

SENATE BILL 412

Introduced by Van Valkenburg

2/13	Introduced
2/13	Referred to State Administration
2/14	Fiscal Note Requested
2/16	Hearing
2/17	Fiscal Note Received
2/18	Fiscal Note Printed
	Died in Committee

1 *Sen. Smith* BILL NO. *412*  
 2 INTRODUCED BY *Sen. Veltman*  
 3 BY REQUEST OF THE ATTORNEY GENERAL  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AGENTS OF THE  
 6 DEPARTMENT OF JUSTICE TO BE MEMBERS OF THE MONTANA HIGHWAY  
 7 PATROLMEN'S RETIREMENT SYSTEM; PROVIDING FOR THE OPTIONAL  
 8 TRANSFER OF AN AGENT'S SERVICE CREDITS FROM THE PUBLIC  
 9 EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTIONS 19-6-101,  
 10 19-6-301 THROUGH 19-6-305, 19-6-401, 19-6-404, 19-6-501,  
 11 19-6-505, 19-6-601, 19-6-612, 19-6-707, AND 44-2-114, MCA; AND  
 12 PROVIDING AN EFFECTIVE DATE."  
 13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 15 **Section 1.** Section 19-6-101, MCA, is amended to read:  
 16 "19-6-101. Definitions. Unless the context requires  
 17 otherwise, the following definitions apply in this chapter:  
 18 (1) "Account" means the Montana highway patrolmen's  
 19 retirement pension trust fund.  
 20 (2) "Accumulated deductions" means the total of the  
 21 amounts deducted from the salary of a member, paid into the  
 22 account, and standing to his credit in the account, together  
 23 with the regular interest thereon.  
 24 (3) "Actuarial equivalent" means a benefit of equal value  
 25 when computed on the basis of the 1971 Group Annuity Mortality

1 Table, with ages set back 4 years and an interest rate of 8%  
 2 compounded annually.  
 3 (4) "Agent" means a person appointed by the attorney  
 4 general as provided in Title 44, chapter 2, part 1.  
 5 (5) "Beneficiary" means a surviving spouse or dependent  
 6 child or, if there is no surviving spouse or dependent child,  
 7 a person nominated to receive benefits under 19-6-602.  
 8 (5)(6) "Board" means the public employees' retirement  
 9 board provided for in 2-15-1009.  
 10 (6)(7) "Department" means the public employees'  
 11 retirement division of the department of administration.  
 12 (7)(8) "Dependent child" means an unmarried child of a  
 13 deceased retired patrolman member, who is:  
 14 (a) under 18 years of age; or  
 15 (b) under 24 years of age and attending an accredited  
 16 postsecondary educational institution as a full-time student  
 17 in anticipation of receiving a certificate or degree.  
 18 (8)(9) "Final salary" means the average annual  
 19 compensation received by a member, before any deductions have  
 20 been made and exclusive of maintenance, allowances, and  
 21 expenses, for any 3 years of continuous service upon which  
 22 contributions have been made or, in-the-event if a member has  
 23 not served 3 years, the total compensation earned divided by  
 24 the number of years served. Lump-sum payments for sick leave  
 25 and annual leave paid to an 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.

{9}(10) "Member" means a person who has accumulated deductions in the account standing to his credit before retirement.

{10}(11) "Member's annuity" means payments for life derived from contributions made by the member.

{11}(12) "Retired patrolman member" means a person in receipt of a retirement allowance under this chapter.

{12}(13) "Retirement age" means the age at which a member retires after 25 years of creditable service ~~with-the-Montana highway-patrol~~.

{13}(14) "Retirement allowance" means the state annuity plus the member's annuity.

{14}(15) "State annuity" means payments for life derived from contributions made by the state of Montana.

{15}(16) "Surviving spouse" means the spouse married to a retired patrolman member at the time of the retired patrolman's member's death."

**Section 2.** Section 19-6-301, MCA, is amended to read:

"19-6-301. **Membership.** All ~~members-of-the-Montana~~ highway

patrol officers and agents, including the supervisor and assistant supervisors, must be members of the retirement system."

**Section 3.** Section 19-6-302, MCA, is amended to read:

"19-6-302. **Computation of the service of a member.** (1) In computing the length of service of a member for retirement purposes, full credit ~~shall~~ must be given to each member for each year of service rendered ~~to-the-patrol~~, including service rendered by a member as a highway patrolman prior to July 1, 1945, if there is compliance with the provisions of this chapter. The time during which a member is absent from service without pay may not be counted in computing his service for retirement purposes, except as provided in 19-6-303 and 19-6-304 in regard to service with the armed forces of the United States.

(2) There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member."

**Section 4.** Section 19-6-303, MCA, is amended to read:

"19-6-303. **Military service.** (1) A ~~member of-the-Montana highway-patrol~~ inducted into the armed forces of the United States has the option to:

- (a) continue his payments into the fund; or
- (b) allow the department to make his payments for him during his military service, in which event he must repay the

1 fund the full amount of the payments within 2 years after his  
2 return to ~~the-Montana-highway-patrol~~ service covered under the  
3 retirement system.

4 (2) If a member chooses one of the options in subsection  
5 (1) and meets its requirements, he ~~shall~~ must be given credit  
6 for his service in the armed forces of the United States as if  
7 it were ~~service in-the-Montana-highway-patrol~~ covered under  
8 the retirement system."

9 **Section 5.** Section 19-6-304, MCA, is amended to read:

10 "19-6-304. Election to qualify military service for full  
11 credit. (1) A member with 15 years or more of creditable  
12 ~~service with-the-Montana-highway-patrol~~ may, at any time prior  
13 to his retirement, make a written election with the department  
14 to qualify all or any portion of his active service in the  
15 armed forces of the United States for the purpose of  
16 calculating retirement benefits, up to a maximum of 5 years,  
17 if he is not otherwise eligible to receive credit for this  
18 ~~same~~ service pursuant to 19-6-303.

19 (2) To qualify this service he ~~must~~ shall contribute to  
20 the account the amount determined by the department due based  
21 on his compensation and normal contribution rate as of his  
22 16th year and as many succeeding years as are required to  
23 qualify this service, with interest from the date he becomes  
24 eligible for this benefit to the date he contributes. He may  
25 not qualify more of this service than he has service with

1 covered under the Montana-highway-patrol retirement system in  
2 excess of 15 years."

3 **Section 6.** Section 19-6-305, MCA, is amended to read:

4 "19-6-305. Qualification of service from other Montana  
5 public retirement systems. (1) (a) A Except as provided in  
6 subsection (2), a member may, at any time before his  
7 retirement, make a written election with the board to qualify  
8 all or any portion of his creditable service in the public  
9 employees', sheriffs', game wardens', firefighters' unified,  
10 or municipal police officers' retirement system for which he  
11 has received a refund of his membership contributions. To  
12 qualify this service, he must contribute to the retirement  
13 fund account the actuarial cost of granting qualifying the  
14 service in the highway patrolmen's retirement system, as  
15 determined by the board, based on his compensation earned as a  
16 member of the former system and the normal contribution rate  
17 according to the most recent actuarial valuation minus the  
18 employer contribution provided in subsection (1)(b). This  
19 service may not be credited in more than one retirement system  
20 under Title 19.

21 (b) Upon receiving the member's payment under subsection  
22 (1)(a), the administrator shall transfer from the member's  
23 former retirement system to the highway-patrolmen's-retirement  
24 system account an amount equal to the employer contributions  
25 made during the member's service but no more than an amount

1 equal to the normal contribution rate minus the employee  
2 contribution rate in the highway patrolmen's retirement  
3 system, according to the most recent actuarial valuation,  
4 based on the salaries earned by the employee as a member of  
5 the former system.

6 (2) (a) A member may, at any time before his retirement,  
7 make a written election with the board to qualify any of his  
8 creditable service in the public employees' retirement system  
9 earned while employed full time as an agent. To qualify this  
10 service, the member shall contribute to the account the  
11 actuarial cost of a member's contribution to the highway  
12 patrolmen's retirement system, as determined by the board,  
13 based on the compensation earned as a member of the public  
14 employees' retirement system while an agent and on the normal  
15 member's contribution rate according to the most recent  
16 actuarial valuation.

17 (b) Upon receiving the member's payment under subsection  
18 (2)(a), the administrator shall transfer from the public  
19 employees' retirement system to the account an amount equal to  
20 the employer contributions made during the member's service,  
21 but no more than an amount equal to the normal contribution  
22 rate minus the employee contribution rate in the highway  
23 patrolman's retirement system, according to the most recent  
24 actuarial valuation, based on the salaries earned by the  
25 employee as a member of the public employees' retirement

1 system while an agent.

2 (c) After transferring the contributions as provided in  
3 subsection (2)(b), the administrator shall notify the state  
4 treasurer of the member's written election to qualify service  
5 under the highway patrolmen's retirement system. Upon receipt  
6 of this notification, the treasurer shall transfer from the  
7 general fund to the account an amount equal to the actuarial  
8 cost of qualifying this service in the highway patrolmen's  
9 retirement system, as determined by the board, based on the  
10 employee's compensation earned during this period of service  
11 and on the normal contribution rate according to the most  
12 recent actuarial valuation minus the amounts paid or  
13 transferred under subsections (2)(a) and (2)(b).

14 (2)(3) (a) A member may, at any time before his  
15 retirement, make a written election with the board to qualify  
16 any full-time public service employment performed for the  
17 state or a political subdivision of the state. The member  
18 shall provide salary and employment documentation certified by  
19 his public employer. The board may grant service credit  
20 subject to the provisions of 19-6-201 upon contribution by the  
21 employee of the actuarial cost of granting qualifying this  
22 service in the highway patrolmen's retirement system, as  
23 determined by the board, based on the employee's compensation  
24 earned during this period of service and the normal  
25 contribution rate according to the most recent actuarial

1 valuation of the system.

2 (b) The board is the sole authority under this subsection  
3 ~~(2)~~ (3) in determining what constitutes full-time public  
4 service.

5 (c) This service may not be credited in more than one  
6 retirement system under Title 19."

7 **Section 7.** Section 19-6-401, MCA, is amended to read:

8 "19-6-401. Payments into retirement fund. All  
9 appropriations Appropriations made by the state, all  
10 contributions by members ~~of the Montana highway patrol, in the~~  
11 ~~amount--hereinafter-specified, all~~ interest on and increase of  
12 the investments and moneys under this account, and a portion  
13 of the fees from driver's licenses and duplicate driver's  
14 licenses as provided in 61-5-121 ~~shall~~ must be paid to the  
15 state treasurer, who shall credit the payments to the Montana  
16 ~~highway patrol's retirement pension trust fund~~ account."

17 **Section 8.** Section 19-6-404, MCA, is amended to read:

18 "19-6-404. State's contribution. (1) The state of Montana  
19 shall annually contribute to the account an amount equal to  
20 26.75% of the salaries paid to the ~~highway patrolmen who are~~  
21 ~~covered by this account~~ members from the general fund. In  
22 addition, the state shall contribute to the account a portion  
23 of the fees from driver's licenses and duplicate driver's  
24 licenses as provided in 61-5-121.

25 (2) The department shall credit all fees deposited as

1 provided in 61-5-121 as part of the state's contribution  
2 required in subsection (1)."

3 **Section 9.** Section 19-6-501, MCA, is amended to read:

4 "19-6-501. Eligibility and application for service  
5 retirement allowance -- commencement of allowance. (1) (a) A  
6 member ~~first--employed--by--the--Montana-highway-patrol--on--or~~  
7 ~~before--July--1--1985,~~ is eligible to receive a service  
8 retirement allowance after completing 20 years or more of  
9 creditable service if he was first employed on or before July  
10 1, 1985:

11 (i) as a highway patrol officer; or

12 (ii) as an agent and he elected to qualify his years of  
13 service from July 1, 1985, to July 1, 1989, as provided in  
14 19-6-305(2).

15 (b) A member first employed by ~~the Montana~~ as a highway  
16 patrol officer or as an agent after July 1, 1985, is eligible  
17 to receive a service retirement allowance when he has reached  
18 age 50 and has completed 20 years or more of creditable  
19 service.

20 (2) A member eligible to receive a retirement allowance  
21 as provided in subsection (1) ~~must~~ shall apply in writing to  
22 the department ~~setting--forth--at--what~~ indicating the time he  
23 ~~desires to be-retired~~ retire, which may not be less than 30  
24 days or more than 90 days subsequent to the filing ~~thereof~~ of  
25 the application.

(3) The retirement allowance must commence on the first day of the month following the member's last day of covered employment."

**Section 10.** Section 19-6-505, MCA, is amended to read:

"19-6-505. Payment of retirement allowance. (1) The department shall pay the service retirement allowance provided for in 19-6-502 to the retired patrolman member for the remainder of his life.

(2) Upon the retired patrolman's member's death, the department shall pay the retirement allowance to the patrolman's member's surviving spouse, if there is one, for as long as the spouse remains unmarried.

(3) (a) If upon the retired patrolman's member's death there is no surviving spouse or if the spouse remarries or dies, the department shall pay the retirement allowance as provided in subsection (3)(c) to the retired patrolman's member's child, if there is one, for as long as the child remains dependent as defined in 19-6-101.

(b) If there is more than one dependent child, the retirement allowance must be paid as provided in subsection (3)(c) to the children collectively. When a child no longer qualifies as dependent as defined in 19-6-101, the pro rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent.

(c) Payments to a dependent child must be made to the child's appointed guardian for the child's use.

(4) If upon the retired patrolman's member's death there is no surviving spouse or dependent child and if the member had designated a beneficiary as provided in 19-6-602, the department shall pay to the designated beneficiary an amount equal to the retired patrolman's member's accumulated deductions less any retirement benefits paid to the member before his death.

(5) If the retired patrolman member did not designate a beneficiary or if the beneficiary predeceased the retired patrolman member, the amount provided in subsection (4) must be paid to the patrolman's member's estate."

**Section 11.** Section 19-6-601, MCA, is amended to read:

"19-6-601. Disability retirement allowance. (1) In case of the total disability of a member, permanent in character, regardless of the length of service of the member, a disability retirement allowance ~~shall~~ must be granted the member in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. If ~~such the~~ total disability is a direct result of any service ~~to the~~ Montana-highway-patrol performed in the line of duty, ~~then~~ such--patrolman the member who is totally and permanently disabled ~~shall~~ must be retired on total retirement allowance

1 of one-half his average final salary regardless of his length  
2 of service.

3 (2) Upon the death of a retired patrolman member  
4 receiving a disability retirement allowance as provided in  
5 subsection (1), the allowance must be paid to his surviving  
6 spouse or dependent child, if there is a spouse or child, in  
7 the same manner as provided for in ~~subsections (2) and (3)~~ of  
8 19-6-505(2) and (3)."

9 **Section 12.** Section 19-6-612, MCA, is amended to read:

10 "19-6-612. Medical examination of disability retiree --  
11 cancellation of allowance. (1) The board, in its discretion,  
12 may require ~~the recipient of a retired member who is receiving~~  
13 a disability retirement allowance to undergo a medical  
14 examination. The examination must be made by a physician or  
15 surgeon at the ~~recipient's retired member's~~ place of residence  
16 or at another place mutually agreed on at the board's expense.  
17 Upon the basis of the examination, the board shall determine,  
18 by reason of physical or mental capacity, whether the  
19 recipient retired member can perform the duties of the  
20 position held by him when he was retired. If the board  
21 determines that the recipient retired member is not  
22 incapacitated, his disability retirement allowance must be  
23 canceled when he is offered a position under subsection (2).  
24 If the recipient retired member refuses to submit to a medical  
25 examination, his retirement allowance must be canceled when he

1 is notified of the determination of the board.

2 (2) A person whose retirement allowance is canceled  
3 because he is no longer incapacitated ~~shall~~ must be reinstated  
4 to the position held by him immediately before his retirement  
5 or to a position in the same classification within his  
6 capacity, whichever is first open. The fact that he was  
7 retired for disability may not prejudice any right to  
8 reinstatement to duty ~~which~~ that he may have or claim to have.

9 (3) The department of justice may request a medical or  
10 psychological review as to the ability of the member to return  
11 to work as a ~~member-of-the~~ highway patrol officer or as an  
12 agent. If the board's findings are upheld, the department of  
13 justice shall pay the cost of the review."

14 **Section 13.** Section 19-6-707, MCA, is amended to read:

15 "19-6-707. Minimum monthly benefit allowance. (1) Subject  
16 to the limitations contained in subsection (2), the following  
17 retired highway-patrolmen members and their beneficiaries are  
18 eligible to receive a monthly benefit allowance of not less  
19 than 2% multiplied by the ~~patrolman's retired member's~~  
20 creditable years of service multiplied by the current base  
21 salary received by a probationary highway patrolman:

22 (a) a retired patrolman member who is 55 years of age or  
23 older, except as provided in subsection (3), or his  
24 beneficiary, who is receiving a service retirement allowance;

25 (b) a retired patrolman member, or his beneficiary, who



1 is receiving a disability retirement allowance; and

2 (c) a beneficiary receiving a survivorship allowance.

3 (2) (a) The maximum monthly benefit allowance paid under  
4 subsection (1) may not exceed 60% of the current base salary  
5 of a probationary highway patrolman.

6 (b) The annual increase in a monthly benefit allowance  
7 under subsection (1) may not exceed 5% of the current monthly  
8 benefit allowance paid to a retired highway-patrolman member  
9 or his beneficiary.

10 (3) A retired patroiman member otherwise qualified under  
11 subsection (1)(a) who is employed in a position covered by a  
12 retirement system under Title 19, chapters 3 through 13, is  
13 ineligible to receive the minimum monthly benefit allowance  
14 provided for in this section until his employment in the  
15 covered position is terminated."

16 **Section 14.** Section 44-2-114, MCA, is amended to read:

17 "44-2-114. Personnel covered by highway patrolmen's  
18 retirement system or PERS. All agents and must be covered by  
19 the Montana highway patrolmen's retirement system. All  
20 assisting personnel ~~shall~~ must be covered by the public  
21 employees' retirement system."

22 **NEW SECTION. Section 15.** Extension of authority. Any  
23 existing authority to make rules on the subject of the  
24 provisions of [this act] is extended to the provisions of  
25 [this act].

1 **NEW SECTION. Section 16.** Effective date. [This act] is  
2 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 SB412, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring agents of the Department of Justice to be members of the Montana Highway Patrolmen's Retirement System; providing for the optional transfer of an agent's service credits from the Public Employees' Retirement System; amending Sections 19-6-101, 19-6-301 through 19-6-305, 19-6-401, 19-6-404, 19-6-501, 19-6-505, 19-6-601, 19-6-612, 19-6-707, and 44-2-114, MCA; and providing an effective date.

ASSUMPTIONS:

1. 16 Justice Agents currently members of the PERS will become members of the Highway Patrol Retirement system on 7/1/89. The current annual salaries of these agents is \$450,800; assuming a 2% increase in each year of the next biennium their salaries will total: \$459,816 (FY90) and \$469,012 (FY91).
2. PERS contribution rates: 6.0% employee 6.417% employer  
HWPRS contribution rates: 7.59% employee 26.75% employer
3. Highway Patrol Officers are not covered by Social Security; however, Justice Agents are covered by Social Security and will remain covered when they transfer to HWPRS; therefore, there will be no SS contributions savings when Justice Agents change retirement systems. Justice Agents will receive SS benefits in addition to retirement benefits from HWPRS.
4. The current annualized salaries of Highway Patrol Officers belonging to the HWPRS is \$5,188,328. Assuming a 2% increase in each year of the next biennium, the payroll will be: \$5,292,095 (FY90) and \$5,397,936 (FY91).
5. 6 Justice Agents who became members of PERS prior to 7/1/85 will qualify their PERS service as Justice Agents into HWPRS during the next biennium; this will require contributions equal to 7.59% of salary from members; 6.417% of salary from PERS; and 8.193% of salary from the general fund. Assume 3 Justice Agents will qualify the service in FY90; and 3 will qualify the service in FY91. The total eligible salaries to be qualified will be: \$1,429,250. The general fund obligation at 8.193% of salary totals: \$117,100 (If others elect to qualify their PERS service during this time period, the general fund impact will increase.)

FISCAL IMPACT:

		<u>FY90</u>			<u>FY91</u>	
	Current	Proposed		Current	Proposed	
<u>Expenditures:</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
Personal Services	\$29,506	\$181,551	\$ 152,045	\$30,097	\$184,011	\$ 153,914
(Retirement Contributions)						

Funding: General Fund

Ray Shackleford  
RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/17/89

Fred Van Valkenburg  
FRED VAN VALKENBURG, PRIMARY SPONSOR

DATE 2-17-89

Fiscal Note for SB412, as introduced

SB 412

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

The Highway Patrol Retirement System was established specifically for Highway Patrol Officers who were not then (and currently are not) covered by Social Security. It was the intent of the Legislature in designing the benefit levels of this retirement system to provide a higher level of benefits (than in PERS, Game Wardens, and Sheriffs' which are also covered by Social Security) in order to makeup for the lack of Social Security coverage. Justice Agents are covered by Social Security and will not lose Social Security coverage by becoming members of this retirement system. Therefore, the total level of benefits being provided for Justice Agents when they retire from the HWPRS and Social Security will be substantially greater than the benefits being provided to Highway Patrol Officers.

HB543 currently under consideration by the legislature will require payment of 50% of group health insurance premiums for retired highway patrol officers. It is not clear whether it is the intention of the legislature that retired Justice Agents will also have 50% of their group health insurance premiums paid under the provisions of HB543.

HB219 currently under consideration by the legislature clarifies funding in the HWPRS. The split of contributions required from the General Fund and the License Fees fund anticipated in this fiscal note are based on the provisions of current law. If HB219 becomes law, it is possible that the cost of this proposal will be split:

General Fund (plus some federal*)	\$105,236 (FY90)	\$106,193 (FY91)
License Fees	\$ 46,809 (FY90)	\$ 47,745 (FY91)

It is probable that by FY95 license fees allocated to the HWPRS will be insufficient to cover 10.18% of salaries of members of this retirement system.

\*Some Justice Agents are paid in part from federal funds and HB219 changes statute regarding payment of employer contributions from "General Fund" to "from the same source as used to pay compensation."