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108TH CONGRESS
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S. 593

[Report No. 108–409]

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.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2003

Mr. DURBIN (for himself, Ms. MIKULSKI, Mr. LEAHY, Mr. SARBANES, Mr. BINGAMAN, Mr. LAUTENBERG, Ms. LANDRIEU, Mr. KERRY, Mr. GREGG, and Mr. ALLEN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

NOVEMBER 16, 2004

Reported by Ms. COLLINS, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reservists Pay Secu-
 5 rity Act of 2003”.

6 **SEC. 2. NONREDUCTION IN PAY WHILE FEDERAL EM-**
 7 **PLOYEE IS PERFORMING ACTIVE SERVICE IN**
 8 **THE UNIFORMED SERVICES OR NATIONAL**
 9 **GUARD.**

10 (a) ~~IN GENERAL.~~—Subchapter IV of chapter 55 of
 11 title 5, United States Code, is amended by adding at the
 12 end the following:

13 ~~“§ 5538. Nonreduction in pay while serving in the~~
 14 **uniformed services or National Guard**

15 ~~“(a) An employee who is absent from a position of~~
 16 ~~employment with the Federal Government in order to per-~~
 17 ~~form service in the uniformed services or the National~~
 18 ~~Guard shall be entitled to receive, for each pay period de-~~
 19 ~~scribed in subsection (b), an amount equal to the amount~~
 20 ~~by which—~~

21 ~~“(1) the amount of basic pay which would oth-~~
 22 ~~erwise have been payable to such employee for such~~

1 pay period if such employee's civilian employment
 2 with the Government had not been interrupted by
 3 that service, exceeds (if at all)

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

6 “(A) is payable to such employee for that
 7 service; and

8 “(B) is allocable to such pay period.

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

13 “(A) during which such employee is entitled to
 14 reemployment rights under chapter 43 of title 38
 15 with respect to the position from which such em-
 16 ployee is absent (as referred to in subsection (a));
 17 and

18 “(B) for which such employee does not other-
 19 wise receive basic pay (including by taking any an-
 20 nual, military, or other paid leave) to which such
 21 employee is entitled by virtue of such employee's ei-
 22 vilian employment with the Government.

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

1 “(A) shall be determined disregarding the provi-
2 sions of section 4312(d) of title 38; and

3 “(B) shall include any period of time specified
4 in section 4312(e) of title 38 within which an em-
5 ployee may report or apply for employment or reem-
6 ployment following completion of service in the uni-
7 formed services or National Guard.

8 “(e) Any amount payable under this section to an em-
9 ployee shall be paid—

10 “(1) by such employee’s employing agency;

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

14 “(3) to the extent practicable, at the same time
15 and in the same manner as would basic pay if such
16 employee’s civilian employment had not been inter-
17 rupted.

18 “(d) The Office of Personnel Management shall, in
19 consultation with Secretary of Defense, prescribe any reg-
20 ulations necessary to carry out the preceding provisions
21 of this section.

22 “(e)(1) The head of each agency referred to in section
23 2302(a)(2)(C)(ii) shall, in consultation with the Office,
24 prescribe procedures to ensure that the rights under this
25 section apply to the employees of such agency.

1 “(2) The Administrator of the Federal Aviation Ad-
 2 ministration shall, in consultation with the Office, pre-
 3 scribe procedures to ensure that the rights under this sec-
 4 tion apply to the employees of that agency.

5 “(f) For purposes of this section—

6 “(1) the terms ‘employee’, ‘Federal Govern-
 7 ment’, and ‘uniformed services’ have the same re-
 8 spective meanings as given them in section 4303 of
 9 title 38;

10 “(2) the term ‘service in the uniformed services’
 11 has the meaning given that term in section 4303 of
 12 title 38 and includes duty performed by a member
 13 of the National Guard under section 502(f) of title
 14 32 at the direction of the Secretary of the Army or
 15 Secretary of the Air Force;

16 “(3) the term ‘employing agency’, as used with
 17 respect to an employee entitled to any payments
 18 under this section, means the agency or other entity
 19 of the Government (including an agency referred to
 20 in section 2302(a)(2)(C)(ii)) with respect to which
 21 such employee has reemployment rights under chap-
 22 ter 43 of title 38; and

23 “(4) the term ‘basic pay’ includes any amount
 24 payable under section 5304.”.

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

***“5538. Nonreduction in pay while serving in the uniformed serv-
 ices or National Guard.”***

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply with respect to pay periods (as de-
 7 scribed in section 5538(b) of title 5, United States Code,
 8 as amended by this section) beginning on or after Sep-
 9 tember 11, 2001.

10 **SECTION 1. NONREDUCTION IN PAY WHILE FEDERAL EM-**
 11 ****PLOYEE IS PERFORMING ACTIVE SERVICE IN****
 12 ****THE UNIFORMED SERVICES OR NATIONAL****
 13 ****GUARD.****

14 (a) SHORT TITLE.—*This Act may be cited as the “Re-*
 15 *servists Pay Security Act of 2004”.*

16 (b) IN GENERAL.—*Subchapter IV of chapter 55 of title*
 17 *5, United States Code, is amended by adding at the end*
 18 *the following:*

19 ***“§ 5538. Nonreduction in pay while serving in the uni-***
 20 ***formed services or National Guard***

21 *“(a) An employee who is absent from a position of em-*
 22 *ployment with the Federal Government in order to perform*
 23 *active duty in the uniformed services pursuant to a call*
 24 *or order to active duty under a provision of law referred*

1 *to in section 101(a)(13)(B) of title 10 shall be entitled, while*
 2 *serving on active duty, to receive, for each pay period de-*
 3 *scribed in subsection (b), an amount equal to the amount*
 4 *by which—*

5 *“(1) the amount of basic pay which would other-*
 6 *wise have been payable to such employee for such pay*
 7 *period if such employee’s civilian employment with*
 8 *the Government had not been interrupted by that*
 9 *service, exceeds (if at all)*

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

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

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

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

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

23 *“(B) for which such employee does not otherwise*
 24 *receive basic pay (including by taking any annual,*
 25 *military, or other paid leave) to which such employee*

1 *is entitled by virtue of such employee’s civilian em-*
 2 *ployment with the Government.*

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

6 *“(A) shall be determined disregarding the provi-*
 7 *sions of section 4312(d) of title 38; and*

8 *“(B) shall include any period of time specified*
 9 *in section 4312(e) of title 38 within which an em-*
 10 *ployee may report or apply for employment or reem-*
 11 *ployment following completion of service on active*
 12 *duty to which called or ordered as described in sub-*
 13 *section (a).*

14 *“(c) Any amount payable under this section to an em-*
 15 *ployee shall be paid—*

16 *“(1) by such employee’s employing agency;*

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

20 *“(3) to the extent practicable, at the same time*
 21 *and in the same manner as would basic pay if such*
 22 *employee’s civilian employment had not been inter-*
 23 *rupted.*

24 *“(d) The Office of Personnel Management shall, in con-*
 25 *sultation with Secretary of Defense, prescribe any regula-*

1 tions necessary to carry out the preceding provisions of this
2 section.

3 “(e)(1) The head of each agency referred to in section
4 2302(a)(2)(C)(ii) shall, in consultation with the Office, pre-
5 scribe procedures to ensure that the rights under this section
6 apply to the employees of such agency.

7 “(2) The Administrator of the Federal Aviation Ad-
8 ministration shall, in consultation with the Office, prescribe
9 procedures to ensure that the rights under this section apply
10 to the employees of that agency.

11 “(f) For purposes of this section—

12 “(1) the terms ‘employee’, ‘Federal Government’,
13 and ‘uniformed services’ have the same respective
14 meanings as given them in section 4303 of title 38;

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

22 “(3) the term ‘basic pay’ includes any amount
23 payable under section 5304.”.

24 (c) CLERICAL AMENDMENT.—The table of sections for
25 chapter 55 of title 5, United States Code, is amended by

1 *inserting after the item relating to section 5537 the fol-*
 2 *lowing:*

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

3 *(d) EFFECTIVE DATE.—*

4 *(1) IN GENERAL.—The amendments made by*
 5 *this section shall apply with respect to pay periods*
 6 *(as described in section 5538(b) of title 5, United*
 7 *States Code, as amended by this section) beginning on*
 8 *or after the date of enactment of this Act.*

9 *(2) CONDITIONAL RETROACTIVE APPLICATION.—*

10 *(A) IN GENERAL.—The amendments made*
 11 *by this section shall apply with respect to pay*
 12 *periods (as described in section 5538(b) of title*
 13 *5, United States Code, as amended by this sec-*
 14 *tion) beginning on or after October 11, 2002*
 15 *through the date of enactment of this Act, subject*
 16 *to the availability of appropriations.*

17 *(B) AUTHORIZATION OF APPROPRIA-*
 18 *TIONS.—There are authorized to be appropriated*
 19 *\$100,000,000 for purposes of subparagraph (A).*

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A BILL

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.

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