

109TH CONGRESS
1ST SESSION

S. 673

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to clarify that federally recognized Indian tribal governments are to be regulated under the same government employer rules and procedures that apply to Federal, State, and other local government employers with regard to the establishment and maintenance of employee benefit plans.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2005

Mr. SMITH (for himself, Mr. BINGAMAN, and Mr. CONRAD) 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 and the Employee Retirement Income Security Act of 1974 to clarify that federally recognized Indian tribal governments are to be regulated under the same government employer rules and procedures that apply to Federal, State, and other local government employers with regard to the establishment and maintenance of employee benefit plans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Governmental Pension
3 Plan Equalization Act of 2005”.

4 **SEC. 2. DEFINITION OF “GOVERNMENTAL PLAN”.**

5 (a) AMENDMENT TO INTERNAL REVENUE CODE OF
6 1986.—Section 414(d) of the Internal Revenue Code of
7 1986 (definition of governmental plan) is amended by add-
8 ing at the end the following: “The term ‘governmental
9 plan’ includes a plan established or maintained for its em-
10 ployees by an Indian tribal government (as defined in sec-
11 tion 7701(a)(40)), a subdivision of an Indian tribal gov-
12 ernment (determined in accordance with section 7871(d)),
13 an agency instrumentality (or subdivision) of an Indian
14 tribal government, or an entity established under Federal,
15 State, or tribal law which is wholly owned or controlled
16 by any of the foregoing.”

17 (b) AMENDMENT TO EMPLOYEE RETIREMENT IN-
18 COME SECURITY ACT OF 1974.—Section 3(32) of the Em-
19 ployee Retirement Income Security Act of 1974 (29
20 U.S.C. 1002(32)) is amended by adding at the end the
21 following: “The term ‘governmental plan’ includes a plan
22 established or maintained for its employees by an Indian
23 tribal government (as defined in section 7701(a)(40)), a
24 subdivision of an Indian tribal government (determined in
25 accordance with section 7871(d)), an agency instrumen-
26 tality (or subdivision) of an Indian tribal government, or

1 an entity established under Federal, State, or tribal law
2 that is wholly owned or controlled by any of the fore-
3 going.”

4 **SEC. 3. EXTENSION TO ALL GOVERNMENTAL PLANS OF**
5 **CURRENT MORATORIUM ON APPLICATION OF**
6 **CERTAIN NONDISCRIMINATION RULES APPLI-**
7 **CABLE TO STATE AND LOCAL PLANS.**

8 (a) IN GENERAL.—

9 (1) Subparagraph (G) of section 401(a)(5) and
10 subparagraph (G) of section 401(a)(26) of the Inter-
11 nal Revenue Code of 1986 are each amended by
12 striking “section 414(d)” and all that follows and
13 inserting “section 414(d).”.

14 (2) Subparagraph (G) of section 401(k)(3) of
15 such Code and paragraph (2) of section 1505(d) of
16 the Taxpayer Relief Act of 1997 (Public Law 105–
17 34; 111 Stat. 1063) are each amended by striking
18 “maintained by a State or local government or polit-
19 ical subdivision thereof (or agency or instrumentality
20 thereof)”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) The heading of subparagraph (G) of section
23 401(a)(5) of the Internal Revenue Code of 1986 is
24 amended by striking “STATE AND LOCAL GOVERN-
25 MENTAL” and inserting “GOVERNMENTAL”.

1 (2) The heading of subparagraph (G) of section
 2 401(a)(26) of such Code is amended by striking
 3 “EXCEPTION FOR STATE AND LOCAL” and inserting
 4 “EXCEPTION FOR”.

5 (3) Section 401(k)(3)(G) of such Code is
 6 amended by inserting “GOVERNMENTAL PLAN.—”
 7 after “(G)”.

8 **SEC. 4. CLARIFICATION THAT TRIBAL GOVERNMENTS ARE**
 9 **SUBJECT TO THE SAME DEFINED BENEFIT**
 10 **PLAN RULES AND REGULATIONS APPLIED TO**
 11 **STATE AND OTHER LOCAL GOVERNMENTS,**
 12 **THEIR POLICE AND FIREFIGHTERS.**

13 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF
 14 1986.—

15 (1) POLICE AND FIREFIGHTERS.—Subpara-
 16 graph (H) section 415(b)(2) of the Internal Revenue
 17 Code of 1986 (defining participant) is amended—

18 (A) in clause (i), by striking “State or po-
 19 litical subdivision” and inserting “State, Indian
 20 tribal government (as defined in section
 21 7701(a)(40)), or any political subdivision”; and

22 (B) in clause (ii)(I), by striking “State or
 23 political subdivision” each place it appears and
 24 inserting “State, Indian tribal government (as
 25 so defined), or any political subdivision”.

1 (2) STATE AND LOCAL GOVERNMENT PLANS.—

2 (A) IN GENERAL.—Subparagraph (A) of
3 section 415(b)(10) of such Code (relating to
4 limitation to equal accrued benefit) is amend-
5 ed—

6 (i) by inserting “, Indian tribal gov-
7 ernment (as defined in section
8 7701(a)(40)),” after “State”;

9 (ii) by inserting “any” before “polit-
10 ical subdivision”; and

11 (iii) by inserting “any of” before “the
12 foregoing”.

13 (B) CONFORMING AMENDMENT.—The
14 heading of paragraph (1) of section 415(b) of
15 such Code is amended by striking “SPECIAL
16 RULE FOR STATE AND” and inserting “SPECIAL
17 RULE FOR STATE, INDIAN TRIBAL, AND”.

18 (3) GOVERNMENT PICK UP CONTRIBUTIONS.—
19 Paragraph (2) of section 414(h) of such Code (relat-
20 ing to designation by units of government) is amend-
21 ed by striking “State or political subdivision” and
22 inserting “State, Indian tribal government (as de-
23 fined in section 7701(a)(40)), or any political sub-
24 division”.

1 (b) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
2 COME SECURITY ACT OF 1974.—Section 4021(b) of the
3 Employee Retirement Income Security Act of 1974 (29
4 U.S.C. 1321(b)) is amended—

5 (1) in paragraph (12), by striking “or” at the
6 end;

7 (2) in paragraph (13), by striking “plan.” and
8 inserting “plan; or”; and

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

10 “(14) established and maintained for its em-
11 ployees by an Indian tribal government (as defined
12 in section 7701(a)(40) of the Internal Revenue Code
13 of 1986), a subdivision of an Indian tribal govern-
14 ment (determined in accordance with section
15 7871(d) of such Code), an agency or instrumentality
16 of an Indian tribal government or subdivision there-
17 of, or an entity established under Federal, State, or
18 tribal law that is wholly owned or controlled by any
19 of the foregoing.”.

20 **SEC. 5. EFFECTIVE DATE.**

21 The amendments made by this Act shall apply to any
22 year beginning before, on, or after the date of the enact-
23 ment of this Act.

○