

109TH CONGRESS  
1ST SESSION

# S. 981

To ensure that a Federal employee who takes leave without pay in order to perform service as a member of the uniformed services or member of the National Guard shall continue to receive pay in an amount which, when taken together with the pay and allowances such individual is receiving for such service, will be no less than the basic pay such individual would then be receiving if no interruption in employment had occurred.

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## IN THE SENATE OF THE UNITED STATES

MAY 9, 2005

Mr. DURBIN (for himself, Ms. MIKULSKI, Mr. ALLEN, Ms. LANDRIEU, Mr. LEAHY, Mr. SARBANES, Mr. BINGAMAN, Mr. LAUTENBERG, and Mr. KERRY) introduced the following bill; which was read the first time

MAY 10, 2005

Read the second time and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To ensure that a Federal employee who takes leave without pay in order to perform service as a member of the uniformed services or member of the National Guard shall continue to receive pay in an amount which, when taken together with the pay and allowances such individual is receiving for such service, will be no less than the basic pay such individual would then be receiving if no interruption in employment had occurred.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. NONREDUCTION IN PAY WHILE FEDERAL EM-**  
 4                       **PLOYEE IS PERFORMING ACTIVE SERVICE IN**  
 5                       **THE UNIFORMED SERVICES OR NATIONAL**  
 6                       **GUARD.**

7       (a) SHORT TITLE.—This Act may be cited as the  
 8       “Reservists Pay Security Act of 2005”.

9       (b) IN GENERAL.—Subchapter IV of chapter 55 of  
 10      title 5, United States Code, is amended by adding at the  
 11      end the following:

12     **“§ 5538. Nonreduction in pay while serving in the**  
 13                       **uniformed services or National Guard**

14       “(a) An employee who is absent from a position of  
 15      employment with the Federal Government in order to per-  
 16      form active duty in the uniformed services pursuant to a  
 17      call or order to active duty under a provision of law re-  
 18      ferred to in section 101(a)(13)(B) of title 10 shall be enti-  
 19      tled, while serving on active duty, to receive, for each pay  
 20      period described in subsection (b), an amount equal to the  
 21      amount by which—

22               “(1) the amount of basic pay which would oth-  
 23               erwise have been payable to such employee for such  
 24               pay period if such employee’s civilian employment

1 with the Government had not been interrupted by  
2 that service, exceeds (if at all)

3 “(2) the amount of pay and allowances which  
4 (as determined under subsection (d))—

5 “(A) is payable to such employee for that  
6 service; and

7 “(B) is allocable to such pay period.

8 “(b)(1) Amounts under this section shall be payable  
9 with respect to each pay period (which would otherwise  
10 apply if the employee’s civilian employment had not been  
11 interrupted)—

12 “(A) during which such employee is entitled to  
13 reemployment rights under chapter 43 of title 38  
14 with respect to the position from which such em-  
15 ployee is absent (as referred to in subsection (a));  
16 and

17 “(B) for which such employee does not other-  
18 wise receive basic pay (including by taking any an-  
19 nual, military, or other paid leave) to which such  
20 employee is entitled by virtue of such employee’s ci-  
21 vilian employment with the Government.

22 “(2) For purposes of this section, the period during  
23 which an employee is entitled to reemployment rights  
24 under chapter 43 of title 38—

1           “(A) shall be determined disregarding the provi-  
2           sions of section 4312(d) of title 38; and

3           “(B) shall include any period of time specified  
4           in section 4312(e) of title 38 within which an em-  
5           ployee may report or apply for employment or reem-  
6           ployment following completion of service on active  
7           duty to which called or ordered as described in sub-  
8           section (a).

9           “(c) Any amount payable under this section to an em-  
10          ployee shall be paid—

11           “(1) by such employee’s employing agency;

12           “(2) from the appropriation or fund which  
13          would be used to pay the employee if such employee  
14          were in a pay status; and

15           “(3) to the extent practicable, at the same time  
16          and in the same manner as would basic pay if such  
17          employee’s civilian employment had not been inter-  
18          rupted.

19           “(d) The Office of Personnel Management shall, in  
20          consultation with Secretary of Defense, prescribe any reg-  
21          ulations necessary to carry out the preceding provisions  
22          of this section.

23           “(e)(1) The head of each agency referred to in section  
24          2302(a)(2)(C)(ii) shall, in consultation with the Office,

1 prescribe procedures to ensure that the rights under this  
 2 section apply to the employees of such agency.

3 “(2) The Administrator of the Federal Aviation Ad-  
 4 ministration shall, in consultation with the Office, pre-  
 5 scribe procedures to ensure that the rights under this sec-  
 6 tion apply to the employees of that agency.

7 “(f) For purposes of this section—

8 “(1) the terms ‘employee’, ‘Federal Govern-  
 9 ment’, and ‘uniformed services’ have the same re-  
 10 spective meanings as given them in section 4303 of  
 11 title 38;

12 “(2) the term ‘employing agency’, as used with  
 13 respect to an employee entitled to any payments  
 14 under this section, means the agency or other entity  
 15 of the Government (including an agency referred to  
 16 in section 2302(a)(2)(C)(ii)) with respect to which  
 17 such employee has reemployment rights under chap-  
 18 ter 43 of title 38; and

19 “(3) the term ‘basic pay’ includes any amount  
 20 payable under section 5304.”.

21 (c) CLERICAL AMENDMENT.—The table of sections  
 22 for chapter 55 of title 5, United States Code, is amended  
 23 by inserting after the item relating to section 5537 the  
 24 following:

“5538. Nonreduction in pay while serving in the uniformed services or National  
 Guard.”.

1 (d) EFFECTIVE DATE.—

2 (1) IN GENERAL.—The amendments made by  
3 this section shall apply with respect to pay periods  
4 (as described in section 5538(b) of title 5, United  
5 States Code, as amended by this section) beginning  
6 on or after the date of enactment of this Act.

7 (2) CONDITIONAL RETROACTIVE APPLICA-  
8 TION.—

9 (A) IN GENERAL.—The amendments made  
10 by this section shall apply with respect to pay  
11 periods (as described in section 5538(b) of title  
12 5, United States Code, as amended by this sec-  
13 tion) beginning on or after October 11, 2002  
14 through the date of enactment of this Act, sub-  
15 ject to the availability of appropriations.

16 (B) AUTHORIZATION OF APPROPRIA-  
17 TIONS.—There are authorized to be appro-  
18 priated \$125,000,000 for purposes of subpara-  
19 graph (A).

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