

HOUSE BILL NO. 773

INTRODUCED BY M. REGIER

BY REQUEST OF THE HOUSE APPROPRIATIONS COMMITTEE

1
2
3
4
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE FUNDING FOR
7 THE OFFICE OF STATE PUBLIC DEFENDER; REVISING THE CALCULATION OF THE ENTITLEMENT
8 SHARE TO INCLUDE A LOCAL GOVERNMENT CONTRIBUTION RATE FOR FUNDING THE OFFICE;
9 CREATING AN INTERIM TASK FORCE TO ANALYZE IMPLEMENTATION OF THE LOCAL GOVERNMENT
10 CONTRIBUTION RATE; REQUIRING REPORTING OF THE ANALYSIS COMPARING CERTAIN GROWTH
11 RATES; PROVIDING AN APPROPRIATION; SUPERSEDING THE UNFUNDED MANDATE LAWS; PROVIDING
12 FOR CONTINGENT VOIDNESS; AMENDING SECTIONS 15-1-121 AND 47-1-125, MCA; AND PROVIDING
13 EFFECTIVE DATES AND A TERMINATION DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **NEW SECTION. Section 1. Public defender contribution task force.** (1) There is a public defender
18 contribution task force.

19 (2) The task force consists of 11 members appointed as follows:

20 (a) three members of the house of representatives, two of whom must be appointed by the speaker of
21 the house and one of whom must be appointed by the house minority leader;

22 (b) three members of the senate, one of whom must be appointed by the senate president and two of
23 whom must be appointed by the senate minority leader;

24 (c) the director of the office of state public defender or the director's designee;

25 (d) four members appointed by the governor, none of whom may be a currently serving legislator,
26 including:

27 (i) one representing counties;

28 (ii) one representing municipalities;

29 (iii) one representing the district court council; and

30 (iv) one county attorney.

1 (3) If possible, the senate president and senate minority leader and the speaker of the house and house
2 minority leader shall select members who served on the joint appropriations subcommittee on judicial branch,
3 law enforcement, and justice during the 2019 legislative session.

4 (4) (a) Legislative members are entitled to receive compensation and expenses as provided in 5-2-302.

5 (b) Members who are full-time salaried officers or employees of this state or of a political subdivision of
6 this state are not entitled to be compensated for their service as members except when they perform their task
7 force duties outside their regular working hours or during hours charged against their leave time, but those
8 members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

9 (c) Members appointed pursuant to subsection (2)(d) are entitled to reimbursement for travel expenses
10 as provided in 2-18-501 through 2-18-503.

11 (5) The task force shall select a presiding officer and vice presiding officer by majority vote. The presiding
12 officer and vice presiding officer must be legislative members.

13 (6) The legislative services division in conjunction with the legislative fiscal division shall provide staff
14 assistance to the task force.

15
16 **NEW SECTION. Section 2. Task force duties.** (1) The task force shall review, monitor, and provide
17 input and guidance regarding the shared financial responsibility to fund the office of state public defender between
18 the state and local governments and the revisions to 15-1-121 made by [this act].

19 (2) The task force shall analyze the change in general fund revenue since 2005 and compare it to the
20 percentage change in the amounts allocated to local governments under the provisions of 15-1-121, as amended
21 in 2005, and the actual costs for public defender services for the same time period. The task force shall also
22 analyze the impact of local ordinances on the office of state public defender.

23 (3) The results of the task force must be presented to the governor, legislative finance committee, and
24 the law and justice interim committee by September 1, 2020.

25 (4) The task force shall involve input from the various stakeholders of the office, the legal system, and
26 local governments.

27 (5) The task force shall coordinate meetings with the law and justice interim committee and the legislative
28 finance committee to the extent possible.

29 (6) All aspects of the task force, including reporting requirements, must be concluded prior to September
30 1, 2020. The task force shall prepare a final report of its findings, conclusions, and recommendations and shall

1 prepare draft legislation whenever appropriate. The task force shall submit the final report to the governor and
2 the 67th legislature as provided in 5-11-210.

3

4 **Section 3.** Section 15-1-121, MCA, is amended to read:

5 **"15-1-121. Entitlement share payment -- purpose -- appropriation.** (1) As described in 15-1-120(3),
6 each local government is entitled to an annual amount that is the replacement for revenue received by local
7 governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant
8 to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later
9 enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other
10 revenue in the state treasury with each local government's share. The reimbursement under this section is
11 provided by direct payment from the state treasury rather than the ad hoc system that offset certain state
12 payments with local government collections due the state and reimbursements made by percentage splits, with
13 a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending
14 a portion to other local governments.

15 (2) The sources of dedicated revenue that were relinquished by local governments in exchange for an
16 entitlement share of the state general fund were:

17 (a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter
18 584, Laws of 1999;

19 (b) vehicle, boat, and aircraft taxes and fees pursuant to:

20 (i) Title 23, chapter 2, part 5;

21 (ii) Title 23, chapter 2, part 6;

22 (iii) Title 23, chapter 2, part 8;

23 (iv) 61-3-317;

24 (v) 61-3-321;

25 (vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment
26 of 61-3-509 in 2001;

27 (vii) Title 61, chapter 3, part 7;

28 (viii) 5% of the fees collected under 61-10-122;

29 (ix) 61-10-130;

30 (x) 61-10-148; and

- 1 (xi) 67-3-205;
- 2 (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
- 3 (d) district court fees pursuant to:
- 4 (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
- 5 (ii) 25-1-202;
- 6 (iii) 25-9-506; and
- 7 (iv) 27-9-103;
- 8 (e) certificate of title fees for manufactured homes pursuant to 15-1-116;
- 9 (f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;
- 10 (g) all beer, liquor, and wine taxes pursuant to:
- 11 (i) 16-1-404;
- 12 (ii) 16-1-406; and
- 13 (iii) 16-1-411;
- 14 (h) late filing fees pursuant to 61-3-220;
- 15 (i) title and registration fees pursuant to 61-3-203;
- 16 (j) veterans' cemetery license plate fees pursuant to 61-3-459;
- 17 (k) county personalized license plate fees pursuant to 61-3-406;
- 18 (l) special mobile equipment fees pursuant to 61-3-431;
- 19 (m) single movement permit fees pursuant to 61-4-310;
- 20 (n) state aeronautics fees pursuant to 67-3-101; and
- 21 (o) department of natural resources and conservation payments in lieu of taxes pursuant to former Title
- 22 77, chapter 1, part 5.

23 (3) Except as provided in ~~subsection~~ subsections (7)(b) and (7)(c), the total amount received by each

24 local government in the prior fiscal year as an entitlement share payment under this section is the base

25 component for the subsequent fiscal year distribution, and in each subsequent year the prior year entitlement

26 share payment, including any reimbursement payments received pursuant to subsection (7), is each local

27 government's base component. The sum of all local governments' base components is the fiscal year entitlement

28 share pool.

29 (4) (a) Except as provided in subsections (4)(b)(iv), ~~and (7)(b), and (7)(c)~~, the base entitlement share

30 pool must be increased annually by an entitlement share growth rate as provided for in this subsection (4). The

1 amount determined through the application of annual growth rates is the entitlement share pool for each fiscal
2 year.

3 (b) By October 1 of each year, the department shall calculate the growth rate of the entitlement share
4 pool for the next fiscal year in the following manner:

5 (i) The department shall calculate the entitlement share growth rate based on the ratio of two factors of
6 state revenue sources for the first, second, and third most recently completed fiscal years as recorded on the
7 statewide budgeting and accounting system. The first factor is the sum of the revenue for the first and second
8 previous completed fiscal years received from the sources referred to in subsections (2)(b), (2)(c), and (2)(g)
9 divided by the sum of the revenue for the second and third previous completed fiscal years received from the
10 same sources multiplied by 0.75. The second factor is the sum of the revenue for the first and second previous
11 completed fiscal years received from individual income tax as provided in Title 15, chapter 30, and corporate
12 income tax as provided in Title 15, chapter 31, divided by the sum of the revenue for the second and third
13 previous completed fiscal years received from the same sources multiplied by 0.25.

14 (ii) Except as provided in subsections (4)(b)(iii) and (4)(b)(iv), the entitlement share growth rate is the
15 lesser of:

16 (A) the sum of the first factor plus the second factor; or

17 (B) 1.03 for counties, 1.0325 for consolidated local governments, and 1.035 for cities and towns.

18 (iii) In no instance can the entitlement growth factor be less than 1. Subject to subsection (4)(b)(iv), the
19 entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to
20 determine the subsequent fiscal year payment.

21 (iv) The entitlement share growth rate, as described in this subsection (4), is:

22 (A) for fiscal year 2018, 1.005;

23 (B) for fiscal year 2019, 1.0187;

24 (C) for fiscal year 2020 and thereafter, determined as provided in subsection (4)(b)(ii). The rate must be
25 applied to the entitlement payment for the previous fiscal year as if the payment had been calculated using
26 entitlement share growth rates for fiscal years 2018 and 2019 as provided in subsection (4)(b)(ii).

27 (5) As used in this section, "local government" means a county, a consolidated local government, an
28 incorporated city, and an incorporated town. A local government does not include a tax increment financing
29 district provided for in subsection (8). The county or consolidated local government is responsible for making an
30 allocation from the county's or consolidated local government's share of the entitlement share pool to each special

1 district within the county or consolidated local government in a manner that reasonably reflects each special
2 district's loss of revenue sources for which reimbursement is provided in this section. The allocation for each
3 special district that existed in 2002 must be based on the relative proportion of the loss of revenue in 2002.

4 (6) (a) The entitlement share pools calculated in this section, the amounts determined under 15-1-123(2)
5 for local governments, the funding provided for in subsection (8) of this section, and the amounts determined
6 under 15-1-123(3) for tax increment financing districts are statutorily appropriated, as provided in 17-7-502, from
7 the general fund to the department for distribution to local governments.

8 (b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year
9 and the entitlement share pool in the previous fiscal year. The growth factor in the entitlement share must be
10 calculated separately for:

11 (A) counties;

12 (B) consolidated local governments; and

13 (C) incorporated cities and towns.

14 (ii) In each fiscal year, the growth amount for counties must be allocated as follows:

15 (A) 50% of the growth amount must be allocated based upon each county's percentage of the prior fiscal
16 year entitlement share pool for all counties; and

17 (B) 50% of the growth amount must be allocated based upon the percentage that each county's
18 population bears to the state population not residing within consolidated local governments as determined by the
19 latest interim year population estimates from the Montana department of commerce as supplied by the United
20 States bureau of the census.

21 (iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as
22 follows:

23 (A) 50% of the growth amount must be allocated based upon each consolidated local government's
24 percentage of the prior fiscal year entitlement share pool for all consolidated local governments; and

25 (B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local
26 government's population bears to the state's total population residing within consolidated local governments as
27 determined by the latest interim year population estimates from the Montana department of commerce as
28 supplied by the United States bureau of the census.

29 (iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

30 (A) 50% of the growth amount must be allocated based upon each incorporated city's or town's

1 percentage of the prior fiscal year entitlement share pool for all incorporated cities and towns; and

2 (B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's
3 population bears to the state's total population residing within incorporated cities and towns as determined by the
4 latest interim year population estimates from the Montana department of commerce as supplied by the United
5 States bureau of the census.

6 (v) In each fiscal year, the amount of the entitlement share pool before the growth amount or adjustments
7 made under subsection (7) are applied is to be distributed to each local government in the same manner as the
8 entitlement share pool was distributed in the prior fiscal year.

9 (7) (a) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section,
10 the department shall determine the reimbursement amount as provided in the enactment and add the appropriate
11 amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal
12 year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool.
13 The ratio of each local government's distribution from the entitlement share pool must be recomputed to
14 determine each local government's ratio to be used in the subsequent year's distribution determination under
15 subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).

16 (b) If the legislature enacts a reduction provision pursuant to subsection (13) that is to be distributed
17 pursuant to this section, the department shall determine the reduction amount and how to allocate the amount
18 among the local governments as provided in the enactment and reduce the appropriate amount to the entitlement
19 share distribution under this section.

20 ~~(b)(c) For fiscal year 2018 and thereafter, the~~ The growth rate provided for in subsection (4) does not
21 apply to the portion of the entitlement share pool attributable to the reimbursement provided for in 15-1-123(2).
22 The department shall calculate the portion of the entitlement share pool attributable to the reimbursement in
23 15-1-123(2), including the application of the growth rate in previous fiscal years, for counties, consolidated local
24 governments, and cities and, ~~for fiscal year 2018 and thereafter,~~ apply the growth rate for that portion of the
25 entitlement share pool as provided in 15-1-123(2).

26 ~~(e)(d)~~ The growth amount resulting from the application of the growth rate in 15-1-123(2) must be
27 allocated as provided in subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A) of this section.

28 (8) (a) Except for a tax increment financing district entitled to a reimbursement under 15-1-123(3), if a
29 tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax
30 increment financing district is not entitled to any funding. If a tax increment financing district referred to in

1 subsection (8)(b) terminates, then the funding for the district provided for in subsection (8)(b) terminates.

2 (b) One-half of the payments provided for in this subsection (8)(b) must be made by November 30 and
3 the other half by May 31 of each year. Subject to subsection (8)(a), the entitlement share for tax increment
4 financing districts is as follows:

5	Flathead	Kalispell - District 2	\$4,638
6	Flathead	Kalispell - District 3	37,231
7	Flathead	Whitefish District	148,194
8	Gallatin	Bozeman - downtown	31,158
9	Missoula	Missoula - 1-1C	225,251
10	Missoula	Missoula - 4-1C	30,009

11 (9) The estimated fiscal year entitlement share pool and any subsequent entitlement share pool for local
12 governments do not include revenue received from tax increment financing districts.

13 (10) When there has been an underpayment of a local government's share of the entitlement share pool,
14 the department shall distribute the difference between the underpayment and the correct amount of the
15 entitlement share. When there has been an overpayment of a local government's entitlement share, the local
16 government shall remit the overpaid amount to the department.

17 (11) A local government may appeal the department's estimation of the base component, the entitlement
18 share growth rate, or a local government's allocation of the entitlement share pool, according to the uniform
19 dispute review procedure in 15-1-211.

20 (12) (a) Except as provided in 2-7-517, a payment required pursuant to this section may not be offset by
21 a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1.

22 (b) A payment required pursuant to this section must be withheld if a local government:

23 (i) fails to meet a deadline established in 2-7-503(1), 7-6-611(2), 7-6-4024(3), or 7-6-4036(1); and

24 (ii) fails to remit any amounts collected on behalf of the state as required by 15-1-504 or any other
25 amounts owed to the state or another taxing jurisdiction, as otherwise required by law, within 45 days of the end
26 of a month.

27 (c) A payment required pursuant to this section may be withheld if, for more than 90 days, a local
28 government fails to:

29 (i) file a financial report required by 15-1-504;

1 (ii) remit any amounts collected on behalf of the state as required by 15-1-504; or

2 (iii) remit any other amounts owed to the state or another taxing jurisdiction.

3 (13) Beginning in the 2025 legislative session, and for each legislative session thereafter, the joint
4 appropriations subcommittee on judicial branch, law enforcement, and justice shall review the year-over-year
5 growth rate of actual expenditures of the office of state public defender for the 2 most recently completed fiscal
6 years. If the growth rate for either fiscal year is greater than the entitlement share growth rate for the same fiscal
7 year, the subcommittee may recommend a committee bill to reduce a local government's entitlement share based
8 on the office of state public defender's caseload for that local government and its population. The reduction must
9 be distributed pursuant to subsection (7)(b).

10 (14) The entitlement share is reduced for the local government contribution to the office of state public
11 defender as follows:

12 (a) for fiscal year 2022, by \$831,886;

13 (b) for fiscal year 2023, by \$856,843;

14 (c) for fiscal year 2024, by \$882,548; and

15 (d) for fiscal year 2025, by \$909,024."

16

17 **Section 4.** Section 47-1-125, MCA, is amended to read:

18 **"47-1-125. Reports.** (1) (a) The office shall submit a biennial report to the governor, the supreme court,
19 and the legislature, as provided in 5-11-210. Each interim, the director shall also specifically report to the law and
20 justice interim committee established pursuant to 5-5-202 and 5-5-226.

21 (b) The biennial report must cover the preceding biennium and include:

22 (i) all policies or procedures in effect for the operation and administration of the statewide public defender
23 system;

24 (ii) all standards of practice established or being considered by the director for the public defender
25 division, the appellate defender division, and the conflict defender division;

26 (iii) the number of deputy public defenders and the region supervised by each;

27 (iv) the number of public defenders employed or contracted with in the system, identified by region, if
28 appropriate, and office;

29 (v) the number of nonattorney staff employed or contracted with in the system, identified by region, if
30 appropriate, and office;

1 (vi) the number of new cases in which counsel was assigned to represent a party, identified by region,
2 court, and case type;

3 (vii) the total number of persons represented by the public defender division, the appellate defender
4 division, and the conflict defender division identified by region, if appropriate, court, and case type;

5 (viii) the annual caseload and workload of each public defender identified by region, if appropriate, court,
6 and case type;

7 (ix) the training programs conducted by the office and the number of attorney and nonattorney staff who
8 attended each program;

9 (x) the continuing education courses on criminal defense or criminal procedure attended by each public
10 defender employed or contracted with in the system; and

11 (xi) detailed expenditure data by court and case type.

12 (2) The office shall report data for each fiscal year by September 30 of the subsequent fiscal year
13 representing the caseload for the entire statewide public defender system to the governor and legislative fiscal
14 analyst. The report must include unduplicated count data for all cases for which representation is paid for by the
15 office, the number of new cases opened, the number of cases closed, the number of cases that remain open and
16 active, the number of cases that remain open but are inactive, and the average number of days between case
17 opening and closure for each case type. The report must be provided in an electronic format.

18 (3) (a) For the fiscal year beginning July 1, 2029, and every 5 years after, the legislative fiscal analyst
19 shall compare the percentage change in general fund revenue for the previous 5 years to the percentage change
20 in the amounts allocated to local governments under the provisions of 15-1-121, as amended in 2005, and the
21 actual costs for public defender services for the same time period. The results of the comparison must be
22 presented to the governor, legislative finance committee, law and justice interim committee, and the supreme
23 court by September 1 of the following fiscal year.

24 (b) As used in subsection (3)(a), the following definitions apply:

25 (i) "Actual costs" means all expenditures for public defender services in district court and justice court
26 that were not reimbursed by the office of court administrator pursuant to 3-5-901.

27 (ii) "Public defender services" means all services and support associated with providing defendants in
28 district court or justice court proceedings with assigned, appointed, or contracted attorneys, including:

29 (A) compensation;

30 (B) personal expenses, including travel, meals, and lodging;

