



EXHIBIT #3
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SB 229

2011 Legislative Session
House State Administration
February 7, 2011
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Montana Public Employees' Retirement Board

SB 229

Informational Testimony before the
Senate State Administration Committee
February 7, 2011

- The Public Employees' Retirement System (PERS) is a qualified governmental retirement plan under Internal Revenue Code Sections 401(a) and 414(d).
- That status ensures PERS's exemption from many Code requirements, including ERISA; and affords a deferred-tax status on the contributions into the retirement plans.
- In order to maintain a qualified status, only governmental entities can participate in PERS.
- The federal Pension Protection Act of 2006 extended participation in governmental plans to Indian Tribal Governments.
- In order to maintain PERS's qualified status, we must ensure the legal entity created under the State-Tribal Cooperative Agreements Act is an instrumentality of state or local government or an Indian Tribal Government entity.
- According to the Attorney General's office, most agreements under that act do not create a legal entity. Currently there are two such legal entities:
 - *The Cooperative Management Entity that will run the Flathead Indian Irrigation Project
 - *A joint board that manages bird hunting and fishing on the Flathead Indian Reservation
- However, the broad nature of this bill does not preclude PERS membership by any other legal entity created under the State-Tribal Cooperative Agreements Act in the future.
- Additionally, federal Code also requires that the services reported to the retirement system be related to "essential governmental functions" and not "commercial" in nature.
- Generally legislation that significantly changes the terms of or membership in a governmental retirement plan includes a provision that the change does not become effective until approved by the IRS.

- The Treasury is currently working with the Department of Labor and the Pension Benefit Guaranty Corporation on issues related to the definition of a governmental plan.
- That project will delay the IRS's consideration of this legislation.
- If the legislature does not wish to wait for a ruling from the IRS, the Public Employees' Retirement Board requests a provision stating that the legislation will become void if the IRS does not approve the change.
- Finally, the Retirement Board believes that Title 19, chapter 3, part two should be amended to include these legal entities. Currently, that part addresses contracts between PERS and local governments only and is not easily transferable to contracts between PERS and State-Tribal Cooperative Agreement legal entities.

Thank you.