

111TH CONGRESS
1ST SESSION

H. R. 710

To secure additional Tier I capital for the United States banking system from parties other than the Federal Government by providing authority to the Secretary of the Treasury to guaranty certain new preferred stock investments made by public pensions acting in a collective fashion, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2009

Mr. ACKERMAN introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Ways and Means, 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

A BILL

To secure additional Tier I capital for the United States banking system from parties other than the Federal Government by providing authority to the Secretary of the Treasury to guaranty certain new preferred stock investments made by public pensions acting in a collective fashion, and for other purposes.

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 Retiree’s Invest-
3 ment Act of 2009”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The United States banking system’s ability
7 to extend credit on a basis consistent with healthy
8 economic activity is restricted by a need or desire to
9 conserve capital in the face of anticipated losses.

10 (2) A shortage of banking capital may continue
11 to exist because private investors are generally un-
12 willing to provide such capital given their inability to
13 accurately assess the risk exposure of any individual
14 institution while the Federal Government’s ability to
15 function as a capital provider may be constrained by
16 concerns regarding Federal control of the banking
17 system as well its desire to use Federal funds in nu-
18 merous areas besides capitalization of the banking
19 system.

20 (3) State and local public pension funds are
21 long term investors whose constituents benefit from
22 a well-capitalized banking system with the ability to
23 extend credit broadly at all levels of the economy.

24 (4) Certain State and local pension plans have
25 broad investment powers under State law which
26 would include the ability to form cooperative busi-

1 ness endeavors solely owned by them or in concert
2 with public pension plans in other States.

3 (5) Certain of these public pension plans have
4 indicated their willingness and ability to rapidly
5 form and fund a vehicle to be mutually owned by
6 them for the sole purpose of investing in preferred
7 stocks of United States banking institutions subject
8 to certain guaranties provided by the Secretary of
9 the Treasury or other appropriate Federal Govern-
10 ment officer or agency.

11 **SEC. 3. DEFINITIONS.**

12 For purposes of this Act, the following definitions
13 shall apply:

14 (1) ELIGIBLE INVESTMENTS.—The term “eligi-
15 ble investment” means any preferred stock invest-
16 ment which meets the requirements of this Act by
17 any public pension bank capital infusion fund.

18 (2) PUBLIC PENSION PLANS.—The term “pub-
19 lic pension plan” means any State and local pension
20 plan that has broad investment powers and author-
21 ity under State law, including the authority to estab-
22 lish, administer, and participate in cooperative busi-
23 ness endeavors solely owned by the plan or other
24 public pension plans.

1 (3) PUBLIC PENSION BANK CAPITAL INFUSION
2 FUND.—The term “public pension bank capital infu-
3 sion fund” means any investment vehicle mutually
4 owned by public pension plans for the sole purpose
5 of investing in preferred stocks of United States
6 banking institutions, subject to certain guarantees
7 provided by the Secretary of the Treasury or other
8 appropriate Federal Government officer or agency,
9 that meets the requirements of this Act for such
10 capital infusion funds.

11 (4) QUALIFIED EQUITY OFFERING.—The term
12 “qualified equity offering” means the sale for cash,
13 by a financial institution after the date of an invest-
14 ment by a public pension bank capital infusion fund
15 in any eligible investment issued by such institution,
16 of perpetual preferred stock or common stock which
17 qualifies as Tier 1 capital of such financial institu-
18 tion.

19 (5) REGUARANTEE.—The term “reguarantee”
20 means a guarantee issued by a guarantor of the pay-
21 ment of, or the fulfillment of any other obligation
22 under, a guarantee issued by another guarantor.

23 (6) SECRETARY.—The term “Secretary” means
24 the Secretary of the Treasury.

1 **SEC. 4. PUBLIC PENSION PLAN INVESTMENTS IN CERTAIN**
2 **BANK PREFERRED STOCK INSTRUMENTS.**

3 (a) **GUARANTEE AND REGUARANTEE AUTHORITY.—**

4 The Secretary may guarantee eligible investments or re-
5 guarantee a guarantee of eligible investments.

6 (b) **REQUIREMENTS AND PROCEDURES FOR GUARAN-**
7 **TEES.—**

8 (1) **TERM AND OTHER CONDITIONS OF GUARAN-**
9 **TEES.—**Any guarantee or reguarantee provided by
10 the Secretary under subsection (a) with respect to
11 an eligible investment shall—

12 (A) be an unconditional guarantee for the
13 life of the eligible investment; and

14 (B) shall cover the timely payment of divi-
15 dends on, and the ultimate return of principal
16 of, such eligible investment, in accordance with
17 the terms of the eligible investment.

18 (2) **PROCEDURES.—**The process by which the
19 Secretary shall be notified of a need to perform
20 under a guarantee or reguarantee issue under sub-
21 section (a) and the manner in which the Secretary
22 shall perform the duties of guarantor or reguarantor
23 shall be mutually agreed to by the Secretary, the
24 other guarantor, in the case of a reguarantee from
25 the Secretary, and the public pension bank capital
26 infusion fund.

1 (c) TERMS OF ELIGIBILITY FOR PUBLIC PENSION
2 PLANS.—

3 (1) AUTHORIZED UNDER STATE LAW.—The
4 Secretary may not guarantee or reguarantee eligible
5 investments of a public pension bank capital infusion
6 fund under subsection (a) unless each public pension
7 plan which has a mutual ownership interest in such
8 capital infusion fund is authorized under State law
9 to establish, or participate in the formation of, a
10 wholly owned mutual fund or a limited liability cor-
11 poration, in the case of joint ownership with other
12 public pension plans.

13 (2) CHOICE OF LAW ISSUE.—The powers of any
14 public pension plan for purposes of this subsection
15 shall—

16 (A) in all instances be determined by the
17 law of the domicile State of such public pension
18 plans; and

19 (B) in the case of a joint endeavor among
20 public pension plans from different States, by a
21 choice of law agreement (among the partici-
22 pating public pension plans) to which each
23 State represented by a plan has granted full
24 faith and credit.

1 (d) TERMS OF ELIGIBILITY FOR ELIGIBLE INVEST-
2 MENTS BY A PUBLIC PENSION BANK CAPITAL INFUSION
3 FUND.—

4 (1) MAXIMUM AMOUNT PER FUND.—The eligi-
5 ble investments of a public pension bank capital in-
6 fusion fund shall be eligible for a guarantee or re-
7 guarantee under this section only if the aggregate
8 amount of such investments by the fund do not ex-
9 ceed \$50,000,000,000.

10 (2) INSTITUTION ELIGIBLE FOR INVEST-
11 MENTS.—Only an investment in preferred stock that
12 meets the requirements of subsection (e) and has
13 been issued by a financial institution which meets
14 the definition of a qualifying financial institution
15 under the TARP Capital Purchase Program estab-
16 lished under the authority of the Emergency Eco-
17 nomic Stabilization Act of 2008 may be treated as
18 an eligible investment for purposes of this Act.

19 (e) PREFERRED STOCK REQUIREMENTS.—Preferred
20 stock meets the requirements of this subsection if the fol-
21 lowing terms and conditions are met by such stock:

22 (1) SECURITY.—The stock bears senior pre-
23 ferred status with a liquidation preference of \$1,000
24 per share or higher as provided in the TARP Capital
25 Purchase Program.

1 (2) RANKING.—The stock is senior to common
2 stock and pari passu with existing preferred shares
3 other than preferred shares which by their terms
4 rank junior to any existing preferred shares.

5 (3) REGULATORY CAPITAL STATUS.—The pre-
6 ferred stock meets the requirement for treatment as
7 Tier I capital for the financial institution which
8 issued it.

9 (4) TERM.—The term of the stock is perpetual.

10 (5) DIVIDENDS.—

11 (A) IN GENERAL.—The stock pays cumu-
12 lative dividends at—

13 (i) an initial rate of 8.5 percent per
14 year; and

15 (ii) after the end of the 1-year period
16 beginning on the date of the enactment of
17 this Act, at the prevailing reset rate deter-
18 mined in accordance with subparagraph
19 (B).

20 (B) RESET RATE.—The term “reset rate”
21 means the rate determined at the end of the 1-
22 year period beginning on the date of the enact-
23 ment of this Act and each 1-year period there-
24 after by adding together—

1 (i) the yield prevailing as of the close
2 of business of the date of the determina-
3 tion on 10-year United States treasury
4 notes; and

5 (ii) the difference between 8.5 percent
6 and the yield prevailing as of the close of
7 business on the date of the enactment of
8 this Act on 10-year United States treasury
9 notes.

10 (6) REDEMPTION.—

11 (A) TIMING.—The redemption of the stock
12 is subject to the following conditions:

13 (i) The stock may not be redeemed for
14 a period of 3 years from the date of the
15 initial investment by the public pension
16 bank capital infusion fund, except with the
17 proceeds from a qualified equity offering
18 which results in aggregate gross proceeds
19 to the financial institution which issued the
20 stock of not less than 25 percent of the
21 issue price of the stock.

22 (ii) After the third anniversary of the
23 date of the investment, the stock may be
24 redeemed, in whole or in part, at any time

1 and from time to time, at the option of the
2 financial institution.

3 (B) AMOUNT.—All redemptions of the
4 stock are at 100 percent of the issue price, plus
5 any accrued and unpaid dividends and shall be
6 subject to the approval of the primary Federal
7 financial regulator of the issuing financial insti-
8 tution.

9 (7) RESTRICTIONS ON DIVIDENDS.—For as
10 long as the preferred stock is outstanding, no divi-
11 dends may be declared or paid on junior preferred
12 shares, preferred shares ranking pari passu with the
13 preferred stock, or common shares (other than in
14 the case of pari passu preferred shares' dividends on
15 a pro rata basis with the preferred stock) nor may
16 the financial institution which issued the preferred
17 stock repurchase or redeem any junior preferred
18 shares, preferred shares ranking pari passu with the
19 preferred stock, or common shares until such time
20 as the preferred stock has been redeemed in whole.

21 (8) VOTING RIGHTS.—The preferred stock is
22 nonvoting, other than class voting rights on—

23 (A) any authorization or issuance of shares
24 ranking senior to the preferred stock;

1 (B) any amendment to the rights of the
2 preferred stock; or

3 (C) any merger, exchange or similar trans-
4 action which would adversely affect the rights
5 of the preferred stock.

6 (9) APPOINT OF DIRECTORS.—The stock in-
7 strument provides that if dividends on the preferred
8 stock are not paid in full for more than 4 consecu-
9 tive dividend periods, the Secretary may elect 2 di-
10 rectors to serve on the board of directors of the
11 issuing financial institution until such time as full
12 dividends have been paid for 4 consecutive dividend
13 periods.

14 (10) TIMING OF GUARANTY PAYMENTS.—The
15 payment of guaranty payments under this Act shall
16 be pursuant to a policy mutually agreed to by the
17 Secretary, the other guarantor, in the case of a re-
18 guarantee from the Secretary, and the public pen-
19 sion bank capital infusion fund which policy shall be
20 consistent with the intent of the guarantee, as speci-
21 fied in section 4(b).

22 (f) EFFECTIVE PERIOD OF GUARANTEE AUTHOR-
23 ITY.—Notwithstanding any other provision of this section,
24 any guarantee or reguarantee under this subsection may
25 only be provided on an eligible investment whose initial

1 issuance is made before the end of the 3-year period begin-
2 ning on the date of the enactment of this Act .

3 (g) TREATMENT UNDER OTHER LAW.—A public
4 pension bank capital infusion fund that is a mutual fund
5 vehicle or limited liability corporation owned by one or
6 more public pension plans and managed under contract
7 by an appropriate service vender (as approved by the Sec-
8 retary) who reports to the fund directly or through its
9 chief investment officer shall be deemed to be a political
10 subdivision of a State as that term is defined in section
11 414(d) of the Internal Revenue Code of 1986 and shall
12 be exempt from taxation pursuant to section 115 of such
13 Code.

14 (h) REPORTS.—

15 (1) IN GENERAL.—In the case of any guarantee
16 or reguarantee issued by the Secretary, under sub-
17 section (a), with respect to eligible investments, the
18 guarantor of such eligible investments shall submit
19 a report to the Congress (and to the Secretary, in
20 any case in which the Secretary is the reguarantor)
21 on the status of the guarantee or reguarantee.

22 (2) CONTENTS.—Each report submitted under
23 paragraph (1) shall include, at a minimum—

1 (A) the name of any institution issuing eli-
2 gible investments for which a guarantee is in ef-
3 fect;

4 (B) the face amount of each eligible invest-
5 ment covered by the guarantee;

6 (C) the amount of dividends paid, declared
7 and due under the terms of the eligible invest-
8 ment; and

9 (D) the amount of any payments made by
10 the guarantor as a result of the enactment of
11 this Act.

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