

FEDERAL JUDICIARY EMERGENCY TOLLING ACT OF 2005

FEBRUARY 8, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3729]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3729) to provide emergency authority to delay or toll judicial proceedings in United States district and circuit courts, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Judiciary Emergency Tolling Act of 2005”.

SEC. 2. EMERGENCY AUTHORITY TO DELAY OR TOLL JUDICIAL PROCEEDINGS.

(a) IN GENERAL.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following:

“§ 1660. Emergency authority to delay or toll judicial deadlines

“(a) TOLLING IN DISTRICT COURTS.—

“(1) IN GENERAL.—In the event of a natural disaster or other emergency situation requiring the closure of courts or rendering it impracticable for the United States Government or a class of litigants to comply with deadlines imposed by any Federal or State law or rule that applies in the courts of the United States, the chief judge of a district court that has been affected may exercise emergency authority in accordance with this section.

“(2) SCOPE OF AUTHORITY.—(A) The chief judge may enter such order or orders as may be appropriate to delay, toll, or otherwise grant relief from the time deadlines imposed by otherwise applicable laws or rules for such period as may be appropriate for any class of cases pending or thereafter filed in the district court or bankruptcy court of the district.

“(B) Except as provided in subparagraph (C), the authority conferred by this section extends to all laws and rules affecting criminal and juvenile proceedings (including, prearrest, post-arrest, pretrial, trial, and post-trial procedures), civil actions, bankruptcy proceedings, and the time for filing and perfecting an appeal.

“(C) The authority conferred by this section does not include the authority to extend—

“(i) any statute of limitation for a criminal action; or

“(ii) any statute of limitation for a civil action, if—

“(I) the claim arises under the laws of a State; and

“(II) extending the limitations period would be inconsistent with the governing State law.

“(3) UNAVAILABILITY OF CHIEF JUDGE.—If the chief judge of the district is unavailable, the authority conferred by this section may be exercised by the district judge in regular active service who is senior in commission or, if no such judge is available, by the chief judge of the circuit that includes the district.

“(4) HABEAS CORPUS UNAFFECTED.—Nothing in this section shall be construed to authorize suspension of the writ of habeas corpus.

“(b) CRIMINAL CASES.—In exercising the authority under subsection (a) for criminal cases, the court shall consider the ability of the United States Government to investigate, litigate, and process defendants during and after the emergency situation, as well as the ability of criminal defendants as a class to prepare their defenses.

“(c) TOLLING IN COURTS OF APPEALS.—

“(1) IN GENERAL.—In the event of a natural disaster or other emergency situation requiring the closure of courts or rendering it impracticable for the United States Government or a class of litigants to comply with deadlines imposed by any federal or States law or rule that applies in the courts of the United States, the chief judge of a court of appeals that has been affected or that includes a district court so affected may exercise emergency authority in accordance with this section.

“(2) SCOPE OF AUTHORITY.—The chief judge may enter such order or orders as may be appropriate to delay, toll, or otherwise grant relief from the time deadlines imposed by otherwise applicable laws or rules for such period as may be appropriate for any class of cases pending in the court of appeals.

“(3) UNAVAILABILITY OF CHIEF JUDGE.—If the chief judge of the circuit is unavailable, the authority conferred by this section may be exercised by the circuit judge in regular active service who is senior in commission.

“(4) HABEAS CORPUS UNAFFECTED.—Nothing in this section shall be construed to authorize suspension of the writ of habeas corpus.

“(d) ISSUANCE OF ORDERS.—The Attorney General or the Attorney General’s designee may request issuance of an order under this section, or the chief judge of a district or of a circuit may act on his or her own motion.

“(e) DURATION OF ORDERS.—An order entered under this section may not toll or extend a time deadline for a period of more than 14 days, except that, if the chief judge (whether of a district or of a circuit) determines that an emergency situation requires additional extensions of the period during which deadlines are tolled or extended, the chief judge may, with the consent of the judicial council of the circuit, enter additional orders under this section in order to further toll or extend such time deadline.

“(f) NOTICE.—A court issuing an order under this section—

“(1) shall make all reasonable efforts to publicize the order, including announcing the order on the web sites of all affected courts and the web site of the Federal judiciary; and

“(2) shall, through the Director of the Administrative Office of the United States Courts, send notice of the order, including the reasons for the issuance of the order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

“(g) REQUIRED REPORTS.—A court issuing one or more orders under this section relating to an emergency situation shall, not later than 180 days after the date on which the last extension or tolling of a time period made by the order or orders ends, submit a brief report to the Committee on the Judiciary of the Senate, the Committee on the Judiciary of the House of Representatives, and the Judicial Conference of the United States describing the orders, including—

“(1) the reasons for issuing the orders;

“(2) the duration of the orders;

“(3) the effects of the orders on litigants; and

“(4) the costs to the judiciary resulting from the orders.

“(h) EXCEPTIONS.—The notice under subsection (f)(2) and the report under subsection (g) are not required in the case of an order that tolls or extends a time deadline for a period of less than 14 days.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 111 of title 28, United States Code, is amended by adding at the end the following new item:

“1660. Emergency authority to delay or toll judicial deadlines.”.

PURPOSE AND SUMMARY

The purpose of H.R. 3729 is to amend 28 U.S.C. § 1660 to allow the chief judge of any district court (or, if unavailable, the next most senior active district judge in the district or the chief judge of the court of appeals for the circuit in which the district is located), to enter an order or orders to delay or toll any and all deadlines imposed by any statute or rule of procedure whenever the district court is closed by virtue of any natural disaster, civil disobedience, or other emergency situation. The bill allows the chief judge to make this motion either on his own determination or at the request of the Attorney General or his designee.

When a judge makes a motion to delay or toll court deadlines under this section, he or she may take into consideration solely the burden on the government to comply with deadlines in the aftermath of a natural disaster or other emergency situation when granting the motion. Subsection (b) of the new 28 U.S.C. § 1660 would make clear that, in setting new time limits applicable in criminal cases, the court must consider the government’s ability to investigate, litigate and process defendants during and beyond the emergency situation. Subsection (c) of the new section would provide like authority to the chief judge of the court of appeals for the circuit when the court of appeals itself is so affected.

BACKGROUND AND NEED FOR THE LEGISLATION

The need for this legislation initially became apparent following the terrorist attacks of September 11, 2001, and the impact of these disasters on court operations, particularly in New York City. In emergency conditions, a Federal courthouse may be closed for extended periods of time. As was made clear in the aftermath of September 11th and the hurricanes of calendar year 2005, in an emergency situation, law enforcement may have to devote an overwhelming majority of their resources and manpower to ensuring the safety of the area and investigating criminal behavior that may

occur. Large classes of litigants may also be negatively affected by an emergency situation and may be unable to meet the deadlines required in their pending civil or criminal cases.

Currently, under Federal Rule of Civil Procedure 6(a), a judge may extend the deadline on a per-day basis, if weather or other conditions have made the office of the clerk or the district court inaccessible. A district judge has similar authority in criminal cases under Rule 45 of the Federal Rules of Criminal Procedure. However, both of these rules only allow the judge to make this determination when conditions render the clerk of court inaccessible and only on a daily basis. H.R. 3729 allows a judge to extend deadlines in an emergency situation for an appropriate time according to the judge's discretion.

This legislation is also needed to address natural disasters. The recent impact of Hurricane Katrina on the Federal courts in Louisiana, Alabama, and Mississippi has increased the urgency of congressional action regarding this proposal. Where court operations cannot be transferred to other divisions within the affected judicial district due to widespread flooding and destruction, judges must be empowered to delay or toll deadlines for pending cases where appropriate.

HEARINGS

The House Committee on the Judiciary held no hearings on H.R. 3729.

COMMITTEE CONSIDERATION

On September 13, 2005, the House Committee on the Judiciary received an exclusive referral for H.R. 3729. On November 9, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 3729, as amended, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee consideration of H.R. 3729.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII 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 descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3729, the following estimate and comparison prepared by the Director of the Congressional Budget Office under the section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 29, 2005.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3729, the "Federal Judiciary Emergency Tolling Act of 2005."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Gregory Waring, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 3729—Federal Judiciary Emergency Tolling Act of 2005.

CBO estimates that implementing H.R. 3729 would have no significant impact on the federal budget and would not affect direct spending or revenues. H.R. 3729 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

Enacting H.R. 3729 would provide chief judges of federal courts the authority to delay time deadlines and proceedings of certain criminal and civil cases, including bankruptcy proceedings, in the event of a natural disaster or other emergency. CBO cannot predict when or how often such situations may arise that would close the courts or make it difficult for litigants to comply with court rules and deadlines. Based on information from the Administrative Office of the United States Courts, however, the cost of issuing such orders would be negligible.

The CBO staff contact for this estimate is Gregory Waring, who can be reached at 226-2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee expects that enactment of H.R. 3729 will allow the operation of the Federal judiciary to continue in the event of widespread damage resulting from a natural disaster or emergency situation. Federal civil and criminal cases will not be dismissed based on delays created from an emergency situation and the chief judge of a Federal district or circuit will have limited discretion to delay or toll deadlines according to need.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in art. I, § 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title.

The act may be cited as the “Federal Judiciary Emergency Tolling Act of 2005.”

Section 2. Emergency Authority to Delay or Toll Judicial Proceedings.

In the event of a natural disaster or other emergency situation requiring the closure of courts or other emergency situation rendering it impracticable for the government or a class of litigants to comply with deadlines imposed by any Federal or State rule that applies in the courts of the United States, the chief judge of the affected district may exercise emergency authority to enter an order to toll, delay, or otherwise grant relief from deadlines imposed for any cases pending or thereafter filed in a district court or bankruptcy court. This authority extends to all laws and rules affecting criminal and juvenile proceedings, civil actions, bankruptcy proceedings, and the time for filing and perfecting an appeal. This authority does not extend to any statute of limitation for a criminal action or any statute of limitation for a civil action if the claim arises under the laws of a State and extending limitations would be inconsistent with the governing State law.

In addition, section 2 provides that if the chief judge of the district is unavailable, the authority is conferred to the district judge in regular active service who is senior in commission or if no such judge is available, the chief judge of the circuit that includes the district.

Habeas Corpus Unaffected. This section also expressly provides that nothing in this section is to be construed to authorize suspension of habeas corpus.

Criminal Cases. This section mandates that a court must consider the ability of the government, in criminal cases, to investigate, litigate, and process defendants during and after an emergency situation, as well as the ability of criminal defendants, as a class to prepare defenses.

Tolling in Courts of Appeals. This section also provides authority to Federal appellate courts. The chief judge of a circuit or his designee, in the event of his or her absence, may enter an order to toll or delay deadlines for cases pending in the court of appeals. A chief judge of a circuit may not authorize suspension of habeas corpus.

Issuance of Orders. The Attorney General or his designee may request issuance of an order under this section or the chief judge of a district or a circuit may act on his or her own motion.

Duration of an Order. An order to extend or toll a deadline may not exceed 14 days, except where a judge determines that an emergency situation requires additional extensions of the period during which deadlines are delayed or tolled, he or she may, with the consent of the judicial council of the circuit, enter additional orders under this section in order to further extend the deadline.

Notice. A court issuing an order under this section must: make all reasonable efforts to publicize the order, including announcing the order on the web sites of all affected courts and the web site of the Federal judiciary; and the Director of the Administrative Office of the Courts must send notice, including reasons for the issuance, to the House and Senate Judiciary Committees.

Reporting Requirement. A court issuing one or more orders under this section must submit a brief report to the House and Senate Judiciary Committees, and the Judicial Conference of the United States describing the impact of the order—including the reasons for issuing the order, the duration, the impact of the order on litigants, and the costs to the judiciary. The report must be filed within 180 days after the last extension or tolling of a time period made by an order ends. A report is only required under this section if the court issues one or more orders that toll or extend a time deadline for more than 14 consecutive days.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

CHAPTER 111 OF TITLE 28, UNITED STATES CODE

CHAPTER 111—GENERAL PROVISIONS

Sec.

1651. Writs.

* * * * *

1660. *Emergency authority to delay or toll judicial deadlines.*

* * * * *

§ 1660. *Emergency authority to delay or toll judicial deadlines*

(a) *TOLLING IN DISTRICT COURTS.*—

(1) *IN GENERAL.*—*In the event of a natural disaster or other emergency situation requiring the closure of courts or rendering it impracticable for the United States Government or a class of litigants to comply with deadlines imposed by any Federal or State law or rule that applies in the courts of the United States, the chief judge of a district court that has been affected may exercise emergency authority in accordance with this section.*

(2) *SCOPE OF AUTHORITY.*—(A) *The chief judge may enter such order or orders as may be appropriate to delay, toll, or otherwise grant relief from the time deadlines imposed by otherwise applicable laws or rules for such period as may be appropriate for any class of cases pending or thereafter filed in the district court or bankruptcy court of the district.*

(B) *Except as provided in subparagraph (C), the authority conferred by this section extends to all laws and rules affecting criminal and juvenile proceedings (including, prearrest, post-arrest, pretrial, trial, and post-trial procedures), civil actions,*

bankruptcy proceedings, and the time for filing and perfecting an appeal.

(C) The authority conferred by this section does not include the authority to extend—

(i) any statute of limitation for a criminal action; or

(ii) any statute of limitation for a civil action, if—

(I) the claim arises under the laws of a State; and

(II) extending the limitations period would be inconsistent with the governing State law.

(3) UNAVAILABILITY OF CHIEF JUDGE.—If the chief judge of the district is unavailable, the authority conferred by this section may be exercised by the district judge in regular active service who is senior in commission or, if no such judge is available, by the chief judge of the circuit that includes the district.

(4) HABEAS CORPUS UNAFFECTED.—Nothing in this section shall be construed to authorize suspension of the writ of habeas corpus.

(b) CRIMINAL CASES.—In exercising the authority under subsection (a) for criminal cases, the court shall consider the ability of the United States Government to investigate, litigate, and process defendants during and after the emergency situation, as well as the ability of criminal defendants as a class to prepare their defenses.

(c) TOLLING IN COURTS OF APPEALS.—

(1) IN GENERAL.—In the event of a natural disaster or other emergency situation requiring the closure of courts or rendering it impracticable for the United States Government or a class of litigants to comply with deadlines imposed by any federal or States law or rule that applies in the courts of the United States, the chief judge of a court of appeals that has been affected or that includes a district court so affected may exercise emergency authority in accordance with this section.

(2) SCOPE OF AUTHORITY.—The chief judge may enter such order or orders as may be appropriate to delay, toll, or otherwise grant relief from the time deadlines imposed by otherwise applicable laws or rules for such period as may be appropriate for any class of cases pending in the court of appeals.

(3) UNAVAILABILITY OF CHIEF JUDGE.—If the chief judge of the circuit is unavailable, the authority conferred by this section may be exercised by the circuit judge in regular active service who is senior in commission.

(4) HABEAS CORPUS UNAFFECTED.—Nothing in this section shall be construed to authorize suspension of the writ of habeas corpus.

(d) ISSUANCE OF ORDERS.—The Attorney General or the Attorney General's designee may request issuance of an order under this section, or the chief judge of a district or of a circuit may act on his or her own motion.

(e) DURATION OF ORDERS.—An order entered under this section may not toll or extend a time deadline for a period of more than 14 days, except that, if the chief judge (whether of a district or of a circuit) determines that an emergency situation requires additional extensions of the period during which deadlines are tolled or extended, the chief judge may, with the consent of the judicial coun-

cil of the circuit, enter additional orders under this section in order to further toll or extend such time deadline.

(f) NOTICE.—A court issuing an order under this section—

(1) shall make all reasonable efforts to publicize the order, including announcing the order on the web sites of all affected courts and the web site of the Federal judiciary; and

(2) shall, through the Director of the Administrative Office of the United States Courts, send notice of the order, including the reasons for the issuance of the order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(g) REQUIRED REPORTS.—A court issuing one or more orders under this section relating to an emergency situation shall, not later than 180 days after the date on which the last extension or tolling of a time period made by the order or orders ends, submit a brief report to the Committee on the Judiciary of the Senate, the Committee on the Judiciary of the House of Representatives, and the Judicial Conference of the United States describing the orders, including—

(1) the reasons for issuing the orders;

(2) the duration of the orders;

(3) the effects of the orders on litigants; and

(4) the costs to the judiciary resulting from the orders.

(h) EXCEPTIONS.—The notice under subsection (f)(2) and the report under subsection (g) are not required in the case of an order that tolls or extends a time deadline for a period of less than 14 days.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, NOVEMBER 9, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will come to order.

[Intervening business.]

Chairman SENSENBRENNER. Now, pursuant to notice, I call up the bill H.R. 3729, to provide emergency authority to delay or toll judicial proceedings in the United States district and circuit courts, for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 3729, follows:]

109TH CONGRESS
1ST SESSION

H. R. 3729

To provide emergency authority to delay or toll judicial proceedings in United States district and circuit courts.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2005

Mr. SENSENBRENNER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide emergency authority to delay or toll judicial proceedings in United States district and circuit courts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. EMERGENCY AUTHORITY TO DELAY OR TOLL**
4 **JUDICIAL PROCEEDINGS.**

5 (a) IN GENERAL.—Chapter 111 of title 28, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

1 **“§ 1660. Emergency authority to delay or toll judicial**
2 **proceedings**

3 “(a) IN GENERAL.—Upon application of the Attorney
4 General or the Attorney General’s designee, or on his or
5 her own motion, the chief judge of a district court that
6 has been affected (or, if the chief district judge is unavail-
7 able, the most senior available active district judge or the
8 chief judge of the court of appeals including the district)
9 may, in the event of a natural disaster, civil disobedience,
10 or other emergency situation requiring the closure of
11 courts or other circumstances inhibiting the ability of liti-
12 gants to comply with deadlines imposed by rules of proce-
13 dure applicable in the courts of the United States, enter
14 such order or orders as may be appropriate to delay, toll,
15 or otherwise grant relief from time deadlines imposed by
16 otherwise applicable statutes and rules of procedure for
17 such period and in such judicial district as may be appro-
18 priate, including, without limitation, those affecting all
19 prearrest, post-arrest, pretrial, trial, and post-trial proce-
20 dures in criminal and juvenile proceedings and all civil
21 process and proceedings, and the time for filing and per-
22 fecting an appeal.

23 “(b) CRIMINAL CASES.—In setting new time limits
24 under this section for criminal cases, the court shall con-
25 sider the Government’s ability to investigate, litigate, and

1 process defendants during and after the emergency situa-
2 tion.

3 “(c) APPEALS.—Upon application of the Attorney
4 General or the Attorney General’s designee, or on his or
5 her own motion, the chief judge of a court of appeals that
6 has been affected or that includes a district court so af-
7 fected (or, if the chief circuit judge is unavailable, the
8 most senior available active circuit judge) may, in the
9 event of a natural disaster, civil disobedience, or other
10 emergency situation requiring the closure of courts or
11 other circumstances inhibiting the ability of litigants to
12 comply with deadlines imposed by rules of procedure appli-
13 cable in the courts of the United States, enter such order
14 or orders as may be appropriate to delay, toll, or otherwise
15 grant relief from time deadlines imposed by otherwise ap-
16 plicable statutes and rules of procedure for such period
17 and in such circuit as may be appropriate, including, with-
18 out limitation, those affecting all appellate proceedings.”.

19 (b) CLERICAL AMENDMENT.—The table of sections
20 at the beginning of chapter 111 of title 28, United States
21 Code, is amended by adding at the end the following new
22 item:

“1660. Emergency authority to delay or toll judicial proceedings.”.

○

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes to explain the bill.

This bill would grant the chief judge of any district court or appeals court the authority to enter an order to delay or toll any deadlines on pending court cases whenever an effective court is closed due to a natural disaster, civil disobedience, or other emergency situation. I think this is pretty self-explanatory. It's discretionary with the judge. If the courthouse is closed, obviously deadlines can't be enforced.

I will have an amendment in the nature of a substitute to offer at the appropriate time and yield back the balance of my time.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentleman from Michigan wish to give an opening statement?

Mr. CONYERS. No. I'll yield to the gentleman from North Carolina.

Chairman SENSENBRENNER. The gentleman from North Carolina is recognized for an opening statement.

Mr. WATT. I don't have an opening statement. I just wanted to ask a question at an appropriate time. Maybe it's better to ask it when you introduce the amendment.

Chairman SENSENBRENNER. Whenever. Does the gentleman from Michigan have an opening statement?

Mr. CONYERS. I'll ask that it go in the record.

Chairman SENSENBRENNER. Without objection, all Members—

Mr. CONYERS. And I support the measure.

Chairman SENSENBRENNER. All Members may include opening statements in the record at this time.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MICHIGAN, AND RANKING MEMBER, COMMITTEE
ON THE JUDICIARY

Let me begin by thanking Chairman Sensenbrenner for his willingness to work with members on this side of the aisle to address many of the concerns that have existed with regard to this legislation. This Manager's amendment, while maybe still not perfect, represents a noticeable improvement over the version of the bill, as it was originally introduced.

First, it narrows the circumstances under which the chief judge of a federal judicial district may toll or delay deadlines to those involving a natural disaster or emergency.

Second, and equally important, it includes clarifying language which makes it clear that this bill is not to be construed to authorize suspension of the writ of habeas corpus.

Third, it limits the amount of time that a chief judge may extend or toll a deadline to no more than 14 days, except where a judge determines that an emergency situation requires additional extensions.

Finally, for any court that decides to toll or delay a deadline, the amendment creates a notice requirement. Under this requirement, a court would have to:

- (1) make all reasonable efforts to publicize the order—including announcing the order on the web sites of all affected courts and the web site of the Federal Judiciary; and
- (2) The Director of the Administrative Office of the Courts must send notice, including reasons for the issuance, to the House and Senate Judiciary Committees.

This latter provision will go along way towards helping our committee conduct adequate oversight and assist in our efforts to detect any possible abuses.

Chairman SENSENBRENNER. Are there amendments? And the Chair recognizes himself to offer an amendment in the nature of a substitute, which the clerk will report.

The CLERK. Amendment in the nature of a substitute to H.R. 3729, offered by Chairman Sensenbrenner. Strike all after the—

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment in the nature of a substitute follows:]

H.L.C.

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3729**

OFFERED BY M. _____

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Federal Judiciary
3 Emergency Tolling Act of 2005”.

**4 SEC. 2. EMERGENCY AUTHORITY TO DELAY OR TOLL JUDI-
5 CIAL PROCEEDINGS.**

6 (a) IN GENERAL.—Chapter 111 of title 28, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

**9 “§ 1660. Emergency authority to delay or toll judicial
10 deadlines**

11 “(a) TOLLING IN DISTRICT COURTS.—

12 “(1) IN GENERAL.—In the event of a natural
13 disaster or other emergency situation requiring the
14 closure of courts or rendering it impracticable for
15 the United States Government or a class of litigants
16 to comply with deadlines imposed by any Federal or
17 State law or rule that applies in the courts of the
18 United States, the chief judge of a district court



1 that has been affected may exercise emergency au-
 2 thority in accordance with this section.

3 “(2) SCOPE OF AUTHORITY.—(A) The chief
 4 judge may enter such order or orders as may be ap-
 5 propriate to delay, toll, or otherwise grant relief
 6 from the time deadlines imposed by otherwise appli-
 7 cable laws or rules for such period as may be appro-
 8 priate for any class of cases pending or thereafter
 9 filed in the district court or bankruptcy court of the
 10 district.

11 “(B) Except as provided in subparagraph (C),
 12 the authority conferred by this section extends to all
 13 laws and rules affecting criminal and juvenile pro-
 14 ceedings (including, prearrest, post-arrest, pretrial,
 15 trial, and post-trial procedures), civil actions, bank-
 16 ruptcy proceedings, and the time for filing and per-
 17 fecting an appeal.

18 “(C) The authority conferred by this section
 19 does not include the authority to extend—

20 “(i) any statute of limitation for a criminal
 21 action; or

22 “(ii) any statute of limitation for a civil ac-
 23 tion, if—

24 “(I) the claim arises under the laws of
 25 a State; and



H.L.C.

3

1 “(II) extending the limitations period
2 would be inconsistent with the governing
3 State law.

4 “(3) UNAVAILABILITY OF CHIEF JUDGE.—If
5 the chief judge of the district is unavailable, the au-
6 thority conferred by this section may be exercised by
7 the district judge in regular active service who is
8 senior in commission or, if no such judge is avail-
9 able, by the chief judge of the circuit that includes
10 the district.

11 “(4) HABEAS CORPUS UNAFFECTED.—Nothing
12 in this section shall be construed to authorize sus-
13 pension of the writ of habeas corpus.

14 “(b) CRIMINAL CASES.—In exercising the authority
15 under subsection (a) for criminal cases, the court shall
16 consider the ability of the United States Government to
17 investigate, litigate, and process defendants during and
18 after the emergency situation, as well as the ability of
19 criminal defendants as a class to prepare their defenses.

20 “(c) TOLLING IN COURTS OF APPEALS.—

21 “(1) IN GENERAL.—In the event of a natural
22 disaster or other emergency situation requiring the
23 closure of courts or rendering it impracticable for
24 the United States Government or a class of litigants
25 to comply with deadlines imposed by any federal or



1 States law or rule that applies in the courts of the
 2 United States, the chief judge of a court of appeals
 3 that has been affected or that includes a district
 4 court so affected may exercise emergency authority
 5 in accordance with this section.

6 “(2) SCOPE OF AUTHORITY.—The chief judge
 7 may enter such order or orders as may be appro-
 8 priate to delay, toll, or otherwise grant relief from
 9 the time deadlines imposed by otherwise applicable
 10 laws or rules for such period as may be appropriate
 11 for any class of cases pending in the court of ap-
 12 peals.

13 “(3) UNAVAILABILITY OF CHIEF JUDGE.—If
 14 the chief judge of the circuit is unavailable, the au-
 15 thority conferred by this section may be exercised by
 16 the circuit judge in regular active service who is sen-
 17 ior in commission.

18 “(4) HABEAS CORPUS UNAFFECTED.—Nothing
 19 in this section shall be construed to authorize sus-
 20 pension of the writ of habeas corpus.

21 “(d) ISSUANCE OF ORDERS.—The Attorney General
 22 or the Attorney General’s designee may request issuance
 23 of an order under this section, or the chief judge of a dis-
 24 trict or of a circuit may act on his or her own motion.



1 “(e) DURATION OF ORDERS.—An order entered
 2 under this section may not toll or extend a time deadline
 3 for a period of more than 14 days, except that, if the chief
 4 judge (whether of a district or of a circuit) determines that
 5 an emergency situation requires additional extensions of
 6 the period during which deadlines are tolled or extended,
 7 the chief judge may, with the consent of the judicial coun-
 8 cil of the circuit, enter additional orders under this section
 9 in order to further toll or extend such time deadline.

10 “(f) NOTICE.—A court issuing an order under this
 11 section—

12 “(1) shall make all reasonable efforts to pub-
 13 lize the order, including announcing the order on
 14 the web sites of all affected courts and the web site
 15 of the Federal judiciary; and

16 “(2) shall, through the Director of the Adminis-
 17 trative Office of the United States Courts, send no-
 18 tice of the order, including the reasons for the
 19 issuance of the order, to the Committee on the Judi-
 20 ciary of the Senate and the Committee on the Judi-
 21 ciary of the House of Representatives.

22 “(g) REQUIRED REPORTS.—A court issuing one or
 23 more orders under this section relating to an emergency
 24 situation shall, not later than 180 days after the date on
 25 which the last extension or tolling of a time period made



1 by the order or orders ends, submit a brief report to the
 2 Committee on the Judiciary of the Senate, the Committee
 3 on the Judiciary of the House of Representatives, and the
 4 Judicial Conference of the United States describing the
 5 orders, including—

6 “(1) the reasons for issuing the orders;

7 “(2) the duration of the orders;

8 “(3) the effects of the orders on litigants; and

9 “(4) the costs to the judiciary resulting from
 10 the orders.

11 “(h) EXCEPTIONS.—The notice under subsection
 12 (f)(2) and the report under subsection (g) are not required
 13 in the case of an order that tolls or extends a time deadline
 14 for a period of less than 14 days.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
 16 at the beginning of chapter 111 of title 28, United States
 17 Code, is amended by adding at the end the following new
 18 item:

“1660. Emergency authority to delay or toll judicial deadlines.”.



Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes.

This bipartisan substitute makes a number of clarifying changes to reflect the recommendations of the Administrative Office of the U.S. Courts and the Department of Justice. The substitute would reduce the authority of a Federal judge to toll deadlines during emergency situations. The amendment also includes an express provision that the authority of this bill does not extend to any statute of limitation for a criminal or civil action if the claim arises under the laws of a State and extending limitations would be inconsistent with governing State law. This provision was added in order to ensure that the bill does not violate the Erie Doctrine, which preserves the primacy of State law.

Additionally, the substitute expressly provides that the legislation not be construed to authorize the suspension of habeas corpus and places a limitation, 14-day limitation, on the amount of time a deadline may be extended or tolled while preserving the ability of a judge to seek additional extensions.

Finally, the substitute requires a court issuing an order to toll or delay deadlines to make all reasonable efforts to publicize the order on the websites of the Federal judiciary and all affected courts and also to notify our Committee and the wise people over on the other side who serve on the Judiciary Committee when such an action is taken.

I urge the Members to support the substitute, and——

Mr. WATT. Would the Chairman yield for——

Chairman SENSENBRENNER. I yield to the gentleman from North Carolina.

Mr. WATT. I was quickly trying to read the substitute. I had read the original bill and thought that we were proceeding on that. Does this require an application of any kind, or it's just the initiative of the judge? The original bill gave the Attorney General but not litigants the right to apply to trigger, but I don't see a triggering mechanism here either one, either the Attorney General or private litigants.

Chairman SENSENBRENNER. If the gentleman—reclaiming my time, it is my belief that the judge can do this on his own with the, you know, appropriate notice on the website. I imagine that if there are extenuating circumstances, any of the litigants, including the Attorney General, should the United States be a party, can make an application, in which case it would be up to the judge on whether or not to grant the application or deny it.

Mr. WATT. That's fine, Mr. Chairman. The concern I had about the original bill was that it seemed to give the Attorney General the right to apply, not litigants. But I think you've solved that, and I'll yield back.

Chairman SENSENBRENNER. The Chair yields back his time. Without objection, all Members may include opening statements in the record at this point.

Are there any second degree amendments to the amendment in the nature of a substitute?

[No response.]

Chairman SENSENBRENNER. Hearing no amendments, the question occurs on the amendment in the nature of the substitute offered by the Chair. All those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the amendment in the nature of a substitute is agreed to. A reporting quorum is present.

The question occurs on the motion to report the bill H.R. 3729 favorably as amended. All those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it. The motion to report favorably is agreed to.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by the rules in which to submit additional, dissenting, supplemental, or minority views.

This concludes the business for which this markup was called. The Chair thanks everybody for dealing with these matters expeditiously, and without objection, the Committee stands adjourned.

[Whereupon, at 11:37 a.m., the Committee was adjourned.]

