

SENATE BILL NO. 173

INTRODUCED BY BARTLETT, J. RICE, FRITZ, BROOKE,
JACOBSON, B. BROWN, SQUIRES, NATHE, DEVLIN,
HOCKETT, HARPER, SWIFT, EWER
BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD
AND THE TEACHERS' RETIREMENT BOARD

IN THE SENATE

JANUARY 16, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 4, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 5, 1993	PRINTING REPORT.
FEBRUARY 6, 1993	SECOND READING, DO PASS.
FEBRUARY 8, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 9, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 12, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 15, 1993	SECOND READING, CONCURRED IN.
MARCH 18, 1993	THIRD READING, CONCURRED IN. AYES, 83; NOES, 15.
MARCH 19, 1993	RETURNED TO SENATE.

IN THE SENATE

MARCH 20, 1993	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *173*
 2 INTRODUCED BY *Boyle*
 3 BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD
 4 AND THE TEACHERS' RETIREMENT BOARD

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 7 PAYMENT OF PUBLIC RETIREMENT BENEFITS TO ALTERNATE PAYEES
 8 PURSUANT TO FAMILY LAW ORDERS; AND AMENDING SECTIONS
 9 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805,
 10 19-9-1006, AND 19-13-1004, MCA."

11 STATEMENT OF INTENT

12
 13 A statement of intent is required for this bill because
 14 [section 1] grants rulemaking authority to the public
 15 employees' retirement board or the teachers' retirement
 16 board. [Section 1] provides for the assignment and payment
 17 of retirement system benefits to alternate payees but
 18 differs from federal qualified domestic relations orders.
 19 Alternate payees will not be eligible to receive payments
 20 that could not otherwise be paid by the retirement system.

21
 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 NEW SECTION. **Section 1.** Alternate payees -- family law
 24 orders. (1) A participant in a retirement system may have
 25 the participant's rights modified or recognized by a family

1 law order.

2 (2) For purposes of this section:

3 (a) "participant" means a member or an actual or
 4 potential beneficiary, survivor, or contingent annuitant of
 5 a retirement system designated pursuant to Title 19, chapter
 6 3, 4, 5, 6, 7, 8, 9, 12, or 13 [this title]; and

7 (b) "family law order" means a judgment, decree, or
 8 order of a court of competent jurisdiction concerning child
 9 support, parental support, spousal maintenance, or marital
 10 property rights that includes a transfer of all or a portion
 11 of a participant's payment rights in a retirement system to
 12 an alternate payee in compliance with this section.

13 (3) A family law order must identify an alternate payee
 14 by full name, current address, and social security number.
 15 An alternate payee's rights and interests granted in
 16 compliance with this section are not subject to assignment,
 17 execution, garnishment, attachment, or other process. An
 18 alternate payee's rights or interests may be modified only
 19 by a family law order amending the family law order that
 20 established the right or interest.

21 (4) A family law order may not require:

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

25 (b) an amount or duration of payment greater than that

1 available to a participant under the appropriate retirement
2 system.

3 (5) A family law order may only provide for payment to
4 an alternate payee as follows:

5 (a) Service retirement benefit payments or withdrawals
6 of member contributions may be apportioned by directing
7 payment of a percentage of the amount payable or payment of
8 a fixed amount of no more than the amount payable to the
9 participant.

10 (b) The maximum amount of disability or survivorship
11 benefits that may be apportioned to alternate payees is the
12 monthly benefit amount that would have been payable on the
13 date of termination of service if the member had retired
14 without disability or death.

15 (c) Retirement benefit adjustments for which a
16 participant is eligible after retirement may be apportioned
17 only if existing benefit payments are apportioned. The
18 adjustments must be apportioned in the same ratio as
19 existing benefit payments.

20 (d) Payments must be limited to the life of the
21 appropriate participant. The duration of payments to an
22 alternate payee may be further limited only to a specified
23 maximum time, the life of the alternate payee, or the life
24 of a specified participant. Payments to an alternate payee
25 may be limited to a specific amount per month if the number

1 of payments is specified. The alternate payee's rights and
2 interests survive the alternate payee's death and may be
3 transferred by inheritance.

4 (e) The participant may be required to choose a
5 specified form of benefit payment or designate a beneficiary
6 or contingent annuitant if the retirement system allows for
7 that option.

8 (6) The board may assess a participant or an alternate
9 payee for all costs of reviewing and administering a family
10 law order, including reasonable attorney fees. The board may
11 adopt rules to implement this section.

12 **Section 2.** Section 19-3-105, MCA, is amended to read:

13 **"19-3-105. Exemption from taxes and legal process. The**
14 **Except as provided in [section 1], the right of a person to**
15 **a retirement allowance or any other benefit under this**
16 **chapter and the money in the fund created under this chapter**
17 **are not:**

18 (1) subject to execution, garnishment, attachment, or
19 any other process;

20 (2) subject to state, county, or municipal taxes except
21 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 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 3. Section 19-4-706, MCA, is amended to read:

"19-4-706. **Exemption from taxation and legal process.** The Except as provided in [section 1], 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 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; and

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

Section 4. Section 19-5-704, MCA, is amended to read:

"19-5-704. **Exemption from taxes and legal process -- exception.** (1) Money Except as provided in [section 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 exempt from levy, sale, garnishment, attachment, or any other process and is unassignable except as specifically provided in 19-5-705.

(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 5. Section 19-6-705, MCA, is amended to read:

"19-6-705. **Exemption from taxes and legal process.** Any Except as provided in [section 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 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; and

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

Section 6. Section 19-7-705, MCA, is amended to read:

"19-7-705. Exemption from taxes and legal process. Any Except as provided in [section 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 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 19-7-304 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-7-403;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

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

Section 7. Section 19-8-805, MCA, is amended to read:

"19-8-805. Exemption from taxes and legal process. Any Except as provided in [section 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 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 19-8-503 of the member's contributions picked up by an employer after June 30, 1985, as provided in 19-8-502;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

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

Section 8. Section 19-9-1006, MCA, is amended to read:

"19-9-1006. Protection from legal process -- nonassignability. Except as provided in [section 1] and this chapter, the benefits payable hereunder 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 and no a member, beneficiary, or survivor may not alienate, anticipate, commute, pledge, encumber, assign, or sell any of such the benefits."

Section 9. Section 19-13-1004, MCA, is amended to read:

"19-13-1004. Protection from legal process --

1 unassignability. ~~The Except as provided in [section 1], the~~
2 benefits payable under this chapter are not subject to the
3 claims of any creditor of a member, beneficiary, or survivor
4 or to attachment, garnishment, or other legal or equitable
5 process. No A member, beneficiary, or survivor may not
6 alienate, anticipate, commute, pledge, encumber, assign, or
7 sell any of such the benefits."

8 NEW SECTION. Section 10. Codification instruction.
9 [Section 1] is intended to be codified as an integral part
10 of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, and 13, and
11 the provisions of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12,
12 and 13, apply to [section 1].

13 NEW SECTION. Section 11. Coordination instruction. If
14 Bill No. _____ [LC 0246] is passed and approved, [section
15 1] is to be codified only as an integral part of the general
16 retirement provisions and the bracketed language in [section
17 1] replaces the references to the enumerated chapters of
18 Title 19.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 173

INTRODUCED BY BARTLETT, J. RICE, FRITZ, BROOKE,

JACOBSON, B. BROWN, SQUIRES, NATHE, DEVLIN,

HOCKETT, HARPER, SWIFT, EWER

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

AND THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
PAYMENT OF PUBLIC RETIREMENT BENEFITS TO ALTERNATE PAYEES
PURSUANT TO FAMILY LAW ORDERS; AND AMENDING SECTIONS
19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805,
19-9-1006, AND 19-13-1004, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 1] grants rulemaking authority to the public
employees' retirement board or the teachers' retirement
board. [Section 1] provides for the assignment and payment
of retirement system benefits to alternate payees but
differs from federal qualified domestic relations orders.
Alternate payees will not be eligible to receive payments
that could not otherwise be paid by the retirement system.

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

NEW SECTION. Section 1. Alternate payees -- family law

orders. (1) A participant in a retirement system may have
the participant's rights modified or recognized by a family
law order.

(2) For purposes of this section:

(a) "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, 12, or 13 [this title]; and

(b) "family law order" means a judgment, decree, or
order of a court of competent jurisdiction UNDER TITLE 40
concerning child support, parental support, spousal
maintenance, or marital property rights that includes a
transfer of all or a portion of a participant's payment
rights in a retirement system to an alternate payee in
compliance with this section.

(3) A family law order must identify an alternate payee
by full name, current address, and social security number.
An alternate payee's rights and interests granted in
compliance with this section are not subject to assignment,
execution, garnishment, attachment, or other process. An
alternate payee's rights or interests may be modified only
by a family law order amending the family law order that
established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not

1 available to the affected participant under the appropriate
2 retirement system; or

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

6 (5) A family law order may only provide for payment to
7 an alternate payee as follows:

8 (a) Service retirement benefit payments or withdrawals
9 of member contributions may be apportioned by directing
10 payment of a percentage of the amount payable or payment of
11 a fixed amount of no more than the amount payable to the
12 participant.

13 (b) The maximum amount of disability or survivorship
14 benefits that may be apportioned to alternate payees is the
15 monthly benefit amount that would have been payable on the
16 date of termination of service if the member had retired
17 without disability or death.

18 (c) Retirement benefit adjustments for which a
19 participant is eligible after retirement may be apportioned
20 only if existing benefit payments are apportioned. The
21 adjustments must be apportioned in the same ratio as
22 existing benefit payments.

23 (d) Payments must be limited to the life of the
24 appropriate participant. The duration of payments to an
25 alternate payee may be further limited only to a specified

1 maximum time, the life of the alternate payee, or the life
2 of a specified participant. Payments to an alternate payee
3 may be limited to a specific amount per month if the number
4 of payments is specified. The alternate payee's rights and
5 interests survive the alternate payee's death and may be
6 transferred by inheritance.

7 (e) The participant may be required to choose a
8 specified form of benefit payment or designate a beneficiary
9 or contingent annuitant if the retirement system allows for
10 that option.

11 (6) The board may assess a participant or an alternate
12 payee for all costs of reviewing and administering a family
13 law order, including reasonable attorney fees. The board may
14 adopt rules to implement this section.

15 **Section 2.** Section 19-3-105, MCA, is amended to read:

16 "19-3-105. **Exemption from taxes and legal process.** The
17 Except as provided in [section 1], the right of a person to
18 a retirement allowance or any other benefit under this
19 chapter and the money in the fund created under this chapter
20 are not:

21 (1) subject to execution, garnishment, attachment, or
22 any other process;

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

25 (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 3. Section 19-4-706, MCA, is amended to read:

"19-4-706. **Exemption from taxation and legal process.** The Except as provided in [section 1], 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 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; and

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

Section 4. Section 19-5-704, MCA, is amended to read:

"19-5-704. **Exemption from taxes and legal process -- exception.** (1) Money Except as provided in [section 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 exempt from levy, sale, garnishment, attachment, or any other process and is unassignable except as specifically provided in 19-5-705.

(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 5. Section 19-6-705, MCA, is amended to read:

"19-6-705. **Exemption from taxes and legal process.** Any Except as provided in [section 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 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; and

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

Section 6. Section 19-7-705, MCA, is amended to read:

"19-7-705. **Exemption from taxes and legal process.** Any Except as provided in [section 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 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 19-7-304 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-7-403;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

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

Section 7. Section 19-8-805, MCA, is amended to read:

"19-8-805. **Exemption from taxes and legal process.** Any Except as provided in [section 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 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 19-8-503 of the member's contributions picked up by an employer after June 30, 1985, as provided in 19-8-502;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

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

Section 8. Section 19-9-1006, MCA, is amended to read:

"19-9-1006. **Protection from legal process -- nonassignability.** Except as provided in [section 1] and this chapter, the benefits payable hereunder 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 and no a member, beneficiary, or survivor may not alienate, anticipate, commute, pledge, encumber, assign, or sell any of such the

1 benefits."

2 **Section 9.** Section 19-13-1004, MCA, is amended to read:

3 "19-13-1004. Protection from legal process --
4 unassignability. The Except as provided in [section 1], the
5 benefits payable under this chapter are not subject to the
6 claims of any creditor of a member, beneficiary, or survivor
7 or to attachment, garnishment, or other legal or equitable
8 process. No A member, beneficiary, or survivor may not
9 alienate, anticipate, commute, pledge, encumber, assign, or
10 sell any of such the benefits."

11 NEW SECTION. **Section 10.** Codification instruction.
12 [Section 1] is intended to be codified as an integral part
13 of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, and 13, and
14 the provisions of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12,
15 and 13, apply to [section 1].

16 NEW SECTION. **Section 11.** Coordination instruction. If
17 ____ Bill No. ____ [LC 0246] is passed and approved, [section
18 1] is to be codified only as an integral part of the general
19 retirement provisions and the bracketed language in [section
20 1] replaces the references to the enumerated chapters of
21 Title 19.

-End-

SENATE BILL NO. 173

INTRODUCED BY BARTLETT, J. RICE, FRITZ, BROOKE,

JACOBSON, B. BROWN, SQUIRES, NATHE, DEVLIN,

HOCKETT, HARPER, SWIFT, EWER

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

AND THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
PAYMENT OF PUBLIC RETIREMENT BENEFITS TO ALTERNATE PAYEES
PURSUANT TO FAMILY LAW ORDERS; AND AMENDING SECTIONS
19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805,
19-9-1006, AND 19-13-1004, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 1] grants rulemaking authority to the public
employees' retirement board or the teachers' retirement
board. [Section 1] provides for the assignment and payment
of retirement system benefits to alternate payees but
differs from federal qualified domestic relations orders.
Alternate payees will not be eligible to receive payments
that could not otherwise be paid by the retirement system.

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

NEW SECTION. Section 1. Alternate payees -- family law

orders. (1) A participant in a retirement system may have
the participant's rights modified or recognized by a family
law order.

(2) For purposes of this section:

(a) "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, 12, or 13 [this title]; and

(b) "family law order" means a judgment, decree, or
order of a court of competent jurisdiction UNDER TITLE 40
concerning child support, parental support, spousal
maintenance, or marital property rights that includes a
transfer of all or a portion of a participant's payment
rights in a retirement system to an alternate payee in
compliance with this section.

(3) A family law order must identify an alternate payee
by full name, current address, and social security number.
An alternate payee's rights and interests granted in
compliance with this section are not subject to assignment,
execution, garnishment, attachment, or other process. An
alternate payee's rights or interests may be modified only
by a family law order amending the family law order that
established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not

1 available to the affected participant under the appropriate
2 retirement system; or

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

6 (5) A family law order may only provide for payment to
7 an alternate payee as follows:

8 (a) Service retirement benefit payments or withdrawals
9 of member contributions may be apportioned by directing
10 payment of a percentage of the amount payable or payment of
11 a fixed amount of no more than the amount payable to the
12 participant.

13 (b) The maximum amount of disability or survivorship
14 benefits that may be apportioned to alternate payees is the
15 monthly benefit amount that would have been payable on the
16 date of termination of service if the member had retired
17 without disability or death.

18 (c) Retirement benefit adjustments for which a
19 participant is eligible after retirement may be apportioned
20 only if existing benefit payments are apportioned. The
21 adjustments must be apportioned in the same ratio as
22 existing benefit payments.

23 (d) Payments must be limited to the life of the
24 appropriate participant. The duration of payments to an
25 alternate payee may be further limited only to a specified

1 maximum time, the life of the alternate payee, or the life
2 of a specified participant. Payments to an alternate payee
3 may be limited to a specific amount per month if the number
4 of payments is specified. The alternate payee's rights and
5 interests survive the alternate payee's death and may be
6 transferred by inheritance.

7 (e) The participant may be required to choose a
8 specified form of benefit payment or designate a beneficiary
9 or contingent annuitant if the retirement system allows for
10 that option.

11 (6) The board may assess a participant or an alternate
12 payee for all costs of reviewing and administering a family
13 law order, including reasonable attorney fees. The board may
14 adopt rules to implement this section.

15 **Section 2.** Section 19-3-105, MCA, is amended to read:

16 "19-3-105. Exemption from taxes and legal process. The
17 Except as provided in [section 1], the right of a person to
18 a retirement allowance or any other benefit under this
19 chapter and the money in the fund created under this chapter
20 are not:

21 (1) subject to execution, garnishment, attachment, or
22 any other process;

23 (2) subject to state, county, or municipal taxes except
24 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 19-3-703 of a member's
4 contributions picked up by an employer after June 30, 1985,
5 as provided in 19-3-701; or

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

8 **Section 3.** Section 19-4-706, MCA, is amended to read:

9 "19-4-706. **Exemption from taxation and legal process.**
10 The Except as provided in [section 1], the pensions,
11 annuities, or any other benefits accrued or accruing to any
12 person under the provisions of the retirement system and the
13 accumulated contributions and cash and securities in the
14 various funds of the retirement system are:

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

17 (a) a retirement allowance received in excess of \$3,600
18 or adjusted by an amount determined pursuant to
19 15-30-111(2)(c)(ii); or

20 (b) a withdrawal paid under 19-4-603 of a member's
21 contributions picked up by an employer after June 30, 1985,
22 as provided in 19-4-602;

23 (2) not subject to execution, garnishment, attachment
24 by trustee process or otherwise, in law or equity, or any
25 other process; and

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

3 **Section 4.** Section 19-5-704, MCA, is amended to read:

4 "19-5-704. **Exemption from taxes and legal process --**
5 **exception.** (1) Money Except as provided in [section 1],
6 money received or to be paid as a member's annuity, state
7 annuity, or return of deductions or the right of any of
8 these except refunds paid under 19-5-403 of the member's
9 contributions picked up by an employer after June 30, 1991,
10 as provided in 19-5-402, is exempt from levy, sale,
11 garnishment, attachment, or any other process and is
12 unassignable except as specifically provided in 19-5-705.

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

16 **Section 5.** Section 19-6-705, MCA, is amended to read:

17 "19-6-705. **Exemption from taxes and legal process.** Any
18 Except as provided in [section 1], money received or to be
19 paid as a member's annuity, state annuity, or return of
20 deductions or the right of any of these is:

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

23 (a) a retirement allowance received in excess of \$3,600
24 or adjusted by an amount determined pursuant to
25 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; and

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

Section 6. Section 19-7-705, MCA, is amended to read:

"19-7-705. Exemption from taxes and legal process. Any Except as provided in [section 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 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 19-7-304 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-7-403;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

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

Section 7. Section 19-8-805, MCA, is amended to read:

"19-8-805. Exemption from taxes and legal process. Any Except as provided in [section 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 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 19-8-503 of the member's contributions picked up by an employer after June 30, 1985, as provided in 19-8-502;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

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

Section 8. Section 19-9-1006, MCA, is amended to read:

"19-9-1006. Protection from legal process -- nonassignability. Except as provided in [section 1] and this chapter, the benefits payable hereunder 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 and no a member, beneficiary, or survivor may not alienate, anticipate, commute, pledge, encumber, assign, or sell any of such the

1 benefits."

2 **Section 9.** Section 19-13-1004, MCA, is amended to read:

3 "19-13-1004. Protection from legal process --
4 unassignability. The Except as provided in [section 1], the
5 benefits payable under this chapter are not subject to the
6 claims of any creditor of a member, beneficiary, or survivor
7 or to attachment, garnishment, or other legal or equitable
8 process. No A member, beneficiary, or survivor may not
9 alienate, anticipate, commute, pledge, encumber, assign, or
10 sell any of such the benefits."

11 **NEW SECTION. Section 10.** Codification instruction.
12 [Section 1] is intended to be codified as an integral part
13 of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, and 13, and
14 the provisions of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12,
15 and 13, apply to [section 1].

16 **NEW SECTION. Section 11.** Coordination instruction. If
17 Bill No. _____ [LC 0246] is passed and approved, [section
18 1] is to be codified only as an integral part of the general
19 retirement provisions and the bracketed language in [section
20 1] replaces the references to the enumerated chapters of
21 Title 19.

-End-

SENATE BILL NO. 173

INTRODUCED BY BARTLETT, J. RICE, FRITZ, BROOKE,

JACOBSON, B. BROWN, SQUIRES, NATHE, DEVLIN,

HOCKETT, HARPER, SWIFT, EWER

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

AND THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PAYMENT OF PUBLIC RETIREMENT BENEFITS TO ALTERNATE PAYEES PURSUANT TO FAMILY LAW ORDERS; AND AMENDING SECTIONS 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, AND 19-13-1004, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] grants rulemaking authority to the public employees' retirement board or the teachers' retirement board. [Section 1] provides for the assignment and payment of retirement system benefits to alternate payees but differs from federal qualified domestic relations orders. Alternate payees will not be eligible to receive payments that could not otherwise be paid by the retirement system.

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

NEW SECTION. Section 1. Alternate payees -- family law

orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "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, 12, or 13 [this title]; and

(b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction UNDER TITLE 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not

1 available to the affected participant under the appropriate
2 retirement system; or

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

6 (5) A family law order may only provide for payment to
7 an alternate payee as follows:

8 (a) Service retirement benefit payments or withdrawals
9 of member contributions may be apportioned by directing
10 payment of a percentage of the amount payable or payment of
11 a fixed amount of no more than the amount payable to the
12 participant.

13 (b) The maximum amount of disability or survivorship
14 benefits that may be apportioned to alternate payees is the
15 monthly benefit amount that would have been payable on the
16 date of termination of service if the member had retired
17 without disability or death.

18 (c) Retirement benefit adjustments for which a
19 participant is eligible after retirement may be apportioned
20 only if existing benefit payments are apportioned. The
21 adjustments must be apportioned in the same ratio as
22 existing benefit payments.

23 (d) Payments must be limited to the life of the
24 appropriate participant. The duration of payments to an
25 alternate payee may be further limited only to a specified

1 maximum time, the life of the alternate payee, or the life
2 of a specified participant. Payments to an alternate payee
3 may be limited to a specific amount per month if the number
4 of payments is specified. The alternate payee's rights and
5 interests survive the alternate payee's death and may be
6 transferred by inheritance.

7 (e) The participant may be required to choose a
8 specified form of benefit payment or designate a beneficiary
9 or contingent annuitant if the retirement system allows for
10 that option.

11 (6) The board may assess a participant or an alternate
12 payee for all costs of reviewing and administering a family
13 law order, including reasonable attorney fees. The board may
14 adopt rules to implement this section.

15 **Section 2.** Section 19-3-105, MCA, is amended to read:

16 "19-3-105. Exemption from taxes and legal process. The
17 Except as provided in [section 1], the right of a person to
18 a retirement allowance or any other benefit under this
19 chapter and the money in the fund created under this chapter
20 are not:

21 (1) subject to execution, garnishment, attachment, or
22 any other process;

23 (2) subject to state, county, or municipal taxes except
24 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 19-3-703 of a member's
4 contributions picked up by an employer after June 30, 1985,
5 as provided in 19-3-701; or

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

8 **Section 3.** Section 19-4-706, MCA, is amended to read:

9 "19-4-706. **Exemption from taxation and legal process.**
10 The Except as provided in [section 1], the pensions,
11 annuities, or any other benefits accrued or accruing to any
12 person under the provisions of the retirement system and the
13 accumulated contributions and cash and securities in the
14 various funds of the retirement system are:

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

17 (a) a retirement allowance received in excess of \$3,600
18 or adjusted by an amount determined pursuant to
19 15-30-111(2)(c)(ii); or

20 (b) a withdrawal paid under 19-4-603 of a member's
21 contributions picked up by an employer after June 30, 1985,
22 as provided in 19-4-602;

23 (2) not subject to execution, garnishment, attachment
24 by trustee process or otherwise, in law or equity, or any
25 other process; and

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

3 **Section 4.** Section 19-5-704, MCA, is amended to read:

4 "19-5-704. **Exemption from taxes and legal process --**
5 **exception. (1) Money Except as provided in [section 1],**
6 **money received or to be paid as a member's annuity, state**
7 **annuity, or return of deductions or the right of any of**
8 **these except refunds paid under 19-5-403 of the member's**
9 **contributions picked up by an employer after June 30, 1991,**
10 **as provided in 19-5-402, is exempt from levy, sale,**
11 **garnishment, attachment, or any other process and is**
12 **unassignable except as specifically provided in 19-5-705.**

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

16 **Section 5.** Section 19-6-705, MCA, is amended to read:

17 "19-6-705. **Exemption from taxes and legal process. Any**
18 **Except as provided in [section 1], money received or to be**
19 **paid as a member's annuity, state annuity, or return of**
20 **deductions or the right of any of these is:**

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

23 (a) a retirement allowance received in excess of \$3,600
24 or adjusted by an amount determined pursuant to
25 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; and

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

Section 6. Section 19-7-705, MCA, is amended to read:

"19-7-705. Exemption from taxes and legal process. Any Except as provided in [section 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 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 19-7-304 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-7-403;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

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

Section 7. Section 19-8-805, MCA, is amended to read:

"19-8-805. Exemption from taxes and legal process. Any Except as provided in [section 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 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 19-8-503 of the member's contributions picked up by an employer after June 30, 1985, as provided in 19-8-502;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

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

Section 8. Section 19-9-1006, MCA, is amended to read:

"19-9-1006. Protection from legal process -- nonassignability. Except as provided in [section 1] and this chapter, the benefits payable hereunder 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 and no a member, beneficiary, or survivor may not alienate, anticipate, commute, pledge, encumber, assign, or sell any of such the

1 benefits."

2 **Section 9.** Section 19-13-1004, MCA, is amended to read:

3 "19-13-1004. Protection from legal process --
4 unassignability. The Except as provided in [section 1], the
5 benefits payable under this chapter are not subject to the
6 claims of any creditor of a member, beneficiary, or survivor
7 or to attachment, garnishment, or other legal or equitable
8 process. No A member, beneficiary, or survivor may not
9 alienate, anticipate, commute, pledge, encumber, assign, or
10 sell any of such the benefits."

11 NEW SECTION. **Section 10.** Codification instruction.
12 [Section 1] is intended to be codified as an integral part
13 of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, and 13, and
14 the provisions of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12,
15 and 13, apply to [section 1].

16 NEW SECTION. **Section 11.** Coordination instruction. If
17 Bill No. _____ [LC 0246] is passed and approved, [section
18 1] is to be codified only as an integral part of the general
19 retirement provisions and the bracketed language in [section
20 1] replaces the references to the enumerated chapters of
21 Title 19.

-End-