House
REPUBLICAN
Conference

Legislative Digest

Week of February 14, 2000 Vol. XXIX, #3, February 11, 2000

J.C. Watts, Jr.
Chairman
4th District, Oklahoma

Monday, February 14

House Meets at 12:30 p.m. for Morning Hour and 2:00 p.m. for Legislative Business
(No Votes Before 6:00 p.m)

**** Four Suspensions**

H.R. 149 Omnibus Parks Technical Corrections Act (Considering Senate Amendments)....p.1
H.R. 3201 Carter G. Woodson Home National Historic Site Study Act.....p.3
H.Con.Res. 247 Sense of Congress Supporting National Donor Day.....p.4
H.Con.Res. 76 Sense of Congress Recognizing the Problem of Child Abuse and Neglect.....p.5

Tuesday-Thursday, February 15-17

Tuesday, House Meets at 9:30 a.m. for Morning Hour and 11:00 a.m. for Legislative Business
Wednesday and Thursday, House Meets at 10:00 a.m. for Legislative Business

**** One Suspension**

H.R. 3557 Awarding the Congressional Gold Medal to John Cardinal O'Connor.....p.6
H.R. 2086 Networking and Information Technology Research and Development Act.....p.7
H.R. 2366 Small Business Liability Reform Act.....p.10
H.R. 1987 Fair Access to Indemnity and Reimbursement Act.....p.13

Friday, February 18

No Votes Expected

1013 LONGWORTH HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515 (202) 226-2302

Brian Fortune: *Managing Editor*

Kevin Smith: *Senior Legislative Analyst*

Scott Galupo, Brendan Shields,
Heather Valentine & Michelle Yahng:
Legislative Analysts

House
REPUBLICAN
Conference

Legislative
Digest

http://hillsource.house.gov/LegislativeDigest

Omnibus Parks Technical Corrections Act (Considering Senate Amendments)

H.R. 149

Committee on Resources
H.Rept. 106-17
Referred by the Senate on November 22, 1999

Floor Situation:

The House is scheduled to consider Senate amendments to H.R. 149 under suspension of the rules on Monday, February 14, 2000. It is debatable for 40 minutes, may not be amended, and requires a two-thirds majority vote for passage.

Summary:

H.R. 149, as amended by the Senate, makes numerous technical amendments to certain statutes affecting public lands. Most of these amendments correct spelling and punctuation errors or make other non-substantive changes to the original laws. Specifically, the measure makes technical corrections to the following statutes:

* 1996 Omnibus Parks and Public Lands Management Act (*P.L. 104-333*);
* 1998 Arches National Park Expansion Act (*P.L. 105-329*);
* 1998 Dutch John Federal Property Disposition and Assistance Act (*P.L. 105-326*);
* 1998 Oregon Public Lands Transfer and Protection Act (*P.L. 105-321*); and
* 1998 Automobile National Heritage Area Act (*P.L. 105-355*).

In each Congress, small mistakes and errors are made in drafting and printing the final language of a bill, such as misdesignating a map or spelling a word incorrectly. This legislation responds to a list of technical mistakes submitted to Congress by the administration. The measure is considered non-controversial. The Senate amendment makes additional minor technical corrections to the bill.

The House originally passed H.R. 149 by voice vote on February 23, 1999. The Senate amended and passed the bill on November 19 by unanimous consent.

Costs/Committee Action:

CBO estimates that enactment of H.R. 149 will have no significant impact on the federal budget. The bill may affect direct spending, so pay-as-you-go procedures apply; however, CBO estimates that any such effect will be negligible.

The Resources Committee reported H.R. 149 by voice vote on February 3, 1999.

Michelle Yahng, 226-6871

Carter G. Woodson Home National Historic Site Study Act

H.R. 3201

Committee on Resources
No Report Filed
Introduced by Ms. Norton on November 2, 1999

Floor Situation:

The House is scheduled to consider H.R. 3201 under suspension of the rules on Monday, February 14, 2000. It is debatable for 40 minutes, may not be amended, and requires a two-thirds majority vote for passage.

Summary:

H.R. 3201 authorizes the Interior Secretary to study the feasibility of designating the Carter G. Woodson Home as a National Historic Site. The home currently serves as the headquarters of the Association for the Study of African-American Life and History, located at 1538 Ninth Street, Northwest in Washington, D.C.

Specifically, the study will determine the suitability of including the Carter G. Woodson Home as a historic site in the National Park System and identify alternatives for managing and protecting the home. The secretary must report his findings to Congress within 18 months after funds for the study are made available.

In 1915, Dr. Carter G. Wilson founded the Association for the Study of African American Life and History to increase awareness of the contributions of Black Americans to the country's history and culture. One of Dr. Wilson's greatest accomplishments was his leadership in the creation of Negro History Week that has since evolved into Black History Month.

Committee Action:

The bill was not considered by a House committee.

Michelle Yahng, 226-6871

Sense of Congress Supporting National Donor Day

H.Con.Res. 247

Committee on Commerce
No Report Filed
Introduced by Ms. Thurman *et al.* on February 8, 2000

Floor Situation:

The House is scheduled to consider H.Con.Res. 247 under suspension of the rules on Monday, February 14, 2000. It is debatable for 40 minutes, may not be amended, and requires a two-thirds majority vote for passage.

Summary:

H.Con.Res. 247 supports the goals and ideas of National Donor Day and encourages all Americans to learn about the importance of organ, tissue, bone marrow, and blood donation and discuss such donations with their families and friends. Finally, the measure requests that the president call on all Americans to conduct appropriate ceremonies, activities, and programs to demonstrate support for organ, tissue, bone marrow, and blood donation.

In the past decade transplantation has become an important element of mainstream medicine that prolongs and enhances life. Today, more than 70,000 individuals await organ transplants. However, despite progress over the past 15 years, more than 10 people die each day because of a shortage of donor organs and every 16 minutes someone is added to the national organ transplant waiting list.

National Donor Day is America's largest one-day organ, tissue, bone marrow, and blood donation event. For the third consecutive year, a coalition of health organizations is joining forces for National Donor Day. During the first two National Donor Days, nearly 17,000 units of blood were collected and more than 2,400 potential donors were added to the National Marrow Donor Program Registry.

Committee Action:

H.Con.Res. 247 was not considered by a House committee.

Brendan Shields, 226-0378

Sense of Congress Recognizing the Problem of Child Abuse and Neglect

H.Con.Res. 76

Committee on Education & the Workforce
No Report Filed
Introduced by Mr. Salmon *et al*. on March 24, 1999

Floor Situation:

The House is scheduled to consider H.Con.Res. 76 under suspension of the rules on Monday, February 14, 2000. It is debatable for 40 minutes, may not be amended, and requires a two-thirds majority vote for passage.

Summary:

H.Con.Res. 76 expresses the sense of Congress that (1) all Americans should keep abused and victimized children in their thoughts and prayers; (2) all Americans should seek to break the cycle of abuse and neglect; and (3) the faith community, nonprofit organizations, and volunteers across America should re-commit themselves and mobilize their resources to assist abused and neglected children. In addition, the resolution states that Congress supports the goals and ideas of the "Day of Hope" and commends Childhelp USA for its efforts on behalf of abused and neglected children everywhere.

The "Day of Hope" was established by Childhelp USA, a nonprofit organization combating childhood neglect and abuse, to focus public attention on these abuses. The day is observed on the first Wednesday of every April, the month already recognized as Child Abuse Prevention Month.

Every year in America, more than three million children are suspected victims of abuse and neglect. Of these, more than 500,000 children are unable to live safely within their homes and are placed in foster homes and institutions, and more than 1,000 lose their lives as a direct result of abuse and neglect.

Committee Action:

The resolution was not considered by a House committee.

Heather Valentine, 226-7860

Awarding the Congressional Gold Medal to John Cardinal O'Connor

H.R. 3557

Committee on Banking and Financial Services
No Report Filed
Introduced by Mr. Fossella *et al.* on January 31, 2000

Floor Situation:

The House is scheduled to consider H.R. 3557 under suspension of the rules on Tuesday, February 15, 2000. It is debatable for 40 minutes, may not be amended, and requires a two-thirds majority vote for passage.

Summary:

H.R. 3557 authorizes the president to present, on behalf of Congress, a gold medal to John Cardinal O'Connor in recognition of his accomplishments as a priest, a chaplain, and a humanitarian. The bill authorizes up to $30,000 to cover the cost of providing the medal. The actual amount spent for the medal will be recouped by the U.S. Mint through the sale of authentic bronze reproductions of the medal.

John Cardinal O'Connor was born in Philadelphia on January 15, 1920. In 1945, he was ordained to the Roman Catholic Priesthood. During the Korean Conflict in 1952, he entered service as a chaplain for the United States Navy and Marine Corps, and after serving for 27 years and rising to the rank of Navy Chief of Chaplains, he retired as an Admiral in May 1979. In 1983, Cardinal O'Connor became the Bishop of Scranton, Pennsylvania, where he served for only eight months before being named Archbishop of New York in 1984. A year later, he was elevated to the rank of Cardinal.

Cardinal O'Connor, who turned 80 on January 15, is expected to retire this year. He has served on a number of councils and congregations in Rome and in various capacities in the National Conference of Catholic Bishops. His devotion to all people has been shown through his tireless efforts on behalf of the handicapped, elderly, and victims of AIDS. He has also been deeply committed to racial justice, the rights of immigrants, and the right-to-life movement. As the Cardinal Archbishop of the New York Archdiocese, Cardinal O'Connor is commonly recognized as the foremost leader of the Catholic Church in the United States.

Costs/Committee Action:

A CBO cost estimate was unavailable at press time.

The bill was not reported by a House committee.

Christina Carr, 226-2302

Networking and Information Technology Research and Development Act

H.R. 2086

Committee on Science
H.Rept. 106-472, Pt. I
Introduced by Mr. Sensenbrenner *et al*. on June 9, 1999

Floor Situation:

The House is scheduled to consider H.R. 2086 on Tuesday, February 15, 2000. On Tuesday, February 8, the Rules Committee granted an open rule that provides one hour of general debate, equally divided between the chairman and ranking member of the Science Committee. The rule makes in order a committee amendment in the nature of a substitute as base text. It also strikes a provision in the bill that permanently reauthorizes the research and development tax credit (which was reauthorized last year). In addition, the rule makes in order only those amendments that have been pre-printed in the *Congressional Record*. The chairman of the Committee of the Whole may postpone votes and reduce the voting time on a postponed vote to five minutes, so long as it follows a regular 15-minute vote. Finally, the rule provides one motion to recommit, with or without instructions. Additional information on potential amendments will be provided in a *FloorPrep* prior to floor consideration.

Summary:

H.R. 2086 authorizes $4.8 billion over FYs 2000-2004 for networking and information technology research and development at the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA), the Energy Department (DOE), the National Institute of Standards and Technology (NIST), the National Oceanic and Atmospheric Administration (NOAA), and the Environmental Protection Agency (EPA). The funding for the six agencies will go toward the High-Performance Computing and Communication (HPCC) program, the Next Generation Internet program (NGI; which is authorized only for FY 2000-2001), and other information technology programs.

For the NSF (which receives roughly 60 percent of the funding authorized by the bill) H.R. 2086 authorizes a total of $3 billion, including:

* $130 million for grants of up to $1 million for high-end computing, software, and networking research;

* $220 million for information technology research centers;

* $385 million for terascale computing;

* $95 million for universities to establish internship programs for research at private companies;

* $56 million for educational technology research; and

* $50 million for the NGI program.

In addition, the bill authorizes:

* $602.2 million for the DOE (including $30 million for the NGI program);

* $1 billion for NASA (including $20 million for the NGI program);

* $73 million for NIST (including $11 million for the NGI program);

* $71.7 million for NOAA; and

* $22.3 million for the EPA.

Finally, the bill authorizes a series of studies and reports, including one on Internet privacy (to be conducted by the National Research Council), the availability of encryption technologies in foreign countries (to be conducted by the NSF), and the impact of information technology research funded by certain appropriations bills (to be conducted by the Comptroller General).

Background:

Information technology (IT) research has played a vital role in fomenting the information revolution—paving the way for new industries and high-paying jobs, and advancing science generally. IT now represents one of the fastest growing sectors of the U.S. economy, growing at an annual rate of 12 percent between 1993 and 1997. Since 1992, businesses producing computers, semiconductors, software, and communications equipment have accounted for one third of the economic growth in the U.S. In 1998, the Internet economy generated more than $300 billion in U.S. revenue and 1.2 million jobs.

The federal government has spearheaded much IT research. The first high-performance computers were placed in government installations, largely for reasons of national defense. Government support for high-performance computing expanded in the 1970s, and by the early 1980s many agencies had developed independent programs. In the late 1980s, these programs were brought under one umbrella by the High-Performance Computing and Communications (HPCC) initiative, which ultimately involved 10 federal agencies.

These activities were authorized by the 1991 High-Performance Computing Act (*P.L. 102-194*). More recently, Congress authorized the Next Generation Internet (NGI) program (*P.L. 105-305*), whose goals are to: (1) promote experimental research into advanced network technologies; (2) establish a network test-bed that will increase network speed and capacity; and (3) link the missions of federal agencies with the needs of universities, laboratories, and industry through revolutionary applications.

The president's Information Technology Advisory Committee, in its *Information Technology Research: An Investment in Our Future* (published in February 1999), concluded that U.S. leadership in IT provides an essential foundation for promoting economic growth, education and research, environmental stewardship, public health, and national security. It also noted that support for long-term fundamental research in IT has eroded and that current research is too focused on near-term problems linked to agency missions.

To address these and other issues, the president's committee recommended that the federal government develop a strategic initiative for long-term R&D, fund projects for longer periods, establish an effective structure for managing and coordinating R&D, and increase spending by $1.4 billion by FY 2004. H.R. 2086 represents an important phase of this initiative.

Costs/Committee Action:

CBO estimates that enactment will result in additional discretionary spending of $3.7 billion over FYs 2000-2004. The bill affects direct spending, so pay-as-you-go procedures apply.

The Science Committee reported the bill by a vote of 41-1 on September 9, 1999.

Scott Galupo, 226-2305

Small Business Liability Reform Act

H.R. 2366

Committee on the Judiciary
H.Rept. 106-494, Pt. I
Introduced by Mr. Rogan *et al*. on June 25, 1999

Floor Situation:

The House is scheduled to consider H.R. 2366 on Wednesday, February 16, 2000. The Rules Committee is scheduled to meet on the bill at 5:00 p.m. on Tuesday, February 15. Chairman Dreier has requested that members who wish to offer an amendment must submit 55 copies and a brief explanation of the amendment by 12:00 p.m. on Tuesday, February 15. Additional information on the rule and potential amendments will be provided in a *FloorPrep* prior to floor consideration.

Summary:

H.R. 2366 contains several provisions to limit the product liability of small businesses (defined as a business with fewer than 25 employees). Specifically, the bill:

* caps punitive damages at $250,000 or three times compensatory damages (whichever is less) in any civil lawsuit against small businesses. To receive damages, plaintiffs must demonstrate through "clear and convincing evidence" that the defendant acted with willful misconduct and was indifferent to the rights and safety of others;

* exempts small business defendants from joint and several liability (*i.e.*, the rule that each defendant may be held individually liable for total damages) for non-economic damages, such as pain and suffering. That is, defendants will be liable *only* for the proportion of the judgment that corresponds to the percentage of actual fault; and

* exempts retailers, renters, and lessors (large and small) from legal responsibility for products they received from manufacturers—but did not alter—and which, subsequently, malfunctioned or caused damage.

The cap on damages will not apply in cases where the defendant's misconduct (1) includes a violent crime, an act of international terrorism, a hate crime, or a sexual offense; (2) results in the destruction or loss of natural resources, or violates federal or state civil rights laws; or (3) was the result of the defendant's being under the influence of drugs or alcohol. The measure also outlines exceptions that apply to the liability protections for retailers: Retailers will be held joint and severally liable if they were negligent, engaged in intentional wrongdoing, or gave an additional warranty beyond the manufacturer's. A retailer also may be sued if the manufacturer is bankrupt or, for some reason, could not be brought to court in the state.

Supporters of the bill argue that small businesses, which employ nearly 60 percent of the American workforce and account for 38 percent of the GDP, operate in fear of frivolous litigation (small business owners estimate that they have a one in three chance of being sued in the next five years) and thus decline to hire

more employees or introduce new products. To alleviate this burden, the measure reforms current law to require defendants to pay their "fair share" of damages and exempts them from footing the cost of another business's negligent behavior. Finally, proponents assert that the measure frees retailers from the burden of defending themselves against needless and wasteful product liability suits when they have merely acted as conduits between the manufacturer and the customer.

Opponents counter that the bill circumscribes victims' rights to "solve" a problem that does not exist: there is no credible evidence of a litigation explosion in federal or state courts. The measure, say critics, encourages irresponsibility on the part of manufacturers—after all, the fear of being sued has always been a basic motivation for businesses to do the right thing. Moreover, the measure exempts small business owners from joint and several liability, which will result in victims having to bear the brunt of damages while a co-defendant is judgment-proof. Finally, opponents say the bill tramples the principle of federalism by pre-empting state prerogatives.

Background:

Product Liability Reform

Since 1995 and the *Contract with America*, Congress has attempted to enact significant product liability reform but has consistently faced resistance from President Clinton. In 1996, the 104th Congress passed a comprehensive reform bill—H.R. 956, the Common Sense Product Liability Legal Reform Act—that President Clinton subsequently vetoed. The president also refused to sign the Private Securities Litigation Reform Act (*P.L. 104-67*), which limits "strike" lawsuits against corporations whose stocks legitimately change in value, but Congress overrode his veto in May 1996. Last year, Congress passed the Y2K Readiness and Responsibility Act (*P.L. 106-37*), which established a waiting period before lawsuits stemming from the Y2K computer glitch could be filed. H.R. 2366 is another phase of this reform effort, this time to protect small businesses.

The Vulnerability of Small Businesses

Small businesses with fewer than 25 full-time workers employ nearly 60 percent of the American workforce and account for approximately 38 percent of the GDP, but over 60 percent of small business owners make an annual salary of less than $50,000. One lawsuit, notwithstanding its legitimacy, could potentially put a small business out of business. According to a recent Gallup survey, one out of every five small businesses decides not to hire more employees, expand its business, introduce a new product, or improve an existing product out of fear of litigation. Small business owners estimate that they have a one in three chance of being sued in the next five years. Indeed, according to the National Federation of Independent Businesses (NFIB), nearly one in four small business owners has been sued or has been threatened with a lawsuit.

During committee consideration of the bill, one witness testified, on behalf of the Ohio Chapter of the NFIB, that the maximum possible punitive damages award against a small business under the measure—$250,000—would alone bankrupt 59.1 percent of Ohio small businesses. He also stated that the average cost of civil litigation in Ohio ($50,000 per case) forces small businesses into otherwise unjustified settlements because they cannot afford the costs of a defense.

Broad expansions of liability are based, in part, on the assumption that businesses can more ably bear financial losses since they can obtain insurance. Not so for small businesses, many contend: Because of

the high cost of liability insurance, and the low capitalization rate of many of these small entities, carrying insurance is a luxury they can ill afford. Moreover, small businesses are responding to the threat of being sued by considering purchasing less insurance, rather than more. About one in eight small businesses is not covered by liability insurance. Their rationale is that less insurance will actually reduce their litigation risk by making them a less lucrative target for plaintiffs' lawyers when compared to entities that are actually responsible for an accident.

Product Liability for Retailers

In response to inconsistencies among state law, the bill establishes uniform legal principles of liability for product sellers, lessors, and renters. Currently, 31 states hold retailers liable for products they merely pass from manufacturers to consumers. Although retailers are rarely ordered to pay damages in such cases—indeed, they prevail 95 percent of the time—bill supporters argue that the patchwork of state laws creates confusion and potentially depresses interstate commerce.

Costs/Committee Action:

CBO estimates that enactment will have no significant impact on the federal budget. The bill does not affect direct spending, so pay-as-you-go procedures do not apply.

The Judiciary Committee reported the bill by voice vote on February 1, 2000.

Scott Galupo, 226-2305

Fair Access to Indemnity and Reimbursement Act

H.R. 1987

Committee on Education & the Workforce
H.Rept. 106-385
Introduced by Mr. Goodling *et al*. on May 27, 1999

Floor Situation:

The House is scheduled to consider H.R. 1987 on Thursday, February 17, 2000. The Rules Committee is scheduled to meet on the bill at 5:00 p.m. on Tuesday, February 15. Chairman Dreier has indicated that the rule may require all amendments to be pre-printed in the *Congressional Record*. Additional information on the rule and potential amendments will be provided in a *FloorPrep* prior to floor consideration.

Summary:

H.R. 1987 amends current law to permit employers and labor organizations who win a case brought against them by the National Labor Relations Board (NLRB) or the Occupational Safety and Health Administration (OSHA) to recover attorneys' fees, without regard to whether the federal agency's position was "substantially justified." The bill applies to employers, including labor organizations, with 100 or fewer employees and a net worth equal to or less than $7 million. The intent of the measure is to (1) ensure that small business owners and labor groups are not deterred from seeking judicial review of federal actions brought against them because of potential legal expenses; (2) reduce the disparity in resources that exists between small business owners and labor organizations vis-à-vis the NLRB and OSHA; and (3) hold the NLRB and OSHA more accountable for actions they bring against small employers and labor groups.

Supporters of the bill assert that current law is inadequate for small employers—the "little guys"—to protect themselves from federal agencies replete with roving lawyers well-versed in labor laws and with deep resources. The measure levels the playing field by impelling the NLRB and OSHA to better evaluate the merits of complaints against small businesses that lack the financial resources to see a case to its just conclusion. The legislation represents a modest proposal for small businesses especially given the recent suspect regulatory actions of OSHA and the NRLB (*e.g.*, OSHA's recent Work-at-Home directive that it withdrew under heavy criticism) and the nearly $60 million increase in appropriations allocated to those agencies by Congress for FY 2000.

Opponents counter that the bill is an attempt to "chill" two federal agencies charged with protecting the rights of workers. Instead of encouraging cooperation and compliance with the law, the bill encourages defendants to litigate matters with the NLRB and OSHA, resulting in fewer settlements, lengthier litigation, and ultimately delaying compliance with health and safety laws. This bill is manifestly unnecessary: Current law already provides recourse to small businesses through initiatives like 1980 Equal Access to Justice Act.

Background:

Currently, small employers and unions with 500 or fewer employees and a net worth equal to or less than $7 million who prevail against federal agencies may file a claim to recover attorneys' fees under the 1980 Equal Access to Justice Act (EAJA; *P.L. 96-481*). However, if the federal agency demonstrates that its position was "substantially justified" or that "special circumstances make an award unjust," the employer may not recover attorneys' fees. Employers have made spare use of the EAJA. Out of the 3,421 complaints filed by the NLRB in FY 1998, 2,814 were settled at some point. Since 1981, OSHA has received only 82 EAJA applications (30 of which were won by employers)—an average of 1.5 annually. This data has led the committee and bill supporters to conclude that small businesses are intimidated by the federal agencies and too often settle, choosing to avoid protracted and expensive litigation even if they feel that the suit was brought against them unjustly.

During committee consideration, one witness testified that his 17-employee company spent more than $100,000 to defend itself against 11 labor practice charges that were ultimately dismissed. He also stated that he personally knew of several small contractors who pled guilty to charges "rather than face what we went through to prove our innocence." Another witness spent $80,000 to prevail on 35 of 36 charges—while representing himself through most of the proceedings. When labor unions file charges on behalf of their members, the NLRB in effect becomes an advocate in the case. The committee notes that unions frequently file multiple "goading" charges in order to force concessions from an employer, knowing well that the NLRB will take up the case under a veneer of impartiality.

Costs/Committee Action:

CBO estimates that enactment will increase federal spending by approximately $4 million in FY 2000 and $20 million over the FY 2000-2004 period. Because the measure may reduce fines collected by the federal government, it affects direct spending; therefore, pay-as-you-go procedures apply.

The Education & the Workforce Committee reported the bill by a vote of 24-19 on July 29, 1999.

Heather Valentine, 226-7860