



Legislative Bulletin.....July 25, 2011

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S.1103 — A bill to extend the term of the incumbent Director of the Federal Bureau of Investigation (*Leahy, D-VT*)

Order of Business: The bill is scheduled to be considered on Monday, July 25, 2011 under a motion to suspend the rules requiring two-thirds majority vote for passage.

Summary: S.1103 amends current law¹ to except the current Director of the Federal Bureau of Investigation (FBI), Mr. Robert S. Mueller, III, from the statutory 10-year appointment term without reappointment to serve an additional two years. President George W. Bush nominated Mr. Mueller to serve as FBI director on July 18, 2001. The Senate confirmed his appointment to a 10-year term on August 2, 2001 by a vote of 98-0, and President Bush signed his appointment on August 4, 2001. His appointment is scheduled to terminate on August 3, 2011. The bill would extend his appointment until August 3, 2013.

Additional Background: President Barack Obama announced on May 12, 2011 his desire to seek a limited, two-year extension of FBI Director Robert Mueller’s original 10-year term. The President stated:

“Given the ongoing threats facing the United States, as well as the leadership transitions at other agencies like the Defense Department and Central Intelligence Agency, I believe continuity and stability at the FBI is critical at this time...I ask Democrats and Republicans in Congress to join together in extending that leadership for the sake of our nation’s safety and security.”

Director Mueller testified about recent threats against the United States in the lead up to the tenth anniversary of the September 11, 2001 terrorists attacks on the World Trade Center and Pentagon. He explained that the “FBI has never faced a more complex threat

¹ Congress passed legislation limiting the service of an FBI Director to one 10-year term without the possibility of reappointment. Public Law No. 94-503; 28 U.S.C. sec 503 note (Oct. 15, 1976).

environment that it does today. Over the past year, we have seen an extraordinary array of national security and criminal threats from terrorism, espionage, cyber attacks, and traditional crimes...”²

The bill’s findings state that the President has requested this one-time exception to the 10-year term limit based upon the exceptional circumstances the nation is facing, and that this extension is not intended to create a precedent for future extensions of the FBI Director. The Senate passed the bill by voice vote on July 21, 2011.

For more information on the history and Congressional action of the FBI Directorship, please click [here](#) for a recent Congressional Research Service report.

Committee Action: Senator Patrick Leahy (*D-VT*) introduced S. 1103 on May 26, 2011. The Senate Judiciary Committee held a hearing on June 8, 2011 where Director Mueller and other witnesses testified. On June 16, 2011, the Committee reported out the bill with an amendment in the nature of a substitute including new findings in Section one of the bill.

Potential Conservative Concerns: Some conservatives believe that extending the statutorily-limited appointment term of the FBI Director conflicts with the Constitution’s Appointments Clause³ permitting the President to choose his nominee. According to page seven of the Senate Judiciary Committee [report](#), the Appointments Clause “is not offended, however, when Congress merely acts to extend the term of service of an executive branch officer who serves at the pleasure of the President, particularly when Congress acts at the specific request of the President.”⁴ Secondly, the bill does not affect the President’s ability, at his discretion, to remove Mr. Mueller at any point during his service.

Administration Position: As of press time, no Statement of Administration Policy (SAP) has been released. However, the President released a statement on May 12, 2011 requesting Congress to extend the term of Robert S. Mueller, III as FBI Director.

RSC Bonus Fact: J. Edgar Hoover is—and always will be—the longest-serving FBI Director. His tenure as Director lasted 48 years until his death in 1972.

² The President’s Request to Extend the Service of Director Mueller of the FBI until 2013: Hearing before the Senate Committee on the Judiciary, 112th Cong. (June 8, 2011) (statement from Robert S. Mueller, III, Director of the FBI, at 1).

³ Article II, section 2 of the U.S. Constitution states that the President shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme court and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law.

⁴ This basic principle has been reaffirmed on several occasions by the Department of Justice through legal opinions dating back six decades—the Committee report describes Attorney General and office of Legal Counsel opinions. Additionally, a recent CRS [report](#) on the history of FBI Directors explains that it was apparently unable to identify a single case, opinion, or other legal authority to support the notion that a legislative extension such as S. 1103 might violate the Appointments Clause.

Cost to Taxpayers: The Congressional Budget Office (CBO) released a cost [estimate](#) for S. 1103 on June 17, 2011. The estimate states that implementing this bill will have no significant cost to the federal government.

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?: The CBO report states that the bill does not contain any intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: The Senate sponsor of this bill has not provided a Constitutional Authority Statement as required for all House-introduced bills and joint-resolution under House rules in the 112th Congress.

Outside Organizations Supporting the Bill: National Fraternal Order of Police, the National Association of Police Organizations, and the International Association of Chiefs of Police.

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H.R. 440 - To provide for the establishment of the Special Envoy to Promote Religious Freedom of Religious Minorities in the Near East and South Central Asia. (Wolf, R-VA)

Order of Business: The legislation is scheduled to be considered on July 25, 2011, under a motion to suspend the rules and pass the bill.

Summary: This legislation would establish a Special Envoy to Promote Religious Freedom of Religious Minorities in the Near East and South Central Asia with the Department of State. This individual will be appointed by the President, not subject to Senate confirmation, and shall have the rank of ambassador. This individual shall represent the U.S. to foreign governments, intergovernmental organizations and agencies of the U.N. regarding matters of religious freedom in the Near East and South Central Asia. The individual is prohibited from holding any other position within the federal government as long as they are the Special Envoy.

The duties of the Special Envoy shall include:

- Promote the right of religious freedom of religious minorities in the countries of the Near East and the countries of South Central Asia, denounce the violation of such right, and recommend appropriate responses by the United States Government when such right is violated.
- Monitor and combat acts of religious intolerance and incitement targeted against religious minorities in the countries of the Near East and the countries of South Central Asia.
- Work to ensure that the unique needs of religious minority communities in the countries of the Near East and the countries of South Central Asia are addressed, including the economic and security needs of such communities.
- Work with foreign governments of the countries of the Near East and the countries of South Central Asia to address laws that are inherently discriminatory toward religious minority communities in such countries.

H.R. 440 directs that funding for this legislation shall be derived from existing funds available for “Diplomatic and Consular Programs,” and shall not exceed \$1,000,000 for each fiscal year 2011 through 2015. This amount will be used for the hiring of staff, the conduct of investigations, and for travel expenses. The Secretary of State is allowed to eliminate positions within the Department (that are not authorized or required by law) for the purpose of offsetting this cost. This legislation prohibits additional funds from being authorized to “Diplomatic and Consular Programs” in order to offset funding for this legislation.

This legislation directs the Special Envoy to give priority to program, projects and activities for Egypt, Iraq, Afghanistan, and Pakistan.

H.R. 440 contains a sunset date of October 1, 2015.

Committee Action: H.R. 440 was introduced on January 25, 2011, and was referred to the House Foreign Affairs Subcommittee on Middle East and South Asia, and the Subcommittee on Africa, Global Health, and Human Rights, which took no public action.

Administration Position: No Statement of Administration Policy (SAP) is provided.

Cost to Taxpayers: A report from CBO was unavailable at press time, however the legislation does not authorize any additional funds.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The legislation creates a Special Envoy to Promote Religious Freedom of Religious Minorities in the Near East and South Central Asia with the Department of State.

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?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: Rep. Wolf's statement of constitutional authority states that Congress has the power to enact this legislation pursuant to the following: "Article I, Section 8, Clause 18 of the United States Constitution, which states: "The Congress shall have Power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof" Article II, Section 2, Clause 2 of the United States Constitution, which states: "[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.""

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Senate Amendments to H.R. 1383 — Restoring GI Bill Fairness Act of 2011 (Miller, R-FL)

Order of Business: The bill is scheduled to be considered on Monday, July 25, 2011 under a motion to suspend the rules requiring two-thirds majority vote for passage.

Summary: The Senate Amendments to H.R. 1383 amends a bill that previously passed the House of May 23, 2011 under suspension of the rules by a vote of [389-0](#). The bill temporarily changes the amount of educational benefits payable to certain veterans and qualifying dependents for three years using the Post-9/11 GI Bill, beginning August 1, 2011 through July 31, 2014. The Senate passed the amendments to H.R. 1383 on July 21, 2011 by Unanimous Consent.

Changes Since the Last Time This Legislation Was Before the House:

- *Eligibility Date* – Veterans and dependents entitled to educational assistance must have been enrolled in a non-public institution of higher learning on or before January 4, 2011. The original House-passed bill required students to have been enrolled on or before April 1, 2011.

- *Adjusts Dates and Rates for Existing Department of Veteran Affairs Home Loan Fees* – Under existing law (38 U.S.C. section 3710 (a)), the Department collects

funding fees for Department home loans for active duty and reservists veterans.
The Senate amendment would:

- increase the funding fee for loans to purchase or construct a dwelling with zero money down closed before October 1, 2011 from 3.0 to 3.30 percent; and
 - retain the provisions in the House-passed bill to:
 - lower these fees for loans closed from October 1, 2011 to September 30, 2012 from 3.30 to 2.80 percent; and
 - lower these fees for loans closed from October 1, 2012 to September 30, 2013 from 2.80 to 2.15 percent.
- *Effective Date of Amendments*– The effective date of amendments for the new loan fees will take effect on the later of October 1, 2011 or the date of enactment of this act. The original House-passed bill would take effect on October 1, 2011.

Additional Background: Under current federal law (P.L. 111-377), beginning August 1, 2011, educational assistance payable to certain veterans (and their dependents) under the Post-9/11 GI Bill for programs at private institutions will be capped to the cost of tuition and fees (net amount minus scholarships and other financial assistance) up to \$17,500 per year. Prior to enactment to P.L. 111-377, the amount of this educational assistance was the actual cost of tuition and fees up to the highest in-state tuition and fees charged by a public, in-state educational institution.

Beginning August 1, 2011, H.R. 1383 will temporarily increase this cap to \$27,000 through July 31, 2014. Beneficiaries must have been enrolled in a private institution on or before January 4, 2011 where tuition and fees for full-time attendance exceeded \$17,500 during the 2010-2011 academic year where a public institution charged in-state students more than \$700 per credit hour (as determined by the Department) during the 2010-2011 academic year. The Congressional Budget Office (CBO) estimates that about 4,500 veterans and dependents attending private four-year and graduate institutions would satisfy these conditions. It also originally estimated⁵ that this provision would increase direct spending by \$51 million over the 2012-2021 period.

The manager's amendment adopted on the House floor for H.R. 1383 extended existing loan fee requirements associated with subsequent use of a Department loan guaranty for one year. Under existing law, the funding fee for subsequent use of a Department loan guaranty is 3.3% of the total loan amount. That fee is set to be reduced to 2.15% on October 1, 2011. Instead, the manager's amendment reduced the fee to 2.8% for the one year period ending September 30, 2012, after which the fee would again be reduced to 2.15%. In total, the manager's amendment would save \$22 M in Fiscal Year 2012; save \$3 M over five years; and save \$3 M over 10 years. **The Senate amendment made revisions to this fee structure as described above (See *Changes Since the Last Time This Legislation Was Before the House*).**

⁵ May 18, 2011 CBO [estimate](#) of H.R. 1383

Committee Action: H.R. 1383 was introduced by Chairman Jeff Miller (R-FL) on April 6, 2011 and referred to the House Committee on Veterans Affairs. On May 3, 2011, the Subcommittee on Economic Opportunity held a legislative hearing on the bill. On May 5, 2011, the Subcommittee marked up the bill and forwarded it favorably to the Full Committee. On May 12th, the Full Committee ordered the amended bill out favorably by voice vote. The House passed H.R. 1383 on May 23, 2011 by a vote of 389-0. The Senate passed the bill by Unanimous Consent on July 21, 2011.

Administration Position: As of press time, no Statement of Administration Policy (SAP) has been released.

Cost to Taxpayers: The Congressional Budget Office (CBO) issued a cost estimate for H.R. 1383 on May 18, 2011. The estimate states that implementing H.R. 1383 would (on net) reduce direct spending by \$5 million over the 2012-2021 periods. According to the Committee on Veterans' Affairs, the Manager's Amendment reduced direct spending by \$3 million, which differs from the original CBO report issued on May 18th, because the Manager's Amendment—by changing the scheduled cut in funding fees (from 2.15% to 2.8% in the first year) for subsequent use of a Department loan guaranty—was drafted after the CBO report was issued. CBO has not scored the changes made by the Senate amendments to H.R. 1383.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill temporarily increases the Post-9/11 GI Bill program's cap of educational assistance for tuition and fees paid by the Department of Veterans' Affairs on behalf of veterans pursuing programs of education at private institutions of higher learning from \$17,500 to \$27,000. However, the bill reduces (on net) overall direct spending by \$3 million over 10 years according to the Committee on Veterans' Affairs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: H.R. 1383 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.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1383 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Constitutional Authority: The Constitutional Authority Statement published in the Congressional Record upon introduction of the bill states: "Congress has the power to enact this legislation pursuant to the following: Clauses 12, 13, 14, and 18 of Section 8 of Article 1 of the Constitution."

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