

Legislative Bulletin.....July 20, 2004

Contents:

Suspensions

- H.Res. 723**—Recognizing the 35th anniversary of the Apollo 11 lunar landing
H.R. 4259—Department of Homeland Security Financial Accountability Act
H.R. 4608—Bob Michel Department of Veterans Affairs Outpatient Clinic Designation Act
H.R. 3936—To amend title 38, United States Code, to authorize the principal office of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, D.C. metropolitan area
H.R. 4175—Veterans' Compensation Cost-of-Living Adjustment Act of 2004
H.Con.Res. 308—Recognizing the members of AMVETS for their service to the Nation and supporting the goal of AMVETS National Charter Day
S.J.Res. 38—A joint resolution providing for the appointment of Eli Broad as a citizen regent of the Board of Regents of the Smithsonian Institution
S. 2362—A bill to authorize construction of a Smithsonian Astrophysical Observatory instrumentation support control building and associated site development on Kitt Peak, Arizona
H.R. 4816—To permit the Librarian of Congress to hire Library of Congress Police employees
S. 741—Minor Use and Minor Species Animal Health Act of 2003
H.R. 4600 — Junk Fax Prevention Act of 2004

Rule bill

- H.R. 3574**—Stock Option Accounting Reform Act

Motion to Instruct

- Stenholm Motion to Instruct Conferees on H.R. 1308**—All-American Tax Relief Act of 2003

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 1

Total Cost of Discretionary Authorizations: \$65 million over five years

Static Effect on Revenue: None

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 4

H.Res. 723—Recognizing the 35th anniversary of the Apollo 11 lunar landing (Hall)

Order of Business: The resolution is scheduled to be considered on Tuesday, July 20th, under a motion to suspend the rules and pass the bill.

Summary: H.Res. 723 would resolve that the House:

- “recognizes the 35th anniversary of the Apollo 11 lunar landing;
- “commends the astronauts and other men and women of the National Aeronautics and Space Administration (NASA) whose efforts assured the success of the Apollo 11 mission; and
- “supports the continued leadership of the United States in the exploration of space.”

The resolution also states: “The Apollo 11 mission continues to inspire exploration, as NASA envisions returning to the moon and eventually landing a person on Mars.”

Additional Background: On July 16, 1969, the U.S. launched the Apollo 11 mission into space to attempt the first manned lunar landing. On July 20, 1969, astronaut Neil A. Armstrong stepped onto the lunar surface.

Committee Action: On July 19, 2004, the resolution was referred to the Science Committee, which took no official action on it.

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

H.R. 4259—Department of Homeland Security Financial Accountability Act (Platts)

Order of Business: The bill is scheduled for consideration on Tuesday, July 20th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 4259 adds the Department of Homeland Security (DHS) to the list of departments and agencies covered by the Chief Financial Officers (CFO) Act of 1990 and requires the President to appoint or designate a CFO for the Department (who would then face confirmation in the Senate) within 180 days of enactment of the legislation. The bill also requires DHS to submit its annual financial and performance management reports in the form

of a “performance and accountability” report and include in the report audit opinions of its internal controls.

H.R. 4259 also requires the Secretary of DHS to develop a yearly comprehensive homeland security strategy, with defined objectives, for submission as part of the Future Years Homeland Security Program and establishes an Office of Program Analysis and Evaluation.

Additional Background: DHS currently employs a CFO with the same duties and responsibilities as CFOs in other agencies, and also operates an office for Program Analysis and Evaluation.

Committee Action: H.R. 4259 was introduced on May 4, 2004, and referred to the Committees on Government Reform and Homeland Security. The Committee on Government Reform favorably reported the bill on May 6, 2004, by voice vote. The Committee on Homeland Security discharged the bill on June 9, 2004.

Cost to Taxpayers: The Congressional Budget Office estimates that H.R. 4259 will cost \$4 million annually.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Committee on Government Reform, in House Report 108-533, cites Article I, Section 8, Clause 18 (all laws “necessary and proper”).

Staff Contact: Lisa Bos, lisa.bos@mail.house.gov, (202) 226-1630

H.R. 4608—Bob Michel Department of Veterans Affairs Outpatient Clinic Designation Act (LaHood)

Order of Business: The bill is scheduled for consideration on Tuesday, July 20th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 4608 would designate the Department of Veterans Affairs outpatient clinic located in Peoria, Illinois, as the “Bob Michel Department of Veterans Affairs Outpatient Clinic.”

Additional Background: Bob Michel represented the 18th congressional district of Illinois from 1957 until his retirement in 1994. A graduate of Bradley University, he served in World War II and was wounded during the Battle of the Bulge. Bob Michel served more consecutive terms in the House as a member of the minority than anyone else in history. He served as chairman of the National Republican Campaign Committee (1973-74), Republican

Whip (1975-1980) and was elected House Minority Leader in 1980. He served in that post until his retirement.

Committee Action: H.R. 4608 was introduced on June 17, 2004, and referred to the Committee on Veterans' Affairs. The Committee did not take action on the resolution.

Cost to Taxpayers: The only costs associated with a building renaming are those for sign and map changes, none of which significantly affect the federal budget.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Staff Contact: Lisa Bos, lisa.bos@mail.house.gov, (202) 226-1630

H.R. 3936—To amend title 38, United States Code, to authorize the principal office of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, D.C., metropolitan area (Chris Smith)

Order of Business: The bill is scheduled for consideration on Tuesday, July 20th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 3936 would allow the principal office of the United States Court of Appeals for Veterans to be located anywhere in the Washington, D.C. metropolitan area, instead of only in the District of Columbia. The bill also expresses a sense of Congress that the Secretary of Defense should determine the feasibility of locating a dedicated Veterans Courthouse and Justice Center for the U.S. Court of Appeals for Veterans at an appropriate federal site near the Pentagon. The bill would require the Secretary of Defense, the Secretary of Veterans Affairs, and the Administrator of General Services to submit a report within 90 days after enactment on the feasibility of locating a new Veterans Courthouse and Justice Center at an appropriate site owned by the United States.

Additional Background: Since 1988, the U.S. Court of Appeals for Veterans has been located in a commercial office building in Washington, D.C.

Committee Action: H.R. 3936 was introduced on March 11, 2004, and referred to the Committee on Veterans' Affairs. The Subcommittee on Benefits favorably reported the bill by voice vote on May 13, 2004, and the full Committee favorably reported the bill on May 19, 2004, by voice vote.

Administration Position: The Department of Defense noted in a letter (included in the Committee Report for H.R. 3936) that it could not support construction of a Veterans

Courthouse and Justice Center on federal land near the Pentagon because the property is being used “to provide essential parking for DoD employees.” The DoD suggested leasing or purchasing private sector land in the area but did note that a feasibility study being conducted could allow for “enhanced-use-leasing” for a courthouse.

Cost to Taxpayers: The Congressional Budget Office estimates that H.R. 3936 would have no significant effect on the federal budget in the near term. If the U.S. Court of Appeals for Veterans does relocate to a new, dedicated facility, CBO estimates that it could cost \$35 million over the 2006-2009 period.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Committee on Veterans’ Affairs, in House Report 108-574, cites Article I, Section 8, but fails to cite a specific clause.

Staff Contact: Lisa Bos, lisa.bos@mail.house.gov, (202) 226-1630

H.R. 4175—Veterans’ Compensation Cost-of-Living Adjustment Act of 2004 (Chris Smith)

Order of Business: The bill is scheduled for consideration on Tuesday, July 20th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 4175 would provide a cost-of-living adjustment (COLA) for disability compensation for veterans with service-connected disabilities and for dependency and indemnity compensation for survivors of certain service-connected disabled veterans equal to the increase provided under the Social Security Act (based on changes in the Consumer Price Index), effective December 1, 2004. The bill also adds osteoporosis to the list of diseases presumed to be service-connected for former prisoners of war (for the purposes of veterans’ benefits) and codifies the current dollar amounts of disability compensation and dependency and indemnity compensation (provided in Public Law 108-147).

Additional Background: The COLA for certain veterans’ compensation is traditionally set by reference to the to-be-determined Social Security COLA. The increase for the next year is expected to be about 1.7 percent, but a final percentage will not be calculated until September 30, 2004. In the Administration’s FY05 budget, the COLA was estimated at 1.3 percent.

Committee Action: H.R. 4175 was introduced on April 20, 2004, and referred to the Committee on Veterans’ Affairs. The Subcommittee on Benefits forwarded the bill to the full Committee by voice vote on May 13, 2004, and the full Committee favorably reported the bill by voice vote on May 19.

Cost to Taxpayers: According to the Congressional Budget Office, H.R. 4175 would increase spending \$466 million in 2005 (estimating a COLA of 1.5 percent), but since the COLA is assumed in the baseline, there would be no budgetary impact relative to the baseline.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Committee on Veterans' Affairs, in House Report 108-524, cites Article I, Section 8, but fails to cite a specific clause.

Staff Contact: Lisa Bos, lisa.bos@mail.house.gov, (202) 226-1630

**H.Con.Res. 308—Recognizing the members of AMVETS for their service to the Nation and supporting the goal of AMVETS National Charter Day
(*Bishop of New York*)**

Order of Business: The resolution is scheduled to be considered on Tuesday, July 20th, under a motion to suspend the rules and pass the bill.

Summary: H.Con.Res. 308 would resolve that Congress “recognizes the members of AMVETS (American Veterans) for their service to the Nation and supports the goal of AMVETS National Charter Day.”

Additional Background: AMVETS, a not-for-profit corporation founded on July 23, 1947, is a national membership and service organization for American veterans who honorably served in or after World War II. Members of AMVETS continue to provide services to hospitalized veterans, assist veterans with housing and employment problems, march in parades, participate in color guards and burial details, and educate young people.

AMVETS has designated July 23 as AMVETS National Charter Day, the goal of which is to “raise public awareness regarding AMVETS' commitment and service to veterans, the families of veterans, and the Nation.”

For more information on AMVETS, visit their website: <http://www.amvets.org/>

Committee Action: On October 21, 2003, the resolution was referred to the Veterans' Affairs Committee, which took no official action on it.

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

S.J.Res. 38—A joint resolution providing for the appointment of Eli Broad as a citizen regent of the Board of Regents of the Smithsonian Institution (Senator Cochran)

Order of Business: The resolution is scheduled to be considered on Tuesday, July 20th, under a motion to suspend the rules and pass the bill.

Summary: S.J.Res. 38 would fill the vacancy on the Board of Regents of the Smithsonian Institution, in the class other than Members of Congress, with Eli Broad of California. The appointment would be for a term of six years, beginning upon the date of enactment of this resolution.

Additional Background: A self-made businessman, Eli Broad started and grew two Fortune 500 companies over a five-decade career in business: AIG Retirement Services Inc. (formerly SunAmerica Inc.) and KB Home (formerly Kaufman and Broad Home Corporation). Read more about Mr. Broad at this webpage:

<http://www.broadfoundation.org/eli/index-net.shtml>

Mr. Broad is also consistently in the Forbes list of the world's richest people:

<http://www.forbes.com/finance/lists/10/2003/LIR.jhtml?passListId=10&passYear=2003&passListType=Person&uniqueId=599L&datatype=Person>

The Smithsonian vacancy is the result of the death of Barber B. Conable, Jr.

Committee Action: On June 9, 2004, the Senate passed the resolution by unanimous consent. On June 14th, the resolution was referred to the Committee on House Administration, which took no official action on the resolution.

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

S. 2362—A bill to authorize construction of a Smithsonian Astrophysical Observatory instrumentation support control building and associated site development on Kitt Peak, Arizona (Senator Cochran)

Order of Business: The bill is scheduled to be considered on Tuesday, July 20th, under a motion to suspend the rules and pass the bill.

Summary: S. 2362 would authorize \$1 million for fiscal year 2005 for the Board of Regents of the Smithsonian Institution to develop the site for a Smithsonian Astrophysical Observatory instrumentation support control building, including the installation of necessary utilities and equipment housings, and to construct such building on the site for the purpose of supporting the collaborative Very Energetic Radiation Imaging Telescope Array System (VERITAS) project on Kitt Peak near Tucson, Arizona.

Additional Background: VERITAS is an uncompleted series of special ground-based telescopes that detect gamma rays (the detection of which usually has to be done from space). Objects that emit gamma rays (rays on the electromagnetic spectrum—like visible light, radio waves, and X-rays) are very interesting to astrophysicists because high-energy gamma rays are associated with supernova (exploding stars), pulsars, quasars, and black holes—some of the most mysterious phenomena in the universe. The emission of high-energy gamma-rays from cosmic objects always implies the presence of extreme physical conditions—high magnetic and electric fields, shock waves, cataclysmic explosions, etc. Often, the only way to *directly* probe these extreme conditions is via gamma rays.

VERITAS is funded by the Department of Energy, the National Science Foundation, the Smithsonian Institution, and the governments of Canada, Ireland, and the United Kingdom.

To learn more about gamma rays and VERITAS, visit this webpage:
http://veritas.sao.arizona.edu/VERITAS_science.html

Committee Action: On June 14, 2004, the Senate passed the resolution by unanimous consent. On June 16th, the resolution was referred to the Committee on House Administration, which took no official action on the resolution.

Cost to Taxpayers: The bill would authorize appropriations of \$1 million in fiscal year 2005.

Does the Bill Expand the Size and Scope of the Federal Government?: The bill would authorize the creation of a new federal building (and site for the building) near a federally funded series of gamma ray telescopes.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

H.R. 4816—To permit the Librarian of Congress to hire Library of Congress Police employees (Ney)

Order of Business: The bill is scheduled to be considered on Tuesday, July 20th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 4816 would strike the provisions of the FY2004 Legislative Branch Appropriations Act that prevent the Librarian of Congress from directly hiring any individual as a Library of Congress Police employee and from transferring a Library of Congress employee to the Library of Congress Police force. The Librarian of Congress had to submit requested hires to the Chief of Capitol Police for hiring. Under H.R. 4816, the Librarian would be able to directly hire Library of Congress Police employees. The bill would also strike the cap on hiring Library of Congress Police employees.

Committee Action: On July 12, 2004, the bill was referred to the Committee on House Administration, which took no official action on it.

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

S. 741— Minor Use and Minor Species Animal Health Act of 2003 (Sen. Sessions)

Order of Business: The bill is scheduled for consideration on Tuesday, July 20th, under a motion to suspend the rules and pass the bill.

S. 741 passed the Senate on March 8, 2004, by unanimous consent.

Summary: S. 741 amends the Federal Food, Drug, and Cosmetic Act (FFDCA) to authorize the Food and Drug Administration (FDA) to establish a conditional approval process for drugs for minor use (defined as the use of a drug in a major species for a disease that occurs infrequently in a small number of animals) and minor species (defined as animals other than humans that are not major species (cattle, horses, swine, chickens, turkeys, dogs, and cats)). A conditional approval would be effective for one year and renewable by the Secretary for up to 4 additional 1-year terms. The bill would establish a new office within the FDA to

administer activities related to regulating animal drugs for minor uses and minor species. S. 741 authorizes \$1.2 million in FY04 and “such sums” each following fiscal year for the new office.

The bill would require the Secretary to create an index of legally marketed unapproved drugs to treat certain minor species. Eligibility for listing on the index would apply to drugs for animals that are not consumed by humans or food-producing animals, or for use in a non-food life stage of a minor species (such as the larval form of shellfish) in a contained man-made structure (such as a hatchery pond or tank). The Secretary could place a drug on the index if the sponsor demonstrates that the drug meets certain safety criteria and if an expert panel concludes that the benefits of using the drug outweigh it risks to the target animal.

These drugs must have a prominent label indicating that the drug is not approved by the FDA.

S. 741 also would authorize grants to public and private entities and individuals to help defray a portion of the cost associated with the development of designated new animal drugs and would award seven years of marketing exclusivity to products meeting certain criteria. The bill authorizes \$1 million for the fiscal year following publication of final implementing regulations, \$2 million for the subsequent fiscal year, and such sums as may be necessary for each fiscal year thereafter.

S. 741 also would require that labels for food products indicate in plain English the presence of any of the eight major food allergens (milk, eggs, fish, Crustacean shellfish, tree nuts, peanuts, wheat, and soybeans), and would direct the Secretary of Health and Human Services to engage in a number of activities to increase scientific and public understanding of issues related to food allergies. The bill authorizes the Secretary to conduct inspections of manufacturing and processing facilities to ensure that major food allergens are properly labeled on foods.

Committee Action: S. 741 was referred to the Committee on Energy and Commerce on March 9, 2004. The Subcommittee on Health approved the bill by voice vote on June 15, 2004, and the full Commerce Committee favorably reported the bill on June 24, also by voice vote.

Cost to Taxpayers: The Congressional Budget Office estimates that implementing S. 741 would cost \$6 million in 2006 and \$60 million over the 2005–2009 period, subject to appropriations. The bill directly authorizes only \$4.2 million and “such sums” for grants for the development of designated new animal drugs and for the new FDA office.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill establishes one new grant program for the development of designated new animal drugs and establishes a new office in the FDA.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. S. 741 would impose a private-sector mandate on the manufacturers, packagers, and labelers of processed foods by requiring them to display on the label the names of the major food allergens from which the ingredients are derived. CBO

estimates that the direct cost of these mandates would not exceed the threshold established by Unfunded Mandates Reform Act (\$120 million in 2004, adjusted annually for inflation).

Constitutional Authority: The Committee on Energy and Commerce, in House Report 108-608, cites Article I, Section 8, Clause 3 (commerce clause).

Staff Contact: Lisa Bos, lisa.bos@mail.house.gov, (202) 226-1630

H.R. 4600 — Junk Fax Prevention Act of 2004 (Upton)

Order of Business: The bill is scheduled for consideration on Tuesday, July 20, 2004, under a motion to suspend the rules and pass the bill.

Summary: H.R. 4600 would amend the Communications Act (47 USC 227) and regulations regarding unsolicited advertisements sent via telephone facsimile machine (so-called “junk faxes”). The bill would direct the Federal Communications Commission (FCC), within 270 days following enactment, to issue regulations to control unsolicited advertisement sent via fax and establishes an opt-out requirement for senders of certain faxes.

The bill makes it illegal under federal law, “to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement, unless—

- (1) “the unsolicited advertisement is from a sender with an established business relationship with the recipient,” and
- (2) the unsolicited advertisement contains a notice meeting the opt-out requirements specified in H.R. 4600.

The bill concurs with the definition of “established business relationship” found in the FCC regulations of January 1, 2003, though it adds that “such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber.” The bill also authorizes the FCC to limit such “relationship” to having occurred not shorter than 5 years ago and not longer than 7 years ago.

Opt-out: To comply with the law, the bill requires senders to include an opt-out notice that is “clear and conspicuous and on the first page.” The opt-out notice must include “a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and a cost-free mechanism for a recipient to transmit a request to the sender” to stop faxing. The cost-free mechanism might include either a toll-free or a local telephone number. The bill includes authority for the FCC to establish a nonprofit exception to this rule, for such groups as trade associations with members.

H.R. 4600 requires an annual report from the FCC, and a study by the General Accounting Office on the effectiveness of these regulations.

Additional Information: As part of the Telecommunications Consumer Protection Act (TCPA), passed in 1991, Congress included language regulating unsolicited commercial faxes. The law prohibited anyone from faxing an “unsolicited advertisement,” which is defined as “material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission.”

According to the Committee, for 10 years rules to the TCPA junk fax prohibition were enforced under one interpretation, but in July 2003, the Commission amended its junk fax rules. These amended regulations, that are slated to take effect in January 2005, would require written permission from recipients prior to senders’ transmission of any unsolicited fax advertisements.

If this bill were enacted, it would eliminate the requirement to obtain written permission from customers but replace this requirement with the opt-out mechanism. This legislation, the Committee notes, “is designed to permit legitimate businesses to do business without the unnecessary and expensive burden of collecting written permission to send faxes.”

According to *National Journal* and the Committee, the sponsor has argued the financial costs of the new rules on small businesses and nonprofits have been enormous. A survey by the U.S. Chamber of Commerce reportedly suggested the cost of the pending FCC rule to the average small business would be at least \$5,000 in the first year and more than \$3,000 each year thereafter. The survey further found it would take an average of more than 27 hours of staff time to obtain the initial written consent from their customers and an additional 20 hours each year to keep the forms current. Another survey by the National Association of Wholesaler-Distributors revealed that its member companies expected to pay an average of \$22,500 to obtain consent forms required under the pending rule. The National Association of Realtors estimated that it would have to collect over 67 million permissions to sustain the roughly 6 million home sales from last year.

Committee Action: H.R. 4600 was introduced on June 16, 2004, and referred to the House Committee on Energy and Commerce, which considered the bill, amended it, and ordered it reported to the full House on June 24 by voice vote.

Cost to Taxpayers: H.R. 4600 would not have a significant effect on revenues or spending, subject to appropriation. Any civil penalties collected for violations of these laws are recorded in the federal budget as revenues.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill creates a new federal FCC law that makes sending certain types of faxes illegal, and establishes federal procedures that must be followed if sending faxes to those with whom a company has an established business relationship.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, the bill imposes private-sector mandates on senders of unsolicited fax advertisements. Based on information from industry sources, CBO expects that the aggregate direct cost of mandates in the bill would be fully offset by savings from the bill and thus would fall below the annual \$120 million threshold established by UMRA for private-sector mandates.

Constitutional Authority: The Energy and Commerce Committee, in Report 108-593 finds authority under Article I, Section 8, Clause 3 of the Constitution, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

RSC Staff Contact: Sheila Moloney; sheila.moloney@mail.house.gov; (202) 226-9719.

H.R. 3574—Stock Option Accounting Reform Act (Baker)

Order of Business: The bill is scheduled to be considered on Tuesday, July 20th, subject to a structured rule (H.Res. 725). Amendments made in order under the rule are summarized below.

Summary: H.R. 3574 would require a publicly traded company (excluding American, Canadian, and Mexican small businesses and all businesses that have been public for less than three years) to show as an immediate expense in its mandatory annual report the estimated value of all stock-purchase options granted to the CEO (and anyone serving as CEO during the most recent fiscal year) and the four next-highly-compensated executive officers after December 31, 2004. For all other employees of such companies, stock option expenses would have to be accounted for in the year in which they are exercised or forfeited.

The bill would also deny Securities and Exchange Commission (SEC) recognition of any accounting principle established by a standard-setting body (regarding stock options expensing) until the Secretaries of Commerce and of Labor complete a joint study on the economic impact of mandatory expensing of all employee stock options. The bill clarifies that nothing in the legislation would limit the authority over the setting of accounting principles by an accounting standards setting body whose principles are recognized by the SEC.

No later than 180 days after the date of this bill's enactment, the SEC would have to require that each securities issuer include in its periodic report more detailed information regarding stock option plans, stock purchase plans, and other arrangements involving an employee acquisition of an equity interest in the company (including a "plain English" discussion of the dilutive effect of stock option plans, the number of outstanding stock options, and the estimated number of stock options outstanding that will vest in each year.

Additional Background: On March 31, 2004, the Financial Accounting Standards Board (FASB) issued an accounting standard mandating that public companies expense the stock

options of all employees in the year that they are given to the employee (as opposed to the year in which the employee exercises or forfeits the options). This standard would have the effect of forcing public companies to revalue themselves based on artificial estimates of what the stock options *might* be worth (as opposed to the *actual* value of the options when they are exercised or forfeited).

Amendments Made in Order under the Rule (H.Res. 725):

(Debate time indicated parenthetically)

Oxley (Manager's Amendment): Clarifies that any company wishing to voluntarily expense all its employee stock options (as recommended by FASB) in its periodic reports to the SEC could do so. *(10 minutes)*

Sherman: Strikes the requirement that an assumption of zero volatility be used when estimating the fair value of the stock options for the top five executives. *(10 minutes)*

Maloney: Affirms that this legislation should not be construed to “impair or limit” the authority of the SEC to establish accounting principles or standards on its own initiative, as the SEC deems necessary in the public interest or for the protection of investors. *(10 minutes)*

Kanjorski/ Castle/ Dingell/ Maloney/ Emanuel (Amendment in the Nature of a Substitute): Includes findings concerning the SEC’s authority over standard setting, the importance of FASB’s independence and credible accounting standards to the economy and investors, the recent actions of Congress in the Sarbanes-Oxley law (Public Law 107-204) to strengthen the standard-setting process, the importance of U.S. accounting standards matching the standards of other countries, the comparative advantage provided to the U.S. by high quality accounting standards, and the damage to FASB and the standard-setting process of legislative pre-emption. Includes a sense of the Congress that preserving the integrity of the accounting standard-setting process and FASB independence is crucial to the financial reporting system and markets and that the SEC should be permitted to adopt new standards without congressional intervention. Directs the SEC to oversee the process of setting standards for equity-based compensation (stock options) to ensure that all comments are appropriately reviewed and that any modifications necessary to ensure the highest quality accounting standards are adopted. *(20 minutes)*

Committee Action: The bill was referred to the Financial Services Committee on November 21, 2003, and to the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises on December 2, 2003. On May 12, 2004, the Subcommittee marked up and forwarded the bill to the full Committee by voice vote. On June 3rd and 15th, the Committee marked up and ordered the bill reported to the full House by a vote of 45-13. On July 15th, the bill was referred to the Energy and Commerce Committee, which discharged the bill on July 16th.

Administration Position: The Administration has not taken a formal position on this legislation.

Cost to Taxpayers: CBO reports that this bill would have no significant effect on the federal budget.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, it would require certain stock options expensing and prohibit the implementation of a rule set by the leading accounting standards board.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes—two private sector mandates (requiring stock options expensing for the top five senior executives of publicly traded companies and requiring additional information about stock options in periodic reports).

Constitutional Authority: The Financial Services Committee, in House Report 108-609, cites constitutional authority in Article I, Section 8, Clause 1 (general welfare) and Clause 3 (interstate commerce).

Outside Organizations: Americans for Tax Reform, the Small Business Survival Committee, the National Taxpayers Union, the American Shareholders Association, Frontiers of Freedom, and the 60 Plus Association have all expressed support for this legislation.

The Heritage Foundation has expressed concerns about congressional efforts to “micro-manage specific accounting issues.” The U.S. Chamber of Commerce is not taking a position on the legislation.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718

Stenholm Motion to Instruct Conferees on H.R. 1308—the All-American Tax Relief Act

Order of Business: On Monday, July 19, 2004, Rep. Charlie Stenholm (D-TX) notified the House of his intention to offer a motion to instruct conferees on H.R. 1308—the All-American Tax Relief Act.

Text of Motion: The text of the Stenholm motion is as follows:

Mr. Stenholm moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the Senate amendment to the bill H.R. 1308 be instructed to agree, to the maximum extent possible within the scope of conference, to a conference report that--

- (1) extends the tax relief provisions which expire at the end of 2004, and
- (2) does not increase the Federal budget deficit.

Additional Background: NOTE: This motion is not the same as the motion Democrats offered 16 times last year on this bill. Information on that motion can be found at this RSC webpage: <http://johnshadegg.house.gov/rsc/LB110503a.pdf>

H.R. 1308, as it most recently passed the House, would primarily:

- Accelerate the increase in refundability of the child tax credit;
- Eliminate the marriage penalty in the child tax credit by raising the phase-out for married couples from \$110,000 to \$150,000 (twice the level of the single filer phase-out); and
- Repeal the sunset included in the Jobs and Growth Tax Relief Reconciliation Act (Public Law 108-27) ensuring that the Child Tax Credit stays at \$1,000 through 2010 (in 2011 it sunsets back to pre-2001 levels of \$500)

To view the RSC Legislative Bulletin on H.R. 1308, which includes a legislative history of the bill, visit this webpage: <http://johnshadegg.house.gov/rsc/LB61203A.pdf>

Cost to Taxpayers: Any motion to instruct conferees is non-binding and thus would have no effect on the cost or revenue effects of the underlying legislation.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718