



The Daily Whip

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TUESDAY, SEPTEMBER 14, 2004

House Meets At...	Last Vote Predicted At...
9:00 a.m.: Morning Hour 10:00 a.m.: Legislative Business Unlimited "One Minutes"	9:00 – 10:00 p.m.

FLOOR SCHEDULE AND BILL SUMMARY

H.Res. 766 - Rule providing for consideration of H.R. 4571 - Lawsuit Abuse Reduction Act of 2004 (Rep. Sessions / Rules Committee). The Rules Committee has recommended a modified closed Rule that allows for one hour of general debate and provides one motion to recommit with or without instructions. The Rule also makes in order one amendment in the nature of a substitute to be offered by Rep. Turner (TX), with forty minutes of debate. This substitute was made in order only after a section in the substitute that sought accountability from "Benedict Arnold Corporations" was removed. The section removed specified that federal courts would have jurisdiction for legal actions brought against corporations that have renounced their U.S. residence and permits service of process wherever such corporation is located, has an agent or transacts business.

Suspensions (3 bills):

- 1) **H.R. 3369** - Nonprofit Athletic Organization Protection Act of 2003 (Rep. Souder - Judiciary)
- 2) **H.R. 1787** - Good Samaritan Volunteer Firefighter Assistance Act of 2003 (Rep. Castle - Judiciary)
- 3) **H.R. 1084** - Volunteer Pilot Organization Protection Act (Rep. Schrock - Judiciary)

H.R. 4571 - Lawsuit Abuse Reduction Act of 2004 (Rep. Smith {TX} - Judiciary) (Subject to a Rule). This bill revises the current frivolous lawsuit sanctions in Rule 11 of the Federal Rules of Civil Procedure, extends Rule 11's application to state court cases, and restricts the judicial fora in which consumers can file personal injury claims. H.R. 4571 requires a mandatory sanctions regime that would apply to civil rights cases and will have a significant, adverse impact on the ability of civil rights plaintiffs to seek recourse in our courts. In addition, this bill only permits suits to be brought where the defendant's principal place of business is located, which will benefit foreign corporate defendants at the expense of their domestic counterparts, and will skew the playing field against injured victims.

The Turner (TX) Democratic Substitute is an effective solution to the frivolous lawsuit problem:

- **Democrats would impose "Three Strikes and You're Out" for Frivolous Pleadings** (1st violation - required payment of costs and attorneys fees; 2nd violation - add that attorney held in contempt and monetary fine; 3rd violation - add referral to state bar for disciplinary proceedings). Advantages over Republican Bill: tougher overall regime than the Republican bill; clear and specific civil rights carve out to prevent a chilling effect on these actions; amends the U.S. Code to prevent future changes and modifications by the courts.
- **Democrats impose mandatory "three strikes and you're out" sanctions on discovery violations** (1st violation - required payment of costs and attorneys fees; 2nd violation - add that attorney held in contempt and monetary fine; 3rd violation - add referral to state bar for disciplinary proceedings). Advantages over Republican Bill: tougher overall regime than the Republican bill which only imposes mandatory payment of costs and fees; amends U.S. Code to prevent to future changes and modifications by the courts.
- **Democrats would place Ban on Concealment of Unlawful Conduct** by requiring that court records may not be sealed unless the court first finds that such sealing is justified. This will help insure that information on dangerous products and actions is made available to the public. The Republican bill doesn't include similar provisions.
- **Democrats Enhance Sanctions for Document Destruction** by providing that parties which destroy documents in connection with civil proceedings shall be punished with mandatory civil sanctions, held in contempt of court, and referred to state bar for disciplinary proceedings. The Republican bill only includes civil sanctions.
- **Democrats Provide Expedited Disposition of Frivolous and other Lawsuits** by imposing the Civil Justice Reform Act, which has proved successful in federal courts, to the state courts in order to speed up the pretrial process and weed out junk lawsuits. Requires each judicial district to develop and implement a civil justice expense and delay reduction plan and submit it to the governing state body. The Republican bill doesn't include similar provisions.

Democrats are urged to VOTE YES on the Turner Substitute. If the Turner Substitute is not adopted, **Democrats are urged to VOTE NO on Final Passage of H.R. 4571.**



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H.Res. ____ - Rule providing for general debate of H.R. 5025 - Transportation, Treasury Appropriations Act for FY05. A vote on the Previous Question on the Rule is expected. This vote will be a vote on the issue of Member's Cost of Living Adjustment (COLA). **Members who OPPOSE receiving a Cost of Living Adjustment should vote NO on the Previous Question, and Members who SUPPORT receiving a Cost of Living Adjustment should vote YES on the Previous Question.**

H.R. 5025 - Transportation, Treasury, and Independent Agencies Appropriations Act for FY05 (Rep. Istook - Appropriations). This bill provides \$89.9 billion, which is \$495 million below the FY04 level. Funding in this bill include: \$58.8 billion for the Transportation Department (\$14.02 billion for the Federal Aviation Administration; \$35.09 billion for the Federal Highway Administration; \$7.25 billion for the Federal Transit Administration; and \$1.08 for the Federal Railroad Administration); \$11.22 billion for the Treasury Department (\$10.29 billion for the Internal Revenue Service); \$727 million for the Executive Office of the President; \$18.22 billion for the Office of Personnel Management; and \$36.5 million for the U.S. Postal Service.

Amendments offered to this bill will be considered under the 5-minute rule. Several important amendments are expected, including:

- **Van Hollen Amendment.** This amendment would prevent OMB from spending any funds to implement the A-76 rewrite changes that were finalized on May 29 regarding federal employees and contractors. **Democrats are urged to VOTE YES.**
- **Oxley/Frank/Kolbe/Pastor/Hinojosa Amendment.** This amendment would strike Section 216 (added during subcommittee markup) which would prohibit the Department of Treasury from enforcing the PATRIOT Act's customer identification provisions that are designed to combat money laundering and terrorist finance. (Section 326 of the PATRIOT Act established new, strict guidelines for financial institutions to verify the identity of persons who open bank accounts. The Department of Treasury affirmed that financial institutions are allowed to accept certain forms of foreign identification, including the *matricula consular* --- which approximately 350 financial institutions and 1100 police department accept today). Section 216 specifically prohibits the Treasury Department from using funds "to be used to publish, implement, administer, or enforce regulations that permit financial institutions to accept the *matricula consular* identification card as a form of identification."
 - The Mexican Consular ID card (*matricula consular*) is secure. It is issued by the Mexican government and has a dozen security features to ensure authenticity and discourage fraud, (digitalized photo, serial number, hologram with special marks, infrared band).
 - The *matricula consular* does not change one's immigration status and it is simply an identification card. It cannot be used to obtain any immigration or citizenship benefits such as work authorization or the right to vote, and it cannot be used to obtain public benefits.
 - Supporters of the Oxley-Frank-Kolbe-Pastor-Hinojosa include: The Financial Services Roundtable, America's Community Bankers, American Bankers Association, Independent Community Bankers Association, Credit Union National Association, Bankers' Association for Finance and Trade, the Congressional Hispanic Caucus, The National Council of La Raza, and the National Immigration Law Center. **Democrats are urged to VOTE YES.**
- **Capito Amendment.** This amendment would prevent funds in the underlying bill to be used to plan, enter into, implement, or provide oversight of contracts between the Secretary of the Treasury and any private collection agency for collection of Federal taxes. **Democrats are urged to VOTE YES.**

TOMORROW'S OUTLOOK

The GOP Leadership has announced the following schedule: On Wednesday, the House will convene at 10:00 a.m. for legislative business and will complete consideration of **H.R. 5025 - Transportation, Treasury, and Independent Agencies Appropriations Act for FY05 (Rep. Istook - Appropriations).**

Daily Quote...

"It was good news when President Bush flip-flopped on intelligence reform and endorsed giving the proposed new post of national intelligence director some real authority... This burning issue demands true bipartisan momentum as well as stronger leadership if an effective restructuring plan is to emerge from Congress. A worthy bipartisan benchmark has been set in both houses in a joint bill rooted in the main proposals of the 9/11 commission. The approach of Election Day presents a deadline by which voters will be able to see either true change at hand or more decades of dangerous procrastination."

- The New York Times editorial today