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Law and Justice Interim Committee

59th Montana Legislature

SENATE MEMBERS

DANIEL MCGEE--Vice Chair
BRENT CROMLEY
JESSE LASLOVICH
GARY PERRY
JIM SHOCKLEY
CAROL WILLIAMS

HOUSE MEMBERS

JOHN PARKER--Chair
GEORGE EVERETT
DIANE RICE
RON STOKER
BILL WILSON
JEANNE WINDHAM

COMMITTEE STAFF

SHERI HEFFELFINGER, Lead Staff
VALENCIA LANE, Staff Attorney
FONG HOM, Secretary

MINUTES

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

May 11, 2006

Room 137, Capitol Building
Helena, Montana

COMMITTEE MEMBERS PRESENT

REP. JOHN PARKER, Chair

SEN. BRENT CROMLEY
SEN. GARY PERRY
SEN. JIM SHOCKLEY
SEN. CAROL WILLIAMS

REP. GEORGE EVERETT
REP. RON STOKER
REP. BILL WILSON
REP. JEANNE WINDHAM

COMMITTEE MEMBERS EXCUSED

SEN. DANIEL MCGEE
SEN. JESSE LASLOVICH
REP. DIANE RICE

STAFF PRESENT

SHERI HEFFELFINGER, Lead Staff
VALENCIA LANE, Staff Attorney
FONG HOM, Secretary

Visitors List and Agenda

Visitors' list, [Attachment 1](#)
Agenda, [Attachment 2](#)

COMMITTEE ACTION

- The Committee approved the subcommittee bill to be presented as a full committee bill to the Legislature.
- The Committee approved the title in the subcommittee bill to read: "An Act establishing a self-help law program administered by the Supreme Court within appropriated funding."
- The Committee approved the subcommittee bill to say Section 4, part 1, "the Supreme Court may contract for the performance of duties under the section" and section 4, subsection (2), " any program staff employed by the Judicial Branch are subject to the Judicial Branch personnel", and section 4, subsection (5) on page 3, insert " program staff employed by the Judicial Branch may not provide legal representation through this program." and an amendment authorizing the staff to make technical adjustments in the language if necessary to reflect the intent of the Committee.
- The Committee approved indexing the county attorney's salary to the district court judge's salary.

TAPE 1A

CALL TO ORDER AND ROLL CALL

REP. PARKER called the meeting to order at 8:39 a.m. Secretary noted the roll. SEN. MCGEE, SEN. LASLOVICH, and REP. RICE were excused.

PRO SE SUBCOMMITTEE REPORT

SEN. PERRY gave a brief overview of the Pro Se Subcommittee's work. He said that the work done by the Subcommittee was focused on the instructions of their duties. Sen. Perry thanked the Subcommittee members, the attendees, Pat Gervais, Valencia Lane, Fong Hom and Sheri Heffelfinger for the work done on the Pro Se Subcommittee. He then turned the presentation over to Ms. Heffelfinger.

SHERI HEFFELFINGER discussed the document, SJR 6 Study: Pro Se Subcommittee Report (**EXHIBIT 1**) and the bill drafts, LCpro2 and LC0072, attached to the report. Ms. Heffelfinger said that the first draft, LCpro2, showed the Subcommittee's work. LC0072 is the is the Subcommittee's bill draft recommendation to the full committee.

Ms. Heffelfinger distributed to the Committee the Pro Bono Information Packet (**EXHIBIT 2**). Ms. Heffelfinger said that the Committee should take the Subcommittee's recommendation and discuss whether or not the draft bill will be the full committee's recommendation. She said that the Committee also needed to make a decision about pro bono, whether to add a pro bono component, add any amendatory language to the bill, or discuss fiscal assumptions on the appropriation to account for the pro bono help for Montana Legal Services, and to discuss the appropriation amount.

PAT GERVAIS, Fiscal Analyst, Legislative Fiscal Division, distributed the estimated costs for the Pro Se Program (**EXHIBIT 3**) which were based on the components represented to the

Committee. She said that she did not include any operating costs; i.e., pens, pencils, paper in those estimates.

QUESTIONS

SEN. CROMLEY asked Ms. Gervais if office space was included in the estimated costs. MS. GERVAIS said that office space was not included because the existence of adequate office was presumed. If there would be a need for an increase in square footage, that would be considered as additional costs.

SEN. SHOCKLEY asked Ms. Gervais to explain why the statement "including the media, website and local computer and work stations" was crossed out in LCpro2 but addressed in her report. MS. GERVAIS said that the intent of her document was to show the cost of each component to the Committee so that they could decide whether to do all of the components or to choose the components that they could support with a certain amount of money.

REP. PARKER asked Ms. Gervais how often would computers need to be updated if they were considered a one-time purchase. MS. GERVAIS said that the current state standard for equipment replacement of PCs is a 4-year cycle, which includes new employee office setup.

REP. PARKER asked Ms. Gervais how she envisions the program officer's role to be in conjunction with working with an attorney. MS. GERVAIS said that the program officer will coordinate and administer a variety of functions associated with the program, and will have a staff of one attorney and a part time support person.

REP. PARKER asked Ms. Heffelfinger if there were other items that would be added to the subcommittee bill dealing with pro bono. MS. HEFFELFINGER said that there were some discussions about postponing the pro bono component, but the language of the bill draft allowed for a flexible approach to those issues so that the restrictions that are put on it were dependent upon the appropriation amount and whether they can actually do those components. She said that Ms. Gervais presented a preliminary fiscal analysis which included the entire range with options and flexibility.

REP. PARKER asked Tara Veazey for an estimate of the amount of time it took her to develop forms. MS. VEAZEY said that dissolution and parenting plan forms took her 10 to 20 hours a week for a year. She said that she took best practices from across the state, from various pro se clinics across the state, from the various forms that were being used by attorneys within the program and outside of the program and then developed templates for her forms. She said that after she developed the dissolution and parenting plan forms, she sent them to attorneys she knew and to the stakeholders of the Access to Justice community for review and comments.

TAPE 1B

COMMITTEE DISCUSSION ON PRO BONO COMPONENT

REP. PARKER asked Ms. Veazey if the bill draft would save MLSA resources for other functions that wouldn't be funded from the bill. MS. VEAZEY said that all of the different components represent work that MLS is trying to do now but with limited resources. She said that shifting development of forms and coordination to the Supreme Court would free Montana Legal Services to do more direct representation and impact work.

KLAUS SITTE, Executive Director, Montana Legal Services Association, said that the pro bono coordinator is an essential part of the delivery of the pro se forms and services. Mr. Sitte suggested that rather than putting the pro bono coordinator into a court position, give the Court flexibility to contract that out. He said that as an organization, MLSA can offer attorneys who work through the pro bono program malpractice insurance or professional liability insurance.

DISCUSSION

SEN. WILLIAMS asked if everyone would be required to use the standard forms and if that requirement should be reflected in the bill draft. MS. VEAZEY said that the Supreme Court has been reluctant to standardize or put their official seal of approval on any of the forms. She said that the reason is, if they have to hear a case on the legal accuracy of the forms, they do not want to have approved those forms in advance.

SEN. SHOCKLEY said that he would like a mechanism to take care of a judge who refuses to take the Commission's (Commission on Self-Represented Litigants) forms. MR. SITTE said that it is the Supreme Court's position that they cannot impose their will on judges who are independently elected and have a mandate from their constituents.

SEN. SHOCKLEY asked if there are any mechanisms for remedy if judges refuse to use the standard forms which might be approved by the Commission but not the Supreme Court. SEN. CROMLEY said that the Committee is looking at legally sufficient forms that will meet the minimum requirements, not mandatory forms. He said that if the form is legally sufficient, the judge should take it, and if they don't then he suggested that an appeal to the Supreme Court could be a remedy.

SEN. WILLIAMS said that she would like the Committee to think about ways to use the Commission to make sure the forms are used, not mandatorily, and that the Committee is serious about making it easy and streamlined.

REP. PARKER asked Ms. Veazey how much time would be saved if the training was on DVDs. MS. VEAZEY said that there are different versions of their self-help clinics in Montana Legal Services. She said that they are moving toward the use of Hotdocs automated technology to answer all of the questions concerning their dissolutions and parenting plan forms.

PUBLIC COMMENT

GARY CONNALLY, attorney with Crowley Law Firm and a member of the State Bar's Access to Justice Committee, said that he believes that there should be more specific language in the bill regarding the pro bono coordination component, with inclusion of training and retention of pro bono attorneys to serve the clients' full spectrum of needs. He said that he would be willing to help Ms. Heffelfinger and staff in considering minor changes to the language of the bill.

MICHELE SNOWBERGER, Belgrade City Judge, spoke of two examples of cases that the court deals with all the time that led her to the conclusion that legal assistance should be available for those who need attorneys and cannot obtain one. Ms. Snowberger also thanked the Committee for their work and said that she is glad to be a part of the process to meet the needs of the low income Montanans.

KLAUS SITTE thanked the Committee for their hard work and thanked the subcommittee for their on-site visit to their Billings office. He said that he agreed with Ms. Snowberger regarding the flexibility of LC0072. He encouraged flexibility to fashion language so that the resources are used in an efficient and effective manner and to make sure that there is a more user friendly court system and a court process so people can have greater access to the courts.

BETH BAKER, Attorney, Chair of State Bar's Access to Justice Committee, said that progress is being made for access to legal services by Montana's indigent population. She said that the bill as it stands addresses only the pro se assistance. She thinks the legal services delivery system is a three-legged stool; the three legs being pro se assistance, pro bono representation, and direct representation by legal aid organizations such as Montana Legal Services. She wanted the committee to consider as part of the pro bono piece, providing a tax credit to lawyers doing pro bono work.

TAPE 2A

QUESTIONS

SEN. CROMLEY asked if the pro bono coordinator position created by this bill could be an area that might be contracted with other agencies, and if so, how do we make that intent known to the legislature in terms of what we envision this program to be. VALENCIA LANE said that the bill as drafted anticipates a full-time state employee. If that is not the intent, by adding one or two sentences and clarification, the bill could say that the duties can be performed by persons employed by the Judicial Branch or under contract with the Judicial Branch.

MOTION

SEN. PERRY moved that the subcommittee bill be adopted by the full committee for presentation as a full committee bill to legislature. MOTION CARRIED UNANIMOUSLY with proxy of Rep. Rice, Sen. McGee and Sen. Laslovich voting aye.

DISCUSSION

SEN. SHOCKLEY said that he is uncomfortable with the word "establish" in the preamble, "an Act creating the Montana Access to Civil Justice Act, directing the Supreme Court to establish..." He said that it is inappropriate for the Committee to direct the Court to establish a legal program.

MOTION

Sen. Shockley moved to amend the bill title to read: "providing for the establishment of a self-help law program within appropriated funding."

DISCUSSION

Sen. Perry said that he remembered the Chief Justice's input on this and that the Supreme Court should not be eliminated from the title. MS. LANE said that the purpose of the title is to give notice to the legislators on what they are voting on and a notice to the public of what the legislature is working on. She said that the Committee is creating the program, establishing it in the Judicial Branch, and providing for the Supreme Court to administer it.

MOTION AMENDED

SEN. SHOCKLEY amended his motion to amend the title to read: "An Act creating the Montana Access to Civil Justice Act, authorizing the Supreme Court to establish a self-help law program within appropriated funding."

DISCUSSION

SEN. PERRY said that he would prefer Ms. Lane's wording rather than going back. Ms. Lane's wording was to say "providing for the establishment of a self-help law program within appropriated funds."

SEN. SHOCKLEY withdrew his motion.

MOTION

SEN. PERRY moved that the bill title read: "An Act providing for the establishment of a self-help law program within appropriated funds".

DISCUSSION

REP. STOKER said that the Supreme Court needs to be embraced in this and that providing for the Supreme Court to establish a program. He suggested substituting the word "providing" in place of "directing".

MS. LANE said that the original proposal was "providing for the establishment of a self-help law program within appropriated funds" or "providing for the establishment of a self-help law

program. She said that the alternative is to recognize that the Legislature is actually establishing the program. Section 4 states that there will be a self-help law program, the legislature will establish the program, and the Supreme Court will be authorized to administer the program.

SEN. PERRY said that he wanted to be sure that nothing will be changed that is already contained in the bill. He said that if we look at page 2 of the bill, section 4, it specifically says that there is a self-help law program that will be administered by the Supreme Court.

MS. HEFFELFINGER said that if you strike "directing the Supreme Court to establish", and insert "providing for the establishment of"; continue to read, "a self-help law program", and insert "administered by the Supreme Court"; and then go back to the language "within appropriated funding".

REP. STOKER said that the wording that Ms. Heffelfinger just enunciated is fine with him as long as it included in the title, the Supreme Court.

REP. PARKER said that the language that Sen. Perry proposed is not the language what Ms. Heffelfinger wanted in.

SEN. PERRY withdrew his motion and proposed a substitute motion.

MOTION

SEN. PERRY moved that the title read: "An Act establishing a self-help law program administered by the Supreme Court within appropriated funding." MOTION CARRIED UNANIMOUSLY with proxy votes of Rep. Rice, Sen. McGee, and Sen. Laslovich voting aye.

DISCUSSION

REP. PARKER asked Ms. Lane whether the language of the bill actually allows the Supreme Court to choose between state employees and contracting as Ms. Gervais has indicated that contracting is possible under the existing terms. MS. LANE said that Ms. Gervais is correct in that once you appropriate money, they can do it through an employee or a contract employee. She said that this particular bill needs to be clarified, and that would require the insertion of the sentence that the services can be performed either by employees of the Judicial Branch or through contracted services. She said that where it states that program staff will be Judicial Branch employees subject to the Personnel Pay Plan, the bill would need to clarify that program staff who were hired by the Judicial Branch are subject to that Pay Plan as opposed to the contracted employees.

REP. PARKER asked Sen. Perry if the Subcommittee has a firm intent for state employees or

contracted employees, or did the Subcommittee intend it to be flexible. SEN. PERRY said that his feeling is that the subcommittee wanted this to remain flexible and that he cannot recall if they intended to direct it one way or another.

MOTION

REP. STOKER moved to insert the language, "program staff or contract persons may not provide legal representation through the pro bono program."

REP. WINDHAM said that she thinks that it might too soon to consider that because the pro bono portion has not been addressed. She said that she doesn't know what will happen to the pro bono program because a lot of pro bono programs require direct representation. REP. PARKER said that the Committee could propose amendments today, debate those, and then direct staff to do research on proposed amendments later.

REP. STOKER withdrew his motion.

REP. EVERETT said that he is interested in seeing the contract language in the draft because private enterprise does a better job than the government.

REP. PARKER said that the draft before the Committee, on page 4, which has blank lines for the appropriation, does not need a fixed appropriation today but the Committee will need to do that before the end of the interim.

MS. HEFFELFINGER suggested that on page 2 of LC0072, add at the end of subsection (1) after the sentence, "There is a self-help law program, the program is administered by the Supreme Court, the Supreme Court may designate a commission to perform its duties under Sections 1 through 5", a new sentence to say, "The Supreme Court may contract for the performance of duties under this section." She said that that authorizes the contracting. She said that providing the funding doesn't mean hiring an FTE, but you would have the funding and the parameters of the program. Ms. Heffelfinger said to insert at the beginning of subsection (2) the word "any", so that any program staff is subject to the Judicial Branch Personnel and Pay Plan. That stays within the intent of the Subcommittee so if they hire a staff person, that staff person is a classified employee.

MOTION

SEN. CROMLEY moved to add a sentence at the end subsection (1) under section 4 to say, "The Supreme Court may contract for the performance of duties under this section" and to insert at the beginning of that subsection (2) the word "any".

DISCUSSION

MS. LANE said that she didn't think that on subsection (2), inserting "any" would work, because any program staff picks up the contracted one too and that was not what was intended. She said that what Ms. Heffelfinger meant is that program staff employed by the Judicial Branch are subject to, and you need to distinguish between contract employees. The insertion of "any" doesn't distinguish. MS. HEFFELFINGER and MS. LANE discussed alternative language.

REP. PARKER instructed the Committee to stand at ease for 10 minutes while staff confers with Sen. Cromley on how to do the amendment. He would like staff to unify their position before they go ahead.

MOTION

SEN. CROMLEY clarified his amendment to say Section 4, part 1, "the Supreme Court may contract for the performance of duties under the section" and section 4, subsection (2), " any program staff employed by the Judicial Branch are subject to the Judicial Branch personnel", and section 4, subsection (5) on page 3, insert " program staff employed by the Judicial Branch may not provide legal representation through this program." He also included in his motion authorization for staff to make technical adjustments in the language if necessary to reflect the intent of the Committee. MOTION CARRIED.

REP. PARKER closed the work session on the bill.

REP. PARKER recessed the Committee for lunch.

TAPE 2B

DRAFT BILL LC0071: Prosecution Services Revision Act

MS. HEFFELFINGER gave an overview of LC0071: Prosecution Services Revision Act as drafted per Committee instructions on March 23, 2006 (**EXHIBIT 4**) and an alternative version LC71: Components and Alternatives on County Attorney Salaries (**EXHIBIT 5**). She summarized the components of the decisions that needed to be made about county attorney salaries: 1) minimum salary; and 2) how the state and county share is determined.

Ms. Heffelfinger discussed the idea of using the entitlement share, which was set up through HB 124. She said that the purpose of HB 124 was a simplification of counties paying for certain things and having certain revenues, the state taking the revenue and giving back what the counties are entitled to as a portion of that revenue.

Ms. Heffelfinger discussed the concept of indexing county attorney salaries to the district judge's salary.

PRELIMINARY FISCAL ANALYSIS OF LC 71 - Pat Gervais, Fiscal Analyst, LFD

MS. GERVAIS said that at one of the Committee's previous meetings, the Department of Justice had presented some information regarding its proposal to increase funding related to the Forensic Science Division. She distributed the spreadsheet (**EXHIBIT 6**) which summarizes the proposed budget figures.

REP. PARKER asked if Ms. Gervais had a dollar amount for the new prosecution positions proposed for the Prosecution Services Bureau. MS. GERVAIS said that she didn't have a dollar figure.

REP. STOKER said that he is concerned with number 5 on page 2 of Exhibit 4, LC0071: Prosecution Services Revision Act . He said that years ago there were 5 positions authorized in Child Protective Services Unit but they never got more positions than 3 positions. Now the Child Protective Services is asking for two more for a total of 7. He said he did not understand the rationale of asking for 7 positions. REP. PARKER asked Mr. Fasbender how many attorneys would be in the Child Protective Services if the Committee adopted the legislation. LARRY FASBENDER said that they currently have 4 people who work in Protective Services. When the funding was cut, some of those positions were dropped and they are trying to get them restored because of the demand for those services.

STAKEHOLDER ROUNDTABLE DISCUSSION ON LC 71

Harold Blattie, Montana Association of Counties, conference phone
Larry Fasbender, Deputy Director, Department of Justice
Fred Van Valkenberg, Montana County Attorneys Association
Nick Murnion, Garfield County Attorney
Sheryl Wood, Associate Director, Montana Association of Counties

FRED VAN VALKENBERG, President of Montana County Attorneys Association, said that the Committee should think about why they are talking about salaries. He said that it is not a matter that is important just in itself but that the salary issue is something that is the basic relationship between an employer and an employee. He said that the county attorneys want to get beyond the discussion of salary every legislative session and find a one-time solution to the salary issue that does not necessitate having to come back to the legislature, or going to county commissioners, or litigating the issue.

NICK MURNION, Garfield County Attorney, said that he has served 28 years as a county attorney and in his 28 years he has seen the ups and downs of salary for county attorneys. He said that he would like to see some agreement on the salaries and to have salary incentives to attract and retain good prosecutors.

TAPE 3A

HAROLD BLATTIE, Montana Association of Counties, said that they are supportive and would like to resolve this once and for all, to get it right, and get something that will work and last so that the issue does not have to be revisited on a regular basis. He said that some of the problems the Association has encountered are the wide differences in workload responsibilities of individual county attorneys and health insurance issues.

MR. BLATTIE asked Ms. Heffelfinger if the Committee had received his options regarding health insurance and asked if it would be appropriate for him to go into his alternate bill proposal. SHERI HEFFELFINGER said that she handed out a packet that summarized the options and alternatives.

Mr. Blattie said that he is hearing from some of the Association members that they did not believe that the entitlement share was the appropriate vehicle for the transfer of money from the state. He said that he wanted to put out for the Committee's consideration the issue of should the prosecutor be a state employee, should they be a county employee, or should they be an employee of both agencies. He said that when that question is answered, then you can define some direction of how to proceed. If the feeling is that they should be strictly a county employee, then a mechanism needs to be developed for compensating the counties for a share of that county attorney's salary.

He said that one thing that he has advocated is eliminating the notion of 50/50 because that notion has been the cause of some of the conflict. If we acknowledge that it is shared responsibility, then a mechanism is needed to transfer the appropriate amount of funding. If they are to be a state employee, we need to find appropriate mechanism for the county to pay for their reasonable share of that costs. The alternative is that they continue to be an employee of both entities.

Mr. Blattie said that a great deal of frustration and problem has been caused by the advent of the County Compensation Boards. If the state has a joint responsibility, and county attorneys continue to receive a paycheck from the state and the county, then he would suggest that the mechanism for determining the state's share of that salary be defined in statute and that the Committee determine whether to tie the salary to a district court judge's salary, a public defender's salary, or to a percentage of the district court judge's salary, but to have a formula-driven mechanism in statute that defines what the state will pay and to do the same thing on the county side of things.

Mr. Blattie said that health insurance coverage should be provided for county attorneys whether they are part-time state employees or part-time county employees, and under either the county or the state plan.

LARRY FASBENDER, Deputy Director, Department of Justice, said that we need to have a level of salary that is going to ensure that we have quality prosecutors and we need to have

some method to fund those prosecutors. The policy decisions that this Committee and the legislature will have to make is whether or not they want to set those salaries at the state level and work in conjunction with the counties and the County Compensation Board to make that happen.

QUESTIONS

REP. PARKER asked Mr. Fasbender what the time table might be for putting together a consensus packet that the Committee can look at. MR. FASBENDER said he might not be able to answer the question regarding the time table but he is committed in getting something done. He said that they could run some numbers to see what is happening at the county level.

SEN. WILLIAMS asked if it would be possible to come up with a mechanism to deal with longevity and experience. MR. FASBENDER said that the County Compensation Board sets that, but it would be possible that once the state base is set, that the counties could decide whether or not they were interested in paying more for experience. MR. VAN VALKENBURG said that there are some counties that factors in longevity in terms of determining the county attorney's salary.

REP. STOKER asked Mr. Van Valkenburg if there was a situation where because of longevity, deputy attorneys could actually be paid more than the boss, the county attorney. MR. VAN VALKENBURG said that deputies have a separate longevity element to their salaries that the legislature had established, which essentially allowed deputies to accumulate longevity up to 11 years. MR. BLATTIE said that a number of counties have adopted longevity, some have put a cap at 5 years, some don't begin it until after the 5th year, and others have up to 1% unlimited. He said that the bigger question is, as the District Court Judge's salary moves and if the county attorney's salary was indexed to that, does longevity need to be calculated into the mix of things and should it be a shared responsibility or just the responsibility of one entity or the other.

SEN. SHOCKLEY asked if it was true that the county attorneys are supporting 75% of a judge's salary, plus \$3600 and the state paying 1/2 of the 75%. MR. VAN VALKENBURG said that that was not true. He said that that is largely the proposal that has come from MACo, but the numbers which Mr. Blattie is talking about is something to show the effect of what would happen if you use those numbers. He said that what the county attorneys are asking for is to have the legislature come up with a salary and the best way to do that was to tie it to a percentage of a district court judge's salary and to prorate the salary for the part time county attorneys so that they would get their fair share of that salary, and then to continue the previous method whereby the state paid 50% of that salary and the counties pay 50% of that salary. Mr. Van Valkenburg said that the Department of Justice didn't want to deal with going to the legislature and asking for an appropriation, or dealing with the counties over the reporting of what the salaries might be. He said that the Department of Justice thought that a better way was to go with the adjustments to the local government entitlement program.

SEN. SHOCKLEY said that he does not want to take the county attorneys out from the compensation board but he would like a system where the state would pay a percentage and in the larger counties where the duties are more responsible and more difficult, that they be compensated for it, but the counties pay the difference.

SEN. PERRY said that if we set a percentage of a district court judge's salary and said that is our state law, that might impact the other counties that choose to pay their attorneys more. He said that he didn't think the legislature should have the prerogative to do that. He asked the Committee if it would solve the issue if on page 1 of the sample bill (in Exhibit 5, LC71): Components and Alternatives on County Attorney Salaries), section 1, subsection (2), line 17, the language was changed to read: "at a rate not to exceed 50% of 75% of the salary that a district court judge is entitled to." He said that if we did that, that would define the state's contribution but then the rest of the salary is up to the county to set. He said that the percentage of the district judge's salary would change under that law every two years and there could be an increase in the state's share and also it would be a known on lines 19 through 21, page 3, each county attorney is entitled to an increase in salary based upon a schedule developed and approved by the county compensation board. He asked if that would meet the needs fairly simply.

MR. VAN VALKENBURG said that the biggest concern he had was that adding "not to exceed" would open the door for the legislature to appropriate less than 50%. He said that is what he is trying to avoid.

SEN. PERRY asked if it would be satisfactory to say "a salary is set by a compensation board that is less than 75% of the district court judge's salary", and follow that with "the state will pay 50% of that salary not to exceed 50% of 75%". MR. VAN VALKENBURG said that it would be a legitimate legislative decision and one that you might want to make. He said that in a previous meeting, he had asked the Committee to consider raising the minimum salary. He said that there is a minimum salary in statute right now of \$50,000. He said that if you decide as a matter of legislative policy to do away with the minimum salary and let county compensation boards set salaries without any reference to a minimum salary by the state, you run some risk that some counties will basically pay so little money that they will attract either no attorneys to be county attorneys, or will be scraping the bottom of the barrel to get people to go out there and do the work. He said that he would suggest that the legislature raise the minimum to \$70,000.

TAPE 3B

REP. PARKER asked each organization elaborate on whether or not the entitlement share program should be the mechanism used to pay the state share. FRED VAN VALKENBURG, said they agree that the entitlement share is not a good basis to establish a formula. HAROLD BLATTIE said that he agrees that the entitlement share was not going to work or be an

appropriate vehicle. LARRY FASBENDER said that given the entitlement share growth formula using the entitlement share is not fair to counties.

REP. PARKER asked if there was a consensus among the three organizations on whether or not to try it as a statutory appropriation or as a state payroll. FRED VAN VALKENBURG said that from the County Attorneys Association's perspective, they would want the legislature to adopt the statutory appropriation with respect to the funding the state's share of county attorneys salaries. HAROLD BLATTIE said that that would be MACo's preference but he didn't know that for sure, but that would be their general feeling. LARRY FASBENDER said that statutorily appropriating the percentage of something which is predictable is what the Department of Justice is looking for, and so that would be the direction they would go.

REP. PARKER asked what the benchmark should be: 1) what should the salary be indexed to; and 2) should the index be applicable to county share and the state share, or should the state share be a block of money that the county could add to or not at their discretion. FRED VAN VALKENBURG said that based on several years' discussion within the County Attorneys Association, they would support tying the county attorneys salary to a percentage of the district court judge's salary because 1) a district court judge's salary is already indexed to grow with inflation over time, that the legislature has made a decision to do that; and 2) the district court judge has duties and responsibilities similar to county attorney duties and responsibilities. HAROLD BLATTIE said that MACo would support the notion of the salary being indexed to something as far as the state's responsibility; however, he said that he did not believe that MACo's membership would be completely supportive of that because it would be a significant budget hit for them. LARRY FASBENDER said that the district judge's salary has a built in advantage, that information is collected every two years about the salary in surrounding states and the average is taken to drive that salary, so it is indexed in that sense. He said that the Department of Justice didn't have any problem using a percentage of the district judge's salary for the state's portion of it, but beyond that, there has to be a discussion as to what the counties are going to do. He said that finding the proper percentage is going to be the difficult task.

REP. STOKER asked if the salary compensation of a clerk and recorder who might perform several duties exists uniformly across the state. MR. BLATTIE said that no, it is not uniform across the 56 counties.

SEN. CROMLEY asked if the clerk and recorder's salary is indexed. MR. VAN VALKENBURG said that the clerk and recorder's salary is not indexed in the same way that the district court judge's salary is indexed. The district court judge's salary is indexed to a salary survey of surrounding states. The clerk and recorder's salary is tied to some degree to the growth in the assessed value of taxable value of property within a county. SEN. CROMLEY asked if a specific formula was used. MR. VAN VALKENBURG said that he thought there was but that he is not personally familiar with it.

MOTION

SEN. PERRY moved to have Ms. Heffelfinger rework the bill draft, replace the entitlement share concept with a statutory appropriation concept, and to continue working with the Montana County Attorneys Association, the Montana Association of Counties, and the Department of Justice along those lines. **MOTION CARRIED UNANIMOUSLY.**

REP. PARKER said that the Committee will need a motion about what the county attorney's pay will be indexed to.

MOTION

SEN. SHOCKLEY moved that the county attorney's salary be indexed to the district court judge's salary. **MOTION PASSED** with Rep. Everett voting no; Rep. Rice voted yes by proxy; Sen. McGee voted yes by proxy; and Rep. Laslovich voted yes by proxy.

INSTRUCTION TO STAFF

REP. PARKER said that this item will be on the June meeting's agenda. He said that if Ms. Heffelfinger can produce a new draft for discussion, the Committee can take that up for discussion and call for a vote in June. He said that if the working group is not heading in that direction, he would request a staff report from Ms. Heffelfinger to identify the sticking points in the form of policy options for the Committee.

REP. PARKER asked if the three organizations could get together before the end of May to give Ms. Heffelfinger time to package it up for the Committee. The parties said that they could get together before the end of May.

REP. PARKER thanked Mr. Blattie of MACo, Mr. Van Valkenburg of the County Attorneys Association, and Mr. Fasbender for their work on this issue.

ADJOURNMENT

REP. PARKER adjourned the meeting at 3:40 p.m.