



Legislative Bulletin.....May 18, 2004

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Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Year to Date Prior to Today's Bills: 17

Total Cost of Discretionary Authorizations: \$10 million over five years

Year to Date Prior to Today's Bills: At least \$205.25 billion[#] over five years

Total Amount of Revenue Reductions: \$0

Year to Date Prior to Today's Bills: \$67.4 billion over five years

Total Change in Mandatory Spending: \$0

Year to Date Prior to Today's Bills: -\$3.9 billion over five years

Total New State & Local Government Mandates: 0

Year to Date Prior to Today's Bills: 15[#]

Total New Private Sector Mandates: 0

Year to Date Prior to Today's Bills: 12

[#] This figure does not include H.R. 3873, the Child Nutrition Improvement and Integrity Act. A CBO analysis of this bill is not yet completed.

H.R. 2728 — Occupational Safety and Health Small Business Day in Court Act of 2004 (Norwood)

Order of Business: The bill is scheduled for consideration on Tuesday, May 18, 2004, under a closed rule.

Summary: H.R. 2728 would modify the Occupational Safety and Health Act (29 U.S.C. Sec. 659) to provide exceptions to the 15-day deadline for employers to file responses to citations made by the Occupational Safety and Health Agency (OSHA). Under current law, employers who receive a citation or proposed assessment of penalty from OSHA must file a notice of contest within 15 days from receipt of the citation and if the deadline is not met, the citation and assessment are deemed a final order. Since the early 1980s, the OSHA Commission has sometimes granted relief from the final order in cases where an employer filed a late notice of contest because of mistake, inadvertence, surprise, or excusable neglect. H.R. 2728 codifies this practice into law to clarify that a litigant under the OSH Act may be relieved from a default judgment when its failure to contest a citation in a timely manner results from “mistake, inadvertence, surprise, or excusable neglect.” (The language inserted by H.R. 2728 is identical to language contained in Federal Rule of Civil Procedure 60(b), which applies to all federal court cases.)

Additional Information: According to the Committee, the ability of the Commission to waive a deadline on a case-by-case basis “has been drawn into increased legal uncertainty by the recent decision of the U.S. Circuit Court of Appeals for the Second Circuit in *Chao v. LeFrois Builder, Inc.* Indeed, as recently as 2003, OSHA has argued that OSHRC does not have the authority to apply this rule.”

Committee Action: The bill was introduced on July 15, 2003, and referred to the House Committee on Education and the Workforce. On May 5, 2004, the Committee passed the bill 24-20.

Cost to Taxpayers: A CBO cost estimate states that H.R. 2728 would not have any effect on the federal budget.

Outside Organizations: A wide variety of organizations support H.R. 2729, including the National Association of Manufacturers, the National Federation of Independent Business, the National Restaurant Association, and Associated Builders and Contractors. In addition, the U.S. Chamber of Commerce is considering making the H.R. 2729 and “key vote” in its annual voting scorecard.

Does the Bill Create New Federal Programs or Rules?: No.

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

Constitutional Authority: The committee, in report number 108-487, finds authority under Article I, section 8, clause 3 of the Constitution (commerce clause).

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H.R. 2729—Occupational Safety and Health Review Commission Efficiency Act of 2004 (Norwood)

Order of Business: The bill is scheduled for consideration on Tuesday, May 18th, subject to a closed rule. Under the rule, an amendment will be considered as adopted (the amendment corrects a drafting error and clarifies that with the new five-member commission, three members will constitute a quorum).

Summary: H.R. 2729 adds two additional members to the Occupational Safety and Health Review Commission (OSHRC) and specifies that the terms of office of the two newly appointed members will be for terms expiring on April 27, 2006 and April 27, 2008. In addition, the bill stipulates that all Commissioners must be chosen from among persons who by reason of legal training, education, or experience are qualified to serve in the position. H.R. 2729 also authorizes the President to extend the expiring term of a member of OSHRC until a replacement can be confirmed by the Senate, up to 365 days.

Additional Background: Occupational Safety and Health Review Commission (OSHRC) is an independent federal agency responsible for hearing disputes arising from the Occupational Safety and Health Act (OSH Act). Under current law, OSHRC consists of three members appointed by the President. Concerns have been raised over the effectiveness of the Commission (decisions have often been delayed because of membership vacancies, the lack of a quorum, or disagreement among commissioners) that H.R. 2729 attempts to address.

Committee Action: On July 24, 2003, the Subcommittee on Workforce Protections favorably reported H.R. 2729 by voice vote. The full Education and the Workforce Committee considered approved the bill on May 5, 2004, by a party line vote of 24-20.

Cost to Taxpayers: CBO estimates that implementing H.R. 2729 would cost \$1 million in 2005 and \$5 million over the 2005-2009 period, subject to appropriations.

Outside Organizations: A wide variety of organizations support H.R. 2729, including the National Association of Manufacturers, the National Federation of Independent Business, the National Restaurant Association, and Associated Builders and Contractors. In addition, the U.S. Chamber of Commerce is considering making the H.R. 2729 and “key vote” in its annual voting scorecard.

Does the Bill Create New Federal Programs or Rules?: No.

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

Constitutional Authority: The Education and the Workforce Committee, in House Report 108-486, cites Article I, Section 8, Clause 3 (commerce clause).

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H.R. 2730—Occupational Safety and Health Independent Review of OSHA Citations Act of 2004 (Norwood)

Order of Business: The bill is scheduled for consideration on Tuesday, May 18th, subject to a closed rule. Under the rule, an amendment will be considered as adopted (the amendment clarifies that the bill isn't intended to broadly change federal court review over OSHA decisions, addressing jurisdictional concerns of the Judiciary Committee).

Summary: H.R. 2730 requires that courts must defer, when reasonable, to the independent Occupational Safety and Health Review Commission (OSHRC) in making decisions on contested citations. Under current practice, the Occupational Safety and Health Administration (OSHA) both gives the citations and makes the recommendation to the court in situations where citations are contested, creating what some argue is a conflict of interest that stacks the process against employers. The bill would give OSHRC recommendation authority, removing this apparent conflict.

Committee Action: On July 24, 2003, the Subcommittee on Workforce Protections favorably reported H.R. 2729 by voice vote. The full Education and the Workforce Committee considered approved the bill on May 5, 2004, by a party line vote of 24-20.

Cost to Taxpayers: CBO estimates that implementing H.R. 2730 would not have any significant impact on the federal budget.

Outside Organizations: A wide variety of organizations support H.R. 2730, including the National Association of Manufacturers, the National Federation of Independent Business, the National Restaurant Association, and Associated Builders and Contractors. In addition, the U.S. Chamber of Commerce is considering making the H.R. 2730 and “key vote” in its annual voting scorecard.

Does the Bill Create New Federal Programs or Rules?: No.

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

Constitutional Authority: The Education and the Workforce Committee, in House Report 108-488, cites Article I, Section 8, Clause 3 (commerce clause).

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H.R. 2731—Occupational Safety and Health Small Employer Access to Justice Act of 2004 (Norwood)

Order of Business: The bill is scheduled for consideration on Tuesday, May 18th, subject to a closed rule. Under the rule, an amendment will be considered as adopted (the amendment corrects a drafting error).

Summary: H.R. 2731 requires small businesses (defined as having no more than 100 employees and a net worth of no more than \$7,000,000) to be awarded attorneys' fees in OSHA court cases where the business is the prevailing party, whether or not the position taken by OSHA was "substantially justified."

Additional Background: In 1980, Congress passed the Equal Access to Justice Act (EAJA), 28 U.S.C. Sec. 2412 et seq., to enable small enterprises that successfully challenge government enforcement actions to recover their legal fees. The EAJA threshold for a small business is no more than 500 employees and a net worth of no more than \$7,000,000.

Under EAJA, an employer may not recover attorneys' fees if the agency can show that its actions were "substantially justified." This provision has significantly hindered the ability of employers to recover attorneys' fees from OSHA, and has had a deterrent effect on attempts to do so.

Committee Action: May 5, 2004, the Committee on Education and the Workforce favorably reported H.R. 2731 to the full House by a party-line vote of 24-20.

Cost to Taxpayers: CBO estimates that implementing H.R. 2731 would cost \$7 million in 2005 and \$44 million over the 2005-2009 period, subject to appropriations.

"CBO assumes that small employers would prevail against OSHA on at least one count in over half of the cases that reach the required administrative or judicial level. This assumption is based on the historical rate at which all employers prevail when they contest OSHA citations. Finally, CBO assumes OSHA would reimburse small employers \$36,000 in legal costs, on average, when they prevail in overturning OSHA actions. This assumption is based on a recent survey of OSHA awards to small employers in 2003. CBO assumed the average award under H.R. 2731 would be 50 percent higher than under current law because reductions for substantial justification would be removed."

Outside Organizations: A wide variety of organizations support H.R. 2730, including the National Association of Manufacturers, the National Federation of Independent Business, the National Restaurant Association, and Associated Builders and Contractors. In addition, the U.S. Chamber of Commerce is considering making the H.R. 2730 and "key vote" in its annual voting scorecard.

Does the Bill Create New Federal Programs or Rules?: No.

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

Constitutional Authority: The Education and the Workforce Committee, in House Report 108-489, cites Article I, Section 8, Clause 3 (commerce clause).

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H.R. 2432—Paperwork and Regulatory Improvements Act (Ose)

Order of Business: The bill is scheduled to be considered on Tuesday, May 18th, subject to section 5 of a rule (H.Res. 645). That section would make two amendments made in order, as summarized below. The rule would also provide that upon passage of H.R. 2432, the bill would be engrossed as part of H.R. 2728.

Summary: H.R. 2432 would make amendments to current law to attempt to reduce the regulatory paperwork burden on businesses and individuals. Specifically, the bill would direct the Office of Management and Budget (OMB) to require every federal agency to submit to OMB an annual estimate of the total annual costs and benefits of federal rules and paperwork on the agency in general and on each agency program. An OMB analysis of such costs and benefits would have to be included *within* (instead of just alongside) the President's annual budget submission.

OMB would also have to designate at least three agencies (or offices within an agency)—from among the following four major regulatory agencies: the Department of Labor, the Department of Transportation, the Department of Health and Human Services, and the Environmental Protection Agency—to participate in a study of regulatory budgeting for fiscal years 2006 and 2007 and then report the results to Congress. Regulatory budgeting would present varying estimated levels of benefits and costs of various regulatory alternatives under consideration by the agency.

The Farm Security and Rural Investment Act of 2002 (Public Law 107-171, often known in recent years as “The Farm Bill”) provides for numerous exceptions from certain good-government requirements (regarding paperwork and regulatory review). H.R. 2432 would remove these exceptions and therefore require that those paperwork and regulatory reviews apply under the Farm Bill.

Additionally, the bill would amend the Truth in Regulating Act (Public Law 106-312) to make permanent the authority for the General Accounting Office (GAO) to respond to congressional requests about the impacts of regulatory decisions developed under the laws enacted by Congress.

Lastly, OMB, in consultation with the Internal Revenue Service (IRS), the Office of Tax Policy of the Department of the Treasury, and the Office of Advocacy of the Small Business Administration, would be required to conduct a review of IRS collections of information to identify actions that the IRS could take to reduce the burden imposed on small businesses.

Additional Background: The bill notes that in 2002, OMB reported that paperwork burdens on Americans have increased in each of the prior six years. The Internal Revenue Service imposes over 80 percent of these paperwork burdens, according to OMB.

Amendments Made in Order under the Rule (H.Res. 645):

Ose (Manager's Amendment): Specifically authorizes \$5 million a year (beginning in FY2005) for GAO permanent authority to respond to congressional requests on the impacts of regulatory decisions developed under the laws enacted by Congress. Strikes the requirement that OMB include its analysis of the costs and benefits of federal rules and regulations on each federal agency and each agency program *within* (instead of just alongside) the President's annual budget submission. Requires congressional consultation for the regulatory budgeting provisions in the underlying bill.

Waxman/Tierney: Authorizes \$5 million to create within the Legislative Branch the Independent Commission on Politicization of Science in the Regulatory Process to "determine the extent to which political considerations have undermined the quality and use of science." Directs the Commission to study a report on the politicization of science prepared by Mr. Waxman's staff (http://www.house.gov/reform/min/politicsandscience/pdfs/pdf_politics_and_science_rep.pdf) and a similar report by the Union of Concerned Scientists. The Waxman report, among other things, criticizes the President's support for abstinence education, his questioning of the merits of drug-needle exchange programs, his appointment of a Christian obstetrician/gynecologist to a reproductive health advisory committee, his environmental policies, and his handling of the Department of Education. The report notes that the Bush Administration has "repeatedly manipulated scientific committees and suppressed science."

Provides the usual authorities for a congressionally-created commission. Requires that the commission make a final report to Congress within 18 months after enactment of this legislation and then terminate 60 days after such submission.

Committee Action: On July 22, 2003, the Government Reform Committee held hearings on the bill. On May 12, 2004, the Committee marked up and favorably reported the bill to the full House by voice vote. Although the bill was referred to the Budget Committee as well, that committee discharged the bill on May 14, 2004.

Administration Position: The Administration opposed the bill in its pre-amended form. The version of the bill coming to the floor, however, seems to have addressed the Administration's stated concerns:

<http://reform.house.gov/UploadedFiles/7.22.03%20H.R.%202432,%20Paperwork%20and%20Regulatory%20Improvements%20Act%202003.pdf> (page 16)

Cost to Taxpayers: CBO estimates that this bill would authorize \$10 million a year.

Does the Bill Create New Federal Programs or Rules?: No. It would create some new responsibilities for federal agencies.

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

Constitutional Authority: The Government Reform Committee, in House Report 108-490, cites constitutional authority in Article I, Section 8, Clause 18 (the "necessary and proper for

carrying into execution the foregoing powers” clause). No foregoing powers are cited. Clause 3 of House Rule XIII, Section d(1), requires that all committee reports contain “a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.”

Outside Organizations: The Competitive Enterprise Institute supports this legislation: <http://reform.house.gov/UploadedFiles/7.22.03%20H.R.%202432,%20Paperwork%20and%20Regulatory%20Improvements%20Act%202003.pdf> (page 60)

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