

105TH CONGRESS  
1ST SESSION

# H. R. 510

To establish a Federal cause of action for failure of State and local public employee pension plans to meet the terms of such plans, subject to differing burdens of proof depending on whether changes in the plan relating to employer contributions are subject, under the law of the principal State involved, to qualified review boards.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1997

Mr. ANDREWS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To establish a Federal cause of action for failure of State and local public employee pension plans to meet the terms of such plans, subject to differing burdens of proof depending on whether changes in the plan relating to employer contributions are subject, under the law of the principal State involved, to qualified review boards.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Public Employee Pen-  
3 sion Plan Liability Act of 1997”.

4 **SEC. 2. CIVIL ENFORCEMENT OF PUBLIC EMPLOYEE PEN-**  
5 **SION PLAN TERMS.**

6 (a) IN GENERAL.—A civil action may be brought, by  
7 a participant or beneficiary under a public employee pen-  
8 sion plan, against the plan—

9 (1) to recover benefits due to him or her under  
10 the terms of the plan, to enforce his or her rights  
11 under the terms of the plan, or to clarify his or her  
12 rights to future benefits under the terms of the plan;

13 (2) to enjoin any act or practice which violates  
14 the terms of the plan, or

15 (3) to obtain other appropriate equitable relief

16 (A) to redress violations of the terms of the plan or

17 (B) to enforce the terms of the plan.

18 (b) BURDEN OF PROOF.—

19 (1) IN GENERAL.—Except as provided in para-  
20 graph (2), in any action brought under this section,  
21 the plaintiff may prevail if the plaintiff proves his or  
22 her case by a preponderance of the evidence.

23 (2) SPECIAL RULE FOR PLANS SUBJECT TO RE-  
24 VIEW BY QUALIFIED REVIEW BOARDS.—In the case  
25 of a public employee pension plan which meets the  
26 requirements of section 3, in any action brought

1 under this section, the plaintiff may prevail only if  
2 the plaintiff proves his or her case by clear and con-  
3 vincing evidence.

4 (c) PLANS TREATED AS PERSONS.—A public em-  
5 ployee pension plan may sue or be sued under this Act  
6 as a person. Service of summons, subpoena, or other legal  
7 process of a court upon a trustee or an administrator of  
8 a public employee pension plan in the trustee’s or adminis-  
9 trator’s capacity as such shall constitute service upon the  
10 plan.

11 (d) JURISDICTION AND VENUE.—

12 (1) IN GENERAL.—State courts of competent  
13 jurisdiction and district court of the United States  
14 shall have concurrent jurisdiction of actions brought  
15 under this section. The district courts of the United  
16 States shall have jurisdiction without regard to the  
17 amount in controversy or the citizenship of the par-  
18 ties, to grant the relief provided for in subsection  
19 (a).

20 (2) VENUE.—Notwithstanding section 94 of the  
21 National Banking Act (12 U.S.C. 94), in any case  
22 in which an action under this Act is brought in a  
23 district court of the United States, it may be  
24 brought in any district of the State where the plan  
25 is administered, where the breach took place, or

1 where a defendant resides or may be found, and  
 2 process may be served in any other district where a  
 3 defendant resides or may be found.

4 (e) ATTORNEY'S FEES.—In any action brought under  
 5 this section, the court may in its discretion award a rea-  
 6 sonable attorney's fee and costs of action to any party who  
 7 prevails or substantially prevails in such action.

8 **SEC. 3. REVIEW BY QUALIFIED REVIEW BOARDS OF**  
 9 **CHANGES IN EMPLOYER CONTRIBUTIONS.**

10 (a) IN GENERAL.—A public employee pension plan  
 11 meets the requirements of this section if, under the plan,  
 12 changes in employer contributions are subject to review  
 13 by a qualified review board established for the plan as pro-  
 14 vided in this section. For purposes of this section, the term  
 15 “qualified review board” means a board—

16 (1) whose membership is determined under the  
 17 law of the principal State in accordance with sub-  
 18 section (b), and

19 (2) whose powers are determined under the law  
 20 of the principal State in accordance with subsection  
 21 (c).

22 (b) MEMBERSHIP.—

23 (1) IN GENERAL.—The membership of a quali-  
 24 fied review board established for a plan shall consist  
 25 of 3 members selected from among individuals who,

1 by means of their education and experience, have  
2 demonstrated expertise in the area of pension fund  
3 management, as follows:

4 (A) one member is appointed by the Gov-  
5 ernor of the State,

6 (B) one member is selected by the partici-  
7 pants in the plan, by means of an election held  
8 in such form and manner as shall be prescribed  
9 in regulations of the Secretary of Labor, and

10 (C) one member is selected jointly by the  
11 Governor and by a representative of partici-  
12 pants in the plan (from a certified list of pen-  
13 sion experts established in accordance with  
14 paragraph (2)).

15 Each member of the board shall have 1 vote. Mem-  
16 bers of the board shall serve for such equivalent  
17 terms as shall be prescribed under the law of the  
18 principal State.

19 (2) CERTIFIED LIST OF EXPERTS.—The Gov-  
20 ernor of the State shall, for purposes of paragraph  
21 (1)(C), establish and maintain with respect to each  
22 public employee pension plan (for which such State  
23 is the principal State) a certified list of pension ex-  
24 perts meeting the requirements for membership on

1 the qualified review board. Individuals may be in-  
2 cluded on such list only by agreement between the  
3 Governor of the State and a representative elected  
4 by participants in the plan, entered into by means  
5 of collective bargaining in such form and manner as  
6 shall be prescribed in regulations of the Secretary of  
7 Labor.

8 (c) POWERS.—The board shall be treated as a quali-  
9 fied review board for purposes of this section with respect  
10 to any public employee pension plan (for which such State  
11 is the principal State) only if the powers of such board  
12 under the law of the principal State include review by the  
13 board, for approval or disapproval by the board, of any  
14 change in the terms of such plan, as a necessary pre-  
15 requisite for such change to take effect, if—

16 (1) such change would have the effect of chang-  
17 ing levels of employer contributions to the plan, and

18 (2) such review is requested, in such form and  
19 manner as shall be prescribed in regulations of the  
20 Secretary of Labor, by—

21 (A) at least one-third of the total number  
22 of trustees of any trust fund forming a part of  
23 the plan, or

1 (B) the head of any employee organization  
 2 representing at least 20 percent of the total  
 3 number of active participants in the plan.

4 The board may be treated as a qualified review board for  
 5 purposes of this section only if, under the law of the prin-  
 6 cipal State, any such change submitted to such review by  
 7 the board may take effect only upon approval of the  
 8 change by the board.

9 **SEC. 4. EFFECT ON OTHER LAWS.**

10 (a) IN GENERAL.—Nothing in this Act shall be con-  
 11 strued to alter, amend, modify, invalidate, impair, or su-  
 12 percede any law of a State or any rule or regulation issued  
 13 under any such law, except to the extent that such law—

14 (1) may now or hereafter relate to the subject  
 15 matter of the provisions of this Act as they apply to  
 16 any public employee pension plan described in sec-  
 17 tion 4(b)(1) and not exempt under section 4(b)(2),  
 18 and

19 (2) prevents the application of such provisions.

20 (b) STATE CAUSES OF ACTION PRESERVED.—Noth-  
 21 ing in this Act shall be construed to apply with respect  
 22 to State causes of action available in State courts.

23 **SEC. 5. DEFINITIONS AND COVERAGE.**

24 (a) DEFINITIONS.—For purposes of this Act—

1           (1) ADMINISTRATOR.—The term “adminis-  
2       trator” means—

3           (A) the board of trustees, retirement  
4       board, or similar person with administrative re-  
5       sponsibilities in connection with a plan, or any  
6       other person specifically so designated in con-  
7       nection with any requirement of this Act by the  
8       terms of the instrument or instruments under  
9       which the plan is operated, including but not  
10      limited to the law of any State or of any politi-  
11      cal subdivision of any State, or

12          (B) in any case in which there is no person  
13      described in subparagraph (A) in connection  
14      with the plan, the plan sponsor.

15          (2) BENEFICIARY.—The term “beneficiary”  
16      means a person designated by a participant, or by  
17      the terms of a public employee pension plan, who is  
18      or may become entitled to a benefit thereunder.

19          (3) EMPLOYEE.—The term “employee” means  
20      any individual employed by an employer, employer  
21      representative, or other person required to make em-  
22      ployer contributions under the plan.

23          (4) EMPLOYEE ORGANIZATION.—The term  
24      “employee organization” means any labor union or



1 any organization of any kind, or any agency or em-  
2 ployee representation committee, association, group,  
3 or plan, in which employees participate and which  
4 exists for the purpose, in whole or in part, of dealing  
5 with employers or employer representatives concern-  
6 ing a public employee pension plan or other matters  
7 incidental to employment relationships; or any em-  
8 ployees' beneficiary association organized for the  
9 purpose, in whole or in part, of establishing such a  
10 plan.

11 (5) EMPLOYER.—The term “employer”  
12 means—

13 (A) the government of any State or of any  
14 political subdivision of a State,

15 (B) any agency or instrumentality of a  
16 government referred to in subparagraph (A), or

17 (C) any agency or instrumentality of two  
18 or more governments referred to in subpara-  
19 graph (A).

20 (6) EMPLOYER CONTRIBUTION.—The term  
21 “employer contribution” means any contribution to  
22 a public employee pension plan other than a con-  
23 tribution made by a participant in the plan.

24 (7) EMPLOYER REPRESENTATIVE.—The term  
25 “employer representative” means—

1           (A) any group or association consisting, in  
2           whole or in part, of employers acting, in connec-  
3           tion with a public employee pension plan, for an  
4           employer, or

5           (B) any person acting, in connection with  
6           a public employee pension plan, indirectly in the  
7           interest of an employer or of a group or asso-  
8           ciation described in subparagraph (A).

9           (8) PUBLIC EMPLOYEE PENSION PLAN.—The  
10          term “public employee pension plan” and “plan”  
11          mean any plan, fund, or program which was here-  
12          tofore or is hereafter established or maintained, in  
13          whole or in part, by an employer, an employer rep-  
14          resentative, or an employee organization, or by a  
15          combination thereof, to the extent that by its express  
16          terms or as a result of surrounding circumstances  
17          such plan, fund, or program—

18               (A) provides retirement income to employ-  
19               ees, or

20               (B) results in a deferral of income by em-  
21               ployees for periods extending to the termination  
22               of covered employment or beyond,  
23          regardless of the method of calculating the contribu-  
24          tions made to the plan, the method of calculating

1 the benefits under the plan, or the method of distrib-  
2 uting benefits from the plan.

3 (9) PRINCIPAL STATE.—The term “principal  
4 State” means, for any plan year with respect to a  
5 public employee pension plan, the State in which, as  
6 of the beginning of such plan year, the largest per-  
7 centage of the participants of the plan employed in  
8 any single State is employed.

9 (10) GOVERNOR.—The term “Governor”  
10 means, in connection with a public employee pension  
11 plan, the Governor (or equivalent official) of the  
12 principal State.

13 (11) PARTICIPANT.—The term “participant”  
14 means any individual who is or may become eligible  
15 to receive a benefit of any type from a public em-  
16 ployee pension plan or whose beneficiaries may be el-  
17 igible to receive any such benefit.

18 (12) PERSON.—The term “person” means a  
19 State, a political subdivision of a State, any agency  
20 or instrumentality of a State or a political subdivi-  
21 sion of a State, an individual, a partnership, a joint  
22 venture, a corporation, a mutual company, a joint-  
23 stock company, a trust, an estate, an unincorporated  
24 organization, an association, or an employee organi-  
25 zation.

1           (13) PLAN SPONSOR.—The term “plan spon-  
2       sor” means—

3           (A) in the case of a plan established or  
4       maintained solely for employees of a single em-  
5       ployer, such employer,

6           (B) in the case of a plan established or  
7       maintained by an employee organization, the  
8       employee organization, or

9           (C) in the case of a plan established or  
10      maintained by two or more employers or jointly  
11      by one or more employers and one or more em-  
12      ployee organizations, the association, commit-  
13      tee, board of trustees, or other similar group of  
14      representatives of the parties who establish or  
15      maintain the plan.

16          (14) PLAN YEAR.—The term “plan year”  
17      means, with respect to a plan, the calendar, policy,  
18      or fiscal year on which the records of the plan are  
19      kept.

20          (15) STATE.—The term “State” means any  
21      State of the United States, the District of Columbia,  
22      the Commonwealth of Puerto Rico, the Virgin Is-  
23      lands, American Samoa, and Guam.

24          (b) COVERAGE.—

1           (1) IN GENERAL.—Except as provided in para-  
2       graph (2), this Act shall apply to any public em-  
3       ployee pension plan.

4           (2) EXCEPTIONS FROM COVERAGE.—The provi-  
5       sions of this Act shall not apply to—

6           (A) any employee benefit plan described in  
7       section 4(a) of the Employee Retirement In-  
8       come Security Act of 1974 (29 U.S.C.  
9       1003(a)), which is not exempt under section  
10      4(b)(1) of such Act (29 U.S.C. 1003(b)(1));

11          (B) any plan which is unfunded and is  
12      maintained by an employer or employer rep-  
13      resentative primarily for the purpose of provid-  
14      ing deferred compensation for a select group of  
15      management or highly compensated employees;

16          (C) any arrangement which would be a  
17      severance pay arrangement, as defined in regu-  
18      lations of the Secretary of Labor under section  
19      3(2)(B)(i) of the Employee Retirement Income  
20      Security Act of 1974 (29 U.S.C.  
21      1002(2)(B)(i)), if the employer were an em-  
22      ployer within the meaning of section 3(5) of  
23      such Act (29 U.S.C. 1002(5));

24          (D) any agreement to the extent it is a  
25      coverage agreement entered into pursuant to

1 section 218 of the Social Security Act (42  
2 U.S.C. 418);

3 (E) any individual retirement account or  
4 any individual retirement annuity within the  
5 meaning of section 408 of the Internal Revenue  
6 Code of 1986, or a retirement bond within the  
7 meaning of section 409 of such Code;

8 (F) any plan described in section 401(d) of  
9 such Code;

10 (G) any individual account plan consisting  
11 of an annuity contract described in section  
12 403(b) of such Code;

13 (H) any eligible State deferred compensa-  
14 tion plan, as defined in section 457(b) of such  
15 Code; or

16 (I) any plan maintained solely for the pur-  
17 pose of complying with applicable workers' com-  
18 pensation laws or disability insurance laws.

19 **SEC. 5. EFFECTIVE DATE.**

20 The preceding provisions of this Act shall apply with  
21 respect to plan years beginning on or after January 1,  
22 1998.

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