

Union Calendar No. 264

115TH CONGRESS
1ST SESSION

H. R. 4010

[Report No. 115-360]

To amend the Revised Statutes of the United States and title 28, United States Code, to enhance compliance with requests for information pursuant to legislative power under Article I of the Constitution, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 11, 2017

Mr. ISSA (for himself, Mr. GOODLATTE, Mr. SMITH of Texas, Mr. SESSIONS, and Mr. FARENTHOLD) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 23, 2017

Additional sponsor: Mr. MESSER

OCTOBER 23, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on October 11, 2017]

A BILL

To amend the Revised Statutes of the United States and title 28, United States Code, to enhance compliance with requests for information pursuant to legislative power under Article I of the Constitution, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Congressional Subpoena*
5 *Compliance and Enforcement Act of 2017”.*

6 **SEC. 2. ENFORCEMENT OF CONGRESSIONAL SUBPOENAS.**

7 *(a) IN GENERAL.—Chapter 85 of title 28, United*
8 *States Code, is amended by inserting after section 1365 the*
9 *following:*

10 **“§ 1365a. Congressional actions against subpoena re-**
11 **ipients**

12 *“(a) SPECIAL RULES.—In any civil action brought by*
13 *the United States House of Representatives, the United*
14 *States Senate, or a committee or subcommittee thereof,*
15 *against the recipient of a subpoena to secure declaratory,*
16 *injunctive, or other relief as may be appropriate concerning*
17 *the failure to comply with a subpoena issued by a congres-*
18 *sional committee or subcommittee, the following rules shall*
19 *apply:*

20 *“(1) The action shall be filed in a United States*
21 *district court of competent jurisdiction.*

22 *“(2) It shall be the duty of the United States dis-*
23 *trict courts, the United States courts of appeal, and*
24 *the Supreme Court of the United States to advance on*

1 *the docket and to expedite to the greatest possible ex-*
2 *tent the disposition of any such action and appeal.*

3 “(3) *If a three-judge court is expressly requested*
4 *by the plaintiff in the initial pleading, the action*
5 *shall be heard by a three-judge court convened pursu-*
6 *ant to section 2284 of title 28, United States Code,*
7 *and shall be reviewable only by appeal directly to the*
8 *Supreme Court of the United States. Such appeal*
9 *shall be taken by the filing of a notice of appeal with-*
10 *in 10 days, and the filing of a jurisdictional state-*
11 *ment within 30 days, of the entry of the final deci-*
12 *sion.*

13 “(b) *MONETARY PENALTIES IN CASES INVOLVING GOV-*
14 *ERNMENT AGENCIES.—*

15 “(1) *The court may impose monetary penalties*
16 *directly against the head of a Government agency or*
17 *a component thereof held to have willfully failed to*
18 *comply with any part of a congressional subpoena.*

19 “(2) *No appropriated funds, funds provided from*
20 *any accounts in the Treasury, funds derived from the*
21 *collection of fees, or other Government funds shall be*
22 *used to pay any monetary penalty imposed by the*
23 *court pursuant to this section.*

24 “(c) *WAIVER OF PRIVILEGE.—Any assertion of a*
25 *privilege or other ground for noncompliance (whether statu-*

1 tory, common law, or otherwise) asserted by the recipient
2 of a congressional subpoena may be determined to have been
3 waived as to any particular record withheld from produc-
4 tion if the court finds that the recipient failed in a timely
5 manner to comply with the requirement of section 105 of
6 the Revised Statutes of the United States that it produce
7 a privilege log with respect to such record.

8 “(d) *DEFINITION.*—For purposes of this section, the
9 term ‘Government agency’ means an executive department
10 listed in section 101 of title 5, United States Code, an inde-
11 pendent establishment, commission, board, bureau, division,
12 or office in the executive branch, or other agency of the Fed-
13 eral Government, including wholly or partly owned Govern-
14 ment corporations.”.

15 (b) *CLERICAL AMENDMENT.*—The table of sections for
16 chapter 85 of title 28, United States Code, is amended by
17 inserting after the item relating to section 1365 the fol-
18 lowing:

“1365a. Congressional actions against subpoena recipients.”.

19 **SEC. 3. COMPLIANCE WITH CONGRESSIONAL SUBPOENAS.**

20 (a) *IN GENERAL.*—Chapter seven of title II of the Re-
21 vised Statutes of the United States (2 U.S.C. 191 et seq.)
22 is amended by adding at the end the following:

23 **“SEC. 105. RESPONSE TO CONGRESSIONAL SUBPOENAS.**

24 “(a) *SUBPOENA BY CONGRESSIONAL COMMITTEE.*—
25 Any recipient of any subpoena from a congressional com-

1 *mittee or subcommittee shall appear and testify or produce*
2 *records in a manner consistent with the subpoena and this*
3 *section.*

4 “(b) *CONGRESSIONAL SUBPOENAS FOR RECORDS.—*

5 “(1) *IDENTIFICATION OF RECORDS WITHHELD.—*

6 *In the case of a record that is withheld, in whole or*
7 *in part, by the subpoena recipient, the subpoena re-*
8 *ipient shall provide a log containing the following*
9 *information concerning such record:*

10 “(A) *An express assertion and description of*
11 *the legal basis asserted for withholding the*
12 *record.*

13 “(B) *The type of record.*

14 “(C) *The general subject matter.*

15 “(D) *The date, author, and addressee.*

16 “(E) *The relationship of the author and ad-*
17 *dressee to each other.*

18 “(F) *The custodian of the record.*

19 “(G) *Any other descriptive information that*
20 *may be produced or disclosed regarding the*
21 *record that will enable the congressional com-*
22 *mittee or subcommittee issuing the subpoena to*
23 *assess the legal basis asserted for withholding the*
24 *record.*

1 “(2) *MISSING RECORDS.*—*In the case of any*
2 *record responsive to the subpoena submitted under*
3 *paragraph (1) that was, but no longer is, in the pos-*
4 *session, custody, or control of the subpoena recipient,*
5 *the subpoena recipient shall identify the record (in-*
6 *cluding the date, author, subject, and each recipient*
7 *of the record) and explain the circumstances under*
8 *which the record ceased to be in the possession, cus-*
9 *tody, or control of the subpoena recipient.*

10 “(3) *ELECTRONIC RECORDS.*—*Electronic records*
11 *shall be produced pursuant to this subsection in their*
12 *native or original file format. Electronic records shall*
13 *be delivered on a storage device (such as compact*
14 *disk, memory stick, or thumb drive) and, to the extent*
15 *feasible, shall be organized, identified, and indexed*
16 *electronically and shall include an index describing*
17 *the contents of the production.*

18 “(c) *DEFINITIONS.*—*For purposes of this section the*
19 *term ‘record’ includes any books, papers, documents, data,*
20 *or other objects requested in a subpoena issued by a congres-*
21 *sional committee or subcommittee.”.*

22 “(b) *CLERICAL AMENDMENT.*—*The table of contents for*
23 *chapter 7 of title II of the Revised Statutes of the United*
24 *States is amended by adding at the end the following:*

“105. *Response to congressional subpoenas.*”.

1 **SEC. 4. RULE OF CONSTRUCTION.**

2 *Nothing in this Act shall be interpreted to diminish*
3 *Congress' inherent authority or previously established meth-*
4 *ods and practices for enforcing compliance with congres-*
5 *sional subpoenas, nor shall anything in this Act be inter-*
6 *preted to establish Congress' acceptance of any privilege or*
7 *other legal basis for noncompliance with a congressional*
8 *subpoena.*

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