To amend the Employee Retirement Income Security Act of 1974 with respect to the scope of employee pension benefit plans.

A BILL

To amend the Employee Retirement Income Security Act of 1974 with respect to the scope of employee pension benefit 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 “Preserve Rights Of States and Political subdivisions to Encourage Retirement Savings Act” or the “PROSPERS Act”.

SEC. 2. DEFINITIONS.

Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), by striking “sub-
paragraph (B)” and inserting “subparagraphs
(B) and (C)”; and

(B) by adding at the end the following:

“(C)(i) The terms ‘employee pension benefit plan’
and ‘pension plan’ do not include an individual retirement
plan (as defined in section 7701(a)(37) of the Internal
Revenue Code of 1986) established and maintained pursuant
to a payroll deduction savings program of a State or
qualified political subdivision of a State, provided that—

“(I) the program is specifically established pursuant to State or qualified political subdivision law;

“(II) the program is implemented and administered by the State or qualified political subdivision establishing the program (or by a governmental agency or instrumentality of either), which is responsible for investing the employee savings or for selecting investment alternatives for employees to choose;

“(III) the State or qualified political subdivision (or governmental agency or instrumentality of ei-
ther) assumes responsibility for the security of pay-
roll deductions and employee savings, including by
requiring that amounts withheld from wages by the
employer be transmitted to the program promptly
and by providing an enforcement mechanism to as-
sure compliance with this requirement;

“(IV) the State or qualified political subdivision
(or governmental agency or instrumentality of ei-
ther) adopts measures to ensure that employees are
notified of their rights under the program, and cre-
ates a mechanism for enforcement of those rights;

“(V) participation in the program is voluntary
for employees;

“(VI) all rights of the employee, former em-
ployee, or beneficiary under the program are en-
forceable only by the employee, former employee, or
beneficiary, an authorized representative of such a
person, or by the State or qualified political subdi-
vision (or governmental agency or instrumentality of
either);

“(VII) the involvement of the employer is lim-
ited to—

“(aa) collecting employee contributions
through payroll deductions and remitting them
to the program;
“(bb) providing notice to the employees and maintaining records regarding the employer’s collection and remittance of payments under the program;

“(cc) providing information to the State or qualified political subdivision (or governmental agency or instrumentality of either) necessary to facilitate the operation of the program; and

“(dd) distributing program information to employees from the State or qualified political subdivision (or governmental agency or instrumentality of either) and permitting the State or qualified political subdivision (or governmental agency or instrumentality of either) to publicize the program to employees;

“(VIII) the employer contributes no funds to the program and provides no bonus or other monetary incentive to employees to participate in the program;

“(IX) the employer’s participation in the program is required by the law of the State law or qualified political subdivision;

“(X) the employer has no discretionary authority, control, or responsibility under the program; and
“(XI) the employer receives no direct or indirect consideration in the form of cash or otherwise, other than consideration (including tax incentives and credits) received directly from the State or qualified political subdivision (or governmental agency or instrumentality of either) that does not exceed an amount that reasonably approximates the employer’s (or a typical employer’s) costs under the program.

“(ii) A State savings program will not fail to satisfy the requirements of subclauses (I) through (XI) of clause (i) merely because the program—

“(I) is directed toward those employers that do not offer some other workplace savings arrangement;

“(II) utilizes one or more service or investment providers to operate and administer the program, provided that the State (or governmental agency or instrumentality of the State) retains full responsibility for the operation and administration of the program; or

“(III) treats employees as having automatically elected payroll deductions in an amount or percentage of compensation, including any automatic increases in such amount or percentage, unless the employee specifically elects not to have such deduc-
tions made (or specifically elects to have the deduc-
tions made in a different amount or percentage of
compensation allowed by the program), provided
that the employee is given adequate advance notice
of the right to make such elections and provided,
further, that a program may also satisfy the require-
ments of such subclauses (I) through (XI) without
requiring or otherwise providing for automatic elec-
tions such as those described in this subclause.

“(iii) For purposes of this subparagraph, the term
“qualified political subdivision” means any governmental
unit of a State, including a city, county, or similar govern-
mental body, that—

“(I) has the authority, implicit or explicit,
under State law to require employers’ participation
in the program as described in clause (i); and

“(II) at the time of the establishment of the po-
litical subdivision’s payroll deduction savings pro-
gram—

“(aa) has a population equal to or greater
than the population of the least populated State
(excluding the District of Columbia and terri-
tories listed in paragraph (10));

“(bb) has no geographic overlap with any
other political subdivision that has enacted a
mandatory payroll deduction savings program
for private-sector employees and is not located
in a State that has enacted such a program
statewide; and

“(cc) has implemented and administers a
plan, fund, or program that provides retirement
income to its employees, or results in a deferral
of income by its employees for periods extend-
ing to the termination of covered employment
or beyond.

“(iv) For purposes of clause (i)(III), amounts with-
held from an employee’s wages by the employer are
deemed to be transmitted promptly if such amounts are
transmitted to the program as of the earliest date on
which such contributions can reasonably be segregated
from the employer’s general assets, but in no event later
than the last day of the month following the month in
which such amounts would otherwise have been payable
to the employee in cash.”.