

**MINUTES**

**MONTANA SENATE  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By Senator Jeff Weldon, on January 15, 1993, at  
10:00 a.m.

**ROLL CALL**

**Members Present:**

Sen. Eleanor Vaughn, Chair (D)  
Sen. Jeff Weldon, Vice Chair (D)  
Sen. Jim Burnett (R)  
Sen. Harry Fritz (D)  
Sen. John Hertel (R)  
Sen. Bob Hockett (D)  
Sen. Bob Pipinich (D)  
Sen. Bernie Swift (R)  
Sen. Henry McClernan (D)  
Sen. Larry Tveit (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** David Niss, Legislative Council  
Deborah Stanton, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: SB 87, SB 90  
Executive Action: SB 90

**HEARING ON SB 87**

**Opening Statement by Sponsor:**

Sen. Bruce Crippen, Senate District 45, presented SB 87. Title 13, Chapter 7 MCA, contains the provision for referring measures to the vote of the people. Under normal circumstances, as a legislative body, these provisions for referring measures to the vote of the people are adequate. Where the problem arises, is when the Legislature, in its wisdom, sees fit to refer an issue to the vote of the people soon after the Legislature adjourns and in this case some of the time frame provisions cannot be met. The Treasure State Endowment was passed as a referendum by the Legislative Special Session of 1992. The primary election was to

be held in June of 1992. There was a lawsuit that came before the Supreme Court that the referendum did not meet all of the requirements within the provision of the law. The Supreme Court held that the intent of the Legislature is paramount. SB 87 is a companion bill to LC 373. LC 373 is the sales tax referendum proposed by Governor Racicot and carried by Sen. Crippen that contains the tax reform proposal presented by Governor Racicot. SB 87 pertains to LC 373 and it shortens up the provisions that are required under Chapter 27 and other provisions in the law. The whole purpose of SB 87 is to make sure that the people of the State of Montana have an opportunity to be informed of the issues. If LC 373 does not pass the legislature this bill will be moot. It would be his intention to have this bill presented and to have the committee hold the bill to see what happens.

**Proponents' Testimony:**

None.

**Opponents' Testimony:**

Don Judge, Montana State AFL-CIO, spoke in opposition to SB 87. He spoke with Sen. Crippen about SB 87 and would be interested in having input into the legislation if, in fact, it is necessary. If a sales tax is placed in a referendum and passes the Legislature prior to March 10 there is no need for this legislation. Legislation may be needed in order to adjust time periods. There is a need to reconsider the time frame that Sen. Crippen has proposed in this legislation. For instance, there is clearly not enough time to prepare and distribute voter information pamphlets to the voters on the issue that is as complex and controversial as a sales tax. SB 87 would allow only seven total days instead of the normal period of 45 days for absentee ballots to be submitted. People who are affected by this provision are senior citizens, handicapped people, military people, or those who are on vacation. Montana has a large turnout of absentee voters. The voter registration period becomes abbreviated with SB 87. Mr. Judge said he would be willing to work with the committee on legislation if necessary.

**Questions From Committee Members and Responses:**

None.

**Closing by Sponsor:**

Sen. Crippen said a special election should be brought before the people in a manner in which they have as much opportunity as possible to read the voter information packet and make a decision. Sen. Crippen said he is hesitant to rely on a case, even though it was decided on by the Supreme Court. He will be willing to work with Mr. Judge on this issue.

HEARING ON SB 90Opening Statement by Sponsor:

Sen. Jacobsen explained SB 90 is a bill that Sen. Brown and Sen. Jacobsen co-sponsor which would protect the funding integrity of Montana's teachers and public employees retirement systems. There are two large amounts of money that potentially could be used as one-time revenue. One is the retirement fund and the other is the coal trust that is protected by a 3/4 vote of this body. The time is past for using one-time monies. It is important to the people who depend on the retirement systems to be able to rely on the fact that their funds will be protected by the Legislature and will be sound in the future.

Proponents' Testimony:

Tom Bilodeau, Research Director of the Montana Education Association, representing Montana Public Employee Pension Security Coalition (PEPSCO) gave written testimony (EXHIBIT #1, EXHIBIT #2, EXHIBIT #3).

John Denherder, President of PEPSCO, explained the coalition is a broad base of associations of active and retired public employees. The affiliated associations that were present to endorse SB 90 were: Tom Bilodeau, Montana Education Association; Gene Allen, Association of Montana Retired Public Employees; Tom Schneider, Montana Public Employees Association; Natalie Fitzpatrick, Montana Retired Teachers Association; John Malee, Montana Federation of Teachers and State Employees; Tom Foley, American Federation of State, County and Municipal Employees; Bill Flinner, Montana Sheriffs and Peace Officers Association. The Public Pension Security Act of 1993 was initiated by PEPSCO. The act was drafted by a cooperative process involving administrative and legal staff, review by the Public Employees Retirement System, and the Teachers Retirement System, Montana Board of Investments, and the Legislative Council. SB 90 has also been endorsed by Governor Racicot.

Tom Schneider, Montana Public Employees Association, said the money in the retirement systems are already committed to future benefits of the members of those systems. It seems like a lot of money but none of the systems are actuarial 100% funded at this point and for any of that money to be used for another purpose would put us in a situation similar to the one in something called workers' compensation. SB 90 is a good vehicle to protect against that situation.

Dave Senn, Executive Director of Teachers' Retirement Board gave written testimony (EXHIBIT #4).

Mark Cress, Administrator of the Public Employees Retirement System, spoke on behalf of the Public Employees Retirement Board

in favor of SB 90. The board, in a recent meeting, voted to endorse this constitutional referendum and has worked with the proponents of the referendum on the language and legal content of the bill. As trustees of these public employees pension funds, the board members believe that preservation of those funds deserve constitutional protection.

Natalie Fitzpatrick, Montana Retired Teachers and School Personnel Association, spoke in favor of SB 90. In the September state meeting, there was a great deal of concern expressed by the membership of the fear of what happened in other states happening in Montana, the raiding of pension funds in order to pay current expenses. So a resolution was passed unanimously asking that we work together with other groups to safeguard the public pension fund. She said SB 90 expresses all the concerns of the group and she urged the passage of the bill.

John Malee, represented the Montana Federation of Teachers and the Montana Federation of State Employees, and urged support of SB 90.

Gene Allen, Public Employees Retirement System retiree and member of the Associated Montana Retired Public Employees System, urged passage of SB 90.

Don Judge, Montana State AFL-CIO, pointed out to the committee that Congress has already begun moving to protect the private retirement systems from raids that have occurred over the last dozen years that have literally destroyed a number of private sector pension systems, particularly in the auto industry and the steel industry and some of the other major manufacturing industries in this country. The downside to the destruction of those systems is not just the effect that it has on the workers and their families but also the fact that the federal government guarantees the payment of those pensions which is beginning to drive the federal deficit as well. SB 90 would be a chance to pre-empt that here in Montana and he encourages submitting it to the voters.

Bill Holdorf, Butte Retired Teacher, represented the Butte Retired Teachers Association. They would like to go on record totally in favor of SB 90.

**Opponents' Testimony:**

None.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

None.

**Closing by Sponsor:**

Sen. Jacobsen stated that there are 35 states that are facing the same kinds of budget deficits as Montana. Many of those have dipped into their retirement funds or have underfunded actuarially their funds. Montana is fortunate to be able to act rather than react to a problem, in this instance, to be able to protect those funds that have been protected in the past and to do it in a constitutional manner.

**EXECUTIVE ACTION ON SB 90**

**Motion:** Sen. McClernan moved SB 90 DO PASS.

**Discussion:** Sen. Fritz asked Tom Bilodeau if there was any other way to protect these funds short of an amendment to the Constitution. Mr. Bilodeau said there are some statutory limitations, potentially statutory protections, however, it is also subject to the whim of future legislative action. This is an adequate way of protecting these funds.

**Vote:** Motion that SB 90 PASS Carried Unanimously.

There was discussion on the Governor's appointments. There was a motion to have the resolution drawn for confirmation of the first 12 appointments. The motion carried unanimously.

**ADJOURNMENT**

**Adjournment:** 11:50 a.m.

  
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SENATOR ELEANOR VAUGHN, Chair

  
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DEBORAH STANTON, Secretary

EV/ds

# ROLL CALL

SENATE COMMITTEE STATE ADMINISTRATION DATE 1-15-93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Eleanor Vaughn	✓		
Sen. Jeff Weldon	✓		
Sen. Jim Burnett	✓		
Sen. Harry Fritz	✓		✓
Sen. John Hertel	✓		
Sen. Bob Hockett	✓		
Sen. Henry McClernan	✓		
Sen. Bob Pipinich	✓		
Sen. Bernie Swift	✓		
Sen. Larry Tveit	✓		
David Niss	✓		

F08

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 15, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Bill No. 90 (first reading copy -- white), respectfully report that Senate Bill No. 90 do pass.

Signed: Eleanor Vaughn  
Senator Eleanor Vaughn, Chair

# PEPSCO

*A coalition concerned about  
protecting public employee  
pensions and the pension funds*

## Montana Public Employee Pension Security Coalition

1232 East Sixth Avenue • Helena, MT 59601  
(406) 442-4250

### SB90 – PUBLIC PENSION SECURITY ACT OF 1993

PEPSCO strongly supports SB90 and urges immediate adoption of this legislation.

SB90, sponsored by Senators Judy Jacobson and Bob Brown, proposes constitutional protection for both the current assets and future contributions deemed actuarially necessary to provide for retirement benefits promised to current and future retirees enrolled in Montana's state and local government public pension systems. Further, the bill -- if passed by public referendum -- would amend Montana's Constitution to require the governing boards of Montana's public pension systems to administer the systems and manage system assets as "fiduciaries" -- i.e. in a fiscally responsible manner -- for pension program members and their beneficiaries.

SB90 proposes to guarantee the continued fiscal integrity of Montana's public pension systems and to assure the availability of long-promised pension benefits to current and future State and local government retirees. The essence of SB90 is that public retirement revenues will be collected, maintained and distributed exclusively for the purposes of administering public pension systems and providing pension benefits for public employees and their beneficiaries.

The Public Pension Security Act would constitutionally prohibit use of current public pension assets or of future pension revenues for purposes unrelated to pension administration or benefit distribution. If enacted, the Act would prevent the types of "stop-gap" pension-raiding and pension underfunding engaged in by a dozen other states in recent years. (See e.g. The Role of Pension Funding Policy, NEA (1992).

SB90 -- the Public Pension Security Act of 1993:

assures responsible management of Montana's pension systems by explicitly authorizing pension system governing boards to act as fiduciaries for pension members and beneficiaries;

maintains the proven effective day-to-day investment responsibility of pension assets by the Montana Board of Investments for systems administered by the state;

stabilizes the tax burdens expected of the public-at-large, as well as government employer and employee payroll taxpayers; and

significantly diminishes the threat of jeopardizing future pension benefits for public employees.

SB90 represents sound fiscal policy and responsible pension administration practice.

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 1-15-93

BILL NO. SB90

**MEA/MEA-R**  
Montana  
Education  
Association

**AMRPE**  
Association  
of  
Montana  
Retired  
Public  
Employees

**MPEA**  
Montana  
Public  
Employees  
Association

**MRTA**  
Montana  
Retired  
Teachers  
Association

**MFT-MFSE**  
Montana  
Federation  
of  
Teachers  
and  
State  
Employees

**AFSCME**  
American  
Federation  
of  
State,  
County  
and  
Municipal  
Employees



## PUBLIC PENSION SECURITY ACT OF 1993 -- SB90

### CONSTITUTIONAL AMENDMENTS BY LEGISLATIVE REFERENDUM

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Article XIV, section 8, of the Montana Constitution provides for constitutional amendment by public referendum initiated by the Legislature. Pursuant to this provision, any proposed amendment must receive an affirmative vote by two-thirds of the Legislature before it is referred to the people for popular vote at the next regularly scheduled general election. Article VI, section 10, provides that bills proposing constitutional amendments need not be submitted to the Governor for signature.

Title 13, chapter 27, MCA, contains the general law relating to procedures to be followed by the Secretary of State and other officials when submitting a constitutional amendment (and other ballot issues) to the electorate. Article XIV, section 8, provides that, unless the amendment provides otherwise, the amendment will become effective on July 1 following certification of the election returns.

Enactment of the proposed "Public Pension Security Act of 1993" by the current 53rd Legislature would refer the bill for referendum or popular vote at the general election scheduled for November of 1994. If passed by popular vote of the people, the constitution's amendment would be effective as of the amendment's stated effective date -- January 1, 1995.

#### Montana Constitution - Article XIV (1972)

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##### Section 8. Amendment by legislative referendum.

Amendments to this constitution may be proposed by any member of the legislature.

If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election.

If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first of July after certification of the election returns unless the amendment provides otherwise.

The "Public Pension Security Act of 1993" was initiated by "PEPSCo" -- a coalition of groups which represent both active and retired public employees. PEPSCo groups are identified on the letterhead of this flyer. The Act was drafted through a cooperative process involving administrative and legal staff review by the Public Employee Retirement System (PERS) and Teacher Retirement System (TRS), the Montana Board of Investments and the Legislative Council.

The Public Pension Security Act of 1993 (SB90) exemplifies the best aspects of bipartisan, sound fiscal management and good government. SB90 is sponsored by Senator Judy Jacobson (D., Butte) and by Senator Bob Brown (R., Whitefish). The Act has been specifically approved by formal action of both the PERS and TRS Boards and it has been endorsed by Governor Marc Racicot.

PEPSCo urges immediate enactment of SB90 by the 53rd Legislature.

# Examples of Changes in Retirement System Financing 1991—1992

<i>Arizona</i>	Change in actuarial funding method
<i>California</i>	Transfer of assets out of retirement system; proposal to change actuarial assumptions (PERS)
<i>Connecticut</i>	Change in assumed investment rate of return; deferral of contributions; proposal to abolish cost-of-living adjustment
<i>Illinois</i>	Deferral of contributions
<i>Maine</i>	Deferral of contributions; change in assumed investment rate of return
<i>Minnesota</i>	Change in assumed investment rate of return; proposal to change salary scale assumption
<i>New Hampshire</i>	Change in actuarial funding method; change in assumed investment rate of return
<i>New Jersey</i>	Proposals to change the asset valuation method, actuarial funding method, and actuarial assumptions
<i>New York</i>	Change in actuarial funding method
<i>Oklahoma</i>	Proposals to change actuarial assumptions
<i>Oregon</i>	Possible decrease in employer contributions
<i>Pennsylvania</i>	Change in actuarial assumptions; proposal to change amortization period
<i>Rhode Island</i>	Deferral of employer contributions; change in assumed investment rate of return
<i>Texas</i>	Decrease in employer contributions (Teacher Retirement System)
<i>Virginia</i>	Change in assumed investment rate of return; proposal to change asset valuation method

# THE ROLE OF PENSION FUNDING POLICY

In Protecting  
Public Employee Retirement Systems

*Exhibit # 3*

*1-15 93*

*SB-90*

*Senate State Administration*

The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

**National Education Association**  
**Research Division**

SENATE BILL 90

TESTIMONY

Teachers' Retirement Board  
Presented by David L. Senn

4  
1-15-93  
SB 90

Much has been said and written recently regarding funding of public pensions plans. Members are concerned that plan assets may be used or contributions diverted to purposes other than to fund promised benefits. Senate Bill 90 addresses the primary concern of many public employees, i.e., **Benefit Security**. Benefit Security relies on asset accumulation, future contributions to the plan and on protection of assets and contributions. Members must have confidence that adequate assets will be available to pay benefits and the guarantee that future contributions necessary to maintain the actuarial stability of the plan will not be jeopardized.

I would like to share with you a quote from the December 16, 1991 Congressional Research Service Report for Congress.

"Pension funds covering 15.7 million State and local government workers and retirees currently hold assets worth about \$878 billion; those assets may reach \$1 trillion by 1993. Although some public plans are not adequately funded, most State plans and large municipal plans have substantial assets to back up their benefit obligations. At the same time, State and local governments are facing crushing fiscal problems, and some are seeking relief by reducing or deferring contributions into their pension plans to free up cash for other purposes. Those who are concerned that these actions may jeopardize future pension benefits suggest that the Federal Government should regulate State and local government pension fund operations to ensure adequate funding."

Since 1938 public pension plans have been required to comply with the exclusive benefit rule of the Internal Revenue Code in order to qualify for tax exempt status. This rule requires that the assets of the pension plan be maintained in a trust for the exclusive benefit of plan participants and their beneficiaries and prohibits using any part of the assets or income for any purpose other than for the exclusive benefit of participants or their beneficiaries. Nevertheless, enforcement of this rule is problematic because the only sanction for violation is revocation of the plan's tax exemption, resulting in members being taxed on the value of their accrued benefits.

Senate Bill 90 addresses the concerns of those who question the sincerity of the State to guarantee adequate funding but more importantly it says to Montana's public employees and the electorate that the State and the legislature will not divert the assets or income of the plans to any other purpose other than for the exclusive benefit of its members. Senate Bill 90 meets the requirements of guaranteeing Benefit Security and we ask for your support.

DATE 1-15-93

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: SB 90, SB 87

Name	Representing	Bill No.	Check One	Support Oppose
<del>Thomas Schuder</del>	<del>MPEA</del>	<del>SB 90</del>	<del>X</del>	
Don Judge	MT STATE AFL-CIO	SB 87		X
Alvin Thomas	MRTA	SB 9	X	
Bill Holdorf	Retired Teachers	SB 90	✓	
Samuel Wagner	Retired State	SB 90	✓	
Charlotte Thomas	MRTA	SB 90	✓	
John W. Van Herden	AMRPE + PEPSCO	SB 90	✓	
Natalie Fitzpatrick	Mont. Ret. Teachers	SB 90	✓	
Gene Allen	AMRPF	SB 90	✓	
John Malee	M.F.T./MFESE	SB 90	X	
Tom G. Foley	AFSCME	SB 90	X	
TOM BILODEAU	MEA - PEPSCO	SB 90	X	
Don Judge	MT STATE AFL-CIO	SB 90	X	
David Seim	Teachers' Retirement Fund	SB 90	X	
MMPK CRESS	Public Empl. Retirement	SB 90	X	

**VISITOR REGISTER**

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY