

HOUSE BILL NO. 558

INTRODUCED BY D. BROWN, KEYSER

IN THE HOUSE

January 29, 1981	Introduced and referred to Committee on State Administration.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
February 23, 1981	Second reading, do pass.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading, passed. Ayes, 93; Noes, 2. Transmitted to Senate.

IN THE SENATE

March 3, 1981	Introduced and referred to Committee on Local Government.
March 26, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 28, 1981	Second reading, concurred in.
March 30, 1981	Motion pass consideration.
March 31, 1981	On motion rules suspended. Bill allowed to be transmitted on 71st legislative day. Motion adopted. Third reading, concurred in as amended. Ayes, 49; Noes, 0.

IN THE HOUSE

April 1, 1981 Returned from Senate with amendments.

April 8, 1981 Second reading, amendments not concurred in.

 On motion Conference Committee requested.

April 9, 1981 Conference Committee appointed.

April 16, 1981 Conference Committee dissolved.

 On motion new Free Conference Committee requested and appointed.

April 21, 1981 Free Conference Committee reported and dissolved.

April 22, 1981 Second reading, Free Conference Committee report adopted.

 On motion rules suspended and Free Conference Committee report placed on third reading this day.

 Third reading, Free Conference Committee report adopted.
Ayes, 90; Noes, 5. Transmitted to Senate.

IN THE SENATE

April 23, 1981 Free Conference Committee report adopted.

IN THE HOUSE

April 23, 1981 Returned from Senate. Sent to enrolling.

 Reported correctly enrolled.

1 HOUSE BILL NO. 558
 2 INTRODUCED BY *Dave Brown*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE
 5 RESTRICTIONS IMPOSED ON THE COMPENSATION OF A DEPUTY SHERIFF
 6 OR AN UNDERSHERIFF DO NOT APPLY TO ANY BENEFITS OR ANY
 7 PAYMENTS FOR HOURS WORKED OVERTIME; AMENDING SECTION
 8 7-4-2505, MCA."
 9

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

11 Section 1. Section 7-4-2505, MCA, is amended to read:

12 "7-4-2505. Amount of compensation for deputies and
 13 assistants. (1) ~~Except as provided in subsection (2)~~
 14 Subject to subsections (2) and (3), the boards of county
 15 commissioners in the several counties in the state shall
 16 have the power to fix the compensation allowed any deputy or
 17 assistant of the following officers:

- 18 (a) sheriff;
- 19 (b) clerk and recorder;
- 20 (c) clerk of the district court;
- 21 (d) treasurer;
- 22 (e) assessor;
- 23 (f) county attorney;
- 24 (g) auditor.

25 (2) (a) Except as provided in subsection (2)(b), the

1 salary of no a deputy or an assistant shall ~~may not~~ be more
 2 than 90% of the salary of the officer under whom such deputy
 3 or assistant is serving.

4 (b) In fixing the compensation allowed the
 5 undersheriff, the board must fix the same at 95% of the
 6 salary of the officers under whom such undersheriff is
 7 serving. In fixing the compensation allowed the deputy
 8 sheriffs, the board must fix the same at 90% of the salary
 9 of the officer under whom such deputy sheriff is serving,
 10 except in counties of the first, second, or third class, in
 11 which the board must fix the same at not less than 75% or
 12 more than 90% of the salary of the officer under whom such
 13 deputy sheriff is serving.

14 (c) Where any deputy or assistant is employed for a
 15 period of less than 1 year, the compensation of such deputy
 16 or assistant shall be for the time so employed, provided the
 17 rate of such compensation shall not be in excess of the
 18 rates now provided by law for similar deputies and
 19 assistants except as provided herein.

20 (d) Deputy assessors' salaries shall be the same as
 21 paid the deputy clerk and recorder.

22 ~~(3) For purposes of subsection (2)(b), the term~~
 23 ~~"compensation" means the base rate of pay and does not mean~~
 24 ~~any benefits or any payments for hours worked overtime."~~

-End-

-2- INTRODUCED BILL
 HB 558

Approved by Committee
on State Administration

1 HOUSE BILL NO. 558
 2 INTRODUCED BY D. BROWN, KEYSER
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 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE--THAT--THE
 5 RESTRICTIONS--IMPOSED--ON REVISE THE COMPENSATION OF A DEPUTY
 6 SHERIFF OR AN UNDERSHERIFF DO NOT APPLY TO ANY--BENEFITS--OR
 7 ANY--PAYMENTS--FOR HOURS WORKED OVERTIME PROVISIONS RELATING
 8 TO DEPUTY SHERIFFS AND UNDERSHERIFFS; AMENDING SECTION
 9 SECTIONS 7-4-2505 AND 39-3-406, MCA."

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 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 7-4-2505, MCA, is amended to read:
 13 "7-4-2505. Amount of compensation for deputies and
 14 assistants. (1) ~~Except--as--provided--in--subsection--(2),~~
 15 Subject to subsections SUBSECTION (2) and (3), the boards of
 16 county commissioners in the several counties in the state
 17 shall have the power to fix the compensation allowed any
 18 deputy or assistant of the following officers:

- 19 ~~(a) sheriff;~~
- 20 ~~(b) (A) clerk and recorder;~~
- 21 ~~(b) (B) clerk of the district court;~~
- 22 ~~(b) (C) treasurer;~~
- 23 ~~(b) (D) assessor;~~
- 24 ~~(b) (E) county attorney;~~
- 25 ~~(b) (F) auditor.~~

1 ~~(2) (a) Except as provided in subsection (2)(b), the~~
 2 THE salary of no a deputy or an assistant LISTED IN
 3 SUBSECTION (1) shall may not be more than 90% of the salary
 4 of the officer under whom such deputy or assistant is
 5 serving.

6 ~~(b) In fixing the compensation allowed the~~
 7 ~~undersheriff, the board must fix the same at 95% of the~~
 8 ~~salary of the officers under whom such undersheriff is~~
 9 ~~serving. In fixing the compensation allowed the deputy~~
 10 ~~sheriffs, the board must fix the same at 90% of the salary~~
 11 ~~of the officer under whom such deputy sheriff is serving,~~
 12 ~~except in counties of the first, second, or third class, in~~
 13 ~~which the board must fix the same at not less than 75% or~~
 14 ~~more than 90% of the salary of the officer under whom such~~
 15 ~~deputy sheriff is serving.~~

16 ~~(c) (B)~~ Where any deputy or assistant is employed for a
 17 period of less than 1 year, the compensation of such deputy
 18 or assistant shall be for the time so employed, provided the
 19 rate of such compensation shall not be in excess of the
 20 rates now provided by law for similar deputies and
 21 assistants except as provided herein.

22 ~~(d) (C)~~ Deputy assessors' salaries shall be the same as
 23 paid the deputy clerk and recorder.

24 ~~(3) For purposes of subsection (2)(b), the term~~
 25 ~~"compensation" means the base rate of pay and does not mean~~

1 ~~any benefits or any payments for hours worked overtime."~~

2 NEW SECTION. SECTION 2. COMPENSATION OF UNDERSHERIFF
3 AND DEPUTY SHERIFF. (1) THE SHERIFF SHALL FIX THE
4 COMPENSATION OF THE UNDERSHERIFF AT 95% OF THE SALARY OF
5 THAT SHERIFF.

6 (2) (A) THE SHERIFF SHALL FIX THE COMPENSATION OF THE
7 DEPUTY SHERIFF BASED UPON A PERCENTAGE OF THE SALARY OF THAT
8 SHERIFF ACCORDING TO THE FOLLOWING SCHEDULE:

9 IN COUNTIES WITH POPULATION OF:

10 <u>BELOW 15,000</u>	<u>75% TO 90%</u>
11 <u>15,000 TO 29,999</u>	<u>70% TO 90%</u>
12 <u>30,000 TO 65,999</u>	<u>65% TO 90%</u>
13 <u>66,000 TO 99,999</u>	<u>60% TO 90%</u>
14 <u>100,000 AND OVER</u>	<u>55% TO 90%</u>

15 (B) THE SHERIFF SHALL ADJUST THE COMPENSATION OF THE
16 DEPUTY SHERIFF WITHIN THE RANGE PRESCRIBED IN SUBSECTION (A)
17 ACCORDING TO A RANK STRUCTURE IN THE DEPARTMENT.

18 (3) FOR PURPOSES OF THIS SECTION, THE TERM
19 "COMPENSATION" MEANS THE BASE RATE OF PAY AND DOES NOT MEAN
20 LONGEVITY PAYMENTS OR PAYMENTS FOR HOURS WORKED OVERTIME.

21 NEW SECTION. SECTION 3. OPTION TO ESTABLISH
22 WORKPERIOD IN LIEU OF WORKWEEK. (1) A SHERIFF'S DEPARTMENT
23 MAY ESTABLISH A WORKPERIOD OTHER THAN THE WORKWEEK PROVIDED
24 IN 39-3-405 FOR DETERMINING WHEN AN EMPLOYEE MUST BE PAID
25 OVERTIME.

1 (2) THE AGGREGATE OF ALL WORKPERIODS IN A YEAR, WHEN
2 EXPRESSED IN HOURS, MAY NOT EXCEED 2,080 HOURS.

3 NEW SECTION. SECTION 4. COMPENSATION FOR HOURS WORKED
4 OVERTIME. ANY UNDERSHERIFF OR DEPUTY SHERIFF WHO WORKS IN
5 EXCESS OF HIS REGULARLY SCHEDULED WORKPERIOD MUST BE
6 COMPENSATED FOR THE HOURS WORKED IN EXCESS OF THE WORKPERIOD
7 AT A RATE OF NOT LESS THAN 1 1/2 TIMES THE HOURLY RATE AT
8 WHICH HE IS EMPLOYED.

9 NEW SECTION. SECTION 5. LONGEVITY PAYMENTS.
10 BEGINNING ON THE DATE OF HIS FIRST ANNIVERSARY OF EMPLOYMENT
11 WITH THE DEPARTMENT AND ADJUSTED ANNUALLY, A DEPUTY SHERIFF
12 OR UNDERSHERIFF IS ENTITLED TO RECEIVE A LONGEVITY PAYMENT
13 AMOUNTING TO 1% OF HIS ANNUAL SALARY FOR EACH YEAR OF
14 SERVICE WITH THE DEPARTMENT. THIS PAYMENT SHALL BE MADE IN
15 EQUAL MONTHLY INSTALLMENTS.

16 SECTION 6. SECTION 39-3-406, MCA, IS AMENDED TO READ:

17 "39-3-406. Exclusions. (1) The provisions of 39-3-404
18 and 39-3-405 shall not apply with respect to:

19 (a) students participating in a distributive education
20 program established under the auspices of an accredited
21 educational agency;

22 (b) persons employed in private homes whose duties
23 consist of menial chores such as baby sitting, mowing lawns,
24 cleaning sidewalks;

25 (c) persons employed directly by the head of a

1 household to care for children dependent upon the head of
2 the household;

3 (d) immediate members of the family of an employer or
4 persons dependent upon an employer for half or more of their
5 support in the customary sense of being a dependent;

6 (e) any persons not regular employees thereof who
7 voluntarily offer their services to a nonprofit organization
8 on a fully or partially reimbursed basis;

9 (f) handicapped workers engaged in work which is
10 incidental to training or evaluation programs or whose
11 earning capacity is so severely impaired that they are
12 unable to engage in competitive employment;

13 (g) apprentices or learners, who may be exempted by
14 the commissioner for a period not to exceed 30 days of their
15 employment;

16 (h) learners under the age of 18 who are employed as
17 farm workers, provided that such exclusion shall not exceed
18 a period of 180 days from their initial date of employment
19 and further provided that during this exclusion period wages
20 paid such learners may not be less than 50% of the minimum
21 wage rate established in this part;

22 (i) retired or semiretired persons performing
23 part-time incidental work as a condition of their residence
24 on a farm or ranch;

25 (j) any individual employed in a bona fide executive,

1 administrative, or professional capacity as these terms are
2 defined and delimited by regulations of the commissioner;

3 (k) any individual employed by the United States of
4 America.

5 (2) The provisions of 39-3-405 do not apply to:

6 (a) an employee with respect to whom the United States
7 Secretary of Transportation has power to establish
8 qualifications and maximum hours of service pursuant to the
9 provisions of 49 U.S.C. 304;

10 (b) an employee of an employer subject to the
11 provisions of part I of the Interstate Commerce Act;

12 (c) an individual employed as an outside buyer of
13 poultry, eggs, cream, or milk, in their raw or natural
14 state;

15 (d) a salesman, partsman, or mechanic paid on a
16 commission or contract basis and primarily engaged in
17 selling or servicing automobiles, trucks, mobile homes,
18 recreational vehicles, or farm implements if he is employed
19 by a nonmanufacturing establishment primarily engaged in the
20 business of selling such vehicles or implements to ultimate
21 purchasers;

22 (e) a salesman primarily engaged in selling trailers,
23 boats, or aircraft if he is employed by a nonmanufacturing
24 establishment primarily engaged in the business of selling
25 trailers, boats, or aircraft to ultimate purchasers;

1 (f) an employee employed as a driver or driver's
2 helper making local deliveries who is compensated for such
3 employment on the basis of trip rates, or other delivery
4 payment plan, if the commissioner finds that such plan has
5 the general purpose and effect of reducing hours worked by
6 such employees to or below the maximum workweek applicable
7 to them under 39-3-405;

8 (g) an employee employed in agriculture or in
9 connection with the operation or maintenance of ditches,
10 canals, reservoirs, or waterways not owned or operated for
11 profit and not operated on a sharecrop basis and which are
12 used exclusively for supply and storing of water for
13 agricultural purposes;

14 (h) an employee with respect to his employment in
15 agriculture by a farmer, notwithstanding other employment of
16 such employee in connection with livestock auction
17 operations in which such farmer is engaged as an adjunct to
18 the raising of livestock, either on his own account or in
19 conjunction with other farmers, if such employee is:

20 (i) primarily employed during his workweek in
21 agriculture by such farmer; and

22 (ii) paid for his employment in connection with such
23 livestock auction operations at a wage rate not less than
24 that prescribed by 39-3-404;

25 (i) an employee of an establishment commonly

1 recognized as a country elevator, including an establishment
2 which sells products and services used in the operation of a
3 farm, if no more than five employees are employed by the
4 establishment;

5 (j) a driver employed by an employer engaged in the
6 business of operating taxicabs;

7 (k) an employee who is employed with his spouse by a
8 nonprofit educational institution to serve as the parents of
9 children who are orphans or one of whose natural parents is
10 deceased or who are enrolled in such institution and reside
11 in residential facilities of the institution so long as the
12 children are in residence at the institution and so long as
13 such employee and his spouse reside in such facilities and
14 receive, without cost, board and lodging from the
15 institution and are together compensated, on a cash basis,
16 at an annual rate of not less than \$10,000; or

17 (l) an employee employed in planting or tending trees;
18 cruising, surveying, or felling timber; or transporting logs
19 or other forestry products to a mill, processing plant,
20 railroad, or other transportation terminal if the number of
21 employees employed by his employer in such forestry or
22 lumbering operations does not exceed eight; or

23 (m) an employee of a sheriff's department who is
24 working under an established workperiod in lieu of a
25 workweek pursuant to [section 3]."

1 NEW SECTION. SECTION 7. CONSTRUCTION IN EVENT OF
2 CONFLICT. IF THERE IS A CONFLICT BETWEEN SECTIONS 2 THROUGH
3 5 AND ANY OTHER LAW, SECTIONS 2 THROUGH 5 GOVERN WITH
4 RESPECT TO UNDERSHERIFFS AND DEPUTY SHERIFFS.

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(a) sheriff;

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(2) (a) Except as provided in subsection (2)(b), the salary of no a deputy or an assistant LISTED IN SUBSECTION (1) shall may not be more than 90% of the salary of the officer under whom such deputy or assistant is serving.

(b) In fixing the compensation allowed the undersheriff, the board must fix the same at 95% of the salary of the officers under whom such undersheriff is serving. In fixing the compensation allowed the deputy sheriffs, the board must fix the same at 98% of the salary of the officer under whom such deputy sheriff is serving, except in counties of the first, second, or third class, in which the board must fix the same at not less than 75% or more than 98% of the salary of the officer under whom such deputy sheriff is serving.

(c)(B) Where any deputy or assistant is employed for a period of less than 1 year, the compensation of such deputy or assistant shall be for the time so employed, provided the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants except as provided herein.

(d)(C) Deputy assessors' salaries shall be the same as paid the deputy clerk and recorder.

(3) For purposes of subsection (2)(b), the term "compensation" means the base rate of pay and does not mean

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1 household to care for children dependent upon the head of
2 the household;

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4 persons dependent upon an employer for half or more of their
5 support in the customary sense of being a dependent;

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7 voluntarily offer their services to a nonprofit organization
8 on a fully or partially reimbursed basis;

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10 incidental to training or evaluation programs or whose
11 earning capacity is so severely impaired that they are
12 unable to engage in competitive employment;

13 (g) apprentices or learners, who may be exempted by
14 the commissioner for a period not to exceed 30 days of their
15 employment;

16 (h) learners under the age of 18 who are employed as
17 farm workers, provided that such exclusion shall not exceed
18 a period of 180 days from their initial date of employment
19 and further provided that during this exclusion period wages
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15 (d) a salesman, partsman, or mechanic paid on a
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4 establishment;

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HB 0558/02

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(c)(3) Where any deputy or assistant is employed for a period of less than 1 year, the compensation of such deputy or assistant shall be for the time so employed, provided the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants except as provided herein.

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~~any benefits or any payments for hours worked overtime"~~

~~NEW SECTION. SECTION 2. COMPENSATION OF UNDERSHERIFF AND DEPUTY SHERIFF. (1) THE SHERIFF SHALL FIX THE COMPENSATION OF THE UNDERSHERIFF AT 95% OF THE SALARY OF THAT SHERIFF.~~

~~(2) (A) THE SHERIFF SHALL FIX THE COMPENSATION OF THE DEPUTY SHERIFF BASED UPON A PERCENTAGE OF THE SALARY OF THAT SHERIFF ACCORDING TO THE FOLLOWING SCHEDULE:~~

IN COUNTIES WITH POPULATION OF:	PERCENTAGE:
BELOW 15,000	75% TO 90%
15,000 TO 29,999	70% TO 90%
30,000 TO 65,999	65% TO 90%
66,000 TO 99,999	60% TO 90%
100,000 AND OVER	55% TO 90%

~~(B) THE SHERIFF SHALL ADJUST THE COMPENSATION OF THE DEPUTY SHERIFF WITHIN THE RANGE PRESCRIBED IN SUBSECTION (A) ACCORDING TO A RANK STRUCTURE IN THE DEPARTMENT.~~

~~(3) FOR PURPOSES OF THIS SECTION, THE TERM "COMPENSATION" MEANS THE BASE RATE OF PAY AND DOES NOT MEAN LONGEVITY PAYMENTS OR PAYMENTS FOR HOURS WORKED OVERTIME.~~

~~NEW SECTION. SECTION 2. OPTION TO ESTABLISH WORKPERIOD IN LIEU OF WORKWEEK. (1) A SHERIFF'S DEPARTMENT MAY ESTABLISH A WORKPERIOD OTHER THAN THE WORKWEEK PROVIDED IN 39-3-405 FOR DETERMINING WHEN AN EMPLOYEE MUST BE PAID OVERTIME.~~

(2) THE AGGREGATE OF ALL WORKPERIODS IN A YEAR, WHEN EXPRESSED IN HOURS, MAY NOT EXCEED 2,080 HOURS.

NEW SECTION. SECTION 3. COMPENSATION FOR HOURS WORKED OVERTIME. ANY UNDERSHERIFF OR DEPUTY SHERIFF WHO WORKS IN EXCESS OF HIS REGULARLY SCHEDULED WORKPERIOD MUST BE COMPENSATED FOR THE HOURS WORKED IN EXCESS OF THE WORKPERIOD AT A RATE OF NOT LESS THAN 1 1/2 TIMES THE HOURLY RATE AT WHICH HE IS EMPLOYED.

NEW SECTION. SECTION 4. LONGEVITY PAYMENTS. BEGINNING ON THE DATE OF HIS FIRST ANNIVERSARY OF EMPLOYMENT WITH THE DEPARTMENT AND ADJUSTED ANNUALLY, A DEPUTY SHERIFF OR UNDERSHERIFF IS ENTITLED TO RECEIVE A LONGEVITY PAYMENT AMOUNTING TO 1% OF HIS ANNUAL SALARY FOR EACH YEAR OF SERVICE WITH THE DEPARTMENT. THIS PAYMENT SHALL BE MADE IN EQUAL MONTHLY INSTALLMENTS.

SECTION 5. SECTION 39-3-406, MCA, IS AMENDED TO READ:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

- (a) students participating in a distributive education program established under the auspices of an accredited educational agency;
- (b) persons employed in private homes whose duties consist of menial chores such as baby sitting, mowing lawns, cleaning sidewalks;
- (c) persons employed directly by the head of a

1 household to care for children dependent upon the head of
2 the household;

3 (d) immediate members of the family of an employer or
4 persons dependent upon an employer for half or more of their
5 support in the customary sense of being a dependent;

6 (e) any persons not regular employees thereof who
7 voluntarily offer their services to a nonprofit organization
8 on a fully or partially reimbursed basis;

9 (f) handicapped workers engaged in work which is
10 incidental to training or evaluation programs or whose
11 earning capacity is so severely impaired that they are
12 unable to engage in competitive employment;

13 (g) apprentices or learners, who may be exempted by
14 the commissioner for a period not to exceed 30 days of their
15 employment;

16 (h) learners under the age of 18 who are employed as
17 farm workers, provided that such exclusion shall not exceed
18 a period of 180 days from their initial date of employment
19 and further provided that during this exclusion period wages
20 paid such learners may not be less than 50% of the minimum
21 wage rate established in this part;

22 (i) retired or semiretired persons performing
23 part-time incidental work as a condition of their residence
24 on a farm or ranch;

25 (j) any individual employed in a bona fide executive,

1 administrative, or professional capacity as these terms are
2 defined and delimited by regulations of the commissioner;

3 (k) any individual employed by the United States of
4 America.

5 (2) The provisions of 39-3-405 do not apply to:

6 (a) an employee with respect to whom the United States
7 Secretary of Transportation has power to establish
8 qualifications and maximum hours of service pursuant to the
9 provisions of 49 U.S.C. 304;

10 (b) an employee of an employer subject to the
11 provisions of part I of the Interstate Commerce Act;

12 (c) an individual employed as an outside buyer of
13 poultry, eggs, cream, or milk, in their raw or natural
14 state;

15 (d) a salesman, partsman, or mechanic paid on a
16 commission or contract basis and primarily engaged in
17 selling or servicing automobiles, trucks, mobile homes,
18 recreational vehicles, or farm implements if he is employed
19 by a nonmanufacturing establishment primarily engaged in the
20 business of selling such vehicles or implements to ultimate
21 purchasers;

22 (e) a salesman primarily engaged in selling trailers,
23 boats, or aircraft if he is employed by a nonmanufacturing
24 establishment primarily engaged in the business of selling
25 trailers, boats, or aircraft to ultimate purchasers;

1 (f) an employee employed as a driver or driver's
 2 helper making local deliveries who is compensated for such
 3 employment on the basis of trip rates, or other delivery
 4 payment plan, if the commissioner finds that such plan has
 5 the general purpose and effect of reducing hours worked by
 6 such employees to or below the maximum workweek applicable
 7 to them under 39-3-405;

8 (g) an employee employed in agriculture or in
 9 connection with the operation or maintenance of ditches,
 10 canals, reservoirs, or waterways not owned or operated for
 11 profit and not operated on a sharecrop basis and which are
 12 used exclusively for supply and storing of water for
 13 agricultural purposes;

14 (h) an employee with respect to his employment in
 15 agriculture by a farmer, notwithstanding other employment of
 16 such employee in connection with livestock auction
 17 operations in which such farmer is engaged as an adjunct to
 18 the raising of livestock, either on his own account or in
 19 conjunction with other farmers, if such employee is:

20 (i) primarily employed during his workweek in
 21 agriculture by such farmer; and

22 (ii) paid for his employment in connection with such
 23 livestock auction operations at a wage rate not less than
 24 that prescribed by 39-3-404;

25 (i) an employee of an establishment commonly

1 recognized as a country elevator, including an establishment
 2 which sells products and services used in the operation of a
 3 farm, if no more than five employees are employed by the
 4 establishment;

5 (j) a driver employed by an employer engaged in the
 6 business of operating taxicabs;

7 (k) an employee who is employed with his spouse by a
 8 nonprofit educational institution to serve as the parents of
 9 children who are orphans or one of whose natural parents is
 10 deceased or who are enrolled in such institution and reside
 11 in residential facilities of the institution so long as the
 12 children are in residence at the institution and so long as
 13 such employee and his spouse reside in such facilities and
 14 receive, without cost, board and lodging from the
 15 institution and are together compensated, on a cash basis,
 16 at an annual rate of not less than \$10,000; or

17 (l) an employee employed in planting or tending trees;
 18 cruising, surveying, or felling timber; or transporting logs
 19 or other forestry products to a mill, processing plant,
 20 railroad, or other transportation terminal if the number of
 21 employees employed by his employer in such forestry or
 22 lumbering operations does not exceed eight; or

23 (m) an employee of a sheriff's department who is
 24 working under an established workperiod in lieu of a
 25 workweek pursuant to [section 3]."

HB 0558/03

1 NEW SECTION. SECTION 6. CONSTRUCTION IN EVENT OF
2 CONFLICT. IF THERE IS A CONFLICT BETWEEN SECTIONS 2 THROUGH
3 5 4 AND ANY OTHER LAW, SECTIONS 2 THROUGH 5 4 GOVERN WITH
4 RESPECT TO UNDERSHERIFFS AND DEPUTY SHERIFFS.

-End-

HOUSE BILL NO. 558

INTRODUCED BY D. BROWN, KEYSER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE--THAT--THE RESTRICTIONS--IMPOSED--ON REVISE THE COMPENSATION OF--A--DEPUTY SHERIFF--OR--AN--UNDERSHERIFF--DO--NOT--APPLY--TO--ANY--BENEFITS--OR ANY--PAYMENTS--FOR--HOURS--WORKED--OVERTIME PROVISIONS RELATING TO DEPUTY SHERIFFS AND UNDERSHERIFFS; AMENDING SECTION SECTIONS 7-4-2505 AND 39-3-406, MCA."

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

Section 1. Section 7-4-2505, MCA, is amended to read:

"7-4-2505. Amount of compensation for deputies and assistants. (1) Except--as--provided--in--subsection--(2), Subject to subsections SUBSECTION (2) and (3), the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant of the following officers:

- (a)--sheriff;
(b)(A) clerk and recorder;
(c)(B) clerk of the district court;
(d)(C) treasurer;
(e)(D) assessor;
(f)(E) county attorney;
(g)(F) auditor.

(2) (a) Except--as--provided--in--subsection--(2)(b),--the THE salary of no a deputy or an assistant LISTED IN SUBSECTION (1) shall may not be more than 90% of the salary of the officer under whom such deputy or assistant is serving.

(b)--in--fixing--the--compensation--allowed--the undersheriff, the board must fix the same at 95% of the salary of the officers under whom such undersheriff is serving, in fixing the compensation allowed the deputy sheriffs, the board must fix the same at 90% of the salary of the officer under whom such deputy sheriff is serving except in counties of the first, second, or third class, in which the board must fix the same at not less than 75% or more than 90% of the salary of the officer under whom such deputy sheriff is serving.

(c)(B) Where any deputy or assistant is employed for a period of less than 1 year, the compensation of such deputy or assistant shall be for the time so employed, provided the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants except as provided herein.

(d)(C) Deputy assessors' salaries shall be the same as paid the deputy clerk and recorder.

(3)--for--purposes--of--subsection--(2)(b),--the--term "compensation" means the base rate of pay and does not mean

1 ~~any benefits or any payments for hours worked overtime."~~

2 ~~NEW SECTION. SECTION 2. COMPENSATION OF UNDERSHERIFF~~

3 ~~AND DEPUTY SHERIFF. (1) THE SHERIFF SHALL FIX THE~~

4 ~~COMPENSATION OF THE UNDERSHERIFF AT 95% OF THE SALARY OF~~

5 ~~THAT SHERIFF.~~

6 ~~(2) (A) THE SHERIFF SHALL FIX THE COMPENSATION OF THE~~

7 ~~DEPUTY SHERIFF BASED UPON A PERCENTAGE OF THE SALARY OF THAT~~

8 ~~SHERIFF ACCORDING TO THE FOLLOWING SCHEDULE:~~

9 ~~IN COUNTIES WITH POPULATION OF:~~

10 ~~BELOW 15,000 75% TO 90%~~

11 ~~15,000 TO 29,999 70% TO 90%~~

12 ~~30,000 TO 65,999 65% TO 90%~~

13 ~~66,000 TO 99,999 60% TO 90%~~

14 ~~100,000 AND OVER 55% TO 90%~~

15 ~~(B) THE SHERIFF SHALL ADJUST THE COMPENSATION OF THE~~

16 ~~DEPUTY SHERIFF WITHIN THE RANGE PRESCRIBED IN SUBSECTION (A)~~

17 ~~ACCORDING TO A RANK STRUCTURE IN THE DEPARTMENT.~~

18 ~~(3) FOR PURPOSES OF THIS SECTION, THE TERM~~

19 ~~"COMPENSATION" MEANS THE BASE RATE OF PAY AND DOES NOT MEAN~~

20 ~~LONGEVITY PAYMENTS OR PAYMENTS FOR HOURS WORKED OVERTIME.~~

21 ~~NEW SECTION. SECTION 2. COMPENSATION OF UNDERSHERIFF~~

22 ~~AND DEPUTY SHERIFF. (1) THE SHERIFF SHALL FIX THE~~

23 ~~COMPENSATION OF THE UNDERSHERIFF AT 95% OF THE SALARY OF~~

24 ~~THAT SHERIFF.~~

25 ~~(2) (A) THE SHERIFF SHALL FIX THE COMPENSATION OF THE~~

1 DEPUTY SHERIFF BASED UPON A PERCENTAGE OF THE SALARY OF THAT

2 SHERIFF ACCORDING TO THE FOLLOWING SCHEDULE:

3 IN COUNTIES WITH POPULATION OF:

4 BELOW 15,000 85% TO 90%

5 15,000 TO 29,999 76% TO 90%

6 30,000 TO 74,999 74% TO 90%

7 75,000 AND OVER 72% TO 90%

8 (B) THE SHERIFF SHALL ADJUST THE COMPENSATION OF THE

9 DEPUTY SHERIFF WITHIN THE RANGE PRESCRIBED IN SUBSECTION (A)

10 ACCORDING TO A RANK STRUCTURE IN THE DEPARTMENT.

11 (3) FOR PURPOSES OF THIS SECTION, THE TERM

12 "COMPENSATION" MEANS THE BASE RATE OF PAY AND DOES NOT MEAN

13 LONGEVITY PAYMENTS OR PAYMENTS FOR HOURS WORKED OVERTIME.

14 NEW SECTION. SECTION 3. OPTION TO ESTABLISH

15 WORKPERIOD IN LIEU OF WORKWEEK. (1) A SHERIFF'S DEPARTMENT

16 MAY ESTABLISH A WORKPERIOD OTHER THAN THE WORKWEEK PROVIDED

17 IN 39-3-405 OR 7-32-2111 FOR DETERMINING WHEN AN EMPLOYEE

18 MUST MAY BE PAID OVERTIME.

19 (2) THE AGGREGATE OF ALL WORKPERIODS IN A YEAR, WHEN

20 EXPRESSED IN HOURS, MAY NOT EXCEED 2,080 HOURS.

21 NEW SECTION. SECTION 4. COMPENSATION FOR HOURS WORKED

22 OVERTIME. ANY UNDERSHERIFF OR DEPUTY SHERIFF WHO WORKS IN

23 EXCESS OF HIS REGULARLY SCHEDULED WORKPERIOD MUST BE

24 COMPENSATED FOR THE HOURS WORKED IN EXCESS OF THE WORKPERIOD

25 AT A RATE OF NOT LESS THAN 1 1/2 TIMES THE HOURLY RATE AT

1 ~~WHICH HE IS EMPLOYED, THE BOARD OF COUNTY COMMISSIONERS MAY~~
 2 ~~BY RESOLUTION ESTABLISH THAT ANY UNDERSHERIFF OR DEPUTY~~
 3 ~~SHERIFF WHO WORKS IN EXCESS OF HIS REGULARLY SCHEDULED WORK~~
 4 ~~PERIOD WILL BE COMPENSATED FOR THE HOURS WORKED IN EXCESS OF~~
 5 ~~THE WORK PERIOD AT A RATE TO BE DETERMINED BY THAT BOARD OF~~
 6 ~~COUNTY COMMISSIONERS.~~

7 NEW SECTION. SECTION 5. LONGEVITY PAYMENTS.
 8 BEGINNING ON THE DATE OF HIS FIRST ANNIVERSARY OF EMPLOYMENT
 9 WITH THE DEPARTMENT AND ADJUSTED ANNUALLY, A DEPUTY SHERIFF
 10 OR UNDERSHERIFF IS ENTITLED TO RECEIVE A LONGEVITY PAYMENT
 11 AMOUNTING TO 1% OF HIS THE MINIMUM BASE ANNUAL SALARY FOR
 12 EACH YEAR OF SERVICE WITH THE DEPARTMENT. THIS PAYMENT SHALL
 13 BE MADE IN EQUAL MONTHLY INSTALLMENTS.

14 SECTION 6. SECTION 39-3-406, MCA, IS AMENDED TO READ:

15 *39-3-406. Exclusions. (1) The provisions of 39-3-404
 16 and 39-3-405 shall not apply with respect to:

17 (a) students participating in a distributive education
 18 program established under the auspices of an accredited
 19 educational agency;

20 (b) persons employed in private homes whose duties
 21 consist of menial chores such as baby sitting, mowing, lawns,
 22 cleaning sidewalks;

23 (c) persons employed directly by the head of a
 24 household to care for children dependent upon the head of
 25 the household;

1 (d) immediate members of the family of an employer or
 2 persons dependent upon an employer for half or more of their
 3 support in the customary sense of being a dependent;

4 (e) any persons not regular employees thereof who
 5 voluntarily offer their services to a nonprofit organization
 6 on a fully or partially reimbursed basis;

7 (f) handicapped workers engaged in work which is
 8 incidental to training or evaluation programs or whose
 9 earning capacity is so severely impaired that they are
 10 unable to engage in competitive employment;

11 (g) apprentices or learners, who may be exempted by
 12 the commissioner for a period not to exceed 30 days of their
 13 employment;

14 (h) learners under the age of 18 who are employed as
 15 farm workers, provided that such exclusion shall not exceed
 16 a period of 180 days from their initial date of employment
 17 and further provided that during this exclusion period wages
 18 paid such learners may not be less than 50% of the minimum
 19 wage rate established in this part;

20 (i) retired or semiretired persons performing
 21 part-time incidental work as a condition of their residence
 22 on a farm or ranch;

23 (j) any individual employed in a bona fide executive,
 24 administrative, or professional capacity as these terms are
 25 defined and delimited by regulations of the commissioner;

1 (k) any individual employed by the United States of
2 America.

3 (2) The provisions of 39-3-405 do not apply to:

4 (a) an employee with respect to whom the United States
5 Secretary of Transportation has power to establish
6 qualifications and maximum hours of service pursuant to the
7 provisions of 49 U.S.C. 304;

8 (b) an employee of an employer subject to the
9 provisions of part I of the Interstate Commerce Act;

10 (c) an individual employed as an outside buyer of
11 poultry, eggs, cream, or milk, in their raw or natural
12 state;

13 (d) a salesman, partsman, or mechanic paid on a
14 commission or contract basis and primarily engaged in
15 selling or servicing automobiles, trucks, mobile homes,
16 recreational vehicles, or farm implements if he is employed
17 by a nonmanufacturing establishment primarily engaged in the
18 business of selling such vehicles or implements to ultimate
19 purchasers;

20 (e) a salesman primarily engaged in selling trailers,
21 boats, or aircraft if he is employed by a nonmanufacturing
22 establishment primarily engaged in the business of selling
23 trailers, boats, or aircraft to ultimate purchasers;

24 (f) an employee employed as a driver or driver's
25 helper making local deliveries who is compensated for such

1 employment on the basis of trip rates, or other delivery
2 payment plan, if the commissioner finds that such plan has
3 the general purpose and effect of reducing hours worked by
4 such employees to or below the maximum workweek applicable
5 to them under 39-3-405;

6 (g) an employee employed in agriculture or in
7 connection with the operation or maintenance of ditches,
8 canals, reservoirs, or waterways not owned or operated for
9 profit and not operated on a sharecrop basis and which are
10 used exclusively for supply and storing of water for
11 agricultural purposes;

12 (h) an employee with respect to his employment in
13 agriculture by a farmer, notwithstanding other employment of
14 such employee in connection with livestock auction
15 operations in which such farmer is engaged as an adjunct to
16 the raising of livestock, either on his own account or in
17 conjunction with other farmers, if such employee is:

18 (i) primarily employed during his workweek in
19 agriculture by such farmer; and

20 (ii) paid for his employment in connection with such
21 livestock auction operations at a wage rate not less than
22 that prescribed by 39-3-404;

23 (i) an employee of an establishment commonly
24 recognized as a country elevator, including an establishment
25 which sells products and services used in the operation of a

1 farm, if no more than five employees are employed by the
2 establishment;

3 (j) a driver employed by an employer engaged in the
4 business of operating taxicabs;

5 (k) an employee who is employed with his spouse by a
6 nonprofit educational institution to serve as the parents of
7 children who are orphans or one of whose natural parents is
8 deceased or who are enrolled in such institution and reside
9 in residential facilities of the institution so long as the
10 children are in residence at the institution and so long as
11 such employee and his spouse reside in such facilities and
12 receive, without cost, board and lodging from the
13 institution and are together compensated, on a cash basis,
14 at an annual rate of not less than \$10,000; or

15 (l) an employee employed in planting or tending trees;
16 cruising, surveying, or felling timber; or transporting logs
17 or other forestry products to a mill, processing plant,
18 railroad, or other transportation terminal if the number of
19 employees employed by his employer in such forestry or
20 lumbering operations does not exceed eight; or

21 (m) an employee of a sheriff's department who is
22 working under an established workperiod in lieu of a
23 workweek pursuant to [section 3]."

24 NEW SECTION. SECTION 7. CONSTRUCTION IN EVENT OF
25 CONFLICT. IF THERE IS A CONFLICT BETWEEN SECTIONS 2 THROUGH

1 5 4 5 AND ANY OTHER LAW, SECTIONS 2 THROUGH 5 4 5 GOVERN
2 WITH RESPECT TO UNDERSHERIFFS AND DEPUTY SHERIFFS.

-End-

April 21, 1981

FREE CONFERENCE COMMITTEE
ON HOUSE BILL NO. 558

(Report No. 1, April 21, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on House Bill No. 558, met April 21, 1981, and considered:

Senate Local Government Committee Amendments to the third reading copy, dated March 26, 1981, and recommend as follows:

That the Senate accede to Committee amendment no. 1;

That the House recede from Committee amendment No. 2;

That House Bill 558 be further amended as specified in the CLERICAL INSTRUCTIONS nos. 1 through 5.

That the reference copy of House Bill No. 558 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Conference Report to House Bill No. 558 be adopted.

CLERICAL INSTRUCTIONS:

1. Page 9, line 3.

Following: "5"

Strike: "4"

Insert: "5"

Following: "5"

Strike: "4"

Insert: "5"

2. Page 3.

Following: line 20

Insert: "NEW SECTION. Section 2. Compensation of undersheriff and deputy sheriff. (1) The sheriff shall fix the compensation of the undersheriff at 95% of the salary of that sheriff. (2) (a) The sheriff shall fix the compensation of the deputy sheriff based upon a percentage of the salary of that sheriff according to the following schedule:

In counties with population of:

Below 15,00085% to 90%
15,000 to 29,99976% to 90%
30,000 to 74,99974% to 90%
75,000 and over72% to 90%

(b) The sheriff shall adjust the compensation of the deputy sheriff within the range prescribed in subsection (a) according to a rank structure in the department.

(Continued)

(3) For purposes of this section, the term "compensation" means the base rate of pay and does not mean longevity payments or payments for hours worked overtime."

Renumber: subsequent sections

3. Page 3, line 24.
Following: "39-3-405"
Insert: "or 7-32-2111"
Following: "EMPLOYEE"
Strike: "MUST"
Insert: "may"

4. Page 4, lines 4 through 8
Following: "OVERTIME."
Strike: The remainder of section 3 in its entirety
Insert: "The board of county commissioners may by resolution establish that any undersheriff or deputy sheriff who works in excess of his regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by that board of county commissioners."

5. Page 4, line 13.
Following: "1% OF"
Strike: "HIS"
Insert: "the minimum base"

FOR THE HOUSE:

Walter Jones
Sales, Chairman

Orin Vinger
Vinger

Dussault
Dussault

FOR THE SENATE:

George McCally
McCally, Chairman

Hammond
Hammond

Van Valkenburg
Van Valkenburg

March 26, 1981

SENATE STANDING COMMITTEE REPORT
(Local Government)

That House Bill No. 558 be amended as follows:

1. Page 3, line 2 through line 20.

Strike: section 2 in its entirety

Re-number: subsequent sections

2. Page 9, line 3.

Following: line 2

Strike: "5"

Insert: "4"

Following: "through"

Strike: "5"

Insert: "4"