

SENATE BILL NO. 449

INTRODUCED BY TURNAGE, HIMSL, BARDANOUVE
BY REQUEST OF SENATE LEGISLATIVE ADMINISTRATION COMMITTEE

IN THE SENATE

February 12, 1981	Introduced and referred to Committee on Finance and Claims.
February 19, 1981	Committee recommend bill do pass. Report adopted. Statement of intent attached.
February 20, 1981	Bill printed and placed on members' desks.
February 21, 1981	Second reading, do pass.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

March 3, 1981	Introduced and referred to Committee on State Administration.
March 27, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 30, 1981	On motion rules suspended. Bill allowed to be transmitted on the 71st legislative day. Motion adopted.
March 31, 1981	Second reading, concurred in.

March 31, 1981

On motion rules suspended and
bill placed on third reading
this day.

Third reading, concurred in
as amended. Ayes, 88; Noes, 7.

IN THE SENATE

April 1, 1981

Returned from House with
amendments.

April 10, 1981

Second reading, amendments
concurred in.

April 11, 1981

Third reading, amendments
concurred in. Ayes, 43;
Noes, 5. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. 449
2 INTRODUCED BY *Turner, Tim (Baldassare)*
3 BY REQUEST OF SENATE LEGISLATIVE ADMINISTRATION COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS RELATING TO DEFERRED COMPENSATION PLANS FOR PUBLIC
7 EMPLOYEES SO AS TO ESTABLISH A STATE INVESTMENT ACCOUNT; TO
8 AUTHORIZE LOCAL GOVERNMENTS TO PARTICIPATE IN THE STATE
9 DEFERRED COMPENSATION PROGRAM; AND TO AUTHORIZE THE PLAN
10 ADMINISTRATOR TO ASSESS ADMINISTRATIVE COSTS AGAINST THE
11 PROGRAM; AMENDING SECTIONS 19-2-101 THROUGH 19-2-103,
12 19-2-201 THROUGH 19-2-204, MCA; AND REPEALING SECTION
13 19-2-205, MCA."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 19-2-101, MCA, is amended to read:
17
18 "19-2-101. Employee--defined Definitions. For the
19 purposes of this chapter, "employee"--means--any person
20 whether appointed--elected--or--under--contract--providing
21 services--for--the--state--county--city--town--or--other
22 political subdivision for which compensation is paid unless
23 a different meaning is plainly implied by the context, the
24 following definitions apply:

25 *111. "Administrator" means the department of
administration created by 2-15-1001 or an appropriate*

1 officer of a political subdivision.
2 (2) "Deferred compensation" means that income which an
3 employee may legally defer in a deferred compensation plan
4 established under this chapter pursuant to the rulings of
5 the Internal Revenue Service and which, while invested, is
6 exempt from state and federal income tax on the employee's
7 contribution and on the interest, dividends, and capital
8 gains until ultimately distributed to the employee.
9 (3) "Department" means the department of
10 administration created by 2-15-1001.
11 (4) "Eligible deferred compensation plan" means a plan
12 meeting the requirements of section 457 of the Internal
13 Revenue Code.
14 (5) "Employee" means any person, including independent
15 contractors and elected officials, receiving compensation
16 from the state or a political subdivision for performing
17 services.
18 (6) "Fund" means the state deferred compensation
19 investment accounts.
20 (7) "Participant" means an employee enrolled in the
21 plan.
22 (8) "Political subdivision" means any city, town,
23 county, or other political subdivision of the state of
24 Montana."
25 Section 2. Section 19-2-102, MCA, is amended to read:

-2- INTRODUCED BILL
SB 449

1 "19-2-102. Deferred compensation programs permitted --
 2 rules. The--state--or--any--county--city--town--or--other
 3 political--subdivision--may--establish--after--reaching
 4 agreement--with--any--employee--or--the--employee's
 5 representative, if one has been designated or certified,--a
 6 program--for--the--employee--to--defer--any--portion--of--his
 7 compensation up to--the--maximum--allowed--by--the--Internal
 8 Revenue--Code--in--a--plan--qualified--for--exemption--under
 9 applicable--sections--of--the--Internal--Revenue--Code. (1) The
 10 state or a political subdivision may establish deferred
 11 compensation plans that are eligible under section 457 of
 12 the Internal Revenue Code of 1954, as amended or superseded,
 13 and in compliance with regulations of the U.S. department of
 14 the treasury. Eligible deferred compensation plans for
 15 employees may be established in addition to any retirement,
 16 pension, or other benefit plan administered by the state or
 17 a political subdivision.

18 (2) An employee may enter into a written agreement
 19 with the state or a political subdivision to defer a part of
 20 his compensation for the purpose of investment as provided
 21 by this chapter. The total amount deferred may not exceed
 22 the employee's annual salary and may not exceed the amounts
 23 permitted under applicable sections of the Internal Revenue
 24 Code.

25 (3) Compensation deferred pursuant to this chapter is

1 included as compensation for the purpose of computing
 2 retirement or pension benefits.
 3 (4) The amount of compensation deferred under this
 4 chapter may be used to purchase:
 5 (a) shares in a state deferred compensation investment
 6 fund established pursuant to title 17 for the purpose of
 7 administering a state invested deferred compensation plan.
 8 All contributions made by participants in the state deferred
 9 compensation investment fund and all interest or increase in
 10 the fund shall be credited to the fund. These funds may be
 11 commingled with other state investment funds, but separate
 12 accounts must be maintained for participants in the state
 13 deferred compensation investment fund. The assets of the
 14 fund must be maintained for the benefit of participants and
 15 may not be diverted except for paying the reasonable
 16 expenses for administering the state deferred compensation
 17 investment fund.
 18 (b) savings accounts in federally insured financial
 19 institutions;
 20 (c) life insurance contracts and fixed annuity and
 21 variable annuity contracts from companies that are licensed
 22 to do business in the state and subject to regulation by the
 23 insurance commissioner; or
 24 (d) any combination of subsections (a), (b), or (c)
 25 above as specified by the participant. The shares,

1 accounts or contracts so purchased are the exclusive
 2 property of and stand in the name of the state of Montana or
 3 a political subdivision until distributed to an employee in
 4 a manner provided in the plan agreement established by the
 5 administrator.

6 (5) The administrator may allocate any necessary costs
 7 against the assets and interest earnings accumulated in
 8 funds, accounts, or contracts established under this
 9 chapter.

10 (6) The department or appropriate officer of a
 11 political subdivision shall promulgate rules not
 12 inconsistent with this chapter for the proper administration
 13 of deferred compensation plans established under this
 14 chapter.

15 Section 3. Section 19-2-103, MCA, is amended to read:
 16 "19-2-103. No effect on other retirement programs --
 17 taxes deferred. The deferred compensation program
 18 established by this chapter shall exist and serve in
 19 addition to retirement, pension, or benefit systems,
 20 including plans qualifying under section 403(b) of the
 21 Internal Revenue Code of 1954, established by the state,
 22 county, city, town, or other a political subdivision, and no
 23 deferral of income under the deferred compensation program
 24 shall affect a reduction of any retirement, pension, or
 25 other benefit provided by law. However, any sum deferred

1 under the deferred compensation program shall not be subject
 2 to taxation until distribution is actually made to the
 3 employee participant or his beneficiary because of
 4 separation from service, retirement, or unforeseeable
 5 emergency. For purposes of this chapter any qualified
 6 private pension plans now in existence shall qualify."

7 Section 4. Section 19-2-201, MCA, is amended to read:
 8 "19-2-201. Department of administration authorized to
 9 make contracts with political subdivisions. The department
 10 of administration is hereby authorized to enter into a
 11 contractual agreement with any employee or his
 12 representative if one has been designated or certified on
 13 behalf of the state to defer a portion of the employee's
 14 compensation through a qualified plan agreed upon by the
 15 employee or his representative. The department of
 16 administration may establish rules for the proper operation
 17 of plans agreed upon under this section. III. A political
 18 subdivision may become a contracting employer and make all
 19 or specified groups of its employees eligible to participate
 20 in the state-administered deferred compensation program by a
 21 contract entered into and between the department and the
 22 legislative body of the political subdivision. The contract
 23 may include any provisions that are consistent with this
 24 chapter and necessary for the administration of the deferred
 25 compensation program.

1 (2) The approval and termination of the contract shall
 2 be subject to the following provisions:

3 (a) The legislative body of the political subdivision
 4 shall adopt a resolution to enter into a contract with the
 5 department authorizing its employees to participate in the
 6 state-administered deferred compensation program. The
 7 resolution must contain a summary of the major provisions of
 8 the state-administered deferred compensation program.

9 (b) The contract must specify that the political
 10 subdivision agrees that the department is the administrator
 11 of the deferred compensation program and agrees to the rules
 12 and conditions established by the department for the proper
 13 administration of the plan.

14 (c) The contract may be revoked or amended in the
 15 manner prescribed in the original approval of contracts."

16 Section 5. Section 19-2-202, MCA, is amended to read:

17 "19-2-202. Administration of program. The coordination
 18 of--the deferred compensation program shall be under--the
 19 direction--of administered by the department of
 20 administration or--its--designee or the appropriate officer
 21 designated by the county--city--town--or--other a political
 22 subdivision. Payroll deductions shall be made, in each
 23 instance, by the appropriate payroll officer. The
 24 coordinator administrator of the deferred compensation
 25 program may contract with a private corporation or

1 institution for providing consolidated billing and other
 2 administrative services and may hire necessary auditors,
 3 marketing representatives, or consultants. The
 4 administrator may solicit bids for options under 19-2-102.
 5 All contracts with marketing representatives must provide
 6 that all options in 19-2-102 be presented in an unbiased
 7 manner and in a manner so as to conform to applicable rules
 8 promulgated by the administrator, be reported on a periodic
 9 basis to all employees participating in eligible deferred
 10 compensation plans, and not be the subject of unreasonable
 11 solicitation of employees to participate in the program. All
 12 costs or fees in relation to the marketing of options
 13 provided under 19-2-102 shall be paid by the underwriting
 14 companies selected by the administrator or by the interest
 15 earnings accruing to the assets of the state deferred
 16 compensation investment fund."

17 Section 6. Section 19-2-203, MCA, is amended to read:
 18 "19-2-203. Payments authorized. Notwithstanding any
 19 other provision of law to the contrary, the department of
 20 administration or--the--appropriate--officer--of--the--county--
 21 city--town--or--other a political subdivision designated to
 22 coordinate--the--deferred--compensation--program is hereby
 23 authorized to make payments to qualified eligible deferred
 24 compensation plans designated by this chapter. Such
 25 payments shall not be construed to be a prohibited use of

1 the general assets of the state--county--city--town--or
2 other or a political subdivision."

3 Section 7. Section 19-2-204, MCA, is amended to read:
4 "19-2-204. Public entity not to be liable. There shall
5 be no financial liability of the state--county--city--town
6 or other a political subdivision for any losses incurred by
7 any eligible deferred compensation plan established under
8 this chapter."

9 Section 8. Repealer. Section 19-2-205, MCA, is
10 repealed.

-End-

STATEMENT OF INTENT

SENATE BILL 449

Senate Finance and Claims Committee

1 STATEMENT OF INTENT
2 SENATE BILL 449
3 Senate Finance and Claims Committee
4
5 A statement of intent for this bill is necessary in
6 that section 2 grants the Department of Administration or
7 the appropriate officer of a political subdivision of the
8 State of Montana the authority to promulgate rules for the
9 proper administration of deferred compensation plans.

10 It is contemplated that the rules will address the
11 following:

- 12 (1) procedures for enrolling employees in the plan;
- 13 (2) the content of the plan agreement that is
- 14 consistent with section 457 of the Internal Revenue Code;

15 (3) rules for granting financial hardships due to
16 unforeseen emergencies;

17 (4) rules regarding the participation of political
18 subdivisions in the state deferred compensation plan; and

19 (5) rules governing the performance of marketing
20 representatives or consultants who may be hired to present
21 the plan to employees.

22 First adopted by the Senate Finance and Claims
23 Committee on the 19th day of February, 1981.

Approved by Committee
on Finance & Claims

SENATE BILL NO. 449

INTRODUCED BY TURNAGE, HIMSL, BARDANOUVE

BY REQUEST OF SENATE LEGISLATIVE ADMINISTRATION COMMITTEE

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS RELATING TO DEFERRED COMPENSATION PLANS FOR PUBLIC
7 EMPLOYEES SO AS TO ESTABLISH A STATE INVESTMENT ACCOUNT; TO
8 AUTHORIZE LOCAL GOVERNMENTS TO PARTICIPATE IN THE STATE
9 DEFERRED COMPENSATION PROGRAM; AND TO AUTHORIZE THE PLAN
10 ADMINISTRATOR TO ASSESS ADMINISTRATIVE COSTS AGAINST THE
11 PROGRAM; AMENDING SECTIONS 19-2-101 THROUGH 19-2-103,
12 19-2-201 THROUGH 19-2-204, MCA; AND REPEALING SECTION
13 19-2-205, MCA."

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

Section 1. Section 19-2-101, MCA, is amended to read:

17 "19-2-101. Employee--defined Definitions. For the
18 purposes of this chapter, "employee"--means--any persons
19 whether appointed--elected--or--under--contract--providing
20 services--for--the--statey--county--city--town--or--other
21 polittical--subdivision--for--which--compensation--is--paid-- unless
22 a different meaning is plainly implied by the context, the
23 following definitions apply:

24 (1) "Administrator" means the department of
25 administration created by 2-15-1001 or an appropriate

1 officer of a political subdivision.

9 {31} "Department" means the department of
10 administration created by 2-15-1001.

11 (4) "Eligible deferred compensation plan" means a plan
12 meeting the requirements of section 457 of the Internal
13 Revenue Code.

14 (5) "Employee" means any person, including independent
15 contractors and elected officials, receiving compensation
16 from the state or a political subdivision for performing
17 services.

18 (6) "Fund" means the state deferred compensation
19 investment account.

20 (7) "Participant" means an employee enrolled in the
21 plan.

22 (8) "Political subdivision" means any city, town,
23 county, or other political subdivision of the state of
24 Montana."

25 Section 2. Section 19-2-102, MCA, is amended to read:

1 "19-2-102. Deferred compensation programs permitted --
 2 rules. The state or any county, city, town, or other
 3 political subdivision may establish, after reaching
 4 agreement with any employee or the employee's
 5 representative, if one has been designated or certified, a
 6 program for the employee to defer any portion of his
 7 compensation up to the maximum allowed by the Internal
 8 Revenue Code in a plan qualified for exemption under
 9 applicable sections of the Internal Revenue Code. (1) The
 10 state or a political subdivision may establish deferred
 11 compensation plans that are eligible under section 457 of
 12 the Internal Revenue Code of 1954, as amended or superseded,
 13 and in compliance with regulations of the U.S. Department of
 14 the Treasury. Eligible deferred compensation plans for
 15 employees may be established in addition to any retirement,
 16 pension, or other benefit plan administered by the state or
 17 a political subdivision.

18 (2) An employee may enter into a written agreement
 19 with the state or a political subdivision to defer a part of
 20 his compensation for the purpose of investment as provided
 21 by this chapter. The total amount deferred may not exceed
 22 the employee's annual salary and may not exceed the amounts
 23 permitted under applicable sections of the Internal Revenue
 24 Code.

25 (3) Compensation deferred pursuant to this chapter is

1 included as compensation for the purpose of computing
 2 retirement or pension benefits.
 3 (4) The amount of compensation deferred under this
 4 chapter may be used to purchase:
 5 (a) shares in a state deferred compensation investment
 6 fund established pursuant to Title 17 for the purpose of
 7 administering a state invested deferred compensation plan.
 8 All contributions made by participants in the state deferred
 9 compensation investment fund and all interest or increase in
 10 the fund shall be credited to the fund. These funds may be
 11 commingled with other state investment funds, but separate
 12 accounts must be maintained for participants in the state
 13 deferred compensation investment fund. The assets of the
 14 fund must be maintained for the benefit of participants and
 15 may not be diverted except for paying the reasonable
 16 expenses for administering the state deferred compensation
 17 investment fund.
 18 (b) savings accounts in federally insured financial
 19 institutions;
 20 (c) life insurance contracts and fixed annuity and
 21 variable annuity contracts from companies that are licensed
 22 to do business in the state and subject to regulation by the
 23 insurance commissioner; or
 24 (d) any combination of subsections (a), (b), or (c)
 25 above, as specified by the participant. The shares,

1 accounts, or contracts so purchased are the exclusive
 2 property of and stand in the name of the state of Montana or
 3 a political subdivision until distributed to an employee in
 4 a manner provided in the plan agreement established by the
 5 administrator.

6 (5) The administrator may allocate any necessary costs
 7 against the assets and interest earnings accumulated in
 8 funds, accounts, or contracts established under this
 9 chapter.

10 (6) The department or appropriate officer of a
 11 political subdivision shall promulgate rules not
 12 inconsistent with this chapter for the proper administration
 13 of deferred compensation plans established under this
 14 chapter."

15 Section 3. Section 19-2-103, MCA, is amended to read:
 16 "19-2-103. No effect on other retirement programs --
 17 taxes deferred. The deferred compensation program
 18 established by this chapter shall exist and serve in
 19 addition to retirement, pension, or benefit systems,
 20 including plans qualifying under section 403(b) of the
 21 Internal Revenue Code of 1954, established by the state,
 22 county, city, town, or other a political subdivision, and no
 23 deferral of income under the deferred compensation program
 24 shall affect a reduction of any retirement, pension, or
 25 other benefit provided by law. However, any sum deferred

1 under the deferred compensation program shall not be subject
 2 to taxation until distribution is actually made to the
 3 employee participant or his beneficiary because of
 4 separation from service, retirement, or unforeseeable
 5 emergency. For purposes of this chapter any qualified
 6 private pension plans now in existence shall qualify."

7 Section 4. Section 19-2-201, MCA, is amended to read:
 8 "19-2-201. Department of administration authorized to
 9 make contracts with political subdivisions. The--department
 10 of--administration--is--hereby--authorized--to--enter--into--a
 11 contractual--agreement--with--any--employee--or--his
 12 representative--if--one--has--been--designated--or--certified--on
 13 behalf--of--the--state--to--defer--a--portion--of--the--employee's
 14 compensation--through--a--qualified--plan--agreed--upon--by--the
 15 employee--or--his--representative--The--department--of
 16 administration--may--establish--rules--for--the--proper--operation
 17 of--plans--agreed--upon--under--this--section. III. A political
 18 subdivision may become a contracting employer and make all
 19 or specified groups of its employees eligible to participate
 20 in the state-administered deferred compensation program by a
 21 contract entered into and between the department and the
 22 legislative body of the political subdivision. The contract
 23 may include any provisions that are consistent with this
 24 chapter and necessary for the administration of the deferred
 25 compensation program.

1 (2) The approval and termination of the contract shall
 2 be subject to the following provisions:

3 (a) The legislative body of the political subdivision
 4 shall adopt a resolution to enter into a contract with the
 5 department authorizing its employees to participate in the
 6 state-administered deferred compensation program. The
 7 resolution must contain a summary of the major provisions of
 8 the state-administered deferred compensation program.

9 (b) The contract must specify that the political
 10 subdivision agrees that the department is the administrator
 11 of the deferred compensation program and agrees to the rules
 12 and conditions established by the department for the proper
 13 administration of the plan.

14 (c) The contract may be revoked or amended in the
 15 manner prescribed in the original approval of contracts."

16 Section 5. Section 19-2-202, MCA, is amended to read:

17 "19-2-202. Administration of program. The coordination
 18 of--the deferred compensation program shall be under--the
 19 direction--of administered by the department of
 20 administration or--its--designee or the appropriate officer
 21 ~~designated by the county--city--town--or--other a political~~
 22 subdivision. Payroll deductions shall be made, in each
 23 instance, by the appropriate payroll officer. The
 24 coordinator administrator of the deferred compensation
 25 program may contract with a private corporation or

1 institution for providing consolidated billing and other
 2 administrative services and may hire necessary auditors,
 3 marketing representatives, or consultants. The
 4 administrator may solicit bids for options under 19-2-102.
 5 All contracts with marketing representatives must provide
 6 that all options in 19-2-102 be presented in an unbiased
 7 manner and in a manner so as to conform to applicable rules
 8 promulgated by the administrator, be reported on a periodic
 9 basis to all employees participating in eligible deferred
 10 compensation plans, and not be the subject of unreasonable
 11 solicitation of employees to participate in the program. All
 12 costs or fees in relation to the marketing of options
 13 provided under 19-2-102 shall be paid by the underwriting
 14 companies selected by the administrator or by the interest
 15 earnings accruing to the assets of the state deferred
 16 compensation investment fund."

17 Section 6. Section 19-2-203, MCA, is amended to read:
 18 "19-2-203. Payments authorized. Notwithstanding any
 19 other provision of law to the contrary, the department of
 20 administration or--the--appropriate--officer--of--the--county--
 21 city--town-- or other a political subdivision designated to
 22 coordinate--the--deferred--compensation--program is hereby
 23 authorized to make payments to qualified eligible deferred
 24 compensation plans designated by this chapter. Such
 25 payments shall not be construed to be a prohibited use of

1 the general assets of the state--county--city--town--or
2 other or a political subdivision."

3 Section 7. Section 19-2-204, MCA, is amended to read:
4 "19-2-204. Public entity not to be liable. There shall
5 be no financial liability of the state--county--city--town--
6 or other a political subdivision for any losses incurred by
7 any eligible deferred compensation plan established under
8 this chapter."

9 Section 8. Repealer. Section 19-2-205, MCA, is
10 repealed.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 449

3 Senate Finance and Claims Committee

4

5 A statement of intent for this bill is necessary in
6 that section 2 grants the Department of Administration or
7 the appropriate officer of a political subdivision of the
8 State of Montana the authority to promulgate rules for the
9 proper administration of deferred compensation plans.

10 It is contemplated that the rules will address the
11 following:

12 (1) procedures for enrolling employees in the plan;
13 (2) the content of the plan agreement that is
14 consistent with section 457 of the Internal Revenue Code;

15 (3) rules for granting financial hardships due to
16 unforeseen emergencies;

17 (4) rules regarding the participation of political
18 subdivisions in the state deferred compensation plan; and

19 (5) rules governing the performance of marketing
20 representatives or consultants who may be hired to present
21 the plan to employees.

22 First adopted by the Senate Finance and Claims
23 Committee on the 19th day of February, 1981.

SB 449

SENATE BILL NO. 449

INTRODUCED BY TURNAGE, HIMSL, BARDANDOUVE

BY REQUEST OF SENATE LEGISLATIVE ADMINISTRATION COMMITTEE

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS RELATING TO DEFERRED COMPENSATION PLANS FOR PUBLIC
7 EMPLOYEES SO AS TO ESTABLISH A STATE INVESTMENT ACCOUNT; TO
8 AUTHORIZE LOCAL GOVERNMENTS TO PARTICIPATE IN THE STATE
9 DEFERRED COMPENSATION PROGRAM; AND TO AUTHORIZE THE PLAN
10 ADMINISTRATOR TO ASSESS ADMINISTRATIVE COSTS AGAINST THE
11 PROGRAM; AMENDING SECTIONS 19-2-101 THROUGH 19-2-103,
12 19-2-201 THROUGH 19-2-204, MCA; AND REPEALING SECTION
13 19-2-205, MCA."

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

16 Section 1. Section 19-2-101, MCA, is amended to read:

17 "19-2-101. Employee--defined Definitions. For the

18 purposes of this chapter, "employee"--means--any person v-

19 whether appointed--elected--or--under--contract--providing

20 services--for--the--state--county--city--town--or--other

21 political subdivision for which compensation is paid, unless

22 a different meaning is plainly implied by the context, the

23 following definitions apply:

24 [1] "Administrator" means the department of
25 administration created by 2-15-1001 or an appropriate

1 officer of a political subdivision.

2 (2) "Deferred compensation" means that income which an
3 employee may legally defer in a deferred compensation plan
4 established under this chapter pursuant to the rulings of
5 the internal revenue service and which, while invested, is
6 exempt from state and federal income tax on the employee's
7 contribution and on the interest, dividends, and capital
8 gains until ultimately distributed to the employee.

9 13) "Department" means the department of
10 administration created by 2-15-1001.

11 (4) "Eligible deferred compensation plan" means a plan
12 meeting the requirements of section 457 of the Internal
13 Revenue Code.

14 (5) "Employee" means any person, including independent
15 contractors and elected officials, receiving compensation
16 from the state or a political subdivision for performing
17 services.

18 [6] "Fund" means the state deferred compensation
19 investment account.

20 171. "Participant" means an employee enrolled in the
21 plan.

22 (8) "Political subdivision" means any city, town,
23 county, or other political subdivision of the state of
24 Montana."

25 Section 2. Section 19-2-102, MCA, is amended to read:

1 "19-2-102. Deferred compensation programs permitted --
 2 rules. The--state--or--any--county,--city,--town--or--other
 3 political--subdivision--may--establish---after---reaching
 4 agreement---with---any---employee---or---the---employee's
 5 representative, if one has been designated or certified---a
 6 program--for--the--employee--to--defer--any--portion--of--his
 7 compensation--up--to--the--maximum--allowed--by--the--Internal
 8 Revenue--Code--in--a--plan--qualified--for--exemption--under
 9 applicable--sections--of--the--Internal--Revenue--Code. (1) The
 10 state or a political subdivision may establish deferred
 11 compensation plans that are eligible under section 457 of
 12 the Internal Revenue Code of 1954, as amended or superseded,
 13 and in compliance with regulations of the U.S. department of
 14 the treasury. Eligible deferred compensation plans for
 15 employees may be established in addition to any retirement,
 16 pension, or other benefit plan administered by the state or
 17 a political subdivision.

18 (2) An employee may enter into a written agreement
 19 with the state or a political subdivision to defer a part of
 20 his compensation for the purpose of investment as provided
 21 by this chapter. The total amount deferred may not exceed
 22 the employee's annual salary and may not exceed the amounts
 23 permitted under applicable sections of the Internal Revenue
 24 Code.

25 (3) Compensation deferred pursuant to this chapter is

1 included as compensation for the purpose of computing
 2 retirement or pension benefits.

3 (4) The amount of compensation deferred under this
 4 chapter may be used to purchase:

5 (a) shares in a state deferred compensation investment
 6 fund established pursuant to Title 17 for the purpose of
 7 administering a state invested deferred compensation plan.
 8 All contributions made by participants in the state deferred
 9 compensation investment fund and all interest or increase in
 10 the fund shall be credited to the fund. These funds may be
 11 commingled with other state investment funds, but separate
 12 accounts must be maintained for participants in the state
 13 deferred compensation investment fund. The assets of the
 14 fund must be maintained for the benefit of participants and
 15 may not be diverted except for paying the reasonable
 16 expenses for administering the state deferred compensation
 17 investment fund.

18 (b) savings accounts in federally insured financial
 19 institutions;

20 (c) life insurance contracts and fixed annuity and
 21 variable annuity contracts from companies that are licensed
 22 to do business in the state and subject to regulation by the
 23 insurance commissioner; or

24 (d) any combination of subsections (a), (b), or (c)
 25 above, as specified by the participant. The shares,

1 accounts, or contracts so purchased are the exclusive
 2 property of and stand in the name of the state of Montana or
 3 a political subdivision until distributed to an employee in
 4 a manner provided in the plan agreement established by the
 5 administrator.

6 (5) The administrator may allocate any necessary costs
 7 against the assets and interest earnings accumulated in
 8 funds, accounts, or contracts established under this
 9 chapter.

10 (6) The department or appropriate officer of a
 11 political subdivision shall promulgate rules not
 12 inconsistent with this chapter for the proper administration
 13 of deferred compensation plans established under this
 14 chapter."

15 Section 3. Section 19-2-103, MCA, is amended to read:
 16 "19-2-103. No effect on other retirement programs --
 17 taxes deferred. The deferred compensation program
 18 established by this chapter shall exist and serve in
 19 addition to retirement, pension, or benefit systems,
 20 including plans qualifying under section 403(b) of the
 21 Internal Revenue Code of 1954, established by the state,
 22 county, city, town or other a political subdivision, and no
 23 deferral of income under the deferred compensation program
 24 shall affect a reduction of any retirement, pension, or
 25 other benefit provided by law. However, any sum deferred

1 under the deferred compensation program shall not be subject
 2 to taxation until distribution is actually made to the
 3 employee participant or his beneficiary because of
 4 separation from service, retirement, or unforeseeable
 5 emergency. For purposes of this chapter any qualified
 6 private pension plans now in existence shall qualify."

7 Section 4. Section 19-2-201, MCA, is amended to read:
 8 "19-2-201. Department of administration authorized to
 9 make contracts with political subdivisions. The department
 10 of administration is hereby authorized to enter into a
 11 contractual agreement with any employee or his
 12 representative if one has been designated or certified on
 13 behalf of the state to defer a portion of the employee's
 14 compensation through a qualified plan agreed upon by the
 15 employee or his representative. The department of
 16 administration may establish rules for the proper operation
 17 of plans agreed upon under this section. (1) A political
 18 subdivision may become a contracting employer and make all
 19 or specified groups of its employees eligible to participate
 20 in the state-administered deferred compensation program by a
 21 contract entered into and between the department and the
 22 legislative body of the political subdivision. The contract
 23 may include any provisions that are consistent with this
 24 chapter and necessary for the administration of the deferred
 25 compensation program.

1 (2) The approval and termination of the contract shall
 2 be subject to the following provisions:

3 (a) The legislative body of the political subdivision
 4 shall adopt a resolution to enter into a contract with the
 5 department authorizing its employees to participate in the
 6 state-administered deferred compensation program. The
 7 resolution must contain a summary of the major provisions of
 8 the state-administered deferred compensation program.

9 (b) The contract must specify that the political
 10 subdivision agrees that the department is the administrator
 11 of the deferred compensation program and agrees to the rules
 12 and conditions established by the department for the proper
 13 administration of the plan.

14 (c) The contract may be revoked or amended in the
 15 manner prescribed in the original approval of contracts."

16 Section 5. Section 19-2-202, MCA, is amended to read:

17 "19-2-202. Administration of program. The coordination
 18 of--the deferred compensation program shall be under--the
 19 direction--of administered by the department of
 20 administration or--its--designee or the appropriate officer
 21 designated by the--county--city--town--or--other a political
 22 subdivision. Payroll deductions shall be made, in each
 23 instance, by the appropriate payroll officer. The
 24 coordinator administrator of the deferred compensation
 25 program may contract with a private corporation or

1 institution for providing consolidated billing and other
 2 administrative services and may hire necessary auditors,
 3 marketing representatives or consultants. The
 4 administrator may solicit bids for options under 19-2-102.
 5 All contracts with marketing representatives must provide
 6 that all options in 19-2-102 be presented in an unbiased
 7 manner and in a manner so as to conform to applicable rules
 8 promulgated by the administrator, be reported on a periodic
 9 basis to all employees participating in eligible deferred
 10 compensation plans, and not be the subject of unreasonable
 11 solicitation of employees to participate in the program. All
 12 costs or fees in relation to the marketing of options
 13 provided under 19-2-102 shall be paid by the underwriting
 14 companies selected by the administrator or by the interest
 15 earnings accruing to the assets of the state deferred
 16 compensation investment fund."

17 Section 6. Section 19-2-203, MCA, is amended to read:
 18 "19-2-203. Payments authorized. Notwithstanding any
 19 other provision of law to the contrary, the department of
 20 administration or--the--appropriate--officer--of--the--county--
 21 city--town--or--other a political subdivision designated to
 22 coordinate--the--deferred--compensation--program is hereby
 23 authorized to make payments to qualified eligible deferred
 24 compensation plans designated by this chapter. Such
 25 payments shall not be construed to be a prohibited use of

1 the general assets of the state--county--city--town--or
2 other or a political subdivision."

3 Section 7. Section 19-2-204, MCA, is amended to read:
4 "19-2-204. Public entity not to be liable. There shall
5 be no financial liability of the state--county--city--town
6 or other a political subdivision for any losses incurred by
7 any eligible deferred compensation plan established under
8 this chapter."

9 Section 8. Repealer. Section 19-2-205, MCA, is
10 repealed.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 449

3 Senate Finance and Claims Committee

5 THE LEGISLATURE INTENDS THAT AN ADMINISTRATOR OF A
6 DEFERRED COMPENSATION PROGRAM IN THE STATE OF MONTANA SHALL
7 CONTRACT ADMINISTRATIVE AND MARKETING SERVICES WITH PRIVATE
8 CORPORATIONS, INSTITUTIONS, OR INDIVIDUALS WHEN ELIGIBLE
9 DEFERRED COMPENSATION PROGRAMS ARE ESTABLISHED UNDER THIS
10 ACT, IF THESE CONTRACTS RESULT IN THE PROTECTION OF
11 PARTICIPANTS' INTERESTS AND THE SAFEGUARDING OF THE PLAN'S
12 ASSETS.

13 A statement of intent for this bill is necessary in
14 that section 2 grants the Department of Administration or
15 the appropriate officer of a political subdivision of the
16 State of Montana the authority to promulgate rules for the
17 proper administration of deferred compensation plans.

18 It is contemplated that the rules will address the
19 following:

20 (1) procedures for enrolling employees in the plan;
21 (2) the content of the plan agreement that is
22 consistent with section 457 of the Internal Revenue Code;
23 (3) rules for granting financial hardships due to
24 unforeseen emergencies;
25 (4) rules regarding the participation of political

1 subdivisions in the state deferred compensation plan; and
2 (5) rules governing the performance of marketing
3 representatives or consultants who may be hired to present
4 the plan to employees.
5 First adopted by the Senate Finance and Claims
6 Committee on the 19th day of February, 1981.

1 SENATE BILL NO. 449

2 INTRODUCED BY TURNAGE, HIMSL, BARDANOUVE

3 BY REQUEST OF SENATE LEGISLATIVE ADMINISTRATION COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS RELATING TO DEFERRED COMPENSATION PLANS FOR PUBLIC
7 EMPLOYEES SO AS TO ESTABLISH A STATE INVESTMENT ACCOUNT; TO
8 AUTHORIZE LOCAL GOVERNMENTS TO PARTICIPATE IN THE STATE
9 DEFERRED COMPENSATION PROGRAM; AND TO AUTHORIZE THE PLAN
10 ADMINISTRATOR TO ASSESS ADMINISTRATIVE COSTS AGAINST THE
11 PROGRAM; AMENDING SECTIONS 19-2-101 THROUGH 19-2-103,
12 19-2-201 THROUGH 19-2-204, MCA; AND REPEALING SECTION
13 19-2-205, MCA."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 19-2-101, MCA, is amended to read:

17 "19-2-101. Employee--defined Definitions. For the
18 purposes of this chapter, "employee"--means--any person,
19 whether appointed--elected--or--under--contract--providing
20 services--for--the--state--county--city--town--or--other
21 political subdivision for which compensation is paid-- unless
22 a different meaning is plainly implied by the context, the
23 following definitions apply:

24 (1) "Administrator" means the department of
25 administration created by 2-15-1001 or an appropriate

1 officer of a political subdivision.

2 (2) "ADVISORY COUNCIL" means the state employee group

3 BENEFITS ADVISORY COUNCIL PROVIDED FOR IN 2-15-1016.

4 (3) "Deferred compensation" means that income which
5 an employee may legally defer in a deferred compensation
6 plan established under this chapter pursuant to the rulings
7 of the internal revenue service and which, while invested,
8 is exempt from state and federal income tax on the
9 employee's contribution and on the interest, dividends, and
10 capital gains until ultimately distributed to the employee.

11 (4) "Department" means the department of
12 administration created by 2-15-1001.

13 (5) "Eligible deferred compensation plan" means a
14 plan meeting the requirements of section 457 of the Internal
15 Revenue Code.

16 (6) "Employee" means any person, including
17 independent contractors and elected officials, receiving
18 compensation from the state or a political subdivision for
19 performing services.

20 (7) "Fund" means the state deferred compensation
21 investment account.

22 (8) "Participant" means an employee enrolled in the
23 plan.

24 (9) "Political subdivision" means any city, town,
25 county, or other political subdivision of the state of

1 Montana.

2 Section 2. Section 19-2-102, MCA, is amended to read:

3 "19-2-102. Deferred compensation programs permitted --

4 rules. The--state--or--any--county--city--town--or--other

5 political--subdivision--may--establish--after--reaching

6 agreement--with--any--employee--or--the--employee's

7 representative--if--one--has--been--designated--or--certified--a

8 program--for--the--employee--to--defer--any--portion--of--his

9 compensation--up--to--the--maximum--allowed--by--the--Internal

10 Revenue--Code--in--a--plan--qualified--for--exemption--under

11 applicable--sections--of--the--Internal--Revenue--Code. (1) The

12 state--or--a--political--subdivision--may--establish--defered

13 compensation--plans--that--are--eligible--under--section--457--of

14 the--Internal--Revenue--Code--of--1954, as--amended--or--superseded,

15 and--in--compliance--with--regulations--of--the--U.S.--department--of

16 the--treasury. Eligible--defered--compensation--plans--for

17 employees--may--be--established--in--addition--to--any--retirement,

18 pension, or other benefit plan administered by the state or

19 a political subdivision.

20 (2) An employee may enter into a written agreement

21 with the state or a political subdivision to defer a part of

22 his compensation for the purpose of investment as provided

23 by this chapter. The total amount deferred may not exceed

24 the employee's annual salary and may not exceed the amounts

25 permitted under applicable sections of the Internal Revenue

1 Code.

2 (1) Compensation deferred pursuant to this chapter is

3 included as compensation for the purpose of computing

4 retirement or pension benefits.

5 (4) The amount of compensation deferred under this

6 chapter may be used to purchase:

7 (a) shares in a state deferred compensation investment

8 fund established pursuant to title 17 for the purpose of

9 administering a state invested deferred compensation plan.

10 All contributions made by participants in the state deferred

11 compensation investment fund and all interest or increase in

12 the fund shall be credited to the fund. These funds may be

13 commingled with other state investment funds, but separate

14 accounts must be maintained for participants in the state

15 deferred compensation investment fund. The assets of the

16 fund must be maintained for the benefit of participants and

17 may not be diverted except for paying the reasonable

18 expenses for administering the state deferred compensation

19 investment fund.

20 (b) savings accounts in federally insured financial

21 institutions;

22 (c) life insurance contracts and fixed annuity and

23 variable annuity contracts from companies that are licensed

24 to do business in the state and subject to regulation by the

25 insurance commissioner; or

1 (d) any combination of subsections (a), (b), or (c)
 2 above, as specified by the participant. The shares,
 3 accounts, or contracts so purchased are the exclusive
 4 property of and stand in the name of the state of Montana or
 5 a political subdivision until distributed to an employee in
 6 a manner provided in the plan agreement established by the
 7 administrator.

8 (5) The administrator may allocate any necessary costs
 9 against the assets and interest earnings accumulated in
 10 funds, accounts, or contracts established under this
 11 chapter.

12 (6) The department or appropriate officer of a
 13 political subdivision shall promulgate rules not
 14 inconsistent with this chapter for the proper administration
 15 of deferred compensation plans established under this
 16 chapter."

17 Section 3. Section 19-2-103, MCA, is amended to read:
 18 "19-2-103. No effect on other retirement programs --
 19 taxes deferred. The deferred compensation program
 20 established by this chapter shall exist and serve in
 21 addition to retirement, pension, or benefit systems,
 22 including plans qualifying under section 403(b) of the
 23 Internal Revenue Code of 1954, established by the state,
 24 county, city, town or other a political subdivision, and no
 25 deferral of income under the deferred compensation program

1 shall affect a reduction of any retirement, pension, or
 2 other benefit provided by law. However, any sum deferred
 3 under the deferred compensation program shall not be subject
 4 to taxation until distribution is actually made to the
 5 employee participant or his beneficiary because of
 6 separation from service, retirement, or unforeseeable
 7 emergency. For purposes of this chapter any qualified
 8 private pension plans now in existence shall qualify."

9 Section 4. Section 19-2-201, MCA, is amended to read:
 10 "19-2-201. Department of administration authorized to
 11 make contracts with political subdivisions. The--department
 12 of--administration--is--hereby--authorized--to--enter--into--a
 13 contractual--agreement--with--any--employee--or--his
 14 representative--if--one--has--been--designated--or--certified--on
 15 behalf--of--the--state--to--defer--a--portion--of--the--employee's
 16 compensation--through--a--qualified--plan--agreed--upon--by--the
 17 employee--or--his--representative--the--department--of
 18 administration--may--establish--rules--for--the--proper--operation
 19 of--plans--agreed--upon--under--this--section. (1) **A** EFFECTIVE
 20 JULY 1, 1983, A political subdivision may become a
 21 contracting employer and make all or specified groups of its
 22 employees eligible to participate in the state-administered
 23 deferred compensation program by a contract entered into and
 24 between the department and the legislative body of the
 25 political subdivision. The contract may include any

1 provisions that are consistent with this chapter and
 2 necessary for the administration of the deferred
 3 compensation program.

4 (2) The approval and termination of the contract shall
 5 be subject to the following provisions:

6 (a) The legislative body of the political subdivision
 7 shall adopt a resolution to enter into a contract with the
 8 department authorizing its employees to participate in the
 9 state-administered deferred compensation program. The
 10 resolution must contain a summary of the major provisions of
 11 the state-administered deferred compensation program.

12 (b) The contract must specify that the political
 13 subdivision agrees that the department is the administrator
 14 of the deferred compensation program and agrees to the rules
 15 and conditions established by the department for the proper
 16 administration of the plan.

17 (c) The contract may be revoked or amended in the
 18 manner prescribed in the original approval of contracts."

19 Section 5. Section 19-2-202, MCA, is amended to read:
 20
 21 "19-2-202. Administration of program. The coordination
 22 of the deferred compensation program shall be under--the
 23 direction--of, ~~10~~ administered by the department of
 24 administration or its designee or the appropriate officer
 25 designated by the county, city, town, or other a political
 subdivision. Payroll deductions shall be made, in each

1 instance, by the appropriate payroll officer. The
 2 coordinator ~~administrator~~ of--the--deferred--compensation
 3 program--may--contract--with--a--private--corporation--or
 4 institution--for--providing--consolidated--bitting--and--other
 5 administrative--services ~~and--may--hire--necessary--auditors--~~
 6 ~~marketing--representatives--or--consultants.~~ THE ADMINISTRATOR
 7 SHALL PROTECT THE INTERESTS OF PROGRAM PARTICIPANTS AND
 8 SAFEGUARD THE ASSETS OF THE DEFERRED COMPENSATION PLAN AND
 9 SHALL CONTRACT WITH PRIVATE CORPORATIONS, INSTITUTIONS, OR
 10 INDIVIDUALS FOR ADMINISTRATIVE AND MARKETING SERVICES. The
 11 administrator ~~may solicit bids for options under 19-2-102.~~
 12 All contracts with marketing representatives must provide
 13 that all options in 19-2-102 be presented in an unbiased
 14 manner and in a manner so as to conform to applicable rules
 15 promulgated by the administrator, be reported on a periodic
 16 basis to all employees participating in eligible deferred
 17 compensation plans, and not be the subject of unreasonable
 18 solicitation of employees to participate in the program. All
 19 costs or fees in relation to the marketing of options
 20 provided under 19-2-102 shall be paid by the underwriting
 21 companies selected by the administrator or by the interest
 22 earnings accruing to the assets of the state deferred
 23 compensation investment fund."
 24 NEW SECTION. SECTION 6. FUNCTIONS OF ADVISORY
 25 COUNCIL. (1) THE DEPARTMENT SHALL MEET AND CONSULT WITH THE

1 ADVISORY COUNCIL BEFORE NEGOTIATING, CONTRACTING, OR
 2 MODIFYING DEFERRED COMPENSATION PLANS.

3 (2) THE ADVISORY COUNCIL SHALL MEET AT LEAST QUARTERLY
 4 TO REVIEW EXISTING DEFERRED COMPENSATION PLANS AND TO ADVISE
 5 THE DEPARTMENT ON THE ADMINISTRATION OF THE PROGRAM.

6 Section 7. Section 19-2-203, MCA, is amended to read:

7 "19-2-203. Payments authorized. Notwithstanding any
 8 other provision of law to the contrary, the department of
 9 administration or the appropriate officer of the county,
 10 city,--town, or other a political subdivision designated to
 11 coordinate--the--deferred--compensation--program is hereby
 12 authorized to make payments to qualified eligible deferred
 13 compensation plans designated by this chapter. Such
 14 payments shall not be construed to be a prohibited use of
 15 the general assets of the state,--county,--city,--town,--or
 16 other or a political subdivision."

17 Section 8. Section 19-2-204, MCA, is amended to read:

18 "19-2-204. Public entity not to be liable. There shall
 19 be no financial liability of the state,--county,--city,--town,
 20 or other a political subdivision for any INVESTMENT losses
 21 incurred by any eligible deferred compensation plan
 22 established under this chapter."

23 SECTION 9. CODIFICATION INSTRUCTION. SECTION 6 IS
 24 INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 19,
 25 CHAPTER 2, PART 2, AND THE PROVISIONS OF TITLE 19, CHAPTER

1 2. APPLY TO SECTION 6.

2 Section 10. Repealer. Section 19-2-205, MCA, is
 3 repealed.

-End-

HOUSE AMENDMENTS TO SB 449

1. Statement of Intent

Following: line 4

Insert: "The Legislature intends that an administrator of a deferred compensation program in the state of Montana shall contract administrative and marketing services with private corporations, institutions, or individuals when eligible deferred compensation programs are established under this act, if these contracts result in the protection of participants' interests and the safeguarding of the plan's assets."

2. Page 2.

Following: line 1

Insert: "(2) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016."

Renumber: subsequent subsections

3. Page 6, line 8.

Following: "Department"

Strike: "of administration"

4. Page 6, line 17.

Following: "(1)"

Strike: "A"

Insert: "Effective July 1, 1983, a"

5. Page 7, lines 19 and 20.

Following: "department" on line 19

Strike: "of administration"

6. Page 7, lines 23 through line 3, on page 8.

Following: " ." on line 23

Strike: "The" through " ." on line 3

Insert: "The administrator shall protect the interests of program participants and safeguard the assets of the deferred compensation plan and shall contract with private corporations, institutions, or individuals for administrative and marketing services."

7. Page 8.

Following: line 16

Insert: "NEW SECTION. Section 6. Functions of advisory council. (1) The department shall meet and consult with the advisory council before negotiating, contracting, or modifying deferred compensation plans.

(2) The advisory council shall meet at least quarterly to review existing deferred compensation plans and to advise the department on the administration of the program."

Renumber: subsequent sections

8. Page 8, lines 19 and 20.

Following: "department" on line 19

Strike: "of administration"

9. Page 9, line 6.

Following: "any"

Insert: "investment"

10. Page 9.

Following: line 8

Insert: "Section 9. Codification instruction. Section 6 is intended to be codified as an integral part of Title 19, chapter 2, part 2, and the provisions of Title 19, chapter 2, apply to section 6."

Renumber: subsequent section