

1 SB BILL NO. 138  
2 INTRODUCED BY Foster James

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL  
5 A COUNTY ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000 BE  
6 ADMITTED TO THE PRACTICE OF LAW FOR 3 YEARS BEFORE THE DATE OF ELECTION OR  
7 APPOINTMENT; ELIMINATING THE REQUIREMENT THAT A PERSON APPOINTED TO FILL A VACANCY  
8 IN THE OFFICE OF COUNTY ATTORNEY BE DESIGNATED AN ACTING COUNTY ATTORNEY UNTIL THAT  
9 PERSON ESTABLISHES RESIDENCY IN THE COUNTY; AND AMENDING SECTIONS 7-4-2701 AND  
10 7-4-2702, MCA."

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

13  
14 Section 1. Section 7-4-2701, MCA, is amended to read:

15 "7-4-2701. Qualifications for county attorney in certain counties. (1) ~~No~~ A person is not eligible  
16 for the position of county attorney in counties ~~which~~ that have a population in excess of 30,000 unless ~~he~~  
17 the person is a citizen of the United States ~~who~~ and has resided in the state 2 years immediately before  
18 taking office and has been admitted to the practice of law for at least 5 years ~~prior to~~ before the date of  
19 election or appointment.

20 (2) A person is not eligible for the position of county attorney in counties that have a population  
21 less than 30,000 unless the person is a citizen of the United States and has resided in the state 2 years  
22 immediately before taking office and has been admitted to the practice of law for at least 3 years before  
23 the date of election or appointment."

24  
25 Section 2. Section 7-4-2702, MCA, is amended to read:

26 "7-4-2702. Procedure to fill vacancy in office of county attorney. ~~(+) Whenever a vacancy in the~~  
27 ~~office of county attorney shall arise~~ arises in any a county and there is no licensed attorney residing in said  
28 ~~county who is eligible to be appointed to fill said vacancy,~~ the board of county commissioners is authorized  
29 to appoint an attorney who meets the qualifications established in 7-4-2701 to fill the vacancy. ~~and has~~  
30 ~~the power to employ special counsel from without the county, who shall be designated and officially known~~



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

8 ~~(2) Whenever any licensed attorney shall establish residence in said county and become eligible~~  
9 ~~to hold the office of county attorney, it shall be the duty of the board to appoint such attorney to fill said~~  
10 ~~vacancy, and the employment of said special attorney shall thereupon cease."~~

11 ~~-END-~~

## 1 SENATE BILL NO. 138

2 INTRODUCED BY FOSTER, GRIMES

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL  
5 A FULL-TIME COUNTY ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000  
6 BE ADMITTED TO THE PRACTICE OF LAW FOR 3 YEARS BEFORE THE DATE OF ELECTION OR  
7 APPOINTMENT; REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL A PART-TIME COUNTY  
8 ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000 BE ADMITTED TO THE  
9 PRACTICE OF LAW BEFORE TAKING OFFICE; ELIMINATING THE REQUIREMENT THAT A PERSON  
10 APPOINTED TO FILL A VACANCY IN THE OFFICE OF COUNTY ATTORNEY BE DESIGNATED AN ACTING  
11 COUNTY ATTORNEY UNTIL THAT PERSON ESTABLISHES RESIDENCY IN THE COUNTY; AND AMENDING  
12 SECTIONS 7-4-2701 AND 7-4-2702, MCA."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15  
16 **Section 1.** Section 7-4-2701, MCA, is amended to read:

17 "**7-4-2701. Qualifications for county attorney in certain counties.** (1) ~~He~~ A person is not eligible  
18 for the position of FULL-TIME county attorney in counties ~~which~~ that have a population in excess of 30,000  
19 unless ~~he~~ the person is a citizen of the United States ~~who~~ and has resided in the state 2 years immediately  
20 before taking office and has been admitted to the practice of law for at least 5 years ~~prior to~~ before the date  
21 of election or appointment.

22 (2) A person is not eligible for the position of FULL-TIME county attorney in counties that have a  
23 population OF less than 30,000 unless the person is a citizen of the United States and has resided in the  
24 state 2 years immediately before taking office and has been admitted to the practice of law for at least 3  
25 years before the date of election or appointment.

26 (3) A PERSON IS NOT ELIGIBLE FOR THE POSITION OF PART-TIME COUNTY ATTORNEY IN  
27 COUNTIES THAT HAVE A POPULATION OF LESS THAN 30,000 UNLESS THE PERSON IS A CITIZEN OF  
28 THE UNITED STATES AND RESIDES IN THE STATE AND HAS BEEN ADMITTED TO THE PRACTICE OF  
29 LAW BEFORE TAKING OFFICE."



## SENATE BILL NO. 138

INTRODUCED BY FOSTER, GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL A FULL-TIME COUNTY ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000 BE ADMITTED TO THE PRACTICE OF LAW FOR 3 YEARS BEFORE THE DATE OF ELECTION OR APPOINTMENT; REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL A PART-TIME COUNTY ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000 BE ADMITTED TO THE PRACTICE OF LAW BEFORE TAKING OFFICE; ELIMINATING THE REQUIREMENT THAT A PERSON APPOINTED TO FILL A VACANCY IN THE OFFICE OF COUNTY ATTORNEY BE DESIGNATED AN ACTING COUNTY ATTORNEY UNTIL THAT PERSON ESTABLISHES RESIDENCY IN THE COUNTY; AND AMENDING SECTIONS 7-4-2701 AND 7-4-2702, MCA."

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

**Section 1.** Section 7-4-2701, MCA, is amended to read:

"7-4-2701. **Qualifications for county attorney in certain counties.** (1) No A person is not eligible for the position of FULL-TIME county attorney in counties ~~which~~ that have a population in excess of 30,000 unless ~~he~~ the person is a citizen of the United States ~~who~~ and has resided in the state 2 years immediately before taking office and has been admitted to the practice of law for at least 5 years ~~prior to~~ before the date of election or appointment.

(2) A person is not eligible for the position of FULL-TIME county attorney in counties that have a population OF less than 30,000 unless the person is a citizen of the United States and has resided in the state 2 years immediately before taking office and has been admitted to the practice of law for at least 3 years before the date of election or appointment.

(3) A PERSON IS NOT ELIGIBLE FOR THE POSITION OF PART-TIME COUNTY ATTORNEY IN COUNTIES THAT HAVE A POPULATION OF LESS THAN 30,000 UNLESS THE PERSON IS A CITIZEN OF THE UNITED STATES AND RESIDES IN THE STATE AND HAS BEEN ADMITTED TO THE PRACTICE OF LAW BEFORE TAKING OFFICE."



## 1 SENATE BILL NO. 138

2 INTRODUCED BY FOSTER, GRIMES

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL  
5 A FULL-TIME COUNTY ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000  
6 BE ADMITTED TO THE PRACTICE OF LAW FOR 3 YEARS BEFORE THE DATE OF ELECTION OR  
7 APPOINTMENT; REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL A PART-TIME COUNTY  
8 ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000 BE ADMITTED TO THE  
9 PRACTICE OF LAW BEFORE TAKING OFFICE; ELIMINATING THE REQUIREMENT THAT A PERSON  
10 APPOINTED TO FILL A VACANCY IN THE OFFICE OF COUNTY ATTORNEY BE DESIGNATED AN ACTING  
11 COUNTY ATTORNEY UNTIL THAT PERSON ESTABLISHES RESIDENCY IN THE COUNTY; AND AMENDING  
12 SECTIONS 7-4-2701 AND 7-4-2702, MCA."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15  
16 **Section 1.** Section 7-4-2701, MCA, is amended to read:

17 **"7-4-2701. Qualifications for county attorney in certain counties. (1) ~~No~~ A person is not eligible**  
18 **for the position of FULL-TIME county attorney in counties ~~which~~ that have a population in excess of 30,000**  
19 **unless ~~he~~ the person is a citizen of the United States ~~who~~ and has resided in the state 2 years immediately**  
20 **before taking office and has been admitted to the practice of law for at least 5 years ~~prior to~~ before the date**  
21 **of election or appointment.**

22 **(2) A person is not eligible for the position of FULL-TIME county attorney in counties that have a**  
23 **population OF less than 30,000 unless the person is a citizen of the United States and has resided in the**  
24 **state 2 years immediately before taking office and has been admitted to the practice of law for at least 3**  
25 **years before the date of election or appointment.**

26 **(3) A PERSON IS NOT ELIGIBLE FOR THE POSITION OF PART-TIME COUNTY ATTORNEY IN**  
27 **COUNTIES THAT HAVE A POPULATION OF LESS THAN 30,000 UNLESS THE PERSON IS A CITIZEN OF**  
28 **THE UNITED STATES AND RESIDES IN THE STATE AND HAS BEEN ADMITTED TO THE PRACTICE OF**  
29 **LAW BEFORE TAKING OFFICE.**

30 2ND RD--2ND HOUSE

1           Section 2. Section 7-4-2702, MCA, is amended to read:

2           "**7-4-2702. Procedure to fill vacancy in office of county attorney.** ~~(1)~~ Whenever a vacancy in the  
3 office of county attorney ~~shall arise~~ arises in any a county and there is no licensed attorney residing in said  
4 county ~~who is eligible to be appointed to fill said vacancy~~, the board of county commissioners is authorized  
5 to appoint an attorney who meets the qualifications established in 7-4-2701 to fill the vacancy. ~~and has~~  
6 ~~the power to employ special counsel from without the county, who shall be designated and officially known~~  
7 ~~as the "acting county attorney" and who during said employment shall be vested with all the powers and~~  
8 ~~shall perform all the duties of the county attorney, including the filing of all complaints, informations, and/or~~  
9 ~~other proceedings for and in which the county or state may be a party and the prosecution and defense~~  
10 ~~of the same to the same extent and with the same force and effect as if he were the regular qualified~~  
11 ~~county attorney. Said attorney shall be paid a monthly compensation not to exceed the monthly salary of~~  
12 ~~the county attorney. Whenever any such attorney is employed, the county clerk of said county shall certify~~  
13 ~~to the attorney general the name of such acting county attorney and the fact of his employment.~~

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

17

-END-



SENATE BILL NO. 138

INTRODUCED BY FOSTER, GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL A FULL-TIME COUNTY ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000 BE ADMITTED TO THE PRACTICE OF LAW FOR 3 YEARS BEFORE THE DATE OF ELECTION OR APPOINTMENT; REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL A PART-TIME COUNTY ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000 BE ADMITTED TO THE PRACTICE OF LAW BEFORE TAKING OFFICE; ELIMINATING THE REQUIREMENT THAT A PERSON APPOINTED TO FILL A VACANCY IN THE OFFICE OF COUNTY ATTORNEY BE DESIGNATED AN ACTING COUNTY ATTORNEY UNTIL THAT PERSON ESTABLISHES RESIDENCY IN THE COUNTY; AND AMENDING SECTIONS 7-4-2701 AND 7-4-2702, MCA."

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

**Section 1.** Section 7-4-2701, MCA, is amended to read:

**"7-4-2701. Qualifications for county attorney in certain counties.** (1) No A person is not eligible for the position of FULL-TIME county attorney in counties which that have a population in excess of 30,000 unless he the person is a citizen of the United States who and has resided in the state 2 years immediately before taking office and has been admitted to the practice of law for at least 5 years prior to before the date of election or appointment.

(2) A person is not eligible for the position of FULL-TIME county attorney in counties that have a population OF less than 30,000 unless the person is a citizen of the United States and has resided in the state 2 years immediately before taking office and has been admitted to the practice of law for at least 3 years before the date of election or appointment.

(3) A PERSON IS NOT ELIGIBLE FOR THE POSITION OF PART-TIME COUNTY ATTORNEY IN COUNTIES THAT HAVE A POPULATION OF LESS THAN 30,000 UNLESS THE PERSON IS A CITIZEN OF THE UNITED STATES AND RESIDES IN THE STATE AND HAS BEEN ADMITTED TO THE PRACTICE OF LAW BEFORE TAKING OFFICE."

REFERENCE BILL



