109TH CONGRESS
1ST SESSION

S. 861

To amend the Internal Revenue Code of 1986 to provide transition funding rules for certain plans electing to cease future benefit accruals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 20, 2005

Mr. ISAKSON (for himself and Mr. ROCKEFELLER) 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 transition funding rules for certain plans electing to cease future benefit accruals, and for other purposes.

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 ''Employee Pension Preservation Act of 2005''.

SEC. 2. TRANSITION FUNDING RULES FOR CERTAIN PLANS THAT ARE AMENDED TO CEASE FUTURE BENEFIT ACCRUALS.

(a) AMENDMENT OF 1986 CODE.—Section 412 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(o) TRANSITION FUNDING STANDARDS FOR CERTAIN PLANS THAT ARE AMENDED TO PERMANENTLY CEASE FUTURE BENEFIT ACCRUALS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section, if an eligible plan elects to have this subsection apply—

"(A) the plan shall maintain a transition funding standard account for each applicable plan year,

"(B) the accumulated funding deficiency of the plan for any applicable plan year for purposes of this section and section 4971 shall be determined by using the transition funding standard account rather than the funding standard account used without regard to this subsection, and

"(C) except as provided in paragraph (6), the transition funding standard account shall be credited and charged solely as provided in this subsection and without regard to the requirements of subsection (b), (d), (e), (f), (g), or (l).

"(2) ELIGIBLE PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'eligible plan' means a plan (other than multiemployer plan) to which this section applies—

"(i) which is sponsored by an applicable employer (as defined in subsection (l)(12)(C)(i)), and

"(ii) with respect to which the requirements of subparagraphs (B) and (C) are met.

"(B) ACCRUAL RESTRICTIONS.—The requirements of this subparagraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter, the plan provides that, except to the extent required under section 401(a) or as provided in paragraph (4)(C), a participant will not receive any credit for any purpose under the plan for service with, or for compensation earned from, the employer (or any member of the employer's controlled group (within the meaning of subsection (1)(8)(C))) on or after such first day.

"(C) RESTRICTION ON AMENDMENTS INCREASING LIABILITIES.—The requirements of this subparagraph are met if, at any time during the period beginning on the date of the enactment of this subsection and ending on the day before the first day of the first applicable plan year, no amendment to the plan has been adopted which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan. This subparagraph shall not apply to any plan amendment described in clause (i) or (ii) of subsection (l)(12)(B).

"(3) ELECTIONS AND RELATED TERMS.—

"(A) IN GENERAL.—A plan sponsor shall make the election under paragraph (1) at such time and in such manner as the Secretary may prescribe. Such election, once made, is irrevocable without the consent of the Secretary.

"(B) YEARS FOR WHICH ELECTION MADE.—

"(i) IN GENERAL.—The plan sponsor may select the first plan year to which the election under paragraph (1) applies from among plan years ending after the date of the election. The election shall apply to such plan year and all subsequent years.

"(ii) ELECTION OF NEW PLAN YEAR.—The plan sponsor may specify a new plan year in the election under paragraph (1) and the plan year of the plan may be changed to such new plan year without the approval of the Secretary.

"(C) APPLICABLE PLAN YEAR.—The term 'applicable plan year' means each plan year to which the election under paragraph (1) applies under subparagraph (A).

"(4) CHARGES TO THE ACCOUNT.—

"(A) IN GENERAL.—In the case of any applicable plan year during the amortization period, the transition funding standard account shall be charged with the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such charge shall be separately determined for each applicable plan year.

"(B) YEARS AFTER AMORTIZATION PERIOD.—In the case of an applicable plan year beginning after the amortization period, the transition funding standard account shall be charged with the unfunded liability determined as of the first day of the plan year.

"(C) CURRENT FUNDING OF OTHERWISE PROHIBITED CREDITS.—Notwithstanding paragraph (2)(C), a plan may provide credit for any applicable plan year which is otherwise prohibited under such paragraph, but the transition funding standard account for the plan year shall be charged with the entire amount of the expected increase in unfunded accrued liability (determined under the unit credit funding method) due to benefits accruing during the plan year which are attributable to such credit.

"(D) DEFINITIONS.—For purposes of this subsection—

"(i) UNFUNDED LIABILITY.—The term 'unfunded liability' means the unfunded accrued liability under the plan, determined under the unit credit funding method.

"(ii) AMORTIZATION PERIOD.—The term 'amortization period' means the 25-plan year period beginning with the first applicable plan year.

"(5) CREDIT TO ACCOUNT.—The transition funding standard account for any applicable plan year shall be credited with the amount considered contributed by the employer to or under the plan for the plan year.

"(6) OTHER RULES RELATING TO TRANSITION FUNDING STANDARD ACCOUNT.—In the case of any transition funding standard account—

"(A) the provisions of subsection (c) (other than paragraph (7)) shall apply,

"(B) interest on underpayments, if any, shall be charged at the rate determined under subsection (b),

"(C) in determining credits and charges to the transition funding standard account for the first applicable plan year, all existing amortization bases and any credit balances shall be reduced to zero, and

"(D) in determining credits and charges to the transition funding standard account for any applicable plan year, the value of plan assets shall be equal to their fair market value.''

(b) AMENDMENT OF EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 302 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

''(i) TRANSITION FUNDING STANDARDS FOR CERTAIN PLANS THAT ARE AMENDED TO PERMANENTLY CEASE FUTURE BENEFIT ACCRUALS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, if an eligible plan elects to have this subsection apply—

''(A) the plan shall maintain a transition funding standard account for each applicable plan year,

''(B) the accumulated funding deficiency of the plan for any applicable plan year for purposes of this section and section 4971 of the Internal Revenue Code of 1986 shall be determined by using the transition funding standard account rather than the funding standard account used without regard to this subsection, and

''(C) except as provided in paragraph (6), the transition funding standard account shall be credited and charged solely as provided in this subsection and without regard to the requirements of subsection (b) or (d) of this section or section 303, 304, 305, 306, or 307.

"(2) ELIGIBLE PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'eligible plan' means a plan (other than multiemployer plan) to which this section applies—

"(i) which is sponsored by an applicable employer (as defined in subsection (d)(12)(C)(i)), and

"(ii) with respect to which the requirements of subparagraphs (B) and (C) are met.

"(B) ACCRUAL RESTRICTIONS.—The requirements of this subparagraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter, the plan provides that, except to the extent required under part 2 or as provided in paragraph (4)(C), a participant will not receive any credit for any purpose under the plan for service with, or for compensation earned from, the employer (or any member of the employer's controlled group (within the meaning of subsection (d)(8)(C))) on or after such first day.

"(C) RESTRICTION ON AMENDMENTS INCREASING LIABILITIES.—The requirements of this subparagraph are met if, at any time during the period beginning on the date of the enactment of this subsection and ending on the day before the first day of the first applicable plan year, no amendment to the plan has been adopted which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan. This subparagraph shall not apply to any plan amendment described in clause (i) or (ii) of subsection (d)(12)(B).

"(3) ELECTIONS AND RELATED TERMS.—

"(A) IN GENERAL.—A plan sponsor shall make the election under paragraph (1) at such time and in such manner as the Secretary may prescribe. Such election, once made, is irrevocable without the consent of the Secretary of the Treasury.

"(B) YEARS FOR WHICH ELECTION MADE.—

"(i) IN GENERAL.—The plan sponsor may select the first plan year to which the election under paragraph (1) applies from among plan years ending after the date of the election. The election shall apply to such plan year and all subsequent years.

"(ii) ELECTION OF NEW PLAN YEAR.—The plan sponsor may specify a new plan year in the election under paragraph (1) and the plan year of the plan may be changed to such new plan year without the approval of the Secretary of the Treasury.

"(C) APPLICABLE PLAN YEAR.—For purposes of this subsection, the term 'applicable plan year' means each plan year to which the election under paragraph (1) applies under subparagraph (A).

"(4) CHARGES TO THE ACCOUNT.—

"(A) IN GENERAL.—In the case of any applicable plan year during the amortization period, the transition funding standard account shall be charged with the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such charge shall be separately determined for each applicable plan year.

"(B) YEARS AFTER AMORTIZATION PERIOD.—In the case of an applicable plan year beginning after the amortization period, the transition funding standard account shall be charged with the unfunded liability determined as of the first day of the plan year.

"(C) CURRENT FUNDING OF OTHERWISE PROHIBITED CREDITS.—Notwithstanding paragraph (2)(C), a plan may provide credit for any applicable plan year which is otherwise prohibited under such paragraph, but the transition funding standard account for the plan year shall be charged with the entire amount of the expected increase in unfunded accrued liability (determined under the unit credit funding method) due to benefits accruing during the plan year which are attributable to such credit.

"(D) DEFINITIONS.—For purposes of this subsection—

"(i) UNFUNDED LIABILITY.—The term 'unfunded liability' means the unfunded accrued liability under the plan, determined under the unit credit funding method.

"(ii) AMORTIZATION PERIOD.—The term 'amortization period' means the 25-plan year period beginning with the first applicable plan year.

"(5) CREDIT TO ACCOUNT.—The transition funding standard account for any applicable plan year shall be credited with the amount considered contributed by the employer to or under the plan for the plan year.

"(6) OTHER RULES RELATING TO TRANSITION FUNDING STANDARD ACCOUNT.—In the case of any transition funding standard account—

"(A) the provisions of subsection (c) (other than paragraph (7)) shall apply,

"(B) interest on underpayments, if any, shall be charged at the rate determined under subsection (b),

"(C) in determining credits and charges to the transition funding standard account for the first applicable plan year, all existing amortization bases and any credit balances shall be reduced to zero, and

"(D) in determining credits and charges to the transition funding standard account for any applicable plan year, the value of plan assets shall be equal to their fair market value.".

(c) AMENDMENT TO QUALIFICATION RULES.—Section 401(a) of the Internal Revenue Code of 1986 is amended by inserting after paragraph (34) the following new paragraph:

"(35) SUCCESSOR PLANS TO CERTAIN PLANS.—If a plan to which section 412(o) applies is maintained by an employer that establishes or maintains 1 or more other defined benefit plans, and such other plans in combination provide benefit accruals to any substantial number of successor employees, the Secretary may, in the Secretary's discretion, determine that any trust of which any other such plan is a part does not constitute a qualified trust under this subsection unless all benefit obligations of the plan to which section 412(o) applies have been satisfied. For purposes of this paragraph, the term 'successor employee' means any employee who is or was covered by the plan to which section 412(o) applies and any employee who performs substantially the same type of work with respect to the same business operations as an employee covered by such plan."

(d) PBGC LIABILITY LIMITED.—Section 4022(b) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new paragraph:

"(8) For any plan that terminates at a time when the special funding requirements under section 302(i) and section 412(o) of the Internal Revenue Code of 1986 apply to such plan, paragraphs (1), (3), and (7) shall be applied as if the plan had terminated on the first day of the first applicable plan year described in such sections."

(e) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—

(1) SPECIAL RULES.—Section 404(a)(1)(D) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

"(v) PLANS TO WHICH SECTION 412(O) APPLIES.—In the case of a plan to which section 412(o) applies, the maximum amount deductible under the limitations of this paragraph shall be the amount paid into such plan for such plan year."

(2) COMBINED PLANS.—Section 404(a)(7)(C) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

"(iii) PLANS TO WHICH SECTION 412(O) APPLIES.—Contributions to a plan to which section 412(o) applies shall be disregarded in applying this paragraph."

(f) NOTICE.—In the case of a plan amendment adopted in order to comply with section 412(o)(2)(B) of the Internal Revenue Code of 1986 and with section 302(i)(2)(B) of the Employee Retirement Income Security Act of 1974, any notice required under section 4980F(e) of such Code or section 204(h) of such Act shall be subject to the timing rules applicable to multiemployer plans under Treasury Regulation section 54.4980F–1 Q/A–9 (or any successor provision). This subsection shall not apply to any plan unless such plan is—

(1) described in section 412(o) of such Code and section 302(i) of such Act, and

(2) maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years ending after the date of the enactment of this Act.

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