

113TH CONGRESS
1ST SESSION

S. 779

To amend the Internal Revenue Code of 1986 to provide for reporting and disclosure by State and local public employee retirement pension plans.

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2013

Mr. BURR (for himself, Mr. COBURN, and Mr. THUNE) 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 to provide for reporting and disclosure by State and local public employee retirement pension plans.

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 “Public Employee Pen-
5 sion Transparency Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Pursuant to clauses 1 and 3 of section 8 of
9 article I of the Constitution of the United States,
10 the Congress has the authority to condition the con-

1 tinuation of certain specified Federal tax benefits
2 upon State or local government employee pension
3 benefit plans on the provision of meaningful disclo-
4 sure under section 4980J of the Internal Revenue
5 Code of 1986, as added by this Act.

6 (2) State and local government employee pen-
7 sion benefit plans have promised pension benefits to
8 approximately 20,000,000 Americans who are active
9 employees of these entities. An additional 7,000,000
10 retirees and their dependents currently receive bene-
11 fits from State or local government employee pen-
12 sion benefit plans. The interests of participants in
13 many of such plans are in the nature of property
14 rights under State law.

15 (3) State and local government employee pen-
16 sion benefit plans are substantially facilitated by the
17 favorable tax treatment of participants and bene-
18 ficiaries, investment earnings, and employee con-
19 tributions with respect to such plans provided by the
20 Federal Government under the Internal Revenue
21 Code of 1986.

22 (4) The investment of State or local govern-
23 ment employee pension benefit plan assets, the dis-
24 tribution of benefits under such plans, and other re-
25 lated financial activities are facilitated through the

1 use of instrumentalities of, and substantially affect,
2 interstate commerce. These activities, which are
3 interstate in nature and have a substantial impact
4 on the national economy, affect capital formation,
5 regional growth and decline, the national markets
6 for insurance, and the markets for securities and the
7 trading of securities of State and local governments.

8 (5) The financial status of State or local gov-
9 ernment employee pension benefit plans also has a
10 direct impact on the national markets for insurance
11 and trading of securities of State and local govern-
12 ments.

13 (6) State or local government employee pension
14 benefit plans additionally have a substantial impact
15 on interstate commerce as a consequence of the
16 interstate movement of participants.

17 (7) State or local government employee pension
18 benefit plans are becoming a large financial burden
19 on certain State and local governments and have al-
20 ready resulted in tax increases and the reduction of
21 services.

22 (8) In fact, a recent study published in the
23 Journal of Economic Perspectives found that the
24 present value of the already promised pension liabil-
25 ities of the 50 States amount to \$5,170,000,000,000

1 and that these pension plans are unfunded by
2 \$3,230,000,000,000. Another study determined that
3 the total unfunded liability for all municipal plans in
4 the United States is \$574,000,000,000.

5 (9) Some economists and observers have stated
6 that the extent to which State or local government
7 employee pension benefit plans are underfunded is
8 obscured by governmental accounting rules and
9 practices, particularly as they relate to the valuation
10 of plan assets and liabilities. This results in a
11 misstatement of the value of plan assets and an un-
12 derstatement of plan liabilities, a situation that
13 poses a significant threat to the soundness of State
14 and local budgets.

15 (10) There currently is a lack of meaningful
16 disclosure regarding the value of State or local gov-
17 ernment employee pension benefit plan assets and li-
18 abilities. This lack of meaningful disclosure poses a
19 direct and serious threat to the financial stability of
20 such plans and their sponsoring governments, im-
21 pairs the ability of State and local government tax-
22 payers and officials to understand the financial obli-
23 gations of their government, and reduces the likeli-
24 hood that State and local government processes will
25 be effective in assuring the prudent management of

1 their plans. The status quo also constitutes a serious
 2 threat to the future economic health of the Nation
 3 and places an undue burden upon State and local
 4 government taxpayers, who will be called upon to
 5 fully fund existing, and future, pension promises.

6 (11) State or local government employee pen-
 7 sion benefit plans affect the national public interest
 8 and meaningful disclosure of the value of their as-
 9 sets and liabilities is necessary and desirable in
 10 order to adequately protect plan participants and
 11 their beneficiaries and the general public. Meaning-
 12 ful disclosure would also further efforts to provide
 13 for the general welfare and the free flow of com-
 14 merce.

15 **SEC. 3. REPORTING OF INFORMATION WITH RESPECT TO**
 16 **STATE OR LOCAL GOVERNMENT EMPLOYEE**
 17 **PENSION BENEFIT PLANS TREATED AS A TAX**
 18 **EXEMPTION, ETC., REQUIREMENT FOR STATE**
 19 **AND LOCAL BONDS.**

20 (a) IN GENERAL.—Subpart B of part IV of sub-
 21 chapter B of chapter 1 of the Internal Revenue Code of
 22 1986 is amended by adding at the end the following new
 23 section:

1 **“SEC. 149A. REPORTING WITH RESPECT TO STATE OR**
 2 **LOCAL GOVERNMENT EMPLOYEE PENSION**
 3 **BENEFIT PLANS.**

4 “(a) IN GENERAL.—In the case of a failure to satisfy
 5 any requirement of subsection (a) or (b) of section 4980J
 6 with respect to any plan maintained with respect to em-
 7 ployees of one or more States or political subdivisions of
 8 one or more States, no specified Federal tax benefit shall
 9 be allowed or made with respect to any specified bond
 10 issued by any such State or political subdivision (or by
 11 any bonding authority acting on behalf, or for the benefit,
 12 of such State or political subdivision) during the non-
 13 compliance period.

14 “(b) NONCOMPLIANCE PERIOD.—For purposes of
 15 this section, the term ‘noncompliance period’ means, with
 16 respect to any State or political subdivision in connection
 17 with any failure described in subsection (a), the period be-
 18 ginning on the date that the Secretary notifies such State
 19 or political subdivision of such failure and ending on the
 20 date that such failure is cured (as determined by the Sec-
 21 retary).

22 “(c) SPECIFIED BOND.—For purposes of this section,
 23 the term ‘specified bond’ means—

24 “(1) any State or local bond within the meaning
 25 of section 103,

1 “(2) any qualified tax credit bond within the
2 meaning of section 54A, and

3 “(3) any build America bond within the mean-
4 ing of section 54AA.

5 “(d) SPECIFIED FEDERAL TAX BENEFIT.—For pur-
6 poses of this section, the term ‘specified Federal tax ben-
7 efit’ means—

8 “(1) any exemption from gross income allowed
9 under section 103 (relating to interest on State and
10 local bonds),

11 “(2) any credit allowed under section 54A (re-
12 lating to credit to holders of qualified tax credit
13 bonds),

14 “(3) any credit allowed under section 54AA (re-
15 lating to build America bonds), and

16 “(4) any credit or payment allowed or made
17 under section 6431 (relating to credit for qualified
18 bonds allowed to issuer).”.

19 (b) REPORTING REQUIREMENTS.—Chapter 43 of
20 such Code is amended by adding at the end the following
21 new section:

1 **“SEC. 4980J. FAILURE OF STATE OR LOCAL GOVERNMENT**
 2 **EMPLOYEE PENSION BENEFIT PLANS TO**
 3 **MEET REPORTING REQUIREMENTS.**

4 “(a) ANNUAL REPORT.—For purposes of section
 5 149A, the requirements of this subsection are as follows:

6 “(1) IN GENERAL.—The plan sponsor of a
 7 State or local government employee pension benefit
 8 plan shall file with the Secretary, in such form and
 9 manner as shall be prescribed by the Secretary, a re-
 10 port for each plan year beginning on or after Janu-
 11 ary 1, 2014, setting forth the following information
 12 with respect to the plan, as determined by the plan
 13 sponsor as of the end of such plan year:

14 “(A) A schedule of funding status, which
 15 shall include a statement as to the current li-
 16 ability of the plan, the amount of plan assets
 17 available to meet that liability, the amount of
 18 the net unfunded liability (if any), and the
 19 funding percentage of the plan.

20 “(B) A schedule of contributions by the
 21 plan sponsor for the plan year, indicating which
 22 are or are not taken into account under sub-
 23 paragraph (A).

24 “(C) Alternative projections which shall be
 25 specified in regulations of the Secretary for
 26 each of the next 60 plan years following the

1 plan year of the cash flows associated with the
2 current liability, together with a statement of
3 the assumptions used in connection with such
4 projections. The Secretary shall specify in such
5 regulations the projection assumptions to be
6 used as necessary to achieve comparability
7 across plans.

8 “(D) A statement of the actuarial assump-
9 tions used for the plan year, including the rate
10 of return on investment of plan assets and as-
11 sumptions as to such other matters as the Sec-
12 retary may prescribe by regulation.

13 “(E) A statement of the number of partici-
14 pants who are each of the following—

15 “(i) those who are retired or sepa-
16 rated from service and are receiving bene-
17 fits,

18 “(ii) those who are retired or sepa-
19 rated and are entitled to future benefits,
20 and

21 “(iii) those who are active under the
22 plan.

23 “(F) A statement of the plan’s investment
24 returns, including the rate of return, for the
25 plan year and the 5 preceding plan years.

1 “(G) A statement of the degree to which,
2 and manner in which, the plan sponsor expects
3 to eliminate any unfunded current liability that
4 may exist for the plan year and the extent to
5 which the plan sponsor has followed the plan’s
6 funding policy for each of the preceding 5 plan
7 years. The Secretary shall prescribe by regula-
8 tion the specific criteria to be used for meeting
9 the requirements of this paragraph.

10 “(H) A statement of the amount of pen-
11 sion obligation bonds outstanding.

12 “(I) A statement of the current cost of the
13 plan for the plan year.

14 “(2) TIMING OF REPORT.—The plan sponsor of
15 a State or local government employee pension ben-
16 efit plan shall make the filing required under para-
17 graph (1) for each plan year not later than 210 days
18 after the end of such plan year (or within such time
19 as may be required by regulations prescribed by the
20 Secretary in order to reduce duplicative filing).

21 “(b) ADDITIONAL REPORTING REQUIREMENTS.—
22 For purposes of section 149A, the requirements of this
23 subsection are as follows:

1 “(1) SUPPLEMENTARY REPORTS.—In any case
 2 in which, in determining the information filed in the
 3 annual report for a plan year under subsection (a)—

4 “(A) the value of plan assets is determined
 5 using a standard other than fair market value,
 6 or

7 “(B) the interest rate or rates used to de-
 8 termine the value of liabilities or as the dis-
 9 count value for liabilities are not the interest
 10 rates described in paragraph (3), the plan spon-
 11 sor shall include in the annual report filed for
 12 such plan year pursuant to subsection (a) the
 13 supplementary report for such plan year de-
 14 scribed in paragraph (2) of this subsection.

15 “(2) USE OF PRESCRIBED VALUATION METHOD
 16 AND INTEREST RATES.—A supplementary report for
 17 a plan year filed for a plan year pursuant to this
 18 subsection shall include the information specified as
 19 required in the annual report under subparagraphs
 20 (A), (F), (G) and (I) of subsection (a)(1), deter-
 21 mined as of the end of such plan year by valuing
 22 plan assets at fair market value and by using the in-
 23 terest rates described in paragraph (3) to value li-
 24 abilities and as the discount value for liabilities.

1 “(3) INTEREST RATES BASED ON U.S. TREAS-
2 URY OBLIGATION YIELD CURVE RATE.—

3 “(A) IN GENERAL.—The interest rates de-
4 scribed in this subsection are, with respect to
5 any day, the rates of interest which shall be de-
6 termined by the Secretary for such day on the
7 basis of the U.S. Treasury obligation yield
8 curve for such day.

9 “(B) U.S. TREASURY OBLIGATION YIELD
10 CURVE.—For purposes of this subsection, the
11 term ‘U.S. Treasury obligation yield curve’
12 means, with respect to any day, a yield curve
13 which shall be prescribed by the Secretary for
14 such day on interest-bearing obligations of the
15 United States.

16 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
17 poses of this section—

18 “(1) STATE OR LOCAL GOVERNMENT EM-
19 PLOYEE PENSION BENEFIT PLAN.—The terms ‘State
20 or local government employee pension benefit plan’
21 and ‘plan’ mean any plan, fund, or program, other
22 than a defined contribution plan (within the mean-
23 ing of section 414(i)), which was heretofore or is
24 hereafter established or maintained, in whole or in
25 part, by a State, a political subdivision of a State,

1 or any agency or instrumentality of a State or polit-
 2 ical subdivision of a State, to the extent that by its
 3 express terms or as a result of surrounding cir-
 4 cumstances such plan, fund, or program—

5 “(A) provides retirement income to em-
 6 ployees, or

7 “(B) results in a deferral of income by em-
 8 ployees for periods extending to the termination
 9 of covered employment or beyond, regardless of
 10 the method of calculating the contributions
 11 made to the plan, the method of calculating the
 12 benefits under the plan, or the method of dis-
 13 tributing benefits from the plan.

14 “(2) FUNDING PERCENTAGE.—The term ‘fund-
 15 ing percentage’ for a plan year means the ratio (ex-
 16 pressed as a percentage) which—

17 “(A) the value of plan assets as of the end
 18 of the plan year bears to

19 “(B) the current liability of the plan for
 20 the plan year.

21 “(3) CURRENT LIABILITY.—The term ‘current
 22 liability’ of a plan for a plan year means the present
 23 value of all benefits accrued or earned under the
 24 plan as of the end of the plan year.

25 “(4) PRESENT VALUE.—

1 “(A) IN GENERAL.—The present value of
2 an accrued benefit shall be determined by dis-
3 counting its future cash flows in accordance
4 with subsection (b)(3). The present value of all
5 benefits accrued for a participant shall be cal-
6 culated as the sum of the present value of the
7 accrued benefit for each exit event multiplied by
8 the probability of the associated exit event.

9 “(B) EXIT EVENT.—An ‘exit event’ occurs
10 when the employment of a plan participant ter-
11 minates. For each currently employed plan par-
12 ticipant as of the measurement date, there are
13 one or more potential future exit events. Each
14 exit event is associated with a termination date,
15 a cause of termination (e.g., retirement, death,
16 disability, quit, etc.), a contractual benefit, and
17 a probability that the participant will exit em-
18 ployment via the particular event.

19 “(5) ACCRUED BENEFIT.—

20 “(A) IN GENERAL.—An ‘accrued benefit’ is
21 determined for each exit event as the projected
22 benefit multiplied by service earned as of the
23 measurement date divided by service projected
24 to be earned by the event date. For participants
25 retired or separated from service as of the

1 measurement date, the accrued benefit equals
 2 the projected benefit.

3 “(B) PROJECTED BENEFIT.—As of the
 4 measurement date, a ‘projected benefit’ (con-
 5 sisting of future cash flows) is calculated for
 6 each possible exit event using service projected
 7 to be earned to the event date and salary as of
 8 the measurement date. Such projected benefit
 9 shall reflect any cost-of-living adjustments pay-
 10 able in the future based on the law in effect as
 11 of the measurement date.

12 “(6) MEASUREMENT DATE.—The term ‘meas-
 13 urement date’ means the date as of which the value
 14 of the pension obligation is determined (sometimes
 15 referred to as the ‘valuation date’).

16 “(7) CURRENT COST.—The term ‘current cost’
 17 of a plan for a plan year means the present value
 18 as of the end of the plan year of all benefits accrued
 19 or earned under the plan during the plan year.

20 “(8) PLAN SPONSOR.—The term ‘plan sponsor’
 21 means, in connection with a State or local govern-
 22 ment employee pension benefit plan, the State, polit-
 23 ical subdivision of a State, or agency or instrumen-
 24 tality of a State or a political subdivision of a State
 25 which establishes or maintains the plan.

1 “(9) PARTICIPANT.—

2 “(A) IN GENERAL.—The term ‘participant’
3 means, in connection with a State or local gov-
4 ernment employee pension benefit plan, an indi-
5 vidual—

6 “(i) who is an employee or former em-
7 ployee of a State, political subdivision of a
8 State, or agency or instrumentality of a
9 State or a political subdivision of a State
10 which is the plan sponsor of such plan, and

11 “(ii) who is or may become eligible to
12 receive a benefit of any type from such
13 plan or whose beneficiaries may be eligible
14 to receive any such benefit.

15 “(B) BENEFICIARY.—The term ‘bene-
16 ficiary’ means a person designated by a partici-
17 pant, or by the terms of the plan, who is or
18 may become entitled to a benefit thereunder.

19 “(10) PLAN YEAR.—The term ‘plan year’
20 means, in connection with a plan, the calendar or
21 fiscal year on which the records of the plan are kept.

22 “(11) STATE.—The term ‘State’ includes any
23 State of the United States, the District of Columbia,
24 the Commonwealth of Puerto Rico, the United
25 States Virgin Islands, American Samoa, Guam, and

1 the Commonwealth of the Northern Mariana Is-
2 lands.

3 “(12) FAIR MARKET VALUE.—The term ‘fair
4 market value’ has the meaning of such term under
5 section 430(g)(3)(A) (without regard to section
6 430(g)(3)(B)).

7 “(d) MODEL REPORTING STATEMENT.—The Sec-
8 retary shall develop model reporting statements for pur-
9 poses of subsections (a) and (b). Plan sponsors of State
10 or local government employee pension plans may elect, in
11 such form and manner as shall be prescribed by the Sec-
12 retary, to utilize the applicable model reporting statement
13 for purposes of complying with requirements of such sub-
14 sections.

15 “(e) TRANSPARENCY OF INFORMATION FILED.—The
16 Secretary shall create and maintain a public Web site,
17 with searchable capabilities, for purposes of posting the
18 information received by the Secretary pursuant to sub-
19 sections (a) and (b). Any such information received by the
20 Secretary (including any updates to such information re-
21 ceived by the Secretary) shall be posted on the Web site
22 not later than 60 days after receipt and shall not be treat-
23 ed as return information for purposes of this title.”.

24 (c) CLERICAL AMENDMENTS.—

(2) The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

8 SEC. 4. GENERAL PROVISIONS AND RULES OF CONSTRUC-
9 TION.

The United States shall not be liable for any obligation related to any current or future shortfall in any State or local government employee pension plan. Nothing in this Act (or any amendment made by this Act) or any other provision of law shall be construed to provide Federal Government funds to diminish or meet any current or future shortfall in, or obligation of, any State or local government employee pension plan. The preceding sentence shall also apply to the Federal Reserve.

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1 or local government employee pension plans or to require
2 Federal funding standards for such plans.

3 (c) DEFINITIONS.—Terms used in this section which
4 are also used in section 4980J of the Internal Revenue
5 Code of 1986 shall have the same meaning as when used
6 in such section.

○