

MEMORANDUM

March 10, 2009

To: Honorable Carolyn B. Maloney
Attention: Kristina Spiegel

From: Jennifer D. Williams, Specialist in American National Government, 7-8640

Subject: Section-by-Section Summary H.R. 1254, “to make the Census Bureau an Independent Establishment”

This memorandum responds to your request, as clarified in our telephone conversations, for a section-by-section summary of H.R. 1254, Representative Maloney’s legislation introduced on March 3, 2009, “to make the Census Bureau an independent establishment.”

Section 1. Short Title; Table of Contents.

This section states the bill’s short title, the “Restoring the Integrity of American Statistics Act of 2009,” and lists its 10 sections.

Sec. 2. Findings.

Section 2 presents congressional findings.

(1) The policy of the United States is to provide the public and the government with accurate, timely statistics that are relevant to public purposes and credible because they are collected impartially and available to all.

(2) As mandated by Article 1, Section 2, of the Constitution, the United States conducts a decennial population census that is fundamental to the nation’s representative democracy.

(3) Because knowledge of who Americans are as a people is basic to informed policy making, public edification, and scientific research, an economic census and other economic and population data collections should occur at appropriate intervals between decennial censuses.

(4) All data collections under Title 13, *U.S. Code*, must be impartial, using the most modern statistical, computational, and operational methods consistent with applicable law.

(5) Because the credibility and impartiality of federal statistical agency data depend on whether the agency operates from a clearly defined position of independence, the authority for conducting the decennial census and other data collections should rest with such an agency.

(6) In addition, the agency’s operating principles should include

- (A) openness about data sources and limitations;
- (B) dissemination of data as widely as possible, according to published schedules for releasing key statistics;
- (C) constant efforts to develop data that are more cost-effective, accurate, timely, and relevant to public purposes;
- (D) regular evaluation of major data collection programs to further these efforts;
- (E) commitment to quality and professional standards as a statistical agency;
- (F) fair treatment of individual and organizational data providers, including respect for privacy and protection of confidential information;
- (G) an active research program in methodology and operations, as well as in using data to report conditions and trends; and
- (H) cooperation and coordination with other statistical agencies.

Sec. 3. Definitions.

For purposes of this Act,

- (1) “Census Bureau” means the United States Census Bureau;
- (2) “Director” means the Census Bureau’s Director;
- (3) “Deputy Director” means the Census Bureau’s Deputy Director; and
- (4) “function” includes any duty, obligation, responsibility, power, authority, right, privilege, activity, or program.

Sec. 4. United States Census Bureau.

Effective January 1, 2012, the United States Census Bureau is established as an independent establishment in the executive branch of the federal government.

Sec. 5. Director.

- (a) In General. A Director to head the Census Bureau is to be appointed by the President, by and with the advice and consent of the Senate, regardless of the appointee’s political affiliation and solely on the basis of his or her professional qualifications for the position.
 - (b) Term of Office. The Director’s term of office is five years. It is to start on January 1, 2012, and every five years thereafter. The Director may be removed only for a finding by the President of neglect of duty or malfeasance in office. The President is to inform each house of Congress about the reasons for any such removal.
 - (c) Functions. The Director is to be responsible for exercising all powers and discharging all duties of the Census Bureau, and is to have authority and control over all its personnel and activities.
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(d) Organization. The Director, as he or she considers necessary or appropriate, may establish, alter, consolidate, or discontinue components of the Census Bureau, unless they are provided for by law.

(e) Advisory Committees. The Director may establish advisory committees to provide advice about any of his or her functions. Advisory committee members are to serve without pay but, in accordance with 5 U.S.C. 5703, are to have their transportation expenses covered and receive per diem in lieu of subsistence.

(f) Regulations. The Director may prescribe rules and regulations that he or she considers necessary or appropriate to carry out his or her functions.

(g) Delegations, etc. The Director, as he or she finds necessary, may assign duties and delegate or authorize redelegations of authority to act and make decisions to other Census Bureau officers and employees. Within the limitations of such assignments, delegations, or redelegations, all these individuals' official acts and decisions are to have the same force and effect as if they were the Director's. An assignment, delegation, or redelegation may not take effect before notice of it appears in the *Federal Register*.

(h) Other authorities.

(1) Personnel. Notwithstanding any other provision of law, the Director, in carrying out his or her functions, may use the services of officers and other personnel in other federal agencies, including Armed Forces personnel, with the consent of the agency head(s) concerned.

(2) Voluntary Services. Notwithstanding 31 U.S.C. 1342 or any other provision of law, the Director may accept and use voluntary, uncompensated services.

(i) Compensation. Level II of the Executive Schedule, under 5 U.S.C. 5313, applies with respect to the office of the Director.

Sec. 6. Deputy Director.

(a) Deputy Director.

(1) In General. The Census Bureau is to have a Deputy Director appointed by, and serving at the pleasure of, the Director. The Deputy Director position is to be a career reserved position within the meaning of 5 U.S.C. 3132(a)(8).

(2) Functions. The Deputy Director is to perform functions that the Director designates.

(b) Temporary Authority to Perform Functions of Director. The provisions of 5 U.S.C. 3345-3349d are to apply to the office of the Director. The first assistant to this office is to be the Deputy Director for purposes of applying such provisions.

Sec. 7. Transfers.

(a) Functions. All functions are to be transferred to and vested in the Director that, as of December 31, 2011, were

(1) vested in the Secretary of Commerce by Title 13, *U.S. Code*, executive order, or any other provision of law; and

(2) delegated to the Census Bureau Director in the Department of Commerce.

(b) Personnel, Assets, Etc.

(1) In General. The following are to be transferred from the Commerce Department to the Census Bureau, for appropriate allocation by the Director:

(A) the personnel employed in connection with the functions transferred by subsection (a); and

(B) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, or used in connection with these functions, arising from them, or available, or to be made available, in connection with them.

(2) Unexpended Funds. Unexpended funds transferred under this subsection are to be used only for the purposes for which they were originally appropriated.

(3) Employment Protection. For a year beginning on January 1, 2012, the transfer under this section of any full-time personnel (except “special Government employees”) and part-time personnel holding permanent positions is not, by itself, to cause their separation or reduction in grade or compensation.

(c) Effective Date. This section is to take effect on January 1, 2012.

Sec. 8. Transition Rules.

(a) Relating to Officers.

(1) Appointment of Initial Director. The initial Director of the Census Bureau is to be appointed in accordance with Section 5(a).

(2) Interim Role of Current Director of the Census After Effective Date of New Census Bureau. If the initial Director of the newly established Census Bureau has not taken office as of January 1, 2012, the officer who was serving on December 31, 2011, as Census Bureau Director (or Acting Director, if applicable) in the Commerce Department is to serve as Director of the new Census Bureau and assume the Director’s powers and duties until the initial Director takes office.

(b) Continuation of Orders, Determinations, Rules, Regulations, Etc. All orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements (and ongoing negotiations relating to these agreements), recognitions of labor organizations, certificates, licenses, and privileges

(1) that have been issued or allowed to become effective in the exercise of functions (A) exercised by the Commerce Secretary (or the Secretary’s delegate), and (B) related to functions vested by this Act in the Director of the United States Census Bureau, and

(2) that are in effect as of December 31, 2011,

are to continue in effect until modified, suspended, terminated, set aside, or repealed by the new Census Bureau Director, except that any collective bargaining agreement is to remain in effect until its termination date.

(c) Continuation of Proceedings. This Act is not to affect any proceedings pending before the Commerce Secretary (or the Secretary's delegate) as of December 31, 2011, concerning functions vested by the Act in the Census Bureau Director, except that insofar as the proceedings relate to these functions, they are to continue before the Director. Orders are to be issued under any such proceedings, appeals taken, and payments made just as if the Act had not been enacted. Orders issued are to continue in effect until modified, terminated, superseded, or repealed by the Director, by a court of competent jurisdiction, or by operation of law.

(d) Continuation of Suits. Except as provided in this subsection,

(1) this Act is not to affect suits begun before January 1, 2012; and

(2) in all such suits, proceedings are to be conducted, appeals taken, and judgments rendered as if the Act had not been enacted.

No proceeding begun by or against any Commerce Department officer in his or her official capacity is to abate because of the enactment of this Act. In any proceeding pending on December 31, 2011, the court or hearing officer at any time, on the motion of the court, the hearing officer, or a party, may enter an order that will give effect to the provisions of this subsection (including, as appropriate, an order for substitution of parties).

(e) Continuation of Penalties. This Act is not to release or extinguish any civil or criminal prosecution, penalty, forfeiture, or liability incurred because of any function that the Act vests in the Census Bureau Director.

(f) Judicial Review. The Director's orders and actions in exercising his or her functions shall be subject to judicial review just as if they had been the Commerce Secretary's immediately before the transfer described in Section 7(a). Any statutory requirements pertaining to notice, hearings, action upon the record, or administrative review that apply to any of the Director's functions are to continue applying to his or her exercise of these functions.

(g) Exercise of Functions. In exercising his or her functions under this Act, the Director is to have the same authority as the Commerce Secretary had immediately before these functions became vested in the Director.

Sec. 9. Inspector General.

(a) In General. This section amends Section 12 of the Inspector General Act of 1978, 5 U.S.C. App.

(1) in paragraph (1), by striking "or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;" and inserting "the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; or the Director of the United States Census Bureau;"; and

(2) in paragraph (2), by striking "or the Commissions established under section 15301 of title 40, United States Code," and inserting "the Commissions established under section 15301 of title 40, United States Code, or the United States Census Bureau,".

(b) Effective Date. These amendments are to take effect on January 1, 2012.

Sec. 10. Technical and Conforming Amendments.

By January 1, 2011, the Census Bureau Director is to submit to each house of Congress draft legislation with any technical and conforming amendments to 13 U.S.C., and any other provisions that may be necessary to carry out the Act.

I hope that this summary will be useful to you. If I may be of further assistance, please do not hesitate to contact me, at 7-8640 or jwilliams@crs.loc.gov.