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(Original Signature of Member)

116TH CONGRESS
2D SESSION

H. RES.

Amending the Rules of the House of Representatives with respect to the enforcement of committee subpoenas to executive branch officials, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. TED LIEU of California submitted the following resolution; which was referred to the Committee on _____

RESOLUTION

Amending the Rules of the House of Representatives with respect to the enforcement of committee subpoenas to executive branch officials, and for other purposes.

1 *Resolved,*

2 **SECTION 1. SHORT TITLE.**

3 This resolution may be cited as the “Congressional
4 Inherent Contempt Resolution”.

5 **SEC. 2. ADDITIONAL SUBPOENA ENFORCEMENT POWER.**

6 That rule XI of the Rules of the House of Represent-
7 atives is amended by adding at the end the following new
8 clauses:

1 “Additional Subpoena Enforcement Power

2 “7.(a)(1) Whenever any committee or subcommittee
3 makes a written request to any department or agency of
4 the Government, or to any individual, for the attendance
5 of named witnesses or the production of such books,
6 records, correspondence, memorandum, papers, docu-
7 ments, and electronic or digital files, data or information,
8 in any form, including any electronic or digital files, data
9 or information in any searchable formats in which they
10 are available to or can be produced by the agency, as the
11 committee or subcommittee considers necessary, a senior
12 responsible official shall either comply with that request
13 or file written objections within the time frame for re-
14 sponse set forth in the request. In the absence of a senior
15 responsible official, the witness himself or herself is re-
16 sponsible for the duties that would otherwise have fallen
17 on that official.

18 “(2) Nothing in this clause shall be interpreted as
19 preventing a witness from asserting personal privileges re-
20 gardless of the decisions and actions of the senior respon-
21 sible official.

22 “(b) If the senior responsible official files written ob-
23 jections within the timeframe for response, the committee
24 or subcommittee shall seek to resolve these objections
25 through negotiation and accommodation. If a resolution

1 cannot be reached, staff shall so certify to the chair of
2 the committee.

3 “(c) If the senior responsible official fails to file ob-
4 jections or make available the designated witnesses or full
5 production of responsive records and information within
6 the timeframe for response, the chair of the committee
7 may issue a subpoena to the senior responsible official for
8 any unproduced records or information as to which no ob-
9 jection was filed, and to any designated witness to which
10 no objection was filed.

11 “(d) With respect to any portion of the written re-
12 quest for documents and witnesses to which timely objec-
13 tion was made, a subpoena to the senior responsible offi-
14 cial and to designated witnesses, may be issued, following
15 conclusion of the negotiations referred to in paragraph (b),
16 by—

17 “(1) the chair, upon 48 hours notice to the
18 ranking member, unless the ranking member objects
19 during that period; or

20 “(2) a vote of the committee.

21 “(e) If the senior responsible official files written ob-
22 jections to a subpoena issued under paragraphs (c) or (d)
23 within the timeframe for response, or the President per-
24 sonally and in writing asserts a claim of executive privilege
25 with respect to the records, information, and witnesses at

1 issue, the committee may hold a hearing to consider these
2 objections. The senior responsible official shall personally
3 attend this hearing but may not assert Executive Privilege
4 on behalf of the President, and the committee chair may
5 grant an exception for good cause shown.

6 “(f) If the committee overrules some or all of the ob-
7 jections asserted, it may issue an order of compliance
8 which states the grounds for rejection of the objections,
9 the date for compliance, and an advisement of the legal
10 consequences of a failure to comply.

11 “(g) On the failure of the senior responsible official
12 to comply with the order, the committee shall meet to as-
13 sess whether the noncompliance rises to the level of a
14 breach of the constitutional privilege and duty of the
15 House to be fully informed in order to properly perform
16 its legislative responsibilities without undue obstruction
17 and thereby warrants condemnation and punishment. If
18 so, the committee shall report a privileged resolution of
19 contempt. The accompanying report shall include a de-
20 tailed history and nature of the controversy and attempts
21 at accommodation; the legal issues raised; the legislative
22 need for the information sought; the legal and practical
23 reasons for the determination that the objections were re-
24 jected; and the recommended monetary penalties.

1 “(j) If the committee reports a resolution of con-
2 tempt, it shall be treated as a rule IX question of privilege
3 of the House requiring precedence over all other questions
4 until resolved and promptly scheduled for floor consider-
5 ation. The chair of the committee shall present the case
6 for passage of the resolution. At the conclusion of the al-
7 lotted period for presentations, questions and debate, a
8 vote on passage of the resolution (including any fine, if
9 any). A proffer of an amendment to alter the rec-
10 ommended penalty is in order.

11 “(k) (1) Upon House passage of the resolution of
12 contempt the contemnor shall be assessed by the body an
13 initial penalty of not more than \$25,000 and total pen-
14 alties of not more than \$100,000. The amount of the ulti-
15 mate penalty depends on timeliness of the contemnor’s
16 compliance in providing information withheld. The initial
17 penalty of not more than \$25,000 may be increased by
18 increments of not more than \$25,000 after a one-time
19 waiting period of 20 calendar days from the initial penalty
20 until the \$100,000 maximum is reached. The 20-day pe-
21 riod must only be observed after the first penalty. On
22 House passage of the resolution of contempt, the General
23 Counsel is authorized to file an immediate suit for a judi-
24 cial order to freeze the contemnor’s assets. On expiration
25 of the 20-day period for compliance, the General Counsel

1 is authorized to file suit for recovery of any accrued pen-
2 alties, but only if the contemnor has failed to comply with
3 the subpoena before the end of such 20-day period.

4 “(2) No appropriated funds, funds provided from any
5 accounts in the Treasury, funds derived from collection
6 of fees, or other Government funds shall be used to pay
7 a monetary penalty imposed by the House under this
8 clause.

9 “(3) No person, group, entity, organization, or cor-
10 poration may make payments to, reimburse or offer remu-
11 neration of any kind to compensate a contemnor for, or
12 assist a contemnor in paying, any portion of a monetary
13 penalty imposed by the House. Nor shall any person,
14 group, entity, organization, or corporation be permitted to
15 pay any monetary penalties directly on behalf of a
16 contemnor. The House may regard such actions to com-
17 pensate, reimburse or provide remunerations or payments
18 to a contemnor as an obstruction of its investigative and
19 information gathering prerogatives and responsibilities
20 and a contempt of the House.

21 “(l) As used in this clause:

22 “(1) The term ‘senior responsible official’ refers
23 to an executive branch official with control or cus-
24 tody over the records or information or the subordi-
25 nate officials or employees that are sought and who

1 is a civil officer subject to removal from the office
2 under Article II, section 4, of the Constitution, un-
3 less no such civil officer has control or custody over
4 the records or information sought.

5 “(2) The term ‘objections’ includes an appro-
6 priate privilege log, which shall describe with par-
7 ticularity the records or information withheld and
8 the basis for withholding. The log shall be in such
9 form as instructed by the committee or, in the ab-
10 sence of such instruction, shall be in the form that
11 would be required by the rules and practice of the
12 United States District for the District of Columbia.
13 Failure to file an appropriate and timely privilege
14 log shall be a basis for overruling or disregarding
15 any objection.

16 **“Additional Subpoena Enforcement Power**

17 “8.(a) Whenever any committee or subcommittee
18 makes a written request to any person for the attendance
19 of named witnesses or the production of such books,
20 records, correspondence, memorandum, papers, docu-
21 ments, and electronic or digital files, data or information,
22 in any form, including any electronic or digital files, data
23 or information in any searchable formats in which they
24 are available to or can be produced by that person, as the
25 committee or subcommittee considers necessary, such per-

1 son shall either comply with that request or file written
2 objections within the time frame for response set forth in
3 the request.

4 “(b) If such person files written objections within the
5 timeframe for response, the committee or subcommittee
6 shall seek to resolve these objections through negotiation
7 and accommodation. If a resolution cannot be reached,
8 staff shall so certify to the chair of the committee.

9 “(c) If such person fails to file objections or make
10 available the designated witnesses or full production of re-
11 sponsive records and information within the timeframe for
12 response, the chair of the committee may issue a subpoena
13 to such person for any unproduced records or information
14 as to which no objection was filed, and to any designated
15 witness to which no objection was filed.

16 “(d) With respect to any portion of the written re-
17 quest for documents and witnesses to which timely objec-
18 tion was made, a subpoena to designated witnesses may
19 be issued, following conclusion of the negotiations referred
20 to in paragraph (b), by—

21 “(1) the chair, upon 48 hours notice to the
22 ranking member, unless the ranking member objects
23 during that period; or

24 “(2) a vote of the committee.

1 “(e) If such person files written objections to a sub-
2 poena issued under paragraphs (c) or (d) within the time-
3 frame for response, the committee may hold a hearing to
4 consider these objections. The person shall personally at-
5 tend this hearing, but the committee chair may grant an
6 exception for good cause shown.

7 “(f) If the committee overrules some or all of the ob-
8 jections asserted, it may issue an order of compliance
9 which states the grounds for rejection of the objections,
10 the date for compliance, and an advisement of the legal
11 consequences of a failure to comply. The person shall com-
12 ply with such order within the timeframe for response.

13 “(g) On the failure of the person to comply with the
14 order of the compliance of the committee shall meet to
15 assess whether the noncompliance rises to the level of a
16 breach of the constitutional privilege and duty of the
17 House to be fully informed in order to properly perform
18 its legislative responsibilities without undue obstruction
19 and thereby warrants condemnation and punishment. If
20 so, the committee shall report a privileged resolution of
21 contempt. The accompanying report shall include a de-
22 tailed history and nature of the controversy and attempts
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4 tempt, it shall be treated as a rule IX question of privilege
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17 pay any monetary penalties directly on behalf of a
18 contemnor. The House may regard such actions to com-
19 pensate, reimburse or provide remunerations or payments
20 to a contemnor as an obstruction of its investigative and
21 information gathering prerogatives and responsibilities
22 and a contempt of the House.

23 “(1) As used in this clause:

24 “(1) The term ‘person’ includes an individual,
25 partnership, corporation, association, or public or

1 private organization other than an department or
2 agency of the Government.

3 “(2) The term ‘objections’ has meaning given to
4 such term in section 7(m).”.