

DISTRICT OF COLUMBIA HATCH ACT REFORM ACT OF
2009

JUNE 19, 2009.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. TOWNS, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

[To accompany H.R. 1345]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom 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, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Legislative History	3
Section-by-Section	3
Explanation of Amendments	4
Committee Consideration	4
Roll Call Votes	4
Application of Law to the Legislative Branch	4
Statement of Oversight Findings and Recommendations of the Committee	4
Statement of General Performance Goals and Objectives	5
Constitutional Authority Statement	5
Federal Advisory Committee Act	5
Unfunded Mandates Statement	5
Earmark Identification	5
Committee Estimate	5
Budget Authority and Congressional Budget Office Cost Estimate	6
Changes in Existing Law Made by the Bill, as Reported	6

PURPOSE AND SUMMARY

H.R. 1345, the District of Columbia Hatch Act Reform Act of 2009, was introduced by Congresswoman Eleanor Holmes Norton on March 5, 2009. The bill amends the federal Hatch Act provisions applicable to both federal and state and local employees to ensure that employees of the District of Columbia are subject to the same restrictions on political activity that currently apply to all other state and local government employees. Unlike any other U.S. jurisdiction, the District of Columbia and its employees are subject to the Hatch Act provisions that apply to federal employees, rather than those that apply to states and localities.

BACKGROUND AND NEED FOR LEGISLATION

In 1939, Congress originally enacted legislation known as the Hatch Act, which together with subsequent amendments, limited the political activities of federal employees, employees of the District of Columbia, and certain employees of state and local governments. The Hatch Act was intended to eliminate partisan political activity among government employees in order to assure that public institutions functioned fairly, effectively, and without undue political interference.

In October 1993, the Hatch Act Reform Amendments of 1992 were enacted to modify the Hatch Act to permit federal employees to take an active part in political management and partisan political campaigns while off duty. Despite these changes, Congress retained provisions of the law which subject District of Columbia employees to the same Hatch Act restrictions as federal employees. These restrictions were maintained without regard to the fact that the District had previously been granted the authority to self-govern and enact its own local laws.

While the 1993 amendments to the Hatch Act exempted the District of Columbia Mayor, members of the City Council, and the Recorder of Deeds from its restrictions, they did not include exemptions for other local elected officials such as members of Advisory Neighborhood Commissions (ANC) or members of the former District of Columbia Board of Education. Current law has caused confusion about the applicability of the Hatch Act to District officials. In recent years, some ANC commissioners, who are elected, unpaid officials, have been affected by the uncertainty over their status under the Hatch Act.

In 2006, an ANC Commissioner withdrew from the race for City Council chairman after the federal Office of Special Counsel (OSC) stated that it is unlawful under the Hatch Act for ANC Commissioners to campaign for a partisan public office.¹ The OSC noted, however, that it was uncertain whether it had enforcement authority under the Hatch Act because ANC commissioners are elected officials.² Moreover, other ANC commissioners have run for partisan office without opposition from the OSC.³ The OSC has also found that elected members of the former DC Board of Education were

¹A *Leak in the Hatch Act*, Roll Call (Aug. 2, 2006) (online at <http://www.rollcall.com/issues/52-16/ath/14593-1.html>).

²*Id.*

³*Norton Bill Would Ease Some Hatch Act Rules*, Roll Call (Mar. 22, 2007) (online at <http://www.rollcall.com/issues/52-98/news/17674-1.html>).

technically prohibited by the Hatch Act from seeking partisan office, but the OSC cited a similar lack of enforcement authority regarding Board members.⁴ The OSC has noted that the current legal regime is unclear with regard to District elected officials.⁵ By contrast, Section 1502(c) of the Hatch Act, which is applicable to state and local governments, specifically exempts an individual holding elective office.

H.R. 1345 attempts to rectify this disparate treatment by placing District of Columbia employees under the same Hatch Act restrictions that apply to all other states and localities. By placing the District of Columbia under state and local Hatch Act provisions, H.R. 1345 would subject employees of the District of Columbia government to the same restrictions on partisan and political activity that currently apply to all employees of state and local governments who work in connection with programs financed in whole or in part by federal loans or grants. The Hatch Act restricts such state and local employees from running for partisan elective office, using their official authority or influence to impact election results, and directly or indirectly engaging in political coercion.

H.R. 1345 would also remove the provisions of title 5 that specifically apply Hatch Act restrictions on federal employees to employees of the District of Columbia. H.R. 1345 would make implementation of its amendments to the federal Hatch Act contingent upon the District of Columbia government enacting a local version of the Hatch Act to place restrictions on the political activities of District employees.

LEGISLATIVE HISTORY

Earlier versions of H.R. 1345 (H.R. 1572, H.R. 4969) were introduced in previous Congresses. H.R. 1572 was introduced on March 27, 2007, and referred to the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia. H.R. 4969 was introduced on March 15, 2006, and referred to the Committee on Oversight and Government Reform. The Committee held a markup of the bill on September 21, 2006, and ordered the bill reported by unanimous consent.

H.R. 1345 was introduced by Representative Eleanor Holmes Norton on March 5, 2009, and referred to the Committee on Oversight and Government Reform and the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia. The Committee held a markup of H.R. 1345 on June 4, 2009, and by unanimous consent ordered the bill discharged from the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia. The Committee then ordered H.R. 1345 reported by voice vote.

SECTION-BY-SECTION

Section 1. Short title

The short title of the bill is the District of Columbia Hatch Act Reform Act of 2009.

⁴A Leak in the Hatch Act, *supra* note 1.

⁵*Id.*

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 Section 1501(1) of title 5, U.S.C., to include the District in the section of the Hatch Act covering states, territories, and possessions of the United States. Subsection (b) of Section 2 would amend Section 7332(1) of title 5, U.S.C. to remove the employees of the District from the portion of the Hatch Act applicable to federal employees.

Under Section 2, District employees would be subject to the same restrictions on political activity that are applicable to state and local employees, including restrictions on running for elective office, using their official authority or influence to impact election results, and directly or indirectly engaging in political coercion. These Hatch Act provisions apply to state and local employees 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.⁶

Section 3. Effective date

Section 3 would make H.R. 1345 effective on the effective date of legislation to be enacted by the District of Columbia government in order to restrict the political activities of District employees.

EXPLANATION OF AMENDMENTS

No amendments to H.R. 1345 were offered or adopted in Committee.

COMMITTEE CONSIDERATION

On Thursday, June 4, 2009, the Committee met in open session and favorably ordered H.R. 1345 to be reported to the House by a voice vote.

ROLL CALL VOTES

No roll call votes were taken.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations.

H.R. 1345 is not applicable to the legislative branch in relation to the terms and conditions of employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with Clause 3(c)(1) of rule XIII and Clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report, including the need to sub-

⁶ 5 U.S.C. § 1501(4)

ject District of Columbia employees to the same restrictions on political activity that are applicable to state and local employees of other jurisdictions under the Hatch Act, and to eliminate confusion caused by current law.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with Clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report, including the requirement that the District of Columbia enact its own local version of the Hatch Act to restrict the political activities of District employees.

CONSTITUTIONAL AUTHORITY STATEMENT

Under Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 1345. Article I, Section 8, Clauses 17 and 18 of the Constitution of the United States grant the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement, the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 1345 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in Clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1345. However, Clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under Section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and Section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of Clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and Section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1345 from the Director of the Congressional Budget Office:

JUNE 9, 2009.

Hon. EDOLPHUS TOWNS,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, 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 2009.

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 2009

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 principle 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.

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.

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES

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CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

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§ 1501. Definitions

For the purpose of this chapter—

(1) “State” means [a State or territory] *a State, the District of Columbia, or a territory* or possession of the United States;

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PART III—EMPLOYEES

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SUBPART F—LABOR-MANAGEMENT AND EMPLOYEE RELATIONS

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CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

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SUBCHAPTER III—POLITICAL ACTIVITIES

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§ 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 *or an individual employed or holding office in the government of the District of Columbia;*

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