

Kill Bill?

LATE ON THE EVENING OF DEC. 9, 2003, a resounding groan of disappointment could be heard in offices across Washington, D.C. Both houses of Congress officially adjourned, leaving various pieces of legislation without resolution. One of particular interest to us here at the Academy was legislation that would designate a replacement for the now defunct 30-year Treasury bond used to discount liabilities and determine funding for defined benefit pension plans.

In the waning days of the congressional year, those organizations focused on retirement security and the preservation of defined benefit (DB) plans led a heightened lobbying effort to urge Congress to pass this legislation. The Academy's Pension Practice Council even sent two separate letters expressing concern that employers would face financial uncertainties without a specified replacement for the discount rate.

The temporary rate that replaced the 30-year bond as part of the Job Creation and Worker Assistance Act of 2001 expired on Dec. 31, 2003, forcing companies to revert to 105 percent of a 4-year weighted average of 30-year Treasury rates.

The question this raises is, how does one get a piece of legislation to the President's desk for his signature?

Think back to your childhood Social Studies class, when everyone was required to learn how a bill becomes a law. I remember watching a video showing a cheerful piece of parchment (let's call him "Bill") dancing his way through the Capitol as both the House and Senate voted him through with much enthusiasm and only moderate debate. Bill was then sent to the President for his signature, and everyone in my class was forever misled by the illustration that this was how easily laws were made.

What we were never taught was that it's more difficult, at times, to enact a bill than it is to stop it from being enacted, *even when there is agreement on a majority of the provisions contained therein*. We now know that competing interests, bipartisan/bicameral differences, and personal conflicts, often keep "Bill" from making his way from the Capitol to the White House.

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Last year's pension legislation provides the perfect example of legislation that was easier to stop than to pass, despite widespread agreement on the appropriate replacement for the 30-year rate.

In April 2003, Reps. Rob Portman (R-Ohio) and Benjamin Cardin (D-Md.) introduced

omnibus legislation containing a variety of provisions, including a 3-year replacement of the Treasury rate with a rate based on conservatively invested corporate bonds. HR 1776 was the first in a string of bills this year that offered a temporary replacement. It was a large, comprehensive bill, however, that wasn't likely to pass in its entirety. Interested parties quickly realized that the only

hope of passage was a stand-alone bill or attaching the provision to another must-move bill.

Thus began an all-out effort to get legislation enacted by the end of the year.

Committee hearings were held, the Academy offered testimony at four of these hearings.

In July, shortly after a scaled-down version of the Portman/Cardin legislation was controversially passed out of the House Ways and Means Committee, Sen. Judd Gregg (R-N.H.) introduced legislation that would replace the rate for five years with a corporate bond index and also establish a commission to review the financial situation of DB plans.

The Bush administration subsequently offered its pension reform proposal, including the support of a corporate bond yield curve as the replacement for the 30-year rate in funding DB plans.

The Senate Finance Committee then passed draft legislation that would replace the rate first with a corporate bond rate, followed by a phased-in yield curve. This legislation also contained a provision that would, as we now know, further complicate passage of a replacement rate before the temporary rate expired.

The provision in question would have exempted plans that weren't required to make a deficit reduction contribution (DRC) in 2000 from making such contributions for the 2004-2006 plan years, a provision that did not have general acceptance.

Then, in October, the full House passed HR 3108



(397-2), the Pension Funding Equity Act, which would provide a two-year replacement also based on a corporate bond rate. The Senate Health, Education, Labor, and Pensions Committee then passed draft legislation, establishing a three-year replacement and a commission to develop long-term solutions for pension funding issues.

So at this point, there were five pieces of legislation, either passed or introduced, each of which established a corporate bond rate as the immediate, temporary replacement for the 30-year bond. Negotiations between the two Senate committees that had passed legislation fell short, primarily because of the DRC relief and the phased-in yield curve. Despite efforts to bring HR 3108 to the Senate floor for passage if a compromise couldn't be reached, the Senate didn't act on this legislation.

Since time was short and all attempts to pass the fix in a stand-alone bill had seemingly failed, the provision was at-

tached to another bill that was considered a must-have and easy-to-pass piece of legislation. That bill was HR 3521, designed to extend certain tax provisions that were set to expire at the end of the year.

In addition to a 2-year corporate bond replacement for the 30-year Treasury rate, this bill also contained a provision for a 2-year exemption from the DRC for commercial airlines that maintained pension plans. This last ditch effort to enact pension legislation was introduced and passed by the House only days before Congress planned to adjourn for the year.

Unfortunately, it was quickly apparent that the DRC relief was a sticking point for several Senators. Some felt the provision needed to be broader, including more than the airline industry, while others felt that the provision provided too much relief for companies and would have a profoundly negative impact on the PBGC. So, despite a massive lobbying campaign by organizations such as the American Benefits Council and the

ERISA Industry Committee (not to mention our own letters), nothing passed.

However, at the same time, discussions regarding the omnibus appropriations bill weren't going well, and the House and Senate agreed to return after the Thanksgiving holiday for one last effort at passing those and other outstanding bills. Ascertaining that the 30-year fix wouldn't pass if it continued to be coupled with the DRC relief, organizations called on Congress to separate the issues in order to pass the more immediate need—a replacement for the 30-year rate.

When Congress returned on Dec. 8, the Senate indicated to the House that if it passed another bill with the 30-year rate provision and extended the DRC provision from airlines to all industries but limited the relief available, the Senate would bring the bill to the floor and clear it for enactment. The House declined, having already passed two bills that were never considered by the full Senate.

On Dec. 9, 2003, Senate Majority



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Leader Bill Frist (R-Tenn.) and Senate Minority Leader Tom Daschle (D-S.D.) agreed to bring HR 3108 to the floor when Congress reconvened in January, thus ending a hard-fought effort to separate the pension-funding fix from the DRC relief before the end of 2003 and the expiration of the temporary rate.

True to promises, on Jan. 28, 2004, the Senate passed (86-9) its own version of HR 3108, adding provisions which would relieve commercial airlines and steelmakers with underfunded plans of 80 percent of the additional DRC contribution in the first year and 60 percent in the second year, as well as additional funding relief for multiemployer plans. However, some Senate Democrats immediately blocked a motion to appoint conferees until they were assured adequate participation in the conference negotiations.

In addition to the conference delay, on Jan. 22, Treasury Secretary John Snow, Labor Secretary Elaine Chao and Commerce Secretary Donald Evans wrote a letter to Sen. Frist warning him that they will recommend that President Bush veto the legislation if the final version includes the DRC provision because it would worsen pension plan underfunding. So much for illusions of the blissful pension "Bill" dancing his way to the President's desk—now, he must be looking pretty beleaguered.

At the time of this writing, I can only hope that the legislation will have passed through conference, both houses and been signed by the President (anticipating that the urgent need for a replacement rate will override any advice to veto). However, damage to the defined benefit pension system may already have been done. The economic troubles of the past several years have resulted in the underfunding of pension plans. Financial uncertainty, caused by a delay in passage of replacement for the 30-year Treasury bond, may have already forced employers to consider drastic measures such as freezing their defined benefit plans, a process from which most plans won't recover.

The retirement security of millions of Americans was placed on hold due to a process that makes it easier to stop important legislation than to enact it, despite widespread agreement on the solution. ●



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