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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Public Employee Pension Transparency Act”.

SEC. 2. FINDINGS.

The Congress finds the following:

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

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

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

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

(5) The financial status of State or local government employee pension benefit plans also has a direct impact on the national markets for insurance and trading of securities of State and local governments.

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

(7) State or local government employee pension benefit plans are becoming a large financial burden on certain State and local governments and have already resulted in tax increases and the reduction of services.

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

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

(10) There currently is a lack of meaningful disclosure regarding the value of State or local government employee pension benefit plan assets and liabilities. This lack of meaningful disclosure poses a direct and serious threat to the financial stability of such plans and their sponsoring governments, impairs the ability of State and local government taxpayers and officials to understand the financial obligations of their government, and reduces the likelihood that State and local government processes will
be effective in assuring the prudent management of
their plans. The status quo also constitutes a serious
threat to the future economic health of the Nation
and places an undue burden upon State and local
government taxpayers, who will be called upon to
fully fund existing, and future, pension promises.

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

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

(a) In General.—Subpart B of part IV of sub-
chapter B of chapter 1 of the Internal Revenue Code of
1986 (relating to requirements applicable to all State and
local bonds) is amended by adding at the end the following
new section:
“SEC. 149A. REPORTING WITH RESPECT TO STATE OR LOCAL GOVERNMENT EMPLOYEE PENSION BENEFIT PLANS.

“(a) IN GENERAL.—In the case of a failure to satisfy any requirement of subsection (a) or (b) of section 4980J (relating to failure of State or local government employee pension benefit plans to meet reporting requirements) with respect to any plan maintained with respect to employees of one or more States or political subdivisions of one or more States, no specified Federal tax benefit shall be allowed or made with respect to any specified bond issued by any such State or political subdivision (or by any bonding authority acting on behalf, or for the benefit, of such State or political subdivision) during the noncompliance period.

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

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

“(1) any State or local bond within the meaning of section 103,
“(2) any qualified tax credit bond within the meaning of section 54A, and
“(3) any build America bond within the meaning of section 54AA.
“(d) SPECIFIED FEDERAL TAX BENEFIT.—For purposes of this section, the term ‘specified Federal tax benefit’ means—
“(1) any exemption from gross income allowed under section 103 (relating to interest on State and local bonds),
“(2) any credit allowed under section 54A (relating to credit to holders of qualified tax credit bonds),
“(3) any credit allowed under section 54AA (relating to build America bonds), and
“(4) any credit or payment allowed or made under section 6431 (relating to credit for qualified bonds allowed to issuer).”.
(b) REPORTING REQUIREMENTS.—Chapter 43 of such Code is amended by adding at the end the following new section:
SEC. 4980J. FAILURE OF STATE OR LOCAL GOVERNMENT EMPLOYEE PENSION BENEFIT PLANS TO MEET REPORTING REQUIREMENTS.

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

“(1) IN GENERAL.—The plan sponsor of a State or local government employee pension benefit plan shall file with the Secretary, in such form and manner as shall be prescribed by the Secretary, a report for each plan year beginning on or after January 1, 2011, setting forth the following information with respect to the plan, as determined by the plan sponsor as of the end of such plan year:

“(A) A schedule of funding status, which shall include a statement as to the current liability of the plan, the amount of plan assets available to meet that liability, the amount of the net unfunded liability (if any), and the funding percentage of the plan.

“(B) A schedule of contributions by the plan sponsor for the plan year, indicating which are or are not taken into account under subparagraph (A).

“(C) Alternative projections which shall be specified in regulations of the Secretary for each of the next 20 plan years following the
plan year relating to the amount of annual contributions, the fair market value of plan assets, current liability, the funding percentage, and such other matters as the Secretary may specify in such regulations, together with a statement of the assumptions and methods used in connection with such projections, including assumptions related to funding policy, plan changes, future workforce projections, future investment returns, and such other matters as the Secretary may specify in such regulations. The Secretary shall specify in such regulations the projection assumptions and methods to be used as necessary to achieve comparability across plans.

“(D) A statement of the actuarial assumptions used for the plan year, including the rate of return on investment of plan assets and assumptions as to such other matters as the Secretary may prescribe by regulation.

“(E) A statement of the number of participants who are each of the following—

“(i) those who are retired or separated from service and are receiving benefits,
“(ii) those who are retired or separated and are entitled to future benefits, and

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

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

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

“(H) A statement of the amount of pension obligation bonds outstanding.

“(2) TIMING OF REPORT.—The plan sponsor of a State or local government employee pension benefit plan shall make the filing required under paragraph (1) for each plan year not later than 210 days after the end of such plan year (or within such time
as may be required by regulations prescribed by the Secretary in order to reduce duplicative filing).

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

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

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

“(B) the interest rate or rates used to determine the value of liabilities or as the discount value for liabilities are not the interest rates described in paragraph (3),

the plan sponsor shall include in the annual report filed for such plan year pursuant to subsection (a) the supplementary report for such plan year described in paragraph (2) of this subsection.

“(2) USE OF PRESCRIBED VALUATION METHOD AND INTEREST RATES.—A supplementary report for a plan year filed for a plan year pursuant to this subsection shall include the information specified as required in the annual report under subparagraphs (A), (C), (F), and (G) of subsection (a)(1), deter-
mined as of the end of such plan year by valuing plan assets at fair market value and by using the interest rates described in paragraph (3) to value liabilities and as the discount value for liabilities.

“(3) INTEREST RATES BASED ON U.S. TREASURY OBLIGATION YIELD CURVE RATE.—

“(A) IN GENERAL.—The interest rates described in this subsection are—

“(i) in the case of benefits reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

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

“(iii) in the case of benefits reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.
“(B) Segment rates.—For purposes of this paragraph—

“(i) First segment rate.—The term ‘first segment rate’ means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the U.S. Treasury obligation yield curve for such month, taking into account only that portion of such yield curve which is based on obligations maturing during the 5-year period commencing with such month.

“(ii) Second segment rate.—The term ‘second segment rate’ means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the U.S. Treasury obligation yield curve for such month, taking into account only that portion of such yield curve which is based on obligations maturing during the 15-year period beginning at the end of the period described in clause (i).
“(iii) THIRD SEGMENT RATE.—The term ‘third segment rate’ means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the U.S. Treasury obligation yield curve for such month, taking into account only that portion of such yield curve which is based on obligations maturing during periods beginning after the period described in clause (ii).

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

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

“(1) STATE OR LOCAL GOVERNMENT EMPLOYEE PENSION BENEFIT PLAN.—The terms ‘State or local government employee pension benefit plan’ and ‘plan’ mean any plan, fund, or program, other
than a defined contribution plan (within the meaning of section 414(i)), which was heretofore or is hereafter established or maintained, in whole or in part, by a State, a political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

“(A) provides retirement income to employees, or

“(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan, or the method of distributing benefits from the plan.

“(2) FUNDING PERCENTAGE.—The term ‘funding percentage’ for a plan year means the ratio (expressed as a percentage) which—

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

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

“(4) PLAN SPONSOR.—The term ‘plan sponsor’ means, in connection with a State or local government employee pension benefit plan, the State, political subdivision of a State, or agency or instrumentality of a State or a political subdivision of a State which establishes or maintains the plan.

“(5) PARTICIPANT.—

“(A) IN GENERAL.—The term ‘participant’ means, in connection with a State or local government employee pension benefit plan, an individual—

“(i) who is an employee or former employee of a State, political subdivision of a State, or agency or instrumentality of a State or a political subdivision of a State which is the plan sponsor of such plan, and

“(ii) who is or may become eligible to receive a benefit of any type from such plan or whose beneficiaries may be eligible to receive any such benefit.
“(B) BENEFICIARY.—The term ‘beneficiary’ means a person designated by a participant, or by the terms of the plan, who is or may become entitled to a benefit thereunder.

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

“(7) STATE.—The term ‘State’ includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

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

“(d) MODEL REPORTING STATEMENT.—The Secretary shall develop model reporting statements for purposes of subsections (a) and (b). Plan sponsors of State or local government employee pension plans may elect, in such form and manner as shall be prescribed by the Secretary, to utilize the applicable model reporting statement for purposes of complying with requirements of such subsections.
“(e) TRANSPARENCY OF INFORMATION FILED.—The Secretary shall create and maintain a public website, with searchable capabilities, for purposes of posting the information received by the Secretary pursuant to subsections (a) and (b). Any such information received by the Secretary (including any updates to such information received by the Secretary) shall be posted on the website not later than 60 days after receipt and shall not be treated as return information for purposes of this title.”.

(c) CLERICAL AMENDMENTS.—

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

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

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

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

SEC. 4. GENERAL PROVISIONS AND RULES OF CONSTRUCTION.

(a) LIMITATIONS ON FEDERAL RESPONSIBILITIES RELATING TO PLAN OBLIGATIONS AND LIABILITIES.—The United States shall not be liable for any obligation related to any current or future shortfall in any State or
local government employee pension plan. Nothing in this Act (or any amendment made by this Act) or any other provision of law shall be construed to provide Federal Government funds to diminish or meet any current or future shortfall in, or obligation of, any State or local government employee pension plan. The preceding sentence shall also apply to the Federal Reserve.

(b) No Federal Funding Standards.—Nothing in this Act (or any amendment made by this Act) shall be construed to alter existing funding standards for State or local government employee pension plans or to require Federal funding standards for such plans.

c) Definitions.—Terms used in this section which are also used in section 4980J of the Internal Revenue Code of 1986 shall have the same meaning as when used in such section.