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110TH CONGRESS *2d Session*	SENATE	REPORT 110–452

COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF LATIN AMERICANS OF JAPANESE DESCENT ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 381

TO ESTABLISH A FACT-FINDING COMMISSION TO EXTEND THE STUDY OF A PRIOR COMMISSION TO INVESTIGATE AND DETERMINE FACTS AND CIRCUMSTANCES SURROUNDING THE RELOCATION, INTERNMENT, AND DEPORTATION TO AXIS COUNTRIES OF LATIN AMERICANS OF JAPANESE DESCENT FROM DECEMBER 1941 THROUGH FEBRUARY 1948, AND THE IMPACT OF THOSE ACTIONS BY THE UNITED STATES, AND TO RECOMMEND APPROPRIATE REMEDIES, AND FOR OTHER PURPOSES



SEPTEMBER 11, 2008.—Ordered to be printed

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SEPTEMBER 11, 2008.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 381]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 381) to establish a fact-finding Commission to extend the study of a prior commission to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States, and to recommend remedies, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

I. PURPOSE AND SUMMARY

The Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act (S. 381) would create a fact finding commission to (1) investigate U.S. relocation, internment, and deportation of Latin Americans of Japanese descent held in U.S. custody from December 1941 through February 1948; and (2) recommend appropriate remedies to Congress based on preliminary findings by the original Commission and any new evidence that the Commission may consider.

II. BACKGROUND AND NEED FOR LEGISLATION

In 1982, the Commission on Wartime Relocation and Internment of Civilians (hereinafter "WRIC") reported on the internment of Japanese-Americans during World War II, actions which were conducted pursuant to President Franklin D. Roosevelt's Executive

Order 9066.[1] The report of the WRIC was followed by a formal apology by President Reagan and a bill for reparations. Near the end of its work, the WRIC discovered, but did not investigate, the U.S. government's involvement in relocating, interning, and using Latin Americans of Japanese descent for prisoner exchanges.

Documents in the National Archives reflect that from 1941 to 1948, the U.S. government initiated a program that brought approximately 2,300 persons of Japanese ancestry into the U.S. from 13 Latin American countries. The relocation and internment of Japanese Latin Americans was motivated by a desire to increase the number of persons who could potentially be exchanged for U.S. civilians and military personnel in Japanese custody.[2] Many of these Japanese Latin Americans were used in prisoner exchanges and were sent to Japan, a country they may never have visited. Those who were not used in prisoner exchanges were held as late as 1948; after that, they were considered illegal entrants by the U.S. government and many were deported.

Commissions are regularly mandated by Congress as a necessary and legitimate tool to aid Congress in exercising its policy making powers. The WRIC acknowledged that its work was in some sense incomplete. In its final report in 1982 it concluded that "historical documents concerning the ethnic Japanese in Latin America are, of course, housed in distant archives, and the Commission has not researched that body of material,"[3] but nonetheless concluded that "an examination of the extraordinary program of interning aliens from Latin America in the United States completes the account of federal actions to detain and intern civilians . . . of Japanese ancestry."[4] This Committee believes that further work remains to be done to establish a full record of this tragic episode, and therefore S. 381 continues the earlier study authorized by Congress. It also establishes that Congress will retain the discretion to enact any recommendations proposed by the new findings and work of the Commission.

III. LEGISLATIVE HISTORY

The Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act, S. 381, was introduced by Senator Inouye on January 24, 2007 with Senators Akaka, Bennett, Leahy, Levin, Murkowski, and Stevens as original co-sponsors. The bill was subsequently co-sponsored by Senators Lieberman, Carper, Feingold, Sanders, Biden and Feinstein. Representative Xavier Becerra introduced an identical measure, H.R. 662, on January 24, 2007. On June 13, 2007, the Committee ordered S. 381 to be reported favorably, without amendment, by voice vote. Senators present were: Lieberman, Levin, Akaka, Pryor, Tester, Collins, Stevens, Voinovich, Coleman, and Warner.

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[1] Congress established the Commission on Wartime Relocation and Internment of Civilians in P.L. 96–317, which was signed into law on July 31, 1980. The Commission issued its report, "Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians" (hereinafter "WRIC Report") in December of 1982.

[2] Acting Secretary of State Breckinridge Long wrote in a memorandum to the U.S. Ambassador to Peru, R. Henry Norweb, that "an eventual deficiency of Japanese to be exchanged may develop." Memorandum from Acting Secretary of State Breckenridge Long to U.S. Ambassador to Peru, R. Henry Norweb, Oct. 22, 1943.

[3] Appendix I: Latin Americans. WRIC Report, page 314.

[4] *Ibid.,* page 305.

IV. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1. Short title

Section 2. Findings and purpose

Section 2(a) summarizes the findings of the original Commission on Wartime Relocation and Internment of Civilians that the U.S. government financed relocation to the United States and internment of approximately 2,300 Latin Americans of Japanese descent for the purpose of exchanging the Japanese Latin Americans for United States citizens held by Axis countries.

Section 2(b) states that the purpose of the Act is to establish a fact-finding commission to extend the study of the Commission on Wartime Relocation and Internment of Civilians to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies, if any, based on preliminary findings by the original Commission based upon new evidence and discoveries.

Section 3. Establishment of the Commission

Section 3(a) establishes the Commission on Wartime Relocation and Internment of Latin Americans of Japanese descent (hereinafter "the Commission").

Section 3(b) sets out the composition of the Commission. It provides that the 9-member Commission shall be composed of three members appointed by the President, three members appointed by the Speaker of the House of Representatives in consultation with the House majority leader and House minority leader, and three members appointed by the President pro tempore of the Senate, in consultation with the Senate majority and Senate minority leader.

Under Section 3(c), members of the Commission are appointed for the life of the Commission and a vacancy will not affect its powers, but shall be filled in the same manner as the original appointment was made.

Under Section 3(d), the President must call the first meeting of the Commission no later than the later of either (1) 60 days after the date of enactment of this Act, or (2) 30 days after the date of enactment of legislation making appropriations to carry out this Act. After the first meeting, the Commission shall meet at the call of the Chairperson.

Section 3(e) provides that five members of the Commission are required to constitute a quorum though fewer than five members may hold hearings.

Section 3(f) provides that the Commission will elect a Chairperson and Vice Chairperson from its members to serve for the life of the Commission.

Section 4. Duties of the Commission

Section 4(a) sets out the general duties of the Commission, which include investigating the circumstances surrounding the United States' relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through

February 1948, and the impact of these actions by the United States. The Commission will also recommend appropriate remedies, if any, based on preliminary findings by the WRIC and new discoveries by the Commission.

Section 4(b) requires the Commission to submit a written report to Congress no later than one year after the date of the Commission's first meeting. This report will contain findings resulting from the investigation and the Commission's recommendations, if any.

Section 5. Powers of the Commission

Section 5(a) allows the Commission, or at its direction, any subcommittee or member of the Commission, to hold public hearings, take testimony and receive evidence. The section also authorizes the Commission to require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of documents and other materials.

Section 5(b) describes the process for issuing and enforcing subpoenas. If a person fails to obey a subpoena issued by a Commission, a United States district court may issue an order compelling compliance, and may punish failure to obey as a contempt of that court.

Section 5(c) applies Section 1821 of title 28, United States Code to witnesses requested or subpoenaed to appear at any Commission hearings. The per diem and mileage allowances for witnesses will be paid from funds available to pay the expenses of the Commission.

Section 5(d) requires all executive branch entities to comply fully with any requests for information from the Commission.

Under Section 5(e), the Commission may use the United States Postal Service in the same manner and under the same condition as other agencies and departments of the Federal Government.

Section 6. Personnel and administrative provisions

Under Section 6(a), each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of pay prescribed for level IV of the Executive Schedule for each day (including travel time) the member is performing the duties of the Commission. Those members of the Commission who are officers or employees of the Federal Government shall serve without compensation in addition to their services as officers or employees of the United States.

Section 6(b) allows members of the Commission travel expenses, including per diem, while away from their homes or regular places of business while performing services for the Commission.

Section 6(c) sets personnel and administrative provisions regarding the hiring of staff. The Chairperson of the Commission may appoint and terminate personnel as necessary to enable the Commission to perform its duties. The Chairperson also has the authority to fix the compensation for personnel, which may not exceed the rate payable for level V of the Executive Schedule.

Under Section 6(d), any employee of the Federal Government may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

Section 6(e) allows the Chairperson of the Commission to procure temporary and intermittent services at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule.

Section 6(f) allows the Commission to enter into agreements to procure necessary financial and administrative services, supplies, property, and other activities necessary to enable the Commission to perform its duties.

Section 7. Termination

Section 7 provides that the Commission shall terminate 90 days after the date on which the Commission submits its report to Congress.

Section 8. Authorization of appropriations

Section 8 authorizes to be appropriated such sums as may be necessary to carry out this Act. Appropriated sums would remain available, without fiscal year limitation, until expended.

V. REGULATORY IMPACT AND EVALUATION

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Congressional Budget Office states that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments, or private entities. The enactment of this legislation will not have significant regulatory impact.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee sets forth, with respect to the bill, S. 381, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

JUNE 18, 2007.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 381, the Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 381—Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act

S. 381 would establish the Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent to investigate and determine the facts and circumstances surrounding the

relocation, internment, and deportation of Latin Americans of Japanese descent from December 1941 through February 1948.

Under S. 381, nine commission members—three appointed by the President, three appointed by the Speaker of the House of Representatives, and three appointed by the President pro tempore of the Senate—would have one year to report to the Congress on its findings, recommendations, and possible remedies. Commission members who are not federal employees would be compensated for their services. In addition, all commission members would be reimbursed for travel expenses. Under the bill, the commission could hire staff or use personnel detailed from other federal agencies. The commission would terminate 90 days after submitting its final report.

Based on the costs of similar commissions, CBO estimates that the commission would spend about $500,000 over the 2008–2009 period subject to appropriation of the necessary amounts. Enacting the bill would not affect direct spending or revenues. The legislation does not authorize any payment of restitution; such authority would require a separate act of the Congress.

S. 381 would impose both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would establish a commission with the authority to subpoena information. State, local, and tribal governments, as well as private-sector entities, if subpoenaed by the commission, would be required to provide testimony, documents, or other evidence. CBO expects that the commission would likely exercise this authority sparingly and that the costs to comply with a subpoena would not be significant. Thus, CBO estimates that the costs to those governments and private-sector entities would be small and well below the annual thresholds established in UMRA ($66 million for intergovernmental mandates and $131 million for private-sector mandates in 2007, adjusted annually for inflation). Furthermore, S. 381 would direct the commission to pay a per diem and mileage allowance to any witness who appears before the commission from funds available to pay the expenses of the commission.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs), Elizabeth Cove (for state and local impact), and Jacob Kuipers (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW

Pursuant to paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds no changes in existing law made by S. 381, as ordered reported.

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