



Legislative Bulletin.....March 31, 2003

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**H.R. 1463—Smallpox Emergency Personnel Protection Act of 2003 (Burr)
(As Reported)**

Order of Business: The bill is scheduled to be considered on Monday, March 31, 2003, under a motion to suspend the rules and pass the bill.

Summary: The bill authorizes “such sums as may be necessary” for FY03-07 to the Secretary of HHS to establish procedures to determine whether people are eligible for federal compensation due to the adverse effects from the smallpox vaccine, to determine how and if they are to be compensated, and to compensate eligible individuals. The compensation program is retroactive to November 25, 2002. The bill prohibits the Secretary from considering compensation if the compensation request comes in over a year after the vaccine has been administered or after two years from the first symptoms of an accidental vaccination.

The bill allows the Secretary to review any determination made under the smallpox compensation program and *prohibits* any court or federal employee (unless the President specifically directs) from reviewing the Secretary’s decision. Any Secretarial amendment will, where applicable, extend the one- and two-year time limits on eligible claims from the amendment’s effective date.

The Secretary will establish an adverse-effects table that shall list presumed effects from the administration of the smallpox vaccine and may amend this list retroactively. Furthermore, the Secretary is authorized to administer this program through a Memorandum of Agreement with the heads of federal agencies and such agency heads are authorized to promulgate implementing regulations, as appropriate.

Under the definitions in the bill, a “covered individual” is someone:

1. who is a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialties;
2. who is or will be functioning in a role identified in a State, local, or Department of Health and Human Services smallpox emergency response plan approved by the Secretary;
and
3. to whom a vaccine is administered pursuant to such approved plan— during the effective period of the Secretary’s Declaration (which began on January 24, 2003) **and** not later than a) 180 days after the regulations become effective, b) 120 days after becoming an individual in an occupation described in #1 above; or c) 120 days after becoming an individual identified as a member of a smallpox emergency response plan described in #2 above.

Medical benefits:

The Secretary shall pay or reimburse for medical items and services “necessary to treat a covered injury of an eligible individual.” Such payments must be secondary to any other benefits (such as health insurance payments).

Federal Payments

1) Lost Income Compensation:

Under H.R. 1463, the Secretary shall compensate an individual harmed by the smallpox vaccine at a rate of 66 2/3 percent of monthly employment income (including self-employment income), except if an individual has one or more dependent the rate shall be 75%. [If a health care worker made \$60,000 (\$5,000 per month) and was determined to have suffered from the smallpox vaccine, such compensation would amount to \$3,333 per month from the federal government or \$3750 if he or she has a child.] **Total benefits are capped at \$50,000 per year and the lifetime total may not exceed what would be paid out for death or permanent disability (currently \$250,000).** The compensation does not apply for a waiting period of 5 days of missed work. Income loss compensation is not available if individuals or their survivors receive payment under the category of a death resulting from the smallpox vaccine or for total disability. In other words, an individual cannot claim total disability payments and then claim income compensation payments.

2) Permanent, Total Disability Compensation:

Total disability is cross referenced to the definition of disability under the Social Security Act (42 U.S.C. 416(i)), which states that “disability” means:

“(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term “blindness” means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is

accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.”

(Source: <http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t41142+1622+0++%28%29%20AND%20%28%2842%29%20AD1%20USC%29%3ACITE%20AND%20%28USC%20w%2F10%20%28416%29%29%3ACITE%20%20%20%20%20%20%20%20>)

After an individual is determined to be disabled due to the administration of the smallpox vaccine, or accidental vaccination, payments will be made in the same manner as payments are made in the federal Public Safety Officer Benefit Program (PSOB), except that if the injured is a minor or someone with legal guardianship, the payment shall be made to the parent or legal guardian.

Under the current PSOB program (as amended by H.R. 3297 in the 107th Congress), a benefit of is paid:

- (1) to the spouse,
- (2) or in the absence of a spouse, to dependent children
- (3) or in the absence of a spouse, or dependent children, **to life insurance policy beneficiary**
- (4) or in the absence of a spouse or dependent children or life insurance policy beneficiary, to the victim’s parents.

3) Death Compensation:

If an individual is determined to have died due to the administration of the smallpox vaccine, or accidental vaccination, a death benefit will be made in the same manner as payments are made in the federal Public Safety Officer Benefit Program (PSOB), except that if the deceased is a minor, with no living parent, the payment shall be made to the legal guardian. Under the current program, this death benefit would equal \$250,000. The bill reduces this death compensation payment by any amount paid out under the income loss compensation program. (In other words, if someone originally receives smallpox vaccine payments for losing work, but then ultimately dies due to the smallpox vaccine, the death payout would deduct the amount already paid out as under income loss compensation.)

Both death and disability payments are made in addition to amounts paid out under medical benefit payments. If the disabled or diseased individual qualifies for death or disability payments under the Public Safety Officer Benefit Program, then the *PSOB* shall pay, not the vaccine fund. If PSOB funds are limited by appropriations then the vaccine fund shall supplement funds up to what would be the full PSOB benefit (currently \$250,000).

H.R. 1463 makes explicit that nothing in the bill shall be construed as overriding or limiting any rights to seek compensation under federal or state law.

It also requires that state, local, or Department of Health and Human Services smallpox emergency response plans are consistent with guidelines established and updated by the Centers for Disease Control and Prevention (CDC).

Liability Amendments:

The bill amends a provision in the Dept. of Homeland Security Act (Public Law 107-296 (H.R. 5005 in the 107th Congress) to clarify that accidental smallpox vaccination includes those who have “contact with,” not just live with, those who have received the vaccine. The bill further amends Public Law 107-296 with regard to countermeasures (i.e. vaccines). The bill expands and clarifies a number of provisions regarding a person who is covered from liability with respect to the administration of countermeasures (note: while the manufacturer was already covered, a contractor or volunteer is added, for example)

The bill shields from liability any person who receives the smallpox vaccine under the Secretary’s Declaration and later transmits it to another individual. The bill requires that the amount the federal government pays to be offset by the amount of money awarded in the case of any settlement, award, or compromise from a claim or lawsuit.

Additional Information:

For permanent disability or death due to the smallpox vaccine, the bill specifies that payments shall be disbursed as payments are dispersed *under the Public Safety Office Benefit Program*. In the 107th Congress, the House expanded the PSOB to make a person named as the beneficiary in a life insurance policy eligible for federal death compensation payments. **The 107th bill H.R. 3297 allowed a chaplain to qualify under PSOB, and according to press releases and news reports also allowed some domestic partners of public safety officers killed in the September 11 attacks to qualify for payments.** Because H.R. 1463 cross references the PSOB, if there is an individual who dies due to being vaccinated or accidentally vaccinated under the federal smallpox directive, a person named as a life insurance beneficiary would likely qualify for federal smallpox payments, currently \$250,000.

The CDC has a webpage dedicated to smallpox information:

<http://www.bt.cdc.gov/agent/smallpox/index.asp>

According to the CDC, “Of the 25,645 civilians who had received the smallpox vaccine as of March 21, 2003, seven reported heart problems. These included problems like angina (chest pain caused by lack of blood flow to the heart) and heart attacks. One person who had a heart attack died. It is not known at this time if smallpox vaccination caused these events.”

According to news reports, 17 people so far are identified as possibly suffering adverse reactions to the smallpox vaccine, including three (as of March 31, 2003) who have died of heart attacks (two women and a man). The women were both health care workers in private hospitals, and the third, which was announced on Friday, March 28, 2003, was a 55-year-old National Guardsman, the first death in a military inoculation program that has been administered to 350,000 people.

On Friday, March 28, 2003, the Advisory Committee on Immunization Practices, a panel of technical advisers to the CDC, recommended that the screening of those who should not receive the smallpox vaccine be expanded to exclude anyone with at least three risk factors for heart disease, such as smoking, high blood pressure, high cholesterol, and diabetes. The CDC estimated that would exclude about 6 percent of health care workers and 10 percent of

the general public.

Cost to Taxpayers: A CBO cost estimate is unavailable.

Does the Bill Create New Federal Programs or Rules?: Yes, the bill creates a new program to compensate eligible individuals who have adverse reactions to the smallpox vaccine or from accidental vaccination.

Committee Action: H.R. 1463 was introduced on March 27, 2003 and was referred to the committee on Energy and Commerce, and jointly referred to the Committee on Education and the Workforce and the Judiciary Committee. The bill was not considered in any of the three committees.

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

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H.Con.Res. 58 — Honoring the City of Fayetteville, North Carolina, and its many partners for the Festival of Flight, a celebration of the centennial or Wilbur and Orville Wright’s first flight; the first controlled, powered flight in history (Etheridge)

Order of Business: The resolution is scheduled for consideration on Monday, March 31st, under a motion to suspend the rules and pass the bill.

Summary: H.Con.Res. 58 contains a variety of findings, including the following:

- On December 17, 1903, Wilbur and Orville Wright completed the first sustained and controlled flight at Kitty Hawk, North Carolina;
- The City of Fayetteville, North Carolina will host the Fayetteville Festival of Flight May 16-26, 2003, to celebrate the centennial of the Wright brothers’ flight, one of four events nationwide endorsed as a full partner by the United States Centennial of Flight Commission; and
- The City of Fayetteville has joined with civic groups, private businesses, government agencies, and military partners to plan the festival.

H.Con.Res. 58 further resolves that Congress “honors the City of Fayetteville, North Carolina, and its many partners, for the Festival of Flight, a celebration of the centennial of Wilbur and Orville Wright’s first flight, the first controlled, powered flight in history.”

Committee Action: The resolution was referred to the Committee on Government Reform on February 27, 2003, but was not considered.

Cost to Taxpayers: The resolution authorizes no expenditure.

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

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H.R. 1208 — Northern Ireland Peace and Reconciliation Support Act of 2003 (Smith)

Order of Business: The bill is scheduled for consideration on Monday, March 31st, under a motion to suspend the rules and pass the bill.

Summary: H.R. 1208 authorizes \$25 million each year for fiscal years 2004 and 2005 for the International Fund for Ireland. In addition, the bill expands the purposes of the Fund to include “programs that enhance relations between communities, and between the police and the communities they serve, promote human rights training for police, enhance peaceful mediation in neighborhoods of continued conflict, and promote training programs to enhance the new district partnership police boards.

Additional Background: The British and Irish Governments established The International Fund for Ireland as an independent, international organization in 1986. According to the United States Agency for International Development (USAID), the objectives of the Fund are “to promote economic and social advancement, and encourage contact, dialogue, and reconciliation between Nationalists and Unionists.” The Fund seeks to achieve those objectives by supporting and promoting social reconciliation through economic development in Northern Ireland and Ireland, with priority given to new investments that create jobs and reconstruct disadvantaged areas. Fund policy requires that all projects benefit both communities, and that the implementing organization must include members of both communities.

Since 1986, the U.S. has provided funds to the International Fund for Ireland (thus far totaling approximately \$390 million). The Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2002 appropriated \$25 million for the Fund, as did the FY03 Omnibus Appropriations bill. **The Administration has requested \$8.5 million for the Fund for FY04.**

The Fund has faced some criticism. For example, some of the projects it has funded include a hotel swimming pool and a tourist video for a golf resort. Others have questioned the continued need for the Fund since the Irish economy is now doing well (Ireland accounts for 40 percent of all the software sold in Europe and unemployment in 2002 was down to 4.7% from a high of 17%. Unemployment in Northern Ireland of 6% in 2001 was less than the European Union average of 7.6%).

Committee Action: H.R. 1208 was referred to the International Relations Committee and reported by voice vote on March 12, 2003.

Cost to Taxpayers: CBO estimates that implementing the bill would cost \$45 million over the 2004-2008 period, subject to appropriations.

Does the Bill Create New Federal Programs or Rules?: The bill authorizes funds for the International Fund for Ireland.

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

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H.Res. 149—Expressing the condolences of the House of Representatives in response to the assassination of Prime Minister Zoran Djindjic of Serbia (Bereuter)

Order of Business: The resolution is scheduled to be considered on Monday, March 31st, under a motion to suspend the rules and pass the bill.

Summary: H.Res. 149 would resolve that:

- “the House of Representatives offers its condolences and deepest sympathy to the people of Serbia and the family of Zoran Djindjic following the assassination of Prime Minister Djindjic;
- “the House of Representatives understands that organized criminal groups within Serbian society continue to threaten the free and democratic government of Serbia and Montenegro;
- “the House of Representatives recognizes that while implementing necessary reforms and cooperating with the International Criminal Tribunal for the former Yugoslavia may carry significant risks for the leadership of Serbia and Montenegro, these reforms and this cooperation are necessary and must continue; and
- “it is the sense of the House of Representatives that the United States should support continued democratic reforms initiated by Zoran Djindjic, should urge his successors to dedicate themselves to continue to support his road to reform, and should pledge to assist Serbia and its new leadership in accomplishing these necessary reforms, including efforts to fight organized crime and corruption.”

Additional Background: The resolution notes that Prime Minister Zoran Djindjic of Serbia was killed by two sniper bullets in front of his office in the center of Belgrade on Wednesday, March 12, 2003. Djindjic was known worldwide as a democratic activist and reformer. Following 88 days of mass protests over electoral manipulation during local elections in 1996, Zoran Djindjic was elected Belgrade's first noncommunist mayor since World War II. Djindjic is widely believed to be the chief strategist and main organizer behind the Yugoslav presidential elections of September 24, 2000, and the uprising of October 5, 2000, that resulted in the overthrow and delivery of former Yugoslav President Slobodan Milosevic to the International Criminal Tribunal for the former Yugoslavia. Since his Democratic Opposition of Serbia party elected him to be Prime Minister of Serbia on January 25, 2001, he

sought to advance democracy, human rights, free market reforms, and the rule of law in Serbia.

Committee Action: The resolution was referred to the Committee on International Relations on March 19, 2003, but was not considered by the Committee.

Cost to Taxpayers: The resolution would authorize no expenditure.

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

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H.R. 1166—To amend the Small Business Act to expand and improve the assistance provided by Small Business Development Centers to Indian tribe members, Native Alaskans, and Native Hawaiians (*Udall of New Mexico*)

Order of Business: The bill is scheduled to be considered on Monday, March 31st, under a motion to suspend the rules and pass the bill.

An identical bill, H.R. 2538, passed the House on December 5, 2001, by voice vote. It was never considered by the Senate.

Summary: H.R. 1166 would authorize **\$21.0 million** of additional grants for existing Small Business Development Centers (SBDCs) to assist with outreach, development, and enhancement of small business startups and expansions that are owned by Indian tribe members, Alaska Natives, or Native Hawaiians and that are located in Alaska, Hawaii, or on Indian lands in the remaining eligible states.

A state would only be eligible if its combined population of Indian tribe members, Alaska natives, and Hawaiian natives is at least 1% of the state's total population. States receiving such grants would have to consult with the governing bodies of Indian tribes, certain Alaska native entities, and certain Hawaiian native entities.

The bill would authorize \$7.0 million for each of fiscal years 2004, 2005, and 2006 for such grants. No Small Business Development Center could receive more than \$300,000 in grants in a single fiscal year.

Additional Background: The Small Business Development Center program provides grants for small business counseling and technical assistance at over 1000 centers nationwide to help start-ups, reduce business failures, and increase business expansions. SBDCs are jointly funded by the private sector, schools, and federal, state, and local governments to provide management assistance to current and prospective small business owners. H.R. 1166 would create an additional SBDC grant stream specifically for Indian and Alaska/Hawaii native businesses.

Committee Action: The bill was referred to the Committee on Small Business on March 6, 2003, but was not considered by the Committee.

Cost to Taxpayers: The bill would authorize \$7.0 million for each of fiscal years 2004, 2005, and 2006 (**\$21 million total**) for new grants to Small Business Development Centers to assist businesses owned by Indians, native Alaskans and native Hawaiians. CBO reported no additional costs in the legislation.

Does the Bill Create New Federal Programs or Rules?: H.R. 1166 would authorize new grants within a pre-existing grant program.

Constitutional Authority: Though no committee report citing constitutional authority for H.R. 1166 is available, last Congress for H.R. 2538, the Committee on Small Business (in House Report 107-211) cited constitutional authority in Article I, Section 8, Clause 18 (the congressional power to make all laws that are “necessary and proper for carrying into Execution the foregoing Powers”).

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