

112TH CONGRESS  
1ST SESSION

# H. R. 567

To amend the Internal Revenue Code of 1986 to provide for reporting and disclosure by State and local public employee retirement pension plans.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2011

Mr. NUNES (for himself, Mr. RYAN of Wisconsin, Mr. ISSA, Mr. SMITH of Texas, Mr. HERGER, Mr. BRADY of Texas, Mr. LEE of New York, Mr. GARRETT, Mr. CALVERT, Mr. MCCLINTOCK, Mr. CHAFFETZ, Mr. RIBBLE, Mr. FLORES, Mr. MCHENRY, Mr. MACK, Mr. GOSAR, Mr. LABRADOR, Mr. ROSS of Florida, Mr. SENSENBRENNER, Mrs. MCMORRIS RODGERS, Mrs. MYRICK, Mr. DUNCAN of South Carolina, Mr. ROHRABACHER, Mr. GALLEGLY, Mr. MCCOTTER, Mr. JONES, Mr. COBLE, Mr. SCALISE, Mr. BARTLETT, Mr. MCKINLEY, Mr. ROONEY, Mr. POSEY, Mr. DUNCAN of Tennessee, Mrs. BLACKBURN, Mr. NUGENT, Mr. COFFMAN of Colorado, Mr. LAMBORN, Mrs. BACHMANN, and Mr. WESTMORELAND) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for reporting and disclosure by State and local public employee retirement pension plans.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Employee Pen-  
5 sion Transparency Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) Pursuant to clauses 1 and 3 of section 8 of  
4 article I of the Constitution of the United States,  
5 the Congress has the authority to condition the con-  
6 tinuation of certain specified Federal tax benefits  
7 upon State or local government employee pension  
8 benefit plans provision of meaningful disclosure  
9 under section 4980J of the Internal Revenue Code  
10 of 1986, as added by this Act.

11 (2) State or local government employee pension  
12 benefit plans have promised pension benefits to ap-  
13 proximately 20 million Americans who are active em-  
14 ployees of these entities. An additional 7 million re-  
15 tirees and their dependents currently receive benefits  
16 from State or local government employee pension  
17 benefit plans. The interests of participants in many  
18 of such plans are in the nature of property rights  
19 under State law.

20 (3) State or local government employee pension  
21 benefit plans are substantially facilitated by the fa-  
22 vorable tax treatment of participants and bene-  
23 ficiaries, investment earnings, and employee con-  
24 tributions with respect to such plans provided by the  
25 Federal Government under the Internal Revenue  
26 Code of 1986.

1           (4) The investment of State or local govern-  
2           ment employee pension benefit plan assets, the dis-  
3           tribution of benefits under such plans, and other re-  
4           lated financial activities are facilitated through the  
5           use of instrumentalities of, and substantially affect,  
6           interstate commerce. These activities, which are  
7           interstate in nature and have a substantial impact  
8           on the national economy, affect capital formation,  
9           regional growth and decline, the national markets  
10          for insurance, and the markets for securities and the  
11          trading of securities of State and local governments.

12          (5) The financial status of State or local gov-  
13          ernment employee pension benefit plans also has a  
14          direct impact on the national markets for insurance  
15          and trading of securities of State and local govern-  
16          ments.

17          (6) State or local government employee pension  
18          benefit plans additionally have a substantial impact  
19          on interstate commerce as a consequence of the  
20          interstate movement of participants.

21          (7) State or local government employee pension  
22          benefit plans are becoming a large financial burden  
23          on certain State and local governments and have al-  
24          ready resulted in tax increases and the reduction of  
25          services.

1           (8) In fact, a recent study published in the  
2           Journal of Economic Perspectives found that the  
3           present value of the already-promised pension liabil-  
4           ities of the 50 States amount to \$5.17 trillion and  
5           that these pension plans are unfunded by \$3.23 tril-  
6           lion. Another study determined that the total un-  
7           funded liability for all municipal plans in the United  
8           States is \$574 billion.

9           (9) Some economists and observers have stated  
10          that the extent to which State or local government  
11          employee pension benefit plans are underfunded is  
12          obscured by governmental accounting rules and  
13          practices, particularly as they relate to the valuation  
14          of plan assets and liabilities. This results in a  
15          misstatement of the value of plan assets and an un-  
16          derstatement of plan liabilities, a situation that  
17          poses a significant threat to the soundness of State  
18          and local budgets.

19          (10) There currently is a lack of meaningful  
20          disclosure regarding the value of State or local gov-  
21          ernment employee pension benefit plan assets and li-  
22          abilities. This lack of meaningful disclosure poses a  
23          direct and serious threat to the financial stability of  
24          such plans and their sponsoring governments, im-  
25          pairs the ability of State and local government tax-

1 payers and officials to understand the financial obli-  
2 gations of their government, and reduces the likeli-  
3 hood that State and local government processes will  
4 be effective in assuring the prudent management of  
5 their plans. The status quo also constitutes a serious  
6 threat to the future economic health of the Nation  
7 and places an undue burden upon State and local  
8 government taxpayers, who will be called upon to  
9 fully fund existing, and future, pension promises.

10 (11) State or local government employee pen-  
11 sion benefit plans are affected with a national public  
12 interest and meaningful disclosure of the value of  
13 their assets and liabilities is necessary and desirable  
14 in order to adequately protect plan participants and  
15 their beneficiaries and the general public. Meaning-  
16 ful disclosure would also further efforts to provide  
17 for the general welfare and the free flow of com-  
18 merce.

19 **SEC. 3. REPORTING OF INFORMATION WITH RESPECT TO**  
20 **STATE OR LOCAL GOVERNMENT EMPLOYEE**  
21 **PENSION BENEFIT PLANS TREATED AS A TAX**  
22 **EXEMPTION, ETC., REQUIREMENT FOR STATE**  
23 **AND LOCAL BONDS.**

24 (a) IN GENERAL.—Subpart B of part IV of sub-  
25 chapter B of chapter 1 of the Internal Revenue Code of

1 1986 (relating to requirements applicable to all State and  
2 local bonds) is amended by adding at the end the following  
3 new section:

4 **“SEC. 149A. REPORTING WITH RESPECT TO STATE OR**  
5 **LOCAL GOVERNMENT EMPLOYEE PENSION**  
6 **BENEFIT PLANS.**

7 “(a) IN GENERAL.—In the case of a failure to satisfy  
8 any requirement of subsection (a) or (b) of section 4980J  
9 (relating to failure of State or local government employee  
10 pension benefit plans to meet reporting requirements) with  
11 respect to any plan maintained with respect to employees  
12 of one or more States or political subdivisions of one or  
13 more States, no specified Federal tax benefit shall be al-  
14 lowed or made with respect to any specified bond issued  
15 by any such State or political subdivision (or by any bond-  
16 ing authority acting on behalf, or for the benefit, of such  
17 State or political subdivision) during the noncompliance  
18 period.

19 “(b) NONCOMPLIANCE PERIOD.—For purposes of  
20 this section, the term ‘noncompliance period’ means, with  
21 respect to any State or political subdivision in connection  
22 with any failure, the period beginning on the date that  
23 the Secretary notifies such State or political subdivision  
24 of such failure and ending on the date that such failure  
25 is cured (as determined by the Secretary).

1       “(c) SPECIFIED BOND.—For purposes of this section,  
2 the term ‘specified bond’ means—

3           “(1) any State or local bond within the meaning  
4 of section 103,

5           “(2) any qualified tax credit bond within the  
6 meaning of section 54A, and

7           “(3) any build America bond within the mean-  
8 ing of section 54AA.

9       “(d) SPECIFIED FEDERAL TAX BENEFIT.—For pur-  
10 poses of this section, the term ‘specified Federal tax ben-  
11 efit’ means—

12           “(1) any exemption from gross income allowed  
13 under section 103 (relating to interest on State and  
14 local bonds),

15           “(2) any credit allowed under section 54A (re-  
16 lating to credit to holders of qualified tax credit  
17 bonds),

18           “(3) any credit allowed under section 54AA (re-  
19 lating to build America bonds), and

20           “(4) any credit or payment allowed or made  
21 under section 6431 (relating to credit for qualified  
22 bonds allowed to issuer).”.

23       (b) REPORTING REQUIREMENTS.—Chapter 43 of  
24 such Code is amended by adding at the end the following  
25 new section:

1 **“SEC. 4980J. FAILURE OF STATE OR LOCAL GOVERNMENT**  
2 **EMPLOYEE PENSION BENEFIT PLANS TO**  
3 **MEET REPORTING REQUIREMENTS.**

4 “(a) ANNUAL REPORT.—For purposes of section  
5 149A, the requirements of this subsection are as follows:

6 “(1) IN GENERAL.—The plan sponsor of a  
7 State or local government employee pension benefit  
8 plan shall file with the Secretary, in such form and  
9 manner as shall be prescribed by the Secretary, a re-  
10 port for each plan year beginning on or after Janu-  
11 ary 1, 2011, setting forth the following information  
12 with respect to the plan, as determined by the plan  
13 sponsor as of the end of such plan year:

14 “(A) A schedule of funding status, which  
15 shall include a statement as to the current li-  
16 ability of the plan, the amount of plan assets  
17 available to meet that liability, the amount of  
18 the net unfunded liability (if any), and the  
19 funding percentage of the plan.

20 “(B) A schedule of contributions by the  
21 plan sponsor for the plan year, indicating which  
22 are or are not taken into account under sub-  
23 paragraph (A).

24 “(C) Alternative projections which shall be  
25 specified in regulations of the Secretary for  
26 each of the next 20 plan years following the



1 plan year relating to the amount of annual con-  
2 tributions, the fair market value of plan assets,  
3 current liability, the funding percentage, and  
4 such other matters as the Secretary may specify  
5 in such regulations, together with a statement  
6 of the assumptions and methods used in con-  
7 nection with such projections, including as-  
8 sumptions related to funding policy, plan  
9 changes, future workforce projections, future  
10 investment returns, and such other matters as  
11 the Secretary may specify in such regulations.  
12 The Secretary shall specify in such regulations  
13 the projection assumptions and methods to be  
14 used as necessary to achieve comparability  
15 across plans.

16 “(D) A statement of the actuarial assump-  
17 tions used for the plan year, including the rate  
18 of return on investment of plan assets and as-  
19 sumptions as to such other matters as the Sec-  
20 retary may prescribe by regulation.

21 “(E) A statement of the number of partici-  
22 pants who are each of the following—

23 “(i) those who are retired or sepa-  
24 rated from service and are receiving bene-  
25 fits,

1                   “(ii) those who are retired or sepa-  
2                   rated and are entitled to future benefits,  
3                   and

4                   “(iii) those who are active under the  
5                   plan.

6                   “(F) A statement of the plan’s investment  
7                   returns, including the rate of return, for the  
8                   plan year and the 5 preceding plan years.

9                   “(G) A statement of the degree to which,  
10                  and manner in which, the plan sponsor expects  
11                  to eliminate any unfunded current liability that  
12                  may exist for the plan year and the extent to  
13                  which the plan sponsor has followed the plan’s  
14                  funding policy for each of the preceding 5 plan  
15                  years. The Secretary shall prescribe by regula-  
16                  tion the specific criteria to be used for meeting  
17                  the requirements of this paragraph.

18                  “(H) A statement of the amount of pen-  
19                  sion obligation bonds outstanding.

20                  “(2) TIMING OF REPORT.—The plan sponsor of  
21                  a State or local government employee pension ben-  
22                  efit plan shall make the filing required under para-  
23                  graph (1) for each plan year not later than 210 days  
24                  after the end of such plan year (or within such time

1 as may be required by regulations prescribed by the  
2 Secretary in order to reduce duplicative filing).

3 “(b) ADDITIONAL REPORTING REQUIREMENTS.—  
4 For purposes of section 149A, the requirements of this  
5 subsection are as follows:

6 “(1) SUPPLEMENTARY REPORTS.—In any case  
7 in which, in determining the information filed in the  
8 annual report for a plan year under subsection (a)—

9 “(A) the value of plan assets is determined  
10 using a standard other than fair market value,  
11 or

12 “(B) the interest rate or rates used to de-  
13 termine the value of liabilities or as the dis-  
14 count value for liabilities are not the interest  
15 rates described in paragraph (3),

16 the plan sponsor shall include in the annual report  
17 filed for such plan year pursuant to subsection (a)  
18 the supplementary report for such plan year de-  
19 scribed in paragraph (2) of this subsection.

20 “(2) USE OF PRESCRIBED VALUATION METHOD  
21 AND INTEREST RATES.—A supplementary report for  
22 a plan year filed for a plan year pursuant to this  
23 subsection shall include the information specified as  
24 required in the annual report under subparagraphs  
25 (A), (C), (F), and (G) of subsection (a)(1), deter-

1       mined as of the end of such plan year by valuing  
2       plan assets at fair market value and by using the in-  
3       terest rates described in paragraph (3) to value li-  
4       abilities and as the discount value for liabilities.

5               “(3) INTEREST RATES BASED ON U.S. TREAS-  
6       URY OBLIGATION YIELD CURVE RATE.—

7               “(A) IN GENERAL.—The interest rates de-  
8       scribed in this subsection are—

9               “(i) in the case of benefits reasonably  
10       determined to be payable during the 5-year  
11       period beginning on the first day of the  
12       plan year, the first segment rate with re-  
13       spect to the applicable month,

14              “(ii) in the case of benefits reasonably  
15       determined to be payable during the 15-  
16       year period beginning at the end of the pe-  
17       riod described in subparagraph (A), the  
18       second segment rate with respect to the  
19       applicable month, and

20              “(iii) in the case of benefits reason-  
21       ably determined to be payable after the pe-  
22       riod described in clause (ii), the third seg-  
23       ment rate with respect to the applicable  
24       month.

1           “(B) SEGMENT RATES.—For purposes of  
2 this paragraph—

3           “(i) FIRST SEGMENT RATE.—The  
4 term ‘first segment rate’ means, with re-  
5 spect to any month, the single rate of in-  
6 terest which shall be determined by the  
7 Secretary for such month on the basis of  
8 the U.S. Treasury obligation yield curve  
9 for such month, taking into account only  
10 that portion of such yield curve which is  
11 based on obligations maturing during the  
12 5-year period commencing with such  
13 month.

14           “(ii) SECOND SEGMENT RATE.—The  
15 term ‘second segment rate’ means, with re-  
16 spect to any month, the single rate of in-  
17 terest which shall be determined by the  
18 Secretary for such month on the basis of  
19 the U.S. Treasury obligation yield curve  
20 for such month, taking into account only  
21 that portion of such yield curve which is  
22 based on obligations maturing during the  
23 15-year period beginning at the end of the  
24 period described in clause (i).

1           “(iii) THIRD SEGMENT RATE.—The  
2           term ‘third segment rate’ means, with re-  
3           spect to any month, the single rate of in-  
4           terest which shall be determined by the  
5           Secretary for such month on the basis of  
6           the U.S. Treasury obligation yield curve  
7           for such month, taking into account only  
8           that portion of such yield curve which is  
9           based on obligations maturing during peri-  
10          ods beginning after the period described in  
11          clause (ii).

12          “(C) U.S. TREASURY OBLIGATION YIELD  
13          CURVE.—For purposes of this subsection, the  
14          term ‘U.S. Treasury obligation yield curve’  
15          means, with respect to any month, a yield curve  
16          which shall be prescribed by the Secretary for  
17          such month and which reflects the average, for  
18          the 24-month period ending with the month  
19          preceding such month, of monthly yields on in-  
20          terest-bearing obligations of the United States.

21          “(c) DEFINITIONS.—For purposes of this section—

22                 “(1) STATE OR LOCAL GOVERNMENT EM-  
23                 PLOYEE PENSION BENEFIT PLAN.—The terms ‘State  
24                 or local government employee pension benefit plan’  
25                 and ‘plan’ mean any plan, fund, or program, other

1 than a defined contribution plan (within the mean-  
2 ing of section 414(i)), which was heretofore or is  
3 hereafter established or maintained, in whole or in  
4 part, by a State, a political subdivision of a State,  
5 or any agency or instrumentality of a State or polit-  
6 ical subdivision of a State, to the extent that by its  
7 express terms or as a result of surrounding cir-  
8 cumstances such plan, fund, or program—

9 “(A) provides retirement income to em-  
10 ployees, or

11 “(B) results in a deferral of income by em-  
12 ployees for periods extending to the termination  
13 of covered employment or beyond, regardless of  
14 the method of calculating the contributions  
15 made to the plan, the method of calculating the  
16 benefits under the plan, or the method of dis-  
17 tributing benefits from the plan.

18 “(2) FUNDING PERCENTAGE.—The term ‘fund-  
19 ing percentage’ for a plan year means the ratio (ex-  
20 pressed as a percentage) which—

21 “(A) the value of plan assets as of the end  
22 of the plan year bears to

23 “(B) the current liability of the plan for  
24 the plan year.

1           “(3) CURRENT LIABILITY.—The term ‘current  
2 liability’ of a plan for a plan year means the present  
3 value of all benefits accrued or earned under the  
4 plan as of the end of the plan year.

5           “(4) PLAN SPONSOR.—The term ‘plan sponsor’  
6 means, in connection with a State or local govern-  
7 ment employee pension benefit plan, the State, polit-  
8 ical subdivision of a State, or agency or instrumen-  
9 tality of a State or a political subdivision of a State  
10 which establishes or maintains the plan.

11           “(5) PARTICIPANT.—

12           “(A) IN GENERAL.—The term ‘participant’  
13 means, in connection with a State or local gov-  
14 ernment employee pension benefit plan, an indi-  
15 vidual—

16           “(i) who is an employee or former em-  
17 ployee of a State, political subdivision of a  
18 State, or agency or instrumentality of a  
19 State or a political subdivision of a State  
20 which is the plan sponsor of such plan, and

21           “(ii) who is or may become eligible to  
22 receive a benefit of any type from such  
23 plan or whose beneficiaries may be eligible  
24 to receive any such benefit.



1           “(B) BENEFICIARY.—The term ‘bene-  
2           ficiary’ means a person designated by a partici-  
3           pant, or by the terms of the plan, who is or  
4           may become entitled to a benefit thereunder.

5           “(6) PLAN YEAR.—The term ‘plan year’ means,  
6           in connection with a plan, the calendar or fiscal year  
7           on which the records of the plan are kept.

8           “(7) STATE.—The term ‘State’ includes any  
9           State of the United States, the District of Columbia,  
10          the Commonwealth of Puerto Rico, the Virgin Is-  
11          lands, American Samoa, Guam, and the Common-  
12          wealth of the Northern Mariana Islands.

13          “(8) FAIR MARKET VALUE.—The term ‘fair  
14          market value’ has the meaning of such term under  
15          section 430(g)(3)(A) (without regard to section  
16          430(g)(3)(B)).

17          “(d) MODEL REPORTING STATEMENT.—The Sec-  
18          retary shall develop model reporting statements for pur-  
19          poses of subsections (a) and (b). Plan sponsors of State  
20          or local government employee pension plans may elect, in  
21          such form and manner as shall be prescribed by the Sec-  
22          retary, to utilize the applicable model reporting statement  
23          for purposes of complying with requirements of such sub-  
24          sections.

1       “(e) **TRANSPARENCY OF INFORMATION FILED.**—The  
 2 Secretary shall create and maintain a public Web site,  
 3 with searchable capabilities, for purposes of posting the  
 4 information received by the Secretary pursuant to sub-  
 5 sections (a) and (b). Any such information received by the  
 6 Secretary (including any updates to such information re-  
 7 ceived by the Secretary) shall be posted on the Web site  
 8 not later than 60 days after receipt and shall not be treat-  
 9 ed as return information for purposes of this title.”.

10       (c) **CLERICAL AMENDMENTS.**—

11           (1) The table of sections for subpart B of part  
 12 IV of subchapter B of chapter 1 of such Code is  
 13 amended by adding at the end the following new  
 14 item:

“Sec. 149A. Reporting with respect to State or local government employee pen-  
 sion benefit plans.”.

15           (2) The table of sections for chapter 43 of such  
 16 Code is amended by adding at the end the following  
 17 new item:

“Sec. 4980J. Failure of State or local government employee pension benefit  
 plans to meet reporting requirements.”.

18 **SEC. 4. GENERAL PROVISIONS AND RULES OF CONSTRUC-**  
 19 **TION.**

20       (a) **LIMITATIONS ON FEDERAL RESPONSIBILITIES**  
 21 **RELATING TO PLAN OBLIGATIONS AND LIABILITIES.**—  
 22 The United States shall not be liable for any obligation  
 23 related to any current or future shortfall in any State or

1 local government employee pension plan. Nothing in this  
2 Act (or any amendment made by this Act) or any other  
3 provision of law shall be construed to provide Federal Gov-  
4 ernment funds to diminish or meet any current or future  
5 shortfall in, or obligation of, any State or local government  
6 employee pension plan. The preceding sentence shall also  
7 apply to the Federal Reserve.

8 (b) NO FEDERAL FUNDING STANDARDS.—Nothing  
9 in this Act (or any amendment made by this Act) shall  
10 be construed to alter existing funding standards for State  
11 or local government employee pension plans or to require  
12 Federal funding standards for such plans.

13 (c) DEFINITIONS.—Terms used in this section which  
14 are also used in section 4980J of the Internal Revenue  
15 Code of 1986 shall have the same meaning as when used  
16 in such section.

○