

HOUSE BILL 614

Introduced by Boharski, et al.

2/13	Introduced
2/13	Referred to Human Services & Aging
2/13	First Reading
2/13	Fiscal Note Requested
2/17	Hearing
2/19	Fiscal Note Received
2/20	Committee Report--Bill Passed as Amended
2/20	Fiscal Note Printed
2/22	2nd Reading Do Pass as Amended Motion Failed
2/22	Motion Failed to Reconsider Previous Action and Place Back on 2nd Reading

1 House BILL NO. 614  
 2 INTRODUCED BY Wm F. Boharski Liberal Democratic  
 3 Asst. Dir.  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ENHANCED  
 5 ABILITY TO COLLECT CHILD SUPPORT; PROVIDING FOR  
 6 GRANDPARENTAL RESPONSIBILITY FOR SUPPORT IN CERTAIN CASES;  
 7 PROVIDING LIABILITY FOR OVERPAYMENT OF SUPPORT; SUBJECTING  
 8 PUBLIC RETIREMENT BENEFITS TO WITHHOLDING, ATTACHMENT, AND  
 9 GARNISHMENT FOR SUPPORT; PROVIDING FOR NOTICE AND A LIEN TO  
 10 THE STATE IV-D AGENCY FOR INSURANCE PAYMENTS TO AN OBLIGOR;  
 11 PROVIDING FOR A PROCESS TO WITHHOLD PUBLIC RETIREMENT  
 12 BENEFITS; AMENDING SECTIONS 19-3-105, 19-4-706, 19-5-704,  
 13 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504,  
 14 19-11-612, 19-12-407, 19-13-1004, 19-21-212, AND 53-4-248,  
 15 MCA."

16  
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 **Section 1.** Section 19-3-105, MCA, is amended to read:

19 "19-3-105. **Exemption from taxes and legal process.** The  
 20 right of a person to a retirement allowance or any other  
 21 benefit under this chapter and the money in the fund created  
 22 under this chapter are not:

23 (1) subject to execution, garnishment, attachment, or  
 24 any other process except for:

25 (a) child support; or

1 (b) maintenance to be paid to a spouse or former spouse  
 2 who is custodial parent;

3 (2) subject to state, county, or municipal taxes except  
 4 for:

5 (a) a retirement allowance received in excess of \$3,600  
 6 or adjusted by an amount determined pursuant to  
 7 15-30-111(2)(c)(ii); or

8 (b) a refund paid under 19-3-703 of a member's  
 9 contributions picked up by an employer after June 30, 1985,  
 10 as provided in 19-3-701; or

11 (3) assignable except as in this chapter specifically  
 12 provided."

13 **Section 2.** Section 19-4-706, MCA, is amended to read:

14 "19-4-706. **Exemption from taxation and legal process.**  
 15 The pensions, annuities, or any other benefits accrued or  
 16 accruing to any person under the provisions of the  
 17 retirement system and the accumulated contributions and cash  
 18 and securities in the various funds of the retirement system  
 19 are:

20 (1) exempted from any state, county, or municipal tax  
 21 of the state of Montana except for:

22 (a) a retirement allowance received in excess of \$3,600  
 23 or adjusted by an amount determined pursuant to  
 24 15-30-111(2)(c)(ii); or

25 (b) a withdrawal paid under 19-4-603 of a member's

contributions picked up by an employer after June 30, 1985,  
as provided in 19-4-602;

(2) not subject to execution, garnishment, attachment  
by trustee process or otherwise, in law or equity, or any  
other process except for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse  
who is custodial parent; and

(3) unassignable except as specifically provided in  
this chapter."

**Section 3.** Section 19-5-704, MCA, is amended to read:

"19-5-704. **Exemption from taxes and legal process --  
exception.** (1) Money received or to be paid as a member's  
annuity, state annuity, or return of deductions or the right  
of any of these except refunds paid under 19-5-403 of the  
member's contributions picked up by an employer after June  
30, 1991, as provided in 19-5-402, is unassignable except as  
specifically provided in 19-5-705 and is exempt from levy,  
sale, garnishment, attachment, or any other process and--is  
unassignable--except--as--specifically--provided--in--19-5-705  
except for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse  
who is custodial parent.

(2) The first \$3,600 or the amount determined pursuant

to 15-30-111(2)(c)(ii) received under this chapter is exempt  
from state, county, or municipal taxation."

**Section 4.** Section 19-6-705, MCA, is amended to read:

"19-6-705. **Exemption from taxes and legal process.** Any  
money received or to be paid as a member's annuity, state  
annuity, or return of deductions or the right of any of  
these is:

(1) exempt from any state, county, or municipal tax  
except for:

(a) a retirement allowance received in excess of \$3,600  
or adjusted by an amount determined pursuant to  
15-30-111(2)(c)(ii); or

(b) a refund paid under 19-6-403 of a member's  
contributions picked up by an employer after June 30, 1985,  
as provided in 19-6-402;

(2) exempt from levy, sale, garnishment, attachment, or  
any other process except for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse  
who is custodial parent; and

(3) unassignable except as specifically provided in  
19-6-706."

**Section 5.** Section 19-7-705, MCA, is amended to read:

"19-7-705. **Exemption from taxes and legal process.** Any  
money received or to be paid as a member's annuity, state

1 annuity, or return of deductions or the right of any of  
2 these is:

3 (1) exempt from any state, county, or municipal tax  
4 except for:

5 (a) a retirement allowance received in excess of \$3,600  
6 or adjusted by an amount determined pursuant to  
7 15-30-111(2)(c)(ii); or

8 (b) a refund paid under 19-7-304 of a member's  
9 contributions picked up by an employer after June 30, 1985,  
10 as provided in 19-7-403;

11 (2) exempt from levy, sale, garnishment, attachment, or  
12 any other process except for:

13 (a) child support; or

14 (b) maintenance to be paid to a spouse or former spouse  
15 who is custodial parent; and

16 (3) unassignable except as specifically provided in  
17 19-7-706."

18 **Section 6.** Section 19-8-805, MCA, is amended to read:

19 "19-8-805. **Exemption from taxes and legal process.** Any  
20 money received or to be paid as a member's annuity, state  
21 annuity, or return of deductions or the right of any of  
22 these is:

23 (1) exempt from any state, county, or municipal tax  
24 except for:

25 (a) a retirement allowance received in excess of \$3,600

1 or adjusted by an amount determined pursuant to  
2 15-30-111(2)(c)(ii); or

3 (b) a refund paid under 19-8-503 of the member's  
4 contributions picked up by an employer after June 30, 1985,  
5 as provided in 19-8-502;

6 (2) exempt from levy, sale, garnishment, attachment, or  
7 any other process except for:

8 (a) child support; or

9 (b) maintenance to be paid to a spouse or former spouse  
10 who is custodial parent; and

11 (3) unassignable except as specifically provided in  
12 19-8-806."

13 **Section 7.** Section 19-9-1006, MCA, is amended to read:

14 "19-9-1006. **Protection from legal process --**  
15 **nonassignability.** Except as provided in this chapter:

16 (1) the benefits payable hereunder under this chapter  
17 are not subject to the claims of any creditor of a member,  
18 beneficiary, or survivor or to attachment, garnishment, or  
19 other legal or equitable process except for:

20 (a) child support; or

21 (b) maintenance to be paid to a spouse or former spouse  
22 who is custodial parent; and

23 (2) no a member, beneficiary, or survivor may not  
24 alienate, anticipate, commute, pledge, encumber, assign, or  
25 sell any of such the benefits."

**Section 8.** Section 19-10-504, MCA, is amended to read:

"19-10-504. Protection of benefits from legal process and taxation. (1) The benefits provided for in this part are unassignable except as specifically provided in 19-10-505 and are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law ~~and are unassignable except as specifically provided in 19-10-505 except for:~~

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse who is custodial parent.

(2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation."

**Section 9.** Section 19-11-612, MCA, is amended to read:

"19-11-612. Protection of benefits from legal process and taxation -- nonassignability. (1) Any payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process except for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse who is custodial parent.

(2) A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum so assigned.

~~(2)~~(3) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation."

**Section 10.** Section 19-12-407, MCA, is amended to read:

"19-12-407. Payment of pension benefits -- exemption from taxation. (1) All payments under the volunteer firefighters' pension plan must be approved by the board and paid by warrants drawn upon the pension trust fund, payable to the order of the individual qualified volunteer firefighter or the beneficiary as provided in 19-12-405(1).

(2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation.

(3) Payments under subsection (1) are subject to garnishment, attachment, execution, or other legal process for the payment of:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse who is custodial parent."

**Section 11.** Section 19-13-1004, MCA, is amended to read:

"19-13-1004. Protection from legal process -- unassignability. (1) The benefits payable under this chapter are not subject to the claims of any creditor of a member,

beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process except for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse who is custodial parent.

(2) No A member, beneficiary, or survivor may not alienate, anticipate, commute, pledge, encumber, assign, or sell any of such benefits."

**Section 12.** Section 19-21-212, MCA, is amended to read:

"19-21-212. Exemption from taxation, legal process, and assessments. All contracts, benefits, and contributions under the optional retirement program and the earnings thereon on contracts, benefits, and contributions are:

(1) except for a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii), exempt from any state, county, or municipal tax;

(2) not subject to execution, garnishment, attachment, or other process except for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse who is custodial parent;

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

(4) unassignable except as specifically provided in the

contracts."

**Section 13.** Section 53-4-248, MCA, is amended to read:

"53-4-248. Parents Persons liable to department for aid to families with dependent children payments. (1) A payment of public assistance money made to or for the benefit of a dependent child creates a debt due and owing to the department by the natural or adoptive parents ~~who are legally responsible for the support of the child by statute or court decree in an amount equal to the amount of public assistance paid;~~

(a) whose absence from the dependent child's home entitles the child to public assistance; or

(b) of a dependent child who is or becomes a parent, entitling the dependent child or the dependent child's child to public assistance. The adult natural or adoptive parents of the dependent child parent are liable for the debt of the dependent grandchild. However, where the support obligation is based upon a court decree, the debt is limited to the amount of the court decree.

(2) A natural or adoptive parent of a dependent child is not liable under this section if the dependent child is the victim of a sex crime that results in the birth of a dependent child and the perpetrator who is convicted of the offense is someone other than the natural or adoptive parent of the minor child.

1       (3) The natural or adoptive parents of a minor  
 2       convicted of a sex crime that results in the birth of a  
 3       dependent child are solely liable under this section.

4       (4) The natural or adoptive parent of a minor is solely  
 5       liable under this section if the minor is the victim of a  
 6       sex crime that results in the birth of a dependent child and  
 7       the natural or adopted parent is convicted of the crime.

8       (5) Accrual of a debt created under this section ceases  
 9       only when the minor parent attains the age of majority and  
 10       the debt is paid.

11       (6) The amount of debt created under this section is  
 12       equal to the amount of public assistance paid for the  
 13       benefit of the dependent child or the child of the dependent  
 14       child or paid to the caretaker of the dependent child. If  
 15       there has been a court order for support, a final decree or  
 16       judgment ordering support, or an administrative order for  
 17       support issued by an agency with jurisdiction, the debt owed  
 18       is the lesser of the amount of the support order, decree, or  
 19       judgment or the amount of public assistance paid. If there  
 20       is not an existing support order, decree, or judgment, the  
 21       department shall establish an order for support under the  
 22       provisions of 40-5-225. Unless modified by subsequent order,  
 23       the amount of the debt is the lesser of the amount of the  
 24       order or the amount of public assistance paid.

25       (7) A debt created by this section is joint and several

1       as to any natural or adoptive parents. The department may,  
 2       upon notice to a natural or adoptive parent, seek  
 3       reimbursement under Title 40, chapter 5, part 2. An  
 4       individual determined to be liable for a debt under this  
 5       section must be allowed the opportunity to seek contribution  
 6       from any other responsible individual.

7       (8) For the purpose of this section, "convicted" means:

8       (a) a final conviction, as defined in 45-2-101, in this  
 9       state;

10       (b) a final conviction for a violation of a sex crime  
 11       in another state; or

12       (c) a forfeiture of bail or collateral deposited to  
 13       secure the defendant's appearance in court in this state or  
 14       another state that has not been vacated.

15       {2}(9) The department is subrogated to the right of the  
 16       child or person having the care, custody, and control of the  
 17       child to prosecute any support action or execute any  
 18       administrative remedy existing under the laws of the state  
 19       to obtain reimbursement of money thus expended. If a court  
 20       decree enters judgment for an amount of support to be paid  
 21       by an obligor parent, the department is subrogated to the  
 22       debt created by the order and the money judgment is in favor  
 23       of the department. No An obligee may not commence an action  
 24       to recover support due and owing to him the obligee without  
 25       first filing an affidavit with the court stating whether he

1 the obligee has received public assistance from any source  
 2 and, if he the obligee has received public assistance, that  
 3 he the obligee has notified the department in writing of the  
 4 pending action.

5 ~~(3)~~(10) ~~In no case may a~~ A debt arising under this  
 6 section may not be incurred by or collected from a parent or  
 7 other person while he the individual is the recipient of  
 8 public assistance money for the benefit of minor dependent  
 9 children.

10 ~~(4)~~(11) The remedies herein provided in this section are  
 11 in addition to and not in lieu of existing common law and  
 12 statutory law.

13 ~~(5)~~(12) The department or its legal representatives may,  
 14 at any time consistent with the income, earning capacity,  
 15 and resources of the debtor, petition the court having  
 16 jurisdiction over the particular case to set or reset a  
 17 level and schedule of payments to be paid upon the debt."

18 NEW SECTION. Section 14. Notice of repayment  
 19 responsibility -- contents -- administrative procedure. (1)  
 20 The department may issue a notice of repayment  
 21 responsibility if, after written demand, an obligee refuses  
 22 to return money issued:

- 23 (a) in error; or  
 24 (b) as a result of a joint tax refund intercept that  
 25 must be repaid to the obligor.

1 (2) The notice must be served by personal service or  
 2 certified mail. The notice must state:

3 (a) the amount of money wrongly retained by the  
 4 obligee;

5 (b) the approximate date the payment was issued to the  
 6 obligee;

7 (c) that the obligee is entitled to an administrative  
 8 hearing;

9 (d) that if the obligee does not file a written answer  
 10 within 20 days from the date of service or refusal of  
 11 service, the amount in the notice will become final; and

12 (e) that the amount stated in the final order will be  
 13 filed with the district court and, upon approval, will  
 14 constitute a judgment of the district court and will be  
 15 enforceable in the same manner as a district court judgment.

16 (3) If the obligee files a written answer with the  
 17 department within 20 days from the date of service or  
 18 refusal of service, the department shall conduct a hearing  
 19 pursuant to the provisions of 40-5-226. If the department  
 20 does not receive a timely answer, the amount stated in the  
 21 notice is final.

22 (4) The department's final order may be filed with the  
 23 district court in accordance with 40-5-227. Upon approval,  
 24 the order is a judgment of the district court.

25 (5) It is not a defense to a notice of repayment



responsibility that an erroneous payment was the result of the department's error.

**NEW SECTION. Section 15. Attachment, execution, garnishment -- support and maintenance.** (1) For the purposes of this section, "participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, or 21.

(2) A child support or maintenance order presented for attachment, execution, garnishment, or other process may not:

(a) apply to a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or

(b) require an amount or duration of payment greater than that available to a participant under the retirement system.

(3) The retirement system shall deduct and withhold from any retirement benefit payable to the affected participant owing child support or qualifying spousal maintenance the amount required to be deducted and withheld pursuant to legal process.

(4) An amount deducted and withheld under subsection (3) must be treated as if it were paid to the participant as retirement benefits and paid by the participant in

satisfaction of the participant's child support or spousal maintenance obligation.

(5) The applicable retirement board is limited to the costs allowed under 40-5-416 in administering an order to withhold retirement benefits issued under that section.

**NEW SECTION. Section 16. Insurance company to withhold certain debt payments -- definition.** (1) For the purposes of this section, "IV-D agency" means the state child support enforcement agency created pursuant to Title IV-D of the federal Social Security Act and providing services under Title 40, chapter 5.

(2) Prior to making any payment equal to or in excess of \$5,000 to a claimant under a contract of insurance, a company authorized to issue policies of insurance pursuant to this title shall obtain from the IV-D agency information that indicates whether the claimant owes a debt to the IV-D agency or that a debt is being collected by the IV-D agency. If the IV-D agency is involved, the insurance company shall notify the IV-D agency that has a lien against the payment in an amount equal to the amount of the debt. The amount of the lien must be held by the company for 30 days from the company's receipt of confirmation of a debt to allow the IV-D agency to institute any necessary garnishment or withholding proceedings. If a garnishment or withholding proceeding is not initiated within the 30-day period, the

1 insurance company shall release the payment to the claimant.

2 NEW SECTION. Section 17. Codification instruction. (1)  
3 [Section 14] is intended to be codified as an integral part  
4 of Title 40, chapter 5, part 2, and the provisions of Title  
5 40, chapter 5, part 2, apply to [section 14].

6 (2) [Section 15] is intended to be codified as an  
7 integral part of Title 40, chapter 5, part 3, and the  
8 provisions of Title 40, chapter 5, part 3, apply to [section  
9 15].

10 (3) [Section 16] is intended to be codified as an  
11 integral part of Title 33, and the provisions of Title 33  
12 apply to [section 16].

13 NEW SECTION. Section 18. Severability. If a part of  
14 [this act] is invalid, all valid parts that are severable  
15 from the invalid part remain in effect. If a part of [this  
16 act] is invalid in one or more of its applications, the part  
17 remains in effect in all valid applications that are  
18 severable from the invalid applications.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0614, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:** A bill providing for grandparental responsibility for child support in certain cases, providing liability for overpayment of support, subjecting public retirement benefits to withholding and providing a withholding process, and providing for notice and a lien to the state IV-D (SRS - Child Support Enforcement) agency for insurance payments to an obligor.

**ASSUMPTIONS:**

**Department of Social and Rehabilitation Services (SRS)**

1. The portion of this legislation with a measurable impact is the grandparents responsibility.
2. The programs will not be in effect for all of FY94. The impacts apply to 6-8 months of FY94.
3. Current estimates indicate 11,808 AFDC cases will be opened in FY94. Approximately 3% ( $11,808 \times .03 = 354$ ) will have a minor head of household, custodial parent of one child. These cases would be eligible to receive \$310 per month in AFDC benefits.
4. 90% of the 354 cases ( $319 = 0.9 \times 354$ ), have one or both parents of the minor (grandparents), alive and contacted.
5. 25% of the 319 (i.e. 80) cases will close when the grandparents are noticed for the debt. These cases would have received AFDC benefits approximately 8 months during FY94. Savings of AFDC benefits will be \$198,400 in FY94 ( $\$310 \times 80 \times 8$ ).
6. Through the IV-D program, 19% of the remaining 239 (i.e.  $.75 \times 319$ ) cases ( $0.19 \times 239$ ), or 45 cases, will save \$83,700 in FY94 (i.e.  $\$310 \times 45 \times 6$ ).
7. Through the IV-D program, 134 cases (56.5% of the 239 cases) will yield 80% of the AFDC benefit amount received, for a monthly savings of \$33,232 in FY94 ( $\$310 \times 134 \times 0.8$ ). Collections will be for 7 months, so FY94 savings is expected to be \$232,624 ( $7 \times \$33,232$ ).
8. A total of 12,044 AFDC cases are projected for FY95, and 3% of those will have a minor head of household ( $12,044 \times .03 = 361$ ). Due to this bill, 35.2% of those 361 cases ( $.352 \times 361 = 127$ ) would not open. Savings for those 127 cases are projected to be \$472,440 in FY95.
9. There will be collections on 137 of the 361 remaining cases. 80% of the monthly AFDC benefit will be collected yielding a savings of \$407,712 in FY95.
10. IV-D program expenditures will not increase as a result of this new case activity.
11. No increase in benefits will result from this bill. The federal match for AFDC is 71%.
12. IV-D Child Support Collections result in the federal share being foregone at the 71% rate at which it is paid on AFDC and 29% being deposited to the CSED state special revenue fund. There is no general fund savings or transfer to the general fund until the conditions in assumption # 13 are met.
13. CSED program expenses are paid from its account and a \$500,000 balance is left at fiscal year end to provide startup cash. Any amount remaining is transferred to the general fund. It is reasonable to assume that

(continued)

*Dave Lewis*

DAVE LEWIS, BUDGET DIRECTOR

Office of Budget and Program Planning

*2-19-93*

DATE

*Wm E Boharski*

WILLIAM E. BOHARSKI, PRIMARY SPONSOR

Fiscal Note for HB0614, as introduced

*2/20/93*

DATE

*HB 614*

**Public Employees' Retirement System (PERS)**

14. Due to current law prohibiting garnishment of retirement benefits, it is difficult to estimate the increased number of claims for withholding that may be filed with the Public Employees' Retirement Board (PERB). A rough estimate is 250 to 500 claims per year. [Note: SRS estimates 319 in FY94 and 137 in FY95.]
15. The backlog of existing claims for child support enforcement will result in 500 to 1,000 total claims filed during FY94.
16. PERB will need 0.5 FTE (cost \$11,968) and budget authority of \$5,500 for operating costs and computer system development to implement this program change. This will be funded from the pension trust funds of PERS.

**Teachers' Retirement System (TRS)**

17. Due to current law prohibiting garnishment of retirement benefits, it is difficult to estimate the increased number of claims for withholding that may be filed with the Teachers' Retirement Board (PERB). A rough estimate is 250 to 500 claims per year. [Note: SRS estimates 319 in FY94 and 137 in FY95.]
18. The backlog of existing claims for child support enforcement will result in 500 to 1,000 total claims filed during FY94.
19. TRS will need 0.5 FTE (cost \$11,968) and budget authority of \$5,500 for operating costs and computer system development to implement this program change. This will be funded from the TRS trust fund.

**FISCAL IMPACT:**

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<b>SRS (Family Assistance AFDC) Savings</b>						
<b><u>Funding:</u></b>						
General Fund	13,651,985	13,570,176	(81,809)	14,191,639	14,054,631	(137,008)
County Reimbursement	925,558	925,558	0	944,057	944,057	0
Public Welfare (Federal)	<u>35,724,537</u>	<u>35,359,083</u>	<u>(365,454)</u>	<u>36,171,748</u>	<u>35,546,840</u>	<u>(624,908)</u>
Total	50,302,080	49,854,817	(447,263)	51,307,444	50,545,528	(761,916)

**SRS Child Support Enforcement Division (CSED)**

<b><u>Revenues:</u></b>						
State Special	0	67,461	67,461	0	118,236	118,236

**PERS**

<b><u>Expenditures:</u></b>						
FTE	20.00	20.50	.50	20.00	20.50	.50
Personal Services	594,636	606,604	11,968	596,452	612,250	15,798
Operating Expenses	529,460	534,960	5,500	509,946	509,946	0
Equipment	<u>7,716</u>	<u>7,716</u>	<u>0</u>	<u>5,435</u>	<u>5,435</u>	<u>0</u>
Total	1,131,812	1,149,280	17,468	1,111,833	1,127,631	15,798

<b><u>Funding:</u></b>						
Pension Trust Fund	1,131,812	1,149,280	17,468	1,111,833	1,127,631	15,798

(Continued)

HR 1,114

Fiscal Note Request, HB0614, as introduced  
Form BD-15 page 3  
(continued)

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
TRS						
<u>Expenditures:</u>						
FTE	11.50	12.00	.50	11.50	12.00	.50
Personal Services	329,820	341,788	11,968	330,874	346,672	15,798
Operating Expenses	273,505	279,005	5,500	245,231	245,231	0
Equipment	19,969	19,969	0	10,964	10,964	0
Debt service	<u>61,474</u>	<u>61,474</u>	<u>0</u>	<u>61,474</u>	<u>61,474</u>	<u>0</u>
Total	684,768	702,236	17,468	648,543	664,341	15,798
<u>Funding:</u>						
TRS Trust Fund	684,768	702,236	17,468	648,543	664,341	15,798
<u>NET IMPACT:</u>						
General Fund Savings			81,809			137,008

TECHNICAL NOTES: The Human Service Appropriations Subcommittee already has already made a general fund language reduction of \$263,044 each year of the 1995 biennium in HB2, contingent on passage and approval of HB614. Since the known savings are \$81,809 in FY94 and \$137,008 in FY95, this contingency may need to be adjusted.

In addition, it is reasonable to assume that CSE will transfer to the general fund about \$67,461 at FYE94 and \$118,236 at FYE95 as a result of this bill.

PERS and TRS question whether this legislation will be interpreted as preempting Federal legislation.

HB 614

APPROVED BY COMM. ON  
HUMAN SERVICES AND AGING

HOUSE BILL NO. 614

INTRODUCED BY BOHARSKI, COBB, PETERSON, KASTEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ENHANCED ABILITY TO COLLECT CHILD SUPPORT; PROVIDING FOR GRANDPARENTAL RESPONSIBILITY FOR SUPPORT IN CERTAIN CASES; PROVIDING LIABILITY FOR OVERPAYMENT OF SUPPORT; SUBJECING PUBLIC RETIREMENT BENEFITS TO WITHHOLDING, ATTACHMENT, AND GARNISHMENT FOR SUPPORT; PROVIDING FOR NOTICE AND A LIEN TO THE STATE IV-D AGENCY FOR INSURANCE PAYMENTS TO AN OBLIGOR; PROVIDING FOR A PROCESS TO WITHHOLD PUBLIC RETIREMENT BENEFITS; AMENDING SECTIONS 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612, 19-12-407, 19-13-1004, 19-21-212, AND AMENDING SECTION 53-4-248, MCA."

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

**Section 1.** Section 19-3-105, MCA, is amended to read:

"19-3-105. Exemption from taxes and legal process. The right of a person to a retirement allowance or any other benefit under this chapter and the money in the fund created under this chapter are not:

(1) subject to execution, garnishment, attachment, or any other process except for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse who is custodial parent;

(2) subject to state, county, or municipal taxes except for:

(a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund paid under 19-3-703 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-3-701, or

(3) assignable except as in this chapter specifically provided."

**Section 2.** Section 19-4-706, MCA, is amended to read:

"19-4-706. Exemption from taxation and legal process. The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for:

(a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a withdrawal paid under 19-4-603 of a member's

1 contributions--picked-up-by-an-employer-after-June-30, 1985,  
2 as-provided-in-19-4-602;

3 (2)--not-subject-to-execution,--garnishment,--attachment  
4 by--trustee--process--or--otherwise,--in-law-or-equity,--or-any  
5 other-process-except-for:

6 (a)--child-support,--or

7 (b)--maintenance-to-be-paid-to-a-spouse-or-former-spouse  
8 who-is-custodial-parent,--and

9 (3)--unassignable-except--as--specifically--provided--in  
10 this-chapter."

11 **Section 3.**--Section-19-5-704, MCA, is-amended-to-read:--

12 "19-5-704. Exemption--from--taxes--and-legal-process--  
13 exception:--(1) Money-received-or-to-be-paid-as--a--member's  
14 annuity, state-annuity, or-return-of-deductions-or-the-right  
15 of--any--of--these-except-refunds-paid-under-19-5-403-of-the  
16 member's-contributions-picked-up-by-an-employer--after--June  
17 30, 1991, as-provided-in-19-5-402, is-unassignable-except-as  
18 specifically--provided--in-19-5-705-and is-exempt-from-levy,  
19 sale, garnishment, attachment, or-any-other-process--and--is  
20 unassignable--except--as--specifically--provided-in-19-5-705  
21 except-for:

22 (a)--child-support,--or

23 (b)--maintenance-to-be-paid-to-a-spouse-or-former-spouse  
24 who-is-custodial-parent;

25 (2)--The-first-\$3,600-or-the-amount-determined--pursuant

1 to-15-30-111(2)(c)(ii)--received-under-this-chapter-is-exempt  
2 from-state, county, or-municipal-taxation."

3 **Section 4.**--Section-19-6-705, MCA, is-amended-to-read:--

4 "19-6-705. Exemption--from--taxes-and-legal-process. Any  
5 money-received-or-to-be-paid-as-a--member's--annuity,--state  
6 annuity,--or--return--of--deductions--or-the-right-of-any-of  
7 these-is:

8 (1)--exempt-from-any-state,--county,--or--municipal--tax  
9 except-for:

10 (a)--a-retirement-allowance-received-in-excess-of-\$3,600  
11 or--adjusted--by--an--amount--determined--pursuant--to  
12 15-30-111(2)(c)(ii), or

13 (b)--a--refund--paid--under--19-6-403--of--a--member's  
14 contributions--picked-up-by-an-employer-after-June-30, 1985,  
15 as-provided-in-19-6-402;

16 (2)--exempt-from-levy, sale, garnishment, attachment, or  
17 any-other-process except-for:

18 (a)--child-support,--or

19 (b)--maintenance-to-be-paid-to-a-spouse-or-former-spouse  
20 who-is-custodial-parent,--and

21 (3)--unassignable-except--as--specifically--provided--in  
22 19-6-706."

23 **Section 5.**--Section-19-7-705, MCA, is-amended-to-read:--

24 "19-7-705. Exemption--from--taxes-and-legal-process. Any  
25 money-received-or-to-be-paid-as-a--member's--annuity,--state

1 annuity,--or--return--of--deductions--or--the--right--of--any--of  
 2 these--is--  
 3 {1}--exempt--from--any--state,--county,--or--municipal--tax  
 4 except--for--  
 5 {a}--a--retirement--allowance--received--in--excess--of--\$3,600  
 6 or--adjusted--by--an--amount--determined--pursuant--to  
 7 15-30-111(2)(c){ii};-or  
 8 {b}--a--refund--paid--under--19-7-304--of--a--member's  
 9 contributions--picked-up-by-an-employer-after-June-30,--1985,  
 10 as-provided-in-19-7-403;  
 11 {2}--exempt--from--levy,--sale,--garnishment,--attachment,--or  
 12 any--other--process except--for:  
 13 {a}--child--support;-or  
 14 {b}--maintenance--to--be--paid--to--a--spouse--or--former--spouse  
 15 who--is--custodial--parent;-and  
 16 {3}--unassignable--except--as--specifically--provided--in  
 17 19-7-706;"

18 **Section 6.**--Section-19-8-005,--MCA,--is--amended--to--read:--  
 19 "19-8-005,--Exemption--from--taxes--and--legal--process.--Any  
 20 money--received--or--to--be--paid--as--a--member's--annuity,--state  
 21 annuity,--or--return--of--deductions--or--the--right--of--any--of  
 22 these--is--  
 23 {1}--exempt--from--any--state,--county,--or--municipal--tax  
 24 except--for--  
 25 {a}--a--retirement--allowance--received--in--excess--of--\$3,600

1 or--adjusted--by--an--amount--determined--pursuant--to  
 2 15-30-111(2)(c){ii};-or  
 3 {b}--a--refund--paid--under--19-8-503--of--the--member's  
 4 contributions--picked-up-by-an-employer-after-June-30,--1985,  
 5 as-provided-in-19-8-502;  
 6 {2}--exempt--from--levy,--sale,--garnishment,--attachment,--or  
 7 any--other--process except--for:  
 8 {a}--child--support;-or  
 9 {b}--maintenance--to--be--paid--to--a--spouse--or--former--spouse  
 10 who--is--custodial--parent;-and  
 11 {3}--unassignable--except--as--specifically--provided--in  
 12 19-8-806;"

13 **Section 7.**--Section-19-9-1006,--MCA,--is--amended--to--read:--  
 14 "19-9-1006,--Protection--from--legal--process-----  
 15 nonassignability.--Except--as--provided--in--this--chapter,--  
 16 {1}--the--benefits--payable--hereunder under--this--chapter  
 17 are--not--subject--to--the--claims--of--any--creditor--of--a--member,  
 18 beneficiary,--or--survivor--or--to--attachment,--garnishment,--or  
 19 other--legal--or--equitable--process except--for:  
 20 {a}--child--support;-or  
 21 {b}--maintenance--to--be--paid--to--a--spouse--or--former--spouse  
 22 who--is--custodial--parent; and  
 23 {2}--no a member,--beneficiary,--or--survivor--may not  
 24 alienate,--anticipate,--commute,--pledge,--encumber,--assign,--or  
 25 sell--any--of--such the benefits;"



**Section 8.** Section 19-10-504, MCA, is amended to read:--

"19-10-504. Protection of benefits from legal process and taxation. (1) The benefits provided for in this part are unassignable except as specifically provided in 19-10-505 and are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-10-505 except for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse who is custodial parent;

(2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation."

**Section 9.** Section 19-11-612, MCA, is amended to read:--

"19-11-612. Protection of benefits from legal process and taxation. nonassignability. (1) Any payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process except for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse who is custodial parent;

(2) A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum so assigned.

(2)(3) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation."

**Section 10.** Section 19-12-407, MCA, is amended to read:--

"19-12-407. Payment of pension benefits. exemption from taxation. (1) All payments under the volunteer firefighters' pension plan must be approved by the board and paid by warrants drawn upon the pension trust fund, payable to the order of the individual qualified volunteer firefighter or the beneficiary as provided in 19-12-405(1);

(2) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation;

(3) Payments under subsection (1) are subject to garnishment, attachment, execution, or other legal process for the payment of;

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse who is custodial parent."

**Section 11.** Section 19-13-1004, MCA, is amended to read:

"19-13-1004. Protection from legal process. nonassignability. (1) The benefits payable under this chapter are not subject to the claims of any creditor of a member,

beneficiary, or survivor or to attachment, garnishment, or  
other legal or equitable process except for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse

who is custodial parent;

(2) No A member, beneficiary, or survivor may not  
alienate, anticipate, commute, pledge, encumber, assign, or  
sell any of such benefits."

**Section 12.** Section 19-21-212, MCA, is amended to read:

"19-21-212. Exemption from taxation, legal process, and  
assessments. All contracts, benefits, and contributions  
under the optional retirement program and the earnings  
thereon on contracts, benefits, and contributions are:

(1) except for a retirement allowance received in  
excess of \$3,600 or adjusted by an amount determined  
pursuant to 15-30-111(2)(c)(ii), exempt from any state,  
county, or municipal tax;

(2) not subject to execution, garnishment, attachment,  
or other process except for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse

who is custodial parent;

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

(4) unassignable except as specifically provided in the

contracts."

**Section 1.** Section 53-4-248, MCA, is amended to read:

"53-4-248. Parents Persons liable to department for aid  
to families with dependent children payments. (1) A payment  
of public assistance money made to or for the benefit of a  
dependent child creates a debt due and owing to the  
department by the natural or adoptive parents who are  
legally responsible for the support of the child by statute  
or court decree in an amount equal to the amount of public  
assistance paid:

(a) whose absence from the dependent child's home  
entitles the child to public assistance; or

(b) of a dependent child who is or becomes a parent,  
entitling the dependent child or the dependent child's child  
to public assistance. The adult natural or adoptive parents  
of the dependent child parent are liable for the debt of the  
dependent grandchild. However, where the support obligation  
is based upon a court decree, the debt is limited to the  
amount of the court decree.

(2) A natural or adoptive parent of a dependent child  
is not liable under this section if the dependent child is  
the victim of a sex crime that results in the birth of a  
dependent child and the perpetrator who is convicted of the  
offense is someone other than the natural or adoptive parent  
of the minor child.

(3) The natural or adoptive parents of a minor convicted of a sex crime that results in the birth of a dependent child are solely liable under this section.

(4) The natural or adoptive parent of a minor is solely liable under this section if the minor is the victim of a sex crime that results in the birth of a dependent child and the natural or adopted parent is convicted of the crime.

(5) Accrual of a debt created under this section ceases only when the minor parent attains the age of majority and the debt is paid.

(6) The amount of debt created under this section is equal to the amount of public assistance paid for the benefit of the dependent child or the child of the dependent child or paid to the caretaker of the dependent child. If there has been a court order for support, a final decree or judgment ordering support, or an administrative order for support issued by an agency with jurisdiction, the debt owed is the lesser of the amount of the support order, decree, or judgment or the amount of public assistance paid. If there is not an existing support order, decree, or judgment, the department shall establish an order for support under the provisions of 40-5-225. Unless modified by subsequent order, the amount of the debt is the lesser of the amount of the order or the amount of public assistance paid.

(7) A debt created by this section is joint and several

as to any natural or adoptive parents. The department may, upon notice to a natural or adoptive parent, seek reimbursement under Title 40, chapter 5, part 2. An individual determined to be liable for a debt under this section must be allowed the opportunity to seek contribution from any other responsible individual.

(8) For the purpose of this section, "convicted" means:

(a) a final conviction, as defined in 45-2-101, in this state;

(b) a final conviction for a violation of a sex crime in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state that has not been vacated.

(9) The department is subrogated to the right of the child or person having the care, custody, and control of the child to prosecute any support action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus expended. If a court decree enters judgment for an amount of support to be paid by an obligor parent, the department is subrogated to the debt created by the order and the money judgment is in favor of the department. No obligee may not commence an action to recover support due and owing to him the obligee without first filing an affidavit with the court stating whether he

1 the obligee has received public assistance from any source  
 2 and, if he the obligee has received public assistance, that  
 3 he the obligee has notified the department in writing of the  
 4 pending action.

5 ~~{3}~~(10) ~~in--no--case--may--a~~ A debt arising under this  
 6 section may not be incurred by or collected from a parent or  
 7 other person while he the individual is the recipient of  
 8 public assistance money for the benefit of minor dependent  
 9 children.

10 ~~{4}~~(11) The remedies herein provided in this section are  
 11 in addition to and not in lieu of existing common law and  
 12 statutory law.

13 ~~{5}~~(12) The department or its legal representatives may,  
 14 at any time consistent with the income, earning capacity,  
 15 and resources of the debtor, petition the court having  
 16 jurisdiction over the particular case to set or reset a  
 17 level and schedule of payments to be paid upon the debt."

18 NEW SECTION. Section 2. Notice of repayment  
 19 responsibility -- contents -- administrative procedure. (1)  
 20 The department may issue a notice of repayment  
 21 responsibility if, after written demand, an obligee refuses  
 22 to return money issued:

- 23 (a) in error; or  
 24 (b) as a result of a joint tax refund intercept that  
 25 must be repaid to the obligor.

1 (2) The notice must be served by personal service or  
 2 certified mail. The notice must state:

3 (a) the amount of money wrongly retained by the  
 4 obligee;

5 (b) the approximate date the payment was issued to the  
 6 obligee;

7 (c) that the obligee is entitled to an administrative  
 8 hearing;

9 (d) that if the obligee does not file a written answer  
 10 within 20 days from the date of service or refusal of  
 11 service, the amount in the notice will become final; and

12 (e) that the amount stated in the final order will be  
 13 filed with the district court and, upon approval, will  
 14 constitute a judgment of the district court and will be  
 15 enforceable in the same manner as a district court judgment.

16 (3) If the obligee files a written answer with the  
 17 department within 20 days from the date of service or  
 18 refusal of service, the department shall conduct a hearing  
 19 pursuant to the provisions of 40-5-226. If the department  
 20 does not receive a timely answer, the amount stated in the  
 21 notice is final.

22 (4) The department's final order may be filed with the  
 23 district court in accordance with 40-5-227. Upon approval,  
 24 the order is a judgment of the district court.

25 (5) It is not a defense to a notice of repayment

responsibility that an erroneous payment was the result of the department's error.

~~NEW SECTION. Section 15. Attachment, execution, garnishment, support and maintenance. (1) For the purposes of this section, "participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, or 21.~~

~~(2) A child support or maintenance order presented for attachment, execution, garnishment, or other process may not:~~

~~(a) apply to a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or~~

~~(b) require an amount or duration of payment greater than that available to a participant under the retirement system.~~

~~(3) The retirement system shall deduct and withhold from any retirement benefit payable to the affected participant owing child support or qualifying spousal maintenance the amount required to be deducted and withheld pursuant to legal process.~~

~~(4) An amount deducted and withheld under subsection (3) must be treated as if it were paid to the participant as retirement benefits and paid by the participant in~~

~~satisfaction of the participant's child support or spousal maintenance obligation.~~

~~(5) The applicable retirement board is limited to the costs allowed under 48-5-416 in administering an order to withhold retirement benefits issued under that section.~~

~~NEW SECTION. Section 3. Insurance company INSURER to withhold certain debt payments -- definition. (1) For the purposes of this section, "IV-D agency" means the state child support enforcement agency created pursuant to Title IV-D of the federal Social Security Act and providing services under Title 40, chapter 5.~~

~~(2) Prior to making any payment equal to or in excess of \$5,000 to a claimant under a contract of insurance OR A MEMBERSHIP CERTIFICATE, a company authorized to issue policies of insurance pursuant to this title OR A HEALTH SERVICE CORPORATION AUTHORIZED TO ISSUE MEMBERSHIP CERTIFICATES PURSUANT TO THIS TITLE shall obtain from the IV-D agency information that indicates whether the claimant owes a debt to the IV-D agency or that a debt is being collected by the IV-D agency. If the IV-D agency is involved, the insurance company INSURER shall notify the IV-D agency that has a lien against the payment in an amount equal to the amount of the debt. The amount of the lien must be held by the company INSURER for 30 days from the company's INSURER'S receipt of confirmation of a debt to~~

allow the IV-D agency to institute any necessary garnishment or withholding proceedings. If a garnishment or withholding proceeding is not initiated within the 30-day period, the insurance--company INSURER shall release the payment to the claimant.

NEW SECTION. **Section 4.** Codification instruction. (1)

[Section ~~14~~ 2] is intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [section ~~14~~ 2].

~~{2}--{Section--15}--is--intended--to--be--codified--as--an integral part of Title 40, chapter 5, part 3, and the provisions of Title 40, chapter 5, part 3, apply to {section 15}+~~

~~{3}{2}~~ [Section ~~16~~ 3] is intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [section ~~16~~ 3].

NEW SECTION. **Section 5.** Severability. If a part of

[this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-