

## CIVIL LIBERTIES ACT AMENDMENTS OF 1992

SEPTEMBER 14, 1992.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary,  
submitted the following

### REPORT

[To accompany H.R. 4551]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4551) to amend the Civil Liberties Act of 1988 to increase the authorization for the Trust Fund under that Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TIME.

This Act may be cited as the "Civil Liberties Act Amendments of 1992".

#### SEC. 2. AUTHORIZATION FOR TRUST FUND.

Section 104(e) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-3(e)) is amended by striking "\$1,250,000,000" and inserting "\$1,650,000,000".

#### SEC. 3. DEFINITIONS.

Section 108(2) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-7(2)) is amended in the matter preceding subparagraph (A) by inserting ", or the spouse or a parent of an individual of Japanese ancestry," after "Japanese ancestry".

#### SEC. 4. BENEFIT OF THE DOUBT; JUDICIAL REVIEW.

(a) BENEFIT OF THE DOUBT.—Section 105(a) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-4(a)) is amended—

(1) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8), respectively; and

(2) by inserting after paragraph (2) the following:

"(3) BENEFIT OF THE DOUBT.—When, after consideration of all evidence and relevant material for determining whether an individual is an eligible individual, there is an appropriate balance of positive and negative evidence regarding the merits of an issue material to the determination of eligibility, the benefit of the doubt in resolving each such issue shall be given to such individual."

(b) **JUDICIAL REVIEW.**—Section 105 of such Act is amended by adding at the end the following:

“(h) **JUDICIAL REVIEW.**—

“(1) **REVIEW BY THE CLAIMS COURT.**—A claimant may seek judicial review of a denial of compensation under this section solely in the United States Claims Court, which shall review the denial upon the administrative record and shall hold unlawful and set aside the denial if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

“(2) **APPLICABILITY.**—This subsection shall apply only to any claim filed in court on or after the date of the enactment of this subsection.”

(c) **CONFORMING AMENDMENTS.**—Section 105 of such Act is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking “(6)” and inserting “(7)”; and

(ii) by striking “(4)” and inserting “(5)”; and

(B) in subparagraph (B) of paragraph (4) (as redesignated by subsection

(a)(1) of this section)—

(i) by striking “(4)” and inserting “(5)”; and

(ii) by striking “(5)” and inserting “(6)”; and

(C) in paragraph (6) (as redesignated by subsection (a)(1) of this section)—

(i) by striking “(4)” and inserting “(5)”; and

(ii) by striking “(3)” and inserting “(4)”; and

(D) in paragraph (7) (as redesignated by subsection (a)(1) of this section)

by striking “(6)” and inserting “(8)”; and

(2) in subsection (b) by striking “(6)” and inserting “(8)”.

#### SEC. 5. TERMINATION OF DUTIES OF ATTORNEY GENERAL.

Section 105(e) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-4(e)) is amended by striking “when the Fund terminates.” and inserting “180 days after the Fund terminates.”

#### SEC. 6. EXCLUSION OF PAYMENTS AS INCOME FOR VETERANS BENEFITS.

(a) **EXCLUSION.**—Section 105(f)(2) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-4(f)(2)) is amended by striking out “, or the” and inserting “or available under any other law administered by the Secretary of Veterans Affairs, or for purposes of determining the”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall be effective as of August 10, 1988.

### EXPLANATION OF AMENDMENT

Inasmuch as H.R. 4551 was ordered reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of this amendment.

### PURPOSE AND SUMMARY

H.R. 4551, as reported by the Committee, would make a number of amendments to the Civil Liberties Act of 1988. It would increase the amount authorized for the Civil Liberties Public Education Fund from \$1.25 billion to \$1.65 billion. The 1988 Act provided sufficient resources to pay benefits to about 60,000 eligible individuals, based on the estimates available in 1988, with any unused funds after all restitution payments are made (an estimated \$50 million) used for educational purposes. That sum has proved insufficient to compensate all of the individuals who are eligible under the program. The bill as passed by the Committee increases the total amount authorized by \$400 million to permit an additional 20,000 payments, while maintaining a reserve of \$50 million, which will remain available for educational purposes to the extent that it would not be needed for compensation purposes. In a July 30, 1992 letter, the Justice Department estimated that the total number of redress payments would be 80,000.

H.R. 4551 would expand the eligibility requirements for receiving restitution payments to include persons not of Japanese ancestry who were interned along with their spouses or children.

As amended by the Committee, H.R. 4551 provides that the exclusive judicial review of Justice Department determinations of eligibility would be in the U.S. Claims Court, and such review would be conducted under the Administrative Procedure Act. The bill also provides that the Justice Department must give claimants the benefit of the doubt when there is an approximate balance of positive and negative evidence regarding issues material to eligibility for compensation under the Act.

Finally, H.R. 4551 allows the Justice Department 180 days after the termination of the Fund to phase out the activities of the Office of Redress Administration, which administers this program.

#### DISCUSSION

The Civil Liberties Act of 1988, title I of Public Law No. 100-383, provides redress in amounts of \$20,000 to certain individuals of Japanese ancestry who were interned, evacuated, or relocated during World War II by or on behalf of the Federal Government.

The Civil Liberties Act requires the Attorney General to identify, locate, and make payment to all eligible redress recipients, without requiring any application. The Attorney General is required to conduct a public awareness campaign to encourage each eligible individual to submit his or her current address.

The Justice Department established the Office of Redress Administration (ORA) within the Department's Civil Rights Division to administer the program. ORA has conducted workshops in cities containing a high percentage of Japanese-Americans and opened a toll-free telephone line to assist individuals with their cases. ORA must verify that the individual was eligible for redress before making payment. In addition to verifying that the individual was evacuated, relocated, interned, or otherwise deprived of liberty as a result of U.S. Government action, ORA also must assure that individuals meet the threshold requirements for eligibility: (1) Japanese ancestry; (2) a U.S. citizen or permanent resident alien during the internment period, from December 7, 1941 to June 30, 1946; (3) alive on the date of enactment of the Civil Liberties Act (August 10, 1988); and (4) remained a resident of the United States during the period of December 7, 1941 to September 2, 1945 and did not relocate to another country while the United States was at war with that country during that period.

The Act establishes the Civil Liberties Public Education Fund, which is used by the Department of Justice to make restitution payments. After all restitution payments have been made, the balance of any funds remaining is to be used by a newly established Board of Directors of the Fund to sponsor research and public educational activities so that the events surrounding the evacuation, relocation, and internment of Japanese-Americans will be remembered. The Act authorized the appropriation of \$1.25 billion. This amount was based on an estimate of approximately 60,000 individuals being eligible for restitution payments costing a total of \$1.2

billion. The anticipated balance of \$50 million was to be used for educational purposes.

The amount originally authorized, however, has been insufficient to permit payments to be made for all of the individuals eligible for payment. As of May 1992, ORA had distributed redress payments to approximately 50,000 recipients, amounting to \$1 billion (the Act provided that not more than \$500 million may be appropriated for any fiscal year). In both fiscal years 1991 and 1992, more than 90 percent of the funds allotted were disbursed in the first month of the fiscal year. As of July 29, 1992, ORA had made final eligibility determinations in more than 25,000 additional cases; in all, the eligibility of some 77,700 cases have been decided. The Justice Department estimates that there will be roughly 2,300 more cases where individuals will be eligible for compensation, making a total of 80,000 individuals who will be eligible to receive redress payments. The Act requires that payments be made in age order, beginning with the eldest recipients. The age for the first two groups of recipients was 64 and above.

The Committee commends the Justice Department, under the leadership of John R. Dunne, Assistant Attorney General for the Civil Rights Division, Robert Bratt, former ORA Administrator, and Paul Suddes, Acting ORA Administrator, for the excellent job they have done identifying, locating, and paying eligible redress recipients. It is largely because of their outstanding outreach efforts that ORA has discovered more eligible recipients than originally estimated. The Committee commends the Department for these efforts to implement effectively the letter and spirit of the Civil Liberties Act of 1988.

#### SECTION-BY-SECTION ANALYSIS

Following is a section-by-section analysis of the Civil Liberties Act Amendments of 1992 as ordered reported by the Committee.

##### SECTION 1—SHORT TITLE

Section 1 establishes the short title for the legislation, which is the "Civil Liberties Act Amendments of 1992."

##### SECTION 2—AUTHORIZATION FOR TRUST FUND

Section 2 amends Section 104(e) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-3(e)), by striking the original total authorization for the program, \$1,250,000,000, and inserting in its place, \$1,650,000,000.

The increased authorization will complete the payments required by the program established in the Civil Liberties Act of 1988. The \$1.25 billion originally authorized was based on an estimate of approximately 60,000 individuals being eligible for restitution payments costing 1.2 billion, with the remaining \$50 million to be used for educational purposes. The bill as passed by the Committee increases the total amount authorized by \$400 million to permit an additional 20,000 payments, while maintaining a reserve of \$50 million which will remain available for educational purposes to the extent that it would not be needed for compensation purposes.

**SECTION 3—DEFINITIONS**

Section 3 amends section 108(2) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-7), to expand the criteria for redress eligibility to include Americans who are not of Japanese descent but are spouses or parents of Japanese-Americans, and were evacuated, relocated and interned with those Japanese-American relatives. The Justice Department's Office of Redress Administration estimates the number of such spouses and parents to be no more than 40.

**SECTION 4—BENEFIT OF THE DOUBT; JUDICIAL REVIEW**

Section 4 amends section 105(a) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-4(a)) to give claimants the benefit of the doubt when there is an approximate balance of positive and negative evidence about the merits of an issue material to determining eligibility for redress payments. Section 4 also provides that the exclusive judicial review of Justice Department determinations of eligibility would be in the United States Claims Court, which would review the denial upon the administrative record and would set aside a denial if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. This judicial review provision applies only to any claim filed in court after the enactment of this bill. The Civil Liberties Act of 1988 currently contains no specific provision concerning judicial review.

**SECTION 5—TERMINATION OF DUTIES OF ATTORNEY GENERAL**

Section 5 amends section 105(e) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-4(e)) to extend the Attorney General's responsibilities for administering the redress program to 180 days after the Civil Liberties Public Education Fund terminates. Current law calls for these responsibilities to cease when the Fund terminates. This section would allow the Justice Department the additional 180 days to phase out the activities of the Office of Redress Administration.

**SECTION 6—EXCLUSION OF PAYMENTS AS INCOME FOR VETERANS BENEFITS**

Section 6 amends section 105(f)(2) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-4(f)(2)) to clarify that payments under the Civil Liberties Act shall not affect eligibility for benefits under any program administered by the Secretary of Veterans Affairs. The Civil Liberties Act of 1988 already has a provision that payments under the Act shall not be included as income or resources for determining eligibility for "benefits," which by reference in title 31 is defined to include veterans benefits under chapters 11, 13, 15, 17, and 21 of title 38. The Department of Veterans Affairs has taken the position that the phrase "benefits under chapter . . . 15" does not include a few veterans' pension programs that were repealed by Congress in 1978, but with a "grandfather" provision that allowed VA pensioners to receive benefits from prior-law pension programs. Those programs are called "Section 306" pension programs because the grandfather provision is section 306 of Veterans' and Survivors' Pension Improvement Act of 1978 (Pub. L. No.

95-588). The grandfather provision is listed in the Code as a note to chapter 15 of title 38. The repealed programs were found in chapter 11 of title 38.

This section of the bill is based on the language in H.R. 4553, which was referred jointly to the Judiciary and Veterans' Affairs Committees. In a letter to the Subcommittee dated April 3, 1992, the Honorable G.V. (Sonny) Montgomery, Chairman of the Veterans' Affairs Committee, indicated that the Veterans' Affairs Committee "would not object to a Judiciary Committee request to schedule this bill, or one containing the identical language, for consideration by the House." In a letter to the Subcommittee dated May 7, 1992, the Department of Veterans Affairs expressed its strong support for H.R. 4553.

#### COMMITTEE CONSIDERATION

On March 26, 1992, the Subcommittee on Administrative Law and Governmental Relations held a hearing on H.R. 4551. The Subcommittee received testimony from the Honorable Norman Mineta of California; the Honorable Robert Matsui of California; the Honorable Patsy Mink of Hawaii; the Honorable Nancy Pelosi of California; John Dunne, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice; and Dennis Hayashi, National Director, Japanese-American Citizens League. The Subcommittee also received written testimony from the Honorable Richard Gephardt of Missouri, the Majority Leader of the House.

On April 1, 1992, the Subcommittee held a markup and favorably recommended H.R. 4551 to the full Committee with a single amendment in the nature of a substitute. The amendment added a provision giving claimants the benefit of the doubt in eligibility decisions made by the Justice Department, and provided that exclusive judicial review of Justice Department determinations of eligibility would be in the U.S. Claims Court.

On August 11, 1992, the Committee considered H.R. 4551 and recommended it favorably to the House, with a single amendment in the nature of a substitute, by voice vote. The amendment (1) increased the overall authorization for the program in the bill from \$1.57 billion to \$1.65 billion, after the Justice Department increased its estimate of the number of individuals eligible for redress payments to 80,000; (2) removed a section of the bill which provided that, where the Government has paid compensation to heirs based on their representation that they are the sole eligible recipients, the exclusive remedy of omitted heirs would have been against the heirs who received the payment, and not against the Government; and (3) clarified that payments under the Civil Liberties Act shall not affect eligibility for benefits under any program administered by the Secretary of Veterans Affairs.

#### JURISDICTIONAL CONCERNS OF THE COMMITTEE ON VETERANS AFFAIR

The following letter concerns issues contained in H.R. 4551 that are within the jurisdiction of the Committee on Veterans Affairs:

COMMITTEE ON VETERANS' AFFAIRS,  
Washington, DC, April 3, 1992.

HON. BARNEY FRANK,  
*Chairman, Subcommittee on Administrative Law and Governmental Relations, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Our colleague Robert Matsui recently contacted me concerning his bill H.R. 4553, which your subcommittee plans to take quick action on. He asked whether the Veterans Committee could assist in expediting consideration of this matter.

It's my understanding that there are very few veterans who may be affected by H.R. 4553. This is because the Civil Liberties Act of 1988, which was not referred to our committee for consideration, provided that determinations of veterans eligibility for the "current law" pension program shall not consider any payments made to individuals covered by the act. The failure to include a reference to "old-law" pension programs in the Act means that any person drawing benefits under that program would probably lose eligibility based on their receipt of payments under the Act.

After consulting with the chairman of the Subcommittee on Compensation, Pension, and Insurance, Doug Applegate, I have determined that no purpose would be served by reopening the issue of whether such payment should be disregarded in determining eligibility for needs-based veterans programs, an issue which I believe is under the exclusive jurisdiction of the Veterans' Committee.<sup>1</sup>

The Committee would not object to a Judiciary Committee request to schedule this bill, or one containing the identical language, for consideration by the House.

Sincerely,

G.V. (SONNY) MONTGOMERY,  
*Chairman.*

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the description portions of this report.

COMMITTEE ON GOVERNMENT OPERATIONS OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(b) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

<sup>1</sup> See e.g. H.R. 4479, 100th Congress; § 1203, P.L. 100-687 (considered exclusively by the Committee on Veterans' Affairs).

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4551, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, August 14, 1992.

HON. JACK BROOKS,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 4551, the Civil Liberties Act Amendments of 1992.

Because this bill would affect direct spending, it would be subject to pay-as-you-go procedures under the Budget Enforcement Act of 1990. As a result, the estimate required under clause 8 of House Rule XXI is attached.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,  
Director.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 4551.
2. Bill title: The Civil Liberties Act Amendments of 1992.
3. Bill status: As ordered reported by the House Committee on the Judiciary on August 11, 1992.
4. Bill purpose: H.R. 4551 would provide additional funding for compensation to eligible Japanese-Americans who were interned during World War II. In addition, the bill would define as eligible those not of Japanese ancestry who were spouses or parents of interned Japanese Americans.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

|                                     | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 |
|-------------------------------------|------|------|------|------|------|------|
| Direct spending:                    |      |      |      |      |      |      |
| Estimated budget authority .....    |      |      | 1    |      |      |      |
| Estimated outlays .....             |      |      | 1    |      |      |      |
| Authorizations:                     |      |      |      |      |      |      |
| Estimated authorization level ..... |      |      | 49   |      |      |      |
| Estimated outlays .....             |      |      | 12   | 12   | 13   | 13   |

The costs of this bill fall within budget function 800.

Basis of estimate:

*Background.* Public Law 100-383, enacted in 1988, states that each Japanese-American who was interned during World War II is



eligible to receive a payment of \$20,000. Based on information available at the time that about 60,000 people would be eligible, the Congress authorized the appropriation of \$1.25 billion for such payments. Public Law 101-162, enacted in 1989, states that "the maximum amount authorized \* \* \* is appropriated \* \* \* for payment to eligible individuals" and that such "payments \* \* \* to an eligible individual \* \* \* shall be an entitlement." Because the payments are an entitlement—meaning that if a person meets the definition of eligibility that person must be paid—the Congress included this program on its list of appropriated entitlements and mandatories under the Budget Enforcement Act (BEA) of 1990 (page 1176 of House Report 101-964).

Thus far, the government has paid about \$1 billion to eligible individuals, and the remaining \$250 million of the \$1.25 billion originally appropriated will be spent in 1993. However, the Department of Justice (DOJ) has revised its original estimate of the number of eligible individuals up to 80,000, meaning that the \$1.25 billion originally authorized and appropriated is not sufficient to pay all eligible persons \$20,000 each. An estimated additional \$350 million is needed to make payments to all entitled individuals.

*Budgetary Impact.* H.R. 4551 would replace the \$1.25 billion amount authorized in current law with \$1.65 billion, thereby increasing the authorization for the purposes of the Civil Liberties Act by \$400 million. Along with this increased authorization H.R. 4551 would simultaneously appropriate the portion of the \$400 million that is needed to pay all eligible individuals because current law states that the "amount authorized \* \* \* is appropriated...for payments to eligible individuals." Based on the most recent estimates from DOJ, CBO expects that \$350 million of the \$400 million authorized would be needed for payments, and thus would be appropriated by the bill. The additional appropriations to fund such payments, however, would not constitute new budget authority or result in additional outlays because they merely fund existing entitlement obligations.

In addition to funding these existing obligations, H.R. 4551 would authorize the appropriation of the amounts remaining—once the necessary portion of the \$400 million is used for payments—for other purposes of the Civil Liberties Act. Because CBO expects \$350 million of the \$400 million would be needed to pay those currently entitled, we estimate \$50 million would remain for other purposes. About \$1 million of the \$50 million would be earmarked for new payments to individuals because the bill would modify the eligibility for the compensation payments. About 50 people not of Japanese ancestry who were spouses or parents of Japanese-Americans would be newly entitled to a \$20,000 payment. This change in eligibility would result in direct spending of \$1 million in budget authority and outlays in 1994.

Under the provisions of Public Law 100-383, funds authorized and appropriated in excess of the amounts needed to make payments to individuals are available for conducting a public education campaign on civil liberties. Once the \$1 million is paid to the newly entitled individuals, \$49 million of the increased authorization would remain that would not be needed to fund payments. However, appropriation action would be necessary before this

amount could be spent for education purposes. CBO's estimate of outlays for the education program assumes the amounts authorized would be appropriated and spent over the 1994-1997 period.

6. Pay-as-you-go considerations: The Budget Enforcement Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. H.R. 4551 would affect direct spending, and thus would be subject to pay-as-you-go procedures. Although most of the direct spending that would result from the bill is already included in the budget resolution baseline, CBO estimates that the payments to newly eligible individuals would result in additional outlays of \$1 million in 1994, which would be counted for pay-as-you-go purposes.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: The President's 1993 budget includes proposed legislation (introduced as H.R. 4570) to provide \$250 million to continue payments until all eligible persons receive compensation. At that time, the Department of Justice had identified about 75,000 people eligible to receive a payment. On July 30, 1992, DOJ informed the Congress that about 80,000 people now appear to be eligible, meaning that an additional \$350 million, not \$250 million, is needed. Nonetheless, the Administration has indicated—in the President's budget, in testimony, and in a letter to the House Committee on the Judiciary—that it considers any increase in the current law amount to be new direct spending and would count it for pay-as-you-go scoring. The Office of Management and Budget (OMB) believes that the program is a "capped" entitlement, and that the government's obligation is limited to the \$1.25 billion specified in law. Therefore, OMB believes that increasing the authorization cap would expand the scope of the original entitlement program and that the amount of the increase would be subject to pay-as-you-go procedures.

CBO believes that the original appropriation of \$1.25 billion was based on the best estimate at the time of all eligible beneficiaries. Now that additional beneficiaries have been identified, the law contains an inherent contradiction between an entitlement for all persons eligible for a \$20,000 payment and a cap that will prevent many of those entitled from receiving a payment without filing a lawsuit. In appropriating an additional \$350 million, the Congress would not be changing current law definitions of who is entitled to a payment nor the amount of an individual payment, but instead would change the total amount available to correct for a misestimate in the number of beneficiaries.

9. Previous CBO estimate: On August 7, 1992, CBO provided a cost estimate for S. 2553, the Civil Liberties Act Amendments of 1992 as ordered reported by the Senate Committee on Government Affairs on August 5, 1992. That bill increased the authorization for the Civil Liberties Act to \$1.57 billion while H.R. 4551, as ordered reported by the House Committee on the Judiciary, would increase the authorization to \$1.65 billion. In addition, H.R. 4551 would make the \$1 million in payments to newly eligible individuals an entitlement, while S. 2553 would make those payments subject to appropriation.

On July 28, 1992, CBO provided a cost estimate for H.R. 4551, the Civil Liberties Act Amendments of 1992, as approved by the Sub-

committee on Administrative Law and Governmental Relations of the House Committee on the Judiciary on April 1, 1992. That version of the bill includes \$1.57 billion for the Civil Liberties Act purposes, while the more recent version would authorize \$1.65 billion. In addition, CBO has revised its interpretation of the bill and has concluded that the bill only authorizes, but does not appropriate, funds for educational purposes. This means that the amount of new direct spending authority that counts for pay-as-you-go procedures decreases from the previous estimate of \$70 million to the current estimate of \$1 million.

10. Estimate prepared by: James Hearn.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE <sup>1</sup>

The applicable cost estimate of this act for all purposes of sections 252 and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be as follows:

[By fiscal year, in millions of dollars]

|                          | 1992             | 1993             | 1994             | 1995             |
|--------------------------|------------------|------------------|------------------|------------------|
| Change in outlays .....  | 0                | 0                | 1                | 0                |
| Change in receipts ..... | ( <sup>1</sup> ) | ( <sup>1</sup> ) | ( <sup>1</sup> ) | ( <sup>1</sup> ) |

<sup>1</sup> Not applicable.

#### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 4551 will have no significant inflationary impact on prices and costs in the national economy.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

<sup>1</sup> An estimate of H.R. 4451 as ordered reported by the House Committee on the Judiciary on August 11, 1992. This estimate was transmitted by the Congressional Budget Office on August 14, 1992.

## CIVIL LIBERTIES ACT OF 1988

# TITLE I—UNITED STATES CITIZENS OF JAPANESE ANCESTRY AND RESIDENT JAPANESE ALIENS

## SEC. 101. SHORT TITLE.

This title may be cited as the "Civil Liberties Act of 1988".

\* \* \* \* \*

## SEC. 104. TRUST FUND.

(a) \* \* \*

\* \* \* \* \*

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Fund ~~["\$1,250,000,000"]~~ *\$1,650,000,000*, of which not more than \$500,000,000 may be appropriated for any fiscal year. Any amounts appropriated pursuant to this section are authorized to remain available until expended.

## SEC. 105. RESTITUTION.

(a) **LOCATION AND PAYMENT OF ELIGIBLE INDIVIDUALS.**—

(1) **IN GENERAL.**—Subject to paragraph ~~[(6)]~~ (7), the Attorney General shall, subject to the availability of funds appropriated to the Fund for such purpose, pay out of the Fund to each eligible individual the sum of \$20,000, unless such individual refuses, in the manner described in paragraph ~~[(4)]~~ (5), to accept the payment.

\* \* \* \* \*

(3) **BENEFIT OF THE DOUBT.**—*When, after consideration of all evidence and relevant material for determining whether an individual is an eligible individual, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of eligibility, the benefit of the doubt in resolving each such issue shall be given to such individual.*

~~[(3)]~~ (4) **NOTICE FROM THE ATTORNEY GENERAL.**—The Attorney General shall, when funds are appropriated to the Fund for payments to an eligible individual under this section, notify that eligible individual in writing of his or her eligibility for payment under this section. Such notice shall inform the eligible individual that—

(A) acceptance of payment under this section shall be in full satisfaction of all claims against the United States arising out of acts described in section 108(2)(B), and

(B) each eligible individual who does not refuse, in the manner described in paragraph ~~[(4)]~~ (5), to accept payment under this section within 18 months after receiving such written notice shall be deemed to have accepted payment for purposes of paragraph ~~[(5)]~~ (6).

~~[(4)]~~ (5) **EFFECT OF REFUSAL TO ACCEPT PAYMENT.**—If an eligible individual refuses, in a written document filed with the Attorney General, to accept any payment under this section, the

amount of such payment shall remain in the Fund and no payment may be made under this section to such individual at any time after such refusal.

[(5)] (6) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—The acceptance of payment by an eligible individual under this section shall be in full satisfaction of all claims against the United States arising out of acts described in section 108(2)(B). This paragraph shall apply to any eligible individual who does not refuse, in the manner described in paragraph [(4)] (5) to accept payment under this section within 18 months after receiving the notification from the Attorney General referred to in paragraph [(3)] (4).

[(6)] (7) EXCLUSION OF CERTAIN INDIVIDUALS.—No payment may be made under this section to any individual who, after September 1, 1987, accepts payment pursuant to an award of a final judgment or a settlement on a claim against the United States for acts described in section 108(2)(B), or to any surviving spouse, child, or parent of such individual to whom paragraph [(6)] (8) applies.

[(7)] (8) PAYMENT IN THE CASE OF DECEASED PERSONS.—(A) In the case of the eligible individual who is deceased at the time of payment under this section, such payment shall be made only as follows:

(i) If the eligible individual is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

\* \* \* \* \*

(b) ORDER OF PAYMENTS.—The Attorney General shall endeavor to make payments under this section to eligible individuals in the order of date of birth (with the oldest individual on the date of the enactment of this Act (or, if applicable, that individuals's survivors under paragraph [(6)] (8) receiving full payment first), until all eligible individuals have received payment in full.

\* \* \* \* \*

(e) TERMINATION OF DUTIES OF ATTORNEY GENERAL.—The duties of the Attorney General under this section shall cease [when the Fund terminates.] *180 days after the Fund terminates.*

(f) CLARIFICATION OF TREATMENT OF PAYMENT UNDER OTHER LAWS.—Amounts paid to an eligible individual under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code[, or the] *or available under any other law administered by the Secretary of Veterans Affairs, or for purposes of determining the amount of such benefits.*

\* \* \* \* \*

(h) JUDICIAL REVIEW.—

(1) REVIEW BY THE CLAIMS COURT.—*A claimant may seek judicial review of a denial of compensation under this section solely in the United States Claims Court, which shall review*

*the denial upon the administrative record and shall hold unlawful and set aside the denial if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.*

*(2) APPLICABILITY.—This subsection shall apply only to any claim filed in court on or after the date of the enactment of this subsection.*

\* \* \* \* \*

SEC. 108. DEFINITIONS.

For the purposes of this title—

(1) the term "evacuation, relocation, and internment period" means that period beginning on December 7, 1941, and ending on June 30, 1946;

(2) the term "eligible individual" means any individual of Japanese ancestry, or the spouse or a parent of an individual of Japanese ancestry, who is living on the date of the enactment of this Act and who, during the evacuation, relocation, and internment period—

(A) \* \* \*

\* \* \* \* \*

