

111TH CONGRESS
2D SESSION

S. 3122

To require the Attorney General of the United States to compile, and make publically available, certain data relating to the Equal Access to Justice Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2010

Mr. ENSIGN (for himself, Mr. RISCH, Mr. VITTER, Mr. BARRASSO, Mr. BENNETT, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require the Attorney General of the United States to compile, and make publically available, certain data relating to the Equal Access to Justice Act, and for other purposes.

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. SHORT TITLE.**

4 This Act may be cited as the “Open EAJA Act of
5 2010”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) The Equal Access to Justice Act, estab-
2 lished in 1980 to provide small businesses, individ-
3 uals, and public interest groups the opportunity to
4 recover attorney fees and costs, is funded through a
5 permanent Congressional appropriation.

6 (2) The Equal Access to Justice Act, as passed,
7 includes statutory reporting requirements to Con-
8 gress on the administration and payments funded
9 through the Act.

10 (3) The Department of Justice and the Admin-
11 istrative Conference of the United States ceased re-
12 porting to Congress on EAJA payments and admin-
13 istration in 1995.

14 (4) Payments authorized by EAJA have contin-
15 ued every year without Congressional oversight.

16 **SEC. 3. DATA COMPILATION, REPORTING, AND PUBLIC AC-**
17 **CESS.**

18 (a) REPORTING IN AGENCY ADJUDICATIONS.—Sec-
19 tion 504(c) of title 5, United States Code, is amended—

20 (1) in subsection (c)(1), by striking “After con-
21 sultation with the Chairman of the Administrative
22 Conference of the United States, each” and insert-
23 ing “Each”; and

24 (2) by striking subsection (e) and inserting the
25 following:

1 “(e)(1) The Attorney General of the United States
2 shall issue an annual, online report to the Congress on
3 the amount of fees and other expenses awarded during the
4 preceding fiscal year under this section. The report shall
5 describe the number, nature, and amount of the awards,
6 the claims involved in the controversy, a justification for
7 awards exceeding the cap provided in subsection (b)(1)(A),
8 and any other relevant information that may aid the Con-
9 gress in evaluating the scope and impact of such awards.
10 The report shall be made available to the public online,
11 and contain a searchable database, total awards given, and
12 total number of applications for the award of fees and
13 other expenses that were filed, defended, and heard, and
14 shall include, with respect to each such application, the
15 following:

16 “(A) Name of the party seeking the award of
17 fees and other expenses.

18 “(B) The agency to which the application for
19 the award was made.

20 “(C) The name of administrative law judges in
21 the case.

22 “(D) The disposition of the application, includ-
23 ing any appeal of action taken on the application.

1 “(E) The hourly rates of attorneys and expert
2 witnesses stated in the application that was award-
3 ed.

4 “(2) The report under paragraph (1) shall cover pay-
5 ments of fees and other expenses under this section that
6 are made under a settlement agreement.

7 “(3) Each agency shall provide the Attorney General
8 with such information as is necessary for the Attorney
9 General to comply with the requirements of this sub-
10 section.”.

11 (b) REPORTING IN COURT CASES.—Section 2412(d)
12 of title 28, United States Code, is amended by inserting
13 after paragraph (4), the following:

14 “(5) The Attorney General of the United States shall
15 issue an annual, online report to the Congress on the
16 amount of fees and other expenses awarded during the
17 preceding fiscal year under this subsection. The report
18 shall describe the number, nature, and amount of the
19 awards, the claims involved in the controversy, a justifica-
20 tion for awards exceeding the cap provided in paragraph
21 (2)(A)(ii), and any other relevant information that may
22 aid the Congress in evaluating the scope and impact of
23 such awards. The report shall be made available to the
24 public online and shall contain a searchable database of
25 total awards given and the total number of cases filed,

1 defended, or heard, and shall include with respect to each
2 such case the following:

3 “(A) The name of the party seeking the award
4 of fees and other expenses in the case.

5 “(B) The district court hearing the case.

6 “(C) The names of presiding judges in the case.

7 “(D) The name of the agency involved in the
8 case.

9 “(E) The disposition of the application for fees
10 and other expenses, including any appeal of action
11 taken on the application.

12 “(F) The hourly rates of attorneys and expert
13 witnesses stated in the application that was award-
14 ed.

15 The report under this paragraph shall cover payments of
16 fees and other expenses under this subsection that are
17 made under a settlement agreement.”.

18 **SEC. 4. GAO STUDY.**

19 Not later than 30 days after the date of enactment
20 of this Act, the Comptroller General shall commence an
21 audit of the Equal Access to Justice Act for the years
22 1995 through the end of the calendar year in which this
23 Act is enacted. The Comptroller General shall, not later
24 than 1 year after the end of the calendar year in which

- 1 this Act is enacted, complete such audit and submit to
- 2 the Congress a report on the results of the audit.

