

“(11) PROPOSED WASTE MANAGEMENT FACILITY.—The term ‘proposed waste management facility’ means a facility that has been specifically identified and designated, but that was not under construction, as of May 15, 1994.

“(12) FUTURE WASTE MANAGEMENT FACILITY.—The term ‘future waste management facility’ means any other waste management facility.”

SEC. 203. TABLE OF CONTENTS AMENDMENT.

The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 103) is further amended by adding after the item relating to section 4011 the following new item:

“Sec. 4012. Congressional authorization of State control over transportation, management and disposal of municipal solid waste.”

The bill, as amended, was ordered to be read a third time, was read a third time by title, and passed.

By unanimous consent, the title was amended so as to read: “A bill to amend the Solid Waste Disposal Act to provide congressional authorization for restrictions on receipt of out-of-State municipal solid waste and for State control over transportation of municipal solid waste, and for other purposes.”

A motion to reconsider the votes whereby said bill, as amended, was passed and the title was amended was, by unanimous consent, laid on the table.

Ordered, That the Clerk request the concurrence of the Senate in said amendments.

¶122.68 COMPREHENSIVE ONE-CALL NOTIFICATION

On motion of Mr. SHARP, by unanimous consent, the Committee on Public Works and Transportation and the Committee on Energy and Commerce were discharged from further consideration of the bill (H.R. 5248) to require States to consider adopting mandatory, comprehensive, Statewide one-call notification systems to protect natural gas and hazardous liquid pipelines and all other underground facilities from being damaged by any excavations, and for other purposes.

When said bill was considered, read twice, ordered to be engrossed and read a third time, was read a third time by title, and passed.

A motion to reconsider the vote whereby the bill was passed was, by unanimous consent, laid on the table.

Ordered, That the Clerk request the concurrence of the Senate in said bill.

¶122.69 SOCIAL SECURITY ACT AMENDMENTS

On motion of Mr. STARK, by unanimous consent, the Committee on Ways and Means and Committee on Energy and Commerce were discharged from further consideration of the bill (H.R. 5252) to amend the Social Security Act and related Acts to make miscellaneous and technical amendments, and for other purposes.

When said bill was considered, read twice, ordered to be engrossed and read

a third time, was read a third time by title, and passed.

A motion to reconsider the vote whereby the bill was passed was, by unanimous consent, laid on the table.

Ordered, That the Clerk request the concurrence of the Senate in said bill.

¶122.70 PERMISSION TO FILE REPORTS

On motion of Mr. CONYERS, by unanimous consent, the Committee on Government Operations was granted permission until 6 p.m., Friday, November 11, 1994, to file sundry reports.

¶122.71 FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 3160. An Act to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to make technical corrections necessitated by the enactment of Public Law 102-586, and for other purposes; and

H.R. 4598. An Act to direct the Secretary of the Interior to make technical corrections to maps relating to the Coastal Barrier Resources System, and to authorize appropriations to carry out the Coastal Barrier Resources Act.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2375. An Act to amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

¶122.72 PREEMPTING STATE ECONOMIC REGULATION OF MOTOR CARRIERS TECHNICAL CORRECTION

On motion of Mr. RAHALL, by unanimous consent, the bill (H.R. 5123) to make a technical correction to an Act preempting State economic regulation of motor carriers; together with the following amendment of the Senate thereto, was taken from the Speaker's table:

Strike out all after the enacting clause and insert:

SECTION 1. TECHNICAL CORRECTION OF 1994 FAA AUTHORIZATION ACT.

(a) IN GENERAL.—Section 11501(h)(2) of title 49, United States Code, is amended—

(1) by striking out “and” at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and insert in lieu thereof a semicolon; and

(3) by adding at the end the following: “(C) does not apply to the transportation of garbage and refuse;

(D) does not apply to the transportation for collection of recyclable materials that are a part of a residential curbside recycling program; and

(E) does not restrict the regulatory authority of a State, political subdivision of a State, or political authority of 2 or more States before January 1, 1997, insofar as such authority relates to tow trucks or wreckers providing for-hire service.”

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1995.

On motion of Mr. RAHALL, said Senate amendment was agreed to.

A motion to reconsider the vote whereby said Senate amendment was agreed to was, by unanimous consent, laid on the table.

Ordered, That the Clerk notify the Senate thereof.

¶122.73 COASTAL BARRIER RESOURCES SYSTEM

On motion of Mrs. UNSOELD, by unanimous consent, the bill (H.R. 4598) to direct the Secretary of the Interior to make technical corrections to maps relating to the Coastal Barrier Resources System; together with the following amendment of the Senate thereto, was taken from the Speaker's table:

Strike out all after the enacting clause and insert:

SECTION 1. CORRECTION TO MAPS.

(a) IN GENERAL.—The Secretary of the Interior shall, not later than 30 days after the date of enactment of this Act, make such corrections to the maps described in subsection (b) as are necessary to ensure that—

(1) depictions of areas on the maps are consistent with the depictions of areas appearing on the maps entitled ‘Coastal Barrier Resources System’, dated September 27, 1994, and on file with the Secretary of the Interior; and

(2) the Coastal Barrier Resources System does not include any area that, on the day before the date of the enactment of this Act, was part of unit FL-05P of the System.

(b) MAPS DESCRIBED.—The maps described in this subsection are maps that—

(1) are included in a set of maps entitled ‘Coastal Barrier Resources System’, dated October 24, 1990; and

(2) related to the following units of the Coastal Barrier Resources System: AL-01P, FL-05P; P11A, P17, P17A, P18P, P19P, FL-15, FL-95P, FL-36P, P31P, FL-72P, MI21, NY75, and VA62P.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 12 of the Coastal Barrier Resources Act (16 U.S.C. 3510) is amended to read as follows:

“SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to the Secretary for carrying out this Act \$2,000,000 for each of fiscal years 1995 to 1998.”

On motion of Mrs. UNSOELD, said Senate amendment was agreed to.

A motion to reconsider the vote whereby said Senate amendment was agreed to was, by unanimous consent, laid on the table.

Ordered, That the Clerk notify the Senate thereof.

¶122.74 RECESS—10:43 P.M.

The SPEAKER pro tempore, Mr. DE LA GARZA, pursuant to clause 12 of rule I, declared the House in recess at 10 o'clock and 43 minutes p.m., until approximately 11 o'clock p.m.

¶122.75 AFTER RECESS—11:55 P.M.

The SPEAKER pro tempore, Mr. DURBIN, called the House to order.

¶122.76 FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 512. An Act to amend chapter 87 of title 5, United States Code, to provide that group life insurance benefits under such chapter may, upon application, be paid out to an insured individual who is terminally ill, and for other purposes;

H.R. 2970. An Act to reauthorize the Office of Special Counsel, and for other purposes;

H.R. 3499. An Act to amend the Defense Department Overseas Teachers Pay and Personnel Practices Act; and

H.R. 4361. An Act to amend title 5, United States Code, to provide that an employee of the Federal Government may use sick leave to attend to the medical needs of a family member, to modify the voluntary leave transfer program with respect to employees who are members of the same family; and for other purposes.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2478. An Act to amend the Small Business Act to enhance the business development opportunities of small business concerns owned and controlled by socially and economically disadvantaged individuals, and for other purposes.

1122.77 OFFICE OF SPECIAL COUNSEL

On motion of Mr. MCCLOSKEY, by unanimous consent, the bill (H.R. 2970) to reauthorize the Office of Special Counsel, and for other purposes; together with the following amendment of the Senate thereto, was taken from the Speaker's table:

Strike out all after the enacting clause and insert:

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

(a) MERIT SYSTEMS PROTECTION BOARD.—Section 8(a)(1) of the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note; Public Law 101-12: 103 Stat. 34) is amended by striking out “1989, 1990, 1991, 1992, 1993, and 1994” and inserting in lieu thereof “1993, 1994, 1995, 1996, and 1997.”

(b) OFFICE OF SPECIAL COUNSEL.—Section 8(a)(2) of the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note; Public Law 101-12: 103 Stat. 34) is amended by striking out “1989, 1990, 1991, and 1992” and inserting in lieu thereof “1993, 1994, 1995, 1996, and 1997”.

SEC. 2. REASONABLE ATTORNEY FEES IN CERTAIN CASES.

Section 1204 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

“(m)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case arising under section 1215, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee (as the case may be) determines that payment by the agency is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

“(2) If an employee or applicant for employment is the prevailing party of a case arising under section 1215 and the decision is based on a finding of discrimination prohibited under section 2302(b)(1) of this title, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).”

SEC. 3. OFFICE OF SPECIAL COUNSEL.

(a) SUCCESSION.—Section 1211(b) of title 5, United States Code, is amended by inserting after the first sentence: “The Special Counsel may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Special Counsel may not continue to serve for more than one year after the date on which the term of the Special Counsel would otherwise expire under this subsection.”

(b) LIMITATIONS ON DISCLOSURES.—Section 1212(g) of title 5, United States Code, is amended—

(1) in paragraph (1), by striking out “provide information concerning” and inserting in lieu thereof “disclose any information from or about”; and

(2) in paragraph (2), by striking out “a matter described in subparagraph (A) or (B) of section 2302(b)(2) in connection with a” and inserting in lieu thereof “an evaluation of the work performance, ability, aptitude, general qualifications, character, loyalty, or suitability for any personnel action of any”.

(c) STATUS REPORT BEFORE TERMINATION OF INVESTIGATION.—Section 1214(a) of title 5, United States Code, is amended—

(1) in paragraph (1) by adding at the end thereof the following new subparagraph:

“(D) No later than 10 days before the Special Counsel terminates any investigation of a prohibited personnel practice, the Special Counsel shall provide a written status report to the person who made the allegation of the proposed findings of fact and legal conclusions. The person may submit written comments about the report to the Special Counsel. The Special Counsel shall not be required to provide a subsequent written status report under this subparagraph after the submission of such written comments.”; and

(2) in paragraph (2)(A)—

(A) in clause (ii) by striking out “and” after the semicolon;

(B) in clause (iii) by striking out the period and inserting in lieu thereof a semicolon and “and”; and

(C) by adding at the end thereof the following new clause:

“(iv) a response to any comments submitted under paragraph (1)(D).”

(d) DETERMINATIONS.—Section 1214(b)(2) of title 5, United States Code, is amended—

(1) by redesignating subparagraphs (A), (B), and (C) as subparagraphs (B), (C), and (D), respectively;

(2) by inserting before subparagraph (B) (as redesignated by paragraph (1) of this subsection) the following:

“(A)(i) Except as provided under clause (ii), no later than 240 days after the date of receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel shall make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

“(ii) If the Special Counsel is unable to make the required determination within the 240-day period specified under clause (i) and the person submitting the allegation of a prohibited personnel practice agrees to an extension of time, the determination shall be made within such additional period of time as shall be agreed upon between the Special Counsel and the person submitting the allegation.”; and

(3) by inserting after subparagraph (D) (as redesignated by paragraph (1) of this subsection) the following new subparagraph:

“(E) A determination by the Special Counsel under this paragraph shall not be cited or referred to in any proceeding under this paragraph or any other administrative or judicial proceeding for any purpose, without the consent of the person submitting the allegation of a prohibited personnel practice.”

(e) REPORTS.—Section 1218 of title 5, United States Code, is amended by inserting

“cases in which it did not make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214(b)(2)(A)(i),” after “investigations conducted by it.”

SEC. 4. INDEPENDENT RIGHT OF ACTION.

(a) SUBPOENAS.—Section 1221(d) of title 5, United States Code, is amended by striking out paragraph (1) and inserting in lieu thereof the following:

“(1) At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board shall issue a subpoena for the attendance and testimony of any person or the production of documentary or other evidence from any person if the Board finds that the testimony or production requested is not unduly burdensome and appears reasonably calculated to lead to the discovery of admissible evidence.”

(b) CORRECTIVE ACTIONS.—Section 1221(e)(1) is amended by adding after the last sentence:

“The employee may demonstrate that the disclosure was a contributing factor in the personnel action through circumstantial evidence, such as evidence that—

“(A) the official taking the personnel action knew of the disclosure; and

“(B) the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action.”

(c) REFERRALS.—Section 1221(f) of title 5, United States Code, is amended by adding after paragraph (2) the following new paragraph:

“(3) If, based on evidence presented to it under this section, the Merit Systems Protection Board determines that there is reason to believe that a current employee may have committed a prohibited personnel practice, the Board shall refer the matter to the Special Counsel to investigate and take appropriate action under section 1215.”

SEC. 5. PROHIBITED PERSONNEL PRACTICES.

(a) PERSONNEL ACTIONS.—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(1) in clause (ix) by striking out “and” after the semicolon;

(2) by striking out clause (x) and inserting in lieu thereof the following:

“(x) a decision to order psychiatric testing or examination; and

“(xi) any other significant change in duties, responsibilities, or working conditions.”; and

(3) in the matter following designated clause (xi) (as added by paragraph (2) of this subsection) by inserting before the semicolon the following: “, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31”.

(b) COVERED POSITIONS.—Section 2302(a)(2)(B) of title 5, United States Code, is amended to read as follows:

“(B) ‘covered position’ means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action—

“(i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

“(ii) excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration; and”.