

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 3094) TO AMEND THE NATIONAL LABOR RELATIONS ACT WITH RESPECT TO REPRESENTATION HEARINGS AND THE TIMING OF ELECTIONS OF LABOR ORGANIZATIONS UNDER THAT ACT

NOVEMBER 17, 2011.—Referred to the House Calendar and ordered to be printed

Ms. FOXX, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 470]

The Committee on Rules, having had under consideration House Resolution 470, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 3094, the Workforce Democracy and Fairness Act, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Education and the Workforce. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on Education and the Workforce now printed in the bill shall be considered as original text for the purpose of amendment and shall be considered as read. The resolution waives all points of order against the committee amendment in the nature of a substitute. The resolution makes in order only those amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in this report. Finally, the resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of the bill, the Committee is not aware of any points of order. The waiver of all points of order is prophylactic in nature.

Although the resolution waives all points of order against the committee amendment in the nature of a substitute, the Committee is not aware of any points of order. The waiver of all points of order is prophylactic in nature.

Although the resolution waives all points of order against the amendments printed in this report, the Committee is not aware of any points of order. The waiver of all points of order is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 159

Motion by Ms. Slaughter to report an open rule. Defeated: 4–7

Majority Members	Vote	Minority Members	Vote
Mr. Sessions	Nay	Ms. Slaughter	Yea
Ms. Foxx	Nay	Mr. McGovern	Yea
Mr. Bishop of Utah	Nay	Mr. Hastings of Florida	Yea
Mr. Woodall	Nay	Mr. Polis	Yea
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Dreier, Chairman	Nay		

SUMMARY OF AMENDMENTS MADE IN ORDER

1. Bishop, Tim (NY): Would give the Board authority to impose sanctions on a party for presenting a frivolous or vexatious filing during pre-election proceedings. (10 minutes)

2. Boswell (IA): Would prevent employers that have paid any executive compensation bonuses in excess of 10,000 percent of the annual compensation of the average employee from engaging in open-ended litigation. Such parties are required to state their issues or positions at the outset of pre-election hearings, and prohibited from raising new, frivolous issues as a dilatory tactic. (10 minutes)

3. Walz (MN): Would prevent this Act from applying to businesses that have been cited for violating labor laws in the past year against employees who are veterans of the Armed Forces. (10 minutes)

4. Jackson Lee (TX): Would strike a section of the bill to ensure that employers would not be able to unnecessarily delay an election. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BISHOP OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, line 2, strike “and”.

Page 9, line 19, strike the second period and insert “; and” and after such line insert the following:

(3) by adding at the end the following:

“(f)(1) Prior to presenting any objection, filing, pleading, statement of position, paper, or appeal (in this subsection referred to as ‘filing’) in any proceeding prior to an election under this section, an attorney or other party representative has a duty, to the best of his or her knowledge, information, and belief, and formed after an inquiry reasonable under the circumstances, to assure that—

“(A) such a filing is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

“(B) the claims, defenses, positions, and other legal contentions in the filing are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;

“(C) the factual contentions in the filing have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or development of the record; and

“(D) any denials of factual contentions in the filing are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

“(2)(A) At any stage of a representation proceeding prior to an election under this section, including pre-election hearings, requests for Board reviews, or Board reviews, the Board or its agents, upon their own motion or that of a party to the proceeding, shall have discretion to impose sanctions against a party for presenting a frivolous or vexatious filing or raising a frivolous or vexatious matter to the Board under this section, or upon a finding that an attorney or other party representative breached his or her duty under this subsection. Sanctions may include reasonable litigation costs, salaries, transcript and record costs, travel and other reasonable costs and expenses. If the Board determines that a party has raised a frivolous or vexatious matter for purposes of delaying an election, the Board shall immediately direct that an election be conducted not less than 7 days after such determination.

“(B) For purposes of this section, a frivolous or vexatious filing is one that an attorney of ordinary competence would recognize as so lacking in merit that there is no substantial possibility that the Board would accept it as valid. The Board shall be guided by Rule 11 of the Federal Rules of Civil Procedure in determining whether an objection, filing, pleading, paper or appeal is frivolous.”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BOSWELL OF IOWA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, line 2, strike “and”.

Page 8, line 20, insert “(except those designated parties described in subparagraph (C))” after “parties”.

Page 9, line 19, strike the second period and insert “; and” and after such line insert the following:

(3) by adding at the end of subsection (c)(1) the following:

“(C) The designated parties referred to in subparagraph (B) are employers that paid any executive bonus compensation in excess of 10,000 percent of the total annual compensation of the average employee during the 1-year

period preceding the filing of a petition under this subsection. Such parties may not engage in the dilatory tactic of raising new issues or positions during a pre-election hearing that were not raised prior to the commencement of the hearing.”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WALZ OF MINNESOTA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, line 2, strike “and”.

Page 8, line 20, insert “(except those designated parties described in subparagraph (C))” after “parties”.

Page 9, line 19, strike the second period and insert “; and” and after such line insert the following:

(3) by adding at the end of subsection (c)(1) the following:

“(C) The designated parties referred to in subparagraph (B) are employers that have been found liable for any labor law violation against a veteran of the Armed Forces during the 1-year period preceding the filing of a petition under this subsection. Such parties may not engage in the dilatory tactic of raising new issues or positions during a pre-election hearing that were not raised prior to the commencement of the hearing.”.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON LEE OF TEXAS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, beginning on line 4, strike “subparagraph (B)—” and all that follows through “(B) by inserting” on line 8, and insert “subparagraph (B), by inserting”.

Page 8, line 24, strike “last sentence—” and all that follows through page 9, line 9, and insert “last sentence, by inserting ‘or consideration of a request for review of a regional director’s decision and direction of election,’ after ‘record of such hearing; and”.