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rm's-length sale of assets to an unrelated party to be relieved of his liability.

In order to encourage new employers o join multiemployer plans, a "free ook" rule is provided under which a new mployer who does not contribute for nore than 6 consecutive plan years may eave a plan without incurring liability when several conditions are satisfied.

The bill imposes a periodic payment ap on the amount of withdrawal liability of 20 annual payments of an amount letermined on the basis of the employer's contributions over the 5 years preeding the withdrawal. Additionally, liability limitations are provided as folows: First, the liability of an insolvent mployer undergoing liquidation or disolution would be limited to the sum of 0 percent of the liability plus that porion of 50 percent of the liability which loes not exceed the liquidation or dissoution value; second, the liability of an ndividual (sole proprietor or partner) would not reach personal assets exempt under bankruptcy law; and third, where ll or substantially all of an employer's ssets are transferred in a bona fide sale n an arm's-length transaction to an unelated party, the liability would not exeed, where the liquidation or dissolution alue of the employer does not exceed $2 million, the greater of first, 30 percent of he liquidation or dissolution value or econd, the liability attributable to the mployer's employees.

For sales in which the liquidation alue exceeds $2 million, the 30-percent imitation would be incrementally inreased as in a tax table so that it would each 80 percent for a liquidation value xceeding $10 million. Any dispute over n employer's withdrawal liability must e resolved through arbitration.

The bill provides for two types of withirawal liability—related funds in which multiemployer may voluntarily particiate. The first is a PBGC fund to remburse plans for withdrawal liability hat is uncollectible because an employer s involved in bankruptcy or insolvency roceedings. The second is a reinsurance und which may be established by plan ponsors to relieve employers of portions f withdrawal liability that would have een paid by other employers had it not een forgiven, by the 20-year periodic ayment cap, de minimus rule, and so orth, or which are unattributable, unollectible, or attributable to the emloyer. The bill also permits the estabishment of a third type of reinsurance und in which employers in the construcion industry may participate.

The effective date for the imposition of withdrawal liability is April 29, 1980. The ommittees decided in part to move up he date from February 27, 1979, the date contained in earlier versions of the bill, ecause the original purpose of a retroctive effective date—namely, to avoid ncouragement of employer withdrawals while the bill was being considered—has een achieved. It should also be noted hat the April 29 effective date is the roduct of strong political pressures by ertain withdrawing employers who were aught by the earlier date. I realize that ermitting these employers to avoid liaility only increases the burdens of those employers remaining with the plans in question, but it appears necessary to accept the April 29 date in order to enact the bill before the August 1 deadline for action.

That somewhat increases the burdens of those employers who remain; but it appears necessary to accept this April 29, 1980, date in order to enact the bill before the August 1 deadline for action, which we now face; and it applies, of course, only within the particular multiemployer plans to which it relates.

The bill also contains provisions dealing with mergers and transfers of assets and liabilities as well as with plan partitions. In those cases where an employer withdrew from a multiemployer plan prior to the effective date of withdrawal liability, the PBGC would continue to have its partition authority under ERISA section 4063(d) and its airthority to guarantee benefits under the terminated plan under the full ERISA section 4022 single-employer plan guarantee.

For multiemployer plans experiencing financial difficulty, the bill provides mandatory reorganization under which plans are required to meet a special faster funding requirement called the minimum contribution requirement (MCR). Employers who remain with a plan in reorganization are protected from too rapid increases in funding under the MCR through an overburden credit and a safe harbor provision. The overburden credit, which is applied to reduce a plan's accumulated funding deficiency, is available to plans with more retirees than active participants for a plan year. I am pleased to note that the permissive reduction of certain recently granted benefits by plans in reorganization has been deleted in the compromise bill.

If, despite reorganization, a plan becomes unable to meet benefit payments, those payments would have to be suspended until they are supportable by employer contributions and other plan assets. If such an insolvent plan is unable to pay benefits at the levels guaranteed under the bill, the PBGC would make up the difference through financial assistance insolvency insurance.

The level of guarantee provided by the bill has been a subject of much debate. The original administration proposal was to guarantee 100 percent of the first $5 of pension accrual per month per year of service and 60 percent of the next $15 per month per year of service. The original proposal at the March 24 Senate Labor Committee markup of S. 1076 was 100 percent of the first $5 and 75 percent of the next $15. The 75 percent figure would be reduced to 65 percent for those plans which did not meet certain minimal pre-ERISA funding requirements.

At the markup, I opposed both the administration and the committee proposals and offered an amendment to raise the guarantee to 100 percent of the first $5 and 85 percent of the next $15. The 85 percent would be reduced to 80 percent for those plans which did not meet certain nominal pre-ERISA funding requirements.

My efforts to raise the guarantee were supported by the American Association of Retired Persons, the United Food and Commercial Workers International Union, and the United Mine Workers of America. With the assistance of the Senator from Rhode Island (Mr. PELL) a compromise guarantee was approved which was 100 percent of the first $5 and 80 percent of the next $15, with certain modifications in meeting special situations.

For those plans not meeting the specific pre-ERISA funding requirements, the 80-percent figure would be reduced to 70 percent. As with all compromises I was not fully satisfied with the 80–70 percent figure we settled on, but it was better than the original proposal. Subsequently, in order to get a joint bill to the Senate floor, it was unfortunately necessary to reduce the guarantee to 100 percent of the first $5 and 75 percent/65 percent of the next $15. This guarantee reduction was ameliorated somewhat by the elimination of the permissive authority of plans in reorganization to eliminate certain accrued benefits.

Even though I believe that the bill's provisions on lower guarantee levels are too severe, I believe they are the best that are possible of agreement. I urge my Senate colleagues and affected workers and retirees to join in opposing proposals for guarantees lower than the Senate committee's guarantee level, as already approved by the House of Representatives.

I should add that the bill requires the PBGC to propose a feasible supplemental guarantee program for that portion of a participant's benefit that is not guaranteed because of the partial guarantee of the accrual rate in excess of $5.

In order to pay for the proposed termination insurance program, the bill would raise the present premium of 50 cents per participant per year to $2.60 over 9 years. The PBGC would be required to increase the premium automatically if it projects that for any year its assets are less than twice what it paid out in the preceding year. The PBGC would have discretion to accelerate the premium if the board of directors determines that increased premium income is necessary to provide assistance to plans which are receiving assistance and to plans the board finds are reasonably likely to require assistance.

The premium in S. 1076 is less than the premium permitted in the Senate Labor Committee bill which could have risen to $3.40 in the 10th year. Without actual experience under a mandatory program, it is not possible to say with assurance what the premium should be. I believe that the premium settled on in the joint bill is on the low side, but only experience will tell what the appropriate premium level should be.

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The bill also contains a number of proposals based upon certain provisions of S. 209, the Williams-Javits ERISA Improvements Act of 1979. These proposals treat delinquent contributions, return of mistaken contributions, the preemption of the Hawaii prepaid health care law, and severance pay and supplemental retirement income arrangements. The bill

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also contains proposals on church plans and program oversight. As to the church pension plans, I might say that I am not too happy about those as it exempts also those who work for schools and similar institutions which are church-related but, nonetheless, if we want a bill there were some things we had to give and that was one of them and I was very unhappy with it.

S. 1076 represents years of hard work and debate by interested parties across the country and four committees of Congress. There may be areas where the legislation can be improved, but I believe that is the best that can be produced at this time. The question is when and in order to improve it in areas A and B would there be grave deficiencies created in areas C and D?

Multiemployer plan insurance protection in my judgment is a vital element of ERISA's basic objectives affecting over 8 million plan participants. The time has come while we still remain among the many diverse interests in balance to adopt these amendments and to enact them into law, and I am satisfied that it is best to do that to insure a pension guarantee program which provides mandatory benefit guarantees to the millions of workers who are affected.

Mr. President, that completes my statement.

Mr. MATSUNAGA. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. MATSUNAGA. Mr. President, I rise in support of the pending measure and I wish to commend and congratulate both the Senator from New Jersey (Mr. WILLIAMS) and the Senator from New York (Mr. JAVITS). They have put in a tremendous amount of work into this bill with so much understanding, with so much yielding here and yielding there to the wishes of others Senators, but always with judiciousness.

I, for one, with Hawaii particularly in mind had the occasion to appear before their committee and also to deal with them on a personal basis outside of committee meetings. I must say that I was met with only understanding and with a cooperative spirit of trying to do what was right, and for this I am truly grateful to both the Senator from New Jersey and the Senator from New York and I express on behalf of the people of Hawaii my deepest gratitude and mahalo.

I wish also to commend the chairman of the Finance Committee, the distinguished Senator from Louisiana (Mr. LONG), the ranking minority member of the committee, the distinguished Senator from Kansas (Mr. DOLE), and the chairman of the Finance Subcommittee on Pensions, the distinguished Senator from Texas (Mr. BENTSEN) for their Herculean effort in bringing to this floor a sensible, acceptable measure. To them also I extend the appreciation and thanks they so well deserve.

If the floor manager will yield further, the recourse available to multiemployer pension plans under current law for collecting delinquent contributions is insufficient and unnecessarily cumbersome and costly.

May I inquire of the floor manager, does the bill improve the legal recourse available to plans against delinquent employers?

Mr. WILLIAMS. Yes, it does. We have appreciated the opportunity to work with the Senator in connection with a situation that arose in Hawaii that had a great deal of appeal to those of us who are on the Labor and Human Resources Committee. We, of course, had the Hawaiian preemption question before us. In the process of considering it we have had the pleasure of discussion with our good friend from Hawaii and his ideas were so well received that others wanted to join in, as a matter of fact, but it was so unique and so good that we wanted to make sure it was preserved. We deal with it that way, as exclusive to Hawaii.

Mr. MATSUNAGA. Again I express my appreciation.

Mr. WILLIAMS. On this whole question of delinquent contributions and the withdrawal liability collection, the bill provides a direct and I suggest unambiguous cause of action under ERISA to a plan against a delinquent employer.

Mr. MATSUNAGA. If I may pose a further question. In some recent cases such as the Washington Area Carpenters Fund Overhead Door Co. case, a simple collection action brought by plan trustees has been converted into lengthy, costly, and complex litigation concerning claims and defenses unrelated to the employer's promise of contributions and the plan's entitlement to the contributions. Would the bill correct this situation?

Mr. WILLIAMS. I feel that it would correct the situation. It is essential to the financial health of multiemployer plans that they and their actuaries be able to rely on an employer's contribution promises.

Further, plan participants for whom the employer promises to make pension contributions to the plan in exchange for their labor are entitled to rely on their employer's promises. The bill clarifies the law in this regard by providing a direct ERISA cause of action against a delinquent employer without regard to extraneous claims or defenses.

Mr. MATSUNAGA. The Senator, of course, will agree that the provisions for employer withdrawal liability are central to this legislation. Will these same principles apply to claims by a plan for withdrawal liability?

Mr. WILLIAMS. Affirmative. Like suits to collect delinquent contributions, it is intended that a plan's claim for withdrawal liability not be subject to extraneous claims and defenses.

Mr. MATSUNAGA. One final question, if the Senator will yield further.

The bill directs the courts in delinquency cases to award a plan which wins judgment not only the delinquent contributions, but other costs and damages as well. Do those provisions constitute a maximum as well as a minimum restriction on the relief available to plans?

Mr. WILLIAMS. Those provisions, as we drafted and intended them, are a minimum but not a maximum.

Mr. MATSUNAGA. I do appreciate the response of the floor manager. May I enter into a colloquy with the floor manager on another matter relative to the withdrawal and partial withdrawal rule as applied to the shipbuilding industry.

Mr. WILLIAMS. I would be happy to proceed with the colloquy on this part on this impact of the legislation.

Mr. MATSUNAGA. Will the floor manager of the bill clarify the existing provisions for withdrawal and partial withdrawal liability?

Mr. WILLIAMS. Yes.

Mr. MATSUNAGA. The original measure considered by the Senate Finance Committee contained a special rule for the construction industry. In committee, I raised the shipbuilding industry's concern with the general withdrawal and partial withdrawal provisions.

The shipbuilding industry is cyclical and has problems of intermittent employment as does the construction industry. For example, in good times with new ships being built, a shipyard will hire a number of workers; the shipyard's work force will be greatly increased. But in bad times, once the shipyard completes its existing contracts for new ships, it will begin to lay off workers; there is no work to maintain the work force.

As soon as a new order is received, the shipyard will rehire the workers. The shipyard, unlike construction sites in the building trades, will remain. The investment in docks, dock cranes, and shipbuilding equipment is not easily moved. Once shipbuilding resumes, the shipyard will increase the number of its workers, but until that time, the shipyard workers will be laid off.

Since the shipbuilding industry faces the same cyclical problem as the construction industry, I suggested that the committee broaden the construction industry rule to include ship building. Various committee members had similar concerns for other industries. Rather than specifically providing for these industries and unintentionally neglecting other industries not mentioned in committee, the staff recommended a general provision to cover all industries similarly situated.

I note that the substitute bill establishes a special withdrawal liability rule for the construction industry as an exception to the general withdrawal and partial withdrawal rules. The substitute bill in section 104 allows the Pension Benefits Guaranty Corporation to extend the special withdrawal liability rule to other industries whose characteristics make the special rule appropriate. Is it the floor manager's understanding that this provision will permit the shipbuilding industry to seek such relief from the Pension Benefit Guaranty Corporation? In other words, the Pension Benefit Guaranty Corporation may extend the special withdrawal liability rule to the shipbuilding industry upon review of the facts presented by that industry?

Am I correct?

Mr. WILLIAMS. Yes, these relief provisions permit the special withdrawal liability rules to be applied to other industries such as the shipbuilding industry.

Mr. MATSUNAGA. I thank the Senator.

Will the Pension Benefit Guaranty [illegible]