

H 3996

CONGRESSIONAL RECORD — HOUSE

July 12, 1982

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland (Mr. BARNES) that the House suspend the rules and pass the joint resolution (H.J. Res. 494), as amended.

The question was taken.

Mr. BARNES. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

#### GENERAL LEAVE

Mr. BARNES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the joint resolution just under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

#### FEDERAL EMPLOYEES FLEXIBLE AND COMPRESSED WORK SCHEDULES ACT OF 1982

Ms. FERRARO. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2240) to amend title 5, United States Code, to provide permanent authorization for Federal agencies to use flexible and compressed employee work schedules.

The Clerk read as follows:

S. 2240

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employees Flexible and Compressed Work Schedules Act of 1982".*

Sec. 2. (a) Chapter 61 of title 5, United States Code, is amended—

(1) by inserting before section 6101 the following:

#### "SUBCHAPTER I—GENERAL PROVISIONS";

and

(2) by adding at the end thereof the following new subchapter:

#### SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES

"§ 6120. Purpose

"The Congress finds that the use of flexible and compressed work schedules has the potential to improve productivity in the Federal Government and provide greater service to the public.

"§ 6121. Definitions

"For purposes of this subchapter—

"(1) 'agency' means any Executive agency, any military department, and the Library of Congress;

"(2) 'employee' has the meaning given it by section 2105 of this title;

"(3) 'basic work requirement' means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise;

"(4) 'credit hours' means any hours, within a flexible schedule established under section 6122 of this title, which are in excess of an employee's basic work requirement

and which the employee elects to work so as to vary the length of a workweek or a workday.

"(5) 'compressed schedule' means—

"(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

"(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays;

"(6) 'overtime hours', when used with respect to flexible schedule programs under section 6122 through 6128 of this title, means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours;

"(7) 'overtime hours', when used with respect to compressed schedule programs under sections 6127 and 6128 of this title, means any hours in excess of those specified hours which constitute the compressed schedule; and

"(8) 'collective bargaining', 'collective bargaining agreement', and 'exclusive representative' have the same meanings given such terms—

"(A) by section 7103(a)(12), (8), and (16) of this title, respectively, in the case of any unit covered by chapter 71 of this title; and

"(B) in the case of any other unit, by the corresponding provisions applicable under the personnel system covering this unit.

"§ 6122. Flexible schedules; agencies authorized to use

"(a) Notwithstanding section 6101 of this title, each agency may establish, in accordance with this subchapter, programs which allow the use of flexible schedules which include—

"(1) designated hours and days during which an employee on such a schedule must be present for work; and

"(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

"(b) Notwithstanding any other provision of this subchapter, but subject to the terms of any written agreement referred to in section 6130(a) of this title, if the head of an agency determines that any organization within the agency which is participating in a program under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

"(1) restrict the employees' choice of arrival and departure time,

"(2) restrict the use of credit hours, or

"(3) exclude from such program any employee or group of employees.

"§ 6123. Flexible schedules; computation of premium pay

"(a) For purposes of determining compensation for overtime hours in the case of an employee participating in a program under section 6122 of this title—

"(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a),

5543(a)(1), 5544(a), and 5550 of this title, section 4107(e)(5) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other provision of law; or

"(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

"(b) Notwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 6126 of this title or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

"(c)(1) Notwithstanding section 5545(a) of this title, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which such premium pay is otherwise authorized, except that—

"(A) if an employee is on a flexible schedule under which—

"(i) the number of hours during which such employee must be present for work, plus

"(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the nightwork hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

"(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

"(2) Notwithstanding section 5343(f) of this title, and section 4107(e)(2) of title 38, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this subchapter—

"(A) in the case of an employee subject to subsection (f) of such section 5343, for which all or a majority of the hours of such schedule for any day fall between the hours specified in such subsection, or

"(B) in the case of an employee subject to subsection (e)(2) of such section 4107, for which 4 hours of such schedule fall between the hours specified in such subsection.

"§ 6124. Flexible schedules; holidays

"Notwithstanding sections 6103 and 6104 of this title, if any employee on a flexible schedule under section 6122 of this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Office of Personnel Management).

"§ 6125. Flexible schedules; time-recording devices

"Notwithstanding section 6106 of this title, the Office of Personnel Management or any agency may use recording clocks as part of programs under section 6122 of this title.

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**§ 6126. Flexible schedules; credit hours; accumulation and compensation**

"(a) Subject to any limitation prescribed by the Office of Personnel Management or the agency, a full-time employee on a flexible schedule can accumulate not more than 24 credit hours, and a part-time employee can accumulate not more than one-fourth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

"(b) Any employee who is on a flexible schedule program under section 6122 of this title and who is no longer subject to such a program shall be paid at such employee's then current rate of basic pay for—

"(1) in the case of a full-time employee, not more than 24 credit hours accumulated by such employee, or

"(2) in the case of a part-time employee, the number of credit hours (not excess of one-fourth of the hours in such employee's biweekly basic work requirement) accumulated by such employee."

**§ 6127. Compressed schedules; agencies authorized to use**

"(a) Notwithstanding section 6101 of this title, each agency may establish programs which use a 4-day workweek or other compressed schedule.

"(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any program under subsection (a) unless a majority of the employees in such unit who, but for this paragraph, would be included in such program have voted to be so included.

"(2) Upon written request to any agency by an employee, the agency, if it determines that participation in a program under subsection (a) would impose a personal hardship on such employee, shall—

"(A) except such employee from such program; or

"(B) reassign such employee to the first position within the agency—

"(i) which becomes vacant after such determination,

"(ii) which is not included within such program,

"(iii) for which such employee is qualified, and

"(iv) which is acceptable to the employee. A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

**§ 6128. Compressed schedules; computation of premium pay**

"(a) The provisions of sections 5542(a), 5544(a), and 5550(2) of this title, section 4107(e)(5) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

"(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by the applicable provisions referred to in subsection (a) of this section. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

"(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of this title, or any other applicable provision of law, in the case of any full-time employee on a compressed

schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

"(d) Notwithstanding section 5546(b) of this title, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of this title, as applicable, or the provisions of section 7 of the Fair Labor Standards Act (29 U.S.C. 207) whichever provisions are more beneficial to the employee.

**§ 6129. Administration of leave and retirement provisions**

"For purposes of administering sections 6303(a), 6304, 6307 (a) and (c), 6323, 6326, and 8339(m) of this title, in the case of an employee who is in any program under this subchapter, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

**§ 6130. Application of programs in the case of collective bargaining agreements**

"(a)(1) In the case of employees in a unit represented by an exclusive representative, any flexible or compressed work schedule, and the establishment and termination of any such schedule, shall be subject to the provisions of this subchapter and the terms of a collective bargaining agreement between the agency and the exclusive representative.

"(2) Employees within a unit represented by an exclusive representative shall not be included within any program under this subchapter except to the extent expressly provided under a collective bargaining agreement between the agency and the exclusive representative.

"(b) An agency may not participate in a flexible or compressed schedule program under a collective bargaining agreement which contains premium pay provisions which are inconsistent with the provisions of section 6123 or 6128 of this title, as applicable."

**§ 6131. Criteria and review**

"(a) Notwithstanding the preceding provisions of this subchapter or any collective bargaining agreement and subject to subsection (c) of this section, if the head of an agency finds that a particular flexible or compressed schedule under this subchapter has had or would have an adverse agency impact, the agency shall promptly determine not to—

"(1) establish such schedule; or

"(2) continue such schedule, if the schedule has already been established.

"(b) For purposes of this section, 'adverse agency impact' means—

"(1) a reduction of the productivity of the agency;

"(2) a diminished level of services furnished to the public by the agency; or

"(3) an increase in the cost of agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule.

"(c)(1) This subsection shall apply in the case of any schedule covering employees in

a unit represented by an exclusive representative.

"(2)(A) If an agency and an exclusive representative reach an impasse in collective bargaining with respect to an agency determination under subsection (a)(1) not to establish a flexible or compressed schedule, the impasse shall be presented to the Federal Service Impasses Panel (hereinafter in this section referred to as the 'Panel').

"(B) The Panel shall promptly consider any case presented under subparagraph (A), and shall take final action in favor of the agency's determination if the finding on which it is based is supported by evidence that the schedule is likely to cause an adverse agency impact.

"(3)(A) If an agency and an exclusive representative have entered into a collective bargaining agreement providing for use of a flexible or compressed schedule under this subchapter and the head of the agency determines under subsection (a)(2) to terminate a flexible or compressed schedule, the agency may reopen the agreement to seek termination of the schedule involved.

"(B) If the agency and exclusive representative reach an impasse in collective bargaining with respect to terminating such schedule, the impasse shall be presented to the Panel.

"(C) The Panel shall promptly consider any case presented under subparagraph (B), and shall rule on such impasse not later than 60 days after the date the Panel is presented the impasse. The Panel shall take final action in favor of the agency's determination to terminate a schedule if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact.

"(D) Any such schedule may not be terminated until—

"(i) the agreement covering such schedule is renegotiated or expires or terminates pursuant to the terms of the agreement; or

"(ii) the date of the Panel's final decision, if an impasse arose in the reopening of the agreement under subparagraph (A) of this paragraph.

"(d) This section shall not apply with respect to flexible schedules that may be established without regard to the authority provided under this subchapter."

**§ 6132. Prohibition of coercion**

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

"(1) such employee's rights under sections 6122 through 6126 of this title to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

"(2) such employee's right under section 6127(b)(1) of this title to vote whether or not to be included within a compressed schedule program or such employee's right to request an agency determination under section 6127(b)(2) of this title.

"(b) For the purpose of subsection (a), the term 'intimidate, threaten, or coerce' includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

**§ 6133. Regulations; technical assistance; program review**

"(a) The Office of Personnel Management shall prescribe regulations necessary for the administration of the programs established under this subchapter.

"(b)(1) The Office shall provide educational material, and technical aids and assistance, for use by an agency in connection with establishing and maintaining programs under this subchapter.

"(2) In order to provide the most effective materials, aids, and assistance under paragraph (1), the Office shall conduct periodic reviews of programs established by agencies under this subchapter particularly insofar as such programs may affect—

"(A) the efficiency of Government operations;

"(B) mass transit facilities and traffic;

"(C) levels of energy consumption;

"(D) service to the public;

"(E) increased opportunities for full-time and part-time employment; and

"(F) employees' job satisfaction and non-worklife.

"(c) With respect to employees in the Library of Congress, the authority granted to the Office of Personnel Management under this subchapter shall be exercised by the Librarian of Congress."

(b) The table of sections at the beginning of such chapter is amended—

(1) by inserting before the item relating to section 6101 the following:

"SUBCHAPTER I—GENERAL PROVISIONS";

and

(2) by adding at the end thereof the following:

"SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES

"Sec.

"6120. Purpose.

"6121. Definitions.

"6122. Flexible schedules; agencies authorized to use.

"6123. Flexible schedules; computation of premium pay.

"6124. Flexible schedules; holidays.

"6125. Flexible schedules; time-recording devices.

"6126. Flexible schedules; credit hours; accumulation and compensation.

"6127. Compressed schedules; agencies authorized to use.

"6128. Compressed schedules; computation of premium pay.

"6129. Administration of leave and retirement provisions.

"6130. Application of programs in the case of collective bargaining agreements.

"6131. Criteria and review.

"6132. Prohibition of coercion.

"6133. Regulations; technical assistance; program review."

Sec. 3. Section 3401(2) of title 5, United States Code, is amended by inserting "(or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title)" after "week".

Sec. 4. (a) Except as provided in subsection (b), each flexible or compressed work schedule established by any agency under the Federal Employees Flexible and Compressed Work Schedules Act of 1978 (5 U.S.C. 6101 note) in existence on the date of enactment of this Act shall be continued by the agency concerned.

(b)(1) During the 90-day period after the date of the enactment of this Act, any flexible or compressed work schedule referred to in subsection (a) may be reviewed by the agency concerned. If, in reviewing the schedule, the agency determines in writing that—

(A) the schedule has reduced the productivity of the agency or the level of services to the public, or has increased the cost of the agency operations; and

(B) termination of the schedule will not result in an increase in the cost of the

agency operations (other than a reasonable administrative cost relating to the process of terminating a schedule),

the agency shall, notwithstanding any provision of a negotiated agreement, immediately terminate such schedule and such termination shall not be subject to negotiation or to administrative review (except as the President may provide) or to judicial review.

(2) If a schedule established pursuant to a negotiated agreement is terminated under paragraph (1), either the agency or the exclusive representative concerned may, by written notice to the other party, within 90 days after the date of such termination, initiate collective bargaining pertaining to the establishment of another flexible or compressed work schedule under subchapter II of chapter 61 of title 5, United States Code, which would be effective for the unexpired portion of the term of the negotiated agreement.

Sec. 5. The amendments made by this Act shall not be in effect after three years after the date of the enactment of this Act.

Sec. 6. (a) Section 6106 of title 5, United States Code, is amended by striking out the period and inserting in lieu thereof a comma and "except that the Bureau of Engraving and Printing may use such recording clocks."

(b) The amendment made by this section shall take effect October 1, 1982. Section 5 of this Act shall not apply to the amendment made by this section.

The SPEAKER pro tempore. Is a second demanded?

Mr. DERWINSKI. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentlewoman from New York (Ms. FERRARO) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. DERWINSKI) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York (Ms. FERRARO).

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

(Ms. FERRARO asked and was given permission to revise and extend her remarks, and to include extraneous material.)

Ms. FERRARO. Mr. Speaker, In 1978, the Congress authorized Public Law 95-390 a 3 year experiment for Federal agencies on the use of alternatives to the traditional fixed-schedule 8-hour day. Since then, more than 350,000 Federal employees in 1,500 organizations have taken part in this successful experiment. The legislation we are considering, S. 2240, would permit, but not require, Federal agencies to continue this program which the Office of Personnel Management found to be "successful in most situations from the perspective of experimenting organizations and individuals."

This Federal experience closely parallels the private sector experience. There is a substantial body of literature concerning the use of alternative work schedules in the private sector. Over 10 million full-time workers in thousands of different firms enjoy

flexible schedules and compressed work weeks. These variations from the standard, fixed schedule 8-hour workday evolved as a means of coping with social change, particularly the dramatic increase of women in the work force, and the desire of all employees for a better accommodation between their working and personal lives. Employers found that they benefited from higher usage of buildings and equipment, decreased traffic congestion, and improved attendance, punctuality and morale. Employees felt they had more control over their working lives.

Flexible schedules have also helped reduce the conflicts between work and personal needs, particularly for working women and others with household responsibilities.

Because most Members are familiar with this issue, I will only summarize the background. The act required the Office of Personnel Management (OPM) to submit an interim report on the results of the experiment and legislative recommendations no later than September 30, 1981, so that Congress would have sufficient time to consider permanent legislation in an orderly fashion. I had planned to hold hearings last October. We did not receive the report from OPM until November 9, and as a result, our hearings had to be postponed. The report, as I have already said, found the experiment successful, but it did not contain the mandated legislative proposal.

When the administration failed to submit legislative recommendations, and only 8 weeks remained prior to the expiration of the original experiment, I introduced legislation in January. That legislation would have permanently authorized the same program which had been found to be successful.

On March 2 this house voted 255-142 in favor of H.R. 5366, the legislation which I introduced to permanently authorize the program. Unfortunately, the administration's opposition resulted in an insufficient vote to suspend the rules and pass the legislation. Because the entire program was about to terminate at the end of March, Congress approved an emergency extension which is currently in place, but will expire beginning July 24.

Despite a lack of facts to support their position, the administration has consistently contended that more management control over use of AWS is necessary. The administration working with my subcommittee and the appropriate committee in the other body developed legislation which was acceptable to them. That legislation, as initially introduced in the other body, would have altered the delicate balance between management rights and employee participation which have contributed to the success of the program. I believe that the bill which I introduced in January, which is identical