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Despite Dim Prospects, Fund Bills Keep Sprouting

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Even with the prospect of fund legislation passing this year effectively gone, lawmakers are still focused on the fund business.

This month has already seen two new fund-reform bills introduced, one in the Senate and one in the House. But given the short legislative calendar this election year and the Senate Banking Committee's deferral, for now, to the SEC, neither bill has much chance of becoming law anytime soon.

The first bill, The Small Investor Protection Act of 2004, was introduced earlier this month by Sen. Joe Lieberman (D-Conn.)

It is unique in that it focuses on the ways that fund investors can communicate with the SEC about their concerns and report abuses. Other bills introduced thus far, including Lieberman's first fund bill, focus mainly on how funds operate and disclose their fees and practices to investors.

The bill would create a Division of the Investor at the SEC that would advocate causes and measures beneficial to individual investors within the commission. The new division would act as a liaison between investor advocacy groups and the SEC, conduct research on the needs of individual investors and develop investor education initiatives.

While the proposed legislation may have good intentions, it comes up short on usefulness. Adding a Division of the Investor to the SEC doesn't make a lot of sense, says **Morningstar** fund research director Russ Kinnel. The SEC as it is currently structured is supposed to already be looking out for investors, he says.

If the SEC really wants to become more investor-sensitive, the answer isn't to create a new division, says Kinnel. Instead, the solution is to look beyond Wall Street and hire people with a history of investor advocacy when hiring commissioners for its existing divisions, he says.

While supporting any measure that gives investors more of a voice in Washington, Niels Holch, who heads the **Coalition of Mutual Fund Investors**, is similarly skeptical of the efficacy of such a structural change at the SEC. A better approach might be to simply appoint a small-investor ombudsman within the SEC, he says.

Lieberman's bill would also amend the '40 Act, making it it illegal to sell fund shares without a summary of the fund's expenses, risk and diversification, as well as any other information that the SEC deems relevant to investor protection.

The other bill, the Mutual Fund Reform Act of 2004, has been introduced by Rep. Paul Gilmore (R-Ohio) in the House of Representatives. The bill is essentially identical to the Mutual Fund Reform Act that Sen. Peter Fitzgerald already introduced in the Senate.

The Fitzgerald bill is considered to be the most extreme of all the fund-reform bills introduced in the wake of the fund scandal. Among other things, the bill would do away with 12b-1 fees, directed brokerage and revenue sharing. In addition, it would prohibit funds from receiving soft dollars.

By introducing the bill in the House, Gilmore is helping to keep Fitzgerald's bill alive, says Roy Green of the **AARP**'s government affairs office. That's because Fitzgerald, who's retiring from the Senate after this year, won't be around to pursue it.

Unlike Fitzgerald, who's not on the Senate Banking Committee, Gilmore is an influential senior member on the House Financial Services Committee, which has jurisdiction over funds, notes Holch.

But even without Gilmore's House bill, however, it's likely that Senators Carl Levin (D-Mich.) and Susan Collins (R-Maine) will pursue the legislation after Fitzgerald is gone, Green says.

Given the scarcity of days on this year's legislative calendar and the Senate Banking Committee's decision to let the SEC handle fund reform for the time being, neither bill will pass this year, says Holch.

But that doesn't mean that the bills are empty gestures, says Green. These bills are being introduced in the Senate and House to remind the SEC that Congress is monitoring its actions and to spur the commission to approve the proposals it has made in these areas, he says. The bills are also meant to help give the SEC a sense of the direction that Congress wants it to move in, he says.

Ultimately, the fate of the two bills, along with all fund legislation, depends on the steps the SEC takes in the coming months, Green says. If Congress is pleased with the progress it has made on reform, it's much less likely that any fund legislation will pass in the coming year, he says.