

JUS  
Subcommittee  
on SB-146

EXHIBIT NO. 4  
DATE 2-8-04  
BILL NO. SB-146

Amendments to Senate Bill No. 146  
1st Reading Copy

Requested by Senator Dan McGee

For the Senate Judiciary Committee

Prepared by Sheri Heffelfinger  
February 7, 2005 (5:42pm)

1. Title, page 1, lines 16 through 17.

**Strike:** "PROVIDING" on line 16 through "FUNDING;" on line 17

2. Title, page 1, line 22.

**Following:** "PERIOD;"

**Insert:** "REQUIRING REPORTING AND A LEGISLATIVE AUDIT OF ACTUAL  
EXPENSES SO THAT FUNDING RESPONSIBILITIES CAN BE ADJUSTED;"

3. Page 2, lines 3, 6, 15, 17, and 19.

**Strike:** "14" on lines 3, 6, 15, 17, and 19

**Insert:** "13" on lines 3, 6, 15, 17, and 19

4. Page 3, line 16.

**Strike:** "14"

**Insert:** "13"

5. Page 3, line 25.

**Strike:** "15"

**Insert:** "14"

6. Page 4, line 7.

**Strike:** "15"

**Insert:** "14"

7. Page 4, line 27.

**Strike:** "14"

**Insert:** "13"

8. Page 6, line 8.

**Strike:** "14"

**Insert:** "13"

9. Page 7, lines 6 and 24.

**Strike:** "14"

**Insert:** "13"

10. Page 7, line 10 through line 12.

**Strike:** the second "and" on line 10 through "workload" on line 12

11. Page 8, line 23.

**Strike:** "14"

**Insert:** "13"

12. Page 9, line 17.

**Strike:** "14"

**Insert:** "13"

13. Page 11.

**Strike:** line 28 in its entirety

**ReNUMBER:** subsequent subsections

14. Page 14, line 20 through page 16, line 12.

**Strike:** section 14 in its entirety

**ReNUMBER:** subsequent sections

15. Page 16, line 26.

**Strike:** "14"

**Insert:** "13"

16. Page 17, line 29.

**Strike:** "14"

**Insert:** "13"

17. Page 26, line 3.

**Strike:** "14"

**Insert:** "13"

18. Page 31, lines 1 and 27.

**Strike:** "15" on both lines

**Insert:** "14" on both lines

19. Page 32, line 8.

**Strike:** "15"

**Insert:** "14"

20. Page 33, line 12.

**Strike:** "15"

**Insert:** "14"

21. Page 35, line 9.

**Strike:** "15"

**Insert:** "14"

22. Page 41, line 10.

**Strike:** "14"

**Insert:** "13"

23. Page 42, line 23.

**Strike:** "14"

**Insert:** "13"

24. Page 44, line 27.

**Strike:** "14"

**Insert:** "13"

25. Page 49, line 1.

**Strike:** "14"

**Insert:** "13"

26. Page 53, line 21.

**Strike:** "14"

**Insert:** "13"

27. Page 63, line 10.

**Strike:** "14"

**Insert:** "13"

28. Page 65, line 25.

**Strike:** "14"

**Insert:** "13"

29. Page 66, lines 10 and 21.  
**Strike:** "14" on both lines  
**Insert:** "13" on both lines

30. Page 67, lines 17 and 27.  
**Strike:** "14" on both lines  
**Insert:** "13" on both lines

31. Page 68, line 4.  
**Strike:** "14"  
**Insert:** "13"

32. Page 68, line 26.  
**Strike:** "14"  
**Insert:** "13"

33. Page 70, line 29.  
**Strike:** "67(5)"  
**Insert:** "66(5)"

34. Page 71, line 7.  
**Strike:** "66"  
**Insert:** "65"

35. Page 71.

**Following:** line 15

**Insert:** "NEW SECTION. Section 70. Payment of costs to be based on actual expenses -- legislative audit -- report. (1) The purpose of this section is to provide that:

(a) funding responsibilities for public defender costs pursuant to [sections 1 through 4 and 6 through 13] will be shared by state and local government based on an audit of actual costs; and

(b) that the counties and cities will pay their share of costs through a one-time reduction in the county's or city's base entitlement share under 15-1-121.

(2) During the fiscal year beginning July 1, 2005:

(a) district court public defender costs must continue to be paid by the office of court administrator pursuant to 3-5-901 and the office shall report all of its actual expenditures, including reimbursements and direct payments, to the legislative audit division;

(b) each county shall report monthly to the legislative audit division actual expenditures for district court public

defender costs, whether or not those expenditures were reimbursed by the office; and

(c) each city and county shall report monthly to the legislative audit division the city's or county's actual expenditures for all public defender services in the city's or county's courts of limited jurisdiction.

(3) For the fiscal year beginning July 1, 2006:

(a) the office shall pay, either directly or through reimbursements, all public defender costs incurred under [sections 1 through 4 and 6 through 13];

(b) each city and county shall directly pay any public defender costs that are not directly paid by the office of state public defender pursuant to [sections 1 through 4 and 6 through 13] and shall submit a monthly claim to the office for reimbursement of those expenses;

(c) the office shall pay a claim for reimbursement within 30 days of receiving the claim; and

(d) the office and each city and county shall report monthly to the legislative audit division actual expenditures for public defender services through September 30, 2006.

(4) An audit, by or at the direction of the legislative auditor, must be conducted on all of the state, city, and county public defender expenditures incurred from July 1, 2005, through September 30, 2006. The reports to the legislative audit division required under this section must be in a form and include the content prescribed by the legislative auditor. The office and each city and county shall reimburse the legislative auditor for the cost of the audit.

(5) The results of the audit must be reported to the governor's budget office, the legislative audit committee, the legislative finance committee, and the law and justice interim committee.

(6) The law and justice interim committee shall prepare legislation to be introduced in the 2007 legislative session that will amend 15-1-121 to provide that each city's and county's base entitlement share is adjusted by an appropriate amount arrived at based on the audit and in consultation with the legislative finance committee, the legislative audit committee, representatives of the counties and cities, the governor's office, the American civil liberties union, the attorney general's office, and all other interested and participating parties."

**Renumber:** subsequent sections

36. Page 71, line 19.

**Following:** "committee,"

**Insert:** "legislative audit committee,"

37. Page 71, line 25.

**Strike:** "14"

**Insert:** "13"

38. Page 71, lines 29 and 30.

**Strike:** "15" on both lines

**Insert:** "14" on both lines

39. Page 72, line 7.

**Strike:** "[Sections 17" through "72]"

**Insert:** "[Sections 16 through 18, 22 through 27, 32 through 65,  
and 72]"

- END -

## Explanation of SB014604.ash for Sen. McGee

1. Section 14 (cost allocation formula) gets stricken from the bill. No cost allocation factors or budget percentage shared by state, counties, or cities.
  - a. the assumption is that our "best guess" numbers will be used to reduce the entitlement share to cities and counties for the coming biennium, FY 06 and FY 07. (Separate amendment **SB014605.avl**, offered by the Dept. of Justice and ACLU, passes)
  - b. the entitlement share reduction in **SB014605.avl** will "plus up" the general fund by:

\$ 716,618 from cities  
\$ 144,734 from consolidated governments  
\$1, 731,586 from counties

FY 06

**\$2,592,938 TOTAL for FY 06 and FY 07**

2. New Section 70. (won't be codified): See language in Amend No. 35 of **SB014604.ash** (McGee)
  - a. the Legislative Auditor will provide for an audit of all FY 06 actual expenses and claims by the state, counties and cities (and the state, counties and cities must provide reports to the Legislative Auditor as prescribed by the Auditor)
  - b. the Law and Justice Interim Committee will develop and introduce legislation in 2007 to adjust the entitlement share amounts to reflect numbers based on the legislative audit of actual costs

3. Time table:

July 1, 2005, through June 30, 2006:

- a. Office of Court Administrator continues to pay most of the district court PD costs under current district court program (will be in Judiciary's budget)
- b. Public Defender Commission will be appointed, chief and other state staff will be appointed and technical assistance will be secure (will be in the Dept. of Admin's budget)
- c. Legislative Auditor oversees audit of all state, county, and city PD costs in all courts and capturing all costs (state, counties, and cities will also have a reporting requirement to the legislative auditor)

(more)

July 1, 2006, through June 30, 2007:

- a. Office of State Public Defender becomes fully operational on July 1, 2006.
- b. All PD costs paid either directly by the Office or reimbursed by the Office.
- c. If costs outstrip appropriations, the Office will have to request a supplemental

Interim of 2005-2006 and for 2007 Session

- a. Law and Justice Interim Committee, Legislative Audit Committee, Legislative Finance Committee, and all interested parties work to develop legislation based on audit
- b. If passed by the 2007 Legislature, base entitlement share gets adjusted up or down based on actual costs rather than the "best guess" numbers

4. Pros and Cons of Entitlement Share Approach

Cons:

- a. PD costs may inflate by more than the growth rate assumed for the entitlement share
- b. If city or county is "underfunding" PD costs in FY 05, that will be carried forward

Pros:

- a. Simpler to administer
- b. More predictable for budgeting purposes
- c. Counties and cities won't have big changes in what they have budgeted for PD costs for the next biennium
- d. If PD costs dramatically increase, adjustments can be made by future legislatures