

AMENDING TITLE 38, UNITED STATES CODE, TO REVISE THE ENFORCEMENT PENALTIES FOR MISREPRESENTATION OF A BUSINESS CONCERN AS A SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VETERANS OR AS A SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS

MAY 20, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of Florida, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany H.R. 1657]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1657) to amend title 38, United States Code, to revise the enforcement penalties for misrepresentation of a business concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1657 was introduced on April 15, 2011, by Representative Marlin Stutzman of Indiana. H.R. 1657 would revise the enforcement penalties for misrepresentation of a business concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans.

BACKGROUND AND NEED FOR LEGISLATION

Executive Order 1336 and Public Law 106–50 established a goal for all Federal agencies to spend not less than three percent of their contract dollars with Service-Disabled Veteran-Owned Small Businesses (SDVOBs). According to the Small Business Administration (SBA), in Fiscal Year (FY) 2005, the Department of Veterans Affairs (VA) awarded \$210,829,326 or 2.151 percent of its total contract dollars with SDVOBs. To improve VA's performance, Congress enacted Public Law 109–461 in December 2006, to provide VA with new contracting authorities and protections for SDVOBs. As a result, SBA statistics show that VA awarded twenty percent of its total contract dollars to SDVOBs and Veteran-Owned Small Businesses (VOBs) in FY 2009 and VA internal statistics show an improvement to approximately 23 percent for FY 2010.

Public Law 109–461 also required VA to maintain a database of verified SDVOBs and VOBs, so contracting officers and other privately held businesses could ensure that they were, in fact, dealing with genuine SDVOBs and VOBs. VA was very slow in creating and verifying the businesses listed in this database and, as a result, Public Law 111–275 was enacted to clarify Congress's intention that only businesses that have been verified as SDVOBs and VOBs are allowed in the database.

Section 8127 of title 38 United States Code, requires the Secretary to debar any business found to fraudulently claim SDVOB or VOB status from doing business with VA, "for a reasonable time as determined by the Secretary."

A Government Accountability Office (GAO) report in 2009, Service-Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts (GAO–10–255T) and a follow up in 2010, Service-Disabled Veteran-Owned Small Business Program: Fraud Prevention Controls Needed to Improve Program Integrity (GAO–10–740T), studied the validation of ownership and control of SDVOBs and found, "a lack of government-wide fraud prevention controls, a lack of validation of information provided by SDVOB firms used to substantiate their eligibility for the program, non-existent monitoring of continued compliance with program requirements, and an ineffective process for investigating and prosecuting firms found to be abusing the program."

Of the ten firms that GAO identified as fraudulent SDVOBs, the Secretary has not debarred any of them. The Committee believes that a five-year automatic debarment required under H.R. 1657 would be a strong deterrent against fraudulent companies and would result in more contracting dollars going to legitimate SDVOBs. The Committee expects the Secretary to aggressively

prosecute firms and principals found to be fraudulently claiming SDVOB and VOB status.

HEARINGS

On May 3, 2011, the Subcommittee on Economic Opportunity conducted a legislative hearing on various bills introduced during the 112th Congress, including H.R. 1657. The following witnesses testified: Ms. Christina M. Roof, National Acting Legislative Director for AMVETS; Mr. Tom Tarantino, Senior Legislative Associate for Iraq and Afghanistan Veterans of America; Mr. Shane Barker, Senior Legislative Associate of the National Legislative Service for the Veterans of Foreign Wars of the United States; Mr. Robert Madden, Assistant Director of the National Economic Commission for The American Legion; Mr. Andrew Connolly of Dubuque, IA; Mr. Keith M. Wilson, Director of the Education Service for the Veterans Benefit Administration of the U.S. Department of Veterans Affairs, who was accompanied by Mr. Jan R. Frye, Deputy Assistant Secretary for Acquisitions and Logistics for the U.S. Department of Veterans Affairs and Mr. F. John Brizzi, Deputy Assistant General Counsel for the U.S. Department of Veterans Affairs.

Those submitting statements for the record included: Paralyzed Veterans of America, Gold Star Wives of America, National Association of Veteran Program Administrators, and the Military Officers Association of America.

SUBCOMMITTEE CONSIDERATION

On March 5, 2011, the Subcommittee on Economic Opportunity met in an open markup session and ordered H.R. 1657 favorably forwarded to the full Committee by voice vote.

COMMITTEE CONSIDERATION

On May 12, 2011, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 1657 reported favorably to the House of Representatives, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. There were no recorded votes taken on amendments or in connection with ordering H.R. 1657 reported to the House. A motion by Ranking Member Bob Filner of California to order H.R. 1657 reported favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1657 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 1657 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 1657 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MAY 16, 2011.

Hon. JEFF MILLER,
Chairman, Committee on Veterans' Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1657, a bill to amend title 38, United States Code, to revise the enforcement penalties for misrepresentation of a business concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 1657—A bill to amend title 38, United States Code, to revise the enforcement penalties for misrepresentation of a business concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans

H.R. 1657 would revise the penalty for businesses that, in their dealings with the Department of Veterans Affairs (VA), misrepresent their status as small business concerns owned and controlled by veterans or service-disabled veterans. Under current law, VA is required to preclude such businesses from contracting with the agency for a period of time determined by the Secretary of Veterans Affairs to be reasonable.

Under H.R. 1657, any small business concern—and all principals involved—found to be misrepresenting their status would be prohibited from contracting with VA for no less than five years. Upon determining that a business misrepresented its status, VA would be required to take action to bar that business within 90 days. Based on information from VA, CBO estimates that implementing H.R. 1657 would have no budgetary impact.

Enacting H.R. 1657 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1657 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.

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

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1657 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 1657.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Department of Veterans Affairs Enforcement Penalties for Misrepresentation of a Business Concern as a Small Business Concern Owned and Controlled by Veterans or as a Small Business Concern Owned and Controlled by Service-Disabled Veterans

This section would require VA to debar a company and its principals from contracting with VA for a period of five years, if it is determined that the company has fraudulently represented itself as

a Service-Disabled Veteran-Owned Small Business (SDVOB). Section 1 also requires the Secretary of Veterans Affairs to begin such actions no later than within 30 days of a finding on non-compliance and complete the debarment process no later than within 90 days of the finding of misrepresentation.

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 italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

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CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

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Subchapter II—Procurement and Supply

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§ 8127. Small business concerns owned and controlled by veterans: contracting goals and preferences.

(a) * * *

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(g) ENFORCEMENT PENALTIES FOR MISREPRESENTATION.—**[Any business]** (1) *Any business* concern that is determined by the Secretary to have misrepresented the status of that concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans for purposes of this subsection shall be debarred from contracting with the Department for a reasonable period of time, as determined by the Secretary *a period of not less than five years.*

(2) *In the case of a debarment under paragraph (1), the Secretary shall commence debarment action against the business concern by not later than 30 days after determining that the concern misrepresented the status of the concern as described in paragraph (1) and shall complete debarment actions against such concern by not later than 90 days after such determination.*

(3) The debarment of a business concern under paragraph (1) includes the debarment of all principals in the business concern for a period of not less than five years.

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