

108TH CONGRESS
2D SESSION

S. 2831

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to clarify that federally recognized Indian tribal governments are to be regulated under the same government employer rules and procedures that apply to Federal, State, and other local government employers with regard to the establishment and maintenance of employee benefit plans.

IN THE SENATE OF THE UNITED STATES

Mr. SMITH (for himself, Mr. BINGAMAN, Mr. CONRAD, Mr. DASCHLE, Mr. HATCH, and Mr. THOMAS) 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 and the Employee Retirement Income Security Act of 1974 to clarify that federally recognized Indian tribal governments are to be regulated under the same government employer rules and procedures that apply to Federal, State, and other local government employers with regard to the establishment and maintenance of employee benefit plans.

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 “Governmental Pension
3 Plan Equalization Act of 2004”.

4 **SEC. 2. CLARIFICATION OF “GOVERNMENTAL PLAN” DEFINI-**
5 **NITIONS.**

6 (a) AMENDMENT TO INTERNAL REVENUE CODE OF
7 1986.—Section 414(d) of the Internal Revenue Code of
8 1986 (definition of governmental plan) is amended by add-
9 ing at the end thereof the following new sentence: “The
10 term ‘governmental plan’ also includes a plan established
11 or maintained for its employees by an Indian tribal gov-
12 ernment (as defined in section 7701(a)(40)), a subdivision
13 of an Indian tribal government (determined in accordance
14 with section 7871(d)), an agency or instrumentality of an
15 Indian tribal government or a subdivision thereof, or an
16 entity established under tribal, Federal, or State law
17 which is wholly owned or controlled by any of the fore-
18 going.”.

19 (b) AMENDMENT TO EMPLOYEE RETIREMENT IN-
20 COME SECURITY ACT OF 1974.—Section 3(32) of the Em-
21 ployee Retirement Income Security Act of 1974 (29
22 U.S.C. 1002(32)) is amended by adding at the end the
23 following new sentence: “The term ‘governmental plan’
24 also includes a plan established or maintained for its em-
25 ployees by an Indian tribal government (as defined in sec-
26 tion 7701(a)(40) of the Internal Revenue Code of 1986),

1 a subdivision of an Indian tribal government (determined
 2 in accordance with section 7871(d) of such Code), an
 3 agency or instrumentality of an Indian tribal government
 4 or subdivision thereof, or an entity established under trib-
 5 al, Federal, or State law which is wholly owned or con-
 6 trolled by any of the foregoing.”.

7 **SEC. 3. EXTENSION TO ALL GOVERNMENTAL PLANS OF**
 8 **CURRENT MORATORIUM ON APPLICATION OF**
 9 **CERTAIN NONDISCRIMINATION RULES APPLI-**
 10 **CABLE TO STATE AND LOCAL PLANS.**

11 (a) IN GENERAL.—

12 (1) Subparagraph (G) of section 401(a)(5) and
 13 subparagraph (H) of section 401(a)(26) of the In-
 14 ternal Revenue Code of 1986 are each amended by
 15 striking “section 414(d))” and all that follows and
 16 inserting “section 414(d)).”.

17 (2) Subparagraph (G) of section 401(k)(3) of
 18 such Code and paragraph (2) of section 1505(d) of
 19 the Taxpayer Relief Act of 1997 are each amended
 20 by striking “maintained by a State or local govern-
 21 ment or political subdivision thereof (or agency or
 22 instrumentality thereof)”.

23 (b) CONFORMING AMENDMENTS.—

24 (1) The heading for section 401(a)(5)(G) of
 25 such Code is amended to read as follows:

1 “(G) GOVERNMENTAL PLANS.—”.

2 (2) The heading for section 401(a)(26)(H) of
3 such Code is amended to read as follows:

4 “(H) EXCEPTION FOR GOVERNMENTAL
5 PLANS.—”.

6 (3) Section 401(k)(3)(G) of such Code is
7 amended by inserting “GOVERNMENTAL PLAN.—”
8 after “(G)”.

9 **SEC. 4. CLARIFICATION THAT TRIBAL GOVERNMENTS ARE**
10 **SUBJECT TO THE SAME DEFINED BENEFIT**
11 **PLAN RULES AND REGULATIONS APPLIED TO**
12 **STATE AND OTHER LOCAL GOVERNMENTS,**
13 **THEIR POLICE AND FIREFIGHTERS.**

14 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF
15 1986.—

16 (1) POLICE AND FIREFIGHTERS.—Subpara-
17 graph (H) section 415(b)(2) of the Internal Revenue
18 Code of 1986 (defining participant) is amended—

19 (A) in clause (i) by inserting “, Indian
20 tribal government (as defined in section
21 7701(a)(40)),” after “State”, and

22 (B) in clause (ii)(I) by inserting “, Indian
23 tribal government,” after “State” both places it
24 appears.

25 (2) STATE AND LOCAL GOVERNMENT PLANS.—

1 (A) IN GENERAL.—Subparagraph (A) of
 2 section 415(b)(10) of such Code (relating to
 3 limitation to equal accrued benefit) is amended
 4 by inserting “, Indian tribal government (as de-
 5 fined in section 7701(a)(40)),” after “State”.

6 (B) CONFORMING AMENDMENT.—The
 7 heading for section 415(b)(10) of such Code is
 8 amended to read as follows:

9 “(10) SPECIAL RULE FOR STATE, INDIAN TRIB-
 10 AL, AND LOCAL GOVERNMENT PLANS.—”.

11 (3) GOVERNMENT PICK UP CONTRIBUTIONS.—
 12 Paragraph (2) of section 414(h) of such Code (relat-
 13 ing to designation by units of government) is amend-
 14 ed by inserting “, Indian tribal government (as de-
 15 fined in section 7701(a)(40)),” after “State”.

16 (b) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
 17 COME SECURITY ACT OF 1974.—Section 4021(b) of the
 18 Employee Retirement Income Security Act of 1974 (29
 19 U.S.C. 1321(b)) is amended—

20 (1) in paragraph (12), by striking “or” at the
 21 end;

22 (2) in paragraph (13), by striking “plan.” and
 23 inserting “plan; or”; and

24 (3) by adding at the end the following new
 25 paragraph:

1 “(14) established and maintained for its em-
2 ployees by an Indian tribal government (as defined
3 in section 7701(a)(40) of the Internal Revenue Code
4 of 1986), a subdivision of an Indian tribal govern-
5 ment (determined in accordance with section
6 7871(d) of such Code), an agency or instrumentality
7 of an Indian tribal government or subdivision there-
8 of, or an entity established under tribal, Federal, or
9 State law which is wholly owned or controlled by any
10 of the foregoing.”.

11 **SEC. 5. EFFECTIVE DATE.**

12 The amendments made by this Act shall apply to
13 years beginning before, on, or after the date of the enact-
14 ment of this Act.

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