

HOUSE BILL 657

Introduced by Fisher, et al.

3/03	Introduced
3/03	Referred to Appropriations
3/03	First Reading
3/03	Fiscal Note Requested
3/08	Fiscal Note Received
3/08	Fiscal Note Printed
3/12	Hearing
3/12	Tabled in Committee
3/16	Committee Report--Bill Passed as Amended
3/23	2nd Reading Passed
3/24	3rd Reading Passed
	Transmitted to Senate
3/26	First Reading
3/26	Referred to Finance & Claims
4/05	Hearing
4/06	Committee Report--Bill Concurred
4/07	2nd Reading Concur Motion Failed
4/07	Motion Failed to Indefinitely Postpone on 2nd Reading
4/08	2nd Reading Concur Motion Failed
4/08	2nd Reading Indefinitely Postponed

1 House BILL NO. 657
 2 INTRODUCED BY Fisher Peterson
 3 BY REQUEST OF THE JOINT SUBCOMMITTEE ON
 4 GENERAL GOVERNMENT AND TRANSPORTATION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE
 7 REQUIREMENT THAT THE ATTORNEY GENERAL ISSUE OPINIONS TO
 8 CERTAIN GOVERNMENT OFFICIALS; AMENDING SECTION 2-15-501,
 9 MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION
 10 DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 2-15-501, MCA, is amended to read:

14 "2-15-501. General duties. It is the duty of the
 15 attorney general:

16 (1) to prosecute or defend all causes in the supreme
 17 court in which the state or any officer of the state in his
 18 the officer's official capacity is a party or in which the
 19 state has an interest;

20 (2) after judgment in any of the causes referred to in
 21 subsection (1), to direct the issuing of a process as may be
 22 necessary to carry the judgment into execution;

23 (3) to keep a register of all cases prosecuted or
 24 defended by him the attorney general, which must during
 25 business hours be open to the inspection of the public. The

1 attorney general must deliver the register to his the
 2 attorney general's successor in office.

3 (4) to exercise supervisory powers over county
 4 attorneys in all matters pertaining to the duties of their
 5 offices and from time to time require of them reports as to
 6 the condition of public business entrusted to their charge.
 7 The supervisory powers granted to the attorney general by
 8 this subsection include the power to order and direct county
 9 attorneys in all matters pertaining to the duties of their
 10 office. The A county attorney shall, when ordered or
 11 directed by the attorney general, promptly institute and
 12 diligently prosecute in the proper court and in the name of
 13 the state of Montana any criminal or civil action or special
 14 proceeding.

15 (5) when required by the public service or directed by
 16 the governor, to assist the county attorney of any county in
 17 the discharge of his the county attorney's duties or to
 18 prosecute or defend appropriate cases in which the state or
 19 any officer of the state in his the officer's official
 20 capacity is a party or in which the state has an interest;

21 (6) ~~to give his opinion in writing, without fee, to the~~
 22 ~~legislature or either house of the legislature, to any state~~
 23 ~~officer, board, or commission, to any county attorney, to~~
 24 ~~the city attorney of any city or town, and to the board of~~
 25 ~~county commissioners of any county of the state when~~

1 required--upon--any--question--of--law--relating--to---their
2 respective--offices--He-shall-give-any-such-opinion-within-3
3 months--following--the--date--it--is--requested--unless---he
4 certifies--in--writing--to--the--requesting--party--that-the
5 question-is-of-sufficient-complexity-to--require--additional
6 time--if-an-opinion-issued-by-the-attorney-general-conflicts
7 with--an-opinion-issued-by-a-city-attorney, county-attorney,
8 or-an-attorney-employed-or-retained-by--any--state--officer,
9 board,--commission,--or--department,--the-attorney-general's
10 opinion-is-controlling-unless-overruled-by-a-state--district
11 court-or-the-supreme-court.

12 {7} to discharge the duties of a member of the board of
13 examiners and state board of land commissioners;

14 {8}{7} to perform all other duties as required by law."

15 NEW SECTION. **Section 2.** Effective date. [This act] is
16 effective July 1, 1993.

17 NEW SECTION. **Section 3.** Termination. [This act]
18 terminates July 1, 1995.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0657, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act eliminating the requirement that the Attorney General issue opinions to certain government officials.

ASSUMPTIONS:

1. It is assumed that the function of issuing attorney general opinions consumes 1,500 attorney hours per year, or the equivalent reduction of 0.75 FTE grade 17 attorney.

FISCAL IMPACT:

Department of Justice-Legal Services Division-Appellate Legal Services:

Expenditures:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	21.50	20.75	(0.75)	21.50	20.75	(0.75)
Personal Services	908,700	884,700	(24,000)	910,700	886,700	(24,000)
Operating Expenses	265,400	265,400	0	167,200	167,200	0
Equipment	<u>17,200</u>	<u>17,200</u>	<u>0</u>	<u>17,200</u>	<u>17,200</u>	<u>0</u>
Total	1,191,300	1,167,300	(24,000)	1,095,100	1,071,100	(24,000)
<u>Funding:</u>						
General Fund	1,191,300	1,167,300	(24,000)	1,095,100	1,071,100	(24,000)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments would not have the objective forum of the Attorney General's office to seek advice about legal issues if the issuance of opinions were abolished. There may be some potential for increased liability exposure in the future.

Dave Lewis 3-8-93
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Marjorie Fisher
MARJORIE FISHER, PRIMARY SPONSOR DATE

Fiscal Note for HB0657, as introduced

HB657

APPROVED BY COMMITTEE
ON APPROPRIATIONS

HOUSE BILL NO. 657

INTRODUCED BY FISHER, PETERSON

BY REQUEST OF THE JOINT SUBCOMMITTEE ON
GENERAL GOVERNMENT AND TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT ~~ELIMINATING--THE~~
~~REQUIREMENT--THAT~~ ALLOWING THE ATTORNEY GENERAL TO CHARGE A
FEE TO ISSUE OPINIONS TO CERTAIN GOVERNMENT OFFICIALS;
AMENDING SECTION 2-15-501, MCA; AND PROVIDING AN EFFECTIVE
DATE ~~AND-A-TERMINATION-DATE.~~"

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

Section 1. Section 2-15-501, MCA, is amended to read:

"2-15-501. General duties. It is the duty of the
attorney general:

(1) to prosecute or defend all causes in the supreme
court in which the state or any officer of the state in his
the officer's official capacity is a party or in which the
state has an interest;

(2) after judgment in any of the causes referred to in
subsection (1), to direct the issuing of a process as may be
necessary to carry the judgment into execution;

(3) to keep a register of all cases prosecuted or
defended by him the attorney general, which must during
business hours be open to the inspection of the public. The

attorney general must deliver the register to his the
attorney general's successor in office.

(4) to exercise supervisory powers over county
attorneys in all matters pertaining to the duties of their
offices and from time to time require of them reports as to
the condition of public business entrusted to their charge.
The supervisory powers granted to the attorney general by
this subsection include the power to order and direct county
attorneys in all matters pertaining to the duties of their
office. The A county attorney shall, when ordered or
directed by the attorney general, promptly institute and
diligently prosecute in the proper court and in the name of
the state of Montana any criminal or civil action or special
proceeding.

(5) when required by the public service or directed by
the governor, to assist the county attorney of any county in
the discharge of his the county attorney's duties or to
prosecute or defend appropriate cases in which the state or
any officer of the state in his the officer's official
capacity is a party or in which the state has an interest;

(6) TO GIVE AN OPINION IN WRITING TO THE LEGISLATURE OR
EITHER HOUSE OF THE LEGISLATURE, TO ANY STATE OFFICER,
BOARD, OR COMMISSION, TO ANY COUNTY ATTORNEY, TO THE CITY
ATTORNEY OF ANY CITY OR TOWN, AND TO THE BOARD OF COUNTY
COMMISSIONERS OF ANY COUNTY OF THE STATE WHEN REQUIRED UPON

1 ANY QUESTION OF LAW RELATING TO THEIR RESPECTIVE OFFICES.
 2 THE ATTORNEY GENERAL SHALL GIVE AN OPINION WITHIN 3 MONTHS
 3 FOLLOWING THE DATE IT IS REQUESTED UNLESS THE ATTORNEY
 4 GENERAL CERTIFIES IN WRITING TO THE REQUESTING PARTY THAT
 5 THE QUESTION IS OF SUFFICIENT COMPLEXITY TO REQUIRE
 6 ADDITIONAL TIME. IF AN OPINION ISSUED BY THE ATTORNEY
 7 GENERAL CONFLICTS WITH AN OPINION ISSUED BY A CITY ATTORNEY,
 8 A COUNTY ATTORNEY, OR AN ATTORNEY EMPLOYED OR RETAINED BY
 9 ANY STATE OFFICER, BOARD, COMMISSION, OR DEPARTMENT, THE
 10 ATTORNEY GENERAL'S OPINION IS CONTROLLING UNLESS OVERRULED
 11 BY A STATE DISTRICT COURT OR THE SUPREME COURT. THE ATTORNEY
 12 GENERAL MAY ASSESS A REASONABLE FEE TO THE REQUESTING PARTY
 13 TO DEFRAY THE COSTS ASSOCIATED WITH RESPONDING TO THE
 14 REQUEST. THE FEES COLLECTED MUST BE DEPOSITED IN THE GENERAL
 15 FUND. ~~to--give--his--opinion--in--writing,--without--fee,--to--the~~
 16 ~~legislature--or--either--house--of--the--legislature,--to--any--state~~
 17 ~~officer,--board,--or--commission,--to--any--county--attorney--to~~
 18 ~~the--city--attorney--of--any--city--or--town,--and--to--the--board--of~~
 19 ~~county--commissioners--of--any--county--of--the--state--when~~
 20 ~~required--upon--any--question--of--law--relating--to--their~~
 21 ~~respective--offices. He shall give any such opinion within 3~~
 22 ~~months--following--the--date--it--is--requested--unless--he~~
 23 ~~certifies--in--writing--to--the--requesting--party--that--the~~
 24 ~~question--is--of--sufficient--complexity--to--require--additional~~
 25 ~~time. If an opinion issued by the attorney general conflicts~~

1 ~~with--an--opinion--issued--by--a--city--attorney,--county--attorney,~~
 2 ~~or--an--attorney--employed--or--retained--by--any--state--officer,~~
 3 ~~board,--commission,--or--department,--the--attorney--general's~~
 4 ~~opinion--is--controlling--unless--overruled--by--a--state--district~~
 5 ~~court--or--the--supreme--court,~~
 6 ~~{7}{7}~~ (7) to discharge the duties of a member of the board
 7 of examiners and state board of land commissioners;
 8 ~~{8}{7}{8}~~ (8) to perform all other duties as required by
 9 law."
 10 NEW SECTION. Section 2. Effective date. [This act] is
 11 effective July 1, 1993.
 12 NEW SECTION. Section 3. Termination. ~~{This--act}~~
 13 ~~terminates--July--17--1995.~~

-End-

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GENERAL GOVERNMENT AND TRANSPORTATION

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state has an interest;

(2) after judgment in any of the causes referred to in
subsection (1), to direct the issuing of a process as may be
necessary to carry the judgment into execution;

(3) to keep a register of all cases prosecuted or
defended by him the attorney general, which must during
business hours be open to the inspection of the public. The

attorney general must deliver the register to his the
attorney general's successor in office.

(4) to exercise supervisory powers over county
attorneys in all matters pertaining to the duties of their
offices and from time to time require of them reports as to
the condition of public business entrusted to their charge.
The supervisory powers granted to the attorney general by
this subsection include the power to order and direct county
attorneys in all matters pertaining to the duties of their
office. ~~The~~ A county attorney shall, when ordered or
directed by the attorney general, promptly institute and
diligently prosecute in the proper court and in the name of
the state of Montana any criminal or civil action or special
proceeding.

(5) when required by the public service or directed by
the governor, to assist the county attorney of any county in
the discharge of his the county attorney's duties or to
prosecute or defend appropriate cases in which the state or
any officer of the state in his the officer's official
capacity is a party or in which the state has an interest;

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ATTORNEY OF ANY CITY OR TOWN, AND TO THE BOARD OF COUNTY
COMMISSIONERS OF ANY COUNTY OF THE STATE WHEN REQUIRED UPON

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 14 REQUEST. THE FEES COLLECTED MUST BE DEPOSITED IN THE GENERAL
 15 FUND. to--give--his--opinion--in--writing,--without--fee,--to--the
 16 legislature--or--either--house--of--the--legislature,--to--any--state
 17 officer,--board,--or--commission,--to--any--county--attorney,--to
 18 the--city--attorney--of--any--city--or--town,--and--to--the--board--of
 19 county--commissioners--of--any--county--of--the--state--when
 20 required--upon--any--question--of--law--relating--to--their
 21 respective--offices. He shall give any such opinion within 3
 22 months--following--the--date--it--is--requested--unless--he
 23 certifies--in--writing--to--the--requesting--party--that--the
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 25 time,--if--an--opinion--issued--by--the--attorney--general--conflicts

1 ~~with--an--opinion--issued--by--a--city--attorney,--county--attorney,~~
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6 ~~(7)(7)~~ to discharge the duties of a member of the board
 7 of examiners and state board of land commissioners;

8 ~~(8)(7)(8)~~ to perform all other duties as required by
 9 law."

10 NEW SECTION. Section 2. Effective date. [This act] is
 11 effective July 1, 1993.

12 ~~NEW SECTION. Section 3. Termination.-----{This----act}--~~
 13 ~~terminates--July--1,--1995.~~

-End-