Suspend the Rules and Pass the Bill, H.R. 3279, with an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

114TH CONGRESS 1ST SESSION H. R. 3279

To amend titles 5 and 28, United States Code, to require annual reports to Congress on, and the maintenance of databases on, awards of fees and other expenses to prevailing parties in certain administrative proceedings and court cases to which the United States is a party, and for other purposes.

## IN THE HOUSE OF REPRESENTATIVES

July 29, 2015

Mr. Collins of Georgia (for himself, Mr. Cohen, Mrs. Lummis, Mr. Schrader, Mr. Gosar, and Mr. Peterson) introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To amend titles 5 and 28, United States Code, to require annual reports to Congress on, and the maintenance of databases on, awards of fees and other expenses to prevailing parties in certain administrative proceedings and court cases to which the United States is a party, 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,

## 1 SECTION 1. SHORT TITLE.

- This Act may be cited as the "Open Book on Equal
- 3 Access to Justice Act".
- 4 SEC. 2. MODIFICATION OF EQUAL ACCESS TO JUSTICE
- 5 PROVISIONS.
- 6 (a) AGENCY PROCEEDINGS.—Section 504 of title 5,
- 7 United States Code, is amended—
- 8 (1) in subsection (c)(1), by striking ", United
- 9 States Code";
- 10 (2) by redesignating subsection (f) as sub-
- 11 section (i); and
- 12 (3) by striking subsection (e) and inserting the
- following:
- 14 "(e)(1) The Chairman of the Administrative Con-
- 15 ference of the United States, after consultation with the
- 16 Chief Counsel for Advocacy of the Small Business Admin-
- 17 istration, shall report to the Congress, not later than
- 18 March 31 of each year through the 6th calendar year be-
- 19 ginning after the initial report under this subsection is
- 20 submitted, on the amount of fees and other expenses
- 21 awarded during the preceding fiscal year pursuant to this
- 22 section. The report shall describe the number, nature, and
- 23 amount of the awards, the claims involved in the con-
- 24 troversy, and any other relevant information that may aid
- 25 the Congress in evaluating the scope and impact of such

- 1 awards. The report shall be made available to the public
- 2 online.
- 3 "(2)(A) The report required by paragraph (1) shall
- 4 account for all payments of fees and other expenses
- 5 awarded under this section that are made pursuant to a
- 6 settlement agreement, regardless of whether the settle-
- 7 ment agreement is sealed or otherwise subject to non-
- 8 disclosure provisions.
- 9 "(B) The disclosure of fees and other expenses re-
- 10 quired under subparagraph (A) does not affect any other
- 11 information that is subject to nondisclosure provisions in
- 12 the settlement agreement.
- 13 "(f) The Chairman of the Administrative Conference
- 14 shall create and maintain, during the period beginning on
- 15 the date the initial report under subsection (e) is sub-
- 16 mitted and ending one year after the date on which the
- 17 final report under that subsection is submitted, online a
- 18 searchable database containing the following information
- 19 with respect to each award of fees and other expenses
- 20 under this section:
- 21 "(1) The case name and number of the adver-
- sary adjudication, if available.
- "(2) The name of the agency involved in the
- adversary adjudication.

1	"(3) A description of the claims in the adver-
2	sary adjudication.
3	"(4) The name of each party to whom the
4	award was made, as such party is identified in the
5	order or other agency document making the award.
6	"(5) The amount of the award.
7	"(6) The basis for the finding that the position
8	of the agency concerned was not substantially justi-
9	fied.
10	"(g) The online searchable database described in sub-
11	section (f) may not reveal any information the disclosure
12	of which is prohibited by law or court order.
13	"(h) The head of each agency shall provide to the
14	Chairman of the Administrative Conference in a timely
15	manner all information requested by the Chairman to
16	comply with the requirements of subsections (e), (f), and
17	(g).".
18	(b) Court Cases.—Section 2412(d) of title 28,
19	United States Code, is amended by adding at the end the
20	following:
21	"(5)(A) The Chairman of the Administrative Con-
22	ference of the United States shall submit to the Congress,
23	not later than March 31 of each year through the 6th cal-
24	endar year beginning after the initial report under this
25	paragraph is submitted, a report on the amount of fees

- 1 and other expenses awarded during the preceding fiscal
- 2 year pursuant to this subsection. The report shall describe
- 3 the number, nature, and amount of the awards, the claims
- 4 involved in each controversy, and any other relevant infor-
- 5 mation that may aid the Congress in evaluating the scope
- 6 and impact of such awards. The report shall be made
- 7 available to the public online.
- 8 "(B)(i) The report required by subparagraph (A)
- 9 shall account for all payments of fees and other expenses
- 10 awarded under this subsection that are made pursuant to
- 11 a settlement agreement, regardless of whether the settle-
- 12 ment agreement is sealed or otherwise subject to non-
- 13 disclosure provisions.
- 14 "(ii) The disclosure of fees and other expenses re-
- 15 quired under clause (i) does not affect any other informa-
- 16 tion that is subject to nondisclosure provisions in the set-
- 17 tlement agreement.
- 18 "(C) The Chairman of the Administrative Conference
- 19 shall include and clearly identify in the annual report
- 20 under subparagraph (A), for each case in which an award
- 21 of fees and other expenses is included in the report—
- "(i) any amounts paid from section 1304 of
- 23 title 31 for a judgment in the case;
- 24 "(ii) the amount of the award of fees and other
- expenses; and

1	"(111) the statute under which the plaintiff filed
2	suit.
3	"(6) The Chairman of the Administrative Conference
4	shall create and maintain, during the period beginning on
5	the date the initial report under paragraph (5) is sub-
6	mitted and ending one year after the date on which the
7	final report under that paragraph is submitted, online a
8	searchable database containing the following information
9	with respect to each award of fees and other expenses
10	under this subsection:
11	"(A) The case name and number.
12	"(B) The name of the agency involved in the
13	case.
14	"(C) The name of each party to whom the
15	award was made, as such party is identified in the
16	order or other court document making the award.
17	"(D) A description of the claims in the case.
18	"(E) The amount of the award.
19	"(F) The basis for the finding that the position
20	of the agency concerned was not substantially justi-
21	fied.
22	"(7) The online searchable database described in
23	paragraph (6) may not reveal any information the disclo-
24	sure of which is prohibited by law or court order.

1	"(8) The head of each agency (including the Attorney
2	General of the United States) shall provide to the Chair-
3	man of the Administrative Conference of the United
4	States in a timely manner all information requested by
5	the Chairman to comply with the requirements of para-
6	graphs (5), (6), and (7).".
7	(c) Clerical Amendments.—Section 2412 of title
8	28, United States Code, is amended—
9	(1) in subsection (d)(3), by striking "United
10	States Code,"; and
11	(2) in subsection (e)—
12	(A) by striking "of section 2412 of title
13	28, United States Code," and inserting "of this
14	section"; and
15	(B) by striking "of such title" and insert-
16	ing "of this title".
17	(d) Effective Date.—
18	(1) IN GENERAL.—The amendments made by
19	subsections (a) and (b) shall first apply with respect
20	to awards of fees and other expenses that are made
21	on or after the date of the enactment of this Act.
22	(2) Initial reports.—The first reports re-
23	quired by section 504(e) of title 5, United States
24	Code, and section 2412(d)(5) of title 28, United
25	States Code, shall be submitted not later than

1	March 31 of the calendar year following the first
2	calendar year in which a fiscal year begins after the
3	date of the enactment of this Act.
4	(3) Online databases.—The online databases
5	required by section 504(f) of title 5, United States
6	Code, and section 2412(d)(6) of title 28, United
7	States Code, shall be established as soon as prac-
8	ticable after the date of the enactment of this Act,
9	but in no case later than the date on which the first
10	reports under section 504(e) of title 5, United States
11	Code, and section 2412(d)(5) of title 28, United
12	States Code, are required to be submitted under
13	paragraph (2) of this subsection.