all motions to suspend the rules but not before 5 p.m. today.

AGE DISCRIMINATION IN EMPLOYMENT AMENDMENTS OF 1995

Mr. FAWELL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 849) to amend the Age Discrimination in Employment Act of 1967 to reinstate an exemption for certain bona fide hiring and retirement plans applicable to State and local firefighters and law enforcement officers, and for other purposes.

The Clerk read as follows:

H.R. 849

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Age Discrimination in Employment Amendments of 1995''.

SEC. 2. REINSTATEMENT OF EXEMPTION.

(a) REPEAL OF REPEALER.—Section 3(b) of the Age Discrimination in Employment Amendments of 1986 (29 U.S.C. 623 note; Public Law 99–592) is repealed.

(b) EXEMPTION.—Section 4(j) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623), as in effect immediately before December 31, 1993—

(1) is hereby reenacted as such, and

(2) as so reenacted, is amended by striking ''attained the age'' and all that follows through ''1983, and'', and inserting the following:

''attained—

''(A) the age of hiring or retirement in effect under applicable State or local law on March 3, 1983; or

''(B) if the age of retirement was not in effect under applicable State or local law on March 3, 1983, 55 years of age; and''.

SEC. 3. STUDY AND GUIDELINES FOR PERFORMANCE TESTS.

(a) STUDY.—Not later than 3 years after the date of enactment of this Act, the Chairman of the Equal Employment Opportunity Commission (in this section referred to as ''the Chairman'') shall conduct, directly or by contract, a study that will include—

(1) a list and description of all tests available for the assessment of abilities important for completion of public safety tasks performed by law enforcement officers and firefighters,

(2) a list of such public safety tasks for which adequate tests do not exist,

(3) a description of the technical characteristics that performance tests must meet to be compatible with applicable Federal civil rights Acts and policies,

(4) a description of the alternative methods available for determining minimally acceptable performance standards on the tests described in paragraph (1),

(5) a description of the administrative standards that should be met in the administration, scoring, and score interpretation of the tests described in paragraph (1), and

(6) an examination of the extent to which the tests described in paragraph (1) are cost effective, safe, and comply with Federal civil rights Acts and regulations.

(b) ADVISORY GUIDELINES.—Not later than 4 years after the date of enactment of this Act, the Chairman shall develop and issue, based on the results of the study required by subsection (a), advisory guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of law enforcement officers and firefighters to perform the requirements of their jobs.

(c) CONSULTATION REQUIREMENT; OPPORTUNITY FOR PUBLIC COMMENT.—(1) The Chairman shall, during the conduct of the study required by subsection (a), consult with—

(A) the United States Fire Administration,

(B) the Federal Emergency Management Agency,

(C) organizations that represent law enforcement officers, firefighters, and their employers, and

(D) organizations that represent older individuals.

(2) Before issuing the advisory guidelines required in subsection (b), the Chairman shall allow for public comment on the proposed guidelines.

(d) DEVELOPMENT OF STANDARDS FOR WELLNESS PROGRAMS.—Not later than 2 years after the date of the enactment of this Act, the Chairman shall proposed advisory standards for wellness programs for law enforcement officers and firefighters.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $5,000,000.

SEC. 4. EFFECTIVE DATES.

(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

(b) SPECIAL EFFECTIVE DATE.—Section 2(b)(1) shall take effect on December 31, 1993.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Illinois [Mr. FAWELL] will be recognized for 20 minutes, and the gentleman from California [Mr. MARTINEZ] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Illinois [Mr. FAWELL].

Mr. FAWELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill we are considering today, the Age Discrimination in Employment Amendments of 1995, would restore the public safety exemption under the Age Discrimination in Employment Act [ADEA] and permit police and fire departments to use maximum hiring and mandatory retirement ages as part of their overall personnel policies. When the upper age limit for coverage under the ADEA was removed in 1986, the use of such age criteria was made generally impermissible under the act. Legislation to restore the public safety exemption was twice considered and passed by the House during the last Congress, but failed to clear the Senate.

H.R. 849 amends section 4 of the ADEA to allow, but not require, State and local governments that used age-based hiring and retirement policies for law enforcement officers and firefighters as part of a bona fide hiring or retirement plan as of March 3, 1983, to continue to use such policies. It also amends section 4 to allow States and local governments that either did not use or stopped using age-based hiring or retirement policies to adopt such policies with the proviso that the mandatory retirement age be not less than 55 years of age. In addition, H.R. 849 directs the EEOC to identify particular types of physical and mental fitness tests that are valid measures of the ability and competency of public safety officers to perform their jobs and to promulgate guidelines to assist State and local governments in the administration and the use of such tests.

The flexibility to use age-based criteria as part of an overall personnel policy is being sought by both management and labor in the public safety field. The Subcommittee on Employer-Employee Relations received compelling testimony from organizations representing rank-and-file firefighters and police officers, as well as local government, arguing that age was an effective proxy for job fitness in these extremely dangerous and physically demanding occupations. These organizations contend that tests of physical and mental fitness have not proven a feasible alternative to an age proxy because such tests do not replicate the stress inherent in an actual emergency. Testing also places these organizations in the bind that many private sector employers find themselves in—namely, that they must use tests to avoid the use of arbitrary selection criteria, but every test they select is subject to challenge for its other discriminatory effects and for its job relatedness.

I find persuasive the arguments of these law enforcement and firefighting organizations which, after all, represent those on the frontlines of public safety. I do not feel that we can discount their judgment and there is obviously a commonsense recognition that there is some decline in physical ability with age. The potential threat to public safety posed by the expiration of the exemption demands that the Congress act to allow State and local governments closest to the needs of law enforcement and firefighting to make their own decisions about hiring and retirement policies.

I might add that I strongly support the protections against arbitrary age discrimination inherent in the ADEA. The public safety field is one of the rare exceptions where one's age is relevant to one's ability to perform effectively as a firefighter or law enforcement officer. Perhaps at some point, the age proxy will no longer be necessary and effective tests will be available. As I mentioned, to that end, the bill we are considering today directs the Equal Employment Opportunity Commission [EEOC] to develop and to issue advisory guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of law enforcement officers and firefighters to perform the requirements of their jobs. Until the point that adequate tests are in place however, I feel that the public safety exemption to the ADEA is necessary and that H.R. 849 should be quickly enacted. I urge the support of the legislation.

Mr. Speaker, I would also very much like to thank the gentleman from New York [Mr. OWENS], who did quite a lot of work on this bill last year, and the gentleman from California [Mr. MARTINEZ] for their longstanding support

and outstanding leadership regarding this legislation. During the last Congress, Mr. OWENS twice shepherded a similar bill to passage on the House floor only to see it languish and die in the other body. My hope is that our colleagues on the other side will now move on the bill and that this important legislation will indeed finally be enacted.

Mr. Speaker, I reserve the balance of my time.

Mr. MARTINEZ. Mr. Speaker, I yield myself such time as I may consume.

(Mr. MARTINEZ asked and was given permission to revise and extend his remarks.)

Mr. MARTINEZ. Mr. Speaker, I rise in support of H.R. 849. As the Honorable Member, the gentleman from Illinois [Mr. FAWELL], chairman of the Subcommittee on Employer-Employee relations has said, this bill has been before us in previous Congresses. In the 103d Congress, Mr. OWENS of New York was the chief author of the bill, and as the gentleman from Illinois [Mr. FAWELL] has said, it passed with the widest of margins.

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But it failed in the Senate, and, although there may be some who are still not in total support of this bill, this bill is a good bill, and this bill solves the problem raised by the municipalities who have demonstrated that the provision allowing them to implement an age-based retirement system, but not mandating that they do so, will provide them with the flexibility they need to continue to ensure the public safety and their residents and citizens.

This responds to the needs of the employees—those police and firefighters who feel so strongly that the public and their fellow public safety workers will be best served by the flexibility this change to the ADEA will allow. And, because it is not mandatory, but provides the authority to base a mandatory retirement program on age; city managers, fire chiefs, police chiefs, and their own elected officials can develop their own policies based on what works best for them.

I am proud to support this bill, and I ask my colleagues to do the same.

Mr. Speaker, I had intended to yield to the gentleman from New York [Mr. OWENS] who is not here, and I would ask if the gentleman from Illinois [Mr. FAWELL] is going to ask for the 5 legislative days for comment by our colleagues.

Mr. FAWELL. Mr. Speaker, will the gentleman yield?

Mr. MARTINEZ. I yield to the gentleman from Illinois.

Mr. FAWELL. Yes, I will.

Mr. HOYER. Mr. Speaker, I rise today in support of H.R. 849, to amend the Age and Discrimination in Employment Act of 1967. This bill will reinstate an exemption for certain bona fide hiring and retirement rules applicable to firefighters and law enforcement officials. The bill also instructs the Equal Employment Opportunity Commission Chairman to conduct a study as to whether there should be mandatory retirement ages for these public employees. Ultimately, this bill seeks to clear up the confusion which has come about due to differing court decisions throughout the country on this issue over the past several years.

In 1986, the Congress passed a law which exempted fire and police departments from the ADEA for a period of 7 years. This exemption expired on January 1, 1994. It has long since been time to act and with this bill today we are fulfilling our responsibility to those who put their lives on the line for each American every day.

All of us know how physically demanding firefighting is. We also recognize the importance of protecting our communities. Mr. Speaker, the ability for firefighters and law enforcement officials to perform their duties at peak level is literally a matter of life and death for each and every American. Clearly age affects and individuals ability to perform the duties associated with these jobs.

Mr. Speaker, the study which followed the passage of this legislation in 1986 clearly concluded that age has a direct impact on a person's ability to work as a police officer or firefighter. We took this measure up twice last year and both times if passed unanimously in the House. The inaction of the Senate in the last Congress is no excuse for us not to act favorably on this measure again in the 104th Congress and I urge its adoption here today.

For all of the hard and dedicated work that these public employees perform each and every day it is our responsibility to ensure that the rules governing their employment and retirement are adequate and fair. This is exactly what H.R. 849 seeks to achieve. Let us today demonstrate our support of firefighters and law enforcement officials throughout the country with the speedy, unanimous passage of this bill. Thank you.

Mr. OWENS. Mr. Speaker, I rise in strong support of H.R. 849, the Age Discrimination in Employment Act Amendments of 1995. This legislation would permanently exempt State and local public safety agencies from the Age Discrimination in Employment Act in order to permit them to consider age in their hiring and retirement policies. This exemption is urgently needed to provide State and local agencies the flexibility they need to ensure that all public safety employees are fit and able to carry out their very demanding jobs. Comparable legislation passed the House unanimously on two occasions last year but was prevented from even being considered by the Senate by the threat of a filibuster. It is imperative that there be no further delay.

As a rule, Congress must avoid exempting whole classes of employees from the protection of civil rights laws unless it is absolutely necessary. We should not carve out exemptions merely because an employer finds civil rights compliance to be costly or inconvenient. Exemptions must be made only when there is a strong compelling need to do so and there is no other reasonable alternative. This is one of those rare instances.

State and local fire and police agencies must be exempted from the ADEA in order to protect and promote the safety of the public. This is literally a life or death matter. If a police officer or firefighter cannot adequately perform their duties, people die and people get hurt.

Age does indeed affect an individual's ability to perform the duties of a public safety officer. This is not a stereotype. This is not ageism. This is a medical fact. Physical ability declines with age. For example, aerobic capacity declines at a rate of 1 percent per year after age 30. Strength declines at a rate of 10–13 percent every decade. The risk of sudden incapacitation also clearly increases with age, increasing sixfold between the age of 40 and 60 years of age. These physical effects are not experienced by all people to the same degree or at the same precise time. But they pose a significant problem to public safety agencies in their efforts to maintain a fit and effective work force.

A public safety agency can respond to age-related declines in ability in 1 of 2 ways. It can establish an age-based mandatory retirement policy. This will reduce the risks to public safety, but it may result in some capable individuals being forcibly retired.

Alternatively, an agency can try to use performance and physical ability testing to try to screen out employees who might pose a threat to public safety. Unfortunately, there are numerous problems with trying to use tests as an alternative to age which makes this option untenable.

It is simply not possible to devise a test for all tasks carried out by a public safety employee. For example, no test could have possibly simulated the kinds of physical conditions public safety employees in California have faced over the past few weeks of severe flooding. No test, no matter how comprehensive, can measure all of the skills and abilities a public safety employee must possess.

Moreover, there is no current test that can effectively screen for the risk of sudden incapacitation among asymptomatic individuals. A mandatory retirement age, used in conjunction with screening for other risk factors, continues to be the most effective way of reducing the risk of sudden incapacitation by public safety officers.

Testing can also have a very serious negative impact on other individuals and groups that historically have been discriminated against in employment. Tests have been proven to have an adverse impact on women and minorities. Women on average are less strong than men. Written tests may underpredict the on-the-job performance of minorities. To assure that such factors did not prevent women and minorities from serving in public safety positions, many agencies within-group normed the results of certain tests. Unfortunately, a provision of the Civil Rights Act of 1991 now prohibits that practice. As a result, any increase in the use of physical and mental testing of public safety employees will jeopardize employment opportunities for women and minorities.

Another, but lesser concern is that it is enormously expensive to administer performance and ability tests on a periodic basis to all public safety employees, consuming scarce resources that are needed to keep police on the streets. In addition, testing often entails considerable litigation over the content of the tests. In Tennessee, for example, there were several years of litigation over the State wildlife officer's entrance exam which focused on the question of whether the fences recruits had to scale should be 8 or 10 feet tall.

For these reasons, testing does not today represent a viable alternative to age-based

mandatory retirement policies for public safety agencies. If public safety agencies are exempted from the ADEA, those agencies who wish to experiment with testing in lieu of retirement ages will be able to do so. But given the uncertainty about the effectiveness, effects and implications of using tests as a substitute for age, the Congress must not force every public safety agency to implement them. This would be the effect if we did not enact an exemption.

I urge my colleagues to join me in supporting passage of H.R. 849. All public safety employees must be fit, effective, and fully capable of fulfilling their duties. An ADEA exemption will assure that State and local police and fire agencies will be able to pursue that goal using the same age-based employment criteria which is now used by the FBI, the Secret Service and other Federal public safety agencies.

Mr. WELDON of Pennsylvania. Mr. Speaker, I rise today to express my strong support for H.R. 849, the Age Discrimination in Employment Safety Exemption Act. As the founder of the congressional fire services caucus, I have worked tirelessly to promote fire safety at the national level. For this reason, I am a cosponsor of H.R. 849 and am grateful that my colleague from Illinois has brought this issue to the floor today.

The ability of all public safety officers to perform their duties at peak level is literally a matter of life or death for millions of Americans. I can tell you first hand that the physical demands of firefighting are overwhelming. For this reason, in 1986, Congress agreed to exempt fire and police departments from ADEA while an official study was conducted regarding the validity of age criteria for public safety occupations. The study verified what I have been saying for years, that the ability to work as a fire or police officer declines with age.

Fitness tests are not a valid alternative to age limits. I've been surrounded by a 6-foot wall of fire, and I'm telling you there is no adequate simulation. In addition, fitness tests have been consistently struck down by courts as discriminatory. In absence of a valid fitness test, age limits ensure our public safety teams are in peak condition.

In addition, this bill will continue to protect State and local governments who in the past have been threatened with costly litigation in their efforts to defend age policies. Lives are at stake; we cannot let this issue become another litigation nightmare played out in our Nation's courts.

H.R. 849 is supported by those who are directly affected by its passage, the fire and police officers who rely on the ability of their colleagues to perform each and every day. In addition, the measure enjoys a broad and diverse range of support from organizations such as the AFL–CIO, the International Association of Fire Chiefs, the Fire Department Safety Officers Association, the International Association of Chiefs of Police, and the National Association of Counties to name but a few.

Mr. Speaker, I support passage of H.R. 849 and urge my colleagues to support Congressman FAWELL's efforts to strengthen our emergency service teams.

Mr. MARTINEZ. Mr. Speaker, I have no further requests for time.

Mr. FAWELL. Mr. Speaker, I, too, have no further requests for time, and I yield back the balance of my time.

Mr. MARTINEZ. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MCINNIS). The question is on the motion offered by the gentleman from Illinois [Mr. FAWELL] that the House suspend the rules and pass the bill, H.R. 849.

The question was taken; and—two-thirds having voted in favor thereof—the rules were suspended, and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FAWELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

TARGHEE NATIONAL FOREST LAND EXCHANGE

Mr. HANSEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 529) to authorize the exchange of National Forest System lands in the Targhee National Forest in Idaho for non-Federal lands within the forest in Wyoming, as amended.

The Clerk read as follows:

H.R. 529

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF EXCHANGE.

(a) CONVEYANCE.—Notwithstanding the requirements in the Act entitled ''An Act to Consolidate National Forest Lands'', approved March 20, 1922 (16 U.S.C. 485), and section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)) that Federal and non-Federal lands exchanged for each other must be located within the same State, the Secretary of Agriculture may convey the Federal lands described in section 2(a) in exchange for the non-Federal lands described in section 2(b) in accordance with the provisions of this Act.

(b) APPLICABILITY OF OTHER PROVISIONS OF LAW.—Except as otherwise provided in this Act, the land exchange authorized by this section shall be made under the existing authorities of the Secretary.

(c) ACCEPTABILITY OF TITLE AND MANNER OF CONVEYANCE.—The Secretary shall not carry out the exchange described in subsection (a) unless the title to the non-Federal lands to be conveyed to the United States, and the form and procedures of conveyance, are acceptable to the Secretary.

SEC. 2. DESCRIPTION OF LANDS TO BE EXCHANGED.

(a) FEDERAL LANDS.—The Federal lands referred to in this Act are located in the Targhee National Forest in Idaho, are generally depicted on the map entitled ''Targhee Exchange, Idaho-Wyoming—Proposed, Federal Land'', dated September 1994, and are known as the North Fork Tract.

(b) NON-FEDERAL LANDS.—The non-Federal lands referred to in this Act are located in the Targhee National Forest in Wyoming, are generally depicted on the map entitled ''Non-Federal Land, Targhee Exchange, Idaho-Wyoming—Proposed'', dated September 1994, and are known as the Squirrel Meadows Tract.

(c) MAPS.—The maps referred to in subsections (a) and (b) shall be on file and available for inspection in the office of the Targhee National Forest in Idaho and in the office of the Chief of the Forest Service.

SEC. 3. EQUALIZATION OF VALUES.

Prior to the exchange authorized by section 1, the values of the Federal and non-Federal lands to be so exchanged shall be established by appraisals of fair market value that shall be subject to approval by the Secretary. The values either shall be equal or shall be equalized using the following methods:

(1) ADJUSTMENT OF LANDS.—

(A) PORTION OF FEDERAL LANDS.—If the Federal lands are greater in value than the non-Federal lands, the Secretary shall reduce the acreage of the Federal lands until the values of the Federal lands closely approximate the values of the non-Federal lands.

(B) ADDITIONAL FEDERALLY-OWNED LANDS—If the non-Federal lands are greater in value than the Federal lands, the Secretary may convey additional federally owned lands within the Targhee National Forest up to an amount necessary to equalize the values of the non-Federal lands and the lands to be transferred out of Federal ownership. However, such additional federally owned lands shall be limited to those meeting the criteria for land exchanges specified in the Targhee National Forest Land and Resource Management Plan.

(2) PAYMENT OF MONEY.—The values may be equalized by the payment of money as provided in section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

SEC. 4. DEFINITIONS.

For purposes of this Act:

(1) The term ''Federal lands'' means the Federal lands described in section 2(a).

(2) The term ''non-Federal lands'' means the non-Federal lands described in section 2(b).

(3) The term ''Secretary'' means the Secretary of Agriculture.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Utah [Mr. HANSEN] will be recognized for 20 minutes, and the gentleman from New Mexico [Mr. RICHARDSON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Utah [Mr. HANSEN].

Mr. HANSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 529, to authorize the exchange of National Forest System lands in the Targhee National Forest in Idaho for non-Federal lands within the forest in Wyoming. Sponsored by Mr. CRAPO of Idaho, this legislation will facilitate the exchange of critical grizzly bear habitat in Wyoming for surplus Forest Service lands in Idaho. This is an equal value exchange that benefits both parties. This legislation passed the House under suspension during the 103d Congress and I urge my colleagues to support this measure once again. I thank my good friend, the gentleman from Idaho [Mr. CRAPO] for his work on this issue and look forward to its final passage.