

OVERSEAS CONTRACTOR REFORM ACT

SEPTEMBER 14, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 5366]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 5366) to require the proposal for debarment from contracting with the Federal Government of persons violating the Foreign Corrupt Practices Act of 1977, 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. 5366, the “Overseas Contractor Reform Act,” was introduced by Rep. Peter Welch on May 20, 2010. The legislation would re-

quire any person convicted of violating the Foreign Corrupt Practices Act of 1977 (FCPA) to be proposed for debarment from any further contracts or grants with the federal government. Furthermore, the legislation makes it federal policy that no contracts or grants should be awarded to any individuals or companies who violate the FCPA.

H.R. 5366 requires that any person (defined as any individual, partnership, or corporation), found to be in violation of the FCPA be proposed for debarment from any federal contracts or grants within 30 days after final judgment of the violation. The legislation defines “final judgment” as occurring when all appeals of the judgment have been determined or all the time for filing such appeals has expired. The legislation also authorizes the head of a federal agency to issue a waiver, but the agency head must justify the decision and report the waiver and accompanying justification to Congress within 30 days.

BACKGROUND AND NEED FOR LEGISLATION

Federal government contractors have used bribes in the past to influence the actions of foreign governments. The source of these bribes in part is American tax dollars paid by the federal government to contractors. This bill seeks to root out companies which tarnish the image of the United States of America by engaging in illegal activities.

LEGISLATIVE HISTORY

H.R. 5366, the “Overseas Contractor Reform Act,” was introduced by Rep. Peter Welch on May 20, 2010, and referred to the House Committee on Oversight and Government Reform. The Committee met in open session and ordered H.R. 5366 to be reported favorably to the House by a voice vote.

SECTION-BY-SECTION

Section 1: Short title

The short title of the bill is the Overseas Contractor Reform Act.

Section 2: Requirement to propose for debarment persons violating the Foreign Corrupt Practices Act

This section would require any person found to be in violation of the Foreign Corrupt Practices Act of 1977 (FCPA) to be proposed for debarment, unless the requirement was waived by the head of the federal agency concerned.

The proposed debarment would be from any contract or grant awarded by the federal government within 30 days after a final judgment finding violation of the FCPA. This section also defines all applicable waivers for this bill. The head of a federal agency may waive the proposal for debarment requirement for a federal contract or grant, however, any waiver shall be reported to Congress by the head of the agency concerned within 30 days from the date of the waiver, along with an accompanying justification for the waiver.

This section defines the term “final judgment” as when all appeals of the judgment have been finally determined, or all time for filing such appeals has expired.

This section defines a “contract” as a binding agreement entered into by a federal agency for the purpose of obtaining property or services.

This section defines “person” as any: individual; partnership; and corporation.

This section also defines the FCPA to include: section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd–1); and sections 104 and 104A of the FCPA (15 U.S.C. 78dd–2).

Section 3: Government policy

This section makes it the policy of the United States government that no government contracts or grants should be awarded to individuals or companies who violate the Foreign Corrupt Practices Act of 1977.

EXPLANATION OF AMENDMENTS

Not applicable; no amendments.

COMMITTEE CONSIDERATION

The Committee on Oversight and Government Reform held a markup of the bill on July 28, 2010. The Committee ordered the bill to be reported favorably by a voice vote.

ROLLCALL VOTES

No roll call votes were taken.

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 terms and conditions of employment or access to public services and accommodations. This legislation does not apply 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 including the need to prevent individuals who violate the FCPA from receiving federal contracts.

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, including the legislation’s requirement for a proposal for debarment from contracting with the federal government of any person found in violation of the Foreign Corrupt Practices Act of 1977 to reduce waste, fraud, and abuse in the federal procurement system.

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. 5366. 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 meaning 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 Mandates Reform Act, P.L. 104-4) requires a statement on whether the provisions of the report 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. 5366 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) 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. 5366. 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. 5366 from the Director of the Congressional Budget Office:

AUGUST 10, 2010.

Hon. EDOLPHUS TOWNS,
Chairman, Committee on Oversight and Government Reform,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5366, the Overseas Contractor Reform Act.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 5366—Overseas Contractor Reform Act

H.R. 5366 would amend federal law to require that any individual, partnership, or corporation found to be in violation of the Foreign Corrupt Practices Act of 1977 (FCPA) be suspended from receiving any federal contract or grant. That action would be required within 30 days after the final judgment of such a violation. Agencies could waive this provision for particular federal contracts or grants and would have to report such waivers to the Congress within 30 days. In addition, the legislation declares it to be the policy of the U.S. government that no contract or grant should be awarded to individuals or companies that violate the FCPA.

CBO expects that this bill would apply only to a small number of individuals and entities subject to FCPA enforcement actions that are settled through judicial proceedings. Consequently, we estimate that implementing the legislation would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 5366 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. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

There are no changes to existing law in this bill.

