

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

A BILL FOR AN ACT ENTITLED: "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; PROVIDING AN APPROPRIATION TO FUND ADDITIONAL STAFF FOR STATE PROSECUTION AND FORENSIC SERVICES; 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:

NEW SECTION. **Section 1. Short title.** [Sections 1 and 2] may be cited as the "Prosecution Services Revision Act".

NEW SECTION. **Section 2. Legislative findings -- county attorney workload and salaries -- state prosecution services support.** (1) With respect to county attorneys and their salaries, the legislature finds that:

(a) 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;

(b) the county attorney workloads vary greatly from county to county;

(c) 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;

(d) 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;

(e) 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

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

(2) The legislature also finds that it is desirable to increase the number of state prosecutors, not only to relieve heavy caseloads but to help ensure that assistance to county attorneys is available in a fair and consistent manner statewide, especially with regard to child protective services.

(3) The legislature finds that staff turnover and the lack of competitive salaries have contributed to a serious backlog in state forensic services, delayed prosecutions, and increased state costs and that it is in the state's best interest to fund additional positions and to increase salaries so that the department of justice may recruit and retain qualified and skilled staff in forensic sciences.

Section 3. 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, 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 4. 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 5. 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 6. Section 7-4-2706, MCA, is amended to read:

"7-4-2706. County attorney to be full or part time -- resolution -- salary. (1) ~~(a)~~ (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 7. 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 8. 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.)"

NEW SECTION. Section 9. Appropriation. For fiscal years 2008 and 2009, the following amounts are appropriated from the general fund to the department of justice for the purposes described in [section 2(2) and (3)]:

	FY 2008	FY 2009
Legal Services Division	\$334,132	\$322,494
Forensic Sciences Division	297,516	291,724

NEW SECTION. Section 10. Effective date. [This act] is effective July 1, 2007.

- END -

