

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

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.

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 “Employee Pension
5 Preservation Act of 2005”.

1 **SEC. 2. TRANSITION FUNDING RULES FOR CERTAIN PLANS**
 2 **THAT ARE AMENDED TO CEASE FUTURE BEN-**
 3 **EFIT ACCRUALS.**

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

7 “(o) TRANSITION FUNDING STANDARDS FOR CER-
 8 TAIN PLANS THAT ARE AMENDED TO PERMANENTLY
 9 CEASE FUTURE BENEFIT ACCRUALS.—

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

13 “(A) the plan shall maintain a transition
 14 funding standard account for each applicable
 15 plan year,

16 “(B) the accumulated funding deficiency of
 17 the plan for any applicable plan year for pur-
 18 poses of this section and section 4971 shall be
 19 determined by using the transition funding
 20 standard account rather than the funding
 21 standard account used without regard to this
 22 subsection, and

23 “(C) except as provided in paragraph (6),
 24 the transition funding standard account shall be
 25 credited and charged solely as provided in this

1 subsection and without regard to the require-
 2 ments of subsection (b), (d), (e), (f), (g), or (l).

3 “(2) ELIGIBLE PLAN.—For purposes of this
 4 subsection—

5 “(A) IN GENERAL.—The term ‘eligible
 6 plan’ means a plan (other than multiemployer
 7 plan) to which this section applies—

8 “(i) which is sponsored by an applica-
 9 ble employer (as defined in subsection
 10 (l)(12)(C)(i)), and

11 “(ii) with respect to which the re-
 12 quirements of subparagraphs (B) and (C)
 13 are met.

14 “(B) ACCRUAL RESTRICTIONS.—The re-
 15 quirements of this subparagraph are met if, ef-
 16 fective as of the first day of the first applicable
 17 plan year and at all times thereafter, the plan
 18 provides that, except to the extent required
 19 under section 401(a) or as provided in para-
 20 graph (4)(C), a participant will not receive any
 21 credit for any purpose under the plan for serv-
 22 ice with, or for compensation earned from, the
 23 employer (or any member of the employer’s
 24 controlled group (within the meaning of sub-
 25 section (1)(8)(C))) on or after such first day.

“(C) RESTRICTION ON AMENDMENTS IN-
 CREATING LIABILITIES.—The requirements of
 this subparagraph are met if, at any time dur-
 ing the period beginning on the date of the en-
 actment 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 nonforfeit-
 able 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 irrev-
 ocable 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.

1 “(ii) AMORTIZATION PERIOD.—The
 2 term ‘amortization period’ means the 25-
 3 plan year period beginning with the first
 4 applicable plan year.

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

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

13 “(A) the provisions of subsection (c) (other
 14 than paragraph (7)) shall apply,

15 “(B) interest on underpayments, if any,
 16 shall be charged at the rate determined under
 17 subsection (b),

18 “(C) in determining credits and charges to
 19 the transition funding standard account for the
 20 first applicable plan year, all existing amortiza-
 21 tion bases and any credit balances shall be re-
 22 duced to zero, and

23 “(D) in determining credits and charges to
 24 the transition funding standard account for any

1 applicable plan year, the value of plan assets
 2 shall be equal to their fair market value.”

3 (b) AMENDMENT OF EMPLOYEE RETIREMENT IN-
 4 COME SECURITY ACT OF 1974.—Section 302 of the Em-
 5 ployee Retirement Income Security Act of 1974 is amend-
 6 ed by adding at the end the following new subsection:

7 “(i) TRANSITION FUNDING STANDARDS FOR CER-
 8 TAIN PLANS THAT ARE AMENDED TO PERMANENTLY
 9 CEASE FUTURE BENEFIT ACCRUALS.—

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

13 “(A) the plan shall maintain a transition
 14 funding standard account for each applicable
 15 plan year,

16 “(B) the accumulated funding deficiency of
 17 the plan for any applicable plan year for pur-
 18 poses of this section and section 4971 of the In-
 19 ternal Revenue Code of 1986 shall be deter-
 20 mined by using the transition funding standard
 21 account rather than the funding standard ac-
 22 count used without regard to this subsection,
 23 and

24 “(C) except as provided in paragraph (6),
 25 the transition funding standard account shall be

1 credited and charged solely as provided in this
 2 subsection and without regard to the require-
 3 ments of subsection (b) or (d) of this section or
 4 section 303, 304, 305, 306, or 307.

5 “(2) ELIGIBLE PLAN.—For purposes of this
 6 subsection—

7 “(A) IN GENERAL.—The term ‘eligible
 8 plan’ means a plan (other than multiemployer
 9 plan) to which this section applies—

10 “(i) which is sponsored by an applica-
 11 ble employer (as defined in subsection
 12 (d)(12)(C)(i)), and

13 “(ii) with respect to which the re-
 14 quirements of subparagraphs (B) and (C)
 15 are met.

16 “(B) ACCRUAL RESTRICTIONS.—The re-
 17 quirements of this subparagraph are met if, ef-
 18 fective as of the first day of the first applicable
 19 plan year and at all times thereafter, the plan
 20 provides that, except to the extent required
 21 under part 2 or as provided in paragraph
 22 (4)(C), a participant will not receive any credit
 23 for any purpose under the plan for service with,
 24 or for compensation earned from, the employer
 25 (or any member of the employer’s controlled

1 group (within the meaning of subsection
2 (d)(8)(C))) on or after such first day.

3 “(C) RESTRICTION ON AMENDMENTS IN-
4 CREASING LIABILITIES.—The requirements of
5 this subparagraph are met if, at any time dur-
6 ing the period beginning on the date of the en-
7 actment of this subsection and ending on the
8 day before the first day of the first applicable
9 plan year, no amendment to the plan has been
10 adopted which increases the liabilities of the
11 plan by reason of any increase in benefits, any
12 change in the accrual of benefits, or any change
13 in the rate at which benefits become nonforfeit-
14 able under the plan. This subparagraph shall
15 not apply to any plan amendment described in
16 clause (i) or (ii) of subsection (d)(12)(B).

17 “(3) ELECTIONS AND RELATED TERMS.—

18 “(A) IN GENERAL.—A plan sponsor shall
19 make the election under paragraph (1) at such
20 time and in such manner as the Secretary may
21 prescribe. Such election, once made, is irrev-
22 ocable without the consent of the Secretary of
23 the Treasury.

24 “(B) YEARS FOR WHICH ELECTION
25 MADE.—

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

7 “(ii) ELECTION OF NEW PLAN
 8 YEAR.—The plan sponsor may specify a
 9 new plan year in the election under para-
 10 graph (1) and the plan year of the plan
 11 may be changed to such new plan year
 12 without the approval of the Secretary of
 13 the Treasury.

14 “(C) APPLICABLE PLAN YEAR.—For pur-
 15 poses of this subsection, the term ‘applicable
 16 plan year’ means each plan year to which the
 17 election under paragraph (1) applies under sub-
 18 paragraph (A).

19 “(4) CHARGES TO THE ACCOUNT.—

20 “(A) IN GENERAL.—In the case of any ap-
 21 plicable plan year during the amortization pe-
 22 riod, the transition funding standard account
 23 shall be charged with the amount necessary to
 24 amortize the unfunded liability of the plan, de-
 25 termined as of the first day of the plan year,

1 in equal annual installments (until fully amor-
 2 tized) over the remainder of the amortization
 3 period. Such charge shall be separately deter-
 4 mined for each applicable plan year.

5 “(B) YEARS AFTER AMORTIZATION PE-
 6 RIOD.—In the case of an applicable plan year
 7 beginning after the amortization period, the
 8 transition funding standard account shall be
 9 charged with the unfunded liability determined
 10 as of the first day of the plan year.

11 “(C) CURRENT FUNDING OF OTHERWISE
 12 PROHIBITED CREDITS.—Notwithstanding para-
 13 graph (2)(C), a plan may provide credit for any
 14 applicable plan year which is otherwise prohib-
 15 ited under such paragraph, but the transition
 16 funding standard account for the plan year
 17 shall be charged with the entire amount of the
 18 expected increase in unfunded accrued liability
 19 (determined under the unit credit funding
 20 method) due to benefits accruing during the
 21 plan year which are attributable to such credit.

22 “(D) DEFINITIONS.—For purposes of this
 23 subsection—

24 “(i) UNFUNDED LIABILITY.—The
 25 term ‘unfunded liability’ means the un-

1 funded accrued liability under the plan, de-
 2 termined under the unit credit funding
 3 method.

4 “(ii) AMORTIZATION PERIOD.—The
 5 term ‘amortization period’ means the 25-
 6 plan year period beginning with the first
 7 applicable plan year.

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

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

16 “(A) the provisions of subsection (c) (other
 17 than paragraph (7)) shall apply,

18 “(B) interest on underpayments, if any,
 19 shall be charged at the rate determined under
 20 subsection (b),

21 “(C) in determining credits and charges to
 22 the transition funding standard account for the
 23 first applicable plan year, all existing amortiza-
 24 tion bases and any credit balances shall be re-
 25 duced to zero, and

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

5 (c) AMENDMENT TO QUALIFICATION RULES.—Sec-
 6 tion 401(a) of the Internal Revenue Code of 1986 is
 7 amended by inserting after paragraph (34) the following
 8 new paragraph:

9 “(35) SUCCESSOR PLANS TO CERTAIN PLANS.—
 10 If a plan to which section 412(o) applies is main-
 11 tained by an employer that establishes or maintains
 12 1 or more other defined benefit plans, and such
 13 other plans in combination provide benefit accruals
 14 to any substantial number of successor employees,
 15 the Secretary may, in the Secretary’s discretion, de-
 16 termine that any trust of which any other such plan
 17 is a part does not constitute a qualified trust under
 18 this subsection unless all benefit obligations of the
 19 plan to which section 412(o) applies have been satis-
 20 fied. For purposes of this paragraph, the term ‘suc-
 21 cessor employee’ means any employee who is or was
 22 covered by the plan to which section 412(o) applies
 23 and any employee who performs substantially the
 24 same type of work with respect to the same business
 25 operations as an employee covered by such plan.”

1 (d) PBGC LIABILITY LIMITED.—Section 4022(b) of
 2 the Employee Retirement Income Security Act of 1974 is
 3 amended by adding at the end the following new para-
 4 graph:

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

12 (e) LIMITATION ON DEDUCTIONS UNDER CERTAIN
 13 PLANS.—

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

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

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

1 “(iii) PLANS TO WHICH SECTION
 2 412(O) APPLIES.—Contributions to a plan
 3 to which section 412(o) applies shall be
 4 disregarded in applying this paragraph.”

5 (f) NOTICE.—In the case of a plan amendment adopt-
 6 ed in order to comply with section 412(o)(2)(B) of the
 7 Internal Revenue Code of 1986 and with section
 8 302(i)(2)(B) of the Employee Retirement Income Security
 9 Act of 1974, any notice required under section 4980F(e)
 10 of such Code or section 204(h) of such Act shall be subject
 11 to the timing rules applicable to multiemployer plans
 12 under Treasury Regulation section 54.4980F-1 Q/A-9 (or
 13 any successor provision). This subsection shall not apply
 14 to any plan unless such plan is—

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

17 (2) maintained pursuant to one or more collec-
 18 tive bargaining agreements between employee rep-
 19 resentatives and one or more employers.

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

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