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EXHIBIT 2
DATE 3/25/11
HB 603

New Section 13(9)(c) Employees in a public charter school are eligible for participation in retirement and other benefits programs of the state if the public charter school chooses to participate

1. Does not comport with other legal requirements, so would only cause confusion with respect to participation in the retirement system

- Title 19, Chapter 20 does not authorize elective participation in TRS
  - If an entity is an "employer" as defined in 19-20-101, its employees who fall within one of the categories of 19-20-302 are required to participate in the retirement system
  - And the employer is required to report the employment and remit contributions
    - I believe a public charter school is an employer as defined, and its employees eligible for participation in TRS would be required to participate

2. If New Section 13(9)(c) was legally construed to allow public charter schools to choose to participate or not in TRS, there would be a number of problems
   - Administrative difficulties – When will the public charter school be required to make its election? Will the election be revocable? Will
   - TRS Funding issues –
     - Reduction of contributions base - for every public education position that is taken out of participation in TRS, the salary base from which contributions to the retirement system are derived becomes smaller so the annual fiscal contributions to the retirement system will be reduced
       - Positions removed from participation in the retirement system will change the actuarial assumptions used to value the retirement system – a reduction in the assumptions regarding numbers of participants and salary growth will result in an increase in the unfunded liabilities of the retirement system
     - Adverse Selection by Working Retirees – the option for a public charter school to elect not to participate in TRS would give rise to an argument that TRS retirees are entitled to go to work for charter schools free from the application of the earnings limitations of the retirement system
       - While TRS would resist that construction, a legal determination that public charter schools that have opted not to participate in TRS cannot be reached with respect to working retiree limitations would result in tremendous adverse selection against the retirement system
         - Those participants in TRS who are retired or eligible to retire would be encouraged to retire as soon as possible and to return to employment in public

education with a public charter school, thereby allowing them to receive full retirement benefits and to continue to earn full-time wages and benefits in public education (double-dipping)
    - At the same time, contributions to the retirement system would not be made on the positions employed in the charter schools

- Administrative difficulties – When will the public charter school be required to make its election? Will the election be revocable? How many times?
    - And might it not be in the interests of the public charter schools to decide whether to participate in the retirement system based on whether or not it has the opportunity to employ TRS retirees
        - In other words, could a public charter school determine from time to time to participate or not based on whether more of its employees would prefer to receive the benefits of the retirement system or evade the limitations of the retirement system

3. TRS participant rights
    - The requirement for participation in the retirement system, as well as the provisions that prevent double-dipping and other abuse of the retirement system, accrues to the benefit of the persons employed in public education for the state of Montana – administrators, educators and other related staff.
        - This bill allows a public school in the state of Montana to decide to opt out of the retirement system. The public charter school will make the election, but the TRS-eligible employees of the charter school will pay the price. In fact, an existing public school that converts to a charter school could elect not to participate in TRS, thereby terminating current rights of its employees
    - I think you need to consider whether there is a constitutional violation on the basis of equal protection if a person who is otherwise eligible for retirement participation and benefits is precluded from that participation and those benefits on the basis of an election, on an employer by employer basis, to allow them to access them or not.