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Rules of Procedure

SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

United States Senate

MARCH 2017

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SENATE RESOLUTION 62, 115th CONGRESS, 1st SESSION (CONSIDERED AND AGREED TO FEBRUARY 28, 2017)

AUTHORIZING EXPENDITURES BY COMMITTEES OF THE SENATE FOR THE PERIODS MARCH 1, 2017 THROUGH FEBRUARY 28, 2019.

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SEC. 12. COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate and S. Res. 445, agreed to October 9, 2004 (108th Congress), including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Homeland Security and Governmental Affairs is authorized from March 1, 2017 through February 28, 2019, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and

the Committee on Rules and Administration, to use on a reimbursable, or non-reimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2017.—The expenses of the committee for the period March 1, 2017, through September 30, 2017, under this section shall not exceed $5,591,653, of which—

(1) not to exceed $75,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 4301(i))); and

(2) not to exceed $20,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2018 PERIOD.—The expenses of the committee for the period October 1, 2017, through September 30, 2018, under this section shall not exceed $9,585,691, of which—

(1) not to exceed $75,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 4301(i))); and

(2) not to exceed $20,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2019.—The expenses of the committee for the period October 1, 2018, through February 28, 2019, under this section shall not exceed $3,994,038, of which—

(1) not to exceed $75,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 4301(i))); and

(2) not to exceed $20,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(e) INVESTIGATIONS.—

(1) IN GENERAL.—The committee, or any duly authorized subcommittee of the committee, is authorized to study or investigate—

(A) the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in transactions, contracts, and activities of the Government or of Government officials and employees and any and all such improper practices between Government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the Govern-

ment, and the compliance or noncompliance of such corporations, companies, or individuals or other entities with the rules, regulations, and laws governing the various governmental agencies and the Government's relationships with the public;

(B) the extent to which criminal or other improper practices or activities are, or have been, engaged in the field of labor-management relations or in groups or organizations of employees or employers, to the detriment of interests of the public, employers, or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities;

(C) organized criminal activity which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions and the manner and extent to which, and the identity of the persons, firms, or corporations, or other entities by whom such utilization is being made, and further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activity have infiltrated lawful business enterprise, and to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce, and to determine

whether any changes are required in the laws of the United States in order to protect the public against such practices or activities;

(D) all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety, including investment fraud schemes, commodity and security fraud, computer fraud, and the use of offshore banking and corporate facilities to carry out criminal objectives;

(E) the efficiency and economy of operations of all branches and functions of the Government with particular reference to—

(i) the effectiveness of present national security methods, staffing, and processes as tested against the requirements imposed by the rapidly mounting complexity of national security problems;

(ii) the capacity of present national security staffing, methods, and processes to make full use of the Nation's resources of knowledge and talents;

(iii) the adequacy of present intergovernmental relations between the United States and international organizations principally concerned with national security of which the United States is a member; and

(iv) legislative and other proposals to improve these methods, processes, and relationships;

(F) the efficiency, economy, and effectiveness of all agencies and departments of the Government involved in the control and management of energy shortages including their performance with respect to—

(i) the collection and dissemination of accurate statistics on fuel demand and supply;

(ii) the implementation of effective energy conservation measures;

(iii) the pricing of energy in all forms;

(iv) coordination of energy programs with State and local government;

(v) control of exports of scarce fuels;

(vi) the management of tax, import, pricing, and other policies affecting energy supplies;

(vii) maintenance of the independent sector of the petroleum industry as a strong competitive force;

(viii) the allocation of fuels in short supply by public and private entities;

(ix) the management of energy supplies owned or controlled by the Government;

(x) relations with other oil producing and consuming countries;

(xi) the monitoring of compliance by governments, corporations, or individuals with the laws and regulations gov-

erning the allocation, conservation, or pricing of energy supplies; and

(xii) research into the discovery and development of alternative energy supplies; and

(G) the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs.

(2) EXTENT OF INQUIRIES.—In carrying out the duties provided in paragraph (1), the inquiries of this committee or any subcommittee of the committee shall not be construed to be limited to the records, functions, and operations of any particular branch of the Government and may extend to the records and activities of any persons, corporation, or other entity.

(3) SPECIAL COMMITTEE AUTHORITY.—For the purposes of this subsection, the committee, or any duly authorized subcommittee of the committee, or its chairman, or any other member of the committee or subcommittee designated by the chairman is authorized, in its, his, her, or their discretion—

(A) to require by subpoena or otherwise the attendance of witnesses and production of correspondence, books, papers, and documents;

(B) to hold hearings;

(C) to sit and act at any time or place during the sessions, recess, and adjournment periods of the Senate;

(D) to administer oaths; and

(E) to take testimony, either orally or by sworn statement, or, in the case of staff members of the Committee and the Permanent Subcommittee on Investigations, by deposition in accordance with the Committee Rules of Procedure.

(4) AUTHORITY OF OTHER COMMITTEES.—Nothing contained in this subsection shall affect or impair the exercise of any other standing committee of the Senate of any power, or the discharge by such committee of any duty, conferred or imposed upon it by the Standing Rules of the Senate or by the Legislative Reorganization Act of 1946.

(5) SUBPOENA AUTHORITY.—All subpoenas and related legal processes of the committee and its subcommittee authorized under S. Res. 73, agreed to February 12, 2015 (114th Congress) are authorized to continue.

RULES OF PROCEDURE FOR THE SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS AS ADOPTED

FEBRUARY 28, 2017

1. No public hearing connected with an investigation may be held without the approval of either the Chairman and the Ranking Minority Member or a Majority of the Members of the Subcommittee.[1] In all cases, notification to all Subcommittee Members of the intent to hold hearings must be given at least 7 days in advance to the date of the hearing. The Ranking Minority Member should be kept fully apprised of preliminary inquiries, investigations, and hearings. Preliminary inquiries may be initiated by the Subcommittee Majority staff upon the approval of the Chairman and notice of such approval to the Ranking Minority Member, Minority Staff Director, or the Minority Chief Counsel.

[1] Throughout these rules, the Chairman and Ranking Minority Member of the Subcommittee are referred to simply as the "Chairman" and the "Ranking Minority Member." These rules refer to the Chairman and Ranking Minority Member of the Committee on Homeland Security and Governmental Affairs as the Chairman and Ranking Minority Member "of the Committee."

Preliminary inquiries may be undertaken by the Minority staff upon the approval of the Ranking Minority Member and notice of such approval to the Chairman, Staff Director, or Chief Counsel. Investigations may be undertaken upon the approval of the Chairman and the Ranking Minority Member with notice of such approval to all Members of the Subcommittee.

No public hearing shall be held if the Minority Members of the Subcommittee unanimously object, unless the Committee on Homeland Security and Governmental Affairs (the "Committee") approves of such public hearing by a majority vote.

Senate Rules will govern all closed sessions convened by the Subcommittee (Rule XXVI, Sec. 5(b), Standing Rules of the Senate).

2. Subpoenas for witnesses, as well as documents and records, may be authorized and issued by the Chairman, or any other Member of the Subcommittee designated by him or her, with notice to the Ranking Minority Member. A written notice of intent to issue a subpoena shall be provided to the Chairman and Ranking Minority Member of the Committee, or staff officers designated by them, by the Chairman or a staff officer designated by him or her, immediately upon such authorization, and no subpoena shall be issued for at least 48 hours, excluding Saturdays and Sundays, from delivery to the appropriate offices, unless the Chairman and Ranking Minority Member of the Committee waive the 48-hour waiting period or unless

the Chairman certifies in writing to the Chairman and Ranking Minority Member of the Committee that, in his or her opinion, it is necessary to issue a subpoena immediately.

3. The Chairman shall have the authority to call meetings of the Subcommittee. This authority may be delegated by the Chairman to any other Member of the Subcommittee when necessary.

4. If at least three Members of the Subcommittee desire the Chairman to call a special meeting, they may file in the office of the Subcommittee, a written request therefor, addressed to the Chairman. Immediately thereafter, the chief clerk of the Subcommittee shall notify the Chairman of such request. If, within 3 calendar days after the filing of such request, the Chairman fails to call the requested special meeting, which is to be held within 7 calendar days after the filing of such request, a majority of the Subcommittee Members may file in the office of the Subcommittee their written notice that a special Subcommittee meeting will be held, specifying the date and hour thereof, and the Subcommittee shall meet on that date and hour. Immediately upon the filing of such notice, the Subcommittee chief clerk shall notify all Subcommittee Members that such special meeting will be held and inform them of its date and hour. If the Chairman is not present at any regular, additional, or special meeting, the Ranking Majority Member present shall preside.

5. For public or executive sessions, one Member of the Subcommittee shall constitute a quorum for the administering of oaths and the taking of testimony in any given case or subject matter.

One-third of the Members of the Subcommittee shall constitute a quorum for the transaction of Subcommittee business other than the administering of oaths and the taking of testimony, provided that one member of the minority is present.

6. All witnesses at public or executive hearings who testify to matters of fact shall be sworn.

7. If, during public or executive sessions, a witness, his or her counsel, or any spectator conducts himself or herself in such a manner as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of such hearing, the Chairman or presiding Member of the Subcommittee present during such hearing may request the Sergeant at Arms of the Senate, his or her representative, or any law enforcement official to eject said person from the hearing room.

8. Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing, and to advise such witness while he or she is testifying, of his or her legal rights; *provided, however,* that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Chairman may rule that representa-

tion by counsel from the government, corporation, or association, or by counsel representing other witnesses, creates a conflict of interest, and that the witness may only be represented during interrogation by Subcommittee staff or during testimony before the Subcommittee by personal counsel not from the government, corporation, or association, or by personal counsel not representing other witnesses. This rule shall not be construed to excuse a witness from testifying in the event his or her counsel is ejected for conducting himself or herself in such a manner so as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of the hearings; nor shall this rule be construed as authorizing counsel to coach the witness or answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

9. **Depositions.**

9.1 **Notice.** Notices for the taking of depositions in an investigation authorized by the Subcommittee shall be authorized and issued by the Chairman. The Chairman of the Committee and the Ranking Minority Member of the Subcommittee shall be kept fully apprised of the authorization for the taking of depositions. Such notices shall specify a time and place of examination, and the name of the Subcommittee Member or Members or staff officer or officers who will take the deposition. The deposition shall be in private. The Subcommittee shall not initiate procedures

leading to criminal or civil enforcement proceedings for a witness's failure to appear unless the deposition notice was accompanied by a Subcommittee subpoena.

9.2 **Counsel.** Witnesses may be accompanied at a deposition by counsel to advise them of their legal rights, subject to the provisions of Rule 8.

9.3 **Procedure.** Witnesses shall be examined upon oath administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Subcommittee Members or staff. Objections by the witness as to the form of questions shall be noted for the record. If a witness objects to a question and refuses to testify on the basis of relevance or privilege, the Subcommittee Members or staff may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from the Chairman or such Subcommittee Member as designated by him or her. If the Chairman or designated Member overrules the objection, he or she may refer the matter to the Subcommittee or he or she may order and direct the witness to answer the question, but the Subcommittee shall not initiate procedures leading to civil or criminal enforcement unless the witness refuses to testify after he or she has been ordered and directed to answer by a Member of the Subcommittee.

9.4 **Filing.** The Subcommittee staff shall see that the testimony is transcribed or electronically recorded. If it is transcribed, the

witness shall be furnished with a copy for review pursuant to the provisions of Rule 12. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his or her presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the Subcommittee chief clerk. Subcommittee staff may stipulate with the witness to changes in this procedure; deviations from this procedure which do not substantially impair the reliability of the record shall not relieve the witness from his or her obligation to testify truthfully.

10. Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the Chairman, Staff Director, or Chief Counsel 48 hours in advance of the hearing at which the statement is to be presented unless the Chairman and the Ranking Minority Member waive this requirement. The Subcommittee shall determine whether such statement may be read or placed in the record of the hearing.

11. A witness may request, on grounds of distraction, harassment, personal safety, or physical discomfort, that during the testimony, television, motion picture, and other cameras and lights, shall not be directed at him or her. Such requests shall be ruled on by the Subcommittee Members present at the hearing.

12. An accurate stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. The record of his or her own testimony, whether in public or executive session, shall be made available for inspection by witness or his or her counsel under Subcommittee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be made available to any witness at his or her expense if he or she so requests.

13. Interrogation of witnesses at Subcommittee hearings shall be conducted on behalf of the Subcommittee by Members and authorized Subcommittee staff personnel only.

14. Any person who is the subject of an investigation in public hearings may submit to the Chairman questions in writing for the cross-examination of other witnesses called by the Subcommittee. With the consent of a majority of the Members of the Subcommittee present and voting, these questions, or paraphrased versions of them, shall be put to the witness by the Chairman, by a Member of the Subcommittee, or by counsel of the Subcommittee.

15. Any person whose name is mentioned or who is specifically identified, and who believes that testimony or other evidence presented at a public hearing, or comment made by a Subcommittee Member or counsel, tends to defame him or her or otherwise adversely

affect his or her reputation, may (a) request to appear personally before the Subcommittee to testify in his or her own behalf, or, in the alternative, (b) file a sworn statement of facts relevant to the testimony or other evidence or comment complained of. Such request and such statement shall be submitted to the Subcommittee for its consideration and action.

If a person requests to appear personally before the Subcommittee pursuant to alternative (a) referred to herein, said request shall be considered untimely if it is not received by the Chairman, Staff Director, or Chief Counsel in writing on or before thirty (30) days subsequent to the day on which said person's name was mentioned or otherwise specifically identified during a public hearing held before the Subcommittee, unless the Chairman and the Ranking Minority Member waive this requirement.

If a person requests the filing of his or her sworn statement pursuant to alternative (b) referred to herein, the Subcommittee may condition the filing of said sworn statement upon said person agreeing to appear personally before the Subcommittee and to testify concerning the matters contained in his or her sworn statement, as well as any other matters related to the subject of the investigation before the Subcommittee.

16. All testimony taken in executive session shall be kept secret and will not be released for public information without the approval

of a majority of the Members of the Subcommittee.

17. No Subcommittee report shall be released to the public unless approved by a majority of the Subcommittee and after no less than 10 days' notice and opportunity for comment by the Members of the Subcommittee unless the need for such notice and opportunity to comment has been waived in writing by a majority of the Minority Members of the Subcommittee.

18. The Ranking Minority Member may select for appointment to the Subcommittee staff a Chief Counsel for the Minority and such other professional staff and clerical assistants as he or she deems advisable. The total compensation allocated to such Minority staff members shall be not less than one-third the total amount allocated for all Subcommittee staff salaries during any given year. The Minority staff shall work under the direction and supervision of the Ranking Minority Member. The Minority Staff Director and the Minority Chief Counsel shall be kept fully informed as to preliminary inquiries, investigations, and hearings, and shall have access to all material in the files of the Subcommittee.

19. When it is determined by the Chairman and Ranking Minority Member, or by a majority of the Subcommittee, that there is reasonable cause to believe that a violation of law may have occurred, the Chairman and Ranking Minority Member by letter, or the Subcommittee by resolution, are authorized

to report such violation to the proper State, local and/or Federal authorities. Such letter or report may recite the basis for the determination of reasonable cause. This rule is not authority for release of documents or testimony.

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