

TO AMEND TITLE 36, UNITED STATES CODE, TO PROVIDE FOR AN ADDITIONAL POWER FOR THE AMERICAN LEGION UNDER ITS FEDERAL CHARTER

DECEMBER 5, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 2369]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2369) to amend title 36, United States Code, to provide for an additional power for the American Legion under its Federal charter, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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Purpose and Summary

The bill amends the Federal charter of the American Legion to clarify that the national organization does not control or otherwise influence the activities and conduct of the individual departments and posts.

Background and Need for the Legislation

The American Legion is a federally-chartered organization open to membership to persons who have served in the U.S. Armed Forces or those of a government associated with the U.S. during wartime (including the current war on terrorism beginning on August 2, 1990) who were honorably discharged or continues their service.¹ The purposes of the American Legion are to uphold and defend the U.S. Constitution, promote worldwide peace and good will, preserve the memories and incidents of the two world wars and the other great hostilities fought to uphold democracy, cement the ties and comradeship born of service, and consecrate the efforts of its members to mutual helpfulness and service to the United States.²

The American Legion states that:

The American Legion was chartered and incorporated by Congress in 1919 as a patriotic veterans organization devoted to mutual helpfulness. It is the Nation's largest veterans service organization, committed to mentoring and sponsorship of youth programs in our communities, advocating patriotism and honor, promoting a strong national security, and continued devotion to our fellow servicemembers and veterans.

In contrast to other veterans organizations, the Legion offers a number of local programs and activities to strengthen its commitment to our Nation's grass roots and the people we serve. American Legion Baseball is one of the Nation's most successful amateur athletic programs; it continues to educate youths on the importance of sportsmanship and develops the quality of our country's citizenship. The Heroes to Hometowns program is the only nationwide reintegration assistance service for wounded veterans from Iraq and Afghanistan. Additionally, millions of dollars in donations have been given to fellow veterans and their families in times of grief, and various scholarship opportunities ensure the future success of our youth.³

The American Legion has 2.5 million members in over 14,000 local posts.⁴ As the Supreme Court of Minnesota has stated:

Posts and departments [the State chapters] are separately incorporated, as is National. National, each department, and each post all have their own leaders (commanders). . . . Additionally, National, the local departments, and the posts all have their own constitutions and by-laws. . . . The "Officer's Guide and Manual of Ceremonies," a guidebook distributed to Legion officials by National, states that "[t]he post is a separate and distinct unit which can, and often does, function independently." . . . The Officer's Guide also sets out the very limited relationship between the posts and national headquarters: "Practically all of your contacts with National Head-

¹ See 36 U.S.C. secs. 21701, 21703.

² See 36 U.S.C. sec. 21702.

³ See American Legion website.

⁴ *Id.*

quarters are rightfully carried through your department headquarters.” . . . Neither National nor the departments finance the local posts.⁵

The Director of the Legion’s National Legislative Commission, sent a letter to Rep. Altmire stating that:

The American Legion wants to provide a new service that will allow members to renew their membership and pay their dues to the National Organization through the use of a credit card over the Internet. . . . Currently these dues payments flow to the national organization from our posts through our departments. General Counsel for the American Legion reviewed this new service and has raised a concern that because dues monies would flow from the National Organization to the Departments and Posts that plaintiff’s lawyers would raise as an issue of whether the National Organization has “control” over those Departments and Posts. General Counsel’s concern comes from some case law indicating this appearance of “control” may raise an appearance to support a claim of liability against the National Organization when a legal dispute against a post arises. . . . [T]o ensure this liability issue does not prevail in a claim against the National Organization, the American Legion seeks to resolve this “control” problem by amending its Corporate Charter to confirm statutorily the independence of our Departments and Posts.⁶

H.R. 2369 amends the Legion’s Federal charter to provide that the national organization may “provide guidance and leadership to the individual Departments and Posts, but may not control or otherwise influence the specific activities and conduct of the independent, autonomous Departments and Posts. . . .”

Hearings

The Committee on the Judiciary held no hearings on H.R. 2369.

Committee Consideration

On November 3, 2011, the Committee met in open session and ordered the bill H.R. 2369 favorably reported without amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee’s consideration of H.R. 2369.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

⁵ *Urban v. the American Legion Department of Minnesota*, 723 N.W. 2d 1, 3–4 (Minn. 2006).

⁶ Letter from Tim Tetz to Rep. Jason Altmire (March 25, 2011).

representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2369, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 2, 2011.

Hon. LAMAR SMITH, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2369, a bill to amend title 36, United States Code, to provide for an additional power for the American Legion under its federal charter.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dawn Regan, who can be reached at 226-2840.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 2369—A bill to amend title 36, United States Code, to provide for an additional power for the American Legion under its federal charter.

As ordered reported by the House Committee on the Judiciary on
November 3, 2011

H.R. 2369 would amend title 36 of the U.S. Code to allow the American Legion to provide guidance to its State and local level departments and posts, but prohibit the national organization from influencing or controlling the activities and conduct of those independent departments and posts. Because chartered organizations listed in title 36 are not agencies of the U.S. government and are not conferred Federal benefits, CBO estimates that enacting the bill would have no impact on the Federal budget.

Enacting H.R. 2369 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2369 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

The CBO staff contact for this estimate is Dawn Regan. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2369 amends the Federal charter of the American Legion to clarify that the national organization does not control or otherwise influence the activities and conduct of the individual Departments and Posts.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2369 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.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Additional Power of American Legion Under Federal Charter.

Section 1 amends 36 U.S.C. sec. 21704 (mistakenly cited as sec. 2104 in the bill as introduced) to add an additional power of the American Legion “to provide guidance and leadership to the individual Departments and Posts, but may not control or otherwise influence the specific activities and conduct of the independent, autonomous Departments and Posts. . . .”

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, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 2104 OF TITLE 36, UNITED STATES CODE

§ 2104. Military cemeteries in foreign countries

When, as a result of combat operations, the Armed Forces establish military cemeteries in zones of operations outside the United States and the territories and possessions of the United States, the American Battle Monuments Commission and the Secretary of the Army, immediately on the cessation of hostilities, shall decide which of the cemeteries will become permanent cemeteries or, if they decide it is desirable, shall select new sites for the cemeteries at any other location. The Commission is solely responsible for the design and construction of the permanent cemeteries, and of all buildings, plantings, headstones, and other permanent improvements incidental to the cemeteries, except that—

(1) the Armed Forces are responsible for maintaining the permanent cemeteries until the Commission declares its readiness to assume the authorized administrative duties and powers;

(2) all construction undertaken by the Armed Forces in establishing and maintaining the cemetery prior to its transfer to the Commission shall be nonpermanent;

(3) burials and reburials by the Armed Forces shall be carried out in accordance with plans prepared by the Commission; and

(4) the Armed Forces have the right to re-enter a cemetery transferred to the Commission to exhume or re-inter a body if they decide it is necessary.

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