RSC Republican Study Committee

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Legislative Bulletin…………………………………….………October 3, 2007

Contents:

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: $11 million in FY 2008 and $75 million over the FY 2008 – FY 2009 period

Effect on Revenue: $0

Total Change in Mandatory Spending: $0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 928— Improving Government Accountability Act *(Cooper, D-TN)*

Order of Business: The bill is scheduled to be considered on Wednesday, October 3, subject to a structured rule (H.Res. 701). The RSC will summarize the amendments made in order under the rule in a separate RSC document.

Summary: H.R. 928 would prohibit the removal of any Inspectors General (IGs) without specific cause, establish term limits for individuals serving as IGs, authorize IGs to submit budget requests independently of the executive branch, establish the Inspectors General Council, and establish new payment levels for IGs. The specific provisions of the bill are as follows:

- Specifies that IGs appointed by the President may **only be removed** from office prior to the expiration of their term in the case of permanent incapacity, inefficiency, neglect of duty, malfeasance, conviction of a felony, or conduct involving moral turpitude.

- Specifies that IGs appointed by their agency heads in designated federal entities may not be removed or transferred without the agency head submitting the reasons for removal in writing to Congress at least 30 days prior.

- Establishes a seven-year term for every IG and allows for IGs to serve more than one term. States that an individual appointed to fill a vacancy will serve a full seven-year term and allows an individual to serve as IG for up to one year after his or her term has expired while a replacement is appointed.

- Authorizes IGs to submit their own appropriation estimate and budget request to the Office of Management and Budget (OMB) and directly to Congress. The budget requests will be separate from and in addition to the individual agency's request (currently IG budgets are requested and appropriated through each agency).

- Requires the President's budget to show each separate IG request and include a statement comparing the IG's requests to the requests of their respective agency.

- Establishes the Inspectors General Council within the executive branch. The Council is made up of every IG and supplants the President's Council on Integrity and Efficiency (PCIE), which oversees presidentially appointed IGs, and the Executive Council on Integrity and Efficiency (ECIC) which oversees IGs appointed by agency heads.

- Requires that the Council elect a chair from among the IGs to serve for a period of two years. The chair will be responsible for appointing a vice chair, convening meetings, carrying out the duties of the Council, and making payments to carry out the Council's duties.

- Requires the Council to continually review federal programs vulnerable to waste, fraud, and abuse, conduct inter-agency audits and investigations, maintain a website, establish one or more academies to train auditors and investigators, and submit reports to Congress per the chair's request.

- Establishes the Integrity Committee within the Council, headed by the IG of the FBI, for the purpose of investigating allegations of wrongdoing that are made against IGs and senior-level staff.

- Prohibits IGs from receiving any cash awards or bonuses and increases the annual rate of basic pay for presidentially appointed IGs from level IV of the Executive Schedule ($145,400 in 2007) to level III plus three percent ($159,238). In addition, IGs appointed by their agency heads in designated federal entities will be paid at a level comparable to other senior staff members of the agency plus 3 percent.

- Provides that IGs will be the considered the "agency head" with respect to Senior Executive Service, Voluntary Separation Authority, and law enforcement officer retirement exemptions and that the IGs will determine nominees for Presidential Rank Awards for Inspector General personnel.

- Expands the IGs power to subpoena to included electronic information as well as any "tangible thing" (hard drives and computers).

- Authorizes all IGs to apply to the Department of Justice to deputize their agents and authorize them to obtain warrants, make arrests, and carry firearms (currently only presidentially appointed IGs may do so).

- Authorizes the Treasury Inspector General for Tax Administration's agents to provide armed escorts to protect the physical security of IRS employees.

- Expands the power of the Comptroller General to administer oaths and accept sworn testimony and requires the Comptroller General to assess the overall degree of cooperation between agencies and the Government Accountability Office (GAO).

- Authorizes IGs appointed by their agency heads in designated federal entities to pursue false claims and recoup losses from fraud (currently only presidentially appointed IGs are authorized to do so).

Additional Background: The Inspector General Act of 1978 established a series of independent Inspectors General (IGs) that answer to the President and operate within executive departments and agencies. IGs function as supervisory bodies within the agency, conducting audits and investigations to prevent government waste, fraud, and abuse. Since their creation, IGs have conducted investigations and audits that have led to countless prosecutions, debarments, and suspensions. According to House Report 110-354, audits and investigations conducted by IGs resulted in $9.9 billion in potential savings and $6.8 billion in investigative recoveries in 2006 alone.

There are currently 58 Offices of Inspector General (OIGs) operating under the authorization of the IG bill. Each IG is appointed to his or her position either by President, with confirmation in the Senate, or by the respective agency. Currently, 29 IGs are presidential appointees and 29 have been appointed by their agency. In 1992, Executive Order 12805 was signed to coordinate and enhance the efforts of individual IGs by establishing the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE). The PCIE is made up of presidentially appointed IGs, while the ECIE consists of all agency-appointed IGs. Under the terms of the Executive Order, a PCIE IG may only be removed from office by the President, while an ECIE IG may be removed by the head of the presiding agency. In either case, the President or the agency head must give Congress notice and an explanation before an IG may be removed.

According to House Report 110-354, a number of recent events have called into question the independence and accountability of IGs and have led to this legislation. Incidents that have called into question IGs position as a neutral supervisor include:

- Department of State Inspector General Howard Krongard allegedly interfered with numerous department investigations. The House Report suggests that "Krongard's strong affinity with State Department leadership, support for the current administration, and partisan political ties have led him to halt investigations, censor reports, and refuse to cooperate with law enforcement agencies." To read more, click here.

- Current NASA Inspector General Robert Cobb allegedly intimidated and punished his own staff for investigating allegations of theft and safety violations.

- Department of Commerce Inspector General Johnnie Frazier, who retired in June 2007, was under investigation for taking vacations with taxpayer dollars. To read more, click here.

- Legal Services Corporation (LSC) Inspector General Kirt West was considered for dismissal after conducting investigations into the LSC traveling expenses.

Despite the Committee's contention that this legislation is needed to address these problems, the Administration views H.R. 928 as a usurpation of constitutionally granted executive authority. The portion of the bill that prohibits the removal of IGs without cause would take away the President's power to appoint and remove IGs as he sees fit. In the Administration's estimation, this would intrude on the President's ability to hold IGs accountable for their performance. The Administration also believes that allowing IGs to submit their budget requests directly to Congress would supersede a longstanding process that gives the executive branch full control of its budget request. Further, the Administration opposes the bill's provision that combines the PCIE and the ECIE into one independent Council.

RSC Bonus Fact: According to CQ, IG offices employed more than 12,000 employees and had an appropriated budget of $2 billion in FY 2006.

Committee Action: H.R. 928 was introduced on February 28, 2007, and referred to the Committee on Oversight and Government Reform, Subcommittee on Government Management, Organization, and Procurement on March 23, 2007. On August 2, 2007, a mark-up was held and the bill was reported, in the nature of a substitute, by voice vote.

Possible Conservative Concerns: Some conservatives may be concerned that a provision in the bill which permits the President to remove Inspectors General only with cause intrudes on the President's responsibility to "take Care that the Laws be faithfully executed," as prescribed in Article II, Section 3 of the U.S. Constitution. In addition, some conservatives may be concerned that H.R. 928 would circumvent traditional budgetary procedure by allowing Inspectors General to submit budget requests to Congress independently of the executive branch and their respective agency.

Administration Position: According to a Statement of Administration Policy (SAP), issued on October 1, 2007, the Administration strongly objects to provisions in the bill that prohibit the removal of IGs without specific cause, authorize IGs to submit budget requests to Congress independently, and combine the PCIE and the ECIE into the Inspectors General Council. According to the SAP, "If H.R. 928 were presented to the President in its current form, the President's senior advisors would recommend that he veto the bill." To read the entire SAP, click here.

Cost to Taxpayers: According to CBO, implementing H.R. 928 would cost $11 million in FY 2008 and $75 million of the FY 2008 – FY 2012 period (subject to appropriation).

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?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The Oversight and Government Reform Committee, in House Report 110-354, asserts that, "H.R. 928 contains no earmarks, limited tax benefits, or limited tariff benefits."

Constitutional Authority: The Oversight and Government Reform Committee, in House Report 110-354 cites constitutional authority in Article I, Section 8, Clause 18 (the congressional power to make all laws necessary and proper for executing the foregoing powers), but fails to cite a foregoing power to which this clause refers. House Rule XIII, Section 3(d)(1), requires that all committee reports contain "a statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution." *[emphasis added]*

Note: Article VI, Clause 3 of the U.S. Constitution states that, "The Senators and Representatives…and all executive and judicial Officers…shall be bound by Oath or Affirmation, to support this Constitution."

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