

1 House BILL NO. 110  
 2 INTRODUCED BY Edward W. Barth

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE ATTORNEY  
 5 GENERAL TO GIVE WRITTEN OPINIONS WITHIN FOUR (4) MONTHS TO  
 6 THE GOVERNING BODY OF ANY CITY OR TOWN UPON ANY QUESTION OF  
 7 LAW RELATING TO THE OFFICES OF SAID GOVERNING BODY."  
 8

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

10 Section 1. Section 82-401, R.C.M. 1947, is amended to  
 11 read as follows:

12 "82-401. General duties. It is the duty of the  
 13 attorney general:

14 1. To attend the supreme court and prosecute or defend  
 15 all causes to which the state, or any officer thereof, in  
 16 his official capacity, is a party; and all causes to which  
 17 any county may be a party, unless the interest of the county  
 18 is adverse to the state, or some officer thereof acting in  
 19 his official capacity.

20 2. After judgment in any of the causes referred to in  
 21 the preceding subdivision, to direct the issuing of such  
 22 process as may be necessary to carry the same into  
 23 execution.

24 3. To account for and pay over to the proper officer  
 25 all moneys which may come into his possession belonging to

1 the state or to any county.

2 4. To keep a register of all cases in which he is  
 3 required to appear, which must, during business hours, be  
 4 open to the inspection of the public, and must show the  
 5 county, district, and court in which the cases have been  
 6 instituted and tried, and whether they are civil or  
 7 criminal; if civil, the nature of the demand, the stage of  
 8 proceedings, and, when prosecuted to judgment, a memorandum  
 9 of the judgment, of any process issued thereon, and whether  
 10 satisfied or not; if not satisfied, the return of the  
 11 sheriff; and if criminal, the nature of the crime, the mode  
 12 of prosecution, the stage of proceedings, and, when  
 13 prosecuted to sentence, a memorandum of the sentence and of  
 14 the execution thereof, if the same has been executed, and if  
 15 not executed, of the reason of the delay or prevention; and  
 16 must deliver the same to his successor in office.

17 5. To exercise supervisory powers over county attorneys  
 18 in all matters pertaining to the duties of their offices,  
 19 and from time to time require of them reports as to the  
 20 condition of public business entrusted to their charge.

21 6. To give his opinion in writing, without fee, to the  
 22 legislative assembly, or either house thereof and to any  
 23 state officer, board, or commission, any county attorney, to  
 24 the governing body of any city or town, and to the board of  
 25 county commissioners of any county of the state, when

1 required upon any question of law relating to their  
 2 respective offices. He shall give any such opinion within  
 3 four (4) months following the date it is requested, unless  
 4 he certifies in writing to the requesting party that the  
 5 question is of sufficient complexity to require additional  
 6 time.

7 7. When required by the public service, or directed by  
 8 the governor, to assist the county attorney of any county in  
 9 the discharge of his duties.

10 8. To bid upon and purchase in the name of the state,  
 11 and under the direction of the board of examiners, any  
 12 property offered for sale under execution issued upon  
 13 judgments in favor of or for the use of the state, and to  
 14 enter satisfaction, in whole or in part, of such judgments  
 15 as the consideration for such purchases.

16 9. Whenever the property of a judgment debtor in any  
 17 judgment mentioned in the preceding subdivision has been  
 18 sold under a prior judgment, or is subject to any judgment,  
 19 lien, or encumbrance taking precedence of the judgment in  
 20 favor of the state, under the direction of the board of  
 21 examiners to redeem such property from such prior judgment,  
 22 lien, or encumbrance; and all sums of money necessary for  
 23 such redemption must, upon the order of the board of  
 24 examiners, be paid out of any money appropriated for such  
 25 purposes.

1 10. When in his opinion it is necessary for the  
 2 collection or enforcement of any judgment hereinbefore  
 3 mentioned, to institute and prosecute, in behalf of the  
 4 state, such suits or other proceedings as are necessary to  
 5 set aside and annul all conveyances fraudulently made by  
 6 such judgment debtors, the cost necessary to the prosecution  
 7 must, when allowed by the board of examiners, be paid out of  
 8 any appropriations for the prosecution of delinquents.

9 11. To discharge the duties of a member of the board of  
 10 examiners, state board of land commissioners, board of state  
 11 prison commissioners, and other duties prescribed by law.

12 12. To report to the governor, at the time prescribed  
 13 by section 59-702 of this code, the condition of the affairs  
 14 of his department, and to accompany the same with a copy of  
 15 his docket and of the reports received by him from county  
 16 attorneys, and to report to the governor as provided in  
 17 section 59-705."

-End-

## STATE OF MONTANA

REQUEST NO. 53-75

## FISCAL NOTE

Form *BD-15*

In compliance with a written request received January 20, 19 75, there is hereby submitted a Fiscal Note for House Bill 110 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## DESCRIPTION OF PROPOSED LEGISLATION:

An act to require the Attorney General to give written opinions within four months, without fee to the governing body of any city or town upon any question of law relating to the offices of the governing body. This act is identical to Senate Bill 30 with the exception of the four month time constraint.

## ASSUMPTIONS:

1. Governing body of any city or town means incorporated city or town of which there are presently 126.
2. There are presently 386 sources of opinion requests (56 county attorneys, 19 state agencies, 150 legislators, and 161 boards and commissions). Adding 126 cities and towns would be an increase in workload of 32%.
3. The increase in workload would require two additional attorneys at a salary of \$15,000 and one additional secretary at a salary of \$6,000 plus benefits at 13%.
4. The increase in staff would require office space outside the Capitol Complex as no space is available at present.
5. Additional equipment will be needed and additional operating expenses will be incurred.

## FISCAL IMPACT:

	FY 76			FY 77		
	Current Law	Proposed Law	Increase	Current Law	Proposed Law	Increase
Personal Services	\$242,369	\$283,049	\$40,680	\$258,832	\$302,767	\$43,935
Operating Expenses	50,858	55,113	4,255	54,522	59,287	4,765
Capital Outlay	4,000	5,875	1,875	4,000	4,000	0
<b>Total Expenditures</b>	<b>\$297,227</b>	<b>\$344,037</b>	<b>\$46,810</b>	<b>\$317,354</b>	<b>\$366,054</b>	<b>\$48,700</b>

## CONCLUSION:

Enactment of Senate Bill 30 would result in an increase in expenditures from the General Fund of approximately \$95,500 during the biennium. The fiscal impact of House Bill 110 is the same as that of Senate Bill 30. The additional four month time constraint poses no additional expenditure burden.

*Michael Billings*

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: January 21, 1975

Approved by Committee  
on Judiciary

HOUSE BILL NO. 110

INTRODUCED BY BRAND, W. BAETH

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE ATTORNEY GENERAL TO GIVE WRITTEN OPINIONS WITHIN ~~FOUR-4~~ THREE (3) MONTHS TO THE GOVERNING BODY OF ANY CITY OR TOWN UPON ANY QUESTION OF LAW RELATING TO THE OFFICES OF SAID GOVERNING BODY."

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

Section 1. Section 82-401, R.C.M. 1947, is amended to read as follows:

"82-401. General duties. It is the duty of the attorney general:

1. To attend the supreme court and prosecute or defend all causes to which the state, or any officer thereof, in his official capacity, is a party; and all causes to which any county may be a party, unless the interest of the county is adverse to the state, or some officer thereof acting in his official capacity.

2. After judgment in any of the causes referred to in the preceding subdivision, to direct the issuing of such process as may be necessary to carry the same into execution.

3. To account for and pay over to the proper officer

all moneys which may come into his possession belonging to the state or to any county.

4. To keep a register of all cases in which he is required to appear, which must, during business hours, be open to the inspection of the public, and must show the county, district, and court in which the cases have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not; if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention; and must deliver the same to his successor in office.

5. To exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business entrusted to their charge.

6. To give his opinion in writing, without fee, to the legislative assembly, or either house thereof and to any state officer, board, or commission, any county attorney, to a governing body of any city or town, and to the board of

1 county commissioners of any county of the state, when  
 2 required upon any question of law relating to their  
 3 respective offices. He shall give any such opinion within  
 4 four---(4) THREE (3) months following the date it is  
 5 requested, unless he certifies in writing to the requesting  
 6 party that the question is of sufficient complexity to  
 7 require additional time.

8 7. When required by the public service, or directed by  
 9 the governor, to assist the county attorney of any county in  
 10 the discharge of his duties.

11 8. To bid upon and purchase in the name of the state,  
 12 and under the direction of the board of examiners, any  
 13 property offered for sale under execution issued upon  
 14 judgments in favor of or for the use of the state, and to  
 15 enter satisfaction, in whole or in part, of such judgments  
 16 as the consideration for such purchases.

17 9. Whenever the property of a judgment debtor in any  
 18 judgment mentioned in the preceding subdivision has been  
 19 sold under a prior judgment, or is subject to any judgment,  
 20 lien, or encumbrance taking precedence of the judgment in  
 21 favor of the state, under the direction of the board of  
 22 examiners to redeem such property from such prior judgment,  
 23 lien, or encumbrance; and all sums of money necessary for  
 24 such redemption must, upon the order of the board of  
 25 examiners, be paid out of any money appropriated for such

1 purposes.

2 10. When in his opinion it is necessary for the  
 3 collection or enforcement of any judgment hereinbefore  
 4 mentioned, to institute and prosecute, in behalf of the  
 5 state, such suits or other proceedings as are necessary to  
 6 set aside and annul all conveyances fraudulently made by  
 7 such judgment debtors, the cost necessary to the prosecution  
 8 must, when allowed by the board of examiners, be paid out of  
 9 any appropriations for the prosecution of delinquents.

10 11. To discharge the duties of a member of the board of  
 11 examiners, state board of land commissioners, board of state  
 12 prison commissioners, and other duties prescribed by law.

13 12. To report to the governor, at the time prescribed  
 14 by section 59-702 of this code, the condition of the affairs  
 15 of his department, and to accompany the same with a copy of  
 16 his docket and of the reports received by him from county  
 17 attorneys, and to report to the governor as provided in  
 18 section 59-705."

-End-

HOUSE BILL NO. 110

INTRODUCED BY BRAND, W. BAETH

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE ATTORNEY GENERAL TO GIVE WRITTEN OPINIONS WITHIN ~~FOUR~~ THREE (3) MONTHS TO THE GOVERNING BODY OF ANY CITY OR TOWN UPON ANY QUESTION OF LAW RELATING TO THE OFFICES OF SAID GOVERNING BODY."

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

Section 1. Section 82-401, R.C.M. 1947, is amended to read as follows:

"82-401. General duties. It is the duty of the attorney general:

1. To attend the supreme court and prosecute or defend all causes to which the state, or any officer thereof, in his official capacity, is a party; and all causes to which any county may be a party, unless the interest of the county is adverse to the state, or some officer thereof acting in his official capacity.

2. After judgment in any of the causes referred to in the preceding subdivision, to direct the issuing of such process as may be necessary to carry the same into execution.

3. To account for and pay over to the proper officer

all moneys which may come into his possession belonging to the state or to any county.

4. To keep a register of all cases in which he is required to appear, which must, during business hours, be open to the inspection of the public, and must show the county, district, and court in which the cases have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not; if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention; and must deliver the same to his successor in office.

5. To exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business entrusted to their charge.

6. To give his opinion in writing, without fee, to the legislative assembly, or either house thereof and to any state officer, board, or commission, any county attorney, to the governing body of any city or town, and to the board of

1 county commissioners of any county of the state, when  
 2 required upon any question of law relating to their  
 3 respective offices. He shall give any such opinion within  
 4 four---(4) THREE (3) months following the date it is  
 5 requested, unless he certifies in writing to the requesting  
 6 party that the question is of sufficient complexity to  
 7 require additional time.

8 7. When required by the public service, or directed by  
 9 the governor, to assist the county attorney of any county in  
 10 the discharge of his duties.

11 8. To bid upon and purchase in the name of the state,  
 12 and under the direction of the board of examiners, any  
 13 property offered for sale under execution issued upon  
 14 judgments in favor of or for the use of the state, and to  
 15 enter satisfaction, in whole or in part, of such judgments  
 16 as the consideration for such purchases.

17 9. Whenever the property of a judgment debtor in any  
 18 judgment mentioned in the preceding subdivision has been  
 19 sold under a prior judgment, or is subject to any judgment,  
 20 lien, or encumbrance taking precedence of the judgment in  
 21 favor of the state, under the direction of the board of  
 22 examiners to redeem such property from such prior judgment,  
 23 lien, or encumbrance; and all sums of money necessary for  
 24 such redemption must, upon the order of the board of  
 25 examiners, be paid out of any money appropriated for such

1 purposes.

2 10. When in his opinion it is necessary for the  
 3 collection or enforcement of any judgment hereinbefore  
 4 mentioned, to institute and prosecute, in behalf of the  
 5 state, such suits or other proceedings as are necessary to  
 6 set aside and annul all conveyances fraudulently made by  
 7 such judgment debtors, the cost necessary to the prosecution  
 8 must, when allowed by the board of examiners, be paid out of  
 9 any appropriations for the prosecution of delinquents.

10 11. To discharge the duties of a member of the board of  
 11 examiners, state board of land commissioners, board of state  
 12 prison commissioners, and other duties prescribed by law.

13 12. To report to the governor, at the time prescribed  
 14 by section 59-702 of this code, the condition of the affairs  
 15 of his department, and to accompany the same with a copy of  
 16 his docket and of the reports received by him from county  
 17 attorneys, and to report to the governor as provided in  
 18 section 59-705."

-End-

March 13, 1975

SENATE COMMITTEE ON JUDICIARY  
AMENDMENTS TO HOUSE BILL NO. 110

That House Bill No. 110, third reading, be amended as follows:

1. Amend title, line 6.  
Following: "THE"  
Strike: "GOVERNING BODY"  
Insert: "city attorney"
2. Amend page 2, section 1, line 25.  
Following: "the"  
Strike: "governing body"  
Insert: "city attorney"



## 1 HOUSE BILL NO. 110

2 INTRODUCED BY BRAND, W. BAETH

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE ATTORNEY  
5 GENERAL TO GIVE WRITTEN OPINIONS WITHIN ~~FOUR-(4)~~ THREE (3)  
6 MONTHS TO THE ~~GOVERNING-BODY~~ CITY ATTORNEY OF ANY CITY OR  
7 TOWN UPON ANY QUESTION OF LAW RELATING TO THE OFFICES OF  
8 SAID GOVERNING BODY."  
9

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

11 Section 1. Section 82-401, R.C.M. 1947, is amended to  
12 read as follows:13 "82-401. General duties. It is the duty of the  
14 attorney general:

15 1. To attend the supreme court and prosecute or defend  
16 all causes to which the state, or any officer thereof, in  
17 his official capacity, is a party; and all causes to which  
18 any county may be a party, unless the interest of the county  
19 is adverse to the state, or some officer thereof acting in  
20 his official capacity.

21 2. After judgment in any of the causes referred to in  
22 the preceding subdivision, to direct the issuing of such  
23 process as may be necessary to carry the same into  
24 execution.

25 3. To account for and pay over to the proper officer

1 all moneys which may come into his possession belonging to  
2 the state or to any county.

3 4. To keep a register of all cases in which he is  
4 required to appear, which must, during business hours, be  
5 open to the inspection of the public, and must show the  
6 county, district, and court in which the cases have been  
7 instituted and tried, and whether they are civil or  
8 criminal; if civil, the nature of the demand, the stage of  
9 proceedings, and, when prosecuted to judgment, a memorandum  
10 of the judgment, of any process issued thereon, and whether  
11 satisfied or not; if not satisfied, the return of the  
12 sheriff; and if criminal, the nature of the crime, the mode  
13 of prosecution, the stage of proceedings, and, when  
14 prosecuted to sentence, a memorandum of the sentence and of  
15 the execution thereof, if the same has been executed, and if  
16 not executed, of the reason of the delay or prevention; and  
17 must deliver the same to his successor in office.

18 5. To exercise supervisory powers over county  
19 attorneys in all matters pertaining to the duties of their  
20 offices, and from time to time require of them reports as to  
21 the condition of public business entrusted to their charge.

22 6. To give his opinion in writing, without fee, to the  
23 legislative assembly, or either house thereof and to any  
24 state officer, board, or commission, any county attorney, to  
25 the governing-body CITY ATTORNEY of any city or town, and

1 to the board of county commissioners of any county of the  
 2 state, when required upon any question of law relating to  
 3 their respective offices. He shall give any such opinion  
 4 within ~~four-(4)~~ THREE (3) months following the date it is  
 5 requested, unless he certifies in writing to the requesting  
 6 party that the question is of sufficient complexity to  
 7 require additional time.

8 7. When required by the public service, or directed by  
 9 the governor, to assist the county attorney of any county in  
 10 the discharge of his duties.

11 8. To bid upon and purchase in the name of the state,  
 12 and under the direction of the board of examiners, any  
 13 property offered for sale under execution issued upon  
 14 judgments in favor of or for the use of the state, and to  
 15 enter satisfaction, in whole or in part, of such judgments  
 16 as the consideration for such purchases.

17 9. Whenever the property of a judgment debtor in any  
 18 judgment mentioned in the preceding subdivision has been  
 19 sold under a prior judgment, or is subject to any judgment,  
 20 lien, or encumbrance taking precedence of the judgment in  
 21 favor of the state, under the direction of the board of  
 22 examiners to redeem such property from such prior judgment,  
 23 lien, or encumbrance; and all sums of money necessary for  
 24 such redemption must, upon the order of the board of  
 25 examiners, be paid out of any money appropriated for such

1 purposes.

2 10. When in his opinion it is necessary for the  
 3 collection or enforcement of any judgment hereinbefore  
 4 mentioned, to institute and prosecute, in behalf of the  
 5 state, such suits or other proceedings as are necessary to  
 6 set aside and annul all conveyances fraudulently made by  
 7 such judgment debtors, the cost necessary to the prosecution  
 8 must, when allowed by the board of examiners, be paid out of  
 9 any appropriations for the prosecution of delinquents.

10 11. To discharge the duties of a member of the board of  
 11 examiners, state board of land commissioners, board of state  
 12 prison commissioners, and other duties prescribed by law.

13 12. To report to the governor, at the time prescribed  
 14 by section 59-702 of this code, the condition of the affairs  
 15 of his department, and to accompany the same with a copy of  
 16 his docket and of the reports received by him from county  
 17 attorneys, and to report to the governor as provided in  
 18 section 59-705."

-End-