

September 2007

Summary of the Legislative History of the Postal Accountability and Enhancement Act Public Law 109-435 (2006)

James I. Campbell Jr.

The Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, 120 Stat. 3198, was enacted by the 109th Congress and signed by President George W. Bush on December 20, 2006.

1 104th to 106th Congresses (1995-2000)

The origin of the PAEA lies in the work of the 104th Congress. In early 1995, the House Subcommittee on the Postal Service, led by a new chairman, Congressman John McHugh of New York, conducted a series of oversight hearings on the state of the Postal Service. On February 23, the first day of hearings, the opening witness was then Postmaster General Marvin Runyon. The Postmaster General called for reform legislation to address three major issues:

There are three areas we need to focus on. First, we need to free our employees from burdensome rules and bureaucratic red tape and focus their efforts on serving our customers' mailing needs; second, we need to free the price setting process so we can respond to the market, and keep costs down; and, third, we need to free our products from bureaucratic restrictions and make them more modern and customer oriented.¹

During these oversight hearings, Chairman McHugh became convinced of the need to modernize the postal laws. He accepted the Postal Service's argument that it needed greater commercial flexibility to respond to the threat of private carriers and electronic alternatives. At the same time, Mr. McHugh believed that the Postal Service should compete on equal terms when facing private companies. Mr. McHugh was also sensitive to concerns that the Postal Service might take advantage of its economic power in markets where its products faced little or no competition. And, as representative of a rural district, Mr. McHugh was determined to ensure continuation of universal postal service in the United States. Drawing on such

¹*General Oversight of the U.S. Postal Service: Hearings before the Subcommittee on the Postal Service of the House Committee on Government Reform and Oversight, 104th Cong, 1st Sess. (1997) at 6-7 (seven hearings held February to June 1995).*

perspectives, Chairman McHugh introduced a first draft of plan for postal reform, H.R. 3717, on June 25, 1996.

For two years, through the end of the 104th Congress and the 105th Congress, Chairman McHugh and the Subcommittee continued to refine the postal reform bill. In the 105th Congress, beginning in January 1997, H.R. 3717 was reintroduced as H.R. 22. In December 1997, after eighteen months of additional hearings,² Chairman McHugh proposed a comprehensive revision of his bill and asked for comments from interested parties by April 1998. Taking these comments into consideration, Mr. McHugh revised his bill again and announced a substitute amendment for H.R. 22 at the end of August. In September 1998, the House Subcommittee on the Postal Service approved H.R. 22 as amended by the McHugh substitute and reported it to the full Committee on Government Reform and Oversight. It was too late in the life of 105th Congress, however, to take the full postal reform bill further, and Congress adjourned for the election in November.

In closing days of the 105th Congress, however, Congress did address international postal issues. In May 1998, Senator Thad Cochran of Mississippi, chairman of the Senate Subcommittee on International Security, Proliferation, and Federal Services, proposed introduced S. 2082, a bill that would have granted the Postal Rate Commission authority to regulate international postage rates in the same manner as domestic. A hearing was held in June 1998.³ Meanwhile, in the House, Congresswoman Anne Northup of Kentucky, working with Mr. McHugh, proposed an amendment to the postal appropriations bill that would transfer from the Postal Service to the Department of State the authority to represent to the United States at the next meeting of the Universal Postal Union, to be held in August 1999. Ms. Northup's proposal was consistent with the international postal provisions of the McHugh bill. The Cochran and Northup proposals were ultimately modified and joined in a provision in the postal appropriations bill.⁴ The final provision did not give the Postal Rate Commission authority

²*United States Postal Service Reform: The International Experience: Joint Hearing Before the Subcomm. on Post Office and Civil Service of the Senate Comm. on Governmental Affairs and the House Comm. on Government Reform and Oversight*, 104th Cong., 2d Sess., Ser. No. 104-442 (1996) (hearing held on January 25, 1996); *H.R. 3717, the Postal Reform Act of 1996: Hearings before the Subcommittee on the Postal Service of the House Committee on Government Reform and Oversight*, 104th Cong, 2d Sess. (1997) (four hearings held in July and September 1996); *H.R. 22, The Postal Reform Act of 1997: Hearing Before the Subcommittee on Postal Service of the House Committee on Government Reform and Oversight*, 105th Cong, 1st Sess., Ser. No. 105-40 (1997) (hearing held on April 16, 1997); *General Oversight of the U.S. Postal Service: Hearing before the Subcommittee on the Postal Service of the House Committee on Government Reform and Oversight*, 105th Cong, 1st Sess (1997) (hearing held on April 24, 1997).

³*S. 2082—The International Postal Services Act of 1998: Hearing Before the Subcomm. on International Security, Proliferation, and Federal Services of the Senate Comm. on Governmental Affairs*, 105th Cong., 2d Sess., Ser. No. 105-690 (1998) (hearing held on June 2, 1998)

⁴Public Law 105-277 (omnibus appropriations bill), 112 Stat. 2681, 3204, 3208, § 663 (transferring representation at UPU to Department of State) and § 648 (inserting 39 U.S.C. 3663 requiring the Commission to

to regulate international rates but did require preparation of an annual report on international mail.

In January 1999, at the start of the 106th Congress, Chairman McHugh reintroduced the postal reform bill, again numbered H.R. 22, and convened a final round of hearings.⁵ The postal reform bill was supported by the Postal Service, leading first class mailers, major direct mailers, small newspapers and magazine publishers, parcel shippers, the majority of postal unions, and some competitors of the Postal Service. There was, however, opposition from important parties, including a large postal union and competitors of the Postal Service. In addition, despite the traditionally bipartisan nature of postal legislation, Democratic members opposed action on the bill due to political considerations unrelated to the merits. The 106th Congress expired without action on postal reform.

2 107th Congress (2001-2002)

Early in the 107th Congress, in May 2001, the General Accounting Office had placed the Postal Service on a list of “high risk” federal agencies because of concerns that the Postal Service was not responding to changing commercial conditions fast enough to ensure long term financial viability. Both the House and Senate held hearings on the financial outlook of the Postal Service.⁶ The leadership of the Senate on Governmental Affairs requested the Postal Service to prepare a plan for transforming itself into a more modern, financially viable organization. In April 2002, the Postal Service issued its *Transformation Plan*. In May 2002, the Senate Subcommittee, chaired by Senator Daniel Akaka of Hawaii, held further hearings on the GAO report and Postal Service plan.⁷

Although these hearings and the Postal Service’s *Transformation Plan* did not lead directly to legislation, but they provided additional impetus for general postal reform legislation. In the House in early 2001, Democratic members of the Committee, led by ranking

prepare an annual report on international mail). In the 106th Congress, the House Subcommittee held a followup hearing on international postal policy. *International Postal Policy: Hearing Before the Subcomm. on the Postal Service of the House Comm. on Government Reform*, 106th Cong., 2d Sess., Ser. No. 106-133 (2000) (hearing held on March 9, 2000)

⁵*H.R. 22, The Postal Modernization Act of 1999: Hearing Before the Subcommittee on Postal Service of the House Committee on Government Reform*, 106th Cong., 2d Sess. Ser. No. 106-16 (1999) (hearings held on Feb 11 and Mar 4, 1999).

⁶*The U.S. Postal Service's Uncertain Financial Outlook, Parts I and II: Hearings Before the House Comm. on Government Reform*, 107th Cong., 1st Sess., Ser. No. 107-10 (2001) (hearings held on April 4 and May 14, 2001); *The Financial Outlook of the U.S. Postal Service: Hearing Before the Senate Committee on Governmental Affairs*, 107th Cong., 1st Sess., Ser. No. 107-70 (hearing held on May 15, 2001).

⁷*The Postal Service in the 21st Century: the USPS Transformation Plan: Hearing Before the International Security, Proliferation and Federal Services Subcomm. of the Senate Comm. on Governmental Affairs*, 107th Cong., 2d Sess., Ser. No. 107-551 (2003) (hearing held May 13, 2002).

member Congressman Henry Waxman of Los Angeles, began to work with Chairman McHugh to develop a bipartisan postal reform bill. The result was H.R. 4970. Among other things, H.R. 4970 introduced the concept that the Postal Rate Commission should develop a modern system of rate regulation. The political disharmony of prior years had not entirely dissipated, however, and in June 2002, the full committee rejected H.R. 4970 by a vote of 20 to 6 even though a majority of members likely favored the bill on the merits.

3 108th Congress (2003-2004)

To break the political deadlock, in December 2002, President George W. Bush appointed a special commission of leading citizens to recommend a course of action. The Presidential Commission on the United States Postal Service reported in July 2003. The Commission supported most of reforms developed by the House committee. In some cases, the Commission offered still more far reaching ideas, such as replacing the Presidentially appointed Board of Governors with a board of directors who choose their own successors, but these were generally not included in the legislation.

In the 108th Congress, a new factor entered the political equation. In April 2003, Congress had enacted a small measure, Public Law 108-18, 117 Stat. 624, to correct a statutory provision that would have erroneously required the Postal Service to pay more than necessary into a pension fund for postal employees. Public Law 108-18 suspended excess pension payments through 2005 but thereafter required the the Postal Service to make these payments into an escrow fund until Congress decided what to do with the money. In addition, the 2003 act required the Postal Service to pay for pensions earned by postal employees while serving in the U.S. military. Military pension obligations amounted to about \$27 billion to be paid over the course of a decade or more. In short, Public Law 108-18 required mailers to pay annually several billion dollars in increased postage rates beginning in 2006. Mailers, the Postal Service, and most members of Congress felt strongly that the escrow fund requirement should be repealed and the cost of military pensions returned to the U.S. Treasury. The Bush Administration, facing a large budget deficits, was opposed.

In early 2004, energized by the report of the presidential commission and concerns about the unnecessary rate increases, Congress returned to postal reform. In early 2004, a special panel of the House Committee on Government Reform chaired by Mr. McHugh held hearings on the report of the presidential commission.⁸ In May 2004, Chairman McHugh, Mr. Tom Davis of Virginia (new chairman of the full committee), Mr. Waxman, and several co-sponsors introduced H.R. 4341, a bill similar to H.R. 4970 in the previous congress but now

⁸*Answering the Administration's Call for Postal Reform—Parts I, II, and III: Hearings Before the House Special Panel on Postal Reform and Oversight of the Comm. on Government Reform, 108th Cong., 2d Sess. (2004) (hearings held January 28, 2004 and February 5 and 11, 2004).*

named the “Postal Accountability and Enhancement Act.” The House Committee on Government Reform immediately reported this bill to the full House. Several sections of H.R. 4970 was subsequently referred to the Committee on the Judiciary. The Judiciary Committee favorably reported H.R. 4970 to the full House after striking a section which would have allowed the Postal Service to claim bankruptcy protection for competitive products and making other minor amendments. The committee report accompanying H.R. 4341 was H.R. Rept. No. 108-672.⁹

Meanwhile, the Senate Committee of Government Affairs, led by Chairman Susan Collins of Maine and Senator Thomas Carper of Delaware, also began to address postal reform. Hearings on the report of the presidential commission were held in March 2004.¹⁰ On March 23, 2004, the Senate committee joined the House committee in a rare joint session at which Secretary of Treasury John Snow testified in support of postal reform.¹¹ In late May 2004, the Senate Committee reported a postal reform bill, S. 2468, for consideration by full Senate. The Senate bill was substantially based on H.R. 4341 but included significant modifications. The committee report accompanying S. 2468, S. Rept. No. 108-918, is the only Senate report on postal reform.

Although both chambers of Congress now had before them committee-approved versions of postal reform, time was running out in the legislative session. In October, the 108th Congress adjourned for the November election without addressing the postal reform bills.

4 109th Congress (2005-2006)

By the beginning of 2005, it was apparent that without new legislation postage rates would be increased as a result of Public Law 108-18. In April 2005, the Postal Service asked the Postal Rate Commission to approve a 5.4 percent increase in rates to pay for the escrow payments required by the 2003 act beginning in 2006. In November, the Postal Rate Commission approved a 5.4 percent increase in postage rates to cover the cost of the escrow mandated by the 2003 act.

In January 2005, on the first day of the 109th Congress, Congressman McHugh reintroduced the postal reform bill, this time again numbered H.R. 22. On April 28, 2005, the House Committee on Government Reform reported H.R. 22 to the House. The committee

⁹*Postal Accountability and Enhancement Act*, H. Rpt. No. 108-672, Part 1 (Sept. 8, 2004) (Committee on Government Reform) and Part 2 (Sep. 29, 2004) (Committee on the Judiciary).

¹⁰*Postal Reform: Sustaining the Nine Million Jobs in the \$900 Billion Mailing Industry: Hearings Before the Senate Comm. on Governmental Affairs*, 108th Cong., 2d Sess. (2004) (hearings on May 9 and 11, 2004)

¹¹*The Postal Service in Crisis: a Joint Senate House Hearing on Principles for Meaningful Reform*, 108th Cong., 2d Sess. (2004) (hearing on Mar. 23, 2004).

report, H.R. Rept. No. 109-66, is the last House committee report on postal reform. On July 26, 2005, the House of Representatives considered H.R. 22 as reported, rejected three proposed amendments, approved the bill by a vote of 410-20, and sent it to the Senate for consideration.¹²

In the Senate, in March 2005, Chairman Collins reintroduced the Senate version of the postal reform bill as S. 662.¹³ Quick action was prevented by disagreement over provisions relating to the regulation of rates for market dominant products. Some senators, led by Senator Christopher Bond of Missouri, were concerned about possible rate increases for single piece letters, such as greeting cards. Resolution of this issue took several months during which time other issues were raised by various parties and dealt with. On February 7, 2006, Senators Collins and Bond joined in a colloquy to record agreement on certain ratemaking principles.¹⁴

On February 9, 2006, the Senate approved S. 662. Four amendments were added. The most important was an amendment reflecting the compromise between Senators Collins and Bond. It modified provisions relating to objectives, unused rate adjustment authority, transition rules, rate and service complaints. In addition, the Senate approved an amendment by Senator Tom Harkin of Iowa to provide for procedures by the Postal Service to give notice on certain actions affecting communities; an amendment by Senator Harry Reid to modify qualifications and terms of Governors of the United States Postal Service; and an amendment by Senator Ted Stevens of Alaska to modify contracts for the transportation of mail by air. The Senate then adopted S. 662 as a substitute amendment to H.R. 22, requested a conference with the House of Representatives to resolve the different versions of H.R. 22, and appointed conferees.¹⁵

The Senate and House versions of H.R. 22 differed significantly. Nonetheless, the House did not appoint conferees, so no conference was held. Instead, key members of Congress and the Administration worked out a compromise version informally. Resolving one of the major issues, the Administration accepted an end to the Postal Service's responsibility for paying military pensions. Nonetheless, remaining disagreements prevented action before the end of the regular session of the 109th Congress in October.

After the November election, the 109th Congress convened a lame duck session. On December 7, 2006, key members of the House and Senate agreed to a final compromise on the

¹²152 Cong. Rec. H6511-6549 (Jul. 26, 2005). *See also* 152 Cong. Rec. D831 (Daily Digest, Jul. 26, 2005).

¹³*U.S. Postal Service: What Is Needed to Ensure its Future Viability?: Hearing Before the Senate Comm. on Homeland Security and Governmental Affairs, 109th Cong., 1st Sess. (2006) (hearing on April 14, 2005).*

¹⁴153 Cong. Rec. S767 (Feb. 7, 2006).

¹⁵153 Cong. Rec. S898-943 (debate and approval), S982 (amendments), S1033-34 (amendment) (Feb. 9, 2006).

postal reform bill. The compromise was introduced in the House as a new bill, H.R. 6407. At 11:15 pm on December 8, the last day of the 109th Congress, the House took up H.R. 6407 and approved it without amendment.¹⁶ In the early morning hours of December 9, the Senate approved H.R. 6407, necessarily without amendment.¹⁷

On December 20, 2006, President George W. Bush signed H.R. 6407 and it became Public Law 109-435. At the same time, the Administration issued a “signing statement” that declared how it would interpret several provisions of the new law.

¹⁶153 Cong. Rec. H9160-182 (Dec. 8, 2006). *See also* 153 Cong. Rec. D1162 (Daily Digest, Dec. 8, 2006).

¹⁷153 Cong. Rec. S11674-677 (debate); S11821-22 (approval). *See also* 153 Cong. Rec. D1153 (Daily Digest, Dec. 8, 2006).