THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

BOARD ACTION

- **Board of Directors**
  Legislation Committee

4/12/2011 Board Meeting

8-12

Subject

Express no position on H.R. 567 (Nunes, R-CA) and S. 347 (Burr, R-NC) - Public Employee Pension Transparency Act, and continue to monitor the legislation

Description

H.R. 567 (Nunes, R-CA) (**Attachment 1**) and companion measure S. 347 (Burr, R-NC) (**Attachment 2**) both entitled the Public Employee Pension Transparency Act would impose federal reporting requirements on state and local pension plans. Specifically, H.R. 567 and S. 347 would require public pensions to file annual reports with the U.S. Treasury Department that contain details about their assets, liabilities and funding status using a prescribed methodology and would penalize noncompliant states and localities with a denial of federal tax benefits for their bonds. The bill also would prohibit federal bailouts of state and local pension plans. As drafted, this legislation would include the pension plan Metropolitan subscribes to, the California Public Employees' Retirement System (CalPERS).

Identical legislation, H.R. 6484 (Nunes, R-CA), was introduced late last session in December 2010 and was referred to the House Committee on Ways and Means, but it expired when the last session of Congress adjourned and never became law.

When calculating the value of public pension plan assets, state and local governments typically use their own estimated long-term rate of return on their investments as required by current accounting rules. Proponents of the legislation have expressed a concern that some agencies may be relying on unrealistically high rates of return. Such reliance in turn may cause a public pension agency to understate pension plan liabilities and avoid requesting contributions needed to adequately fund a public pension program.

H.R. 567 and S. 347 would require public pension plans to report their plan assets, liabilities and funding status to the U.S. Treasury Department using both their own investment forecasts as well as the Treasury bond rate (to be determined by a formula).

More specifically, the bills would require government employee pension benefit plans to file with the Secretary of the Treasury an annual report setting forth the following:

1. a schedule of the funding status of the plan;
2. a schedule of contributions by the plan sponsor for the plan year;
3. alternative projections for each of the next 20 plan years relating to the amount of annual contributions, the fair market value of plan assets, current liability, the funding percentage, and other matters specified by the Secretary;
4. a statement of the actuarial assumptions used for the plan year;
5. a statement of the number of plan participants who are retired or separated from service and are either receiving benefits or are entitled to future benefits and those who are active under the plan;
6. a statement of the plan's investment returns;
7. a statement of the degree to which unfunded liabilities are expected to be eliminated; and
8. a statement of the amount of pension obligation bonds outstanding.

If enacted, the Act would require public agencies to submit this information as a condition of receiving federal tax exemptions for the bonds they issue. The Treasury Department would then make the information public.

Proponents of H.R. 567 note that many public pensions typically assume an 8 percent annual return on investments, but over the past five years state pension funds with more than $5 billion in assets have typically earned only 4.5 percent. (See http://devinnunes.blogspot.com/2011/01/wsj-endorses-nunes-bill.html) The concern is that the public may be called on to make up the difference between what the funds earn and what is needed to pay retirees. By using the Treasury bond rate, the supporters believe that the resulting data would clarify how much taxpayers potentially owe to adequately finance public pension plans. For instance, it has been reported that Illinois estimated in 2009 that it had a roughly $85 billion unfunded liability. If that liability had been calculated using a Treasury discount rate, the unfunded liability increases to $167 billion. The supporters of H.R. 567 include the U.S. Chamber of Commerce. (See http://www.uschamber.com/press/releases/2010/december/us-chamber-expresses-support-public-employee-pension-transparency-act)

Opponents of H.R. 567 and S. 347, including the National Council on Teacher Retirement (NCTR) Director Jim Mosman, expressed concerns that the proposed legislation "would recklessly create turmoil in the municipal bond markets and scare bondholders, taxpayers and retirees by erroneously claiming [their] members' pension trusts will soon be exhausted," which he declared is "simply not the case." (See http://www.nctr.org/pdf/NCTR%20press%20statement%20re%20Nunes%20intro%202011.pdf)

Similar concerns were raised with regard to H.R. 6484 by the National Association of State Retirement Administrators along with the National Association of Counties, the United States Conference of Mayors, the National League of Cities, the International City/County Management Association, the National Association of State Auditors Comptrollers and Treasurers, the Government Finance Officers Association, the International Personnel Management Association for Human Resources, and NCTR who released a joint statement, on December 8, 2010 that said, "H.R. 6484 would mandate inappropriate federal reporting requirements on state and local governments" regarding the costs of their pension plans. (See http://www.nctr.org/pdf/PressStatement%20Nunes%20Bill%20final.pdf) Those organizations further objected to the federal government's intrusion into "areas that are the financial responsibility of, and have thus been historically regulated by, the states and/or localities." Additionally, the organizations expressed concerns that H.R. 6484 would conflict with existing accounting standards and would increase state and local government costs. Furthermore, they argued, state and local governments "are not seeking a so-called federal 'bailout' for their retirement systems." According to the statement, "State and local pension systems collectively have pre-funded nearly four-fifths of their future pension liabilities – even when accounting for the steep losses in 2008 and earlier this decade," adding that, "Inaccurate and inflammatory descriptions of the state of public pensions and unnecessary calls for federal intervention are unwarranted and only serve to confuse the public and unduly alarm state and local government retirees."

Congressman Nunes certainly should be applauded for highlighting an issue of national concern that deserves public attention and scrutiny. Metropolitan staff however does not have the necessary actuarial skills and pension background to know whether this approach is the best way to analyze pensions nation-wide. That is why Metropolitan has traditionally not taken positions on state and federal pension legislation. Accordingly, Metropolitan staff recommends a watch position on this legislation.

Policy

Metropolitan's CalPERS contract

California Environmental Quality Act (CEQA)

CEQA determination for Options #1 and #2:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may

have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

Board Options

Option #1

Adopt the CEQA determination and express no position on H.R. 567 (Nunes, R-CA) and S. 347 (Burr, R-NC)
Fiscal Impact: None
Business Analysis: Pension costs and obligations are a significant source of fiscal concern for local government budgets.

Option #2

Adopt the CEQA determination and express support for H.R. 567 (Nunes, R-CA) and S. 347 (Burr, R-NC).
Fiscal Impact: None
Business Analysis: Pension costs and obligations are a significant source of fiscal concern for local government budgets.

Staff Recommendation

Option #1

Linda Waade 4/5/2011
Linda Waade *Date*
Deputy General Manager, External Affairs

Jeff Kightlinger 4/5/2011
Jeffrey Kightlinger *Date*
General Manager

Attachment 1 – H.R. 567 (Nunes, R-CA)

Attachment 2 – S. 347 (Burr, R-NC)

Ref# ea12611611

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112TH CONGRESS
1ST SESSION

H. R. 567

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

FEBRUARY 9, 2011

Mr. NUNES (for himself, Mr. RYAN of Wisconsin, Mr. ISSA, Mr. SMITH of Texas, Mr. HERGER, Mr. BRADY of Texas, Mr. LEE of New York, Mr. GARRETT, Mr. CALVERT, Mr. MCCLINTOCK, Mr. CHAFFETZ, Mr. RIBBLE, Mr. FLORES, Mr. MCHENRY, Mr. MACK, Mr. GOSAR, Mr. LABRADOR, Mr. ROSS of Florida, Mr. SENSENBRENNER, Mrs. MCMORRIS RODGERS, Mrs. MYRICK, Mr. DUNCAN of South Carolina, Mr. ROHRABACHER, Mr. GALLEGLY, Mr. MCCOTTER, Mr. JONES, Mr. COBLE, Mr. SCALISE, Mr. BARTLETT, Mr. MCKINLEY, Mr. ROONEY, Mr. POSEY, Mr. DUNCAN of Tennessee, Mrs. BLACKBURN, Mr. NUGENT, Mr. COFFMAN of Colorado, Mr. LAMBORN, Mrs. BACHMANN, and Mr. WESTMORELAND) introduced the following bill; which was referred to the Committee on Ways and Means

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Public Employee Pension Transparency Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

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

(2) State or local government employee pension benefit plans have promised pension benefits to approximately 20 million Americans who are active employees of these entities. An additional 7 million retirees and their dependents currently receive benefits from State or local government employee pension benefit plans. The interests of participants in many of such plans are in the nature of property rights under State law.

(3) State or local government employee pension benefit plans are substantially facilitated by the favorable tax treatment of participants and beneficiaries, investment earnings, and employee contributions with respect to such plans provided by the Federal Government under the Internal Revenue Code of 1986.

(4) The investment of State or local government employee pension benefit plan assets, the distribution of benefits under such plans, and other related financial activities are facilitated through the use of instrumentalities of, and substantially affect, interstate commerce. These activities, which are interstate in nature and have a substantial impact on the national economy, affect capital formation, regional growth and decline, the national markets for insurance, and the markets for securities and the trading of securities of State and local governments.

(5) The financial status of State or local government employee pension benefit plans also has a direct impact on the national markets for insurance and trading of securities of State and local governments.

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

(7) State or local government employee pension benefit plans are becoming a large financial burden on certain State and local governments and have already resulted in tax increases and the reduction of services.

(8) In fact, a recent study published in the Journal of Economic Perspectives found that the present value of the already-promised pension liabilities of the 50 States amount to $5.17 trillion and that these pension plans are unfunded by $3.23 trillion. Another study determined that the total unfunded liability for all municipal plans in the United States is $574 billion.

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

(10) There currently is a lack of meaningful disclosure regarding the value of State or local government employee pension benefit plan assets and liabilities. This lack of meaningful disclosure poses a direct and serious threat to the financial stability of such plans and their sponsoring governments, impairs the ability of State and local government tax-

payers and officials to understand the financial obligations of their government, and reduces the likelihood that State and local government processes will be effective in assuring the prudent management of their plans. The status quo also constitutes a serious threat to the future economic health of the Nation and places an undue burden upon State and local government taxpayers, who will be called upon to fully fund existing, and future, pension promises.

(11) State or local government employee pension benefit plans are affected with a national public interest and meaningful disclosure of the value of their assets and liabilities is necessary and desirable in order to adequately protect plan participants and their beneficiaries and the general public. Meaningful disclosure would also further efforts to provide for the general welfare and the free flow of commerce.

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

(a) IN GENERAL.—Subpart B of part IV of subchapter B of chapter 1 of the Internal Revenue Code of

1986 (relating to requirements applicable to all State and local bonds) is amended by adding at the end the following new section:

"SEC. 149A. REPORTING WITH RESPECT TO STATE OR LOCAL GOVERNMENT EMPLOYEE PENSION BENEFIT PLANS.

''(a) IN GENERAL.—In the case of a failure to satisfy any requirement of subsection (a) or (b) of section 4980J (relating to failure of State or local government employee pension benefit plans to meet reporting requirements) with respect to any plan maintained with respect to employees of one or more States or political subdivisions of one or more States, no specified Federal tax benefit shall be allowed or made with respect to any specified bond issued by any such State or political subdivision (or by any bonding authority acting on behalf, or for the benefit, of such State or political subdivision) during the noncompliance period.

''(b) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any State or political subdivision in connection with any failure, the period beginning on the date that the Secretary notifies such State or political subdivision of such failure and ending on the date that such failure is cured (as determined by the Secretary).

1 "(c) SPECIFIED BOND.—For purposes of this section,
2 the term 'specified bond' means—
3 "(1) any State or local bond within the meaning
4 of section 103,
5 "(2) any qualified tax credit bond within the
6 meaning of section 54A, and
7 "(3) any build America bond within the mean-
8 ing of section 54AA.
9 "(d) SPECIFIED FEDERAL TAX BENEFIT.—For pur-
10 poses of this section, the term 'specified Federal tax ben-
11 efit' means—
12 "(1) any exemption from gross income allowed
13 under section 103 (relating to interest on State and
14 local bonds),
15 "(2) any credit allowed under section 54A (re-
16 lating to credit to holders of qualified tax credit
17 bonds),
18 "(3) any credit allowed under section 54AA (re-
19 lating to build America bonds), and
20 "(4) any credit or payment allowed or made
21 under section 6431 (relating to credit for qualified
22 bonds allowed to issuer).".
23 (b) REPORTING REQUIREMENTS.—Chapter 43 of
24 such Code is amended by adding at the end the following
25 new section:

"SEC. 4980J. FAILURE OF STATE OR LOCAL GOVERNMENT EMPLOYEE PENSION BENEFIT PLANS TO MEET REPORTING REQUIREMENTS.

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

"(1) IN GENERAL.—The plan sponsor of a State or local government employee pension benefit plan shall file with the Secretary, in such form and manner as shall be prescribed by the Secretary, a report for each plan year beginning on or after January 1, 2011, setting forth the following information with respect to the plan, as determined by the plan sponsor as of the end of such plan year:

"(A) A schedule of funding status, which shall include a statement as to the current liability of the plan, the amount of plan assets available to meet that liability, the amount of the net unfunded liability (if any), and the funding percentage of the plan.

"(B) A schedule of contributions by the plan sponsor for the plan year, indicating which are or are not taken into account under subparagraph (A).

"(C) Alternative projections which shall be specified in regulations of the Secretary for each of the next 20 plan years following the

1 plan year relating to the amount of annual con-
2 tributions, the fair market value of plan assets,
3 current liability, the funding percentage, and
4 such other matters as the Secretary may specify
5 in such regulations, together with a statement
6 of the assumptions and methods used in con-
7 nection with such projections, including as-
8 sumptions related to funding policy, plan
9 changes, future workforce projections, future
10 investment returns, and such other matters as
11 the Secretary may specify in such regulations.
12 The Secretary shall specify in such regulations
13 the projection assumptions and methods to be
14 used as necessary to achieve comparability
15 across plans.
16 ''(D) A statement of the actuarial assump-
17 tions used for the plan year, including the rate
18 of return on investment of plan assets and as-
19 sumptions as to such other matters as the Sec-
20 retary may prescribe by regulation.
21 ''(E) A statement of the number of partici-
22 pants who are each of the following—
23 ''(i) those who are retired or sepa-
24 rated from service and are receiving bene-
25 fits,

"(ii) those who are retired or separated and are entitled to future benefits, and

"(iii) those who are active under the plan.

"(F) A statement of the plan's investment returns, including the rate of return, for the plan year and the 5 preceding plan years.

"(G) A statement of the degree to which, and manner in which, the plan sponsor expects to eliminate any unfunded current liability that may exist for the plan year and the extent to which the plan sponsor has followed the plan's funding policy for each of the preceding 5 plan years. The Secretary shall prescribe by regulation the specific criteria to be used for meeting the requirements of this paragraph.

"(H) A statement of the amount of pension obligation bonds outstanding.

"(2) TIMING OF REPORT.—The plan sponsor of a State or local government employee pension benefit plan shall make the filing required under paragraph (1) for each plan year not later than 210 days after the end of such plan year (or within such time

as may be required by regulations prescribed by the Secretary in order to reduce duplicative filing).

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

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

"(A) the value of plan assets is determined using a standard other than fair market value, or

"(B) the interest rate or rates used to determine the value of liabilities or as the discount value for liabilities are not the interest rates described in paragraph (3),

the plan sponsor shall include in the annual report filed for such plan year pursuant to subsection (a) the supplementary report for such plan year described in paragraph (2) of this subsection.

"(2) USE OF PRESCRIBED VALUATION METHOD AND INTEREST RATES.—A supplementary report for a plan year filed for a plan year pursuant to this subsection shall include the information specified as required in the annual report under subparagraphs (A), (C), (F), and (G) of subsection (a)(1), deter-

1 mined as of the end of such plan year by valuing
2 plan assets at fair market value and by using the in-
3 terest rates described in paragraph (3) to value li-
4 abilities and as the discount value for liabilities.
5 "(3) INTEREST RATES BASED ON U.S. TREAS-
6 URY OBLIGATION YIELD CURVE RATE.—
7 "(A) IN GENERAL.—The interest rates de-
8 scribed in this subsection are—
9 "(i) in the case of benefits reasonably
10 determined to be payable during the 5-year
11 period beginning on the first day of the
12 plan year, the first segment rate with re-
13 spect to the applicable month,
14 "(ii) in the case of benefits reasonably
15 determined to be payable during the 15-
16 year period beginning at the end of the pe-
17 riod described in subparagraph (A), the
18 second segment rate with respect to the
19 applicable month, and
20 "(iii) in the case of benefits reason-
21 ably determined to be payable after the pe-
22 riod described in clause (ii), the third seg-
23 ment rate with respect to the applicable
24 month.

"(B) SEGMENT RATES.—For purposes of this paragraph—

"(i) FIRST SEGMENT RATE.—The term 'first segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the U.S. Treasury obligation yield curve for such month, taking into account only that portion of such yield curve which is based on obligations maturing during the 5-year period commencing with such month.

"(ii) SECOND SEGMENT RATE.—The term 'second segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the U.S. Treasury obligation yield curve for such month, taking into account only that portion of such yield curve which is based on obligations maturing during the 15-year period beginning at the end of the period described in clause (i).

"(iii) THIRD SEGMENT RATE.—The term 'third segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the U.S. Treasury obligation yield curve for such month, taking into account only that portion of such yield curve which is based on obligations maturing during periods beginning after the period described in clause (ii).

"(C) U.S. TREASURY OBLIGATION YIELD CURVE.—For purposes of this subsection, the term 'U.S. Treasury obligation yield curve' means, with respect to any month, a yield curve which shall be prescribed by the Secretary for such month and which reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on interest-bearing obligations of the United States.

"(c) DEFINITIONS.—For purposes of this section—

"(1) STATE OR LOCAL GOVERNMENT EMPLOYEE PENSION BENEFIT PLAN.—The terms 'State or local government employee pension benefit plan' and 'plan' mean any plan, fund, or program, other

than a defined contribution plan (within the meaning of section 414(i)), which was heretofore or is hereafter established or maintained, in whole or in part, by a State, a political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

"(A) provides retirement income to employees, or

"(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan, or the method of distributing benefits from the plan.

"(2) FUNDING PERCENTAGE.—The term 'funding percentage' for a plan year means the ratio (expressed as a percentage) which—

"(A) the value of plan assets as of the end of the plan year bears to

"(B) the current liability of the plan for the plan year.

1 "(3) CURRENT LIABILITY.—The term 'current
2 liability' of a plan for a plan year means the present
3 value of all benefits accrued or earned under the
4 plan as of the end of the plan year.
5 "(4) PLAN SPONSOR.—The term 'plan sponsor'
6 means, in connection with a State or local govern-
7 ment employee pension benefit plan, the State, polit-
8 ical subdivision of a State, or agency or instrumen-
9 tality of a State or a political subdivision of a State
10 which establishes or maintains the plan.
11 "(5) PARTICIPANT.—
12 "(A) IN GENERAL.—The term 'participant'
13 means, in connection with a State or local gov-
14 ernment employee pension benefit plan, an indi-
15 vidual—
16 "(i) who is an employee or former em-
17 ployee of a State, political subdivision of a
18 State, or agency or instrumentality of a
19 State or a political subdivision of a State
20 which is the plan sponsor of such plan, and
21 "(ii) who is or may become eligible to
22 receive a benefit of any type from such
23 plan or whose beneficiaries may be eligible
24 to receive any such benefit.

"(B) BENEFICIARY.—The term 'beneficiary' means a person designated by a participant, or by the terms of the plan, who is or may become entitled to a benefit thereunder.

"(6) PLAN YEAR.—The term 'plan year' means, in connection with a plan, the calendar or fiscal year on which the records of the plan are kept.

"(7) STATE.—The term 'State' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

"(8) FAIR MARKET VALUE.—The term 'fair market value' has the meaning of such term under section 430(g)(3)(A) (without regard to section 430(g)(3)(B)).

"(d) MODEL REPORTING STATEMENT.—The Secretary shall develop model reporting statements for purposes of subsections (a) and (b). Plan sponsors of State or local government employee pension plans may elect, in such form and manner as shall be prescribed by the Secretary, to utilize the applicable model reporting statement for purposes of complying with requirements of such subsections.

"(e) TRANSPARENCY OF INFORMATION FILED.—The Secretary shall create and maintain a public Web site, with searchable capabilities, for purposes of posting the information received by the Secretary pursuant to subsections (a) and (b). Any such information received by the Secretary (including any updates to such information received by the Secretary) shall be posted on the Web site not later than 60 days after receipt and shall not be treated as return information for purposes of this title.".

(c) CLERICAL AMENDMENTS.—

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

"Sec. 149A. Reporting with respect to State or local government employee pension benefit plans.".

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

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

SEC. 4. GENERAL PROVISIONS AND RULES OF CONSTRUCTION.

(a) LIMITATIONS ON FEDERAL RESPONSIBILITIES RELATING TO PLAN OBLIGATIONS AND LIABILITIES.—The United States shall not be liable for any obligation related to any current or future shortfall in any State or

1 local government employee pension plan. Nothing in this
2 Act (or any amendment made by this Act) or any other
3 provision of law shall be construed to provide Federal Gov-
4 ernment funds to diminish or meet any current or future
5 shortfall in, or obligation of, any State or local government
6 employee pension plan. The preceding sentence shall also
7 apply to the Federal Reserve.

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

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

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II

112TH CONGRESS
1ST SESSION

S. 347

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

FEBRUARY 15, 2011

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Public Employee Pension Transparency Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Pursuant to clauses 1 and 3 of section 8 of article I of the Constitution of the United States,

the Congress has the authority to condition the continuation of certain specified Federal tax benefits upon State or local government employee pension benefit plans provision of meaningful disclosure under section 4980J of the Internal Revenue Code of 1986, as added by this Act.

(2) State or local government employee pension benefit plans have promised pension benefits to approximately 20 million Americans who are active employees of these entities. An additional 7 million retirees and their dependents currently receive benefits from State or local government employee pension benefit plans. The interests of participants in many of such plans are in the nature of property rights under State law.

(3) State or local government employee pension benefit plans are substantially facilitated by the favorable tax treatment of participants and beneficiaries, investment earnings, and employee contributions with respect to such plans provided by the Federal Government under the Internal Revenue Code of 1986.

(4) The investment of State or local government employee pension benefit plan assets, the distribution of benefits under such plans, and other re-

lated financial activities are facilitated through the use of instrumentalities of, and substantially affect, interstate commerce. These activities, which are interstate in nature and have a substantial impact on the national economy, affect capital formation, regional growth and decline, the national markets for insurance, and the markets for securities and the trading of securities of State and local governments.

(5) The financial status of State or local government employee pension benefit plans also has a direct impact on the national markets for insurance and trading of securities of State and local governments.

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

(7) State or local government employee pension benefit plans are becoming a large financial burden on certain State and local governments and have already resulted in tax increases and the reduction of services.

(8) In fact, a recent study published in the Journal of Economic Perspectives found that the present value of the already-promised pension liabil-

ities of the 50 States amount to $5.17 trillion and that these pension plans are unfunded by $3.23 trillion. Another study determined that the total unfunded liability for all municipal plans in the United States is $574 billion.

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

(10) There currently is a lack of meaningful disclosure regarding the value of State or local government employee pension benefit plan assets and liabilities. This lack of meaningful disclosure poses a direct and serious threat to the financial stability of such plans and their sponsoring governments, impairs the ability of State and local government taxpayers and officials to understand the financial obligations of their government, and reduces the likelihood that State and local government processes will

be effective in assuring the prudent management of their plans. The status quo also constitutes a serious threat to the future economic health of the Nation and places an undue burden upon State and local government taxpayers, who will be called upon to fully fund existing, and future, pension promises.

(11) State or local government employee pension benefit plans are affected with a national public interest and meaningful disclosure of the value of their assets and liabilities is necessary and desirable in order to adequately protect plan participants and their beneficiaries and the general public. Meaningful disclosure would also further efforts to provide for the general welfare and the free flow of commerce.

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

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

"SEC. 149A. REPORTING WITH RESPECT TO STATE OR LOCAL GOVERNMENT EMPLOYEE PENSION BENEFIT PLANS.

"(a) IN GENERAL.—In the case of a failure to satisfy any requirement of subsection (a) or (b) of section 4980J (relating to failure of State or local government employee pension benefit plans to meet reporting requirements) with respect to any plan maintained with respect to employees of one or more States or political subdivisions of one or more States, no specified Federal tax benefit shall be allowed or made with respect to any specified bond issued by any such State or political subdivision (or by any bonding authority acting on behalf, or for the benefit, of such State or political subdivision) during the noncompliance period.

"(b) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any State or political subdivision in connection with any failure, the period beginning on the date that the Secretary notifies such State or political subdivision of such failure and ending on the date that such failure is cured (as determined by the Secretary).

"(c) SPECIFIED BOND.—For purposes of this section, the term 'specified bond' means—

"(1) any State or local bond within the meaning of section 103,

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

"(3) any build America bond within the meaning of section 54AA.

"(d) SPECIFIED FEDERAL TAX BENEFIT.—For purposes of this section, the term 'specified Federal tax benefit' means—

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

"(2) any credit allowed under section 54A (relating to credit to holders of qualified tax credit bonds),

"(3) any credit allowed under section 54AA (relating to build America bonds), and

"(4) any credit or payment allowed or made under section 6431 (relating to credit for qualified bonds allowed to issuer).".

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

"SEC. 4980J. FAILURE OF STATE OR LOCAL GOVERNMENT EMPLOYEE PENSION BENEFIT PLANS TO MEET REPORTING REQUIREMENTS.

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

"(1) IN GENERAL.—The plan sponsor of a State or local government employee pension benefit plan shall file with the Secretary, in such form and manner as shall be prescribed by the Secretary, a report for each plan year beginning on or after January 1, 2011, setting forth the following information with respect to the plan, as determined by the plan sponsor as of the end of such plan year:

"(A) A schedule of funding status, which shall include a statement as to the current liability of the plan, the amount of plan assets available to meet that liability, the amount of the net unfunded liability (if any), and the funding percentage of the plan.

"(B) A schedule of contributions by the plan sponsor for the plan year, indicating which are or are not taken into account under subparagraph (A).

"(C) Alternative projections which shall be specified in regulations of the Secretary for each of the next 20 plan years following the

1 plan year relating to the amount of annual con-
2 tributions, the fair market value of plan assets,
3 current liability, the funding percentage, and
4 such other matters as the Secretary may specify
5 in such regulations, together with a statement
6 of the assumptions and methods used in con-
7 nection with such projections, including as-
8 sumptions related to funding policy, plan
9 changes, future workforce projections, future
10 investment returns, and such other matters as
11 the Secretary may specify in such regulations.
12 The Secretary shall specify in such regulations
13 the projection assumptions and methods to be
14 used as necessary to achieve comparability
15 across plans.
16 ''(D) A statement of the actuarial assump-
17 tions used for the plan year, including the rate
18 of return on investment of plan assets and as-
19 sumptions as to such other matters as the Sec-
20 retary may prescribe by regulation.
21 ''(E) A statement of the number of partici-
22 pants who are each of the following—
23 ''(i) those who are retired or sepa-
24 rated from service and are receiving bene-
25 fits,

"(ii) those who are retired or separated and are entitled to future benefits, and

"(iii) those who are active under the plan.

"(F) A statement of the plan's investment returns, including the rate of return, for the plan year and the 5 preceding plan years.

"(G) A statement of the degree to which, and manner in which, the plan sponsor expects to eliminate any unfunded current liability that may exist for the plan year and the extent to which the plan sponsor has followed the plan's funding policy for each of the preceding 5 plan years. The Secretary shall prescribe by regulation the specific criteria to be used for meeting the requirements of this paragraph.

"(H) A statement of the amount of pension obligation bonds outstanding.

"(2) TIMING OF REPORT.—The plan sponsor of a State or local government employee pension benefit plan shall make the filing required under paragraph (1) for each plan year not later than 210 days after the end of such plan year (or within such time

as may be required by regulations prescribed by the Secretary in order to reduce duplicative filing).

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

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

"(A) the value of plan assets is determined using a standard other than fair market value, or

"(B) the interest rate or rates used to determine the value of liabilities or as the discount value for liabilities are not the interest rates described in paragraph (3),

the plan sponsor shall include in the annual report filed for such plan year pursuant to subsection (a) the supplementary report for such plan year described in paragraph (2) of this subsection.

"(2) USE OF PRESCRIBED VALUATION METHOD AND INTEREST RATES.—A supplementary report for a plan year filed for a plan year pursuant to this subsection shall include the information specified as required in the annual report under subparagraphs (A), (C), (F), and (G) of subsection (a)(1), deter-

1 mined as of the end of such plan year by valuing
2 plan assets at fair market value and by using the in-
3 terest rates described in paragraph (3) to value li-
4 abilities and as the discount value for liabilities.
5 "(3) INTEREST RATES BASED ON U.S. TREAS-
6 URY OBLIGATION YIELD CURVE RATE.—
7 "(A) IN GENERAL.—The interest rates de-
8 scribed in this subsection are—
9 "(i) in the case of benefits reasonably
10 determined to be payable during the 5-year
11 period beginning on the first day of the
12 plan year, the first segment rate with re-
13 spect to the applicable month,
14 "(ii) in the case of benefits reasonably
15 determined to be payable during the 15-
16 year period beginning at the end of the pe-
17 riod described in subparagraph (A), the
18 second segment rate with respect to the
19 applicable month, and
20 "(iii) in the case of benefits reason-
21 ably determined to be payable after the pe-
22 riod described in clause (ii), the third seg-
23 ment rate with respect to the applicable
24 month.

"(B) SEGMENT RATES.—For purposes of this paragraph—

"(i) FIRST SEGMENT RATE.—The term 'first segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the U.S. Treasury obligation yield curve for such month, taking into account only that portion of such yield curve which is based on obligations maturing during the 5-year period commencing with such month.

"(ii) SECOND SEGMENT RATE.—The term 'second segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the U.S. Treasury obligation yield curve for such month, taking into account only that portion of such yield curve which is based on obligations maturing during the 15-year period beginning at the end of the period described in clause (i).

"(iii) THIRD SEGMENT RATE.—The term 'third segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the U.S. Treasury obligation yield curve for such month, taking into account only that portion of such yield curve which is based on obligations maturing during periods beginning after the period described in clause (ii).

"(C) U.S. TREASURY OBLIGATION YIELD CURVE.—For purposes of this subsection, the term 'U.S. Treasury obligation yield curve' means, with respect to any month, a yield curve which shall be prescribed by the Secretary for such month and which reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on interest-bearing obligations of the United States.

"(c) DEFINITIONS.—For purposes of this section—

"(1) STATE OR LOCAL GOVERNMENT EMPLOYEE PENSION BENEFIT PLAN.—The terms 'State or local government employee pension benefit plan' and 'plan' mean any plan, fund, or program, other

than a defined contribution plan (within the meaning of section 414(i)), which was heretofore or is hereafter established or maintained, in whole or in part, by a State, a political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

"(A) provides retirement income to employees, or

"(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan, or the method of distributing benefits from the plan.

"(2) FUNDING PERCENTAGE.—The term 'funding percentage' for a plan year means the ratio (expressed as a percentage) which—

"(A) the value of plan assets as of the end of the plan year bears to

"(B) the current liability of the plan for the plan year.

1 "(3) CURRENT LIABILITY.—The term 'current
2 liability' of a plan for a plan year means the present
3 value of all benefits accrued or earned under the
4 plan as of the end of the plan year.
5 "(4) PLAN SPONSOR.—The term 'plan sponsor'
6 means, in connection with a State or local govern-
7 ment employee pension benefit plan, the State, polit-
8 ical subdivision of a State, or agency or instrumen-
9 tality of a State or a political subdivision of a State
10 which establishes or maintains the plan.
11 "(5) PARTICIPANT.—
12 "(A) IN GENERAL.—The term 'participant'
13 means, in connection with a State or local gov-
14 ernment employee pension benefit plan, an indi-
15 vidual—
16 "(i) who is an employee or former em-
17 ployee of a State, political subdivision of a
18 State, or agency or instrumentality of a
19 State or a political subdivision of a State
20 which is the plan sponsor of such plan, and
21 "(ii) who is or may become eligible to
22 receive a benefit of any type from such
23 plan or whose beneficiaries may be eligible
24 to receive any such benefit.

1 "(B) BENEFICIARY.—The term 'bene-
2 ficiary' means a person designated by a partici-
3 pant, or by the terms of the plan, who is or
4 may become entitled to a benefit thereunder.
5 "(6) PLAN YEAR.—The term 'plan year' means,
6 in connection with a plan, the calendar or fiscal year
7 on which the records of the plan are kept.
8 "(7) STATE.—The term 'State' includes any
9 State of the United States, the District of Columbia,
10 the Commonwealth of Puerto Rico, the Virgin Is-
11 lands, American Samoa, Guam, and the Common-
12 wealth of the Northern Mariana Islands.
13 "(8) FAIR MARKET VALUE.—The term 'fair
14 market value' has the meaning of such term under
15 section 430(g)(3)(A) (without regard to section
16 430(g)(3)(B)).
17 "(d) MODEL REPORTING STATEMENT.—The Sec-
18 retary shall develop model reporting statements for pur-
19 poses of subsections (a) and (b). Plan sponsors of State
20 or local government employee pension plans may elect, in
21 such form and manner as shall be prescribed by the Sec-
22 retary, to utilize the applicable model reporting statement
23 for purposes of complying with requirements of such sub-
24 sections.

"(e) TRANSPARENCY OF INFORMATION FILED.—The Secretary shall create and maintain a public website, with searchable capabilities, for purposes of posting the information received by the Secretary pursuant to subsections (a) and (b). Any such information received by the Secretary (including any updates to such information received by the Secretary) shall be posted on the website not later than 60 days after receipt and shall not be treated as return information for purposes of this title.".

(c) CLERICAL AMENDMENTS.—

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

"Sec. 149A. Reporting with respect to State or local government employee pension benefit plans.".

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

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

SEC. 4. GENERAL PROVISIONS AND RULES OF CONSTRUCTION.

(a) LIMITATIONS ON FEDERAL RESPONSIBILITIES RELATING TO PLAN OBLIGATIONS AND LIABILITIES.—The United States shall not be liable for any obligation related to any current or future shortfall in any State or

1 local government employee pension plan. Nothing in this
2 Act (or any amendment made by this Act) or any other
3 provision of law shall be construed to provide Federal Gov-
4 ernment funds to diminish or meet any current or future
5 shortfall in, or obligation of, any State or local government
6 employee pension plan. The preceding sentence shall also
7 apply to the Federal Reserve.

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

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

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