

SENATE BILL NO. 226

INTRODUCED BY HARP  
BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE SENATE

JANUARY 30, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
  ON TAXATION.

MARCH 11, 1991                    COMMITTEE RECOMMEND BILL  
  DO PASS AS AMENDED. REPORT ADOPTED.

MARCH 12, 1991                    PRINTING REPORT.

  SECOND READING, DO PASS.

MARCH 13, 1991                    ENGROSSING REPORT.

  THIRD READING, PASSED.  
  AYES, 27; NOES, 22.

  TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 13, 1991                    INTRODUCED AND REFERRED TO COMMITTEE  
  ON TAXATION.

MARCH 14, 1991                    FIRST READING.

APRIL 12, 1991                    COMMITTEE RECOMMEND BILL BE  
  CONCURRED IN AS AMENDED. REPORT  
  ADOPTED.

APRIL 15, 1991                    SECOND READING, CONCURRED IN AS  
  AMENDED.

APRIL 16, 1991                    THIRD READING, CONCURRED IN.  
  AYES, 59; NOES, 39.

  RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 17, 1991                    SECOND READING, AMENDMENTS NOT  
  CONCURRED IN.

APRIL 18, 1991                    ON MOTION, FREE CONFERENCE COMMITTEE  
  REQUESTED.

APRIL 19, 1991

FREE CONFERENCE COMMITTEE APPOINTED.

IN THE HOUSE

APRIL 19, 1991

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 23, 1991

FREE CONFERENCE COMMITTEE REPORTED.

APRIL 24, 1991

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 29, 1991

FREE CONFERENCE COMMITTEE  
REPORT ADOPTED.

IN THE SENATE

APRIL 29, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *226*  
2 INTRODUCED BY *HARP*

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO RESTRUCTURE THE  
6 INCOME TAX ON PENSION BENEFITS BY EQUALIZING THE TAXATION OF  
7 ALL PENSION BENEFITS; TO PROVIDE A \$10,000 EXCLUSION FROM  
8 NET INCOME FOR TAXPAYERS WITH A TOTAL FEDERAL ADJUSTED GROSS  
9 INCOME OF \$35,000 OR LESS; AMENDING SECTIONS 15-30-101,  
10 15-30-111, 15-30-136, 19-3-105, 19-4-706, 19-5-704,  
11 19-6-705, 19-7-705, 19-8-805, AND 19-21-212, MCA; REPEALING  
12 SECTIONS 19-9-1005 AND 19-13-1003, MCA; AND PROVIDING AN  
13 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY  
14 DATE."

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

17 NEW SECTION. **Section 1.** Retirement income exclusion.

18 (1) A single person or married couple filing a joint return  
19 or separately on the same return may exclude from net  
20 taxable income up to \$10,000 of pension and annuity income,  
21 subject to the following limitations:

22 (a) the taxpayer's total federal adjusted gross income  
23 must be \$35,000 or less;

24 (b) the pension and annuity income to be excluded is of  
25 the type defined in 15-30-101(13); and

1 (c) the amount of the exclusion is the amount of both  
2 pension and annuity income received, but the exclusion may  
3 not exceed \$10,000.

4 (2) The \$35,000 federal adjusted gross income limit in  
5 this section applies to either the single person's federal  
6 adjusted gross income or the married couple's combined  
7 federal adjusted gross income. In the case of a married  
8 couple, if each person is receiving pension and annuity  
9 income, as defined in 15-30-101, and meets the  
10 qualifications of subsection (1)(a), then each person may  
11 exclude from net income up to \$10,000.

12 **Section 2.** Section 15-30-101, MCA, is amended to read:

13 **"15-30-101. Definitions.** For the purpose of this  
14 chapter, unless otherwise required by the context, the  
15 following definitions apply:

16 (1) "Base year structure" means the following elements  
17 of the income tax structure:

18 (a) the tax brackets established in 15-30-103, but  
19 unadjusted by subsection (2) of 15-30-103, in effect on June  
20 30 of the taxable year;

21 (b) the exemptions contained in 15-30-112, but  
22 unadjusted by subsections (7) and (8) of 15-30-112, in  
23 effect on June 30 of the taxable year;

24 (c) the maximum standard deduction provided in  
25 15-30-122, but unadjusted by subsection (2) of 15-30-122, in

1 effect on June 30 of the taxable year.

2 (2) "Consumer price index" means the consumer price  
3 index, United States city average, for all items, using the  
4 1967 base of 100 as published by the bureau of labor  
5 statistics of the U.S. department of labor.

6 (3) "Department" means the department of revenue.

7 (4) "Dividend" means any distribution made by a  
8 corporation out of its earnings or profits to its  
9 shareholders or members, whether in cash or in other  
10 property or in stock of the corporation, other than stock  
11 dividends as herein defined. "Stock dividends" means new  
12 stock issued, for surplus or profits capitalized, to  
13 shareholders in proportion to their previous holdings.

14 (5) "Fiduciary" means a guardian, trustee, executor,  
15 administrator, receiver, conservator, or any person, whether  
16 individual or corporate, acting in any fiduciary capacity  
17 for any person, trust, or estate.

18 (6) "Foreign country" or "Foreign government" means any  
19 jurisdiction other than the one embraced within the United  
20 States, its territories and possessions.

21 (7) "Gross income" means the taxpayer's gross income  
22 for federal income tax purposes as defined in section 61 of  
23 the Internal Revenue Code of 1954 or as that section may be  
24 labeled or amended, excluding unemployment compensation  
25 included in federal gross income under the provisions of

1 section 85 of the Internal Revenue Code of 1954 as amended.

2 (8) "Inflation factor" means a number determined for  
3 each taxable year by dividing the consumer price index for  
4 June of the taxable year by the consumer price index for  
5 June, 1980.

6 (9) "Information agents" includes all individuals,  
7 corporations, associations, and partnerships, in whatever  
8 capacity acting, including lessees or mortgagors of real or  
9 personal property, fiduciaries, brokers, real estate  
10 brokers, employers, and all officers and employees of the  
11 state or of any municipal corporation or political  
12 subdivision of the state, having the control, receipt,  
13 custody, disposal, or payment of interest, rent, salaries,  
14 wages, premiums, annuities, compensations, remunerations,  
15 emoluments, or other fixed or determinable annual or  
16 periodical gains, profits, and income with respect to which  
17 any person or fiduciary is taxable under this chapter.

18 (10) "Knowingly" is as defined in 45-2-101.

19 (11) "Net income" means the adjusted gross income of a  
20 taxpayer less the deductions allowed by this chapter.

21 (12) "Paid", for the purposes of the deductions and  
22 credits under this chapter, means paid or accrued or paid or  
23 incurred, and the terms "paid or incurred" and "paid or  
24 accrued" shall be construed according to the method of  
25 accounting upon the basis of which the taxable income is

1 computed under this chapter.

2 (13) "Pension and annuity income" means:

3 (a) systematic payments of a definitely determinable  
 4 amount from a qualified pension plan, as that term is used  
 5 in section 401 of the Internal Revenue Code, or systematic  
 6 payments received as the result of contributions made to a  
 7 qualified pension plan that are paid to the recipient or  
 8 recipient's beneficiary upon the cessation of employment;

9 (b) payments received as the result of past service and  
 10 cessation of employment in the uniformed services of the  
 11 United States;

12 (c) lump-sum distributions from pension or  
 13 profitsharing plans to the extent that the distributions are  
 14 included in federal adjusted gross income;

15 (d) distributions from individual retirement, deferred  
 16 compensation, and self-employed retirement plans recognized  
 17 under sections 401 through 408 of the Internal Revenue Code  
 18 to the extent that the distributions are not considered to  
 19 be premature distributions for federal income tax purposes;  
 20 or

21 (e) amounts after cessation of regular employment  
 22 received from fully matured, privately purchased annuity  
 23 contracts.

24 ~~(13)~~(14) "Purposely" is as defined in 45-2-101.

25 ~~(14)~~(15) "Received", for the purpose of computation of

1 taxable income under this chapter, means received or accrued  
 2 and the term "received or accrued" shall be construed  
 3 according to the method of accounting upon the basis of  
 4 which the taxable income is computed under this chapter.

5 ~~(15)~~(16) "Resident" applies only to natural persons and  
 6 includes, for the purpose of determining liability to the  
 7 tax imposed by this chapter with reference to the income of  
 8 any taxable year, any person domiciled in the state of  
 9 Montana and any other person who maintains a permanent place  
 10 of abode within the state even though temporarily absent  
 11 from the state and has not established a residence  
 12 elsewhere.

13 ~~(16)~~(17) "Taxable income" means the adjusted gross  
 14 income of a taxpayer less the deductions and exemptions  
 15 provided for in this chapter.

16 ~~(17)~~(18) "Taxable year" means the taxpayer's taxable  
 17 year for federal income tax purposes.

18 ~~(18)~~(19) "Taxpayer" includes any person or fiduciary,  
 19 resident or nonresident, subject to a tax imposed by this  
 20 chapter and does not include corporations."

21 **Section 3.** Section 15-30-111, MCA, is amended to read:

22 "15-30-111. Adjusted gross income. (1) Adjusted gross  
 23 income shall be the taxpayer's federal income tax adjusted  
 24 gross income as defined in section 62 of the Internal  
 25 Revenue Code of 1954 or as that section may be labeled or

1 amended and in addition shall include the following:

2 (a) interest received on obligations of another state  
3 or territory or county, municipality, district, or other  
4 political subdivision thereof;

5 (b) refunds received of federal income tax, to the  
6 extent the deduction of such tax resulted in a reduction of  
7 Montana income tax liability;

8 (c) that portion of a shareholder's income under  
9 subchapter S. of Chapter 1 of the Internal Revenue Code of  
10 1954, that has been reduced by any federal taxes paid by the  
11 subchapter S. corporation on the income; and

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

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

18 (a) all interest income from obligations of the United  
19 States government, the state of Montana, county,  
20 municipality, district, or other political subdivision  
21 thereof;

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

1 ~~(c) all benefits, not in excess of \$3,600, received:~~  
2 ~~(i) under the Federal Employees' Retirement Act;~~  
3 ~~(ii) under the public employee retirement laws of a~~  
4 ~~state other than Montana; or~~  
5 ~~(iii) as an annuity, pension, or endowment under any~~  
6 ~~private or corporate retirement plan or system;~~  
7 ~~(d) all benefits paid under the teachers' retirement~~  
8 ~~law which are specified as exempt from taxation by 19-4-706;~~  
9 ~~(e) all benefits paid under The Public Employees'~~  
10 ~~Retirement System Act which are specified as exempt from~~  
11 ~~taxation by 19-3-105;~~  
12 ~~(f) all benefits paid under the highway patrol~~  
13 ~~retirement law which are specified as exempt from taxation~~  
14 ~~by 19-6-705;~~  
15 (g)(c) all Montana income tax refunds or credits  
16 thereof;  
17 (h) all benefits paid under 19-11-602, 19-11-604, and  
18 19-11-605 to retired and disabled firefighters, their  
19 surviving spouses and orphans or specified as exempt from  
20 taxation by 19-13-1003;  
21 (i) all benefits paid under the municipal police  
22 officers' retirement system that are specified as exempt  
23 from taxation by 19-9-1005;  
24 (j)(d) gain required to be recognized by a liquidating  
25 corporation under 15-31-113(1)(a)(ii);

1       {k}(e) all tips covered by section 3402(k) of the  
2 Internal Revenue Code of 1954, as amended and applicable on  
3 January 1, 1983, received by persons for services rendered  
4 by them to patrons of premises licensed to provide food,  
5 beverage, or lodging;

6       {l}(f) all benefits received under the workers'  
7 compensation laws;

8       {m}(g) all health insurance premiums paid by an  
9 employer for an employee if attributed as income to the  
10 employee under federal law;

11       {n}(h) all benefits paid under an optional retirement  
12 program that are specified as exempt from taxation by  
13 19-21-212; and

14       {o}(i) all money received because of a settlement  
15 agreement or judgment in a lawsuit brought against a  
16 manufacturer or distributor of "agent orange" for damages  
17 resulting from exposure to "agent orange".

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, as amended, is not in effect, adjusted  
23 gross income does not include any part of the corporation's  
24 undistributed taxable income, net operating loss, capital  
25 gains or other gains, profits, or losses required to be

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

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

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

25       (6) Married taxpayers filing a joint federal return who

1 must include part of their social security benefits or part  
 2 of their tier 1 railroad retirement benefits in federal  
 3 adjusted gross income may split the federal base used in  
 4 calculation of federal taxable social security benefits or  
 5 federal taxable tier 1 railroad retirement benefits when  
 6 they file separate Montana income tax returns. The federal  
 7 base must be split equally on the Montana return.

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

1 impairment lasting or expected to last at least 12 months.

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

11 **Section 4.** Section 15-30-136, MCA, is amended to read:

12 "15-30-136. Computation of income of estates or trusts  
 13 -- exemption. (1) Except as otherwise provided in this  
 14 chapter, "gross income" of estates or trusts means all  
 15 income from whatever source derived in the taxable year,  
 16 including but not limited to the following items:

- 17 (a) dividends;
- 18 (b) interest received or accrued, including interest  
 19 received on obligations of another state or territory or a  
 20 county, municipality, district, or other political  
 21 subdivision thereof, but excluding interest income from  
 22 obligations of:

- 23 (i) the United States government or the state of  
 24 Montana;
- 25 (ii) a school district; or



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

3 (c) income from partnerships and other fiduciaries;

4 (d) gross rents and royalties;

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

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

10 (g) refunds recovered on federal income tax, to the  
11 extent the deduction of such tax resulted in a reduction of  
12 Montana income tax liability.

13 (2) In computing net income, there are allowed as  
14 deductions:

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

18 (b) taxes paid or accrued within the taxable year,  
19 including but not limited to federal income tax, but  
20 excluding Montana income tax;

21 (c) that fiduciary's portion of depreciation or  
22 depletion which is deductible for federal tax purposes  
23 according to sections 167, 611, and 642 of the Internal  
24 Revenue Code of 1954, as amended;

25 (d) charitable contributions that are deductible for

1 federal tax purposes according to section 642(c) of the  
2 Internal Revenue Code of 1954, as amended;

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

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

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

17 ~~(h) all benefits, not in excess of \$3,600, received;~~

18 ~~(i) as federal employees' retirement;~~

19 ~~(ii) as retirement from public employment in a state  
20 other than Montana; or~~

21 ~~(iii) as an annuity, pension, or endowment under private  
22 or corporate retirement plans or systems;~~

23 ~~(i) all benefits paid under the Montana teachers'  
24 retirement system that are specified as exempt from taxation  
25 by 19-4-706;~~

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

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

~~(l)(h) Montana income tax refunds or credits thereof;~~

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

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

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable

dividends if the subchapter S. election were not in effect.

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

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

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

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

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

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

**Section 5.** Section 19-3-105, MCA, is amended to read:

"19-3-105. Exemption from taxes and legal process. The right of a person to a retirement allowance or any other benefit under this chapter and the moneys in the fund created under this chapter is not:

(1) subject to execution, garnishment, attachment, or

1 any other process; or

2 ~~{2}--subject-to-state, county, or municipal taxes except~~  
3 ~~for a refund paid under 19-3-703 of a member's contributions~~  
4 ~~picked up by an employer after June 30, 1985, as provided in~~  
5 ~~19-3-701, or~~

6 ~~{3}(2)~~ assignable except as in this chapter  
7 specifically provided."

8 **Section 6.** Section 19-4-706, MCA, is amended to read:

9 "19-4-706. Exemption from ~~taxation and~~ legal process.

10 The pensions, annuities, or any other benefits accrued or  
11 accruing to any person under the provisions of the  
12 retirement system and the accumulated contributions and cash  
13 and securities in the various funds of the retirement system  
14 are:

15 ~~{1}--exempted from any state, county, or municipal tax~~  
16 ~~of the state of Montana except for a withdrawal paid under~~  
17 ~~19-4-603 of a member's contributions picked up by an~~  
18 ~~employer after June 30, 1985, as provided in 19-4-602;~~

19 ~~{2}(1)~~ not subject to execution, garnishment,  
20 attachment by trustee process or otherwise, in law or  
21 equity, or any other process; and

22 ~~{3}(2)~~ unassignable except as specifically provided in  
23 this chapter."

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

25 "19-5-704. Exemption from ~~taxes and~~ legal process. Any

1 money received or to be paid as a member's annuity, state  
2 annuity, or return of deductions or the right of any of  
3 these ~~shall be~~ is exempt from ~~any state or municipal tax and~~  
4 from levy, sale, garnishment, attachment, or any other  
5 process whatsoever and shall be unassignable except as  
6 specifically provided in 19-5-705."

7 **Section 8.** Section 19-6-705, MCA, is amended to read:

8 "19-6-705. 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 a refund paid under 19-6-403 of a member's~~  
14 ~~contributions picked up by an employer after June 30, 1985,~~  
15 ~~as provided in 19-6-402;~~

16 ~~{2}(1)~~ exempt from levy, sale, garnishment, attachment,  
17 or any other process; and

18 ~~{3}(2)~~ unassignable except as specifically provided in  
19 19-6-706."

20 **Section 9.** Section 19-7-705, MCA, is amended to read:

21 "19-7-705. Exemption from ~~taxes and~~ legal process. Any  
22 money received or to be paid as a member's annuity, state  
23 annuity, or return of deductions or the right of any of  
24 these is:

25 ~~{1}--exempt from any state, county, or municipal tax~~

1 ~~except for a refund paid under 19-7-304(i) of a member's~~  
 2 ~~contributions picked up by an employer after June 30, 1985,~~  
 3 ~~as provided in 19-7-403;~~

4 ~~(2)(1) exempt from levy, sale, garnishment, attachment,~~  
 5 ~~or any other process; and~~

6 ~~(3)(2) unassignable except as specifically provided in~~  
 7 ~~19-7-706."~~

8 **Section 10.** Section 19-8-805, MCA, is amended to read:

9 "19-8-805. ~~Exemption from taxes and~~ legal process. Any  
 10 money received or to be paid as a member's annuity, state  
 11 annuity, or return of deductions or the right of any of  
 12 these is:

13 ~~(i) exempt from any state, county, or municipal tax~~  
 14 ~~except for a refund paid under 19-8-503 of the member's~~  
 15 ~~contributions picked up by an employer after June 30, 1985,~~  
 16 ~~as provided in 19-8-502;~~

17 ~~(2)(1) exempt from levy, sale, garnishment, attachment,~~  
 18 ~~or any other process; and~~

19 ~~(3)(2) unassignable except as specifically provided in~~  
 20 ~~19-8-806."~~

21 **Section 11.** Section 19-21-212, MCA, is amended to read:

22 "19-21-212. ~~Exemption from taxation,~~ legal process, and  
 23 assessments. All contracts, benefits, and contributions  
 24 under the optional retirement program and the earnings  
 25 thereon are:

1 ~~(i) exempt from any state, county, or municipal tax;~~  
 2 ~~(2)(1) not subject to execution, garnishment,~~  
 3 ~~attachment, or other process;~~

4 ~~(3)(2) not covered or assessable by an insurance~~  
 5 ~~guaranty association; and~~

6 ~~(4)(3) unassignable except as specifically provided in~~  
 7 ~~the contracts."~~

8 NEW SECTION. **Section 12.** Repealer. Sections 19-9-1005  
 9 and 19-13-1003, MCA, are repealed.

10 NEW SECTION. **Section 13.** Codification instruction.  
 11 [Section 1] is intended to be codified as an integral part  
 12 of Title 15, chapter 30, and the provisions of Title 15,  
 13 chapter 30, apply to [section 1].

14 NEW SECTION. **Section 14.** Effective date -- retroactive  
 15 applicability. [This act] is effective on passage and  
 16 approval and applies retroactively, within the meaning of  
 17 1-2-109, to taxable years beginning after December 31, 1990.

-End-

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0226, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to restructure the income tax on pension benefits by equalizing the taxation of all pension benefits; to provide a \$10,000 exclusion from net income for taxpayers with a total federal adjusted gross income of \$35,000 or less; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. Individual income tax collections under current law are \$311,176,000 in FY92 and \$327,201,000 in FY93 (OBPP).
2. Providing a uniform pension income exclusion of up to \$10,000 for all retirees with household federal adjusted gross income of \$35,000 or less increases revenue \$9,950,000 in FY92 and \$10,940,000 in FY93 (DOR income tax simulations).
3. The uniform pension income exclusion applies to tax years beginning after December 31, 1990.
4. There is no impact in FY91.
5. There is no impact on Department of Revenue administrative expenses.
6. All income tax revenue is deposited in the state general fund in FY92 and FY93.


FISCAL IMPACT:

Revenues:

	FY '92			FY '93		
	<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	311,176,000	321,126,000	9,950,000	327,201,000	338,141,000	10,940,000

TECHNICAL NOTES:

1. Section 19-9-1005, MCA provides for an exemption from state, county or municipal taxes for benefits paid under the Municipal Police Officers' Retirement System. The proposal should also repeal this provision.
2. Section 19-9-1003, MCA provides for an exemption from state, county or municipal taxes for benefits paid under the Firefighters' United Retirement System. The proposal should also repeal this provision.
3. HB0453 would exempt mandatory employee contributions made to the Judges' Retirement System from state and federal taxes until such time as a person receives a refund of those contributions. The Legislative Council should review SB0226 and HB0453 to ensure there would be no codification problems if both were to become law.

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

  
JOHN G. HARP, PRIMARY SPONSOR      2/4/91      DATE

Fiscal Note for SB0226, as introduced

SB 226

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0226, third reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to restructure the income tax on pension benefits by equalizing the taxation of all pension benefits; to provide an exemption of \$3,600 from taxation of benefits from federal, state, and private retirement, annuity, pension, and endowment plans or systems; to provide for an adjustment payment to retirees of state, local, and teacher retirement systems who are Montana residents; and providing an immediate effective date and a retroactive applicability date.


ASSUMPTIONS:

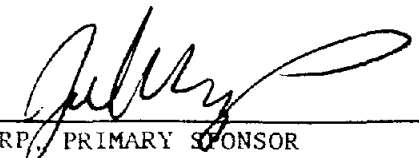
1. Individual income tax collections under current law are \$311,176,000 in FY92 and \$327,201,000 in FY93 (OBPP).
2. Providing a uniform pension income exclusion of up to \$3,600 for all retirees increases revenue \$10,430,000 in FY92 and \$11,470,000 in FY93 (DOR income tax simulations).
3. Providing a retirement adjustment payment of 2% of the total benefits paid by the Public Employee's Retirement System (PERS) and the Teacher's Retirement System (TRS) during the prior calendar year reduces the general fund impact of this proposal by \$2.670 million in FY92, and \$2.980 million in FY93 (based on PERS and TRS projections of total annual benefit payments).
4. The uniform pension income exclusion applies to tax years beginning after December 31, 1990.
5. There is no impact on Department of Revenue administrative expenses.
6. All income tax revenue is deposited in the state general fund in FY92 and FY93.

FISCAL IMPACT:

<u>Revenues:</u>	<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(01)	311,176,000	321,606,000	10,430,000	327,201,000	338,671,000	11,470,000

The bill does not provide for a means of funding the 2% retirement adjustment offset discussed in assumption 3 above. If the offset were to be funded 100% general fund, the net impact to the general fund would be \$7.760 million in FY92, and \$8.490 million in FY93. If the offset were to be funded in the ratio that general fund pays for all retirement plans, general fund revenue would be reduced only \$748,000 in FY92, and \$834,000 in FY93; resulting in a net general fund impact of \$9,682,000 in FY92, and \$10,636,000 in FY93.

  
 \_\_\_\_\_  
 ROD SUNDSTED, BUDGET DIRECTOR      DATE 3-27-91  
 Office of Budget and Program Planning

  
 \_\_\_\_\_  
 JOHN G. HARP, PRIMARY SPONSOR      DATE

Fiscal Note for SB0226, third reading

**SB 226-2**

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0226, third reading, revised.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to restructure the income tax on pension benefits by equalizing the taxation of all pension benefits; to provide an exemption of \$3,600 from taxation of benefits from federal, state, and private retirement, annuity, pension, and endowment plans or systems; to provide for an adjustment payment to retirees of state, local, and teacher retirement systems who are Montana residents; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. Individual income tax collections under current law are \$311,176,000 in FY92 and \$327,201,000 in FY93 (OBPP).
2. Providing a uniform pension income exclusion of up to \$3,600 for all retirees increases revenue \$10,430,000 in FY92 and \$11,470,000 in FY93 (DOR income tax simulations).
3. Providing a retirement adjustment payment of 2% of the total benefits paid by the Public Employee's Retirement System (PERD) and the Teacher's Retirement System (TRS) during the prior calendar year reduces the general fund impact of this proposal by \$2.670 million in FY92, and \$2.980 million in FY93 (based on PERD and TRS projections of total annual benefit payments).
4. The uniform pension income exclusion applies to tax years beginning after December 31, 1990.
5. There is no impact on Department of Revenue administrative expenses.
6. All income tax revenue is deposited in the state general fund in FY92 and FY93.
7. The Public Employees' Retirement Division (PERD) and the Teacher's Retirement System (TRS) will require data processing enhancements to calculate the retirement adjustment payments stipulated in the proposed legislation. Both agencies lack the appropriation authority in their current law budgets to absorb the additional data processing enhancement costs.

FISCAL IMPACT:

(continued on next page)

  
\_\_\_\_\_  
ROD SUNDSTED, BUDGET DIRECTOR      4-5-91      DATE  
Office of Budget and Program Planning

  
\_\_\_\_\_  
JOHN G. HARP, PRIMARY SPONSOR      4/6/91      DATE

Fiscal Note for SB0226, third reading, revised.

SB 226-#3

FISCAL IMPACT:

P.E.R.D.

	<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>
<u>Expenditures:</u>						
Operating Costs	0	25,000	25,000	0	5,000	5,000

Funding:

Non-Expendable Trust	0	25,000	25,000	0	5,000	5,000
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T.R.S.

	<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>
<u>Expenditures:</u>						
Operating Costs	0	25,000	25,000	0	5,000	5,000

Funding:

Non-Expendable Trust	0	25,000	25,000	0	5,000	5,000
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T.R.S.

	<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>
<u>Revenues:</u>						
Individual Income Tax(01)	311,176,000	321,606,000	10,430,000	327,201,000	338,671,000	11,470,000

Technical Note:

1. The bill does not provide for a means of funding the 2% retirement adjustment offset discussed in assumption 3 above. If the offset were to be funded 100% general fund, the net impact to the general fund would be \$7.760 million in FY92, and \$8.490 million in FY93. If the offset were to be funded in the ratio that general fund pays for all retirement plans, general fund revenue would be reduced only \$748,000 in FY92, and \$834,000 in FY93; resulting in a net general fund impact of \$9,682,000 in FY92, and \$10,636,000 in FY93.
2. The state treasure must transfer to the retirement boards the funds for the benefit adjustment by May 1 of each year based on data submitted to the state treasurer by February 1 of each year. The procedure to calculate and pay the adjustment benefits implies a statutory appropriation. However, the proposed legislation makes no mention of any authority for statutory appropriations. The proposed legislation should be amended to authorize the statutory appropriation of the proposed adjustment benefits.
3. The withdrawal of employee contributions following the termination of employment is defined by statute as a retirement benefit. Consideration should be given to excluding refunds from the calculation of adjustment benefit payments.

SB 226-#3



APPROVED BY COMMITTEE  
ON TAXATION

1 SENATE BILL NO. 226  
 2 INTRODUCED BY HARP  
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO RESTRUCTURE THE  
 6 INCOME TAX ON PENSION BENEFITS BY EQUALIZING THE TAXATION OF  
 7 ALL PENSION BENEFITS; TO PROVIDE ~~A-\$10,000-EXCLUSION-FROM~~  
 8 ~~NET-INCOME-FOR-TAXPAYERS-WITH-A-TOTAL-FEDERAL-ADJUSTED-GROSS~~  
 9 ~~INCOME-OF-\$35,000--OR--LESS~~ AN EXEMPTION OF \$3,600 FROM  
 10 TAXATION OF BENEFITS FROM FEDERAL, STATE, AND PRIVATE  
 11 RETIREMENT, ANNUITY, PENSION, AND ENDOWMENT PLANS OR  
 12 SYSTEMS; TO PROVIDE FOR AN ADJUSTMENT PAYMENT TO RETIREES OF  
 13 STATE, LOCAL, AND TEACHER RETIREMENT SYSTEMS WHO ARE MONTANA  
 14 RESIDENTS; AMENDING SECTIONS ~~15-30-1017~~ 15-30-111,  
 15 15-30-136, 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705,  
 16 19-8-805, 19-9-1005, 19-10-504, 19-11-612, 19-12-407,  
 17 19-13-1003, AND 19-21-212, MCA; ~~REPEALING-SECTIONS-19-9-1005~~  
 18 ~~AND-19-13-1003,-MCA,~~ AND PROVIDING AN IMMEDIATE EFFECTIVE  
 19 DATE AND A RETROACTIVE APPLICABILITY DATE."

21 WHEREAS, THE STATE OF MONTANA DESIRES TO TAX FEDERAL,  
22 STATE, AND PRIVATE RETIREMENT BENEFITS EQUALLY; AND

23 WHEREAS, THE STATE OF MONTANA HAS IN THE PAST PROVIDED  
24 ITS EMPLOYEES WITH A BENEFIT OF EMPLOYMENT THROUGH ITS TAX  
25 SYSTEM; AND

1 WHEREAS, THE LEGISLATURE DESIRES AND ENCOURAGES  
2 QUALIFIED EMPLOYEES TO ENTER AND REMAIN IN PUBLIC SERVICE;  
3 AND

4 WHEREAS, IT IS THE POLICY OF THE STATE OF MONTANA TO  
5 ENCOURAGE PUBLIC EMPLOYEES WHO BECOME SUPERANNUATED OR  
6 INCAPACITATED TO RETIRE AND, TO THAT END, TO PROVIDE  
7 SUFFICIENT BENEFITS TO PROVIDE FOR RETIREMENT; AND

8 WHEREAS, THE LEGISLATURE WISHES TO ENCOURAGE ALL RETIRED  
9 PERSONS TO REMAIN WITHIN MONTANA TO PROVIDE A CRITICAL MASS  
10 OF RETIRED PERSONS WHO USE CERTAIN SERVICES AND FACILITIES  
11 THAT ARE IMPORTANT TO RETIRED PERSONS AND THAT MAY KEEP AND  
12 PERHAPS ENTICE OTHER RETIRED PERSONS INTO THE STATE; AND

13 WHEREAS, THE LEGISLATURE HAS IN THE PAST GRANTED  
14 INCREASES IN RETIREMENT BENEFITS IN A MANNER DESIGNED TO  
15 PROVIDE RELATIVELY GREATER INCREASES TO THOSE RETIREES WHO  
16 WERE EMPLOYED DURING THE YEARS OF LOW WAGES AND WHOSE  
17 BENEFITS ARE RELATIVELY SMALL; AND

18 WHEREAS, THE LEGISLATURE THEREFORE GRANTS AN INCREASE IN  
19 BENEFITS TO ITS FORMER PUBLIC EMPLOYEES WHO ARE RESIDENTS OF  
20 THE STATE TO PROVIDE COMPENSATION TO ENCOURAGE THEM TO  
21 REMAIN IN MONTANA.

22 STATEMENT OF INTENT

23 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE  
24 THE PUBLIC EMPLOYEES' RETIREMENT BOARD AND THE TEACHERS'  
25



1 RETIREMENT BOARD MUST ESTABLISH A PERCENTAGE RATE TO PROVIDE  
 2 A UNIFORM ADJUSTMENT PAYMENT RATE TO ALL MEMBERS OF PUBLIC  
 3 RETIREMENT SYSTEMS AS PROVIDED IN [SECTION 4].

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

6 (Refer to Introduced Bill)

7 Strike everything after the enacting clause and insert:

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

9 **"15-30-111. Adjusted gross income.** (1) Adjusted gross  
 10 income shall be the taxpayer's federal income tax adjusted  
 11 gross income as defined in section 62 of the Internal  
 12 Revenue Code of 1954 or as that section may be labeled or  
 13 amended and in addition shall include the following:

14 (a) interest received on obligations of another state  
 15 or territory or county, municipality, district, or other  
 16 political subdivision thereof;

17 (b) refunds received of federal income tax, to the  
 18 extent the deduction of such tax resulted in a reduction of  
 19 Montana income tax liability;

20 (c) that portion of a shareholder's income under  
 21 subchapter S. of Chapter 1 of the Internal Revenue Code of  
 22 1954, that has been reduced by any federal taxes paid by the  
 23 subchapter S. corporation on the income; and

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

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

5 (a) all interest income from obligations of the United  
 6 States government, the state of Montana, county,  
 7 municipality, district, or other political subdivision  
 8 thereof;

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

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

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

15 (ii) under the public employee retirement laws of a  
 16 Montana or another state other-than-Montana; or

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

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

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

24 ~~(f) all benefits paid under the highway patrol~~  
 25 ~~retirement law which are specified as exempt from taxation~~

1 ~~by 19-6-705;~~  
 2 ~~(g)(d) all Montana income tax refunds or tax refund~~  
 3 ~~credits thereof;~~  
 4 ~~(h) all benefits paid under 19-11-602, 19-11-604, and~~  
 5 ~~19-11-605 to retired and disabled firefighters, their~~  
 6 ~~surviving spouses and orphans or specified as exempt from~~  
 7 ~~taxation by 19-13-1003;~~  
 8 ~~(i) all benefits paid under the municipal police~~  
 9 ~~officers' retirement system that are specified as exempt~~  
 10 ~~from taxation by 19-9-1005;~~  
 11 ~~(j)(e) gain required to be recognized by a liquidating~~  
 12 ~~corporation under 15-31-113(1)(a)(ii);~~  
 13 ~~(k)(f) all tips covered by section 3402(k) of the~~  
 14 ~~Internal Revenue Code of 1954, as amended and applicable on~~  
 15 ~~January 1, 1983, received by persons for services rendered~~  
 16 ~~by them to patrons of premises licensed to provide food,~~  
 17 ~~beverage, or lodging;~~  
 18 ~~(l)(g) all benefits received under the workers'~~  
 19 ~~compensation laws;~~  
 20 ~~(m)(h) all health insurance premiums paid by an~~  
 21 ~~employer for an employee if attributed as income to the~~  
 22 ~~employee under federal law; and~~  
 23 ~~(n) all benefits paid under an optional retirement~~  
 24 ~~program that are specified as exempt from taxation by~~  
 25 ~~19-21-212; and~~

1 ~~(i)~~ all money received because of a settlement  
 2 agreement or judgment in a lawsuit brought against a  
 3 manufacturer or distributor of "agent orange" for damages  
 4 resulting from exposure to "agent orange".  
 5 (3) In the case of a shareholder of a corporation with  
 6 respect to which the election provided for under subchapter  
 7 S. of the Internal Revenue Code of 1954, as amended, is in  
 8 effect but with respect to which the election provided for  
 9 under 15-31-202, as amended, is not in effect, adjusted  
 10 gross income does not include any part of the corporation's  
 11 undistributed taxable income, net operating loss, capital  
 12 gains or other gains, profits, or losses required to be  
 13 included in the shareholder's federal income tax adjusted  
 14 gross income by reason of the election under subchapter S.  
 15 However, the shareholder's adjusted gross income shall  
 16 include actual distributions from the corporation to the  
 17 extent they would be treated as taxable dividends if the  
 18 subchapter S. election were not in effect.  
 19 (4) A shareholder of a DISC that is exempt from the  
 20 corporation license tax under 15-31-102(1)(1) shall include  
 21 in his adjusted gross income the earnings and profits of the  
 22 DISC in the same manner as provided by federal law (section  
 23 995, Internal Revenue Code) for all periods for which the  
 24 DISC election is effective.  
 25 (5) A taxpayer who, in determining federal adjusted

1 gross income, has reduced his business deductions by an  
 2 amount for wages and salaries for which a federal tax credit  
 3 was elected under section 44B of the Internal Revenue Code  
 4 of 1954 or as that section may be labeled or amended is  
 5 allowed to deduct the amount of the wages and salaries paid  
 6 regardless of the credit taken. The deduction must be made  
 7 in the year the wages and salaries were used to compute the  
 8 credit. In the case of a partnership or small business  
 9 corporation, the deduction must be made to determine the  
 10 amount of income or loss of the partnership or small  
 11 business corporation.

12 (6) Married taxpayers filing a joint federal return who  
 13 must include part of their social security benefits or part  
 14 of their tier 1 railroad retirement benefits in federal  
 15 adjusted gross income may split the federal base used in  
 16 calculation of federal taxable social security benefits or  
 17 federal taxable tier 1 railroad retirement benefits when  
 18 they file separate Montana income tax returns. The federal  
 19 base must be split equally on the Montana return.

20 (7) A taxpayer receiving retirement disability benefits  
 21 who has not attained age 65 by the end of the taxable year  
 22 and who has retired as permanently and totally disabled may  
 23 exclude from adjusted gross income up to \$100 per week  
 24 received as wages or payments in lieu of wages for a period  
 25 during which the employee is absent from work due to the

1 disability. If the adjusted gross income before this  
 2 exclusion and before application of the two-earner married  
 3 couple deduction exceeds \$15,000, the excess reduces the  
 4 exclusion by an equal amount. This limitation affects the  
 5 amount of exclusion, but not the taxpayer's eligibility for  
 6 the exclusion. If eligible, married individuals shall apply  
 7 the exclusion separately, but the limitation for income  
 8 exceeding \$15,000 is determined with respect to the spouses  
 9 on their combined adjusted gross income. For the purpose of  
 10 this subsection, permanently and totally disabled means  
 11 unable to engage in any substantial gainful activity by  
 12 reason of any medically determined physical or mental  
 13 impairment lasting or expected to last at least 12 months.

14 (B) A person receiving benefits described in  
 15 ~~subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not~~  
 16 ~~exclude benefits described in subsection (2)(c) from~~  
 17 ~~adjusted gross income unless the benefits received under~~  
 18 ~~subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are~~  
 19 ~~less than \$3,600, in which case the person may~~ subsection  
 20 (2)(c) shall combine benefits specified in subsections  
 21 (2)(c)(i) through (2)(c)(iii) to exclude up to not more than  
 22 a total of \$3,600 from adjusted gross income. (Subsection  
 23 ~~(2)(f) terminates on occurrence of contingency--sec.~~  
 24 ~~3, Ch. 634, L. 1983.)"~~

25 **Section 2.** Section 15-30-136, MCA, is amended to read:

1       "15-30-136. Computation of income of estates or trusts  
 2 -- exemption. (1) Except as otherwise provided in this  
 3 chapter, "gross income" of estates or trusts means all  
 4 income from whatever source derived in the taxable year,  
 5 including but not limited to the following items:  
 6       (a) dividends;  
 7       (b) interest received or accrued, including interest  
 8 received on obligations of another state or territory or a  
 9 county, municipality, district, or other political  
 10 subdivision thereof, but excluding interest income from  
 11 obligations of:  
 12       (i) the United States government or the state of  
 13 Montana;  
 14       (ii) a school district; or  
 15       (iii) a county, municipality, district, or other  
 16 political subdivision of the state;  
 17       (c) income from partnerships and other fiduciaries;  
 18       (d) gross rents and royalties;  
 19       (e) gain from sale or exchange of property, including  
 20 those gains that are excluded from gross income for federal  
 21 fiduciary income tax purposes by section 641(c) of the  
 22 Internal Revenue Code of 1954, as amended;  
 23       (f) gross profit from trade or business; and  
 24       (g) refunds recovered on federal income tax, to the  
 25 extent the deduction of such tax resulted in a reduction of

1 Montana income tax liability.  
 2       (2) In computing net income, there are allowed as  
 3 deductions:  
 4       (a) interest expenses deductible for federal tax  
 5 purposes according to section 163 of the Internal Revenue  
 6 Code of 1954, as amended;  
 7       (b) taxes paid or accrued within the taxable year,  
 8 including but not limited to federal income tax, but  
 9 excluding Montana income tax;  
 10       (c) that fiduciary's portion of depreciation or  
 11 depletion which is deductible for federal tax purposes  
 12 according to sections 167, 611, and 642 of the Internal  
 13 Revenue Code of 1954, as amended;  
 14       (d) charitable contributions that are deductible for  
 15 federal tax purposes according to section 642(c) of the  
 16 Internal Revenue Code of 1954, as amended;  
 17       (e) administrative expenses claimed for federal income  
 18 tax purposes, according to sections 212 and 642(g) of the  
 19 Internal Revenue Code of 1954, as amended, if such expenses  
 20 were not claimed as a deduction in the determination of  
 21 Montana inheritance tax;  
 22       (f) losses from fire, storm, shipwreck, or other  
 23 casualty or from theft, to the extent not compensated for by  
 24 insurance or otherwise, that are deductible for federal tax  
 25 purposes according to section 165 of the Internal Revenue

1 Code of 1954, as amended;

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

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

7 (i) as federal employees' retirement;

8 (ii) as retirement from public employment in a Montana  
9 or another state other than Montana; or

10 (iii) as an annuity, pension, or endowment under private  
11 or corporate retirement plans or systems;

12 ~~{i}--all--benefits--paid--under--the--Montana--teachers'--~~  
13 ~~retirement-system-that-are-specified-as-exempt-from-taxation~~  
14 ~~by-19-4-706;~~

15 ~~{j}--all--benefits--paid--under--the--Montana--Public~~  
16 ~~Employees'--Retirement--System--Act--that--are--specified-as~~  
17 ~~exempt-from-taxation-by-19-3-105;~~

18 ~~{k}--all-benefits-paid-under-the-Montana-highway--patrol~~  
19 ~~officers'--retirement--system--that--are-specified-as-exempt~~  
20 ~~from-taxation-by-19-6-705;~~

21 ~~{l}(i)~~ Montana income tax refunds or tax refund credits  
22 thereof;

23 ~~{m}--all-benefits-paid-under-19-11-602,--19-11-604,--and~~  
24 ~~19-11-605-to-retired-and-disabled-firemen-or-their-surviving~~  
25 ~~spouses-or-children;~~

1 ~~{n}--all--benefits--paid--under--the--municipal--police~~  
2 ~~officers'--retirement-system-that--are--specified--as--exempt~~  
3 ~~from-taxation-by-19-9-1005.~~

4 (3) In the case of a shareholder of a corporation with  
5 respect to which the election provided for under subchapter  
6 S. of the Internal Revenue Code of 1954, as amended, is in  
7 effect but with respect to which the election provided for  
8 under 15-31-202 is not in effect, net income does not  
9 include any part of the corporation's undistributed taxable  
10 income, net operating loss, capital gains or other gains,  
11 profits, or losses required to be included in the  
12 shareholder's federal income tax net income by reason of the  
13 election under subchapter S. However, the shareholder's net  
14 income shall include actual distribution from the  
15 corporation to the extent it would be treated as taxable  
16 dividends if the subchapter S. election were not in effect.

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

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

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

23 (c) the amount of 60% of the excess of the net  
24 long-term capital gain over the net short-term capital loss  
25 for the taxable year.

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

3 (6) A trust or estate excluding benefits under  
4 ~~subsections-(2)(i)-through-(2)(k)-or-(2)(m)-or-(2)(n)-may-not~~  
5 ~~exclude--benefits--described--in--subsection-(2)(h)-from-net~~  
6 ~~income-unless-the-benefits-received-under-subsections-(2)(i)~~  
7 ~~through-(2)(k)-or-(2)(m)-or-(2)(n)-are-less-than--\$3,600--in~~  
8 ~~which--case--the--trust-or-estate-may~~ subsection (2)(h) must  
9 combine benefits specified in subsections (2)(h)(i) through  
10 (2)(h)(iii) to exclude up to not more than a total of \$3,600  
11 from net income."

12 NEW SECTION. Section 3. Retirement adjustment --  
13 annual deposit. (1) There is allocated to the public  
14 employees' retirement board and the teachers' retirement  
15 board the amounts provided in subsection (2) for  
16 distribution to members of retirement systems as provided in  
17 [section 4].

18 (2) On or before May 1 of each year, the state  
19 treasurer shall pay to the public employees' retirement  
20 board and the teachers' retirement board an amount equal to  
21 2% of the total benefits paid by both systems during the  
22 prior calendar year. In distributing the appropriations to  
23 the boards, the treasurer shall consult with the boards to  
24 determine the amounts necessary for uniform payments to  
25 members. The amount of the benefits must be certified to the

1 treasurer by the public employees' retirement board and the  
2 teachers' retirement board no later than April 1 of each  
3 year. For the purpose of this section, the public employees'  
4 retirement board shall collect information and certify the  
5 amount of benefits paid pursuant to Title 19, chapters 10  
6 and 11. Not later than February 15 of each year, the boards  
7 of trustees of local police retirement funds, provided in  
8 19-10-201, and boards of trustees of local fire department  
9 relief associations, provided in 19-11-104, shall submit  
10 reports on benefit payments containing information requested  
11 by the public employees' retirement board.

12 NEW SECTION. Section 4. Montana retirement adjustment  
13 payments -- public employees' retirement board. (1) Not  
14 later than June 1 of each year, the public employees'  
15 retirement board and the teachers' retirement board shall  
16 fix and pay to those members entitled to it an annual  
17 adjustment payment. The adjustment payment is determined for  
18 each system based upon the benefits paid by the system in  
19 the prior calendar year and on the annual benefit to which  
20 each Montana resident member of the system is entitled.

21 (2) (a) The public employees' retirement board shall  
22 allocate money appropriated for retirement adjustment to the  
23 public retirement systems in Title 19, chapters 3 and 5  
24 through 13. The allocation to each system must be made based  
25 upon the annual amount each system's benefits payments bears

1 to the amount paid by all of the systems specified in this  
2 subsection.

3 (b) The teachers' retirement board shall administer the  
4 money appropriated for retirement adjustment to the  
5 teachers' retirement system in Title 19, chapter 4.

6 (3) (a) Each member of a system listed in subsection  
7 (2) who is a resident of the state and who is entitled to an  
8 annual benefit is entitled to a retirement adjustment  
9 payment. Each retirement system specified in subsection (2),  
10 through the public employees' retirement board, the  
11 teachers' retirement board, or a local retirement board of  
12 trustees, as appropriate, shall distribute its allocation of  
13 the money appropriated for retirement adjustment to its  
14 members entitled to adjustment payments. The governing board  
15 of each system set forth in subsection (2) shall provide an  
16 annual adjustment payment that is a percentage of annual  
17 benefits.

18 (b) The methodology that the public employees'  
19 retirement board and the teachers' retirement board use to  
20 calculate adjustments for systems administered by them must  
21 be adopted by rule pursuant to Title 2, chapter 4.

22 (c) For the purposes of this section, a "Montana  
23 resident" means a person domiciled in the state and any  
24 person who maintains a permanent place of abode within the  
25 state.

1 **Section 5.** Section 19-3-105, MCA, is amended to read:

2 **"19-3-105. Exemption from taxes and legal process.** The  
3 right of a person to a retirement allowance or any other  
4 benefit under this chapter and the moneys money in the fund  
5 created under this chapter ~~is~~ are not:

- 6 (1) subject to execution, garnishment, attachment, or
- 7 any other process;
- 8 (2) subject to state, county, or municipal taxes except
- 9 for:

10 (a) a retirement allowance received in excess of  
11 \$3,600; or

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

15 (3) assignable except as in this chapter specifically  
16 provided."

17 **Section 6.** Section 19-4-706, MCA, is amended to read:

18 **"19-4-706. Exemption from taxation and legal process.**  
19 The pensions, annuities, or any other benefits accrued or  
20 accruing to any person under the provisions of the  
21 retirement system and the accumulated contributions and cash  
22 and securities in the various funds of the retirement system  
23 are:

- 24 (1) exempted from any state, county, or municipal tax
- 25 of the state of Montana except for:



1 (a) a retirement allowance received in excess of  
2 \$3,600; or

3 (b) a withdrawal paid under 19-4-603 of a member's  
4 contributions picked up by an employer after June 30, 1985,  
5 as provided in 19-4-602;

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

9 (3) unassignable except as specifically provided in  
10 this chapter."

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

12 "19-5-704. **Exemption from taxes and legal process.** (1)  
13 ~~Any-money Money~~ received or to be paid as a member's  
14 annuity, state annuity, or return of deductions or the right  
15 of any of these ~~shall--be~~ is exempt from ~~any-state-or~~  
16 ~~municipal-tax-and-from~~ levy, sale, garnishment, attachment,  
17 or any other process ~~whatsoever~~ and ~~shall-be~~ is unassignable  
18 except as specifically provided in 19-5-705.

19 (2) The first \$3,600 received under this chapter is  
20 exempt from state, county, or municipal taxation."

21 **Section 8.** Section 19-6-705, MCA, is amended to read:

22 "19-6-705. **Exemption from taxes and legal process.** Any  
23 money received or to be paid as a member's annuity, state  
24 annuity, or return of deductions or the right of any of  
25 these is:

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

3 (a) a retirement allowance received in excess of  
4 \$3,600; or

5 (b) a refund paid under 19-6-403 of a member's  
6 contributions picked up by an employer after June 30, 1985,  
7 as provided in 19-6-402;

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

10 (3) unassignable except as specifically provided in  
11 19-6-706."

12 **Section 9.** Section 19-7-705, MCA, is amended to read:

13 "19-7-705. **Exemption from taxes and legal process.** Any  
14 money received or to be paid as a member's annuity, state  
15 annuity, or return of deductions or the right of any of  
16 these is:

17 (1) exempt from any state, county, or municipal tax  
18 except for;

19 (a) a retirement allowance received in excess of  
20 \$3,600; or

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

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

1 (3) unassignable except as specifically provided in  
2 19-7-706."

3 **Section 10.** Section 19-8-805, MCA, is amended to read:

4 "19-8-805. **Exemption from taxes and legal process.** Any  
5 money received or to be paid as a member's annuity, state  
6 annuity, or return of deductions or the right of any of  
7 these is:

8 (1) exempt from any state, county, or municipal tax  
9 except for:

10 (a) a retirement allowance received in excess of  
11 \$3,600; or

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

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

17 (3) unassignable except as specifically provided in  
18 19-8-806."

19 **Section 11.** Section 19-9-1005, MCA, is amended to read:

20 "19-9-1005. **Exemption from taxes.** Any money paid in  
21 accordance with the provisions of this chapter is exempt  
22 from any state, county, or municipal tax except for:

23 (1) a retirement allowance received in excess of  
24 \$3,600; or

25 (2) a refund paid under 19-9-304 of a member's

1 contributions picked up by an employer after June 30, 1985,  
2 as provided in 19-9-601."

3 **Section 12.** Section 19-10-504, MCA, is amended to read:

4 "19-10-504. **Protection of benefits from legal process**  
5 **and taxation.** (1) The benefits provided for in this part are  
6 not subject to execution, garnishment, attachment, or the  
7 operation of bankruptcy, insolvency, or other process of law  
8 and are unassignable except as specifically provided in  
9 19-10-505.

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

12 **Section 13.** Section 19-11-612, MCA, is amended to read:

13 "19-11-612. **Protection of benefits from legal process**  
14 **and taxation -- nonassignability.** (1) Any payments made or  
15 to be made under this chapter are not subject to judgments,  
16 garnishment, execution, or other legal process. A person  
17 entitled to a pension may not assign the right, and the  
18 association and trustees may not recognize any assignment or  
19 pay over any sum so assigned.

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

22 **Section 14.** Section 19-12-407, MCA, is amended to read:

23 "19-12-407. **Payment of pension benefits -- exemption**  
24 **from taxation.** (1) All payments under the volunteer  
25 firefighters' pension plan must be approved by the board and

1 paid by warrants drawn upon the pension trust fund, payable  
2 to the order of the individual qualified volunteer  
3 firefighter or the beneficiary as provided in 19-12-405(1).

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

6 **Section 15.** Section 19-13-1003, MCA, is amended to  
7 read:

8 **"19-13-1003. Exemption from taxes.** Any money paid in  
9 accordance with the provisions of this chapter is exempt  
10 from any state, county, or municipal tax except for:

11 (1) the retirement allowance received in excess of  
12 \$3,600; or

13 (2) refunds paid under 19-13-602 of the member's  
14 contributions picked up by an employer after June 30, 1987,  
15 as provided in 19-13-601."

16 **Section 16.** Section 19-21-212, MCA, is amended to read:

17 **"19-21-212. Exemption from taxation, legal process, and**  
18 **assessments.** All contracts, benefits, and contributions  
19 under the optional retirement program and the earnings  
20 thereon are:

21 (1) except for a retirement allowance received in  
22 excess of \$3,600, exempt from any state, county, or  
23 municipal tax;

24 (2) not subject to execution, garnishment, attachment,  
25 or other process;

1 (3) not covered or assessable by an insurance guaranty  
2 association; and

3 (4) unassignable except as specifically provided in the  
4 contracts."

5 **NEW SECTION. Section 17. Severability.** If a part of  
6 [this act] is invalid, all valid parts that are severable  
7 from the invalid part remain in effect. If a part of [this  
8 act] is invalid in one or more of its applications, the part  
9 remains in effect in all valid applications that are  
10 severable from the invalid applications.

11 **NEW SECTION. Section 18. Codification instruction.**  
12 [Sections 3 and 4] are intended to be codified as an  
13 integral part of Title 19, and the provisions of Title 19  
14 apply to [sections 3 and 4].

15 **NEW SECTION. Section 19. Effective date -- retroactive**  
16 **applicability.** [This act] is effective on passage and  
17 approval and applies retroactively, within the meaning of  
18 1-2-109, to taxable years beginning after December 31, 1990.

-End-

1 SENATE BILL NO. 226  
 2 INTRODUCED BY HARP  
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO RESTRUCTURE THE  
 6 INCOME TAX ON PENSION BENEFITS BY EQUALIZING THE TAXATION OF  
 7 ALL PENSION BENEFITS; TO PROVIDE A ~~-\$107,000-EXEMPTION-FROM~~  
 8 ~~NET-INCOME-FOR-TAXPAYERS-WITH-A-TOTAL-FEDERAL-ADJUSTED-GROSS~~  
 9 ~~INCOME-OF-\$357,000--OR--LESS~~ AN EXEMPTION OF \$3,600 FROM  
 10 TAXATION OF BENEFITS FROM FEDERAL, STATE, AND PRIVATE  
 11 RETIREMENT, ANNUITY, PENSION, AND ENDOWMENT PLANS OR  
 12 SYSTEMS; TO PROVIDE FOR AN ADJUSTMENT PAYMENT TO RETIREES OF  
 13 STATE, LOCAL, AND TEACHER RETIREMENT SYSTEMS WHO ARE MONTANA  
 14 RESIDENTS; AMENDING SECTIONS ~~15-30-101, 15-30-111,~~  
 15 15-30-136, 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705,  
 16 19-8-805, 19-9-1005, 19-10-504, 19-11-612, 19-12-407,  
 17 19-13-1003, AND 19-21-212, MCA; REPEALING SECTIONS ~~19-9-1005~~  
 18 AND ~~19-13-1003~~-MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
 19 DATE AND A RETROACTIVE APPLICABILITY DATE."

20  
 21 WHEREAS, THE STATE OF MONTANA DESIRES TO TAX FEDERAL,  
 22 STATE, AND PRIVATE RETIREMENT BENEFITS EQUALLY; AND

23 WHEREAS, THE STATE OF MONTANA HAS IN THE PAST PROVIDED  
 24 ITS EMPLOYEES WITH A BENEFIT OF EMPLOYMENT THROUGH ITS TAX  
 25 SYSTEM; AND

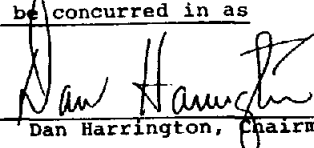
There are no changes in this bill,  
 and will not be reprinted. Please  
 refer to yellow copy for complete  
 text.



April 8, 1991  
Page 1 of 5

Mr. Speaker: We, the committee on Taxation report that Senate Bill 226 (third reading copy -- blue) be concurred in as amended.

Signed:

  
Dan Harrington, Chairman

Carried by: Rep. Harrington

And, that such amendments read:

1. Title, line 14.

Following: "RESIDENTS;"

Insert: "TO DIRECT A STUDY OF THE TAXATION OF RETIREMENT BENEFITS; TO PROVIDE A STATUTORY APPROPRIATION FOR ADJUSTMENT PAYMENTS;"

Following: "~~15-30-101,~~"

Insert: "15-30-101,"

2. Title, line 15.

Following: "15-30-136,"

Insert: "17-7-502,"

3. Page 3.

Following: line 7

Insert: "Section 1. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by subsections (7) and (8) of 15-30-112, in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June, 1980.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used

in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes;  
or

(e) amounts after cessation of regular employment received from fully matured, privately purchased annuity contracts.

~~(13)~~ (14) "Purposely" is as defined in 45-2-101.

~~(14)~~ (15) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(15)~~ (16) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

~~(16)~~ (17) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(17)~~ (18) "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

~~(18)~~ (19) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

Renumber: subsequent sections

4. Page 4, lines 13 through 18.

Strike: "all" on line 13 through "system" on line 18

Insert: "the first \$3,600 of all pension and annuity income received as defined in 15-30-101"

5. Page 8, lines 14 through 22.

Strike: subsection (8) in its entirety

6. Page 11, lines 6 through 11.

Strike: subsection (h) in its entirety

Renumber: subsequent subsection

7. Page 13, lines 3 through 11.

Strike: subsection (6) in its entirety

8. Page 13, line 13.

Following: "deposit"

Insert: "-- statutory appropriation"

Strike: "allocated"

Insert: "statutorily appropriated, as provided in 17-7-502, from the general fund"

9. Page 13, line 17.

Strike: "4"

Insert: "5"

10. Page 13, line 21.

Strike: "2%"

Insert: "2 1/2%"

11. Page 22.

Following: line 4

Insert: "Section 17. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition --  
requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-

5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206;  
37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-  
121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123;  
80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-  
613; 90-6-331; 90-9-306; [section 3]; and section 13, House  
Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. (In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)"

NEW SECTION. Section 18. Study of taxation of retirement benefits. The revenue oversight committee is requested to study the taxation of retirement benefits, including all relevant permutations of income sources and age criteria. The revenue oversight committee is also to keep abreast of legal developments involving the taxation of retirement benefits. The revenue oversight committee is to report its findings and recommendations to the 53rd legislature."

Renumber: subsequent sections

12. Page 22, line 12.

Strike: "3 and"

Following: "4"

Insert: "and 5"

13. Page 22, line 14.

Strike: "3 and"

Following: "4"

Insert: "and 5"

HOUSE COMMITTEE OF THE WHOLE AMENDMENT  
Senate Bill 226  
Representative Mercer

April 15, 1991 11:13 am  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 226 (third reading copy -- blue).

Signed: MERCER  
Representative Mercer

And, that such amendments to Senate Bill 226 read as follows:

1. Title, line 18.  
Following: "PROVIDING"  
Strike: "AN IMMEDIATE"  
Insert: "A DELAYED"
2. Title, line 19.  
Following: the first "DATE"  
Strike: remainder of line 19  
Insert: "."
3. Page 22, lines 15 and 16.  
Strike: "-- retroactive applicability"
4. Page 22, lines 16 through 18.  
Following: "[This act]" on line 16  
Strike: remainder of line 16 through "1-2-209," on line 18  
Insert: "shall apply"
5. Page 22, line 18.  
Strike: "1990"  
Insert: "1992"

ADOPT

REJECT

HOUSE  
SB 226



1 SENATE BILL NO. 226

2 INTRODUCED BY HARP

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO RESTRUCTURE THE  
6 INCOME TAX ON PENSION BENEFITS BY EQUALIZING THE TAXATION OF  
7 ALL PENSION BENEFITS; TO PROVIDE A ~~\$10,000~~-EXCLUSION FROM  
8 NET-INCOME FOR TAXPAYERS WITH A TOTAL FEDERAL ADJUSTED GROSS  
9 INCOME OF ~~\$35,000~~ OR LESS AN EXEMPTION OF \$3,600 FROM  
10 TAXATION OF BENEFITS FROM FEDERAL, STATE, AND PRIVATE  
11 RETIREMENT, ANNUITY, PENSION, AND ENDOWMENT PLANS OR  
12 SYSTEMS; TO PROVIDE FOR AN ADJUSTMENT PAYMENT TO RETIREES OF  
13 STATE, LOCAL, AND TEACHER RETIREMENT SYSTEMS WHO ARE MONTANA  
14 RESIDENTS; TO DIRECT A STUDY OF THE TAXATION OF RETIREMENT  
15 BENEFITS; TO PROVIDE A STATUTORY APPROPRIATION FOR  
16 ADJUSTMENT PAYMENTS; AMENDING SECTIONS ~~15-30-101~~, 15-30-101,  
17 15-30-111, 15-30-136, 17-7-502, 19-3-105, 19-4-706,  
18 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1005,  
19 19-10-504, 19-11-612, 19-12-407, 19-13-1003, AND 19-21-212,  
20 MCA; REPEALING ~~SECTIONS 19-9-1005 AND 19-13-1003~~, MCA; AND  
21 PROVIDING AN IMMEDIATE A DELAYED EFFECTIVE DATE AND A  
22 RETROACTIVE APPLICABILITY DATE."

23  
24 WHEREAS, THE STATE OF MONTANA DESIRES TO TAX FEDERAL,  
25 STATE, AND PRIVATE RETIREMENT BENEFITS EQUALLY; AND

1 WHEREAS, THE STATE OF MONTANA HAS IN THE PAST PROVIDED  
2 ITS EMPLOYEES WITH A BENEFIT OF EMPLOYMENT THROUGH ITS TAX  
3 SYSTEM; AND

4 WHEREAS, THE LEGISLATURE DESIRES AND ENCOURAGES  
5 QUALIFIED EMPLOYEES TO ENTER AND REMAIN IN PUBLIC SERVICE;  
6 AND

7 WHEREAS, IT IS THE POLICY OF THE STATE OF MONTANA TO  
8 ENCOURAGE PUBLIC EMPLOYEES WHO BECOME SUPERANNUATED OR  
9 INCAPACITATED TO RETIRE AND, TO THAT END, TO PROVIDE  
10 SUFFICIENT BENEFITS TO PROVIDE FOR RETIREMENT; AND

11 WHEREAS, THE LEGISLATURE WISHES TO ENCOURAGE ALL RETIRED  
12 PERSONS TO REMAIN WITHIN MONTANA TO PROVIDE A CRITICAL MASS  
13 OF RETIRED PERSONS WHO USE CERTAIN SERVICES AND FACILITIES  
14 THAT ARE IMPORTANT TO RETIRED PERSONS AND THAT MAY KEEP AND  
15 PERHAPS ENTICE OTHER RETIRED PERSONS INTO THE STATE; AND

16 WHEREAS, THE LEGISLATURE HAS IN THE PAST GRANTED  
17 INCREASES IN RETIREMENT BENEFITS IN A MANNER DESIGNED TO  
18 PROVIDE RELATIVELY GREATER INCREASES TO THOSE RETIREES WHO  
19 WERE EMPLOYED DURING THE YEARS OF LOW WAGES AND WHOSE  
20 BENEFITS ARE RELATIVELY SMALL; AND

21 WHEREAS, THE LEGISLATURE THEREFORE GRANTS AN INCREASE IN  
22 BENEFITS TO ITS FORMER PUBLIC EMPLOYEES WHO ARE RESIDENTS OF  
23 THE STATE TO PROVIDE COMPENSATION TO ENCOURAGE THEM TO  
24 REMAIN IN MONTANA.

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE THE PUBLIC EMPLOYEES' RETIREMENT BOARD AND THE TEACHERS' RETIREMENT BOARD MUST ESTABLISH A PERCENTAGE RATE TO PROVIDE A UNIFORM ADJUSTMENT PAYMENT RATE TO ALL MEMBERS OF PUBLIC RETIREMENT SYSTEMS AS PROVIDED IN [SECTION 4].

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

SECTION 1. SECTION 15-30-101, MCA, IS AMENDED TO READ:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by subsections (7) and (8) of 15-30-112, in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

1 (8) "Inflation factor" means a number determined for  
2 each taxable year by dividing the consumer price index for  
3 June of the taxable year by the consumer price index for  
4 June, 1980.

5 (9) "Information agents" includes all individuals,  
6 corporations, associations, and partnerships, in whatever  
7 capacity acting, including lessees or mortgagors of real or  
8 personal property, fiduciaries, brokers, real estate  
9 brokers, employers, and all officers and employees of the  
10 state or of any municipal corporation or political  
11 subdivision of the state, having the control, receipt,  
12 custody, disposal, or payment of interest, rent, salaries,  
13 wages, premiums, annuities, compensations, remunerations,  
14 emoluments, or other fixed or determinable annual or  
15 periodical gains, profits, and income with respect to which  
16 any person or fiduciary is taxable under this chapter.

17 (10) "Knowingly" is as defined in 45-2-101.

18 (11) "Net income" means the adjusted gross income of a  
19 taxpayer less the deductions allowed by this chapter.

20 (12) "Paid", for the purposes of the deductions and  
21 credits under this chapter, means paid or accrued or paid or  
22 incurred, and the terms "paid or incurred" and "paid or  
23 accrued" shall be construed according to the method of  
24 accounting upon the basis of which the taxable income is  
25 computed under this chapter.

1 (13) "Pension and annuity income" means:

2 (a) systematic payments of a definitely determinable  
3 amount from a qualified pension plan, as that term is used  
4 in section 401 of the Internal Revenue Code, or systematic  
5 payments received as the result of contributions made to a  
6 qualified pension plan that are paid to the recipient or  
7 recipient's beneficiary upon the cessation of employment;

8 (b) payments received as the result of past service and  
9 cessation of employment in the uniformed services of the  
10 United States;

11 (c) lump-sum distributions from pension or  
12 profitsharing plans to the extent that the distributions are  
13 included in federal adjusted gross income;

14 (d) distributions from individual retirement, deferred  
15 compensation, and self-employed retirement plans recognized  
16 under sections 401 through 408 of the Internal Revenue Code  
17 to the extent that the distributions are not considered to  
18 be premature distributions for federal income tax purposes;  
19 or

20 (e) amounts after cessation of regular employment  
21 received from fully matured, privately purchased annuity  
22 contracts.

23 ~~(13)~~(14) "Purposely" is as defined in 45-2-101.

24 ~~(14)~~(15) "Received", for the purpose of computation of  
25 taxable income under this chapter, means received or accrued

1 and the term "received or accrued" shall be construed  
 2 according to the method of accounting upon the basis of  
 3 which the taxable income is computed under this chapter.

4 †15†(16) "Resident" applies only to natural persons and  
 5 includes, for the purpose of determining liability to the  
 6 tax imposed by this chapter with reference to the income of  
 7 any taxable year, any person domiciled in the state of  
 8 Montana and any other person who maintains a permanent place  
 9 of abode within the state even though temporarily absent  
 10 from the state and has not established a residence  
 11 elsewhere.

12 †16†(17) "Taxable income" means the adjusted gross  
 13 income of a taxpayer less the deductions and exemptions  
 14 provided for in this chapter.

15 †17†(18) "Taxable year" means the taxpayer's taxable  
 16 year for federal income tax purposes.

17 †18†(19) "Taxpayer" includes any person or fiduciary,  
 18 resident or nonresident, subject to a tax imposed by this  
 19 chapter and does not include corporations."

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

21 "15-30-111. **Adjusted gross income.** (1) Adjusted gross  
 22 income shall be the taxpayer's federal income tax adjusted  
 23 gross income as defined in section 62 of the Internal  
 24 Revenue Code of 1954 or as that section may be labeled or  
 25 amended and in addition shall include the following:

1 (a) interest received on obligations of another state  
 2 or territory or county, municipality, district, or other  
 3 political subdivision thereof;

4 (b) refunds received of federal income tax, to the  
 5 extent the deduction of such tax resulted in a reduction of  
 6 Montana income tax liability;

7 (c) that portion of a shareholder's income under  
 8 subchapter S. of Chapter 1 of the Internal Revenue Code of  
 9 1954, that has been reduced by any federal taxes paid by the  
 10 subchapter S. corporation on the income; and

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

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

17 (a) all interest income from obligations of the United  
 18 States government, the state of Montana, county,  
 19 municipality, district, or other political subdivision  
 20 thereof;

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

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

1        ~~{i}~~ under the Federal Employees' Retirement Act;

2        ~~{ii}~~ under the public employee retirement laws of a

3        ~~Montana or another~~ state other than Montana; or

4        ~~{iii}~~ as an annuity, pension, or endowment under any

5        private or corporate retirement plan or system THE FIRST

6        \$3,600 OF ALL PENSION AND ANNUITY INCOME RECEIVED AS DEFINED

7        IN 15-30-101;

8        ~~{d}~~ all benefits paid under the teachers' retirement

9        law which are specified as exempt from taxation by 19-4-706;

10       ~~{e}~~ all benefits paid under The Public Employees'

11       Retirement System Act which are specified as exempt from

12       taxation by 19-3-105;

13       ~~{f}~~ all benefits paid under the highway patrol

14       retirement law which are specified as exempt from taxation

15       by 19-6-705;

16       ~~{g}~~ (d) all Montana income tax refunds or tax refund

17       credits thereof;

18       ~~{h}~~ all benefits paid under 19-11-602, 19-11-604, and

19       19-11-605 to retired and disabled firefighters, their

20       surviving spouses and orphans or specified as exempt from

21       taxation by 19-13-1003;

22       ~~{i}~~ all benefits paid under the municipal police

23       officers' retirement system that are specified as exempt

24       from taxation by 19-9-1005;

25       ~~{j}~~ (e) gain required to be recognized by a liquidating

1       corporation under 15-31-113(1)(a)(ii);

2       ~~{k}~~ (f) all tips covered by section 3402(k) of the

3       Internal Revenue Code of 1954, as amended and applicable on

4       January 1, 1983, received by persons for services rendered

5       by them to patrons of premises licensed to provide food,

6       beverage, or lodging;

7       ~~{l}~~ (g) all benefits received under the workers'

8       compensation laws;

9       ~~{m}~~ (h) all health insurance premiums paid by an

10       employer for an employee if attributed as income to the

11       employee under federal law; and

12       ~~{n}~~ all benefits paid under an optional retirement

13       program that are specified as exempt from taxation by

14       19-21-212; and

15       ~~{o}~~ (i) all money received because of a settlement

16       agreement or judgment in a lawsuit brought against a

17       manufacturer or distributor of "agent orange" for damages

18       resulting from exposure to "agent orange".

19       (3) In the case of a shareholder of a corporation with

20       respect to which the election provided for under subchapter

21       S. of the Internal Revenue Code of 1954, as amended, is in

22       effect but with respect to which the election provided for

23       under 15-31-202, as amended, is not in effect, adjusted

24       gross income does not include any part of the corporation's

25       undistributed taxable income, net operating loss, capital

1 gains or other gains, profits, or losses required to be  
 2 included in the shareholder's federal income tax adjusted  
 3 gross income by reason of the election under subchapter S.  
 4 However, the shareholder's adjusted gross income shall  
 5 include actual distributions from the corporation to the  
 6 extent they would be treated as taxable dividends if the  
 7 subchapter S. election were not in effect.

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

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

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

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

1 reason of any medically determined physical or mental  
2 impairment lasting or expected to last at least 12 months.

3 ~~{0}--A---person---receiving---benefits---described---in  
4 subsections-(2){d}-through-(2){f}-,-(2){h}-,--or-(2){i}-may-not  
5 exclude--benefits--described--in--subsection---(2){c}---from  
6 adjusted--gross--income--unless--the-benefits-received-under  
7 subsections-(2){d}-through-(2){f}-,--(2){h}-,--or--(2){i}--are  
8 less--than--\$3,600,--in-which-case-the-person-may subsection  
9 (2){c}--shall combine--benefits specified--in--subsections  
10 (2){c}{i}--through--(2){c}{iii} to-exclude up-to not more than  
11 a-total-of-\$3,600-from-adjusted--gross--income---(Subsection  
12 (2){k} (2){f} terminates-on-occurrence-of-contingency--sec-  
13 37-Ch--6347-b--1983-}~~"

14 **Section 3.** Section 15-30-136, MCA, is amended to read:  
15 "15-30-136. Computation of income of estates or trusts  
16 -- exemption. (1) Except as otherwise provided in this  
17 chapter, "gross income" of estates or trusts means all  
18 income from whatever source derived in the taxable year,  
19 including but not limited to the following items:  
20 (a) dividends;  
21 (b) interest received or accrued, including interest  
22 received on obligations of another state or territory or a  
23 county, municipality, district, or other political  
24 subdivision thereof, but excluding interest income from  
25 obligations of:

1 (i) the United States government or the state of  
2 Montana;  
3 (ii) a school district; or  
4 (iii) a county, municipality, district, or other  
5 political subdivision of the state;  
6 (c) income from partnerships and other fiduciaries;  
7 (d) gross rents and royalties;  
8 (e) gain from sale or exchange of property, including  
9 those gains that are excluded from gross income for federal  
10 fiduciary income tax purposes by section 641(c) of the  
11 Internal Revenue Code of 1954, as amended;  
12 (f) gross profit from trade or business; and  
13 (g) refunds recovered on federal income tax, to the  
14 extent the deduction of such tax resulted in a reduction of  
15 Montana income tax liability.  
16 (2) In computing net income, there are allowed as  
17 deductions:  
18 (a) interest expenses deductible for federal tax  
19 purposes according to section 163 of the Internal Revenue  
20 Code of 1954, as amended;  
21 (b) taxes paid or accrued within the taxable year,  
22 including but not limited to federal income tax, but  
23 excluding Montana income tax;  
24 (c) that fiduciary's portion of depreciation or  
25 depletion which is deductible for federal tax purposes

1 according to sections 167, 611, and 642 of the Internal  
2 Revenue Code of 1954, as amended;

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

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

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

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

20 ~~(h) all benefits, not in excess of \$37600, received;~~

21 ~~(i) as federal employees' retirement;~~

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

24 ~~(iii) as an annuity, pension, or endowment under private  
25 or corporate retirement plans or systems;~~

1 ~~(i) all benefits paid under the Montana teachers'  
2 retirement system that are specified as exempt from taxation  
3 by 19-4-706;~~

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

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

10 ~~(l)(H) Montana income tax refunds or tax refund  
11 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 subsection--(2)(h)--must  
23 combine--benefits specified--in--subsections--(2)(h)(i)--through  
24 (2)(h)(iii) to--exclude--up--to not--more--than a--total--of--\$3,600  
25 from--net--income."~~

1 NEW SECTION. Section 4. Retirement adjustment --  
2 annual deposit -- STATUTORY APPROPRIATION. (1) There is  
3 allocated STATUTORILY APPROPRIATED, AS PROVIDED IN 17-7-502,  
4 FROM THE GENERAL FUND to the public employees' retirement  
5 board and the teachers' retirement board the amounts  
6 provided in subsection (2) for distribution to members of  
7 retirement systems as provided in [section 4 5].

8 (2) On or before May 1 of each year, the state  
9 treasurer shall pay to the public employees' retirement  
10 board and the teachers' retirement board an amount equal to  
11 ~~2%~~ 2 1/2% of the total benefits paid by both systems during  
12 the prior calendar year. In distributing the appropriations  
13 to the boards, the treasurer shall consult with the boards  
14 to determine the amounts necessary for uniform payments to  
15 members. The amount of the benefits must be certified to the  
16 treasurer by the public employees' retirement board and the  
17 teachers' retirement board no later than April 1 of each  
18 year. For the purpose of this section, the public employees'  
19 retirement board shall collect information and certify the  
20 amount of benefits paid pursuant to Title 19, chapters 10  
21 and 11. Not later than February 15 of each year, the boards  
22 of trustees of local police retirement funds, provided in  
23 19-10-201, and boards of trustees of local fire department  
24 relief associations, provided in 19-11-104, shall submit  
25 reports on benefit payments containing information requested

1 by the public employees' retirement board.

2 **NEW SECTION. Section 5. Montana retirement adjustment**  
 3 **payments -- public employees' retirement board.** (1) Not  
 4 later than June 1 of each year, the public employees'  
 5 retirement board and the teachers' retirement board shall  
 6 fix and pay to those members entitled to it an annual  
 7 adjustment payment. The adjustment payment is determined for  
 8 each system based upon the benefits paid by the system in  
 9 the prior calendar year and on the annual benefit to which  
 10 each Montana resident member of the system is entitled.

11 (2) (a) The public employees' retirement board shall  
 12 allocate money appropriated for retirement adjustment to the  
 13 public retirement systems in Title 19, chapters 3 and 5  
 14 through 13. The allocation to each system must be made based  
 15 upon the annual amount each system's benefits payments bears  
 16 to the amount paid by all of the systems specified in this  
 17 subsection.

18 (b) The teachers' retirement board shall administer the  
 19 money appropriated for retirement adjustment to the  
 20 teachers' retirement system in Title 19, chapter 4.

21 (3) (a) Each member of a system listed in subsection  
 22 (2) who is a resident of the state and who is entitled to an  
 23 annual benefit is entitled to a retirement adjustment  
 24 payment. Each retirement system specified in subsection (2),  
 25 through the public employees' retirement board, the

1 teachers' retirement board, or a local retirement board of  
 2 trustees, as appropriate, shall distribute its allocation of  
 3 the money appropriated for retirement adjustment to its  
 4 members entitled to adjustment payments. The governing board  
 5 of each system set forth in subsection (2) shall provide an  
 6 annual adjustment payment that is a percentage of annual  
 7 benefits.

8 (b) The methodology that the public employees'  
 9 retirement board and the teachers' retirement board use to  
 10 calculate adjustments for systems administered by them must  
 11 be adopted by rule pursuant to Title 2, chapter 4.

12 (c) For the purposes of this section, a "Montana  
 13 resident" means a person domiciled in the state and any  
 14 person who maintains a permanent place of abode within the  
 15 state.

16 **Section 6.** Section 19-3-105, MCA, is amended to read:

17 **"19-3-105. Exemption from taxes and legal process.** The  
 18 right of a person to a retirement allowance or any other  
 19 benefit under this chapter and the moneys money in the fund  
 20 created under this chapter ~~is~~ are not:

21 (1) subject to execution, garnishment, attachment, or  
 22 any other process;

23 (2) subject to state, county, or municipal taxes except  
 24 for:

25 (a) a retirement allowance received in excess of

1 \$3,600; or

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

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

7 **Section 7.** Section 19-4-706, MCA, is amended to read:

8 "19-4-706. **Exemption from taxation and legal process.**

9 The pensions, annuities, or any other benefits accrued or  
10 accruing to any person under the provisions of the  
11 retirement system and the accumulated contributions and cash  
12 and securities in the various funds of the retirement system  
13 are:

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

16 (a) a retirement allowance received in excess of  
17 \$3,600; or

18 (b) a withdrawal paid under 19-4-603 of a member's  
19 contributions picked up by an employer after June 30, 1985,  
20 as provided in 19-4-602;

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

24 (3) unassignable except as specifically provided in  
25 this chapter."

1 **Section 8.** Section 19-5-704, MCA, is amended to read:

2 "19-5-704. **Exemption from taxes and legal process.** (1)  
3 ~~Any--money~~ Money received or to be paid as a member's  
4 annuity, state annuity, or return of deductions or the right  
5 of any of these ~~shall--be~~ is exempt from ~~any--state--or~~  
6 ~~municipal--tax-and-from~~ levy, sale, garnishment, attachment,  
7 or any other process ~~whatsoever~~ and ~~shall--be~~ is unassignable  
8 except as specifically provided in 19-5-705.

9 (2) The first \$3,600 received under this chapter is  
10 exempt from state, county, or municipal taxation."

11 **Section 9.** Section 19-6-705, MCA, is amended to read:

12 "19-6-705. **Exemption from taxes and legal process.** Any  
13 money received or to be paid as a member's annuity, state  
14 annuity, or return of deductions or the right of any of  
15 these is:

16 (1) exempt from any state, county, or municipal tax  
17 except for:

18 (a) a retirement allowance received in excess of  
19 \$3,600; or

20 (b) a refund paid under 19-6-403 of a member's  
21 contributions picked up by an employer after June 30, 1985,  
22 as provided in 19-6-402;

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

25 (3) unassignable except as specifically provided in

1 19-6-706."

2 **Section 10.** Section 19-7-705, MCA, is amended to read:

3 **"19-7-705. Exemption from taxes and legal process.** Any  
4 money received or to be paid as a member's annuity, state  
5 annuity, or return of deductions or the right of any of  
6 these is:

7 (1) exempt from any state, county, or municipal tax  
8 except for:

9 (a) a retirement allowance received in excess of  
10 \$3,600; or

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

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

16 (3) unassignable except as specifically provided in  
17 19-7-706."

18 **Section 11.** Section 19-8-805, MCA, is amended to read:

19 **"19-8-805. Exemption from taxes and legal process.** Any  
20 money received or to be paid as a member's annuity, state  
21 annuity, or return of deductions or the right of any of  
22 these is:

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

25 (a) a retirement allowance received in excess of

1 \$3,600; or

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

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

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

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

10 **"19-9-1005. Exemption from taxes.** Any money paid in  
11 accordance with the provisions of this chapter is exempt  
12 from any state, county, or municipal tax except for:

13 (1) a retirement allowance received in excess of  
14 \$3,600; or

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

18 **Section 13.** Section 19-10-504, MCA, is amended to read:

19 **"19-10-504. Protection of benefits from legal process**  
20 **and taxation. (1)** The benefits provided for in this part are  
21 not subject to execution, garnishment, attachment, or the  
22 operation of bankruptcy, insolvency, or other process of law  
23 and are unassignable except as specifically provided in  
24 19-10-505.

25 (2) The first \$3,600 of benefits received under this

1 part are exempt from state, county, and municipal taxation."

2 **Section 14.** Section 19-11-612, MCA, is amended to read:

3 "19-11-612. Protection of benefits from legal process  
4 and taxation -- nonassignability. (1) Any payments made or  
5 to be made under this chapter are not subject to judgments,  
6 garnishment, execution, or other legal process. A person  
7 entitled to a pension may not assign the right, and the  
8 association and trustees may not recognize any assignment or  
9 pay over any sum so assigned.

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

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

13 "19-12-407. Payment of pension benefits -- exemption  
14 from taxation. (1) All payments under the volunteer  
15 firefighters' pension plan must be approved by the board and  
16 paid by warrants drawn upon the pension trust fund, payable  
17 to the order of the individual qualified volunteer  
18 firefighter or the beneficiary as provided in 19-12-405(1).

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

21 **Section 16.** Section 19-13-1003, MCA, is amended to  
22 read:

23 "19-13-1003. **Exemption from taxes.** Any money paid in  
24 accordance with the provisions of this chapter is exempt  
25 from any state, county, or municipal tax except for:

1 (1) the retirement allowance received in excess of  
2 \$3,600; or

3 (2) refunds paid under 19-13-602 of the member's  
4 contributions picked up by an employer after June 30, 1987,  
5 as provided in 19-13-601."

6 **Section 17.** Section 19-21-212, MCA, is amended to read:

7 "19-21-212. **Exemption from taxation, legal process, and**  
8 **assessments.** All contracts, benefits, and contributions  
9 under the optional retirement program and the earnings  
10 thereon are:

11 (1) except for a retirement allowance received in  
12 excess of \$3,600, exempt from any state, county, or  
13 municipal tax;

14 (2) not subject to execution, garnishment, attachment,  
15 or other process;

16 (3) not covered or assessable by an insurance guaranty  
17 association; and

18 (4) unassignable except as specifically provided in the  
19 contracts."

20 **SECTION 18.** SECTION 17-7-502, MCA, IS AMENDED TO READ:

21 "17-7-502. **Statutory appropriations -- definition --**  
22 **requisites for validity.** (1) A statutory appropriation is an  
23 appropriation made by permanent law that authorizes spending  
24 by a state agency without the need for a biennial  
25 legislative appropriation or budget amendment.

1 (2) Except as provided in subsection (4), to be  
2 effective, a statutory appropriation must comply with both  
3 of the following provisions:

4 (a) The law containing the statutory authority must be  
5 listed in subsection (3).

6 (b) The law or portion of the law making a statutory  
7 appropriation must specifically state that a statutory  
8 appropriation is made as provided in this section.

9 (3) The following laws are the only laws containing  
10 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
11 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
12 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;  
13 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;  
14 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;  
15 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
16 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;  
17 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;  
18 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;  
19 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;  
20 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;  
21 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;  
22 [section 3]; and section 13, House Bill No. 861, Laws of  
23 1985.

24 (4) There is a statutory appropriation to pay the  
25 principal, interest, premiums, and costs of issuing, paying,

1 and securing all bonds, notes, or other obligations, as due,  
2 that have been authorized and issued pursuant to the laws of  
3 Montana. Agencies that have entered into agreements  
4 authorized by the laws of Montana to pay the state  
5 treasurer, for deposit in accordance with 17-2-101 through  
6 17-2-107, as determined by the state treasurer, an amount  
7 sufficient to pay the principal and interest as due on the  
8 bonds or notes have statutory appropriation authority for  
9 such payments. (In subsection (3), pursuant to sec. 10, Ch.  
10 664, L. 1987, the inclusion of 39-71-2504 terminates June  
11 30, 1991.)"

12 NEW SECTION. SECTION 19. STUDY OF TAXATION OF  
13 RETIREMENT BENEFITS. THE REVENUE OVERSIGHT COMMITTEE IS  
14 REQUESTED TO STUDY THE TAXATION OF RETIREMENT BENEFITS,  
15 INCLUDING ALL RELEVANT PERMUTATIONS OF INCOME SOURCES AND  
16 AGE CRITERIA. THE REVENUE OVERSIGHT COMMITTEE IS ALSO TO  
17 KEEP ABREAST OF LEGAL DEVELOPMENTS INVOLVING THE TAXATION OF  
18 RETIREMENT BENEFITS. THE REVENUE OVERSIGHT COMMITTEE IS TO  
19 REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE 53RD  
20 LEGISLATURE.

21 NEW SECTION. Section 20. Severability. If a part of  
22 [this act] is invalid, all valid parts that are severable  
23 from the invalid part remain in effect. If a part of [this  
24 act] is invalid in one or more of its applications, the part  
25 remains in effect in all valid applications that are

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1 severable from the invalid applications.

2 NEW SECTION. **Section 21.** Codification instruction.  
3 [Sections ~~3-and 4~~ AND 5] are intended to be codified as an  
4 integral part of Title 19, and the provisions of Title 19  
5 apply to [sections ~~3-and 4~~ AND 5].

6 NEW SECTION. **Section 22.** Effective date ~~---retroactive~~  
7 ~~applicability.~~ [This act] ~~is--effective--on--passage--and~~  
8 ~~approval--and--applies--retroactively,--within--the--meaning--of~~  
9 ~~1-2-1997,~~ APPLIES to taxable years beginning after December  
10 31, ~~1990~~ 1992.

-End-

Page 1 of 3

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill No. 226, met, considered, and we recommend that Senate Bill No. 226 (reference copy - salmon) be amended as follows:

1. Title, line 12.  
Following: "SYSTEMS,"  
Insert: "TO PROVIDE THAT THE AMOUNT OF THE EXEMPTION BE REDUCED BY \$2 FOR EVERY \$1 OF FEDERAL ADJUSTED GROSS INCOME RECEIVED BY THE TAXPAYER IN EXCESS OF \$30,000;"
2. Title, line 21.  
Strike: "A DELAYED"  
Insert: "AN IMMEDIATE"
3. Title, line 22.  
Following: "~~DATE~~"  
Insert: "AND A RETROACTIVE APPLICABILITY DATE"
4. Page 8, line 25.  
Following: "(c)"  
Insert: "(i)"
5. Page 9, line 5.  
Following: "~~system~~"  
Insert: "except as provided in subsection (2)(c)(ii),"
6. Page 9, line 8.  
Following: line 7  
Insert: "(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:  
(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;  
(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;"

7. Page 21, line 1.  
Following: "\$3,600"  
Insert: "or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii)"
8. Page 21, line 17.  
Following: "\$3,600"  
Insert: "or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii)"
9. Page 22, line 9.  
Following: "\$3,600"  
Insert: "or the amount as determined pursuant to 15-30-111(2)(c)(ii)"
10. Page 22, line 19.  
Following: "\$3,600"  
Insert: "or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii)"
11. Page 23, line 10.  
Following: "\$3,600"  
Insert: "or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii)"
12. Page 24, line 1.  
Following: "\$3,600"  
Insert: "or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii)"
13. Page 24, line 14.  
Following: "\$3,600"  
Insert: "or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii)"
14. Page 24, line 25.  
Following: "\$3,600"  
Insert: "or the amount as determined pursuant to 15-30-111(2)(c)(ii)"
15. Page 25, line 10.  
Following: "\$3,600"  
Insert: "or the amount as determined pursuant to 15-30-111(2)(c)(ii)"
16. Page 25, line 19.  
Following: "\$3,600"  
Insert: "or the amount as determined pursuant to 15-30-111(2)(c)(ii)"

ADOPT

REJECT

871353CC.Sj1

FCCR #1  
SB 226  
871353CC.Sj1



17. Page 26, line 2.  
Following: "\$3,600"  
Insert: "or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii)"

18. Page 26, line 12.  
Following: "\$3,600"  
Insert: "or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii)"

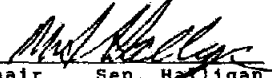
19. Page 29, line 7.  
Following: "applicability"  
Insert: "-- retroactive applicability"

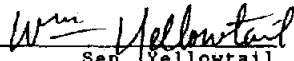
20. Page 29, line 9.  
Strike: "APPLIES"  
Insert: "is effective on passage and approval and applies retroactively, within the meaning of 1-2-109,"

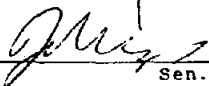
21. Page 29, line 10.  
Strike: "1992"  
Insert: "1990"

And that this Free Conference Committee report be adopted.

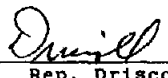
For the Senate:

  
Chair, Sen. Holligan

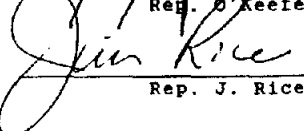
  
Sen. Yellowtail

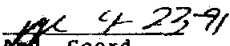
  
Sen. Harp

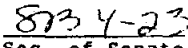
For the House:

  
Chair, Rep. Driscoll

  
Rep. O'Keefe

  
Rep. J. Rice

  
Sec. of Senate

  
Sec. of Senate



AN ACT TO RESTRUCTURE THE INCOME TAX ON PENSION BENEFITS BY EQUALIZING THE TAXATION OF ALL PENSION BENEFITS; TO PROVIDE AN EXEMPTION OF \$3,600 FROM TAXATION OF BENEFITS FROM FEDERAL, STATE, AND PRIVATE RETIREMENT, ANNUITY, PENSION, AND ENDOWMENT PLANS OR SYSTEMS; TO PROVIDE THAT THE AMOUNT OF THE EXEMPTION BE REDUCED BY \$2 FOR EVERY \$1 OF FEDERAL ADJUSTED GROSS INCOME RECEIVED BY THE TAXPAYER IN EXCESS OF \$30,000; TO PROVIDE FOR AN ADJUSTMENT PAYMENT TO RETIREES OF STATE, LOCAL, AND TEACHER RETIREMENT SYSTEMS WHO ARE MONTANA RESIDENTS; TO DIRECT A STUDY OF THE TAXATION OF RETIREMENT BENEFITS; TO PROVIDE A STATUTORY APPROPRIATION FOR ADJUSTMENT PAYMENTS; AMENDING SECTIONS 15-30-101, 15-30-111, 15-30-136, 17-7-502, 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1005, 19-10-504, 19-11-612, 19-12-407, 19-13-1003, AND 19-21-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to

retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana.

#### STATEMENT OF INTENT

A statement of intent is required for this bill because the public employees' retirement board and the teachers' retirement board must establish a percentage rate to provide a uniform adjustment payment rate to all members of public retirement systems as provided in [section 4].

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

Section 1. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by subsections (7) and (8) of 15-30-112, in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous

holdings.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June, 1980.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations,

remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred

compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts after cessation of regular employment received from fully matured, privately purchased annuity contracts.

~~(13)~~(14) "Purposely" is as defined in 45-2-101.

~~(14)~~(15) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(15)~~(16) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

~~(16)~~(17) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(17)~~(18) "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

~~(18)~~(19) "Taxpayer" includes any person or fiduciary, resident

or nonresident, subject to a tax imposed by this chapter and does not include corporations."

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

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

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

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

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

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

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

(a) all interest income from obligations of the United States

government, the state of Montana, county, municipality, district, or other political subdivision thereof;

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

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

(i) under the Federal Employees' Retirement Act;

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

(iii) as an annuity, pension, or endowment under any private or corporate retirement plan or system except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000

as shown on their joint return;

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

~~{e}~~ all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

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

~~{g}~~ (d) all Montana income tax refunds or tax refund credits thereof;

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

~~{i}~~ all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005;

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

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

~~{l}~~ (g) all benefits received under the workers' compensation laws;

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

~~{n}~~ all benefits paid under an optional retirement program that are specified as exempt from taxation by 19-21-212; and

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

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(1) shall include in his adjusted gross income the earnings and profits of the DISC in the

same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

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

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

(7) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from

adjusted gross income up to \$100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

~~(8) A person receiving benefits described in subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not exclude benefits described in subsection (2)(c) from adjusted gross income unless the benefits received under subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are less than \$3,600, in which case the person may combine benefits to exclude up to a total of \$3,600 from adjusted gross income. (Subsection (2)(k) terminates on occurrence of contingency see 37-Ch-6347-B-1983.)~~

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

"15-30-136. Computation of income of estates or trusts --

exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

- (a) dividends;
  - (b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision thereof, but excluding interest income from obligations of:
    - (i) the United States government or the state of Montana;
    - (ii) a school district; or
    - (iii) a county, municipality, district, or other political subdivision of the state;
  - (c) income from partnerships and other fiduciaries;
  - (d) gross rents and royalties;
  - (e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;
  - (f) gross profit from trade or business; and
  - (g) refunds recovered on federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.
- (2) In computing net income, there are allowed as deductions:
- (a) interest expenses deductible for federal tax purposes

according to section 163 of the Internal Revenue Code of 1954, as amended;

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

(c) that fiduciary's portion of depreciation or depletion which is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

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

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

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

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



~~(h) all benefits, not in excess of \$3,600, received:~~  
~~(i) as federal employees' retirement;~~  
~~(ii) as retirement from public employment in a state other than Montana; or~~  
~~(iii) as an annuity, pension, or endowment under private or corporate retirement plans or systems;~~  
~~(i) all benefits paid under the Montana teachers' retirement system that are specified as exempt from taxation by 19-4-706;~~  
~~(j) all benefits paid under the Montana Public Employees' Retirement System Act that are specified as exempt from taxation by 19-3-105;~~  
~~(k) all benefits paid under the Montana highway patrol officers' retirement system that are specified as exempt from taxation by 19-6-705;~~  
~~(i)(h) Montana income tax refunds or tax refund credits thereof;~~  
~~(m) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firemen or their surviving spouses or children;~~  
~~(n) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005.~~

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

with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect.

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

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

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

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

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

~~(6) A trust or estate excluding benefits under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not exclude benefits described in subsection (2)(h) from net income unless the benefits received under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) are less than \$3,600, in which case the trust or estate may~~

~~combine--benefits to--exclude--up--to a-total-of-\$37600-from-net income."~~

Section 4. Retirement adjustment -- annual deposit -- statutory appropriation. (1) There is statutorily appropriated, as provided in 17-7-502, from the general fund to the public employees' retirement board and the teachers' retirement board the amounts provided in subsection (2) for distribution to members of retirement systems as provided in [section 5].

(2) On or before May 1 of each year, the state treasurer shall pay to the public employees' retirement board and the teachers' retirement board an amount equal to 2 1/2% of the total benefits paid by both systems during the prior calendar year. In distributing the appropriations to the boards, the treasurer shall consult with the boards to determine the amounts necessary for uniform payments to members. The amount of the benefits must be certified to the treasurer by the public employees' retirement board and the teachers' retirement board no later than April 1 of each year. For the purpose of this section, the public employees' retirement board shall collect information and certify the amount of benefits paid pursuant to Title 19, chapters 10 and 11. Not later than February 15 of each year, the boards of trustees of local police retirement funds, provided in 19-10-201, and boards of trustees of local fire department relief associations, provided in 19-11-104, shall submit reports on benefit payments containing information requested by the public employees' retirement board.

Section 5. Montana retirement adjustment payments -- public employees' retirement board. (1) Not later than June 1 of each year, the public employees' retirement board and the teachers' retirement board shall fix and pay to those members entitled to it an annual adjustment payment. The adjustment payment is determined for each system based upon the benefits paid by the system in the prior calendar year and on the annual benefit to which each Montana resident member of the system is entitled.

(2) (a) The public employees' retirement board shall allocate money appropriated for retirement adjustment to the public retirement systems in Title 19, chapters 3 and 5 through 13. The allocation to each system must be made based upon the annual amount each system's benefits payments bears to the amount paid by all of the systems specified in this subsection.

(b) The teachers' retirement board shall administer the money appropriated for retirement adjustment to the teachers' retirement system in Title 19, chapter 4.

(3) (a) Each member of a system listed in subsection (2) who is a resident of the state and who is entitled to an annual benefit is entitled to a retirement adjustment payment. Each retirement system specified in subsection (2), through the public employees' retirement board, the teachers' retirement board, or a local retirement board of trustees, as appropriate, shall distribute its allocation of the money appropriated for retirement adjustment to its members entitled to adjustment payments. The

governing board of each system set forth in subsection (2) shall provide an annual adjustment payment that is a percentage of annual benefits.

(b) The methodology that the public employees' retirement board and the teachers' retirement board use to calculate adjustments for systems administered by them must be adopted by rule pursuant to Title 2, chapter 4.

(c) For the purposes of this section, a "Montana resident" means a person domiciled in the state and any person who maintains a permanent place of abode within the state.

Section 6. Section 19-3-105, MCA, is amended to read:

\*19-3-105. **Exemption from taxes and legal process.** The right of a person to a retirement allowance or any other benefit under this chapter and the moneys money in the fund created under this chapter is are not:

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

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

(a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii);  
or

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

(3) assignable except as in this chapter specifically

provided."

Section 7. Section 19-4-706, MCA, is amended to read:

\*19-4-706. **Exemption from taxation and legal process.** The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

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

(a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii);  
or

(b) a withdrawal paid under 19-4-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-4-602;

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

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

Section 8. Section 19-5-704, MCA, is amended to read:

\*19-5-704. **Exemption from taxes and legal process.** (1) Any money Money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these ~~shall--be~~ is exempt from ~~any-state-or-municipal-tax-and-from~~ levy,

sale, garnishment, attachment, or any other process ~~whatsoever~~ and ~~shall be~~ is unassignable except as specifically provided in 19-5-705.

(2) The first \$3,600 or the amount as determined pursuant to 15-30-111(2)(c)(ii) received under this chapter is exempt from state, county, or municipal taxation."

Section 9. Section 19-6-705, MCA, is amended to read:

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

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

(a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii);

or

(b) a refund paid under 19-6-403 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-6-402;

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

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

Section 10. Section 19-7-705, MCA, is amended to read:

"19-7-705. **Exemption from taxes and legal process.** Any money received or to be paid as a member's annuity, state annuity, or

return of deductions or the right of any of these is:

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

(a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii);

or

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

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

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

Section 11. Section 19-8-805, MCA, is amended to read:

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

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

(a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii);

or

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

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

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

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

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

(1) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii);  
or

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

Section 13. Section 19-10-504, MCA, is amended to read:

"19-10-504. Protection of benefits from legal process and taxation. (1) The benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-10-505.

(2) The first \$3,600 or the amount as determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part are exempt from state, county, and municipal taxation."

Section 14. Section 19-11-612, MCA, is amended to read:

"19-11-612. Protection of benefits from legal process and

taxation -- nonassignability. (1) Any payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum so assigned.

(2) The first \$3,600 or the amount as determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part are exempt from state, county, and municipal taxation."

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

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

(2) The first \$3,600 or the amount as determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part are exempt from state, county, and municipal taxation."

Section 16. Section 19-13-1003, MCA, is amended to read:

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

(1) the retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii);  
or

(2) refunds paid under 19-13-602 of the member's contributions picked up by an employer after June 30, 1987, as provided in 19-13-601."

Section 17. Section 19-21-212, MCA, is amended to read:

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

(1) except for a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii), exempt from any state, county, or municipal tax;

(2) not subject to execution, garnishment, attachment, or other process;

(3) not covered or assessable by an insurance guaranty association; and

(4) unassignable except as specifically provided in the contracts."

Section 18. Section 17-7-502, MCA, is amended to read:

"17-7-502. **Statutory appropriations -- definition --** requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following

provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; [section 3]; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with

17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. (In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)"

**Section 19. Study of taxation of retirement benefits.** The revenue oversight committee is requested to study the taxation of retirement benefits, including all relevant permutations of income sources and age criteria. The revenue oversight committee is also to keep abreast of legal developments involving the taxation of retirement benefits. The revenue oversight committee is to report its findings and recommendations to the 53rd legislature.

**Section 20. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 21. Codification instruction.** [Sections 4 and 5] are intended to be codified as an integral part of Title 19, and the provisions of Title 19 apply to [sections 4 and 5].

**Section 22. Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.