

**REAUTHORIZING THE OFFICE OF SPECIAL COUNSEL (House of Representatives -
October 03, 1994)**

[Page: H10615]

Mr. **McCLOSKEY**. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2970) to reauthorize the Office of Special Counsel, and for other purposes, as amended. The Clerk read as follows:

H.R. 2970

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

SECTION 1. REAUTHORIZATIONS.

Section 8(a) of the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note) is amended by striking `fiscal years' through `such sums' each place it appears and inserting `fiscal years 1993-1997, such sums'.

SEC. 2. OFFICE OF SPECIAL COUNSEL.

(a) **Authority to Continue Serving Pending the Appointment of a Successor:**

Section 1211(b) of title 5, United States Code, is amended by inserting after the third sentence the following: `The Special Counsel may continue to serve after the expiration of the Special Counsel's term until a successor has qualified, but for not longer than 1 year.'.

(b) **Limitations on Disclosures:**

(1) **In general:** Section 1212(g) of title 5, United States Code, is amended to read as follows:

`(g)(1) The Special Counsel may not respond to any inquiry or provide information concerning either any person making an allegation under section 1214(a) or any allegation so made, except in accordance with the provisions of section 552a or as required by any other applicable law.

`(2) If, or to the extent that, the allegation involves a prohibited personnel practice described in paragraph (2), (8), or (9) of section 2302(b), no disclosure described in paragraph (1) may be made unless--

`(A) either of the exceptions permitting disclosure under paragraph (1) is met; and

`(B)(i) the consent of the person who made such allegation is obtained in advance; or

`(ii) the information is being sought by an agency which requires such information in order to make a determination concerning access, for the person referred to in paragraph (1), to information the unauthorized disclosure of which could be expected to cause exceptionally grave damage to national security.'.

(2) **Conforming amendments:** Section 7121(a)(1) of title 5, United States Code, is amended--

(A) by inserting `administrative' after `exclusive'; and

(B) by striking `(d) and (e)' and inserting `(d), (e), and (g)'.

(c) **Standard Applicable With Respect to Certain Agency Findings:** Section

1213(e)(2)(A) of title 5, United States Code, is amended to read as follows:

`(A) the findings of the agency head are supported by clear and convincing evidence; and'

(d) **Technical Clarification:** The first sentence of section 1213(g)(1) of title 5, United States Code, is amended to read as follows: `If the Special Counsel receives information from an individual other than an individual described in subparagraph (A) or (B) of subsection (c)(2) which, if such individual were an individual described in either of such subparagraphs, would be considered information of a type described in subsection (a), the Special Counsel may transmit the information to the head of the agency which the information concerns.'.

(e) **Investigations:** Section 1214(a)(1) of title 5, United States Code, is amended--

(1) in subparagraph (B) by striking `practice under paragraph (1),' and inserting `practice,'; and

(2) by striking subparagraph (C) and inserting the following:

`(C) Unless an investigation under this section is terminated, the Special Counsel shall, within 60 days after notice is provided under subparagraph (B) with respect to a particular allegation, and at least every 60 days thereafter, notify the person who made such allegation as to the status of the investigation and any action which has been taken by the Office of Special Counsel since notice was last given under this subsection.

`(D)(i) Except as provided in clause (ii), no later than 120 days after the date of receiving an allegation of a prohibited personnel practice, the Special Counsel shall determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

`(ii) The deadline under clause (i) may be extended by written agreement between the Special Counsel and the person who made the allegation involved.

`(E) A determination by the Special Counsel under this paragraph shall not be admissible in any judicial or administrative proceeding except in the same circumstances as would apply under paragraph (2)(B) with respect to a written statement under paragraph (2)(A).'

(f) **Clarification Relating to Burden of Proof:** Sections 1214(b)(4)(B)(i) and 1221(e)(1) (as amended by section 3(b)) are further amended by striking the period at the end and inserting `, notwithstanding the provisions of section 7701(c)(1).'

(g) **Additional Information To Be Included in Annual Reports:** Section 1218 of title 5, United States Code, is amended by inserting `the number of instances in which it did not make a timely determination under section 1214(a)(1),' after `investigations conducted by it,'.

(h) **Effective Date:** The amendments made by subsection (e) shall apply with respect to any allegation first received by the Office of Special Counsel on or after the effective date of this Act.

SEC. 3. INDIVIDUAL RIGHT OF ACTION RELATING TO THE MERIT SYSTEMS PROTECTION BOARD.

(a) **Subpoenas:** Section 1221(d)(1) of title 5, United States Code, is amended to read as follows:

`(d)(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 matter requested--

`(A) is not unduly burdensome;

`(B) is not privileged or otherwise protected from disclosure by law, rule, or regulation; and

`(C) is relevant to the subject matter involved in the pending action or appears reasonably calculated to lead to the discovery of admissible evidence.'

(b) **Burden of Proof:**

(1) **In general:** Section 1221(e) of title 5, United States Code, is amended to read as follows:

`(e)(1) Subject to paragraph (2), in any case involving an alleged prohibited personnel practice as described in paragraph (8) or (9) of section 2302(b), the Board shall order such corrective action as the Board considers appropriate if the employee, former employee, or applicant for employment has demonstrated that protected conduct under such paragraph (8) or (9) (as defined in paragraph (3)(A) or (B), as applicable) was a contributing factor in the personnel action which was taken or is to be taken against such employee, former employee, or applicant.

`(2) Corrective action under paragraph (1) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of the protected conduct involved.

`(3) For the purpose of this subsection, the term `protected conduct' means--

`(A) with respect to paragraph (8) of section 2302(b), any disclosure described in subparagraph (A) or (B) of such paragraph; and

`(B) with respect to paragraph (9) of section 2302(b), any conduct described in subparagraph (A), (B), (C), or (D) of such paragraph.'

(2) **Same standard if relief is sought through office of special counsel:**

(A) **In general:** Subparagraph (B) of section 1214(b)(4) of title 5, United States Code, is amended to read as follows:

`(B)(i) Subject to the provisions of clause (ii), in any case involving an alleged prohibited personnel practice as described in paragraph (8) or (9) of section 2302(b), the Board shall order such corrective action as the Board considers appropriate if the employee, former employee, or applicant for employment has demonstrated that protected conduct under such paragraph (8) or (9) (as defined in clause (iii)(I) or (II), as applicable) was a contributing factor in the personnel action which was taken or is to be taken against such employee, former employee, or applicant.

`(ii) Corrective action under clause (i) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of the protected conduct involved.

`(iii) For the purpose of this subparagraph, the term `protected conduct' means--

`(I) with respect to paragraph (8) of section 2302(b), any disclosure described in subparagraph (A) or (B) of such paragraph; and

`(II) with respect to paragraph (9) of section 2302(b), any conduct described in subparagraph (A), (B), (C), or (D) of such paragraph.'

(B) **Conforming amendment:** Section 1214(b)(4)(A) is amended by striking `section 2302(b)(8),' and inserting `paragraph (8) or (9) of section 2302(b),'.

(3) **Same standard if relief is sought through binding arbitration:** Section 7121(b) of title 5, United States Code, as amended by section 5(d), is further amended by adding at the end the following:

`(3) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice described in paragraph (8) or (9) of section 2302(b) is involved, require that the arbitrator apply the same standard as would apply under section 1221(e).'

(4) **Same standard if relief is sought by an appeal under section 7701:** Section 7701(c) of title 5, United States Code, is amended--

(A) in paragraph (1) by striking `Subject to paragraph (2)' and inserting `Subject to paragraphs (2) and (3)'; and

(B) by adding at the end the following:

`(3) To the extent that an appeal involves an alleged prohibited personnel practice described in paragraph (8) or (9) of section 2302(b), the standard under section 1221(e) shall be applied.'

(c) **Referrals for Possible Disciplinary Action:** Section 1221(f) of title 5, United States Code, is amended by adding after paragraph (2) the following:

`(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 for investigation and appropriate action under section 1215.'

[Page: H10616]

SEC. 4. PROHIBITED PERSONNEL PRACTICES.

(a) **Personnel Actions:**

(1) **In general:** Section 2302(a)(2)(A) of title 5, United States Code, is amended--

(A) in clause (ix) by striking `and' after the semicolon; and

(B) by redesignating clause (x) as clause (xii) and inserting before such clause the following:

`(x) a decision to require psychiatric testing or examination;

`(xi) a denial, revocation, or other determination relating to a security clearance; and'

(2) **Conforming amendment:** Section 2303(a) of title 5, United States Code, is amended by striking `clauses (i) through (x)' and inserting `clauses (i) through (xii)'

(b) **Covered Positions:** Section 2302(a)(2)(B) of title 5, United States Code, is amended to read as follows:

`(B) `covered position', as used with respect to an employee or applicant for employment, means any position in the competitive service, a career appointee position in the Senior Executive Service, a position in the excepted service, or a position covered by chapter 74 of title 38, but does not include any position which, as of the date on which the employee began serving in the position or the applicant applied for such position (as the case may be), was--

`(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.'.

(c) **Agencies:**

(1) **In general:** Section 2302(a)(2)(C) of title 5, United States Code, is amended--

(A) by striking clause (i); and

(B) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(2) **Coordination with certain other provisions of law:** Section 2305 of title 5, United States Code, is amended--

(A) by striking `No' and inserting `(a) No'; and

(B) by adding at the end the following:

`(b)(1) This subsection applies with respect to a prohibited personnel practice described in section 2302(b)(8) for which a remedy is also available under section 33 of the Federal Deposit Insurance Act or section 21A(q) of the Federal Home Loan Bank Act.

`(2) An employee or former employee affected by a prohibited personnel practice described in paragraph (1) may raise the matter under (A) section 33 of the Federal Deposit Insurance Act or section 21A(q) of the Federal Home Loan Bank Act, as the case may be, or (B) a procedure available under this title, but not both.

`(3) A determination as to if or when an employee or former employee has made a choice under this subsection shall be made in a manner similar to that set forth in section 7121(g).'

(d) **Information:** Section 2302(c) of title 5, United States Code, is amended in the first sentence by striking `management.' and inserting `management, and for ensuring (in consultation with the Office of Special Counsel) that employees of such agency are informed of the rights and remedies available to them under this chapter and chapter 12.'

SEC. 5. ADDITIONAL AMENDMENTS RELATING TO PROCEDURES UNDER WHICH INDIVIDUALS MAY SEEK RELIEF FROM PROHIBITED PERSONNEL PRACTICES.

(a) **Individual Right of Action Before MSPB Available for Prohibited Personnel Practices Generally:**

(1) **In general:** Section 1221(a) of title 5, United States Code, is amended by striking `practice described in section 2302(b)(8),' and inserting `practice,'.

(2) **Exception:** Subsection (b) of section 1221 of title 5, United States Code, is amended by redesignating such subsection as subsection (b)(1), and by adding at the end the following:

`(2) Nothing in this subchapter shall be considered to create any right to seek corrective action with respect to a prohibited personnel practice described in section 2302(b)(1).

`(3) For purposes of subsection (a), the term `personnel action', if taken or proposed to be taken as a result of a prohibited personnel practice other than one described in paragraph (1) or (8) of section 2302(b), means--

`(A) an action under subchapter II of chapter 75;

`(B) a detail, transfer, or reassignment; and

`(C) a reduction in grade or removal under section 4303.'

(3) **Technical correction:** Section 1221(a) is amended by striking `subsection 1214(a)(3)' and inserting `section 1214(a)(3)'

(b) **Amendments Relating to the 'Pass-Through' Requirement:** Section 1214(a)(3) of title 5, United States Code, is amended--

(1) by adding at the end the following:

`This paragraph shall not apply with respect to a prohibited personnel practice described in section 2302(b)(8).';

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

(3) by striking the matter before subparagraph (B) (as so redesignated by paragraph (2)) and inserting the following:

`(3) Except as provided in the last sentence of this paragraph, an employee, former employee, or applicant for employment may not seek corrective action from the Board under section 1221 unless--

`(A) such employee, former employee, or applicant has sought corrective action from the Special Counsel under this subchapter;'

(c) **Choice of Remedies Provision Involving Judicial Review:**

(1) **In general:** Chapter 12 of title 5, United States Code, is amended by adding at the end the following:

`SUBCHAPTER IV--JUDICIAL REVIEW

`1231. Judicial review

`(a) Subject to subsection (b) and section 1232, an employee, former employee, or applicant for employment may, with respect to a personnel action taken, or proposed to be taken, against such employee, former employee, or applicant for employment, as a result of a prohibited personnel practice described in section 2302(b)(8), bring a civil action in the appropriate district court of the United States for relief. For purposes of the preceding sentence, the term 'personnel action' means--

`(1) an action under subchapter II of chapter 75;

`(2) a detail, transfer, or reassignment; and

`(3) a reduction in grade or removal under section 4303.

`(b) An action under this section--

`(1) shall be brought in the district court of the United States for the judicial district in which the prohibited personnel practice is alleged to have been committed, in which the employment records relevant to such practice are maintained and administered, or in which the aggrieved person works or would have worked but for the alleged prohibited personnel practice; and

`(2) shall be brought within 120 days after the prohibited personnel practice is alleged to have occurred.

`(c) **Standard of Review:** In any action brought under this section, the court--

`(1) shall review the matter de novo; and

`(2) shall apply the same standard as would the Merit Systems Protection Board under section 1214(b)(4)(B) or 1221(e).

`1232. Choice of remedies

`(a) An action under section 1231--

`(1) if brought, shall be in lieu of any remedy described in subsection (b); but

`(2) may not be brought if the aggrieved person has elected to raise the same matter under any of the remedies described in subsection (b).

`(b) The remedies described in this subsection are as follows:

`(1) An appeal to the Merit Systems Protection Board under section 7701.

`(2) A negotiated grievance procedure under section 7121.

`(3) Procedures for seeking corrective action under subchapters II and III.

`(c) For the purpose of this section, a person shall be considered to have elected--

`(1) the remedy described in subsection (b)(1) if such person has timely filed a notice of appeal under the applicable appellate procedures;

`(2) the remedy described in subsection (b)(2) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

`(3) the remedy described in subsection (b)(3) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214(a)(1).

`(d) For purposes of subsection (a)(1), a person shall be considered to have elected the remedy under section 1231 if such person has timely commenced an action in an appropriate court, in accordance with applicable procedures.

` 1233. Appeals

` Any party aggrieved by a final decision under section 1231 may appeal such decision only to the United States Court of Appeals for the Federal Circuit.'

(2) **Chapter analysis:** The analysis for chapter 12 of title 5, United States Code, is amended by striking `Sec.' each place it appears, by inserting `Sec.' as a flush left item after the item relating to subchapter I, and by adding at the end the following:

SUBCHAPTER IV--JUDICIAL REVIEW

1231. Judicial review.

1232. Choice of remedies.

1233. Appeals.'

(d) **Authorities Which May Be Extended To Arbitrators:** Section 7121(b) of title 5, United States Code, is amended--

(1) by redesignating subparagraphs (A) through (C) of paragraph (3) as clauses (i) through (iii), respectively;

(2) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(3) by striking `(b)' and inserting `(b)(1)'; and

(4) by adding at the end the following:

`(2)(A) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order--

`(i) a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board; and

`(ii) the taking, by an agency, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of such agency to take.

`(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A)(ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.'

(e) **Choice of Remedies Provision Not Involving Judicial Review:** Section 7121 of title 5, United States Code, is amended by adding at the end the following:

`(g)(1) This subsection applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which subsection (d) applies.

`(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For purposes of the preceding sentence, a determination as to whether a particular remedy has been elected shall be made in the same way as set forth in section 1232(c).

`(3) The remedies described in this paragraph are as follows:

`(A) An appeal to the Merit Systems Protection Board under section 7701.

`(B) A negotiated grievance procedure under this section.

`(C) Procedures for seeking corrective action under subchapters II and III of chapter 12.'

[Page: H10617]

SEC. 6. PERFORMANCE APPRAISALS.

Paragraph (5) of section 4313 of title 5, United States Code, is amended to read as follows:

`(5) meeting affirmative action goals, achievement of equal employment opportunity requirements, and compliance with the merit systems principles set forth in section 2301.'

SEC. 7. IMPLEMENTATION.

(a) **Policy Statement:** No later than 6 months after the date of the enactment of this Act, the Special Counsel shall issue a policy statement regarding the implementation of the amendments made by the Whistleblower Protection Act of 1989. Such policy statement shall be made available to each person alleging a prohibited personnel practice described in section 2302(b) of title 5, United States Code, and shall include detailed guidelines identifying specific categories of information that may (or may not) be communicated to agency officials for an investigative purpose, or for the purpose of obtaining corrective action under section 1214 of title 5, United States Code, or disciplinary action under section 1215 of such title, the circumstances under which such information is likely to be disclosed, and whether or not the consent of any person is required in advance of any such communication.

(b) **Termination Statement:** The Special Counsel shall include in any written statement under section 1214(a)(2)(A) of title 5, United States Code, the name and telephone number of an employee of the Office of Special Counsel who shall be available to respond to reasonable questions from the person regarding the investigation involved, the relevant facts ascertained by the Special Counsel, and the law applicable to the person's allegations.

SEC. 8. AMENDMENTS RELATING TO ATTORNEY'S FEES.

(a) **Chapter 12:** Section 1221(g) of title 5, United States Code, is amended by striking 'attorney's fees' each place it appears and inserting 'fees for legal representation'.

(b) **Chapter 77:** Section 7701(g) of title 5, United States Code, is amended--

(1) by striking 'attorney fees' each place it appears and inserting 'fees for legal representation'; and

(2) in paragraph (1)--

(A) by inserting 'substantially' before 'prevailing'; and

(B) by striking 'agency or any case in which the agency's action was clearly without merit.' and inserting 'agency, in which the agency's action was clearly without merit, or which is settled or otherwise similarly resolved.'.

SEC. 9. MSPB RETIREMENT APPEALS EXPENSE AUTHORIZATION.

(a) **In General:** Section 8348(a) of title 5, United States Code, is amended by striking 'and' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '; and', and by adding at the end the following:

'(3) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Merit Systems Protection Board in connection with the administration of appeals authorized under section 8347(d) or 8461(e).'

(b) **Effective Date:** The amendments made by subsection (a) shall take effect on October 1, 1995.

SEC. 10. EFFECTIVE DATE.

(a) **In General:** Except as provided in section 9, this Act and the amendments made by this Act shall take effect 120 days after the date of the enactment of this Act.

(b) **Savings Provision:** No provision of this Act shall affect any administrative proceeding pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Indiana

[Mr. **McCloskey**] will be recognized for 20 minutes, and the gentleman from New York [Mr. **Gilman**] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Indiana [Mr. **McCloskey**].

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

Mr. Speaker, the history and rationale for the OSC is quite simple: to provide legal protections for Federal employees who blow the whistle on fraud, waste, abuse, or criminal activity in the workplace and to investigate prohibited personnel practices. Prohibited personnel practices are serious career-threatening or career ending moves like demotion, removal, reassignment, or other significant change in duties on prohibited grounds such as racial discrimination, political coercion, reprisal against whistle blowing, or in response to the employee's valid exercise of legal rights.

The Subcommittee on Civil Service has had several hearings on this issue, and has heard testimony from the office of special counsel on two occasions, from Ben Erdreich, the Chairman of the Merit Systems Protections Board [MSPB], Federal employee unions, Government Accountability Project [GAP], and individual whistleblowers. Our findings have generally tracked the conclusions of the MSPB and the GAO in reports released last year: Agencies still need to improve their attitudes when it comes to whistleblowers.

Clearly agencies must do a better job of educating their employees of their rights and remedies under the WPA, but they must also communicate to managers and supervisors that retaliation against whistleblowers is not acceptable and will not be tolerated. Considerable consultation has been done with the administration, other committees, and virtually all interested parties.

I have an amendment in the nature of a substitute which closely tracks the original structure of H.R. 2970 while seeking to address the concerns of the Banking Committee and the Judiciary Committee.

The amendment reauthorizes the Office of Special Counsel and the MSPB for 4 years, and makes amendments to the Whistleblower Protection Act of 1989 which add further protection to Federal employees who blow the whistle.

The bill also expands the choices Federal employees would have when seeking corrective action for any reprisal taken against them.

The bill requires agencies to educate and inform their employees of their rights and remedies under the WPA, expands coverage to hundreds of thousands of Federal employees who are not currently covered, expands the definition of personnel actions to include several practices that are not currently covered, but that can have a debilitating effect on an employee's career, and attempts to level the playing field for employees in these always difficult cases.

In response to concerns raised by the Judiciary Committee, the amendment deletes the provision of H.R. 2970 which expanded appellate jurisdiction from the Federal circuit and gave the employee the option of choosing the circuit in which the employee resides.

The amendment also provides that employees of the FDIC and RTC who have separate whistleblower protection provisions as a result of the savings and local bailout legislation must choose to either follow those procedures in title 39 or the ones established title 5.

I urge all of my colleagues to support this measure.

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

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

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

Mr. GILMAN. Mr. Speaker, I am pleased to rise in support of H.R. 2970, a bill introduced by the distinguished gentleman from Indiana [Mr. **McCloskey**] reauthorizing the Office of Special Counsel and the Merit Systems Protection Board through 1997. The legislation also expands upon the 1989 Whistleblower Protection Act by providing additional safeguards for Federal employees who expose waste, fraud, or abuse within the Federal Government.

The legislation was the subject of three Civil Service subcommittee hearings and was reported out of the Committee on Post Office and Civil Service by voice vote. Mr.

Speaker, the minority has no objections to consideration of this measure under suspension of the rules. Accordingly, I urge my colleagues to support passage of this measure.

[Page: H10618]

Mr. LEWIS of California. Mr. Speaker, will the gentleman yield?

Mr. GILMAN. Mr. Speaker, I yield to the gentleman from California.

Mr. LEWIS of California. Mr. Speaker, we had an issue on the floor earlier that related to the reauthorization of an agency, and the question was raised relative to those provisions that would have prevented the downsizing of these agencies. Are those provisions a part of this measure?

Mr. **McCLOSKEY**. Mr. Speaker, will the gentleman yield?

Mr. GILMAN. I yield to the gentleman from Indiana.

Mr. **McCLOSKEY**. Mr. Speaker, I say to the gentleman, `There are no provisions related to downsizing in this legislation.

Mr. LEWIS of California. Mr. Speaker, I thank the gentleman from Indiana.

[TIME: 1940]

Mr. **McCLOSKEY**. Mr. Speaker, I thank the distinguished gentleman from New York for his cooperation and leadership on this and numerous other items of legislation.

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

The SPEAKER pro tempore (Mr. **DeFazio**). The question is on the motion offered by the gentleman from Indiana [Mr. **McCloskey**] that the House suspend the rules and pass the bill, H.R. 2970, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed

A motion to reconsider was laid on the table.

END