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**Legislative Bulletin.....May 6, 2009**

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**H.Res. 391 – Recognizing May as “National Foster Care Month” and acknowledging that the House of Representatives should continue to work to improve the Nation’s foster care system (McDermott, D-WA)**

**Order of Business:** H.Res. 391 is scheduled to be considered on Wednesday, May 6, 2009 under a motion to suspend the rules and pass the resolution.

**Summary:** H.Res. 391 resolves that the House of Representatives:

- “Supports the designation of a ‘National Foster Care Month’;
- “Acknowledges the needs of children in the foster care system;
- “Honors the commitment and dedication of those individuals who work tirelessly to provide assistance and services to children in the foster care system; and
- “Recognizes the need to continue work to improve outcomes of all children in the foster care system through the title IV program in the Social Security Act and other programs that are designed to help children in the foster care system reunite with their biological parents and, when children are unable to return to their biological parents, to find them a permanent, safe, and loving home.”

The resolution lists a new of findings including:

- “On average, the Nation's foster care system provides for more than a half a million children each day who are unable to live safely with their biological parents;
- “National Foster Care Month provides an opportunity to recognize the important role that foster care parents, workers, and advocates have in the lives of children in the foster care system throughout the United States;
- “293,000 children entered the foster care system during fiscal year 2007;
- “In fiscal year 2007, there was an average of 131,000 children in the foster care system each day who were waiting to be adopted;
- “While a majority of children in the foster care system have the goal of being reunited with their biological parents, more than 23 percent of children who were in the foster care system on the last day of fiscal year 2007 were seeking placement through the adoption process;
- “The overall reduction in the number of children in the foster care system in the last decade does not reflect a decline in the level of Federal assistance necessary to assist those living in foster care and the dedicated men and women in the child welfare workforce;
- “The number of children ‘aging out’ of the foster care system without finding a permanent family increased to an all-time high of nearly 28,000 in fiscal year 2007;
- “Children ‘aging out’ of the foster care system lack the security of a biological or adoptive family to fall back on when struggling to secure affordable housing, obtain health insurance, pursue higher education, and acquire adequate employment;
- “The foster care system is intended to be a temporary solution, however, on average, children remain in the system for at least 2 years;
- “The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) provided new investments and services to improve the outcomes of children and families in the foster care system.”

**Committee Action:** H.Res. 391 was introduced on April 30, 2009 and referred to the House Ways and Means Committee, which took no official action.

**Cost to Taxpayers:** The resolution authorizes no additional expenditures.

**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?:** A committee reporting citing compliance with the rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available. However, the resolution does not contain any earmarks.

**Constitutional Authority:** A committee report citing constitutional authority is unavailable.

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## **H.Res. 401 – Honoring the life and recognizing the far-reaching accomplishments of the Honorable Jack Kemp Jr. (Boehner, R-OH)**

**Order of Business:** H.Res. 401 is scheduled to be considered on Wednesday, May 6, 2009 under a motion to suspend the rules and pass the resolution.

**Summary:** H.Res. 401 resolves that the House of Representatives:

- “Expresses its appreciation for the profound dedication and public service of Jack Kemp;
- “Tenders its deep sympathy to his wife, Joanne, to his children, Jeffrey, Jennifer, Judith, and James, and to the entire family, friends, and former staff of Jack Kemp; and
- “Directs the Clerk of the House to transmit a copy of this resolution to the family of Jack Kemp.”

The resolution lists a new of findings including:

- “The Congress is greatly saddened by the passing of Jack Kemp on Saturday, May 2, 2009;
- “Jack Kemp's commitment to public service was an inspiration to millions of Americans;
- “Jack Kemp had an unwavering belief in the American dream, saying ‘There are no limits to our future if we don't put limits on our people’;
- “Prior to his election to Congress, Jack Kemp was a champion on the professional football field, leading the Buffalo Bills to 2 American Football League championships in 1964 and 1965 and earning Most Valuable Player honors in 1965, and was named as one of the top 50 quarterbacks of all time by the Sporting News in 2005;
- “Jack Kemp was elected to Congress in 1970 and honorably served the people of western New York as a Congressman for 18 years, during which time he served as Chairman of the House Republican Conference from 1981 through 1987 **and was a member of the Republican Study Committee;**
- “During his time in Congress, Jack Kemp pioneered innovative solutions for the American people, including the Kemp-Roth provisions of President Ronald Reagan's Economic Recovery Tax Act of 1981, which provided tax relief to the American people by reducing marginal income tax rates by 25 percent over 3 years;

- “Jack Kemp served for 4 years as Secretary of Housing and Urban Development and was a champion of efforts to encourage entrepreneurship and job creation in urban America;
- “Jack Kemp received the nomination of the Republican Party for Vice President in 1996;
- “At the conclusion of his service in the United States Government, Jack Kemp never ceased in his efforts to make the American dream a reality for everyone, including his efforts to cofound Empower America, a public policy and advocacy organization, and the Foundation for the Defense of Democracies, a nonpartisan think tank;
- “As Chairman of the National Commission on Economic Growth and Tax Reform, Jack Kemp wisely advocated for reform and simplification of the United States tax code that would unleash the American entrepreneurial spirit, increase capital growth, and expand access to capital for all people;
- “Jack Kemp believed that `real leadership is not just seeing the realities of what we are temporarily faced with, but seeing the possibilities and potential that can be realized by lifting up people's vision of what they can be'; and
- “While Jack Kemp will be remembered as a honorable and cherished public servant, he will more importantly be remembered by his wife as a loving husband, by his children as a wonderful father, and by his grandchildren as a doting grandparent.”

**Committee Action:** H.Res. 401 was introduced on May 5, 2009 and referred to the House Administration Committee, which took no official action.

**Cost to Taxpayers:** The resolution authorizes no additional expenditures.

**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?:** A committee reporting citing compliance with the rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available. However, the resolution does not contain any earmarks.

**Constitutional Authority:** A committee report citing constitutional authority is unavailable.

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**H.Con.Res. 80 – Authorizing the use of Emancipation Hall in the CVC  
for an event to celebrate the birthday of King Kamehameha  
(Hirono, D-HI)**

**Order of Business:** H.Con.Res 80 is scheduled to be considered on Wednesday, May 6, 2009 under a motion to suspend the rules and pass the resolution.

**Summary:** H.Con.Res. 80 resolves that the House of Representatives (the Senate concurring) authorizes the use Emancipation Hall in the Capitol Visitor Center for an event on June 7, 2009, to celebrate the birthday of King Kamehameha.

**Committee Action:** H.Con.Res. 80 was introduced on March 24, 2009 and referred to the House Administration Committee, which took no official action.

**Cost to Taxpayers:** The resolution authorizes no additional expenditures.

**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?:** A committee reporting citing compliance with the rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available. However, the resolution does not contain any earmarks.

**Constitutional Authority:** A committee report citing constitutional authority is unavailable.

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## **H.R. 1107 – To enact certain laws relating to public contracts as title 41, United States Code, “Public Contracts” (*Conyers, D-MI*)**

**Order of Business:** H.R. 1107 is scheduled to be considered on Wednesday, May 6, 2009 under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 1107 revises and restates certain laws relating to public contracts and re-enacts those laws as title 41, US Code. In restating existing law, the bill consolidates various provisions of law which have been enacted over a period of many years. The bill reorganizes the language, changes style and terminology, modernizes obsolete language and corrects drafting errors. According to the House Judiciary Committee Minority staff, these changes are purely technical in nature and have no substantive effect.

**Committee Action:** H.R. 1107 was introduced on February 23, 2009 and referred to the House Judiciary Committee. The bill marked up on March 18, 2009 and was reported out of Committee on March 23, 2009 by voice vote.

**Cost to Taxpayers:** According to CBO, H.R. 1107 would have no significant impact on the federal budget and would not 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.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The committee report does not contain a statement regarding earmarks, limited tax benefits and limited tariff benefits.

**Constitutional Authority:** The Committee Report cites Authority from Article I, Section 8, but does not 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]*

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## **H.Res. 14 – Recognizing the importance of the Border Patrol in combating human smuggling (Issa, R-CA)**

**Order of Business:** H.Res. 14 is scheduled to be considered on Wednesday, May 6, 2009 under a motion to suspend the rules and pass the resolution.

**Summary:** H.Res. 14 resolves that the House of Representatives:

- “Reaffirms its support for the role and importance of the Border Patrol in combating human smuggling; and
- “Commends the Department of Justice for increasing the rate of human smuggler prosecutions and urges the Department of Justice to continue prosecuting human smugglers at a rate that will help eliminate the scourge of human smuggling.”

The resolution lists a new of findings including:

- “Human smuggling continues to threaten the United States as well as individuals in transport;
- “Human smuggling introduces numerous violent criminals to neighborhoods and communities in the United States;
- “Human smuggling exposes the United States to further acts of terrorism by subverting the authority of and safety provided by United States Customs and Border Protection;
- “Individuals voluntarily being smuggled are exposed to tragic and dangerous conditions, many times resulting in their injury or death;

- “Countless individuals are abducted and smuggled against their will continuing the grotesque practice of human slavery;
- “Human smuggling is often conducted by organized crime and exposes Federal agents to increased danger in their enforcement efforts;
- “United States Customs and Border Protection has, in the past, arrested many human smugglers only to see them freed by the Federal Government without prosecution;
- “Many of these same human smugglers are repeatedly arrested by United States Customs and Border Protection;
- “Such repeated encounters are extremely demoralizing to the Border Patrol in a time when the American public is putting tremendous pressure on the Border Patrol to do more to stop illegal border crossings; and
- “Federal prosecutions of human smugglers have increased in recent months resulting in decreased repeat offenses and arrests and uplifted Border Patrol morale.”

**Committee Action:** H.Res. 14 was introduced on January 6, 2009 and referred to the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and the Homeland Security Committee, which took no official action.

**Cost to Taxpayers:** The resolution authorizes no additional expenditures.

**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?:** A committee reporting citing compliance with the rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available. However, the resolution does not contain any earmarks.

**Constitutional Authority:** A committee report citing constitutional authority is unavailable.

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## **S. 386 – Fraud Enforcement and Recovery Act of 2009, as amended (*Sen. Leahy, D-VT*)**

**\*While the majority of the underlying bill remains the same, some changes were recently made to S. 386. Please note that this bill no longer includes the creation of a Senate Select Committee on Investigation of the Economic Crisis. Please also note an addition to the conservative concern.**

**Order of Business:** S. 386 is scheduled to be considered on Wednesday, May 6, 2009 under a motion to suspend the rules and pass the bill. The bill passed the Senate by a vote of [92-4](#) on April 28, 2009.

**Summary:** S. 386 expands the definition of financial institution in the federal criminal fraud statute (Chapter 1, title 18) to include “mortgage lending businesses.” A “mortgage lending business” is defined as an organization which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries of such organizations, and whose activities affect interstate or foreign commerce.

The bill amends the False Statements in Mortgage Applications statute (Section 1014 of title 18) to cover mortgage lending businesses affecting interstate or foreign commerce or any person or entity involved in federally related mortgage loans.

The bill amends the criminal fraud statute to cover any grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of federal assistance, including through the Troubled Assets Relief Program, the economic stimulus recovery or rescue plan provided by the Government, or the Government’s purchase of any troubled asset as defined in the Emergency Economic Stabilization Act of 2008.

The bill amends the federal money laundering statute to define proceeds of specified unlawful activity. “Proceeds” is defined in the bill to mean any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity. Current law limits the proceeds of unlawful activity to profits from the unlawful activity.

Lastly, the bill amends the federal international money laundering statute to cover tax evasion.

**Authorizations.** The bill authorizes \$165,000,000 for each year from FY 2010 to FY 2011 for investigations, prosecutions, and civil proceedings involving Federal assistance programs and financial institutions.

- FBI – \$75,000,000 for FY 2010 and \$65,000,000 for FY 2011.
- US Attorneys – \$50,000,000
- Criminal division of the Department of Justice – a \$20,000,000
- Civil division of the Department of Justice – \$15,000,000
- Tax division of the Department of Justice – \$5,000,000
- US Postal Service – \$30,000,000 for each year from FY 2010-FY 2011
- Inspector General for the Department of Housing and Urban Development – \$30,000,000 for each year from FY 2010-FY 2011.
- US Secret Service – \$20,000,000 for each year from FY 2010-FY 2011
- Securities and Exchange Commission – \$20,000,000 for each year from FY 2010-FY 2011 for investigations and enforcement proceedings.

- Securities and Exchange Commission – \$1,000,000 for each year from FY 2010-FY 2011 for salaries and expenses.

The funds must be used to investigate possible criminal, civil, or administrative violations and for prosecuting criminal, civil, or administrative proceedings involving financial crimes and crimes against Federal assistance programs, including mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs.

Following the expenditure of all the funds, the most of the departments listed above must submit a joint report to Congress identifying the amounts expended and the amounts recovered as a result of criminal or civil restitution, fines, penalties, and other monetary recoveries due to this Act.

**Amending the False Claims Act (FCA).** S. 386 amends the FCA to overturn some recent court decisions that narrowed the reach of the FCA. The FCA allows an individual with knowledge of fraud against the Government, to file a lawsuit on behalf of the Government against the person who committed the fraud. The bill makes the following clarifications to the FCA to include any person who:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
- Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property;
- Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government.

The individuals above are liable for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages which the Government sustains because of the act of that individual. Reduced damages are possible if the court find that the individual did certain things, such as cooperate with an investigation of a violation. Any person in violation of this act is liable for the costs of the civil action brought to recover the damages. Liability does not apply to federal employment compensation or income subsidies (i.e. Social Security benefits).

**Establishment of a Financial Markets Commission.** The bill establishes in the legislative branch the Financial Markets Commission to examine all causes, domestic and global, of the current financial and economic crisis in the US. The Commission is composed of ten members appointed by various Senators and Congressmen from the Majority and the Minority (*six chosen by the Majority and four chosen by the Minority*). The Commission's functions are to examine the causes of the current crisis including the role, if any, of:

- fraud and abuse in the financial sector;
- federal and state financial regulators, including the extent to which they enforced, or failed to enforce statutory, regulatory, or supervisory requirements;
- the global imbalance of savings, international capital flows, and fiscal imbalances of various governments;
- monetary policy and the availability and terms of credit;
- accounting practices, including, mark-to-market and fair value rules, and treatment of off-balance sheet vehicles;
- tax treatment of financial products and investments;
- capital requirements and regulations on leverage and liquidity, including the capital structures of regulated and non-regulated financial entities;
- credit rating agencies;
- lending practices and securitization, including the originate-to-distribute model for extending credit and transferring risk;
- affiliations between insured depository institutions and securities, insurance, and other types of nonbanking companies;
- market participant expectations that certain institutions were 'too-big-to-fail';
- corporate governance, including the impact of company conversions from partnerships to corporations;
- compensation structures;
- changes in compensation for employees of financial companies, as compared to compensation for others with similar skill sets in the labor market;
- federal housing policy;
- derivatives and unregulated financial products and practices;
- short-selling;
- financial institution reliance on numerical models, including risk models and credit ratings;
- the legal and regulatory structure governing financial institutions;
- the legal and regulatory structure governing investor protection;
- financial institutions and government-sponsored enterprises;
- the reliance on credit ratings by Federal financial regulators, and the use of credit ratings in financial regulation; and
- the quality of due diligence undertaken by financial institutions.

The Commission will also be charged with:

- Examining the causes of the collapse of each major financial institution that failed or was likely to have failed if not for the receipt of Government assistance between August 2007 and April 2009.
- Referring to the Attorney General any person that they find may have violated the law;
- Reviewing the record of the Senate Committee on Banking, Housing and Urban Development and the House Financial Service Committee and other Committees, the GAO and other legislative pans with respect to the current financial and economic crisis.

The Commission may also hold hearings and require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of documents.

*Funding of the Commission.* The Secretary of the Treasury shall provide, out of money that was previously appropriated, \$5,000,000 to the Commission.

*Report of the Commission.* On December 15, 2010, the Commission shall submit to the President and to Congress a report containing the findings and conclusions of the Commission on the causes of the current financial and economic crisis in the US. Not later than 120 days after the date of submission of the final reports, the chairperson of the Commission shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the report. No more than 60 days after the report is given to Congress, the Commission will terminate.

**Possible Conservative Concerns:**

- Some conservatives might be concerned that this bill, which will cost \$490 million over four years, is being considered on the suspension calendar without the opportunity for amendments.
- The Heritage Foundation and the National Association of Criminal Defense Lawyers state in their February 11, 2009 [letter to Senators Leahy and Specter](#), part of S. 386 is “redundant and risks overreaching.” They state that Congress “has already enacted all of the tools prosecutors need (and far more) to prosecute any criminal activity associated with the subprime market or the current financial crisis.”
- The letter also argues that the bill is an “inappropriate expansion of federal authority, at the expense of state and local law-enforcement operations.”
- Many Republicans may be concerned that the new bipartisan Commission under-represents the minority. The Commission will be split 6 to 4 (6 chosen by the Majority and 4 chosen by the Minority) which will give the Majority more of a say on how the Commission is to be run.

**Committee Action:** S. 386 was introduced on February 5, 2009 and referred to the Senate Judiciary Committee. The bill was reported out of the Senate Judiciary

Committee by voice vote, on March 5, 2009 with an amendment in the nature of a substitute.

**Cost to Taxpayers:** According to CBO, S. 386 would cost \$490 million over the 2010-2014 period.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes. The bill creates new federal crimes. According to CBO, the bill “broadens coverage of current laws against financial crimes, including fraud affecting mortgages, securities, and federal assistance and relief programs.”

**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?:** No committee report citing compliance with House rules on earmarks/limited tax benefits/limited tariff benefits is available.

**Constitutional Authority:** No committee report citing constitutional authority is available.

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