



Montana Legislative Services Division  
Legal Services Office

EXHIBIT 5  
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HB 377  
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To: House Appropriations Committee

FROM: K.V. ("Ginger") Aldrich, legislative attorney; Julie Johnson, legislative attorney

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As noted in the legal review notes on the 3 pension bills before the House Appropriations Committee, the Montana Supreme Court has not yet expressly adopted a theory of law allowing interference with statutory public retirement pensions, protected under Article II, section 31 of the Montana Constitution and Article I, section 10, of the U.S. Constitution. However, the Montana Supreme Court has held that Montana and federal contract clauses are interchangeable and that federal case law allowing interference with contracts is therefore of precedential value in Montana. See, e.g., *City of Butte v. Roberts*, 94 Mont. 482, 23 P.2d 243 (1933), and *Neel v. First Fed. S. and L. Ass'n*, 207 Mont. 376, 675 P.2d 96 (1984). The United States Supreme Court, in *U.S. Trust Company of New York v. New Jersey*, has held that a contract impairment will be held unconstitutional if: (1) the impairment is a substantial impairment; and (2) the government enacting impairing legislation does not first at least seriously consider nonimpairing or lesser impairing legislation. 431 U.S. 1 (1977).

If a provision is construed to be a "substantial impairment" of existing contracts with public employees under the *U.S. Trust* decision, the Court will ask if the government seriously considered other nonimpairing alternatives or less drastic impairments.

If the Court determines the Legislature did seriously consider lesser impairing alternatives, the Court will likely ask if the state had a significant and legitimate public purpose for the impairment. *Energy Reserves*, 459 U.S. at 411, *Neel v. First Fed. S. & L. Ass'n*, 207 Mont. 376 (1984), *Carmichael v. Workers' Comp. Court*, 234 Mont. 410 (1988), *Seven Up Pete Venture v. State*, 327 Mont. 306 (2005).

Lastly, if the state can document that it does have a significant and legitimate public purpose for the impairment, the Court will ask if the impairment is reasonably related to the identified legitimate and public purpose. *U.S. Trust Co.*, 431 U.S. at 22-23.; *Neel*, 207 Mont. 376; *Carmichael*, 234 Mont. 410 (1988).

If the impairment can withstand scrutiny on all of these points, it will likely be upheld; but if it fails this test, it will likely be found unconstitutional.