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S. 1789 – 21st Century Postal Service Act

Reported by the Senate Homeland Security and Governmental Affairs Committee on November 9, 2011 by a vote of 9-1; the "no" votes of Senators Coburn and McCain were not counted because they were proxy votes.

Noteworthy

- On Thursday, March 22, 2012, cloture was filed on the motion to proceed to S. 1789, the 21st Century Postal Service Act, also known as the Postal Reform Bill.
- S. 1789 changes the laws governing the operation of the U.S. Postal Service.
- S. 1789 permits the Postal Service to recoup overpayments to the Federal Employees Retirement System and use those funds for buyouts and early retirement incentives.
- The bill mandates certain procedures the Postal Service must follow before post offices and mail processing facilities can be closed or consolidated.
- S. 1789 imposes a two-year delay before the elimination of Saturday delivery.
- S. 1789 reforms the government-wide (not just postal) workers' compensation program.
- This legislation allows the Postal Service to offer nonpostal products such as fishing licenses and to ship beer and wine.

Overview

The Postal Service fiscal year 2011 debt was $13 billion. In the first quarter of fiscal year 2012, the Postal Service had a $3.3 billion operational loss. While the Postal Service can borrow money from the U.S. Treasury, its debt limit is set at $15 billion by federal statute. Thus, the Postal Service is expected to no longer be able to absorb operational losses by the end of this year.

The Senate Homeland Security and Governmental Affairs Committee held a hearing on "U.S. Postal Service in Crisis: Proposals to Prevent a Postal Shutdown" on September 6, 2011. Video and Member Statements from that hearing are available here. At the November 9, 2011, Executive Meeting of the Homeland Security and Governmental Affairs Committee, the legislation passed by a vote of 9-1. The "no" votes of Senators Coburn and McCain were not counted because they were proxy votes. Video of that mark-up is available here. The Committee Report is available here.

House Action

H.R. 2309, the Postal Reform Act of 2011, was introduced in the House of Representatives on June 23, 2011. The House Committee on Oversight and Government Reform marked it up and reported it on October 13, 2011, by a party-line vote of 22-18. The House Committee on Rules is marking up its jurisdictional piece of the bill on March 26, 2012.

Bill Provisions

Section One – Short Title

The 21st Century Postal Service Act of 2012.

Section Two – Table of Contents

This section outlines the four titles in the Act.

Title I: Postal Workforce Matters

Section 101 – Treatment of Surplus Contributions to Federal Employees Retirement System

This section amends 5 U.S.C. §8423(b) to require an annual calculation of the Postal Service's FERS balance. It further amends the statute to direct any overpayment of funds contributed to FERS by the Postal Service (after liabilities paid by FERS), to be transferred to the Postal Service, upon request of the Postmaster General.

This section directs that for fiscal years 2011 through 2013, a portion of any FERS overpayment is to be used for retirement incentives, including buyouts (up to $25,000) or additional service credits. If additional funds remain, these may be used by the Postal Service for such things as repaying debt, workers' compensation payments, paying down the retiree health liability, and pension obligations.

Section 102 – Additional Service Credit

This section amends 5 U.S.C. §8332 and 5 U.S.C. §8411 to allow the Postal Service (through the Office of Personnel Management) to offer credited service years to employees who retire before October 2014 as an incentive for retirement. Individuals in the Civil Service Retirement System pension system can be credited up to one year, whereas individuals in FERS can be credited up to two years. Receipt of additional service credit forecloses a cash buyout.

Section 103 – Restructuring of Payments for Retiree Health Benefits

This section amends 5 U.S.C. §8906(g)(2)(A) to restructure the Postal Service's pre-funding requirements in the Postal Service Retiree Health Benefits Fund for retiree health benefits by beginning an immediate (upon enactment of the bill) 40-year amortized payment schedule (slated to begin in 2017 under *current* law). It also amends 5 U.S.C.§8909a to reduce the pre-funding goal for retiree health benefits to **80 percent of the projected liability** and rolls the current schedule of payments set forth in §8909a into the amortized payment schedule (under current law, these are slated to end in 2017 when the amortized payments begin).

Section 104 – Postal Service Health Benefits Program

This section permits the Postal Service to negotiate with the relevant unions – in consultation with OPM – in order to develop a new Postal Service health care plan. A postal employee not represented by a union may participate in any new Postal Service health plan. It also requires the Postal Service to submit a report to Congress on how this section is implemented.

Section 105 – Arbitration; Labor Disputes

This section amends 39 U.S.C. §1207(c)(2) to require arbitrators to consider various factors when ruling on a contract dispute between the Postal Service and one of its unions. The factors to be considered are:

1) The financial condition of the Postal Service;
2) Comparability of private sector wages and benefits (39 U.S.C. 1003(a)); and
3) The policies of Title 39 (dealing with postal matters).

Title II: Postal Services and Operations

Section 201 – Postal Facilities

This section amends 39 U.S.C. §404 to require certain criteria before closing a mail processing facility. The Postal Service is required to:

1) Issue a study, with notice and publication, that includes the feasibility of downsizing rather than closing a processing facility;
2) Provide a 45-day public comment period, including a public meeting, after publishing the study;
3) Provide a 30-day period for the Postal Service to consider any concerns raised during the public comment stage, culminating with the publication of a justification on its web site. The published justification shall include:

a) Responses to public comments;
b) A discussion of the effect of closure on the affected community, including any disproportionate impact on a state, region or locality;
c) The change in travel times and distances for affected customers;
d) The effect on delivery times for all classes of mail;
e) A consideration of geographical factors such as remoteness, weather, and broadband availability; and
f) Any other appropriate factors.

4) Establish a waiting period of at least 15 days after the publication of the closure justification before the Postal Service may close a facility; and
5) Take reasonable efforts to ensure delivery of mail in a geographically close facility (if not the same facility) in the event of a consolidation or closure.

Section 202 – Additional Postal Service Planning

This section amends 39 USCS § 3691 to require the Postal Service to expand its annual report on the use of retail alternatives to post offices to include a discussion of any plans to replace post offices with alternate retail locations. The discussion should:

1) Consider the impact on small communities and rural areas;
2) Ensure that the Postal Service continues to serve small communities and rural areas after the implementation of the plan; and
3) Allow for the solicitation of community input.

Section 203 – Area and District Office Structure

This section requires the Postal Service to submit a report to Congress within one year of enactment outlining a strategic plan for area and district offices. The Postal Service is further required to develop a 10-year plan providing for the consolidation of area and district offices when deemed cost effective and without adversely affecting operations.

This section also requires the Postal Service to consolidate district offices located within 50 miles of each other, and those with less than the mean mail volume and number of work hours for all area and district offices. Area offices are to be relocated to headquarters.

Section 204 – Post Offices; Retail Service Standards

This section amends 39 U.S.C. §404 to require the Postal Service to consider several factors prior to the decision to close or consolidate a post office, including whether to:

1) Consolidate two post offices within a reasonable distance;
2) Reduce the operating hours at a particular post office instead of closing or consolidating; and
3) Permit a contractor or rural carrier to provide retail services.

This section requires the Postal Service to provide notice at least 60 days prior to the proposed closure or consolidation of a post office. This section also requires the Postal Service to develop a set of service standards defining what constitutes reasonable access to retail postal services within 60 days of enactment. The standards are required to be consistent with the service obligations of the Postal Service and the needs of populations served. The Postal Service also is to consider the requirement that it serve remote areas and communities. Finally, under this section, the Postal Service may not close a post office, except as health and safety requires, from the date of enactment until such service standards are set.

Section 205 – Conversion of Door Delivery Points

This section amends 39 U.S.C. §3692 to authorize the Postal Service to change door delivery service of mail to curbside, sidewalk, or centralized delivery, subject to exceptions set forth therein. The Postal Service is further required to establish procedures to allow for input from people affected by the change from door delivery. It must report to Congress and the Postal Service's Inspector General within 60 days of the end of each fiscal year until 2015.

Section 206 – Limitations on Changes to Mail Delivery Schedule

This section prohibits the Postal Service from eliminating Saturday delivery for at least two years from enactment. Prior to a switch to five-day delivery, the Postal Service must:

1) Identify customers disproportionately affected by the switch and develop measures to ameliorate the negative impact;
2) Utilize all means set forth in this bill and otherwise within its authority to increase revenue and reduce costs;
3) Evaluate whether the measures in this bill will increase revenues and reduce costs such that the Postal Service becomes profitable by fiscal year 2015 and can achieve long term solvency; and
4) Submit a report on the steps it has taken.

The Government Accountability Office will review the Postal Service's report to determine whether the implementation of five-day delivery is necessary. The Postal Service would not be able to implement a five-day schedule unless the Comptroller General has made a determination that doing so is necessary and the Postal Regulatory Commission confirms such a determination.

Section 207 – Time Limits for Consideration of Service Changes

This section amends 39 U.S.C. §3661 to establish a timeline of 90 days for advisory opinions to be issued by the Postal Regulatory Commission, if the Postal Service proposes a change affecting nationwide services. The section outlines the procedure for how the Postal Service is to deal with the advisory opinion, including a requirement for submission of a statement to the president and Congress on how it will address the advisory opinion recommendations.

Section 208 – Public Procedures for Significant Changes to Mailing Specifications

This section requires the Postal Service to allow 30 days notice in the Federal Register of any proposed changes to mailing services not reviewed by the Postal Regulatory Commission, except for reasons set forth in the section. The Postal Service must publish a final report to include its response to public comments on the proposed changes and may not execute the changes within 30 days of its final report.

Section 209 – Non-postal Products and Services

This section amends 39 U.S.C. §3661 to allow for non-postal products and services to be offered by the Postal Service, provided the Postal Regulatory Commission determines that such products or services:

1) Utilize the Postal Service's infrastructure or technology;
2) Are consistent with the public interest and demand for the Postal Service to provide the service or product;
3) Do not create unfair competition with the private sector; and
4) Improve the financial position of the Postal Service, as confirmed by the Postal Regulatory Commission.

This section also requires the Postal Service to submit a market analysis for any new product or service to the Postal Regulatory Commission.

Title III: Federal Employees' Compensation Act (FECA)

Section 301 – Short Title and References

This section creates the "Workers' Compensation Reform Act of 2012" and clarifies that all changes in Title III of the bill are referencing changes in Title 5 of the United States Code, unless otherwise noted.

Section 302 – Federal Workers' Compensation Reforms for Retirement Age Employees

This section reduces FECA benefits for individuals who reach full retirement age (and choose not to transfer to the regular Federal retirement system). This section also includes a full exemption from the reduction for the most severely injured, as well as for individuals who have already reached full retirement age. For such retirement-age individuals not grandfathered and receiving total disability compensation, the FECA payments are 50 percent of the pre-disability monthly pay. For such retirement-age individuals with a partial disability, the FECA payments are 50 percent of the difference between the pre-disability monthly pay and the monthly wage-earning capacity that was lost due to the injury. The changes to benefit levels will be delayed for three years for current FECA recipients not exempted by a total disability and inability to return to work.

Section 303 – Augmented Compensation for Dependents

This section eliminates the additional compensation payments employees received for having dependents. For individuals who were injured and currently receiving these additional payments, the payments will end three years after the bill's enactment, unless the individual is subject to the exemption clause in Section 302.

This section also lowers the maximum monthly FECA payment to 66 2/3 percent of the monthly pay of the maximum rate of basic pay for GS–15. Finally, the section establishes the minimum monthly FECA payment as 66 2/3 percent of the monthly pay of the minimum rate of basic pay for GS–2.

Section 304 – Schedule Compensation Payments

This section allows individuals to receive "schedule compensation payments" simultaneously with the FECA benefits. These payments are authorized under current law and are specific payments for specific injuries.

Section 305 – Vocational Rehabilitation

This section increases the focus on vocational rehabilitation, directing individuals to participate in a "Return to Work" plan and undergo vocational rehabilitation whenever reasonable to do so. The Secretary of Labor can use money from the Employees' Compensation Fund to pay for the vocational rehabilitation expenses.

Additionally, the section outlines specific requirements for a "Return to Work" plan, which must, among other things, include ways for the individual to increase wage-earning potential, take into account the individual's prior training and education, and consider the distance between the individual's residence and the location of employment.

Finally, the section allows the Secretary to enter into assisted reemployment agreements, which give the Secretary the ability to use the Employees' Compensation Fund to reimburse a federal, state, or local government employer, as well as a private employer, for up to 100 percent of the injured individual's wages for up to three years. Under current law, the Secretary can only make these wage-loss compensation payments to non-federal employers.

Section 306 – Reporting Requirements

This section directs the Secretary of Labor to collect information regarding outside income from individuals receiving FECA benefits. Failure to report this information will result in the individual's loss of FECA benefits.

Section 307 – Disability Management Review; Independent Medical Examinations

This section directs the Secretary of Labor to establish and promulgate regulations for a disability management review process to certify and monitor the disability status and the extent of injury for each individual receiving FECA benefits. The process must include periodic physical examinations by an independent medical examiner which will occur at a minimum of at least once every three years.

Section 308 – Waiting Period

This section moves the three-day waiting period that currently occurs after the 45 day waiting period between the injury and the initiation of FECA benefits to immediately after any postal and non-postal federal employee suffers a work-related injury.

Section 309 – Election of Benefits

This section requires that individuals who are eligible for Civil Service Retirement System or Federal Employees Retirement System and FECA benefits to choose which benefits to receive. The decision is revocable if the individual decides to receive retirement benefits while eligible for FECA benefits; however the beneficiary cannot claim retroactive FECA benefits for the time he or she received retirement benefits. (Current law allows beneficiaries to move back and forth between retirement and FECA and claim retroactive benefit payments.)

Section 310 – Sanctions for Non-Cooperation with Nurses

This section suspends FECA benefits for individuals who fail to cooperate with a “field nurse.” Field nurses are registered nurses who assist the Department of Labor in managing disability claims and coordinating an individual’s medical and vocational rehabilitation services.

Section 311 – Subrogation of Continuation of Pay

This section allows the federal government to recover money paid to the individual during the waiting period between the injury and the initiation of FECA benefits from third parties who are liable for the individual’s work-related injury.

Section 312 – Integrity and Compliance

This section includes several provisions to strengthen program integrity and compliance, including directing the Secretary of Labor to create an Integrity and Compliance Program to prevent, identify, and recover improper and fraudulent payments. Additionally, the National Directory of New Hires must be made available to the Secretary of Labor, the Department of Labor Inspector General, the Postmaster General, the United States Postal Service Inspector General, and the Government Accountability Office in order to allow for the comparison of data between the directory and claimant data under the FECA program.

Section 313 – Amount of Compensation

This section increases the amount an injured worker receives for a severe disfigurement of the face, head, or neck to a maximum of $50,000. Additionally, it increases the amount allowed to reimburse funeral expenses incurred because of death from a work-related injury to a maximum of $6,000.

Section 314 – Technical and Conforming Amendments

This section contains technical and conforming amendments to Title 5 of the United States Code.

Section 315 – Regulations

This section directs the Department of Labor to issue regulations to carry out this title of the legislation.

Title IV: Other Matters

Section 401 – Profitability Plan

This section requires the Postal Service to submit a five-year plan to Congress within 90 days of enactment detailing how it will achieve solvency and profitability. The plan must be updated each quarter until the last quarter of fiscal year 2015.

Section 402 – Postal Rates

This section requires the Postal Regulatory Commission to commence a study on the economic viability of postal mail classes, services, and products within two years of enactment. The Commission must also hold a public hearing before completing the study. For classes of mail deemed to recover less than 90 percent of costs, the Postmaster General may increase rates by two percent a year, until 90 percent of costs are recovered.

Section 403 – Cooperation with State and Local Governments

This section amends 39 U.S.C. §411to allow the Postal Service, in cooperation with the local and state governments, to provide government services, such as fishing licenses or tax forms, in post offices.

Section 404 – Shipping of Wine and Beer

This section amends 18 U.S.C. §1716(f) to allow the shipment of wine and beer by the Postal Service. Such shipments must be sent by a licensed winery or brewery and in accordance with the laws of the relevant mailing states. The section further requires the issuance of regulations providing the wine or beer is mailed directly to a person who is at least 21 years old and presents a valid, government-issued form of identification at the time of delivery.

Section 405 – Annual Report on U.S. Mailing Industry

This section amends 39 U.S.C. §2403 to require the Postal Regulatory Commission, with the assistance of the Postal Service, to publish an annual report within one year of enactment detailing the financial health of the U.S. mailing industry.

Section 406 – Use of Negotiated Service Agreements

This section amends 39 U.S.C. §3622 to permit the Postal Service to enter into Negotiated Service Agreements (these are special pricing arrangements) with individual mailers in order to preserve existing mail volume and revenue. Under current law, these are only allowed to increase volume and revenue.

Section 407 – Contract Disputes

This section amends 41 U.S.C. 7101(8) to include the Postal Service and the Postal Regulatory Commission among the agencies covered by the Contract Disputes Act of 1978.

Section 408 – Contracting Provisions

This section amends Part I of Title 39 of the U.S. Code to include a new chapter dealing with contracting reforms and new ethics provisions for the Postal Service and the Postal Regulatory Commission. These reforms:

1) Establish an "Advocate for Competition" at both entities;
2) Clarify that both the Postmaster General and the Postal Regulatory Commission Chairman are responsible for any delegation of contracting authority and must publish any delegation of authority to a contract;
3) Require both entities to publicly justify noncompetitive contracts;
4) Ensure that an ethics official will review proposed contracts identified as having ethical issues;
5) Require disclosure of any relationship that could suggest impartiality by decision-making employees in the awarding of noncompetitive contracts. They further require the ethics counsel to determine if disqualification of the contract or disclosure of the relationship is necessary;
6) Allow for the voiding of improper contracts and the recovery of funds where a violation is proven; and
7) Prohibit the Postal Service from entering into contracts that restrict Congress from exercising its oversight authority.

Administration Position

The Obama Administration has not weighed in on S. 1789, but the fiscal year 2013 Budget permits the immediate change to a five-day delivery for mail, waives retiree health benefit prefunding payments for 2011-2013, and transfers FERS funds within two years.

Cost

The Congressional Budget Office issued a cost estimate of the bill on January 26, 2011. According to CBO, the bill results in a net cost to the unified budget of $6.3 billion over the 2012 to 2022 period. The Postal Service's Inspector General argues that budget scoring rules incorrectly charge on-budget costs fully but only give half-credit to off-budget savings. Bill sponsors estimate that adopting the scoring rules the Inspector General urges for the bill would save $18.3 billion to the unified budget.