



Competitiveness Agenda: House plan for economy hits House floor

There are many encouraging signs of growth in our economy. The gross domestic product (GDP) is growing at its fastest pace in 20 years, factory orders are up, and new jobs are being created.

Still, new jobs are all too often hard to find for many Americans, especially in the manufacturing sector where steady erosion poses a troubling picture for our economic and national security. One point is clear: to retain and create jobs, the U.S. must be the premier location for doing business. We cannot afford to drive away businesses, domestic or foreign. We need real change in legal, financial, regulatory, and trade policies to bolster our job base while enabling growth. In short, we will



Congressman Pitts talks with officials at Landisville Railroad during a recent visit

reduce "offshoring" and increase "insourcing" as we lower the cost of doing business in the United States.

- 1) **Health Care Security:** Soaring health insurance costs are the #1 concern of businesses, making it too expensive to do business in the U.S. Job growth

cannot occur until we reduce surging health costs through allowing small businesses to band together to get group insurance discount rates (H.R. 660); reform medical liability laws (H.R. 5); popularize Health Savings Accounts (as contained in H.R. 1); and other health tax credits/deductions to encourage the uninsured to purchase health coverage (H.R. 1873).

- 2) **Bureaucratic Red Tape Termination:** America leads the world in regulatory costs – totalling \$843 billion annually from the federal level alone. Congress and the Office of Management and Budget (OMB) must require sound science for all new regulations and repeal or amend indefensible older ones. We should amend the Regulatory
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H.R. 2728 — Occupational Safety and Health Small Business Day in Court Act of 2004

H.R. 2728 would modify the Occupational Safety and Health Act (29 U.S.C. Sec. 659) to provide exceptions to the 15-day deadline for employers to file responses to citations made by the Occupational Safety and Health Agency (OSHA). Under current law, employers who receive a citation or proposed assessment of penalty from OSHA must file a notice of contest within 15 days from receipt of the citation and if the deadline is not met, the citation and assessment are deemed a final order. Since the early 1980s, the OSHA Commission has sometimes granted relief from the final order in cases where an employer filed a late notice of contest because of mistake, inadvertence, surprise, or excusable neglect. H.R. 2728

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Latest Economic Indicators

Real GDP

3.9% for Q1 2004

Disposable Personal Income

+0.6% in May 2004

Consumer Price Index

+0.3% in June 2004

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codifies this practice into law to clarify that a litigant under the OSH Act may be relieved from a default judgment when its failure to contest a citation in a timely manner results from "mistake, inadvertence, surprise, or excusable neglect." (The language inserted by H.R. 2728 is identical to language contained in Federal Rule of Civil Procedure 60(b), which applies to all federal court cases.)

According to the House Committee on Education and the Workforce, the ability of the Commission to waive a deadline on a case-by-case basis "has been drawn into increased legal uncertainty by the recent decision of the U.S. Circuit Court of Appeals for the Second Circuit in *Chao v. LeFrois Builder, Inc.* Indeed, as recently as 2003, OSHA has argued that OSHRC does not have the authority to apply this rule."

H.R. 2728 passed the House with my support on May 18, 2004, by a vote of 251 to 177. It now awaits action in the Senate.

H.R. 2729—Occupational Safety and Health Review Commission Efficiency Act of 2004

H.R. 2729 adds two additional members to the Occupational Safety and Health Review Commission (OSHRC). In addition, the bill stipulates that all Commissioners must be chosen from among persons who by reason of legal training, education, or experience are qualified to serve in the position. H.R. 2729 also authorizes the President to extend the expiring term of a member of OSHRC until a replacement can be confirmed by the Senate, up to 365 days.

The Occupational Safety and Health Review Commission (OSHRC) is an independent federal agency responsible for

hearing disputes arising from the Occupational Safety and Health Act (OSH Act). Under current law, OSHRC consists of three members appointed by the President. Concerns have been raised over the effectiveness of the Commission (decisions have often been delayed because of membership vacancies, the lack of a quorum, or disagreement among commissioners) that H.R. 2729 attempts to address.

H.R. 2729 passed the House on May 18, 2004, by a vote of 228 to 199, and has since been appended to H.R. 2728.

H.R. 2730—Occupational Safety and Health Independent Review of OSHA Citations Act of 2004

H.R. 2730 requires that courts must defer, when reasonable, to the independent Occupational Safety and Health Review Commission (OSHRC) in making decisions on contested citations. Under current practice, the Occupational Safety and Health Administration (OSHA) both gives the citations and makes the recommendation to the court in situations where citations are contested, creating what some argue is a conflict of interest that stacks the process against employers. The bill would give OSHRC recommendation authority, removing this apparent conflict.

H.R. 2730 passed the House with my support on May 18, 2004,

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Congressman Pitts offers the microphone to a 16th District resident for a question during this year's HOPE Summit on the new Medicare Drug Discount Cards. The Summit attracted about 200 people who heard experts explain the drug card program and address questions on it.

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Flexibility Act (H.R. 2345) to further empower the Small Business Administration's (SBA's) independent Office of Advocacy to challenge proposed regulations that unduly harm or burden small businesses. We should also reform the Equal Access to Justice Act (H.R. 2282) and enact common-sense reform at OSHA.

3) **Lifelong Learning:** To ensure a fully trained workforce, education must be transformed into a process of lifelong learning. The costs should be offset by tax deductions or credits, as appropriate.

4) **Trade Fairness and Opportunity:** Many of our trading partners impose myriad tariff and non-tariffs barriers on our exports. Our businesses must have reciprocal access to foreign markets through negotiating market-opening agreements. We must also enforce our trade agreements while holding foreign government accountable for their illegal practices, including ending currency manipulation.

5) **Tax Relief and Simplification:** We must have a tax policy that rewards companies for keeping operations in the U.S. We also must make the President's tax cuts permanent.

6) **Energy Self-Sufficiency and Security:** Congress must pass a comprehensive energy bill that encourages environmentally sound development and conservation to help bring down these costs. In June, the House passed a series of bills designed to reduce gas prices and improve energy efficiency. Unfortunately, these bills, along with H.R. 6, the Energy Policy Act, are being obstructed in the Senate.

7) **Research and Development:** Congress should make the R&D tax credit permanent and governments must prioritize funding for the most promising technologies of the future (such as nanotechnology, biotechnology, and miniaturizations). H.R. 3598 would strengthen and expand various manufacturing R&D efforts. Modernization of the patent process with special protections for small business innovators (H.R. 1561) must pass Congress.

8) **Ending Lawsuit Abuse and Litigation Management:** America is the most litigious society in the world and many companies and service providers are leaving because some juries think businesses have an unlimited source of wealth. We need to have product liability reform that has a limit on how old a piece of equipment can be before the time to sue ends. We also need to have

medical liability reform (H.R. 5) in order to keep doctors practicing medicine.

9) **Improve Access to Capital:** Small businesses, particularly small manufacturers, continue to have difficulty in accessing capital. Congress fully reopened the 7(a) program by passing H.R. 4062 that freed up an additional \$3 billion in lending to small business. The Small Business Reauthorization and Manufacturing Revitalization Act (H.R. 2802) builds on that success by expanding the SBA loan and venture capital opportunities for our manufacturers, including those hurt by import competition. Also, the IRS should allow small businesses to place up to 20 percent of taxable income into a tax-deferred savings account for each of the first five years of operations until capital flow has typically stabilized for a new business.



Congressman Pitts discusses the importance of reading with students at Centerville Middle School

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by a vote of 224 to 204 and was later appended to H.R. 2728.

H.R. 2731—Occupational Safety and Health Small Employer Access to Justice Act of 2004

H.R. 2731 requires small businesses (defined as having no more than 100 employees and a net worth of no more than \$7,000,000) to be awarded attorneys' fees in OSHA court cases where the business is the prevailing party, whether or not the position taken by OSHA was "substantially justified."

In 1980, Congress passed the Equal Access to Justice Act (EAJA), 28 U.S.C. Sec. 2412 et seq., to enable small enterprises that successfully challenge government enforcement actions to recover their legal fees. The EAJA threshold for a small business is no more than 500 employees and a net worth of no more than \$7,000,000. Under EAJA, an employer may not recover attorneys' fees if the agency can show that its actions were "substantially justified." This provision has significantly hindered the ability of employers to recover attorneys' fees from OSHA, and has had a deterrent effect on attempts to do so.

H.R. 2731 passed the House with my support on May 18, 2004, by a vote of 233 to 194 and was later appended to H.R. 2728.

A wide variety of organizations support H.R. 2728, H.R. 2729, H.R. 2730, and H.R. 2731, including the National Association of Manufacturers, the National Federation of Independent Business, the National Restaurant Association, and Associated Builders and Contractors. In addition, the U.S. Chamber of Commerce is considering making these four votes "key votes" in its annual voting scorecard.

For further information on these, or any other, bills, you can access the Library of Congress' "Thomas" website by going to www.house.gov/pitts/legislation.htm, and clicking on the "Thomas" link on the right-hand side.

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