

TO ENSURE THAT ANY NEW OR REVISED REQUIREMENT PROVIDING FOR THE SCREENING, TESTING, OR TREATMENT OF AN AIRMAN OR AN AIR TRAFFIC CONTROLLER FOR A SLEEP DISORDER IS ADOPTED PURSUANT TO A RULEMAKING PROCEEDING, AND FOR OTHER PURPOSES

FEBRUARY 6, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

## R E P O R T

[To accompany H.R. 3578]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3578) to ensure that any new or revised requirement providing for the screening, testing, or treatment of an airman or an air traffic controller for a sleep disorder is adopted pursuant to a rulemaking proceeding, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. MEDICAL CERTIFICATION REQUIREMENTS FOR AIRMEN AND AIR TRAFFIC CONTROLLERS RELATING TO SLEEP DISORDERS.**

(a) **IN GENERAL.**—The Secretary of Transportation may, consistent with accepted medical standards and practices, implement or enforce a requirement providing for the screening, testing, or treatment (including consideration of all possible treatment alternatives) of an airman or an air traffic controller for a sleep disorder—

(1) in the case of an airman, only if the requirement is adopted pursuant to a rulemaking proceeding; and

(2) in the case of an air traffic controller, only if the Federal Aviation Administration meets its obligations pursuant to chapter 71 of title 5, United States Code.

(b) **APPLICABILITY.**—Subsection (a) shall not apply to a requirement that was in force before November 1, 2013.

(c) **DEFINITIONS.**—In this section, the following definitions apply:

(1) **AIRMAN.**—The term “airman” has the meaning given that term in section 40102(a) of title 49, United States Code.

(2) **AIR TRAFFIC CONTROLLER.**—The term “air traffic controller” means a civilian employee of the Department of Transportation described in section 2109 of title 5, United States Code.

(3) **SLEEP DISORDER.**—The term “sleep disorder” includes obstructive sleep apnea.

Amend the title so as to read:

A bill to establish requirements for the adoption of any new or revised requirement providing for the screening, testing, or treatment of an airman or an air traffic controller for a sleep disorder, and for other purposes.

**PURPOSE OF LEGISLATION**

H.R. 3578 ensures that the Federal Aviation Administration (FAA) will use a transparent and thorough process if the agency proposes new medical certification requirements for sleep disorders.

**BACKGROUND AND NEED FOR LEGISLATION**

In November 2013, the FAA announced a change to its medical certification policy, which was originally scheduled to be implemented in January 2014. Currently, pilots and air traffic controllers must be medically certified by the FAA before they can operate an aircraft or control and separate air traffic. The type of activity and other factors, such as age, determine the type or class of medical certificate that is required and how frequently it must be re-issued.

Pilots that are diagnosed with certain medical conditions, or pilots that are otherwise impaired or unfit to fly for any number of reasons, are legally prohibited from exercising the privileges of their certificate. In the case of a disqualifying medical condition, such as obstructive sleep apnea (OSA), a pilot is immediately and permanently “grounded” and must seek and obtain a “Special Issuance” medical certificate from the FAA before they can resume exercising the privileges of their certificate. Ultimately, after a thorough review process, the FAA is responsible for determining whether or not to issue a Special Issuance medical certificate to pilots with OSA or other disqualifying medical conditions. Air traffic controllers are bound by similar requirements.

The FAA’s new policy does not change the medical standards related to OSA, but it does change the approach to diagnosing OSA. The new policy requires all pilots with a body mass index (BMI) of 40 or more to receive additional medical screening and be evalu-

ated by a physician who is a board certified sleep specialist before they can be medically certificated. In addition, the FAA has announced its intention to eventually apply this new standard to air traffic controllers and pilots with a lower BMI. Because this proposal is a significant change in the FAA's medical policy, it is important for the FAA to use a transparent, inclusive process to evaluate the costs and benefits, consider the views of affected stakeholders, and review alternative approaches to the proposal.

H.R. 3578 allows the Secretary of Transportation to implement and enforce new sleep disorder requirements providing for the screening, testing, or treatment of pilots and air traffic controllers only if (1) in the case of a pilot, the requirement is adopted pursuant to a rulemaking proceeding, and (2) in the case of an air traffic controller, the FAA meets its obligations pursuant to chapter 71 of title 5, United States Code. H.R. 3578 does not prohibit the FAA from implementing new sleep disorder requirements; it simply requires the agency to use an open, inclusive process. Further, H.R. 3578 is specific to sleep disorders and does not apply to any other medical condition.

#### HEARINGS

No hearings were held on H.R. 3578.

#### LEGISLATIVE HISTORY AND CONSIDERATION

On November 21, 2013, Representative Frank A. LoBiondo introduced H.R. 3578, along with original cosponsors Representatives Rick Larsen, Larry Bucshon, Daniel Lipinski, Sam Graves, and Patrick Meehan.

On December 4, 2013, the Committee on Transportation and Infrastructure met in open session and ordered the bill reported favorably to the House by voice vote with a quorum present. An amendment in the nature of a substitute was offered in committee by Mr. LoBiondo. The amendment was a technical amendment to clarify the process the FAA must use when proposing new sleep disorder requirements for pilots and air traffic controllers. The amendment was adopted by voice vote with a quorum present.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no record votes taken in connection with consideration of H.R. 3578 or ordering the measure reported. A motion to order H.R. 3578 reported favorably to the House was agreed to by voice vote with a quorum present.

#### COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in the report.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 3578 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, December 10, 2013.*

Hon. BILL SHUSTER,  
*Chairman, Committee on Transportation and Infrastructure,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3578, a bill to establish requirements for the adoption of any new or revised requirement providing for the screening, testing, or treatment of an airman or an air traffic controller for a sleep disorder, and for other purposes.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 3578—A bill to establish requirements for the adoption of any new or revised requirement providing for the screening, testing, or treatment of an airman or an air traffic controller for a sleep disorder, and for other purposes*

H.R. 3578 would require the Secretary of Transportation to follow formal rulemaking procedures when establishing new requirements for certain types of medical tests for pilots and air traffic controllers. CBO estimates that enacting H.R. 3578 would have no significant impact on the federal budget.

Based on information from the Federal Aviation Administration, CBO estimates that any federal spending to pursue required rulemakings under the bill would not exceed \$500,000 in any given year or over five years. Such spending would be subject to the availability of appropriated funds. Enacting H.R. 3578 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 3578 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 Megan Carroll. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

## PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to ensure the FAA uses a transparent process if the agency proposes new medical certification requirements for sleep disorders.

## ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee finds that no provision of H.R. 3578 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

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee estimates that enacting H.R. 3578 could result in the completion of a rule making pertaining to the medical certification of sleep disorders within the meaning of section 551 of title 5, United States Code.

## FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

## PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 3578 does not preempt any state, local, or tribal law.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

## APPLICABILITY OF LEGISLATIVE BRANCH

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 (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

*Section 1. Medical certification requirements for airmen and air traffic controllers relating to sleep disorders*

Subsection (a) authorizes the Secretary of Transportation to implement or enforce a requirement providing for the screening, testing, or treatment of an airman or air traffic controller for a sleep disorder if in the case of an airman, the requirement is adopted pursuant to a rulemaking proceeding; and in the case of an air traffic controller, if the FAA meets its obligations pursuant to chapter 71 of title 5, United States Code.

Subsection (b) ensures that medical certification requirements for pilots and air traffic controllers with sleep disorders enacted before November 1, 2013, are not impacted.

Subsection (c) defines the terms “airman”, “air traffic controller”, and “sleep disorder”.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 3578 makes no changes in existing law.