

**Calendar No. 800**

108TH CONGRESS }  
2d Session

SENATE

{ REPORT  
108-409

RESERVISTS PAY SECURITY ACT OF 2004

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R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 593

TO ENSURE THAT A FEDERAL EMPLOYEE WHO TAKES LEAVE WITHOUT PAY IN ORDER TO PERFORM SERVICE AS A MEMBER OF THE UNIFORMED SERVICES OR MEMBER OF THE NATIONAL GUARD SHALL CONTINUE TO RECEIVE PAY IN AN AMOUNT WHICH, WHEN TAKEN TOGETHER WITH THE PAY AND ALLOWANCES SUCH INDIVIDUAL IS RECEIVING FOR SUCH SERVICE, WILL BE NO LESS THAN THE BASIC PAY SUCH INDIVIDUAL WOULD THEN BE RECEIVING IF NO INTERRUPTION IN EMPLOYMENT HAD OCCURRED



NOVEMBER 16, 2004.—Ordered to be printed

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### RESERVISTS PAY SECURITY ACT OF 2004

NOVEMBER 16, 2004.—Ordered to be printed

Ms. COLLINS, from the Committee on Governmental Affairs,  
submitted the following

### R E P O R T

[To accompany S. 593]

The Committee on Governmental Affairs, to whom was referred the bill (S. 593) to ensure that a Federal employee who takes leave without pay in order to perform service as a member of the uniformed services or member of the National Guard shall continue to receive pay in an amount which, when taken together with the pay and allowances such individual is receiving for such service, will be no less than the basic pay such individual would then be receiving if no interruption in employment had occurred, having considered the same reports favorably thereon with an amendment and recommends that the bill do pass.

#### I. PURPOSE AND SUMMARY

S. 593, the Reservists Pay Security Act of 2004, is a bill to ensure that a Federal employee who takes leave without pay in order to perform active duty military service shall continue to receive pay in an amount which, when taken together with military pay and allowances, would be no less than the basic pay the individual would be receiving if no interruption in Federal employment had occurred.

#### II. BACKGROUND

Under current law, a federal employee who is a member of the National Guard or Reserve is entitled to 15 days of paid military leave each fiscal year for active duty, active duty training, or inactive duty training. When an employee is mobilized under a Presi-

dential Reserve Call Up or a partial to full mobilization,<sup>1</sup> he or she is placed in a leave without pay status from his or her federal job and begins drawing military pay and allowances. According to a 2000 Department of Defense survey of approximately 35,000 reserve personnel, including federal employees, 41% of respondents reported a loss of income during mobilization and deployment.<sup>2</sup>

In recognition of the potential significant financial impact of long term mobilization, many private companies have chosen to continue to cover the difference in pay and benefits for their employee reservists called to active duty. Companies such as Boeing Aerospace, State Farm Insurance, and Safeway have elected to cover any pay differences.<sup>3</sup> In addition, a number of state governments cover either a significant portion of or all differences in pay for state employee reservists, including: Alabama, Alaska, California, Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

S. 593 would alleviate the financial burdens created when federal employees are called to active duty and experience a reduction in pay because their military pay and allowances are less than their basic federal salary. Approximately 10 percent of the 1.2 million members of the Guard and Reserve are federal employees.<sup>4</sup> Since September 11, 2001, more than 43,000 of these 120,000 federal employees have been called to active duty (as of June 2004), with more than 15,000 presently mobilized for the Global War on Terrorism.<sup>5</sup>

### III. LEGISLATIVE HISTORY

S. 593 was introduced by Senator Durbin on March 11, 2003, and was referred to the Committee on Governmental Affairs. The legislation is cosponsored by Senators Mikulski, Leahy, Sarbanes, Bingaman, Lautenberg, Landrieu, Kerry, Gregg, and Allen. The bill was referred to the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia on June 20, 2003. On May 13, 2004, the Subcommittee favorably polled S. 593 to the full Committee.

On July 21, 2004, the Committee on Governmental Affairs considered S. 593 and ordered the bill reported by voice vote, with an amendment in the nature of a substitute, as part of an en bloc vote. Senators present: Collins, Voinovich, Specter, Fitzgerald, Lieberman, Akaka, Durbin, Carper, and Lautenberg.

S. 593 as amended makes four changes to the bill as introduced. Specifically, the amendment: (1) changes the bill title to “Reservists Pay Security Act of 2004”; (2) makes the bill applicable to the level of mobilization under 10 U.S.C. 101(a)(13)(B) and eliminates reference to Title 32; (3) specifies the effective date as October 11,

<sup>1</sup> 10 U.S.C. § 101(a)(13)(B).

<sup>2</sup> Defense Manpower Data Center. Report No. 2002-005, “DRAFT Tabulations of Responses from the 2000 Survey of Reserve Component Personnel: Vol 1, Military Background.” iv, 326-327 (August 2002).

<sup>3</sup> National Committee for Employer Support of the Guard and Reserve, ([www.esgr.org](http://www.esgr.org)).

<sup>4</sup> Annual Report by the Assistant Secretary of Defense (Reserve Affairs), “Ready Reservists in the Federal Government.” 3 (December 2001).

<sup>5</sup> Information provided to Senator Durbin by the Defense Manpower Data Center, ID 4901 (June 14, 2004).

2002; and (4) provides for conditional retroactive application to pay periods beginning on or after October 11, 2002 through date of enactment, subject to availability of appropriations.

#### IV. SECTION-BY-SECTION ANALYSIS

##### *Section 1. Nonreduction in pay while federal employee is performing active service in the Uniformed Services or National Guard*

Section (a) establishes the title of the legislation as the “Reservists Pay Security Act of 2004.”

Section (b) amends subpart IV of chapter 55 of title 5, United States Code, by adding a new provision at the end.

New section 5538 states that an employee who is absent from a position with the Federal Government in order to perform active duty in the uniformed services pursuant to a call to order in accordance with section 101(a)(13)(B) of title 10, United States Code, shall be entitled to receive an amount of pay which, when taken together with their military pay and allowances, is no less than the amount of basic pay which would otherwise have been payable if the employee’s employment with the government had not been interrupted. New subsection (b) makes clear that the amounts payable under this section shall be payable with respect to each period during which the employee is entitled to reemployment rights under chapter 43 of title 38, United States Code, and for which the employee does not otherwise receive basic pay, including by taking any annual, military, or paid leave. In addition, new subsection (b) makes clear that the period under which an employee is entitled to reemployment rights shall be determined without regard to section 4312(d) of title 38, United States Code; and shall include the time period within which the employee may report or apply for employment or reemployment. New subsection (c) states that the difference in pay shall be paid by the employing agency from appropriated funds in the same manner as if the individual’s civilian employment had not been interrupted. New subsection (d) states that the Office of Personnel Management shall, in consultation with the Secretary of Defense, prescribe regulations to carry out this section. New subsection (e) requires the head of each agency, in consultation with the Office of Personnel Management, to prescribe procedures to ensure the rights under new section 5538 apply to agency employees. New subsection (f) makes a number of references to existing definitions in law.

Section (c) makes a clerical amendment to the table of sections for chapter 55 of title 5, United States Code.

Section (d) states that the provisions within the legislation will apply with respect to pay period beginning on or after the date of enactment of S. 593. In addition, this section states that new section 5538 may apply with respect to pay periods beginning on or after October 11, 2002, subject to the availability of appropriated funds, and authorizes \$100,000,000 for the conditional retroactive payments.

## V. ESTIMATED COST OF LEGISLATION

*S. 593—Reservist Pay Security Act of 2004*

Summary: S. 593 would authorize an increase in federal salaries to pay for the difference between civilian and military compensation for federal employees called to active duty in the uniformed services or National Guard. The legislation also would authorize the appropriation of \$100 million for retroactive pay for the difference between civilian and military compensation for federal employees activated since October 11, 2002.

CBO estimates that implementing S. 593 would cost \$152 million in 2005 and \$334 million over the 2005–2009 period. (Retroactive pay would account for an estimated \$128 million of the five-year cost.) Most of the costs of the bill would be paid from agencies' appropriations, but S. 593 would also affect off-budget direct spending of the U.S. Postal Service (USPS). About \$6 million of the 2005 cost (and \$4 million in 2006) would be paid by the Postal Service. Over the 2005–2014 period, however, we expect that such costs would be offset by revenues from higher postal rates.

S. 593 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 593 is shown in the following table. The costs of this legislation fall within all budget functions that include federal salaries.

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
Changes in Spending Subject to Appropriation					
Retroactive Federal Employee Reservist Pay:					
Estimated Authorization Level .....	128	0	0	0	0
Estimated Outlays .....	88	40	0	0	0
Prospective Federal Employee Reservist Pay:					
Estimated Authorization Level .....	58	44	38	35	31
Estimated Outlays .....	58	44	38	35	31
Total Proposed Changes:					
Estimated Authorization Level .....	186	44	38	35	31
Estimated Outlays .....	146	84	38	35	31
Changes in Off-Budget Direct Spending					
Federal Employee Reservist Pay—Postal: <sup>1</sup>					
Estimated Authorization Level .....	6	4	–1	–1	–1
Estimated Outlays .....	6	4	–1	–1	–1

<sup>1</sup> The direct spending amounts shown for this provision are the off-budget effects associated with the cost of providing the difference between civilian and military compensation for postal workers called to active-duty military service. The net expenditures of the U.S. Postal Service are classified as "off-budget." Over the 2005–2014 period, CBO estimates that this provision would have no net cost as the USPS would adjust its rates to fully recover the cost of higher salaries provided to its employees called to active duty.

Basis of estimate: Based on information from the Department of Defense (DoD), CBO estimates that federal employees account for approximately 120,000 positions or almost 15 percent of the total Ready Reserve. For this estimate, we assume that 15 percent of those reserves called to active service at any time are federal employees.

In a 2000 DoD survey of 35,000 reserve personnel, 59 percent of surveyed reservists (including federal employees) reported either no difference in their income while on active-duty military status or an increase in their income while on active duty, while 41 percent



reported a loss of income during mobilization and deployment. For this estimate, CBO assumes that those self-reported survey data are applicable to the federal employees affected by the current call-up of reservists and National Guard forces.

Of the 41 percent of survey respondents who reported a loss of income during military reserve service, most (about 70 percent) said their income was reduced by \$3,750 or less while on active duty. Some reported much larger losses. For example, approximately 7 percent of those reporting an income loss indicated a loss of \$37,000 to \$50,000 annually. Considering the loss income reported by all survey respondents and the number who reported no loss or an increase in salary, CBO estimates that the average annual reduction in salary while serving in the active-duty military is about \$3,000.

*Spending subject to appropriation*

Retroactive Federal Employee Reservist Pay. S. 593 would authorize an increase in federal salaries to pay for the difference between civilian and military compensation for federal employees called to active duty in the uniformed services or National Guard. That increase would apply not only to future service but also to service since October 11, 2002, subject to the availability of appropriations. The bill also would authorize the appropriation of \$100 million for the cost of providing the difference between military and civilian pay since October 11, 2002. Based on information from DoD about the use of military reserves and National Guard, CBO estimates that about 42,500 person-years of active-duty military service will have been performed by federal employees from October 11, 2002, through September 30, 2004, when we assume the bill would be signed into law. Using the above assumptions on the average annual reduction in salary while serving in active duty and assuming appropriation of the necessary amount, CBO estimates that the retroactive pay provision would cost \$128 million. We expect that some of those payments would be made in 2006 because of the time required to determine pay differentials and adjust payroll systems.

Prospective Federal Employee Reservist Pay. The cost of implementing the legislation for federal employees on active duty in the future depends on the size of the future reserve force, which in turn depends on the duration of the military operations in Iraq and Afghanistan and the forces required for it, as well as the size and duration of any future military conflicts, all of which are uncertain. For this estimate, CBO assumes that the total number of reservists on active duty will decline from about 160,000 person-years in fiscal year 2005 and to about 87,500 person-years by 2009. If the number of reservists called to active duty were to remain at current levels over the 2005–2009 period, the cost of implementing S. 593 would be significantly greater.

Based on the above assumptions about the future size of the reserve force, CBO estimates that an average of about 21,000 federal employees will be on active-duty military service in fiscal year 2005, diminishing to approximately 11,500 by 2009. On that basis, CBO estimates that the prospective costs of implementing this provision would total \$58 million in 2005 and \$206 million over the

2005–2009 period, assuming the appropriation of the necessary amounts.

*Direct spending*

In general, federal salaries are paid from agencies' annual appropriations, but this bill would also affect the U.S. Postal Service, whose spending is not governed by appropriation action. CBO estimates that enacting this legislation would increase direct spending of the USPS by about \$6 million in 2005 and \$4 million in 2006. (Spending and receipts of the Postal Service are classified as off-budget.) Beginning in fiscal year 2007, additional costs would be covered by additional revenues because the USPS is required to set rates to cover its costs; CBO expects that the next rate increase will occur in 2006. At that time, CBO expects that the USPS also would seek to recover prior, unanticipated costs. Consequently, S. 593 would have no net impact on Postal Service outlays over the 2005–2014 period.

Intergovernmental and private-sector impact: S. 593 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO cost estimates: On July 21, 2004, CBO transmitted a cost estimate for S. 2400, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, as passed by the Senate on June 23, 2004. The Senate-passed version of that act and S. 593 contain identical provisions regarding pay for federal reservists. The estimated cost of those provisions is the same.

On May 15, 2003, CBO transmitted a cost estimate for H.R. 1836, the Civil Service and National Security Personnel Improvement Act, as ordered reported by the House Committee on Government Reform on May 8, 2003. On May 1, 2003, CBO transmitted a cost estimate for S. 593, as introduced by Senator Richard J. Durbin on March 11, 2003. H.R. 1836 contains a reservist pay provision but does not authorize retroactive pay. S. 593 as introduced did not authorize appropriations for retroactive pay. Other differences in CBO's cost estimates are due to updated assumptions about the size of U.S. forces in Iraq.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on State, Local, and Tribal Governments: Melissa Merrell; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

## VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. CBO states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on state, local, or tribal governments. The legislation contains no other regulatory impact.

## VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in blank brackets, new matter is printed in italic and existing law, in which no change is proposed, is shown in roman):

## **TITLE 5, UNITED STATES CODE**

\* \* \* \* \*

### **GOVERNMENT ORGANIZATION AND EMPLOYEES**

\* \* \* \* \*

#### **PART III—EMPLOYEES**

\* \* \* \* \*

#### **Subpart D—Pay and Allowances**

\* \* \* \* \*

#### **CHAPTER 55—PAY ADMINISTRATION**

\* \* \* \* \*

#### **Subchapter IV—Dual Pay and Dual Employment**

##### **SECTION 5538. NONREDUCTION IN PAY WHILE SERVING IN THE UNIFORMED SERVICES OR NATIONAL GUARD.**

(a) *An employee who is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—*

*(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by that service, exceeds (if at all)*

*(2) the amount of pay and allowances which (as determined under subsection (d))—*

*(A) is payable to such employee for that service; and*

*(B) is allocable to such pay period.*

*(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—*

*(A) during which such employee is entitled to reemployment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and*

*(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.*

*(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—*

(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of service on active duty to which called or ordered as described in subsection (a).

(c) Any amount payable under this section to an employee shall be paid—

(1) by such employee's employing agency;

(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee's civilian employment had not been interrupted.

(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

(f) For purposes of this section—

(1) the terms "employee", "Federal Government", and "uniformed services" have the same respective meanings as given them in section 4303 of title 38;

(2) the term "employing agency", as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

(3) the term "basic pay" includes any amount payable under section 5304.

(g) CLERICAL AMENDMENT.—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5537 the following:

5538. Nonreduction in pay while serving in the uniformed services or National Guard.