

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN RICHARD SIMPKINS**, on January 20,
1995, at 9:00 a.m.

ROLL CALL

Members Present:

Rep. Richard D. Simpkins, Chairman (R)
Rep. Matt Denny, Vice Chairman (Majority) (R)
Rep. Dore Schwinden, Vice Chairman (Minority) (D)
Rep. Patrick G. Galvin (D)
Rep. Dick Green (R)
Rep. Antoinette R. Hagener (D)
Rep. Harriet Hayne (R)
Rep. Sam Kitzenberg (R)
Rep. Bonnie Martinez (R)
Rep. Gay Ann Masolo (R)
Rep. William Rehbein, Jr. (R)
Rep. George Heavy Runner (D)
Rep. Susan L. Smith (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Lila V. Taylor (R)
Rep. Joe Tropila (D)

Members Excused: Rep. Matt Brainard (R)

Members Absent: none

Staff Present: Sheri Heffelfinger, Legislative Council
Christen Vincent, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 205
Executive Action: HB 106 DO PASS
HB 178 DO PASS AS AMENDED

{Tape: 1; Side: A;}

HEARING ON HB 205Opening Statement by Sponsor:

REP. JOHN JOHNSON, HD 2, stated the intention this bill is to clarify requirements in the Teachers' Retirement Act. This is a general housekeeping amendment to clarify those revisions that comply with the requirements in the Internal Revenue Code. He stated in 1993 the legislature adopted provisions for providing retirement benefits in case of divorce. This process is called family law order. There was an oversight in the coordination and construction of the bill where the final language was not codified under the Teachers' Retirement System. Since the legislature intended family law order be applied to the Teachers' Retirement System, these amendments are needed to clarify that to the Teachers' Retirement Board.

Over the past fifteen years, the definition of compensation that may be included in the calculation of retirement benefits has been amended many times. It continues to limit a member's ability to inflate their final year's salary. As a result **REP. JOHNSON** feels it is necessary to clarify the compensation and correct the ten percent cap on compensation. Some people have questioned if compensation is important to the Teachers' Retirement System. There is a section in this bill that includes a clarification to what is meant by earned compensation. He stated there are several other housekeeping proposals and amendments that are required to comply with the federal laws and regulations.

Proponents' Testimony:

Tom Biladeau, Research Director, Montana Education Association, stated he supported some of the changes that are referenced in this bill when they first came into law five years ago. He stated this is a fair way to treat employees and expeditiously handle the administrative tasks that are covered by the Teachers' Retirement System. He stated this bill cleans up and clarifies the system's law so they understand what it entitles. He believes this is a good bill that will help others understand how the Teachers' Retirement System works. He asked the committee to give this bill a do pass.

Norm Frasier, School Administrators of Montana, stated they too supported the bill in 1989 when it became law. He said there were a lot of questions, however. He stated this bill helps clarify some of those questions. He said he is satisfied things in this bill will help clarify the questions asked of him.

John Malee, Montana Federation of Teachers, stated they were in support of this bill.

Don Waldron, Montana Rural Education Association, stated they support this bill. He said the only question they had about the

bill is on page seven about the county superintendents. He stated that issue has been addressed with this bill.

Opponents' Testimony: none

Informational Testimony:

David Senn, Executive Director, Teachers' Retirement System, provided written testimony. EXHIBIT 1

{Tape: 1; Side: A; Approx. Counter: 748; Comments: Because of background noise REP. SMITH'S questions were inaudible.}

Questions From Committee Members and Responses:

REP. SMITH asked if this money is over what the person would ordinarily pay.

Mr. Senn stated ordinary contributions for an employee are 7.044% and for the employer are 7.47%. He stated this is contributed on the gross salaries he showed in the first column. Contributions below are in addition to what has already been contributed to funds.

REP. SMITH asked if the employee chooses to have their retirement based on the higher figure would their employer be required to match it.

Mr. Senn stated she was correct.

CHAIRMAN SIMPKINS stated that this is current law and this bill won't change that law.

REP. STOVALL asked Mr. Senn to explain what he meant by stating the committee's recommendations do not constitute formal legislative action.

CHAIRMAN SIMPKINS stated that Sheri Heffelfinger would be the best one to answer that question. He also reminded the committee that they were talking about the interim retirement committee.

Sheri Heffelfinger stated the committee on Public Employee Retirement Systems is a statutory committee that the legislature created in 1993 to review retirement proposals prior to the introduction in the legislature. They were asked to provide a recommendation on how the legislature should vote on the proposal. This is the purpose of the report. It is not formal legislative action. They did take a vote of members to say what they would recommend the legislature do.

CHAIRMAN SIMPKINS stated it was the committee's report to the legislature and their recommendation on a particular piece of legislation that was in question.

REP. LILA TAYLOR asked if these people who served on the committee gave this report.

CHAIRMAN SIMPKINS stated that was correct.

REP. SQUIRES asked, in regard to what **REP. SMITH** had been talking about and the discussion about this being the employee's decision, if the retirement package was negotiated in regard to contracts and contributions.

Mr. Senn stated part of the incentives an individual receives are part of what is bargained.

REP. SQUIRES stated this would be the employee's option but there are certain other things that are left to the decision making process. She believed that institutions are aware of what is happening.

REP. DENNY asked if there are any counties that do not elect their superintendent.

Mr. Senn stated there are counties where there is city/county consolidation. He stated these people are typically appointed and if they need a certain person who is certified to perform a certain function of county superintendent, they can contract those services with someone else.

Closing by Sponsor:

REP. JOHNSON closed by stating this is a clarifying bill. It clarifies many issues that have accumulated in the past few years. It adds no money to the general fund. This bill will not take any money away from anyone.

Discussion:

REP. GALVIN stated he didn't believe the committee understood what an interim committee is and what the purpose is. He felt this should be explained to the committee.

CHAIRMAN SIMPKINS stated an interim committee was established because annually there are anywhere from twenty to forty bills that deal with the retirement systems that are managed by the state. Each retirement system has a board, however it is all established by law. There are variables in the retirement system depending upon the activity involved. In order to avoid the leap-frogging, the interim retirement board processed the bills first. At the time of the meeting the committee makes recommendations to either pass or not pass. There were problems with the retirement committee because not all the data was available and not all of the legislation was on time. They sought consolidation of groups and agreements prior to coming before the committee. The only thing he found questionable in this particular legislation was the housing. The housing given

to a teacher is not counted as part of the earnings because the school system can't deduct this because of a technicality to keep it out of the complicated federal system. Technically, a teacher would receive a salary and pay for their own housing. He thought this seemed reasonable to include in the retirement. Due to the complexity of the federal regulations it was decided not to alter the system. If interim committees are established by law and appropriate funding is provided in that law the committee is formed without the vote of the members. Those that come in through resolution and without funding will be voted on by the members. He stated that the committee could take time to study the interim committee and postpone executive action on this bill.

EXECUTIVE ACTION ON HB 106

Motion: REP. GAY ANN MASOLO MOVED THAT HB 106 DO PASS.

Discussion:

REP. TROPILA asked if something had been found out about the window of opportunity.

Sheri Heffelfinger stated she was able to talk to David Senn and the drafter of the bill, but Greg Groepper could not be reached. She stated it was her understanding the one-year window is there because the university system, under the law that was passed last year, developed their own program allowed by the statute they provided for that window.

CHAIRMAN SIMPKINS stated Tom Schneider had talked to him and had mentioned the main reason for the window of opportunity is because of teachers' contracts versus state employees.

{Tape: 1; Side: B;.}

REP. REHBEIN asked if there would be any fiscal impact to the teachers' retirement system.

CHAIRMAN SIMPKINS stated there would be no fiscal impact to the teachers' retirement system. He stated there might be some work impact. This is the way it was done before at no cost to the state and no cost to the retirement system. He stated there was money deposited into the retirement system which was saved from each department.

REP. SQUIRES stated the departments made that decision for everyone and everyone else got the option and these people were accidentally excluded from this option. They need to be brought into the option.

Vote: The motion carried unanimously with REP. MATT BRAINARD voting yes by proxy.

EXECUTIVE ACTION ON HB 178

Motion: REP. JOE TROPILA MOVED THAT HB 178 DO PASS.

Discussion:

Sheri Heffelfinger explained the only substantial change in the bill is on page 2, line 16, where subsection (a) is stricken. This makes that section applicable to everything under subsection 1, in 18-1-202. Public contracts for services with commodities or property is under subsection 1(a). Previously the bidding security requirement only applied to contracts and didn't apply to subsection (b), which was the public bonds for indebtedness. By striking subsection (a) this now applies to both. This is why section 17-5-806 is repealed. This is the statute that applied to public bonds. This consolidates it and make both sections the same.

Vote: The motion carried unanimously.

Motion: REP. JOE TROPILA MOVED HB 178 DO PASS AS AMENDED.

Vote: The motion carried unanimously with REP. MATT BRAINARD voting by proxy.

Motion/Vote: REP. JOE TROPILA MADE A RETROACTIVE MOTION TO PLACE HB 210 ON THE CONSENT CALENDAR. Motion failed with REP. BILL REHBEIN voting no.

ADJOURNMENT

Adjournment: 10:00 a.m.


RICHARD SIMPKINS, Chairman


CHRISTEN VINCENT, Secretary

RS/cdv

HOUSE OF REPRESENTATIVES

State Administration

ROLL CALL

DATE 1-20-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Simpkin, Chairman	✓		
Rep. Matt Denny, Vice Chairman, Majority	✓		
Rep. Dore Schwinden, Vice Chair, Minority	✓		
Rep. Matt Brainard			✓
Rep. Pat Galvin	✓		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Harriet Hayne	✓		
Rep. George Heavy Runner	✓		
Rep. Sam Kitzenberg	✓		
Rep. Bonnie Martinez	✓		
Rep. Gay Ann Masolo	✓		
Rep. Bill Rehbein	✓		
Rep. Susan Smith	✓		
Rep. Jay Stovall	✓		
Rep. Carolyn Squires	✓		
Rep. Lila Taylor	✓		
Rep. Joe Tropila	✓		



HOUSE STANDING COMMITTEE REPORT

January 20, 1995

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 178 (first reading copy -- white) do pass as amended.

Signed: *Dick Simpkins*
Dick Simpkins, Chair

And, that such amendments read:

1. Page 2, line 26.
Strike: "agents"
Insert: "agencies"

-END-

Committee Vote:
Yes 18, No 0.

171103SC.Hdh

Amendments to House Bill No. 178
First Reading Copy

For the Committee on House State Administration

Prepared by Sheri S. Heffelfinger
January 19, 1995

1. Page 2, line 26.
Strike: "agents"
Insert: "agencies"



HOUSE STANDING COMMITTEE REPORT

January 20, 1995

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that **House Bill 106** (first reading copy -- white) do pass.

Signed: *Dick Simpkins*
Dick Simpkins, Chair

Committee Vote:
Yes 18, No 0.

171031SC.Hdh

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State Administration

DATE 1-20-95 BILL NO. HB NUMBER 106

MOTION: Rep. Masolo moved Do Pass

NAME	AYE	NO
Rep. Dick Simpkin, Chairman	✓	
Rep. Matt Denny, Vice Chairman, Majority	✓	
Rep. Dore Schwinden, Vice Chairman, Minority	✓	
Rep. Matt Brainard <i>Proxy</i>	✓	
Rep. Pat Galvin	✓	
Rep. Dick Green	✓	
Rep. Toni Hagener	✓	
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner	✓	
Rep. Sam Kitzenberg	✓	
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo	✓	
Rep. Bill Rehbein	✓	
Rep. Susan Smith	✓	
Rep. Jay Stovall	✓	
Rep. Carolyn Squires	✓	
Rep. Lila Taylor	✓	
Rep. Joe Tropila	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State Administration

DATE 1-20-95 BILL NO. HB NUMBER 178

MOTION: Rep. Tropila moved the amendment

NAME	AYE	NO
Rep. Dick Simpkin, Chairman	✓	
Rep. Matt Denny, Vice Chairman, Majority	✓	
Rep. Dore Schwinden, Vice Chairman, Minority	✓	
Rep. Matt Brainard <i>Proxii</i>	✓	
Rep. Pat Galvin	✓	
Rep. Dick Green	✓	
Rep. Toni Hagener	✓	
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner	✓	
Rep. Sam Kitzenberg	✓	
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo	✓	
Rep. Bill Rehbein	✓	
Rep. Susan Smith	✓	
Rep. Jay Stovall	✓	
Rep. Carolyn Squires	✓	
Rep. Lila Taylor	✓	
Rep. Joe Tropila	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State Administration

DATE 1-20-95 BILL NO. HB NUMBER 178

MOTION: Rep. Tropila moved Do Pass as amended

NAME	AYE	NO
Rep. Dick Simpkin, Chairman	✓	
Rep. Matt Denny, Vice Chairman, Majority	✓	
Rep. Dore Schwinden, Vice Chairman, Minority	✓	
Rep. Matt Brainard <i>Proxy</i>	✓	
Rep. Pat Galvin	✓	
Rep. Dick Green	✓	
Rep. Toni Hagener	✓	
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner	✓	
Rep. Sam Kitzenberg	✓	
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo	✓	
Rep. Bill Rehbein	✓	
Rep. Susan Smith	✓	
Rep. Jay Stovall	✓	
Rep. Carolyn Squires	✓	
Rep. Lila Taylor	✓	
Rep. Joe Tropila	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State Administration

DATE 1-20-95 BILL NO. HB NUMBER 210

MOTION: Rep. Tropila made a retroactive motion to place the bill on the consent calendar.

NAME	AYE	NO
Rep. Dick Simpkin, Chairman	✓	
Rep. Matt Denny, Vice Chairman, Majority	✓	
Rep. Dore Schwinden, Vice Chairman, Minority	✓	
Rep. Matt Brainard	✓	
Rep. Pat Galvin	✓	
Rep. Dick Green	✓	
Rep. Toni Hagener	✓	
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner	✓	
Rep. Sam Kitzenberg	✓	
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo	✓	
Rep. Bill Rehbein		✓
Rep. Susan Smith	✓	
Rep. Jay Stovall	✓	
Rep. Carolyn Squires	✓	
Rep. Lila Taylor	✓	
Rep. Joe Tropila	✓	

COMMITTEE PROXY

Date 1/20/95

I request to be excused from the STATE ADMINISTRATION
Committee meeting this date because of other commitments. I
desire to leave my proxy vote with Rep. Denny.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 106	✓	

SENATE BILL/AMENDMENT	AYE	NO

Rep. Matt Brainard
(Signature)

Summary of House Bill No. 178

Prepared by Sheri S. Heffelfinger
for the Committee on House State Administration
January 20, 1995

OVERVIEW

Current law provides that bids on public bonds (indebtedness) may only be secured by cash, check, cashiers check, money order, or bank draft. (Section 17-5-806, MCA.)

However, current law (section 18-1-203, MCA) provides that bids for anything other than for the purchase of indebtedness (i.e. timber contracts) may be secured by cash, check, cashiers check, money order, bank draft, or financial guaranty bonds.

HB 178 repeals 17-5-806 and lifts the restrictions in 18-1-203 so that bids for the purchase or sale of public bonds as well as bids for anything other than for the sale or purchase of public bonds (i.e. timber contracts) have the same bid security requirements and the option of using a financial guaranty bond.

SECTION ANALYSIS

Section 1. Amends 18-1-202.

Nothing is substantively changed in this section except that subsection (3) is amended (see pg 2, lines 9 through 12) to clarify that the solicitation for all types of bids must specify that security for the bid must be provided under the terms of section 18-1-203.

Section 2. Amends 18-1-203.

Section 18-1-203 currently provides three ways by which a bid may be secured: cash, check or money order, or a surety corporation (i.e. a financial guaranty bond).

However, this law now only applies to the types of bids addressed under 18-1-202(1)(a), i.e., anything but public bonds on indebtedness.

The amendment on page 2, line 16 strikes the reference to "(a)" so that, if this bill passes, the provisions of 18-2-203(1) will also apply to bids for the purchase and sale of public bonds (indebtedness), which is subsection (1)(b) of 18-2-202. Thus, the bid security provisions of 18-1-203 are expanded to include public bonds issued under Title 17, chapter 5, part 8, so the language on page 3, line 2 [subsection (4)] is stricken.

Section 17-5-806 is no longer needed so it is repealed.

EXHIBIT A
DATE 1-20-95
HB 178



Committee on Public Employee Retirement Systems

Room 138 State Capitol
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53rd Montana Legislature

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SHERI HEFFELFINGER
RESEARCHER
DAVID NISS
ATTORNEY

HB 205

REPORT ON LC 529

Purpose of Report

The Committee on Public Employee Retirement Systems (CPERS) is required by law (Ch. 549, L. 1993) to report to the Legislature on the fiscal and policy implications of each retirement proposal it reviews and to make recommendations for Legislative action. The Committee's recommendations do not constitute formal Legislative action on a bill and the Committee may not prevent a retirement bill from being introduced. This report applies to the proposal as presented to CPERS, not to any changes made subsequent to the adoption of this report. This report is informational and its purpose is to promote fair and consistent retirement policy for Montana's public employees.

Proposal Summary

This proposal affects only the Teachers' Retirement System (TRS) and was initially presented in two parts, Proposal #4 and Proposal #5, which were later combined. Three additional provisions were subsequently added to the proposal.

Proposal #4 included:

- clarification of the 10% cap whereby the compensation reported in one year of a member's average final compensation cannot exceed the previous year's compensation by more than 10%;
- clarification of "earned compensation" and elimination of the value of school housing as part of a teacher's earned compensation;
- clarification that the TRS Board may require a disability allowance recipient to submit an earnings statement and other earnings documentation and that the allowance can be reduced when earnings exceed the allowed amount;
- additional statutory language to comply with an IRS requirement limiting the amount of compensation that may be reported to the retirement system; and

EXHIBIT 1
DATE 1-20-95
HB 205

- the elimination of the TRS tax-deferred annuity program, which TRS has been contracting out since 1989.

Proposal #5 provided that elected county superintendents who are elected after July 1, 1995, may elect to be members of TRS, but not PERS.

Three additional changes were made. These changes were to:

- provide that a member with contributions in another qualified retirement plan may transfer their accumulated contributions to TRS in order to purchase additional service in TRS that a member is eligible to qualify;
- define that a "quorum" of members on the TRS Board is three; and
- codify family law orders under the Teachers' Retirement Act.

The original proposal was presented to the CPERS on December 1, 1994, at the request of the Teachers' Retirement Board. The recommendations summarized below were adopted on December 2, 1994.

Issue Summary

Dave Senn, executive secretary of the Teachers' Retirement Board, provided testimony that the proposal does not substantively change benefits. The changes are to assist in the system's administration.

Policy Considerations

CPERS members discussed the issue that teachers who receive school housing would be losing a benefit if the value of the housing is not included as earned compensation because, in effect, the change reduces the amount of compensation that may be used in calculating a member's retirement benefit. Mr. Senn explained that reporting the value of housing increases the amount that districts have to pay into the retirement system, which is why most districts do not report the housing anyway. Since the value of housing cannot be deducted from the employer payroll or as a percentage of the member's salary, Mr. Senn testified that it is better that the value of housing be taken out of the retirement system. Mr. Senn reported that there are very few district who actually provide housing.

Fiscal Considerations

The proposal does not require additional funding.

Effects on Other Systems

Elected County Superintendents would no longer be able to elect membership under PERS. However, no current members of PERS are affected.

Committee Recommendations

Amendments: None.

Recommended Action:

DO PASS on Proposal #4 (adopted with two "No" votes)

DO PASS on Proposal #5 (adopted unanimously)

The three additional provisions were not considered by the CPERS and the CPERS makes no recommendations on these portions of the bill.

Note: This report was prepared by Sheri Heffelfinger, Researcher, Montana Legislative Council based on the minutes of the December 1-2, 1994, and December 29, 1994, CPERS meetings.

TESTIMONY
HOUSE BILL 205
TEACHERS' RETIREMENT SYSTEM
PRESENTED BY DAVID L. SENN
JANUARY 20, 1995

Purpose

General house keeping amendments to clarify provisions of the TRS act and to comply with requirements of the Internal Revenue Code. This act will not create any new benefit features or unfunded liabilities. There is no administrative or actuarial fiscal impact.

Background

There are eleven sections in this bill clarifying different provisions of the Teachers' Retirement System. The following is a brief history of the major provisions of this act.

The 1993 legislature adopted provisions for dividing retirement benefits in case of divorce. This process is called a Family Law Order (FLO). This legislation was introduced at the request of the Teachers' and Public Employees' Retirement Boards. However, due to an oversight in a coordination instruction contained in the bill the final language was not codified under the Teachers' Retirement System, Title 19, Chapter 20. Since the legislature intended that family law orders apply to TRS, these amendments are necessary to clarify that the TRS board can approve a FLO.

Over the past 15 years the legislature has amended the definition of compensation that may be included in the calculation of retirement benefits many times in a continuing effort to limit members ability to inflate their final year's salaries. Inflated salaries result in larger but under funded retirement benefits.

The legislature has rewritten the definition of earned compensation, required that members and their employers pay the actuarial cost if termination pay is used to increase compensation, and limited increases in compensation from year to year to no more than ten percent of the preceding year.

Also, the continuing changes in the definition of taxable income has caused members and school clerks to question what compensation is reportable to TRS. Therefore, this legislation includes a clarification of what is meant by earned compensation.

EXHIBIT 2
DATE 1-20-95
HB 205

Included in this legislation are several house keeping proposals, and amendments that are required to comply with and/or to take advantage of federal laws and regulations. i.e. defining a quorum, clarifying membership for county superintendents, limiting compensation as required under the IRS code, authorizing transfers or rollovers as allow by the IRS, and repealing the requirement that the board offer a tax-deferred annuity program.

Section By Section Description

Section 1. 19-2-907 Alternate payees -- family law orders. This amendment will remove the reference to TRS (chapter 20) from the Public Employees' Retirement statutes covering family law orders. Section 9 will enact family law orders under the Teachers' Retirement System. Without these amendments family law orders may not be approved by the Teachers' Retirement Board.

Section 2. 19-20-101 (5)(b) average final compensation. This is a clarification the calculation of the 10% cap and is not intended to change the current calculation made by the System. The cap is calculated as a rolling cap whereby each year used in the calculation of average final compensation cannot exceed the previous year's compensation by more than 10%. However, members have the option to use earnings in excess of the 10% cap if they and their employer contribute the actuarial cost to fund the increased benefits.

When the cap was adopted the statement of intent said; "It is the intent of the legislature to provide equitable retirement benefits to all members of the Teachers' Retirement System based on their normal service and salary. The legislature further intends to limit the effect on the retirement system of isolated salary increases received by selected individuals through promotions or one-time salary enhancements during their final years of employment."

The Teachers' Retirement Board was directed to adopt administrative rules to allow for exemption to the cap. Under the administrative rules adopted by the Board, increases that result from collective bargaining or increases granted to all similarly situated employees, summer employment, retirees returning to employment, or a change in employers, are exempt from the cap.

Following are two examples of the 10% cap used in the calculation of retirement benefits.

LAST 5 YEARS	SALARIES	EXEMPT EARNINGS	EARNINGS CAP	10% CAP	
1	60,447	NA			
2	57,729	NA			
3	95,513	22,522	63,501	9,490	
4	103,643	29,861	69,851	3,931	BENEFIT W/O CAP \$3,883.60
5	100,434	7,221	76,837	16,376	BENEFIT W CAP \$3,497.32
TOTAL				29,797	DIFFERENCE \$ 386.28

In the above example if the member wished to use earnings in excess of the 10% cap, the actuarial cost would be; employee \$18,008 and employer \$18,966.

LAST 5 YEARS	SALARIES	EXEMPT EARNINGS	CAPPED EARNINGS	10% CAP	
1	38,095	NA			
2	45,706	NA			
3	68,256	0	50,277	17,979	
4	68,761	0	55,304	13,457	BENEFIT W/O CAP \$2,759.03
5	65,000	0	60,835	4,165	BENEFIT W CAP \$2,272.81
TOTAL				35,601	DIFFERENCE \$ 486.22

In the above example if the member wished to use earnings in excess of the 10% cap, the actuarial cost would be; employee \$26,794 and employer \$28,322.

Section 2. 19-20-101 (8) Earned compensation. This amendment clarifies that the member's gross compensation, before any tax-deferred deductions, is reportable to TRS. The "value of housing" which is included in the current definition has been dropped because it is simply not possible to verify if housing is reported when a member is provided a house or what value should be reported.

However, legal counsel has advised us that members with housing currently reported would have a contractual right to that benefit requiring that the value continue to be reported.

We also find that many employers are not aware that housing should be reported, or report housing only in the final three years, and we fear that if we actively pursued it's reporting we could increase the retirement costs for many small school districts.

Section 3. 19-20-203 Officers and employees of retirement board. A quorum of the Teachers' Retirement Board is not defined under the Teachers' Retirement Act. The board is made up of six members appointed by the governor, one of which must be the Superintendent of Public Instruction. This amendment will define a quorum as three members.

Section 4. 19-20-302 Active membership. This amendment is necessary because current law leaves open many questions regarding retirement system membership for elected county superintendents. When the Teachers' Retirement System was enacted in 1937, county superintendents were required to become members. However, in 1971 the definition of a teacher under the School Laws of Montana was amended and "county superintendent" was deleted from the definition.

Currently we find county superintendents under PERS, TRS or neither retirement system. This proposal will give county superintendents elected to office after July 1, 1995, the option to elect membership under TRS, but not PERS. The current retirement status of county superintendents elected to office before July 1, 1995, will remain unchanged. Therefore, this section must be effective July 1, 1995.

Section 5. 19-20-602 Annuity savings fund -- member's contribution. Amendment to clean up reference to earned compensation and average final compensation as amended in Section 2.

Section 6. 19-20-706 Exemption from taxation and legal process. Amendment necessary to strike the reference to the public employees' retirement statutes, 19-2-902 regarding family law orders. Section 9 will enact family law orders under TRS.

Section 7. 19-20-904 Adjustment of allowance. Current law refers to adjusting the disability recipient's "pension" and "annuity" if a recipient has compensation in excess of the amount they are allowed to earn. As benefits are calculated today these terms mean retirement allowance. This amendment is necessary to clarify how the members benefit will be adjusted if they receive compensation in excess of the amount they are allowed to earn.

Disability retirement benefits are reduced if the member's earnings plus the member's disability benefit exceed their average final compensation. For example a member receiving a disability benefit of \$5,000 and an average final compensation of \$20,000 would be eligible to earn up to \$15,000 without loss of benefits.

This proposal will also grant the board discretion to require an annual earnings statements. Currently members receiving a disability allowance must annually submit an earnings statement even if it is obvious that they can no longer be gainfully employed. Failure to submit an earnings statement could result in the cancellation of retirement benefits. Members who obviously cannot be gainfully employed should not be required to continue to submit an annual statement.

Section 8. COMPENSATION LIMIT - (IRS REQUIREMENT). Federal law Section 401(a)(17), limits the amount of compensation that may be reported to the retirement system and thus used in the calculation of retirement benefits. For 1995 this limit is \$150,000.00 and will be adjusted for inflation in the future. Currently no member of TRS is in danger of exceeding this limit.

All retirement plans are required to include Section 401(a)(17) of the Internal Revenue Code in their plan document. This amendment was prepared by the system's actuary to be in compliance with the Code and will grandfather members of TRS prior to July 1, 1995, to no compensation limits. To comply with the federal regulations, this Section must be effective July 1, 1995.

If this provision is not enacted this year the TRS could lose it's IRS qualified status. If a plan loses it's qualified status, the investment earnings of the plan will be subject to taxation and accrued benefits will be taxable to the members.

Section 9. ALTERNATE PAYEE -- FAMILY LAW ORDERS. This amendment was prepared by the legislative council so that the Family Law Orders could be codified under the Teachers' Retirement Act.

Section 10. ROLLOVER OR TRANSFER OF PUBLIC EMPLOYEE ACCUMULATED CONTRIBUTIONS. This amendment will allow members who are eligible to purchase additional service to rollover contributions from another qualified public retirement plan into the Teachers' Retirement System. Members will then be able to retain the tax-deferred status on contributions and continue to apply these dollars to their future retirement.

Section 11. REPEAL 19-20-207. The section 19-20-207, MCA., requires that the Board establish a Tax-Deferred Annuity program. When enacted, the TRS was about the only option available to members wishing to use a tax-deferred annuity to supplement their retirement income. In 1989 the Board recognized that these programs had become a thriving private sector industry in which we were in direct competition. Therefore, the Board, through a Request For Proposal contracted with the Variable Annuity Life Insurance Company to take over our annuity accounts. In this legislative session the board is asking the legislature to repeal 19-20-207, MCA.

**TESTIMONY
HOUSE BILL 205
TEACHERS' RETIREMENT SYSTEM
PRESENTED BY DAVID L. SENN
JANUARY 20, 1995**

Purpose

General house keeping amendments to clarify provisions of the TRS act and to comply with requirements of the Internal Revenue Code. This act will not create any new benefit features or unfunded liabilities. There is no administrative or actuarial fiscal impact.

Background

There are eleven sections in this bill clarifying different provisions of the Teachers' Retirement System. The following is a brief history of the major provisions of this act.

The 1993 legislature adopted provisions for dividing retirement benefits in case of divorce. This process is called a Family Law Order (FLO). This legislation was introduced at the request of the Teachers' and Public Employees' Retirement Boards. However, due to an oversight in a coordination instruction contained in the bill the final language was not codified under the Teachers' Retirement System, Title 19, Chapter 20. Since the legislature intended that family law orders apply to TRS, these amendments are necessary to clarify that the TRS board can approve a FLO.

Over the past 15 years the legislature has amended the definition of compensation that may be included in the calculation of retirement benefits many times in a continuing effort to limit members ability to inflate their final year's salaries. Inflated salaries result in larger but under funded retirement benefits.

The legislature has rewritten the definition of earned compensation, required that members and their employers pay the actuarial cost if termination pay is used to increase compensation, and limited increases in compensation from year to year to no more than ten percent of the preceding year.

Also, the continuing changes in the definition of taxable income has caused members and school clerks to question what compensation is reportable to TRS. Therefore, this legislation includes a clarification of what is meant by earned compensation.

Included in this legislation are several house keeping proposals, and amendments that are required to comply with and/or to take advantage of federal laws and regulations. i.e. defining a quorum, clarifying membership for county superintendents, limiting compensation as required under the IRS code, authorizing transfers or rollovers as allow by the IRS, and repealing the requirement that the board offer a tax-deferred annuity program.

Section By Section Description

Section 1. 19-2-907 Alternate payees -- family law orders. This amendment will remove the reference to TRS (chapter 20) from the Public Employees' Retirement statutes covering family law orders. Section 9 will enact family law orders under the Teachers' Retirement System. Without these amendments family law orders may not be approved by the Teachers' Retirement Board.

Section 2. 19-20-101 (5)(b) average final compensation. This is a clarification the calculation of the 10% cap and is not intended to change the current calculation made by the System. The cap is calculated as a rolling cap whereby each year used in the calculation of average final compensation cannot exceed the previous year's compensation by more than 10%. However, members have the option to use earnings in excess of the 10% cap if they and their employer contribute the actuarial cost to fund the increased benefits.

When the cap was adopted the statement of intent said; "It is the intent of the legislature to provide equitable retirement benefits to all members of the Teachers' Retirement System based on their normal service and salary. The legislature further intends to limit the effect on the retirement system of isolated salary increases received by selected individuals through promotions or one-time salary enhancements during their final years of employment."

The Teachers' Retirement Board was directed to adopt administrative rules to allow for exemption to the cap. Under the administrative rules adopted by the Board, increases that result from collective bargaining or increases granted to all similarly situated employees, summer employment, retirees returning to employment, or a change in employers, are exempt from the cap.

Following are two examples of the 10% cap used in the calculation of retirement benefits.

LAST 5 YEARS	SALARIES	EXEMPT EARNINGS	EARNINGS CAP	10% CAP	
1	60,447	NA			
2	57,729	NA			
3	95,513	22,522	63,501	9,490	
4	103,643	29,861	69,851	3,931	BENEFIT W/O CAP \$3,883.60
5	100,434	7,221	76,837	16,376	BENEFIT W CAP \$3,497.32
TOTAL				29,797	DIFFERENCE \$ 386.28

In the above example if the member wished to use earnings in excess of the 10% cap, the actuarial cost would be; employee \$18,008 and employer \$18,966.

LAST 5 YEARS	SALARIES	EXEMPT EARNINGS	CAPPED EARNINGS	10% CAP	
1	38,095	NA			
2	45,706	NA			
3	68,256	0	50,277	17,979	
4	68,761	0	55,304	13,457	BENEFIT W/O CAP \$2,759.03
5	65,000	0	60,835	4,165	BENEFIT W CAP \$2,272.81
TOTAL				35,601	DIFFERENCE \$ 486.22

In the above example if the member wished to use earnings in excess of the 10% cap, the actuarial cost would be; employee \$26,794 and employer \$28,322.

Section 2. 19-20-101 (8) Earned compensation. This amendment clarifies that the member's gross compensation, before any tax-deferred deductions, is reportable to TRS. The "value of housing" which is included in the current definition has been dropped because it is simply not possible to verify if housing is reported when a member is provided a house or what value should be reported.

However, legal counsel has advised us that members with housing currently reported would have a contractual right to that benefit requiring that the value continue to be reported.

We also find that many employers are not aware that housing should be reported, or report housing only in the final three years, and we fear that if we actively pursued it's reporting we could increase the retirement costs for many small school districts.

Section 3. 19-20-203 Officers and employees of retirement board. A quorum of the Teachers' Retirement Board is not defined under the Teachers' Retirement Act. The board is made up of six members appointed by the governor, one of which must be the Superintendent of Public Instruction. This amendment will define a quorum as three members.

Section 4. 19-20-302 Active membership. This amendment is necessary because current law leaves open many questions regarding retirement system membership for elected county superintendents. When the Teachers' Retirement System was enacted in 1937, county superintendents were required to become members. However, in 1971 the definition of a teacher under the School Laws of Montana was amended and "county superintendent" was deleted from the definition.

Currently we find county superintendents under PERS, TRS or neither retirement system. This proposal will give county superintendents elected to office after July 1, 1995, the option to elect membership under TRS, but not PERS. The current retirement status of county superintendents elected to office before July 1, 1995, will remain unchanged. Therefore, this section must be effective July 1, 1995.

Section 5. 19-20-602 Annuity savings fund -- member's contribution. Amendment to clean up reference to earned compensation and average final compensation as amended in Section 2.

Section 6. 19-20-706 Exemption from taxation and legal process. Amendment necessary to strike the reference to the public employees' retirement statutes, 19-2-902 regarding family law orders. Section 9 will enact family law orders under TRS.

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

State Administration COMMITTEE

DATE 1-20-94

BILL NO. HB205 SPONSOR(S) Johnson

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Tom Bilodeau	MEA	✓	
Pete Joseph	MFT		
John Inguin	JAM	/	
Jim Foster	MREA	✓	
Don Waldron	MREA	✓	
David Senn	TRS	✓	
John Malae	M.F.T.	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.