Subject: Globe & Mail article on C-228

MPs advance bill giving pension plan members priority in corporate bankruptcies

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After a decade of false starts, a federal bill to give pension plan members the highest priority when plan funding falls short in a company bankruptcy has unanimously passed a vote in the House of Commons, pushing a long-debated protection for pensioners closer to becoming law.

MPs voted 318 to 0 on Wednesday in support of Bill C-228, a private member's bill sponsored by Conservative MP Marilyn Gladu, sending it to the Senate for review. If passed, it would change bankruptcy and insolvency law to give pensioners superpriority for unfunded liabilities in private-sector, defined benefit company pension plans.

That would put the pension liability ahead of secured and unsecured creditors, improving the chances plan members would be made whole in an insolvency. But even as the bill won support from all parties, it has vocal detractors. It has sparked a debate about whether superpriority for pensioners is a vital protection, or a misguided policy that could unintentionally hasten the demise of the very pension plans whose value it seeks to protect.

Several similar bills have been introduced since 2010, and as far back as 2004, but none gained enough traction. Last year, similar legislation put forward by Bloc Québécois MP Marilène Gill was considered by the federal finance committee, but never came to a vote.

At a Wednesday morning news conference ahead of the House Vote, Ms. Gladu said it has been "a very long journey" to get the bill to this stage, urging MPs to "do the right thing for hard-working Canadians that have paid into their pensions and deserve to receive what they were promised."

Arguments over the merits of the bill now move to the Senate, which could consider amendments.

Supporters of the bill say it would prevent companies from shifting the burden of unfunded liabilities in defined benefit plans – which promise members a fixed monthly benefit after retirement for as long as they live – onto plan members in the event of a bankruptcy. That would help ensure pensioners would receive retirement income much closer to the full value of what they earned.

Advocates point to prominent insolvencies such as Sears Canada Inc. and Nortel Networks Corp. that prompted cuts to pension benefits for former employees. The bill could change company behaviour, they say, putting pressure on employers to keep plans fully funded, rather than falling behind on their obligations when times are tough and then topping up their plans later.

"It quite simply makes the pension obligation a real obligation," said Mike Powell, president of the Canadian Federation of Pensioners, in an interview. "Instead of being at the back of the line, pensioners now move nearer the front."

But critics contend that giving superpriority to plan members will make it less appealing to employers to maintain those pension plans. Banks and other creditors who lend to companies and supply goods and services to them would be ranked lower in a bankruptcy proceeding, which could drive up borrowing costs or making financing harder to come by when companies need to raise capital to fund operations and new investments.

That could create an incentive for some companies that have defined benefit plans – a popular type of benefit that is in decline, with only 9 per cent of private-sector employees having one, compared with 20 per cent two decades ago – to try and shut them down to avoid that added liability.

“I think banks, if they’re acting prudently, are going to assess the risks and they’re either going to charge more for it or lend less,” said Andrea Boctor, partner and chair of pensions and benefits at law firm Osler Hoskin Harcourt LLP, who opposed the bill on behalf of the Association of Canadian Pension Management (ACPM) in testimony before a committee of MPs last month.

Critics also argue that restructurings that can save companies from going out of business, and preserve jobs for current employees, would be harder to negotiate. Ms. Boctor said restructurings at large industrial employers such as Algoma Steel Inc. and Stelco Inc. might not have been possible if an underfunded pension plan had superpriority. A lender looking to finance a restructuring “might have been unlikely to lend into that knowing they would be behind the pension deficit,” she said.

On Wednesday, the ACPM, which advocates for pension plan sponsors and administrators, published an open letter to MPs and senators that warned the bill “has numerous flaws and has serious consequences for existing private sector DB plans.” If it is made law, companies with defined benefit plans “will simply wind up their existing plans or convert them to a retirement savings plan that will be less beneficial for plan members,” the letter said.

The Canadian Federation of Pensioners and other supporters of the bill, which include unions that welcomed the vote in a statement from the Canadian Labour Congress on Wednesday, counter that those concerns are overblown. Defined benefit plans are already in decline, Mr. Powell said, but with pensioners taking higher priority, “companies are going to make different decisions and have better-funded pensions.”