

SENATE BILL 218

Introduced by Eck

1/28	Introduced
1/29	Referred to Taxation
1/29	First Reading
1/29	Fiscal Note Requested
2/01	Hearing
2/04	Fiscal Note Received
2/04	Fiscal Note Printed
3/12	Tabled in Committee

1 Stratz BILL NO. 218
2 INTRODUCED BY Eck

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A UNIFORM
5 EXEMPTION FROM TAXATION OF BENEFITS FROM FEDERAL, STATE, AND
6 PRIVATE RETIREMENT, ANNUITY, PENSION, AND ENDOWMENT PLANS OR
7 SYSTEMS; PROVIDING A SUPPLEMENTAL INCREASE FOR STATE AND
8 LOCAL PENSION BENEFITS GRANTED UNDER TITLE 19; AMENDING
9 SECTIONS 15-30-111, 15-30-136, 19-3-105, 19-4-101, 19-4-706,
10 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1005,
11 19-10-504, 19-11-612, 19-12-407, 19-13-1003, AND 19-21-212,
12 MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE
13 APPLICABILITY DATE."
14

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

16 NEW SECTION. **Section 1.** Supplemental allowance --
17 exception -- department of revenue to provide information.

18 (1) For the purposes of this section:

19 (a) "B" is a member's or his beneficiary's total
20 service or disability retirement allowance or survivorship
21 allowance received in the previous year.

22 (b) "T" is the amount of income tax that would be paid
23 on B if B were the only income received by the member or his
24 beneficiary. The value of T must be determined by the
25 formula $T = ((B-E)S) - Y)R$, where:

1 (i) E is the \$3,600 exemption provided for in this
2 chapter and in 15-30-111;

3 (ii) S is 1 minus the percentage that is the standard
4 deduction provided for in 15-30-122;

5 (iii) Y is the exemption or exemptions claimed by the
6 member or his beneficiary in the previous year provided for
7 in 15-30-112 and 15-30-114; and

8 (iv) R is the appropriate tax rate in the previous year.

9 (c) "A" equals a member's or his beneficiary's monthly
10 service or disability retirement allowance or survivorship
11 allowance received in the previous year.

12 (2) (a) Except as provided in subsection (2)(b),
13 effective January 1, 1992, each monthly service or
14 disability retirement allowance payable to a member of the
15 retirement system under this chapter or his beneficiary must
16 be increased by an amount equal to $A(T/B)$.

17 (b) The adjustment to the monthly allowance under
18 subsection (2)(a) does not apply in the case where the
19 calculation of T is equal to or less than zero.

20 (3) The increase allowed in this section does not apply
21 to the refund of contributions on termination of service.

22 (4) The department of revenue shall furnish to the
23 board information on exemptions claimed by members,
24 appropriate tax rates, and other relevant information
25 required to carry out the provisions of this section.



1 **Section 2.** Section 15-30-111, MCA, is amended to read:

2 "15-30-111. **Adjusted gross income.** (1) Adjusted gross
3 income shall be the taxpayer's federal income tax adjusted
4 gross income as defined in section 62 of the Internal
5 Revenue Code of 1954 or as that section may be labeled or
6 amended and in addition shall include the following:

7 (a) interest received on obligations of another state
8 or territory or county, municipality, district, or other
9 political subdivision thereof;

10 (b) refunds received of federal income tax, to the
11 extent the deduction of such tax resulted in a reduction of
12 Montana income tax liability;

13 (c) that portion of a shareholder's income under
14 subchapter S. of Chapter 1 of the Internal Revenue Code of
15 1954, that has been reduced by any federal taxes paid by the
16 subchapter S. corporation on the income; and

17 (d) depreciation or amortization taken on a title plant
18 as defined in 33-25-105(15).

19 (2) Notwithstanding the provisions of the federal
20 Internal Revenue Code of 1954, as labeled or amended,
21 adjusted gross income does not include the following which
22 are exempt from taxation under this chapter:

23 (a) all interest income from obligations of the United
24 States government, the state of Montana, county,
25 municipality, district, or other political subdivision

1 thereof;

2 (b) interest income earned by a taxpayer age 65 or
3 older in a taxable year up to and including \$800 for a
4 taxpayer filing a separate return and \$1,600 for each joint
5 return;

6 (c) all benefits, not in excess of \$3,600, received:

7 (i) under the Federal Employees' Retirement Act;

8 (ii) under the public employee retirement laws of a
9 Montana or another state other than Montana; or

10 (iii) as an annuity, pension, or endowment under any
11 private or corporate retirement plan or system;

12 (d) ~~all benefits paid under the teachers' retirement~~
13 ~~law which are specified as exempt from taxation by 19-4-706;~~

14 ~~(e) all benefits paid under The Public Employees'~~
15 ~~Retirement System Act which are specified as exempt from~~
16 ~~taxation by 19-3-105;~~

17 ~~(f) all benefits paid under the highway patrol~~
18 ~~retirement law which are specified as exempt from taxation~~
19 ~~by 19-6-705;~~

20 (g) all Montana income tax refunds or credits thereof;

21 ~~(h) all benefits paid under 19-11-602, 19-11-604, and~~
22 ~~19-11-605 to retired and disabled firefighters, their~~
23 ~~surviving spouses and orphans or specified as exempt from~~
24 ~~taxation by 19-13-1003;~~

25 ~~(i) all benefits paid under the municipal police~~

1 ~~officers' retirement system that are specified as exempt~~
2 ~~from taxation by 19-9-1005;~~

3 ~~(j)(e)~~ gain required to be recognized by a liquidating
4 corporation under 15-31-113(1)(a)(ii);

5 ~~(k)(f)~~ all tips covered by section 3402(k) of the
6 Internal Revenue Code of 1954, as amended and applicable on
7 January 1, 1983, received by persons for services rendered
8 by them to patrons of premises licensed to provide food,
9 beverage, or lodging;

10 ~~(l)(g)~~ all benefits received under the workers'
11 compensation laws;

12 ~~(m)(h)~~ all health insurance premiums paid by an
13 employer for an employee if attributed as income to the
14 employee under federal law;

15 ~~(n) all benefits paid under an optional retirement~~
16 ~~program that are specified as exempt from taxation by~~
17 ~~19-21-212; and~~

18 ~~(o)(i)~~ all money received because of a settlement
19 agreement or judgment in a lawsuit brought against a
20 manufacturer or distributor of "agent orange" for damages
21 resulting from exposure to "agent orange".

22 (3) In the case of a shareholder of a corporation with
23 respect to which the election provided for under subchapter
24 S. of the Internal Revenue Code of 1954, as amended, is in
25 effect but with respect to which the election provided for

1 under 15-31-202, as amended, is not in effect, adjusted
2 gross income does not include any part of the corporation's
3 undistributed taxable income, net operating loss, capital
4 gains or other gains, profits, or losses required to be
5 included in the shareholder's federal income tax adjusted
6 gross income by reason of the election under subchapter S.
7 However, the shareholder's adjusted gross income shall
8 include actual distributions from the corporation to the
9 extent they would be treated as taxable dividends if the
10 subchapter S. election were not in effect.

11 (4) A shareholder of a DISC that is exempt from the
12 corporation license tax under 15-31-102(1)(1) shall include
13 in his adjusted gross income the earnings and profits of the
14 DISC in the same manner as provided by federal law (section
15 995, Internal Revenue Code) for all periods for which the
16 DISC election is effective.

17 (5) A taxpayer who, in determining federal adjusted
18 gross income, has reduced his business deductions by an
19 amount for wages and salaries for which a federal tax credit
20 was elected under section 44B of the Internal Revenue Code
21 of 1954 or as that section may be labeled or amended is
22 allowed to deduct the amount of the wages and salaries paid
23 regardless of the credit taken. The deduction must be made
24 in the year the wages and salaries were used to compute the
25 credit. In the case of a partnership or small business

1 corporation, the deduction must be made to determine the
2 amount of income or loss of the partnership or small
3 business corporation.

4 (6) Married taxpayers filing a joint federal return who
5 must include part of their social security benefits or part
6 of their tier 1 railroad retirement benefits in federal
7 adjusted gross income may split the federal base used in
8 calculation of federal taxable social security benefits or
9 federal taxable tier 1 railroad retirement benefits when
10 they file separate Montana income tax returns. The federal
11 base must be split equally on the Montana return.

12 (7) A taxpayer receiving retirement disability benefits
13 who has not attained age 65 by the end of the taxable year
14 and who has retired as permanently and totally disabled may
15 exclude from adjusted gross income up to \$100 per week
16 received as wages or payments in lieu of wages for a period
17 during which the employee is absent from work due to the
18 disability. If the adjusted gross income before this
19 exclusion and before application of the two-earner married
20 couple deduction exceeds \$15,000, the excess reduces the
21 exclusion by an equal amount. This limitation affects the
22 amount of exclusion, but not the taxpayer's eligibility for
23 the exclusion. If eligible, married individuals shall apply
24 the exclusion separately, but the limitation for income
25 exceeding \$15,000 is determined with respect to the spouses

1 on their combined adjusted gross income. For the purpose of
2 this subsection, permanently and totally disabled means
3 unable to engage in any substantial gainful activity by
4 reason of any medically determined physical or mental
5 impairment lasting or expected to last at least 12 months.

6 ~~(8) A person receiving benefits described in~~
7 ~~subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not~~
8 ~~exclude benefits described in subsection (2)(c) from~~
9 ~~adjusted gross income unless the benefits received under~~
10 ~~subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are~~
11 ~~less than \$3,600, in which case the person may combine~~
12 ~~benefits to exclude up to a total of \$3,600 from adjusted~~
13 ~~gross income. (Subsection (2)(k)(f) terminates on occurrence~~
14 ~~of contingency--sec. 3, Ch. 634, L. 1983.)"~~

15 **Section 3.** Section 15-30-136, MCA, is amended to read:

16 "15-30-136. Computation of income of estates or trusts
17 -- exemption. (1) Except as otherwise provided in this
18 chapter, "gross income" of estates or trusts means all
19 income from whatever source derived in the taxable year,
20 including but not limited to the following items:

21 (a) dividends;

22 (b) interest received or accrued, including interest
23 received on obligations of another state or territory or a
24 county, municipality, district, or other political
25 subdivision thereof, but excluding interest income from

1 obligations of:

2 (i) the United States government or the state of
3 Montana;

4 (ii) a school district; or

5 (iii) a county, municipality, district, or other
6 political subdivision of the state;

7 (c) income from partnerships and other fiduciaries;

8 (d) gross rents and royalties;

9 (e) gain from sale or exchange of property, including
10 those gains that are excluded from gross income for federal
11 fiduciary income tax purposes by section 641(c) of the
12 Internal Revenue Code of 1954, as amended;

13 (f) gross profit from trade or business; and

14 (g) refunds recovered on federal income tax, to the
15 extent the deduction of such tax resulted in a reduction of
16 Montana income tax liability.

17 (2) In computing net income, there are allowed as
18 deductions:

19 (a) interest expenses deductible for federal tax
20 purposes according to section 163 of the Internal Revenue
21 Code of 1954, as amended;

22 (b) taxes paid or accrued within the taxable year,
23 including but not limited to federal income tax, but
24 excluding Montana income tax;

25 (c) that fiduciary's portion of depreciation or

1 depletion which is deductible for federal tax purposes
2 according to sections 167, 611, and 642 of the Internal
3 Revenue Code of 1954, as amended;

4 (d) charitable contributions that are deductible for
5 federal tax purposes according to section 642(c) of the
6 Internal Revenue Code of 1954, as amended;

7 (e) administrative expenses claimed for federal income
8 tax purposes, according to sections 212 and 642(g) of the
9 Internal Revenue Code of 1954, as amended, if such expenses
10 were not claimed as a deduction in the determination of
11 Montana inheritance tax;

12 (f) losses from fire, storm, shipwreck, or other
13 casualty or from theft, to the extent not compensated for by
14 insurance or otherwise, that are deductible for federal tax
15 purposes according to section 165 of the Internal Revenue
16 Code of 1954, as amended;

17 (g) net operating loss deductions allowed for federal
18 income tax under section 642(d) of the Internal Revenue Code
19 of 1954, as amended, except estates may not claim losses
20 that are deductible on the decedent's final return;

21 (h) all benefits, not in excess of \$3,600, received:

22 (i) as federal employees' retirement;

23 (ii) as retirement from public employment in a Montana
24 or another state other-than-Montana; or

25 (iii) as an annuity, pension, or endowment under private

1 or corporate retirement plans or systems;

2 (i) ~~all benefits paid under the Montana teachers'~~
3 ~~retirement system that are specified as exempt from taxation~~
4 ~~by 19-4-786;~~

5 (j) ~~all benefits paid under the Montana Public~~
6 ~~Employees' Retirement System Act that are specified as~~
7 ~~exempt from taxation by 19-3-105;~~

8 (k) ~~all benefits paid under the Montana highway patrol~~
9 ~~officers' retirement system that are specified as exempt~~
10 ~~from taxation by 19-6-705;~~

11 (l) Montana income tax refunds or credits thereof;

12 (m) ~~all benefits paid under 19-11-602, 19-11-604, and~~
13 ~~19-11-605 to retired and disabled firemen or their surviving~~
14 ~~spouses or children;~~

15 (n) ~~all benefits paid under the municipal police~~
16 ~~officers' retirement system that are specified as exempt~~
17 ~~from taxation by 19-9-1005.~~

18 (3) In the case of a shareholder of a corporation with
19 respect to which the election provided for under subchapter
20 S. of the Internal Revenue Code of 1954, as amended, is in
21 effect but with respect to which the election provided for
22 under 15-31-202 is not in effect, net income does not
23 include any part of the corporation's undistributed taxable
24 income, net operating loss, capital gains or other gains,
25 profits, or losses required to be included in the

1 shareholder's federal income tax net income by reason of the
2 election under subchapter S. However, the shareholder's net
3 income shall include actual distribution from the
4 corporation to the extent it would be treated as taxable
5 dividends if the subchapter S. election were not in effect.

6 (4) The following additional deductions shall be
7 allowed in deriving taxable income of estates and trusts:

8 (a) any amount of income for the taxable year currently
9 required to be distributed to beneficiaries for such year;

10 (b) any other amounts properly paid or credited or
11 required to be distributed for the taxable year;

12 (c) the amount of 60% of the excess of the net
13 long-term capital gain over the net short-term capital loss
14 for the taxable year.

15 (5) The exemption allowed for estates and trusts is
16 that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

17 (6) ~~A trust or estate excluding benefits under~~
18 ~~subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not~~
19 ~~exclude benefits described in subsection (2)(h) from net~~
20 ~~income unless the benefits received under subsections (2)(i)~~
21 ~~through (2)(k), (2)(m), or (2)(n) are less than \$3,600, in~~
22 ~~which case the trust or estate may combine benefits to~~
23 ~~exclude up to a total of \$3,600 from net income."~~

24 **Section 4.** Section 19-3-105, MCA, is amended to read:

25 "19-3-105. Exemption from taxes and legal process. The

1 right of a person to a retirement allowance or any other
2 benefit under this chapter and the ~~moneys~~ money in the fund
3 created under this chapter is not:

4 (1) subject to execution, garnishment, attachment, or
5 any other process;

6 (2) subject to state, county, or municipal taxes except
7 for:

8 (a) the amount received in excess of \$3,600; or

9 (b) a refund paid under 19-3-703 of a member's
10 contributions picked up by an employer after June 30, 1985,
11 as provided in 19-3-701; or

12 (3) assignable except as in this chapter specifically
13 provided."

14 **Section 5.** Section 19-4-706, MCA, is amended to read:

15 **"19-4-706. Exemption from taxation and legal process.**

16 The pensions, annuities, or any other benefits accrued or
17 accruing to any person under the provisions of the
18 retirement system and the accumulated contributions and cash
19 and securities in the various funds of the retirement system
20 are:

21 (1) exempted from any state, county, or municipal tax
22 of the state of Montana except for:

23 (a) the amount received in excess of \$3,600; or

24 (b) a withdrawal paid under 19-4-603 of a member's
25 contributions picked up by an employer after June 30, 1985,

1 as provided in 19-4-602;

2 (2) not subject to execution, garnishment, attachment
3 by trustee process or otherwise, in law or equity, or any
4 other process; and

5 (3) unassignable except as specifically provided in
6 this chapter."

7 **Section 6.** Section 19-5-704, MCA, is amended to read:

8 **"19-5-704. Exemption from taxes and legal process. (1)**

9 ~~Any--money~~ Money received or to be paid as a member's
10 annuity, state annuity, or return of deductions or the right
11 of any of these ~~shall--be~~ is exempt from ~~any--state--or~~
12 ~~municipal--tax-and-from~~ levy, sale, garnishment, attachment,
13 or any other process ~~whatsoever~~ and ~~shall-be~~ is unassignable
14 except as specifically provided in 19-5-705.

15 (2) The first \$3,600 received under this chapter is
16 exempt from state, county, or municipal taxes."

17 **Section 7.** Section 19-6-705, MCA, is amended to read:

18 **"19-6-705. Exemption from taxes and legal process.** Any
19 money received or to be paid as a member's annuity, state
20 annuity, or return of deductions or the right of any of
21 these is:

22 (1) exempt from any state, county, or municipal tax
23 except for:

24 (a) the amount received in excess of \$3,600; or

25 (b) a refund paid under 19-6-403 of a member's

1 contributions picked up by an employer after June 30, 1985,
2 as provided in 19-6-402;

3 (2) exempt from levy, sale, garnishment, attachment, or
4 any other process; and

5 (3) unassignable except as specifically provided in
6 19-6-706."

7 **Section 8.** Section 19-7-705, MCA, is amended to read:

8 "19-7-705. Exemption from taxes and legal process. Any
9 money received or to be paid as a member's annuity, state
10 annuity, or return of deductions or the right of any of
11 these is:

12 (1) exempt from any state, county, or municipal tax
13 except for:

14 (a) the amount received in excess of \$3,600; or

15 (b) a refund paid under 19-7-304(1) of a member's
16 contributions picked up by an employer after June 30, 1985,
17 as provided in 19-7-403;

18 (2) exempt from levy, sale, garnishment, attachment, or
19 any other process; and

20 (3) unassignable except as specifically provided in
21 19-7-706."

22 **Section 9.** Section 19-8-805, MCA, is amended to read:

23 "19-8-805. Exemption from taxes and legal process. Any
24 money received or to be paid as a member's annuity, state
25 annuity, or return of deductions or the right of any of

1 these is:

2 (1) exempt from any state, county, or municipal tax
3 except for:

4 (a) the amount received in excess of \$3,600; or

5 (b) a refund paid under 19-8-503 of the member's
6 contributions picked up by an employer after June 30, 1985,
7 as provided in 19-8-502;

8 (2) exempt from levy, sale, garnishment, attachment, or
9 any other process; and

10 (3) unassignable except as specifically provided in
11 19-8-806."

12 **Section 10.** Section 19-9-1005, MCA, is amended to read:

13 "19-9-1005. Exemption from taxes. Any money paid in
14 accordance with the provisions of this chapter is exempt
15 from any state, county, or municipal tax except for:

16 (1) the amount received in excess of \$3,600; or

17 (2) a refund paid under 19-9-304 of a member's
18 contributions picked up by an employer after June 30, 1985,
19 as provided in 19-9-601."

20 **Section 11.** Section 19-10-504, MCA, is amended to read:

21 "19-10-504. Protection of benefits from legal process
22 and taxation. (1) The benefits provided for in this part are
23 not subject to execution, garnishment, attachment, or the
24 operation of bankruptcy, insolvency, or other process of law
25 and are unassignable except as specifically provided in

1 19-10-505.

2 (2) The first \$3,600 of benefits received under this
3 part are exempt from state, county, and municipal taxation."

4 **Section 12.** Section 19-11-612, MCA, is amended to read:

5 **"19-11-612. Protection of benefits from legal process**
6 **and taxation -- nonassignability. (1)** Any payments made or
7 to be made under this chapter are not subject to judgments,
8 garnishment, execution, or other legal process. A person
9 entitled to a pension may not assign the right, and the
10 association and trustees may not recognize any assignment or
11 pay over any sum so assigned.

12 (2) The first \$3,600 of benefits received under this
13 chapter are exempt from state, county, and municipal
14 taxation."

15 **Section 13.** Section 19-12-407, MCA, is amended to read:

16 **"19-12-407. Payment of pension benefits -- exemption**
17 **from taxation. (1)** All payments under the volunteer
18 firefighters' pension plan must be approved by the board and
19 paid by warrants drawn upon the pension trust fund, payable
20 to the order of the individual qualified volunteer
21 firefighter or the beneficiary as provided in 19-12-405(1).

22 (2) The first \$3,600 of benefits received under this
23 chapter are exempt from state, county, and municipal
24 taxation."

25 **Section 14.** Section 19-13-1003, MCA, is amended to

1 read:

2 **"19-13-1003. Exemption from taxes.** Any money paid in
3 accordance with the provisions of this chapter is exempt
4 from any state, county, or municipal tax except for:

- 5 (1) the amount received in excess of \$3,600; or
- 6 (2) refunds paid under 19-13-602 of the member's
7 contributions picked up by an employer after June 30, 1987,
8 as provided in 19-13-601."

9 **Section 15.** Section 19-21-212, MCA, is amended to read:

10 **"19-21-212. Exemption from taxation, legal process, and**
11 **assessments.** All contracts, benefits, and contributions
12 under the optional retirement program and the earnings
13 thereon are:

- 14 (1) except for the amount received in excess of \$3,600,
15 exempt from any state, county, or municipal tax;
- 16 (2) not subject to execution, garnishment, attachment,
17 or other process;
- 18 (3) not covered or assessable by an insurance guaranty
19 association; and
- 20 (4) unassignable except as specifically provided in the
21 contracts."

22 **Section 16.** Section 19-4-101, MCA, is amended to read:

23 **"19-4-101. Definitions.** As used in this chapter, unless
24 the context clearly indicates otherwise, the following
25 definitions apply:

1 (1) "Accumulated contributions" means the sum of all
 2 the amounts deducted from the compensation of a member or
 3 paid by a member and credited to his individual account in
 4 the annuity savings fund, together with interest. Regular
 5 interest shall be computed and allowed to provide a benefit
 6 at the time of retirement.

7 (2) "Actuarial equivalent" means a benefit of equal
 8 value when computed, with regular interest, on the basis of
 9 the 1971 Group Annuity Mortality Table, with ages set back 4
 10 years and an interest rate of 8% compounded annually.

11 (3) "Annuity" means the payments made to a beneficiary
 12 for life which are derived from a member's accumulated
 13 contributions.

14 (4) "Annuity reserve" means the present value of all
 15 payments to be made on account of a member's annuity
 16 computed, with regular interest, on the basis of the
 17 mortality tables adopted by the retirement board.

18 (5) (a) "Average final compensation" means the average
 19 of the earned compensation of a member during the 3
 20 consecutive years of full-time service which yield the
 21 highest average and on which contributions have been made as
 22 required by 19-4-602.

23 (b) In determining a member's retirement allowance
 24 under 19-4-802 or 19-4-804, the amount of each year's earned
 25 compensation that may be used in the calculation of average

1 final compensation may not exceed the member's earned
 2 compensation from the preceding year by more than 10%,
 3 except as provided by rule by the retirement board.

4 (c) Earned compensation in excess of the amount
 5 specified in subsection (5)(b) is considered termination pay
 6 as provided in subsection (5)(d).

7 (d) If the earned compensation includes any termination
 8 pay, the member shall select one of the following options:

9 (i) use the total termination pay in the calculation of
 10 the average final compensation. The member and the employer
 11 shall pay contributions to the retirement system as are
 12 determined by the board to adequately compensate the system
 13 for the additional retirement benefit. The contributions
 14 must be made at the time the termination pay is received.

15 (ii) use a yearly amount of termination pay added to
 16 each of the 3 consecutive years' salary used in the
 17 calculation of the average final compensation, if the member
 18 has 4 or more years of service with the employer from which
 19 the termination pay was received. The amount of compensation
 20 used in the calculation of average final compensation must
 21 be divided by the total number of years of creditable
 22 service to determine a yearly amount. The member and the
 23 employer must pay contributions on the termination pay
 24 according to the rates provided for in 19-4-602(1) and
 25 19-4-605(1).

1 (iii) exclude the termination pay from the average final
 2 compensation. No contribution is required of either the
 3 employer or member, and contributions made under 19-4-602
 4 and 19-4-605 must be refunded.

5 (e) For purposes of this subsection, termination pay
 6 includes any form of termination pay or any lump-sum payment
 7 for deferred compensation, sick leave, or accumulated
 8 vacation credit, or any other payment for time not worked
 9 other than compensation received while on sick leave or
 10 authorized leave of absence.

11 (6) "Beneficiary" means a person in receipt of a
 12 pension, annuity, retirement allowance, or other benefit
 13 provided by the retirement system.

14 (7) "Creditable service" is that service defined by
 15 19-4-401.

16 (8) "Earned compensation" means the full compensation,
 17 pay, or salary actually paid to a member and reported to the
 18 retirement system, including amounts paid under a salary
 19 reduction agreement, a cafeteria plan, a tax sheltered
 20 annuity, a deferred compensation program, and the value of
 21 any housing provided by the employer. The employer shall fix
 22 the value of any housing provided. The term does not include
 23 any other amounts paid in kind or fringe benefits not
 24 actually paid to a member. The earned compensation of a
 25 member who had less than 3 consecutive years of full-time

1 service during the 5 years preceding his retirement is the
 2 compensation, pay, or salary which he would have earned had
 3 his part-time service been full-time service. The earned
 4 compensation of a member who is awarded a disability
 5 retirement allowance prior to the completion of a full year
 6 is the compensation, pay, or salary which he would have
 7 received had he completed the full year, except that any
 8 termination pay, as defined in subsection (5)(e), received
 9 by the member is limited to the amount actually paid and is
 10 not the amount he would have earned had he completed the
 11 full year.

12 (9) "Employer" means the state of Montana, the trustees
 13 of a district, or any other agency or subdivision of the
 14 state which employs a person who is designated a member of
 15 the retirement system.

16 (10) "Full-time service" means service which is
 17 full-time and which extends over a normal academic year of
 18 at least 9 months. With respect to those members employed by
 19 the office of the superintendent of public instruction, any
 20 other state agency or institution, or the office of a county
 21 superintendent, "full-time service" means service which is
 22 full-time and which totals at least 9 months in any one
 23 year.

24 (11) "Member" means a person who has an individual
 25 account in the annuity savings fund. An active member is a

1 person included under the provisions of 19-4-302. An
 2 inactive member is a person included under the provisions of
 3 19-4-303.

4 (12) "Part-time service" means service which is less
 5 than full-time or which totals less than 9 months in any one
 6 year. Part-time service shall be credited in the proportion
 7 that the actual time worked bears to full-time service.

8 (13) "Pension" means the payments made to a beneficiary
 9 for life which are paid out of the pension accumulation
 10 fund.

11 (14) "Pension reserve" means the present value of all
 12 payments to be made on account of a pension computed, with
 13 regular interest, on the basis of the mortality tables
 14 adopted by the retirement board.

15 (15) "Prior service" means employment of the same nature
 16 as service defined in subsection (20) of this section but
 17 rendered before September 1, 1937.

18 (16) "Regular interest" means interest at 4% per annum
 19 compounded annually or at such other rate as may be set by
 20 the retirement board in accordance with 19-4-501(2).

21 (17) "Retirement allowance" means the annuity plus the
 22 pension.

23 (18) "Retirement board" or "board" means the retirement
 24 system's governing board provided for in 2-15-1010.

25 (19) "Retirement system" means the teachers' retirement

1 system of the state of Montana provided for in 19-4-102.

2 (20) "Service" means the performance of such
 3 instructional duties or related activities as would entitle
 4 the person to active membership in the retirement system
 5 under the provisions of 19-4-302."

6 NEW SECTION. **Section 17.** Codification instruction.
 7 [Section 1] is intended to be codified as an integral part
 8 of:

9 (1) Title 19, chapter 3, and the provisions of Title
 10 19, chapter 3, apply to [section 1].

11 (2) Title 19, chapter 4, and the provisions of Title
 12 19, chapter 4, apply to [section 1].

13 (3) Title 19, chapter 5, and the provisions of Title
 14 19, chapter 5, apply to [section 1].

15 (4) Title 19, chapter 6, and the provisions of Title
 16 19, chapter 6, apply to [section 1].

17 (5) Title 19, chapter 7, and the provisions of Title
 18 19, chapter 7, apply to [section 1].

19 (6) Title 19, chapter 8, and the provisions of Title
 20 19, chapter 8, apply to [section 1].

21 (7) Title 19, chapter 9, and the provisions of Title
 22 19, chapter 9, apply to [section 1].

23 (8) Title 19, chapter 13, and the provisions of Title
 24 19, chapter 13, apply to [section 1].

25 NEW SECTION. **Section 18.** Retroactive applicability.

1 [Sections 2 through 16] apply retroactively, within the
2 meaning of 1-2-109, to taxable years beginning after
3 December 31, 1990.

4 NEW SECTION. **Section 19.** Effective dates. (1)

5 [Sections 2 through 16 and this section] are effective on
6 passage and approval.

7 (2) [Section 1] is effective January 1, 1992.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0218, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing a uniform exemption from taxation of benefits from federal, state and private retirement, annuity, pension and endowment plans or systems; providing a supplemental increase for state and local pension benefits granted under Title 19; and providing effective dates and a retroactive applicability date.

ASSUMPTIONS:

Department of Revenue:


1. Individual income tax collections under current law are \$311,176,000 in FY92 and \$327,201,000 in FY93 (OBPP).
2. Limiting all pension benefit payments to a flat exclusion of \$3,600 increases revenue \$10.43 million in FY92, and \$11.43 million in FY93, assuming the limit applies to total retirement income (DOR income tax simulations).
3. The supplemental allowance provided for in Section 1 increases state and local benefit payments \$3.04 million in FY92, and \$3.34 million in FY93 (DOR income tax simulations). For purposes of this fiscal note, it is assumed that the formula provided in section 1 approximates these amounts (see technical notes).
4. Under the provisions of the bill, the \$3,600 exclusion limit is effective for tax years beginning after December 31, 1990; and the increase in benefit payments provided for in Section 1 is effective January 1, 1992. Only 6 retirement payments will include the supplemental allowance in FY92.
5. The supplemental retirement allowance compounds through time due to the reference to the "previous year", which results in compounding after the first year.
6. Since section 1 is to be placed in the codes for each state and local retirement system, it would be funded from each plan's trust fund.

Public Employees Retirement System (PERS) and Teachers Retirement System (TRS)

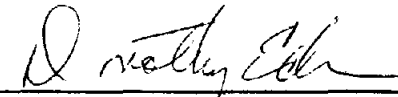
1. Data processing enhancements required to calculate the supplemental allowance in Section 1 of this bill would cost PERS about \$31,000 and TRS \$25,000 in FY92.
2. The retirement systems will be under funded by the amount of the supplemental allowance under Section 1.

FISCAL IMPACT:

see next page



ROD SUNDESTED, BUDGET DIRECTOR 2-2-91
Office of Budget and Program Planning DATE



DOROTHY ECK, PRIMARY SPONSOR 2/4/91
DATE
Fiscal Note for SB0218, as introduced **SB 218**

FISCAL IMPACT:Expenditures:

	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Supplemental Benefits	0	1,520,000	1,520,000	0	4,710,000	4,710,000
PERS (Operating Expenses)	0	31,000	31,000	0	0	0
TRS (Operating Expenses)	0	25,000	25,000	0	0	0
Total	0	1,576,000	1,576,000	0	4,710,000	4,710,000

Funding:

Various Retirement Systems Trusts Funds (09)

Revenues:

	<u>FY '92</u>			<u>FY '93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Individual Income Tax (General Fund)	311,176,000	321,606,000	10,430,000	327,201,000	338,671,000	11,470,000

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Section 1, paragraph (2), is not clear regarding whether the adjustment to the monthly retirement allowance is a "one-time" adjustment, or if the adjustment is to be made each January, based on the previous year's benefit payments, exemptions, and tax rate. If the adjustment is to be made in each year, then referring to benefit payments in the "previous year" would result in ever increasing annual benefit payments to retirees, to the extent that net after tax benefit payments would also increase above the original pension payment.

TECHNICAL NOTES:

see next page

SB 218

TECHNICAL NOTES:

Department of Revenue:

There are several areas of concern regarding technical aspects of this proposal, including the following:

1. Section 1,(1)(b)(ii) refers to the standard deduction percentage provided for in 15-30-122, without referring to the standard deduction maxima that also apply to the state standard deduction.
2. Section 1,(1)(b)(iv) refers to the "appropriate" tax rate without any specifics regarding what is meant by the appropriate rate (e.i., is this the member's actual marginal tax rate in the previous year? the marginal rate that would apply given the formula in Section 1 (1)(b)? does it include only the rate, or also the amount shown in rate tables that is subtracted from tax liability? etc.)
3. The supplemental adjustment to monthly benefit payments is to be made January 1, 1992 based on benefit payments, exemptions claimed, and "appropriate tax rates" in the "previous year". If the previous year means tax year 1991 (the first year in which the \$3,600 exemption applies), then the appropriate returns will not have to be filed until April 15, 1992 precluding any possible adjustment on January 1, 1992.
4. Section 1 (2) provides for an adjustment of A(T/B) to the monthly benefit payment; however, since A is equal to B/12 this adjustment could be simplified to T/12.
5. The proposal is not clear regarding the treatment of pension income from multiple sources. Is the intent to provide a total exclusion of \$3,600 regardless of pension income source, or may \$3,600 be excluded from each pension income source?
6. The supplemental allowance impacts shown in assumption #3, above, were estimated using state and local retiree tax returns, and incorporated all income sources and the taxpayers actual marginal tax rate. These impacts will vary to the extent that actual supplemental allowances would be based solely on pension income used in the formula in Section 1.

PERS and TRS:

1. The formula found under Section 1, page 1, line 25, contains too many sets of parentheses. If enacted with this error, the amount of the supplemental benefit would not equal the tax liability of the individual recipient.
2. The bill provides for a supplemental increase for state and local retirement benefits granted under Title 19; however, the bill does not provide for funding of the benefits to be paid. Therefore, the bill will cause a large unfunded liability to accrue to the retirement systems and the payment of these benefits is ultimately the obligation of the State of Montana.

SB 218