



Legislative Bulletin.....September 17, 2003

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H.R. 659—Hospital Mortgage Insurance Act of 2003 (Ney)

Order of Business: The bill is scheduled for consideration on Wednesday, September 17th, under a motion to suspend the rules and pass the bill.

The House passed H.R. 659 on March 12, 2003, by a vote of 419-0. The Senate passed the bill, with amendment, on September 2 by unanimous consent. The House will move to suspend the rules and agree to the Senate amendment.

Summary: Under the National Housing Act, the Federal Housing Administration (FHA) has the authority to insure private loans used to finance the modernization and rehabilitation of hospitals. To qualify, hospitals must obtain a certificate of need (CON) from the state, which determines if the hospital meets eligibility requirements. If the state does not have a CON process (24 states do not), it must conduct an independent feasibility study. These studies are often expensive.

H.R. 659 amends the National Housing Act to give the Department of Housing and Urban Development (HUD) authority to establish the means for determining need and feasibility for a hospital project seeking mortgage insurance in states where there is not a CON program. Hospitals would also be required to meet state or local licensure and operation requirements.

New provisions added by the Senate amendment:

- Exempts critical access hospitals from the program until July 31, 2006, and requires the Secretary of HUD to report to Congress no later than three years after that date on the effects of the exemption.
- Requires a HUD study on the barriers to the receipt of mortgage insurance by Federally qualified health centers.

Committee Action: The bill was considered by the Committee on Financial Services and reported by voice vote on February 13, 2003.

Cost to Taxpayers: The Congressional Budget Office estimated that H.R. 659, as passed by the House, would increase offsetting collections (a credit against discretionary spending) by \$2 to \$3 million per year. A CBO score including the Senate amendment estimates that the bill would increase offsetting collections by **\$3 million to \$4 million a year**.

Does the Bill Create New Federal Programs or Rules?: The bill makes changes to the current HUD hospital mortgage program.

Constitutional Authority: The Committee on Financial Services, in House Report 108-27, cites Article I, Section 8, Clause 3 (the commerce clause).

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H.R. 292—Korean War Veterans Recognition Act (Kelly)

Order of Business: The bill is scheduled to be considered on Wednesday, September 17th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 292 would amend Section 6(d) of Title 4 of the U.S. Code to include July 27, National Korean War Veterans Armistice Day, in the list of days on which the American flag should especially be displayed.

This section of Title 4 reads as follows (spacing altered):

The flag should be displayed on all days, especially on:

- New Year's Day, January 1;
- Inauguration Day, January 20;
- Martin Luther King Jr.'s birthday, third Monday in January;
- Lincoln's Birthday, February 12;
- Washington's Birthday, third Monday in February;
- Easter Sunday (variable);
- Mother's Day, second Sunday in May;
- Armed Forces Day, third Saturday in May;
- Memorial Day (half-staff until noon), the last Monday in May;
- Flag Day, June 14;
- Independence Day, July 4;
- Labor Day, first Monday in September;
- Constitution Day, September 17;
- Columbus Day, second Monday in October;
- Navy Day, October 27;
- Veterans Day, November 11;
- Thanksgiving Day, fourth Thursday in November;
- Christmas Day, December 25;
- and such other days as may be proclaimed by the President of the United States;
- the birthdays of States (date of admission); and

➤ State holidays.

Additional Background: On July 27, 1953, after three years of intense fighting in the Korean War, an armistice was signed, North Korea withdrew to its side of the 38th parallel, and South Korea remained an independent, democratic nation. 1.8 million American soldiers fought in the Korean War, 103,284 were wounded, and 36,577 died.

During the 106th Congress, Congress passed H.J. Res. 86, (Public Law 106-195), urging the President to make a proclamation recognizing and calling upon Americans to observe the anniversary of the Armistice. On June 23, 2000, President Clinton made such a proclamation.

Committee Action: On July 25, 2003, the Judiciary Committee favorably reported the bill by voice vote to the full House.

Cost to Taxpayers: CBO confirms that H.R. 292 would have no significant impact on the federal budget.

Does the Bill Create New Federal Programs or Rules?: No.

Constitutional Authority: The Judiciary Committee, in House Report 108-250, cites constitutional authority in Article I, Section 8, but does not cite a specific clause.

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**H.R. 2152—To amend the Immigration and Nationality Act to extend
for an additional 5 years the special immigrant religious worker program
(Frank)**

Order of Business: The bill is scheduled to be considered on Wednesday, September 17, 2003, under a motion to suspend the rules and pass the bill.

Summary: The bill amends 8 U.S.C. 1101, to extend for an additional five years an immigration provision that allows immigrants to come to the United States specifically to work as a minister for a religious organization. The bill makes this extension effective on October 1, 2003.

The effect of the Franks bill on current law is shown in bold below:

TITLE 8 - ALIENS AND NATIONALITY
CHAPTER 12 - IMMIGRATION AND NATIONALITY
SUBCHAPTER I - GENERAL PROVISIONS
Sec. 1101. Definitions

...
(27) The term "special immigrant" means -

- (C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who -
- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
 - (ii) seeks to enter the United States -
 - (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
 - (II) before October 1, ~~2003~~, **2008** in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
 - (III) before October 1, ~~2003~~, **2008** in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of title 26) at the request of the organization in a religious vocation or occupation; and

Committee Action: H.R. 2152 was introduced on May 19, 2003 and referred to the House Judiciary Committee from where it was reported by voice vote on September 10, 2003.

Cost to Taxpayers: A CBO cost estimate is unavailable.

Constitutional Authority: A Judiciary Committee report citing constitutional authority is unavailable.

Does the Bill Create New Federal Programs or Rules?: No, the bill extends current law for five years.

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H.R. 49—Internet Tax and Nondiscrimination Act (Cox)

Order of Business: The bill is scheduled to be considered on Wednesday, September 17th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 49 would **permanently** extend the moratorium on state and local taxation of Internet **access** (not standard commercial transactions on the Internet) and **multiple and discriminatory** taxation of e-commerce. The original moratorium went into effect on October 1, 1998, was set to expire on October 21, 2001, and was extended through November 1, 2003 (by H.R. 1552 in the 107th Congress, which passed by voice vote on October 16, 2001). Although the previous moratorium had allowed states that had been collecting a sales tax on Internet access prior to October 1, 1998 to continue doing so, H.R. 49 would strike such grandfathering language and therefore ban Internet access taxes in all states.

Committee Action: On May 22, 2003, the Subcommittee on Commercial and Administrative Law marked up and favorably reported the bill by voice vote to the full Judiciary Committee. On July 16, 2003, the Committee marked up and favorably reported the bill by voice vote to the full House.

Administration Position: Although a Statement of Administration Policy (SAP) is unavailable for H.R. 49, the SAP for H.R. 1552 in the 107th Congress expressed support for a

two-year extension of the moratorium and preference for a five-year extension. To access the SAP, visit this website:

<http://www.whitehouse.gov/omb/legislative/sap/107-1/HR1552-s.html>

Cost to Taxpayers: CBO estimates that implementing H.R. 49 would have no impact on the federal budget (since the bill only applies to state and local taxes). While there is some uncertainty about the number of states that would be directly affected by this moratorium, CBO estimates that the lost revenue to states and local governments would probably total between \$80 million and \$120 million annually.

Does the Bill Create New Federal Programs or Rules?: No, it would permanently extend a current-law moratorium.

Constitutional Authority: The Judiciary Committee, in House Report 108-234, cites constitutional authority in Article I, Section 8, but does not cite a specific clause.

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H.R. 7 -- Charitable Giving Act of 2003 (Blunt)

Order of Business: The bill is scheduled to be brought up under a modified closed rule that self-executes one amendment and makes in order one substitute.

Summary:

Charitable Giving / Charitable Operations Provisions That Reduce Revenue

The bill reduces revenues by \$659 million in 2004 and \$12.663 billion over ten years as follows (#s in parenthesis indicate revenue loss):

Charitable Deduction for Non-Itemizers: Allows non- itemizers to deduct (in addition to the standard deduction) charitable cash contributions of up to \$250 (\$500 for a joint filer) for tax years 2004 through 2006. The provision sunsets at the end of 2006. (\$2.9 billion over ten years with all revenue loss occurring in 2004 through 2006)

Charitable Contributions from IRAs: Allows those 70 ½ and older to make tax-free distributions from their IRA to charitable causes. (\$2.8 billion over ten years)

Corporate Charitable Contributions: Raises the cap on deductions for corporate charitable contributions from 10% on modified taxable income to 11% in 2004, 12% in 2005, 13% in 2006, 14% in 2007, 15% in 2008 through 2011, and 20% in 2012 and thereafter. (\$1.5 billion over ten years)

Charitable Deduction for Food Inventory: Permits taxpayers engaged in a trade or business to claim an enhanced deduction (lesser of two times the cost or cost plus ½ of market value) for

food donations. Currently they can only claim a deduction of the actual cost. (\$643 million over ten years)

Excise Tax on Private Foundations: Replaces the current two-tier tax (1% and 2% depending on certain conditions) on net investment income of private foundations with a single 1% rate. Modifies the definition of qualifying distributions (used to determine whether a charity is making the minimum amount of required payouts) to exclude certain administrative expenses. Increases the tax imposed on self-dealing from 5% to 25%. (\$2.3 billion over ten years).

Unrelated Business Income of Trusts: Provides that in lieu of removing the income tax exemption of a charitable remainder trust for any taxable year in which the trust has unrelated business income, a 100-percent excise tax is imposed on the unrelated business income. (\$52 million over ten years)

Donation of Computers and Scientific Equipment: Expands the enhanced deduction for the donation of computers and scientific equipment to include property assembled by the taxpayer. Makes permanent the current enhanced deduction for qualified computer contributions. (\$1.5 billion over ten years)

S Corporations & Charitable Contributions: Provides that the amount of a shareholder's basis reduction in the stock of an S Corporation by reason of a charitable contribution made by the corporation shall equal the shareholder's pro rata share of the adjusted basis of the contributed property. (\$433 million over ten years)

Collegiate Housing: Permits charitable organizations to make collegiate infrastructure and housing grants. (\$127 million over ten years)

Games of Chance for Charitable Purposes: Permits certain games of chance operated by charities to be treated the same as bingo for tax purposes, provided that the net proceeds are used for charitable purposes or purposes authorized by State law. (\$6 million over ten years)

Federal Excise Tax Exemption for Blood Collector Organizations: Exempts blood collector organizations (Red Cross for example) from Federal excise taxes. (\$13 million over ten years)

Sale of Property by Social Clubs: Extends the amount of time from four years to eleven years that a social club has to acquire replacement property after the sale of existing property without incurring certain tax penalties on the capital gains from the original sale. (\$78 million over ten years)

One-Year Exemption from Federal Guarantee Prohibition for Certain Bonds for Nursing Homes: (\$16 million over ten years)

Landowner Incentive Programs: Expands the current-law provisions that provide an exclusion from gross income for the payments received by a taxpayer from the government for the improvements of property under certain conservation programs to include the Fish and

Wildlife Coordination Act, the Fish and Wildlife Act, and the Endangered Species Act. (\$38 million over ten years)

Tax Treatment of Certain Payments Made to Controlling Tax-Exempt Organizations:

Modifies current law related to the treatment as unrelated business income rent, royalties, annuities and other interest income paid by a controlled subsidiary organization to a tax-exempt controlling organization (\$175 million over ten years)

Elimination of Separate Cap on Grassroots Lobbying by Charities: Eliminates the separate limitation on expenditures for grass-roots lobbying by charities. Charities must still comply with the overall cap on lobbying expenditures (which is not changed). Under current law, charities must limit their grass-roots expenditures to a certain percent of their overall lobbying expenditures. (\$14 million over ten years)

Pilot Project for Forest Conservation Activities: Creates a pilot project through 2006 to provide two tax benefits to qualified organizations that acquire forestlands for conservation management. The first provision provides that qualified forest conservation bonds will be treated like facility bonds. The second provision provides an exclusion from gross income for income from certain timber harvesting activities conducted by a qualified organization on land purchased using forest conservation bonds. (\$61 million over ten years)

Other Provisions With Negligible Revenue Effects

Suspend the Tax-Exempt Status of Terrorist Organizations.

Clarification of Church Tax Inquiry: Clarifies that the church tax inquiry procedures (which limit inquiries to those approved by high-level officials based on specific criteria) do not apply to contacts made by the IRS to a church for the purpose of educating churches with respect to federal tax laws governing tax-exempt organizations.

Spending Authorizations

Compassion Capital Fund: Authorizes \$150 million in appropriations for FY 2004 and such sums for fiscal years 2005 through 2008 for the Compassion Capital Fund at the Department of Health and Human Services. The Secretary would make grants from the fund to support private entities that operate promising social service programs so that the entity can provide technical assistance (legal, business, etc) to other entities that operate social service programs.

Individual Development Accounts: The bill makes a number of modifications to the Individual Development Account (IDA) demonstration program established in 1998. Currently, the demonstration program provides direct Federal funds to nonprofit organizations, States and localities, community-development financial institutions, and certain credit unions to match the amount of earnings deposited by eligible individuals. Grantees must provide non-Federal- matching funds (one dollar per Federal grant dollar). Eligible persons are those (1) who are eligible under the Temporary Assistance for Needy Families program, or (2) whose household net worth is below \$10,000 (“net worth test”), and who

meet the greater of (a) the income limits of the earned income credit (taking into account the size of the household) or (b) 200 percent of the poverty guideline (“income test”). Each participant is eligible to receive up to \$2,000 in Federal funds, and households may receive no more than \$4,000 in Federal grant funds over the course of the project. The projects must create trust or custodial accounts that permit withdrawals of account balances only for three designated purposes: (1) first home purchase, (2) business capitalization, and (3) postsecondary education. Emergency withdrawals (from the account holder’s own deposits only) are allowed for three conditions -- medical expenses, prevention of eviction or mortgage foreclosure, and living expenses after job losses.

Proposed Changes:

- Remove the cost of financial literacy activities provided to IDA holders by those administering the IDA program from the current cap on administrative expenses of 15% of program dollars
- Make eligible certain households whose income does not exceed 50% of the Area Median Income, even if they do not meet the other income test
- Provide flexibility in how IDA funds can be spent for post-secondary expenses
- Provide greater flexibility in the spending of excess interest earned on IDA matching funds
- Extend the program through 2008 and with the current authorization of \$25 million a year.

Maternity Group Homes: Adds maternity group homes to the list of the types of shelters that can be supported through Transitional Living Project Grants. Provides a definition of maternity group homes. The bill also requires an evaluation of maternity group homes and authorized \$33 million in fiscal year 2003 and such sums in fiscal year 2004. The rule self executes an amendment that strikes these latter two provisions (evaluation and authorization of appropriations) from the bill.

Transfer of TANF Funds to Social Services Block Grant: Permanently restores a 1996 provision of law permitting states to transfer up to 10% of their annual TANF (welfare) block grants to the Social Service Block Grant Program to provide social services. In 1998 this percent was reduced to 4.25%, however recent appropriations bills have permitted the 10% transfer.

Cost to the Taxpayer: Assuming the appropriation of authorized funds (for the Individual Development Accounts and Compassion Capital Fund), the bill would cost taxpayers \$904 million between 2004 and 2008. The bill would also save taxpayers \$12.663 billion over ten years.

Does the Bill Create New Federal Programs or Rules?: The bill authorizes the extension of existing programs. The maternity group home authorization, which would have been new, is struck from the bill.

Constitutional Authority: The Ways and Means Committee cites Constitutional authority in Article I, Section 8 (lay and collect taxes), and from the 16th Amendment (income tax).

Committee Action: The bill as amended was reported favorably by the Ways and Means Committee by voice vote.

Democrat Substitute Amendment (Cardin):

Includes all the provisions of the underlying bill, but adds the following:

Increase Social Service Block Grant spending to \$2.8 billion (a \$1.1 billion increase) for FY 2004.

Includes numerous provisions that would raise revenue (i.e. increase taxes) to offset the revenue losses and spending increases in the rest of the bill.

Among the provisions raising taxes are the following:

Clarification of the economic substance doctrine – The proposal would require that business transactions (i.e. transactions which are permitted to reduce a business’s tax liability) have a meaningful impact on a businesses economic position (apart from Federal tax effects) and that a business have a substantial non-tax reason for entering into a transaction (i.e. no business transactions for the purpose of reducing taxes). In addition, a transaction must be reasonably expected to have at least a pre-tax profit in excess of a risk-free rate of return in order to be legitimate business transactions. This proposal would put the government in the position of determining after-the-fact what business transactions are legitimate and whether or not the business should have known that the transaction would have been unprofitable. This provision would strongly discourage businesses from making otherwise legitimate transactions for fear that they would not be acceptable to the IRS because the IRS has a different opinion of what constitutes a “reasonable” expectation for profit. The bill includes significant penalties for understating your taxes because of reliance on transactions which the IRS determines not to have been legitimate.

Tax Shelters – The Cardin substitute proposes multiple new restrictions on “tax shelters” which, according to the majority staff of the Ways and Means Committee, would also limit the ability of businesses to engage in legitimate business transactions.

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