



**Legislative Bulletin ..... March 30, 2011**

**Contents:**

- H.R. 471** – Scholarships for Opportunity and Results Act
- H.R. 872** – Reducing Regulatory Burdens Act of 2011

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**H.R. 471 - Scholarships for Opportunity and Results Act  
(Boehner, R-OH)**

**Order of Business:** The legislation is scheduled to be considered on Wednesday, March 30, 2011. The Rules Committee is expected to meet Tuesday.

**Summary:** H.R. 471 authorizes \$60 million annually for FY 2012 - 2016. This amount is to be divided as follows:

- 1/3 for the D.C. Opportunity Scholarship Program;
- 1/3 for D.C. public schools; and
- 1/3 for D.C. public charter schools.

**Opportunity Scholarship Program:** The Opportunity Scholarship Program (OSP) provides scholarships to eligible students to pay the tuition, fees, and transportation expenses (if any) to enable the eligible student to attend a private elementary school or secondary school of their choice beginning in the 2011-2012 school year. The Department of Education appoints “eligible entities” (commonly referred to as “scholarship funds”) who distribute these scholarships to eligible students. Students go through an application process to become eligible for the OSP. “Eligible Students” must be a resident of the District of Columbia, and come from a household:

- That currently receives assistance under the supplemental nutrition assistance program; or
- Whose income does not exceed 185% of the poverty level.
  - This requirement is waived if the student was in the OSP the previous school year, and the household income had risen.

This legislation prohibits the private or secondary school from charging more to students who receive the OSP than to other students. Eligible students who have been in the OSP the preceding school year will have priority over students who have not previously been in the OSP.

Maximum scholarship levels are set as follows for eligible students:

- \$8,000 for attendance in kindergarten through grade 8; and

- \$12,000 for attendance in grade 9 through grade 12.

The Secretary of Education has the authority to adjust these maximum amounts annually for inflation, as measured by the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The OSP scholarship may only be used at private or secondary schools that:

- Have and maintain a valid certificate of occupancy issued by the District of Columbia;
- Make readily available to all prospective students information on its school accreditation;
- In the case of a school that has been operating for 5 years or less, they must submit to the eligible entity administering the program proof of adequate financial resources reflecting the financial sustainability of the school and the school's ability to be in operation through the school year;
- Agree to submit to site visits as determined to be necessary;
- Have financial systems, controls, policies, and procedures to ensure that funds are used according to this legislation; and
- Ensure that each teacher of core subject matter in the school has a baccalaureate degree, or equivalent degree, whether such degree was awarded in or outside of the U.S.

H.R. 471 caps D.C. OSP administrative expenses at 3% of total appropriated funding, and allows an additional 2% of the appropriated funds to be used to educate parents about the program, and assist them with the application process. This legislation also allows up to 1% of the total appropriated funds to be used on tutoring students in need of academic assistance.

**OSP Evaluations:** H.R. 471 requires the Mayor of D.C. and the Secretary of Education to enter into an agreement with the Institute of Education Sciences (within the Department of Education) to annually evaluate the performance of students who received scholarships under the OSP program. The Mayor and the Secretary will also be required to monitor and evaluate the use of funds authorized and appropriated for the District of Columbia public schools and the District of Columbia public charter schools.

According to the legislation, the Institute of Education Sciences of the Department of Education will use a grade appropriate, nationally norm-referenced standardized test each school year to assess participating eligible students.

**OSP Reporting:** H.R. 471 requires the Secretary to annually submit a congressional report on the progress and preliminary results of the evaluation of the opportunity scholarship program. This legislation also requires a final report on the results of the evaluation of the program. These reports will be made available for public view. The Secretary may use up to 5% of the total funds appropriated to carry out these requirements.

Additionally, scholarship funds that receive funding for the D.C. OSP must submit a report to the Secretary of Education concerning:

- “The academic growth and achievement of students participating in the program;
- “The high school graduation and college admission rates of students who participate in the program, where appropriate; and
- “Parental satisfaction with the program.”

These funds must also report to parents of participating students regarding:

- The student’s academic achievement;
- The safety of the school, including the incidence of school violence, student suspensions, and student expulsions; and
- The accreditation status of the school.

**D.C. Public Schools and D.C. Public Charter Schools:** As a condition of receiving funding under this legislation for D.C. public schools and D.C. public charter schools, the Mayor of D.C. shall agree:

- That all D.C. public schools and all D.C. public charter schools comply with all reasonable requests for information for purposes of evaluation;
- To enter into agreement with the Secretary to monitor and evaluate the use of funds authorized and appropriated by this legislation; and
- Submit a congressional report to relevant committees as specified by the legislation.

If the Mayor is found to not be in compliance with any 1 of those requirements described above, the Secretary may withhold funding from the Mayor for D.C. public schools and D.C. charter schools.

**Additional Background:** The D.C. Opportunity Scholarship Program (OSP) was established in 2003 in accordance with the Supreme Court decision, *Zelman v. Simmon-Harris*. During the 111<sup>th</sup> Congress, the Democrat majority, under the leadership of then-Speaker Pelosi, prevented new eligible students from joining the OSP.

A 2010 report concluded that students who used their scholarships had a 91% graduation rate. This is 21% higher than those who were interested in the program, but did not receive a scholarship. By comparison, according data from Education Week’s 2011 Quality Counts report shows that D.C. public schools have a graduation rate of 59.5%

Out of the 14 evaluations conducted by the Institute for Education Sciences (IES), the OSP was one of four that showed positive results.

**Outside Groups Supporting this Legislation:**

Agudath Israel of America  
Alliance for School Choice  
American Association of Christian Schools  
American Conservative Union  
American Federation for Children

Black Alliance for Educational Options (BAEO)  
Brighter Choice Foundation  
Center for an Educated Georgia  
Center for Education Reform  
Citizen Link – (c)4 of Focus on the Family  
Coalition for Education Reform and Accountability  
Coalition of Hispanic Instructors in Support of Parental Awareness (CHISPA)  
Council for American Private Education (CAPE)  
D.C. Parents for School Choice  
Education Action Group  
Education Breakthrough Network  
Excellent Education for Everyone (E3)  
Family Research Council Action – *Scoring H.R. 471 as a Key Vote*  
Friends Of Choice in Urban Schools (FOCUS)  
Foundation for Educational Choice  
Foundation for Excellence in Education  
Foundation for Florida's Future  
FreedomWorks  
Georgia Family Council  
Heartland Institute  
Heritage Action for America – *Scoring H.R. 471 as a Key Vote*  
Hispanic Council for Reform and Educational Options (HCREO)  
Institute for Justice  
Iowa Advocates/Alliance for Choice in Education  
Mid-Atlantic Catholic Schools Consortium  
National Christian School Association  
Parents/Partners for Educational Freedom in North Carolina  
Parents for Choice in Education  
REACH Alliance  
Reason Foundation  
Rhode Island Scholarship Advocates  
School Choice Indiana Network  
School Choice Ohio  
School Choice Wisconsin  
Step Up for Students  
Students First Corp. (Pennsylvania)  
Success Charter Network  
U.S. Conference of Catholic Bishops

Additionally, Chairman Issa and Rep. Gowdy sent a Dear Colleague on March 29, 2011, encouraging Members to support H.R. 471.

**Committee Action:** H.R. 471 was introduced on January 26, 2011, and referred to the House Oversight and Government Reform Committee. A full committee markup was held on March 10, 2011. Chairman Issa offered a substitute amendment that was agreed to by voice vote. Del. Norton offered a substitute amendment that failed a recorded vote

of 12-21. The legislation was then favorably reported by the committee, as amended, by a recorded vote of 21-14. Similar legislation was introduced by Sen. Lieberman, S. 206.

**Administration Position:** “While the Administration appreciates that H.R. 471 would provide Federal support for improving public schools in the District of Columbia (D.C.), including expanding and improving high-quality D.C. public charter schools, the Administration opposes the creation or expansion of private school voucher programs that are authorized by this bill. The Federal Government should focus its attention and available resources on improving the quality of public schools for all students. Private school vouchers are not an effective way to improve student achievement. The Administration strongly opposes expanding the D.C. Opportunity Scholarship Program and opening it to new students. Rigorous evaluation over several years demonstrates that the D.C. program has not yielded improved student achievement by its scholarship recipients compared to other students in D.C. While the President's FY 2012 Budget requests funding to improve D.C. public schools and expand high-quality public charter schools, the Administration opposes targeting resources to help a small number of individuals attend private schools rather than creating access to great public schools for every child.”

**Cost to Taxpayers:** CBO estimates that H.R. 471 would cost \$300 million over the 2012-2016 period, assuming appropriation of the authorized amounts. Section 14 of this legislation authorizes \$60,000,000 annually for FY 2012 through FY 2016. These authorizations are to be divided equally between the Opportunity Scholarship Program, District of Columbia public schools, and District of Columbia public charter schools.

In contrast, the Consolidated Appropriations Act, H.R. 3288 in the 111<sup>th</sup> Congress, set total funding for these programs at \$75,400,000. Of that amount, the D.C. OSP was authorized \$13.2 million, D.C. public schools were authorized \$42.2 million, and D.C. public charter schools were authorized \$20.0 million.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No. Compared to FY 2010, H.R. 471 reduces authorizations for these programs by \$15.4 million.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** According to [House Report 112-036](#), H.R. 471 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Any costs incurred by the District of Columbia would be incurred voluntarily and would result from complying with conditions of assistance.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** According to [House Report 112-036](#), H.R. 471 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

**Constitutional Authority:** Speaker Boehner’s Constitutional Authority statement, submitted to the Congressional Record on January 26, 2011, states Congress has the authority to enact H.R. 471 according to “Clause 1 and Clause 17 of Section 8 of Article I of the Constitution of the United States grants the Congress the power to enact this law.”

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## **H.R. 872 – Reducing Regulatory Burdens Act of 2011 (Gibbs, R-OH)**

**Order of Business:** The legislation is scheduled to be considered on Wednesday, March 30, 2011, under suspension of the rules.

**Summary:** H.R. 872 would amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Federal Water Pollution Control Act, to eliminate the Environmental Protection Agency’s (EPA) ability to regulate certain pesticide permits, in or near navigable waters.

This legislation would amend FIFRA to clarify that pesticides that are registered do not need permits.

**Additional Information According to the Office of Rep. Gibbs:**

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is a regulatory statute that governs the sale and use of pesticides in the United States through the registration and labeling of such products. FIFRA prohibits the sale of any pesticide unless it is registered and labeled indicating approved uses and restrictions.

The objective of the Clean Water Act (CWA) is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. The primary mechanism for achieving this objective is a prohibition on the discharge of any pollutant without a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits specify limits on what pollutants may be discharged from point sources and in what amounts. These permits are the basic regulatory tool of the CWA.

In over 30 years of administering the CWA, the Environmental Protection Agency (EPA) had never required an NPDES permit for the application of a pesticide, when the pesticide is applied in a manner consistent with FIFRA and its regulations. While the CWA contains a provision granting citizen suits against those who violate permit conditions or those who discharge without an NPDES permit, FIFRA has no citizen suit provision. As a result, beginning in the late 1990s, a series of citizen lawsuits were filed by parties, contending that an NPDES permit is necessary when applying a FIFRA-regulated product over, into, or near water bodies.

EPA undertook a rulemaking to clarify and formalize the agency’s interpretation of the CWA as it applied to pesticide use. The Rule was finalized in November 2006 and was the culmination of a three year participatory rulemaking process that began with an interim interpretive statement in 2003 and involved two rounds of public comment. The

2006 EPA Rule codified EPA's long-standing interpretation that the application of chemical and biological pesticides for their intended purpose and in compliance with pesticide label restrictions is not a discharge of a "pollutant" under the CWA, and therefore, an NPDES permit is not required.

The Sixth Circuit ultimately vacated the rule on January 7, 2009 in *National Cotton Council v. EPA*. The Sixth Circuit held that, even though pesticides are comprehensively regulated under the FIFRA, NPDES permits under the Clean Water Act are also required for all pesticide applications in or near water. This decision undermines over 30 years of legal precedent and threatens to subject individual farmers and other pesticide users to costly, lengthy, and duplicative regulatory processes.

As a result of the concerns raised by stakeholders regarding the interrelationship between FIFRA and the CWA, and the concerns posed by the general permit, legislation is needed. The House Committees on Transportation and Infrastructure, and Agriculture, have sought technical assistance from the EPA to draft very narrow legislation targeted only at addressing the 6<sup>th</sup> Circuit's holding in *National Cotton Council*. It is intended to be consistent with EPA's final rule of November 27<sup>th</sup>, 2006. Effectively, the legislation drafted by EPA will return the state of pesticide regulation to the status quo – before the courts got involved.

**Committee Action:** H.R. 872 was introduced on March 2, 2011, and was referred to the House Transportation and Infrastructure Subcommittee on Water Resources and Environment. A full committee markup was held on March 16, 2011, and a manager's amendment by Rep. Schmidt was approved by voice vote. The legislation was then approved by a [roll call vote of 46-8](#). The legislation was also referred to the House Agriculture Committee, which took no public action.

**Administration Position:** No Statement of Administration Policy is provided.

**Cost to Taxpayers:** CBO estimates that enacting this legislation would have no significant impact on the federal budget.

**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.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

**Constitutional Authority:** Rep. Gibbs constitutional authority statement, available in the Congressional Record, states that Congress has the power to enact this legislation pursuant to Article I, Section 8, Clause 3 of the United States Constitution.

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