

PROCEDURAL FAIRNESS FOR SEPTEMBER 11 VICTIMS ACT
OF 2007

OCTOBER 29, 2007.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3921]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3921) to provide nationwide subpoena authority for actions brought under the September 11 Victim Compensation Fund of 2001, 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. 3921, the “Procedural Fairness for September 11 Victims Act of 2007,” amends the Air Transportation Safety and System Stabilization Act to allow victims of the September 11, 2001 terrorist attacks and their families who opted out of the September 11th Victims Compensation Fund to have nationwide subpoena

power when litigating claims arising out of such attacks. This provision also extends to defendants in such litigation. Under current law, such claims must be commenced in the United States District Court for the Southern District of New York, and pursuant to Federal Rule of Civil Procedure 45, generally a party only may secure testimony and documents from a non-party witness who lives within 100 miles of the Southern District of New York. H.R. 3921 addresses this problem by providing for nationwide subpoena power. The court however, would retain its authority to modify or quash any subpoena that determined to be too burdensome.

BACKGROUND AND NEED FOR THE LEGISLATION

Within eleven days of the September 11 attacks, legislation was drafted, debated, adopted and signed into law as the Air Transportation Safety and System Stabilization Act (ATSSSA).¹ ATSSSA, *inter alia*, provided assistance to the airline industry and created an optional alternative compensation program for individual victims killed or injured by the terrorist attacks of September 11, 2001, known as the September 11th Victims Compensation Fund (“the Fund”). The Fund establishes a Federal cause of action in the United States District Court for the Southern District of New York as the exclusive remedy for damages arising out of the hijacking and subsequent crash of American Airlines flights 11 and 77, and United Airlines flights 93 and 175 on September 11, 2001. The intent of the Fund was to consolidate all litigation arising out of the September 11, 2001 attacks in one court which could adjudicate all the claims in an efficient, equitable and fair venue.

The Act, however, does not address the ramifications of Federal Rule of Civil Procedure Rule 45(b)(2), which generally only authorizes service of a trial subpoenas to non-party witnesses in the district or State where the case was filed or anyplace within 100 miles of the district where the action is filed (termed the “100 mile bulge”). With respect to the September 11, 2001 litigation, many of the non-parties are located outside of this geographically defined range.

Presently pending before the United States District Court for the Southern District of New York is the consolidated action, *In re September 11 Litigation*, in which representatives of certain victims as well as an array of parties suing for property damage and consequential economic loss. Defendants in this litigation include airport security firms, airport authorities, the Boeing Corporation, and others. The litigation focuses not only on the events that occurred at the World Trade Center in New York City but also on Dulles Airport, Newark International Airport, Logan Airport, and various other locations around the Nation, including the headquarters for each of the various airlines and security companies.

For all parties to this litigation to have access to information relevant to the case, it is necessary to make available at trial non-party witnesses from these and other locations. H.R. 3921 accomplishes this objective by simply amending section 408(b) of the ATSSSA to authorize service of process anyplace in the United States. It also makes clear that the court retains its authority to quash or modify a subpoena as provided in clause (i), (iii), or (iv)

¹ 49 U.S.C. § 40101 note.

of subparagraph (A) or subparagraph (B) of Federal Rule of Civil Procedure 45(c)(3).

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 3921.

COMMITTEE CONSIDERATION

On October 24, 2007, the Committee met in open session and ordered the bill, H.R. 3921, 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. 3921.

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 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. 3921, 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, October 26, 2007.

Hon. JOHN CONYERS, Jr., *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. 3921, the Procedural Fairness for September 11 Victims Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 3921—Procedural Fairness for September 11 Victims Act of 2007

H.R. 3921 would amend the Air Transportation Safety and System Stabilization Act (Public Law 107–42) to permit subpoenas issued under that law to be served anywhere in the United States. Current law limits the service of certain subpoenas under P.L. 107–42 to locations within 100 miles of the United States District Court for the Southern District of New York. CBO estimates that implementing this change in judicial procedure would result in no cost to the federal government. Enacting H.R. 3921 would not affect direct spending or receipts.

H.R. 3921 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 Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Theresa Gullo 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. 3921 will provide procedural fairness to victims of the September 11, 2001 terrorist attacks and their families who opted out of the September 11th Victims Compensation Fund, as well as defendants, to have nationwide service of process when litigating claims arising out of such attacks.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 9 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3921 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the Procedural Fairness for September 11 Victims Act of 2007.

Sec. 2. Findings. Section 2 includes several findings, including the finding that litigating a Federal cause of action under the September 11th Victims Compensation Fund of 2001 is likely to involve the testimony and the production of other documents and tangible things by a substantial number of witnesses, many of whom may not reside, be employed, or regularly transact business in, or within 100 miles of, the Southern District of New York.

Sec. 3. Nationwide Subpoenas. Section 3 amends Section 408(b) of the September 11th Victims Compensation Fund of 2001 to allow service anyplace in the United States. It also clarifies that the court retains its authority to quash or modify a subpoena as provided in clause (i), (iii), or (iv) of subparagraph (A) or subparagraph (B) of Federal Rule of Civil Procedure 45(c)(3).

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

**SEPTEMBER 11th VICTIMS COMPENSATION FUND
OF 2001**

* * * * *

SEC. 408. LIMITATION ON LIABILITY.

(a) * * *

(b) **FEDERAL CAUSE OF ACTION.**—

(1) * * *

* * * * *

(4) **NATIONWIDE SUBPOENAS.**—

(A) *IN GENERAL.*—*A subpoena requiring the attendance of a witness at trial or a hearing conducted under this section may be served at any place in the United States.*

(B) *RULE OF CONSTRUCTION.*—*Nothing in this subsection is intended to diminish the authority of a court to quash or modify a subpoena for the reasons provided in clause (i), (iii), or (iv) of subparagraph (A) or subparagraph (B) of rule 45(c)(3) of the Federal Rules of Civil Procedure.*