



MONTANA COUNTY ATTORNEYS ASSOCIATION
34 West Sixth Avenue • Suite 2E
Helena, Montana 59601

April 28, 2014

To: Members of the Law and Justice Interim Committee
Fr: Rich Batterman, President, Montana County Attorneys Association
Re: Comments for April 28, 2014 Meeting.

The Montana County Attorneys Association (MCAA) is asking the State of Montana to invest in 'prosecution services' at the local level in the 2015 legislative session. This investment needs to be significant, and ongoing, in order to allow the State's many county attorney's offices to competently represent the State in criminal proceedings, and other matters, in order to maintain some measure of parity between prosecuting attorneys and the defense bar, and in order to attract and retain the high-quality deputy county attorneys who are the heart and soul of our offices.

We ask that the legislature consider making an investment in two specific areas:

- 1) Assistance with the salaries of the deputy county attorneys; and
- 2) Assistance with meeting the continuing legal education requirements of county attorneys and their deputies through a training appropriation to the Department of Justice.

Since statehood it has been recognized that the elected county attorneys serve both Montana and their own county. Because the county attorneys serve both the State and the county, funding the county attorney has been structured as a shared responsibility between the State of Montana and each of its 56 counties. The 1889 Constitution authorized the State of Montana to pay one half of the salary of each county attorney (Article VIII, Section 19). This arrangement was carried forward in the 1972 Constitution. In 2007 the legislature structured county attorney salaries as a percentage of the salary of district court judges, and authorized a statutory appropriation as the method of payment (House Bill 12, 2007 Session).

Two of the primary duties of every county attorney are the effective prosecution of criminal violations of state law, and providing competent advice to local county officials on all county civil matters. In this modern age local government has become increasingly complex, and criminal caseloads significantly larger. As a consequence, it has become crucial for county attorney offices to attract and retain talented and dedicated persons to serve as deputy county attorneys.

Under current law the state is responsible for only a portion of the salary of the elected county attorney. The state's contribution does not include any portion of the salaries or benefits of any deputy county attorney. The state also does not contribute to the local government's funding any of the expenses needed to support the operation of the county attorney's office, such as victim

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advocacy, administrative staff, office overhead, equipment, supplies, administrative costs, and training costs.

Montana's County Attorneys suggest that it is time for the state make a significant and ongoing investment in the county attorney offices.

At present county attorneys' offices employ approximately 100 deputy county attorneys, the vast majority of whom work in the large and medium sized counties of Montana who serve the bulk of the state's population.

These deputy county attorneys perform important work for the State of Montana every day, including criminal prosecutions, child abuse and neglect cases, involuntary mental health commitments, and youth court cases. These are matters brought in the name of the State, not local government, and are vital to public safety and the protection of the most vulnerable members of society.

Statewide, the average starting wage for a deputy county attorney is approximately \$24.00 per hour, and the average wage for all deputy county attorneys is approximately \$37.00 per hour. Montana's county attorneys request that the State of Montana share the responsibility for these talented individuals and assume a portion of the cost of their salaries.

The County Attorneys suggest two possible mechanisms by which the State of Montana might make the requested investment:

1. By amending the existing statutory appropriation for county attorney salaries, codified at Section 7-4-2502, MCA, to include deputy county attorneys; or
2. By amending the deputy longevity sections found at Section 7-4-2505(3)(c), MCA.

Each of these proposed mechanisms have pros and cons that need to be discussed and evaluated by the various stakeholders, but we feel that these existing funding mechanisms can serve as models to allow the state to support the funding of deputy county attorney salaries.

The MCAA recently surveyed county attorney offices. Six questions were asked:

1. What is the approximate overall budget for your Office?
2. How many deputy county attorneys in your Office?
3. How many deputy county attorneys in your Office work entirely or mainly on state of Montana cases (criminal prosecutions, involuntary commitments, dependent neglect)?
4. What is the starting wage (\$\$/hour) for deputy county attorneys in your Office?
5. What is the average wage (\$\$/hour) for deputy county attorneys in your Office?
6. What is the average length of stay (# years) for a deputy county attorney in your Office?

The results of the Association's survey are attached. What we have found is that the salaries of deputy county attorneys are not keeping up with the salaries of the attorneys working for the Office of Public Defender (OPD). A key difference in the salaries paid to county attorneys as

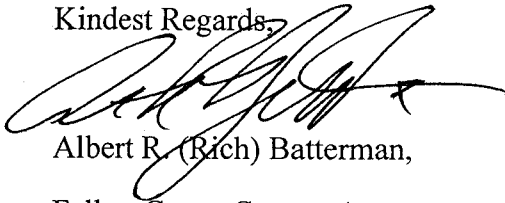
compared to the OPD, of course, is that the OPD's employees are covered by a collective bargaining agreement and a salary schedule. The survey results include a number of anecdotal examples of this salary inequality.

Also attached for your reference is a copy of HB 12, from the 2007 legislative session, which contains relevant sections of the MCA.

In addition to state assistance with the salaries of deputy county attorneys, the MCAA requests a 'training appropriation' of \$500,000 for the 2017 biennium. This amount would: 1) enable the Training Coordinator at the Prosecution Services Bureau to have a meaningful budget with which to invite speakers and presenters to the Continuing Legal Education seminars; and 2) enable county attorney offices to submit requests for reimbursement to the Department of Justice for staff attendance at these events and other advanced trainings.

The Montana County Attorney Association appreciates your consideration of these requests. Please advise how we can assist you further.

Kindest Regards,

A handwritten signature in black ink, appearing to read 'Albert R. Batterman', with a long horizontal flourish extending to the right.

Albert R. (Rich) Batterman,
Fallon-Carter County Attorney
President, MCAA

April 24, 2014

To: Law & Justice Interim Committee
Fr: Rich Batterman. Montana County Attorneys Association
Re: MCAA Survey

Between December 2013 and April 2014 the Association surveyed the County Attorney Offices. Six questions were asked:

1. What is the approximate overall budget for your Office?
2. How many deputy county attorneys in your Office?
3. How many deputy county attorneys in your Office work entirely or mainly on state of Montana cases (criminal prosecutions, involuntary commitments, dependent neglect)?
4. What is the starting wage (\$\$/hour) for deputy county attorneys in your Office?
5. What is the average wage (\$\$/hour) for deputy county attorneys in your Office?
6. What is the average length of stay (# years) for a deputy county attorney in your Office?

Survey Results are attached.

COUNTY	Budget 2014	Number Deputies	Deputies/ MCA	Start wage/hr	Avg. wage/hr	Avg. # yrs.	
Anaconda-Deer Lodge							
Beaverhead	\$285,300.00	1.00	1.00	\$23.00	\$23.00	1	
Big Horn	\$420,629.00	2.00	2.00	\$27.95	\$28.95	7	
Blaine							
Broadwater							
Butte-Silver Bow	\$910,500.00	5.00	5.00	\$24.00	\$34.33	10+	
Carbon							
Carter							
Cascade		12.00	10.00	\$24.00	\$30.00	6	
Chouteau							
Custer	\$380,726.00	1.00	1.00	\$33.18	\$33.18	1	
Daniels	\$82,882.00	0.00	na	na	na	na	
Dawson	\$375,000.00	1.00	1.00	na	\$35.86	na	
Fallon	\$289,000.00	0.00	na	na	na	na	
Fergus	\$385,602.00	1.00	1.00	\$24.00	\$39.91	11	
Flathead	\$1,269,212.00	10.00	13.00	\$23.08	\$26.45	5	
Gallatin	\$1,467,813.00	9.00	7.00	\$25.97	\$29.75	4	
Garfield							
Glacier	\$296,636.00	2.00	1.00	\$24.00	\$24.00	1	2 part time deputies
Golden Valley	\$56,300.00	0.00	0.00	na	na	na	
Granite	\$147,000.00	0.00	na	na	na	na	
Hill	\$400,000.00	2.00	2.00	\$24.00	\$24.50	2	
Jefferson	\$385,000.00	1.00	1.00	\$30.00	\$30.00	5	
Judith Basin	\$88,550.00	0.00	0.00	na	na	na	
Lake	\$467,742.00	4.00	4.00	\$39.59	\$44.62	5	
Lewis & Clark	\$2,063,410.00	10.00	7.50	\$29.81	\$35.67	9	35.67/34.41
Liberty	\$91,232.00	1.00	1.00	\$31.13	\$31.13	12	
Lincoln	\$421,420.00	2.00	2.00	\$21.63	\$27.56	4	
Madison	\$320,783.00	1.00	1.00	\$23.80	\$23.80	3	
McCone							
Meagher							
Mineral							
Missoula	\$2,500,000.00	17.00	14.00	\$19.54	\$34.83	9	
Musselshell	\$181,000.00	0.50	0.50	\$26.95	\$26.95	3.0	
Park	\$380,000.00	2.00	1.00	\$24.00	\$29.80	5	
Petroleum	\$30,000.00	0.20	na	na	na	5	
Phillips	\$276,000.00	0.60	0.60	\$12.50	\$35.00	20	
Pondera	\$117,011.00	0.00	na	na	na	na	
Powder River							
Powell	\$258,605.00	1.00	1.00	\$23.80	\$23.80	5	
Prairie							
Ravalli							
Richland							
Roosevelt	\$367,800.00	1.00	1.00	\$39.66	\$39.66	na	
Rosebud	\$236,946.00	0.00	na	na	na	na	
Sanders	\$297,355.00	1.00	1.00	\$21.63	\$26.32	5	
Sheridan							
Stillwater	\$307,055.00	1.00	1.00	\$23.00	\$23.00	5	
Sweet Grass	\$200,000.00	0.00	na	na	na	na	
Teton							
Toole							
Treasure							
Valley							

COUNTY	Budget 2014	Number Deputies	Deputies/ MCA	Start wage/hr	Avg. wage/hr	Avg. # yrs.	
Wheatland							
Wibaux							
Yellowstone	\$7,358,650.00	23.00	21.00	\$24.03	\$37.15	9.9	Total budget includes civil loss & liability continger
TOTALS	\$23,115,159.00	112.30	101.60				

Following is a list of counties with deputy county attorneys and the number of them in each county, per the survey conducted.

<u>County</u>	<u>Number of Deputy County Attorneys</u>
1. Yellowstone.	23.
2. Missoula.	17.
3. Cascade.	12.
4. Lewis and Clark.	10.
5. Flathead.	10.
6. Gallatin.	9.
7. Butte Silver Bow.	5.
8. Lake.	4.
9. Big Horn.	2.
10. Glacier.	2.
11. Hill.	2.
12. Lincoln.	2.
13. Park.	2.
14. Beaverhead.	1.
15. Custer.	1.
16. Dawson.	1.
17. Fergus.	1. Part time. Serves as Petroleum CA.

18. Jefferson.	1.
19. Liberty.	1.
20. Madison.	1.
21. Powell.	1.
22. Roosevelt.	1.
23. Sanders.	1.
24. Stillwater.	1.
25. Phillips.	.60.
26. Musselshell.	.50.
27. Petroleum.	.20.
28. Ravalli	Unknown, but do have deputy CAs.
29. Richland	Unknown, but do have deputy CAs.

Not all counties replied to the survey. Many of the rural counties do not employ a deputy county attorney.

April 24, 2014

To: Members of the Law and Justice Interim Committee
Fr: Rich Batterman, Montana County Attorneys Association
Re: Attachment. Salary Comparisons.

Specific examples from the Missoula County. 2014.

- **OPD Attorney A** has been working for the OPD for approximately 8 years. He is in Rank 3 and currently makes \$80,374. Less than 1 year from now, he will have 9 years under his belt and will be making \$83,871.
- **Deputy County Attorney A** has worked for the Missoula County Attorney's Office for three months shy of 9 years as an attorney. The current pay rate is \$31.08/hour or \$64,646.40. **OPD Attorney A** is currently making \$15,727.60 more than **Deputy County Attorney A**. Next year, the gap will grow to \$17,608.44 (assuming the Deputy receives a 2.5% cost of living increase next year).
- **OPD Attorney B** has been working for the OPD for approximately 6 years. She is in Rank 2 and currently makes \$71,154.
- **Deputy County Attorney A** has worked for the Missoula County Attorney's Office for three months shy of 9 years as an attorney. The current pay rate is \$31.08/hour or \$64,646.40. This is \$6,507.60/year more than the Deputy with approximately 3 years less experience.
- **OPD Attorney C** and **OPD Attorney D** are at \$87,097 (Rank 3 with 10 plus years).
- **OPD Attorney E** has applied for Rank 3, but is currently in Rank 2 with approximately 8-10 years of experience. His current salary is \$73,033. That is \$8,386.60 more than **Deputy County Attorney A**.

Specific Examples from Lake County. 2014.

I. Here's my data. **Lake County Deputy County Attorney A**. I have been a deputy county attorney in Lake County since September 2007, prior to that, I was a judicial law clerk in the 20th Judicial District for about a year and a half. At this time, I prosecute a wide array of felonies (but if there's a kid sex case, it's probably mine). I make \$26.93 per hour.

In my office, I have two colleagues similarly situated. **Lake County Deputy County Attorney B** is a three-year attorney who also prosecutes mainly felonies. He makes approximately \$25.52 per hour.

OPD Attorney A, an attorney with 6 months in our office and a year of working for OPD prosecutes mainly misdemeanors and makes \$25.00 per hour.

Case-wise and experience-wise, we can compare apples to apples by looking at my two most recent homicide cases with OPD attorneys. In *State v. Whitford*, Whitford was represented by Steve Eschenbacher (\$37.18). Eschenbacher has been substituted off the case, and now Whitford is being represented by Jennifer Streano (\$37.90). In *State v. Madplume*, Madplume was represented by Noel Larrivee (\$40.73) and Jessica Polan (\$31.68). Mr. Larrivee has been practicing a long time (decades) and is partially retired. However, Jessica Polan indicated that she's been an attorney for approximately 4 years. (Yes, he was convicted after a 9 day trial with a whole lotta witnesses and no less than 56 State's exhibits).

Right now, there are three deputy county attorneys, one chief deputy county attorney, and the actual county attorney himself in Lake County. In total, we have five attorneys to handle all the justice court cases, all the district court cases, all the juvenile cases, all the abuse and neglect cases, all the involuntary commitments, and a few other random tasks.

To handle the same cases, the Office of the Public Defender in Lake County has not only their own five regular attorneys, but they are also allowed to (and often do) contract out many of their cases due to conflicts. Plainly put, they have more attorneys doing less work for significantly more money than their deputy county attorney counterparts.

I also crunched a few numbers out of curiosity – in 2013, there were 131 OPD attorneys. 84 made more than I do, 47 make less. On a percentile scale (where 99 is the top paid person, and 1 is the lowest paid person), my salary as a seven-year attorney falls at the 35th percentile (yes, the bottom third). I don't have a way to determine how many of the 47 OPD attorneys who made less than I do have less than seven years of experience (but, I have a pretty good guess that it's all of them).

II. One perfect comparison from Lake County would be myself and **OPD Attorney C**. We both graduated from the UM Law School together in 2010, I had a year of practicum experience prosecuting in Missoula 20 hours a week my third year. She went straight to OPD after the bar exam and I clerked for 6 months for the District Court Judges here. I was hired at the County Attorney's Office to prosecute felony cases in 2011 and at that time my salary request was to be paid whatever **OPD Attorney C** made, since that made sense to me. At the time I believe we were both making \$47,000 a year, of course there were some differences in health care and such but I know that it felt fair at the time. Three years later I am making \$49,724 a year, I think I received a dollar an hour raise after a year and last year I received 50 or 75 cents an hour per hour as a raise. As of today **OPD Attorney C** makes \$28.98 per hour, or \$60,278.40, or over \$10,000 more than me with essentially the same job and experience. I do believe that prior to the recent OPD raise we were still in the same ball park.

III. One more comparison here in Lake County. The OPD just hired a new attorney with zero experience just passed the bar exam this year he is starting at 51,000 a year

2007 Montana Legislature

About Bill -- Links



HOUSE BILL NO. 12
INTRODUCED BY CALLAHAN
BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

AN ACT GENERALLY REVISING LAWS RELATED TO PROSECUTION SERVICES; PROVIDING LEGISLATIVE FINDINGS; REVISING THE FUNDING OF AND BUDGETING FOR COUNTY ATTORNEY SALARIES; CLARIFYING CERTAIN PROVISIONS ON COUNTY POPULATION AND FULL-TIME OR PART-TIME COUNTY ATTORNEY POSITIONS; PROVIDING FOR THE STATUTORY APPROPRIATION OF STATE CONTRIBUTIONS FOR COUNTY ATTORNEY SALARIES; AMENDING SECTIONS 7-4-2502, 7-4-2503, 7-4-2704, 7-4-2706, 17-7-112, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

AN ACT GENERALLY REVISING LAWS RELATED TO PROSECUTION SERVICES; PROVIDING LEGISLATIVE FINDINGS; REVISING THE FUNDING OF AND BUDGETING FOR COUNTY ATTORNEY SALARIES; CLARIFYING CERTAIN PROVISIONS ON COUNTY POPULATION AND FULL-TIME OR PART-TIME COUNTY ATTORNEY POSITIONS; PROVIDING FOR THE STATUTORY APPROPRIATION OF STATE CONTRIBUTIONS FOR COUNTY ATTORNEY SALARIES; AMENDING SECTIONS 7-4-2502, 7-4-2503, 7-4-2704, 7-4-2706, 17-7-112, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Legislative findings -- county attorney workload and salaries. The legislature finds that:

- (1) a significant portion of the work done by county attorneys is for the prosecution of criminal cases under state law and for the enforcement of state civil law concerning child abuse and neglect pursuant to Title 41, chapter 3;
- (2) the county attorney workloads vary greatly from county to county;
- (3) it is in the state's best interest to promote consistent statewide prosecution services and to support the office of county attorney as a career position that will attract experienced and well-qualified attorneys, especially considering the

enactment of a statewide public defender system in 2005;

(4) because a county attorney is an elected county official and has a vital role in providing civil legal services to the county and because each county has unique needs to consider, the county attorney's salary should be set by the county;

(5) because county attorneys provide both state and county services, the responsibility for funding county attorney salaries should be a responsibility shared by the state and the counties; and

(6) the state's funding responsibility should be met through a predictable and ongoing appropriation, thus through a statutory appropriation.

Section 2. Section 7-4-2502, MCA, is amended to read:

"7-4-2502. Payment of salaries of county officials and assistants -- state share for county attorney -- statutory appropriation. (1) The salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) ~~(a) The funding for the salary of and health insurance benefits for the county attorney is payable one-half from the general fund of the county and, if the county has supplied the information to the department of justice for inclusion in its budget, the other one-half from the state treasury upon the warrant of the state treasurer. If the county has not supplied information concerning any scheduled or proposed increase in salary for the county attorney to the department of justice for inclusion in material submitted to the budget director under Title 17, chapter 7, part 1, the county is responsible for any increased salary. The state's share of the county attorney's salary is payable every 2 weeks.~~

~~(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, certify the election or appointment to the department of justice. The department shall notify the state treasurer of the salary of the county attorney. The state treasurer shall draw warrants for the county attorney salaries in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the department of justice, and the department shall compute the salary due on the basis of the notification a shared responsibility of the state and the county. The state's share is payable as provided in subsection (3).~~

(3) (a) For each fiscal year, the department of justice shall pay to each county and consolidated government the amount calculated under subsection (3)(b). Payments must be made quarterly.

(b) (i) For each county and consolidated government with a full-time county attorney, the amount paid each fiscal year must be equal to 50% of 85% of a district court judge's salary most recently set under 3-5-211 plus an amount equal to 50% of the employer contribution for group benefits under 2-18-703(2) for an employee as defined in 2-18-701.

(ii) For each county and consolidated government with a part-time county attorney, the total amount paid each fiscal year must be equal to the amount calculated under subsection (3)(b)(i) prorated according to the position's regular work

hours.

(c) For the purpose of this subsection (3), the following definitions apply:

(i) "Full-time county attorney" means that as of July 1 immediately preceding the regular legislative session, the county attorney position has been established as a full-time position pursuant to 7-4-2706.

(ii) "Part-time county attorney" means that as of July 1 immediately preceding the regular legislative session, the county attorney position has been established as a part-time position pursuant to 7-4-2706.

(iii) "Salary" means wage plus the employer contributions required for retirement, workers' compensation insurance, and the Federal Insurance Contributions Act as determined for a district court judge.

(4) The amount to be paid to each county pursuant to subsection (3) is statutorily appropriated, as provided in 17-7-502, from the general fund to the department of justice.

~~(3)~~(5) The board may, under limitations and restrictions prescribed by law, fix the compensation of all county officers not otherwise fixed by law and provide for the payment of the compensation and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504, set their salaries at the prior fiscal year level."

Section 3. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers -- county compensation board. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, and county auditor in all counties where the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) The annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of \$400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to \$2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of \$2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's office, but years of service during any year in which the salary was set at the

level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(d) If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to \$2,000 a year. The additional salary provided for in this subsection (2) (d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

~~(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is \$50,000 a year, subject to adjustment as provided in subsection (3)(c). In counties with a population less than 30,000, the county attorney who is a part-time official is entitled to receive an annual base salary equal to the salary received for the fiscal year ending June 30, 2001.~~

~~(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 is the same as that established for full-time county attorneys in subsection (3)(a).~~

~~(c) Each Subject to subsection (3)(b), the salary for the county attorney must be set as provided in subsection (4).~~

~~(b) If the uniform base salary set for county officials pursuant to subsection (1) is increased, then the county attorney is entitled to an at least the same increase in salary based upon the schedule developed and approved by the county compensation board as provided in subsection (4), unless the increase would cause the county attorney's salary to exceed the salary of a district court judge.~~

~~(d)(c) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.~~

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and two to four resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of one or two taxpayer members for a 2-year term and one or two taxpayer members for a 3-year term. The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county

officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

(b) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

(c) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.

(d) The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government."

Section 4. Section 7-4-2704, MCA, is amended to read:

"7-4-2704. Limitations on activities of county attorneys and deputy county attorneys. (1) The county attorney, except for his the county attorney's own services, ~~must~~ may not present any a claim, account, or other demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(2) ~~In~~ Except as provided in subsection (4), in each county with a population in excess of 30,000, in which the office of county attorney is a full-time position pursuant to 7-4-2706, the county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except that ~~he~~ the county attorney may engage in self-representation and may represent the county attorney's ~~represent himself and his immediate family and except as provided in subsection (4).~~

(3) ~~Any~~ Except as provided in subsection (4), a deputy county attorney in a county with a population in excess of 30,000 in which the office of county attorney is a full-time position pursuant to 7-4-2706 and who is paid 70% or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except as to those matters in which ~~he~~ the deputy county attorney has a direct interest ~~and except as provided in subsection (4).~~

(4) Any elected or appointed county attorney and any deputy county attorney ~~shall~~ must, upon demonstration of need to the board of county commissioners, be granted a period of time, not to exceed 3 months from the date ~~he~~ that the person takes office, to complete any pending matters remaining from ~~any~~ a previous private practice of law. During ~~such~~ that time, the county attorney and any appointed deputy are bound by the customary rules of ethics applicable to

attorneys at law."

Section 5. Section 7-4-2706, MCA, is amended to read:

"7-4-2706. County attorney to be full or part time -- resolution —salary. (1) (a) In any a county with a population of less than 30,000, the county commissioners may, upon with the consent of the county attorney, on July 1 of any year by resolution effective July 1 of any year establish the office of county attorney as a full-time or part-time position subject to the provisions of 7-4-2701 and 7-4-2704. The salary for this position is the salary established pursuant to 7-4-2503.

~~—(2) In any county in which the office of county attorney has been established as a full-time position under subsection (1), the county commissioners may, by resolution and upon the consent of the county attorney, establish the office as a part-time position on July 1 of any year.~~

(b) A copy of a resolution adopted under subsection (1)(a) must be provided to the department of justice.

(2) In a county with a population of 30,000 or more, the office of county attorney must be a full-time position."

Section 6. Section 17-7-112, MCA, is amended to read:

"17-7-112. Submission deadlines -- budgeting schedule. The following is the schedule for the preparation of a state budget for submission to the legislature convening in the following year:

(1) By August 1, forms necessary for preparation of budget estimates must be distributed pursuant to 17-7-111(2).

(2) ~~(a) By September 1, each agency shall submit the information required under 17-7-111 to the budget director. The department of justice shall submit information received from counties concerning the state's share of county attorney salaries.~~

~~—(b) As provided in 7-4-2502(2)(a), the department of justice is not obligated to provide more than one-half of the salary of a county attorney based on the amount included in the department's budget and appropriated for that purpose.~~

(3) By September 1, the budget director shall submit each state agency's budget request required under 17-7-111(3) to the legislative fiscal analyst. The transfer of budget information must be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information that allows each office to maintain a reasonable staff workflow.

(4) By October 10, the budget director shall furnish the legislative fiscal analyst with a preliminary budget reflecting the base budget in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(5) By October 30, a budget request must be prepared by the budget director and submitted to the legislative fiscal analyst on behalf of any agency that did not present the information required by this section. The budget request must be based upon the budget director's studies of the operations, plans, and needs of the institution, university unit, or agency.

(6) By November 1, the budget director shall furnish the legislative fiscal analyst with a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium. The material must be in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(7) By November 12, the budget director shall furnish the legislative fiscal analyst with the documents, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity.

(8) By November 15, the proposed pay plan schedule and the information technology summary required by 17-7-111(4), a preliminary budget that meets the statutory requirements for submission of the budget to the legislature, and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature must be submitted to the legislative fiscal analyst.

(9) By December 15, the budget director shall submit a preliminary budget to the governor and to the governor-elect, if there is one, as provided in 17-7-121, and shall furnish the legislative fiscal analyst with all amendments to the preliminary budget.

(10) By January 7, recommended changes proposed by a governor-elect must be transmitted to the legislative fiscal analyst and the legislature as provided in 17-7-121."

Section 7. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 7-4-2502; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-

4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 8. Effective date. [This act] is effective July 1, 2007.

- END -

Latest Version of HB 12 (HB0012.ENR)

Processed for the Web on April 17, 2007 (1:28pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the [status of this bill](#) for the bill's primary sponsor.

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GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill # HB0012

Title: Generally revise county attorney salaries and prosecution services

Primary Sponsor: Callahan, T.

Status: Third Reading

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
Expenditures:				
General Fund	\$163,119	\$76,853	\$144,590	\$79,570
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance	<u>(\$163,119)</u>	<u>(\$76,853)</u>	<u>(\$144,590)</u>	<u>(\$79,570)</u>

Description of Fiscal Impact:

HB 12, if passed, removes the county attorney payroll from an annual appropriation by the Legislature and replaces it with a statutory appropriation which distributes funds directly to the counties based upon a formula based system.

FISCAL ANALYSIS

Assumptions:

Department of Justice (DOJ)

1. County Attorney - Section 3 of this bill provides for the state to pay each county and consolidated government an amount equal to 50% of 85% of a district court judge's salary, with benefits at 16% (FICA, PERS, WC), and a portion of the health insurance. Counties whose county attorney works less than full-time will receive a pro-rata amount. These funds will be sent to the counties or consolidated governments quarterly to provide for the states portion of the county attorney salary. The counties or consolidated governments will then pay the entire county attorney salary through their payroll and the county attorney

payroll responsibility at DOJ will be eliminated. Additional general funds over the FY 2008 Executive Budget necessary to fund this proposal would be \$163,119 (\$2,344,057 appropriation needed - \$2,180,938). Additional general funds over the FY 2009 Executive Budget necessary to fund this proposal would be \$76,853 (\$2,344,057 appropriation needed - \$2,267,204). Additional general funds over the estimated FY 2010 Executive Budget necessary to fund this proposal would be \$144,590 (\$2,479,810 appropriation needed - \$2,335,220). Additional general funds over the estimated FY 2011 Executive Budget necessary to fund this proposal would be \$79,570 (\$2,474,847 appropriation needed - \$2,405,277).

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
<u>Fiscal Impact:</u>				
Department of Justice				
<u>Expenditures:</u>				
Personal Services	(\$2,180,938)	(\$2,267,204)	(\$2,335,220)	(\$2,405,277)
Local Assistance	\$2,344,057	\$2,344,057	\$2,479,810	\$2,484,847
TOTAL Expenditures	<u>\$163,119</u>	<u>\$76,853</u>	<u>\$144,590</u>	<u>\$79,570</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$163,119	\$76,853	\$144,590	\$79,570
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$163,119)	(\$76,853)	(\$144,590)	(\$79,570)

Sponsor's Initials

Date

Budget Director's Initials

Date