105TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 105–597

PROVIDING FOR CONSIDERATION OF H.R. 4104, THE TREASURY POSTAL APPROPRIATIONS BILL FOR FISCAL YEAR 1999

JUNE 23, 1998.—Referred to the House Calendar and ordered to be printed

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

REPORT

[To accompany H. Res. 485]

The Committee on Rules, having had under consideration House Resolution 485, 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. 4104, "The Treasury Postal Appropriations Bill for Fiscal Year 1999," under an open rule.

The rule waives points of order against consideration of the bill for failing to comply with clause 2(l)(6) of rule XI (requiring a 3-day layover of the committee report), or clause 7 of rule XXI (requiring printed hearings and reports to be available for 3 days prior to consideration of general appropriations bills). The rule provides for one hour of general debate equally divided between the chairman and ranking minority member of the Appropriations Committee.

The rule also provides that the amendments printed in part 1 of this report be considered as adopted in the House and in the Committee of the Whole. The rule waives points of order against provisions in the bill, as amended, which do not comply with clause 2 of rule XXI (prohibiting unauthorized or legislative appropriations in a general appropriations bill) and clause 6 of rule XXI (prohibiting reappropriations in a general appropriations bill), except as specified in the rule.

The rule further waives all points of order against the amendments printed in part 2 of this report and provides that such amendments may be offered only by a Member designated in the

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report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question.

The rule provides for priority in recognition for those amendments that are pre-printed in the Congressional Record. The rule provides that the chairman of the Committee of the Whole may postpone recorded votes on any amendment and that the chairman may reduce voting time on postponed questions to 5 minutes, provided that the voting time on the first in a series of questions is not less than 15 minutes.

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

PART I

SUMMARY OF AMENDMENTS CONSIDERED AS ADOPTED BY THE RULE TO H.R. 4104—TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT APPROPRIATIONS FY99

Strikes emergency funding related to the Year 2000 conversion of Federal information technology systems. ($2.25 billion)

In error the amendment adopted by the Appropriations Committee eliminated a provision of current law. Therefore, the amendment with the correction grants the authority of negotiating international postal agreements to the U.S. Trade Representative, rather than the U.S. Postal Service.

Amendments considered as adopted by the rule:

On page 37, strike line 10 and all that follows through page 38, line 14.

Strike subsection (c) of section 407 of title 39, United States Code, as proposed to be amended by section ____ (a) (relating to international postal arrangements), and insert the following:

"(c) The Postal Service may—

"(1) enter into such commercial and operational contracts relating to international postal services as it considers necessary, except that the Postal Service may not enter into any contract with an agency of a foreign government (whether under authority of this paragraph or otherwise) if it would grant an undue or unreasonable preference to the Postal Service with respect to any class of mail or type of mail service; and

"(2) with the consent of the President, establish the rates of postage or other charges on mail matter conveyed between the United States and other countries.".

PART II

SUMMARY OF AMENDMENTS MADE IN ORDER BY THE RULE ON H.R. 4104—TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT APPROPRIATIONS FY99

DeLay (30 min.): Finds that there is no Constitutional basis and no Federal common law or statutory law precedent to justify the establishment of a protective function privilege. Expresses the sense of the Congress that if the President believes that the protective function privilege has merit, he should submit legislation to

that effect to the Congress or otherwise withdraw his appeal of the recent district court decision denying the existence of such a privilege.

Coburn (30 min.): Clarifies that "contraceptive drug or device" does not apply to drugs or devices which result in an abortion.

Obey (30 min.): Exempts religiously sponsored, officiated or controlled plans from the requirement that all FEHBP plans cover the full range of prescription contraceptives as part of the benefits package. Allows the Catholic health plans currently participating in the FEHBP program to continue to participate without violating the tenets of their religious beliefs.

Amendments made in order by the rule:

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

Add at the end of title VI, but before the short title, the following:

SEC. . (a) Congress finds that—

(1) the Office of the Independent Counsel and a Federal grand jury are investigating allegations of personal wrongdoing and possible crimes in the White House;

(2) certain Secret Service agents asserted a "protective function privilege" and refused to answer questions before a Federal grand jury (*In Re Grand Jury Proceedings*, Misc. No. 91–148 (NHJ), *redacted version* at 1, (D.D.C. May 22, 1998) (hereinafter referred to as "*Grand Jury Proceedings*"));

(3) "[n]one of the questions at issue relate to the protective techniques or procedures of the Secret Service" (*Grand Jury Proceedings* at 1);

(4) Federal Rule of Evidence 501 provides that evidentiary privileges "shall be governed by the principles of the common law as they may be interpreted by the Courts of the United States in the light of reason and experience";

(5) the Supreme Court has interpreted Rule 501 to require courts to consider whether the asserted privilege is historically rooted in Federal law, whether any States have recognized the privilege, and public policy interests (*Grand Jury Proceedings* at 2, *citing Jaffee v. Redmond,* 518 U.S. 1, 12–15 (1996));

(6) the Supreme Court has emphasized that it is "disinclined to exercise [its] authority [under Rule 501] expansively" (*University of Pennsylvania v. EEOC,* 493 U.S. 182, 189 (1990)) and has cautioned that privileges "are not lightly created nor expansively construed, for they are in derogation of the search for truth" (*U.S. v. Nixon,* 418 U.S. 683, 710 (1974));

(7) the district court found "no constitutional basis for recognizing a protective function privilege," "no history of the privilege in Federal common or statutory law," "[n]o State [recognition of] a protective function privilege or its equivalent," and "the policy arguments advanced by the Secret Service are not strong enough to overcome the grand jury's substantial interest in obtaining evidence of crimes or to cause this Court to create a new testimonial privilege" (*Grand Jury Proceedings* at 3, 6–9);

(8) no administration has ever sought congressional enactment of a protective function privilege;

(9) Chief Judge Norma Holloway Johnson refused to establish a protective function privilege (*Grand Jury Proceedings* at 9) and correctly noted such claims should be made to Congress, not to the courts (*Grand Jury Proceedings* at 4);

(10) the Attorney General, who is the Nation's chief law enforcement official, should not assert claims of privilege, such as the protective function privilege, that have no basis in law and the assertion of which substantially delays the work of the grand jury;

(11) former Attorneys General Barr, Thornburgh, Meese, and Bell encouraged Attorney General Reno to forego appealing the district court's decision because they believe the decision was "legally and historically well-founded," and "any appeal would likely result in an opinion that would only magnify the precedential damage to the Executive Branch" (Letter from Professor Jonathan Turley to Attorney General Reno, May 25, 1998); and

(12) the Attorney General has appealed the district court's decision.

(b) It is the sense of the Congress that the President of the United States, if he believes such a policy is warranted, should submit to the Congress proposed legislation which would establish a protective function privilege and also direct the Attorney General to immediately withdraw the appeal of the district court's decision in the matter styled *In Re Grand Jury Proceedings,* Misc. No. 91–148 (NHJ), *redacted version,* (D.D.C. May 22, 1998).

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE COBURN OF OKLAHOMA, OR A DESIGNEE, DEBATABLE FOR 30 MINUTES

Page 71, strike line 18 and all that follows through page 72, line 2, and insert the following:

"(b) For purposes of this section—

"(1) the term 'contraceptive drug or device' means a drug or device intended for preventing pregnancy, but does not include any drug, device, or procedure which has as one of its known effects the interference with the implantation of a fertilized human ovum or embryo in the uterus or the termination of pregnancy after implantation in the uterus; and

"(2) the term 'outpatient contraceptive services' means consultations, examinations, procedures, and medical services, provided on an outpatient basis and related to the use of contraceptive methods (including natural family planning) to prevent pregnancy, not including the provision of any service relating to a drug, device, or procedure which has as one of its known effects the interference with the implantation of a fertilized human ovum or embryo in the uterus or the termination of pregnancy after implantation in the uterus."

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

At the end of section 516 (page 72, after line 2), insert the following:

(c) An organization that is religiously controlled, sponsored, or affiliated shall be exempted from the application of this section if, or to the extent that, the providing of any coverage or benefits referred to in subsection (a) would violate the bona fide tenets of the religion involved.

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