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(Original Signature of Member)

111TH CONGRESS
2D SESSION

H. R.

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 HOUSE OF REPRESENTATIVES

Mr. NUNES introduced the following bill; which was referred to the Committee on _____

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 AND DECLARATION OF POLICY.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) Pursuant to clauses 1 and 3 of section 8 of
2 article I of the Constitution of the United States,
3 the Congress has the authority to condition the con-
4 tinuation of certain specified Federal tax benefits
5 upon State or local government employee pension
6 benefit plans provision of meaningful disclosure
7 under section 4980J of the Internal Revenue Code
8 of 1986, as added by this Act.

9 (2) State or local government employee pension
10 benefit plans have promised pension benefits to ap-
11 proximately 20 million Americans who are active em-
12 ployees of these entities. An additional 7 million re-
13 tirees and their dependents currently receive benefits
14 from State or local government employee pension
15 benefit plans. The interests of participants in many
16 of such plans are in the nature of property rights
17 under State law.

18 (3) State or local government employee pension
19 benefit plans are substantially facilitated by the fa-
20 vorable tax treatment of participants and bene-
21 ficiaries, investment earnings, and employee con-
22 tributions with respect to such plans provided by the
23 Federal Government under the Internal Revenue
24 Code of 1986.

1 (4) The investment of State or local govern-
2 ment employee pension benefit plan assets, the dis-
3 tribution of benefits under such plans, and other re-
4 lated financial activities are facilitated through the
5 use of instrumentalities of, and substantially affect,
6 interstate commerce. These activities, which are
7 interstate in nature and have a substantial impact
8 on the national economy, affect capital formation,
9 regional growth and decline, the national markets
10 for insurance, and the markets for securities and the
11 trading of securities of State and local governments.

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

17 (6) State or local government employee pension
18 benefit plans additionally have a substantial impact
19 on interstate commerce as a consequence of the
20 interstate movement of participants.

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

1 (8) In fact, a recent study published in the
2 Journal of Economic Perspectives found that the
3 present value of the already-promised pension liabil-
4 ities of the 50 States amount to \$5.17 trillion and
5 that these pension plans are unfunded by \$3.23 tril-
6 lion. Another study determined that the total un-
7 funded liability for all municipal plans in the United
8 States is \$574 billion.

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

19 (10) There currently is a lack of meaningful
20 disclosure regarding the value of State or local gov-
21 ernment employee pension benefit plan assets and li-
22 abilities. This lack of meaningful disclosure poses a
23 direct and serious threat to the financial stability of
24 such plans and their sponsoring governments, im-
25 pairs the ability of State and local government tax-

1 payers and officials to understand the financial obli-
2 gations of their government, and reduces the likeli-
3 hood that State and local government processes will
4 be effective in assuring the prudent management of
5 their plans. The status quo also constitutes a serious
6 threat to the future economic health of the Nation
7 and places an undue burden upon State and local
8 government taxpayers, who will be called upon to
9 fully fund existing, and future, pension promises.

10 (11) State or local government employee pen-
11 sion benefit plans are affected with a national public
12 interest and meaningful disclosure of the value of
13 their assets and liabilities is necessary and desirable
14 in order to adequately protect plan participants and
15 their beneficiaries and the general public. Meaning-
16 ful disclosure would also further efforts to provide
17 for the general welfare and the free flow of com-
18 merce.

19 (b) DECLARATION OF POLICY.—It is therefore de-
20 clared to be the policy of this Act to protect the interests
21 of participants and beneficiaries in State or local govern-
22 ment employee pension benefit plans and the interests of
23 the Federal government and the general public in the fis-
24 cal soundness of such plans, to minimize the threat of a
25 possible adverse impact of the operations of such plans

1 on Federal revenues and expenditures and the national se-
2 curities markets, and to encourage sponsors of such plans
3 to examine the problems which may be experienced by
4 their plans and to expeditiously implement those remedial
5 measures which may be necessary to guarantee meaning-
6 ful disclosure of the assets and liabilities of such plans
7 as well as their fiscal soundness, by providing for meaning-
8 ful disclosure of the value of State or local government
9 employee pension benefit plan assets and liabilities.

10 **SEC. 3. REPORTING OF INFORMATION WITH RESPECT TO**
11 **STATE OR LOCAL GOVERNMENT EMPLOYEE**
12 **PENSION BENEFIT PLANS TREATED AS A TAX**
13 **EXEMPTION, ETC., REQUIREMENT FOR STATE**
14 **AND LOCAL BONDS.**

15 (a) IN GENERAL.—Subpart B of part IV of sub-
16 chapter B of chapter 1 of the Internal Revenue Code of
17 1986 (relating to requirements applicable to all State and
18 local bonds) is amended by adding at the end the following
19 new section:

20 **“SEC. 149A. REPORTING WITH RESPECT TO STATE OR**
21 **LOCAL GOVERNMENT EMPLOYEE PENSION**
22 **BENEFIT PLANS.**

23 “(a) IN GENERAL.—In the case of a failure to satisfy
24 any requirement of subsection (a) or (b) of section 4980J
25 (relating to failure of State or local government employee

1 pension benefit plans to meet reporting requirements) with
2 respect to any plan maintained with respect to employees
3 of one or more States or political subdivisions of one or
4 more States, no specified Federal tax benefit shall be al-
5 lowed or made with respect to any specified bond issued
6 by any such State or political subdivision (or by any bond-
7 ing authority acting on behalf, or for the benefit, of such
8 State or political subdivision) during the noncompliance
9 period.

10 “(b) NONCOMPLIANCE PERIOD.—For purposes of
11 this section, the term ‘noncompliance period’ means, with
12 respect to any State or political subdivision in connection
13 with any failure, the period beginning on the date that
14 the Secretary notifies such State or political subdivision
15 of such failure and ending on the date that such failure
16 is cured (as determined by the Secretary).

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

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

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

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

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

4 “(1) any exemption from gross income allowed
5 under section 103 (relating to interest on State and
6 local bonds),

7 “(2) any credit allowed under section 54A (re-
8 lating to credit to holders of qualified tax credit
9 bonds),

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

12 “(4) any credit or payment allowed or made
13 under section 6431 (relating to credit for qualified
14 bonds allowed to issuer).”.

15 (b) REPORTING REQUIREMENTS.—Chapter 43 of
16 such Code is amended by adding at the end the following
17 new section:

18 **“SEC. 4980J. FAILURE OF STATE OR LOCAL GOVERNMENT**
19 **EMPLOYEE PENSION BENEFIT PLANS TO**
20 **MEET REPORTING REQUIREMENTS.**

21 “(a) ANNUAL REPORT.—For purposes of section
22 149A, the requirements of this subsection are as follows:

23 “(1) IN GENERAL.—The plan sponsor of a
24 State or local government employee pension benefit
25 plan shall file with the Secretary, in such form and

1 manner as shall be prescribed by the Secretary, a re-
2 port for each plan year beginning on or after Janu-
3 ary 1, 2011, setting forth the following information
4 with respect to the plan, as determined by the plan
5 sponsor as of the end of such plan year:

6 “(A) A schedule of funding status, which
7 shall include a statement as to the current li-
8 ability of the plan, the amount of plan assets
9 available to meet that liability, the amount of
10 the net unfunded liability (if any), and the
11 funding percentage of the plan.

12 “(B) A schedule of contributions by the
13 plan sponsor for the plan year, indicating which
14 are or are not taken into account under sub-
15 paragraph (A).

16 “(C) Alternative projections which shall be
17 specified in regulations of the Secretary for
18 each of the next 20 plan years following the
19 plan year relating to the amount of annual con-
20 tributions, the fair market value of plan assets,
21 current liability, the funding percentage, and
22 such other matters as the Secretary may specify
23 in such regulations, together with a statement
24 of the assumptions and methods used in con-
25 nection with such projections, including as-

1 sumptions related to funding policy, plan
2 changes, future workforce projections, future
3 investment returns, and such other matters as
4 the Secretary may specify in such regulations.
5 The Secretary shall specify in such regulations
6 the projection assumptions and methods to be
7 used as necessary to achieve comparability
8 across plans.

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

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

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

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

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

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

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

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

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

22 “(b) ADDITIONAL REPORTING REQUIREMENTS.—
23 For purposes of section 149A, the requirements of this
24 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),

11 the plan sponsor shall include in the annual report
12 filed for such plan year pursuant to subsection (a)
13 the 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), (C), (F), and (G) 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—

5 “(i) in the case of benefits reasonably
6 determined to be payable during the 5-year
7 period beginning on the first day of the
8 plan year, the first segment rate with re-
9 spect to the applicable month,

10 “(ii) in the case of benefits reasonably
11 determined to be payable during the 15-
12 year period beginning at the end of the pe-
13 riod described in subparagraph (A), the
14 second segment rate with respect to the
15 applicable month, and

16 “(iii) in the case of benefits reason-
17 ably determined to be payable after the pe-
18 riod described in clause (ii), the third seg-
19 ment rate with respect to the applicable
20 month.

21 “(B) SEGMENT RATES.—For purposes of
22 this paragraph—

23 “(i) FIRST SEGMENT RATE.—The
24 term ‘first segment rate’ means, with re-
25 spect to any month, the single rate of in-

1 terest which shall be determined by the
2 Secretary for such month on the basis of
3 the U.S. Treasury obligation yield curve
4 for such month, taking into account only
5 that portion of such yield curve which is
6 based on obligations maturing during the
7 5-year period commencing with such
8 month.

9 “(ii) SECOND SEGMENT RATE.—The
10 term ‘second segment rate’ means, with re-
11 spect to any month, the single rate of in-
12 terest which shall be determined by the
13 Secretary for such month on the basis of
14 the U.S. Treasury obligation yield curve
15 for such month, taking into account only
16 that portion of such yield curve which is
17 based on obligations maturing during the
18 15-year period beginning at the end of the
19 period described in clause (i).

20 “(iii) THIRD SEGMENT RATE.—The
21 term ‘third segment rate’ means, with re-
22 spect to any month, the single rate of in-
23 terest which shall be determined by the
24 Secretary for such month on the basis of
25 the U.S. Treasury obligation yield curve

1 for such month, taking into account only
2 that portion of such yield curve which is
3 based on obligations maturing during peri-
4 ods beginning after the period described in
5 clause (ii).

6 “(C) U.S. TREASURY OBLIGATION YIELD
7 CURVE.—For purposes of this subsection, the
8 term ‘U.S. Treasury obligation yield curve’
9 means, with respect to any month, a yield curve
10 which shall be prescribed by the Secretary for
11 such month and which reflects the average, for
12 the 24-month period ending with the month
13 preceding such month, of monthly yields on in-
14 terest-bearing obligations of the United States.

15 “(c) DEFINITIONS.—For purposes of this section—

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

1 express terms or as a result of surrounding cir-
2 cumstances such plan, fund, or program—

3 “(A) provides retirement income to em-
4 ployees, or

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

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

15 “(A) the value of plan assets as of the end
16 of the plan year bears to

17 “(B) the current liability of the plan for
18 the plan year.

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

23 “(4) PLAN SPONSOR.—The term ‘plan sponsor’
24 means, in connection with a State or local govern-
25 ment employee pension benefit plan, the State, polit-

1 ical subdivision of a State, or agency or instrumen-
2 tality of a State or a political subdivision of a State
3 which establishes or maintains the plan.

4 “(5) PARTICIPANT.—

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

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

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

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

22 “(6) PLAN YEAR.—The term ‘plan year’ means,
23 in connection with a plan, the calendar or fiscal year
24 on which the records of the plan are kept.

1 “(7) STATE.—The term ‘State’ includes any
2 State of the United States, the District of Columbia,
3 the Commonwealth of Puerto Rico, the Virgin Is-
4 lands, American Samoa, Guam, and the Common-
5 wealth of the Northern Mariana Islands.

6 “(8) FAIR MARKET VALUE.—The term ‘fair
7 market value’ has the meaning of such term under
8 section 430(g)(3)(A) (without regard to section
9 430(g)(3)(B)).

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

18 “(e) TRANSPARENCY OF INFORMATION FILED.—The
19 Secretary shall create and maintain a public website, with
20 searchable capabilities, for purposes of posting the infor-
21 mation received by the Secretary pursuant to subsections
22 (a) and (b). Any such information received by the Sec-
23 retary (including any updates to such information received
24 by the Secretary) shall be posted on the website not later

1 than 60 days after receipt and shall not be treated as re-
2 turn information for purposes of this title.”.

3 (c) CLERICAL AMENDMENTS.—

4 (1) The table of sections for subpart B of part
5 IV of subchapter B of chapter 1 of such Code is
6 amended by adding at the end the following new
7 item:

“Sec. 149A. Reporting with respect to State or local government employee pen-
sion benefit plans.”.

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

“Sec. 4980J. Failure of State or local government employee pension benefit
plans to meet reporting requirements.”.

11 **SEC. 4. GENERAL PROVISIONS AND RULES OF CONSTRUC-**
12 **TION.**

13 (a) LIMITATIONS ON FEDERAL RESPONSIBILITIES
14 RELATING TO PLAN OBLIGATIONS AND LIABILITIES.—

15 The United States shall not be liable for any obligation
16 related to any current or future shortfall in any State or
17 local government employee pension plan. Nothing in this
18 Act (or any amendment made by this Act) or any other
19 provision of law shall be construed to provide Federal Gov-
20 ernment funds to diminish or meet any current or future
21 shortfall in, or obligation of, any State or local government
22 employee pension plan. The preceding sentence shall also
23 apply to the Federal Reserve, which may not provide

1 loans, purchase assets, or otherwise act to diminish or
2 meet any such shortfall in, or obligation of, any State or
3 local government employee pension plan.

4 (b) NO FEDERAL FUNDING STANDARDS.—Nothing
5 in this Act (or any amendment made by this Act) shall
6 be construed to alter existing funding standards for State
7 or local government employee pension plans or to require
8 Federal funding standards for such plans.

9 (c) SENSE OF THE CONGRESS.—It is the sense of the
10 Congress that States and political subdivisions thereof
11 that are plans sponsors of State or local government em-
12 ployee pension plans should immediately take requisite ac-
13 tion to ensure the fiscal soundness of such plans.

14 (d) DEFINITIONS.—Terms used in this section which
15 are also used in section 4980J of the Internal Revenue
16 Code of 1986 shall have the same meaning as when used
17 in such section.