

PRESIDENTIAL TRANSITION ACT OF 2000

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2705

TO PROVIDE FOR THE TRAINING OF INDIVIDUALS, DURING A PRESIDENTIAL TRANSITION, WHO THE PRESIDENT INTENDS TO APPOINT TO CERTAIN KEY POSITIONS, TO PROVIDE FOR A STUDY AND REPORT ON IMPROVING THE FINANCIAL DISCLOSURE PROCESS FOR CERTAIN PRESIDENTIAL NOMINEES, AND FOR OTHER PURPOSES



JULY 18, 2000.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

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106TH CONGRESS }
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SENATE

{ REPORT
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PRESIDENTIAL TRANSITION ACT OF 2000

JULY 18, 2000.—Ordered to be printed

Mr. THOMPSON, from the Committee on Governmental Affairs,
submitted the following

REPORT

[To accompany S.2705]

The Committee on Governmental Affairs, to which was referred the bill (S. 2705) to provide for the training of individuals, during a Presidential transition, who the President intends to appoint to certain key positions, to provide for a study and report on improving the financial disclosure process for certain Presidential nominees, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. SUMMARY AND PURPOSE

The purpose of S. 2705, the Presidential Transition Act of 2000, is to improve the process by which the United States transitions from one Presidential Administration to the next. The main focus of this bill is to provide for the preparation of key personnel who may be part of the incoming administration. The bill does this in part by encouraging officials of former administrations, including the outgoing administration, to share their knowledge and experience with the incoming administration. With such an orientation,

probable senior appointees will be better able to commence governing once the inauguration of the new President is complete.

S. 2705 seeks to improve upon the transfer of important knowledge and information from one administration to the next. The bill provides for a more cooperative process by which key personnel will be prepared to take on management of the federal government. Allowing for consultation with campaigns regarding equipment for a transitions headquarters will allow transition planners to hit the ground running once the election is held. Finally, a report requested of the Office of Government Ethics seeks to improve the process by which appointees are nominated and confirmed to office.

S. 2705 requires that the Administrator of the General Services Administration compile a transitions directory for the purposes of orienting and educating individuals a President-elect intends to nominate as department heads or appoint to key positions in the Executive Office of the President. In addition, S. 2705 requires the Office of Government Ethics to study and report on ways of improving the financial disclosure process for certain Presidential nominees. S. 2705 also allows Presidential campaigns to consult with the General Services Administration for the purposes of preparing transition headquarters with the appropriate information technology. All of these provisions will improve the Presidential transition.

II. BACKGROUND

The Presidential Transition Act of 1963 (Public Law 88-277, 3 U.S.C. 102 note) was enacted to provide for the orderly transfer of executive power in connection with the expiration of the term of office of a President and the inauguration of a new President. Since the time the Presidential Transition Act was passed, transitions have grown more complex and cumbersome, often leaving the new administration without the head start it needs to begin governing on inauguration day. As Dwight Ink, President Emeritus of the Institute of Public Administration, wrote in a statement submitted to the Committee, transitions “are hit-and-miss affairs that handicap a new president and his team in shifting from campaigning to governing, and create problems for the Congress.”

The problems associated with transitions are now being studied by a number of private sector organizations in an attempt to craft solutions to shortcomings in the current process of transitions. In his statement introducing S. 2705, Senator Thompson said:

The magnitude of the need for an effective presidential transition and the recognized problems with past ones have led a number of private sector organizations to focus on the problem and solutions to it. Several, including the Presidential Appointee Initiative of the Brookings Institution, Transition to Governing Project of the American Enterprise Institute and Brookings, and the Heritage Foundation’s Mandate for Leadership 2000, have contributed to our consideration of this problem. These groups and others are independently preparing a body of knowledge which will assist the new administration to get an effective, timely start.

Notwithstanding the efforts of these groups to assist in the transition, several problems were brought to the attention of the Committee and the House Committee on Government Reform. They are ripe for legislative correction.

Senator Lieberman, in introducing the bill, warned that “individuals without prior government experience who are selected for key positions may be unfamiliar with how to work with Congress and the media and may run the risk of missteps early in their tenure.” Mr. Ink wrote in his statement to the Committee that new appointees “are in danger of stumbling during the first crucial weeks and months of an administration, not so much from what they are striving to do, but from how they are functioning and a lack of familiarity with techniques that are most likely to get things done in a complex Washington environment.” Therefore, Mr. Ink writes that orientations for new political appointees “would help meet the critical need for more transition attention to how incoming political leaders can effectively manage the challenging processes of governing.” These and other concerns led to the introduction of S. 2705 and H.R. 3137.

III. DISCUSSION

Section 2 of S. 2705 encompasses provisions of the House-passed H.R. 3137, which provides for the expenditure of transition funds for the orientation of potential political appointees of a new Presidential Administration. As noted by Norman Ornstein, Resident Scholar at the American Enterprise Institute, “[P]olitical appointees often have impressive accomplishments including managerial skills and experience. Nonetheless, appointees without executive branch experience may not appreciate features particular to government.” This is one problem S. 2705 seeks to remedy.

Section 2 authorizes the use of transition funds for the purpose of providing orientation for potential appointees. The Committee intends that the orientations will include discussions between staff of an incoming administration and staff of prior administrations, including the outgoing administration, in order to give new staff the benefit of the experience of staff from former administrations. The Committee believes that the most beneficial format for such orientations would be informal discussions and workshops coordinated by the General Services Administration.

In addition to authorizing the types of orientations described above, S. 2705 also authorizes education in “records management.” The bill provides for expected key officials of the incoming administration to receive training in records management controls in order to assure that the activities, deliberations, decisions, and policies of the President are adequately documented and that such records are maintained as Presidential records pursuant to the requirements of section 2203 of title 44, United States Code.

Incoming appointees also need to be apprised of some key efforts underway to improve how the federal government functions. One of the strongest trends in the management of the federal government is the move to performance-based government. Instead of judging government performance on the basis of the amount of money that is spent or the number of activities that are conducted, every federal program should be judged on whether or not strategies and approaches produce real, tangible results. Implementation of the Gov-

ernment Performance and Results Act, because it requires performance-based management, continues to be a priority of this Committee, and orientations of the incoming administration should include a careful review of this important legislation.

A crisis currently confronting the federal government is the recruitment, management and retention of quality personnel. Comptroller General David Walker testified before the Committee regarding the current personnel management practices of the federal government, encouraged the Executive Branch to “take steps to align our human capital management policies and practices with modern performance management principles.” As the Committee agrees strongly that effective human capital management is critically important, S. 2705 authorizes executive orientations to include careful analysis of human capital management issues.

Staff of an incoming administration are confronted by an overwhelming amount of material. To assist in navigating the many responsibilities that fall on a new administration, it is the Committee’s intent that the Administrator of the General Services Administration work with the Archivist of the National Archives and Records Administration to develop a “Transition Directory” to aid the President-elect and incoming Administration appointees. This Directory should be a compilation of current Federal materials outlining the organization, and statutory and administrative authorities, functions, duties, responsibilities and mission of each department and agency.

To ensure that the new administration’s transition team can hit the ground running with an infrastructure sufficient to meet its needs in organizing the new government, S. 2705 provides that the General Services Administration should consult with the campaigns to develop an information technology systems architecture plan—for the design of computer and communications systems—for the offices in which the transition will be housed. This provision allows for basic computer and communications equipment to be available for the use of the transition soon after the election. The provision of S. 2705 allowing for the consultation between campaigns and the General Services Administration on technical matters with respect to the transition headquarters should encourage pre-election transition planning.

Section 3 of the bill directs the Office of Government Ethics to conduct a study and submit a report on improving the financial disclosure process required of presidential nominees under section 101(b) of the Ethics in Government Act of 1978. This provision of the bill addresses growing concerns regarding the barriers to service embedded in the current presidential appointments process. The Committee believes that the study can help lead to simple changes in the disclosure process to reduce some of those barriers. At the same time, the Committee intends that the study, and its recommendations, seek to bolster the purpose of the Ethics in Government Act, which is to disclose conflicts of interest that may be found in the financial or other information required to be disclosed under the Act.

There is no question that filling out the informational forms, including the various financial disclosure documents, imposes burdens on appointees and creates delays in the appointments process. According to a survey of 435 Reagan, Bush, and Clinton adminis-

tration appointees conducted under the auspices of the Presidential Appointee Initiative by the Brookings Institution and Heritage Foundation last winter, substantial numbers of recent appointees found these forms difficult to complete and a source of delay in their nomination and confirmation. Nearly a third of the appointees interviewed in the survey characterized these forms as either somewhat or very difficult to fill out, and almost half sought outside help for accounting or financial aspects of the process. According to the Presidential Appointee Initiative survey, one-fifth of appointees reported spending more than \$6,000 on outside help and another one-fifth spent between \$1,000 and \$5,000.

There is also sound evidence that the process has become more difficult over the years as both the number and complexity of forms has increased. Also according to the Presidential Appointee Initiative, more than a third of the Reagan, Bush, and Clinton appointees said the process of filling out financial disclosure and other information forms took longer than necessary, compared to slightly more than a tenth of the appointees who served from 1964–1984.

Given the difficulty and delays, it is no surprise that almost 40 percent of the Reagan, Bush, and Clinton appointees responding to the Presidential Appointee Initiative survey said that the disclosure process either “goes too far” or is “not very reasonable.” Not only does this process ask for the same financial and personal information in different formats, thereby creating unnecessary burdens on appointees to re-supply the same data, it appears to seek information on financial holdings that may not necessarily serve the overall purpose of identifying and curing conflicts of interest.

There is reason to believe that the current disclosure process can be improved through careful streamlining, coordination, and elimination of duplication without lessening the substantive compliance with any conflict of interest requirement. The result of this effort should be an increased willingness among America’s most talented citizens to accept presidential appointments, as well as greater confidence that potential conflicts of interest are made visible and cured.

S. 2705 directs the Office of Government Ethics to conduct a thorough study of the current array of financial information collected from presidential appointees as part of the nomination and confirmation process. This study should include an examination of appointments subject to the Ethics in Government Act, including appointments to advisory boards and commissions, and should begin with an inventory of all information currently requested of presidential nominees. Among the topics the study might address are the following suggestions:

1. Focusing specifically on the financial disclosure forms, what might be done to make the forms easier to complete? Which items are particularly difficult to fill out? Which are the most likely to cause a nominee to seek outside assistance? What might be done to reduce those difficulties and costs without reducing compliance with the Ethics in Government Act?

2. Do the current financial disclosure laws require too much detail regarding the value of an asset and the amount of income generated from that asset? Is such level of detail necessary to determine whether the appointee has a conflict of interest? To what ex-

tent do our disclosure requirements seek information that is unlikely to be used to resolve conflicts of interest?

3. What is the current status of efforts to create on-line versions of the standard forms?

With this study completed, section 3(a) of the bill directs the Office of Government Ethics to make recommendations regarding the streamlining, standardizing, and coordinating of the financial disclosure process, as well as the specific reporting requirements, under the Ethics in Government Act of 1978 (5 U.S.C. App.) for Presidential nominees. As such, the Committee is concerned with both the ways in which information is collected and the kinds of information requested. The Committee is particularly interested in eliminating any duplication of effort and any requests for information that do not advance the faithful implementation of the Ethics in Government Act.

Section 3(b) of the bill directs the Office of Government Ethics to make recommendations that are intended to avoid any duplication with respect to financial disclosure of information. The intent of this section is that, if possible, no presidential appointee should be asked to supply the same information more than once in the Executive Branch clearance process.

Finally, Section 3(c) invites the Office of Government Ethics to think broadly of the need for recommendations that might improve the presidential appointments process.

The Committee encourages the Office of Government Ethics to seek the counsel of the American Enterprise Institute, Brookings Institution, Council on Excellence in Government, Heritage Foundation, the Presidential Appointee Initiative, and any other non-governmental organizations it deems appropriate regarding the study and recommendations requested under Section 3.

IV. LEGISLATIVE HISTORY

S. 2705 was introduced on June 8, 2000, by Chairman Thompson on behalf of himself, Senator Lieberman, Senator Akaka, Senator Collins, Senator Durbin, Senator Levin, and Senator Voinovich. The Committee on Governmental Affairs considered the bill on June 14, 2000, and ordered the bill reported by voice vote. H.R. 3137, the provisions of which are encompassed in S. 2705, passed the House of Representatives by voice vote on November 2, 1999.

V. SECTION-BY-SECTION ANALYSIS

Section 1 provides that the bill may be cited as the "Presidential Transition Act of 2000."

Section 2 amends the Presidential Transition Act of 1963 (3 U.S.C. 102 note) to provide for 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 key political appointments in the executive branch agencies and in the Executive Office of the President, and the committee expects that the orientation process would begin before the incoming President assumes office.

Section 2 specifically authorizes the training or orientation of the individuals the President-elect plans to nominate and appoint to

top White House and/or Executive Branch positions with respect to records management, human resources management and performance-based management.

Section 2 requires the Administrator of the General Services Administration to work with the Archivist of the National Archives and Records Administration to prepare a transitions directory for the purposes of training of individuals a President-elect intends to nominate as department heads or appoint to key positions in the Executive Office of the President.

Section 2 also authorizes GSA to consult with campaign organizations about the information technology systems architecture to be installed in transition offices after a general election.

Section 3 requires the Office of Government Ethics to prepare a report on the current appointments process and make suggestions about easing the burden of financial disclosure on Executive Branch nominees. Specifically, the language requires an examination of ways to streamline and standardize financial disclosure required by various Executive Branch organizations. The legislation would clearly establish that nothing OGE recommends should be considered to lessen the disclosure or weaken the examination for conflicts of interest.

VI. REGULATORY IMPACT

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact that would be incurred in carrying out the bill. The Committee finds that enactment of the bill will not have significant regulatory impact.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 21, 2000.

Hon. FRED THOMPSON,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2705, the Presidential Transition Act of 2000.

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

Sincerely,

STEVEN LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

S. 2705—Presidential Transition Act of 2000

S. 2705 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. The bill also would direct the General Services Administration (GSA) to develop a transition directory for the incoming Administration. The directory would include information

on each department and agency, as well as important federal publications. Finally, the bill would direct the Office of Government Ethics to report on ways to streamline and standardize the financial disclosure process for incoming Administration appointees.

Subject to the availability of funds, CBO estimates that implementing the bill would increase the costs of a Presidential transition by less than \$500,000. (The current Administration has requested \$7.1 million for transition costs in 2001.) Our estimate of incremental cost assumes that the training authorized by S. 2705 would apply to relatively few individuals and that the transition directory would largely compile information from existing publications and materials.

Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. S. 2705 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.

VII. CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2705 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 3—THE PRESIDENT

CHAPTER 2—OFFICE AND COMPENSATION

§ 102. Compensation of the President

* * * * *

SEC. 1 * * *

* * * * *

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) * * * at such place or places within the United States as the President-elect or Vice-President-elect shall designate[;].

(2) * * * and the Federal employees Health Benefits Act of 1959[;].

(3) * * * as amended[;].

(4) * * * as may be appropriate[;].

(5) * * * or Vice-President-elect[;].

(6) * * * as amended[;].

(7) * * *

(8)(A)(i) *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.*

(ii) Activities under this paragraph may include interchange between such appointees and individuals who—

(I) held similar leadership roles in prior administrations;

(II) are department or agency experts from the Office of Management and Budget or and Office of Inspector General of a department or agency; or

(III) are relevant staff from the General Accounting Office.

(iii) Activities under this paragraph may include training in records management to comply with section 2203 of title 44, United States Code, including training on the separation of Presidential records and personal records to comply with subsection (b) of that section.

(iv) Activities under this paragraph may include training in human resources management and performance-based management.

(B) Activities 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.

(9)(A) Development of a transition directory by the Administrator for activities conducted under paragraph (8).

(B) The transition directory shall be a compilation of Federal publications and materials with supplementary materials developed by the Administrator that provides information on the officers, organization, and statutory and administrative authorities, functions, duties, responsibilities, and mission of each department and agency.

(10)(A) Notwithstanding subsection (b), consultation by the Administrator with any candidate for President or Vice President to develop a systems architecture plan for the computer and communications systems of the candidate to coordinate a transition to Federal systems, if the candidate is elected.

(b) Consultations under this paragraph shall be conducted at the discretion of the Administrator.

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