



Legislative Bulletin.....July 17, 2006

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Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: at least 1

Total Cost of Discretionary Authorizations: \$112 million in FY06, and \$60 million over five years.

Effect on Revenue: 0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 2

Number of Bills Without Committee Reports: 1

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 2

H.R. 4075 — Marine Mammal Protection Act Amendments of 2005 — *as introduced (Pombo, R-CA)*

Order of Business: The bill is scheduled for consideration on Monday, July 17, 2006, under a motion to suspend the rules and pass the bill.

Summary: H.R. 4075 permits marine mammal (any mammal that lives in the ocean) product to be exported from the U.S. if the product:

- “is legally possessed, and exported by, a citizen of the United States for noncommercial purposes in conjunction with travel outside the United States and the product is imported into the United States by the same person upon the termination of travel;
- “is legally possessed, and exported by, a person that is not a citizen of the United States for noncommercial purposes;
- “is legally possessed and exported as part of a cultural exchange, by an Indian, Aleut, or Eskimo residing in Alaska; or
- “is owned by a Native inhabitant of Russia, Canada, or Greenland and is exported for noncommercial purposes in conjunction with travel or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.”

Current marine mammal laws have placed a moratorium on the taking and importation of marine mammals and marine mammal products, except in certain specific cases. However, current statute provides for the *importation* of marine mammal product in certain cases, and this provision of H.R. 4075 outlines under what circumstances marine mammal product may be *exported*. According to the Resources Committee, marine mammal products are parts of any marine mammal that can be turned into something else; for instance, Alaska natives can make mammal parts into clothing or art.

H.R. 4075 provides that no marine mammal may be exported for the purpose of public display, unless the Secretary of Agriculture evaluates and verifies that the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit, which is offered under current law to certain individuals and entities. The bill also prohibits the exportation of marine mammals for the purpose of scientific research or enhancing the survival or recovery of a species or stock, unless the above conditions are met. Current law also prohibits these practices; however, this provision of H.R. 4075 explains the prohibitions in greater detail and adds the requirement that the Secretary of Agriculture to evaluate and verify each receiving entity or individual.

Current law requires the Secretary of Commerce to maintain an inventory of all marine mammals brought into the country by persons who have received a permit from the government to do so. H.R. 4075 directs the Secretaries of Commerce and the Interior to, within 12 months of enactment, conduct a review of this inventory, the use of the information in the inventory, and the costs, benefits, and issues associated with the development of an online inventory. The findings of this review are to be submitted to the appropriate congressional committees, in a report containing recommendations on whether the Secretary, or the private sector, should continue to maintain the inventory, how public access and access by federal agencies should be maintained, and several other recommendations.

H.R. 4075 prohibits anyone under U.S. jurisdiction from releasing any captive marine mammal unless specifically authorized under the Marine Mammal Protection Act.

H.R. 4075 increases civil and criminal penalties associated with improper marine mammal exports and imports. These penalties are as follows:

- \$20,000 civil penalty (up from \$10,000) for violating any provisions of the Marine Mammal Protection Act or any permit or regulation issued under the Act;
- \$30,000 fine (up from \$20,000) upon conviction, for each violation, or imprisonment for up to one year, or both; and
- \$35,000 (up from \$25,000) civil penalty for the unlawful taking of any marine mammal by any vessel subject to the jurisdiction of the United States.

H.R. 4075 reauthorizes and amends an existing marine mammal grant program, which provides grants to federal state agencies, as well as public and private institutions that are undertaking research in subjects relevant to the protection and conservation of marine mammals.

In addition, the bill reauthorizes and amends, a Department of Commerce fishing gear research program of which the purpose is to “reduce to the maximum extent practicable the incidental taking of marine mammals in connection fishing operations, and to make every practicable effort to develop, evaluate, and make available to owners and operators of fishing vessels such gear and fishing method improvements as quickly as possible.” The fishing gear program receives roughly \$148,000 in annual appropriations, but a specific funding level is not authorized in current law. H.R. 4075 also permits the Secretary of Commerce to establish a mini-grant program, in which federal assistance would be giving for developing, manufacturing, testing, or designing new types of fishing gear designed to reduce the deaths and injuries to marine mammals associated with fishing. This mini program exists in current law, but is rewritten by this Act.

H.R. 4075 directs the Secretary of Commerce to develop and implement a “take reduction plan” designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with commercial fisheries that have frequent or occasional incidental mortality and serious injury of marine mammals, unless the Secretary determines, after notice and opportunity for public comment, that the level of fishery related mortality and serious injury is having a negligible impact on that stock.

H.R. 4075 reauthorizes and amends a current program on the nonlethal removal and control of nuisance pinnipeds. The program is to include a review of measures that have been taken to effect such removal and control, the effectiveness of these measures, and the development of new technologies to deter nuisance pinnipeds. The nonlethal removal of pinnipeds program receives roughly \$10 million in annual appropriations, but a specific funding level is not authorized in current law. Pinnipeds are “marine mammals characterized by fur/hair, four limbs modified for swimming (flippers), breath held while diving, generally coming ashore in colonies for reproduction. [This] includes harbor seals, sea lions, walruses, elephant seals, and other seals.” (www.projectpacific.org/glossary.html)

In addition, the bill reauthorizes a grant program for the purpose of making grants to state and local governments and regional agencies to carry out qualified nonlethal control of nuisance pinnipeds projects. The federal share for these projects is limited to 75% of the total cost.

H.R. 4075 reauthorizes at \$5 million each year (current authorization), the John H. Prescott Marine Mammal Rescue Assistance Grant Program, which provides grants to eligible stranding network participants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes. Under current law, \$4 million of the annual authorizations is made available to the Department of Commerce, while \$1 million is made available to the Department of the Interior. This legislation would increase the Department of Commerce’s allotment to \$6 million.

H.R. 4075 also reauthorizes, at \$125,000 each year (down from \$500,000), the Marine Mammal Health and Stranding Response Program, which facilitates the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild. The current authorization for this program expired in 1993, and H.R. 4075 reauthorizes the program for fiscal years 2006 through 2010.

Committee Action: H.R. 4075 was introduced on October 18, 2005 and was referred to the Committee on Resources, which took no official action.

Cost to Taxpayers: There is no CBO cost estimate available for this bill. However, according to the Resources Committee, the text of H.R. 2130 is almost identical to H.R. 4075, and the CBO score for this bill is being used in place. According to CBO, H.R. 2130 will cost \$12 million in FY06 and \$60 million over five years.

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: There is no committee report available citing constitutional authority. However, 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.” *[emphasis added]*

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**H.R. 3085 — To amend the National Trails System Act to update the feasibility and suitability study originally prepared for the Trail of Tears National Historic Trail and provide for the inclusion of new trail segments, land components, and campgrounds associated with that trail, and for other purposes — *as amended*
(Wamp, R-TN)**

Order of Business: The bill is scheduled for consideration on Monday, July 17, 2006, under a motion to suspend the rules and pass the bill, as amended.

Summary: H.R. 3085 would direct the Secretary of the Interior to complete the feasibility study on adding to the Trail of Tears National Historic Trail the Bengie and Bell routes; the “land components of the designated water routes in Alabama, Arkansas, Oklahoma, and Tennessee;” “routes from collection forts in Alabama, Georgia, North Carolina, and Tennessee to emigration depots;” and the campgrounds located along the previously listed routes within 6 months of passage of the bill.

Additional Information: According to the National Park Service’s website, the Trail of Tears National Historic Trail commemorates the negative effects of the Indian Removal Act of 1830, which mandated relocating all Native American Indian tribes east of the Mississippi River to lands west of the Mississippi. Currently, the Historic Trail includes 2,200 miles of routes over nine states. (source: <http://www.nps.gov/trte/>)

According to the sponsor’s office, the Park Service has not completed the process to make a recommendation to Congress, and the bill is intended to direct the process to be completed. The Park Services has stated it needs six months to complete the process.

Additionally, the sponsor's office has asserted that even if the lands were designated a part of the National Historic Trail of Tears, the lands would not be under federal jurisdiction. The designation would simply allow historical markers to be placed along the routes.

Committee Action: H.R. 3085 was introduced on June 28, 2005, and referred to the Committee on Resources Subcommittee on National Parks. The bill was marked-up by the full committee and was reported to the House, as amended, by unanimous consent on June 21, 2006.

Cost to Taxpayers: CBO estimates that the bill would cost less than \$100,000 assuming the availability of appropriated funds.

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: Committee Report 109-549 cites constitutional authority for this legislation in Article 4, Section 3, and Clause 2 of the Constitution, the property clause.

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H.R. 4376 — Springfield Armory National Historic Site, Massachusetts Act of 2005 — *as amended* (Neal, D-MA)

Order of Business: The bill is scheduled for consideration on Monday, July 17, 2006, under a motion to suspend the rules and pass the bill, as amended.

Note: Under House Republican Conference Rules, legislation creating a new program is not to be considered by the House on the Suspension Calendar. Although the Conference rule may be waived, H.R. 4376 has been deemed *not* to create a new federal program, despite evidence to the contrary (see additional information below), and a waiver was therefore not sought by the sponsor nor granted by Leadership.

Summary: H.R. 4376 allows the Secretary of the Interior, acting through the National Park Service (NPS), to enter into a cooperative agreement with the Commonwealth of Massachusetts on behalf of Springfield Technical Community College (STCC) to provide financial assistance to that college for the purpose of maintaining, preserving, renovating, and rehabilitating any historic structures within the Springfield Armory National Historic Site, including historic structures located within the Preservation Control Area.

The bill lists a number of findings regarding the Springfield Armory, including the following:

- “The Site commemorates the role of the Springfield Armory in the Nation's military history, a role that the Armory served for almost 200 years;
- “In 1968 the Armory was deactivated as a military installation and in 1974 Congress established the Springfield Armory National Historic Site. A portion of the Site is administered by the National Park Service. The remainder of the Springfield Armory National Historic Site, known as the ‘Preservation Control Area’, is owned and administered by the Commonwealth of Massachusetts on behalf of Springfield Technical Community College; and

- “The Preservation Control Area contains several historic buildings that are in a state of disrepair. The deteriorating condition of these historic buildings threatens to undermine the character and integrity of the Springfield Armory National Historic Site and their repair, renovation, maintenance and rehabilitation is essential to the continued preservation of the Site and its museum and collections.”

Additional Information: According to Committee Report 109-559, “In 1978, Congress established the Springfield Armory National Historic Site to preserve the Nation’s first national armory and the center of military small arms manufacturing from 1794 to 1968. Today, the National Park Service manages the Armory Museum and other historical structures while Springfield Technical Community College owns and manages a number of other important historical structures in the ‘Preservation Control Area’ within the Park.” Although a cooperative agreement between the NPS and Springfield Technical Community College currently exists, the agreement does not allow for federal financial assistance to the college for the purpose of preserving the historic structures. However, H.R. 4376 allows for a new agreement to be entered into, which would provide for federal assistance. **This new federal funding stream to a local project in Massachusetts is considered by RSC staff to be essentially a new program, because the bill allows the Secretary to negate a previous agreement that does not allow for federal funding, and to enact a new agreement, which does allow for federal funding.**

Committee Action: H.R. 4376 was introduced on November 17, 2005 and was referred to the Committee on Resources, which considered it, held a mark-up, and reported the bill, as amended, by unanimous consent on July 13, 2006.

Cost to Taxpayers: According to CBO, “The costs of implementing H.R. 4376 are uncertain because the NPS has not completed formal engineering assessments of the STCC buildings... ..However, based on information provided by the NPS and the STCC, CBO estimates that total costs to restore more than 20 historic buildings and related structures eligible for financial assistance under the bill would be between \$50 million and \$100 million. We expect that the federal government would pay between 75 percent and 100 percent of such costs over the next five years, including \$10 million to stabilize the exterior of the buildings and about \$25 million to restore the largest structure, the Caserne building.”

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill creates a new cooperative agreement allowing for federal funding, where funding was previously not allowed.

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

Constitutional Authority: The Committee finds constitutional authority in Article IV, Section 3, Clause 2 of the Constitution (the congressional power to make laws relating to federal land).

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H.R. 3729 — Federal Judiciary Emergency Tolling Act of 2005 — *as reported*
(Sensenbrenner, R-WI)

Order of Business: The bill is scheduled for consideration on Monday, July 17, 2006, under a motion to suspend the rules and pass the bill.

Summary: H.R. 3729 would allow courts to delay deadlines in cases when the court is affected by a natural disaster or emergency situation, for example, the New Orleans courts during Hurricanes Katrina and Rita. The specific provisions of the bill are as follows:

Tolling in District Courts. H.R. 3729 would allow a chief judge of a district court to delay deadlines imposed by federal or state law when natural disasters or other emergency situations close the courts or make compliance with deadlines impracticable. This authority would not apply to criminal statutes of limitation, any state statute of limitation on an action arising from state law, or if the extension is inconsistent with controlling state law.

In the event the chief judge is unavailable, the authority falls first to the senior judge in regular active service, then to the chief judge of the circuit.

Criminal Cases. H.R. 3729 would not authorize the suspension of habeas corpus, which is “a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody.” (source: <http://www.lectlaw.com/def/h001.htm>) In criminal cases, the judges extending deadlines must consider the United States’ ability to prosecute, as well as the defendants’ ability to prepare their defenses.

Tolling in Courts of Appeals. H.R. 3729 would, in appellate courts, give the chief judge the authority to delay deadlines in the event of a natural disaster or emergency situation. If the chief judge is unavailable, the senior judge in regular active service has the authority to delay deadlines. Habeas corpus is unaffected in appellate courts as in district courts.

Issuance of Orders. The bill would permit an Attorney General, or his designee, to request tolling of a deadline. In addition, a judge empowered by the bill may delay a deadline of his own accord.

Duration of Orders. The bill would provide that delays are to last no longer than 14 days unless the chief judge of a district or circuit seeks the consent of the judicial council of the circuit to issue additional tolling orders.

Notice. H.R. 3729 would require that tolling orders be “reasonably publicized,” including on the websites of the affected courts, and on the federal judiciary website. Additionally, the Director of the Administrative Office of the U.S. Courts would be required to notify both the House and Senate Judiciary Committees.

If the delay is fourteen days or more, the court issuing the order would submit a brief report to the House and Senate Judiciary Committees within 180 days after the delay ends. The report should include the reason for issuing the order(s); the duration of the order(s); the effect of the order(s) on litigants; and the costs to the judiciary resulting from the order(s).

Committee Action: H.R. 3729 was introduced on September 13, 2005, and referred to the Committee on the Judiciary. The bill was marked-up November 9, 2005, and ordered reported to the House by voice vote.

Cost to Taxpayers: CBO estimates that enacting H.R. 3729 would neither have a significant impact on the budget, nor affect direct spending or revenues.

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: Committee Report 109-371 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*].

The Committee could have cited Article 1, Section, 8, clause 9, giving Congress the enumerated power to “constitute Tribunals inferior to the supreme Court,” and/or Article 1, Section 8, clause 18, the necessary and proper clause.

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H.R. 1871 — Volunteer Pilot Organization Protection Act of 2006 — *as reported* (Drake, R-VA)

Order of Business: The bill is scheduled for consideration on Monday, July 17, 2006, under a motion to suspend the rules and pass the bill.

Summary: H.R. 1871 would amend current law to limit liability for volunteer pilots and organizations that dedicate time to public service.

Findings: H.R. 1871 lists the following findings:

- “Scores of public benefit nonprofit volunteer pilot organizations provide valuable services to communities and individuals;
- “In calendar year 2001, nonprofit volunteer pilot organizations provided long-distance, no-cost transportation for over 30,000 people in times of special need;
- “Such organizations are no longer able to reasonably purchase non-owned aircraft liability insurance to provide liability protection, and thus face a highly detrimental liability risk; and
- “Such organizations have supported the interests of homeland security by providing volunteer pilot services at times of national emergency.”

The bill would exempt pilots and volunteer organizations from liability for harm caused by a specific act, or the omission of an action by the volunteer on behalf of the organization, if the pilot was flying in furtherance of the purpose of the organization and was operating an aircraft for which the volunteer

was properly licensed and insured. The pilot or organization would still be liable if the acts in question are classified as the federal crime of terrorism or domestic terrorism.

The exemption would also cover “referring agencies,” including, “any nonprofit organization that provides disaster relief services that place staff, volunteers, evacuees, goods, supplies, or cargo on aircraft flights being coordinated by volunteer pilot organizations in circumstances of disaster response and relief.”

H.R. 1871 directs the Attorney General (AG) to study the availability of insurance to non-profit volunteer pilot organizations that fly for public benefit. The AG is required to submit a report and recommendations to Congress outlining findings on the ability of such organizations to obtain insurance, and if an inability to obtain insurance has an impact on operations.

Committee Action: H.R. 1871 was introduced on April 27, 2005, and referred to the Committee on the Judiciary. The bill was marked-up, and ordered to be reported to the House by voice vote on March 2, 2006

Cost to Taxpayers: CBO estimates that enacting H.R. 1871 would neither have a significant impact on the budget, nor affect direct spending or revenues.

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?: H.R. 1871 contains an intergovernmental mandate because it would preempt state tort laws by exempting volunteer pilots and organizations from liability for injuries caused during the course of volunteer activities. CBO estimates that the resulting costs, if any, would be insignificant, and would be well below the threshold established in UMRA.

Constitutional Authority: Committee Report 109-349 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*].

The Committee could have cited the Commerce Clause in Article 1, Section 8, Clause 3, giving Congress the enumerated power to regulate commerce between the states; and the necessary and proper clause in Article 1, Section 8, Clause 18, giving Congress the power to make all laws necessary and proper in executing the powers enumerated in Article 1, Section 8.

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