

AMENDING TITLE 5, UNITED STATES CODE, TO REQUIRE THAT THE OF-
FICE OF PERSONNEL MANAGEMENT SUBMIT AN ANNUAL REPORT TO
CONGRESS RELATING TO THE USE OF OFFICIAL TIME BY FEDERAL EM-
PLOYEES

JULY 16, 2013.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 568]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
was referred the bill (H.R. 568) to amend title 5, United States
Code, to require that the Office of Personnel Management submit
an annual report to Congress relating to the use of official time by
Federal employees, having considered the same, report favorably
thereon with an amendment and recommend that the bill as
amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. REPORTING REQUIREMENT.

(a) IN GENERAL.—Section 7131 of title 5, United States Code, is amended by adding at the end the following:

“(e)(1)(A) Not later than March 31 of each calendar year, the Office of Personnel Management, in consultation with the Office of Management and Budget, shall submit to each House of Congress a report on the operation of this section during the fiscal year last ending before the start of such calendar year.

“(B) Not later than December 31 of each calendar year, each agency (as defined by section 7103(a)(3)) shall furnish to the Office of Personnel Management the information which such Office requires, with respect to such agency, for purposes of the report which is next due under subparagraph (A).

“(2) Each report by the Office of Personnel Management under this subsection shall include, with respect to the fiscal year described in paragraph (1)(A), at least the following information:

“(A) The total amount of official time granted to employees.

“(B) The average amount of official time expended per bargaining unit employee.

“(C) The specific types of activities or purposes for which official time was granted, and the impact which the granting of such official time for such activities or purposes had on agency operations.

“(D) The total number of employees to whom official time was granted, and, of that total, the number who were not engaged in any activities or purposes except activities or purposes involving the use of official time.

“(E) The total amount of compensation (including fringe benefits) afforded to employees in connection with activities or purposes for which they were granted official time.

“(3) All information included in a report by the Office of Personnel Management under this subsection with respect to a fiscal year—

“(A) shall be shown both agency-by-agency and for all agencies; and

“(B) shall be accompanied by the corresponding information (submitted by the Office in its report under this subsection) for the fiscal year before the fiscal year to which such report pertains, together with appropriate comparisons and analyses.

“(4) For purposes of this subsection, the term ‘official time’ means any period of time, regardless of agency nomenclature—

“(A) which may be granted to an employee under this chapter (including a collective bargaining agreement entered into under this chapter) to perform representational or consultative functions; and

“(B) during which the employee would otherwise be in a duty status.”.

(b) APPLICABILITY.—The amendment made by subsection (a) shall be effective beginning with the report which, under the provisions of such amendment, is first required to be submitted by the Office of Personnel Management to each House of Congress by a date which occurs at least 6 months after the date of the enactment of this Act.

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

Official time is paid time spent by federal employees performing representational functions such as negotiating collective bargaining agreements and settling grievances between labor and management instead of performing their assigned government work. Accurate, timely information on the use of official time is necessary for Congress to ensure such time contributes to the effective conduct of public business. H.R. 568 requires the Office of Personnel Management (OPM) to prepare and publish an annual report to Congress on the use of official time within the federal government.

BACKGROUND AND NEED FOR LEGISLATION

Federal labor relations law currently permits the use of paid official time to negotiate collective bargaining agreements, participate

in proceedings before the Federal Labor Relations Authority, and perform certain representational activities. The use of official time must be reasonable, necessary, and in the public interest.

In 2011, taxpayers spent \$156 million for federal employees to perform tasks for a labor union instead of their regular work,¹ compared to \$139 million in 2010,² \$129 million in 2009,³ and approximately \$96 million in 1998,⁴ when OPM provided the first report on official time usage to Congress.

When a federal worker is on official time, he or she is not available to perform the duties assigned to their regular position. The employing agency must then decide whether to delay the assignment, assign the task to other employees, or use overtime. There is no correlation between official time and an employee's regular duties. As a result, an employee using official time continues to receive pay and fringe benefits at the rate associated with their job classification rather than the rate commensurate with the duties being performed on official time.

There are no current requirements, statutory or otherwise, for OPM to track federal employees' use of official time. OPM issued its first report on official time usage in 1998, pursuant to a requirement in the House report accompanying H.R. 2378, the Treasury, Postal Service, and General Government Appropriations bill for FY1998.⁵

As a matter of practice, OPM has continued to provide reports on the use of official time by federal workers since 2002. However, OPM's current process results in untimely reports. For example, the fiscal year 2009 report was provided to Congress in May 2011 in response to a letter from the Committee, 20 months after the reporting period had ended.⁶ The fiscal year 2010 report was delivered to Congress in October 2011. The fiscal year 2011 report was provided in February 2013, following a letter from the Committee. In transmitting the fiscal year 2011 report, OPM stated "regretably, a comprehensive report for FY2012 has not been developed and is not available at this time."⁷

Continued and timely release of official time information is necessary for the Committee and taxpayers to assess the extent to which such time contributes to the productivity and effectiveness of the federal government. H.R. 568 provides a mechanism to ensure Congress receives timely information and data necessary to evaluate whether official time is being used in the public interest and is contributing to the effective conduct of public business.

¹ U.S. Office of Personnel Management, Official Time Usage in the Federal Government, Fiscal Year 2011 Survey Responses, February 2013.

² U.S. Office of Personnel Management, Official Time Usage in the Federal Government, Fiscal Year 2010 Survey Responses, October 2011.

³ U.S. Office of Personnel Management, Official Time Usage in the Federal Government, Fiscal Year 2009 Survey Responses, May 2011.

⁴ U.S. Office of Personnel Management, Official Time and Services Used by Unions Representing Federal Employees, November 1998. This report only collected data for the first 6 months of the 1998 calendar year, with the cost of official time reported at \$48 million. The \$96 million annual figure was extrapolated by doubling the \$48 million figure.

⁵ House Report to P.L. 105-240.

⁶ Letter from the Honorable John Berry, Director, Office of Personnel Management to the Honorable Darrell Issa and the Honorable Dennis A. Ross, Committee on Oversight and Government Reform, May 17, 2011.

⁷ Letter from the Honorable John Berry, Director, Office of Personnel Management to The Honorable Darrell Issa, Committee on Oversight and Government Reform, February 14, 2013.

LEGISLATIVE HISTORY

The Civil Service Reform Act of 1978⁸ allows federal employees to bargain collectively through labor organizations of their choice, and thereby participate with agency management in the development of personnel policies and other decisions that affect their working lives. Official time for collective bargaining and activities authorized by the Federal Labor Relations Authority is provided as a matter of statutory right. Official time for other purposes is negotiated in the amount the agency and union involved agree to be reasonable, necessary, and in the public interest.

H.R. 568 was introduced on February 6, 2013, by Rep. Dennis Ross (R-FL). The legislation is similar to legislation introduced by Rep. Ross in the 112th Congress, H.R. 2066. During the 112th Congress, the Committee held a hearing on June 1, 2011 to review the use of official time by federal workers.

SECTION-BY-SECTION

Section 1. Reporting requirement

Requires OPM, in consultation with the Office of Management and Budget, to annually report to Congress on the use of official time by federal employees. Official time is time spent by federal employees performing representational work for a bargaining unit in lieu of their regularly assigned work.

The report must include information on the specific types of activities for which official time was used—such as mid-term negotiations, dispute resolution, or general labor-management relations—as well as the impact granting official time had on agency operations. In describing the impact of official time on agency operations, agencies should include a discussion of how official time improved overall employee and agency productivity and performance against established goals and how official time improved agency operations. Such assessment may take into consideration such factors as productivity, efficiency, costs, employee performance and engagement, working conditions, work environment, labor-management relations, workplace disputes and litigation, and quality of products and services. OPM must also report on the number of agency employees who are on 100 percent official time.

Reports are due March 31 following the reportable fiscal year.

EXPLANATION OF AMENDMENTS

Mr. Issa offered an amendment in the nature of a substitute directing agencies to provide OPM the information needed to compile the official time report, and clarifying the required elements of the report. The amendment was agreed to by voice vote.

COMMITTEE CONSIDERATION

On May 22, 2013, the Committee met in open session and ordered reported favorably the bill, H.R. 568, as amended, by voice vote, a quorum being present.

⁸ P.L. 95-454, 5 U.S.C. § 7101 *et seq.*

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. This bill requires OPM, in consultation with the Office of Management and Budget, to annually report to Congress on the use of official time by federal employees. As such this bill does not relate to employment or access to public services and accommodations.

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.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 568 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

H.R. 568 requires the Office of Personnel Management, in consultation with the Office of Management and Budget, to submit to Congress an annual report on official time usage within the federal government.

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 as to whether the provisions of the reported 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. 568 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

H.R. 568 does not establish or reauthorize a Program of the Federal Government known to be duplicative of another Federal program.

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. 568. 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. 568 from the Director of Congressional Budget Office:

JUNE 26, 2013.

Hon. DARRELL ISSA,
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. 568, a bill to amend title 5, United States Code, to require that the Office of Personnel Management submit an annual report to Congress relating to the use of official time by federal employees.

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. 568—A bill to amend title 5, United States Code, to require that the Office of Personnel Management submit an annual report to Congress relating to the use of official time by federal employees

H.R. 568 would require the Office of Personnel Management (OPM) to provide annual reports to the Congress on the use of “official time” by federal employees who also serve as union officers. Of-

ficial time is paid time off from assigned government duties to represent a labor union.

CBO estimates that implementing the legislation would have no significant impact on the federal budget because it would not significantly add to administrative costs. Most of the information needed for the reports required under the bill is currently collected. The legislation also could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting the bill would not affect revenues.

H.R. 568 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

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 (new matter is printed in *italic* and 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 F—LABOR-MANAGEMENT AND EMPLOYEE RELATIONS

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CHAPTER 71—LABOR-MANAGEMENT RELATIONS

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SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

§ 7131. Official time

(a) * * *

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(e)(1)(A) Not later than March 31 of each calendar year, the Office of Personnel Management, in consultation with the Office of Management and Budget, shall submit to each House of Congress a report on the operation of this section during the fiscal year last ending before the start of such calendar year.

(B) Not later than December 31 of each calendar year, each agency (as defined by section 7103(a)(3)) shall furnish to the Office of

Personnel Management the information which such Office requires, with respect to such agency, for purposes of the report which is next due under subparagraph (A).

(2) Each report by the Office of Personnel Management under this subsection shall include, with respect to the fiscal year described in paragraph (1)(A), at least the following information:

(A) The total amount of official time granted to employees.

(B) The average amount of official time expended per bargaining unit employee.

(C) The specific types of activities or purposes for which official time was granted, and the impact which the granting of such official time for such activities or purposes had on agency operations.

(D) The total number of employees to whom official time was granted, and, of that total, the number who were not engaged in any activities or purposes except activities or purposes involving the use of official time.

(E) The total amount of compensation (including fringe benefits) afforded to employees in connection with activities or purposes for which they were granted official time.

(3) All information included in a report by the Office of Personnel Management under this subsection with respect to a fiscal year—

(A) shall be shown both agency-by-agency and for all agencies; and

(B) shall be accompanied by the corresponding information (submitted by the Office in its report under this subsection) for the fiscal year before the fiscal year to which such report pertains, together with appropriate comparisons and analyses.

(4) For purposes of this subsection, the term “official time” means any period of time, regardless of agency nomenclature—

(A) which may be granted to an employee under this chapter (including a collective bargaining agreement entered into under this chapter) to perform representational or consultative functions; and

(B) during which the employee would otherwise be in a duty status.

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