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111TH CONGRESS, 2d Session | SENATE | REPORT 111–339

DISTRICT OF COLUMBIA HATCH ACT REFORM ACT OF 2010

REPORT

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

H.R. 1345

TO AMEND TITLE 5, UNITED STATES CODE, TO ELIMINATE THE DISCRIMINATORY TREATMENT OF THE DISTRICT OF COLUMBIA UNDER THE PROVISIONS OF LAW COMMONLY REFERRED TO AS THE "HATCH ACT"

SEPTEMBER 29, 2010.—Ordered to be printed

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SEPTEMBER 29, 2010.—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 H.R. 1345]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 1345) to amend title 5, United States Code, to eliminate the discriminatory treatment of the District of Columbia under the provisions of law commonly referred to as the "Hatch Act," having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

I. PURPOSE AND SUMMARY

The Hatch Act prohibits certain federal, state and local government employees, including employees of the government of the District of Columbia, from engaging in specified political activity. Since 1940, the Act has subjected D.C. government employees to the same restrictions as federal employees. H.R. 1345 would, however, amend the Hatch Act to apply to D.C. government employees the same laws that govern state and local government employees rather than those governing federal employees. To ensure that D.C. government employees still face appropriate restrictions on partisan political activity, H.R. 1345 would not take effect until after D.C. adopts a law governing such activities.

II. BACKGROUND AND NEED FOR LEGISLATION

Federal employees have faced restrictions on their political activities since the earliest days of the Republic. The Jefferson Administration, for example, issued an order stating that although it is the:

> right of any officer (federal employee) to give his vote at elections as a qualified citizen . . . it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution.[1]

In 1939, increased concerns about partisan political activity of certain federal employees led Congress to pass what has become known as the "Hatch Act."[2] The Hatch Act, as originally passed, restricts the political activities of executive branch employees in the federal government. In passing the Hatch Act, Congress affirmed the view that partisan activity of government employees must be limited if federal laws, institutions and programs are to be administered in a fair and transparent manner.

One year later, Congress amended the Hatch Act to add a new section to restrict certain state and local government employees—those with jobs connected to activities financed in whole or in part by loans or grants made by the United States or a federal agency—from engaging in specified political activities.[3] Currently, covered state and local employees face a slightly narrower set of restrictions than federal employees. They may not run for office in a partisan election, use their official authority to influence an election, or attempt to coerce a state or local employee to make a political contribution.[4] Because Congress exercised direct control over the District of Columbia at the time of the 1940 amendments, Congress placed D.C. government employees under the provisions applicable to federal employees instead of categorizing them as state and local employees.[5]

The role of the D.C. government, and therefore its employees, has evolved significantly since the 1940 Hatch Act amendments. A series of changes that culminated in the landmark 1973 Home Rule Act, which provided the District the powers of local self-government,[6] have made D.C. government employees more similar to state and local employees rather than to federal employees.

Congress has previously recognized the need for the Hatch Act to accommodate the unique nature of the D.C. government and its employees. In 1940, at the same time that Congress placed D.C. government employees under Hatch Act coverage, it exempted "commissioners" and "the Recorder of Deeds of the District of Columbia" from coverage under the Act.[7] Moreover, one year after enacting the D.C. Home Rule law in 1973, Congress amended the Hatch Act to exempt the newly-created positions of Mayor of the District of Columbia, the Chairman and Vice Chairman of the City Council of the District of Columbia, and members of the City Coun-

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[1] A Compilation of the Messages and Papers of the Presidents, Volume 10, pp. 98–99 (1899).
[2] P.L. No. 76–252 (1939) (codified at 5 U.S.C. § 7321 et seq.).
[3] P.L. No. 76–753 (1940) (codified at 5 U.S.C. § 1501).
[4] See 5 U.S.C. 1502. For more information on how OSC interprets these restrictions, please see *http://www.osc.gov/haStateLocalfaq.htm*. Federal employees and officials may not engage in the activities described in the text, but also face a number of other restrictions. They generally may not solicit or discourage participation in any political activity of anyone who has business pending before their agencies. In addition, they may not engage in partisan campaign activity on federal property, on official duty time, while wearing a uniform identifying them as a federal official or employee, or in a government vehicle. (5 U.S.C. § 7323). For more information on further and less restricted employees, please see *http://www.osc.gov/hatchact.htm*.
[5] P.L. No. 76–753 (1940) (codified at 5 U.S.C. § 7322).
[6] P.L. No. 93–198 (1973) (codified at D.C. Code § 1–201.01 et seq.).
[7] P.L. No. 76–753 (1940).

cil.[8] These exemptions are similar to those granted to elected state and local officials under the current Hatch Act.

The Committee concludes it is now time to more precisely align the Hatch Act's mandates with the current structure of the D.C. government. Accordingly, H.R. 1345 would amend the Hatch Act to place employees of the District of Columbia under the provisions of the Hatch Act that apply to state and local government employees. D.C. government employees not covered by Hatch Act would still face restrictions on political activity, but the D.C. Council would determine the scope of those restrictions. To preclude a period of unfettered political activity in the D.C. government workplace, H.R. 1345 states that it would not go into effect until the District enacts a law governing the political activities of employees of the D.C. government.

In consultation with the Office of Special Counsel (OSC), the independent federal agency authorized to investigate and pursue violations of the Hatch Act, the Committee recognized the need to make several changes to H.R. 1345 to clarify the District of Columbia's coverage under Hatch Act. Senator Akaka offered an amendment to that effect which was adopted. The amendment added "the District of Columbia, or an agency or department thereof" to the definition of "state or local agency" and added the District of Columbia to several other provisions. These additions were made to further ensure that D.C. employees would be covered under provisions of the Hatch Act applicable to other state and local government employees.

III. Legislative History

H.R. 1345 was introduced by D.C. Delegate Eleanor Holmes Norton on March 5, 2009. The Committee on Oversight and Government Reform reported the bill to the full House on June 9, 2009, and on September 8, 2009, the House, under a motion to suspend the rules, agreed to H.R. 1345 by a voice vote.

On September 8, 2009, H.R. 1345 was received in the Senate and referred to the Committee on Homeland Security and Governmental Affairs. On May 17, 2010, the Committee considered H.R. 1345 at a business meeting. Senator Daniel Akaka offered an amendment that inserted references to the District of Columbia in several subsections of the Hatch Act. The Committee adopted the amendment and ordered the bill, as amended, reported favorably by voice vote. Members present for both actions were Senators Lieberman, Akaka, Carper, Pryor, Landrieu, Burris, Collins, Brown, Voinovich and Graham.

IV. Section-by-Section

Section 1. Short title

The short title of the bill is the District of Columbia Hatch Act Reform Act of 2010.

[8] P.L. No. 93–268 (1974) (codified at 5 U.S.C. § 7324).

Section 2. Employees of the District of Columbia to be subject to the same restrictions on political activity as apply to state and local employees

Subsection (a) of Section 2 would amend 5 U.S.C. §§ 1501, 1502, and 1506 to subject employees of the government of the District of Columbia to the same restrictions on partisan political activity that currently apply to state and local government employees under the Hatch Act.

First, this subsection would amend 5 U.S.C. § 1501(2) to add the District of Columbia, or an agency or department of the District of Columbia, to the definition of a "state or local agency." 5 U.S.C. § 1501(4) would also be amended to ensure individuals employed by an educational or research institution, establishment, agency, or system supported in whole or in part by the District of Columbia are exempt. This exclusion is granted to similarly-situated employees of state and local governments.

This subsection also would amend 5 U.S.C. § 1502(c)(3) to exclude the duly elected head of the District of Columbia from prohibitions on seeking elective office that apply to other state or local government employees.

Subsection 2(a) of the bill would also amend 5 U.S.C. § 1506(a)(2) to allow the Merit Systems Protection Board to issue an order to withhold federal funds if the Board finds that an employee ordered removed for violating the Hatch Act has been reappointed in the District of Columbia within 18 months.

Subsection (b) of Section 2 would amend 5 U.S.C. § 7322(1) to remove individuals employed or holding office in the government of the District of Columbia from provisions of the Hatch Act applicable to federal employees.

Section 3. Effective date

Section 3 states that the Act will take effect on the effective date of a law enacted by the District of Columbia government which places restrictions on political activities of employees of the government of the District of Columbia and will apply to actions taking place on or after that date.

V. Evaluation of Regulatory Impact

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 (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.

VI. Congressional Budget Office Cost Estimate

May 27, 2010.

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 H.R. 1345, the District of Columbia Hatch Act Reform Act of 2010.

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

Sincerely,

Douglas W. Elmendorf.

Enclosure.

H.R. 1345—District of Columbia Hatch Act Reform Act of 2010

H.R. 1345 would amend the Hatch Act to remove some restrictions on the political activities of District of Columbia government employees. Under current law, such employees are subject to the same restrictions as federal employees under the Hatch Act. The bill would amend federal law to subject District of Columbia government employees to the same Hatch Act restrictions imposed on other employees of state and local governments whose principal employment is connected to an activity financed by funds from the federal government. CBO estimates that implementing the legislation would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

H.R. 1345 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.

On June 9, 2009, CBO transmitted a cost estimate for H.R. 1345, the District of Columbia Hatch Act Reform Act of 2009, as ordered reported by the House Committee on Oversight and Government Reform. The two versions of the legislation are similar, and CBO's estimate of their costs is the same.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. Changes in Existing Law Made by the Bill, as Reported

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black 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 II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES

CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

SEC. 1501. DEFINITIONS.

For the purpose of this chapter—

(1) "State" means a State or territory or possession of the United States;

(2) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof*, or the District of Columbia, or an agency or department thereof*;

(3) * * *

(4) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

(A) an individual who exercises no functions in connection with that activity; or

[(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization]

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by—

(i) a State or political subdivision thereof;

(ii) the District of Columbia; or

(iii) a recognized religious, philanthropic, or cultural organization.

SEC. 1502. INFLUENCING ELECTIONS; TAKING PART IN POLITICAL CAMPAIGNS; PROHIBITIONS; EXCEPTIONS.

(a) * * *

* * * * * * *

(c) Subsection (a)(3) of this section does not apply to—

(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(2) the mayor of a city;

(3) a duly elected head of an executive department of a State [or municipality], *municipality, or the District of Columbia* who is not classified under a State[or municipal], *municipal or the District of Columbia* merit or civil-service system; or

(4) an individual holding elective office.

* * * * * * *

SEC. 1506. ORDERS; WITHHOLDING LOANS OR GRANTS; LIMITATIONS.

(a) When the Merit Systems Protection Board finds—

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he has violated section 1502 of this title and that the violation warrants removal; or

(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State *(or in the case of the District of Columbia, in the District of Columbia)* in a State or local agency which does not receive loans or grants from a Federal agency;

the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

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PART III—EMPLOYEES

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER II—POLITICAL ACTIVITIES

SEC. 7322. DEFINITIONS.

For the purpose of this subchapter—

(1) "employee" means any individual, other than the President and the Vice President, employed or holding office in—

(A) an Executive agency other than the Government Accountability Office; *or*

(B) a position within the competitive service which is not in an Executive agency; **[**or**]**

[(C) the government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds;**]**

but does not include a member of the uniformed **[**services;**]** *services or an individual employed or holding office in the government of the District of Columbia;*

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