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REPORT
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AMENDING THE PRESIDENTIAL TRANSITION ACT OF 1963 TO PROVIDE FOR TRAINING OF INDIVIDUALS A PRESIDENT-ELECT INTENDS TO NOMINATE AS DEPARTMENT HEADS OR APPOINT TO KEY POSITIONS IN THE EXECUTIVE OFFICE OF THE PRESIDENT

NOVEMBER 1, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. BURTON of Indiana, from the Committee on Government Reform, submitted the following

REPORT

[To accompany H.R. 3137]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 3137) to amend the Presidential Transition Act of 1963 to provide for training of individuals a President-elect intends to nominate as department heads or appoint to key positions in the Executive Office of the President, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. PURPOSE

H.R. 3137, the "Presidential Transition Act Amendment of 1999" would amend the Presidential Transition Act of 1963 to provide for training of individuals a President-elect intends to nominate as department heads or appoint to key positions in the Executive Office of the President.

II. BACKGROUND AND NEED FOR LEGISLATION

H.R. 3137, the "Presidential Transition Act Amendment of 1999" would allow transition funds to be used for orientations of high-level, incoming White House appointees, including Cabinet members. The bill stresses the need for these orientations to occur between the general election and 30 days after the incoming President's inauguration. A structured orientation process would assist new, high-level appointees in their new capacities. In addition, it is the Committee's expectation that the President will provide similar orientations to larger groups of lower level appointees at the start of the Administration.

Over the years, there have been many examples of missteps and outright errors made by newly appointed officials at executive branch agencies and in the White House. However capable and well-intentioned, new and unseasoned appointees are especially susceptible to misjudgments that, at a minimum, can be politically embarrassing, but can also have serious consequences for a new Administration's credibility.

As we have seen, sometimes the errors tumble out in misstatements or ill-advised recommendations; other times, they have resulted in ethical lapses by an appointee who was unaware of the ethical standards required by Federal law. These errors could have been avoided if these appointees had properly understood the scope of their responsibilities. But White House orientations are virtually non-existent during the transition period. There has not been enough emphasis on the orientation process in either Democratic or Republican administrations.

Providing timely orientations to new appointees helps smooth the transition between Administrations and ensure continuity in the conduct of business within the Federal Government. Establishing a formal transition process, however, requires money. Prior to 1963, the primary source of transition funding came from the incoming President's political party and contributions from a volunteer staff.[1]

Following a national debate over campaign financing, which included presidential transition activities, President John F. Kennedy established the President's Commission on Campaign Costs in November 1961. The commission was established to make recommendations on financing the expenses of nominees for the offices of President and Vice President and other relevant costs associated with presidential campaigns.[2]

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[1] CRS Report for Congress: Presidential Transitions, An Overview and Bibliography, 1960–1992, Stephanie Smith, Analyst in American National Government Division, and George Walsher, Senior Bibliographer, Government and Law Library Services Division, November 17, 1992

[2] Establishing the President's Commission on Campaign Costs. Executive Order 10974, November 8, 1961. 3 C.F.R. 496 (1959–1963)

The Commission's final report entitled, "Financing Presidential Campaigns" included a recommendation to publicly fund presidential transitions. Shortly thereafter, legislation was approved to provide Federal financial support for the transition period.[3]

The Presidential Transition Act of 1963, signed into law on March 7, 1964, authorized Federal funding and assistance for incoming Presidents. The Act authorized the Administrator of the General Services to provide office space, detail of personnel, consultant fees, and travel expenses for the incoming President and Vice President. It also authorized the outgoing President and Vice President to use transition funds for a period of up to seven months. The Act authorized an appropriation of $900,000, to be divided equally between incoming and outgoing Administrations.

In 1970, the General Accounting Office filed a report recommending that the $900,000 limit be increased due to the escalating costs associated with the transition period.[4] The Act was amended in 1976 to increase the transition funds to $2 million for the incoming President and Vice President and to $1 million for the outgoing President and Vice President. The Amendment also provided that the incoming Administration could use Federal employees as White House detailees on a reimbursable basis.

Again concerned that future Presidents would have to raise private funds to finance the transition period, Congress passed the Presidential Transitions Effectiveness Act of 1988. This law increased transition funding to $3.5 million for the incoming President and Vice President and $1.5 million for the outgoing President and Vice President.

The legislation provided that the incoming President and Vice President could use the funds from the day after the general election to 30 days after inauguration. The outgoing President and Vice President could use the funds for a 6 to 7 month period, beginning one month prior to inauguration. In years that a Vice-President is elected President, the funding level was set at $1.25 million. Again, these figures were to be adjusted for inflation. The 1988 Act also included a provision requiring public disclosure of the names of all transition personnel and private contributors. In addition, the legislation required that all pre-election transition funds must be acquired privately.

The 1999 amendment to the Presidential Transition Act of 1963 would authorize the use of transition funds for the purpose of providing formal orientations for individuals the President-elect plans to nominate and appoint to top White House positions, including Cabinet positions. This legislation only affects the top political appointments in the White House, and it would give greater assurance that the orientation process would take place before or shortly after the incoming President assumes office. It would also increase the time and likelihood that a larger orientation process would be put in place for lower level political appointments.

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[3] U.S. President's Commission on Campaign Costs. Financing Presidential Campaigns. Washington, U.S. Government Printing Office, April 1962. p 36.

[4] U.S. General Accounting Office. *Federal Assistance for Presidential Transitions.* Washington, U.S. Government Printing Office, November 16, 1970.

III. Legislative Hearings and Committee Actions

H.R. 3137, the "Presidential Transition Act Amendment of 1999," was introduced October 25, 1999, by Representative Stephen Horn of California. On October 13, 1999, the Subcommittee on Government Management, Information, and Technology held a legislative hearing on the bill, which was still in draft form. After the bill's introduction, the subcommittee held a business meeting on October 26, 1999, to mark up H.R. 3137. The legislation passed unanimously by voice vote and was reported to the full Committee on Government Reform. H.R. 3137 was considered by the full Committee on Government Reform on October 28, 1999, and was passed unanimously by voice vote.

IV. Committee Hearings and Written Testimony

On October 13, 1999, the Subcommittee on Government Management, Information, and Technology conducted a legislative hearing on H.R. 3137 while the bill was still in its draft form. The hearing examined various issues involving presidential transitions. Witnesses testified regarding the intent of the bill, the bill's objectives and provisions, and suggested changes.

A number of distinguished witnesses testified in support of the legislation, including the Honorable Elliot Richardson, former Attorney General to President Nixon, and the Honorable Lee White, former Assistant Counsel to President Kennedy and Counsel to President Lyndon Johnson. Each of these witnesses presented a unique perspective of the presidency and the transition period. Both said that the legislation is an important step toward preventing future missteps by political appointees.

In addition, the subcommittee heard from three other witnesses who supported the legislation: Dwight Ink, former Acting Director of the Office of Management and Budget; Paul Light, Director of the Center for Public Service at The Brookings Institution; and Norman J. Ornstein, Resident Scholar at the American Enterprise Institute for Policy Research.

Additional written testimony supporting the legislation was submitted for the record by General Andrew Goodpastor, Staff Secretary to President Eisenhower, the Honorable John Gardner, Secretary of Health, Education, and Welfare for President Lyndon Johnson, and the Honorable Pendleton James, Director of Presidential Personnel for President Reagan.

V. Explanation of the Bill

The 1999 amendment to the Presidential Transition Act of 1963 would authorize the use of transition funds for the purpose of providing orientations for individuals the President-elect plans to nominate and appoint to top White House positions, including Cabinet positions. This legislation only affects the top political appointments in the executive branch agencies and in the Executive Office of the President, and it would give greater assurance that the orientation process would take place before or shortly after the incoming President assumes office. It is the Committee's expectation that this would also lead to a larger orientation process for lower level political appointments.

VI. Committee Oversight Findings

Pursuant to rule XIII, clause 3(c)(1), of the Rules of the House of Representatives, the results and findings for those oversight activities are incorporated in the recommendations found in the bill and in this report.

VII. Budget Analysis and Projections

Clause 3(c)(2) of rule XIII, of the Rules of the House of Representatives, is inapplicable because the bill does not provide new budget authority, new spending authority, new credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. Cost Estimate of the Congressional Budget Office

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 29, 1999.

Hon. Dan Burton,
Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3137, a bill to amend the Presidential Transition Act of 1963 to provide for training of individuals a President-elect intends to nominate as department heads or appoint to key positions in the Executive Office of the President.

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

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3137—A bill to amend the Presidential Transition Act of 1963 to provide for training of individuals a President-elect intends to nominate as department heads or appoint to key positions in the Executive Office of the President

H.R. 3137 would clarify that a newly elected President may use funds authorized under the Presidential Transition Act of 1963 to provide training to individuals that he or she intends to nominate as department heads or appoint to key positions in the Executive Office of the President. Because any additional training would apply to relatively few individuals, CBO estimates that implementing the bill would not significantly affect the costs of Presidential transitions. Any increase in costs would be subject to the availability of appropriated funds. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 3137 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 is John R. Righter. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

IX. Statement of Constitutional Authority

Pursuant to rule XIII, clause 3(d)(1), the Committee finds that clauses 1 and 18 of Article I, Section 8 of the U.S. Constitution grant Congress the power to enact this law.

X. Committee Recommendation

On October 28, 1999, a quorum being present, the Committee on Government Reform ordered the bill favorably reported by voice vote to the House for consideration.

XI. Congressional Accountability Act; Public Law 104–1

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of Section 102(B)(3) of the Congressional Accountability Act (P.L. 104–1).

XII. Unfunded Mandates Reform Act; Public Law 104–4, Section 423

The Committee finds that the legislation does not impose any Federal mandates within the meaning of Section 423 of the Unfunded Mandates Reform Act (P.L. 104–4).

XIII. Federal Advisory Committee Act (5 U.S.C. App.) Section 5(b)

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

XIV. 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):

PRESIDENTIAL TRANSITION ACT OF 1963

* * * * * * *

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Presidential Transition Act of 1963."

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SERVICES AND FACILITIES AUTHORIZED TO BE PROVIDED TO PRESIDENTS-ELECT AND VICE-PRESIDENTS-ELECT

SEC. 3. (a) The Administrator of General Services, referred to hereafter in this Act as "the Administrator," is authorized to provide, upon request, to each President-elect and each Vice-President-elect, for use in connection with his preparations for the assumption of official duties as President or Vice President necessary services and facilities, [including—] *including the following:*

(1) Suitable office space appropriately equipped with furniture, furnishings, office machines and equipment, and office supplies, as determined by the Administrator, after consultation with the President-elect, the Vice-President-elect, or their designee provided for in subsection (e) of this section, at such place or places within the United States as the President-elect or Vice-President-elect shall designate**[**;**]**.

(2) Payment of the compensation of members of office staffs designated by the President-elect or Vice-President-elect at rates determined by them not to exceed the rate provided by the Classification Act of 1949, as amended, for grade GS–18: *Provided,* That any employee of any agency of any branch of the Government may be detailed to such staffs on a reimbursable basis with the consent of the head of the agency; and while so detailed such employee shall be responsible only to the President-elect or Vice-President-elect for the performance of his duties: *Provided further,* That any employee so detailed shall continue to receive the compensation provided pursuant to law for his regular employment, and shall retain the rights and privileges of such employment without interruption. Notwithstanding any other law, persons receiving compensation as members of office staffs under this subsection, other than those detailed from agencies, shall not be held or considered to be employees of the Federal Government except for purposes of the Civil Service Retirement Act, the Federal Employees' Compensation Act, the Federal Employees' Group Life Insurance Act of 1954, and the Federal Employees Health Benefits Act of 1959**[**;**]**.

(3) Payment of expenses for the procurement of services of experts or consultants or organizations thereof for the President-elect or Vice-President-elect, as authorized for the head of any department by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a),**[**;**]**.

(4)(A) Payment of travel expenses and subsistence allowances, including rental of Government or hired motor vehicles, found necessary by the President-elect or Vice-President-elect, as authorized for persons employed intermittently or for persons serving without compensation by section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b–2), as may be appropriate**[**;**]**.

(B) When requested by the President-elect or Vice-President-elect or their designee, and approved by the President, Government aircraft may be provided for transition purposes on a reimbursable basis; when requested by the President-elect, the Vice-President-elect, or the designee of the President-elect or Vice-President-elect, aircraft may be chartered for transition purposes; and any collections from the Secret Service, press, or other occupying space on chartered aircraft shall be deposited to the credit of the appropriations made under section 6 of this Act**[**;**]**.

(5) Communications services found necessary by the President-elect or Vice-President-elect**[**;**]**.

(6) Payment of expenses for necessary printing and binding, notwithstanding the Act of January 12, 1895, and the Act of March 1, 1919, as amended (44 U.S.C. 111)**[**;**]**.

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(8)(A) Payment of expenses during the transition for briefings, workshops, or other activities to acquaint key prospective Presidential appointees with the types of problems and challenges that most typically confront new political appointees when they make the transition from campaign and other prior activities to assuming the responsibility for governance after inauguration, including interchange with individuals who held similar leadership roles in prior administrations, agency or department experts from the Office of Management and Budget or an Office of Inspector General of an agency or department, and relevant staff from the General Accounting Office.

(B) Activities funded under this paragraph shall be conducted primarily for individuals the President-elect intends to nominate as department heads or appoint to key positions in the Executive Office of the President.

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