

public attention on the unique contribution of professional school counselors and highlights the tremendous impact that school counselors have in helping students achieve success in school and beyond.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 2262. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 3108, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes; which was ordered to lie on the table.

SA 2263. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 3108, supra; which was ordered to lie on the table.

SA 2264. Mr. GRASSLEY (for Mr. NICKLES) proposed an amendment to amendment SA 2233 proposed by Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. GREGG, and Mr. KENNEDY) to the bill H.R. 3108, supra.

#### TEXT OF AMENDMENTS

SA 2262. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 3108, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert:

#### SEC. \_\_\_\_ RESTORATION OF CERTAIN PLANS TERMINATING IN 2003.

(a) IN GENERAL.—The provisions of subsection (b) shall apply to any defined benefit plan that was—

(1) maintained by a commercial passenger air carrier,

(2) maintained for the benefit of such carrier's employees pursuant to a collective bargaining agreement, and

(3) terminated during the calendar year 2003 while the employer was in bankruptcy under chapter 11 of title 11 of the United States Code.

(b) RESTORATION OF PLAN.—The Pension Benefit Guaranty Corporation shall restore any plan described in subsection (a), pursuant to the terms described in subsection (g), and the control of the plan's assets and liabilities shall be transferred to the employer. The date of restoration shall be not later than 60 days after the date the terms of the plan are determined pursuant to subsection (g).

(c) EXCLUSION OF EXPECTED INCREASE IN CURRENT LIABILITY.—In applying section 412(l)(1)(A)(i) of the Internal Revenue Code of 1986 and section 302(d)(1)(A)(i) of the Employee Retirement Income Security Act of 1974 with respect to a plan restored under subsection (b), any expected increase in current liability due to benefits accruing during each plan year as described in section 412(l)(2)(C) of such Code and section 302(d)(2)(C) of such Act shall be excluded.

(d) AMORTIZATION OF UNFUNDED AMOUNTS UNDER RESTORATION PAYMENT SCHEDULE.—

(1) POST-RESTORATION INITIAL UNFUNDED ACCRUED LIABILITY.—In the case of a plan restored under subsection (b)—

(A) the initial post-restoration valuation date for a plan described in subsection (a) shall be January 1 of the calendar year following the date of restoration,

(B) the initial restoration amortization base for a plan described in subsection (a) shall be an amount equal to the excess of—

(i) the accrued benefit liabilities returned by the Corporation, over

(ii) the market value of plan assets returned by the Corporation, and

(C) the initial restoration amortization base shall be amortized in level annual installments over a period determined pursuant to subsection (g) but not to exceed 30 years after the initial post-restoration valuation date, and the funding standard account of the plan under section 412 of such Code and section 302 of such Act shall be charged with such installments.

(2) UNFUNDED SECTION 412(l) RESTORATION LIABILITY.—For purposes of section 412 of such Code and section 302 of such Act, in the case of a plan restored under subsection (b)—

(A) the initial post-restoration valuation date for a plan described in subsection (a) shall be January 1 of the calendar year following the date of restoration,

(B) the unfunded section 412(l) restoration liability shall be an amount equal to the excess of—

(i) the current liability returned by the Corporation, over

(ii) the market value of plan assets returned by the Corporation, and

(C) the unfunded section 412(l) restoration liability amount shall be equal to the unfunded section 412(l) restoration liability amortized in level annual installments over a period determined pursuant to subsection (g) but not to exceed 30 years after the initial post-restoration valuation date.

(3) RULES OF SPECIAL APPLICATION.—In applying the 30-year amortization described in paragraph (1)(C) or (2)(C)—

(A) the assumed interest rate for purposes of paragraph (1)(C) shall be the valuation interest rate used to determine the accrued liability under section 412(c) of such Code and section 302(c) of such Act,

(B) the assumed interest rate for purposes of paragraph (2)(C) shall be the interest rate used to determine current liability as of the initial post-restoration valuation date under section 412(l) of such Code and section 302(d) of such Act,

(C) the actuarial value of assets as of the initial post-restoration valuation date shall be reset to the market value of assets with a 5-year phase-in of unexpected investment gains or losses on a prospective basis, and

(D) for plans using the frozen initial liability (FIL) funding method in accordance with section 412(c) of such Code and section 302(c) of such Act, the initial unfunded liability used to determine normal cost shall be reset to the initial restoration amortization base.

(e) QUARTERLY CONTRIBUTIONS.—The requirements of section 412(m) of such Code and section 302(e) of such Act shall not apply to a plan restored under subsection (b) until the plan year beginning on the initial post-restoration valuation date. The required annual payment for that year shall be the lesser of—

(1) the amount determined under section 412(m)(4)(B)(i) of such Code and section 302(e)(4)(B)(i) of such Act, or

(2) 100 percent of the amount required to be contributed under the plan for the plan year beginning January 1, 2003, and ending on the date of plan termination.

(f) RESETTING OF FUNDING STANDARD ACCOUNT BALANCES.—In the case of a plan restored under subsection (b), any accumulated funding deficiency or credit balance in the

funding standard account under section 412 of such Code or section 302 of such Act shall be set equal to zero as of the initial post-restoration valuation date.

(g) TERMS OF RESTORED PLAN.—

(1) IN GENERAL.—The terms of a plan which is restored pursuant to subsection (b) shall be determined by mutual agreement of the employer and the collective bargaining representative of employees covered by the plan. If such parties are unable to reach mutual agreement on such terms, then the terms of the restored plan will be determined by a neutral arbitrator. The neutral arbitrator will be selected by the parties within 7 days after the earlier of the date the parties reach an impasse or 60 days after the date of the enactment of this Act. The neutral arbitrator will be selected by the parties from a panel of neutrals provided by the National Mediation Board. The neutral arbitrator will render his or her determination not later than 120 days after the date of the enactment of this Act. Such determination shall be final and binding on the parties.

(2) SPECIFIC TERMS.—The terms of the restored plan are subject to the following:

(A) Benefits under the restored plan for any participant or group of participants may not be greater than, but may be less than, those under the plan prior to its termination, and forms of distribution under the restored plan for any participant or group of participants may exclude forms available under the plan prior to its termination, and any such reductions in benefits or forms of distribution shall be deemed to comply with section 411(d)(6) of such Code and section 204(g) of such Act.

(B) For any participant, benefits under the restored plan shall be offset by the value of contributions made on behalf of such participant to any defined contribution pension plan established by the parties in conjunction with the termination of the restored plan.

(C) The amortization periods for the initial restoration amortization base and the unfunded section 412(l) restoration liability shall not exceed 30 years.

(D) The minimum required cost of the restored plan shall not be less than the greater of—

(i) the projected cost of any defined contribution pension plan established in conjunction with the termination of the restored plan, or

(ii) the amount allowed as costs under the employer's original plan of reorganization for all of the employer's retirement plans minus the minimum required cost determined as of the plan restoration date of all of the employer's retirement plans excluding the restored plan.

(h) PBGC LIABILITY LIMITED.—In the case of any plan which is described in subsection (a), which is restored pursuant to subsection (b), and which subsequently terminates with a date of plan termination before the end of the fifth calendar year after the date of restoration, section 4022 of the Employee Retirement Income Security Act of 1974 shall be applied as if the plan had been amended to provide that participants would receive no credit for benefit accrual purposes under the plan for service on and after the first day of the plan year beginning after the date of the enactment of this Act.

(i) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2002.

SA 2263. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 3108, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based

on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert:

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(1) maintained by a commercial passenger air carrier,

(2) maintained for the benefit of such carrier's employees pursuant to a collective bargaining agreement, and

(3) terminated during the calendar year 2003.

(b) RESTORATION OF PLAN.—The Pension Benefit Guaranty Corporation shall restore any plan described in subsection (a), pursuant to the terms described in subsection (g), and the control of the plan's assets and liabilities shall be transferred to the employer. The date of restoration shall be not later than 60 days after the date the terms of the plan are determined pursuant to subsection (g).

(c) EXCLUSION OF EXPECTED INCREASE IN CURRENT LIABILITY.—In applying section 412(l)(1)(A)(i) of the Internal Revenue Code of 1986 and section 302(d)(1)(A)(i) of the Employee Retirement Income Security Act of 1974 with respect to a plan restored under subsection (b), any expected increase in current liability due to benefits accruing during each plan year as described in section 412(l)(2)(C) of such Code and section 302(d)(2)(C) of such Act shall be excluded.

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(A) the initial post-restoration valuation date for a plan described in subsection (a) shall be January 1 of the calendar year following the date of restoration,

(B) the initial restoration amortization base for a plan described in subsection (a) shall be an amount equal to the excess of—

(i) the accrued benefit liabilities returned by the Corporation, over

(ii) the market value of plan assets returned by the Corporation, and

(C) the initial restoration amortization base shall be amortized in level annual installments over a period determined pursuant to subsection (g) but not to exceed 30 years after the initial post-restoration valuation date, and the funding standard account of the plan under section 412 of such Code and section 302 of such Act shall be charged with such installments.

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(B) the assumed interest rate for purposes of paragraph (2)(C) shall be the interest rate used to determine current liability as of the initial post-restoration valuation date under section 412(l) of such Code and section 302(d) of such Act,

(C) the actuarial value of assets as of the initial post-restoration valuation date shall be reset to the market value of assets with a 5-year phase-in of unexpected investment gains or losses on a prospective basis, and

(D) for plans using the frozen initial liability (FIL) funding method in accordance with section 412(c) of such Code and section 302(c) of such Act, the initial unfunded liability used to determine normal cost shall be reset to the initial restoration amortization base.

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(1) the amount determined under section 412(m)(4)(B)(i) of such Code and section 302(e)(4)(B)(i) of such Act, or

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(f) RESETTING OF FUNDING STANDARD ACCOUNT BALANCES.—In the case of a plan restored under subsection (b), any accumulated funding deficiency or credit balance in the funding standard account under section 412 of such Code or section 302 of such Act shall be set equal to zero as of the initial post-restoration valuation date.

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tion with the termination of the restored plan.

(C) The amortization periods for the initial restoration amortization base and the unfunded section 412(l) restoration liability shall not exceed 30 years.

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(h) PBGC LIABILITY LIMITED.—In the case of any plan which is described in subsection (a), which is restored pursuant to subsection (b), and which subsequently terminates with a date of plan termination before the end of the fifth calendar year after the date of restoration, section 4022 of the Employee Retirement Income Security Act of 1974 shall be applied as if the plan had been amended to provide that participants would receive no credit for benefit accrual purposes under the plan for service on and after the first day of the plan year beginning after the date of the enactment of this Act.

(i) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2002.

**SA 2264.** Mr. GRASSLEY (for Mr. NICKLES) proposed an amendment to amendment SA 2233 proposed by Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. GREGG, and Mr. KENNEDY) to the bill H.R. 3108, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert:

**SEC. \_\_\_\_ . SENSE OF THE SENATE ON STATUS OF PRIVATE PENSION PLANS.**

(a) FINDINGS.—Congress makes the following findings:

(1) The private pension system is integral to the retirement security of Americans, along with individual savings and Social Security.

(2) The Pension Benefit Guaranty Corporation (PBGC) is responsible for insuring the nation's private pension system, and currently insures the pensions of 34,500,000 participants in 29,500 single-employer plans, and 9,700,000 participants in more than 1,600 multiemployer plans.

(3) The PBGC announced on January 15, 2004, that it suffered a net loss in fiscal year 2003 of \$7,600,000,000 for single-employer pension plans, bringing the PBGC's deficit to \$11,200,000,000. This deficit is the PBGC's worst on record, three times larger than the \$3,600,000,000 deficit experienced in fiscal year 2002.

(4) The PBGC also announced that the separate insurance program for multiemployer pension plans sustained a net loss of \$419,000,000 in fiscal year 2003, resulting in a fiscal year-end deficit of \$261,000,000. The 2003 multiemployer plan deficit is the first deficit in more than 20 years and is the largest deficit on record.

(5) The PBGC estimates that the total underfunding in multiemployer pension

plans is roughly \$100,000,000, and in single-employer plans is approximately \$400,000,000. This underfunding is due in part to the recent decline in the stock market and low interest rates, but is also due to demographic changes. For example, in 1980, there were four active workers for every one retiree in a multiemployer plan, but in 2002, there were only two active workers for every one retiree.

(6) This pension plan underfunding is concentrated in mature and often-declining industries, where plan liabilities will come due sooner.

(7) Neither the Senate Committee on Finance nor the Senate Committee on Health, Education, Labor, and Pensions (HELP), the committees of jurisdiction over pension matters, has held hearings this Congress nor reported legislation addressing the funding of multiemployer pension plans;

(8) The Senate is concerned about the current funding status of the private pension system, both single and multi-employer plans;

(9) The Senate is concerned about the potential liabilities facing the PBGC and, as a result, the potential burdens facing healthy pension plans and taxpayers;

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Committee on Finance and the Committee on Health, Education, Labor, and Pensions should conduct hearings on the status of the multiemployer pension plans, and should work in consultation with the Departments of Labor and Treasury on permanent measures to strengthen the integrity of the private pension system in order to protect the benefits of current and future pension plan beneficiaries.

## NOTICES OF HEARINGS/MEETINGS

### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that three hearings have been scheduled before the Committee on Energy and Natural Resources to consider the President's proposed FY 2005 budget.

The Committee will hear testimony from the following:

1. The Department of Energy on Tuesday, February 10, 2004, beginning at 10 a.m., in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

2. The Department of the Interior on Thursday, February 12, 2004, beginning at 10 a.m., in room SD-366 of the Dirksen Senate Office Building in Washington, D.C.

3. The Forest Service on Tuesday, March 2, 2004, beginning at 10 a.m., in room SF-366 of the Dirksen Senate Office Building in Washington, D.C.

For further information on these hearings, please call Carole McGuire, Deputy Staff Director at (202) 224-0537; or Shane Perkins, Staff Assistant, (Department of Energy hearing) at (202)-224-7555 or Meghan Beal, Staff Assistant, (Department of the Interior and Forest Service hearings) at (202) 224-7556.

## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to conduct a hearing during the session of the Senate on Tuesday, January 27, 2004. The purpose of this hearing will be to examine the current situation regarding the discovery of a case of bovine spongiform encephalopathy in a dairy cow in Washington State as it relates to food safety, livestock marketing, and international trade.

The PRESIDING OFFICER. Without objection, it is so ordered.

### COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, January 27, 2003 at 10 a.m. to hold a hearing on "Afghanistan Stabilization & Reconstruction: A status report."

The PRESIDING OFFICER. Without objection, it is so ordered.

### COMMITTEE ON THE JUDICIARY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, January 27, 2004, at 9:30 a.m. on "Ensuring the Continuity of the United States Government: A Proposed Constitutional Amendment to Guarantee a Functioning Congress," in the Dirksen Senate Office Building Room 226.

Witness List: Hon. Alan K. Simpson, Co-Chairman, Continuity of Government Commission, Former United States Senator [R-WY], Cody, WY and Prof. Sanford V. Levinson, W. St. John Garwood and W. St. John Garwood, Jr., Centennial Chair in Law and Professor of Government, University of Texas Law School, Austin, TX.

The PRESIDING OFFICER. Without objection, it is so ordered.

### SPECIAL COMMITTEE ON AGING

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet Tuesday, January 27, 2004 from 10 a.m.-12 p.m. in Dirksen 628 for the purpose of conducting a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

### SUBCOMMITTEE ON FINANCIAL MANAGEMENT, THE BUDGET AND INTERNATIONAL SECURITY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs' Subcommittee on Financial Management, the Budget, and International Security be authorized to meet on Tuesday, January 27, 2004 at 10 a.m. for a hearing titled, "Oversight Hearing on Mutual Funds: Hidden Fees, Misgovernance, and Other Practices that Harm Investors."

The PRESIDING OFFICER. Without objection, it is so ordered.

### SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Terrorism, Technology and Homeland Security be authorized to meet to conduct a hearing on Tuesday, January 27, 2004, at 11:15 a.m., on "Covering the Waterfront—A Review of Seaport Security since September 11, 2001," in the Dirksen Senate Office Building Room 226.

Witness List: Larry Hereth, Rear Admiral, Director of Port Security, United States Coast Guard, Alexandria, VA; Mr. Robert M. Jacksta, Executive Director, United States Customs and Border Patrol, Fairfax, VA; and Mr. Gary M. Bald, Inspector—Deputy Assistant Director FBI, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDERS FOR WEDNESDAY, JANUARY 28, 2004

Mr. GRASSLEY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 11 a.m., Wednesday, January 28. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of H.R. 3108, the pension bill, as provided under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PROGRAM

Mr. GRASSLEY. Tomorrow morning the Senate will resume consideration of H.R. 3108, the pension bill. Under the previous order, there will be 40 minutes of debate prior to the vote in relation to the Kyl second-degree amendment regarding waivers. Following the disposition of the Kyl amendment, we should be prepared to quickly move to a vote on passage of the underlying legislation. Senators should therefore expect a vote or maybe two votes prior to noon tomorrow. In addition to the pension rate bill, the Senate may consider any judicial nominations that can be cleared for action. Additional votes are, therefore, possible during Wednesday's session of the Senate.

## ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. GRASSLEY. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 4:49 p.m., adjourned until Wednesday, January 28, 2004, at 11 a.m.