EXHIBIT 4
DATE 2/17/15
HB 461

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

February 17, 2015

To: Chairman Greef and members of the House Local Government Committee
Fr: Jim Smith, Montana County Attorneys Association.

Re: Testimony is support of House Bill 461.

Good afternoon Mr. Chairman and members of the Committee. My name is Jim Smith and I'm here on behalf of the Montana County Attorneys Association in support of House Bill 461. I'd like to thank Rep. Lavin for sponsoring this bill.

The elected County Attorneys of Montana spent quite a bit of time during the interim working on ways to improve the salaries of the deputy county attorneys that work for them. Several options and methods were explored and the result is before you today as House Bill 461.

By way of background, the section of MCA HB 461 amends went on the books in 1985. It was 30 years ago that an annual longevity increase for deputy county attorneys who had completed four years of service was approved by the Legislature and made part of MCA 7-4-2503. You can see that after four years a deputy county attorney is entitled to a $1000 longevity increase. After five years the amount is $1500. Between years six and eleven the amount of the longevity increase is $500 per year. Under current law, longevity increases cease following eleven years of service. HB 461 would amend that and permit longevity payments to deputy county attorneys after the eleventh year of service, and permit an amount of up to $2500; but only upon the recommendation of the county compensation board, and approval by the county commissioners.

The amounts in the statute---$500, $1000, $1500-- have not changed since 1985. If they were to be adjusted for inflation, they would have to be increased by 84%, or nearly doubled. This would have represented imposition of an 'unfunded mandate' on the counties. The County Attorneys Association thought it best not to take that route.

The County Attorneys also explored trying to obtain state general fund for the salaries of their deputies, or some kind of state special revenue from an existing or new funding source. The state general fund does contribute to the salary of the elected county attorney through a formula based statutory appropriation. The Association explored adding the deputy county attorneys to the existing statutory appropriation. Once again, for various reasons, the Association thought it best not to take that path.

The underlying reality is that the County Attorneys and the deputies in their Offices are still locally based. First and foremost, they are elected. They retain a high degree of local control over their own operation and functions. Their funding is likewise locally based, coming principally from property tax revenues.
Another driving factor behind HB 461, and the need to find a way to better compensate deputy county attorneys is the fact that in 2005 the Legislature created the Office of Public Defender (OPD). The defense bar has become a full fledged state agency: state owned and operated, state funded, part of the state pay plan. The employees of the Office of Public Defender are organized and bargain collectively statewide for wages, salaries and benefits. The County Attorneys Association supported the creation of the OPD in 2005. County attorneys believed then, and believe now that justice is best served by competent criminal defense lawyers, as well as competent criminal prosecutors.

What has developed over the last decade is a two tier structure in which the defense bar is a highly centralized, state managed system, accessing resources from the state general fund; while the prosecution is decentralized across 56 counties, locally managed, and property tax funded.

As the years pass, the County Attorneys are becoming increasingly concerned over a growing disparity between what prosecutors and defense lawyers are getting paid. The Association did quite a bit of fact funding and comparative analysis over the last 18 months, and that information is available to the Committee.
Suffice it to say that the disparity is real; and it is an item of great concern to the elected County Attorneys who are trying to retain their deputies in this environment. HB 461 is their good faith attempt to address a real problem.

There are a few deputy county attorneys here who would like to share some information with you, so I'll conclude my testimony. I'll be available and will try to answer any questions you may have. Thanks for your time this afternoon; and your consideration of House Bill 461.