

Calendar No. 154

117TH CONGRESS }
1st Session }

SENATE

{ REPORT
117-44

CIVILIAN RESERVIST EMERGENCY
WORKFORCE ACT OF 2021

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2293

TO AMEND THE ROBERT T. STAFFORD DISASTER RELIEF
AND EMERGENCY ASSISTANCE ACT TO PROVIDE CERTAIN
EMPLOYMENT RIGHTS TO RESERVISTS OF THE FEDERAL
EMERGENCY MANAGEMENT AGENCY, AND FOR OTHER PURPOSES



OCTOBER 26, 2021.—Ordered to be printed

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OCTOBER 26, 2021.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2293]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2293) to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide certain employment rights to reservists of the Federal Emergency Management Agency, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 2293, the Civilian Reservist Emergency Workforce (CREW) Act of 2021, amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and the Uniformed Services Employment and Reemployment Rights Act (USERRA) to grant Federal Emergency Management Agency (FEMA) reservists employment protections when they are called on to help Americans recover from disasters. The CREW Act extends employment protections to FEMA reservists to ensure they would be able to keep

their full-time employment while being called to serve their country as a disaster response worker.

II. BACKGROUND AND NEED FOR THE LEGISLATION

FEMA has responded to a record number of disasters in recent years, including brutal wildfires, record Atlantic hurricane seasons, and the COVID-19 pandemic.¹ FEMA relies on its temporary, on-call reservists to help it scale up and respond to concurrent crises.² Reservists quickly deploy to disaster areas to help administer various assistance programs and are essential to the Agency's ability to respond quickly and effectively to disasters.³ Given the variable timing of disasters, reservists are expected to be available most of the year and only have a limited ability to request periods of time where they are unavailable to deploy.⁴

Reservists are only paid when deployed to a disaster, and because they are not extended any employment protections, such as those enjoyed by the National Guard, it is difficult to recruit and retain staff who likely cannot juggle being FEMA reservists with full-time employment.⁵ As a result, FEMA's reservist force has been consistently and significantly smaller than its workforce target.⁶ The nationwide response to the COVID-19 pandemic exacerbated this personnel shortage, stretching the Agency's resources and making it difficult to effectively respond to the nation's disaster relief needs.⁷ Former disaster relief officials, the Business Executives for National Security, and several other actors have called for reforms to address the FEMA reservist shortfall.⁸

The CREW Act addresses this shortfall by extending the employment protections of USERRA to FEMA reservists when they are called to help Americans recover from a disaster. USERRA currently covers National Guardsmen, allowing them to request unpaid leave from their civilian jobs while serving their country. A study by the RAND Corporation found that expanding USERRA coverage to FEMA reservists would be critical to the recruiting and retention of FEMA reservists and would increase FEMA's readiness posture and ability to respond to disasters.⁹

III. LEGISLATIVE HISTORY

Chairman Gary Peters (D-MI) and Ranking Member Portman (R-OH) introduced S. 2293, the CREW Act, on June 24, 2021. The bill was referred to the Senate Committee on Homeland Security

¹ See, e.g., *Facing Hurricane and Wildfire Seasons, FEMA Is Already Worn Out*, New York Times (May 20, 2021) (<https://www.nytimes.com/2021/05/20/climate/fema-staff-wildfires-hurricane-season.html>).

² See Government Accountability Office, *FEMA Disaster Workforce: Actions Needed to Address Deployment and Staff Development Challenges*, at 6 (GAO-20-360) (May 2020).

³ See *id.* at 6-7.

⁴ See RAND National Defense Research Institute, *FEMA Reservists: Best Practices for Managing Intermittent Workforces*, at 21 (2018).

⁵ See *id.* at 68.

⁶ See Government Accountability Office, *supra* note 2, at 18.

⁷ Senate Committee on Homeland Security and Governmental Affairs, Testimony Submitted for the Record of Rear Admiral Joseph L. Nimmich, former Deputy Administrator of the Federal Emergency Management Agency, *Hearing on Preparedness for COVID-19: The Initial Pandemic Response and Lessons Learned*, 117th Cong. (Apr. 14, 2021) (S. Hrg. 117-xx).

⁸ See *id.*; Business Executives for National Security, Commission on the National Response Enterprise, *Findings and Recommendations of the BENS: A Call to Action* (Feb., 2021) (<https://www.bens.org/file/national-response-enterprise/CNRE-Report-February-2021.pdf>); Government Accountability Office, *supra* note 2; RAND National Defense Research Institute, *supra* note 4.

⁹ See RAND National Defense Research Institute, *supra* note 4 at 68.

and Governmental Affairs. The Committee considered S. 2293 at a business meeting on July 14, 2021. During the business meeting, a substitute amendment was offered by Chairman Peters which clarified which workforce protections are granted to FEMA reservists and amended USSERA to reflect this change. The Peters Substitute Amendment was adopted by voice vote *en bloc* with Senators Peters, Hassan, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley present. The Committee ordered the bill, as amended, reported favorably by voice vote *en bloc* with Senators Peters, Hassan, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section designates the name of the bill as the “Civilian Reservist Emergency Workforce Act of 2021” or the “CREW Act.”

Section 2. Personnel Performing Service Responding to Presidentially Declared major disasters and emergencies

This section amends Section 306 of the Stafford Act by adding a new subsection (d) titled “Personnel Performing Service Responding to Disasters and Emergencies.” There are two paragraphs proposed within this new subsection (d):

Paragraph (1) provides USERRA protections to FEMA Reservists who deploy to major disaster and emergency sites.

Paragraph (2) allows FEMA Reservists who deploy to major disaster or emergency sites to claim the employment and reemployment rights of USERRA even if they do not provide notice of their absence from work to their employer due to the nature of their deployment. This subsection is in line with the “military necessity” exception to the USERRA provision, and a Reservist would not be required to furnish a notice of absence to their employer for USERRA’s employment and reemployment provisions to apply.

Section 3. Extension of certain employment and reemployment rights to FEMA Reservists

Subsection (a) makes amendments to the following definitions: (1) adds deployment to a Presidentially declared major disaster or emergency site as a FEMA Reservist and service as an intermittent disaster-response appointee under the types of “service in the uniformed services” that would allow someone to claim employment and reemployment protections under USERRA; and (2) adds FEMA Reservists serving under Stafford Act § 306(b)(1) and intermittent disaster-response appointees to those who are considered “uniformed services” and consequently eligible for employment and reemployment protections under USERRA.

Subsection (b) amends USERRA at 38 U.S.C. 4312(b) by giving the FEMA Administrator authority for determining necessity of preclusion from advance notice of service for Urban Search & Rescue (US&R) task force members serving under Stafford Act § 327 and FEMA Reservists serving under Stafford Act § 306(b)(1). This subsection also gives the Secretary of Health and Human Services authority for determining necessity of preclusion from advance notice of service for intermittent disaster-response appointees in a

National Disaster Medical System (NDMS) activation under Public Health Service Act §2812(c). The references to NDMS and US&R are technical fixes to previous enacted laws.

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 and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 20, 2021.

Hon. GARY C. PETERS,
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 S. 2293, the CREW Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 2293, CREW Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 14, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Under Threshold
* = between zero and \$500,000.			

S. 2293 would extend certain employment protections afforded under the Uniformed Services Employment and Reemployment Rights Act (USERRA) to people who are activated for temporary duty by the Federal Emergency Management Agency (FEMA) in re-

sponse to disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. FEMA currently employs about 12,400 such reservists, who are deployed for duty as needed.

USERRA generally requires employers to reemploy covered personnel who serve on active duty upon their return to civilian life and prohibits employment discrimination against such service members. The Department of Labor's Veterans' Employment and Training Service (VETS), in coordination with other agencies, collaboratively enforces USERRA by investigating claims of discrimination. Over the past five years, the VETS program investigated an average of about 1,000 new discrimination cases each year out of an eligible population totaling more than 1 million service members (mostly personnel from the reserve and National Guard components of the U.S. military, as well as a small number of FEMA employees).

Using information from VETS about the rate of claim filings for the current USERRA population, CBO expects that extending employment protections to additional people would increase the number of claims, on average, by about five each year. Based on the cost to administer the VETS program, CBO estimates implementing the bill would cost less than \$500,000 over the 2022–2026 period; such spending would be subject to the availability of appropriated funds.

S. 2293 also would impose a mandate as defined in the Unfunded Mandates Reform Act (UMRA) on the employers of FEMA reservists who are activated for duty. It would expand existing protections in law to include members who return to work after being activated by FEMA, requiring employers to provide the same benefits, pay, and seniority as if they had not been activated. The bill also would expand a requirement in current law that requires employers to treat reservists who are activated by FEMA as furloughed employees or employees on a leave of absence, entitling them to any compensation or benefits otherwise available to them in that status. The cost of the mandate would be the cost to employers who provide those benefits and would depend on the frequency and severity of disasters requiring activation of FEMA reservists. CBO estimates that the cost to provide furlough benefits, such as health insurance, to the approximately 12,400 FEMA reservists would be well below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$85 million and \$170 million in 2021, respectively, adjusted annually for inflation).

The CBO staff contact for this estimate is Jon Sperl (for federal costs) and Brandon Lever (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of 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 brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 38—VETERANS’ BENEFITS

* * * * *

PART III—READJUSTMENT AND RELATED BENEFITS

* * * * *

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

* * * * *

SUBCHAPTER I—GENERAL

* * * * *

SEC. 4303. DEFINITIONS

For the purposes of this chapter—

(1) * * *

* * * * *

(13) The term “service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, State active duty for a period of 14 days or more, State active duty in response to a national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.), State active duty in response to a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, a period for which a System member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, a period for which a person is absent from a position of employment due to an appointment into service in the Federal Emergency Management Agency as intermittent personnel under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5149(b)(1)), and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

(14) * * *

(15) * * *

(16) * * *

(17[6]) The term “uniformed services” means the Armed Forces, the Army National Guard and the Air National Guard when en-

gaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, the commissioned officer corps of the National Oceanic and Atmospheric Administration, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, *intermittent personnel who are appointed into Federal Emergency Management Agency service under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5149(b)(1)) or to train for such service*, and any other category of persons designated by the President in time of war or national emergency.

* * * * *

SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS

* * * * *

SEC. 4312. REEMPLOYMENT RIGHTS OF PERSONS WHO SERVE IN THE UNIFORMED SERVICES

(a) * * *

(b)(1) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. [A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.]

(2) *A determination of military necessity for purposes of paragraph (1) shall be made—*

(A) except as provided in subparagraphs (B) and (C), pursuant to regulations prescribed by the Secretary of Defense;

(B) for persons performing service to the Federal Emergency Management Agency under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165f) and as intermittent personnel under section 306(b)(1) of such Act (42 U.S.C. 5149(b)(1)), by the Administrator of the Federal Emergency Management Agency as described in sections 327(j)(2) and 306(d)(2) of such Act (42 U.S.C. 5165(j)(2) and 5149(d)(2)), respectively; or

(C) for intermittent disaster-response appointees of the National Disaster Medical System, by the Secretary of Health and Human Services as described in section 2812(d)(3)(B) of the Public Health Service Act (42 U.S.C. 300hh-11(d)(3)(B)).

(3) *A determination of military necessity under paragraph (1) shall not be subject to judicial review.*

* * * * *

TITLE 42—THE PUBLIC HEALTH AND WELFARE

* * * * *

CHAPTER 68—DISASTER RELIEF

* * * * *

SUBCHAPTER III—MAJOR DISASTER AND EMERGENCY ASSISTANCE ADMINISTRATION

* * * * *

SEC. 5149. PERFORMANCE OF SERVICES

- (a) * * *
- (b) * * *
- (c) * * *

(d) PERSONNEL PERFORMING SERVICE RESPONDING TO DISASTERS AND EMERGENCIES.—

(1) USERRA EMPLOYMENT AND REEMPLOYMENT RIGHTS.— The protections, rights, benefits, and obligations provided under chapter 43 of title 38, United States Code, shall apply to intermittent personnel appointed pursuant to subsection (b)(1) to perform service to the Federal Emergency Management Agency under sections 401 and 501 or to train for such service.

(2) NOTICE OF ABSENCE FROM POSITION OF EMPLOYMENT.— Preclusion of giving notice of service by necessity of service under subsection (b)(1) to perform service to the Federal Emergency Management Agency under sections 401 and 501 or to train for such service shall be considered preclusion by 'military necessity' for purposes of section 4312(b) of title 38, United States Code, pertaining to giving notice of absence from a position of employment. A determination of such necessity shall be made by the Administrator and shall not be subject to review in any judicial or administrative proceeding.

* * * * *