

MINUTES FOR THE MEETING  
JUDICIARY COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

March 27, 1985

An executive session of the Judiciary Committee was called to order by Chairman Tom Hannah on Wednesday, March 17, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

RE-CONSIDERATION OF HJR 45: Rep. Eudaily moved to reconsider action on HJR 45. The motion was seconded by Rep. Mercer and carried on a voice vote. Rep. Eudaily further moved to amend page 2, following line 9 by striking subsection (2) in its entirety. Furthermore, amend page 4, line 4 following "committee" by striking "(or the Legislative Council)". The motion was seconded by Rep. Keyser and carried unanimously. Rep. Eudaily further moved that HJR 45 DO PASS AS AMENDED. The motion was seconded by Rep. O'Hara and carried unanimously.

ACTION ON SENATE BILL NO. 328: Rep. Brown moved that SB 328 BE NOT CONCURRED IN. The motion was seconded by Rep. Montayne and discussed.

Rep. Krueger feels that removing this duty of care would also remove the standard. Rep. Addy feels that we are subjecting these medical personnel to more liability. He feels the bill may do just the opposite of what it is intended to do. However, Rep. O'Hara feels medical personnel should be helped instead of leaving them out on a limb.

Rep. Keyser didn't agree with Rep. Kreuger. He feels that a person who properly administers that blood test will not be opened to civil liability.

Rep. Bergene said she isn't sure that there is a need for the bill because these medical personnel are already covered. Both Reps. Montayne and Addy brought up the question of the definition of "proper." Rep. Addy said that although he isn't too crazy with the existing language in the statute, he feels that additional language is just going to place a very precarious limitation on liability for hospitals. Rep. Miles feels that the hospitals already protect their employees adequately and that this bill is poorly written.

The question was called on the motion to kill the bill, and it carried on a voice vote.

ACTION ON SENATE BILL NO. 375: Rep. Gould moved that SB 375 BE CONCURRED IN. The motion was seconded by Rep. Montayne

and discussed.

Rep. Brown moved to amend page 7, line 6 by striking "3" and inserting "2". Furthermore, amend on page 9, line 21 by striking "3-YEAR" and inserting in lieu thereof "2-year". The motion was seconded by Rep. Gould and followed by discussion.

Rep. Hannah referred to testimony presented by Senator Towe during the hearing. Senator Towe said that the present standard under which a person is found to be mentally ill, a person must be found to be a danger to himself/herself or others in order to be committed and for each commitment thereafter. As Rep. Hannah understands it, this bill would change that standard. Once a person is found to be a danger to himself/herself or others, the mental health professionals want to be able to say that for a three-day period, they don't have to prove the standard again. If the mentally ill person violates his/her conditional release, then this bill can be used to exercise control over him/her again. The proponents of this bill want to be able to extend that control for a three-year period. This above amendment would extend it for two years before another finding is made to determine whether or not a person is dangerous to himself or others.

The question was called on the motion to amend, and it carried unanimously. Rep. Gould further moved that SB 375 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Hammond. The question was called, and the motion carried with Rep. Hannah dissenting.

ACTION ON SENATE BILL NO. 376: Rep. Gould moved that SB 376 BE CONCURRED IN. The motion was seconded by Rep. Miles and further discussed.

Rep. Hammond moved to amend page 3, line 13 following "OF" by striking "DANGER" and inserting "INJURY". The motion was seconded by Rep. Gould and carried unanimously. Rep. Hammond further moved to amend page 7, by deleting lines 9 through 11 in their entirety. Brenda Desmond, committee researcher, said the bill, with this amendment, would not allow the person to be detained after papers are filed before the hearing

Rep. Brown made a substitute motion that SB 376 BE NOT CONCURRED IN. The motion was seconded by Rep. Mercer. Rep. Brown said this is a very involved and complex issue. He said that the testimony presented at the hearing showed some considerable disagreement amongst all of the parties that had gotten together to try to deal with both SB 375 and SB 376. He is just not comfortable that this legislation is not in good enough shape yet. There are a lot of provisions in this bill that worried him and he is just not ready to go with it yet.

Rep. Bergene pointed out that there is a lot of anguish

about not being able to commit these children because of the involuntary commitment act they way it is presently. She feels that this matter should be considered because there are problems in this area.

Rep. Krueger said he is torn with regards to this legislation. He feels the bill is broad, and he is a little scared to implement something such as this even though there is a need. Rep. Hannah agreed saying that the bill is very broad in that they are dealing with a very subjective standard.

Rep. Addy said he has problems with the involuntary medication being one of the options that the court can order. He feels that at that point, it is tantamount to a commitment. He wishes to delete the reference made to involuntary medication to clarify that it is not one of the options that is available under this type of procedure. (Rep. Addy referred to the language on page 14 (3) of the bill.) Rep. Brown pointed out that Mr. Johnson also recommended that the next lines 11 and 13 beginning with "The" and ending with "(3)." be deleted.

Rep. Brown said that because this bill needs so much fix-up work, he moved that SB 376 BE TABLED. The motion was seconded by Rep. Hannah and carried 10-8. (See roll call vote.)

ACTION ON SENATE BILL NO. 453: Rep. Cobb moved that SB 453 BE CONCURRED IN. The motion was seconded by Rep. Keyser. Rep. Keyser further moved to add the following material on page 1, lines 23 following "and": "WHEREAS, there is a rising level of activity involving the illegal sale and possession of dangerous drugs within the state of Montana by highly secretive and well-financed organizations. The motion was seconded by Rep. O'Hara.

Rep. Mercer feels the amendment is beyond the scope of the title of the bill. He said that in order for a wire tapping bill to pass the House, it will have to be fairly restrictive, and this amendment would just tend to broaden it up.

Rep. Keyser said that regardless of what some say, drug trafficking in the state of Montana is becoming more and more of a major problem. Yet, we are reluctant to give the law enforcement people a tool. He feels that the restrictions placed in this bill are so tight that the law enforcement people will be restricted to the scope of what they are looking for. Rep. Keyser also pointed out that drug trafficking is the toughest case to prove for an officer.

Rep. Rapp-Svrcek has a hard time believing that the drug situation in Montana is as serious as some of the proponents of the bill purport it to be. Rep. Addy agrees with Rep. Keyser in that drug cases are among the most difficult cases to prove. There is a good justification to use this in order to track down drug trafficking; however, the big guy is involved in inter-state drug activity, and the federal govern-

ment is already taking care of that.

In response to Rep. Rapp-Svrcek, Rep. Keyser said he happens to know that drug trafficking is on the increase. He encouraged Rep. Rapp-Svrcek to check the state records on drug trafficking.

Even though Rep. O'Hara is very much in favor of Rep. Keyser's reason to adopt the amendment, he doesn't feel that the bill should be cluttered with this language. The question was called on the motion to amend, and it failed on a voice vote.

Rep. Eudaily further moved to amend page 20, line 2 following "day" strike "or" and insert "of". The motion was seconded by Rep. Gould and carried unanimously.

Rep. Cobb moved to amend pages 9 and 10 by deleting subsections (1) and (3) in their entirety. The motion was seconded by Rep. Mercer. Rep. Cobb feels that the word "terrorists" is too broad. Rep. Keyser spoke against the amendment to delete subsection (3). Rep. Mercer feels that it would be a good idea to delete this material because it makes the bill more clear cut. Upon request, the motion to amend by deleting these two subsections was divided. The question was called on the motion to delete subsection (1) on page 9, and it failed on a voice vote; the question was called on the motion to delete subsection (3) on page 10, and that motion failed on voice vote.

Rep. Rapp-Svrcek moved that SB 453 BE TABLED. The motion was seconded by Rep. Darko and carried 11-7. (See roll call vote.)

ACTION ON SENATE BILL NO. 116: Action on SB 116 commenced. Rep. Hammond moved that SB 116 BE CONCURRED IN AS AMENDED. (Amendments were placed on the bill at the last hearing.)

Rep. Krueger spoke against the motion; he said the bill as it is presently written has too many constitutional problems because we are mandating that the Courts place a surcharge on these types of fines. Rep. Addy said as a co-sponsor of SB 116, he supports the concept of SB 116; however, he admitted he was having the same reservations that Rep. Krueger is having with regards to the funding mechanism of this bill. That is the reason why he moved to amend the bill to include the non-severability clause. Rep. Addy said he intended to move to table the bill later. Rep. Mercer said he would second that motion at the appropriate time although he doesn't feel that it is unconstitutional.

Rep. Gould moved the following amendment as proposed by the Missoula County Attorney:

Page 3, line 3.

Following: "treasurer."

Strike: remainder of subsection (4) in its entirety.

Insert: "On or before the 10th day of each month the local government finance officer or treasurer shall remit to the state treasurer for deposit to the state general fund \$10 for each misdemeanor case and the greater of \$20 or 10% of the fine levied in each felony case. A local government may retain up to 10% of the funds remitted to the state treasurer to cover only the costs of administering this section."

Rep. Hammond seconded the motion, and it carried on a voice vote.

Rep. Gould further moved to amend page 7, lines 1 through 22 by reinserting the language that was stricken in the Senate and beginning on line 10 of page 8 by reinserting the stricken language through page 9. In addition, on lines 2, 7, 12 and 15 in front of "county attorney" insert "part-time." The motion was seconded by Rep. Hammond. The question was called, and the motion carried on a voice vote.

Rep. Miles moved to amend page 6, line 8, strike "base" twice; page 6, line 9 following "attorney." insert "A county attorney who is a part-time official for a county of the fourth, fifth, sixth or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney." The motion was seconded by Rep. Hammond and carried on a voice vote. (See copy of amendments that were adopted up to this point.-- Exhibit A)

Rep. Addy moved that SB 116 BE TABLED. The motion was seconded by Rep. Mercer and carried 10-8. (See roll call vote.)

ACTION ON SENATE BILL NO. 446: SB 446 was referred to the House Judiciary Committee due to some problems that were brought up on the floor. Parties involved proposed some amendments to SB 446 which have been reviewed by Rep. Addy, Rep. Mercer, Rep. Krueger, and Rep. Hannah. These amendments would on page 2, line 23 strike "Such possession placed a burden on the person to remove the effect of such FACT as a circumstance to be considered with all other evidence presented at trial." The insert: "Possession of a dairy case, egg basket, or shopping cart shall not constitute proof of the commission of the offense of unlawful appropriation of retailer property. Such fact will place a burden on the possessor to remove the effect of such fact as a circumstance to be considered with all evidence pointed to his guilt." Rep. Hannah asked Brenda Desmond if that

language could be cleared up at all. Brenda replied that she is not exactly sure of what they are trying to do with this language. Rep. Mercer said that the sponsors of the bill wish to make possession of a shopping cart a crime. Rep. Mercer feels the bill should be amended to strike all of subsection (2) on page 2 because he doesn't feel it should be a crime if a shopping cart is merely in the possession of a person.

Rep. Brown doesn't see a need for the bill. Rep. Krueger agreed with Rep. Brown. We have laws in relation to theft. He feels that we are getting up a bureaucracy here by requiring registration of dairy cases, egg baskets, and shopping carts.

Rep. Mercer made a substitute motion to strike all of subsection 2 on page 2 and 3 in its entirety. The motion was seconded by Rep. Krueger because he felt that the bill is much more preferable with this specific amendment. The question was called, and the motion carried on a voice vote.

Rep. Addy moved to insert a new section 3 by including presumption and provide under that presumption only civil liability for two types of value of the property. Rep. Hammond seconded this motion. (See standing committee report for amendments in final form.)

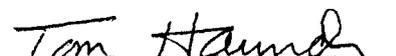
Rep. Brown feels that the administrative costs that go with this bill will probably be fairly substantial. Due to the press of time, Rep. Brown made a substitute motion to TABLE this bill. The motion was seconded by Rep. Krueger and it failed 3-15. (See roll call vote.)

Rep. Addy said he would also like to make possession of the registered property a prima facie case as second part of his motion to amend. Rep. Hannah seconded the motion.

The question was called on Rep. Addy's first amendment to insert a new section 3. The motion carried on a voice vote. The questions was called as to the prima facie amendment. The motion failed due to a split vote. (See roll call vote.)

Rep. Addy moved that SB 446 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Miles and carried with Rep. Brown dissenting.

ADJOURN: Upon the motion of Rep. Keyser, the meeting adjourned at 9:55 a.m.

  
TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/27/85

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NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

# STANDING COMMITTEE REPORT

March 27 19 25

MR. Speaker:

We, your committee on Judiciary

having had under consideration House Joint Resolution Bill No. 45

First reading copy ( white )  
color

## INTERIM STUDY OF FINES, FORFEITURES, COSTS & FEES & THEIR PURPOSES

Respectfully report as follows: That House Joint Resolution Bill No. 45  
be amended as follows:

1. Page 2, following line 9.  
Strike: subsection (2) in its entirety.  
Renumber subsequent subsections.
2. Page 4, line 4.  
Following: "committee"  
Strike: "(or the Legislative Council)"

AND AS AMENDED,

DO PASS

# STANDING COMMITTEE REPORT

March 27

19 35

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 323

Third reading copy ( Blue )  
color

AMEND LAW GRANTING IMMUNITY TO PERSON GIVING BLOOD  
ALCOHOL TEST

Respectfully report as follows: That Senate Bill No. 323

BE NOT CONCURRED IN  
XROPASS.

# STANDING COMMITTEE REPORT

March 27

19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 375

Third reading copy ( Blue )  
color

## CONDITIONAL RELEASE OF MENTAL HEALTH PATIENTS -- REVOCATION OF COND. RELEASE

Senate

375

Respectfully report as follows: That..... Bill No.

be amended as follows:

1. Page 7, line 6.

Strike: "3"

Insert: "2"

2. Page 9, line 21.

Strike: "3-YEAR"

Insert: "2-year"

AND AS AMENDED,  
ADOPTED BY CONCURRING

# STANDING COMMITTEE REPORT

March 27 ..... 19 85

MR. Speaker .....

We, your committee on Judiciary .....

having had under consideration Senate ..... Bill No. 413 .....

third reading copy ( Blue )  
color

## DEFINING HIGH WATER MARK

Respectfully report as follows: That Senate ..... Bill No. 413 .....

### BE AMENDED AS FOLLOWS:

1. Page 1, line 16.  
Following: "purposes"  
Strike: ", except" through "floating" on line 17.

AND AS AMENDED,  
BE NOT CONCURRED IN

~~DO PASS~~

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 27, 1985 BILL NO. SB 446 TIME 9:45

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb		✓
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould		✓
Edward Grady		✓
Joe Hammond		✓
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles		✓
John Montayne		✓
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Brown moved that SB 446 BE TABLED. The motion was  
seconded by Rep. Krueger, and it failed 3-15.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 27, 1985 BILL NO. SB 446 TIME 9:50

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould		✓
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger		✓
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)	✓	

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Addy moved to make possession of the registered  
property a prima facia case. The motion was seconded by Rep.  
Hammond and failed due to a tie vote.

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ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 27, 1985 BILL NO. SB 376 TIME \_\_\_\_\_

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb		✓
Paula Darko		✓
Ralph Eudaily	✓	
Budd Gould		✓
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles		✓
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff	✓	
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)	✓	

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Brown moved that SB 376 BE TABLED. The motion  
was seconded by Rep. Hannah and it carried 10-8.

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\_\_\_\_\_

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 27, 1985 BILL NO. SB 453 TIME \_\_\_\_\_

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould		✓
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Rapp-Svrcek moved that SB 453 BE TABLED. The motion  
was seconded by Rep. Darko and carried 11-7.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 27, 1985 BILL NO. SB 116 TIME \_\_\_\_\_

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould		✓
Edward Grady		✓
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff		✓
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)	✓	

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

Motion: Rep. Addy moved that SB 116 BE TABLED. The motion was  
seconded by Rep. Mercer and carried 10-8.

Amendments to SB 116:

1. Page 1, line 24.

Following: "~~deputies~~"

Insert: ", and providing longevity pay for part-time county attorneys and for deputy county attorneys"

2. Page 2, line 10.

Following: "imposed by"

Strike: "all courts of original jurisdiction"

Insert: "district courts and justices' courts"

3. Page 3, line 3.

Following: "treasurer."

Strike: remainder of subsection (4) in its entirety.

Insert: "On or before the 10th day of each month the local government finance officer or treasurer shall remit to the state treasurer for deposit to the state general fund \$10 for each misdemeanor case and the greater of \$20 or 10% of the fine levied in each felony case. A local government may retain up to 10% of the funds remitted to the state treasurer to cover only the costs of administering this section."

4. Page 4, line 1.

Following: "~~7-4-2503-(3)(d)~~."

Insert: "such salaries include the longevity increases provided by 7-4-2503 (3) (d)."

5. Page 6, line 7.

Following: "COUNTY OF THE"

Insert: "first,"

Following: "SECOND"

Insert: ", "

6. Page 6, line 8.

Strike: "base" twice

7. Page 6, line 9 ~~9~~ <sup>"attorney"</sup>

Following: "A county attorney who is a part-time official for a county of the fourth, fifth, sixth or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney."

8. Page 7, following line 22.

Insert: "(d) (i) After completing 4 years of service as county attorney or deputy county attorney, each part-time county attorney or deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of his employment as county attorney or deputy county attorney. After completing 5 years of service as county attorney or deputy county attorney, each part-time county attorney or deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of his employment. After completing 6 years of service as county attorney or deputy county attorney and for each year of service thereafter up to completion of the 11th year of

service, each part-time county attorney or deputy county attorney is entitled to an additional annual increase in salary of \$500.

(ii) If a part-time county attorney has formerly served as deputy county attorney, his years of service as deputy must be included in the calculation of the longevity increase provided in this subsection (3) (d).

(iii) The years of service as a county attorney or deputy county attorney accumulated prior to [the effective date of this act] must be included in the calculation of the longevity increase."

9. Page 8, following line 9.

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

"7-4-2505. Amount of compensation for deputies and assistants. (1) Subject to subsection (2), 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) clerk and recorder;
- (b) clerk of the district court;
- (c) treasurer;
- (d) assessor;
- (e) county attorney;
- (f) auditor.

(2) (a) The salary of a deputy or an assistant listed in subsection (1) , excluding longevity payments provided in 7-4-2503(3) (d), may not be more than 90% of the salary of the officer under whom such deputy or assistant is serving.

(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.

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

Renumber: subsequent sections.

10. Page 9, following line 10.

Insert: "NEW SECTION. Section 5. Non Severability. It is the intent of this legislature that each part of this act is essentially dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are invalid."

Senate Bill 116 Amendment

Rewrite subsection (4) of Section 1 (p. 2, lines 22025 and p. 3 lines 1 to 7) to read as follows:

(4) The charges collected under subsection (1) must be deposited with the local government finance officer or treasurer. On or before the 10th day of each month the local government finance officer or treasurer shall remit to the state treasurer for deposit to the state general fund \$10 for each misdemeanor case ~~and the~~ and the greater of \$20 or 10% of the fine levied in each felony case. A local government may retain <sup>up to</sup> 10% of the funds remitted to the state treasurer to cover <sup>only the</sup> costs of administering this section.

1 SENATE BILL NO. 116

2 INTRODUCED BY AKLESTAD, GOULD, MENAHAN,  
3 KEENAN, HALLIGAN, PINSONEAULT, KOLSTAD, HART,  
4 ADDY, LORY, MCCALLUM, HOLLIDAY, ABRAMS, IVERSON,  
5 HAFPEY, SCHYE, KOEHNKE, REAM, JANET MOORE, GALT

6  
7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING--THE--PAY  
8 STRUETURE--FOR--PROSECUTING--ATTORNEYS; ADJUSTING THE SALARY OF  
9 PART--TIME COUNTY ATTORNEYS; REQUIRING THE STATE TO PAY  
10 ONE--HALF OF THE SALARY OF NO MORE THAN TWO AUTHORIZED DEPUTY  
11 COUNTY ATTORNEYS; PROVIDING--LONSEVITY--PAY---FOR---COUNTY  
12 ATTORNEYS--AND--THEIR--DEPUTIES; PROVIDING FUNDING BY IMPOSING  
13 A CHARGE ON PERSONS CONVICTED OF CRIMINAL OFFENSES OR WHO  
14 FORFEIT BOND OR BAIL; AMENDING SECTIONS 7-4-25027 AND  
15 7-4-2503, AND 7-4-25057 MCA; AND PROVIDING AN EFFECTIVE  
16 DATE."

17  
18 WHEREAS, the purpose of this act is to maintain and  
19 improve the quality of the prosecution function in Montana  
20 by adjusting the salary of part-time county attorneys; AND  
21 requiring the state to pay one-half of the salary of the TWO  
22 deputy county attorneys authorized by 7-4-2703;---and  
23 providing--longevity--pay--for--county---attorneys---and--for--deputy county  
24 deputies; and *Attorneys*

25 WHEREAS, it is appropriate that necessary funding be

1 derived from a charge to be assessed upon persons convicted  
2 of a crime or who forfeit bail or bond, thus providing that  
3 costs of maintaining and improving the quality of the  
4 prosecution function will be borne, in part, by those who  
5 necessitate the operation of the criminal justice system.

6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
8 NEW SECTION. Section 1. Imposition of charge upon  
9 conviction or forfeiture -- administration. (1) Except as  
10 provided in subsection (2), there must be imposed by all  
11 courts of original jurisdiction on a defendant upon his  
12 conviction for a criminal offense or upon forfeiture of bond  
13 or bail a charge that is in addition to other taxable court  
14 costs, fees, or fines, as follows:  
15 (a) \$10 in each misdemeanor case; and  
16 (b) the greater of \$20 or 10% of the fine levied in  
17 each felony case.

18 (2) If a convicting court determines under 46-18-231  
19 and 46-18-232 that the defendant is not able to pay the fine  
20 and costs or that he is unable to pay within a reasonable  
21 time, the court must waive payment of the charge imposed by  
22 this section.

23 (3) The charge imposed by this section is not a fine  
24 and may not be used in determining the jurisdiction of any  
25 court.

SAVE IN



LEAVE IN

1 (4) The charges collected under subsection (1) must be  
 2 deposited with the local government finance officer or  
 3 treasurer. The finance officer or treasurer shall record the  
 4 amount of charges collected that are on deposit with him. On  
 5 or before the last day of the month following each calendar  
 6 quarter, the finance officer or treasurer shall remit funds  
 7 collected during the preceding quarter to the state  
 8 treasurer for deposit in the state general fund. A local  
 9 government may retain 10% of funds collected to be deposited  
 10 in its general fund to cover costs of administering this  
 11 section.

12 Section 2. Section 7-4-2502, MCA, is amended to read:  
 13 "7-4-2502. Payment of salaries of county officials and  
 14 assistants. (1) Except as provided in subsection (2), the  
 15 salaries of the county officers and their assistants may be  
 16 paid monthly, twice monthly, or every 2 weeks out of the  
 17 general fund of the county and upon the order of the board  
 18 of county commissioners.

19 (2) (a) The salary salaries of the county attorney is  
 20 and deputy county attorneys authorized by 7-4-2703 are  
 21 payable monthly, with THE SALARIES OF THE COUNTY ATTORNEY  
 22 AND NO MORE THAN TWO DEPUTIES PAYABLE one-half from the  
 23 general fund of the county and the other one-half from the  
 24 state treasury upon the warrant of the state auditor. Such  
 25 salaries--include--the--longevity--increases--provided--by

LEAVE IN

7-4-2503(3)(d)

(b) The county commissioners of each county shall,  
 within 30 days after the election or appointment to fill a  
 vacancy for any cause in the office of county attorney or  
 within 30 days after the appointment of a deputy county  
 attorney authorized by 7-4-2703, certify the election or  
 appointment to the state auditor, who shall thereafter draw  
 warrants for such salary in the same manner as for state  
 officers. In case of a vacancy, the county commissioners  
 shall immediately notify the state auditor, and the auditor  
 shall compute the salary due on the basis of the  
 notification.

(3) The board has jurisdiction and power, under such  
 limitations and restrictions as are prescribed by law, to  
 fix the compensation of all county officers not otherwise  
 fixed by law and to provide for the payment of the same."

Section 3. Section 7-4-2503, MCA, is amended to read:  
 "7-4-2503. Salary schedule for certain county  
 officers. (1) The salary paid to the county treasurer,  
 county clerk and recorder, clerk of the district court,  
 part-time county attorney, county assessor, county  
 superintendent of schools, and county sheriff; the county  
 surveyor in counties where county surveyors receive salaries  
 as provided in 7-4-2812; and the county auditor in all  
 counties wherein such office is authorized, for the fiscal

1 year beginning July 1, 1981, is computed by adding the  
 2 annual base salary of:  
 3 (a) \$14,000 for the counties of the first through  
 4 fifth class to the population increment of \$10 for each 100  
 5 persons or major fraction thereof included in the county's  
 6 population as determined by the 1980 federal decennial  
 7 census; or  
 8 (b) \$12,000 for counties of the sixth and seventh  
 9 class to the population increment of \$20 per 100 persons or  
 10 major fraction thereof in the county's population as  
 11 determined by the 1980 federal decennial census.  
 12 (2) (a) The county superintendent of schools shall  
 13 receive, in addition to the salary based upon subsection  
 14 (1), the sum of \$400 per year.  
 15 (b) The county sheriff shall receive, in addition to  
 16 the salary based upon subsection (1), the sum of \$2,000 per  
 17 year.

18 ~~for~~ ~~in~~ ~~counties~~ ~~with~~ ~~a~~ ~~population~~ ~~less~~ ~~than~~ ~~307,000,~~  
 19 ~~the~~ ~~county~~ ~~attorney~~ ~~who~~ ~~is~~ ~~a~~ ~~part~~ ~~time~~ ~~official~~ ~~shall~~  
 20 ~~receive~~ ~~in~~ ~~addition~~ ~~to~~ ~~the~~ ~~salary~~ ~~based~~ ~~upon~~ ~~subsection~~  
 21 ~~for~~ ~~the~~ ~~sum~~ ~~of~~ ~~\$17,000~~ ~~per~~ ~~year.~~

22 (3) (a) In each county with a population in excess of  
 23 30,000, the county attorney shall be a full-time official  
 24 under 7-4-2704, and his salary for the fiscal year beginning  
 25 July 1, 1981, shall be \$36,500. In counties with a

part-time

All other county Attorneys  
 shall be entitled to receive an annual  
 salary equal to 50% of the annual  
 salary of a full-time county attorney.  
 population less than 30,000, the county attorney who is a

part-time official for a county of the first, second, third,  
 fourth or fifth class is entitled to receive an annual base  
 salary equal to 60% of the annual base salary of a full-time  
 county attorney. A county attorney who is a part-time  
 official for a county of the sixth or seventh class FOR A  
 COUNTY OF THE SECOND OR THIRD CLASS is entitled to receive  
 an annual base salary equal to 50% 60% of the annual base  
 salary of a full-time county attorney.

(b) In those counties where the office of the  
 county attorney has been established as a full-time position  
 pursuant to 7-4-2706, the salary of the county attorney for  
 the fiscal year beginning July 1, 1981, shall be \$36,500.

(c) Beginning on July 1, 1982, and on July 1 of each  
 succeeding year, each county attorney shall be entitled to  
 an increase in salary calculated by adding to his annual  
 salary on July 1, 1981, an increment of 70% of the last  
 previous calendar year's consumer price index for all urban  
 consumers, U.S. department of labor, bureau of labor  
 statistics, or other index that the bureau of business and  
 economic research of the university of Montana may in the  
 future recognize as the successor to that index. The  
 cost-of-living increment for the fiscal year beginning July  
 1, 1983, and for each subsequent fiscal year shall be added  
 to all cost-of-living increments granted for previous years.

part time

1 (d) (i) After completing 4 years of service as a county  
 2 attorney or deputy county attorney, each county attorney or  
 3 deputy county attorney is entitled to an increase in salary  
 4 of \$1,000 on the anniversary date of his employment as  
 5 county attorney or deputy county attorney. After completing  
 6 5 years of service as county attorney or deputy county  
 7 attorney, each county attorney or deputy county attorney is  
 8 entitled to an additional increase in salary of \$1,500 on  
 9 the anniversary date of his employment. After completing 6  
 10 years of service as county attorney or deputy county  
 11 attorney and for each year of service thereafter up to  
 12 completion of the 11th year of service, each county attorney  
 13 or deputy county attorney is entitled to an additional  
 14 annual increase in salary of \$500.

Leave IN AS Anniversary

15 (ii) If a county attorney has formerly served as deputy  
 16 county attorney, his years of service as deputy must be  
 17 included in the calculation of the longevity increase  
 18 provided in this subsection (3)(d).  
 19 (iii) The years of service as a county attorney or  
 20 deputy county attorney accumulated prior to the effective  
 21 date of this act must be included in the calculation of the  
 22 longevity increase.

23 (e)(4) For each 10th year after the fiscal year  
 24 beginning July 1, 1981, the latest federal decennial census  
 25 statistics shall be the basis for computation of population

1 increments under this section. During the intervening 9  
 2 years, the computation of population increments applicable  
 3 on July 1 of each year shall be based on the last calendar  
 4 year's annual estimates of counties' populations compiled by  
 5 the federal-state cooperative program for estimates of the  
 6 university of Montana bureau of business and economic  
 7 research and the U.S. bureau of the census or other estimate  
 8 that the bureau of business and economic research may  
 9 certify."

10 Section 4: Section 7-4-2505: MEA is amended to read:  
 11 "7-4-2505. Amount of compensation for deputies and  
 12 assistants. (1) Subject to subsection (2) the boards of  
 13 county commissioners in the several counties in the state  
 14 shall have the power to fix the compensation allowed any  
 15 deputy or assistant of the following officers:

- 16 (a) clerk and recorder;
- 17 (b) clerk of the district court;
- 18 (c) treasurer;
- 19 (d) assessor;
- 20 (e) county attorney;
- 21 (f) auditor;
- 22 (g) (e) The salary of a deputy or an assistant listed

Leave IN

23 in subsection (1) excluding longevity payments provided in  
 24 7-4-2503(3)(d) may not be more than 90% of the salary of  
 25 the officer under whom such deputy or assistant is serving.

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

7 (c) Deputy assessors, clerks and recorders shall be the same as  
8 paid the deputy clerk and recorder."

9 NEW SECTION. Section 4. Effective date. This act is  
10 effective July 1, 1985.

-End-

*Alkelstad Amat.*

AMEND SB 116, Third Reading Copy:

1. Page 6, line 9.

Following: "attorney."

Insert: "A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual base salary equal to 50% of the annual ~~base~~ salary of a full-time county attorney."