

UNITED STATES MARSHALS SERVICE IMPROVEMENT ACT
OF 1996

APRIL 29, 1996.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 2641]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2641) to amend title 28, United States Code, to provide for appointment of United States marshals by the Director of the United States Marshals Service, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “United States Marshals Service Improvement Act of 1996”.

SEC. 2. APPOINTMENTS OF MARSHALS.

(a) IN GENERAL.—Chapter 37 of title 28, United States Code, is amended—

(1) in section 561(c)—

(A) by striking “The President shall appoint, by and with the advice and consent of the Senate,” and inserting “The Attorney General shall appoint”; and

(B) by inserting “United States marshals shall be appointed subject to the provisions of title 5 governing appointments in the competitive civil service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and pay rates.” after the first sentence;

(2) by striking subsection (d) of section 561;

(3) by redesignating subsections (e), (f), (g), (h), and (i) of section 561 as subsections (d), (e), (f), (g), and (h), respectively; and

(4) by striking section 562.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 37 of title 28, United States Code, is amended by striking the item relating to section 562.

SEC. 3. TRANSITIONAL PROVISIONS; PRESIDENTIAL APPOINTMENT OF CERTAIN UNITED STATES MARSHALS.

(a) **INCUMBENT MARSHALS.**—Notwithstanding the amendments made by this Act, each marshal appointed under chapter 37 of title 28, United States Code, before the date of the enactment of this Act shall, unless that marshal resigns or is removed by the President, continue to perform the duties of that office until the expiration of that marshal's term and the appointment of a successor.

(b) **VACANCIES AFTER ENACTMENT.**—Notwithstanding the amendments made by this Act, with respect to the first vacancy which occurs in the office of United States marshal in any district, during the period beginning on the date of the enactment of this Act and ending on December 31, 1999, the President shall appoint, by and with the advice and consent of the Senate, a marshal to fill that vacancy for a term of 4 years. Any marshal appointed by the President under this subsection shall, unless that marshal resigns or is removed from office by the President, continue to perform the duties of that office after the end of the four-year term to which such marshal was appointed until a successor is appointed.

Amend the title so as to read:

A bill to amend title 28, United States Code, to provide for appointment of United States marshals by the Attorney General.

PURPOSE AND SUMMARY

Under current law, U.S. marshals are appointed by the President, by and with the advice and consent of the Senate. In some instances, these appointed marshals lack the law enforcement experience and qualifications necessary for discharging the sensitive and varied demands of the position of U.S. marshal. There has never been any criteria mandated for the selection of a United States marshal.

H.R. 2641, the "United States Marshals Service Improvement Act of 1996," will change the selection process of United States marshals from that of appointment by the President with the advice and consent of the Senate, to appointment by the Attorney General. United States marshals will be selected on a competitive basis among career managers within the Marshals Service, rather than being nominated by members of the United States Senate.

Incumbent U.S. marshals, selected before enactment of H.R. 2641, will continue to perform the duties of their office until their terms expire and successors are appointed. Marshals selected between the enactment of this bill and the year 2000 will be appointed by the President, with the advice and consent of the Senate, and serve a four year term.

BACKGROUND AND NEED FOR THE LEGISLATION

Currently, there is no criteria for the selection of United States marshals. Past marshals include a phone company employee, a children's television show host, a coroner and a pig farmer. The lack of professional standards for the position of U.S. marshal allows persons with backgrounds similar to those above to continue to be appointed as marshals.

Once appointed, a U.S. marshal is not subject to disciplinary action, short of removal by the President. A U.S. marshal is not accountable to the Director of the Marshals Service, and cannot be demoted or suspended. Under H.R. 2641, career marshals will be subjected to the same disciplinary actions as the employees that they supervise. An ineffectual U.S. marshal could be transferred or

demoted, and the Director will finally have control over the entire United States Marshals Service.

The lack of experience in law enforcement of many U.S. marshals also necessitates the position of Chief Deputy U.S. marshal (CDUSM). As the Marshals Service is currently organized, these Chief Deputy marshals are essential because they provide the requisite leadership in the district offices. In turn, these Chief Deputy marshals have Supervisory Deputy U.S. Marshals (SDUSM) to assist them with every day activities.

The ratio of employees to managers in the U.S. Marshals Service nationwide is four to one—the highest ratio in federal law enforcement. H.R. 2641 would professionalize the office of U.S. marshal by ensuring that only knowledgeable career managers could be considered for the position. Thus, there would no longer be a need for the surplus of middle managers who support the presently unprepared U.S. marshals.

H.R. 2641 is supported by the Justice Department and by the current, and several former, directors of the United States Marshals Service.

HEARINGS

The Committee's Subcommittee on Crime held one day of hearings on H.R. 2641 on March 7, 1996. Testimony was received from one witness, Mr. Kevin V. DiGregory, Deputy Assistant Attorney General, representing the Department of Justice. Additional material was submitted by the Federal Law Enforcement Officers Association.

COMMITTEE CONSIDERATION

On March 21, 1996, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 2641, as amended, by voice vote, a quorum being present. On April 24, 1996, the Full Committee met in open session and ordered reported the bill H.R. 2641 with an amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports 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 Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2641, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 26, 1996.

Hon. HENRY J. HYDE,
*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. 2641, the U.S. Marshals Service Improvement Act of 1996.

Enacting H.R. 2641 would not affect direct spending and receipts. Therefore, pay-as-you-go procedures would not apply to this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2641.
2. Bill title: U.S. Marshals Service Improvement Act of 1996.
3. Bill status: As ordered reported by the House Committee on the Judiciary on April 24, 1996.
4. Bill purpose: Enacting H.R. 2641 would enable the Attorney General to appoint U.S. Marshals to the Marshals Service beginning on January 1, 2000. Under current law, U.S. Marshals are appointed by the President with the advice and consent of the Senate. This bill also would require that compensation for all U.S. Marshal positions be consistent with the general schedule pay rates.
5. Estimated cost to the Federal Government: Enacting H.R. 2641 would allow for reduced appropriations for salaries and benefits of the U.S. Marshals Service. CBO estimates that savings would total about \$1 million in fiscal year 2001, about \$2 million in fiscal year 2002, and about \$3 million a year thereafter. For fiscal year 1996, the U.S. Marshals Service received total appropriations of \$448 million.

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
Changes in spending subject to appropriations action:						
Estimated authorization level					-1	-2
Estimated outlays					-1	-2

The budgetary impact of this bill falls within budget function 750.

6. Basis of estimate: Currently, 21 U.S. Marshals are compensated according to the executive level pay schedule. Under this bill, all U.S. Marshal positions would be subject to the general schedule and most would receive compensation according to the GS-15 pay rate. CBO estimates that, on average, the change in pay rate would result in savings of \$31,000 in salaries and benefits per position. Thus, CBO estimates that total annual savings would be about \$650,000 a year in 1996 dollars. Savings would commence in fiscal year 2001, but the full-year savings of about \$800,000 a year could not be achieved until fiscal year 2003.

Because this bill would allow the Attorney General to appoint the U.S. Marshals, CBO expects that a number of middle management positions could be eliminated. Based on information from the U.S. Marshals Service, CBO anticipates that the Attorney General would promote experienced Deputy Chief Marshals to the U.S. Marshal position in the small-to-medium size offices (which constitute about 70 of the 94 districts). As a result, we expect that these 70 offices would no longer need a Deputy Chief Marshal. CBO estimates that if the Marshals Service eliminated about 70 such positions, the federal government would save about \$2 million in salaries and benefits each year by 2003 when the changes could be fully implemented.

The changes under this bill would not take effect until January 1, 2000. Furthermore, the bill would allow U.S. Marshals appointed prior to the bill's effective date to complete their four-year terms, and it would likely take several months to a year for the new U.S. Marshals to be appointed by the Attorney General. Therefore, CBO expects that the federal government would not realize any savings until fiscal year 2001, and that the full effect of the bill's savings would not be realized until fiscal year 2003. Enacting H.R. 2641 would save about \$1 million in fiscal year 2001 and \$2 million in fiscal year 2002, assuming that future appropriations are reduced to reflect the lower costs for salaries and benefits.

7. Pay-as-you-go considerations: None.

8. Estimated impact on State, local, and tribal governments: H.R. 2641 contains no intergovernmental mandates as defined in Public Law 104-4 and would impose no direct costs on state, local, or tribal governments.

9. Estimated impact on the private sector: This bill would impose no new private sector mandates, as defined in Public Law 104-4.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal Cost Estimate: Susanne S. Mehlman; State and Local Government Impact: Karen McVey; Private Sector Impact; Matt Eyles.

12. Estimate approved by: Robert A. Sunshine (for Paul N. Van de Water, Assistant Director for Budget Analysis).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2641 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.—This section states that the short title of the bill is the “United States Marshals Service Improvement Act of 1996.”

Sec. 2. Appointments of marshals.—This section amends chapter 37 of title 28, United States Code, to provide for the appointment of United States marshals by the Attorney General of the United States. Currently, United States marshals are appointed by the President, by and with the advice and consent of the Senate. The section also provides that United States marshals shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive civil service, and shall be paid on the government service scale.

Sec. 3. Transitional provisions; Presidential appointment of certain United States marshals.—The section directs that each United States marshal appointed before enactment of this Act shall remain in that position until the term is completed and a successor is appointed. The section also provides that, during the period between the date of enactment of this Act and December 31, 1999, the President shall appoint U.S. marshals with the advice and consent of the Senate. These marshals shall serve for a four-year term, and shall continue to serve after the four-year term expires until a successor is appointed.

AGENCY VIEWS

The Committee received a letter from the U.S. Department of Justice providing Administration views on H.R. 2641, and other bills. The letter addressed the issues presented in H.R. 2641, in pertinent part, as follows:

H.R. 2641—THE UNITED STATES MARSHALS SERVICE IMPROVEMENTS
ACT

H.R. 2641 would amend 28 U.S.C. § 561(c) to authorize the Director of the Marshals Service to appoint U.S. Marshals from the competitive civil service. Marshals thus would be career law enforcement officers who had risen through the ranks of the Marshals Service. The provision would take effect in the year 2000. Until that time, Marshals would continue to be appointed by the President with the advice and consent of the Senate as they have been since the earliest days of our nation.

We support the thrust of the bill, which is consistent with a recommendation from the National Performance Review. We would, however, note a constitutional concern with the specific language of H.R. 2641. The bill should provide for appointment of Marshals by the Attorney General rather than the Director of the Marshals Service. Courts have held that Marshals are “officers of the United

States” in the Constitutional sense. Under the Appointments Clause of the Constitution, such officers must be appointed by the President, courts of law, or heads of Departments.

Appointment of Marshals by the Attorney General would result in naming as Marshals persons who have demonstrated outstanding law enforcement and administrative expertise through a career in the Service. Although politically appointed Marshals have long served the Nation with dedication and integrity, today the multifaceted law enforcement missions of the Marshals Service—involving such matters as judicial security, fugitive apprehension, prisoner transportation, witness protection, and disposal of seized assets—require that its field offices, like those of other law enforcement agencies, be headed by career law enforcement officers.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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):

CHAPTER 37 OF TITLE 28, UNITED STATES CODE

CHAPTER 37— UNITED STATES MARSHALS SERVICE

Sec.

561. United States Marshals Service.

【562. Vacancies.】

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§ 561. United States Marshals Service

(a) * * *

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(c) 【The President shall appoint, by and with the advice and consent of the Senate,】 *The Attorney General shall appoint* a United States marshal for each judicial district of the United States and for the Superior Court of the District of Columbia, except that any marshal appointed for the Northern Mariana Islands may at the same time serve as marshal in another judicial district. *United States marshals shall be appointed subject to the provisions of title 5 governing appointments in the competitive civil service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and pay rates.* Each United States marshal shall be an official of the Service and shall serve under the direction of the Director.

【(d) Each marshal shall be appointed for a term of four years. A marshal shall, unless that marshal has resigned or been removed by the President, continue to perform the duties of that office after the end of that 4-year term until a successor is appointed and qualifies.】

【(e)】 *(d)* The Director shall designate places within a judicial district for the official station and offices of each marshal. Each marshal shall reside within the district for which such marshal is appointed, except that—

(1) the marshal for the District of Columbia, for the Superior Court of the District of Columbia, and for the Southern District of New York may reside within 20 miles of the district for which the marshal is appointed; and

(2) any marshal appointed for the Northern Mariana Islands who at the same time is serving as marshal in another district may reside in such other district.

[(f)] (e) The Director is authorized to appoint and fix the compensation of such employees as are necessary to carry out the powers and duties of the Service and may designate such employees as law enforcement officers in accordance with such policies and procedures as the Director shall establish pursuant to the applicable provisions of title 5 and regulations issued thereunder.

[(g)] (f) The Director shall supervise and direct the United States Marshals Service in the performance of its duties.

[(h)] (g) The Director may administer oaths and may take affirmations of officials and employees of the Service, but shall not demand or accept any fee or compensation therefor.

[(i)] (h) There are authorized to be appropriated such sums as may be necessary to carry out the functions of the Service.

【§ 562. Vacancies

[(a) In the case of a vacancy in the office of a United States marshal, the Attorney General may designate a person to perform the functions of and act as marshal, except that the Attorney General may not designate to act as marshal any person who was appointed by the President to that office but with respect to such appointment the Senate has refused to give its advice and consent.

[(b) A person designated by the Attorney General under subsection (a) may serve until the earliest of the following events:

[(1) The entry into office of a United States marshal appointed by the President, pursuant to section 561(c).

[(2) The expiration of the thirtieth day following the end of the next session of the Senate.

[(3) If such designee of the Attorney General is appointed by the President pursuant to section 561(c), but the Senate refuses to give its advice and consent to the appointment, the expiration of the thirtieth day following such refusal.]

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