



Legislative Bulletin.....February 9, 2005

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Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 1

Total Cost of Discretionary Authorizations: \$100 million over six years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: Several under the REAL ID bill

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 1

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.Con.Res. 6— Expressing the sense of the Congress that the Department of Defense should continue to exercise its statutory authority to support the activities of the Boy Scouts of America, in particular the periodic national and world Boy Scout Jamborees (Hefley)

Order of Business: The concurrent resolution is scheduled to be considered on Wednesday, February 9, under suspension of the rules.

Summary: H.Con.Res. 6 has six findings and resolves:

“That it is the sense of the Congress that the Department of Defense should continue to exercise its long-standing statutory authority to support the activities of the Boy Scouts of America, in particular the periodic national and world Boy Scout Jamborees.”

Additional Information: In November 2004, the Pentagon announced the settlement of a federal lawsuit filed by the ACLU of Illinois seeking to force the U.S. Army to drop their financial support of the Boy Scouts Jamboree, which amounts to about \$2 million every four years. According to news reports, the ACLU suit centers on the Scout oath, which acknowledges God, which the ACLU said violates Scouts’ religious liberty and is tantamount to government sponsorship of religious discrimination. The Pentagon agreed to warn military bases worldwide not to sponsor Boy Scout *troops*. A Defense spokesman said, “The settlement does not prohibit the Department of Defense from supporting the Boy Scouts of America. Boy Scout units are permitted to meet on military bases, and military personnel are allowed to remain active in Boy Scout programs.” The 2005 Jamboree at Fort A.P. Hill will go forward, but future stagings of the event likely will depend on the outcome of the ongoing legal battle between the ACLU and the Scouts.

See: http://www.defenselink.mil/news/Dec2004/n12062004_2004120609.html
<http://washingtontimes.com/metro/20041116-115229-4427r.htm>
<http://www.scouting.org/jamboree/>

The Boy Scouts of America was incorporated on February 8, 1910, and received a Federal charter on June 15, 1916 (36 U.S.C. chapter 309). According to the resolution’s findings, “since its inception, millions of Americans of every race, creed, and religion have participated in the Boy Scouts,” with more than 1.2 million adult volunteers serving 2.9 million youth members organized in 121,051 units. The resolution notes multiple occurrences in the U.S. Code where federal agencies are specifically directed to cooperate with the Boy Scouts of America.

Administration Position: According to news reports, in late 2004 Secretary Rumsfeld wrote to support a similar concurrent resolution saying, “The Department of Defense takes great pride in its longstanding and rich tradition of support to the Boy Scouts of America.” (Note: the Secretary himself is an Eagle Scout.)

Committee Action: The resolution was introduced on January 4, 2005, and referred to the House Committee on Armed Services, which did not consider it.

Cost to Taxpayers: The concurrent resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

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H.Con.Res. 26— Honoring the Tuskegee Airmen for their bravery in fighting for our freedom in World War II, and for their contribution in creating an integrated United States Air Force (Rogers of Alabama)

Order of Business: The concurrent resolution is scheduled to be considered on Wednesday, February 9, under suspension of the rules.

Summary: H.Con.Res. 26 has five findings and resolves:

“That it is the sense of Congress that the United States Air Force should continue to honor and learn from the example provided by the Tuskegee Airmen as it faces the challenges of the 21st century and the war on terror.”

Additional Information: On July 19, 1941, the Army Air Force began a program in Alabama to train black Americans as military pilots. Primary flight training was conducted by the Division of Aeronautics of Tuskegee Institute, the famed school of learning founded by Booker T. Washington in 1881. By the end of the World War II, 992 men had graduated from pilot training at Tuskegee, 450 of whom were sent overseas for combat assignment. During the same period, approximately 150 lost their lives while in training or on combat flights. According to the resolution’s findings, the Tuskegee Airmen “served honorably in the Second World War struggle against global fascism” and proved that “skill and devotion, and not skin color, are the determining factors in aviation” (Source: <http://www.wpafb.af.mil/museum/history/prewwii/ta.htm>).

Committee Action: The resolution was introduced on January 25, 2005, and referred to the House Committee on Armed Services, which did not consider the bill.

Cost to Taxpayers: The concurrent resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

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H.Con.Res. 30 — Supporting the goals and ideals of National Black HIV/AIDS Awareness Day (Lee)—As Amended

Order of Business: The concurrent resolution is scheduled to be considered on Wednesday, February 9, under suspension of the rules with an amendment.

Summary: H.Con.Res. 30 resolves:

“That the Congress—

- “(1) supports the goals and ideals of National Black HIV/AIDS Awareness Day and recognizes the fifth anniversary of observing such day;
- “(2) encourages State and local governments, including their public health agencies, to recognize such day, to publicize its importance among their communities, and to encourage individuals to undergo testing for HIV;
- “(3) encourages national, State, and local media organizations to carry messages in support of National Black HIV/AIDS Awareness Day;
- “(4) commends the President for highlighting HIV/AIDS in the State of the Union address; for emphasizing the importance of addressing the HIV/AIDS epidemic among the African American community, especially among African American women; as well as international efforts to address the global HIV/AIDS epidemic;
- “(5) encourages enactment of effective HIV prevention programs, including ABC programs like those implemented in Uganda, which recognizes abstinence and being faithful to one’s lifetime partner as effective ways to prevent HIV; and
- “(6) encourages States to enact HIV surveillance programs consistent with recognized infectious disease control methods to ensure accurate data, better targeting of resources, and improved delivery of health services to those living with HIV.”

Additional Information: Beginning in 2001, National Black HIV/AIDS Awareness Day has been celebrated in February. In 2005, the Day was celebrated on February 7th. According to the resolution’s findings, in 2003 the Centers for Disease Control said over 172,000 African Americans were living with AIDS, representing 42% of all cases in the U.S., with 69% of all children born in 2003 to HIV infected mothers being African American (See: http://www.blackaidsday.org/NBHAAD_info/NBHAAD_hist.html).

Committee Action: The resolution was introduced on January 26, 2005, and referred to the House Committee on Energy and Commerce, which did not consider it.

Cost to Taxpayers: The concurrent resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

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H.Res. 69 — Honoring the life and accomplishments of the late Ossie Davis (Bishop of Georgia)

Order of Business: The resolution is scheduled to be considered on Wednesday, February 9, under suspension of the rules.

Summary: H.Res. 69 resolves:

“That the House of Representatives —

- (1) recognizes the extraordinary contributions to the Nation of the late Ossie Davis for his service to the Nation in the military, as a civil rights leader, and as an actor;
- (2) honors him as a great American and pioneer in the annals of American history; and

(3) expresses its deepest condolences upon his death to his wife Ruby Dee Davis, his other family members, and his friends.

Additional Information: According to the resolution’s findings, the late Ossie Davis was an actor and civil rights leader, who was born on December 18, 1917, in Cogdell, Georgia. He “enjoyed a long and luminous career in entertainment” along with his wife before he died in Miami, Florida, at the age of 87 on Friday, February 4, 2005. For more information see: http://www.usatoday.com/life/people/2005-02-04-ossie-davis-obit_x.htm?POE=LIFISVA

Committee Action: The resolution was introduced yesterday February 8, 2005, and referred to the House Committee on Government Reform, which did not consider it.

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

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H.R. 418—REAL ID Act (Sensenbrenner)

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Order of Business: The bill is scheduled to be considered on Wednesday, February 9th and Thursday, February 10th, subject to a rule (H.Res. 71) providing 100 minutes of general debate, with 40 minutes controlled by the Judiciary Committee, 40 minutes controlled by the Government Reform Committee, and 20 minutes controlled by the Homeland Security Committee. No amendments are in order today and all points of order against consideration of the bill are waived. The Rules Committee will report a second rule today that will determine the amendments that are in order during tomorrow’s continuing consideration of H.R. 418.

Background: The provisions of H.R. 418, for the most part, passed the House on October 8, 2004, by a vote of 282-134 (<http://clerk.house.gov/evs/2004/roll523.xml>) as part of the 9/11 Commission Act (H.R. 10). Pursuant to H.Res. 827, the House inserted these and other provisions into the Senate’s bill (S. 2845) and requested a conference with the Senate.

The conference report for S. 2845, which became Public Law 108-458, did not contain most of the border security provisions that the House had passed as part of H.R. 10 last year. The border security provisions that were contained in the conference report signed into law were criticized by some conservatives as less vigorous than the original House-passed provisions.

The House Republican Leadership publicly committed to Judiciary Committee Chairman Jim Sensenbrenner that the House would attach a border security bill to the first “must-pass” bill in the 109th Congress. If the House passes H.R. 418 this week, there is a commitment that a subsequent rule for the Iraq/Afghanistan supplemental appropriations bill (which is likely to

be considered in March) will provide for the attachment of H.R. 418 to the supplemental. Such an attachment will NOT be provided for during this week's consideration of H.R. 418.

In other words, though this bill is being considered as a stand-alone measure this week, in the future it will be attached to a yet-undrafted "must-pass" supplemental and sent to the Senate for consideration.

NOTE: H.R. 418 does NOT contain all of the border security provisions in last year's H.R. 10. See the end of the "Summary" section below to read which border security provisions of H.R. 10 are NOT contained in H.R. 418.

Summary of H.R. 418: H.R. 418 would establish and rapidly implement voluntary regulations for state driver's license and identification document security standards, increase the burden of proof for claiming asylum, synchronize terrorism-related grounds for inadmissibility and removal, and facilitate the completion of the San Diego border fence.

Asylum.

As the Judiciary Committee reports, the bill would seek to reduce the abuse of America's asylum system. Current law and judicial precedent prevent the U.S. government from asking foreign governments what evidence they have about the terrorist activities of asylum applicants. Furthermore, the 9th Circuit has been granting asylum to applicants on the basis that their respective governments believe that they are terrorists and are thus being persecuted for their political beliefs.

In repealing the related section of the 9/11 Commission Act (Section 5403 of Public Law 108-458), H.R. 418 would increase the burden of proof for asylum applicants to demonstrate that they are indeed being persecuted in their respective home countries *primarily* because of their race, religion, nationality, membership in a particular social group, or political opinion. Additionally, the bill would allow the consideration of corroborating evidence in an asylum proceeding that the federal government is currently not allowed to introduce (and immigration judges are not allowed to consider), including, but not limited to, the demeanor of applicants, the consistency between the applicants' written and oral statements, and the consistency of applicants' statements with the country conditions in the countries from which the applicants claim asylum.

San Diego Border Fence.

H.R. 418 would give the Secretary of Homeland Security increased authority to waive—and direct the Secretary to waive—all laws that the Secretary deems necessary to ensure expeditious construction of the barriers and roads related to the San Diego Border Fence with Mexico. No decision of the Secretary in this regard would be subject to judicial review.

In 1996, Congress required the building of a 14-mile border fence inland from the Pacific Ocean in San Diego to 1) secure one of the most trafficked corridors for illegal entry into the U.S., and 2) further protect the U.S. Naval Base in San Diego. The security fence is still not completed, primarily because of ongoing environmental lawsuits that have proceeded under the original limited waiver authority.

Inadmissibility and Deportation of Terrorists.

H.R. 418 would make aliens deportable for terrorism-related offenses to the same extent that they would be inadmissible. Under current law, not all terrorism-related grounds for keeping an alien out of the U.S. are also grounds for deportation once the alien has infiltrated the U.S. Thus, the bill would provide that an alien who provides funds or other material support to a terrorist organization is inadmissible and deportable if he knew, or reasonably should have known, that he was giving to a terrorist organization.

Driver's Licenses.

The bill would repeal the driver's license provisions of the 9/11 Commission Act (Section 7212 of Public Law 108-458), which allow for states to opt-out of various line-items, and replace them with the following:

- H.R. 418 would set minimum document and issuance standards for state driver's licenses or ID cards that could be accepted by a federal agency (effective three years after enactment of this bill, subject to extension).
- The document standards would be the inclusion of:
 - The person's full legal name;
 - The person's date of birth;
 - The person's gender;
 - The person's driver license or identification card number;
 - A digital photograph of the person;
 - The person's address of principal residence;
 - The person's signature;
 - Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes; and
 - A common machine-readable technology (such as a barcode), with defined minimum data elements.
- The issuance standards would be the inclusion of:
 - A photo identity document, except that a non-photo identity document is acceptable if it includes both the person's full legal name and date of birth;
 - Documentation showing the person's date of birth;
 - Proof of the person's Social Security account number or verification that the person is not eligible for a Social Security account number; and
 - Documentation showing the person's name and address of principal residence.(The only foreign document allowable for identification under this section would be a valid passport.)
- Additionally, for a state to meet the issuance standards, it would have to:
 - Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format;
 - Retain paper copies of source documents for a minimum of seven years or images of source documents presented for a minimum of ten years;
 - Subject each person applying for a driver's license or identification card to mandatory facial image capture;
 - Establish an effective procedure to confirm or verify a renewing applicant's information;

- Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number;
 - Refuse to issue a driver's license or identification card to a person holding a driver's license issued by another state without confirmation that the person is terminating or has terminated the driver's license;
 - Ensure the physical security of locations where drivers' licenses and identification cards are produced and the security of document materials and papers from which drivers' licenses and identification cards are produced;
 - Subject all persons authorized to manufacture or produce drivers' licenses and identification cards to appropriate security clearance requirements;
 - Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of drivers' licenses and identification cards;
 - Limit the period of validity of all driver's licenses and identification cards that are not temporary to a period that does not exceed eight years; and
 - In any case in which a state issues a driver's license or identification card that *does not* satisfy these federal requirements, ensure that such license or identification card--
 - (A) clearly states on its face that it may not be accepted by any federal agency for any official purpose; and
 - (B) uses a unique design or color indicator to alert federal agency and other law enforcement personnel that it may not be accepted for any such purpose.
- States would also have to verify that a person is in the United States legally before issuing a driver's license or ID card.
 - States could only issue a temporary driver's license (clearly identified as such) to certain aliens who are in the U.S. temporarily. If no specific end-date to the period of authorized stay, then a temporary driver's license would be valid for one year. Renewals could only be granted upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver's license or temporary identification card has been extended by the Secretary of Homeland Security.
 - Not later than September 11, 2005, each participating state would have to enter into a memorandum of understanding with the Secretary of Homeland Security to routinely utilize the automated system known as Systematic Alien Verification for Entitlements to verify the legal presence status of a person, other than a United States citizen, applying for a driver's license or identification card.
 - Authorizes the Secretary of Homeland Security to further limit the validity period for driver's licenses and ID documents and to prescribe one or more design formats for such licenses and documents.
 - Authorizes "such sums" to states for fiscal years 2005 to 2009 to meet the minimum driver's license and ID standards detailed in the bill. To be eligible to receive federal grant money for meeting the minimum standards, a state would have to participate in the current interstate compact known as the "Driver License Agreement" to provide electronic access by a state to information contained in the motor vehicle databases of all other states. A state motor vehicle database would have to contain, at a minimum:

- All data fields printed on driver's licenses and identification cards issued by the state; and
- Motor vehicle drivers' histories, including motor vehicle violations, suspensions, and points on licenses.

- Makes it illegal to traffic in actual authentication features and devices for identity documents (it's already illegal to traffic in fake authentication features and devices).
- Rests all authority to issue regulations, certify standards, and issue grants under this legislation in the Secretary of Homeland Security and only requires that the Secretary consult with the Secretary of Transportation and the states.

Sections of the House-passed H.R. 10 last year (as inserted into S. 2845) that are **NOT** in H.R. 418:

- **Section 3004:** The requirement that half of the new immigration and customs enforcement agents enforce restrictions on illegal aliens in the workplace.
- **Section 3006:** Alien identification standards beyond airports.
- **Section 3007:** Expedited removal procedures for illegal aliens.
- **Section 3010:** Restrictions on excessive judicial review of the deportation orders of criminal aliens.
- **Sections 3031-32:** Provisions for the detention of dangerous aliens who cannot be deported.
- **Section 3033:** Additional removal authority for deportable aliens.

Additional Background: The majority of the 9/11 hijacker-murderers were in the United States illegally.

Committee Action: On January 26, 2005, the bill was referred to the Judiciary, Homeland Security, and Government Reform Committees, none of which took official action on the bill.

Possible Conservative Concerns: Some conservatives have expressed concerns over the driver's license provisions—that they amount to a *de facto* national ID card and place excessive burdens on the states.

Administration Position: Although a Statement of Administration Policy is currently unavailable, the Judiciary Committee has indicated that the Administration supports this bill.

Cost to Taxpayers: CBO estimates that H.R. 418 would authorize \$40 million in FY2006, a total of \$95 million over the FY2005-FY2009 period, and a total of \$100 million over the FY2005-FY2010 period.

Does the Bill Expand the Size and Scope of the Federal Government?: The federal government has not previously set voluntary standards for state-issued driver's licenses and identity documents. The bill would create a new grant program for states to meet the new standards.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: States are not technically MANDATED to meet the requirements (specifically the driver's license requirements) in this bill. They can decide not to meet the minimum federal standards, but then their driver's licenses and identity documents could not be accepted by any federal agency. CBO reports, however, that some of these requirements do count as intergovernmental mandates under the Unfunded Mandates Reform Act (UMRA).

Constitutional Authority: A committee report citing constitutional authority is unavailable.

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