year I was forced to deplete my vehicle acquisition funds 100% in order to retain the minimally acceptable level of personnel I now have.. This of course means I will be operating vehicles for the next few years at least that exceed acceptable mileage and age limits for emergency vehicles.

We are in a losing battle as long as we are faced with restrictive archaic laws that allow for profit in private industry at our expense.

Your favorable consideration of this bill will be most appreciated.

7-32-2111

LOCAL GOVERNMENT

970

7-32-2111. Hours of work for deputy sheriff of county of first or second class. Any person employed as a deputy sheriff of a first- or second-class county shall not be forced to work in excess of 40 hours per week except in case of an emergency and shall be entitled to 2 days off in each 7-day period.

History: En 16-3705.1 by Sec. 1, Ch. 329, L. 1973; R.C.M. 1947, 16-3705.1.

Cross-References

Classification of counties, 7-1-2111.

Department of Public Safety — work period in lieu of workweek — overtime compensation, 7-32-115.

Work hours for jailers in certain counties, 7-32-2213.

Overtime compensation — exclusions, 39-3-406.

Hours of labor in certain employments, Title 39, ch. 4.

7-32-2112. Exception for organizing posse. The provisions of 7-32-301 through 7-32-303 shall not apply in cases of the officers listed in 7-32-301 summoning a posse forthwith to quell public disturbance or domestic violence.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

Cross-References

Exception for organizing posse, 7-32-304.

7-32-2113 through 7-32-2120 reserved.

7-32-2121. Duties of sheriff. The sheriff must:

- (1) preserve the peace;
- (2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;
- (3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;
- (4) perform the duties of a humane officer within the county with reference to the protection of dumb animals;
- (5) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;
- (6) command the aid of as many inhabitants of the county as are necessary in the execution of the sheriff's duties;
- (7) take charge of and keep the county jail and the prisoners therein, unless the jail is operated by a private party under an agreement entered into under 7-32-2201 or by a jail administrator;
- (8) endorse upon all notices and process the year, month, day, hour, and minute of reception and issue therefor to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of reception;
- (9) serve all process or notices in the manner prescribed by law;
- (10) certify in writing upon the process or notices the manner and time of service or, if he fails to make service, the reasons of this failure, and return the papers without delay;
- (11) take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service; and

(b) When the arrest is on an execution or commitment to enforce the payment of money, the sheriff, jail administrator, or private party jailer is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, the sheriff, jail administrator, or private party jailer is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue of a person in his custody, the sheriff, jail administrator, or private party jailer may introduce evidence in mitigation or exculpation.

(3) An action may not be maintained against a sheriff, jail administrator, or private party jailer for a rescue or for an escape of a person arrested upon an execution or commitment if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail or is retaken by the sheriff, jail administrator, or private party jailer.

History: En. Secs. 4390, 4391, 4392, Pol. C. 1895; re-en. Secs. 3019, 3020, 3021, Rev. C. 1907; re-en. Secs. 4783, 4784, 4785, R.C.M. 1921; Cal. Pol. C. Secs. 4182, 4183, 4184; re-en. Secs. 4783, 4784, 4785, R.C.M. 1935; R.C.M. 1947, 16-2711, 16-2712, 16-2713; amd. Sec. 5, Ch. 263, L. 1979; amd. Sec. 9, Ch. 447, L. 1985.

Cross-References

Execution of judgment, Title 25, ch. 13.

Arrest and bail in civil actions, Title 27, ch. 16.

Bail, Title 46, ch. 9.

7-32-2133 through 7-32-2140 reserved.

7-32-2141. Fees of the sheriff. (1) The sheriff shall receive the following fees:

(a) for the service of summons and complaint on each defendant, \$5;

(b) for making a return of a summons for a person not found in the county, in addition to actual mileage traveled, \$5;

(c) for levying and serving each writ of attachment of execution on real or personal property, \$5;

(d) for service of attachment on the body or order of arrest on each defendant, \$5;

(e) for the service of affidavit, order, and undertaking in claim and delivery, \$5;

(f) for serving a subpoena, \$2.50 for each witness summoned;

(g) for serving writ of possession or restitution, \$5;

(h) for trial of the right of property or damages, including all services except mileage, \$7;

(i) for taking bond or undertaking in any case authorized by law, \$5;

(j) for serving every notice, rule, or order, \$5 for each person served;

(k) for copy of any writ, process, or other paper when demanded or required by law, 25 cents for each page;

(l) for posting notices and advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, \$5;

(m) for holding any sheriff's sale for personal or real property on execution or under any judgment or order of sale, \$7.50;

(n) for cancellation or postponement of sheriff's sale, \$5.

(2) All fees collected by the sheriff for the services provided in subsection (1) must be paid to the county treasurer as provided in subsection (1) of

7-4-2511 and the fees must be credited by the county treasurer to the sheriff budget.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(1); amd. Sec. 1, Ch. 174, L. 1981.

Cross-References

When Sheriff's execution of process justified and required, 25-3-202.
Execution of judgment, Title 25, ch. 13.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).
Subpoena service, Rule 45(c), M.R.Civ.P. (see Title 25, ch. 20).

7-32-2142. Fees of the sheriff for holding property. For the expense in taking and keeping possession of and preserving property under attachment, execution, or other process, the sheriff shall receive such sum as the court or judge may order, not to exceed the actual expense incurred. No keeper must receive to exceed \$10 per day, and no keeper must be employed without an order of court or be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored or where there is no reasonable danger of loss.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(2).

Cross-References

Execution of judgment, Title 25, ch. 13.

Bailment, Title 70, ch. 6.

7-32-2143. Mileage and expenses of sheriff in general. (1) Except as provided in 7-32-2144 and 7-32-2145, in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff shall receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail only his actual expenses when such travel is made by railroad or airline; and when travel is other than by railroad or airline, he shall receive a mileage allowance as provided in 2-18-503 for each mile actually traveled by him both going and returning and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail. He shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and feeding such persons during such transportation. Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, only one mileage may be charged.

(2) No mileage may be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

(3) (a) No mileage may be allowed on an attachment, order of arrest, order for delivery of personal property or any other order, notice, or paper

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when the same accompanies the summons and the service thereof may be made at the time of the service of the summons, except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, only one mileage may be allowed or charged; and in the service of subpoenas, only one mileage may be charged when the persons named therein live in the same place or in the same direction; but mileage may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed only from such place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, only one mileage may be allowed.

(b) When any sheriff or constable serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case may be allowed for less than 1 mile actually traveled.

(4) In lieu of charging mileage for the service of items of a civil nature as provided in subsections (1) and (3), a sheriff may charge \$1 for the service of each item of a civil nature that requires a return or proof of service.

History: Ap. p. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 25-226, R.C.M. 1947; (2)En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971; Sec. 16-2724, R.C.M. 1947; Ap. p. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 640 C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; Sec. 93-3016, R.C.M. 1947; (3)(b)En. Sec. 4619, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907; re-en. Sec. 4900, R.C.M. 1921; re-en. Sec. 4900, R.C.M. 1935; Sec. 25-216, R.C.M. 1947; R.C.M. 1947, 16-2724(part), 25-216(part), 25-226(part), 93-3016(part); amd. Sec. 6, Ch. 263, L. 1979; amd. Sec. 1, Ch. 215, L. 1985.

7-32-2144. Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons. (1) A sheriff delivering prisoners at the state prison or a juvenile correctional facility or mentally ill persons at the Montana state hospital or other mental health facility receives actual expenses necessarily incurred in their transportation. The expenses include the expenses of the sheriff in going to and returning from the institution. The sheriff shall take vouchers for every item of expense. The amount of these expenses, as shown by the vouchers when presented by the sheriff, shall be audited and allowed by the attorney general or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in subsection (2). No other or further compensation may be received by sheriffs for such expenses.

(2) Unless otherwise provided, while in the discharge of his duties, both civil and criminal, the sheriff receives a mileage allowance as provided in 2-18-503. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and feeding persons ordered by the court as provided in 2-18-501 through 2-18-503. The county is not liable for

department or board of this state initiates or intervenes in an action in any court, a copy of the complaint, counterclaim, or cross-claim must be served on the attorney general.

History: En. Sec. 1, Ch. 91, L. 1979.

25-1-502. Notice of appeal to be served on attorney general. When a department or board of this state appeals from a judgment or order entered in any court of this state, a copy of the notice of appeal must be served on the attorney general.

History: En. Sec. 2, Ch. 91, L. 1979.

Parts 6 through 10 reserved

Part 11

Registration of Process Servers — Levying Officers

25-1-1101. Registered process server — levying officer. (1) Any person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year shall file a verified certificate of registration as a process server with the clerk of the district court of the county in which he resides or has his principal place of business.

(2) This part does not apply to:

- (a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of his employment; or
- (b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13.

History: En. Sec. 1, Ch. 548, L. 1987.

25-1-1102. Contents of registration certificate. The certificate of registration of a process server must contain the following statements:

- (1) the name, age, address, and telephone number of the registrant;
- (2) that the registrant has not been convicted of a felony;
- (3) that the registrant has been a resident of this state for a period of 1 year immediately preceding the filing of the certificate; and
- (4) that the registrant will perform his duties as a process server in compliance with the provisions of law governing the service of process in this state.

History: En. Sec. 2, Ch. 548, L. 1987.

25-1-1103. Fee — duration of certificate. (1) A certificate of registration as a process server must be accompanied by a fee of \$100 at the time the certificate is filed. The fee must be deposited in the county general fund for district court operations, unless the county has a district court fund. If the county has a district court fund, the fee must be deposited in that fund.

(2) A certificate of registration is effective for a period of 2 years from the date of filing. A new certificate must be filed upon expiration of a certificate and a new registration fee must accompany the new certificate.

History: En. Sec. 3, Ch. 548, L. 1987.

25-1-1104. Handbook for process servers. (1) The department of commerce shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server must demonstrate that he has passed an examination based on the handbook and administered by the board of private security patrolmen and investigators provided for in 2-15-1891.

(3) The department of commerce may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section.

History: En. Sec. 4, Ch. 548, L. 1987.

25-1-1105. List of process servers — identification. (1) The clerk of the district court shall maintain a list of all process servers registered in the county. The clerk of the district court shall assign a number to each registered process server. Upon renewal of a certificate of registration, the same number may be assigned.

(2) During the course of serving process or acting as a levying officer, a registered process server must have in his possession an identification card with the number assigned under subsection (1) and a photograph of the registered process server. The clerk of the district court shall furnish the identification card, the cost of which must be reimbursed by the process server.

History: En. Sec. 5, Ch. 548, L. 1987.

25-1-1106. Revocation or suspension of certificate. (1) A certificate of registration of a registered process server may be revoked or suspended by the county attorney of the county of registration whenever the registrant makes a service of process not complying with the law.

(2) The county attorney may conduct an investigation concerning the revocation or suspension of a certificate based on the complaint of a person alleging injury caused by improper service of process by the registrant.

(3) The county attorney shall notify the clerk of the district court when a certificate of registration is suspended, revoked, or reinstated.

History: En. Sec. 8, Ch. 548, L. 1987.

25-1-1107. Proof of service — requirements. A proof of service of process signed by a registered process server must indicate the county in which he is registered and the number assigned to him under 25-1-1105.

History: En. Sec. 9, Ch. 548, L. 1987.

25-1-1108 through 25-1-1110 reserved.

25-1-1111. Bond required. (1) The clerk of the district court may not accept a certificate of registration as a process server unless the certificate is accompanied by a surety bond of \$10,000 per individual or \$100,000 per firm, conditioned upon compliance with this part and all laws governing service of process in this state.

(2) A levying officer may not levy on a judgment that exceeds the value of the bond.

History: En. Sec. 6, Ch. 548, L. 1987.

25-1-1112. Action on bond. (1) Any person who recovers damages for an injury caused by a service of process not complying with this part

that did not comply with the law governing service of process in this state may recover the amount of damages from the bond required under 25-1-111.

(2) If there has been recovery against a registered process server's bond the registrant must file a new bond within 30 days or reinstate the bond. If the bond has not been reinstated or filed within 30 days, the county attorney must revoke the registrant's certificate.

History: En. Sec. 7, Ch. 548, L. 1987.

CHAPTER 2

VENUE

Part 1 — Proper Place of Trial—Venue

- 25-2-101. Renumbered 25-2-121 by Code Commissioner, 1985.
- 25-2-102. Renumbered 25-2-122 by Code Commissioner, 1985.
- 25-2-103. Renumbered 25-2-123 by Code Commissioner, 1985.
- 25-2-104. Renumbered 25-2-124 by Code Commissioner, 1985.
- 25-2-105. Renumbered 25-2-125 by Code Commissioner, 1985.
- 25-2-106. Renumbered 25-2-126(2) by Code Commissioner, 1985.
- 25-2-107. Repealed.
- 25-2-108. Renumbered 25-2-118 by Code Commissioner, 1985.
- 25-2-109 and 25-2-110 reserved.
- 25-2-111. Scope of part.
- 25-2-112. Designation of proper place of trial not jurisdictional.
- 25-2-113. Power of court to change place of trial.
- 25-2-114. Right of defendant to move for change of place of trial.
- 25-2-115. Multiple proper counties.
- 25-2-116. Multiple claims.
- 25-2-117. Multiple defendants.
- 25-2-118. Residence of defendant.
- 25-2-119 and 25-2-120 reserved.
- 25-2-121. Contracts.
- 25-2-122. Torts.
- 25-2-123. Real property.
- 25-2-124. Recovery of statutory penalty or forfeiture.
- 25-2-125. Against public officers or their agents.
- 25-2-126. Against state, county, and political subdivisions.
- 25-2-127 through 25-2-130 reserved.
- 25-2-131. Specific statutes control.

Part 2 — Change of Venue

- 25-2-201. When change of venue required.
- 25-2-202. Change of venue on agreement of parties.
- 25-2-203. Papers to be transmitted.
- 25-2-204. Jurisdiction preserved.
- 25-2-205. Allocation of costs between counties.
- 25-2-206. Judgment affecting real property to be transmitted.

Chapter Cross-References

Jurisdiction and venue unaffected, Rule 82,
M.R.Civ.P. (see Title 25, ch. 20).

See page 12 -
Montana is ranked 38th out of 43
states surveyed.

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 3

DATE 1-10-89

BILL NO. 68

A STUDY OF PROCESS SERVICE FEES
RECEIVED BY SHERIFFS ACROSS THE UNITED STATES

* * * * *

BY ALFRED L. BUCHANAN
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JANUARY 1988

INTRODUCTION

The purpose of this study is to determine the range and average amount of civil process service fees received by sheriffs across the United States. States which deviate significantly from the national average may find the data and conclusions herein to be useful for policy analysis.

This study examines fees authorized for service of the following types of civil process: summonses, subpoenas, wage garnishments, non-wage garnishments, writs of possession, writs of restitution, and forcible detainer notices. The reader will notice that many states have set different fees for each type of process. When this occurs, there is often no logical relationship between the amount of the fee and the amount of work required to serve the process. For example, Iowa allows their sheriffs \$10.00 plus mileage for service of a summons, and \$15.00 plus mileage for service of a subpoena. On the other hand, Hawaii allows \$10.00 plus mileage for the summons, and only \$7.00 plus mileage for the subpoena. Actually, neither process is more difficult to serve than the other.¹ That one state allows more for a summons, and another state allows more for a subpoena is indicative of the absence of a logical relationship between the sheriff's efforts and his compensation. States which utilize such compensation schemes may find the observations of this study to be useful for policy analysis.

This study presents state-by-state data in three forms. First, actual service fees are listed for each state, with states arranged alphabetically. Next, these figures are converted into "Assigned Dollar Values" for easy comparison, with states arranged alphabetically. Finally, all states surveyed are ranked in descending order according to their respective Assigned Dollar Values. This ranking allows the reader to compare any particular state to another, or to the national average.

METHODOLOGY AND SAMPLING

On July 14, 1987, a questionnaire and letter (see Appendix A) were sent to the county sheriff of each state capital in each of 49 states.² On August 24, 1987, the same questionnaire and a different letter (see Appendix B) were sent to those sheriffs who did not respond to the original mailing. Ultimately, 42 of the 49 sheriffs responded. (A response rate of 86 percent.) Their responses constitute the data upon which this study relies. This study presumes that data provided by these "state capital sheriffs" applies to all sheriffs in each state represented. This should be an accurate presumption, as process service fees are traditionally set by state legislatures. Also, the letter accompanying each questionnaire advised the recipient that he was "the only sheriff in (his) state who will receive this questionnaire." Only one sheriff (from Salem, Oregon) indicated that his fees were supplemented by local ordinance.³

* * * * *

1. A summons may sometimes be less difficult to serve than a subpoena, because some states allow service of a summons on a third party. But even this fails to explain the diversity, as some states allow higher fees for a summons!
2. Kentucky data was collected directly from Ky.Rev.Stat. 23A.200 and 24A.170.
3. Here, \$47.00 of the writ fees is authorized by statute, and \$15.00 is authorized by county ordinance.

ANALYSIS AND INTERPRETATION OF DATA

The methods used for analysis and interpretation of data here can be classified as "conservative" by any standard. For example, although several states allow sheriffs to charge additional fees in extraordinary or difficult circumstances,⁴ only standard fees were tabulated. Also, when interpreting mileage data, an estimate of actual miles was used, rather than applying possibly inflated figures based upon distances from the courthouse to the destination for each service.⁵

Many states apply compensation schemes based upon mileage, time or percentages of money collected. Comparative ranking of such states required the development and application of an "Assigned Dollar Value Average." When a state provided a monetary figure per mile answer on the questionnaire, it was converted into an Assigned Dollar Value based upon this researcher's estimate of actual miles driven to serve one process. (This formula is further explained in Footnote 5.) When a state provided a monetary figure per hour expended, it was converted into an Assigned Dollar Value based upon this researcher's estimate of actual hours expended.⁶ Thus, a state paying a flat fee may be accurately compared to a state paying a flat fee plus mileage, or it may be compared to a state paying an hourly fee. Percentage-based schemes proved impossible to accurately estimate due to unmanageable amounts of data. For further information on this problem, see Footnote 1 to "Assigned Dollar Values/Data By State/Alphabetical" which explains Connecticut's system.

* * * * *

4. Fourteen states surveyed (plus Kentucky) indicated that their statutes allow the sheriff to impose additional fees of various types for extraordinary or difficult services. For example, Maine authorizes an \$8.00 hourly "waiting and stake-out time" charge. New Hampshire allows \$10.00 per hour. Oregon charges an additional \$12.50 for round-trips over 100 miles.
5. 24 respondents indicated they receive mileage compensation in addition to the regular fee. Translation of "regular fee plus mileage" figures into an "Assigned Dollar Value" is accomplished by multiplying the per-mile figure by 6.7, and adding this amount to the regular fee. Based upon actual figures provided by the Fayette County Constable's Office, it is estimated that the average mileage for service of one legal document is 6.7. This figure takes into account the fact that several trips may be required for some services, and only one may be required for others. The 6.7 miles per service figure comes from a relatively populous area; Lexington, Kentucky's population is between 200,000 and 250,000. Rural areas naturally involve longer distances between stops, so this figure is probably quite conservative. Some statutory schemes allow the sheriff to claim mileage from the courthouse to each destination. Practically speaking, an officer does not make round trips from the courthouse for each paper he serves, unless he has made an arrest. The distance between two stops on his route is likely to be significantly less than the distance between the average stop and the courthouse. This is another indicator that 6.7 miles is a very conservative estimate.
6. The Fayette County Constable's Office expends an average of two hours on each writ of restitution and writ of possession it works. This figure was used to calculate the Assigned Dollar Values where applicable.

The reader will also notice that some categories of process analyzed here have fewer than 43 responses. One or more factors may account for this: First, some states (such as Texas) do not routinely issue all the types of process appearing on the questionnaire. Texas, for example, only issues wage garnishments to collect child support. Second, some of the responding sheriffs do not serve all the types of process on the questionnaire. For example, the service of Forcible Detainers may be performed by constables or marshals rather than sheriffs. This may be a result of either statute, policy or just tradition. Third, some states apply compensation schemes based upon percentages which cannot be translated into dollar amounts. (see preceding explanations.) Finally, some responses were only partially completed, and indicated no reason for the omitted answers.

Finally, it should be noted that once Assigned Dollar Values were calculated for each type of process, an average was taken with equal weight given to each response. Typically, all seven types were accounted for. (The seven Assigned Dollar Values were totalled and divided by seven.) Where there were less than seven responses, the actual number of responses was used to divide the total. The decision to assign equal value to each type of process was a difficult one for this researcher. More accurate results could be obtained by assigning weighted values. For example, if civil summonses composed 25 percent of the typical sheriff's workload (assuming his workload consisted only of the seven types of process in this study), then the Assigned Dollar Value should be multiplied by .25, and added to other similarly-computed Dollar Values. A workload breakdown such as this was not readily available on a local basis. Also, this researcher feels that any question relating to this issue on a questionnaire form would yield less than accurate answers. Unlike process fees themselves--which are regulated by statute--these figures would vary from state to state and county to county. They would be subject to interpretation by each respondent. Therefore, if the survey method were used, it would likely yield inaccurate results both on the individual and on the collective level. So, to maintain some semblance of continuity, it was necessary to assign equal value to each type of process--knowing full well that some types are more frequently issued than others.

CONCLUSIONS

Assigned Dollar Value Averages ranged from a high of \$50.38 to a low of zero. The National Average is \$15.56. Kentucky's Assigned Dollar Value Average (and its actual fee) is \$10.00, ranking it 64 percent below the National Average. Using the assigned rankings, Kentucky is only in the 34th percentile nationally. In other words, 66 percent of the states surveyed here allow higher fees than does Kentucky. One might suspect that fees in Kentucky would be lower due to lower costs of living. However, this conclusion is not apparent from the data. Although it is not the purpose of this study to draw statistical correlations between costs of living and process service fees, there are several blatant examples of disparity between the two. For example, the states of Connecticut, Texas and Minnesota all rank above the 92nd percentile in service fees, yet none of them have reputations for being particularly costly states to live in. On the other hand, New York--with its reputation for high living expenses--ranks in the 49th percentile for process service fees. Hawaii ranks only in the 19th percentile. Other examples are evident from reading the table entitled "Assigned Dollar Values/Data By State/Alphabetical."

POLICY CONSIDERATIONS

The first consideration for the policymaker involves the major question: "To what extent should taxpayers fund the operations of county sheriffs and other similar officers?" The fee system reduces or eliminates taxpayer funding of these operations. Theoretically, the litigants (rather than the taxpayers) pay for the services from which they benefit.⁷ Fee systems appear to fall into three categories. First, states with nominal fees (less than ten dollars per service) rely upon heavy tax subsidies to fund process service operations. Here, the litigants pay only a fraction of the actual cost of serving their process. Next, those states authorizing between ten and twenty dollars may come close to meeting the actual cost of providing these services, depending upon factors such as efficiency of the particular sheriff's office, cost of living, density of population and volume of process to be served. Finally, it would be a fair statement that fees in excess of twenty dollars per service probably fund the entire cost of process service, and there may be a surplus which could be applied to other operations such as patrol and crime prevention.⁸ Increased user fees are a logical and politically popular solution to the problem of funding governmental operations. Sheriff's fees are generally paid by the following classes of people: convicted criminals, tortfeasors, breachers of contracts, people who file frivolous suits, and other losing parties in lawsuits. (see footnote 7.) Also, a reasonable sheriff's fee is usually only a small fraction of the total cost of a lawsuit, which includes expenses such as attorneys' fees, paralegals' fees, court reporters' fees, and filing fees.

If the legislature decides that its state should make sheriffs' process service operations self-supporting, the next consideration involves the question: "How much should the fee be for each type of process served?" The underlying question is: "What is a reasonable cost to provide these services?" The answer to this question involves many factors. Factors favoring a higher fee would be high cost of living, sparsely populated rural areas which require long driving distances, and a relatively low volume of court cases. Factors favoring a lower fee would be low cost of living, dense population statewide, and a high volume of court cases in proportion to the population. Of course, the legislature should keep in mind the fact that adequate compensation is necessary for high-quality, well-trained deputies who serve the process.

* * * * *

7. In criminal cases, the service fee is generally paid by the guilty defendant after sentencing. Imposition of the fee is at the discretion of the court. If the defendant is found not guilty, or if the fee is not imposed or collected, the sheriff is not usually paid for his services. In civil cases, the fee is generally paid up front by the filing party. If the filing party loses, the fee is one of many expenses he has incurred. However, if the filing party wins in court, he is generally awarded costs as part of his judgement. The sheriff's fee is part of his costs.
8. Estimates based upon activities performed by the Fayette County Constable's Department, which receives ten dollars for each process served. This agency has continued operations by cutting corners: comparatively low pay for deputies, requiring deputies to use personal vehicles for official business, no insurance or retirement benefits for all deputies, etc., as this agency receives no tax subsidization whatsoever.

After making the general decisions concerning levels of taxpayer subsidies and overall levels of fees, the legislature must consider exactly what type of funding scheme is appropriate. Four basic types of fee systems are used:

1.) Mileage allowances are authorized by many states. Rates observed in this study ranged from 16¢ to \$1.25 per mile. The mileage system has an honorable purpose; that is to compensate the sheriff in direct proportion to his efforts. However, this system has several problems. First, efforts are not always in direct proportion to mileage driven. It is sometimes necessary for the sheriff to "stake out" a defendant to serve him. This usually involves sitting in a stationary vehicle for several hours while waiting for the defendant to leave his dwelling. Also, many mileage systems measure mileage from the courthouse to each destination, thus sometimes inflating the number of miles for which the sheriff is compensated. Furthermore, if an actual mileage system is used, the system creates more time-consuming paperwork for the sheriff, opens opportunities for abuse, and fails to give the plaintiff advance notice of the amount of the service fee.

2.) Hourly fees are authorized by some states; they appear to be limited to the performance of writs. This is logical, as writs of possession and restitution are quite time-consuming. For example, this study noted that Minnesota authorizes \$38.18 per hour for writs. Writs of restitution (evictions) may be very time-consuming for the sheriff. The usual scenario involves the sheriff going to the dwelling, entering it and securing the premises, and remaining there to keep the peace while the landlord's helpers remove the defendant's belongings and set them on the street. A problem arises when the landlord- trying to save money- hires only a minimum number of helpers. When this happens, the sheriff (or other officer) must often spend the entire day at the dwelling. A reasonable hourly fee not only compensates the sheriff for his time, but it is an incentive to the landlord to speed up the entire operation. It is also a disincentive to unnecessary evictions.⁹

3.) Percentages of amounts of judgements collected are authorized by some states; they are generally limited to garnishments and executions. The percentage system seems appropriate for executions for several reasons. First, it is not necessary for the legislature to change the fee each year the cost of living escalates; as the cost of living rises, the amount of judgements usually rises. Also, it is generally true that as the amount of the judgement increases, the amount of work required of the sheriff increases. More items must be seized and levied upon, and they may be larger items. Also, the sheriff's potential liability increases in direct proportion to the amount of the judgement. (Although the questionnaire in this study had a section on executions, the results were not tabulated due to the complexity of the data.) Some states also allow the sheriff a percentage on amounts collected under garnishments. The factors which favor the use of percentage formulas with executions simply do not apply to garnishments. To serve a garnishment, the sheriff must merely deliver it to the employer of a defendant, or to any individual or corporation holding monies due the defendant. In short, a garnishment is one of the easiest types of legal papers to serve. Under the percentage scheme, the sheriff is not compensated in any proportion to his expended efforts. Many garnishments would yield no fee whatsoever, and some would yield fees in the thousands of dollars. This is a hard system to justify.

* * * * *

9. The Fayette County Constable's Office has experienced several situations where landlords were aware that the defendant was moving out the same day of the eviction, but insisted the constable enforce the court order to embarrass the defendant or to retaliate for non-payment of rent.

4.) Some states (such as Kentucky) use a flat-fee system for everything except executions. For example, Kentucky authorizes payment of ten dollars for summonses, subpoenas, garnishments and writs of restitution. Other states authorize different flat fees for different types of process. (See footnote 1, page 1, discussion of anomolous results between fees allowed for subpoenas and summonses for further information on this system.) Different fees for different types of process may be appropriate if there is a logical relationship between the fee and the different amounts of work required to serve the process. Depending upon rules of civil procedure for process service adopted by the state in question, one type of service may be more difficult than the other. The following ranking, from easiest to most difficult, is based upon service allowed under the Kentucky Rules of Civil Procedure: a.) forcible detainers (may be taped on door and mailed to same address.), b.) garnishments (may be served upon any agent of defendant's employer or any agent of an individual or corporation holding monies due defendant.), c.) civil summonses (must be served directly upon defendant or his attorney, but only if attorney agrees to accept service.), d.) subpoenas (must be served directly upon defendant.), e.) writs of possession (must locate property- which may be difficult if property of movable or concealable- and seize property and store it in a safe place.), f.) writs of restitution (must secure premises and restore to landlord, and must remain on premises during the eviction process to keep the peace.)

It is often difficult for a legislature to determine exactly how difficult a particular type of service might be, and how much more or less that service is worth. Thus, flat fees across-the-board may be a solution. The premise underlying this system is that a high fee for an easy service will balance out a relatively low fee for a difficult service. An across-the-board system is easiest to administer, and it simplifies billing and payments involving litigants. This system will work effectively as long as the overall flat fee is in fact substantial enough to "balance out" particular difficult services.

CONCLUSION TO POLICY CONSIDERATIONS

This section contained many personal observations by the author, and it deviated to some degree from the primary purpose of this study. However, it is important for policymakers to have a full understanding of issues, procedures and all available options. It is hoped that this study will offer valuable guidance to legislators charged with the responsibility of setting appropriate service fees for sheriffs and other court officers.

ABOUT THE AUTHOR

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SERVICE FEES AS REPORTED BY TATE CAPITAL COUNTY SHERIFFS
(STATES BY ALPHABETICAL ORDER)

STATE	CIVIL SUMMONS	CIVIL SUBPOENA	WAGE GARNISHMENT	NON-WAGE GARNISHMENT	WRIT OF POSSESSION	WRIT OF RESTITUTION	FORCIBLE DETAINER
Arizona	\$7.50 plus \$1.25/mile	\$7.50 plus \$1.25/mile	\$15.00 plus \$1.25/mile	\$15.00 plus \$1.25/mile	\$15.00 plus \$1.25/mile	\$15.00 plus \$1.25/mile	\$7.50 plus \$1.25/mile
Arkansas	\$15.00	\$15.00	\$15.00	\$25.00	\$25.00	\$25.00	\$15.00
California	\$16.00	\$16.00	\$16.00	\$16.00	\$16.00	\$25.00	\$25.00
Colorado	\$15.00 plus 20¢/mile	\$7.50 plus 20¢/mile	\$7.50 plus 20¢/mile	\$7.50 plus 20¢/mile	\$25.00 plus 20¢/mile	\$15.00 plus 20¢/mile	\$15.00 plu 20¢/mile
Connecticut	\$20.00 plus 20¢/mile	\$20.00 plus 20¢/mile	6% of amount collected plus 20¢/mile	6% of amount collected plus 20¢/mile	no response	\$75-\$200, de- pending on time spent	\$20.00 plu 20¢/mile
Delaware	20¢/mile only	20¢/mile only	20¢/mile only	20¢/mile only	20¢/mile only	20¢/mile only	20¢/mile o
Florida	\$12.00	\$12.00	\$12.00	\$12.00	\$32.00	\$12.00	\$12.00
Hawaii	\$10.00 plus 20¢/mile	\$7.00 plus 20¢/mile	\$7.00 plus 20¢/mile	\$7.00 plus 20¢/mile	\$1.00 plus 20¢/mile	\$1.00 plus 20¢/mile	\$10.00 plu 20¢/mile
Idaho*	\$10.00 plus 40¢/mile	\$10.00 plus 40¢/mile	\$10.00 plus 40¢/mile	\$10.00 plus 40¢/mile	\$10.00 plus 40¢/mile	\$10.00 plus 40¢/mile	\$10.00 plu 40¢/mile
Illinois	\$11.00 plus 80¢/mile	\$11.00 plus 80¢/mile	\$11.00 plus 80¢/mile	\$11.00 plus 80¢/mile	\$11.00 plus 80¢/mile	\$11.00 plus 80¢/mile	\$11.00 plu 80¢/mile
Indiana	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
Iowa	\$10.00 plus 21¢/mile	\$10.00 plus 21¢/mile	\$10.00 plus 21¢/mile	\$10.00 plus 21¢/mile	\$10.00 plus 21¢/mile	\$10.00 plus 21¢/mile	\$10.00 plus 21¢/mile
Kansas	no fees	no fees	no fees	no fees	no fees	no fees	no fees
Kentucky	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Louisiana	\$5.00 plus 21¢/mile	\$5.00 plus 21¢/mile	\$26.50 plus 21¢/mile	\$19.50 plus 21¢/mile	\$9.00 plus 21¢/mile	\$9.00 plus 21¢/mile	\$5.00 plus 21¢/mile

* Idaho allows \$5.00 for serving process, and \$5.00 for making a return to court. In effect, this is \$10.00.

(CONTINUED)
 SERVICE FEES AS REPORTED BY STATE CAPITAL COUNTY SHERIFFS
 (STATES BY ALPHABETICAL ORDER)

Maine	\$8.00 plus 44¢/mile	\$8.00 plus 44¢/mile	\$8.00 plus 44¢/mile	\$8.00 plus 44¢/mile	\$8.00 plus 44¢/mile	\$8.00 plus 44¢/mile	\$8.00 plus 44¢/mile
Maryland	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00	no response	\$15.00
Michigan	\$10.00 plus 51¢/mile	\$10.00 plus 51¢/mile	\$7.00 plus 51¢/mile	\$20.00 plus 51¢/mile	\$20.00 plus 51¢/mile	\$20.00 plus 51¢/mile	no response
Minnesota	\$23.00 plus 35¢/mile	\$23.00 plus 35¢/mile	\$27.00 plus 35¢/mile	\$38.18/hr plus 35¢/mile	\$38.18/hr plus 35¢/mile	\$38.18/hr plus 35¢/mile	\$23.00 plus 35¢/mile
Montana	\$5.00 plus 20.5¢/mile	\$5.00 plus 20.5¢/mile	\$5.00 plus 20.5¢/mile	\$5.00 plus 20.5¢/mile	\$5.00 plus 20.5¢/mile	\$5.00 plus 20.5¢/mile	\$5.00 plus 20.5¢/mile
Nebraska	\$10.00 plus 23.5¢/mile	\$10.00 plus 23.5¢/mile	\$10.00 plus 23.5¢/mile	\$15.00 plus 23.5¢/mile	\$15.00 plus 23.5¢/mile	\$15.00 plus 23.5¢/mile	\$10.00 plus 23.5¢/ mile
Nevada	\$7.50 plus \$1.00/mile	\$6.00 plus \$1.00/mile	\$5.00 plus \$1.00/mile	\$6.00 plus \$1.00/mile	\$6.00 plus \$1.00/mile	\$6.00 plus \$1.00/mile	\$6.00 plus \$1.00/mile
New Hampshire	\$10.00 plus 45¢/mile	\$15.00 plus 45¢/mile	no response	\$15.00 plus 45¢/mile	\$15.00 plus 45¢/mile	\$15.00 plus 45¢/mile	no response
New Jersey	\$13.00 plus 16¢/mile	\$13.00 plus 16¢/mile	\$36.00 plus 16¢/mile	\$36.00 plus 16¢/mile	\$36.00 plus 16¢/mile	\$5.00 plus 16¢/mile	\$13.00 plus 16¢/mile
New Mexico	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00
New York	\$8.00 plus 23¢/mile	\$8.00 plus 23¢/mile	\$5.00 plus 23¢/mile	\$25.00 plus 23¢/mile	\$25.00 plus 23¢/mile	\$25.00 plus 23¢/mile	\$8.00 plus 23¢/mile
North Carolina	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00
North Dakota	\$7.50 plus 30¢/mile	\$7.50 plus 30¢/mile	\$15.00 plus 30¢/mile	\$15.00 plus 30¢/mile	\$15.00 plus 30¢/mile	\$7.50 plus 30¢/mile	no response
Ohio	\$3.00 plus 50¢/1st mile 20¢/mile thereafter	\$3.00 plus 50¢/1st mile 20¢/mile thereafter	\$6.75 plus 50¢/1st mile 20¢/mile thereafter	\$3.75 plus 50¢/1st mile 20¢/mile thereafter	\$20.00 plus 50¢/1st mile 20¢/mile thereafter	\$40.00 plus 50¢/1st mile 20¢/mile thereafter	\$20.00 plus 50¢/1st mil. 20¢/mile thereafter

(CONTINUED)
 SERVICE FEES AS REPORTED BY STATE CAPITAL COUNTY SHERIFFS
 (STATES BY ALPHABETICAL ORDER)

Oklahoma	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00
Oregon	\$15.00	\$15.00	\$12.50	\$12.50	\$62.00	\$62.00	\$15.00
Pennsylvania	\$14.00	\$14.00	no response	\$41.60	\$14.00	\$30.00	no response
Rhode Island	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00
South Carolina	\$15.00	\$10.00	no response	\$15.00	\$25.00	\$25.00	\$15.00
South Dakota	\$10.50	\$5.50	\$10.50	\$10.50	\$8.00	\$6.00	\$10.50
Tennessee	\$15.00	\$5.00	\$16.00	\$16.00	\$11.00	\$12.00	\$7.00
Texas	\$40.00	\$40.00	\$57.00	\$57.00	\$57.00	\$50.00	\$40.00
Utah	\$3.75 plus 75¢/mile	\$3.75 plus 75¢/mile	\$3.75 plus 75¢/mile	\$3.75 plus 75¢/mile	\$15.00 plus 75¢/mile	\$15.00 plus 75¢/mile	no response 75¢/mile
Vermont	\$15.00 plus 20.5¢/mile	\$15.00 plus 20.5¢/mile	\$15.00 plus 20.5¢/mile	\$15.00 plus 20.5¢/mile	\$15.00 plus 20.5¢/mile	\$15.00 plus 20.5¢/mile	\$15.00 plus 20.5¢/mile
Washington	\$11.00 plus 25¢/mile	\$11.00 plus 25¢/mile	\$11.00 plus 25¢/mile	\$11.00 plus 25¢/mile	\$35.00 plus 25¢/mile	\$35.00 plus 25¢/mile	\$17.00 plus 25¢/mile
West Virginia	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00
Wisconsin	\$8.00 plus 20¢/mile	\$8.00 plus 20¢/mile	\$8.00 plus 20¢/mile	\$8.00 plus 20¢/mile	\$8.00 plus 20¢/mile	\$8.00 plus 20¢/mile	\$8.00 plus 20¢/mile
Missouri*	\$5.00 plus 20¢/mile	\$2.50 plus 20¢/mile	\$5.00 plus 20¢/mile plus 3% of amount collected to \$500.00, and 2% of amounts collected over \$500.00	\$5.00 plus 20¢/mile plus 3% of amount collected to \$500.00, and 2% of amounts collected over \$500.00	\$7.50 plus 20¢/mile	\$5.00 plus 20¢/mile	no response 20¢/mile

* out of alphabetical order at time of publication.

ASSIGNED DOLLAR VALUES
DATA BY STATE (ALPHABETICAL)

	<u>civil summons</u>	<u>civil subpoena</u>	<u>wage garnishment</u>	<u>non-wage garnishment</u>	<u>writ of possession</u>	<u>writ of restitution</u>	<u>forcible detainer</u>
Arizona	15.88	15.88	23.38	23.38	23.38	23.38	15.88
Arkansas	15.00	15.00	15.00	25.00	25.00	25.00	15.00
California	16.00	16.00	16.00	16.00	16.00	25.00	25.00
Colorado	16.34	8.84	8.84	8.84	26.34	16.34	16.34
Connecticut ¹	21.34	21.34	percentage	percentage	no resp.	137.50	21.34
Delaware ²	1.34	1.34	1.34	1.34	1.34	1.34	1.34
Hawaii	11.34	8.34	8.34	8.34	2.34	2.34	11.34
Florida	12.00	12.00	12.00	12.00	32.00	12.00	12.00
Hawaii	12.68	12.68	12.68	12.68	12.68	12.68	12.68
Illinois	16.36	16.36	16.36	16.36	16.36	16.36	16.36
Indiana	3.00	3.00	3.00	3.00	3.00	3.00	3.00
Iowa	11.41	16.41	11.41	11.41	11.41	11.41	11.41
Kansas ³	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Kentucky ⁴	10.00	10.00	10.00	10.00	10.00	10.00	10.00
Louisiana	6.41	6.41	27.91	20.41	10.41	10.41	6.41
Maine	10.95	10.95	10.95	10.95	10.95	10.95	10.95
Maryland	15.00	15.00	15.00	15.00	15.00	no resp.	15.00
Michigan	13.42	13.42	10.42	10.42	23.42	23.42	no resp.
Minnesota ⁵	25.35	25.35	29.35	29.35	78.71	78.71	25.35
Missouri	6.34	3.84	percentage	percentage	8.84	6.34	no resp.
Montana	6.37	3.87	6.37	6.37	6.37	6.37	6.37
Nebraska	11.57	11.57	11.57	11.57	16.57	16.57	11.57
Nevada	14.20	12.70	12.70	11.70	12.70	12.70	12.70
New Hampshire	13.02	18.02	no resp.	18.02	18.02	18.02	no resp.
New Jersey	14.07	14.07	37.07	37.07	37.07	6.07	14.07
New Mexico	15.00	15.00	15.00	15.00	15.00	15.00	15.00
New York	9.54	9.54	6.54	6.54	26.54	26.54	9.54
North Carolina	4.00	4.00	4.00	4.00	4.00	4.00	4.00
North Dakota	9.51	9.51	17.01	17.01	17.01	9.51	no resp.
Ohio	4.64	4.64	8.39	5.39	21.64	41.64	21.64
Oklahoma	20.00	20.00	20.00	20.00	20.00	20.00	20.00
Oregon	15.00	15.00	12.50	12.50	62.00	62.00	15.00
Pennsylvania	14.00	14.00	no resp.	41.60	14.00	30.00	no resp.
Rhode Island	8.00	8.00	8.00	8.00	8.00	8.00	8.00
South Carolina	15.00	10.00	no resp.	15.00	25.00	25.00	15.00
South Dakota	10.50	5.50	10.50	10.50	8.00	6.00	10.50
Texas	40.00	40.00	57.00	57.00	57.00	50.00	40.00
Tennessee	15.00	5.00	16.00	16.00	11.00	12.00	7.00
Utah	8.78	8.78	8.78	8.78	20.03	20.03	no resp.
Vermont	16.37	16.37	16.37	16.37	16.37	16.37	16.37
Washington	12.68	12.68	12.68	12.68	36.68	36.68	18.68
West Virginia	5.00	5.00	5.00	5.00	5.00	5.00	5.00
Wisconsin ⁶	18.68	18.68	18.68	18.68	18.68	18.68	18.68
TOTALS:	541.09	514.09	536.14	609.26	831.86	892.36	498.52
AVERAGES:	12.58	11.96	14.11	14.86	19.81	21.25	13.47
# of responses:	43	43	38	41	42	42	37

FOOTNOTES
"ASSIGNED DOLLAR VALUES/DATA BY STATE/ALPHABETICAL"

1. Connecticut allows the Sheriff 6 percent of the amount collected from each wage or non-wage garnishment he serves. First, this formula is virtually impossible to convert into an Assigned Dollar Value because of the difficulty of knowing the average amount collected upon each garnishment. (To determine this amount, one would have to pull the case jacket of each and every suit involving a garnishment. The Sheriff would have to do the same to make sure he was being paid the full fee to which he is entitled under Connecticut law. Given the large number of garnishments which are issued, it is highly unlikely that this verification procedure is followed.) Also, this compensation scheme bears no logical relationship to the amount of effort or potential liability incurred by service of the process. The Sheriff must merely deliver the garnishment to an employer or other person holding monies due the defendant and make a return to the Court. The Fayette County Constable's Office has served garnishments which have resulted in collections ranging from zero to more than \$400,000.00. Consequently, had this statutory scheme applied, the Constable's fees would have ranged from zero to \$24,000.00 for service of a garnishment, although the same effort would have been put forth on each service.
2. Delaware allows only mileage as a service fee.
3. Kansas allows the Sheriff neither a regular fee, nor does it allow him mileage. However, there is a \$55.00 filing fee which accrues to the Court Clerk. The response was unclear as to whether the Sheriff received a portion of the filing fee. Therefore, to avoid inflating the final results of this study, Kansas was assigned a Dollar Value of zero.
4. Kentucky law does allow additional fees in extraordinary circumstances. However, this practice is rarely exercised.
5. Minnesota allows their sheriffs to charge \$38.18 per hour for writs of possession and restitution. Based upon the Fayette County Constable's Office's experience, these writs require two hours each to perform. Thus, the Assigned Dollar Value of \$78.71 was entered, which includes mileage at 35¢ per mile.
6. Wisconsin allows their sheriffs \$8.00 per attempt for each service. Based upon the Fayette County Constable's Office's experience, the average service requires two attempts to complete. Thus, the Assigned Dollar Value of \$18.68 was entered, which includes mileage at 20¢ per mile.

OVERALL RANK FOR ALL TYPES OF PROCESS
(USING ASSIGNED DOLLAR VALUES)

Rank	State	Assigned Dollar Value	Average
1	Connecticut	\$50.38*	* This ranking may not be accurate, as it was possible to use only four responses in computing the Assigned Dollar Value Average. Connecticut did not respond on writs of possession and they allow percentages on all garnishments.
2	Texas	\$48.71	
3	Minnesota	\$41.74	
4	New Jersey	\$22.78	
5	Pennsylvania	\$22.72 *	* Pennsylvania did not respond to Wage Garnishments or to Forcible Detainers
6	Oregon	\$22.71	
7	Washington	\$20.39	
8	Arizona	\$20.17	
9	Oklahoma	\$20.00	
10	Arkansas	\$19.29	
11	Wisconsin	\$18.68	
12	California	\$18.57	
13	South Carolina	\$17.50 *	* South Carolina did not respond to Wage Garnishments.
14	New Hampshire	\$17.02 *	
15	Vermont	\$16.37	* New Hampshire did not respond to wage garnishments or to Forcible Detainers
16	Illinois	\$16.36	
17	Michigan	\$15.75 *	* Michigan did not respond to Forcible Detainers
18	Ohio	\$15.43	
19	Maryland	\$15.00 *	* Maryland did not respond to writs of restitution
20	New Mexico	\$15.00	
21	Florida	\$14.86	
22	Colorado	\$14.55	
23	New York	\$13.54	
24	North Dakota	\$13.26 *	* North Dakota did not respond to Forcible Detainers
25	Nebraska	\$13.00	
26	Nevada	\$12.77	
27	Idaho	\$12.68	
28	Louisiana	\$12.62	
29	Utah	\$12.53 *	* Utah did not respond to Forcible Detainers
30	Iowa	\$12.12	
31	Tennessee	\$11.71	
32	Maine	\$10.95	
33	Kentucky	\$10.00	
34	South Dakota	\$ 8.79	
35	Rhode Island	\$ 8.00	
36	Hawaii	\$ 7.48	
37	Missouri	\$ 6.34*	*This ranking may not be accurate, as it was possible to use only four responses in computing the Assigned Dollar Value Average. Missouri did not respond on forcible detainers, and they allow a percentage on garnishments.
38	Montana	\$ 6.01	
39	West Virginia	\$ 5.00	
40	North Carolina	\$ 4.00	
41	Indiana	\$ 3.00	
42	Delaware	\$ 1.34	
43	Kansas	\$ -0-	

Total Assigned Dollar Values: \$669.12
Average Assigned Dollar Values: 15.56 ("National Average")
Number of Responses: 43

QUESTIONNAIRE

Please fill in the blanks, and return this form to Al Buchanan, Fayette County Constable's Department, 107 1/2 Church Street Lexington, Kentucky 40507. Enclosed is a pre-addressed, postage-paid envelope for your convenience.

- 1. Do you receive a set fee for service of process in civil cases? _____
- 2. If "yes" please specify amount received for each type of process below:
 - a) civil summons: \$ _____
 - b) civil subpoena: \$ _____
 - c) wage garnishment: \$ _____
 - d) non-wage garnishment (attachment on bank accounts, etc.): _____
 - e) writ of possession (order to seize property for a secured creditor): \$ _____
 - f) writ of restitution (order for eviction; actual set-out): \$ _____
 - g) forcible detainer warrant (eviction hearing notice): \$ _____
 - h) execution/order for sale of personal property: \$ _____ (or specify percentage)
- Do you receive reimbursement for mileage in addition to the set fee? _____
- 4. If "yes" please specify amount per mile: _____
- 5. Do you receive a set fee for service of process in criminal cases? _____
- 6. If "yes" please specify amount received for each type of process below:
 - a) misdemeanor warrant of arrest: \$ _____
 - b) felony warrant of arrest: \$ _____
 - c) bench warrant: \$ _____
 - d) criminal summons: \$ _____
- 7. Does your state authorize the use of private process servers in civil cases? _____
- 8. If "yes" please estimate to the best of your ability the amount charged by private process servers for each service (on the average): \$ _____
- 9. Does your state authorize you to assess additional charges for difficult cases? _____

Please write any additional comments you may have on reverse, or attach your own set. Thank you very much for taking the time to answer this questionnaire.



MISSOULA COUNTY

OFFICE OF THE CLERK AND RECORDER
RECORDING DIVISION
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59802

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 1
DATE 1-10-89
BILL NO. SB 69

January 5, 1989

Please accept this written statement as evidence of support by the Missoula County Clerk & Recorder/Treasurer to allow political subdivisions to submit documents to be recorded with fees payable on a monthly basis.

This proposed amendment will allow cities or other political subdivisions, on request, to benefit by making one monthly payment rather than many small payments. State agencies follow this procedure.

Respectfully submitted,



Fern Hart
Clerk & Recorder/Treasurer
Missoula County

Amendments to Senate Bill No. 69
First Reading Copy

For the Committee on Local Government

Prepared by Connie Erickson
January 10, 1989

1. Page 3, line 16.

Following: "basis"

Insert: ", unless otherwise provided"

COMMITTEE ON

Local Government

DATE

Jan 10, 1989

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Gary Dupuis	G.A.R.D. Process Service	SB68	✓	
Jeff Miller	Dept. of Revenue	SB 53	✓	
Linda Stoll Anderson	Lewis Clark County - MACO	SB68	✓	
Maryann Murray	MACO	SB68	✓	
Chuck Orally	Mt Shenny Peace Officers	SB68	✓	
Chuck Stearns	City of Missoula	SB69	✓	

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE Local Government

Date 1-10-89 Bill No. SB 37 Time 2:01

NAME	YES	NO
Sen. Ethel Harding	X	
Sen. R.J. "Dick" Pinsoneault		X
Sen. Tom Beck	X	
Sen. Eleanor Vaughn	X	
Sen. H.W. "Swede" Hammond		X
Sen. Mike Walker	X	
Sen. Gene Thayer <i>excused</i>		
Sen. Paul Boylan		X
Sen. Bruce D. Crippen	X	

Dolores Harris
Secretary

Ethel Harding
Chairman

Motion: do pass
