



March 14, 2007

H.R. 1255 – Presidential Records Act Amendments of 2007

Floor Situation

H.R. 1255 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Representative Henry Waxman (D-CA) on March 1, 2007 and was ordered to be reported from the House Committee on Oversight and Government Reform by voice vote on March 8, 2007.

H.R. 1255 is expected to be considered on the floor on March 14, 2007.

Summary

H.R. 1255 nullifies President Bush's Executive Order 13233 and establishes procedures for the consideration of privilege claims by a former or incumbent President regarding disclosure of Presidential records. Specifically, H.R. 1255:

- **Claims of privilege against disclosure (Section 2).** When the Archivist determines to make available to the public any Presidential record that has not previously been made publicly available, the Archivist is directed to inform both the incumbent President and the former President during whose term of office the record was created.

H.R. 1255 directs the Archivist to then make the records publicly available within 20 days unless the incumbent or former President asserts a privilege claim against making the records public. The former or incumbent President may extend the deadline to decide whether to make a privilege claim for an additional 20 days by filing an extension with the Archivist. A deadline for review may not expire before July 20th of the year that an incumbent President first takes office.

A privilege claim must be made personally by either a President or former President. On the day that a privilege claim is asserted, the President or former President must notify the Archivist, the House Committee on Oversight and Government Reform, and the Senate Committee on Homeland Security and Governmental Affairs.

If a former President makes a privilege claim, the Archivist is directed to hold off on releasing the records to the public for 20 days. After 20 days, the Archivist is

directed to release the records, notwithstanding the incumbent President's privilege claim, unless a court rules otherwise.

If the incumbent President makes a privilege claim, the Archivist is directed to hold off on releasing the records until either the President withdraws the claim or a final, non-appealable court decision directs that the records be released. This provision does not apply to records required to be made available in connection with judicial or Congressional proceedings.

A privilege claim cannot be made by a current or former Vice President.

- Finally, an amendment was added to the bill at the full committee markup. This amendment prohibits any individual, claiming access to original Presidential records as a representative of a President, from accessing Presidential records if he or she was convicted of a crime involving the review, retention, removal, or destruction of Presidential records.

**Note: This amendment was offered by Ranking Member Tom Davis and was approved by voice vote. Former National Security Adviser to President Clinton, Sandy Berger, pleaded guilty to removing and destroying classified records from the Archives during the 9/11 Commission investigation.*

- **Repeal of Executive Order 13233** (Section 3). H.R. 1255 repeals President Bush's executive order issued November 1, 2001. This executive order extended the right to make privilege claims against the release of records to current and former Vice Presidents and established a process requiring the concurrence of the incumbent and former President for records to be released.

Background

The Presidential Records Act of 1978 transferred ownership of Presidential records to the National Archives. The legislation allowed the President to establish time periods, not to exceed 12 years, for information to become public.

H.R. 1255 as introduced is identical to legislation introduced in the 107th Congress, H.R. 4187, which was ordered to be reported from the House Government Reform Committee by voice vote on October 9, 2002 under Chairman Dan Burton. H.R. 4187 was introduced by former Representative Stephen Horn on April 11, 2002.

As reported by the House Committee on Oversight and Government Reform, the only difference between H.R. 1255 and H.R. 4187 from the 107th Congress is the addition of Chairman Tom Davis's amendment to the legislation during committee which prohibits any individual from accessing Presidential records, claiming access to original Presidential records as a representative of a President, who was convicted of a crime involving the review, retention, removal, or destruction of Presidential records.

CBO Estimate

CBO estimates that H.R. 1255 would no significant impact on the federal budget.

Administration Position

The Administration has issued a Statement of Administration Policy which states: “If H.R. 1255 were to be presented to the President, his senior advisors would recommend that he veto the bill.”

The Statement of Administration Policy expresses concern about “the substantial infringement on separation of powers principles presented by H.R. 1255” and argues that “the President’s executive privilege authority is not subject to Congressional regulation, but rather arises directly from the Constitution itself.”

Staff Contact

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