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*Senate* BILL NO. 356  
*Greely*

INTRODUCED BY \_\_\_\_\_

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A  
MAGISTRATE JUSTICE OF THE PEACE COURT SYSTEM."

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

Section 1. There may be created within a county or a  
judicial district of the state of Montana a separate court,  
known as the "district magistrate justice of the peace  
court".

Section 2. Establishment of a court. A district  
magistrate justice of the peace court may be created as  
follows:

(1) by resolution passed by the county commissioners  
of a county or combination of counties; or

(2) by the majority of the votes cast by the qualified  
voters of a county or combination of counties for a  
referendum requesting the creation of a district magistrate  
justice of the peace court, the election shall be held at  
the next election after the presentation of a petition  
requesting an election signed by more than one hundred fifty  
(150) qualified voters residing in the county. Upon passage  
of the resolution or referendum, the judge or judges of the  
district court shall establish a district magistrate justice

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of the peace court for the county or counties requesting  
that court and shall appoint one (1) or more magistrates  
justices of the peace as required and authorized. The  
appointee shall hold office until the next general election.

Section 3. Magistrate qualifications. To be eligible  
for the office of magistrate justice of the peace, a person  
must be a citizen of the United States, must have resided in  
the state two (2) years immediately before taking office and  
must have been admitted to practice law in Montana at least  
one (1) year prior to the date of appointment or election.  
A magistrate justice of the peace need not be a resident of  
the district for which he is appointed at the time of his  
appointment or election, but shall reside in the district  
for which he is appointed or elected during his term of  
office. A magistrate may not practice law. A justice of  
the peace, police judge, or municipal judge who meets the  
above qualifications may be appointed a magistrate, and may  
hold all three offices.

Section 4. Every magistrate justice of the peace shall  
hold court at the county seat, and at such other places, for  
each county for which he was appointed or elected and at  
times as directed by the district court.

Section 5. Magistrate jurisdiction. (1) Civil  
actions. The magistrate justice of the peace shall have  
jurisdiction over the following civil actions where the

1 subject of the action or some part thereof is situated, or  
 2 the cause or some part thereof arose within a county or  
 3 within a magistrate justice of the peace district which has  
 4 by resolution or referendum requested the creation of a  
 5 district or county magistrate justice of the peace court:

6 (a) actions arising on contract or in tort, if the sum  
 7 claimed or value of the property involved does not exceed  
 8 three thousand dollars (\$3,000);

9 (b) actions to recover the possession of personal  
 10 property, if the value of the property does not exceed three  
 11 thousand dollars (\$3,000);

12 (c) actions for a fine, penalty, or forfeiture not  
 13 exceeding three thousand dollars (\$3,000), given by statute,  
 14 or the ordinance of an incorporated city or town, relating  
 15 to any tax, impost, assessment, toll, or municipal fine;

16 (d) actions upon bonds or undertakings conditioned for  
 17 the payment of money, if the sum claimed does not exceed  
 18 three thousand dollars (\$3,000), though the penalty may  
 19 exceed that sum; and

20 (e) any action of which a justice of the peace has  
 21 jurisdiction by the laws of the state of Montana.

22 (2) Criminal actions. The magistrate justice of the  
 23 peace shall have jurisdiction of all misdemeanors as defined  
 24 by section 94-2-101, subdivision (3i), R.C.M. 1947,  
 25 committed within a county or within the magistrate justice

1 of the peace district which has by resolution or referendum  
 2 requested the creation of a county or district magistrate  
 3 justice of the peace court. A magistrate justice of the  
 4 peace shall have the same jurisdiction as a justice of the  
 5 peace in criminal matters.

6 Section 6. Where jurisdiction same as police court.  
 7 Where the council of any city or town located within a  
 8 county which has created a district magistrate justice of  
 9 the peace court approves by resolution or where a majority  
 10 of the voters of the city or town approve by referendum,  
 11 initiated in the same manner as provided in section 2 (2),  
 12 the district or county magistrate justice of the peace shall  
 13 have jurisdiction of all actions and proceedings, both civil  
 14 and criminal, which under law could have been brought in the  
 15 police court or municipal court of the city or town, and all  
 16 fines or assessments arising under city ordinance shall be  
 17 paid to the city treasurer.

18 Section 7. Assignment by district court -- effect.  
 19 Any district judge in the judicial district encompassing a  
 20 county or district for which there is a magistrate justice  
 21 of the peace may assign to the magistrate, either  
 22 individually or by class, any of the following matters which  
 23 have been filed in the district court:

24 (1) civil proceedings as follows:

25 (a) when the amount of money or damages or the value

1 of personal property claimed does not exceed three thousand  
2 dollars (\$3,000);

3 (b) proceedings in forcible entry, forcible detainer,  
4 and unlawful detainer, claim and delivery; and

5 (c) proceedings for the enforcement and foreclosure of  
6 common law or statutory liens of not to exceed three  
7 thousand dollars (\$3,000) on real or personal property.

8 (2) the following criminal and quasi-criminal  
9 proceedings:

10 (a) misdemeanor;

11 (b) proceedings pertaining to warrants for arrest or  
12 for searches and seizures; and

13 (c) proceedings for the preliminary examination to  
14 determine probable cause, commitment prior to trial or the  
15 release on bail of persons charged with criminal offenses.

16 (3) any juvenile proceedings.

17 All objections to the propriety of an assignment to a  
18 magistrate justice of the peace are waived unless made  
19 before the trial or hearing begins. No order or judgment is  
20 void or subject to collateral attack merely because rendered  
21 under improper assignment to a magistrate justice of the  
22 peace.

23 Section 8. Removal. A proceeding, civil or criminal,  
24 filed in a justice court within a county which has created a  
25 district magistrate justice of the peace court may be

1 removed to the magistrate justice of the peace court by any  
2 party thereto by filing a petition for removal within thirty  
3 (30) days of the commencement of the proceedings.

4 Section 9. Jury. When required, juries shall be  
5 selected and summoned by the district court, except that the  
6 jury shall consist of six (6) persons unless the parties in  
7 open court agree upon a lesser number.

8 Section 10. Maintenance of a record. A verbatim  
9 record of the proceedings and evidence at trials before a  
10 magistrate justice of the peace shall be maintained either  
11 by electrical devices or by stenographic means, as the  
12 magistrate justice of the peace may direct, but if a party  
13 to the action requests stenographic reporting of the  
14 proceedings, the reporting shall be done stenographically.  
15 The requesting party shall pay the costs of reporting the  
16 proceedings.

17 Section 11. Appeals. An appeal from any trial or  
18 proceeding in the magistrate justice of the peace court is  
19 to the district court and is made by filing with the clerk  
20 of the district court of the county wherein the action was  
21 tried, a notice of appeal within thirty (30) days of any  
22 final order or judgment, and service of a copy of the notice  
23 upon the adverse party as shall be provided by the rules.

24 Section 12. Small claims branch. If the district  
25 court finds the need exists, it may create and organize a

1 "small claims branch of the district magistrate justice of  
2 the peace court" which shall have jurisdiction only in cases  
3 for the recovery of money where the amount of each claim  
4 does not exceed five hundred dollars (\$500) and where the  
5 defendant resides within the county.

6 Section 13. Rules of procedure and appeal. (1) The  
7 supreme court shall adopt rules of procedure for the  
8 district magistrate justice of the peace court and the small  
9 claims branch. Until those rules are adopted, each district  
10 court may adopt provisional rules of procedure for a  
11 magistrate justice of the peace court, and for the small  
12 claims court created within the judicial district.

13 (2) The district court shall adopt rules of procedure  
14 for appeals from the magistrate justice of the peace court.

15 Section 14. Magistrate appointment -- salary.  
16 (1) The judge or judges of the judicial district in which  
17 the magistrate justice of the peace court is created shall  
18 appoint the magistrate justice of the peace to serve until  
19 the next general election at which district court judges are  
20 elected. Before entering upon the duties of his office, the  
21 magistrate, whether elected or appointed, shall take the  
22 constitutional oath of office which must be filed with the  
23 county clerk and recorder.

24 (2) A magistrate justice of the peace shall be  
25 nominated and elected on the nonpartisan judicial ballot in

1 the same manner as are judges of the district court. Each  
2 judicial office shall be a separate and independent office  
3 for election purposes and each office shall be numbered by  
4 the county commissioners and each candidate for magistrate  
5 justice of the peace shall specify the number of the office  
6 for which he seeks to be elected. The candidate for  
7 magistrate justice of the peace court may not file for more  
8 than one office, except that a magistrate justice of the  
9 peace shall be the justice of the peace in any county in his  
10 district and take the oath and occupy that office and at the  
11 same time may be police judge, but may only draw one salary.  
12 Section 23-4511, R.C.M. 1947, prohibiting political party  
13 endorsement for judicial officers applies to magistrate  
14 justices of the peace.

15 The magistrate justice of the peace shall be paid a  
16 salary of fifteen thousand dollars (\$15,000) per year.

17 Section 15. Clerk. The clerk of the district court  
18 shall be the clerk for the magistrate court and the small  
19 claims court and shall keep all files and records of the two  
20 courts.

21 Section 16. Fees. The clerk of court of any county  
22 within the magistrate justice of the peace district court  
23 shall collect a fee of five dollars (\$5) upon filing a  
24 complaint in either magistrate justice of the peace court or  
25 the small claims court and five dollars (\$5) for the filing

1 of any judgment in either of those courts. All fees  
 2 received shall be deposited with the county treasurer to the  
 3 county general fund, and any city money received by the  
 4 clerk shall be deposited with the city treasurer. The  
 5 provisions of law relating to filing forma pauperis is  
 6 applicable. The prevailing party is entitled to costs in  
 7 either magistrate justice of the peace court or small claims  
 8 court. The sheriff shall serve all summons and other orders  
 9 and citations and shall receive the same fee as for serving  
 10 district court documents.

11 Section 17. Entity bearing expenses. All expenses of  
 12 the magistrate justice of the peace court shall be borne by  
 13 the county in which the magistrate justice of the peace sits  
 14 and if the same magistrate justice of the peace serves more  
 15 than one county within the same magistrate justice of the  
 16 peace district, then and in that event, the several counties  
 17 shall bear proportionate share of the expense. If the  
 18 justice serves a city, the city shall bear a proportionate  
 19 share of the expense.

20 Section 18. Disqualification. A magistrate justice of  
 21 the peace may disqualify himself or may be disqualified by  
 22 any party filing an affidavit as required by section 93-901,  
 23 R.C.M. 1947, for district judges and when one affidavit is  
 24 properly filed the magistrate justice of the peace shall  
 25 call in another magistrate if there is one in the district,

1 or he may call in any qualified lawyer in the district to  
 2 act as magistrate justice of the peace pro tem. A replacing  
 3 judge shall be paid at the rate of one hundred dollars  
 4 (\$100) per day from the same fund as the magistrate justice  
 5 of the peace is paid. The second or next disqualification  
 6 shall be treated in the same manner, provided only two  
 7 disqualifications are allowed on each side.

8 Section 19. Removal from office. A magistrate justice  
 9 of the peace may be removed from office in the same manner  
 10 as a district judge as provided by Article VII, section 11,  
 11 of the Montana constitution and by sections 93-718 through  
 12 93-728, R.C.M. 1947.

13 Section 20. Term of office. The term of office of the  
 14 magistrate justice of the peace shall be four (4) years as  
 15 fixed by Article VII, section 7, of the constitution.

-End-

## STATE OF MONTANA

REQUEST NO. 156-75

## FISCAL NOTE

Form BD-13

In compliance with a written request received Feb. 3, 1975, there is hereby submitted a Fiscal Note for SB 356 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 establishing a magistrate justice of the peace court system.

**ASSUMPTIONS:**

1. There would be the same number of district magistrate justice of the peace courts as there are district courts (18).
2. Twenty eight (28) magistrate justices of the peace would be appointed.
3. Costs of the magistrate justice of the peace courts would approximate that for district courts; that is travel expenses of approximately \$1,800 per magistrate.
4. SB 356 would have no impact on state expenditures or revenues.

**LOCAL IMPACT:**

SB 356 provides for a \$5 fee for filing a complaint and a \$5 fee for filing a judgement in the proposed courts. Under the proposed law, a claimant could file in any one of four courts; therefore, the increased revenues brought in by the magistrate courts are not possible to predict. The magistrate may be a justice of the peace, police judge, or municipal judge and hold all three offices, but draw only one salary. If the magistrates appointed are currently holding one of said offices, the additional salary expenditures incurred under the proposed law would be limited to the amount necessary to increase salaries to \$15,000. The estimated expenditures set forth below are based on the total cost of a magistrate justice of the peace court system.

Expenditures by category

	FY76	FY77
Personal Services	\$478,800	\$478,800
Operating expenses	<u>50,400</u>	<u>50,400</u>
Total estimated expenditures for magistrate court system.	<u>\$529,200</u>	<u>\$529,200</u>

**CONCLUSION:**

Enactment of SB 356 would result in local government expenditures of an estimated \$1.06 million during the biennium.

*Michael B. Pullinger*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/8/75

Approved by Committee  
on Judiciary

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INTRODUCED BY GREELY, TOWE

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 13 93-728, R.C.M. 1947. .

14 Section 20. Term of office. The term of office of the  
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 16 fixed by Article VII, section 7, of the constitution.

-End-