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

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Sevent BILL NO.173
2 INTRODUCED BY BOTTLET PUBLIC EMPLOYEES RETTREMENT BOARD
4 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."

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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.

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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.

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- (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 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 of a participant's payment rights in a retirement system to 12 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.
- 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
 - (b) an amount or duration of payment greater than that

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available to a participant under the appropriate retirement system.

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- 3 (5) A family law order may only provide for payment to 4 an alternate payee as follows:
 - (a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.
 - (b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.
 - (c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.
 - (d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number

- l 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.

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- 4 (e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for that option.
 - (6) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.
- 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

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- contributions picked up by an employer after June 30, 1985, as provided in 19-3-701; or
- 3 (3) assignable except as in this chapter specifically 4 provided."
- 5 Section 3. Section 19-4-706, MCA, is amended to read:
- 6 "19-4-706. Exemption from taxation and legal process.
- 7 The Except as provided in [section 1], the pensions,
- 8 annuities, or any other benefits accrued or accruing to any
 - person under the provisions of the retirement system and the
- 10 accumulated contributions and cash and securities in the
- 11 various funds of the retirement system are:
- 12 (1) exempted from any state, county, or municipal tax
- 13 of the state of Montana except for:
- 14 (a) a retirement allowance received in excess of \$3,600
- 15 or adjusted by an amount determined pursuant to
- 16 15-30-111(2)(c)(ii); or

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- 17 (b) a withdrawal paid under 19-4-603 of a member's
- 18 contributions picked up by an employer after June 30, 1985,
- 19 as provided in 19-4-602;
- 20 (2) not subject to execution, garnishment, attachment
- 21 by trustee process or otherwise, in law or equity, or any
- 22 other process; and
- 23 (3) unassignable except as specifically provided in
- 24 this chapter."
- 25 Section 4. Section 19-5-704, MCA, is amended to read:

- 1 "19-5-704. Exemption from taxes and legal process --
- 2 exception. (1) Money Except as provided in [section 1],
- 3 money received or to be paid as a member's annuity, state
 - annuity, or return of deductions or the right of any of
- 5 these except refunds paid under 19-5-403 of the member's
- 6 contributions picked up by an employer after June 30, 1991,
- 7 as provided in 19-5-402, is exempt from levy, sale,
 - garnishment, attachment, or any other process and is
- 9 unassignable except as specifically provided in 19-5-705.
- 10 (2) The first \$3,600 or the amount determined pursuant
- 11 to 15-30-111(2)(c)(ii) received under this chapter is exempt
- 12 from state, county, or municipal taxation."
- Section 5. Section 19-6-705, MCA, is amended to read:
- 14 "19-6-705. Exemption from taxes and legal process. Any
- 15 Except as provided in [section 1], money received or to be
- 16 paid as a member's annuity, state annuity, or return of
- 17 deductions or the right of any of these is:
- 18 (1) exempt from any state, county, or municipal tax
- 19 except for:

- 20 (a) a retirement allowance received in excess of \$3,600
- 21 or adjusted by an amount determined pursuant to
- 22 15-30-111(2)(c)(ii); or
- 23 (b) a refund paid under 19-6-403 of a member's
- 24 contributions picked up by an employer after June 30, 1985,
- 25 as provided in 19-6-402;

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benefits."

- (2) exempt from levy, sale, garnishment, attachment, or any other process: and
- 3 (3) unassignable except as specifically provided in 4 19-6-706."
- 5 Section 6. Section 19-7-705, MCA, is amended to read:

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- 6 "19-7-705. Exemption from taxes and legal process. Any
 7 Except as provided in [section 1], money received or to be
 8 paid as a member's annuity, state annuity, or return of
 9 deductions or the right of any of these is:
- 10 (1) exempt from any state, county, or municipal tax
 11 except for:
- 12 (a) a retirement allowance received in excess of \$3,600
 13 or adjusted by an amount determined pursuant to
 14 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;
- 18 (2) exempt from levy, sale, garnishment, attachment, or 19 any other process; and
- 20 (3) unassignable except as specifically provided in 21 19-7-706."
- Section 7. Section 19-8-805, MCA, is amended to read:
- 23 "19-B-805. Exemption from taxes and legal process. Any
 24 Except as provided in [section 1], money received or to be
 25 paid as a member's annuity, state annuity, or return of

- deductions or the right of any of these is:
- 2 (1) exempt from any state, county, or municipal tax
 3 except for:
- 4 (a) a retirement allowance received in excess of \$3,600 5 or adjusted by an amount determined pursuant to 6 15-30-111(2)(c)(ii); or
- 7 (b) a refund paid under 19-8-503 of the member's 8 contributions picked up by an employer after June 30, 1985, 9 as provided in 19-8-502;
- (2) exempt from levy, sale, garnishment, attachment, or any other process; and
- 12 (3) unassignable except as specifically provided in 13 19-8-806."
- 14 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
- Section 9. Section 19-13-1004, MCA, is amended to read:
- 25 "19-13-1004. Protection from legal process --

unassignability. The Except as provided in [section 1], the 1 2 benefits payable under this chapter are not subject to the 3 claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process. No A member, beneficiary, or survivor may not alienate, anticipate, commute, pledge, encumber, assign, or sell any of such the benefits." 7 NEW SECTION. Section 10. Codification 8 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 the provisions of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, 11 and 13, apply to [section 1]. 12 NEW SECTION. Section 11. Coordination instruction. If 13 Bill No. [LC 0246] is passed and approved, [section 14 15 1] is to be codified only as an integral part of the general retirement provisions and the bracketed language in [section 16 1) replaces the references to the enumerated chapters of 17 Title 19. 18

-End-

APPROVED BY COMMITTEE ON JUDICIARY

1	SENATE BILL NO. 173
2	INTRODUCED BY BARTLETT, J. RICE, FRITZ, BROOKE,
3	JACOBSON, B. BROWN, SQUIRES, NATHE, DEVLIN,
4	HOCKETT, HARPER, SWIFT, EWER
5	BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD
6	AND THE TEACHERS' RETIREMENT BOARD
7	
8	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
9	PAYMENT OF PUBLIC RETIREMENT BENEFITS TO ALTERNATE PAYEES
10	PURSUANT TO FAMILY LAW ORDERS; AND AMENDING SECTIONS
11	19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805,
12	19-9-1006, AND 19-13-1004, MCA."
13	
14	STATEMENT OF INTENT
15	A statement of intent is required for this bill because
16	[section 1] grants rulemaking authority to the public
17	employees' retirement board or the teachers' retirement
18	board. [Section 1] provides for the assignment and payment
19	of retirement system benefits to alternate payees but
20	differs from federal qualified domestic relations orders.
21	Alternate payees will not be eligible to receive payments
22	that could not otherwise be paid by the retirement system.
23	
24	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
25	NEW SECTION. Section 1. Alternate payees family law



- 1 orders. (1) A participant in a retirement system may have
- the participant's rights modified or recognized by a family
- 3 law order.
- (2) For purposes of this section:
- 5 (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
- 9 (b) "family law order" means a judgment, decree, or
- order of a court of competent jurisdiction UNDER TITLE 40 10
- 11 concerning child support, parental support, spousal
- 12 maintenance, or marital property rights that includes a
- 13 transfer of all or a portion of a participant's payment
- 14 rights in a retirement system to an alternate payee in
- 15 compliance with this section.
- 16 (3) A family law order must identify an alternate payee
- 17 by full name, current address, and social security number.
- 18 An alternate payee's rights and interests granted in
- compliance with this section are not subject to assignment, 19
- 20 execution, garnishment, attachment, or other process. An
- 21 alternate payee's rights or interests may be modified only
- 22 by a family law order amending the family law order that
- 23 established the right or interest.
- 24 (4) A family law order may not require:
- 25 (a) a type or form of benefit, option, or payment not

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available to the affected participant under the appropriate
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.

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- (5) A family law order may only provide for payment to 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.
 - (b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.
 - (c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as 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

- maximum time, the life of the alternate payee, or the life
 of a specified participant. Payments to an alternate payee
 may be limited to a specific amount per month if the number
 of payments is specified. The alternate payee's rights and
 interests survive the alternate payee's death and may be
 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 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

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- or adjusted by an amount determined pursuant to 1 2 15-30-111(2)(c)(ii); or
- (b) a refund paid under 19-3-703 of a member's 3 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 6 provided." 7
- Section 3. Section 19-4-706, MCA, is amended to read: В
- "19-4-706. Exemption from taxation and legal process. q,
- The Except as provided in [section 1], the pensions, 10
- annuities, or any other benefits accrued or accruing to any 11
- person under the provisions of the retirement system and the 12
- accumulated contributions and cash and securities in the 13
- various funds of the retirement system are: 14
- (1) exempted from any state, county, or municipal tax 15
- of the state of Montana except for: 16
- (a) a retirement allowance received in excess of \$3,600 17
- or adjusted by an amount determined pursuant to 18
- 15-30-111(2)(c)(ii); or 19
- (b) a withdrawal paid under 19-4-603 of a member's 20
- contributions picked up by an employer after June 30, 1985, 21
- as provided in 19-4-602; 22
- (2) not subject to execution, garnishment, attachment 23
- by trustee process or otherwise, in law or equity, or any 24
- other process; and 25

- 1 (3) unassignable except as specifically provided in 2 this chapter."
- 3 Section 4. Section 19-5-704, MCA, is amended to read:
- "19-5-704. Exemption from taxes and legal process --
- 5 exception. (1) Money Except as provided in [section 1],
- annuity, or return of deductions or the right of any of

money received or to be paid as a member's annuity, state

- 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 11
- 12 unassignable except as specifically provided in 19-5-705.
- (2) The first \$3,600 or the amount determined pursuant 13
- 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
- paid as a member's annuity, state annuity, or return of 19
- deductions or the right of any of these is: 20
- (1) exempt from any state, county, or municipal tax 21
- 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

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- 1 (b) a refund paid under 19-6-403 of a member's 2 contributions picked up by an employer after June 30, 1985, 3 as provided in 19-6-402;
- 4 (2) exempt from levy, sale, garnishment, attachment, or 5 any other process; and
- 6 (3) unassignable except as specifically provided in 19-6-706."
- 8 Section 6. Section 19-7-705, MCA, is amended to read:
- 9 "19-7-705. Exemption from taxes and legal process. Any
 10 Except as provided in [section 1], money received or to be
 11 paid as a member's annuity, state annuity, or return of
- 12 deductions or the right of any of these is:
- (1) exempt from any state, county, or municipal tax
 except for:
- 15 (a) a retirement allowance received in excess of \$3,600 16 or adjusted by an amount determined pursuant to 17 15-30-111(2)(c)(ii); or
- 18 (b) a refund paid under 19-7-304 of a member's 19 contributions picked up by an employer after June 30, 1985, 20 as provided in 19-7-403;
- 21 (2) exempt from levy, sale, garnishment, attachment, or 22 any other process; and
- 23 (3) unassignable except as specifically provided in 19-7-706."
- Section 7. Section 19-8-805, MCA, is amended to read:

- 1 "19-8-805. Exemption from taxes and legal process. Any
 2 Except as provided in [section 1], money received or to be
 3 paid as a member's annuity, state annuity, or return of
 4 deductions or the right of any of these is:
- 5 (1) exempt from any state, county, or municipal tax 6 except for:
- 7 (a) a retirement allowance received in excess of \$3,600 8 or adjusted by an amount determined pursuant to 9 15-30-111(2)(c)(ii); or
- 10 (b) a refund paid under 19-8-503 of the member's
 11 contributions picked up by an employer after June 30, 1985,
 12 as provided in 19-8-502;
- (2) exempt from levy, sale, garnishment, attachment, or any other process; and
- 15 (3) unassignable except as specifically provided in 19-8-806."
- Section 8. Section 19-9-1006, MCA, is amended to read:
- 18 "19-9-1006. Protection from legal process -
 19 nonassignability. Except as provided in [section 1] and this

 20 chapter, the benefits payable hereunder under this chapter

 21 are not subject to the claims of any creditor of a member.
- are not subject to the claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or
- 23 other legal or equitable process and no a member,
- 24 beneficiary, or survivor may not alienate, anticipate,
- 25 commute, pledge, encumber, assign, or sell any of such the

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1 benefits." 2 Section 9. Section 19-13-1004, MCA, is amended to read: 3 "19-13-1004. Protection from legal process -unassignability. The Except as provided in [section 1], the 4 benefits payable under this chapter are not subject to the 5 claims of any creditor of a member, beneficiary, or survivor 6 7 or to attachment, garnishment, or other legal or equitable process. No A member, beneficiary, or survivor may not 9 alienate, anticipate, commute, pledge, encumber, assign, or sell any of such the benefits." 10 11 NEW SECTION. Section 10. Codification instruction. 12 [Section 1] is intended to be codified as an integral part of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, and 13, and 13 14 the provisions of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, 15 and 13, apply to [section 1]. NEW SECTION. Section 11. Coordination instruction. If 16 ___Bill No.___ [LC 0246] is passed and approved, [section 17 1] is to be codified only as an integral part of the general 18 19 retirement provisions and the bracketed language in (section 20 1] replaces the references to the enumerated chapters of 21 Title 19.

-End-

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2	INTRODUCED BY BARTLETT, J. RICE, FRITE, BROOKE,
3	JACOBSON, B. BROWN, SQUIRES, NATHE, DEVLIN,
4	HOCKETT, HARPER, SWIFT, EWER
5	BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD
6	AND THE TEACHERS' RETIREMENT BOARD
7	
8	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
9	PAYMENT OF PUBLIC RETIREMENT BENEFITS TO ALTERNATE PAYEES
10	PURSUANT TO FAMILY LAW ORDERS; AND AMENDING SECTIONS
11	19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805,
12	19-9-1006, AND 19-13-1004, MCA."
13	
14	STATEMENT OF INTENT
15	A statement of intent is required for this bill because
16	[section 1] grants rulemaking authority to the public
17	employees' retirement board or the teachers' retirement
18	board. [Section 1] provides for the assignment and payment
19	of retirement system benefits to alternate payees but
20	differs from federal qualified domestic relations orders.
21	Alternate payees will not be eligible to receive payments
22	that could not otherwise be paid by the retirement system.
23	
24	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
25	NEW SECTION. Section 1. Alternate payees family law

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- 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:

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- 5 (a) "participant" means a member or an actual or 6 potential beneficiary, survivor, or contingent annuitant of 7 a retirement system designated pursuant to Title 19, chapter 8 3, 4, 5, 6, 7, 8, 9, 12, or 13 (this title); and
- 9 (b) "family law order" means a judgment, decree, or
 10 order of a court of competent jurisdiction <u>UNDER TITLE 40</u>
 11 concerning child support, parental support, spousal
 12 maintenance, or marital property rights that includes a
 13 transfer of all or a portion of a participant's payment
 14 rights in a retirement system to an alternate payee in
 15 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.
- 24 (4) A family law order may not require:
- 25 (a) a type or form of benefit, option, or payment not

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transferred by inheritance.

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

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

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- (5) A family law order may only provide for payment to an alternate payee as follows:
- (a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.
- (b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.
- (c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.
- (d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified

- maximum time, the life of the alternate payee, or the life
 of a specified participant. Payments to an alternate payee
 may be limited to a specific amount per month if the number
 of payments is specified. The alternate payee's rights and
 interests survive the alternate payee's death and may be
 - (e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for 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.
- Section 2. Section 19-3-105, MCA, is amended to read:
- 16 "19-3-105. Exemption from taxes and legal process. The

 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

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- or adjusted by an amount determined pursuant to 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.*
- Section 3. Section 19-4-706, MCA, is amended to read:
- 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:
- 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."
- 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
 - 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,
- ll garnishment, attachment, or any other process and is
- 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."
 - 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:

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- 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

- 1 (b) a refund paid under 19-6-403 of a member's 2 contributions picked up by an employer after June 30, 1985, 3 as provided in 19-6-402;
- 4 (2) exempt from levy, sale, garnishment, attachment, or any other process; and
- 6 (3) unassignable except as specifically provided in 19-6-706."
- Section 6. Section 19-7-705, MCA, is amended to read:
- 9 "19-7-705. Exemption from taxes and legal process. Any
 10 Except as provided in [section 1], money received or to be
 11 paid as a member's annuity, state annuity, or return of
 12 deductions or the right of any of these is:
- 13 (1) exempt from any state, county, or municipal tax
 14 except for:
- 15 (a) a retirement allowance received in excess of \$3,600

 16 or adjusted by an amount determined pursuant to

 17 15-30-111(2)(c)(ii); or
- 18 (b) a refund paid under 19-7-304 of a member's
 19 contributions picked up by an employer after June 30, 1985,
 20 as provided in 19-7-403;
- 21 (2) exempt from levy, sale, garnishment, attachment, or
 22 any other process; and
- 23 (3) unassignable except as specifically provided in 24 19-7-706."
- 25 Section 7. Section 19-8-805, MCA, is amended to read:

- 1 "19-8-805. Exemption from taxes and legal process. Any
 2 Except as provided in [section 1], money received or to be
 3 paid as a member's annuity, state annuity, or return of
 4 deductions or the right of any of these is:
- 5 (1) exempt from any state, county, or municipal tax 6 except for:
- 7 (a) a retirement allowance received in excess of \$3,600 8 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii): or
- 10 (b) a refund paid under 19-8-503 of the member's
 11 contributions picked up by an employer after June 30, 1985,
 12 as provided in 19-8-502;
- (2) exempt from levy, sale, garnishment, attachment, or any other process; and
- 15 (3) unassignable except as specifically provided in 19-8-806."
- 17 Section 8. Section 19-9-1006, MCA, is amended to read:
- 18 *19-9-1006. Protection from legal process ---19 nonassignability. Except as provided in [section 1] and this 20 chapter, the benefits payable hereunder under this chapter 21 are not subject to the claims of any creditor of a member, 22 beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process and no a member, 23 24 beneficiary, or survivor may not alienate, anticipate,
- 25 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 unassignability. The Except as provided in (section 1), the 4 benefits payable under this chapter are not subject to the 5 6 claims of any creditor of a member, beneficiary, or survivor 7 or to attachment, garnishment, or other legal or equitable B 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 the provisions of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, 14 15 and 13, apply to [section 1]. NEW SECTION. Section 11. Coordination instruction. If 16 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

-End-

1) replaces the references to the enumerated chapters of

20 21

Title 19.

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2	INTRODUCED BY BARTLETT, J. RICE, PRITE, BROOKE,
3	JACOBSON, B. BROWN, SQUIRES, NATHE, DEVLIN,
4	HOCKETT, HARPER, SWIFT, EWER
5	BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD
6	AND THE TEACHERS' RETIREMENT BOARD
7	
8	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
9	PAYMENT OF PUBLIC RETIREMENT BENEFITS TO ALTERNATE PAYEES
10	PURSUANT TO PAMILY LAW ORDERS; AND AMENDING SECTIONS
11	19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805,
12	19-9-1006, AND 19-13-1004, MCA."
13	
14	STATEMENT OF INTENT
15	A statement of intent is required for this bill because
16	[section 1] grants rulemaking authority to the public
17	employees' retirement board or the teachers' retirement
18	board. (Section 1) provides for the assignment and payment
19	of retirement system benefits to alternate payees but
20	differs from federal qualified domestic relations orders.
21	Alternate payees will not be eligible to receive payments
22	that could not otherwise be paid by the retirement system.
23	
24	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
25	NEW COCKYON Section 1 Alternate payers - family law

SENATE BILL NO. 173

- orders. (1) A participant in a retirement system may have the participant's rights modified or recognised 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
- 9 (b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction <u>UNDER TITLE 40</u>
 11 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.
- 16 (3) A family law order must identify an alternate payee 17 by full name, current address, and social security number. 18 An alternate payee's rights and interests granted in 19 compliance with this section are not subject to assignment, 20 execution, garnishment, attachment, or other process. An 21 alternate payee's rights or interests may be modified only 22 by a family law order amending the family law order that 23 established the right or interest.
 - (4) A family law order may not require:
- 25 (a) a type or form of benefit, option, or payment not

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SB 0173/02

SB 0173/02

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

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- (5) A family law order may only provide for payment to
 an alternate payee as follows:
 - (a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.
 - (b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.
 - (c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.
 - (d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified

- maximum time, the life of the alternate payee, or the life
 of a specified participant. Payments to an alternate payee
 may be limited to a specific amount per month if the number
 of payments is specified. The alternate payee's rights and
 interests survive the alternate payee's death and may be
 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 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

 Except as provided in [section 1], 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:
- 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

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- adjusted by an amount determined pursuant to 1 15-30-111(2)(c)(ii); or 2
- (b) a refund paid under 19-3-703 of a member's 3 contributions picked up by an employer after June 30, 1985, as provided in 19-3-701; or 5
- (3) assignable except as in this chapter specifically 6 provided." 7
- 8 Section 3. Section 19-4-706, MCA, is amended to read:
- *19-4-706. Exemption from taxation and legal process. 9
- The Except as provided in [section 1], the pensions, 10
- annuities, or any other benefits accrued or accruing to any 11
- person under the provisions of the retirement system and the 12
- accumulated contributions and cash and securities in the 13
- various funds of the retirement system are: 14
- (1) exempted from any state, county, or municipal tax 15
- of the state of Montana except for: 16
- (a) a retirement allowance received in excess of \$3,600 17
- or adjusted by an amount determined pursuant to 18
- 19 15-30-111(2)(c)(ii); or
- (b) a withdrawal paid under 19-4-603 of a member's 20
- contributions picked up by an employer after June 30, 1985, 21
- as provided in 19-4-602; 22
- (2) not subject to execution, garnishment, attachment 23
- 24 by trustee process or otherwise, in law or equity, or any

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25 other process; and

- (3) unassignable except as specifically provided in 1 2 this chapter."
- 3 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
- 7 annuity, or return of deductions or the right of any of
 - these except refunds paid under 19-5-403 of the member's
- 9 contributions picked up by an employer after June 30, 1991.
- 10 provided in 19-5-402, is exempt from levy, sale,
- garnishment, attachment, or any other process and is 11
 - 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:

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

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15-30-111(2)(c)(ii); or 25

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- 1 (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: 3
- (2) exempt from levy, sale, garnishment, attachment, or any other process; and
- (3) unassignable except as specifically provided in 7 19-6-706."
- Section 6. Section 19-7-705, MCA, is amended to read:
- *19-7-705. Exemption from taxes and legal process. Any 9 Except as provided in [section 1], money received or to be 10 11 paid as a member's annuity, state annuity, or return of 12 deductions or the right of any of these is:
 - (1) exempt from any state, county, or municipal tax except for:

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- (a) a retirement allowance received in excess of \$3,600 15 16 or adjusted by an amount determined pursuant to 17 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;
- 21 (2) exempt from levy, sale, garnishment, attachment, or 22 any other process; and
- 23 (3) unassignable except as specifically provided in 24 19-7-706."
- 25 Section 7. Section 19-8-805, MCA, is amended to read:

- 1 *19-8-805. Exemption from taxes and legal process. Any 2 Except as provided in [section 1], money received or to be paid as a member's annuity, state annuity, or return of 3 deductions or the right of any of these is:
- (1) exempt from any state, county, or municipal tax 6 except for:
- 7 (a) a retirement allowance received in excess of \$3,600 8 or adjusted by an amount determined pursuant to 9 15-30-111(2)(c)(ii); or
- 10 (b) a refund paid under 19-8-503 of the member's 11 contributions picked up by an employer after June 30, 1985. 12 as provided in 19-8-502;
- 13 (2) exempt from levy, sale, garnishment, attachment, or 14 any other process; and
- 15 (3) unassignable except as specifically provided in 16 19-8-806."
- Section 8. Section 19-9-1006, MCA, is amended to read: 17
- 18 *19-9-1006. Protection from legal 19 nonassignability. Except as provided in [section 1] and this 20 chapter, the benefits payable hereunder under this chapter 21 are not subject to the claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or 22 23 other legal or equitable process and no a member. 24 beneficiary, or survivor may not alienate, anticipate,
- commute, pledge, encumber, assign, or sell any of such the

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benefits." 1 Section 9. Section 19-13-1004, MCA, is amended to read: 2 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 or to attachment, garnishment, or other legal or equitable 7 process. No A member, beneficiary, or survivor may not 8 9 alienate, anticipate, commute, pledge, encumber, assign, or 10 sell any of such the benefits." NEW SECTION. Section 10. Codification 11 instruction. 12 [Section 1] is intended to be codified as an integral part of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, and 13, and 13 the provisions of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, 14 and 13, apply to [section 1]. 15 NEW SECTION. Section 11. Coordination instruction. If 16 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

-End-

Title 19.