

HOUSE BILL 580

Introduced by Kadas

2/04	Introduced
2/06	Referred to State Administration
2/07	Fiscal Note Requested
2/13	Fiscal Note Received
2/15	Hearing
2/15	Fiscal Note Printed
2/17	Tabled in Committee

1 HOUSE BILL NO. 580  
2 INTRODUCED BY Kadao  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT MEMBER  
5 AND EMPLOYER CONTRIBUTIONS ON LUMP-SUM PAYMENTS TO BE  
6 RECEIVED BY A TERMINATING EMPLOYEE NOT BE MADE UNLESS THE  
7 EMPLOYEE ELECTS TO CONTRIBUTE; AMENDING SECTIONS 19-3-104,  
8 19-3-701, AND 19-3-801, MCA; AND PROVIDING AN EFFECTIVE  
9 DATE."  
10

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

12 **Section 1.** Section 19-3-104, MCA, is amended to read:

13 "19-3-104. Definitions. Unless the context requires  
14 otherwise, in this chapter the following definitions apply:

15 (1) "Accumulated contributions" means the sum of all  
16 the contributions standing to the credit of a member's  
17 individual account, together with the regular interest  
18 thereon on the contributions.

19 (2) "Actuarial equivalent" means a benefit of equal  
20 value when computed upon the basis of the 1971 Group Annuity  
21 Mortality Table, with ages set back 4 years and an interest  
22 rate of 8% compounded annually.

23 (3) "Actuary" means the actuary retained by the board  
24 in accordance with 19-3-305.

25 (4) "Additional contributions" means contributions by

1 members under the provisions of 19-3-702.

2 (5) "Annuity" means payments for life derived from  
3 contributions made by a member as provided in this chapter.

4 (6) "Beneficiary" means the person so designated  
5 pursuant to part 13 of this chapter.

6 (7) "Benefit" means the retirement allowance,  
7 survivorship allowance, death benefit, or refund of  
8 accumulated contributions provided by this chapter.

9 (8) "Board" means the public employees' retirement  
10 board provided for in 2-15-1009.

11 (9) "Compensation" means remuneration paid out of funds  
12 controlled by an employer, except lump-sum payments for  
13 unused vacation and sick leave received by a member upon  
14 terminating employment. The compensation of each member of  
15 the legislature of Montana for any year ~~shall be considered~~  
16 to--be is that portion of the product of the daily  
17 compensation for ~~such the~~ position multiplied by 360 upon  
18 which ~~such the~~ member elects to pay normal contributions  
19 during the year.

20 (10) "Contracting employer" means any political  
21 subdivision or governmental entity which that has contracted  
22 to come into the system.

23 (11) "Creditable service" means the aggregate of  
24 membership service and prior service.

25 (12) "Disability" and "incapacity for performance of

duty", referred to herein in this chapter as a basis of retirement, mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(13) "Employee" means any person who is employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person considered such to be an employee pursuant to 19-3-402.

(14) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units thereof of the university system for the purposes of this chapter, or any political subdivision or governmental entity which that has contracted to come into the system.

(15) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to 19-3-801 and from contracting employers pursuant to the contracts between them and the board.

(16) "Final compensation" means a member's highest average annual compensation during any 3 consecutive years of membership service. Bump-sum If a member elects to make contributions as provided in 19-3-701(3), lump-sum payments for sick leave and annual leave paid to the employee upon

termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(17) "Fiscal year" means any year commencing with July 1 and ending June 30 next of the following year.

(18) "Head of department" means the head of any department, institution, or branch of the state service which government that directly pays salaries out of its income or which that prepares, approves, and submits salary statements of its employees to the department of administration, state auditor, and state treasurer for payment.

(19) "Member" means any person included in the membership of the retirement system set forth in 19-3-401 and not excluded in 19-3-402, 19-3-403, or 19-3-406.

(20) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislature of Montana ~~shall--be~~ is credited with membership service for that portion of each year for which he pays normal contributions pursuant to subsection (9) of this section.

(21) "Normal contributions" means contributions required

1 from members under this chapter and any optional  
2 contributions made under the provisions of 19-3-502 and  
3 19-3-704.

4 (22) "Pension" means payments for life derived from  
5 contributions made from the state controlled funds or, in  
6 the case of members from contracting employers, from the  
7 funds of such the contracting employers, as provided in this  
8 chapter.

9 (23) "Prior service" means all service rendered as an  
10 employee of the state before July 1, 1945, and all service  
11 rendered as an employee of a contracting employer before  
12 July 1, 1947. Prior service includes all service rendered  
13 prior to July 1, 1945, as a member of the legislative  
14 assembly legislature or lieutenant governor of Montana.

15 (24) "Regular interest" means interest at the rate set  
16 from-time-to-time periodically by the board.

17 (25) "Retirement" means withdrawal from active service  
18 with a retirement allowance granted under the provisions of  
19 this chapter.

20 (26) "Retirement allowance" means the periodic benefit  
21 payable following service, early, or disability retirement.

22 (27) "Retirement fund" means the public employees'  
23 retirement system pension trust fund.

24 (28) "Retirement system" means the public employees'  
25 retirement system created by this chapter.

1 (29) "Service" means employment of an employee, except  
2 as provided in 19-3-501 and 19-3-502.

3 (30) "Survivorship allowance" means payments for life to  
4 the beneficiary of a deceased member as provided in part 12  
5 of this chapter.

6 (31) "Written application" means a written instrument  
7 duly executed and filed with the board and containing all  
8 information required by the board, including such proofs of  
9 age as the board considers necessary."

10 **Section 2.** Section 19-3-701, MCA, is amended to read:

11 "19-3-701. Member's contribution to be deducted. (1)  
12 The normal contribution of each member is 6% of his  
13 compensation. Payment of salaries or wages less the  
14 contribution ~~shall--be~~ is full and complete discharge and  
15 acquittance of all claims and demands whatsoever for the  
16 service rendered by members during the period covered by the  
17 payment, except their claims to the benefits to which they  
18 may be entitled under the provisions of this chapter.

19 (2) (a) Each employer, pursuant to section 414(h)(2) of  
20 the federal Internal Revenue Code of 1954, as amended and  
21 applicable on July 1, 1985, shall pick up and pay the  
22 contributions which would be payable by the member under  
23 subsection (1) for service rendered after June 30, 1985.

24 (b) The member's contributions picked up by the  
25 employer must be designated for all purposes of the

retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and his compensation as defined in 19-3-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

(3) A member may not make contributions on a lump-sum payment for unused vacation and sick leave paid to him upon termination of employment unless he elects to contribute by submitting a written application to the board before his employment is terminated. If the member elects to contribute, the lump-sum payment may be used to calculate his final compensation as provided in 19-3-104.

**Section 3.** Section 19-3-801, MCA, is amended to read:

"19-3-801. **Employer contribution rates -- actuarial determination.** (1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions ~~shall be~~ is computed by applying to

member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates ~~shall be~~ is 6.417% from July 1, 1983, and thereafter.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system ~~which that~~ equals the then present value of the excess of all prospective benefits in respect of ~~such~~ the member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the 40-year period following the date of the determination ~~which that~~ is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all ~~such~~ persons.

(4) If a member elects to contribute as provided in 19-3-701(3), the employer shall make contributions as provided in this section on the lump-sum payment to be

1 received by the member."

2 NEW SECTION. Section 4. Extension of authority. Any  
3 existing authority to make rules on the subject of the  
4 provisions of [this act] is extended to the provisions of  
5 [this act].

6 NEW SECTION. Section 5. Effective date. [This act] is  
7 effective July 1, 1989.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB580, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing that member and employer contributions on lump-sum payments to be received by a terminating employee not be made unless the employee elects to contribute; amending Sections 19-3-104, 19-3-701, and 19-3-801, MCA; and providing an effective date.

ASSUMPTIONS:

1. PERS membership profile (as of October 31, 1988):

<u>Employer Group</u>	<u>Annualized Payroll</u>	<u>Total Members</u>	<u>Percent of Membership</u>	<u>Average Salary</u>	<u>% of Total Contributions</u>
State	\$200,721,851	9,980	39%	\$20,112	47%
University	36,086,983	2,213	8%	16,307	8%
Local Gov'ts	192,686,769	13,717	53%	14,047	45%
TOTAL	\$429,495,603	25,910		\$16,576(avg)	

2. PERS employee contributions on lump sum payouts of sick and annual leave will no longer be tax-deferred. These lump sum payouts average approximately \$8,750 for retiring members.
3. The major impact of this legislation will be to reduce employer contributions to the retirement system. Only members who are retiring will opt to pay PERS contributions on their lump-sum payouts.
4. The annual rates of termination for the two groups of PERS members most likely to terminate without electing to contribution on their lump sum cash-outs are 10.2% and 8.3%.
5. Amounts of lump sum payouts for state employees are based on current leave accumulations and average salaries for these two groups of state employees. University and local government payouts are interpolated from state employee data based on average salaries and percentage of PERS membership.

The average lump sum payouts for terminating PERS members are:

<u>State Employees</u>	<u>Avg Payout</u>	<u>University Employees</u>	<u>Avg Payout</u>	<u>Local Gov't Employees</u>	<u>Avg Payout</u>
Less than 5 years (4,046)	\$ 705	Less than 5 years (897)	\$ 572	Less than 5 years (5,561)	\$ 490
5 to 10 years, under age 50 (2,382)	\$ 1,500	5 to 10 years, under age 50 (529)	\$ 1,215	5 to 10 years, under age 50 (3,275)	\$ 1,050

6. PERS payrolls will increase by 2% each year of the next biennium. 36% of state and university PERS payrolls are a general fund expenditure.
7. Computer program modifications required to process payrolls will require the following expenditures: \$1,000 State Auditor's Office; \$4,000 University System; \$14,000 local governments.

*Ray Shackelford*

DATE 2/13/89

RAY/SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/14/89

MIKE KADAS, PRIMARY SPONSOR

Fiscal Note for HB580, as introduced

**HB 580**

Fiscal Note Request HB580 as introduced

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8. Optional payment of PERS contributions on lump sum cashouts will require major modifications to current operating procedures within the PERD. All optional payments must be manually processed within the retirement division, requiring an additional .5 FTE (Grade 11) benefits analyst. In addition, approximately \$1,500 in Operating Expenses (for printing application forms and reporting instructions, and mailing to reporting clerks in over 450 employing agencies) will be required each year.

FISCAL IMPACT:

	<u>FY90</u>			<u>FY91</u>		
	<u>Current</u>	<u>Proposed</u>		<u>Current</u>	<u>Proposed</u>	
<u>Revenues:</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
PERS Trust Account	\$28,111,948	\$28,021,133	(\$ 90,815)	\$28,674,187	\$28,582,026	(\$ 92,161)
<u>Expenditures:</u>						
FTE	19.0	19.5	0.5	19.0	19.5	0.5
Personal Services \$	455,020	\$ 467,125	\$ 12,105	\$ 456,514	\$ 468,862	\$ 12,348
Operating Expenses	387,170	388,670	1,500	252,638	254,138	1,500
Equipment	3,763	3,763	-0-	1,463	1,463	-0-
TOTAL	\$ 845,953	\$ 859,558	\$ 13,605	\$ 710,615	\$ 724,463	\$ 13,848

Net Effect:

PERS Trust Account (\$ 104,420) (\$ 106,009)

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Lost revenue to PERS trust fund will reduce local government expenditures by \$36,868 in FY90 and \$37,961 in FY91. Local government costs will increase by an estimated \$14,000 during FY89 or FY90 in order to process payroll changes.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

There will be a continual reduction in employer contributions to the PERS as well as an adverse selection against the system in that only those members receiving an increase in their Final Average Salaries will elect to make a contribution on their lump sum payouts. Future actuarial valuations will determine how this will impact the funding period of the system's unfunded liabilities. The compounding effect of lost revenue and adverse selection could eventually require increases in the statutory employer contribution rate.

Employees electing to make PERS contributions on their lump sum payouts of sick and annual leave will have to pay federal and state income taxes averaging approximately \$145 in FY90, which will increase as salaries and leave accruals increase.

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