

HB 655 INTRODUCED BY ADDY  
APPEAL FROM LOWER COURT TO DISTRICT COURT ON THE  
RECORD REVIEW LIMITED

2/07 INTRODUCED  
2/07 REFERRED TO JUDICIARY  
2/07 FISCAL NOTE REQUESTED  
2/13 FISCAL NOTE RECEIVED  
2/16 HEARING  
2/16 TABLED IN COMMITTEE

1 House BILL NO. 655  
2 INTRODUCED BY Adley  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR APPEALS  
5 FROM JUSTICES' AND CITY COURTS TO DISTRICT COURTS ON THE  
6 RECORD; PROVIDING FOR AUDIO TRANSCRIPTS OF CITY AND  
7 JUSTICE'S COURT PROCEEDINGS; ESTABLISHING A STANDARD OF  
8 REVIEW FOR DISTRICT COURT APPELLATE DECISIONS; PROVIDING FOR  
9 DISTRICT COURT APPELLATE DECISIONS TO BE APPEALED UNDER A  
10 WRIT OF CERTIORARI; AND AMENDING SECTIONS 25-33-104,  
11 25-33-301, AND 25-33-306, MCA, AND RULE 1, MONTANA RULES OF  
12 APPELLATE PROCEDURE."

13  
14 WHEREAS, Article VII, section 4, of the Montana  
15 Constitution provides that the district court shall hear  
16 appeals from inferior courts as trials anew unless otherwise  
17 provided by law; and

18 WHEREAS, Article VII, section 2, of the Montana  
19 Constitution provides that the supreme court has appellate  
20 jurisdiction and may issue, hear, and determine writs  
21 appropriate thereto.

22  
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 NEW SECTION. Section 1. Transcript for justice's and  
25 city court proceedings. A justice's or city court shall make

1 an audio recording of each trial. The court shall identify  
2 each audio recording by name and date of trial and shall  
3 retain the audio recording for 30 days after rendering  
4 judgment.

5 Section 2. Section 25-33-104, MCA, is amended to read:  
6 "25-33-104. Papers and transcript to be transmitted.  
7 Upon the filing of the notice of appeal and the undertaking  
8 as required in 25-33-201, 25-33-203, and 25-33-205, the  
9 justice or judge must, within 10 days, upon the payment of  
10 the fees therefor, transmit to the clerk of the district  
11 court a certified copy of his docket, the pleadings, all  
12 notices, motions, and other papers filed in the cause, the  
13 audio transcript of the trial, the notice of appeal, and the  
14 undertaking; and the justice or judge may be compelled by  
15 the district court, by an order entered upon motion, to  
16 transmit such papers and transcript and may be fined for  
17 neglect or refusal to transmit the same. A certified copy of  
18 such order may be served on the justice or judge by the  
19 party or his attorney."

20 Section 3. Section 25-33-301, MCA, is amended to read:  
21 "~~25-33-301. Trial--de--novo-----pleadings--conduct-of~~  
22 Pleading -- appeal trial. (1) All appeals from justices' or  
23 city courts must be ~~tried-anew-in~~ reviewed by the district  
24 court on the audio transcript and the papers filed in the  
25 justice's or city court unless the court, for good cause



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1 shown and on such terms as may be just, allow other or  
2 amended pleadings to be filed in such action. The court may  
3 order new or amended pleadings to be filed. Each party has  
4 the benefit of all legal objections made in the justice's or  
5 city court.

6 (2) The district court review is confined to the  
7 record. The district court may not substitute its judgment  
8 for that of the lower court as to the weight of evidence on  
9 questions of fact. The district court may affirm the  
10 decision of the lower court or remand the case for further  
11 proceedings. The district court may reverse or modify the  
12 decision if substantial rights of the appellant have been  
13 prejudiced because the findings, inferences, conclusions, or  
14 decisions are:

15 (a) in violation of constitutional or statutory  
16 provisions;

17 (b) in excess of the jurisdiction of the lower court;

18 (c) affected by error of law; or

19 (d) characterized by abuse of discretion or clearly  
20 unwarranted exercise of discretion.

21 (2)(3) An action may be tried anew by the district  
22 court if an audio transcript of the lower court proceeding  
23 does not exist or is unusable. When the action is tried anew  
24 on appeal, the trial must be conducted in all respects as  
25 other trials in the district court. The provisions of this

1 code as to trials in the district courts are applicable to  
2 trials on appeal in the district court."

3 Section 4. Section 25-33-306, MCA, is amended to read:

4 "25-33-306. Effect of judgment of district court --  
5 appeal. (1) Judgments rendered in the district court on  
6 appeal shall have the same force and effect and may be  
7 enforced in the same manner as judgments in actions  
8 commenced in the district court.

9 (2) An appeal of a district court judgment rendered on  
10 appeal from a lower court may only be appealed to the  
11 supreme court under the common law writ of certiorari."

12 Section 5. Rule 1, Montana Rules of Appellate  
13 Procedure, is amended to read:

14 "Rule 1. Scope of rules -- from what judgment or order  
15 an appeal may be taken.

16 (a) These rules govern procedure in appeals in civil  
17 and criminal cases to the supreme court of Montana from  
18 Montana district courts and original proceedings in the  
19 supreme court of Montana. The party applying for original  
20 relief is known as the petitioner and the adverse party as  
21 the defendant. The party appealing is known as the  
22 appellant, and the adverse party as the respondent.

23 (b) In civil cases a party aggrieved may appeal from a  
24 judgment or order, except when expressly made final by law,  
25 in the following cases:

1 (1) From Except as provided in 25-33-306(2), from a  
 2 final judgment entered in an action or special proceeding  
 3 commenced in a district court, or brought into a district  
 4 court from another court or administrative body.

5 (2) From an order granting a new trial; or refusing to  
 6 permit an action to be maintained as a class action; or  
 7 granting or dissolving an injunction; or refusing to grant  
 8 or dissolve an injunction; or dissolving or refusing to  
 9 dissolve an attachment; from an order changing or refusing  
 10 to change the place of trial when the county designated in  
 11 the complaint is not the proper county; from an order  
 12 appointing or refusing to appoint a receiver, or giving  
 13 directions with respect to a receivership, or refusing to  
 14 vacate an order appointing or affecting a receiver; from an  
 15 order directing the delivery, transfer, or surrender of  
 16 property; from any special order made after final judgment;  
 17 and from such interlocutory judgments or orders, in actions  
 18 for partition as determine the rights and interests of the  
 19 respective parties and direct partition to be made. In any  
 20 of the cases mentioned in this subdivision the supreme  
 21 court, or a justice thereof, may stay all proceedings under  
 22 the order appealed from, on such conditions as may seem  
 23 proper.

24 (3) From a judgment or order granting or refusing to  
 25 grant, revoking or refusing to revoke, letters testamentary,

1 or of administration, or of guardianship; or admitting or  
 2 refusing to admit a will to probate, or against or in favor  
 3 of the validity of a will, or revoking or refusing to revoke  
 4 the probate thereof; or against or in favor of setting apart  
 5 property, or making an allowance for a widow or child; or  
 6 against or in favor of directing the partition, sale, or  
 7 conveyance of real property, or settling an account of an  
 8 executor, or administrator, or guardian; or refusing,  
 9 allowing, directing the distribution or partition of any  
 10 estate, or any part thereof, or the payment of a debt,  
 11 claim, legacy, or distributive share; or confirming or  
 12 refusing to confirm a report of an appraiser setting apart a  
 13 homestead.

14 (c) All questions raised on an order overruling a  
 15 motion for a new trial or on an order changing or refusing  
 16 to change the place of trial under [R.C.M. 1947, section  
 17 93-2906, subdivision 4 thereof or] subsection (2) or (3) of  
 18 section 25-2-201, Montana Code Annotated, may be raised and  
 19 reviewed on an appeal from the judgment.

20 (d) Appeals may be taken in criminal cases as provided  
 21 in sections 46-20-103 and 46-20-104, Montana Code  
 22 Annotated."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB655, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for appeals from justices' and city courts to district courts on the record; providing for audio transcripts of city and justice's court proceedings; establishing a standard of review for district court appellate decisions; providing for district court appellate decisions to be appealed under a writ of certiorari; and amending sections 25-33-104, 25-33-301, and 25-33-306, MCA; and rule 1, Montana Rules of Appellate Procedure.

FISCAL IMPACT:

None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Minimal local impact. Some justice courts presently tape proceedings. Some cost to county general funds to purchase tape recorders and tapes for each justice court.

David L. Hunter DATE 2/13/87

DAVID L. HUNTER, BUDGET DIRECTOR  
Office of Budget and Program Planning

Kelly Addy DATE 2/14/87  
KELLY ADDY, PRIMARY SPONSOR

Fiscal Note for HB655, as introduced.

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