RSC
Republican Study Committee

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Legislative Bulletin……..…May 14, 2003

Contents:

S. 870 — To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program (*Sen. Harkin*)

Order of Business: The bill is scheduled for consideration on Wednesday, May 14th, under a motion to suspend the rules and pass the bill.

Summary: S. 870 extends the authorization for the school lunch fresh and dried fruit and fresh vegetable pilot program through the 2003-04 school year (the pilot is currently set to end on June 30, 2003).

Additional Background: The pilot program, first authorized in the 2002 Farm Bill, provides fresh and dried fruit and fresh vegetables to children throughout the school day at no cost to the child. The program was authorized at $6 million for the 2002-2003 school year, but due to the timing of the passage of the Farm Bill, it did not operate for the entire year and funds remain available.

According to a May 2003 evaluation of the pilot program (as required by the Farm Bill) "almost all schools participating in USDA's Fruit and Vegetable Pilot Program (FVPP) consider the program to be very successful and would like the pilot to continue." The evaluation also estimated that expanding the pilot nationwide would cost $4.5 billion annually.

The Senate passed S. 870 by unanimous consent on April 10, 2003.

Committee Action: The bill was referred to the Committee on Education and the Workforce but was not considered.

Cost to Taxpayers: The bill does not authorize any new funding above the $6 million authorized in the Farm Bill.

Does the Bill Create New Federal Programs or Rules?: No, the bill extends for an additional year authorization for the fresh and dried fruit and fresh vegetable pilot program.

Constitutional Authority: A committee report citing constitutional authority is not available.

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H.R. 1577 — To designate the visitors' center in Organ Pipe National Monument in Arizona as the "Kris Eggle Memorial Visitors' Center," and for other purposes (Tancredo)

Order of Business: The bill is scheduled for consideration on Wednesday, May 14th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 1577 would redesignate the visitors' center in Organ Pipe National Monument, Arizona, as the "Kris Eggle Memorial Visitors' Center." The Secretary of Interior is required to post signs at the visitors' center and at the trailhead of the Baker Mine-Milton Mine Loop that describe the important role of law enforcement officers in protecting park visitors, refer to the loss of Kris Eggle, refer to the dedication of the visitors' center by Congress, and include a copy of the legislation and an image of Kris Eggle.

Additional Background: Kris Eggle was serving as a national park ranger in Organ Pipe National Monument when he was killed on August 9, 2002, in gunfire between a suspected Mexican drug trafficker, Mexican police, and U.S. Border Patrol agents along the U.S./Mexico border. Originally from Cadillac, Michigan, Kris Eggle was 28 years old when he was killed and had served with the National Park Service since 1995.

Committee Action: The bill was referred to the Committee on Resources but was not considered.

Cost to Taxpayers: While the resolution authorizes no expenditure, the Secretary of Interior would have to use funds for the required signage changes.

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

Constitutional Authority: A committee report citing constitutional authority is not available.

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H.R. 1012 —Carter G. Woodson Home National Historic Site Establishment Act of 2003 (*Norton*)

Order of Business: The bill is scheduled to be considered on Wednesday, May 14, 2003, under a motion to suspend the rules and pass the bill.

Summary: H.R. 1012 authorizes the Secretary of the Interior to purchase or sign a long-term lease for the Carter G. Woodson Home and three adjoining houses in Washington, D.C. (at 1538 Ninth Street, Northwest) and designate the area as a National Historic Site. The Secretary may acquire the lands "from willing owners by donation, purchase with donated or appropriated funds, or exchange." The bill does not define "willing owners." The Secretary may enter into an agreement with The Association for the Study of African-American Life and History to allow it to use a portion of the historic site for administrative purposes. Under the bill, the Secretary also may enter into cooperative agreements "with public and private entities for the purpose of fostering interpretation of African-American heritage in the Shaw area of Washington, D.C." Within three years of funds being appropriated, the Secretary shall prepare a general management plan for the historic site.

Additional Information: In 1915, the Association for the Study of Negro Life and History (later renamed The Association for the Study of African-American Life and History) was founded by Dr. Carter G. Woodson. Dr. Woodson was the son of slaves who earned a Ph.D. degree from Harvard University, and according to the resolution's findings, "dedicated his life to educating the American public about the extensive and positive contributions of African Americans to the Nation's history and culture."

The Carter G. Woodson Home was designated as a National Historic Landmark in 1976 for its national significance in African-American cultural heritage. A June 2002 National Park Service study of the Home found it suitable for designation as a unit of the National Park System, so long as property adjacent to the home is available for National Park Service administrative, curatorial, access, and visitor interpretative needs.

Committee Action: H.R. 1012 was introduced on March 17, 2003, and referred to the House Resources Committee. The committee did not consider the legislation.

Cost to Taxpayers: H.R. 1012 authorizes "such sums as are necessary to carry out this Act," subject to appropriations. A CBO cost estimate is unavailable.

Does the Bill Create New Federal Programs or Rules?: Yes, the bill authorizes the purchase or lease of property to be administered by the federal government and requires the Secretary to prepare a general management plan within three years of funds being made

available. **According to the General Services Administration as of September 30, 2000, the federal government owns 23.2 % of the District of Columbia.**

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H.R. 856—To authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water Control and Improvement District No. 1, San Angelo project, Texas *(Stenholm)*

Order of Business: The bill is scheduled to be considered on Wednesday, May 14, 2003, under a motion to suspend the rules and pass the bill.

In the 107th Congress, the Committee marked-up a similar bill, H.R. 4910, but it was never considered by the House.

Summary: H.R. 856 extends a repayment contract by 10 years for a federal loan made to the Tom Green County Water Control and Improvement District No. 1 of San Angelo, Texas in 1957. The original construction costs were to be repaid to the Department of the Interior (DOI) in 40 years, but the bill extends the timeline to 50 years. With the extension of the loan, the District's annual payment to the United States will be reduced.

Additional Information: According to July 2002 House testimony from the Bureau of Reclamation, the San Angelo Project was authorized by Congress in 1957 to provide flood control, municipal, and industrial water for the City of San Angelo, recreation, fish and wildlife, and supplemental irrigation supplies to the District. The Project has been beset by chronic drought conditions since it was constructed in 1963. These droughts have resulted in the Bureau of Reclamation granting a total of seven deferments of the annual installments due on the District's forty-year repayment contract. During the past seven years alone, at least four deferments for the District's annual payment to the United States have been granted because of the unavailability of irrigation water. The Bureau official noted, "Extension of the repayment period will not likely be a permanent solution to the water scarcity facing this project. However, taking this action will give Reclamation some time to access the project's long-term challenges and will aid the District by providing needed repayment relief."

Committee Action: H.R. 856 was introduced on February 19, 2003 and referred to the House Resources Committee. The committee did not consider the resolution.

Cost to Taxpayers: While a CBO cost estimate is unavailable, a cost estimate of the 107th Congressional version (H.R. 4910) estimated that this 10-year extension would cost less than $70,000 a year over the next 10 years (a loss of about $1 million in offsetting receipts over the 2003-2018 period). According to CBO, the District has been unable to make regular payments of the reimbursable construction costs due to a severe drought. By extending the repayment period, the district would be able to make smaller payments to the federal government over a longer period of time.

According to the sponsor's September 2002 statement on the 107th Congress' version of this bill, the district has an outstanding loan with the DOI for the construction of an irrigation canal with a 2002 remaining balance of "approximately $2.4 million." The farmers in the District have paid 38 percent (about $1.5 million) of the original debt owed to the Department of Interior, according to Rep. Stenholm's statement.

Does the Bill Create New Federal Programs or Rules?: The bill extends by an additional 10 years the repayment time period for a federal loan that previously was payable over 40 years.

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H.R. 255—To authorize the Secretary of the Interior to grant an easement to facilitate access to the Lewis and Clark Interpretative Center in Nebraska City, Nebraska (Bereuter)

Order of Business: The bill is scheduled to be considered on Wednesday, May 14th, under a motion to suspend the rules and pass the bill.

Summary: H.R 255 would authorize the Secretary of the Interior to grant an easement to Otoe County, Nebraska, for the purpose of constructing and maintaining an access road between the Lewis and Clark Interpretive Center in Nebraska City, Nebraska, and each of the following roads:

- Nebraska State Highway 2; and
- Otoe County Road 67.

Committee Action: On January 8, 2003, the bill was referred to the Committee on Resources. On February 12th, the bill was referred to the Subcommittee on National Parks, Recreation and Public Lands. On that same day, the Committee requested executive comment from the Interior Department (which has not yet been received).

Cost to Taxpayers: The bill would authorize no federal expenditure.

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

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

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H.R. 192—To amend the Microenterprise for Self-Reliance Act of 2000 and the Foreign Assistance Act of 1961 to increase assistance for the poorest

people in developing countries under microenterprise assistance programs under those Acts (Smith of New Jersey)

Order of Business: The bill is scheduled to be considered on Wednesday, May 14th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 192 would amend the Microenterprise for Self-Reliance Act of 2000 (Public Law 106-309) to emphasize that at least 50% of all microenterprise assistance under this Act be targeted to the "very poor." The term "very poor" means individuals who are:

- living in the bottom 50% below the poverty line established by their national government; or
- living on the equivalent of less than one U.S.-dollar per day.

The assistance is targeted at people in developing countries who want to start a small business.

Microenterprise assistance would also become available to the *households* of microentrepreneurs—not just to the microentrepreneurs themselves.

Further, the micro- and small enterprise development credits program under the Foreign Assistance Act of 1961 (22 U.S.C. 2151f) would be amended to similarly expand the availability of such credits to the households of microentrepreneurs. One goal of the credits program would be clarified as providing "loans and guarantees to microfinance institutions for the purpose of expanding the availability of savings and credit to poor and low-income households." Current law focuses on microenterprises generally, without emphasis on those of the poor.

H.R. 192 would authorize $1.5 million for each of fiscal years 2003 and 2004 for the credits program. [Current law authorizes this same annual amount for each of fiscal years 2001 and 2002.] These funds come from the amounts authorized below.

Lastly, the Microenterprise Development Grant Assistance Program under the Foreign Assistance Act of 1961 (22 U.S.C. 2252a) would also be adjusted to emphasize service to the very poor (as certified and monitored by the United States Agency for International Development—USAID). H.R. 192 would authorize $175 million for this program in FY2003 and $200 million in FY2004. [Current law authorizes $155 million for each of fiscal years 2001 and 2002.]

USAID would have to report annually to Congress on the progress of reaching the very poor through these programs above.

Additional Background: The Microenterprise for Self-Reliance Act authorizes the President to provide grants and other assistance for programs to increase the availability of credit and other services to microenterprises (in developing countries) lacking full access to capital training, technical assistance, and business development services through: (1) grants to microfinance institutions; (2) loans and guarantees to credit institutions (with a limit of $30 million per borrower); (3) grants to microenterprise institutions for training, technical

assistance, and business development services; and (3) policy and regulatory programs at the country level.

The credits program is similar to the grants program, though it focuses more on the lenders.

Committee Action: On March 5, 2003, the International Relations Committee marked up the bill and unanimously reported it by voice vote en bloc with several other bills.

Possible RSC Concerns: During this bill's markup, committee member Jeff Flake expressed concerns over the increased authorization levels, given rising federal deficits.

Cost to Taxpayers: CBO confirms that H.R. 192 would authorize $175 million in FY2003 and $200 million in FY2004.

Does the Bill Create New Federal Programs or Rules?: No, it makes adjustments to current law.

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

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H.R. 1000—Pension Security Act (Boehner)

Order of Business: The bill is scheduled to be considered on Wednesday, May 14th, subject to a modified closed rule (H.Res. 230) allowing one Democrat substitute (summarized below). On April 11, 2002, the House passed a similar bill (H.R. 3762) by a vote of 255-163 (http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=92). On September 25, 2002, the House passed a resolution (H.Res. 540) by a vote of 258-152 (http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=414) expressing a sense of the House that Congress complete action on H.R. 3762.

Summary:

Benefit Statements and Notices:

- Requires managers of defined contribution **individual account plans** to provide participants at least quarterly benefit statements that include:

  - information about the value of investments allocated to their accounts, including the value of any assets held in the form of employer securities;
  - an understandable explanation of blackout periods and other restrictions on direct participant control;
  - the nonforfeitable pension benefits that have accrued; and
  - information on the importance of diversifying retirement plans and the risk of holding more than 25% of a portfolio in any one security.

NOTE: the provision in last year's bill (H.R. 3762) that would require that plan participants be notified 30 days in advance of blackout periods has been scaled back to the provision above (quarterly notice in regular statements). This provision was included in Public Law 107-204 ("Sarbanes-Oxley").

- Requires **defined benefit** plan managers to provide benefit statements at least once every three years that include information on the total benefits accrued and the nonforfeitable pension benefits.

- Mandates that benefit statements be understandable and allows them to be in electronic form.

- Authorizes the Treasury Secretary to assess a civil penalty of up to $1000 per day against any plan administrator who fails or refuses to provide the required quarterly statements.

- Directs the Secretary to issue model statements.

- Requires that new participants in pension plans be provided with an **investment education notice** containing information about the plan, generally accepted investment principles, and the importance of diversification. Such notices, which may be electronic, must be provided annually thereafter. Willful failure to provide notices results in a $100 per incident fine ("in the same manner as tax"), capped at $50,000 each calendar year.

- Directs the Secretary to provide model notices.

- Fiduciaries are not liable for losses during blackout periods provided that they complied with the requirements set out under this title. (Otherwise, they ARE liable.)

NOTE: the provision in last year's bill (H.R. 3762) prohibiting company executives and those who own more than 10% of any equity security from purchasing or selling any employer securities while plan beneficiaries and participants are precluded from such activity during a blackout period is NOT included in this year's bill (H.R. 1000). This provision was included in Public Law 107-204 ("Sarbanes-Oxley").

Education Program:

- Directs the Secretary to establish an ongoing information and educational resources program for fiduciaries of employee benefit pension plans.

Diversification:

- Provides that employer securities may be diversified three years after the calendar quarter in which they were contributed.

- Provides five-year transition for employer securities held in individual accounts as of the day of enactment.

- Provides that employee contributions are immediately diversifiable.

- Exempts individual account plans where there is no class of stock issued by the employer that is readily tradable on the securities market.

Investment Advice:

- Allows employers to provide workers with direct access to professional investment advice related to employees' choices of retirement investments, as long as the advisers disclose any fees or potential conflicts of interest. Under current law, employers may not provide retirement-plan participants with direct access to fiduciary advisers for individual investment advice.

- Exempts from the list of prohibited transactions under ERISA fiduciary advisers' counsel provided in connection with any sale, acquisition, or holding of a security or other property for purposes of retirement plan investment, as well as the fees for such advice.

- Makes the fees for such advice exempt from excise taxes imposed by section 4975 of the Internal Revenue Code. The investment adviser, who would have to be officially registered with the appropriate authorities, would be required to provide clear, written notification in advance of any advice given of:
    - the fees associated with the advice
    - any material or contractual interests the adviser may have in the securities or properties discussed
    - any limitation placed on the scope of the advice
    - the types of services provided by the adviser
    - the adviser's role as a trustee of the applicable retirement plan

- Requires that investment advisers comply with all appropriate disclosure laws and provide advice that is at least as favorable as an arm's-length market transaction (i.e. advice purchased in a traditional way—not through an employer). Moreover, the adviser would be prohibited from actually making any investment without the express direction of the advisee and from charging unreasonable fees for the provision of advice.

- Directs advisers to make their best-faith efforts to provide advice that is in the best financial interest of the individual plan-participant. As evidence of compliance, fiduciary advisers would be required to keep all records of such investment advice for at least six years.

- Allows an employee to use pre-tax dollars to obtain their own investment advice.

Other Changes:

The bill makes several other changes relative to:

- Reducing reporting requirements for one-participant plans

- Streamlining other reporting requirements
- Reducing Pension Benefit Guarantee premiums for new plans of small employees
- New studies by the Department of Labor

NOTE: the provision in last year's bill (H.R. 3762) ensuring that stock options are not treated as wages for the purpose of the payroll tax is NOT included in this year's bill (H.R. 1000). Further, the provision in last year's bill ensuring that the amounts transferred to the Medicare and Social Security trust funds shall be determined as if this Act had not been enacted is also NOT included in this year's bill.

Committee Action: On March 18, 2003, the House Education & the Workforce Committee reported the bill favorably by a vote of 29-19. Similar bills have been the subject of hearings, mark-ups, and floor consideration in the 106th and 107th Congresses.

Democrats on the Committee, in light of their substitute being rejected, included this summary statement in the committee report:

> H.R. 1000 fails to provide pension reforms necessary to stop future Enrons, fails to stop companies from raiding the pensions of older workers, creates dangerous new legal loopholes that allow for conflicted investment advice, fails to restore fairness between the pension rights afforded executives versus those of average employees, and fails to give employees control over their own nest eggs. The Majority unfortunately rejected the Democratic Substitute that would have provided these protections--thus dashing a real opportunity to provide the kind of retirement security all Americans are urgently demanding.

Administration Position: Last year, the Administration released a statement "strongly support[ing]" H.R. 3762. To read the statement, visit this website: http://www.whitehouse.gov/omb/legislative/sap/107-2/HR3762-h.html

Cost to Taxpayers: CBO and the Joint Committee on Taxation estimate that H.R. 1000 would:

- increase revenues by $196 million in FY2003 but by a net total of $134 million over the FY2003-2007 period;
- reduce mandatory spending by $39 million in FY2003 and by $102 million over the FY2003-2007 period; and
- authorize appropriations of $22 million over the FY2003-2007 period (zero in FY2003).

Does the Bill Create New Federal Programs or Rules?: Yes, as described above.

Constitutional Authority: In House Report 108-43, the Education & the Workforce Committee provides the following constitutional authority statement:

> The Employee Retirement Income Security Act (ERISA) has been determined by the federal courts to be within Congress' Constitutional authority. In *Commercial Mortgage Insurance, Inc.* v. *Citizens National Bank of Dallas*, 526 F.Supp. 510 (N.D. Tex. 1981), the court held that Congress legitimately concluded that employee benefit plans so affected interstate commerce as to be within the scope of Congressional powers under Article 1, Section 8, Clause 3 of the Constitution of the United States. In *Murphy* v. *Wal-Mart Associates' Group Health Plan*, 928 F.Supp. 700 (E.D. Tex 1996), the court upheld the preemption provisions of

ERISA. Because H.R. 1000 modifies but does not extend the federal regulation of pensions, the Committee believes that the Act falls within the same scope of Congressional authority as ERISA.

Democrat Substitute: The rule (H.Res. 230) makes one Democrat substitute in order, to be offered by Rep. George Miller of California or his designee.

The Democrat substitute, which failed in committee mark-up by a vote of 21-20,:

- Gives employees the right to diversify their company-matched stock after one year of participation in a plan. *(Rejected in committee as a separate amendment by a vote of 27-19)*
- Requires that if a company offers its employees investment advice through an advisor affiliated with its plan, it must also provide employees with access to an unaffiliated advisor. *(Rejected in committee as a separate amendment by a vote of 25-22)*
- Requires employee representation on a pension board of trustees. *(Rejected in committee as a separate amendment by a vote of 25-19)*
- Requires companies changing from traditional pension plans to cash balance plans to allow older workers the choice of remaining in the old plan or joining the new plan. *(Rejected in committee as a separate amendment by a vote of 23-20)*
- Requires plan administrators to notify plan participants of blackout periods at least 30 days in advance (in writing and plain language; electronic OK). Sets a $100-per-day tax on noncompliance.
- Establishes within the Labor Department an Office of Pension Participant Advocacy to evaluate government and non-government efforts to protect pension plan participants, promote the expansion of pension plan coverage, advocate for the rights of participants (especially those of low- and moderate-income participants), develop needed information on plans, and pursue claims on behalf of participants and beneficiaries.
- Requires employers to notify plan participants if any company executives or plan fiduciaries sell $100,000 or more in stocks.
- Requires immediate notice to plan participants of "excessive investment" (i.e. more than 10% investment) in employer securities (if such participants had not previously been excessively invested).
- Requires fiduciaries of individual account plans to be bonded or insured in amounts sufficient to cover financial losses.
- Includes deferred compensation of corporate leaders in gross income for tax purposes if the corporation funds its defined contribution plan with employer stock.
- Requires executive compensation packages that include pensions to be approved by the board of directors, and requires companies to notify shareholders and employees of any new executive pensions (in plain language) and of any additional benefits to executives at least 100 days before their adoption.
- Gives employees greater protections when a company declares bankruptcy, and denies executives preferential protection against creditors.
- Expands the application of a 20% excise tax on executive golden parachutes (e.g. large severance packages) to corporate leaders when they leave behind companies with plummeting shareholder value (75% decline over one year) or are facing bankruptcy

proceedings (which commenced during the six-month period beginning three months before the "parachute").

- Prevents firms from deducting more than $1 million in executive performance-based compensation if it is obtained through adjustments of the company's pension funds.
- Imposes 50% tax penalties on executives who sell stock they acquire from stock options if the sale would violate restrictions on the sale of corporate stock that rank-and-file employees face in their 401(k) plans (unless shareholders approve in advance).
- Requires employers negotiating with its employees over wages and benefits to disclose directly to employees any changes (or proposed changes) in top executive pensions, health, or life insurance, and other substantial benefits, with a penalty for failure to disclose.
- Directs the Pension Benefit Guaranty Corporation to contract to carry out a study of the establishment of an insurance system for individual account plans.
- Makes permanent the Saver's Tax Credit (credit for elective deferrals and IRA contributions by certain individuals).
- Includes many similar benefit-statement, investment-notice, and the resulting penalties provisions as does the base text.

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