

109TH CONGRESS
1ST SESSION

S. 1573

To amend the Internal Revenue Code of 1986 to encourage the funding of collectively bargained retiree health benefits.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2005

Mrs. DOLE (for herself and Mr. CORZINE) 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 encourage the funding of collectively bargained retiree health benefits.

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 “Retiree Health Bene-
5 fits Act of 2005”.

6 **SEC. 2. FUNDING OF RETIREE HEALTH BENEFITS.**

7 (a) COLLECTIVELY BARGAINED TRANSFER TREATED
8 AS A QUALIFIED TRANSFER.—

9 (1) IN GENERAL.—Section 420(b) of the Inter-
10 nal Revenue Code of 1986 (defining qualified trans-

1 fer) is amended by redesignating paragraph (5) as
2 paragraph (6) and by inserting after paragraph (4)
3 the following new paragraph:

4 “(5) A collectively bargained transfer (as de-
5 fined in subsection (e)(5)) shall be treated as a
6 qualified transfer.”.

7 (2) CONFORMING AMENDMENTS.—

8 (A) Subparagraph (B) of section 420(b)(2)
9 of such Code is amended by inserting “or a col-
10 lectively bargained transfer” after “paragraph
11 (4)”.

12 (B) Paragraph (3) of section 420(b) of
13 such Code is amended to read as follows:

14 “(3) LIMITATION ON AMOUNT TRANSFERRED.—

15 “(A) IN GENERAL.—The amount of excess
16 pension assets which may be transferred in a
17 qualified transfer (other than a collectively bar-
18 gained transfer) shall not exceed the amount
19 which is reasonably estimated to be the amount
20 the employer maintaining the plan will pay
21 (whether directly or through reimbursement)
22 out of such account during the taxable year of
23 the transfer for qualified current retiree health
24 liabilities.

1 “(B) EXCEPTION FOR COLLECTIVELY BAR-
2 GAINED TRANSFERS.—The amount of excess
3 pension assets which may be transferred in a
4 collectively bargained transfer shall not exceed
5 the amount which is reasonably estimated, in
6 accordance with the provisions of the collective
7 bargaining agreement and generally accepted
8 accounting principles, to be the amount the em-
9 ployer maintaining the plan will pay (whether
10 directly or through reimbursement) out of such
11 account during the collectively bargained cost
12 maintenance period for collectively bargained
13 retiree health liabilities.”.

14 (C) Section 420(b)(6) of such Code, as re-
15 designated by paragraph (1), is amended by in-
16 serting “(other than a collectively bargained
17 transfer)” after “No transfer”.

18 (b) REQUIREMENTS OF PLANS MAKING COLLEC-
19 TIVELY BARGAINED TRANSFERS.—

20 (1) IN GENERAL.—Paragraph (1) of section
21 420(c) of the Internal Revenue Code of 1986 (relat-
22 ing to requirements of plan transferring assets) is
23 amended to read as follows:

24 “(1) USE OF TRANSFERRED ASSETS.—

1 “(A) IN GENERAL.—Except in the case of
2 a collectively bargained transfer, any assets
3 transferred to a health benefits account in a
4 qualified transfer (and any income allocable
5 thereto) shall be used only to pay qualified cur-
6 rent retiree health liabilities (other than liabil-
7 ities of key employees not taken into account
8 under subsection (e)(1)(D)) for the taxable year
9 of the transfer (whether directly or through re-
10 imbursement).

11 “(B) COLLECTIVELY BARGAINED TRANS-
12 FER.—Any assets transferred to a health bene-
13 fits account in a collectively bargained transfer
14 (and any income allocable thereto) shall be used
15 only to pay collectively bargained retiree health
16 liabilities (other than liabilities of key employees
17 not taken into account under subsection
18 (e)(6)(D)) for the taxable year of the transfer
19 or for any subsequent taxable year during the
20 collectively bargained cost maintenance period
21 (whether directly or through reimbursement).

22 “(C) AMOUNTS NOT USED TO PAY FOR
23 HEALTH BENEFITS.—

24 “(i) IN GENERAL.—Any assets trans-
25 ferred to a health benefits account in a

1 qualified transfer (and any income allo-
2 cable thereto) which are not used as pro-
3 vided in subparagraph (A) (in the case of
4 a qualified transfer other than a collec-
5 tively bargained transfer) or cannot be
6 used as provided in subparagraph (B) (in
7 the case of a collectively bargained trans-
8 fer) shall be transferred out of the account
9 to the transferor plan.

10 “(ii) TAX TREATMENT OF
11 AMOUNTS.—Any amount transferred out of
12 an account under clause (i)—

13 “(I) shall not be includible in the
14 gross income of the employer, but

15 “(II) shall be treated as an em-
16 ployer reversion for purposes of sec-
17 tion 4980 (without regard to sub-
18 section (d) thereof).

19 “(D) ORDERING RULE.—For purposes of
20 this section, any amount paid out of a health
21 benefits account shall be treated as paid first
22 out of the assets and income described in sub-
23 paragraph (A) (in the case of a qualified trans-
24 fer other than a collectively bargained transfer)

1 or subparagraph (B) (in the case of a collec-
2 tively bargained transfer).”.

3 (2) CONFORMING AMENDMENTS.—

4 (A) Subparagraph (A) of section 420(e)(3)
5 of such Code is amended to read as follows:

6 “(A) IN GENERAL.—The requirements of
7 this paragraph are met if—

8 “(i) except as provided in clause (ii),
9 each group health plan or arrangement
10 under which applicable health benefits are
11 provided provides that the applicable em-
12 ployer cost for each taxable year during
13 the cost maintenance period shall not be
14 less than the higher of the applicable em-
15 ployer costs for each of the 2 taxable years
16 immediately preceding the taxable year of
17 the qualified transfer, and

18 “(ii) in the case of a collectively bar-
19 gained transfer, each collectively bargained
20 group health plan under which collectively
21 bargained health benefits are provided pro-
22 vides that the collectively bargained em-
23 ployer cost for each taxable year during
24 the collectively bargained cost maintenance
25 period shall not be less than the amount

1 specified by the collective bargaining agree-
2 ment.”.

3 (B) Section 420(c)(3) of such Code is
4 amended by redesignating subparagraphs (C),
5 (D), and (E) as subparagraphs (D), (E), and
6 (F), respectively, and by inserting after sub-
7 paragraph (B) the following new subparagraph:

8 “(C) COLLECTIVELY BARGAINED EM-
9 PLOYER COST.—For purposes of this para-
10 graph, the term ‘collectively bargained employer
11 cost’ means the average cost per covered indi-
12 vidual of providing collectively bargained retiree
13 health benefits as determined in accordance
14 with the applicable collective bargaining agree-
15 ment. Such agreement may provide for an ap-
16 propriate reduction in the collectively bargained
17 employer cost to take into account any portion
18 of the collectively bargained retiree health bene-
19 fits that is provided or financed by a govern-
20 ment program or other source.”.

21 (C) Subparagraph (E) of section 420(c)(3)
22 of such Code (as redesignated by subparagraph
23 (B)) is amended to read as follows:

24 “(E) MAINTENANCE PERIOD.—For pur-
25 poses of this paragraph—

1 “(i) COST MAINTENANCE PERIOD.—

2 The term ‘cost maintenance period’ means
3 the period of 5 taxable years beginning
4 with the taxable year in which the qualified
5 transfer occurs. If a taxable year is in 2 or
6 more overlapping cost maintenance peri-
7 ods, this paragraph shall be applied by
8 taking into account the highest applicable
9 employer cost required to be provided
10 under subparagraph (A)(i) for such taxable
11 year.

12 “(ii) COLLECTIVELY BARGAINED COST
13 MAINTENANCE PERIOD.—The term ‘collec-
14 tively bargained cost maintenance period’
15 means, with respect to each covered retiree
16 and his covered spouse and dependents,
17 the shorter of—

18 “(I) the remaining lifetime of
19 such covered retiree and his covered
20 spouse and dependents, or

21 “(II) the period of coverage pro-
22 vided by the collectively bargained
23 health plan (determined as of the date
24 of the collectively bargained transfer)
25 with respect to such covered retiree

1 and his covered spouse and depend-
2 ents.”.

3 (c) LIMITATIONS ON EMPLOYER.—Subsection (d) of
4 section 420 of the Internal Revenue Code of 1986 is
5 amended to read as follows:

6 “(d) LIMITATIONS ON EMPLOYER.—For purposes of
7 this title—

8 “(1) DEDUCTION LIMITATIONS.—No deduction
9 shall be allowed—

10 “(A) for the transfer of any amount to a
11 health benefits account in a qualified transfer
12 (or any retransfer to the plan under subsection
13 (c)(1)(C)),

14 “(B) for qualified current retiree health li-
15 abilities or collectively bargained retiree health
16 liabilities paid out of the assets (and income)
17 described in subsection (c)(1), or

18 “(C) except in the case of a collectively
19 bargained transfer, for any amounts to which
20 subparagraph (B) does not apply and which are
21 paid for qualified current retiree health liabil-
22 ities for the taxable year to the extent such
23 amounts are not greater than the excess (if
24 any) of—

1 “(i) the amount determined under
2 subparagraph (A) (and income allocable
3 thereto), over

4 “(ii) the amount determined under
5 subparagraph (B).

6 “(2) OTHER LIMITATIONS.—

7 “(A) NO CONTRIBUTIONS ALLOWED.—EX-
8 cept as provided in subparagraph (B), an em-
9 ployer may not contribute after December 31,
10 1990, any amount to a health benefits account
11 or welfare benefit fund (as defined in section
12 419(e)(1)) with respect to qualified current re-
13 tiree health liabilities for which transferred as-
14 sets are required to be used under subsection
15 (c)(1)(A).

16 “(B) EXCEPTION.—An employer may con-
17 tribute an amount to a health benefits account
18 or welfare benefit fund (as defined in section
19 419(e)(1)) with respect to collectively bargained
20 retiree health liabilities for which transferred
21 assets are required to be used under subsection
22 (c)(1)(B), and the deductibility of any such con-
23 tribution shall be governed by the limits appli-
24 cable to the deductibility of contributions to a
25 welfare benefit fund under a collective bar-

1 gaining agreement (as determined under section
2 419A(f)(5)(A)) without regard to whether such
3 contributions are made to a health benefits ac-
4 count or welfare benefit fund and without re-
5 gard to the provisions of section 404 or the
6 other provisions of this section.”.

7 (d) DEFINITIONS.—Section 420(e) of the Internal
8 Revenue Code of 1986 (relating to definition and special
9 rules) is amended by adding at the end the following new
10 paragraphs:

11 “(5) COLLECTIVELY BARGAINED TRANSFER.—
12 The term ‘collectively bargained transfer’ means a
13 transfer—

14 “(A) of excess pension assets to a health
15 benefits account which is part of such plan in
16 a taxable year beginning after December 31,
17 2004,

18 “(B) which does not contravene any other
19 provision of law,

20 “(C) with respect to which are met in con-
21 nection with the plan—

22 “(i) the use requirements of sub-
23 section (c)(1),

24 “(ii) the vesting requirements of sub-
25 section (c)(2), and

1 “(iii) the minimum cost requirements
2 of subsection (c)(3),

3 “(D) which is made in accordance with a
4 collective bargaining agreement, and

5 “(E) which, before the transfer, the em-
6 ployer designates, in a written notice delivered
7 to each employee organization that is a party to
8 the collective bargaining agreement, as a collec-
9 tively bargained transfer in accordance with
10 this section.

11 “(6) COLLECTIVELY BARGAINED RETIREE
12 HEALTH LIABILITIES.—

13 “(A) IN GENERAL.—The term ‘collectively
14 bargained retiree health liabilities’ means the
15 present value, as of the beginning of a taxable
16 year and determined in accordance with the ap-
17 plicable collective bargaining agreement, of all
18 collectively bargained health benefits (including
19 administrative expenses) for such taxable year
20 and all subsequent taxable years during the col-
21 lectively bargained cost maintenance period.

22 “(B) REDUCTION FOR AMOUNTS PRE-
23 VIOUSLY SET ASIDE.—The amount determined
24 under subparagraph (A) shall be reduced by the
25 value (as of the close of the plan year preceding

1 the year of the collectively bargained transfer)
2 of the assets in all health benefits accounts or
3 welfare benefit funds (as defined in section
4 419(e)(1)) set aside to pay for the collectively
5 bargained retiree health liabilities.

6 “(C) KEY EMPLOYEES EXCLUDED.—If an
7 employee is a key employee (within the meaning
8 of section 416(I)(1)) with respect to any plan
9 year ending in a taxable year, such employee
10 shall not be taken into account in computing
11 collectively bargained retiree health liabilities
12 for such taxable year or in calculating collec-
13 tively bargained employer cost under subsection
14 (e)(3)(C).

15 “(7) COLLECTIVELY BARGAINED HEALTH BEN-
16 EFITS.—The term ‘collectively bargained health ben-
17 efits’ means health benefits or coverage which are
18 provided to—

19 “(A) retired employees who, immediately
20 before the collectively bargained transfer, are
21 entitled to receive such benefits upon retirement
22 and who are entitled to pension benefits under
23 the plan, and their spouses and dependents,
24 and

1 “(B) if specified by the provisions of the
2 collective bargaining agreement governing the
3 collectively bargained transfer, active employees
4 who, following their retirement, are entitled to
5 receive such benefits and who are entitled to
6 pension benefits under the plan, and their
7 spouses and dependents.

8 “(8) COLLECTIVELY BARGAINED HEALTH
9 PLAN.—The term ‘collectively bargained health plan’
10 means a group health plan or arrangement for re-
11 tired employees and their spouses and dependents
12 that is maintained pursuant to 1 or more collective
13 bargaining agreements.”.

14 (e) CONFORMING AMENDMENTS.—

15 (1) The last sentence of section 401(h) of the
16 Internal Revenue Code of 1986 is amended by in-
17 serting “(other than contributions with respect to
18 collectively bargained retiree health liabilities within
19 the meaning of section 420(e)(6))” after “medical
20 benefits”.

21 (2) Section 101(e)(3) of the Employee Retirement
22 Income Security Act of 1974 (29 U.S.C.
23 1021(e)(3)) is amended by striking “Pension Fund-
24 ing Equity Act of 2004” and inserting “Retiree
25 Health Benefits Act of 2005.”

1 (3) Section 403(c)(1) of such Act (29 U.S.C.
2 1103(c)(1)) is amended by striking “Pension Fund-
3 ing Equity Act of 2004” and inserting “Retiree
4 Health Benefits Act of 2005.”

5 (4) Paragraph (13) of section 408(b) of such
6 Act (29 U.S.C. 1108(b)) is amended—

7 (A) by striking “before January 1, 2014”
8 and inserting “in accordance with section 420
9 of the Internal Revenue Code of 1986 (as in ef-
10 fect on the date of the enactment of the Retiree
11 Health Benefits Act of 2005)”, and

12 (B) by striking “Pension Funding Equity
13 Act of 2004” and inserting “Retiree Health
14 Benefits Act of 2005”.

15 (f) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to years beginning after December
17 31, 2004.

○