

111TH CONGRESS  
1ST SESSION

# S. 689

To amend the Internal Revenue Code of 1986 to clarify the treatment of church pension plans, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 25, 2009

Mrs. HUTCHISON (for herself and Mr. CARDIN) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to clarify the treatment of church pension plans, 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 “Church Plan Clarifica-  
5       tion Act of 2009”.

6       **SEC. 2. APPLICATION OF CONTROLLED GROUP RULES TO**  
7       **CHURCH PLANS.**

8       (a) IN GENERAL.—Section 414(c) of the Internal  
9       Revenue Code of 1986 (relating to employees of partner-

1 ships, proprietorships, etc., which are under common con-  
 2 trol) is amended—

3 (1) by striking “For purposes” and inserting  
 4 the following:

5 “(1) IN GENERAL.—For purposes”, and

6 (2) by adding at the end the following new  
 7 paragraph:

8 “(2) CHURCH PLANS.—For purposes of this  
 9 subsection, in determining whether an employer who  
 10 is otherwise eligible to participate in a church plan  
 11 is treated as a member of a group of entities under  
 12 common control, such employer (including an orga-  
 13 nization described in subsection (e)(3)(A)) shall not  
 14 be treated as under common control with another  
 15 entity if, based on all of the facts and circumstances,  
 16 the day-to-day financial and operational activities  
 17 are not under common control. In determining if  
 18 such activities are under common control, the Sec-  
 19 retary shall consider whether the entities have been  
 20 historically viewed as distinct entities within the  
 21 church or convention or association of churches.”.

22 (b) EFFECTIVE DATE.—The amendments made by  
 23 this section shall apply to taxable years beginning before,  
 24 on, or after the date of the enactment of this Act.

1 **SEC. 3. APPLICATION OF CONTRIBUTION AND FUNDING**  
 2 **LIMITATIONS TO 403(b) GRANDFATHERED DE-**  
 3 **FINED BENEFIT PLANS.**

4 (a) IN GENERAL.—Section 251(e)(5) of the Tax Eq-  
 5 uity and Fiscal Responsibility Act of 1982 (relating to spe-  
 6 cial rule for existing defined benefit arrangements), Public  
 7 Law 97–248, is amended—

8 (1) by striking “403(b)(2)” and inserting  
 9 “403(b)”, and

10 (2) by inserting before the period at the end the  
 11 following: “, and shall be subject to the applicable  
 12 limitations of section 415(b) of such Code as if it  
 13 were a defined benefit plan under section 401(a) of  
 14 such Code and not the limitations of section 415(c)  
 15 of such Code (relating to limitation for defined con-  
 16 tribution plans).”.

17 (b) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply as if included in the enactment  
 19 of the Tax Equity and Fiscal Responsibility Act of 1982.

20 **SEC. 4. AUTOMATIC ENROLLMENT BY CHURCH PLANS.**

21 (a) IN GENERAL.—For purposes of section 514(e) of  
 22 the Employee Retirement Income Security Act of 1974  
 23 (29 U.S.C. 1114(e)), the term “plan” shall include an em-  
 24 ployee benefit plan which is a church plan (as defined in  
 25 section 3(33) of such Act or section 414(e) of the Internal  
 26 Revenue Code of 1986).

1 (b) EFFECTIVE DATE.—This section shall take effect  
 2 on the date of the enactment of this Act.

3 **SEC. 5. ALLOW CERTAIN PLAN TRANSFERS AND MERGERS.**

4 (a) IN GENERAL.—Section 414 of the Internal Rev-  
 5 enue Code of 1986 (relating to definitions and special  
 6 rules) is amended by adding at the end the following new  
 7 subsection:

8 “(y) CERTAIN PLAN TRANSFERS AND MERGERS.—

9 “(1) IN GENERAL.—Under rules prescribed by  
 10 the Secretary, except as provided in paragraph (2),  
 11 no amount shall be includible in gross income by  
 12 reason of—

13 “(A) a transfer of all or a portion of the  
 14 account balance of a participant or beneficiary,  
 15 whether or not vested, from a plan described in  
 16 section 401(a), or a retirement income account  
 17 described in section 403(b)(9), which is a  
 18 church plan described in section 414(e) to a re-  
 19 tirement income account described in section  
 20 403(b)(9), if such plan and account are both  
 21 maintained by the same church or convention or  
 22 association of churches;

23 “(B) a transfer of all or a portion of the  
 24 account balance of a participant or beneficiary,  
 25 whether or not vested, from a retirement in-

1           come account described in section 403(b)(9) to  
2           a plan described in section 401(a), or a retire-  
3           ment income account described in section  
4           403(b)(9), which is a church plan described in  
5           section 414(e), if such plan and account are  
6           both maintained by the same church or conven-  
7           tion or association of churches, or

8           “(C) a merger of a plan described in sec-  
9           tion 401(a), or a retirement income account de-  
10          scribed in section 403(b)(9), which is a church  
11          plan described in section 414(e) with a retire-  
12          ment income account described in section  
13          403(b)(9), if such plan and account are both  
14          maintained by the same church or convention or  
15          association of churches.

16          “(2) LIMITATION.—Paragraph (1) shall not  
17          apply to a transfer or merger unless the partici-  
18          pant’s or beneficiary’s benefit immediately after the  
19          transfer or merger is equal to or greater than the  
20          participant’s or beneficiary’s benefit immediately be-  
21          fore the transfer or merger.

22          “(3) QUALIFICATION.—A plan or account shall  
23          not fail to be considered to be described in sections  
24          401(a) or 403(b)(9) merely because such plan or ac-

1 count engages in a transfer or merger described in  
2 this subsection.

3 “(4) DEFINITION OF CHURCH.—For purposes  
4 of this subsection, the term ‘church’ includes an or-  
5 ganization described in subparagraph (A) or (B)(ii)  
6 of subsection (e)(3).”.

7 (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to transfers or mergers occurring  
9 after the date of the enactment of this Act.

10 **SEC. 6. INVESTMENTS BY CHURCH PLANS IN COLLECTIVE**  
11 **TRUSTS.**

12 (a) IN GENERAL.—In the case of—

13 (1) a church plan (as defined in section 414(e)  
14 of the Internal Revenue Code 1986), including a  
15 plan described in section 401(a) of such Code and  
16 a retirement income account described in section  
17 403(b)(9) of such Code, and

18 (2) an organization described in section  
19 414(e)(3)(A) of such Code the principal purpose or  
20 function of which is the administration of such a  
21 plan or account,

22 the assets of such plan, account, or organization (includ-  
23 ing any assets otherwise permitted to be commingled for  
24 investment purposes with the assets of such a plan, ac-  
25 count, or organization) may be invested in a group trust

1 otherwise described in Internal Revenue Service Revenue  
2 Ruling 81–100 (as modified by Internal Revenue Service  
3 Revenue Ruling 2004–67), or any subsequent revenue rul-  
4 ing that supersedes or modifies such revenue ruling, with-  
5 out adversely affecting the tax status of the group trust,  
6 such plan, account, or organization, or any other plan or  
7 trust that invests in the group trust.

8 (b) EFFECTIVE DATE.—This section shall apply to  
9 investments made after the date of the enactment of this  
10 Act.

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