

PROVIDING FOR THE CONSIDERATION OF H.R. 2267, THE
COMMERCE, JUSTICE, STATE, THE JUDICIARY AND RE-
LATED AGENCIES APPROPRIATIONS BILL FOR FISCAL
YEAR 1998

SEPTEMBER 23, 1997.—Referred to the House Calendar and ordered to be printed

Mr. DREIER, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 239]

The Committee on Rules, having had under consideration House Resolution 239, by a non-record vote, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for consideration of H.R. 2267, the “Commerce, Justice, State and Related Agencies Appropriations Bill for Fiscal Year 1998” under an open rule. The rule provides one hour of general debate equally divided between the chairman and ranking minority member of the Committee on Appropriations.

The rule also provides for the adoption of the amendment printed in Part 1 of this report. All points of order against provisions in the bill, as amended, for failure to comply with clause 2 (prohibiting unauthorized appropriations and legislative provisions in a general appropriations bill) and clause 6 (prohibiting reappropriations in a general appropriations bill) of rule XXI are waived.

The rule also provides for, prior to the consideration of any other amendment, the consideration of the amendment numbered 1 in Part 2 of this report, if offered by the Member designated in the report which may amend portions of the bill not yet read for amendment.

The rule provides for consideration of the amendments printed in Part 2 of this report, except for the amendment numbered 1, which may only be offered by a Member designated in the report and only at the appropriate point in the reading of the bill, shall be considered as read, shall be debatable for the time specified and shall not

be subject to further amendment or to a demand for a division of the question.

All points of order against the amendment numbered 2 in Part 2 of this report are waived.

Points of order against the amendments numbered 1 and 3 in Part 2 of this report for failure to comply with clause 2 (prohibiting unauthorized appropriations and legislative provisions in a general appropriations bill) of rule XXI are also waived.

The rule permits the Chairman of the Committee of the Whole to accord priority in recognition to those Members who have pre-printed their amendments in the Congressional Record prior to their consideration. The rule further allows the Chairman of the Committee of the Whole to postpone recorded votes and to reduce to five minutes the voting time on any postponed question, provided voting time on the first in any series of questions is not less than 15 minutes.

Finally, the rule provides one motion to recommit, with or without instructions.

SUMMARY OF AMENDMENTS MADE IN ORDER BY THE RULE FOR H.R. 2267—THE COMMERCE, JUSTICE, STATE AND RELATED AGENCIES APPROPRIATIONS BILL FOR FISCAL YEAR 1998

(Listed in the order they will appear in this report)

Part I (Amendment considered as adopted)

1. Hastert: Provides for an expedited judicial review to determine the legality and constitutionality of the use of sampling and statistical adjustment to add or subtract counts to the enumeration of the population for purposes of apportionment or redistricting. Upon the commencement of legal action under this section, a temporary injunction is automatically instituted on the use of appropriated funds under this or any other Act, until that method has been judicially finally determined to be authorized by the Constitution and by Act of Congress.

Part II

1. Hyde—30 mins: Replaces Section 616 with a provision that is based upon the policies, procedures and limitations of the Equal Access to Justice Act. It allows any defendant who prevails in a federal prosecution an opportunity to recovery attorneys' fees and litigation expenses unless the government establishes that it was substantially justified in initiating and prosecuting the case or that an award of attorneys' fees would be unjust.

2. Mollohan/Shays—80 mins: Retains the full \$381.8 million appropriation for Census 2000 in fiscal year 1998. Strikes committee-reported language fencing all but \$100 million of the appropriation until enactment of authorizing legislation and prohibiting use of the un-fenced \$100 million for any activities relating to sampling. Adds language prohibiting the use of any 1998 funds to make irreversible plans or preparations for the use of sampling or any other statistical method (including statistical adjustment) in taking the census for purposes congressional apportionment. Creates a Board of Observers for a Fair and Accurate Census.

3. Burton—30 mins: Requires programs funded by the Legal Services Corporation to disclose to the public and to the LSC certain basic information about the legal actions in which the program is involved. The basic information includes the name and address of each party to the legal action, the cause(s) of action, the name and address of the court in which the case is filed, and the case number assigned to the legal action. In those instances where an address is not disclosed for reasons of security, as with a battered spouse, LSC will not be required to disclose that information.

PART I

Amendment considered as adopted by the rule:

Page 44, strike line 22 and all that follows through line 11 on page 45 and insert the following:

Subject to the limitations provided in section 209, for expenses necessary to conduct the decennial census, \$381,800,000, to remain available until expended.

Page 58, after line 9, insert the following:

SEC. 209. (a) Any person aggrieved by the use of any statistical method in violation of the Constitution or any provision of law (other than this Act), in connection with the 2000 or any later decennial census, to determine the population for purposes of the apportionment or redistricting of members in Congress, may in a civil action obtain declaratory, injunctive, and any other appropriate relief against the use of such method.

(b) For purposes of this section, the use of any statistical method in a dress rehearsal or similar test or simulation of a census in preparation for the use of such method, in a decennial census, to determine the population for purposes of the apportionment or redistricting of members in Congress shall be considered the use of such method in connection with that census.

(c) For purposes of this section, an “aggrieved person” includes—

- (1) any resident of a State whose congressional representation or district could be changed as a result of the use of a statistical method challenged in the civil action;
- (2) any Representative or Senator in Congress; and
- (3) either House of Congress.

(d)(1) Any action brought under this section shall be heard and determined by a district court of 3 judges in accordance with section 2284 of title 28, United States Code. Any order of a United States district court which is issued pursuant to an action brought under this section shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under this section shall be issued by a single Justice of the Supreme Court.

(2) No sums appropriated under this or any other Act may be used for any statistical method, in connection with any decennial census, to determine the population for purposes of the apportionment or redistricting of members in Congress after a civil action is commenced challenging or seeking to uphold the use of such meth-

od, until that method has been judicially finally determined to be authorized by the Constitution and by Act of Congress.

(3) It shall be the duty of a United States district court and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under this section.

(e) Any agency or entity within the executive branch, having authority with respect to the carrying out of a decennial census, may in a civil action obtain a declaratory judgment respecting whether or not the use of a statistical method, in connection with such census, to determine the population for the purposes of the apportionment or redistricting of members in Congress is forbidden by the Constitution and laws of the United States.

(f) For purposes of this section—

(1) the term “statistical method” means an activity related to the design, planning, testing, or implementation of the use of sampling, or any other statistical procedure, including statistical adjustment, to add or subtract counts to the enumeration of the population; and

(2) a matter shall not be considered to have been judicially finally determined until it has been finally determined on the merits in appellate proceedings before the Supreme Court of the United States.

(g) This section shall apply in fiscal year 1998 and succeeding fiscal years.

(h) Nothing in this Act shall be construed to authorize the use of any statistical method, in connection with a decennial census, for the apportionment or redistricting of members in Congress.

PART II

The amendments made in order by the rule are as follows:

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HYDE OF ILLINOIS, OR A DESIGNEE, DEBATABLE FOR 30 MINUTES

Page 116, strike line 16 and all that follows through line 2 on page 117 and insert the following:

SEC. 616. ATTORNEYS FEES AND OTHER COSTS IN CERTAIN CRIMINAL CASES.

During fiscal year 1997 and in any fiscal year thereafter, the court, in any criminal case pending on or after the date of the enactment of this Act, shall award, and the United States shall pay, to a prevailing party, other than the United States, a reasonable attorney’s fee and other litigation costs, unless the court finds that the position of the United States was substantially justified or that other special circumstances make an award unjust. Such awards shall be granted pursuant to the procedures and limitations provided for an award under section 2412 of title 28, United States Code. Fees and other expenses awarded under this provision to a party shall be paid by the agency over which the party prevails from any funds made available to the agency by appropriation. No new appropriations shall be made as a result of this provision.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MOLLOHAN OF WEST VIRGINIA, OR REPRESENTATIVE SHAYS OF CONNECTICUT, OR A DESIGNEE. DEBATABLE FOR 80 MINUTES

In the first paragraph under “DEPARTMENT OF COMMERCE—BUREAU OF THE CENSUS—PERIODIC CENSUSES AND PROGRAMS” strike “Subject to the limitations provided in section 209, for” and insert “For”.

Strike section 209 and insert the following:

SEC. 209. None of the funds made available in this Act for fiscal year 1998 may be used by the Department of Commerce to make irreversible plans or preparations for the use of sampling or any other statistical method (including any statistical adjustment) in taking the 2000 decennial census of population for purposes of the apportionment of Representatives in Congress among the States.

SEC. 210. (a) There shall be established a board to be known as the Board of Observers for a Fair and Accurate Census (hereinafter in this section referred to as the “Board”).

(b)(1) The function of the Board shall be to observe and monitor all aspects of the preparation and implementation of the 2000 decennial census (including all dress rehearsals) to determine whether the process has been manipulated in any way so as to bias the results in favor of any geographic region, population group, or political party, or on any other basis.

(2) In carrying out such function, the Board shall give special attention to the design and implementation of any sampling techniques and any statistical adjustments used in determining the population for purposes of the apportionment of Representatives in Congress among the several States.

(3) The Board shall promptly report to the Congress and the President evidence of any manipulation referred to in paragraph (1).

(c)(1) The Board shall be composed of 3 members as follows:

(A) 1 individual appointed by the President.

(B) 1 individual appointed jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate.

(C) The Comptroller General of the United States.

The members appointed under subparagraphs (A) and (B), respectively, shall be former Presidents or others of similar stature.

(2) Members shall not be entitled to any pay by reason of their service on the Board, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(d)(1) The Board shall have an Executive Director who shall be appointed by the Board and paid at a rate not to exceed level IV of the Executive Schedule.

(2) The Board may appoint and fix the pay of such additional personnel as it considers appropriate, subject to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

(3) Subject to such rules as may be prescribed by the Board, the Board may procure temporary and intermittent services under section 3109(b) of such title 5, but at rates for individuals not to ex-

ceed the daily equivalent of the maximum annual rate of pay payable for grade GS-15 of the General Schedule.

(4)(A) Upon request of the Board, any personnel of an agency under subparagraph (B) may be detailed to the Board, on a reimbursable basis or otherwise, to assist the Board in carrying out its duties.

(B) The agencies under this subparagraph are the General Accounting Office, the Congressional Research Service, and the Congressional Budget Office.

(e)(1) Notwithstanding any provision of title 13, United States Code, or any other provision of law, members of the Board and any members of the staff who may be designated by the Board under this paragraph shall be granted access to any data, files, information, or other matters maintained by the Bureau of the Census (or received by it in the course of conducting a decennial census of population) which they may request, subject to such regulations as the Board may prescribe in consultation with the Secretary of Commerce.

(2) The regulations shall include provisions under which individuals gaining access to any information or other matter pursuant to paragraph (1) shall be subject to sections 9 and 214 of title 13, United States Code.

(f) The Board shall transmit to the Congress and the President—

(1) interim reports, at least semiannually, with the first such report due by August 1, 1998; and

(2) a final report not later than August 1, 2001.

The final report shall contain a detailed statement of the findings and conclusions of the Board with respect to the matters described in subsection (b), together with any recommendations regarding future decennial censuses of population.

(g) Of the amounts appropriated to the Bureau of the Census for each of fiscal years 1998 through 2001, \$2,000,000 shall be available to the Board to carry out this section.

(h) To the extent practicable, members of the Board shall work to promote the most accurate and complete census possible by using their positions to publicize the need for full and timely responses to census questionnaires.

(i) The Board shall cease to exist on September 30, 2001.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BURTON OF INDIANA, OR A DESIGNEE, DEBATABLE FOR 30 MINUTES

On page 104, after line 2, insert the following new section:

SEC. 505. (a) Not later than January 1, 1998, the Legal Services Corporation shall implement a system of case information disclosure which shall apply to all basic field programs which receive funds from the Legal Services Corporation from funds appropriated in this Act.

(b) Any basic field program which receives Federal funds from the Legal Services Corporation from funds appropriated in this Act must disclose to the public in written form, upon request, and to the Legal Services Corporation in semiannual reports, the following information about each case filed by its attorneys in any court:

(1) The name and full address of each party to the legal action unless such information is protected by an order or rule

of a court or by State or Federal law or revealing such information would put the client of the recipient of such Federal funds at risk of physical harm.

(2) The cause of action in the case.

(3) The name and address of the court in which the case was filed and the case number assigned to the legal action.

(c) The case information disclosed in semi-annual reports to the Legal Services Corporation shall be subject to disclosure under section 552 of title 5, United States Code.

