

HB 758 INTRODUCED BY WHALEN
ESTABLISH MUNICIPAL COURT DISTRICTS IN COUNTIES OVER
75,000

2/14 INTRODUCED
2/14 REFERRED TO JUDICIARY
2/14 FISCAL NOTE REQUESTED
2/19 HEARING
2/20 FISCAL NOTE RECEIVED
2/23 TABLED IN COMMITTEE

1 House BILL NO. 758
 2 INTRODUCED BY Whalen
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING MUNICIPAL
 5 COURT DISTRICTS, WITHIN CERTAIN COUNTIES HAVING A POPULATION
 6 OF 75,000 OR MORE, CONSISTING OF THE FIRST- AND SECOND-CLASS
 7 CITIES WITHIN THOSE COUNTIES; DEFINING THE JURISDICTION AND
 8 OPERATIONS OF MUNICIPAL COURTS AND MUNICIPAL COURT
 9 DISTRICTS; AMENDING SECTIONS 3-6-101 THROUGH 3-6-103,
 10 3-6-201 THROUGH 3-6-204, 3-6-301, 3-6-303, 25-30-101,
 11 25-30-108, AND 46-17-404, MCA; AND PROVIDING AN EFFECTIVE
 12 DATE."
 13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 Section 1. Section 3-6-101, MCA, is amended to read:
 16 "3-6-101. Establishment of the court. (1) All first-
 17 and second-class cities in the state of Montana within a
 18 county with a population of ~~107,000~~ 75,000 or more, according
 19 to--the--last-federal-census, together with their respective
 20 counties, form a municipal court district. Each city within
 21 the municipal court district shall may have a court known as
 22 the municipal court of the city of (designating the name of
 23 the city), within the county of (designating the name of the
 24 county), of the state of Montana. The court shall be a court
 25 of record.

1 (2) A first-class city may establish a municipal court
 2 under this chapter. The provisions of this chapter
 3 subsection apply only after the governing body of the city
 4 not meeting the requirements of subsection (1) has elected
 5 by a two-thirds majority vote to adopt them by ordinance
 6 and, in the ordinance, has provided the manner in which and
 7 time when the municipal court is to be established and
 8 assume continuing jurisdiction over all pending city court
 9 cases. The ordinance must be consistent with the provisions
 10 of this chapter.

11 (3) The municipal court shall assume continuing
 12 jurisdiction over all pending city court cases in a city
 13 where the municipal court is established.

14 (4) For the purposes of this chapter, the
 15 classification of a city must be determined under the
 16 provisions of 7-1-4111 by its population as defined under
 17 7-1-1421, based upon a census as determined by the
 18 department of revenue under 16-4-502.

19 (5) Notwithstanding a change in classification of a
 20 city, a municipal court once established in a city may not
 21 be abolished unless the question is submitted to the
 22 electors of the district and a majority of those voting on
 23 the question approve abolishing the court."

24 Section 2. Section 3-6-102, MCA, is amended to read:
 25 "3-6-102. Abolition of city court -- city judge to

1 serve remainder of term as municipal court judge. (1) In
2 cities in which a municipal court is established, the office
3 of city judge is hereby abolished.

4 (2) A city judge whose office is abolished shall serve
5 as a municipal court judge in the municipal court district
6 of the city he served as city judge for the remainder of his
7 term and until the office of municipal court judge is filled
8 by election as provided under 3-6-201 and 3-6-202. A city
9 judge serving as a municipal judge shall continue to receive
10 the same compensation that he received when his court was
11 abolished."

12 Section 3. Section 3-6-103, MCA, is amended to read:

13 "3-6-103. Jurisdiction. (1) Said---court Municipal
14 courts shall have jurisdiction coordinate and coextensive
15 with the justices' courts of the county wherein said city is
16 located and shall, in addition thereto,

17 (2) Municipal courts shall have exclusive original
18 jurisdiction within their respective cities of all actions
19 and proceedings, both civil and criminal, mentioned and
20 provided for in 3-11-103 and Title 61, chapter 8.

21 (3) Such---municipal Subject to court rule approved by
22 the district court, municipal courts shall also have
23 concurrent jurisdiction with the district court within their
24 respective counties in forcible entry and unlawful detainer;
25 actions brought under Title 70, chapter 24; civil actions

1 under 3-15-106(1); and all misdemeanors.

2 (4) Municipal courts have jurisdiction:

3 (a) to act as examining and committing courts and to
4 conduct preliminary hearings;

5 (b) of all contempts under chapter 1, part 5, of this
6 title; and

7 (c) that is concurrent with the youth court over
8 violations of city ordinances related to curfew and minor
9 damage violations.

10 (5) A municipal court may by rule establish that the
11 court does not have civil jurisdiction unless a minimum
12 amount in controversy is met. That amount must exceed the
13 amount required for justice's court jurisdiction under
14 3-10-301."

15 Section 4. Section 3-6-201, MCA, is amended to read:

16 "3-6-201. Election -- term of office -- number of
17 judges. (1) One-judge The judges of each municipal court
18 district shall be elected by the electors of the municipal
19 court district at the general city election provided for in
20 13-1-104(1). The judge's term shall commence on the first
21 Monday in January following the election. The judge shall
22 hold office for the term of 4 6 years and until his
23 successor is elected and qualified.

24 (2) All elections of municipal judges are governed by
25 the laws applicable to the election of nonpartisan city

1 officials district court judges.

2 (3) (a) A municipal court district shall have at least
 3 one judge and may not have fewer judges than the number of
 4 city judges whose offices were abolished in creating the
 5 district. A district must have at least two judges if any
 6 municipality within the district has a population that
 7 exceeds 50,000. For every increase of 25,000 in population
 8 over the original 50,000, an additional judgeship shall be
 9 created.

10 (b) Additional judgeships are created by the district
 11 court upon petition of a municipal court judge. The
 12 petition may request a judgeship based upon reasons of
 13 population or upon workload factors. If workload is the
 14 basis for requesting an additional judge, the district court
 15 shall consider facts relating to the municipal court
 16 district, including population, municipal revenues, case
 17 load, trials, and cases outstanding.

18 (c) Prior to the establishment of a municipal court
 19 district, a city judge may petition the district court to
 20 establish an additional municipal court judgeship effective
 21 upon establishment of the district.

22 (4) The district court shall appoint a person to fill
 23 a vacant office created by an additional judgeship or if
 24 there is a vacancy in the office of a municipal judge. An
 25 appointed judge holds office until a successor is elected

1 and qualified at the next general election. The successor
 2 elected to an office filled due to a vacancy holds office
 3 for the remainder of the unexpired term.

4 (5) A municipal court judge is subject to forfeiture
 5 of office as provided in Article VII, section 10, of the
 6 Montana constitution."

7 Section 5. Section 3-6-202, MCA, is amended to read:

8 "3-6-202. Qualifications. (1) A municipal court judge
 9 must have the same qualifications as a judge of a district
 10 court, as set forth in Article VII, section 9, of the 1972
 11 Montana constitution; ~~except that a municipal court judge~~
 12 ~~need only be admitted to the practice of law in Montana for~~
 13 ~~at least 2 years prior to the date of appointment or~~
 14 ~~election. A municipal court judge must be certified in the~~
 15 ~~same manner as a district court judge.~~

16 (2) A municipal court judge must be a resident and
 17 voter in the city municipal court district in which he is
 18 elected or appointed at the time of his election or
 19 appointment. He shall reside in the district during the
 20 term for which he was elected or appointed."

21 Section 6. Section 3-6-203, MCA, is amended to read:

22 "3-6-203. Salary. (1) The salary of the municipal
 23 court judge shall be set by city ordinance resolution of the
 24 governing bodies of the cities within the district and shall
 25 be payable monthly by the city treasurer.

1 (2) The salary of a municipal court judge may not be
2 less than:

3 (a) 70% of the annual salary of a district court
4 judge; or

5 (b) the highest salary earned by a full-time city
6 judge within the county for the year preceding the
7 establishment of the district.

8 (3) Actual and necessary expenses for the municipal
9 court judge shall be the travel expenses, as defined and
10 provided in 2-18-501 through 2-18-503, incurred in the
11 performance of his official duties.

12 (4) If a municipal court district contains more than
13 one city, each city shall pay its portion of the salary,
14 benefits, and expenses, based on the city's proportion of
15 the total number of actions commenced in the district the
16 preceding year, as certified by the judges of the district.
17 For the year of creation of the district, the number of
18 actions commenced for the year preceding the creation of the
19 district is the total number of city court actions in the
20 county in the preceding year.

21 (5) If there is more than one city within the
22 municipal court district, the cities shall enter into an
23 agreement designating one of the cities to operate a
24 municipal judge account within the city's treasury. Unless
25 otherwise provided by agreement, at the beginning of the

1 fiscal year each city shall pay into the account the amount
2 due under subsection (4) for that fiscal year."

3 Section 7. Section 3-6-204, MCA, is amended to read:

4 "3-6-204. Disqualification Vacancy -- judge pro tem.

5 When a judge of a municipal court has been disqualified
6 pursuant to supreme court rules on the disqualification of
7 judges or is sick or unable to act, he shall call in another
8 municipal court judge or he shall call in some practicing
9 attorney of the county in which his court is located, who
10 shall be judge pro tem with the same powers for the purposes
11 of the cause as the judge of the court."

12 Section 8. Section 3-6-301, MCA, is amended to read:

13 "3-6-301. Clerk of the court -- senior judge. (1) The
14 city ~~clerk of the city~~ in which said court is located shall
15 ~~be ex-officio clerk of such court~~ provide a clerk of court
16 and clerical assistance sufficient for the transaction of
17 the court's business.

18 (2) The municipal court judge shall appoint the clerk
19 of court. The clerk is an officer of the court and holds
20 office during the pleasure of the judge.

21 (3) The governing body of the city shall set the
22 salaries of the clerk of court and persons who provide
23 clerical assistance. Such salaries must be commensurate
24 with the workload and hours of the court.

25 (4) Within each district, the municipal judge with the

1 most years of continuous service as a judge is the senior
 2 judge of the municipal court district. The senior judge
 3 shall administer and coordinate the operation of the
 4 district. The senior judge shall divide the court into
 5 departments and apportion the business of the court in a
 6 similar manner to that used by district courts pursuant to
 7 3-5-403."

8 Section 9. Section 3-6-303, MCA, is amended to read:

9 "3-6-303. Officers of the court. (1) The chief of
 10 police of the city shall be the executive officer of such
 11 court. He shall serve all process and execute all orders of
 12 the court, either in person or by subordinate police
 13 officer, who shall execute process in his name.

14 (2) The chief of police, with the approval of the
 15 judge, shall appoint one or more policemen as court
 16 officers, one of whom shall attend the sessions of the court
 17 and perform all duties in connection therewith which the
 18 judge may require.

19 (3) The chief of police, either in person or by
 20 subordinate officer, may serve a municipal court summons or
 21 process and execute all orders of the court in any part of
 22 the county."

23 Section 10. Section 25-30-101, MCA, is amended to
 24 read:

25 "25-30-101. Applicability of district court and

1 justice's court rules. (1) The provisions of 3-10-222,
 2 ~~3-10-231--through--3-10-234~~, 3-10-305, and 3-10-306--and
 3 ~~3-10-704-through-3-10-706~~; 25-31-102(2), 25-31-114 through
 4 25-31-116, 25-31-304, 25-31-402(2), 25-31-405, parts 7
 5 through 11 of chapter 31 of this title (except 25-31-915,
 6 25-31-1002, 25-31-1004, and 25-31-1005), and chapter 33 of
 7 this title (except 25-33-301 and 25-33-302); and chapter 9,
 8 part 10 of chapter 16, chapter 17, and part 15 of chapter 18
 9 of Title 27 are applicable to municipal courts except when
 10 they are inconsistent with the provisions of this chapter
 11 and chapter 6 of Title 3, the words "municipal court" being
 12 substituted for justice's court and "judge" for justice of
 13 the peace.

14 (2) Except as otherwise provided by this chapter,
 15 chapter 6 of Title 3, and the supreme court's rules on
 16 disqualification of judges, the proceedings and practice in
 17 municipal court shall be the same as in district court."

18 Section 11. Section 25-30-108, MCA, is amended to
 19 read:

20 "25-30-108. Appeals Record -- civil appeals. (1) A
 21 party may appeal to district court from a judgment of
 22 municipal court. The appeal is confined to the municipal
 23 court record.

24 (2) Appeal from a municipal court may be limited by
 25 requiring by ordinance supreme court rule that a minimum

1 amount in controversy, not to exceed ~~9200~~ \$1,500, be met
 2 before the district court has jurisdiction to hear the
 3 appeal, except upon petition by an aggrieved party, the
 4 district court may, in the interests of justice, accept
 5 appeal jurisdiction notwithstanding the amount in
 6 controversy.

7 (3) All actions tried in a municipal court must be
 8 recorded electronically or, if paid for by a party, recorded
 9 stenographically. The record on appeal consists of the
 10 electronic record or transcribed stenographic notes,
 11 together with the original papers and exhibits filed in
 12 municipal court and a certified copy of the docket entries
 13 prepared by the clerk of the municipal court.

14 (4) All or part of an electronic recording may be
 15 transcribed at the expense of the party requesting the
 16 transcription or by the district court if the transcription
 17 is requested by the court. Original stenographic notes must
 18 be filed with the municipal court, and any transcription
 19 prepared from stenographic notes must be paid for by the
 20 appellant.

21 (5) An appellant is responsible to perfect an appeal
 22 and take any other action necessary for the clerk to
 23 assemble and transmit the record to the district court.

24 (6) The district court shall upon motion allow
 25 testimony and other evidence on appeal if it finds that:

1 (a) the electronic record is not capable of being
 2 fully transcribed because of poor recording quality or
 3 because it was partially or totally destroyed; or

4 (b) a party neglected to offer or was precluded from
 5 offering a matter material to the claim or defense or was
 6 otherwise prejudiced by the factfinding process in the
 7 municipal court."

8 Section 12. Section 46-17-404, MCA, is amended to
 9 read:

10 "46-17-404. Appeals Criminal appeals -- fine --
 11 record. (1) A party may appeal to district court from a
 12 judgment of municipal court. The appeal is confined to the
 13 municipal court record.

14 (2) Appeal from a municipal court may be limited by
 15 requiring by ordinance supreme court rule that a minimum
 16 amount--in--controversy fine assessed, not to exceed ~~9200~~
 17 \$300, be met before the district court has jurisdiction to
 18 hear the appeal, except:

19 (a) if the judgment of the municipal court includes
 20 incarceration, no minimum amount-in-controversy fine may be
 21 required for appeal; and

22 (b) upon petition by an aggrieved party, the district
 23 court may, in the interests of justice, accept appeal
 24 jurisdiction notwithstanding the amount in-controversy of a
 25 fine.

1 (3) All actions tried in a municipal court must be
 2 recorded electronically or, if paid for by a party, recorded
 3 stenographically. The record on appeal consists of the
 4 electronic record or transcribed stenographic notes,
 5 together with the original papers and exhibits filed in
 6 municipal court and a certified copy of the docket entries
 7 prepared by the clerk of the municipal court.

8 (4) All or part of an electronic recording may be
 9 transcribed at the expense of the party requesting the
 10 transcription or by the district court if the transcription
 11 is requested by the court. Original stenographic notes must
 12 be filed with the municipal court, and any transcription
 13 prepared from stenographic notes must be paid for by the
 14 appellant.

15 (5) An appellant is responsible to perfect an appeal
 16 and take any other action necessary for the clerk to
 17 assemble and transmit the record to the district court.

18 (6) The district court shall upon motion allow
 19 testimony and other evidence on appeal if it finds that:

20 (a) the electronic record is not capable of being
 21 fully transcribed because of poor recording quality or
 22 because it was partially or totally destroyed; or

23 (b) a party neglected to offer or was precluded from
 24 offering a matter material to the claim or defense or was
 25 otherwise prejudiced by the factfinding process in the

1 municipal court."

2 NEW SECTION. Section 13. Severability. If a part of
 3 this act is invalid, all valid parts that are severable from
 4 the invalid part remain in effect. If a part of this act is
 5 invalid in one or more of its applications, the part remains
 6 in effect in all valid applications that are severable from
 7 the invalid applications.

8 NEW SECTION. Section 14. Effective date. This act is
 9 effective July 1, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB758, as introduced.

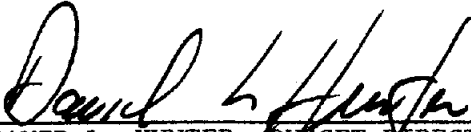
DESCRIPTION OF PROPOSED LEGISLATION:

An act creating municipal court districts, within certain counties having a population of 75,000 or more, consisting of the first- and second-class cities within those counties; defining the jurisdiction and operations of municipal courts and municipal court districts; amending sections 3-6-101 through 3-6-103, 3-6-201 through 3-6-204, 3-6-301, 3-6-303, 25-30-101, 25-30-108, and 46-17-404, MCA; and providing an effective date.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The bill would only apply to Yellowstone, Cascade and Missoula counties.

Missoula County already has a municipal court, but the salary of the judge is below the requirements of Section 6(2)(a) by \$12,000. Yellowstone County would be allowed two municipal court judges by this bill and currently have one full-time judge and a part-time judge. If two full-time judges were employed, an additional \$30,000 would be needed. Cascade County has a city judge so there would be no significant fiscal impact.

 DATE 2/20/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

 DATE 2-20-87
TIM WHALEN, PRIMARY SPONSOR
Fiscal Note for HB758, as introduced.

HB 758