

109TH CONGRESS
1ST SESSION

H. R. 4055

To amend the Employee Retirement Income Security Act of 1974 and title 11, United State Code, to provide necessary reforms for employee pension benefit plans.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2005

Mr. VISCLOSKY introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Employee Retirement Income Security Act of 1974 and title 11, United State Code, to provide necessary reforms for employee pension benefit plans.

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 “Employees’ Pension
5 Security Act of 2005”.

1 **TITLE I—TRUSTEESHIP OF**
2 **SINGLE-EMPLOYER PLANS**

3 **SEC. 101 REQUIREMENTS RELATING TO TRUSTEESHIP OF**
4 **SINGLE-EMPLOYER PLANS.**

5 (a) IN GENERAL.—Section 403(a) of the Employee
6 Retirement Income Security Act of 1974 (29 U.S.C.
7 1103(a)) is amended—

8 (1) by redesignating paragraphs (1) and (2) as
9 subparagraphs (A) and (B), respectively;

10 (2) by inserting “(1)” after “(a)”; and

11 (3) by adding at the end the following new
12 paragraph:

13 “(2)(A) The assets of a pension plan which is a sin-
14 gle-employer plan shall be held in trust by a joint board
15 of trustees, which shall consist of two or more trustees
16 representing on an equal basis the interests of the em-
17 ployer or employers maintaining the plan and the interests
18 of the participants and their beneficiaries.

19 “(B)(i) Except as provided in clause (ii), in any case
20 in which the plan is maintained pursuant to one or more
21 collective bargaining agreements between one or more em-
22 ployee organizations and one or more employers, the trust-
23 ees representing the interests of the participants and their
24 beneficiaries pursuant to subparagraph (A) shall be des-
25 ignated by such employee organizations.

1 “(ii) Clause (i) shall not apply with respect to a plan
2 described in such clause if the employee organization (or
3 all employee organizations, if more than one) referred to
4 in such clause file with the Secretary, in such form and
5 manner as shall be prescribed in regulations of the Sec-
6 retary, a written waiver of their rights under clause (i).

7 “(iii) In any case in which clause (i) does not apply
8 with respect to a pension plan which is a single-employer
9 plan because the plan is not described in clause (i) or be-
10 cause of a waiver filed pursuant to clause (ii), the trustee
11 or trustees representing the interests of the participants
12 and their beneficiaries shall consist of one or more partici-
13 pants under the plan elected to serve as such in accord-
14 ance with this clause. The Secretary shall provide by regu-
15 lation for a secret ballot of the participants under the plan
16 for purposes of such election, and for certification of the
17 results thereof to the participants (and any employee orga-
18 nization referred to in clause (ii)) and to the employer.”.

19 (b) CONFORMING AMENDMENTS.—Section 403(a)(1)
20 of such Act (as redesignated under subsection (a)) is
21 amended—

22 (1) by striking “Such trustee or trustees” and
23 inserting “Except as provided in paragraph (2), such
24 trustee or trustees”;

1 (2) by striking “fiduciary, and upon accept-
2 ance” and inserting “fiduciary. Upon acceptance”;
3 and

4 (3) in subparagraph (A) (as so redesignated),
5 by striking “the plan” the first place it appears and
6 inserting “in the case of a plan other than a pension
7 plan which is a single-employer plan, the plan”.

8 **SEC. 102. EFFECTIVE DATE.**

9 The amendments made by this title shall apply with
10 respect to plan years beginning after 180 days after the
11 date of the enactment of this Act. The Secretary of Labor
12 shall prescribe the initial regulations necessary to carry
13 out the provisions of such amendments not later than 90
14 days after the date of the enactment of this Act.

15 **TITLE II—DISCLOSURE OF**
16 **PENSION PLAN FISCAL HEALTH**

17 **SEC. 201. PENSION BENEFIT INFORMATION.**

18 (a) PENSION BENEFIT STATEMENTS REQUIRED ON
19 PERIODIC BASIS.—

20 (1) IN GENERAL.—Subsection (a) of section
21 105 of the Employee Retirement Income Security
22 Act of 1974 (29 U.S.C. 1025) is amended—

23 (A) by striking “shall furnish to any plan
24 participant or beneficiary who so requests in
25 writing,” and inserting “shall furnish at least

1 once every 3 years, in the case of a participant
2 in a defined benefit plan who has attained age
3 35, and annually, in the case of an individual
4 account plan, to each plan participant, and
5 shall furnish to any plan participant or bene-
6 ficiary who so requests,” and

7 (B) by adding at the end the following
8 flush sentence:

9 “Information furnished under the preceding sentence to
10 a participant in a defined benefit plan (other than at the
11 request of the participant) may be based on reasonable
12 estimates determined under regulations prescribed by the
13 Secretary.”.

14 (2) MODEL STATEMENT.—Section 105 of such
15 Act (29 U.S.C. 1025) is amended by adding at the
16 end the following new subsection:

17 “(e) The Secretary of Labor shall develop a model
18 benefit statement which shall be used by plan administra-
19 tors in complying with the requirements of subsection (a).
20 Such statement shall include—

21 “(1) the amount of nonforfeitable accrued bene-
22 fits as of the statement date which is payable at nor-
23 mal retirement age under the plan,

1 “(2) the amount of accrued benefits which are
2 forfeitable but which may become nonforfeitable
3 under the terms of the plan,

4 “(3) the amount or percentage of any reduction
5 due to integration of the benefit with the partici-
6 pant’s Social Security benefits or similar govern-
7 mental benefits,

8 “(4) the percentage of the net return on invest-
9 ment of plan assets for the preceding plan year (or,
10 with respect to investments directed by the partici-
11 pant, the net return on investment of plan assets for
12 such year so directed), and, stated separately, the
13 administrative and transaction fees incurred in con-
14 nection with such investment,

15 “(5) in the case of an individual account plan,
16 the percentage of assets in the individual account
17 that consists of employer securities and employer
18 real property (as defined in paragraphs (1) and (2),
19 respectively, of section 407(d)), as determined as of
20 the most recent valuation date of the plan,

21 “(6) information on how to contact the Social
22 Security Administration to obtain a participant’s
23 personal earnings and benefit estimate statement,

24 “(7) information on early retirement benefit
25 and joint and survivor annuity reductions, and

1 “(8) a notice advising participants and bene-
2 ficiaries of the importance of diversifying the invest-
3 ment of the assets in their accounts.”.

4 (3) RULE FOR MULTIEMPLOYER PLANS.—Sub-
5 section (d) of section 105 of such Act (29 U.S.C.
6 1025) is amended to read as follows:

7 “(d) Each administrator of a plan to which more than
8 1 unaffiliated employer is required to contribute shall fur-
9 nish a statement described in subsection (a) to any plan
10 participant or beneficiary who so requests in writing.”.

11 (b) DISCLOSURE OF BENEFIT CALCULATIONS.—

12 (1) IN GENERAL.—Section 105 of such Act (as
13 amended by subsection (a)) is amended further—

14 (A) by redesignating subsections (b), (c),
15 (d), and (e) as subsections (c), (d), (e), and (f),
16 respectively; and

17 (B) by inserting after subsection (a) the
18 following new subsection:

19 “(b)(1) In the case of a participant or beneficiary who
20 is entitled to a distribution of a benefit under an employee
21 pension benefit plan, the administrator of such plan shall
22 provide to the participant or beneficiary the information
23 described in paragraph (2) upon the written request of
24 the participant or beneficiary.

1 “(2) The information described in this paragraph in-
2 cludes—

3 “(A) a worksheet explaining how the amount of
4 the distribution was calculated and stating the as-
5 sumptions used for such calculation,

6 “(B) upon written request of the participant or
7 beneficiary, any documents relating to the calcula-
8 tion (if available), and

9 “(C) such other information as the Secretary
10 may prescribe.

11 Any information provided under this paragraph shall be
12 in a form calculated to be understood by the average plan
13 participant.”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) Section 101(a)(2) of such Act (29
16 U.S.C. 1021(a)(2)) is amended by striking
17 “105(a) and (c)” and inserting “105(a), (b),
18 and (d)”.

19 (B) Section 105(e) of such Act (as redesign-
20 nated by paragraph (1)(A) of this subsection) is
21 amended by inserting “or (b)” after “subsection
22 (a)”.

23 (C) Section 106(b) of such Act (29 U.S.C.
24 1026(b)) is amended by striking “sections

1 105(a) and 105(c)” and inserting “subsections
2 (a), (b), and (d) of section 105”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply with respect to requests for state-
5 ments received on or after January 1, 2006.

6 **SEC. 202. PROVISION TO PARTICIPANTS AND BENE-**
7 **FICIARIES OF MATERIAL INVESTMENT IN-**
8 **FORMATION IN ACCURATE FORM.**

9 (a) IN GENERAL.—Section 404(c) of the Employee
10 Retirement Income Security Act of 1974 (29 U.S.C.
11 1104(c)) is amended by adding at the end the following
12 new paragraph:

13 “(4) The plan sponsor and plan administrator of a
14 pension plan described in paragraph (1) shall have a fidu-
15 ciary duty to ensure that each participant and beneficiary
16 under the plan, in connection with the investment by the
17 participant or beneficiary of plan assets in the exercise of
18 his or her control over assets in his account, is provided
19 with all material investment information regarding invest-
20 ment of such assets to the extent that the provision of
21 such information is generally required to be disclosed by
22 the plan sponsor to investors in connection with such an
23 investment under applicable securities laws. The provision
24 by the plan sponsor or plan administrator of any mis-

1 leading investment information shall be treated as a viola-
2 tion of this paragraph.”.

3 (b) ENFORCEMENT.—

4 (1) IN GENERAL.—Section 502(e) of such Act
5 (29 U.S.C. 1132(e)) is amended—

6 (A) by redesignating paragraph (8) as
7 paragraph (9); and

8 (B) by inserting after paragraph (7) the
9 following new paragraph:

10 “(8) The Secretary may assess a civil penalty against
11 any person of up to \$1,000 a day from the date of the
12 person’s failure or refusal to comply with the requirements
13 of section 404(c)(4) until such failure or refusal is cor-
14 rected.”.

15 (2) CONFORMING AMENDMENT.—Section
16 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) is
17 amended by striking “(6), or (7)” and inserting
18 “(6), (7), or (8)”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply with respect to investments made
21 on or after the date of the enactment of this Act.

1 **TITLE III—STRENGTHENED PRO-**
2 **TECTIONS AGAINST ABUSE**
3 **OF THE BANKRUPTCY AND**
4 **TERMINATION PROCESS**

5 **SEC. 301. ADDITIONAL REQUIREMENTS FOR TERMINATION.**

6 (a) **ADDITIONAL REQUIREMENTS FOR DISTRESS**
7 **TERMINATION.**—Section 4041(c)(2)(B) of the Employee
8 Retirement Income Security Act of 1974 (29 U.S.C.
9 1341(c)(2)(B)) is amended by adding at the end the fol-
10 lowing:

11 “(iv) **ADDITIONAL REQUIREMENTS.**—
12 Notwithstanding any other provision of
13 this section, unless the corporation or the
14 court, in the case of a distress termination
15 pursuant to clause (ii), has determined
16 that reasonable efforts to consider avail-
17 able alternatives to termination (including,
18 but not limited to, alternatives described in
19 section 4042(c)(4)) have been undertaken
20 by such person (and, in the case of a plan
21 maintained pursuant to a collective bar-
22 gaining agreement, have been undertaken
23 by the bargaining parties in good faith
24 bargaining), the plan may not be termi-
25 nated. A participant or beneficiary of the

1 plan or an employee organization rep-
2 resenting such participants or beneficiaries
3 may bring an action in the appropriate
4 court to challenge such determination by
5 the corporation and seek equitable relief or
6 must be afforded an opportunity to be
7 heard by the appropriate court if a court
8 is making such determination.”.

9 (b) ADDITIONAL REQUIREMENTS FOR COURT DE-
10 CREES.—Section 4042(c) of such Act (29 U.S.C. 1342(c))
11 is amended—

12 (1) by inserting after the first sentence the fol-
13 lowing new sentences: “The court may not enter
14 such a decree unless that court has found that rea-
15 sonable efforts to consider available alternatives to
16 termination (including, but not limited to, alter-
17 natives described in paragraph (4) have been under-
18 taken by the plan sponsor (and, in the case of a plan
19 maintained pursuant to a collective bargaining
20 agreement, have been undertaken by the bargaining
21 parties in good faith bargaining). There is a pre-
22 sumption that a plan need not be terminated if the
23 plan sponsor can continue in business outside a case
24 under title 11, United States Code (or under any
25 similar law of a State or a political subdivision of a

1 State), in which reorganization is sought without
2 terminating the plan.”; and

3 (2) in the sentence following the sentences in-
4 serted by paragraph (1), by striking “the preceding
5 sentence” and inserting “the first sentence of this
6 subsection,”.

7 (c) RIGHT TO INTERVENE TO CHALLENGE COURT
8 DECREE.—Section 4042(c) of such Act (as amended by
9 subsection (b)) is further amended by inserting after the
10 fourth sentence the following new sentence: “If any party
11 consisting of the plan sponsor, a plan participant, or (in
12 the case of a plan maintained pursuant to a collective bar-
13 gaining agreement) the employee organization rep-
14 resenting plan participants for purposes of collective bar-
15 gaining disagrees with any such determination by the cor-
16 poration, such party may intervene in the proceeding to
17 challenge the determinations of the corporation.”.

18 (d) CONSIDERATION OF ALTERNATIVES BY COR-
19 PORATION AND PLAN SPONSOR.—Section 4042(c) of such
20 Act (as amended by the preceding provisions of this sec-
21 tion) is further amended by adding after the seventh sen-
22 tence the following: “The corporation and the plan admin-
23 istrator may proceed with such an agreement only if they
24 have made reasonable efforts to consider available alter-
25 natives to termination (including, but not limited to, alter-

1 natives described in paragraph (4) of this subsection) and
2 the plan participants and beneficiaries have been provided
3 with at least 60 days notice before such agreement is given
4 effect. During such 60-day period, a participant or bene-
5 ficiary of the plan or an employee organization rep-
6 resenting such participants or beneficiaries may bring an
7 action in the appropriate court to seek appropriate equi-
8 table relief if such reasonable efforts have not been
9 made.”.

10 (e) EFFORTS BY THE CORPORATION AT CONSULTA-
11 TION WITH PARTIES.—Section 4042(c) of such Act is
12 amended by adding at the end the following new para-
13 graph:

14 “(4)(A) Prior to making any determination referred
15 to in the preceding provisions of this subsection, the cor-
16 poration shall consult with the plan participants and (in
17 the case of a plan maintained pursuant to a collective bar-
18 gaining agreement) the employee organization rep-
19 resenting plan participants for purposes of collective bar-
20 gaining to determine whether there are any reasonable
21 available alternatives to termination (including, but not
22 limited to, alternatives described subparagraph (B)).

23 “(B) The reasonable alternatives to termination re-
24 ferred to in subparagraph (A) consist of measures which

1 are in the best interest of plan participants and which in-
2 clude (but are not limited to) the following:—

3 “(i) Financing or loans sought by any member
4 of the plan sponsor’s controlled group, with or with-
5 out assistance from the corporation, in order to ob-
6 tain plan financing, including back-up guarantees to
7 any such financing which the corporation is hereby
8 authorized to provide for such purpose.

9 “(ii) New plan structures agreed to by the par-
10 ties, such as transfer of plan liabilities to multiem-
11 ployer plans, new benefit formulas for new hires or
12 non-vested participants, or other plan restructuring
13 alternatives agreed to by the parties.

14 “(iii) Reinsurance which the corporation is
15 hereby authorized to obtain for the plan.

16 “(iv) An agreement by the parties authorizing
17 alternative funding schedules, approved by the cor-
18 poration, which would modify plan funding, subject
19 to the minimum funding requirements for the plan
20 under part 3 of subtitle B of title I.

21 “(v) Purchase by the plan sponsor of an annu-
22 ity contract to cover liabilities of the plan, which the
23 corporation is hereby authorized to guarantee as
24 necessary to secure such a contract.”.

1 (f) NOTICE OF RIGHT TO CHALLENGE DETERMINA-
2 TIONS RELATING TO PLAN TERMINATION.—

3 (1) PROCEDURE FOR STANDARD TERMI-
4 NATIONS.—Section 4041(a)(2)(B) of such Act (29
5 U.S.C. 1341(a)(2)(B)) is amended in clause (i) by
6 striking “and” at the end, in clause (ii)(V) by strik-
7 ing “require.” and inserting “require, and”, and by
8 inserting after clause (ii) the following new clause:

9 “(iii) the right of participants and
10 beneficiaries to challenge determinations
11 under this section.”.

12 (2) TERMINATION PROCEEDINGS FOR DISTRESS
13 TERMINATIONS AND TERMINATIONS COMMENCED BY
14 THE PBGC.—Section 4042(a) of such Act (29 U.S.C.
15 1342(a)) is amended by adding at the end the fol-
16 lowing new sentence: “Prior to commencing pro-
17 ceedings under this section with respect to any plan,
18 the corporation shall provide notice to plan partici-
19 pants and beneficiaries of the right to challenge de-
20 terminations under this section, written in a manner
21 likely to be understood by the participant or bene-
22 ficiary.”.

23 **SEC. 302. EFFECTIVE DATE OF TITLE.**

24 The amendments made by this title shall apply with
25 respect to any plans undergoing termination proceedings

1 pursuant to section 4041 or 4042 of the Employee Retirement
2 Income Security Act of 1974 which are pending on
3 or after June 29, 2005.

4 **TITLE IV—RECOVERY OF BENEFIT LIABILITIES WHICH ARE**
5 **NOT GUARANTEED**
6

7 **SEC. 401. AMENDMENT TO TITLE 11 OF THE UNITED**
8 **STATES CODE.**

9 Section 507(a)(1) of title 11, United States Code, is
10 amended by adding at the end the following:

11 “(D) Subject to subparagraphs (A), (B),
12 and (C), allowed unsecured claims for benefit li-
13 abilities to participants and beneficiaries under
14 a single-employer plan (as defined in section
15 4001(a)(15) of the Employee Retirement In-
16 come Security Act of 1974) in connection with
17 the termination of the plan, in excess of the
18 benefits payable to the participants and bene-
19 ficiaries by the Pension Benefit Guaranty Cor-
20 poration under section 4022 of the Employee
21 Retirement Income Security Act of 1974 in
22 connection with such termination.”.

23 **SEC. 402. EFFECTIVE DATE; APPLICATION OF AMENDMENT.**

24 (a) EFFECTIVE DATE.—Except as provided in sub-
25 section (b), section 401 and the amendment made by such

1 section shall take effect on October 18, 2005, or the date
2 of the enactment of this Act, whichever date is later.

3 (b) APPLICATION OF AMENDMENT.—The amendment
4 made by section 401 shall not apply with respect to cases
5 commenced under title 11 of the United States Code be-
6 fore the effective date of this section.

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