

1 *Senate* BILL NO. *126*  
 2 INTRODUCED BY *Neal Lee Melhus* *LYNCH Flynn*  
 3 *Furrow* *McCallum* *Romy*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO UPDATE THE STATUS OF  
 5 CONSTABLES BY MAKING THEM COUNTY OFFICERS; REVISING THE  
 6 SCHEDULE OF FEES AND COMPENSATION FOR CONSTABLES; AMENDING  
 7 SECTIONS 16-507, 16-2404, 16-2406, 16-3601, 16-3607,  
 8 16-4010, 25-309, 66-205, AND 93-7709, R.C.M. 1947."

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

11 Section 1. Section 16-507, R.C.M. 1947, is amended to  
12 read as follows:

13 "16-507. Officers of new county--judicial district. At  
 14 the election provided for in section 16-505 of this code,  
 15 there shall be chosen such county, township, and district  
 16 officers as are now or may hereafter by general law be  
 17 provided for in counties of the class to which the said new  
 18 county is determined to belong, as herein provided;  
 19 provided, that all duly elected, qualified and acting  
 20 officers of the county or counties, who may reside within  
 21 the proposed new county, shall be deemed to be officers of  
 22 said new county if they file with the board of county  
 23 commissioners, whose duty it shall be to call the election,  
 24 within five days after the final hearing and determination  
 of said petition for such proposed new county, their

1 intention to become officers of said proposed new county,  
 2 and the board of county commissioners issuing the  
 3 proclamation of any election, as in this act provided, shall  
 4 omit providing for the election of any such officers as may  
 5 have filed their declaration as herein provided; and  
 6 provided, also, that all duly elected, qualified, and acting  
 7 justices of the peace and constables residing within the  
 8 proposed new county ~~at--the--time--of--the--division--of--such~~  
 9 ~~county--into--townships,--as--hereinbefore--in--section--16-505~~  
 10 ~~provided,~~ shall hold office as such justices of the peace or  
 11 constables in said county for the remainder of the term for  
 12 which they were elected ~~on--qualifying--as--justices--of--the~~  
 13 ~~peace--or--constables--for--the--respective--townships--in--which~~  
 14 ~~they--reside,--when--said--townships--are--organized--as--provided~~  
 15 ~~in--this--act;~~ provided, further, that all duly elected,  
 16 qualified, and acting school trustees residing within the  
 17 proposed new county at the time of the division of such  
 18 county into school districts, as hereinbefore in section  
 19 16-505 provided, shall hold office as school trustees in  
 20 said new county for the remainder of the term for which they  
 21 were elected on qualifying as school trustees for the  
 22 respective districts in which they reside, as said districts  
 23 are organized as provided by this act. Each person elected  
 24 or appointed to fill an office of such new county under the  
 25 provisions of this act shall qualify in the manner provided

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1 by law for such officers, except as herein otherwise  
 2 provided, and shall enter upon the discharge of the duties  
 3 of his office within such time as herein provided, after the  
 4 receipt of the certificate of his election. Each of such  
 5 officers may take the oath of office before any officers  
 6 authorized by the laws of the state of Montana to administer  
 7 oaths, and the bond of any officer from which a bond is  
 8 required shall be approved by any judge of the district  
 9 court of the district to which such new county is attached  
 10 for judicial purposes. The officers elected or appointed  
 11 under the provisions of this act shall each perform the  
 12 duties and receive the compensation now provided by general  
 13 law for the office to which he has been appointed or elected  
 14 in the counties of the class to which such new county shall  
 15 have been determined to belong, as herein provided under the  
 16 general classification of counties in this state.

17 Said new county, when created and organized in  
 18 pursuance of the provisions of this act, shall be attached  
 19 to such judicial district as may be designated by the  
 20 governor of the state of Montana, in a proclamation to be  
 21 issued by him, designating such new county as attached to  
 22 the particular judicial district for judicial purposes."

23 Section 2. Section 16-2404, R.C.M. 1947, is amended to  
 24 read as follows:

25 "16-2404. Township officers. The officers of townships

1 are ~~two-constables~~ and such ~~other~~ inferior and subordinate  
 2 officers as are provided for elsewhere in this code, or by  
 3 the board of county commissioners."

4 Section 3. Section 16-2406, R.C.M. 1947, is amended to  
 5 read as follows:

6 "16-2406. County and other officers, when elected or  
 7 appointed and term of office. There may be elected or  
 8 appointed in each county the following county officers who  
 9 shall possess the qualifications for suffrage prescribed by  
 10 the constitution of the state of Montana, and such other  
 11 qualifications as may be prescribed by law:

12 One (1) county attorney; one (1) clerk of the district  
 13 court; one (1) county clerk who shall be clerk of the board  
 14 of county commissioners and ex officio recorder; one (1)  
 15 sheriff; one (1) treasurer, who shall be collector of the  
 16 taxes; one (1) county superintendent of schools; one (1)  
 17 county surveyor; one (1) assessor; one (1) coroner; one (1)  
 18 public administrator; ~~and~~ at least one (1) justice of the  
 19 peace; and no more than one (1) constable for each justice  
 20 of the peace court. Persons elected to the different  
 21 offices named in this section shall hold their respective  
 22 offices for the term of four (4) years, and until their  
 23 successors are elected and qualified. Persons appointed to  
 24 the different offices serve at the pleasure of the  
 25 commissioners.

1 County auditors, and all elective township officers,  
 2 may be elected at each general election as now provided by  
 3 law. The officers mentioned in this act must take office on  
 4 the first Monday of January next succeeding their election,  
 5 except the county treasurer, whose term begins on the first  
 6 Monday of March next succeeding his election.

7 Vacancies in all county, township and precinct offices,  
 8 except that of county commissioners, shall be filled by  
 9 appointment by the board of county commissioners, and the  
 10 appointee shall hold his office until the next general  
 11 election if elective, and if not elective, the appointee  
 12 serves at the pleasure of the commissioners; provided,  
 13 however, that the board of county commissioners of any  
 14 county may, in its discretion, consolidate any two or more  
 15 of the within named offices and combine the powers and the  
 16 duties of the said offices consolidated with the exception  
 17 of the office of the justice of the peace, which office may  
 18 not be combined or consolidated with any other office other  
 19 than another justice of the peace office; however, the  
 20 provisions hereof shall not be construed as allowing one (1)  
 21 office incumbent to be entitled to the salaries and  
 22 emoluments of two (2) or more offices; provided, further,  
 23 that in consolidating county offices, the board of county  
 24 commissioners shall, six (6) months prior to the general  
 25 election held for the purpose of electing the aforesaid

1 officers, or six (6) months prior to the appointment of  
 2 aforesaid officers, make and enter an order, combining any  
 3 two (2) or more of the within named offices, and shall cause  
 4 the said order to be published in a newspaper, published and  
 5 circulated generally in said county, for a period of six (6)  
 6 weeks next following the date of entry of said order."

7 Section 4. Section 16-3601, R.C.M. 1947, is amended to  
 8 read as follows:

9 "16-3601. Constables to attend justices' courts.  
 10 Constables must attend the courts of justices of the peace  
 11 within their ~~townships~~ counties whenever so required, and  
 12 ~~within their counties~~ execute, serve, and return all process  
 13 and notices directed or delivered to them by a justice of  
 14 the peace of such county, or by any competent authority."

15 Section 5. Section 16-3607, R.C.M. 1947, is amended to  
 16 read as follows:

17 "16-3607. Justice or constable purchasing judgment.  
 18 Every justice of the peace, or constable of the same  
 19 township county, who purchases or is interested in the  
 20 purchase of any judgment, or part thereof, on the docket of,  
 21 or on any docket in the possession of, such justice, is  
 22 guilty of a misdemeanor."

23 Section 6. Section 16-4010, R.C.M. 1947, is amended to  
 24 read as follows:

25 "16-4010. Townships--how disposed of, term of justices

1 and constables. The townships of a county abandoned and  
 2 abolished under this act shall be townships of the county to  
 3 which the territory within such townships is attached until  
 4 such time as they may be changed by the board of county  
 5 commissioners of such county and the justices of the peace  
 6 ~~and constables~~ in such townships shall continue to hold such  
 7 offices for the terms for which they were elected; provided  
 8 that if a township of such abandoned county is divided and a  
 9 part attached to one and a part attached to another  
 10 adjoining county then the board of county commissioners of  
 11 the county to which attached, until further order of such  
 12 board, shall attach such territory to an adjoining township  
 13 within such county, and the terms of office of the justices  
 14 of the peace ~~and constables~~ within such divided township  
 15 shall cease and terminate at twelve (12:00) o'clock midnight  
 16 of the thirtieth day of June immediately following."

17 Section 7. Section 25-309, R.C.M. 1947, is amended to  
 18 read as follows:

19 "25-309. Fees of constable. For serving summons,  
 20 including copy on each defendant, besides mileage, fifty  
 21 cents.

22 For serving subpoena, including copy on each person,  
 23 besides mileage, twenty cents.

24 For all services in summoning a jury and taking charge  
 25 of same, two dollars.

1 For all services in serving an attachment on property,  
 2 or levying an execution, or executing an order of arrest, or  
 3 order for the delivery of personal property, including all  
 4 copies, one dollar.

5 For the expense in taking and keeping possession of or  
 6 preserving property under attachment, execution, or other  
 7 process, the same fees and upon the same conditions as  
 8 allowed to the sheriff.

9 For taking and receiving undertaking in any case in  
 10 which he is authorized, one dollar.

11 For serving every notice, rule or order, besides  
 12 mileage, including copy, one dollar.

13 For advertising any property for sale under execution,  
 14 exclusive of costs of publication, one dollar.

15 For serving writ of possession, besides mileage, two  
 16 dollars.

17 For all services in trial of right of property or  
 18 damages, besides mileage, three dollars.

19 For commissions for receiving and paying over money on  
 20 execution or other process where property has been levied on  
 21 and sold, two per cent; when collected without sale, one per  
 22 cent.

23 For mileage, the same as sheriff and under the same  
 24 conditions.

25 For executing in duplicate a certificate of sale

1 exclusive of the fee for filing, one dollar.

2 For drawing and executing a constable's deed, including  
3 acknowledgment, three dollars.

4 For making every arrest in a criminal proceeding, or  
5 executing a search warrant, besides mileage, one dollar and  
6 fifty cents.

7 For all services in summoning and taking charge of a  
8 jury, two dollars.

9 ~~For serving a subpoena, including copy on each person,~~  
10 ~~besides mileage, twenty cents.~~

11 For every mile necessarily traveled in executing any  
12 warrant, serving subpoena, or taking a person before a  
13 magistrate or to jail, the same mileage as in civil actions,  
14 and under the same conditions, and in addition, in serving a  
15 subpoena or warrant when two or more persons are named in  
16 any warrant or subpoena, in the same or different actions in  
17 the hands of the officer, and such persons live in the same  
18 direction, but one mileage must be charged, as provided for  
19 the mileage of sheriffs in civil actions.

20 When two or more persons are brought before a  
21 magistrate or to jail at the same time, or might have been  
22 so brought, the officer must be allowed but one mileage.

23 For conveying a person when under arrest, the actual  
24 expense incurred in the transportation of such person must  
25 be allowed by the board of county commissioners, but the

1 officer must pay his own expenses out of his mileage.

2 The total amount of fees allowed in criminal cases by  
3 the board of county commissioners must not exceed five  
4 hundred dollars ~~(\$500.00)~~ (\$500) in any one year. The excess  
5 must be paid into the contingent fund of the county  
6 treasury.

7 ~~That constables in townships having a population of~~  
8 ~~twelve thousand (12,000) people and not exceeding twenty~~  
9 ~~thousand (20,000) people, shall each receive a salary to be~~  
10 ~~fixed by resolution of the county commissioners, but not to~~  
11 ~~exceed \$900.00 per annum, payable monthly from the county~~  
12 ~~treasury. Constables in townships having a population of~~  
13 ~~more than twenty thousand (20,000) people shall each receive~~  
14 ~~a salary to be fixed by resolution of the county~~  
15 ~~commissioners, but not to exceed \$3,600.00 per annum,~~  
16 ~~payable monthly from the county treasury, and constables in~~  
17 ~~such townships where the population is twelve thousand~~  
18 ~~(12,000) people and not more than thirty-five thousand~~  
19 ~~(35,000) people shall receive no other fees for civil suits~~  
20 ~~or criminal actions except mileage in the performance of~~  
21 ~~their duties. Any such fees received by the constables shall~~  
22 ~~be turned over to the county treasurer. The board of county~~  
23 ~~commissioners shall set salaries for constables by~~  
24 resolution, provided that:

25 (1) in first class counties, the salary shall be seven

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1 thousand two hundred dollars (\$7,200) a year;

2 (2) in second class counties, the salary shall be six  
3 thousand dollars (\$6,000) a year;

4 (3) in third class counties, the salary shall be five  
5 thousand four hundred dollars (\$5,400) a year;

6 (4) in fourth class counties, the salary shall be four  
7 thousand eight hundred dollars (\$4,800) a year;

8 (5) in fifth, sixth and seventh class counties, the  
9 amount of the salary shall be determined by the board of  
10 county commissioners; provided, however, that it may be no  
11 higher than four thousand dollars (\$4,000) per year."

12 Section 8. Section 66-205, R.C.M. 1947, is amended to  
13 read as follows:

14 "66-205. Auctioneers ex officio. In any ~~city--or--town~~  
15 county where there is no auctioneer, the sheriff or a  
16 constable thereof is ex officio auctioneer, and is permitted  
17 to sell any property, real or personal, at public auction;  
18 and for any delinquency as such ex officio auctioneer he is  
19 liable on his official bond."

20 Section 9. Section 93-7709, R.C.M. 1947, is amended to  
21 read as follows:

22 "93-7709. Special constables--appointment. If in any  
23 ~~township~~ county there should be no duly elected, appointed,  
24 or qualified constable, but not otherwise, ~~a-justice-of--the~~  
25 peace the board of county commissioners in the county may,

1 at the request of a party, after being satisfied that it is  
2 expedient to do so, specially depute any proper person of  
3 suitable age not interested in the action to serve a  
4 summons, with or without an order to arrest the defendant,  
5 or with or without a writ of attachment, or to serve an  
6 execution. The justice shall be liable upon his official  
7 bond for all official acts of the person so deputed. Such  
8 deputation shall be in writing made on the process, and a  
9 note thereof made on the justice's docket."

-End-

STATE OF MONTANA

REQUEST NO. 51-75

FISCAL NOTE

Form BD-15

In compliance with a written request received Jan. 22, 19 75, there is hereby submitted a Fiscal Note or Senate Bill 126, 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:

Senate Bill 126 updates the status of constables to county officers and revises the schedules of fees and compensation for constables.

ASSUMPTIONS:

1. Presently 71 constables exist in Montana. The 71 figure is used for future predictions.
2. All constables are earning the maximum salaries allowed under current law.
3. All constables will receive the maximum salaries and expenses allowed under proposed law.

EXPENDITURE IMPACT:

The expenditure impact will be confined to local governments.

	FY76			FY 77		
	Estimated Amount Under Current Law	Estimated Amount Under Proposed Law	Estimated Increase	Estimated Amount Under Current Law	Estimated Amount Under Proposed Law	Estimated Increase
Personal Services	\$255,600	\$366,400	\$110,800	\$255,600	\$366,400	\$110,800
Operating Expenses	0	35,500	35,500	0	35,500	35,500
Total Expenditures	<u>\$255,600</u>	<u>\$401,900</u>	<u>\$146,300</u>	<u>\$255,600</u>	<u>\$401,900</u>	<u>\$146,300</u>

*Michael B. Phillips*

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/25/75