



Legislative Bulletin.....March 11, 2008

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H.Res. 895—Establishing within the House of Representatives an Office of Congressional Ethics, and for other purposes

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: Unknown

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 1

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.Res. 895—Establishing within the House of Representatives an Office of Congressional Ethics, and for other purposes (*Capuano, D-MA*)

Order of Business: The House is scheduled to consider H.Res. 895 today, March 11, 2007, subject to a self-enacting rule. The rule ([H.Res 1031](#)) would adopt an amendment to the underlying resolution, and upon the rule's passage, the resolution, as amended, would be adopted as part of House rules.

Note: H.Res. 895 is a resolution that would amend the rules of the House of Representatives. As such, the resolution does not need to be approved by any other chamber of Congress or branch of the federal government to take effect.

Summary: H.Res. 895 was originally scheduled to be considered on the house floor on February 28, 2008. Due to concerns raised by Members on both sides of the aisle, the bill was pulled from floor consideration. The House will now consider an amended version of the bill. The summary notes portions of the amended legislation that differ from the original bill.

H.Res. 895 would establish the Office of Congressional Ethics to assist the House in carrying out its responsibilities established in Article I, Section 5, Clause 2 of the Constitution (the “Discipline Clause”), which states, “Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member.” The primary function of the office would be reviewing allegations against House Members and staff and reporting suspect violations of House ethics rules to the Committee on Standards of Official Conduct. The functions of the office would be carried out by a board of six appointed members and their staff. The board would serve as an independent group with the power to commence investigations of House Members and employees. The specific provisions of the bill are outlined below.

Composition of the Board

- Establishes a board of six individuals to govern the Office of Congressional Ethics (OCE).
- Stipulates that the OCE board members be nominated by the Speaker and approved with the concurrence of the Minority Leader. Likewise, the Minority Leader would nominate three members of the board subject to the concurrence of the Speaker. The Speaker would designate one member as the Chairman, while the Minority Leader would designate a Co-chairman who would conduct board meetings in the chairman’s absence. *(Note: The original bill called for the Speaker and Minority Leader to appoint members independently of one another.)*
- Prohibits an individual from being appointed to, or serving on, the board if the individual:
 - Is a lobbyist registered under the Lobbying Disclosure Act of 1995.
 - Has been registered as a lobbyist within the last year.
 - Engages in lobbying Congress.
 - Is an agent of a foreign principal registered under the Foreign Agents Registration Act.
 - Is a Member of the House.
 - Is an employee of the federal government.
 - Has been a Member of House or an employee of the House within the last year.
- Sets the length of a term on the board as two Congresses and prohibits any board member from serving for more than four consecutive Congresses (two terms).
- Allows the Speaker and the Minority Leader, acting jointly, to remove a board member with “cause.”

- Creates a per diem pay scale for members of the board equal to the daily equivalent of the minimum rate of basic pay for GS-15 federal employee, which is \$93,063 annually (roughly \$387 per day based on a work year of 240 days).
- Specifies that the OCE board members would not be considered employees of the House.

Powers of the Board

- Directs the board to undertake a preliminary review of alleged violations of any law, rule, or regulation by a Member or employee of the House if two OCE board members submit a joint written request. Stipulates that two members nominated by the same Party leader may not initiate a review. A preliminary review must commence within seven business days of the request. *(Note: The original legislation allowed two members that were appointees of the same Party leader to initiate a review.)*
- Requires that the board notify the Committee on Standards of Official Conduct and any individual who is subject to a preliminary review with a statement detailing the nature of the review.
- Requires the board to complete the preliminary review within 30 calendar days or five legislative days (whichever is longer).
- Authorizes the board, at the end of applicable period of time, to vote on whether to terminate the review process or to commence a second phase of investigation. A vote of three of the six members of the board is required to continue the review process. *(Note: The original legislation required a vote of four of the six OCE board members to terminate a review before it advanced to the second phase of investigation. In either circumstance, a three-three tie would move the investigation forward)*
- Provides the board an addition 45 calendar days or five legislative days (whichever is longer) to complete the second phase of the review.
- Directs the board (after the second phase of review is complete) to vote on whether the matter needs further review by the House Committee on Standards of Official Conduct. Requires four of the six members to vote in the affirmative for the matter to be transferred to the committee.
- Requires the board to submit a report to the Committee on Standards of Official Conduct after any second phase review, regardless of whether the matter is taken up by the Committee on Standards of Official Conduct. The report must contain a recommendation on whether the case should be dismissed or reviewed further and the board's findings.
- Directs the board to adopt rules to carry out its duty, including rules providing that:
 - The board may vote to terminate a preliminary review on any ground.

- The board may vote to recommend that the Committee on Standards of Official Conduct should dismiss a matter that was subject to second phase review.
- All witnesses sign a statement acknowledging their understanding that the False Statements Act applies to their testimony.
- There are no *ex parte* (without other parties present) communications between a board member and an individual under review.
- A code of conduct will be established to govern board member's behavior.

Additional Provisions Concerning the Board

- Stipulates that the board must cease any preliminary or second phase reviews if such a request is made by the Committee on Standards of Official Conduct in writing.
- Specifies that the board may not undertake a review of any alleged violations that occurred before the date of adoption of this resolution.
- States that “No information or testimony received shall be publicly disclosed by any member of the board or staff of the Office.” Subsequent provisions in the bill stipulate how information is to be made public via the Committee on Standards of Official Conduct.
- Provides an individual under review the opportunity to present, orally or in writing (determined by the board), a statement to the board.
- Authorizes the board to set the compensation levels of the office's employees, subject to the affirmative vote of four members.
- Authorizes the board to terminate office staff subject to the vote of four members.
- Requires OCE board members and staff to sign a document that states they will not seek any federal public office for three years after their final term on the board expires. (*Note: The original legislation only required OCE board members to make such a pledge.*)
- Authorizes the appropriation of “such sums as may be necessary” to pay for the expense of the Office of Congressional Ethics.
- Directs members of the board to submit annual financial disclosure reports.

Rules Regarding the Committee on Standards of Official Conduct

- Requires the Committee on Standards of Official Conduct to make the written findings and report of the board public within 45 calendar days or five legislative days (whichever is longer) of receiving such information unless the committee chairman and ranking member jointly decide to withhold the information for an additional period of the same duration.

- Directs the Committee on Standards of Official Conduct to notify the board and the subject of the review at least one day before the committee makes a report or findings public.
- Allows the Committee on Standards of Official Conduct to vote to dismiss a review referred by the board without making a written report public.
- Prohibits the Committee on Standards of Official Conduct from receiving any referral from the board within 60 days before an election in which the subject of the review is a candidate.
- Stipulates that if the Committee on Standards of Official Conduct receives a referral from the board and does not act on it in the applicable amount of time, the report and the findings of the board shall be made public.
- Allows the Committee on Standards of Official Conduct to instruct the board to cease a review if the committee is already investigating the case.

Additional Background: Early in the 110th Congress, Speaker Nancy Pelosi announced the creation of the Special Task Force on Ethics Enforcement—a bipartisan group of legislators assigned with reviewing current House ethics standards and making recommendations concerning ethics reform. Headed by Chairman Michael Capuano (D-MA) and Ranking Member Lamar Smith (R-TX), the task force held hearings, debates, and meetings regarding the creation of an independent panel with the power to investigate alleged violations by House Members and staff. Though the task force never reached a formal consensus on the matter, Rep. Capuano introduced H.Res. 895 in December 2007.

Numerous Members of Congress, both Republican and Democrat, have expressed concerns over multiple provisions in H.Res. 895. For instance, OCE board members, though presumably impartial, would be appointed by politically partisan Members of House Leadership. House Members have also expressed fears that the political nature of appointments to the board, combined with the low threshold for initiating an investigation, could turn the independent panel into a front for partisan battles. In a letter opposing H.Res. 895, the four Republican members of the Special Task Force on Ethics Enforcement (Rep. Lamar Smith, Rep. Hobson, Rep. Camp, and Rep. Tiahrt) conveyed their opposition to the process used to select OCE board members:

The result is that the Democrats' proposal is built on a foundation of partisanship, as the principle of true bipartisanship is directly violated by the provision in the proposal that allows the Speaker and the Minority Leader to make unilateral appointments to the board. If yet another ethics entity is to be created at all, its board should be required to be composed entirely of members each of whom have been jointly appointed by both the Speaker and the Minority Leader. Only such a board can be considered truly bipartisan and a change from the partisanship of the Ethics Committee.

In addition, Members have expressed concerns regarding the low threshold required for the OCE board to initiate an investigation of wrongdoing. The resolution would essentially allow any House Member, individual, or outside organization to anonymously bring innuendo, evidence, or charges to the attention of OCE board members. Once brought to the OCE board it would only

take two of the board's six members to initiate an investigation. Although the resolution would require the board's investigation to remain private until it is handed over to the House Committee on Standards of Official Conduct, there is a potential that baseless charges, investigated at the request of a minority of the board members, could be leaked to the media. In such a circumstance, a House Member or employee could face public scrutiny for a frivolous charge made by a political rival.

House Members on both sides of the aisle have said that they are weary of the potential ramifications of allowing a minority of the OCE board initiate reviews of House Members and employees. Rep. Gregory Meeks (D-NY) was quoted in *The Hill* saying, "There's a real fear of witch hunts." The ethics task force's ranking Republican Member, Rep. Smith, echoed the same sentiment, stating in *Roll Call*, "This is an open invitation to a partisan free-for-all. Leaks regarding such inquiries would seriously damage the reputations of innocent Members."

In contrast to the relatively low threshold needed for the OCE board to begin an investigation, a majority of the panel would be required to dismiss an accusation after the first phase of review. If, however, the board fails to vote to terminate the matter after the first phase of review, the investigation will automatically proceed to the second stage of review. Therefore, an investigation of a meritless charge could be prolonged if half of the partisanly appointed board voted against dismissing the matter.

In an effort to address these concerns, Rep. Capuano is now submitting a revised proposal to the floor in hopes of swaying enough skeptical Democrats to support the OCE's creation. The revised version of H.Res. 895, however, has been criticized for falling significantly short of guarding against partisan political attacks in the OCE. The bill still allows for members of the OCE board to be selected by partisan leaders. The new proposal also retains a requirement that an investigation proceed to a second phase if three members of the board consent. Thus, three partisanly appointed members could still initiate a review and propel the investigation into a second phase.

Possible Conservative Concerns: Some conservatives may be concerned that H.Res. 895 would create an independent Office of Congressional Ethics (OCE), under the control of a board that is appointed by partisan Members of House Leadership, which has the power to initiate investigations on House Members and staff. Conservatives may be concerned that the political nature of appointments may influence the members of the OCE board and could potentially turn the OCE into a political battlefield. Some conservatives may be concerned that the partisan nature of the board would duplicate that of the Committee on Standards of Official Conduct and do little to bring about real and necessary change to the House's ethics rules.

Some conservatives may also be concerned that the OCE's board would be required to initiate an investigation—regardless of any evidence—at the request of just two of the board's six members. Conversely, it would require the agreement of at least four OCE board members to terminate an investigation. Some conservatives may be concerned that this formula could empower a minority or plurality of the partisan board to initiate frivolous ethics reviews for political reasons. In addition, some conservatives may be concerned that the low threshold required to begin a review of a Member of Congress could encourage political advisories to

concoct slanderous, dishonest, and damaging accusations in order to initiate a politically motivated attack. Conservatives may be concerned that mandatory investigations of frivolous accusations would do little to correct flawed ethics practices in the House.

Finally, some conservatives may also be concerned that this ethics reform package lacks earmark reform of any kind, despite numerous calls for such reform by the Minority.

Committee Action: On December 19, 2007, H.Res. 895 was introduced and referred to the Committee on House Administration and the Committee on Rules. Neither committee took any official action.

Cost to Taxpayers: A CBO cost estimate for H.Res. 895 was not available at press time. However, the bill would authorize the appropriation of “such sums as may be necessary” for the Office of Congressional Ethics to carry out its responsibilities.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? A Committee Report citing compliance with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits is unavailable.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

RSC Staff Contact: Andy Koenig; andy.koenig@mail.house.gov; 202-226-1760.

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