

112TH CONGRESS
1ST SESSION

S. 347

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2011

Mr. BURR (for himself, Mr. THUNE, Mr. COBURN, Mr. ISAKSON, Mr. ENSIGN, Mr. GRASSLEY, and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on Finance

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”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Pursuant to clauses 1 and 3 of section 8 of
9 article I of the Constitution of the United States,

1 the Congress has the authority to condition the con-
2 tinuation of certain specified Federal tax benefits
3 upon State or local government employee pension
4 benefit plans provision of meaningful disclosure
5 under section 4980J of the Internal Revenue Code
6 of 1986, as added by this Act.

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

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

23 (4) The investment of State or local govern-
24 ment employee pension benefit plan assets, the dis-
25 tribution of benefits under such plans, and other re-

1 lated financial activities are facilitated through the
2 use of instrumentalities of, and substantially affect,
3 interstate commerce. These activities, which are
4 interstate in nature and have a substantial impact
5 on the national economy, affect capital formation,
6 regional growth and decline, the national markets
7 for insurance, and the markets for securities and the
8 trading of securities of State and local governments.

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

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

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

23 (8) In fact, a recent study published in the
24 Journal of Economic Perspectives found that the
25 present value of the already-promised pension liabil-

1 ities of the 50 States amount to \$5.17 trillion and
2 that these pension plans are unfunded by \$3.23 tril-
3 lion. Another study determined that the total un-
4 funded liability for all municipal plans in the United
5 States is \$574 billion.

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

16 (10) There currently is a lack of meaningful
17 disclosure regarding the value of State or local gov-
18 ernment employee pension benefit plan assets and li-
19 abilities. This lack of meaningful disclosure poses a
20 direct and serious threat to the financial stability of
21 such plans and their sponsoring governments, im-
22 pairs the ability of State and local government tax-
23 payers and officials to understand the financial obli-
24 gations of their government, and reduces the likeli-
25 hood that State and local government processes will

1 be effective in assuring the prudent management of
2 their plans. The status quo also constitutes a serious
3 threat to the future economic health of the Nation
4 and places an undue burden upon State and local
5 government taxpayers, who will be called upon to
6 fully fund existing, and future, pension promises.

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

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

21 (a) IN GENERAL.—Subpart B of part IV of sub-
22 chapter B of chapter 1 of the Internal Revenue Code of
23 1986 (relating to requirements applicable to all State and
24 local bonds) is amended by adding at the end the following
25 new section:

1 **“SEC. 149A. REPORTING WITH RESPECT TO STATE OR**
2 **LOCAL GOVERNMENT EMPLOYEE PENSION**
3 **BENEFIT PLANS.**

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

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

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

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

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

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

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

8 “(1) any exemption from gross income allowed
9 under section 103 (relating to interest on State and
10 local bonds),

11 “(2) any credit allowed under section 54A (re-
12 lating to credit to holders of qualified tax credit
13 bonds),

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

16 “(4) any credit or payment allowed or made
17 under section 6431 (relating to credit for qualified
18 bonds allowed to issuer).”.

19 (b) REPORTING REQUIREMENTS.—Chapter 43 of
20 such Code is amended by adding at the end the following
21 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 fiary’ 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 website, with
 3 searchable capabilities, for purposes of posting the infor-
 4 mation received by the Secretary pursuant to subsections
 5 (a) and (b). Any such information received by the Sec-
 6 retary (including any updates to such information received
 7 by the Secretary) shall be posted on the website not later
 8 than 60 days after receipt and shall not be treated as re-
 9 turn 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.

○