

AMENDMENT TO SECTION 3328 OF TITLE 5, UNITED STATES CODE, RELATING TO SELECTIVE SERVICE REGISTRATION

DECEMBER 10, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4108]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 4108) to amend section 3328 of title 5, United States Code, relating to Selective Service registration, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 4108, a bill to amend section 3328 of title 5, U.S.C., relating to Selective Service registration, was introduced on November 7, 2007, by Reps George Miller and Darrell Issa. The legislation would provide for exemptions from determinations of ineligibility for federal employment for individuals who have received an honorable discharge from the armed services or who have performed at least ten years of federal service.

BACKGROUND AND NEED FOR LEGISLATION

Under current law, all males born after December 31, 1959, must register with the Selective Service by their 26th birthday in order to be eligible for employment in the federal government. An individual who has not registered with the Selective Service is not eligible for federal employment unless he can prove, by a preponderance of the evidence, that the failure to register was neither knowing nor willful. This means that the individual must prove to a high legal standard that he did not know he was required to register or thought he had registered. H.R. 4108 would exempt from this requirement individuals who were honorable discharged from the armed services or who have 10 years of service in the federal government.

LEGISLATIVE HISTORY

H.R. 4108, a bill to amend section 3328 of title 5, U.S.C., relating to Selective Service registration, was introduced on November 7, 2007, and referred to the Committee on Oversight and Government Reform. The Committee held a markup to consider H.R. 4108 on November 8, 2007, and ordered the bill to be reported by voice vote. During the markup, the Chairman and other members of the Committee agreed to consider changes to the legislation suggested by the Director of the Selective Service System.

SECTION-BY-SECTION

Section 1. Selective Service Registration

Section 1 of the bill amends section 3328 of title 5 to require the Office of Personnel Management to prescribe regulations which provide for exceptions to determinations of ineligibility for federal employment due to a failure to register with the Selective Service for individuals who have received an honorable discharge from the armed services or who have performed at least 10 years of federal service. The bill also makes certain technical drafting changes to this section of existing law.

EXPLANATION OF AMENDMENTS

No amendments to this bill were offered in the Committee, however a manager's amendment incorporating suggestions from the

Director of the Selective Service System may be considered when the bill is considered in the House.

COMMITTEE CONSIDERATION

On Thursday, November 8, 2007, the Committee ordered the bill reported to the House by a voice vote.

ROLLCALL VOTES

No rollcall votes were taken on this legislation.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. Amendments made by this bill would apply only to executive branch employees. As such this bill does not relate to the legislative branch.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report, and include enhancing the efficiency of the federal government.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 4108. Article I, section 8, clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement whether the provisions of the reported bill include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 1255 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 4108. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4108 from the Director of Congressional Budget Office:

NOVEMBER 15, 2007.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4108, a bill to amend section 3328 of title 5, United States Code, relating to Selective Service registration.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 4108—A bill to amend section 3328 of title 5, United States Code, relating to Selective Service registration

H.R. 4108 would amend current law and regulations regarding federal employment and the requirement to register with the Selective Service System. The Selective Service is a system for identifying candidates for compulsory military service. Under current law, all males born after December 31, 1959, must register with the Selective Service by their 26th birthday to be eligible for federal employment. Individuals employed by the federal government who have not registered with the Selective Service may be terminated from federal employment unless granted a waiver by the Office of Personnel Management (OPM).

H.R. 4108 would allow certain employees who failed to register with the Selective Service to continue their federal employment.

Specifically, federal employees who did not register with the Selective Service but were honorably discharged from military service would not be terminated, nor would federal employees with at least 10 years of exemplary government service.

Information from OPM indicates that only a small number of employees are identified as unregistered with the Selective Service in the course of their employment with the federal government. Thus, CBO estimates that enacting this legislation would have no significant impact on the federal budget. H.R. 4108 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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SUBPART B—EMPLOYMENT AND RETENTION

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CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

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SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

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§ 3328. Selective Service registration

(a) * * *

[(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication of determinations of whether a failure to register was knowing and willful. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful. Such procedures may provide that determinations of eligibility under the requirements of this section shall be adjudicated by the

Executive agency making the appointment for which the eligibility is determined.】

(b) The Director of the Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations—

(1) shall include procedures—

(A) for the adjudication of determinations of whether a failure to register was knowing and willful; and

(B) under which such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful;

(2) may provide that determinations of eligibility under the requirements of this section shall be adjudicated by the Executive agency making the appointment for which the eligibility is determined; and

(3) shall provide for exceptions to determinations of ineligibility under this section to allow for—

(A) the appointment of an individual who was discharged or released from active duty in the armed forces under honorable conditions; and

(B) the continued employment of an individual, notwithstanding an appointment for which such individual was ineligible under subsection (a), if—

(i) such individual has performed at least 10 years of civilian service with 1 or more Executive agencies;

(ii) such individual's most recent performance rating was at least fully successful (or the equivalent); and

(iii) the employing agency determines that such individual's continued employment would be in the best interests of the Government.

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ADDITIONAL VIEWS OF CHAIRMAN WAXMAN, RANKING
MEMBER TOM DAVIS, AND REP. DARRELL ISSA

Immediately prior to the business meeting held to consider H.R. 4801, the Selective Service System sent the Committee suggestions to improve the bill. While there was not time to incorporate these suggestions into the bill reported by the Committee, the Chairman and other members agreed to further consider the suggestions as the bill moved forward in the legislative process.

As passed by the Committee, the bill would require the Office of Personnel Management to prescribe regulations which would provide for exceptions to determinations of ineligibility for federal employment due to a failure to register with the Selective Service for individuals who have performed at least ten years of federal service. As suggested by the Selective Service System, the manager's amendment to the bill will delete this requirement and instead provide for an exemption for individuals who have reached 31 years of age.

The Selective Service notes that the primary purpose of 5 U.S.C. 3328 was to improve the effectiveness of the Selective Service registration system. It is the position of the Selective Service that the existing lifelong ban on federal employment for individuals who failed to register and are unable to show that their failure was not knowing and willful serves no useful registration purpose or any public policy benefit. The Selective Service believes that limiting the ban to five years after the age an individual is no longer legally able to register (age 26) would have no tangible impact on its registration compliance program. This limit would also coincide with the statute of limitations for prosecuting an individual for failure to register (age 31). The proposed manager's amendment would also alleviate the administrative burden that has been placed on the Office of Personnel Management to adjudicate claims of job applicants and current employees.

HENRY A. WAXMAN.
TOM DAVIS.
DARRELL E. ISSA.

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