

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1338) TO AMEND THE FAIR LABOR STANDARDS ACT OF 1938 TO PROVIDE MORE EFFECTIVE REMEDIES TO VICTIMS OF DISCRIMINATION IN THE PAYMENT OF WAGES ON THE BASIS OF SEX, AND FOR OTHER PURPOSES

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JULY 30, 2008.—Referred to the House Calendar and ordered to be printed

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Ms. SLAUGHTER, from the Committee on Rules,  
submitted the following

## R E P O R T

[To accompany H. Res. 1388]

The Committee on Rules, having had under consideration House Resolution 1388, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

### SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 1338, the “Pay-check Fairness Act,” under a structured rule. The rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor. The rule waives all points of order against consideration of the bill except clauses 9 and 10 of rule XXI. The rule provides that the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the amendment in the nature of a substitute except for clause 10 of rule XXI. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).

The rule makes in order only those amendments printed in this report. The amendments made in order may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. All points of order against the amendments except for clauses 9 and 10 of rule XXI are waived. The rule provides one motion to recom-

mit with or without instructions. The rule provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

#### EXPLANATION OF WAIVERS

Although the rule waives all points of order against consideration of the bill (except for clauses 9 and 10 of rule XXI) the Committee is not aware of any points of order. The waiver of all points of order is prophylactic. The waiver of all points of order (except clause 10 of rule XXI) against the amendment in the nature of a substitute includes a waiver of clause 7 of rule XVI regarding germaneness.

#### COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

#### *Rules Committee record vote No. 581*

Date: July 30, 2008.

Measure: H.R. 1338.

Motion by: Mr. McGovern.

Summary of motion: To make in order an amendment by Rep. Myrick (NC), #5, which would add a new title, comprising of the text of H.R. 6108, regarding energy resources development.

Results: Defeated 2–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Diaz-Balart—Yea; Hastings (WA)—Yea; Slaughter—Nay.

#### SUMMARY OF AMENDMENTS MADE IN ORDER

(Summaries derived from information provided by sponsors.)

1. Bean (IL): Would strike Section 3(b), “Application of Provisions,” from the bill. (10 minutes)

2. Price, Tom (GA): Would direct the Secretary of Labor to study and report back to Congress within 90 days the effect of the Equal Pay Act amendments contained in the bill (section 3) on employers’ ability to recruit and hire employees regardless of gender; the effective date of these amendments is delayed pending the Secretary’s report. If the Secretary finds that these amendments are likely to significantly hinder employers’ ability to hire and recruit employees regardless of gender, they do not go into effect. (10 minutes)

3. Altmire (PA): Would delay the effective date of the bill by six months from the time of enactment. The amendment requires the Department of Labor to educate small businesses about what is required under law and assist them with compliance. (10 minutes)

4. Giffords (AZ): Would clarify that a plaintiff must show intent (malice or reckless indifference) to recover punitive damages. (10 minutes)

5. Cazayoux (LA): Would clarify that nothing in the Paycheck Fairness Act would affect the obligation of employers and employees to fully comply with all the applicable immigration laws. (10 minutes)

6. Flake (AZ): Would prohibit the grant program created by the Paycheck Fairness Act from being used for Congressional earmarks. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BEAN OF ILLINOIS, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, line 23, strike “(b) APPLICATION OF PROVISIONS” and all that follows through page 9, line 4.

Page 9, line 5, strike “(c)” and insert “(b)”.

Page 10, line 12, strike “(d)” and insert “(c)”.

Page 11, line 18, strike “(e)” and insert “(d)”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PRICE OF GEORGIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 12, after line 20, insert the following:

(f) CONDITIONAL IMPLEMENTATION.—

(1) CONDITIONAL EFFECTIVE DATE.—Subject to subparagraph (3), this section and the amendments made by this section shall become effective on the date that is 90 days after the Secretary transmits to Congress the report required under subparagraph (2).

(2) STUDY ON RECRUITMENT AND HIRING OF EMPLOYEES.—The Secretary shall conduct a study to determine the effect of the requirements of this section and the amendments made under this section on the ability of employers to recruit and hire employees irrespective of gender, and not later than 90 days after the date of enactment of this Act, shall transmit to Congress a report containing the findings of such study.

(3) DETERMINATION BY SECRETARY.—This section and the amendments made by this section shall not take effect if the Secretary finds that the requirements of this section may significantly hinder employers’ recruitment and hiring of employees irrespective of gender.”

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ALTMIRE OF PENNSYLVANIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 21, after line 3, insert the following:

**SEC. 11. SMALL BUSINESS ASSISTANCE.**

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the date that is 6 months after the date of enactment of this Act

(b) TECHNICAL ASSISTANCE MATERIALS.—The Secretary of Labor and the Commissioner of the Equal Employment Opportunity Commission shall jointly develop technical assistance material to assist small businesses in complying with the requirements of this Act and the amendments made by this Act.

(c) SMALL BUSINESSES.—A small business shall be exempt from the provisions of this Act to the same extent that such business is

exempt from the requirements of the Fair Labor Standards Act pursuant to section 3(s)(1)(A)(i) and (ii) of such Act.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GIFFORDS OF ARIZONA, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 10, beginning on line 17, strike “damages or” and insert “damages, or, where the employee demonstrates that the employer acted with malice or reckless indifference,”.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CAZAYOUX OF LOUISIANA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 21, after line 3, insert the following:

**SEC. 11. RULE OF CONSTRUCTION.**

Nothing in this Act, or in any amendments made by this Act, shall affect the obligation of employers and employees to fully comply with all applicable immigration laws, including any penalties, fines, or other sanctions.

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6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FLAKE OF ARIZONA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 21, line 2, strike “There are” and insert “(a) AUTHORIZATION OF APPROPRIATIONS.—There are”.

Page 21, after line 3 insert the following:

(b) PROHIBITION ON EARMARKS.—None of the funds appropriated pursuant to subsection (a) for purposes of the grant program in section 5 of this Act may be used for a Congressional earmark as defined in clause 9(d) of rule XXI of the Rules of the House of Representatives.