

AMENDING TITLE 38, UNITED STATES CODE, TO PROVIDE FOR THE INCLUSION OF CERTAIN ADDITIONAL PERIODS OF ACTIVE DUTY SERVICE FOR PURPOSES OF SUSPENDING CHARGES TO VETERANS' ENTITLEMENT TO EDUCATIONAL ASSISTANCE UNDER THE LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS DURING PERIODS OF SUSPENDED PARTICIPATION IN VOCATIONAL REHABILITATION PROGRAMS

JULY 24, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROE of Tennessee, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany H.R. 5538]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 5538) to amend title 38, United States Code, to provide for the inclusion of certain additional periods of active duty service for purposes of suspending charges to veterans' entitlement to educational assistance under the laws administered by the Secretary of Veterans Affairs during periods of suspended participation in vocational rehabilitation programs, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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#### PURPOSE AND SUMMARY

H.R. 5538 would authorize that when a member of the Guard and Reserve component is called to active duty under an order authorized by 12304, 12304a, 12304b of title 10, United States Code (U.S.C.) in the middle of a training program being paid for by the Department of Veterans Affairs (VA) Vocational Rehabilitation and Employment (VR&E) program, the servicemember would not be charged for the duration of the training used due to the interruption. Representative Scott Peters of California introduced H.R. 5538 on April 17, 2018.

#### BACKGROUND AND NEED FOR LEGISLATION

Section 3103 of title 38, U.S.C. provides that VR&E beneficiaries have 12 years to use these benefits beginning on the date from when they were discharged from active duty to use a maximum of 48 months of assistance. Section 3105 of title 38, U.S.C. authorizes certain members of the National Guard or Reserves ordered to active duty to pause their program and not charge entitlement for training they began before they were ordered to active duty and were unable to complete this training due to these orders. This section authorizes that orders under 12304 of title 10, U.S.C. (support of forces following a terrorist attack) are eligible for this pause, but orders under sections 12304a and 12304b of title 10, U.S.C. are not eligible. This bill would address this issue, and would permit those serving under orders authorized by 12304a and 12304b of title 10, U.S.C. to also not charge entitlement for the training time they used towards the completion of a training program they were unable to complete due to being ordered to active duty. The Committee acknowledges that orders authorized by 12304a and 12304b of title 10, U.S.C. are special orders used to respond to domestic emergencies at the request of the governor (12304a) or to augment combat forces on preplanned deployments serving overseas (12304b). As such, the Committee believes it is appropriate to acknowledge that servicemembers serving under these orders are performing some of the same duties as those who are currently eligible to waive this entitlement charge due to being ordered to active duty.

#### HEARINGS

On May 23, 2018, the Subcommittee on Economic Opportunity held a legislative hearing on several bills pending before the Subcommittee including H.R. 5538.

The following witnesses testified:

The Honorable Julia Brownley, U.S. House of Representatives, 26th District, California; The Honorable Scott Peters, U.S. House of Representatives, 52nd District, California; The Honorable Brad Wenstrup, U.S. House of Representatives, 2nd District, Ohio; The Honorable Cheri Bustos, U.S. House of Representatives, 17th District, Illinois; The Honorable Ryan Costello, U.S. House of Representatives, 6th District, Pennsyl-

vania; Ms. Margarita Devlin, Principal Deputy Under Secretary for Benefits, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Mr. John Kamin, Assistant Director, Veterans Employment and Education Division, The American Legion; Ms. Lauren Augustine, Vice President of Government Affairs, Student Veterans of America; and Ms. Rebecca Burgess, Program Manager, Program on American Citizenship, American Enterprise Institute.

Statements for the record were submitted by:

U.S. Department of Defense; U.S. Department of Justice; Tragedy Assistance Program for Survivors; and Paralyzed Veterans of America.

#### SUBCOMMITTEE CONSIDERATION

There was no Subcommittee consideration of H.R. 5538.

#### COMMITTEE CONSIDERATION

On July 12, 2018, the full Committee met in open markup session, a quorum being present, and ordered H.R. 5538 to be reported favorably to the House of Representatives by voice vote.

#### COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes taken on amendments or in connection with ordering H.R. 5538 reported to the House. A motion by Representative Tim Walz of Minnesota to report H.R. 5538 favorably to the House of Representatives was adopted 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 to provide servicemembers with more opportunities to complete VR&E training.

#### 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. 5538 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. 5538 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. 5538 provided by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 18, 2018.*

Hon. PHIL ROE, M.D.,  
*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. 5538, a bill to amend title 38, United States Code, to provide for the inclusion of certain additional periods of active-duty service for purposes of suspending charges to veterans' entitlement to educational assistance under the laws administered by the Secretary of Veterans Affairs during periods of suspended participation in vocational rehabilitation programs.

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

Sincerely,

MARK P. HADLEY  
(For Keith Hall, Director).

Enclosure.

*H.R.—A bill to amend title 38, United States Code, to provide for the inclusion of certain additional periods of active-duty service for purposes of suspending charges to veterans' entitlement to educational assistance under the laws administered by the Secretary of Veterans Affairs during periods of suspended participation in vocational rehabilitation programs*

Veterans with service-connected disabilities that limit or prevent them from being employed can receive vocational rehabilitation services such as education, job training, and physical therapy from the Department of Veterans Affairs (VA). The costs of those services are paid from mandatory appropriations. Generally, veterans can receive up to 48 months of such benefits, but VA has broad authority to provide such benefits after that limit has been reached.

Under that program, if veterans are unable to complete a course of education because they are called to active duty under any of six authorities that are listed in 38 U.S.C. §3105, the uncompleted

course does not count towards the limit on their benefits. H.R. 5538 would add active-duty service to participate in certain preplanned training operations or in response to natural disasters to the list of orders specified in section 3105.

CBO expects that few veterans who are receiving vocational rehabilitation would be mobilized for those operations and that VA would likely extend the availability of benefits under current law if the veteran needed more time to complete a program of education. However, under this provision, a very small number of veterans could receive more benefits than they would have gotten under current law. The costs for those veterans who receive additional benefits under the bill would be insignificant over the 2019–2028 period, CBO estimates.

Pay-as-you-go procedures apply because enacting H.R. 5538 would affect direct spending. However, CBO estimates that the effects would be insignificant for each year. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 5538 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5538 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is David Newman. The estimate was reviewed by Leo Lex, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 5538 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. 5538.

#### STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 5538 is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 5538 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.

#### STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 5538 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Ac-

countability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee estimates that H.R. 5538 contains no directed rule-making that would require the Secretary to prescribe regulations.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Inclusion of certain additional periods of active duty service for purposes of suspension of charges to entitlement during periods of suspended participation in Department of Veterans Affairs vocational rehabilitation programs*

This section would amend Section 3105(e)(2) of title 38, U.S.C., by striking “or 12304” and inserting “12304, 12304a, or 12304b”.

#### 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, and existing law in which no change is proposed is shown in roman):

#### 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, and existing law in which no change is proposed is shown in roman):

### TITLE 38, UNITED STATES CODE

\* \* \* \* \*

### PART III—READJUSTMENT AND RELATED BENEFITS

\* \* \* \* \*

### CHAPTER 31—TRAINING AND REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

\* \* \* \* \*

#### § 3105. Duration of rehabilitation programs

(a) In any case in which the Secretary is unable to determine whether it currently is reasonably feasible for a veteran to achieve a vocational goal, the period of extended evaluation under section 3106(c) of this title may not exceed twelve months, except that such period may be extended for additional periods of up to six months each if the Secretary determines before granting any such exten-

sion that it is reasonably likely that, during the period of any such extension, a determination can be made whether the achievement of a vocational goal is reasonably feasible in the case of such veteran.

(b)(1) Except as provided in paragraph (2) and in subsection (c), the period of a vocational rehabilitation program for a veteran under this chapter following a determination of the current reasonable feasibility of achieving a vocational goal may not exceed forty-eight months, except that the counseling and placement and postplacement services described in section 3104(a)(2) and (5) of this title may be provided for an additional period not to exceed eighteen months in any case in which the Secretary determines the provision of such counseling and services to be necessary to accomplish the purposes of a rehabilitation program in the individual case.

(2) The period of a vocational rehabilitation program pursued by a veteran under section 3102(b) of this title following a determination of the current reasonable feasibility of achieving a vocational goal may not exceed 12 months.

(c) The Secretary may extend the period of a vocational rehabilitation program for a veteran to the extent that the Secretary determines that an extension of such period is necessary to enable such veteran to achieve a vocational goal if the Secretary also determines—

(1) that such veteran had previously been rehabilitated to the point of employability but (A) such veteran's need for further vocational rehabilitation has arisen out of a worsening of such veteran's service-connected disability that precludes such veteran from performing the duties of the occupation for which such veteran had been so rehabilitated, or (B) the occupation for which such veteran had been so rehabilitated is not suitable in view of such veteran's current employment handicap and capabilities; or

(2) under regulations which the Secretary shall prescribe, that such veteran has a serious employment handicap and that an extension of such period is necessary to accomplish the purposes of a rehabilitation program for such veteran.

(d)(1) Except as provided in paragraph (2), the period of a program of independent living services and assistance for a veteran under this chapter (following a determination by the Secretary that such veteran's disability or disabilities are so severe that the achievement of a vocational goal currently is not reasonably feasible) may not exceed twenty-four months.

(2)(A) The period of a program of independent living services and assistance for a veteran under this chapter may exceed twenty-four months as follows:

(i) If the Secretary determines that a longer period is necessary and likely to result in a substantial increase in the veteran's level of independence in daily living.

(ii) If the veteran served on active duty during the Post-9/11 Global Operations period and has a severe disability (as determined by the Secretary for purposes of this clause) incurred or aggravated in such service.

(B) In this paragraph, the term "Post-9/11 Global Operations period" means the period of the Persian Gulf War beginning on Sep-

tember 11, 2001, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(e)(1) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of a subsistence allowance and other assistance described in paragraph (2) shall not—

(A) be charged against any entitlement of any veteran under this chapter; or

(B) be counted toward the aggregate period for which section 3695 of this title limits an individual's receipt of allowance or assistance.

(2) The payment of the subsistence allowance and other assistance referred to in paragraph (1) is the payment of such an allowance or assistance for the period described in paragraph (3) to a veteran for participation in a vocational rehabilitation program under this chapter if the Secretary finds that the veteran had to suspend or discontinue participation in such vocational rehabilitation program as a result of being ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, **[or 12304]** *12304, 12304a, or 12304b* of title 10.

(3) The period for which, by reason of this subsection, a subsistence allowance and other assistance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of this title shall be the period of participation in the vocational rehabilitation program for which the veteran failed to receive credit or with respect to which the veteran lost training time, as determined by the Secretary.

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