

NATIONAL GUARD EMPLOYMENT PROTECTION ACT OF
 2010

MARCH 22, 2010.—Committed to the Committee of the Whole House on the State
 of the Union and ordered to be printed

Mr. FILNER, from the Committee on Veterans' Affairs,
 submitted the following

R E P O R T

[To accompany H.R. 1879]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1879) to amend title 38, United States Code, to provide for employment and reemployment rights for certain individuals ordered to full-time National Guard duty, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	2
Purpose and Summary	2
Background and Need for Legislation	2
Hearings	3
Subcommittee Consideration	3
Committee Consideration	4
Committee Votes	4
Committee Oversight Findings	4
Statement of General Performance Goals and Objectives	4
New Budget Authority, Entitlement Authority, and Tax Expenditures	4
Earmarks and Tax and Tariff Benefits	4
Committee Cost Estimate	4
Congressional Budget Office Cost Estimate	5
Federal Mandates Statement	6
Advisory Committee Statement	6
Constitutional Authority Statement	6
Applicability to Legislative Branch	6
Section-by-Section Analysis of the Legislation	6
Changes in Existing Law Made by the Bill, as Reported	6

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Guard Employment Protection Act of 2010”.

SEC. 2. REEMPLOYMENT RIGHTS FOLLOWING CERTAIN NATIONAL GUARD DUTY.

(a) REEMPLOYMENT RIGHTS.—Section 4312(c)(4) of title 38, United States Code, is amended—

- (1) by striking “or” at the end of subparagraph (D);
 - (2) by striking the period at the end of subparagraph (E) and inserting “; or”;
- and

(3) by adding at the end the following new subparagraph:

“(F) ordered to full-time National Guard duty under the provisions of section 502(f) of title 32 when the period of duty is expressly designated in writing by the Secretary of Defense as covered by this subparagraph.”

(b) EFFECTIVE DATE.—Subparagraph (F) of section 4312(c)(4) of title 38, United States Code, as added by subsection (a), shall apply with respect to an individual ordered to full-time National Guard duty under section 502(f) of title 32, United States Code, on or after September 11, 2001, and shall entitle such individual to rights and benefits under chapter 43 of title 38 of such Code on or after that date.

PURPOSE AND SUMMARY

H.R. 1879 was introduced on April 2, 2009, by Representative Mike Coffman of Colorado. H.R. 1879, as amended, would add certain types of active duty performed by members of the National Guard to the protections afforded by the Uniformed Services Employment and Reemployment Rights Act (USERRA).

BACKGROUND AND NEED FOR LEGISLATION

The September 11, 2001, attacks on New York City and Washington, DC, as well as catastrophic natural disasters such as Hurricane Katrina in the United States and in countries like Haiti has resulted in extended periods of active duty performed by members of the National Guard. As a result, some members of the National Guard are approaching the five-year limit on active duty that is exempted under the USERRA.

The purposes of USERRA are clearly stated in section 4301 of title 38, United States Code. Section 4301 states that:

(a) the purposes of this chapter [USERRA] are—

- (1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;
- (2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and
- (3) to prohibit discrimination against persons because of their service in the uniformed service.

(b) It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.

USERRA was first designed in a time when National Guard forces were intended to function as a strategic reserve. However, national defense strategy has changed and now regards the Na-

tional Guard as operational forces. As such, those forces are now called upon to perform not only the traditional State-based duties such as disaster relief, but also extended active duty under both title 10 and title 32, United States Code.

In accordance with the purposes above, section 4312(c) of title 38, United States Code, places a limit of five-years of active duty that may be performed without losing the protections of USERRA. However, in recognition of the change in national strategy several types of active duty, such as weekend drills, annual active duty, and exercises are exempted from the five-year limit. Since September 11, 2001, the U.S. Department of Defense has relied heavily on activating various members of the National Guard for multiple periods of active duty under section 502(f) of title 32, United States Code. Such duty is not included among the exemptions listed under 4312(c) of title 38, United States Code.

While the basic tenets of USERRA remain, the addition of active duty performed under section 502(f) is appropriate and within the spirit of the purposes of USERRA. To clarify the intent of the legislation, section 2 of the bill was amended to limit the exemption to active duty under section 502(f) performed since September 11, 2001, and specifically designated in writing by the Secretary of Defense.

HEARINGS

On May 21, 2009, the Subcommittee on Economic Opportunity conducted a legislative hearing on various bills introduced during the 111th Congress, including H.R. 1879. The following witnesses testified: The Honorable Mike Coffman of Colorado; Mr. Richard Daley, Associate Legislation Director, Paralyzed Veterans of America; Mr. John L. Wilson, Associate National Legislative Director, Disabled American Veterans; Mr. Mark Seavey, Assistant Director, National Legislative Commission, The American Legion; Mr. Raymond C. Kelley, National Legislative Director, AMVETS; Mr. Wade J. Spann, Alumni, Wounded Warrior Project; Mr. Keith M. Wilson, Director, Office of Education Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs; accompanied by Mr. F. John Brizzi, Jr., Deputy Assistant General Counsel, U.S. Department of Veterans Affairs; and, Mr. John M. McWilliam, Deputy Assistant Secretary, Veterans' Employment and Training Service, U.S. Department of Labor. The Honorable Bob Filner of California submitted a statement for the record.

SUBCOMMITTEE CONSIDERATION

On March 4, 2010, the Subcommittee on Economic Opportunity met in an open markup session and ordered H.R. 1879, as amended, favorably forwarded to the full Committee by voice vote. During consideration of the bill the following amendment in the nature of a substitute was considered:

An amendment in the nature of a substitute offered by Mr. Teague of New Mexico to clarify that National Guard members would only qualify if they receive orders of duty indicating that such duty qualifies for the exemption. The amendment also clarifies that a particular section 502(f) assignment is exempt from the five-year USERRA limitation of section 4312(c)(4)(F)

of title 38, United States Code, only if the Secretary of Defense expressly designates in writing on the orders to duty that such duty qualifies.

COMMITTEE CONSIDERATION

On March 10, 2010, the full Committee met in an open markup session. A quorum being present, the Committee ordered H.R. 1879, as amended, reported favorably to the House of Representatives, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 1879, as amended, reported to the House. A motion by Mr. Brown of South Carolina to order H.R. 1879, as amended, reported favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

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.

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.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1879 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 1879 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 1879 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 16, 2010.

Hon. BOB FILNER,
*Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1879, the National Guard Employment Protection Act of 2010.

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

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 1879—National Guard Employment Protection Act of 2010

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) requires employers (both governmental and private) to provide certain employment benefits, including guaranteed reemployment, to employees who miss work because of their military service. Under USERRA, those protections are guaranteed for up to five years of cumulative absence from a job due to service in the military. However, some servicemembers have their jobs protected for longer than five years, because some specific types of military duty do not count against the period of guaranteed USERRA protection.

H.R. 1879 would amend current law to add a type of National Guard duty to the list of duties exempted from counting against the limited period of USERRA protection. CBO estimates that relatively few National Guard members, if any, who are current or previous federal employees, would receive additional job protection or other benefits because of this new exemption. Thus, CBO estimates that enacting this bill would have no impact on the federal budget.

Enacting H.R. 1879 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

Under current law, state, local, and tribal governments as well as private-sector employers must reemploy military servicemembers as required by USERRA. Such a requirement is an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA). By expanding the individuals protected under USERRA, state, local, and tribal governments as well as private-sector employers would face additional costs to comply with these reemployment protections. Based on annual reporting under USERRA and on discussions with agency officials, CBO estimates that few additional servicemembers would qualify for reemployment. Thus the cost of complying with the mandates would fall

well below the annual thresholds in UMRA for both intergovernmental and private-sector mandates (\$70 million and \$141 million in 2010, respectively, adjusted annually for inflation).

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

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1879 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 1879.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for H.R. 1879 is provided by Article I, section 8 of the Constitution of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title of H.R. 1879, as amended, as the “National Guard Employment Protection Act of 2009.”

Section 2. Reemployment rights following certain National Guard duty

This section would amend section 4312(c)(4) of title 38, United States Code, to add full time National Guard active duty under section 502(f) of title 32, United States Code, when designated in writing by the Secretary of Defense, to the list of active duty exempt from the five-year limit.

This section would also provide the effective date for duty exempted as September 11, 2001.

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 38, UNITED STATES CODE

* * * * *

PART III—READJUSTMENT AND RELATED BENEFITS

* * * * *

CHAPTER 43—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

* * * * *

SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS

* * * * *

§ 4312. Reemployment rights of persons who serve in the uniformed services

(a) * * *

* * * * *

(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service—

(1) * * *

* * * * *

(4) performed by a member of a uniformed service who is—
(A) * * *

* * * * *

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services; [or]

(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10[.]; or

(F) ordered to full-time National Guard duty under the provisions of section 502(f) of title 32 when the period of duty is expressly designated in writing by the Secretary of Defense as covered by this subparagraph.

* * * * *