

Members

Sen. Brent Steele, Chairperson
Sen. Joseph Zakas
Sen. Greg Taylor
Sen. Lonnie Randolph
Rep. Kathy Kreag Richardson
Rep. Greg Steuerwald
Rep. B. Patrick Bauer
Rep. John Bartlett
Chief Justice Brent Dickson
Judge Tom Felts
Commissioner Therese Brown
Christa Coffey
Jerome Prince



COMMISSION ON COURTS

Legislative Services Agency
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Commission
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Authority: IC 33-23-10

MEETING MINUTES¹

Meeting Date: July 18, 2013
Meeting Time: 2:00 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Brent Steele, Chairperson; Sen. Joseph Zakas; Sen. Lonnie Randolph; Rep. B. Patrick Bauer; Rep. John Bartlett; Chief Justice Brent Dickson; Judge Tom Felts; Christa Coffey.

Members Absent: Sen. Greg Taylor; Rep. Kathy Kreag Richardson; Rep. Greg Steuerwald; Commissioner Therese Brown; Jerome Prince.

Sen. Steele, Chair of the Commission called the meeting to order at 2:09 p.m.

After an introduction of the Commission members, Sen. Steele stated that the only request from the Legislative Council is to review the need for an additional magistrate for Vanderburgh County. He distributed a letter from Rep. Gail Riecken that described the need for the additional magistrate. (Exhibit A)

Vanderburgh County Magistrate

Sen. Steele recognized Hon. David Kiely, Vanderburgh Circuit Court, to discuss this issue. Judge Kiely stated that while the 2012 Weighted Caseload Study ranks Vanderburgh

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative> Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

County with the fourth highest need of all 92 counties, the severity of need for the Vanderburgh Circuit Court is even higher than the Vanderburgh County average. (Exhibit B) The Circuit Court's severity of need is 1.93 while the county average is 1.58.

Judge Kiely made the following points in closing:

- The courthouse in Vanderburgh County has adequate space and just needs to be remodeled.
- Both the Vanderburgh County Bar Association and the Vanderburgh Prosecuting Attorney support the need for an additional magistrate.
- While the Vanderburgh County Council has not issued a formal statement of approval, Judge Kiely does not expect to see any local opposition.
- The Vanderburgh Circuit Court's jurisdiction includes both major civil and felony cases.

Sen. Steele stated that he would hold this vote on endorsing a new magistrate at a future meeting.

Sen. Zakas asked about how the weighted caseloads are calculated. Chief Justice Dickson explained that staff in the Division of State Court Administration prepare the measures based on a survey of a sample of trial court judges. These judges estimate the average amount of time that it takes for them to complete civil and criminal cases.

Surety Bonds and Pretrial Release

Sen. Steele stated that the next topic the Commission would examine is pretrial release and surety bonds.

Les Sebring, United Surety Agents Inc., stated that there are 885 bail agents in Indiana. He described the three types of bonds that courts may use to set bail to ensure criminal defendants appear in court at future dates. These include cash bonds, surety bonds, and real estate bonds.

Cash bonds are used when a court orders a criminal defendant to promise to forfeit a certain amount (bond) to the court if the defendant fails to appear in court at a future date. This is in exchange for the defendant being permitted to stay out of jail while awaiting trial. The deposit has to be at least 10% of the bond. If the defendant appears in court at a later date, then the court will refund to the defendant the deposit less certain administrative fees. If the defendant does not appear in court, the bond is forfeited and deposited into the Common School Fund.

Mr. Sebring stated that surety bonds require a third party, generally a bail agent, to post the money and be responsible for assuring the court that the defendant will appear in court at a later date. The bail agent charges the defendant a nonrefundable fee to perform this service. Mr. Sebring told the Commission members that the agent is responsible for forfeiting any money to the Common School Fund if the defendant does not appear in court.

Mr. Sebring stated that criminal defendants should be able to choose between selecting cash bonds and surety bonds and he indicated that the surety bonds are the most effective way to ensure that defendants appear in court. He explained that bail bondsmen are responsible for

ensuring their appearance instead of the deputies in a county sheriff's office.

Mr. Sebring also indicated the following:

- There are no statewide reports that show the number of defendants who fail to appear in court based on pretrial release.
- About 40 counties do not permit surety bonds because of the zeal of the judges to produce revenue.
- Property bonds are generally not posted because of political ramifications of taking people's property especially in small towns and rural areas.
- The state is losing money for the Common School Fund because, when the 10% cash bonds are forfeited because a person fails to appear in court, the 90% balance of the bond is not forwarded to the Common School Fund.

Sen. Randolph noted that some counties use the money from cash bonds to recover the cost of providing indigent defense when a defendant is found guilty.

Sen. Steele requested Mr. Sebring to provide a list of counties that allow for bail by cash deposit, by surety, and by property.

Sen. Earline Rogers told the Commission members that she introduced SB 425 and later SR 69 during the 2013 General Assembly to study the issue of pretrial releases. She indicated that the money that is generated in a county from pretrial detention should stay in the county.

Herb Smith, Express Bail Bonds Inc., distributed a handout to the Commission members, which proposes changes to IC 27-10-2-12. (Exhibit C)

Lee Sexton, president of the American Bonding Company, told the Commission members that he has worked in the bail bond business since 1991. He supports more extensive uses of surety bail bond and suggested that the period of forfeiture for surety bonds be reduced from 365 days to 180 days.

Mike Whitlock, American Surety Company, discussed the late surrender fee split that was proposed in SB 425 - 2013. He told the Commission members that bail agents generally would prefer for defendants to only be released on bail if they deposit full cash or either use a real estate bond or secure a surety bond.

He indicated that bail agents have a difficult time competing when courts allow defendants to be released when they deposit a 10% cash bond with the courts. He also indicated that defendants released on a 10% cash bond are less likely to appear in court than defendants who use surety bonds. He also indicated that each surety company reports how much money they have forfeited in their financial statements.

Rick Cockrum, representing the Lake County Council, explained that Lake County is under a court order to reduce its jail population.

Hon. Robert Freese, Hendricks Superior Court #1, representing the Indiana Judges Association, stated that the Association believes that trial court judges need the discretion to determine the conditions for pretrial release. He indicated that it will generally be the person who lends the defendant money to be released on bail who must pay the entire amount if the defendant does not appear in court and not necessarily the surety company. He told the Commission members that courts do not use the money for a revenue source. He stated that the Hendricks County jail is filled with defendants who are awaiting trial in the Hendricks Circuit Court and cannot pay for the surety bond.

Judge Freese also made the following points:

- He releases about 99% of defendants on their own reconnaissance.
- Most failures to appear in court at a later date are not because of willful nonappearance.
- Release based on property bonds are uncommon because most property does not have the adequate equity to cover the bond.
- Most defendants prefer the 10% cash bond deposit because they have a chance to get a portion of their money back if they are found not guilty.

Barbara Roach, Barbara Roach Bail Bonds, stated that her company pays for any forfeitures. She also indicated that permitting defendants to post the 10% cash bond has adversely affected her business.

Sheriff Ken Campbell, Boone County, representing the Indiana Sheriffs Association, testified about two concerns:

- County sheriffs will apprehend any person for whom the court has issued an arrest warrant whether the defendant was released on a 10% cash bond or a surety bond.
- The Indiana Sheriffs Association will not support any bill that would affect the Sheriffs Pension Fund because the sheriffs would have to ask for more money from each county council. (Under current law, 50% of the revenue from the late surrender fee is deposited in the Sheriffs Pension Fund and 50% into the County Extradition Fund. SB 425-2013 proposed reallocating the late surrender fee revenue from these two funds and depositing these proceeds into other county funds).

Jim Degan, bail agent, said the law should give the defendant the choice between posting a cash bond and a surety bond.

Kevin Watkins, bail and fugitive recovery agent, told the Commission members that he apprehends criminal defendants at no cost to the taxpayer.

Chairman Steele adjourned the meeting at 4:30 p.m. and stated that the date and time of the next meeting will be announced in the future.



Exhibit A IANA
HOUSE OF REPRESENTATIVES

THIRD FLOOR STATE HOUSE

INDIANAPOLIS, INDIANA 46204

GAIL RIECKEN
ASSISTANT DEMOCRATIC FLOOR LEADER
5935 KNIGHT DRIVE
EVANSVILLE, IN 47715

COMMITTEES:
FAMILY, CHILDREN AND HUMAN AFFAIRS, RMM
STATUTORY COMMITTEE ON ETHICS
FINANCIAL INSTITUTIONS
LOCAL GOVERNMENT

July 18th, 2013

Senator Brent Steele
200 West Washington Street
Indianapolis, IN 46204

Dear Senator Steele:

I would like to express my support for adding a magistrate in the Vanderburgh County Circuit Court.

As you already know, Vanderburgh Circuit Court currently has two judicial officers, one judge and one magistrate. The 2011 Weighted Caseload Measure shows that each judicial officer in Circuit Court is operating at a 2.07 level. This means each judicial officer is doing the work of 2.07 judicial officers.

The Weighted Caseload Measure shows that Circuit Court needs 4.14 judicial officers. The 2011 Weighted Caseload Measure "Severity of Need" shows Vanderburgh County second behind Clark County in need for judicial officers state wide.

I appreciate your willingness to discuss this issue during the Commission on Courts summer study committee. Please do not hesitate to contact me if you need any additional information.

Sincerely,

Gail Riecken
State Representative
District 77

Cc: Honorable David Kiely

Exhibit B

2012 WEIGHTED CASELOAD MEASURES

"SEVERITY OF NEED"

	County	Need	Have	Utilization
1	CLARK	12.10	5.35	2.26
2	JEFFERSON	3.55	2.00	1.78
3	JOHNSON	9.52	6.00	1.59
4	VANDEBURGH	22.17	14.00	1.58
5	DEARBORN	5.06	3.20	1.58
6	HOWARD	8.63	5.50	1.57
7	JENNINGS	3.12	2.00	1.56
8	KNOX	4.67	3.00	1.56
9	SCOTT	3.29	2.12	1.55
10	HENDRICKS	9.26	6.00	1.54
11	GIBSON	3.07	2.00	1.53
12	LAPORTE	11.96	7.90	1.51
13	VIGO	10.55	7.00	1.51
14	MADISON	12.00	8.06	1.49
15	KOSCIUSKO	5.95	4.00	1.49
16	TIPPECANOE	13.13	8.86	1.48
17	PUTNAM	2.96	2.00	1.48
18	SPENCER	1.47	1.00	1.47
19	FLOYD	7.33	5.00	1.47
20	ALLEN	32.84	23.00	1.43
21	MARSHALL	4.24	3.00	1.41
22	ELKHART	14.45	10.24	1.41
23	HAMILTON	14.09	10.00	1.41
24	WABASH	2.78	2.00	1.39
25	DUBOIS	2.78	2.00	1.39
26	WARRICK	4.16	3.00	1.39
27	CLINTON	2.77	2.00	1.38
28	SHELBY	4.09	3.00	1.36
29	PORTER	12.17	9.00	1.35
30	HARRISON	3.22	2.40	1.34
31	PARKE	1.32	1.00	1.32
32	NOBLE	3.97	3.00	1.32
33	DEKALB	3.96	3.00	1.32
34	HENRY	4.49	3.45	1.30
35	GREENE	2.59	2.00	1.30
36	VERMILLION	1.28	1.00	1.28
37	JASPER	2.56	2.00	1.28
38	MARION	99.23	78.14	1.27
39	ST. JOSEPH	21.43	17.00	1.26
40	FAYETTE	2.48	2.00	1.24
41	CASS	3.66	3.00	1.22
42	JACKSON	4.12	3.40	1.21
43	DECATUR	2.39	2.00	1.19
44	WASHINGTON	2.38	2.00	1.19
45	LAGRANGE	2.37	2.00	1.18
46	DAVISS	2.36	2.00	1.18

	County	Need	Have	Utilization
47	MIAMI	3.53	3.00	1.18
48	LAKE	39.88	34.10	1.17
49	BARTHOLOMEW	6.01	5.16	1.17
50	WHITLEY	2.30	2.00	1.15
51	HANCOCK	4.45	3.90	1.14
52	DELAWARE	8.83	8.00	1.10
53	MONTGOMERY	3.26	3.00	1.09
54	LAWRENCE	3.98	3.70	1.08
55	STEUBEN	3.11	2.90	1.07
56	ORANGE	2.14	2.00	1.07
57	MORGAN	5.15	4.86	1.06
58	MONROE	10.60	10.00	1.06
59	GRANT	5.26	5.00	1.05
60	WAYNE	5.95	5.81	1.02
61	WELLS	2.03	2.00	1.01
62	HUNTINGTON	2.84	2.80	1.01
63	TIPTON	1.08	1.10	0.98
64	RANDOLPH	1.96	2.00	0.98
65	CLAY	1.95	2.00	0.98
66	WHITE	1.93	2.00	0.97
67	FULTON	1.93	2.00	0.97
68	FOUNTAIN	1.31	1.40	0.94
69	BOONE	3.94	4.22	0.93
70	STARKE	1.87	2.00	0.93
71	PERRY	1.84	2.00	0.92
72	RIPLEY	1.80	2.00	0.90
73	RUSH	1.77	2.00	0.88
74	ADAMS	1.69	2.00	0.84
75	POSEY	1.68	2.00	0.84
76	OWEN	1.62	2.00	0.81
77	PIKE	1.21	1.50	0.81
78	CRAWFORD	0.94	1.20	0.78
79	MARTIN	0.77	1.00	0.77
80	JAY	1.54	2.00	0.77
81	SWITZERLAND	0.75	1.00	0.75
82	FRANKLIN	1.47	2.00	0.74
83	UNION	0.73	1.00	0.73
84	BENTON	0.70	1.00	0.70
85	CARROLL	1.36	2.00	0.68
86	BLACKFORD	1.31	2.00	0.66
87	NEWTON	1.23	2.00	0.62
88	SULLIVAN	1.84	3.00	0.61
89	WARREN	0.59	1.00	0.59
90	BROWN	1.18	2.00	0.59
91	OHIO	0.47	0.80	0.58
92	PULASKI	1.13	2.00	0.57

STATE TOTAL/AVERAGE	560.88	444.07	1.26
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Slight Change In Surety Bail Law

IC 27-10-2-12

Could Bring Big Benefits To Local
Communities and Taxpayers!

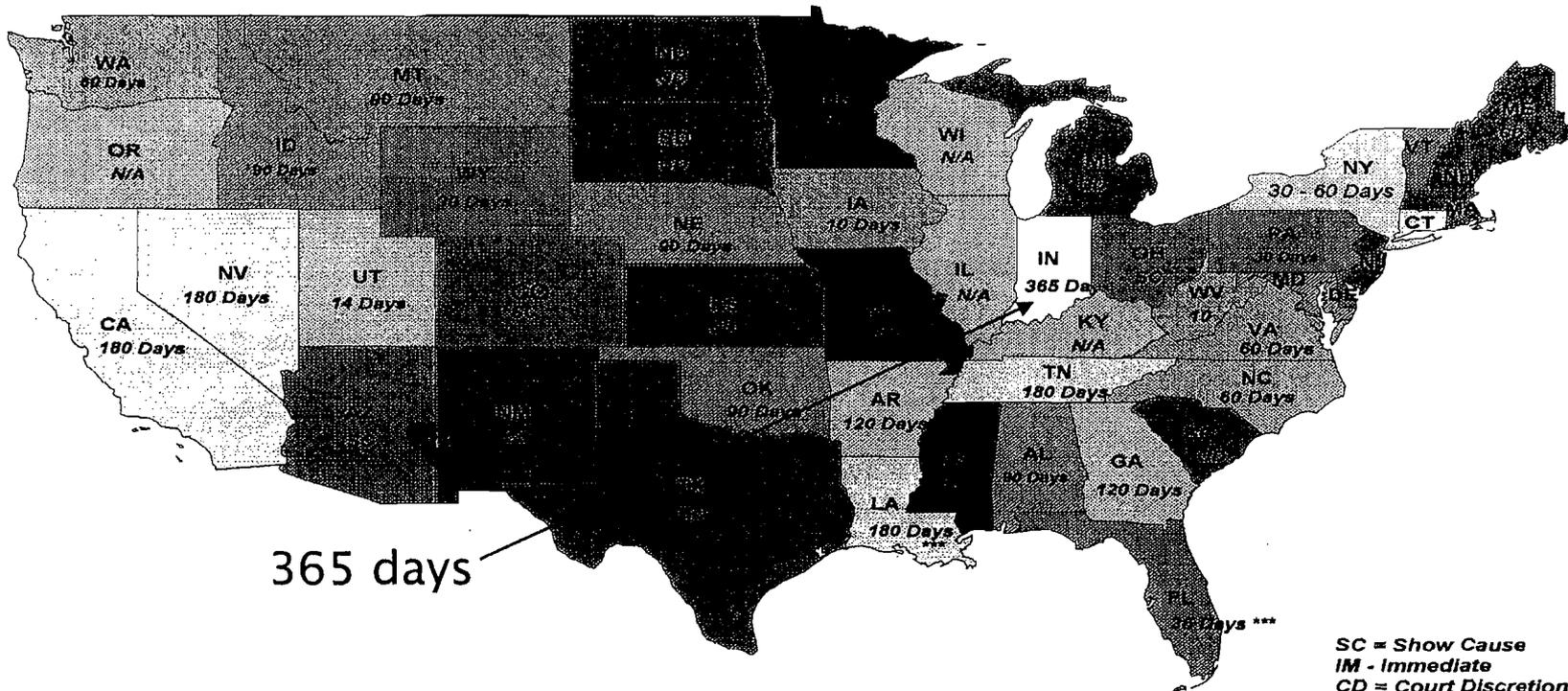
**Recognize Indiana's unusual opportunity with late
surrender fees**

Other states forfeit bonds at 100%. Indiana forfeits 20%, with the remainder up to 80% due as a Late Surrender Fee that the state legislature determines where it goes!

But, when the late surrender fee is due, it is rarely collected, therefore, resulting in the loss of millions of dollars!

Indiana's unusually long surrender time promotes unaccountability and loss of the late surrender fee, and is not within the normal surrender times across the country!

STATE SURRENDER TIMES



365 days

SC = Show Cause
IM - Immediate
CD = Court Discretion

*** Legislation Pending

Only 18 of 92 counties received a benefit from late surrender fees.
The other 74 received Zero!

County	Late Fee (Total)	Current Law Distribution	
		Sheriff's Trust (50%)	County Extradition Fund (50%)
HENDRICKS	175.00	87.50	87.50
WAYNE	770.55	385.28	385.28
ADAMS	2,250.00	1,125.00	1,125.00
HAMILTON	3,500.00	1,750.00	1,750.00
JASPER	4,950.00	2,475.00	2,475.00
GREENE	5,290.00	2,645.00	2,645.00
LAPORTE	6,000.00	3,000.00	3,000.00
MORGAN	6,000.00	3,000.00	3,000.00
CASS	6,600.00	3,300.00	3,300.00
DEKALB	7,500.00	3,750.00	3,750.00
HARRISON	12,670.46	6,335.23	6,335.23
CARROLL	15,500.00	7,750.00	7,750.00
NOBLE	19,739.00	9,869.50	9,869.50
KOSCIUSKO	32,320.00	16,160.00	16,160.00
ALLEN	39,960.61	19,980.31	19,980.31
JOHNSON	71,950.00	35,975.00	35,975.00
ELKHART	118,549.73	59,274.87	59,274.87
MARION	188,900.00	94,450.00	94,450.00

Note: Sherriff Pension Trust Fund amount is an estimated amount.

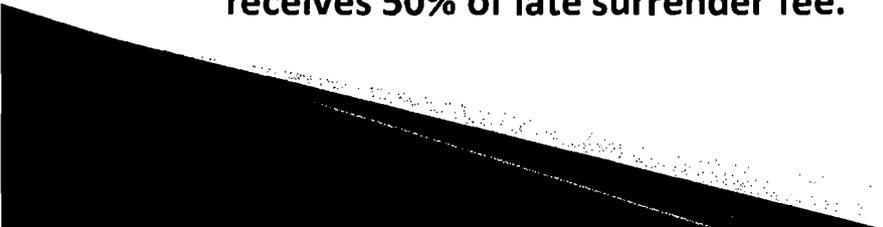
Source: Indiana Legislative Services

Proposed changes to IC 27-10-2-12

Failure of defendant to appear; notice; late surrender fees;
forfeiture proceedings; satisfaction of judgment; revocation of license

Example: One surety bond's value \$20,000.00 @ forfeiture and assessment of late surrender fee 180 days. Forfeiture = (20%) \$4000. Late surrender fee (80%) = \$16,000

Proposed Changes

1. Incentivize the collection of late surrender fees.
 2. Redistribute late surrender fees.
 3. Shorten surrender time from 365 to 180 days for total forfeiture and late surrender fee.
 4. Allow the court where the bond originated to keep 25% of the late surrender fee.
 5. Allow the county where the bond originated to receive 6% of the late surrender fee for the County Public Defender Fund.
 6. Send 10% of the late surrender fee to the County Extradition Fund
 7. Allow the Clerks Office where bond originated to receive 6% of the late surrender fee.
 8. Send 3% of the late surrender fee to County Electronic Monitoring fund.
 9. Finally, There are no changes proposed to the Sheriff Pension Trust Fund which receives 50% of late surrender fee.
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Myths and Facts about Proposed Changes to IC 27-10-2-12

Myths

Shortening surrender time will adversely affect bondsman.

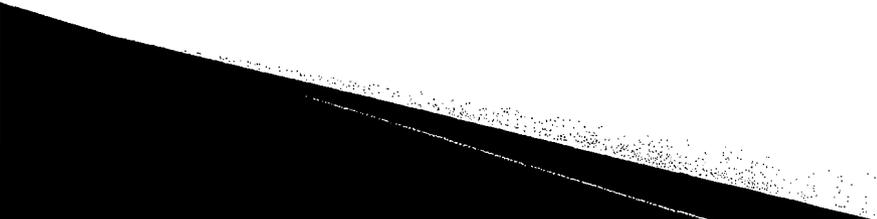
Bonds forfeitures will increase.

Electronic Monitoring will take business from bondsmen.

Proposed changes will take away extradition fund money.

Proposed changes will take funds away from Sheriff Pension Trust Fund.

Other States have this financial opportunity with late surrender fees.



Facts

Not true! The current time frame of 365 days is a great detractor to the use of surety bail. Some courts have expressed that the time frame is too long and the process is too cumbersome. Under the new proposal a bondsman would get 60 extra days before the late surrender fee is assessed and courts will get a new streamline process for bond failures to appear and forfeiture.

There has been no change to Indiana law preventing a bondsman from asking for more time, or showing due diligence to be release from a bond

Not true! Electronic monitoring has been used in conjunction with bail and is used in many instances as a way to relieve jail overcrowding because some defendants cannot afford to pay bail. Therefore late surrender fees for monitoring will only be used to fund indigent offenders stuck in jail.

Not true! Presently only 18 counties received money from bail late surrender fees. The other 74 counties receive nothing, and the 18 counties that did, on average, received less than \$10,000. The proposed changes will change that so that all counties participating will receive late surrender fee monies back in their local communities. Also, the proposed changes will continue to fund the county extradition fund by sending %10 of the late surrender fee to the county extradition fund.

Not true! The Sheriff Pension Trust fund will continue to receive 50% of the assessed late surrender fee as written in current law.

No! No other state has a bail bond failure to appear system like Indiana's assessment of a late surrender fee when there is a failure to appear. Other states forfeit bonds at 100%. However, Indiana's system allows for creative use of the late surrender fee to be used for the benefit of local communities.

BOTTOM LINE!

**The changes proposed create a
Win!–Win!
At No Cost To Government or
Taxpayers!**

