

Counsel, the Civil Rights Division, the Land and Natural Resources Division, the Civil Division, and Interpol.

The Committee recommendation includes language which allows up to \$20,000 for expenses of collecting evidence, \$6,000,000 for litigation support contracts, and not to exceed \$35,213,000 for office automation systems, to remain available until expended. In addition, the Committee has included language allowing the Attorney General to accept gifts for the purpose of hosting the Interpol American Regional Conference, allowing Interpol to use \$1,000 for official reception and representation expenses, and allowing the Attorney General to set fees to cover costs of the Foreign Agents Registration Act.

#### NATIONAL CHILDHOOD VACCINE INJURY ACT

The Committee recommendation provides for the reimbursement of \$2,000,000 for fiscal year 1993 from the special fund for the Justice Department expenses associated with litigating cases under the National Childhood Vaccine Injury Act of 1986.

#### OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION RELATED UNFAIR EMPLOYMENT PRACTICES

The Committee recommendation assumes that up to \$3,000,000 of balances remaining in the immigration legalization fund in fiscal year 1993 will be used by the Office of Special Counsel for grants to community-based organizations for outreach programs, as authorized in Public Law 102-140.

#### ADA TECHNICAL ASSISTANCE

The Committee is concerned over reports of inadequate levels of technical assistance to employers and businesses attempting to comply with the Americans with Disabilities Act [ADA]. The Committee believes that fostering voluntary compliance through an understanding of the act's provisions is critical to the successful implementation of the ADA. While budget constraints prevent the Committee from approving the requested increase of \$2,600,000 for technical assistance and public access litigation cases, the Committee urges the Attorney General to consider diverting base resources to expand these technical assistance efforts believing they will be cost effective in the long run.

#### ANTITRUST DIVISION

Appropriations, 1992 .....	\$44,994,000
Budget estimate, 1993 .....	54,127,000
Committee recommendation .....	44,626,000

The Committee recommends \$44,626,000 for the Antitrust Division, a decrease of \$368,000 below the 1992 appropriations enacted to date and \$9,501,000 below the budget request. The Committee recommendation provides for agency adjustments to base but does not include funding to support program enhancements.

The Committee notes, however, that language has been included under the Federal Trade Commission increasing the filing fee from \$20,000 to \$25,000 for persons acquiring voting securities or assets

who are required to file premerger notification under the Rodino Antitrust Improvements Act of 1976. This will result in filing fees which approximate the \$10,000,000 assumed in the 1992 budget request, \$13,500,000 assumed in fiscal year 1993, and \$16,900,000 in anticipated fee collection. The total of \$44,626,000, a total of \$6,000,000 to support the Antitrust Division in fiscal year 1993.

The Committee recommendation also includes language which allows \$16,900,000 in fees be retained, and \$16,900,000 available until expended in fiscal year 1993.

#### U.S. ATTORNEYS

##### SALARIES AND EXPENSES

Appropriations, 1992 .....	
Budget estimate, 1993 .....	
Committee recommendation .....	

The Committee recommends an appropriate level of activities of U.S. attorneys. The recommendation is more than the 1992 appropriation to date but less than the budget request. The Committee recommends adjustments to base less \$5,700,000 which would support a separate Weed and Seed Program for general administration. This \$5,700,000 would support Weed and Seed Program activities through fiscal year 1992.

The Committee recommendation fully supports the program increases totaling \$39,006,000 to support additional assistant U.S. attorneys to support investigation and prosecution of violent and white collar crime.

The primary mission of the U.S. attorneys is the prosecution of being the principal litigators of the federal government. This mission is accomplished by 94 district offices. These offices are located in Puerto Rico, the Virgin Islands, Guam, American Samoa, and the U.S. attorneys' appropriation for these programs are: criminal litigation, organized crime drug enforcement, and administration.

The Committee has included language which allows U.S. attorneys to enter into intergovernmental agreements for up to \$2,500,000 to be used for debt collection, \$8,000 for official reception and representation, up to \$10,000,000 for automated litigation, and \$22,400,000 of the funds transferred to the Department of Justice out the relocation of the Legal Education Center.

#### U.S. TRUSTEE SYSTEM

Appropriations, 1992 .....	
Budget estimate, 1993 .....	
Committee recommendation .....	



The conference agreement provides for requested adjustments to base, less a general reduction of \$3,766,000. The conference agreement allows for a program enhancement of \$2,500,000 to continue implementation of the Americans with Disabilities Act (ADA).

The conferees encourage the Department, when considering accessibility requirements for automated teller machines (ATMs) under the ADA, to take into account the fact that these sophisticated electronic systems are more difficult to modify and design than other vending machines because of their reliance on computers and their special security considerations.

*Legal Activities Office Automation (LAOA).*—The conferees agree with the establishment of a unitary procurement to replace the three Department of Justice legal activities' office automation systems. The conferees understand that there will be administrative costs (including personnel) associated with this unitary procurement effort, and that LAOA funding will be used for this purpose.

*Payments to Spouses/Parents of Japanese-American Internees.*—The conferees understand that legislation has been sent to the President which makes spouses and parents of individuals of Japanese ancestry interned during World War II eligible for payments under the Civil Liberties Act of 1988. Upon enactment of this legislation, the Committees on Appropriations will consider a reprogramming by the Department to make funds available for this purpose.

Amendment No. 20: Provides language proposed by the Senate, but not in the House bill, which allows the Attorney General to establish and collect fees to recover costs associated with the registration of foreign agents.

Amendment No. 21: Appropriates \$2,000,000 for vaccine injury compensation expenses as proposed by the Senate, instead of \$1,860,000 as proposed by the House.

#### SALARIES AND EXPENSES, ANTITRUST DIVISION

Amendment No. 22: The conference agreement provides total new budget (obligational) authority of \$61,526,000 as proposed by the Senate, instead of \$58,494,000 as proposed by the House. The agreement also offsets this new budget through fee collections of \$16,900,000 for a final appropriation of \$44,626,000 as proposed by the Senate, instead as fee collections of \$13,500,000 for a final appropriation of \$44,994,000 as proposed by the House. Lastly, the agreement makes any fees collected in excess of \$16,900,000 in fiscal year 1993 not available until fiscal year 1994 as proposed by the Senate, instead of \$13,500,000 as proposed by the House.

The conference agreement provides for the full base request, but no program growth for the Antitrust Division. The language included in the agreement protects the Antitrust Division in the event they fail to fully collect anticipated fees of \$16,900,000. Regardless of actual fee collections, the Antitrust Division will be provided \$61,526,000 in total budget (obligational) authority in fiscal year 1993.

#### SALARIES AND EXPENSES, UNITED STATES TRUSTEES

Amendment No. 23: Appropriates \$730,040,000 as proposed by the House, instead of \$730,040,000 as proposed by the Senate. The agreement allows for technical corrections, which allows the Department to enter into cooperative agreements with the legal Education program.

The conference agreement provides to base, less a reduction of \$5,704,000. Seed base funding transferred out of the program allows for no program growth.

Amendment No. 24: Provides language proposed by the Senate, but not in the House bill, amended which allows up to \$22,400,000 of funding to be used to carry out the reprogramming, and allows funds previously to be available under authority of the agreement adds new language, Department's authority to operate the Pilot Program.

*Private Counsel Debt Collection.*—The conference agreement extends by one year the pilot program to contract with private law firms. The Federal government. The conferees will maintain and make available Department of Justice, statistical costs of debt collection by participation by private counsel. The conferees agree to audit the pilot program during the report the results of this audit to review the contract procurement fees paid, and the effectiveness of the program with the U.S. Attorneys' offices.

#### UNITED STATES TRUSTEES

The conference agreement allows for new budget (obligational) authority of \$57,200,000 in fiscal year 1993—\$57,200,000 in anticipated fee collections. The agreement allows the U.S. Trustees to maintain the program allows for no program growth.

#### SALARIES AND EXPENSES, UNITED STATES MARSHALS SERVICE

Amendment No. 25: Appropriates \$333,819,000 as proposed by the House, instead of \$333,819,000 as proposed by the Senate.

The conference agreement provides for the Marshals Service for fiscal year 1993, but no program growth. *Camp Beauregard.*—The conference agreement allows for the requested elimination of funding for the facility at Camp Beauregard.



S 10778

CONGRESSIONAL RECORD — SENATE

September 7, 1989

the ADA? That is, can we assure employers that they will not face litigation under the ADA by current users of illegal drugs and alcohol?

Mr. HARKIN. Let me state it as clearly as I can. Users of illegal drugs, including those addicted to illegal drugs, are not protected by the ADA, regardless of whether the employee or applicant is otherwise qualified and the employee is meeting performance standards.

The technical amendment with respect to illegal drugs and alcohol was made to remove any question about the meaning of the statutory language. Although many of us believe that the language of the bill, as reported, was clear, others criticized the bill as being too vague with respect to the issue of the use of illegal drugs.

The new language assures employers that they need not worry about having to defend actions brought by casual drug users, who are not covered under the act. The act does protect drug addicts who are not current users. And we all agree that people who use controlled substances under medical supervision, are unaffected by this provision of the act.

With respect to drug testing, the ADA explicitly states that nothing in the act prohibits or restricts either drug testing or employment decisions taken on the basis of such drug tests. Therefore, an applicant who is tested and not hired because of a positive test result for illegal drugs, or an employee who is tested and is fired because of a positive test result for illegal drugs, does not have a cause of action under the ADA. If an employer performed a test which actually measured the current use of illegal drugs and the test was positive for the use of illegal drugs, the applicant or employee has no protection under the ADA. It is not a question of the employer having a defense in an action by the applicant or employee. The employer needs no such defense because the applicant or the employee has no cause of action.

So, I think we can assure the Senator and employers, without hesitation, that employers will not face litigation under the ADA on the part of current users of illegal drugs and alcohol either for testing or for taking disciplinary action against such individuals based on such testing.

Mr. ARMSTRONG. Mr. President, I have not had a chance to see the amendment. This is a matter of interest to me. Do we have a copy of the amendment?

Mr. HARKIN. It is at the desk. We tried to clear this with both sides. I thought it had been cleared.

Mr. President, in the meantime, I ask unanimous consent that we can move ahead in the interest of time to accommodate the distinguished minority leader. I move to set aside the amendment.

The PRESIDING OFFICER. Without objection, the amendment will be set aside.

The Senator from Kansas.

AMENDMENT NO. 719

(Purpose: To provide a plan to provide entities with technical assistance)

Mr. DOLE. Mr. President, I send an amendment on behalf of myself and Senator DOMENICI and Senator GRASSLEY to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for himself, Mr. DOMENICI and Mr. GRASSLEY, proposes an amendment numbered 719.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 95, strike lines 4 through 14 and insert the following new subsections:

(a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the National Council on Disability, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of Federal Communications Commission, shall develop a plan to assist entities covered under this Act, along with other executive agencies and commissions, in understanding the responsibility of such entities, agencies, and commissions under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General is authorized to obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) IMPLEMENTATION.—

(1) AUTHORITY TO CONTRACT.—Each department or agency that has responsibility for implementing this Act may render technical assistance to individuals and institutions that have rights or responsibilities under this Act.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance, as described in subsection (a), for title I.

(B) TITLE II.—

(i) IN GENERAL.—Except as provided for in clause (ii), the Attorney General shall implement such plan for assistance for title II.

(ii) EXCEPTION.—The Secretary of Transportation shall implement such plan for assistance for section 203.

(C) TITLE III.—The Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III.

(D) TITLE IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(d) GRANTS AND CONTRACTS.—

(1) IN GENERAL.—Each department and agency having responsibility for implementing this Act may make grants or enter into contracts with individuals, profit institutions, and nonprofit institutions, including educational institutions and groups or associations representing individuals who have rights or duties under this Act, to effectuate the purposes of this Act.

(2) DISSEMINATION OF INFORMATION.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) FAILURE TO RECEIVE ASSISTANCE.—An employer, public accommodation, or other entity covered under this Act shall not be excused from meeting the requirements of this Act because of any failure to receive technical assistance under this section.

Mr. DOLE. Mr. President, let me explain this amendment. It has been cleared on both sides. It is a technical assistance amendment.

It is important that both the employers and businesses and the handicapped fully understand this legislation, once it is passed, if it is to be implemented. So that is precisely what the amendment does. It will enable the responsible Federal agencies to establish a strong Governmentwide technical assistance program. Such a program will help to educate the public about the requirements of this bill.

Entities in the private sector need to be aware of what accommodations are both necessary and cost effective, as well as what is the best suited for particular disabled individuals.

Since many of these accommodations will be made in areas which traditionally have not been covered under the Rehabilitation Act—that is, other than universities or Federal contractors in excess of \$2,500—a longstanding expertise can be applied in implementing the ADA in these new areas.

The same standards exist in the ADA that have existed for over a decade in the Rehabilitation Act. For example, reasonable accommodations which do not provide an undue burden and are limited by business necessity and safety are principles which can be defined by a decade of experience.

Technical assistance is instrumental in providing these definitions to the private sector. A thorough understanding of these principles will greatly hasten the implementation and practice of this important piece of legislation.

Given the comprehensive nature of the ADA, I believe it is our obligation to see that people with disabilities understand their new rights under the bill and that employers and businesses understand the nature of their new obligations.

The PRESIDING OFFICER. Is there further debate?

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, unless the distinguished minority