

HOUSE BILL 799

IN THE HOUSE

February 14, 1979	Introduced and referred to Committee on Judiciary.
February 20, 1979	Committee recommend bill, do not pass.
February 21, 1979	Report adopted.

1 HOUSE BILL NO. 799
 2 INTRODUCED BY John Roy De Vetterling
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE OFFICE OF
 5 DISTRICT ATTORNEY TO REPLACE THE OFFICE OF COUNTY ATTORNEY
 6 IN CERTAIN COUNTIES; PROVIDING FOR FUNDING AND DEPUTY
 7 DISTRICT ATTORNEYS; AND AMENDING SECTIONS 7-4-2203,
 8 7-4-2206, 7-4-2502, 7-4-2702, AND 7-4-2705, MCA."

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

11 NEW SECTION. Section 1. Office of district attorney
 12 established. (1) In each county with a population in excess
 13 of 60,000, the office of county attorney is replaced by the
 14 office of district attorney. The district attorney shall
 15 assume the jurisdiction, rights, powers, and duties of the
 16 county attorney except that, upon an agreement between the
 17 district attorney and a majority of the county governing
 18 body, noncriminal functions of the office of county attorney
 19 may be transferred to an attorney appointed by the governing
 20 body.

21 (2) All references to the county attorney in this code
 22 shall be interpreted to include the district attorney unless
 23 otherwise provided or the context clearly indicates
 24 otherwise.

25 NEW SECTION. Section 2. Qualifications, election, and

1 term of office of district attorney. The district attorney
 2 must have the same qualifications as a district judge and
 3 shall be elected on a nonpartisan ballot to a 6-year term of
 4 office.

5 NEW SECTION. Section 3. Deputy district attorneys.
 6 The district attorney, with the approval of the county
 7 governing body, may appoint a chief deputy district attorney
 8 and such other deputy district attorneys as he considers
 9 necessary to properly discharge the duties of his office.

10 NEW SECTION. Section 4. Salaries of district attorney
 11 and deputies. The salary of the district attorney shall be
 12 the same as that of a district judge. The salary of the
 13 chief deputy district attorney shall be 90% of the salary of
 14 the district attorney. The salary of other deputy district
 15 attorneys with 5 years prosecutorial or comparable
 16 experience may not be less than 70% or more than 90% of the
 17 district attorney's salary. No deputy district attorney may
 18 be paid more than 90% of the salary of the district
 19 attorney.

20 NEW SECTION. Section 5. Restrictions on private
 21 practice of law. The district attorney and chief deputy and
 22 deputy district attorneys may not engage in the private
 23 practice of law or share directly or indirectly in the
 24 profits of any private practice of law, except that each of
 25 them may represent himself and his immediate family.

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1 NEW SECTION. Section 6. Removal of deputies from
 2 office. (1) The chief deputy district attorney serves at the
 3 pleasure of the district attorney. All other deputy
 4 district attorneys also serve at the pleasure of the
 5 district attorney, except that the district attorney may
 6 appoint a deputy other than the chief deputy:

- 7 (a) under a contract for a term not to exceed 3 years;
- 8 or
- 9 (b) whenever the deputy has 5 years continuous
 10 service, under a contract or otherwise.

11 (2) A deputy district attorney appointed under
 12 subsection (1)(a) or (1)(b) may be discharged only for cause
 13 and, if a hearing is requested by the county governing body,
 14 after such hearing.

15 (3) "For cause" means:

- 16 (a) failure or refusal to follow the rules and
 17 procedures of the office;
- 18 (b) conduct that discredits the office;
- 19 (c) failure to perform the duties of the position in a
 20 satisfactory manner; or
- 21 (d) willful violations of the law or the code of
 22 ethics of the American bar association.

23 (4) If a hearing is held, it shall be conducted in the
 24 county before a district judge of a district other than the
 25 one in which the county is located. The chief justice of

1 the supreme court shall select the district judge. The
 2 rules of evidence do not apply in the hearing. The
 3 determination of the judge is final.

4 NEW SECTION. Section 7. Provision of services to
 5 other counties. The district attorney may provide services
 6 to adjoining counties pursuant to the provisions of the
 7 Interlocal Cooperation Act, Title 7, chapter 11, part 1.

8 NEW SECTION. Section 8. Funding of office of district
 9 attorney. In lieu of the state payment for one-half of the
 10 salary of the county attorney provided for in 7-4-2502, for
 11 those counties having a district attorney the state shall
 12 contribute to the district attorney's budget \$1 for each
 13 person residing in the county. This contribution shall be
 14 disbursed quarterly from the state treasury upon the warrant
 15 of the state auditor payable to the general fund of the
 16 county having the district attorney. The county governing
 17 body shall determine the budget for the office of the
 18 district attorney and provide additional funds from the
 19 county general fund it considers necessary to the proper
 20 function of that office. The governing body shall provide
 21 adequate physical facilities for the district attorney and
 22 his staff.

23 Section 9. Section 7-4-2203, MCA, is amended to read:
 24 "7-4-2203. County officers. (1) There may be elected
 25 or appointed in each county the following county officers:

1 who shall possess the qualifications for suffrage prescribed
2 by the Montana constitution and such other qualifications as
3 may be prescribed by law:

- 4 (a) one county attorney unless there is a district
5 attorney;
6 (b) one clerk of the district court;
7 (c) one county clerk;
8 (d) one sheriff;
9 (e) one treasurer;
10 (f) one county superintendent of schools;
11 (g) one county surveyor;
12 (h) one assessor;
13 (i) one coroner;
14 (j) one public administrator; and
15 (k) at least one justice of the peace.

16 (2) The commissioners may appoint at their discretion
17 constables. Not more than one constable may be appointed
18 for each justice of the peace court.

19 (3) County auditors and all elective township officers
20 may be elected at each general election as now provided by
21 law."

22 Section 10. Section 7-4-2206, MCA, is amended to read:

23 "7-4-2206. Vacancies. (1) Vacancies in all county,
24 township, and precinct offices, except that of county
25 commissioner, shall be filled by appointment by the board of

1 county commissioners.

2 (2) The appointee shall hold his office, if elective,
3 until the next general election, and if not elective, the
4 appointee serves at the pleasure of the commissioners.

5 (3) Whenever there is a vacancy in the office of
6 county attorney, the commissioners may contract with an
7 adjoining county that has a district attorney to have that
8 district attorney assume the functions of the vacant
9 office."

10 Section 11. Section 7-4-2502, MCA, is amended to read:

11 "7-4-2502. Payment of salaries of county officials and
12 assistants. (1) (a) Except as provided in subsection (2),
13 the salaries of the several county officers and their
14 assistants must be paid monthly out of the general fund of
15 the county and upon the order of the board of county
16 commissioners.

17 (b) Salaries must be allowed and paid monthly upon the
18 order of the board and paid out of the contingent fund.

19 (2) (a) The Except as provided in [section 8], the
20 salary of the county attorney is payable monthly, with
21 one-half from the general fund of the county and the other
22 one-half from the state treasury upon the warrant of the
23 state auditor.

24 (b) The county commissioners of each county shall,
25 within 30 days after the election or appointment to fill a

1 vacancy for any cause of any county attorney, certify such
 2 election or appointment to the state auditor, who shall
 3 thereafter draw warrants for such salary in the same manner
 4 as for state officers. In case of a vacancy, the county
 5 commissioners shall immediately notify the state auditor,
 6 and the auditor shall compute the salary due on the basis of
 7 said notification.

8 (3) The board has jurisdiction and power, under such
 9 limitations and restrictions as are prescribed by law, to
 10 fix the compensation of all county officers not otherwise
 11 fixed in this code or by general or special law and to
 12 provide for the payment of the same."

13 Section 12. Section 7-4-2702, MCA, is amended to read:

14 "7-4-2702. Procedure to fill vacancy in office of
 15 county attorney. (1) Whenever a vacancy in the office of
 16 county attorney shall arise in any county and there is no
 17 licensed attorney residing in said county who is eligible to
 18 be appointed to fill said vacancy, the board of county
 19 commissioners ~~may contract with an adjoining county that has~~
 20 ~~a district attorney to have that district attorney assume~~
 21 ~~the functions of the vacant office. In the alternative the~~
 22 ~~board~~ is authorized and has the power to employ special
 23 counsel from without the county, who shall be designated and
 24 officially known as the "acting county attorney" and who
 25 during said employment shall be vested with all the powers

1 and shall perform all the duties of the county attorney,
 2 including the filing of all complaints, informations, and/or
 3 other proceedings for and in which the county or state may
 4 be a party and the prosecution and defense of the same to
 5 the same extent and with the same force and effect as if he
 6 were the regular qualified county attorney. Said attorney
 7 shall be paid a monthly compensation not to exceed the
 8 monthly salary of the county attorney. Whenever any such
 9 attorney is employed, the county clerk of said county shall
 10 certify to the attorney general the name of such acting
 11 county attorney and the fact of his employment.

12 (2) Whenever an acting county attorney has been
 13 employed and any licensed attorney shall establish residence
 14 in said county and become eligible to hold the office of
 15 county attorney, it shall be the duty of the board to
 16 appoint such attorney to fill said vacancy, and the
 17 employment of said ~~special~~ acting county attorney shall
 18 thereupon cease."

19 Section 13. Section 7-4-2705, MCA, is amended to read:

20 "7-4-2705. Employment of special counsel in certain
 21 counties. ~~Except in counties of the first class, the~~ The
 22 board of county commissioners has the power, whenever in its
 23 judgment the ends of justice or the interest of the county
 24 require it, to employ or authorize the county attorney to
 25 employ any district attorney or other special counsel to

1 assist in the prosecution of any criminal case pending in
2 such county or to represent said county in any civil action
3 in which such county is a party."

4 Section 14. Transition. On July 1, 1979, the county
5 attorney of each county with a population in excess of
6 60,000 becomes the district attorney and shall continue to
7 serve in accordance with the term of office under which he
8 was elected. All subsequent elections shall be for a 6-year
9 term.

-End-

STATE OF MONTANA

Request No. 374-79

FISCAL NOTE

Form BD-15

In compliance with a written request received February 15, 1979, there is hereby submitted a Fiscal Note for House Bill 799 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:

House Bill 799 replaces the office of the County Attorney with the office of District Attorney in counties of over 60,000 population.

ASSUMPTIONS:

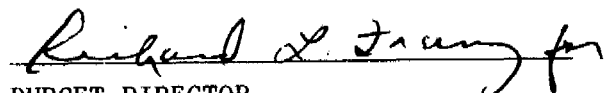
1. The staffing patterns of the three County Attorney's offices converted to District Attorney's offices under the bill would remain the same.
2. The salaries of Deputy District Attorney's will be the same as the salaries currently paid Deputy County Attorneys; however they will increase proportionately to the increase in the District (County) Attorney's salary (17%).

STATE FISCAL IMPACT:

State General Fund contributions to support District (County) Attorney's budgets would increase under the bill by \$204,654 annually.

LOCAL IMPACT:

The costs of operating a County Attorneys/District Attorneys office in the three applicable counties will be reduced in total approximately \$99,000 per year.


BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 2/20/79