

HOUSE BILL NO. 300

INTRODUCED BY LORY

BY REQUEST OF THE BOARD OF REGENTS

IN THE HOUSE

JANUARY 20, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON STATE ADMINISTRATION.

FEBRUARY 17, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 18, 1987 PRINTING REPORT.

FEBRUARY 19, 1987 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 20, 1987 ENGROSSING REPORT.

FEBRUARY 21, 1987 THIRD READING, PASSED.
AYES, 77; NOES, 15.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 23, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON STATE ADMINISTRATION.

MARCH 23, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 27, 1987 SECOND READING, CONCURRED IN.

MARCH 30, 1987 THIRD READING, CONCURRED IN.
AYES, 35; NOES, 15.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 300
 2 INTRODUCTION BY Jerry
 3 BY REQUEST OF THE BOARD OF REGENTS

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING AN OPTIONAL
 6 RETIREMENT PROGRAM FOR CERTAIN ADMINISTRATIVE OFFICERS AND
 7 MEMBERS OF THE INSTRUCTIONAL AND SCIENTIFIC STAFF OF THE
 8 MONTANA UNIVERSITY SYSTEM; AMENDING SECTIONS 15-30-111,
 9 19-4-208, AND 19-4-302, MCA; AND PROVIDING AN EFFECTIVE
 10 DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Authority to establish
 14 optional retirement program. The board of regents may
 15 establish an optional retirement program, as provided in
 16 [sections 1 through 8], for the administrative officers and
 17 members of the instructional and scientific staff of the
 18 Montana university system. The program may be an independent
 19 plan or part of a larger plan with respect to some or all of
 20 the benefits provided. The benefits under the program must
 21 be provided through individual annuity contracts, either
 22 fixed or variable, or a combination thereof, issued to and
 23 owned by the participants in the program.

24 NEW SECTION. Section 2. Definition of teachers'
 25 retirement system. In [sections 1 through 8], "teachers'

1 retirement system" means the teachers' retirement system
 2 provided for in Title 19, chapter 4.

3 NEW SECTION. Section 3. Participation in program.
 4 (1) Academic and professional administrative personnel with
 5 individual contracts under the authority of the board of
 6 regents are eligible for and may elect to participate in the
 7 optional retirement program instead of the teachers'
 8 retirement system. This election must be exercised:

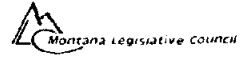
9 (a) before January 1, 1988, for an eligible person
 10 hired before July 1, 1987;

11 (b) within 90 days after entry into service or before
 12 January 1, 1988, whichever is later, for a person hired in
 13 an eligible position on or after July 1, 1987; and

14 (c) within 30 days after receiving written notice of
 15 eligibility or before January 1, 1988, whichever is later,
 16 for an employee who becomes eligible to participate in the
 17 optional retirement program by reason of appointment,
 18 promotion, transfer, or reclassification to an eligible
 19 position.

20 (2) The election must be exercised by filing a written
 21 notice with the teachers' retirement system and the
 22 disbursing officer of the employer. The election is
 23 effective as of the date the notice is filed or January 1,
 24 1988, whichever is later.

25 (3) If an eligible officer or staff member fails to



1 exercise the election, as provided by this section, that
 2 person must remain or become a member of the teachers'
 3 retirement system.

4 (4) An election under this section is not effective
 5 unless the notice filed with the disbursing officer of the
 6 employer is accompanied by an appropriate application, if
 7 one is required, for the issuance of a contract or contracts
 8 under the program.

9 NEW SECTION. Section 4. Effect on rights under
 10 teachers' retirement system. (1) An election under [section
 11 3] to participate in the optional retirement program is a
 12 waiver of all rights and benefits under the teachers'
 13 retirement system except as provided in this section.

14 (2) A member of the teachers' retirement system who
 15 elects to participate in the optional retirement program is
 16 considered, for the purpose of determining eligibility for
 17 rights and benefits under that system, to be no longer
 18 employed in a capacity that allows active membership in that
 19 system as of the effective date of the election.
 20 Thereafter, the member is considered an inactive member of
 21 the retirement system if qualified under 19-4-303, with the
 22 rights and privileges provided under 19-4-603(1). A member
 23 who elects to participate in the optional retirement program
 24 who does not qualify as an inactive member under 19-4-303 is
 25 considered a terminated member of the retirement system

1 under 19-4-304(4).

2 (3) A person who elects to participate in the optional
 3 retirement program is ineligible to be an active member of
 4 the teachers' retirement system while continuously employed
 5 in a position eligible to participate in the optional
 6 retirement program.

7 NEW SECTION. Section 5. Duties of board of regents.
 8 The board of regents shall:

- 9 (1) provide for the administration of the program;
 10 (2) designate the company or companies from which the
 11 contracts are to be purchased and approve the form and
 12 content of the contracts, taking into consideration the:
 13 (a) nature and extent of the rights and benefits to be
 14 provided by the contracts for participants and their
 15 beneficiaries;
 16 (b) relation of these rights and benefits to the
 17 amount of contributions to be made;
 18 (c) suitability of these rights and benefits to the
 19 needs of the participants and the interests of the Montana
 20 university system in the recruitment and retention of
 21 administrative officers and members of the instructional and
 22 scientific staff; and
 23 (d) ability of the designated company or companies to
 24 provide these rights and benefits.

25 NEW SECTION. Section 6. Contributions. (1) Each

1 optional retirement program participant shall contribute an
 2 amount equal to the member's contribution required under
 3 19-4-602. The board of regents shall contribute an amount
 4 equal to the employer contribution required under 19-4-605.

5 (2) The board of regents' contribution must be
 6 apportioned and paid as follows:

7 (a) to the designated company or companies, an amount
 8 that, when added to the participant's contribution, is equal
 9 to 10% of the participant's earned compensation; and

10 (b) to the teachers' retirement system, the balance of
 11 the board of regents' contribution.

12 (3) The board of regents shall determine whether the
 13 participant's contribution is to be made by salary reduction
 14 under section 403(b) of the Internal Revenue Code of 1954 or
 15 by employer pick-up under section 414(h)(2) of that code.

16 (4) The disbursing officer of the employer or other
 17 official designated by the board of regents shall pay both
 18 the participant's contribution and the appropriate portion
 19 of the regents' contribution to the designated company or
 20 companies for the benefit of the participant.

21 NEW SECTION. Section 7. Payment of benefits. No
 22 retirement, death, or other benefit may be paid by the state
 23 or the board of regents under the optional retirement
 24 program. Benefits are payable to a participant and his
 25 beneficiaries only by the designated company or companies in

1 accordance with the terms of the contracts.

2 NEW SECTION. Section 8. Exemption from taxation,
 3 legal process, and assessments. All contracts, benefits, and
 4 contributions under the optional retirement program and the
 5 earnings thereon are:

6 (1) exempt from a state, county, or municipal tax;

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

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

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

13 Section 9. Section 15-30-111, MCA, is amended to read:

14 "15-30-111. Adjusted gross income. (1) Adjusted gross
 15 income shall be the taxpayer's federal income tax adjusted
 16 gross income as defined in section 62 of the Internal
 17 Revenue Code of 1954 or as that section may be labeled or
 18 amended and in addition shall include the following:

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

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

25 (c) that portion of a shareholder's income under

1 subchapter S. of Chapter 1 of the Internal Revenue Code of
2 1954 that has been reduced by any federal taxes paid by the
3 subchapter S. corporation on the income.

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

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

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

16 (c) all benefits received under the Federal Employees'
17 Retirement Act not in excess of \$3,600;

18 (d) all benefits, not in excess of \$360, received as
19 an annuity, pension, or endowment under any private or
20 corporate retirement plan or system;

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

23 (f) all benefits paid under The Public Employees'
24 Retirement System Act which are specified as exempt from
25 taxation by 19-3-105;

1 (g) all benefits paid under the highway patrol
2 retirement law which are specified as exempt from taxation
3 by 19-6-705;

4 (h) all Montana income tax refunds or credits thereof;
5 (i) all benefits paid under 19-11-602, 19-11-604, and
6 19-11-605 to retired and disabled firefighters, their
7 surviving spouses and orphans;

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

11 (k) gain required to be recognized by a liquidating
12 corporation under 15-31-113(1)(a)(ii);

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

18 (m) all benefits received under the workers'
19 compensation laws; and

20 (n) all health insurance premiums paid by an employer
21 for an employee if attributed as income to the employee
22 under federal law; and

23 (o) all benefits paid under an optional retirement
24 program that are specified as exempt from taxation by
25 [section 8].

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

15 (4) A shareholder of a DISC that is exempt from the
16 corporation license tax under 15-31-102(1)(1) shall include
17 in his adjusted gross income the earnings and profits of the
18 DISC in the same manner as provided by federal law (section
19 995, Internal Revenue Code) for all periods for which the
20 DISC election is effective.

21 (5) A taxpayer who, in determining federal adjusted
22 gross income, has reduced his business deductions by an
23 amount for wages and salaries for which a federal tax credit
24 was elected under section 44B of the Internal Revenue Code
25 of 1954 or as that section may be labeled or amended is

1 allowed to deduct the amount of such wages and salaries paid
2 regardless of the credit taken. The deduction must be made
3 in the year the wages and salaries were used to compute the
4 credit. In the case of a partnership or small business
5 corporation, the deduction must be made to determine the
6 amount of income or loss of the partnership or small
7 business corporation.

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

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

1 amount of exclusion, but not the taxpayer's eligibility for
 2 the exclusion. If eligible, married individuals shall apply
 3 the exclusion separately, but the limitation for income
 4 exceeding \$15,000 is determined with respect to the spouses
 5 on their combined adjusted gross income. For the purpose of
 6 this subsection, permanently and totally disabled means
 7 unable to engage in any substantial gainful activity by
 8 reason of any medically determined physical or mental
 9 impairment lasting or expected to last at least 12 months.
 10 (Subsection (2)(1) terminates on occurrence of
 11 contingency--sec. 3, Ch. 634, L. 1983.)"

12 Section 10. Section 19-4-208, MCA, is amended to read:

13 "19-4-208. Duties of employer. Each employer shall:

14 (1) pick up the contribution of each member employed
 15 by him at the rate prescribed by 19-4-602 and transmit the
 16 contribution each month to the secretary of the retirement
 17 board;

18 (2) pay to the secretary of the retirement board the
 19 employer's contribution prescribed by 19-4-605, at the time
 20 that the employee contributions are transmitted to the
 21 secretary;

22 (3) keep records and, as required by the retirement
 23 board, furnish information to the board that is required in
 24 the discharge of the board's duties;

25 (4) upon the employment of a person who is required to

1 become a member of the retirement system, inform him of his
 2 rights and obligations relating to the retirement system;
 3 (5) whenever applicable, inform an employee of his
 4 right to elect to participate in the optional retirement
 5 program under [sections 1 through 8];

6 ~~(5)(6)~~ at the request of the retirement board, certify
 7 the names of all persons who are eligible for membership or
 8 who are members of the retirement system; and

9 ~~(6)(7)~~ notify the retirement board of the employment
 10 of a person eligible for membership and forward his
 11 membership application to the board."

12 Section 11. Section 19-4-302, MCA, is amended to read:

13 "19-4-302. Active membership. (1) Unless otherwise
 14 provided by this chapter, the following persons must be
 15 active members of the retirement system, with the exception
 16 that those persons who became eligible for membership on
 17 September 1, 1937, or on September 1, 1939, and who elected
 18 not to become members under the provisions of the law at
 19 that time are not required to be members:

20 (a) any person who is a teacher, principal, or
 21 district superintendent as defined in 20-1-101;

22 (b) any person who is an administrative officer or a
 23 member of the instructional or scientific staff of a unit of
 24 the Montana university system and who has not elected to
 25 participate in the optional retirement program under

1 [sections 1 through 8];

2 (c) any person employed in an instructional services
3 capacity by the office of the superintendent of public
4 instruction, the office of a county superintendent, a
5 special education cooperative, a public institution of the
6 state of Montana, the Montana state school for the deaf and
7 blind, or a school district;

8 (d) any person who has elected not to become a member
9 of the retirement system and is reentering service in a
10 capacity prescribed by (a), (b), or (c) of this subsection
11 (1);

12 (e) any person who has elected not to become a member
13 of the retirement system, who has been continuously employed
14 in a capacity prescribed by (a), (b), or (c) of this
15 subsection (1) since the time of such election, and who may
16 thereafter elect to become a member of the retirement
17 system.

18 (2) In order to be eligible for active membership, any
19 person described in subsection (1) must:

20 (a) be employed in the capacity prescribed for his
21 eligibility for at least 30 days in any fiscal year; and

22 (b) have the compensation for his creditable service
23 totally paid by an employer as defined herein.

24 (3) At any time a person's eligibility to become a
25 member of the retirement system is in doubt, the retirement

1 board shall determine his eligibility for membership. All
2 persons in similar circumstances shall be treated alike."

3 NEW SECTION. Section 12. Extension of authority. Any
4 existing authority of the teachers' retirement board to make
5 rules on the subject of the provisions of this act is
6 extended to the provisions of this act.

7 NEW SECTION. Section 13. Effective date. This act is
8 effective July 1, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB300, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

Proposed legislation would authorize an optional retirement program for certain administrative officers of the instructional and scientific staff of the Montana University System.

ASSUMPTIONS:

1. Required contribution to amortize the unfunded liability in the Teachers' Retirement System is 5.8% of salary. This rate is sufficient to amortize the unfunded liability over 37.55 years as of July 1, 1985.
2. The unfunded liability contribution rate for the Montana University System will be reduced from 5.8% to 4.472% of salary for employees electing not to participate in Teachers' Retirement System.
3. The employer contribution rate for employers other than the Montana University System will remain unchanged, 5.8%.
4. Annual salaries for the university system are \$55,290,000 (\$28,500 average per member). No increases are assumed during the biennium. source: Montana University System.
5. Total university system employees covered under TRS, 1,940. source: November 1986 payroll.
6. Assume 484 university employees will elect the optional retirement plan in FY88 and 722 in FY89, 15% of all current members or 246 and 80% of all new employees or 238 each fiscal year.

FISCAL IMPACT:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenues:						
Employer Contributions	\$3,206,820	\$3,023,636	(\$ 183,184)	\$3,206,820	\$2,933,557	(\$ 273,263)

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

None in FY88 or FY89.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Impact of the optional retirement plan on the funding of the Teachers' Retirement System will be affected by the age, past service credit, and salaries of members who elect not to participate in TRS. The cost as cited may vary with the actual experience of the system. The reduced contribution for the unfunded liability required by the university system from 5.8% to 4.472% increases the funding period 2.1 years. The present value of contributions required to maintain the current funding period of 37.55 years is \$22,173,000. If the unfunded liability contribution was reduced for all employers 1.328% (5.8% - 4.472%) the funding period would increase approximately 12 years.

David L. Hunter DATE 1/26/89
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

Earl Lory DATE 1/26/89
 EARL LORY, PRIMARY SPONSOR
 Fiscal Note for HB300, as introduced.

HB-300

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

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2 INTRODUCED BY LORY

3 BY REQUEST OF THE BOARD OF REGENTS

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10 DATE."

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18 Montana university system. The program may be an independent
19 plan or part of a larger plan with respect to some or all of
20 the benefits provided. The benefits under the program must
21 be provided through individual annuity contracts, either
22 fixed or variable, or a combination thereof, issued to and
23 owned by the participants in the program.

24 NEW SECTION. Section 2. Definition of teachers'
25 retirement system. In [sections 1 through 8 9], "teachers'

1 retirement system" means the teachers' retirement system
2 provided for in Title 19, chapter 4.

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4 (1) Academic and professional administrative personnel with
5 individual contracts under the authority of the board of
6 regents are eligible for and may elect to participate in the
7 optional retirement program instead of the teachers'
8 retirement system. This election must be exercised:

9 (a) before January 1, 1988, for an eligible person
10 hired before July 1, 1987;

11 (b) within 90 days after entry into service or before
12 January 1, 1988, whichever is later, for a person hired in
13 an eligible position on or after July 1, 1987; and

14 (c) within 30 days after receiving written notice of
15 eligibility or before January 1, 1988, whichever is later,
16 for an employee who becomes eligible to participate in the
17 optional retirement program by reason of appointment,
18 promotion, transfer, or reclassification to an eligible
19 position.

20 (2) The election must be exercised by filing a written
21 notice with the teachers' retirement system and the
22 disbursing officer of the employer. The election is
23 effective as of the date the notice is filed or January 1,
24 1988, whichever is later.

25 (3) If an eligible officer or staff member fails to

1 exercise the election, as provided by this section, that
 2 person must remain or become a member of the teachers'
 3 retirement system.

4 (4) An election under this section is not effective
 5 unless the notice filed with the disbursing officer of the
 6 employer is accompanied by an appropriate application, if
 7 one is required, for the issuance of a contract or contracts
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 10 teachers' retirement system. (1) An election under [section
 11 3] to participate in the optional retirement program is a
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 13 retirement system except as provided in this section.

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 15 elects to participate in the optional retirement program is
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 17 rights and benefits under that system, to be no longer
 18 employed in a capacity that allows active membership in that
 19 system as of the effective date of the election.
 20 Thereafter, the member is considered an inactive member of
 21 the retirement system if qualified under 19-4-303, with the
 22 rights and privileges provided under 19-4-603(1). A member
 23 who elects to participate in the optional retirement program
 24 who does not qualify as an inactive member under 19-4-303 is
 25 considered a terminated member of the retirement system

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2 (3) A person who elects to participate in the optional
 3 retirement program is ineligible to be an active member of
 4 the teachers' retirement system while continuously employed
 5 in a position eligible to participate in the optional
 6 retirement program.

7 NEW SECTION. Section 5. Duties of board of regents.
 8 The board of regents shall:

- 9 (1) provide for the administration of the program;
 10 (2) designate the company or companies from which the
 11 contracts are to be purchased and approve the form and
 12 content of the contracts, taking into consideration the:
 13 (a) nature and extent of the rights and benefits to be
 14 provided by the contracts for participants and their
 15 beneficiaries;
 16 (b) relation of these rights and benefits to the
 17 amount of contributions to be made;
 18 (c) suitability of these rights and benefits to the
 19 needs of the participants and the interests of the Montana
 20 university system in the recruitment and retention of
 21 administrative officers and members of the instructional and
 22 scientific staff; and
 23 (d) ability of the designated company or companies to
 24 provide these rights and benefits.

25 NEW SECTION. Section 6. Contributions. (1) Each

1 optional retirement program participant shall contribute an
 2 amount equal to the member's contribution required under
 3 19-4-602. The board of regents shall contribute an amount
 4 equal to the employer contribution required under 19-4-605.

5 (2) The board of regents' contribution must be
 6 apportioned and paid as follows:

7 (a) to the designated company or companies, an amount
 8 EQUAL TO THE GREATER OF:

9 (I) THE EMPLOYER CONTRIBUTION TO THE TEACHERS'
 10 RETIREMENT SYSTEM NOT USED TO AMORTIZE PAST SERVICE UNFUNDED
 11 LIABILITY AS THAT UNFUNDED LIABILITY IS LIMITED BY [SECTION
 12 9]; OR

13 (II) AN AMOUNT that, when added to the participant's
 14 contribution, is equal to 10% of the participant's earned
 15 compensation; and

16 (b) to the teachers' retirement system, the balance of
 17 the board of regents' contribution.

18 (3) The board of regents shall determine whether the
 19 participant's contribution is to be made by salary reduction
 20 under section 403(b) of the Internal Revenue Code of 1954 or
 21 by employer pick-up under section 414(h)(2) of that code.

22 (4) The disbursing officer of the employer or other
 23 official designated by the board of regents shall pay both
 24 the participant's contribution and the appropriate portion
 25 of the regents' contribution to the designated company or

1 companies for the benefit of the participant.

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 7 accordance with the terms of the contracts.

8 NEW SECTION. Section 8. Exemption from taxation,
 9 legal process, and assessments. All contracts, benefits, and
 10 contributions under the optional retirement program and the
 11 earnings thereon are:

12 (1) exempt from a ANY state, county, or municipal tax;

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

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

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

19 NEW SECTION. SECTION 9. ACTUARIAL EVALUATION TO
 20 DETERMINE UNFUNDED LIABILITY. (1) BEGINNING JUNE 30, 1991,
 21 THE BIENNIAL ACTUARIAL VALUATION OF THE TEACHERS' RETIREMENT
 22 SYSTEM MUST INCLUDE A DETERMINATION OF THE PAST SERVICE
 23 UNFUNDED LIABILITY OF ACTIVE, INACTIVE, AND RETIRED MEMBERS
 24 OF THE MONTANA UNIVERSITY SYSTEM. THE VALUATION MUST
 25 DETERMINE THE EFFECT ON THE AMORTIZATION OF THE UNFUNDED

1 LIABILITY OF THE TEACHERS' RETIREMENT SYSTEM CAUSED BY
 2 PERSONS ELECTING TO PARTICIPATE IN THE OPTIONAL RETIREMENT
 3 PROGRAM.

4 (2) IF THE VALUATION DETERMINES THAT THE PERCENTAGE
 5 CONTRIBUTION ESTABLISHED IN [SECTION 6(2)(B)] HAS AN ADVERSE
 6 EFFECT ON THE AMORTIZATION OF THE UNFUNDED LIABILITY, THEN
 7 THE BOARD OF REGENTS SHALL PAY AN ADDITIONAL SUM OVER A
 8 PERIOD OF 40 YEARS TO RECTIFY THE ADVERSE EFFECT.

9 (3) CHANGES IN THE TEACHERS' RETIREMENT SYSTEM
 10 OCCURRING AFTER JULY 1, 1987, THAT CREATE ADDITIONAL
 11 UNFUNDED LIABILITIES MAY NOT BE CONSIDERED IN THE VALUATION,
 12 AND THE BOARD OF REGENTS MAY NOT BE REQUIRED TO PAY ANY
 13 ADDITIONAL SUM ON THAT ACCOUNT EXCEPT TO THE EXTENT THAT
 14 THOSE CHANGES BENEFIT MEMBERS OF THE TEACHERS' RETIREMENT
 15 SYSTEM WHO ARE EMPLOYEES OF THE MONTANA UNIVERSITY SYSTEM.

16 (4) IF THE VALUATION DETERMINES THAT THE BOARD OF
 17 REGENTS IS PAYING AN AMOUNT IN EXCESS OF THAT NEEDED TO
 18 AMORTIZE THE UNFUNDED LIABILITY, THE TEACHERS' RETIREMENT
 19 BOARD SHALL CREDIT THE BOARD OF REGENTS FOR THE EXCESS
 20 PAYMENTS. THE BOARD OF REGENTS SHALL CREDIT THE ACTIVE
 21 PARTICIPANTS IN THE OPTIONAL RETIREMENT PROGRAM WITH THE
 22 EXCESS PAYMENTS.

23 Section 10. Section 15-30-111, MCA, is amended to
 24 read:

25 "15-30-111. Adjusted gross income. (1) Adjusted gross

1 income shall be the taxpayer's federal income tax adjusted
 2 gross income as defined in section 62 of the Internal
 3 Revenue Code of 1954 or as that section may be labeled or
 4 amended and in addition shall include the following:

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

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

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

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

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

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

1 return;

2 (c) all benefits received under the Federal Employees'
3 Retirement Act not in excess of \$3,600;

4 (d) all benefits, not in excess of \$360, received as
5 an annuity, pension, or endowment under any private or
6 corporate retirement plan or system;

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

9 (f) all benefits paid under The Public Employees'
10 Retirement System Act which are specified as exempt from
11 taxation by 19-3-105;

12 (g) all benefits paid under the highway patrol
13 retirement law which are specified as exempt from taxation
14 by 19-6-705;

15 (h) all Montana income tax refunds or credits thereof;

16 (i) all benefits paid under 19-11-602, 19-11-604, and
17 19-11-605 to retired and disabled firefighters, their
18 surviving spouses and orphans;

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

22 (k) gain required to be recognized by a liquidating
23 corporation under 15-31-113(1)(a)(ii);

24 (l) all tips covered by section 3402(k) of the
25 Internal Revenue Code of 1954, as amended and applicable on

1 January 1, 1983, received by persons for services rendered
2 by them to patrons of premises licensed to provide food,
3 beverage, or lodging;

4 (m) all benefits received under the workers'
5 compensation laws; and

6 (n) all health insurance premiums paid by an employer
7 for an employee if attributed as income to the employee
8 under federal law; and

9 (o) all benefits paid under an optional retirement
10 program that are specified as exempt from taxation by
11 [section 8].

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

1 (4) A shareholder of a DISC that is exempt from the
 2 corporation license tax under 15-31-102(1)(1) shall include
 3 in his adjusted gross income the earnings and profits of the
 4 DISC in the same manner as provided by federal law (section
 5 995, Internal Revenue Code) for all periods for which the
 6 DISC election is effective.

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

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

1 base must be split equally on the Montana return.

2 (7) A taxpayer receiving retirement disability
 3 benefits who has not attained age 65 by the end of the
 4 taxable year and who has retired as permanently and totally
 5 disabled may exclude from adjusted gross income up to \$100
 6 per week received as wages or payments in lieu of wages for
 7 a period during which the employee is absent from work due
 8 to the disability. If the adjusted gross income before this
 9 exclusion and before application of the two-earner married
 10 couple deduction exceeds \$15,000, the excess reduces the
 11 exclusion by an equal amount. This limitation affects the
 12 amount of exclusion, but not the taxpayer's eligibility for
 13 the exclusion. If eligible, married individuals shall apply
 14 the exclusion separately, but the limitation for income
 15 exceeding \$15,000 is determined with respect to the spouses
 16 on their combined adjusted gross income. For the purpose of
 17 this subsection, permanently and totally disabled means
 18 unable to engage in any substantial gainful activity by
 19 reason of any medically determined physical or mental
 20 impairment lasting or expected to last at least 12 months.
 21 (Subsection (2)(1) terminates on occurrence of
 22 contingency--sec. 3, Ch. 634, L. 1983.)"

23 Section 11. Section 19-4-208, MCA, is amended to read:
 24 "19-4-208. Duties of employer. Each employer shall:
 25 (1) pick up the contribution of each member employed

1 by him at the rate prescribed by 19-4-602 and transmit the
2 contribution each month to the secretary of the retirement
3 board;

4 (2) pay to the secretary of the retirement board the
5 employer's contribution prescribed by 19-4-605, at the time
6 that the employee contributions are transmitted to the
7 secretary;

8 (3) keep records and, as required by the retirement
9 board, furnish information to the board that is required in
10 the discharge of the board's duties;

11 (4) upon the employment of a person who is required to
12 become a member of the retirement system, inform him of his
13 rights and obligations relating to the retirement system;

14 (5) whenever applicable, inform an employee of his
15 right to elect to participate in the optional retirement
16 program under [sections 1 through 8 9];

17 ~~{5}{6}~~ at the request of the retirement board, certify
18 the names of all persons who are eligible for membership or
19 who are members of the retirement system; and

20 ~~{6}{7}~~ notify the retirement board of the employment
21 of a person eligible for membership and forward his
22 membership application to the board."

23 Section 12. Section 19-4-302, MCA, is amended to read:

24 "19-4-302. Active membership. (1) Unless otherwise
25 provided by this chapter, the following persons must be

1 active members of the retirement system, with the exception
2 that those persons who became eligible for membership on
3 September 1, 1937, or on September 1, 1939, and who elected
4 not to become members under the provisions of the law at
5 that time are not required to be members:

6 (a) any person who is a teacher, principal, or
7 district superintendent as defined in 20-1-101;

8 (b) any person who is an administrative officer or a
9 member of the instructional or scientific staff of a unit of
10 the Montana university system and who has not elected to
11 participate in the optional retirement program under
12 [sections 1 through 8 9];

13 (c) any person employed in an instructional services
14 capacity by the office of the superintendent of public
15 instruction, the office of a county superintendent, a
16 special education cooperative, a public institution of the
17 state of Montana, the Montana state school for the deaf and
18 blind, or a school district;

19 (d) any person who has elected not to become a member
20 of the retirement system and is reentering service in a
21 capacity prescribed by (a), (b), or (c) of this subsection
22 (1);

23 (e) any person who has elected not to become a member
24 of the retirement system, who has been continuously employed
25 in a capacity prescribed by (a), (b), or (c) of this

1 subsection (1) since the time of such election, and who may
2 thereafter elect to become a member of the retirement
3 system.

4 (2) In order to be eligible for active membership, any
5 person described in subsection (1) must:

6 (a) be employed in the capacity prescribed for his
7 eligibility for at least 30 days in any fiscal year; and

8 (b) have the compensation for his creditable service
9 totally paid by an employer as defined herein.

10 (3) At any time a person's eligibility to become a
11 member of the retirement system is in doubt, the retirement
12 board shall determine his eligibility for membership. All
13 persons in similar circumstances shall be treated alike."

14 NEW SECTION. Section 13. Extension of authority. Any
15 existing authority of the teachers' retirement board to make
16 rules on the subject of the provisions of this act is
17 extended to the provisions of this act.

18 NEW SECTION. Section 14. Effective date. This act is
19 effective July 1, 1987.

-End-

1 HOUSE BILL NO. 300

2 INTRODUCED BY LORY

3 BY REQUEST OF THE BOARD OF REGENTS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING AN OPTIONAL
6 RETIREMENT PROGRAM FOR CERTAIN ADMINISTRATIVE OFFICERS AND
7 MEMBERS OF THE INSTRUCTIONAL AND SCIENTIFIC STAFF OF THE
8 MONTANA UNIVERSITY SYSTEM; AMENDING SECTIONS 15-30-111,
9 19-4-208, AND 19-4-302, MCA; AND PROVIDING AN EFFECTIVE
10 DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Authority to establish
14 optional retirement program. The board of regents may
15 establish an optional retirement program, as provided in
16 [sections 1 through 8 9], for the administrative officers
17 and members of the instructional and scientific staff of the
18 Montana university system. The program may be an independent
19 plan or part of a larger plan with respect to some or all of
20 the benefits provided. The benefits under the program must
21 be provided through individual annuity contracts, either
22 fixed or variable, or a combination thereof, issued to and
23 owned by the participants in the program.

24 NEW SECTION. Section 2. Definition of teachers'
25 retirement system. In [sections 1 through 8 9], "teachers'

1 retirement system" means the teachers' retirement system
2 provided for in Title 19, chapter 4.

3 NEW SECTION. Section 3. Participation in program.
4 (1) Academic and professional administrative personnel with
5 individual contracts under the authority of the board of
6 regents are eligible for and may elect to participate in the
7 optional retirement program instead of the teachers'
8 retirement system. This election must be exercised:

9 (a) before January 1, 1988, for an eligible person
10 hired before July 1, 1987;

11 (b) within 90 days after entry into service or before
12 January 1, 1988, whichever is later, for a person hired in
13 an eligible position on or after July 1, 1987; and

14 (c) within 30 days after receiving written notice of
15 eligibility or before January 1, 1988, whichever is later,
16 for an employee who becomes eligible to participate in the
17 optional retirement program by reason of appointment,
18 promotion, transfer, or reclassification to an eligible
19 position.

20 (2) The election must be exercised by filing a written
21 notice with the teachers' retirement system and the
22 disbursing officer of the employer. The election is
23 effective as of the date the notice is filed or January 1,
24 1988, whichever is later.

25 (3) If an eligible officer or staff member fails to

1 exercise the election, as provided by this section, that
2 person must remain or become a member of the teachers'
3 retirement system.

4 (4) An election under this section is not effective
5 unless the notice filed with the disbursing officer of the
6 employer is accompanied by an appropriate application, if
7 one is required, for the issuance of a contract or contracts
8 under the program.

9 NEW SECTION. Section 4. Effect on rights under
10 teachers' retirement system. (1) An election under [section
11 3] to participate in the optional retirement program is a
12 waiver of all rights and benefits under the teachers'
13 retirement system except as provided in this section.

14 (2) A member of the teachers' retirement system who
15 elects to participate in the optional retirement program is
16 considered, for the purpose of determining eligibility for
17 rights and benefits under that system, to be no longer
18 employed in a capacity that allows active membership in that
19 system as of the effective date of the election.
20 Thereafter, the member is considered an inactive member of
21 the retirement system if qualified under 19-4-303, with the
22 rights and privileges provided under 19-4-603(1). A member
23 who elects to participate in the optional retirement program
24 who does not qualify as an inactive member under 19-4-303 is
25 considered a terminated member of the retirement system

1 under 19-4-304(4).

2 (3) A person who elects to participate in the optional
3 retirement program is ineligible to be an active member of
4 the teachers' retirement system while continuously employed
5 in a position eligible to participate in the optional
6 retirement program.

7 NEW SECTION. Section 5. Duties of board of regents.
8 The board of regents shall:

9 (1) provide for the administration of the program;

10 (2) designate the company or companies from which the
11 contracts are to be purchased and approve the form and
12 content of the contracts, taking into consideration the:

13 (a) nature and extent of the rights and benefits to be
14 provided by the contracts for participants and their
15 beneficiaries;

16 (b) relation of these rights and benefits to the
17 amount of contributions to be made;

18 (c) suitability of these rights and benefits to the
19 needs of the participants and the interests of the Montana
20 university system in the recruitment and retention of
21 administrative officers and members of the instructional and
22 scientific staff; and

23 (d) ability of the designated company or companies to
24 provide these rights and benefits.

25 NEW SECTION. Section 6. Contributions. (1) Each

1 optional retirement program participant shall contribute an
 2 amount equal to the member's contribution required under
 3 19-4-602. The board of regents shall contribute an amount
 4 equal to the employer contribution required under 19-4-605.

5 (2) The board of regents' contribution must be
 6 apportioned and paid as follows:

7 (a) to the designated company or companies, an amount
 8 EQUAL TO THE GREATER OF:

9 (I) THE EMPLOYER CONTRIBUTION TO THE TEACHERS'
 10 RETIREMENT SYSTEM NOT USED TO AMORTIZE PAST SERVICE UNFUNDED
 11 LIABILITY AS THAT UNFUNDED LIABILITY IS LIMITED BY [SECTION
 12 9]; OR

13 (II) AN AMOUNT that, when added to the participant's
 14 contribution, is equal to 10% of the participant's earned
 15 compensation; and

16 (b) to the teachers' retirement system, the balance of
 17 the board of regents' contribution.

18 (3) The board of regents shall determine whether the
 19 participant's contribution is to be made by salary reduction
 20 under section 403(b) of the Internal Revenue Code of 1954 or
 21 by employer pick-up under section 414(h)(2) of that code.

22 (4) The disbursing officer of the employer or other
 23 official designated by the board of regents shall pay both
 24 the participant's contribution and the appropriate portion
 25 of the regents' contribution to the designated company or

1 companies for the benefit of the participant.

2 NEW SECTION. Section 7. Payment of benefits. No
 3 retirement, death, or other benefit may be paid by the state
 4 or the board of regents under the optional retirement
 5 program. Benefits are payable to a participant and his
 6 beneficiaries only by the designated company or companies in
 7 accordance with the terms of the contracts.

8 NEW SECTION. Section 8. Exemption from taxation,
 9 legal process, and assessments. All contracts, benefits, and
 10 contributions under the optional retirement program and the
 11 earnings thereon are:

- 12 (1) exempt from a ANY state, county, or municipal tax;
- 13 (2) not subject to execution, garnishment, attachment,
 14 or other process;
- 15 (3) not covered or assessable by an insurance guaranty
 16 association; and
- 17 (4) unassignable except as specifically provided in
 18 the contracts.

19 NEW SECTION. SECTION 9. ACTUARIAL EVALUATION
 20 INVESTIGATION TO DETERMINE UNFUNDED LIABILITY. (1)
 21 BEGINNING ON JUNE 30, 1991 1990, THE BIENNIAL TEACHERS'
 22 RETIREMENT BOARD SHALL MAKE AN ACTUARIAL VALUATION
 23 INVESTIGATION OF THE TEACHERS' RETIREMENT SYSTEM MUST
 24 INCLUDE--A--DETERMINATION--OF TO DETERMINE THE PAST SERVICE
 25 UNFUNDED LIABILITY OF ACTIVE, INACTIVE, AND RETIRED MEMBERS

1 OF THE MONTANA UNIVERSITY SYSTEM. THE VALUATION MUST
 2 DETERMINE THE EFFECT ON THE AMORTIZATION OF THE UNFUNDED
 3 LIABILITY OF THE TEACHERS' RETIREMENT SYSTEM CAUSED BY
 4 PERSONS ELECTING TO PARTICIPATE IN THE OPTIONAL RETIREMENT
 5 PROGRAM. THE BOARD SHALL REPORT ITS FINDINGS TO THE 52ND
 6 LEGISLATURE.

7 (2) IF THE VALUATION DETERMINES THAT THE PERCENTAGE
 8 CONTRIBUTION ESTABLISHED IN [SECTION 6(2)(B)] HAS AN ADVERSE
 9 EFFECT ON THE AMORTIZATION OF THE UNFUNDED LIABILITY, THEN
 10 THE BOARD OF REGENTS SHALL PAY AN ADDITIONAL SUM OVER A
 11 PERIOD OF 40 YEARS TO RECTIFY THE ADVERSE EFFECT.

12 (3) CHANGES IN THE TEACHERS' RETIREMENT SYSTEM
 13 OCCURRING AFTER JULY 1, 1987, THAT CREATE ADDITIONAL
 14 UNFUNDED LIABILITIES MAY NOT BE CONSIDERED IN THE VALUATION,
 15 AND THE BOARD OF REGENTS MAY NOT BE REQUIRED TO PAY ANY
 16 ADDITIONAL SUM ON THAT ACCOUNT EXCEPT TO THE EXTENT THAT
 17 THOSE CHANGES BENEFIT MEMBERS OF THE TEACHERS' RETIREMENT
 18 SYSTEM WHO ARE EMPLOYEES OF THE MONTANA UNIVERSITY SYSTEM.

19 (4) IF THE VALUATION DETERMINES THAT THE BOARD OF
 20 REGENTS IS PAYING AN AMOUNT IN EXCESS OF THAT NEEDED TO
 21 AMORTIZE THE UNFUNDED LIABILITY, THE TEACHERS' RETIREMENT
 22 BOARD SHALL CREDIT THE BOARD OF REGENTS FOR THE EXCESS
 23 PAYMENTS. THE BOARD OF REGENTS SHALL CREDIT THE ACTIVE
 24 PARTICIPANTS IN THE OPTIONAL RETIREMENT PROGRAM WITH THE
 25 EXCESS PAYMENTS.

1 Section 10. Section 15-30-111, MCA, is amended to
 2 read:

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 4 income shall be the taxpayer's federal income tax adjusted
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 9 or territory or county, municipality, district, or other
 10 political subdivision thereof;

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 12 extent the deduction of such tax resulted in a reduction of
 13 Montana income tax liability; and

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

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

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

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

5 (c) all benefits received under the Federal Employees'
6 Retirement Act not in excess of \$3,600;

7 (d) all benefits, not in excess of \$360, received as
8 an annuity, pension, or endowment under any private or
9 corporate retirement plan or system;

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

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13 Retirement System Act which are specified as exempt from
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16 retirement law which are specified as exempt from taxation
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23 officers' retirement system that are specified as exempt
24 from taxation by 19-9-1005;

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

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3 Internal Revenue Code of 1954, as amended and applicable on
4 January 1, 1983, received by persons for services rendered
5 by them to patrons of premises licensed to provide food,
6 beverage, or lodging;

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13 program that are specified as exempt from taxation by
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15 (3) In the case of a shareholder of a corporation with
16 respect to which the election provided for under subchapter
17 S. of the Internal Revenue Code of 1954, as amended, is in
18 effect but with respect to which the election provided for
19 under 15-31-202, as amended, is not in effect, adjusted
20 gross income does not include any part of the corporation's
21 undistributed taxable income, net operating loss, capital
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23 included in the shareholder's federal income tax adjusted
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25 S. However, the shareholder's adjusted gross income shall

1 include actual distributions from the corporation to the
2 extent they would be treated as taxable dividends if the
3 subchapter S. election were not in effect.

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

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20 amount of income or loss of the partnership or small
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2 federal taxable tier 1 railroad retirement benefits when
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5 (7) A taxpayer receiving retirement disability
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7 taxable year and who has retired as permanently and totally
8 disabled may exclude from adjusted gross income up to \$100
9 per week received as wages or payments in lieu of wages for
10 a period during which the employee is absent from work due
11 to the disability. If the adjusted gross income before this
12 exclusion and before application of the two-earner married
13 couple deduction exceeds \$15,000, the excess reduces the
14 exclusion by an equal amount. This limitation affects the
15 amount of exclusion, but not the taxpayer's eligibility for
16 the exclusion. If eligible, married individuals shall apply
17 the exclusion separately, but the limitation for income
18 exceeding \$15,000 is determined with respect to the spouses
19 on their combined adjusted gross income. For the purpose of
20 this subsection, permanently and totally disabled means
21 unable to engage in any substantial gainful activity by
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23 impairment lasting or expected to last at least 12 months.
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6 board;

7 (2) pay to the secretary of the retirement board the
8 employer's contribution prescribed by 19-4-605, at the time
9 that the employee contributions are transmitted to the
10 secretary;

11 (3) keep records and, as required by the retirement
12 board, furnish information to the board that is required in
13 the discharge of the board's duties;

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15 become a member of the retirement system, inform him of his
16 rights and obligations relating to the retirement system;

17 (5) whenever applicable, inform an employee of his
18 right to elect to participate in the optional retirement
19 program under [sections 1 through 8 9];

20 (5)(6) at the request of the retirement board, certify
21 the names of all persons who are eligible for membership or
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24 of a person eligible for membership and forward his
25 membership application to the board."

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10 district superintendent as defined in 20-1-101;

11 (b) any person who is an administrative officer or a
12 member of the instructional or scientific staff of a unit of
13 the Montana university system and who has not elected to
14 participate in the optional retirement program under
15 [sections 1 through 8 9];

16 (c) any person employed in an instructional services
17 capacity by the office of the superintendent of public
18 instruction, the office of a county superintendent, a
19 special education cooperative, a public institution of the
20 state of Montana, the Montana state school for the deaf and
21 blind, or a school district;

22 (d) any person who has elected not to become a member
23 of the retirement system and is reentering service in a
24 capacity prescribed by (a), (b), or (c) of this subsection
25 (1);

1 (e) any person who has elected not to become a member
2 of the retirement system, who has been continuously employed
3 in a capacity prescribed by (a), (b), or (c) of this
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5 thereafter elect to become a member of the retirement
6 system.

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8 person described in subsection (1) must:

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12 totally paid by an employer as defined herein.

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14 member of the retirement system is in doubt, the retirement
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20 extended to the provisions of this act.

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5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING AN OPTIONAL
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16 [sections 1 through 8 9], for the administrative officers
17 and members of the instructional and scientific staff of the
18 Montana university system. The program may be an independent
19 plan or part of a larger plan with respect to some or all of
20 the benefits provided. The benefits under the program must
21 be provided through individual annuity contracts, either
22 fixed or variable, or a combination thereof, issued to and
23 owned by the participants in the program.

24 NEW SECTION. Section 2. Definition of teachers'
25 retirement system. In [sections 1 through 8 9], "teachers'

1 retirement system" means the teachers' retirement system
2 provided for in Title 19, chapter 4.

3 NEW SECTION. Section 3. Participation in program.
4 (1) Academic and professional administrative personnel with
5 individual contracts under the authority of the board of
6 regents are eligible for and may elect to participate in the
7 optional retirement program instead of the teachers'
8 retirement system. This election must be exercised:

9 (a) before January 1, 1988, for an eligible person
10 hired before July 1, 1987;

11 (b) within 90 days after entry into service or before
12 January 1, 1988, whichever is later, for a person hired in
13 an eligible position on or after July 1, 1987; and

14 (c) within 30 days after receiving written notice of
15 eligibility or before January 1, 1988, whichever is later,
16 for an employee who becomes eligible to participate in the
17 optional retirement program by reason of appointment,
18 promotion, transfer, or reclassification to an eligible
19 position.

20 (2) The election must be exercised by filing a written
21 notice with the teachers' retirement system and the
22 disbursing officer of the employer. The election is
23 effective as of the date the notice is filed or January 1,
24 1988, whichever is later.

25 (3) If an eligible officer or staff member fails to

1 exercise the election, as provided by this section, that
 2 person must remain or become a member of the teachers'
 3 retirement system.

4 (4) An election under this section is not effective
 5 unless the notice filed with the disbursing officer of the
 6 employer is accompanied by an appropriate application, if
 7 one is required, for the issuance of a contract or contracts
 8 under the program.

9 NEW SECTION. Section 4. Effect on rights under
 10 teachers' retirement system. (1) An election under [section
 11 3] to participate in the optional retirement program is a
 12 waiver of all rights and benefits under the teachers'
 13 retirement system except as provided in this section.

14 (2) A member of the teachers' retirement system who
 15 elects to participate in the optional retirement program is
 16 considered, for the purpose of determining eligibility for
 17 rights and benefits under that system, to be no longer
 18 employed in a capacity that allows active membership in that
 19 system as of the effective date of the election.
 20 Thereafter, the member is considered an inactive member of
 21 the retirement system if qualified under 19-4-303, with the
 22 rights and privileges provided under 19-4-603(1). A member
 23 who elects to participate in the optional retirement program
 24 who does not qualify as an inactive member under 19-4-303 is
 25 considered a terminated member of the retirement system

1 under 19-4-304(4).

2 (3) A person who elects to participate in the optional
 3 retirement program is ineligible to be an active member of
 4 the teachers' retirement system while continuously employed
 5 in a position eligible to participate in the optional
 6 retirement program.

7 NEW SECTION. Section 5. Duties of board of regents.
 8 The board of regents shall:

- 9 (1) provide for the administration of the program;
- 10 (2) designate the company or companies from which the
 11 contracts are to be purchased and approve the form and
 12 content of the contracts, taking into consideration the:
 - 13 (a) nature and extent of the rights and benefits to be
 14 provided by the contracts for participants and their
 15 beneficiaries;
 - 16 (b) relation of these rights and benefits to the
 17 amount of contributions to be made;
 - 18 (c) suitability of these rights and benefits to the
 19 needs of the participants and the interests of the Montana
 20 university system in the recruitment and retention of
 21 administrative officers and members of the instructional and
 22 scientific staff; and
 - 23 (d) ability of the designated company or companies to
 24 provide these rights and benefits.

25 NEW SECTION. Section 6. Contributions. (1) Each

1 optional retirement program participant shall contribute an
 2 amount equal to the member's contribution required under
 3 19-4-602. The board of regents shall contribute an amount
 4 equal to the employer contribution required under 19-4-605.

5 (2) The board of regents' contribution must be
 6 apportioned and paid as follows:

7 (a) to the designated company or companies, an amount
 8 EQUAL TO THE GREATER OF:

9 (I) THE EMPLOYER CONTRIBUTION TO THE TEACHERS'
 10 RETIREMENT SYSTEM NOT USED TO AMORTIZE PAST SERVICE UNFUNDED
 11 LIABILITY AS THAT UNFUNDED LIABILITY IS LIMITED BY [SECTION
 12 9]; OR

13 (II) AN AMOUNT that, when added to the participant's
 14 contribution, is equal to 10% of the participant's earned
 15 compensation; and

16 (b) to the teachers' retirement system, the balance of
 17 the board of regents' contribution.

18 (3) The board of regents shall determine whether the
 19 participant's contribution is to be made by salary reduction
 20 under section 403(b) of the Internal Revenue Code of 1954 or
 21 by employer pick-up under section 414(h)(2) of that code.

22 (4) The disbursing officer of the employer or other
 23 official designated by the board of regents shall pay both
 24 the participant's contribution and the appropriate portion
 25 of the regents' contribution to the designated company or

1 companies for the benefit of the participant.

2 NEW SECTION. Section 7. Payment of benefits. No
 3 retirement, death, or other benefit may be paid by the state
 4 or the board of regents under the optional retirement
 5 program. Benefits are payable to a participant and his
 6 beneficiaries only by the designated company or companies in
 7 accordance with the terms of the contracts.

8 NEW SECTION. Section 8. Exemption from taxation,
 9 legal process, and assessments. All contracts, benefits, and
 10 contributions under the optional retirement program and the
 11 earnings thereon are:

- 12 (1) exempt from a ANY state, county, or municipal tax;
- 13 (2) not subject to execution, garnishment, attachment,
 14 or other process;
- 15 (3) not covered or assessable by an insurance guaranty
 16 association; and
- 17 (4) unassignable except as specifically provided in
 18 the contracts.

19 NEW SECTION. SECTION 9. ACTUARIAL EVALUATION
 20 INVESTIGATION TO DETERMINE UNFUNDED LIABILITY. (1)
 21 BEGINNING ON JUNE 30, 1991 1990, THE BIENNIAL TEACHERS'
 22 RETIREMENT BOARD SHALL MAKE AN ACTUARIAL VALUATION
 23 INVESTIGATION OF THE TEACHERS' RETIREMENT SYSTEM MUST
 24 INCLUDE--A--DETERMINATION--OF TO DETERMINE THE PAST SERVICE
 25 UNFUNDED LIABILITY OF ACTIVE, INACTIVE, AND RETIRED MEMBERS

1 OF THE MONTANA UNIVERSITY SYSTEM. THE VALUATION MUST
 2 DETERMINE THE EFFECT ON THE AMORTIZATION OF THE UNFUNDED
 3 LIABILITY OF THE TEACHERS' RETIREMENT SYSTEM CAUSED BY
 4 PERSONS ELECTING TO PARTICIPATE IN THE OPTIONAL RETIREMENT
 5 PROGRAM. THE BOARD SHALL REPORT ITS FINDINGS TO THE 52ND
 6 LEGISLATURE.

7 (2) IF THE VALUATION DETERMINES THAT THE PERCENTAGE
 8 CONTRIBUTION ESTABLISHED IN [SECTION 6(2)(B)] HAS AN ADVERSE
 9 EFFECT ON THE AMORTIZATION OF THE UNFUNDED LIABILITY, THEN
 10 THE BOARD OF REGENTS SHALL PAY AN ADDITIONAL SUM OVER A
 11 PERIOD OF 40 YEARS TO RECTIFY THE ADVERSE EFFECT.

12 (3) CHANGES IN THE TEACHERS' RETIREMENT SYSTEM
 13 OCCURRING AFTER JULY 1, 1987, THAT CREATE ADDITIONAL
 14 UNFUNDED LIABILITIES MAY NOT BE CONSIDERED IN THE VALUATION,
 15 AND THE BOARD OF REGENTS MAY NOT BE REQUIRED TO PAY ANY
 16 ADDITIONAL SUM ON THAT ACCOUNT EXCEPT TO THE EXTENT THAT
 17 THOSE CHANGES BENEFIT MEMBERS OF THE TEACHERS' RETIREMENT
 18 SYSTEM WHO ARE EMPLOYEES OF THE MONTANA UNIVERSITY SYSTEM.

19 (4) IF THE VALUATION DETERMINES THAT THE BOARD OF
 20 REGENTS IS PAYING AN AMOUNT IN EXCESS OF THAT NEEDED TO
 21 AMORTIZE THE UNFUNDED LIABILITY, THE TEACHERS' RETIREMENT
 22 BOARD SHALL CREDIT THE BOARD OF REGENTS FOR THE EXCESS
 23 PAYMENTS. THE BOARD OF REGENTS SHALL CREDIT THE ACTIVE
 24 PARTICIPANTS IN THE OPTIONAL RETIREMENT PROGRAM WITH THE
 25 EXCESS PAYMENTS.

1 Section 10. Section 15-30-111, MCA, is amended to
 2 read:

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

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

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

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

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

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

- 1 (b) interest income earned by a taxpayer age 65 or
- 2 older in a taxable year up to and including \$800 for a
- 3 taxpayer filing a separate return and \$1,600 for each joint
- 4 return;
- 5 (c) all benefits received under the Federal Employees'
- 6 Retirement Act not in excess of \$3,600;
- 7 (d) all benefits, not in excess of \$360, received as
- 8 an annuity, pension, or endowment under any private or
- 9 corporate retirement plan or system;
- 10 (e) all benefits paid under the teachers' retirement
- 11 law which are specified as exempt from taxation by 19-4-706;
- 12 (f) all benefits paid under The Public Employees'
- 13 Retirement System Act which are specified as exempt from
- 14 taxation by 19-3-105;
- 15 (g) all benefits paid under the highway patrol
- 16 retirement law which are specified as exempt from taxation
- 17 by 19-6-705;
- 18 (h) all Montana income tax refunds or credits thereof;
- 19 (i) all benefits paid under 19-11-602, 19-11-604, and
- 20 19-11-605 to retired and disabled firefighters, their
- 21 surviving spouses and orphans;
- 22 (j) all benefits paid under the municipal police
- 23 officers' retirement system that are specified as exempt
- 24 from taxation by 19-9-1005;
- 25 (k) gain required to be recognized by a liquidating

- 1 corporation under 15-31-113(1)(a)(ii);
- 2 (1) all tips covered by section 3402(k) of the
- 3 Internal Revenue Code of 1954, as amended and applicable on
- 4 January 1, 1983, received by persons for services rendered
- 5 by them to patrons of premises licensed to provide food,
- 6 beverage, or lodging;
- 7 (m) all benefits received under the workers'
- 8 compensation laws; and
- 9 (n) all health insurance premiums paid by an employer
- 10 for an employee if attributed as income to the employee
- 11 under federal law; and
- 12 (o) all benefits paid under an optional retirement
- 13 program that are specified as exempt from taxation by
- 14 [section 8].
- 15 (3) In the case of a shareholder of a corporation with
- 16 respect to which the election provided for under subchapter
- 17 S. of the Internal Revenue Code of 1954, as amended, is in
- 18 effect but with respect to which the election provided for
- 19 under 15-31-202, as amended, is not in effect, adjusted
- 20 gross income does not include any part of the corporation's
- 21 undistributed taxable income, net operating loss, capital
- 22 gains or other gains, profits, or losses required to be
- 23 included in the shareholder's federal income tax adjusted
- 24 gross income by reason of the said election under subchapter
- 25 S. However, the shareholder's adjusted gross income shall

1 include actual distributions from the corporation to the
2 extent they would be treated as taxable dividends if the
3 subchapter S. election were not in effect.

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

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

22 (6) Married taxpayers filing a joint federal return
23 who must include part of their social security benefits or
24 part of their tier 1 railroad retirement benefits in federal
25 adjusted gross income may split the federal base used in

1 calculation of federal taxable social security benefits or
2 federal taxable tier 1 railroad retirement benefits when
3 they file separate Montana income tax returns. The federal
4 base must be split equally on the Montana return.

5 (7) A taxpayer receiving retirement disability
6 benefits who has not attained age 65 by the end of the
7 taxable year and who has retired as permanently and totally
8 disabled may exclude from adjusted gross income up to \$100
9 per week received as wages or payments in lieu of wages for
10 a period during which the employee is absent from work due
11 to the disability. If the adjusted gross income before this
12 exclusion and before application of the two-earner married
13 couple deduction exceeds \$15,000, the excess reduces the
14 exclusion by an equal amount. This limitation affects the
15 amount of exclusion, but not the taxpayer's eligibility for
16 the exclusion. If eligible, married individuals shall apply
17 the exclusion separately, but the limitation for income
18 exceeding \$15,000 is determined with respect to the spouses
19 on their combined adjusted gross income. For the purpose of
20 this subsection, permanently and totally disabled means
21 unable to engage in any substantial gainful activity by
22 reason of any medically determined physical or mental
23 impairment lasting or expected to last at least 12 months.
24 (Subsection (2)(1) terminates on occurrence of
25 contingency--sec. 3, Ch. 634, L. 1983.)"

1 Section 11. Section 19-4-208, MCA, is amended to read:

2 "19-4-208. Duties of employer. Each employer shall:

3 (1) pick up the contribution of each member employed
4 by him at the rate prescribed by 19-4-602 and transmit the
5 contribution each month to the secretary of the retirement
6 board;

7 (2) pay to the secretary of the retirement board the
8 employer's contribution prescribed by 19-4-605, at the time
9 that the employee contributions are transmitted to the
10 secretary;

11 (3) keep records and, as required by the retirement
12 board, furnish information to the board that is required in
13 the discharge of the board's duties;

14 (4) upon the employment of a person who is required to
15 become a member of the retirement system, inform him of his
16 rights and obligations relating to the retirement system;

17 (5) whenever applicable, inform an employee of his
18 right to elect to participate in the optional retirement
19 program under [sections 1 through 9];

20 ~~(5)(6)~~ at the request of the retirement board, certify
21 the names of all persons who are eligible for membership or
22 who are members of the retirement system; and

23 ~~(6)(7)~~ notify the retirement board of the employment
24 of a person eligible for membership and forward his
25 membership application to the board."

1 Section 12. Section 19-4-302, MCA, is amended to read:

2 "19-4-302. Active membership. (1) Unless otherwise
3 provided by this chapter, the following persons must be
4 active members of the retirement system, with the exception
5 that those persons who became eligible for membership on
6 September 1, 1937, or on September 1, 1939, and who elected
7 not to become members under the provisions of the law at
8 that time are not required to be members:

9 (a) any person who is a teacher, principal, or
10 district superintendent as defined in 20-1-101;

11 (b) any person who is an administrative officer or a
12 member of the instructional or scientific staff of a unit of
13 the Montana university system and who has not elected to
14 participate in the optional retirement program under
15 [sections 1 through 9];

16 (c) any person employed in an instructional services
17 capacity by the office of the superintendent of public
18 instruction, the office of a county superintendent, a
19 special education cooperative, a public institution of the
20 state of Montana, the Montana state school for the deaf and
21 blind, or a school district;

22 (d) any person who has elected not to become a member
23 of the retirement system and is reentering service in a
24 capacity prescribed by (a), (b), or (c) of this subsection
25 (1);

1 (e) any person who has elected not to become a member
 2 of the retirement system, who has been continuously employed
 3 in a capacity prescribed by (a), (b), or (c) of this
 4 subsection (1) since the time of such election, and who may
 5 thereafter elect to become a member of the retirement
 6 system.

7 (2) In order to be eligible for active membership, any
 8 person described in subsection (1) must:

9 (a) be employed in the capacity prescribed for his
 10 eligibility for at least 30 days in any fiscal year; and

11 (b) have the compensation for his creditable service
 12 totally paid by an employer as defined herein.

13 (3) At any time a person's eligibility to become a
 14 member of the retirement system is in doubt, the retirement
 15 board shall determine his eligibility for membership. All
 16 persons in similar circumstances shall be treated alike."

17 NEW SECTION. Section 13. Extension of authority. Any
 18 existing authority of the teachers' retirement board to make
 19 rules on the subject of the provisions of this act is
 20 extended to the provisions of this act.

21 NEW SECTION. SECTION 14. COORDINATION INSTRUCTION. IF
 22 ANY ACT OF THIS LEGISLATURE IS PASSED AND APPROVED WHICH
 23 AMENDS 15-30-111 PROVIDING FOR THE TAXATION OF ALL OR A
 24 PORTION OF PREVIOUSLY EXEMPT RETIREMENT BENEFITS, SECTIONS 8
 25 AND 10 OF THIS ACT PROVIDING AN EXEMPTION FOR RETIREMENT

1 BENEFITS OF CERTAIN UNIVERSITY SYSTEM EMPLOYEES ARE VOID.

2 NEW SECTION. Section 15. Effective date. This act is
 3 effective July 1, 1987.

-End-

STANDING COMMITTEE REPORT

MARCH 20 19 87

MR. PRESIDENT

SENATE STATE ADMINISTRATION

We, your committee on.....

having had under consideration..... HOUSE BILL No. 300

third reading copy (blue)
color

AUTHORIZE OPTIONAL RETIREMENT PROGRAM FOR CERTAIN U. SYSTEM FACULTY & STAFF
Lory (Haffey)

HOUSE BILL 300

Respectfully report as follows: That..... No.....

be amended as follows:

1. Page 15, line 20.

Insert: "NEW SECTION. Section 14. Coordination instruction.
If any act of this legislature is passed and approved
which amends 15-30-111 providing for the taxation of all
or a portion of previously exempt retirement benefits,
sections 8 and 10 of this act providing an exemption for
retirement benefits of certain university system employ-
ees are void."

Renumber: following section

AND AS AMENDED
BE CONCURRED IN

XXXXXX

XXXXXXXXXX

Jack Haffey
SENATOR JACK HAFFEY

Chairman.

5-23-87
2:35