

TO PROVIDE FOR AN EXCEPTION TO A LIMITATION AGAINST APPOINTMENT OF PERSONS AS SECRETARY OF DEFENSE WITHIN SEVEN YEARS OF RELIEF FROM ACTIVE DUTY AS A REGULAR COMMISSIONED OFFICER OF THE ARMED FORCES

FEBRUARY 16, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THORNBERRY, from the Committee on Armed Services, submitted the following

R E P O R T

[To accompany H.R. 393]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services, to whom was referred the bill (H.R. 393) to provide for an exception to a limitation against appointment of persons as Secretary of Defense within seven years of relief from active duty as a regular commissioned officer of the Armed Forces, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

The purpose of this legislation is to authorize the President to appoint General James N. Mattis, USMC (Ret.), as Secretary of Defense. The legislation authorizes the President to nominate and, by and with the advice and consent of the Senate, appoint, an individual as Secretary of Defense who is within 3 years of relief from Active Duty as a commissioned officer of a regular component of the Armed Forces. The legislation applies only to the first person appointed after enactment. At the date of introduction of the legislation, President-elect Donald J. Trump had announced his intention to nominate General Mattis as Secretary of Defense.

BACKGROUND AND NEED FOR LEGISLATION

In 1947, Congress created the position of Secretary of Defense as part of the National Security Act of 1947 (Public Law 80-253). Public Law 80-253 required that the Secretary of Defense be appointed from civilian life by the President, by and with the advice and consent of the Senate, but it made ineligible for appointment any person who had been on Active Duty as a commissioned officer

in a regular component of the Armed Services within the past 10 years. The limitation was codified in section 113 of title 10, United States Code. In 2007, section 903 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181) reduced the limitation from 10 years to 7 years.

Need for legislation

On November 8, 2016, Donald J. Trump was elected President of the United States. On December 1, 2016, President-elect Trump announced his intention to nominate General James N. Mattis, USMC (Ret.) to the position of Secretary of Defense. General Mattis retired from the Marine Corps in 2013. Thus, absent legislation, section 113 of title 10, United States Code, prohibits the appointment of General Mattis as Secretary of Defense.

Prior exceptions to the prohibition on recently retired officers serving as Secretary of Defense

An exception to section 113 of title 10, United States Code, is rare but not unprecedented. On September 13, 1950, President Harry S. Truman sent a letter to Congress requesting legislation that would authorize General of the Army George C. Marshall, then Secretary of State, to serve as Secretary of Defense. General Marshall had received a lifetime commission, and was still an officer of the Army even while serving as Secretary of State. Thus, General Marshall was prohibited from being appointed Secretary of Defense by what is now section 113 of title 10, United States Code.

Two days later, on September 15, 1950, the House Committee on Armed Services met to consider legislation (H.R. 9646) waiving the prohibition for General Marshall. The committee met in executive session and reported out the legislation favorably by a vote of 18–7. No witnesses attended. The Committee on Rules met that same morning and issued a rule providing for floor debate on the bill. The House adopted the rule and, at the conclusion of the allotted time for debate, voted to pass the bill by a vote of 220–105.

The Senate had been simultaneously considering similar legislation, and by unanimous consent substituted the bill that had just passed the House. That evening, the Senate passed the legislation and on September 18, 1950, the President signed it into law (Public Law 81–788). The President promptly nominated General Marshall to the position of Secretary of Defense, and, after a confirmation hearing, his nomination was approved by the Senate and General Marshall was confirmed as Secretary of Defense on September 20, 1950.

Qualifications of General Mattis

General James N. Mattis, USMC (Ret.) has distinguished himself as a national security leader; a wartime commander, with multiple deployments to the Republic of Iraq and the Islamic Republic of Afghanistan; a scholar who has written on civilian-military relations at Stanford University’s Hoover Institution; and a student of military history.

General Mattis enlisted in the Marine Corps in 1969 and attended Central Washington University as part of the Reserve Officers’ Training Corps program. He earned a bachelor’s degree in 1971 and was commissioned as a second lieutenant the following

year. He retired in 2013 after a 41-year Marine Corps career that included field commands in the Persian Gulf, Iraq, and Afghanistan.

Following the terrorist attacks on September 11, 2001, General Mattis commanded the First Marine Expeditionary Brigade and Naval Task Force 58 in operations against the Taliban in southern Afghanistan. As a major general, he commanded the First Marine Division during the initial attack and subsequent stability operations in Iraq. In his first tour as a lieutenant general, he was in charge of Marine Corps Combat Development Command, and while there helped compile the U.S. Army/Marine Corps Counterinsurgency Field Manual, the tenets of which have been employed in Iraq and Afghanistan. Subsequently, he served as Commander, I Marine Expeditionary Force/Commander, U.S. Marine Forces in the Middle East. In 2007, General Mattis was promoted to general, and served concurrently as the Commander of U.S. Joint Forces Command and the North Atlantic Treaty Organization's Supreme Allied Commander Transformation. He established the Center for Advanced Operational Culture Learning, a training academy for Marine Corps officers and senior enlisted personnel, to instill cultural awareness and language skills. In 2010, he took command of U.S. Central Command, with responsibility for ongoing U.S. military operations in Iraq and Afghanistan.

Since retiring from the U.S. Marine Corps in 2013, General Mattis has been a visiting fellow at Stanford University's Hoover Institution and taught courses on various subjects at other colleges nationwide. He is co-editor of the book, "Warriors & Citizens: American Views of our Military", which explores the paradoxes in American attitudes toward the U.S. military and provides recommendations for civil-military relations.

The principle of civilian control of the military

Civilian control of the Armed Forces is a long-standing national principle, and the committee recognizes the importance of considering the issues associated with its preservation in the context of authorizing an exception to section 113 of title 10, United States Code, for General Mattis. Such consideration was also central to the debate in September 1950, when Congress last considered a legal exception for General of the Army George C. Marshall.

While scholars and practitioners generally believe the United States still adheres to the principle of civilian control of the military, some have observed that civilian-military relations have deteriorated over the past two decades. These scholars and practitioners further worry that greater deference to generals may lead to greater militarism in the Department of Defense. Others worry that, as retired generals engage more in the political arena, the risk of politicizing the military grows. Some also question how such an appointment might affect the Chairman of the Joint Chiefs of Staff's ability to perform his statutory role as principal military advisor to the President, and how the appointee would avoid perceptions of bias towards the military branch he served in.

The committee notes that several leading scholars in civilian-military issues, after considering these issues, support the exception for General Mattis. One scholar concluded that General Mattis is "an exceptional candidate" in "exceptional circumstances," while

another believes that General Mattis can be a “stabilizing and moderating force.” His nomination has also been supported by several former Secretaries of Defense.

General Mattis appears to understand the importance of civil-military relations and of upholding the long-standing principle of civilian control of the military. He testified to the Senate Committee on Armed Services during his confirmation hearing in January 2017, that he “recognize[s] my potential civilian role differs in essence and in substance from my former role in uniform,” and “will provide strong civilian leadership of military plans and decisions . . . [and] hold senior military and civilian leaders accountable.”

The committee recommends authorizing a one-time exception to section 113 of title 10, United States Code. The committee believes that General Mattis is qualified to serve as Secretary of Defense and that the country can once again benefit from his leadership and public service.

HEARINGS

No hearings were held by the committee on H.R. 393.

However, after President-elect Trump announced on December 1, 2016, his intention to nominate General James N. Mattis, USMC (Ret.) to the position of Secretary of Defense, the committee convened two events to discuss issues related to any potential legislation to provide an exception to section 113 of title 10, United States Code.

On December 6, 2016, the committee received a briefing from committee staff on the legislative background and history of the statutory limitations on the position of Secretary of Defense and an “Act to authorize the President to appoint General of the Army George C. Marshall to the office of Secretary of Defense” (Public Law 81–788). On December 7, 2016, the committee held an informal discussion with non-government scholars and experts on civil-military relations.

COMMITTEE POSITION

On January 12, 2017, the Committee on Armed Services held a markup session to consider H.R. 393. No amendments were offered to the bill. The committee ordered the bill H.R. 393 favorably reported to the House of Representatives by a recorded vote of 34–28, a quorum being present.

COMMITTEE VOTES

In accordance with clause 3(b) of rule XIII of the Rules of the House of Representatives, a record vote was taken with respect to the committee’s consideration of H.R. 393. The record of this vote is contained on the following page.

COMMITTEE ON ARMED SERVICES

115th Congress

ROLL CALL VOTE NO. 1

H.R. 393

Description: On motion by Mr. Wilson to adopt the bill, H.R. 393, and report it favorably to the House, with a recommendation that it do pass.

January 12, 2017.

Member	Aye	No	Present	Member	Aye	No	Present
Mr. Thornberry	x			Mr. Smith		x	
Mr. Jones	x			Mr. Brady		x	
Mr. Wilson	x			Mrs. Davis		x	
Mr. LoBiondo	x			Mr. Langevin		x	
Mr. Bishop	x			Mr. Larsen		x	
Mr. Turner	x			Mr. Cooper		x	
Mr. Rogers	x			Ms. Bordallo		x	
Mr. Franks	x			Mr. Courtney		x	
Mr. Shuster	x			Ms. Tsongas		x	
Mr. Conaway	x			Mr. Garamendi		x	
Mr. Lamborn	x			Ms. Speier		x	
Mr. Wittman	x			Mr. Veasey		x	
Mr. Hunter	x			Ms. Gabbard		x	
Mr. Coffman	x			Mr. O'Rourke		x	
Mrs. Hartzler	x			Mr. Norcross		x	
Mr. Scott	x			Mr. Gallego		x	
Mr. Brooks	x			Mr. Moulton		x	
Mr. Cook	x			Ms. Hanabusa		x	
Mr. Bridenstine	x			Ms. Shea-Porter		x	
Dr. Wenstrup	x			Ms. Rosen		x	
Mr. Byrne	x			Mr. McEachin		x	
Mr. Graves	x			Mr. Carbajal		x	
Ms. Stefanik	x			Mr. Brown		x	
Ms. McSally	x			Mrs. Murphy		x	
Mr. Knight	x			Mr. Khanna		x	
Mr. Russell	x			Mr. Peters		x	
Dr. DesJarlais	x			Mr. Aguilar		x	
Dr. Abraham	x			Mr. Castro		x	
Mr. Kelly	x						
Mr. Gallagher	x						
Mr. Gaetz	x						
Mr. Bacon	x						
Mr. Banks	x						
Ms. Cheney	x						
Roll Call Vote Total:	34	28	0				

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 13, 2017.

Hon. MAC THORNBERRY,
*Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 393, a bill to provide for an exception to a limitation against appointment of persons as Secretary of Defense within seven years of relief from active duty as a regular commissioned officer of the Armed Forces.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 393—A bill to provide for an exception to a limitation against appointment of persons as Secretary of Defense within seven years of relief from active duty as a regular commissioned officer of the Armed Forces

Current law bars the appointment to the position of Secretary of Defense of any person who has served on active duty as a commissioned officer of the Armed Forces during the previous seven years. H.R. 393 would waive that prohibition for the next person appointed to the office. CBO estimates that enacting H.R. 393 would have no budgetary effect.

CBO estimates that enacting H.R. 393 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 393 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 David Newman. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Pursuant to clause (3)(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Congressional Budget Office Estimate included in this report satisfies the requirement for the committee to include an estimate by the committee of the costs incurred in carrying out this bill.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the committee finds that H.R. 393 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

ADVISORY OF EARMARKS

The committee finds that H.R. 393, as reported, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

OVERSIGHT FINDINGS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee are incorporated in the descriptive portions of this report.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

In compliance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the general goal and objective of H.R. 393 is to authorize the Senate to consider the nomination of General James N. Mattis, USMC (Ret.) to the position of Secretary of Defense. The legislation does not authorize any funding.

STATEMENT OF FEDERAL MANDATES

Pursuant to section 423 of Public Law 104–4, this legislation contains no Federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the bill provides no Federal intergovernmental mandates.

FEDERAL ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO THE LEGISLATIVE BRANCH

The committee finds that this 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).

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 393 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

The committee estimates that H.R. 393 requires no directed rule makings.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

SECTION 1—EXCEPTION TO LIMITATION AGAINST APPOINTMENT OF PERSONS AS SECRETARY OF DEFENSE WITHIN SEVEN YEARS OF RELIEF FROM ACTIVE DUTY AS REGULAR COMMISSIONED OFFICERS OF THE ARMED FORCES

This section would authorize the President to appoint, by and with the advice and consent of the Senate, an individual as Secretary of Defense who is within 7 years, but not less than 3 years, of relief from Active Duty as a commissioned officer of a regular component of the Armed Forces. The legislation applies only to the first person appointed after enactment of this Act.

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, H.R. 393 would not make any changes to existing law.