RSC Republican Study Committee
Rep. Mike Pence (R-IN), Chairman
Sheila Cole, Executive Director
426 Cannon House Office Building
Washington, DC 20515
http://johnshadegg.house.gov/rsc/
ph (202) 226-9717 / fax (202) 226-1633

# Legislative Bulletin……October 27, 2005

**Contents:**



## Summary of the Bills Under Consideration Today:

**Total Number of New Government Programs**: 0

**Total Cost of Discretionary Authorizations**: See the "Cost to Taxpayers" section of the BRAC resolution below.

**Effect on Revenue**: $0

**Total Change in Mandatory Spending**: $0

**Total New State & Local Government Mandates**: 1

**Total New Private Sector Mandates**: 0

**Number of *Bills* Without Committee Reports:** 0

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

## H.J. Res. 65 — Disapproving the recommendations of the Defense Base Closure and Realignment Commission — *as reported* (LaHood)

**Order of Business:** The joint resolution is scheduled for consideration on Thursday, October 27, 2005, subject to a closed rule.

**Summary:** H.J. Res. 65 resolves that Congress "disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on September 15, 2005."

Enactment of a joint resolution of disapproval within the timeline prescribed by Public Law 101-510 (discussed below) would prevent the base realignment and closure (BRAC) recommendations made by the 2005 BRAC Commission from taking effect. The timeline for passage of the joint resolution must be before the earlier of 1) the end of the 45-day period beginning on the date on which the President transmits the report, or 2) the adjournment of Congress sine die for the session during which such report is transmitted. Thus, Congress has until October 30, 2005, to pass this joint resolution (which must also be signed by the President or passed with sufficient votes to override a veto) in order to prevent the BRAC recommendations from being implemented.

**Additional Information:** The Defense Base Closure and Realignment Act of 1990 (Public Law 101-510) set up a process by which military installations would be recommended for closure or realignment by an independent commission, initially based on recommendations from the Secretary of the Department of Defense (DoD). The DoD would implement the recommendations unless Congress were to enact a joint resolution disapproving them. The BRAC Commission was modified and extended Pursuant to Public Law 107-107. The 2005 BRAC round is the fifth round of base closures since 1988.

According to CRS (Report RS2291), "in the 2005 BRAC round, the DoD recommended 190 closures and realignments. Of this number, the BRAC Commission approved 119 with no changes and accepted 45 with amendments. These figures represented 86% of the Department of Defense's overall proposed recommendations. In other words, only 14% of DOD's list was significantly altered by the Commission. Of the rest, the Commission rejected 13 DOD recommendations in their entirety and significantly modified another 13. It should be pointed out that the BRAC Commission approved 21 of DOD's 33 major closures, recommended realignment of 7 major closures, and rejected another 5."

**Administration Policy**: Although no official Statement of Administration Policy exists for this joint resolution, following are excerpts of President Bush's statement upon transmitting the BRAC Report to Congress: "I transmit herewith the report containing the recommendations of the Defense Base Closure and Realignment Commission pursuant to sections 2903 and 2914 of the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, 104 Stat. 1810, as amended… I certify that I approve all the recommendations contained in the Commission's report."

**Committee Action**: H.J. Res. 65 was introduced on September 20, 2005, and referred to the Committee on Armed Services. The bill was marked-up on September 27, 2005, and reported "adversely to the House by a vote of 43-14" (H. Rept. 109-243). P.L. 101-510 requires that a joint resolution introduced for the purpose of disapproving of the BRAC recommendations be considered by both the full House and Senate, even if the resolution fails to be reported favorably out of the relevant committees. Thus, the House Armed Services Committee adversely reported the bill to the floor with 43 yeas (opposing the resolution) to 14 noes (supporting the resolution).

**Cost to Taxpayers**: The resolution authorizes no expenditure. However, according to the 2005 BRAC Commission, enacting the recommendations contained in the report "will result

in savings of $35.6 billion over 20 years with annual savings of $4.2 billion. However, a large part of these savings would take the form of personnel becoming available to conduct other tasks. Discounting the personnel savings, the commission estimates that its recommendations will result in net savings of $15.1 billion over 20 years with annual savings after implementation of approximately $2.5 billion." Thus, passage of this joint resolution would prevent enactment of the BRAC Commission recommendations, and the above mentioned savings would not be realized.

**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.

**Constitutional Authority**: The Committee Report, H. Rept. 109-243, cites constitutional authority for this legislation in Article 1, Section 8 of the Constitution, but fails to cite a specific Clause.

House Rule XIII, Section 3(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*." *[emphasis added]*

**RSC Staff Contact:** Derek V. Baker; derek.baker@mail.house.gov; 202-226-8585

---

## H.R. 420—Lawsuit Abuse Reduction Act (Smith of TX)

**Order of Business**: The bill is scheduled to be considered on Thursday, October 27th, subject to a structured rule (H.Res. 508). The amendments made in order under the rule are summarized below.

**Summary**: Last year, the House passed a nearly identical bill, H.R. 4571, by a vote of 229-174: http://clerk.house.gov/evs/2004/roll450.xml

This year, H.R. 420 would amend Rule 11 of the Federal Rules of Civil Procedure. Specifically, the bill:

- Establishes a mandatory sanction for attorneys, law firms, or parties that have been found to have filed a frivolous pleading, motion, or other paper. The sanction could include monetary sanctions, such as reimbursement for attorney's fees. The bill stipulates that the sanction would have to be "sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the parties that were injured by such conduct."
- Requires that, in any action in state court, the state court determine within 30 days after the filing of a motion whether the action affects interstate commerce. If the action is found to affect interstate commerce, Rule 11 would apply to such action.
- Allows federal or state personal injury cases to be brought only where:
  --the plaintiff resides;

--the plaintiff was allegedly injured;
--the alleged injury or circumstances giving rise to the personal injury claim allegedly occurred;
--the defendant's principal place of business is located; or
--the defendant resides (if the defendant is an individual).

- Requires that, if a person alleges that the injury or circumstances giving rise to the personal injury claim occurred in more than one county (or federal district), the trial court determine which state and county (or federal district) is the most appropriate forum for such claim. If the court determines that another forum would be the most appropriate forum, the court would have to dismiss the claim.
- Suspends an attorney from practicing at a federal district court for at least one year if the attorney has filed three or more frivolous suits in that federal court over the attorney's career (subject to appeal by the attorney).
- Provides that, whenever an attorney attempts to litigate, in any forum, an issue that the attorney has already litigated and lost on the merits on three consecutive prior occasions, such action would be regarded as a violation of Rule 11. The Judiciary Committee notes that this provision would eliminate the current-law provision that allows lawyers to avoid sanctions for making a frivolous claim by withdrawing the claim within 21 days after a motion for sanctions has been filed.
- Enhances punishments for individuals who (actually or attempt to) influence, obstruct, or impede a pending federal or state court proceeding (that affects interstate commerce) through the intentional destruction of documents sought in, and highly relevant to, that proceeding. If the alleged violator is an attorney, he would have to be referred to one or more appropriate state bar associations for disciplinary proceedings.

The bill would not apply to civil rights cases or class actions and would not apply retroactively.

**Additional Background**: Under Rule 11, a frivolous lawsuit is a case that does not have evidentiary support, is intended to harass or cause unnecessary delay and expense, or is unwarranted under existing law.

For information on the effect of frivolous lawsuits on small businesses and others, please visit the following websites:
http://www.legalreformnow.com/
http://www.atra.org/display/13 (examples of frivolous lawsuits)

**Amendments Made in Order under the Rile (H.Res. 508)**:

**Sensenbrenner (R-WI):** Manager's Amendment.

- Provides that, regarding the anti-forum shopping provisions, if there is no state court in the county in which the injury occurred, the case could be brought in the nearest county where a court of general jurisdiction is located.
- Ensures that the bill would not affect personal injury claims that federal bankruptcy law requires be heard in a federal bankruptcy court.

- Narrows the application for a presumption of a Rule 11 violation when the same issue is repeatedly relitigated (to include only litigation in federal court involving the same plaintiff and the same defendant).
- Narrows the bill's sanctions provisions (for the destruction of relevant documents in a pending court proceeding) to apply only to federal courts.
- Prevents a court from sealing certain court records without a issuing a finding of fact that the justification for sealing outweighs any public health or safety interest. This would not apply to issues of attorney-client privilege or to state or federal laws that protect the confidentiality of crime victims.

**(10 minutes of debate)**

**Schiff (D-CA)/Kind (D-WI):** Amendment in the Nature of a Substitute.
The amendment would make the following changes to Rule 11 of the Federal Rules of Civil Procedure:

- Requires an attorney to sign a "certificate of merit," stating that the case is reasonable, in any filing, written motion, or pleading. If the case were found not to be reasonable, after the first offense, the attorney would be found in contempt of court and required to pay costs and attorney's fees. After the second offense, the attorney would also be required to pay a monetary fine. After the third offense, the attorney would be referred to the state bar for disciplinary proceedings. For each offense, the attorney is required to have a "reasonable opportunity to respond."
- Provisions above would not apply to civil rights cases, but would apply to federal and state courts (if relevant to interstate commerce).
- Imposes sanctions for frivolous filings during discovery. After the first offense, the attorney would be found in contempt of court and required to pay costs and attorney's fees. After the second offense, the attorney would also be required to pay a monetary fine. After the third offense, the attorney would be referred to the state bar for disciplinary proceedings.
- Prevents a court from sealing certain court records without a issuing a finding of fact that the justification for sealing outweighs any public health or safety interest. This would not apply to issues of attorney-client privilege or to state or federal laws that protect the confidentiality of crime victims.
- Provides enhanced sanctions for destruction of documents in a pending federal court proceeding.
- Makes corporations that once were American-headquartered and became foreign-headquartered with substantial foreign business operations (labeled as "financial traitors" in the amendment text) able to be sued in federal or state courts regarding their U.S. business activities. Deems any failure to furnish anything during the discovery period as a *de facto* admission of fact with respect to which the discovery order relates.
- Provides that, whenever an attorney attempts to litigate, in federal court, an issue that the attorney has already litigated (involving the same plaintiff and same defendant) and lost on the merits on three consecutive prior occasions, such action would be regarded as a violation of Rule 11. This provision would not apply to claims arising under the U.S. Constitution.

**(40 minutes of debate)**

**Committee Action**: On May 25, 2005, the Judiciary Committee marked up and ordered the bill reported to the full House by a party-line vote of 19-11.

**Administration Position**: A Statement of Administration is not available for H.R. 420, and none was released for H.R. 4571 last year.

**Cost to Taxpayers**: CBO confirms that any monetary sanction imposed as a result of this legislation would be between the parties to the suit. Therefore, enacting H.R. 420 would result in no cost or savings to the federal government.

**Does the Bill Expand the Size and Scope of the Federal Government?**: The bill would preempt state law in certain cases.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?**: Yes. The bill would require state judges to determine whether certain liability lawsuits affect interstate commerce and apply federal civil procedures for frivolous lawsuits to those cases. (There are no private-sector mandates in the bill.)

**Constitutional Authority**: The Judiciary Committee, in House Report 109-123, cites constitutional authority in Article I, Section 8, Clause 3 (the congressional power to regulate interstate commerce). Specifically, the Committee offers this justification:

> Congress--under its constitutional authority in Article I, Section 8 to regulate interstate commerce--has a responsibility to require state judges to conduct their own analysis, upon motion of parties, to determine whether, based on the relief requested (including potentially huge monetary damage requests) the case is such that it would affect interstate commerce by threatening to bankrupt a multi-state industry, by risking the loss of out-of-state jobs, or by otherwise incurring costs to the interstate economy. Where a case filed in state court substantially affects interstate commerce, as determined by a state judge, it is entirely appropriate that national attorney accountability rules should govern. Liability litigation, under existing rules, presents a serious threat to state autonomy. Manufacturers have no practical way of keeping their products out of certain states. Personal injury lawyers, on the other hand, get to choose their own forum and law. As a result, the jurisdictions most friendly to personal injury lawyers can unfairly impose the costs of their rules on the entire country and redistribute income from out-of-state parties to in-state parties.

**Outside Organizations**: Organizations that supported H.R. 4571 last year include the U.S. Chamber of Commerce, the National Federation of Independent Business, and the American Medical Association. H.R. 420 is nearly identical to H.R. 4571.

**RSC Staff Contact**: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718