

111TH CONGRESS
1ST SESSION

S. 1544

To amend the Employee Retirement Income Security Act of 1974 with respect to the composition of the board of directors of the Pension Benefit Guaranty Corporation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2009

Mr. KOHL (for himself, Mr. BENNET, Mrs. McCASKILL, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 with respect to the composition of the board of directors of the Pension Benefit Guaranty Corporation, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pension Benefit Guar-
5 anty Corporation Governance Improvement Act of 2009”.

1 **SEC. 2. BOARD OF DIRECTORS OF THE PENSION BENEFIT**
 2 **GUARANTY CORPORATION.**

3 (a) IN GENERAL.—Section 4002(d) of the Employee
 4 Retirement Income Security Act of 1974 (29 U.S.C.
 5 1302(d)) is amended to read as follows:

6 “(d)(1) The board of directors of the corporation con-
 7 sists of—

8 “(A) the Secretary of the Treasury, the Sec-
 9 retary of Labor, and the Secretary of Commerce;

10 “(B) a member that is a representative of em-
 11 ployers offering defined benefit plans;

12 “(C) a member that is a representative of orga-
 13 nized labor and employees; and

14 “(D) 2 other members.

15 “(2)(A) The members of the board of directors de-
 16 scribed under subparagraphs (B) through (D) of para-
 17 graph (1)—

18 “(i) shall be appointed by the President by
 19 and with the advice and consent of the Sen-
 20 ate—

21 “(I) at the beginning of the second
 22 year of the President’s term of office, with
 23 respect to such members described under
 24 subparagraphs (B) and (C) of paragraph
 25 (1); and

1 “(II) at the beginning of the fourth
2 year of the President’s term of office, with
3 respect to such members described under
4 subparagraph (D) of paragraph (1); and
5 “(ii) shall serve for a term of 4 years.

6 “(B) Not more than 2 members of the board of
7 directors described under subparagraphs (B)
8 through (D) of paragraph (1) shall be affiliated with
9 the same political party.

10 “(C) Each member of the board of directors de-
11 scribed under subparagraphs (B) through (D) of
12 paragraph (1) shall not have a direct financial inter-
13 est in the decisions of the corporation.

14 “(3) Each member of the board of directors described
15 under subparagraph (A) of paragraph (1) shall designate
16 in writing an official, not below the level of Assistant Sec-
17 retary, to serve as the voting representative of such mem-
18 ber on the board. Such designation shall be effective until
19 revoked or until a date or event specified therein. Any such
20 representative may refer for board action any matter
21 under consideration by the designating board member.

22 “(4) The members of the board of directors described
23 under—

24 “(A) subparagraph (A) of paragraph (1), shall
25 serve without compensation, but shall be reimbursed

1 for travel, subsistence, and other necessary expenses
2 incurred in the performance of their duties as mem-
3 bers of the board; and

4 “(B) subparagraphs (B) through (D) of para-
5 graph (1) shall, for each day (including traveltime)
6 during which they are attending meetings or con-
7 ferences of the board or otherwise engaged in the
8 business of the board, be compensated at a rate
9 fixed by the corporation which is not in excess of the
10 daily equivalent of the annual rate of basic pay in
11 effect for grade GS-18 of the General Schedule, and
12 while away from their homes or regular places of
13 business they may be allowed travel expenses, in-
14 cluding per diem in lieu of subsistence, as authorized
15 by section 5703 of title 5, United States Code.

16 “(5)(A) The Secretary of Labor is the chairman of
17 the board of directors.

18 “(B) The President shall designate 1 of the members
19 appointed under paragraph (2) as the vice-chairman of the
20 board of directors.

21 “(6) The Inspector General of the corporation shall
22 report to the board of directors, and not less than twice
23 a year, shall attend a meeting of the board of directors
24 to provide a report on the activities and findings of the

1 Inspector General, including with respect to monitoring
 2 and review of the operations of the corporation.

3 “(7) The General Counsel of the corporation shall—

4 “(A) serve as the secretary to the board of di-
 5 rectors, and shall advise such board as needed; and

6 “(B) have overall responsibility for all legal
 7 matters affecting the corporation and provide the
 8 corporation with legal advice and opinions on all
 9 matters of law affecting the corporation, except that
 10 the authority of the General Counsel shall not ex-
 11 tend to the Office of Inspector General and the inde-
 12 pendent legal counsel of such Office.

13 “(8) Notwithstanding any other provision of this Act,
 14 the Office of Inspector General and the legal counsel of
 15 such Office is independent of the management of the cor-
 16 poration and the General Counsel of the corporation.”.

17 (b) NUMBER OF MEETINGS; PUBLIC AVAIL-
 18 ABILITY.—Section 4002(e) of the Employee Retirement
 19 Income Security Act of 1974 (29 U.S.C. 1302(e)) is
 20 amended—

21 (1) by striking “The board” and inserting “(1)
 22 The board”;

23 (2) by striking “the corporation.” and inserting
 24 “the corporation, but in no case less than 4 times
 25 a year with a quorum of not less than 5 members.

1 Not less than 1 meeting of the board of directors
 2 during each year shall be a joint meeting with the
 3 advisory committee under subsection (h).”; and

4 (3) by adding at the end the following:

5 “(2) The chairman of the board of directors shall
 6 make available to the public the minutes from each meet-
 7 ing of the board, unless the chairman designates a meeting
 8 or portion of a meeting as closed to the public, based on
 9 the confidentiality of the matters to be discussed during
 10 such meeting.”.

11 (c) ADVISORY COMMITTEE.—

12 (1) ISSUES CONSIDERED BY THE COM-
 13 MITTEE.—Section 4002(h)(1) of the Employee Re-
 14 tirement Income Security Act of 1974 (29 U.S.C.
 15 1302(h)(1)) is amended—

16 (A) by striking “, and (D)” and inserting
 17 “, (D)”; and

18 (B) by striking “time to time.” and insert-
 19 ing “time to time, and (E) other issues as de-
 20 termined appropriate by the advisory com-
 21 mittee.”.

22 (2) JOINT MEETING.—Section 4002(h)(3) of
 23 the Employee Retirement Income Security Act of
 24 1974 (29 U.S.C. 1302(h)(3)) is amended by adding
 25 at the end the following: “Not less than 1 meeting

1 of the advisory committee during each year shall be
2 a joint meeting with the board of directors under
3 subsection (e).”.

4 **SEC. 3. AVOIDING CONFLICTS OF INTEREST.**

5 Section 4002 of the Employee Retirement Income Se-
6 curity Act of 1974 (29 U.S.C. 1302) is amended by adding
7 at the end the following:

8 “(j) The Director of the corporation, and each mem-
9 ber of the board of directors described under subpara-
10 graphs (B) through (D) of subsection (d)(1), shall agree
11 in writing to recuse him or herself from participation in
12 activities which present a potential conflict of interest or
13 appearance of such conflict, including by not serving on
14 a technical evaluation panel.”.

15 **SEC. 4. SENSE OF CONGRESS.**

16 (a) **FORMATION OF COMMITTEES.**—It is the sense of
17 Congress that the board of directors of the Pension Ben-
18 efit Guaranty Corporation established under section 4002
19 of the Employee Retirement Income Security Act of 1974
20 (29 U.S.C. 1302), as amended by this Act, should form
21 committees, including an audit committee and an invest-
22 ment committee, to enhance the overall effectiveness of the
23 board of directors.

24 (b) **RISK MANAGEMENT POSITION.**—It is the sense
25 of Congress that the Pension Benefit Guaranty Corpora-

1 tion established under section 4002 of the Employee Re-
2 tirement Income Security Act of 1974 (29 U.S.C. 1302),
3 as amended by this Act, should establish a risk manage-
4 ment position that evaluates and mitigates the risk that
5 the corporation might experience. The individual in such
6 position should coordinate the risk management efforts of
7 the corporation, explain risks and controls to senior man-
8 agement and the board of directors of the corporation, and
9 make recommendations.

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