

CLARIFICATION OF RULES FOR REMOVAL OF CASES TO
FEDERAL COURT

SEPTEMBER 17, 1996.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

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

REPORT

[To accompany S. 533]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the Act (S. 533) to clarify the rules governing removal of cases to Federal court, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the Act do pass.

CONTENTS

	Page
Purpose and Summary	1
Background and Need for Legislation	2
Hearings	2
Committee Consideration	2
Committee Oversight Findings	2
Committee on Government Reform and Oversight Findings	2
New Budget Authority and Tax Expenditures	2
Congressional Budget Office Estimate	2
Inflationary Impact Statement	3
Section-by-Section Analysis and Discussion	3
Changes in Existing Law	4

PURPOSE AND SUMMARY

Under 28 U.S.C. § 1447(c), a motion to remand to a state court a case that has been removed to federal court on the “basis of any defect in removal procedure,” must be made within 30 days. S. 533 clarifies that it is the intent of Congress that this 30-day limit applies to any “defect” other than the lack of subject matter jurisdiction.

BACKGROUND AND NEED FOR THE LEGISLATION

For some time prior to 1988, 28 U.S.C. § 1447(c) provided that “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” In the Judicial Improvements and Access to Justice Act of 1988, Congress required that a “motion to remand the case on the basis of any defect in removal must be made within 30 days after the filing of the notice of removal under section 1446(a).” The intent of this amendment was to impose a 30-day limit on all motions to remand except in those cases where the court lacks subject matter jurisdiction. The intent of the Congress is not entirely clear from the current wording of 28 U.S.C. § 1447(c), and it has been interpreted differently by different courts. S. 533 clarifies the intent of Congress that a motion to remand a case on the basis of any defect other than subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under 28 U.S.C. § 1446(a).

HEARINGS

The Committee held no hearings on S. 533 because it viewed the bill as technical and noncontroversial, and it received broad bipartisan support.

COMMITTEE CONSIDERATION

On July 23, 1996, the Subcommittee on Courts and Intellectual Property met in open session and ordered reported the bill S. 533, by voice vote, a quorum being present. On September 11, 1996, the Committee met in open session and ordered reported favorably the bill S. 533 by voice vote, a quorum being present.

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 descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight 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.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, S. 533, 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, September 16, 1996.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 533, an act to clarify the rules governing removal of cases to federal court, and for other purposes, as ordered reported by the House Committee on the Judiciary on September 11, 1996. CBO estimates that enacting S. 533 would not result in any significant impact on the federal budget. Because enactment of S. 533 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

S. 533 would clarify that the 30-day limit for remanding a case from federal court to state court applies to all motions to remand, except in cases in which the federal court lacks subject matter jurisdiction. At any time prior to final judgment in a federal court case, the case can be remanded to state court if the federal court lacks subject matter jurisdiction. According to the Administrative Office of the United States Courts (AOUSC), the bill would affect only a small number of cases because most courts are already interpreting the law in a manner consistent with S. 533. Therefore, CBO estimates that any resulting decrease in the caseload of the federal court system would be negligible, and there would be no significant savings to the federal government.

S. 533 contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1996 (Public Law 104-4). In cases where a court has not interpreted current law as it would be clarified by S. 533, state courts may experience a slight increase in the number of cases remanded to them. However, CBO estimates that the cost of this increased caseload would be minimal.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs), and Leo Lex (for the state and local costs).

Sincerely,

JUNE E. O'NEILL, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that S. 533 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Removal.—Section 1 amends section 1447(c) of title 28 United States Code by striking “any defect in removal procedure” and inserting “any defect other than lack of subject matter jurisdiction”.

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):

SECTION 1447 OF TITLE 28, UNITED STATES CODE

§ 1447. Procedure after removal generally

(a) * * *

* * * * *

(c) A motion to remand the case on the basis of [any defect in removal procedure] *any defect other than lack of subject matter jurisdiction* must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

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