

117TH CONGRESS
2D SESSION

H. RES. 869

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

JANUARY 12, 2022

Mr. LIEU (for himself, Mr. CICILLINE, Mr. RASKIN, Ms. DEAN, Mrs. DEMINGS, and Mr. NEGUSE) submitted the following resolution; which was referred to the Committee on Rules

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 of 2022”.

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

6 Rule XI of the Rules of the House of Representatives
7 is amended by adding at the end the following new clauses:

1 “Additional Subpoena Enforcement Power

2 “7.(a) Whenever any committee or subcommittee
3 makes a written request to any department or agency of
4 the Government for the attendance of named witnesses or
5 the production of such books, records, correspondence,
6 memorandum, papers, documents, and electronic or digital
7 files, data or information, in any form, including any elec-
8 tronic or digital files, data or information in any search-
9 able formats in which they are available to or can be pro-
10 duced by the agency, as the committee or subcommittee
11 considers necessary, a senior responsible official shall ei-
12 ther comply with that request or file written objections
13 within the time frame for response set forth in the request.

14 “(b) If the senior responsible official files written ob-
15 jections within the timeframe for response, the committee
16 or subcommittee shall seek to resolve these objections
17 through negotiation and accommodation. If a resolution
18 cannot be reached, staff shall so certify to the chair of
19 the committee.

20 “(c) If the senior responsible official fails to file ob-
21 jections or make available the designated witnesses or full
22 production of responsive records and information within
23 the timeframe for response, the chair of the committee
24 may issue a subpoena to the senior responsible official for
25 any unproduced records or information as to which no ob-

1 jection was filed, and to any designated witness to which
2 no objection was filed.

3 “(d) With respect to any portion of the written re-
4 quest for documents and witnesses to which timely objec-
5 tion was made, a subpoena to the senior responsible offi-
6 cial and to designated witnesses, may be issued, following
7 conclusion of the negotiations referred to in paragraph (b),
8 by—

9 “(1) the chair, upon 48 hours notice to the
10 ranking member, unless the ranking member objects
11 during that period; or

12 “(2) a vote of the committee.

13 “(e) The senior responsible official and other wit-
14 nesses to whom a subpoena is issued have the right to
15 be accompanied only by non-government private counsel
16 during all proceedings conducted pursuant to this clause
17 (even if the witness is a government official or employee).
18 The committee in taking testimony will follow the proce-
19 dures for taking depositions and resolving disputes over
20 objections to questions that are prescribed by the Com-
21 mittee on Rules for such testimonial proceedings (see 165
22 Cong. Rec. H1216–17 (Jan. 25, 2019)).

23 “(f) If the senior responsible official files written ob-
24 jections to a subpoena issued under paragraph (c) or (d)
25 within the timeframe for response, or the President per-

1 sonally and in writing asserts a claim of executive privilege
2 with respect to the records, information, and witnesses at
3 issue, the committee may hold a hearing to consider these
4 objections. The senior responsible official shall personally
5 attend this hearing but may not assert executive privilege
6 on behalf of the President, and the committee chair may
7 grant an exception for good cause shown.

8 “(g) If the committee overrules some or all of the ob-
9 jections asserted, it may issue an order of compliance
10 which states the grounds for rejection of the objections,
11 the date for compliance, and an advisement of the legal
12 consequences of a failure to comply. The senior responsible
13 official and subpoenaed witnesses shall comply with such
14 order within the timeframe for response. If prior to such
15 time, the President asserts a claim of executive privilege,
16 it shall be made personally and in writing, and will be con-
17 sidered by the committee with all other timely objections.
18 Witnesses may not assert a claim of executive privilege
19 in the absence of such an assertion by the President.

20 “(h) On the failure of the senior responsible official
21 or subpoenaed witnesses to comply with the order, the
22 committee shall meet to assess whether the noncompliance
23 rises to the level of a breach of the constitutional privilege
24 and duty of the House to be fully informed in order to
25 properly perform its legislative responsibilities without

1 undue obstruction and thereby warrants condemnation
2 and punishment. If so, the committee shall report a privi-
3 leged resolution of contempt. The accompanying report
4 shall include a detailed history and nature of the con-
5 troversy and attempts at accommodation; the legal issues
6 raised; the legislative need for the information sought; the
7 legal and practical reasons for the determination that the
8 objections were rejected; and the recommended penalty
9 under paragraph (j).

10 “(i) If the committee reports a resolution of con-
11 tempt, it shall be treated as a rule IX question of privilege
12 of the House requiring precedence over all other questions
13 until resolved and promptly scheduled for floor consider-
14 ation. The chair of the committee shall present the case
15 for passage of the resolution. At the conclusion of the al-
16 lotted period for presentations, questions and debate, a
17 vote on passage of the resolution will be taken. If the vote
18 is for passage, a second vote will be taken on the commit-
19 tee’s recommended penalty. A proffer of an amendment
20 to alter the recommended penalty is in order.

21 “(j)(1) The penalty for contempt recommended by a
22 committee under paragraph (h) and approved or amended
23 by the House under paragraph (i) may, as provided for
24 in paragraphs (2) and (3), be either in the form of a mone-
25 tary penalty, detention, or both.

1 “(2)(A) If the recommended penalty as approved by
2 the House is a monetary penalty, the contemnor may be
3 assessed by the House an initial penalty of not more than
4 \$25,000 and total penalties of not more than \$100,000.
5 The amount of the ultimate penalty depends on the timeli-
6 ness of the contemnor’s compliance in providing informa-
7 tion withheld. The initial penalty of not more than
8 \$25,000 may be increased by the chair of the committee
9 involved by increments of not more than \$25,000 after a
10 one-time waiting period of 10 calendar days from the ini-
11 tial penalty until the \$100,000 maximum is reached. The
12 10-day waiting period shall only be observed after the first
13 penalty. Upon expiration of the 10-day waiting period, if
14 the chair deems the measure of compliance by the
15 contemnor to be insufficient to satisfy the legislative needs
16 of the committee, the chair may, over a period of not more
17 than fifteen days, at his or her discretion, increase the
18 penalty by increments of not more than \$25,000 until the
19 maximum is reached. Upon expiration of the 10-day wait-
20 ing period, the General Counsel is authorized to recover
21 any accrued penalties, but only if the contemnor has failed
22 to comply with the subpoena before the end of such 10-
23 day period.

24 “(B) Nothing in this subparagraph shall be inter-
25 preted to limit the ability of the House to impose addi-

1 tional legislative punishments on the contemnor for non-
2 compliance.

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

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

20 “(3)(A) If the recommended penalty as passed by the
21 House is detention, the contemnor may be detained until
22 the chair of the committee involved gives notice that the
23 subpoena has been complied with or the sine die adjourn-
24 ment of the current Congress, whichever occurs first.

1 “(B) The detention of the contemnor under this sub-
2 paragraph shall be carried out in accordance with regula-
3 tions issued by the Committee on Rules and printed in
4 the Congressional Record, including regulations to provide
5 the contemnor with adequate due process.

6 “(k) Nothing in this clause shall be interpreted to di-
7 minish the inherent institutional self-protective authori-
8 ties, methods and practices of the House for enforcing
9 committee subpoenas, nor shall anything in this clause be
10 interpreted to diminish the discretionary power of any
11 committee to determine the acceptability of any constitu-
12 tional or common law-based privilege asserted to justify
13 noncompliance with a congressional subpoena.

14 “(l) As used in this clause:

15 “(1) The term ‘senior responsible official’ refers
16 to an executive branch official with control or cus-
17 tody over the records or information or the subordi-
18 nate officials or employees that are sought and who
19 is a civil officer subject to removal from the office
20 under article II, section 4, of the Constitution, un-
21 less no such civil officer has control or custody over
22 the records or information sought.

23 “(2) The term ‘objections’ includes an appro-
24 priate privilege log, which shall describe with par-
25 ticularity the records or information withheld and

1 the basis for withholding. The log shall be in such
2 form as instructed by the committee or, in the ab-
3 sence of such instruction, shall be in the form that
4 would be required by the rules and practice of the
5 United States District for the District of Columbia.
6 Failure to file an appropriate and timely privilege
7 log shall be a basis for overruling or disregarding
8 any objection.

9 **“Additional Subpoena Enforcement Power**

10 “8.(a) Whenever any committee or subcommittee
11 makes a written request to any person for testimony or
12 the production of such books, records, correspondence,
13 memorandum, papers, documents, and electronic or digital
14 files, data or information, in any form, including any elec-
15 tronic or digital files, data or information in any search-
16 able formats in which they are available to or can be pro-
17 duced by that person, as the committee or subcommittee
18 considers necessary, such person shall either comply with
19 that request or file written objections within the time
20 frame for response set forth in the request.

21 “(b) If such person files written objections within the
22 timeframe for response, the committee or subcommittee
23 shall seek to resolve these objections through negotiation
24 and accommodation. If a resolution cannot be reached,
25 staff shall so certify to the chair of the committee.

1 “(c) If such person fails to file objections or provide
2 testimony or full production of responsive records and in-
3 formation within the timeframe for response, the chair of
4 the committee may issue a subpoena to such person for
5 any unproduced testimony or records or information as
6 to which no objection was filed.

7 “(d) With respect to any portion of the written re-
8 quest for documents and testimony to which timely objec-
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17 the right to be accompanied only by non-government pri-
18 vate counsel during all proceedings conducted pursuant to
19 this clause. The committee in taking testimony will follow
20 the procedures for taking depositions and resolving dis-
21 putes over objections to questions that are prescribed by
22 the Committee on Rules for such testimonial proceedings
23 (see 165 Cong. Rec. H1216–17 (Jan. 25, 2019)).

24 “(f) If such person files written objections to a sub-
25 poena issued under paragraph (c) or (d) within the time-

1 frame for response, the committee may hold a hearing to
2 consider these objections. The person shall personally at-
3 tend this hearing, but the committee chair may grant an
4 exception for good cause shown.

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