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Senate Report 111-229 - To accompany S. 3636  
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**DEPARTMENTS OF COMMERCE AND JUSTICE, AND SCIENCE, AND  
RELATED AGENCIES APPROPRIATIONS BILL, 2011**

July 22, 2010—Ordered to be printed

Ms. MIKULSKI, from the Committee on Appropriations, submitted the following

**R E P O R T**

[To accompany S. 3636]

The Committee on Appropriations reports the bill ([S. 3636](#)) making appropriations for the Departments of Commerce and Justice, science, and related agencies for the fiscal year ending September 30, 2011, and for other purposes, reports favorably thereon and recommends that the bill do pass.

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### **PURPOSE OF THE BILL**

The bill provides funding for: (1) the Department of Commerce and its bureaus, and administrations: the International Trade Administration [ITA], the Bureau of Industry and Security [BIS], the Economic Development Administration [EDA], the Minority Business Development Agency [MBDA], the Economics and Statistics Administration [ESA], the Bureau of the Census, the National Telecommunications and Information Administration [NTIA], the U.S. Patent and Trademark Office [USPTO], the National Institute of Standards and Technology [NIST], and the National Oceanic and Atmospheric Administration [NOAA]; (2) the Department of Justice; (3) several independent science agencies: the Office of Science and Technology Policy [OSTP], the National Aeronautics and Space Administration [NASA], the National Science Foundation [NSF]; and (4) several related commissions and agencies: the Commission on Civil Rights, the Equal Employment Opportunity Commission [EEOC], the International Trade Commission [ITC], the Legal Services Corporation [LSC], the Marine Mammal Commission, the U.S. Trade Representative [USTR], and the State Justice Institute [SJI].

### **SUMMARY OF THE BILL**

The Committee recommends total discretionary appropriations of \$60,139,000,000 for the Departments of Commerce and Justice, science, and related agencies for fiscal year 2011. This amount is \$400,000,000 below the President's budget request.

*Security.*—First and foremost, this bill protects our Nation and our communities from terrorism and violent crime.

*Counterterrorism.*—The bill funds the Federal Bureau of Investigation [FBI], our country's

research that will contribute to the development of new innovative products and processes. The Committee also provides over \$7,300,000,000 for basic research through the National Science Foundation [NSF].

*Space Exploration and Scientific Discovery.*—In 1958, when Sputnik was launched, it inspired quick action on the part of a worried Nation. The United States responded with the National Aeronautics and Space Administration [NASA] not just as a foreign policy statement but also to support a program of peaceful scientific discovery. Today, NASA is still an engine driving America's economic competitiveness.

The Committee's recommendation provides \$19,000,000,000 for NASA. This funding is recommended to support a balanced space program that will reinvest in scientific discovery to: improve our understanding and ability to predict changes in the Earth and its climate; make air travel safer and more efficient; and make highest and best use of the International Space Station [ISS] laboratory for discoveries that will improve life on Earth. The bill makes a real investment in the scientists, engineers, and supporting workforce inside NASA its partners. It supports the transition of the current human spaceflight workforce to a restructured program that will build a heavy lift rocket and capsule to reach beyond low-Earth orbit, as well as the growing commercial workforce that will deliver cargo, and possibly astronauts, to the ISS. These investments in NASA will inspire and teach our next generation of scientists, engineers and entrepreneurs, create jobs today, and fuel the discoveries of new products tomorrow.

*Education.*—The "Rising Above the Gathering Storm" report emphasized that the future of U.S. competitiveness rests on our Nation's ability to train the next generation of scientists and engineers. For this reason, the Committee has invested over \$892,000,000 in NSF education and training programs. This is a critical investment to ensure that our Nation leads the world in science, technology, engineering, and mathematics from kindergarten to post graduate levels.

*Investing in an Innovation Friendly Government.*—The bill provides important funding to ensure that we have a Government that protects our inventions. The Committee recommends the full budget request of \$2,321,724,000 for the Patent and Trademark Office [USPTO] to protect the intellectual property of our inventors. In addition, the Committee has provided language to allow the USPTO to access up to \$100,000,000 in additional fees should they become available in fiscal year 2010. The Committee has been troubled by the backlog of patent applications and the time it takes to process them.

*Climate Change.*—The Commerce, Justice, and science appropriations bill protects our planet by funding the science used to monitor and predict changes in Earth's climate. Through the science conducted at the National Aeronautics and Space Administration [NASA], the National Science Foundation [NSF], and the National Oceanic and Atmospheric Administration [NOAA], this bill funds over 80 percent of Federal climate change science. Several satellites that provide critical climate and weather information are on borrowed time. For this reason, the Committee has recommended over \$1,800,000,000 for NASA's Earth science missions, which will put all four Earth science missions recommended by the National Academies by 2017 and \$641,900,000 for NASA science to better understand how the Sun affects the Earth. In addition, the Committee recommends \$1,918,796,000 to fund our next generation climate and weather satellites that are important to understanding changes in our planet's climate.

### **FIGHTING WASTE, FRAUD, AND ABUSE**

The departments, agencies, boards, and commissions funded in this bill can and should significantly reduce operating expenses by placing greater scrutiny on overhead costs. Savings can

and should be achieved by reducing non-essential travel, office supply, rent, and utility costs. The Committee directs each department, agency, board, and commission funded in this bill to develop a plan to reduce such costs by at least 10 percent in fiscal year 2011. Plans to achieve this savings in fiscal year 2011 should be submitted to the Committee no later than 30 days after enactment of this act.

The Committee has also reduced official reception and representation funds by more than 25 percent. Modest representation funds are provided for agency executives to provide necessary courtesies to our diplomatic partners and out of respect for fallen officers, or to mark historic occasions such as space exploration missions or stunning discoveries. However, savings can and should be achieved by reducing the costs of executive meetings, receptions, ceremonies, and conferences, and purchasing fewer promotional items such as t-shirts, hats, mugs, key chains, and other similar items.

The Committee is extremely concerned about the persistent pattern of cost overruns and schedule slippages on major projects and missions carried out by the agencies within this bill. In addition, reports have exposed a culture within many agencies that exhibits a lack of accountability and oversight of grant funding.

Therefore, the Committee has recommended three bill-wide provisions to ensure greater oversight and fiscal responsibility of taxpayer dollars. First, the bill requires each agency to notify the Committee immediately upon identification of program cost overruns greater than 10 percent. Second, the bill requires the Inspectors General of the Departments of Commerce and Justice, NASA, NSF and the Legal Services Corporation to conduct reviews of grant and contract funds to ensure funds are being spent appropriately.

Third, the bill requires each department, agency, board, and commission funded in this act to report spending on large conferences, with costs in excess of \$20,000 each, to the Inspectors General for audit.

Finally, the Committee intends to continue to work with the Government Accountability Office [GAO] to review selected large-scale acquisition and construction projects. Specifically, the Committee requests that GAO develop a plan for ongoing reviews of such projects, with reports to the Committee on a biannual basis. Agencies shall provide access to all necessary data, as determined by GAO, in order for the reviews to be completed and provided in a timely manner to the Committee. The Committee believes that these project status reports are valuable in identifying cost overrun and schedule slippage problems early, so they can be addressed immediately.

## **REPROGRAMMINGS, REORGANIZATIONS, AND RELOCATIONS**

Section 505 contained in the “General Provisions” of title V provides procedures for the reprogramming of funds. To reprogram is to change the use of funds from the specific purposes provided for in the act and the accompanying report or, in the absence of direction from the Committee on Appropriations, from the specific purposes provided for in the administration’s budget request. Each title of the bill has also traditionally included separate provisions that define permissible transfers of resources between appropriation accounts. These transfer authority provisions are also pursuant to section 505, and were initiated in the early 1990s to provide additional flexibility to the agencies under the subcommittee’s jurisdiction.

The Committee expects each department and agency to closely follow the reprogramming procedures listed in section 505, which are the same as provisions that applied in statute during fiscal year 2010. These procedures apply to funds provided under this act, or provided under

The Committee recommends \$30,000,000 to assist State and local enforcement agencies. The Committee is deeply troubled that the Commission has failed to provide adequate resources to its State partners and therefore has created a separate account for this funding.

## **INTERNATIONAL TRADE COMMISSION**

### **SALARIES AND EXPENSES**

Appropriations, 2010	\$81,860,000
Budget estimate, 2011	87,000,000
Committee recommendation	87,000,000

The Committee recommendation provides \$87,000,000. The recommendation is \$5,140,000 above the fiscal year 2010 level and is equal to the budget request.

The ITC is an independent, quasi-judicial agency responsible for conducting trade-related investigations, providing Congress and the President with independent technical advice relating to United States international trade policy. The increased funding will allow the Commission to fill many vacant positions given the increased workload and to acquire much needed additional space, which includes two new courtrooms.

## **LEGAL SERVICES CORPORATION**

### **PAYMENT TO THE LEGAL SERVICES CORPORATION**

Appropriations, 2010	\$420,000,000
Budget estimate, 2011	435,000,000
Committee recommendation	430,000,000

The Committee recommendation provides \$430,000,000 for payment to the Legal Services Corporation [LSC]. The recommendation is \$10,000,000 above the fiscal year 2010 enacted level and \$5,000,000 below the budget request.

The Committee recommendation provides \$401,700,000 for basic field programs, to be used for competitively awarded grants and contracts, \$20,000,000, for management and administration, \$3,000,000 for client self-help and information technology, \$4,300,000 for the Office of the Inspector General and \$1,000,000 is for loan repayment assistance.

## **ADMINISTRATIVE PROVISIONS**

The Committee recommendation continues the administrative provisions contained in the fiscal year 1998 appropriations act (Public Law 105-119) regarding operation of this program to provide basic legal services to disadvantaged individuals and the restrictions on the use of LSC funds.

LSC funds cannot be used to engage in litigation and related activities with respect to a variety of matters including: (1) redistricting; (2) class action suits; (3) representation of illegal aliens; (4)

political activities; (5) abortion; (6) prisoner litigation; (7) welfare reform; (8) representation of charged drug dealers during eviction proceedings; and (9) solicitation of clients. The exception to the restrictions occurs in a case where there is imminent threat of physical harm to the client or prospective client remains in place.

The manner in which the LSC grantees are audited through contracts with certified public accountants for financial and compliance audits are continued, along with the provisions on recompetition and debarment.

The Committee recognizes that the LSC current percentage locality pay represents reasonable compensation for LSC officers and employees. The Committee expects that any locality pay will continue to be paid at that percentage.

*Accountability and Oversight.*—The Committee is disappointed that the LSC has yet to certify to the House and Senate Committees on Appropriations, as directed in the explanatory statement accompanying Public Law 111-117, that it has met the requirements for management practices and policies, as well as governance standards and guidelines, stated in GAO and LSC Inspector audits. The timely resolution of these outstanding issues must be a priority of the Corporation.

## MARINE MAMMAL COMMISSION

### SALARIES AND EXPENSES

Appropriations, 2010	\$3,250,000
Budget estimate, 2011	3,000,000
Committee recommendation	3,250,000

The Committee recommendation provides \$3,250,000. The recommendation is the same as the fiscal year 2010 enacted level and is \$250,000 above the budget request.

The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals provide oversight and recommend actions on domestic and international topics to advance policies and provisions of the Marine Mammal Protection Act. The Commission provides precise, up-to-date scientific information to Congress on issues related to the safety of marine mammals.

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### SALARIES AND EXPENSES

Appropriations, 2010	\$47,826,000
Budget estimate, 2011	48,257,000
Committee recommendation	50,757,000

The Committee recommendation provides \$50,757,000 for the Office of the United States Trade Representative [USTR]. The recommendation is \$2,931,000 above the fiscal year 2010 level and \$2,500,000 above the budget request.

## **GENERAL PROVISIONS**

### **(INCLUDING RESCISSIONS)**

The Committee recommends the following general provisions for the departments, agencies and commissions funded in the accompanying bill.

Section 501 prohibits the use of appropriations for certain publicity and propaganda purposes.

Section 502 prohibits any appropriations contained in this act from remaining available for obligation beyond the current fiscal year unless expressly provided.

Section 503 limits funds for certain consulting purposes.

Section 504 provides that should any provision of the act be held to be invalid, the remainder of the act would not be affected.

Section 505 stipulates the policy by which funding available to the agencies funded under this act may be reprogrammed for other purposes.

Section 506 prohibits funds in the bill from being used to implement, administer, or enforce any guidelines of the Equal Employment Opportunity Commission [EEOC] similar to proposed guidelines covering harassment based on religion published by the EEOC in October 1993.

Section 507 provides for a penalty for persons found to have falsely mislabeled products.

Section 508 requires agencies to provide quarterly reports to the Appropriations Committees regarding unobligated balances.

Section 509 requires agencies and departments funded in this act to absorb any necessary costs related to downsizing or consolidation within the amounts provided to the agency or department.

Section 510 limits funds for the sale or export of tobacco or tobacco products.

Section 511 prohibits user fees for background checks conducted pursuant to the Brady Handgun Control Act of 1993, and prohibits implementation of a background check system which does not require or result in destruction of certain information.

Section 512 stipulates obligation of receipts available under the Crime Victims Fund.

Section 513 prohibits the use of Department of Justice funds for programs that discriminate against, denigrate, or otherwise undermine the religious beliefs of students participating in such programs.

Section 514 limits transfers of funds between agencies.

Section 515 provides that funding for E-government initiatives are subject to reprogramming guidelines established by this act.

Section 516 specifies requirements for certain firearms tracing studies.

Section 517 requires the Inspectors General of the Departments of Commerce and Justice, the National Aeronautics and Space Administration, the National Science Foundation, and the Legal Services Corporation to conduct reviews of activities funded in this act; prohibits the use of funds

for certain banquets and conferences; and requires certifications regarding conflicts of interest.

Section 518 prohibits funds to issue certain patents.

Section 519 prohibits the use of funds to support or justify the use of torture.

Section 520 limits funds pertaining to certain activities related to the export of firearms.

Section 521 limits funds to process permits to import certain products.

Section 522 prohibiting funds to include certain language in new trade agreements.

Section 523 prohibits funds to authorize a national security letter in contravention of the statutes authorizing the FBI to issue national security letters.

Section 524 requires notification to the Committees in the event of cost overruns.

Section 525 authorizes funds appropriated for intelligence activities for the Department of Justice during fiscal year 2011 until the enactment of the Intelligence Authorization Act for Fiscal Year 2011.

Section 526 directs that the Departments, agencies, and commissions funded under this act, shall establish and maintain on the homepages of their Internet websites a link to their Offices of Inspectors General and a method by which individuals may anonymously report cases of waste, fraud, or abuse.

Section 527 prohibits contracts or grant awards in excess of \$5,000,000 unless the prospective contractor or grantee has certified in writing that she has filed all Federal tax returns, has not been convicted of a criminal offense under the IRS Code of 1986, and has no unpaid Federal tax assessment.

Section 528 prohibits the use of funds in a manner that is inconsistent with the principal negotiating objective of the United States with respect to trade remedy laws.

Section 529 specifies rescissions of prior appropriations.

Section 530 prohibits the use of funds to purchase first class or premium airline travel in contravention of current regulations.

Section 531 prohibits the use of funds to pay for the attendance of more than 50 employees at any single conference outside the United States, except for law enforcement training and/or operational conferences for law enforcement personnel when the majority of Federal employees in attendance are law enforcement personnel stationed outside the United States.

Section 532 restricts the use of funds regarding Guantanamo Bay detainees.

Section 533 prohibits funds to the Association of Community Organizations for Reform Now [ACORN] and its subsidiaries.

Section 534 requires, when practicable, the use of "Energy Star" or "Federal Energy Management Program" designated light bulbs.

Section 535 requires agencies funded in this act to report on undisbursed balances.

Section 536 prohibits the use of funds to relocate the Bureau of Census or employees to the Executive Office of the President.

Section 537 makes technical corrections to congressionally directed spending items from [Public Law 111-8](#).

Section 538 requires agencies to report conference spending to the Inspectors General.

Section 539 prohibits the use of funds to establish or maintain a computer network that does not block pornography, except for law enforcement purposes.

Section 540 authorizes the Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent.

Section 541 requires the Legal Services Corporation to comply with audits by the Government Accountability Office [GAO] and the Corporation's Inspector General.

### COMPLIANCE WITH PARAGRAPH 7, RULE XVI OF THE STANDING RULES OF THE SENATE

Rule XVI, paragraph 7 requires that every report on a general appropriation bill filed by the Committee must identify items of appropriation not made to carry out the provisions of an existing law, a treaty stipulation, or an act or resolution previously passed by the Senate during that session.

The Committee recommends funding for the following programs or activities that currently lack an authorization for fiscal year 2011, either in whole or in part, and therefore fall under this rule:

Agency/program	Last year of authorization
TITLE I—DEPARTMENT OF COMMERCE	
Economic Development Administration: Economic Development Administration, S&E	2008
Economic Development Assistance Programs: Public Works and Economic Development	2008
Trade Adjustment Assistance	2008
International Trade Administration: Export Promotion	1996
Bureau of Industry and Security:	
Export Administration	2001
Defense Production Act	2009
National Telecommunications and Information Administration: National Telecommunications and Information Administration, S&E	1993
National Oceanic and Atmospheric Administration:	
Operations Research and Facilities	
National Ocean Service:	
<i>Coral Reef Restoration</i>	2004

**§ 530A. Authorization of appropriations for travel and related expenses and for health care of personnel serving abroad**

There are authorized to be [appropriated] *used from appropriations*, for any fiscal year, for the Department of Justice, such sums as may be necessary—

(1) for travel and related expenses of employees of the Department of Justice serving abroad and their families, to be payable in the same manner as applicable with respect to the Foreign Service under paragraphs (2), (3), (5), (6), (8), (9), (11), and (15) of section 901 of the Foreign Service Act of 1980, and under the regulations issued by the Secretary of State; and

(2) for health care for such employees and families, to be provided under section 904 of that Act.

**TITLE 42—THE PUBLIC HEALTH AND WELFARE**

**CHAPTER 26—NATIONAL SPACE PROGRAM**

**SUBCHAPTER I—GENERAL PROVISIONS**

**§ 2467a. National Aeronautics and Space Administration Endeavor Teacher Fellowship Trust Fund**

(a) \* \* \*

\* \* \* \* \*

**(c) Purpose**

Income accruing from the Trust Fund principal shall be used to create the National Aeronautics and Space Administration Endeavor Teacher Fellowship Program, to the extent provided in advance in appropriation Acts. The Administrator is authorized to use such funds to award fellowships to selected United States nationals who are undergraduate students pursuing a course of study leading to certified teaching degrees in elementary education or in secondary education in mathematics, science, or technology disciplines. Awards shall be made pursuant to standards established for the fellowship program by the Administrator.

(d) Availability of Funds.—The interest accruing from the National Aeronautics and Space Administration Endeavor Teacher Fellowship Trust Fund principal shall be available in fiscal year 2011 and hereafter for the purpose of the Endeavor Science Teacher Certificate Program.

**OMNIBUS CONSOLIDATED RESCISSIONS AND APPROPRIATIONS ACT OF 1996,  
PUBLIC LAW 104-134**

**DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND  
RELATED AGENCIES APPROPRIATION ACT**

**TITLE V—RELATED AGENCIES**

**LEGAL SERVICES CORPORATION**

**ADMINISTRATIVE PROVISIONS—LEGAL SERVICES CORPORATION**

**Sec. 504. (a) None of the funds appropriated in this Act to the Legal Services Corporation may**

be used to provide financial assistance to any person or entity (which may be referred to in this section as a “recipient”) *that uses Federal funds (or funds from any source with regard to paragraphs (14) and (15)) in a manner—*

\* \* \* \* \*

[(d)(1) The Legal Services Corporation shall not accept any non-Federal funds, and no recipient shall accept funds from any source other than the Corporation, unless the Corporation or the recipient, as the case may be, notifies in writing the source of the funds that the funds may not be expended for any purpose prohibited by the Legal Services Corporation Act or this title.]

[(2) Paragraph (1) shall not prevent a recipient from—

[(A) receiving Indian tribal funds (including funds from private nonprofit organizations for the benefit of Indians or Indian tribes) and expending the tribal funds in accordance with the specific purposes for which the tribal funds are provided; or

[(B) using funds received from a source other than the Legal Services Corporation to provide legal assistance to a covered individual if such funds are used for the specific purposes for which such funds were received, except that such funds may not be expended by recipients for any purpose prohibited by this Act or by the Legal Services Corporation Act.]

\* \* \* \* \*

[(e)] (d) Nothing in this section shall be construed to prohibit a recipient from using funds derived from a source other than the Legal Services Corporation to comment on public rulemaking or to respond to a written request for information or testimony from a Federal, State or local agency, legislative body or committee, or a member of such an agency, body, or committee, so long as the response is made only to the parties that make the request and the recipient does not arrange for the request to be made.

[(f)] (e) As used in this section:

(1) The term “controlled substance” has the meaning given the term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(2) The term “covered individual” means any person who—

(A) except as provided in subparagraph (B), meets the requirements of this Act and the Legal Services Corporation Act relating to eligibility for legal assistance; and

(B) may or may not be financially unable to afford legal assistance.

(3) The term “public housing project” has the meaning as used within, and the term “public housing agency” has the meaning given the term, in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a).

## CONSOLIDATED APPROPRIATIONS ACT, 2004, PUBLIC LAW 108-199

### DIVISION B—DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

#### TITLE I—DEPARTMENT OF JUSTICE

#### GENERAL PROVISIONS—DEPARTMENT OF JUSTICE