

115TH CONGRESS
2D SESSION

H. R. 5255

To amend the Homeland Security Act of 2002 to establish a Department of Homeland Security Reserve Service, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2018

Mr. CARSON of Indiana introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To amend the Homeland Security Act of 2002 to establish a Department of Homeland Security Reserve Service, and for other purposes.

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. SHORT TITLE.**

4 This Act may be cited as the “Department of Home-
5 land Security Reserve Service Act”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

9 (1) Components within the Department of
10 Homeland Security face personnel shortages related

1 to hiring processes, retention of employees, and
2 surges in need.

3 (2) In response to the devastation caused by
4 Hurricane Harvey, Hurricane Irma, Hurricane Jose,
5 and Hurricane Maria, the Federal Emergency Man-
6 agement Agency has deployed thousands of their
7 temporary on-call reservists and specialized Cadre
8 On-Call Response/Recovery (CORE) workforces.

9 (3) In 2017, the Director of the United States
10 Secret Service asked Congress to increase federally
11 mandated caps on salary and overtime for the agen-
12 cy. At the time of the request, more than 1,000
13 agents had worked numerous, uncompensated hours
14 of overtime. The Director cited a protracted presi-
15 dential campaign, a large first family, ongoing per-
16 sonnel shortages, and increasing demands in inves-
17 tigative missions as having strained the organiza-
18 tion.

19 (4) In 2015, the Committee on Oversight and
20 Government Reform of the House of Representatives
21 issued bipartisan report documenting the Secret
22 Service as understaffed, overburdened, and “in cri-
23 sis”. The agency has posted announcements to hire
24 annuitants for the position of investigator to help
25 mitigate shortages in their investigative mission.

1 (5) In 2016, Congress approved a request from
2 the Transportation Security Administration to hire
3 new officers and pay overtime to ease travel disruptions
4 and increase security.

5 (6) The Transportation Security Administration
6 2017 budget request calls for the first Federal Air
7 Marshal class since 2011.

8 (7) In 2017, Customs and Border Protection
9 and Immigration and Customs Enforcement initiated
10 a hiring surge. The Carl Levin and Howard P.
11 “Buck” McKeon National Defense Authorization
12 Act for Fiscal Year 2015 (Public Law 113–291), extended
13 the temporary authority for agency heads
14 (including the Secretary of Homeland Security) to
15 grant dual compensation waivers for certain part-
16 time, temporary reemployed annuitants through De-
17 cember 2019. Dual compensation waivers allow re-
18 employed annuitants to receive an unreduced salary
19 while concurrently receiving their full pension benefit.
20 U.S. Customs and Border Protection is currently
21 making use of this dual compensation waiver
22 authority in efforts to rehire retired Customs and
23 Border Protection officers as reemployed annuitants
24 to support recruitment and training efforts.

1 (b) SENSE OF CONGRESS.—It is the sense of Con-
2 gress that by establishing a reserve service comprised of
3 skilled, ready-to-work former employees, components of
4 the Department of Homeland Security can better mitigate
5 personnel shortages and meet emergent demands without
6 unnecessarily recruiting, hiring, and training new perma-
7 nent employees.

8 (c) PURPOSE.—The purpose of this Act is to establish
9 a reserve service to assist the Department of Homeland
10 Security in maintaining a skilled, ready-to-work pool for
11 performing non-continuous duties of investigation, patrol,
12 response, security, protection, recovery, and inspection.
13 The reserve service capitalizes on investments in human
14 capital, providing for efficient and effective service to
15 agency stakeholders. The reserve service is for temporary
16 needs and shall not be used to supplant new hires.

17 **SEC. 3. DEPARTMENT OF HOMELAND SECURITY RESERVE**
18 **SERVICE.**

19 (a) IN GENERAL.—Title VII of the Homeland Secu-
20 rity Act of 2002 is amended by adding at the end the fol-
21 lowing new section:

22 **“SEC. 708. DEPARTMENT OF HOMELAND SECURITY RE-**
23 **SERVE SERVICE.**

24 “(a) ESTABLISHMENT.—The Secretary of Homeland
25 Security may establish a Homeland Security Reserve Serv-

1 ice (hereinafter referred to as the ‘Reserve Service’) in
2 each covered component of the Department, which shall
3 provide for the temporary employment of former employ-
4 ees of the covered component and the temporary reemploy-
5 ment of annuitants of the covered component to stand
6 ready to mobilize during elevated demands for, or critical
7 shortages of, personnel and in times of crisis. The Sec-
8 retary shall develop and implement an expedited process
9 for hiring such employees and shall not use a competitive
10 process.

11 “(b) COVERED COMPONENTS.—In this section, a cov-
12 ered component is any of the following:

13 “(1) U.S. Customs and Border Protection.

14 “(2) U.S. Immigration and Customs Enforce-
15 ment.

16 “(3) The Transportation Security Administra-
17 tion.

18 “(4) The United States Secret Service.

19 “(5) The Federal Protective Service of the Na-
20 tional Protection and Programs Directorate.

21 “(c) EMPLOYEES.—

22 “(1) SELECTION.—The Secretary shall offer
23 employment or reemployment under the Reserve
24 Service to individuals who—

1 “(A) previously served as employees of the
2 Department whose prior experience and train-
3 ing qualifies them for investigative, inspection,
4 response and patrol, security and protective, or
5 advisory duties as required;

6 “(B) are citizens of the United States; and

7 “(C) the Secretary determines are fit to
8 hold the position in the Reserve Service, includ-
9 ing with respect to health, character, knowl-
10 edge, and ability.

11 “(2) SERVICE.—An individual who is employed
12 or reemployed under this section may be employed
13 on a full-time or part-time basis. The period of such
14 employment or reemployment may not exceed one
15 year for each assignment for which the individual is
16 called into service.

17 “(3) PAY.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraphs (B) and (C), an individual who
20 is a member of the Reserve Service shall not be
21 compensated except for periods during which
22 the individual performs active service in the Re-
23 serve Service. For any period during which such
24 an individual is not performing such service, the

1 individual shall be an employee of the Depart-
2 ment in a non-duty, non-pay status.

3 “(B) COORDINATION AND TRAINING.—Ex-
4 cept as specifically authorized by the Secretary,
5 in addition to compensation provided under
6 subparagraph (A), an individual who is a mem-
7 ber of the Reserve Service may be compensated
8 for—

9 “(i) not more than 80 hours per year
10 for coordination activities with the Reserve
11 Service; and

12 “(ii) not more than 80 hours per year
13 while completing mandatory training.

14 “(C) EMPLOYMENT-RELATED ACTIVI-
15 TIES.—In addition to compensation under sub-
16 paragraphs (A) and (B), an individual who is a
17 member of the Reserve Service shall be com-
18 pensated for the performance of employment-re-
19 lated activities that are time-consuming and re-
20 quired for employment or continued employ-
21 ment. For purposes of this subparagraph, the
22 term ‘time consuming’ means requiring more
23 than 15 minutes of time.

24 “(D) AMOUNT.—The amount of compensa-
25 tion payable under subparagraphs (A), (B), and

1 (C) shall be determined by the head of each
2 covered component in consultation with appro-
3 priate human capital managers.

4 “(4) BENEFITS.—An individual who is em-
5 ployed or reemployed under this section shall not be
6 eligible for any Federal benefits by reason of such
7 employment or reemployment. Time employed in a
8 position under this section shall not count toward
9 competitive status, career tenure, or, consistent with
10 subsection (d), any additional benefits provided
11 under chapter 83 or 84 of title 5, United States
12 Code.

13 “(5) NUMBER OF PERSONNEL.—

14 “(A) IN GENERAL.—The employment or
15 reemployment of individuals by a covered com-
16 ponent under this section shall not—

17 “(i) supplant the hiring of new em-
18 ployees by the component;

19 “(ii) result in the elimination of any
20 full-time or part-time position of employ-
21 ment at the component; or

22 “(iii) force an employee out of a posi-
23 tion held by that employee so that the em-
24 ployee can be employed or reemployed
25 under this section.

1 “(B) OVERSIGHT.—The Inspector General
2 of the Department shall—

3 “(i) provide oversight to ensure the
4 covered components comply with subpara-
5 graph (A); and

6 “(ii) report to Congress any suspected
7 malfeasance or violation of subparagraph
8 (A).

9 “(6) PREFERENCE IN HIRING.—No individual
10 shall receive a preference in hiring or employment in
11 any position in any Federal department or agency by
12 reason of the employment or reemployment of the
13 individual under this section.

14 “(7) APPLICABILITY OF ETHICS LAWS.—All
15 Federal laws and Department regulations and stand-
16 ards of conduct relating to ethics shall apply with re-
17 spect to an individual who is employed or reem-
18 ployed under this section in the same manner as a
19 full-time employee of the Department.

20 “(d) ANNUITANTS.—

21 “(1) IN GENERAL.—If an annuitant becomes
22 temporarily reemployed pursuant to this section,
23 such annuity shall not be discontinued thereby. Sub-
24 section (c)(4) shall not be construed to effect any
25 Federal benefits that such an annuitant is entitled

1 to by virtue of employment in the civil service prior
2 to reemployment under this section.

3 “(2) DUAL COMPENSATION WAIVER.—The Sec-
4 retary may provide dual compensation waivers for
5 reemployed annuitants.

6 “(e) NO IMPACT ON PERSONNEL CEILING.—Reserve
7 Service members employed on a temporary basis pursuant
8 to this section shall not count against any personnel ceil-
9 ing applicable to the Department or any component of the
10 Department.

11 “(f) EXPENSES.—The Secretary may provide mem-
12 bers of the Reserve Service transportation and per diem
13 in lieu of subsistence, in accordance with applicable provi-
14 sions of this Act and title 5, United States Code, for the
15 purpose of participating in any training that relates to
16 service as a member of the Reserve Service.

17 “(g) LIMITATION.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), not more than 1,000 individuals may be
20 employed in the Reserve Service at any given time,
21 to be divided across covered components as deter-
22 mined by the Secretary.

23 “(2) WAIVER.—The Secretary may waive the
24 limitation under paragraph (1) for a period of not
25 more than 90 days.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in section 1(b) of such Act is amended by inserting after
3 the item relating to section 707 the following new item:

“708. Department of Homeland Security Reserve Service.”.

4 (c) IMPLEMENTATION.—

5 (1) IMPLEMENTATION DEADLINE.—The Sec-
6 retary of Homeland Security shall ensure that each
7 covered component of the Department of Homeland
8 Security begins to formally initiate policy, regu-
9 latory, and personnel action to carry out section 708
10 of the Homeland Security Act of 2002, as added by
11 subsection (a), by not later than 180 days after the
12 date of the enactment of this Act.

13 (2) EXTENSION AUTHORITY.—

14 (A) IN GENERAL.—If the Secretary deter-
15 mines it necessary, the Secretary may provide
16 an extension to a covered component with re-
17 spect to the implementation deadline under
18 paragraph (1) for a period of not more than
19 180 days. No such component may receive more
20 than two extensions under this paragraph.

21 (B) NOTICE TO CONGRESS.—If the Sec-
22 retary provides an extension under this para-
23 graph to a covered component, the Secretary
24 shall submit to Congress notice of such exten-

1 sion and the justification for providing such ex-
2 tension.

3 (C) FAILURE TO IMPLEMENT.—If any cov-
4 ered component receives two extensions under
5 this paragraph and fails to begin implementa-
6 tion of such section 708, the Secretary shall ap-
7 pear before the appropriate committees of Con-
8 gress to provide an explanation for such failure.

9 (3) REPORT TO CONGRESS.—Not later than
10 180 days after the date of the enactment of this Act,
11 the Secretary shall submit to Congress a report on
12 the plan of the Secretary for fully implementing
13 such section 708. Such report shall include the plan
14 of the Secretary—

15 (A) for creating position descriptions with
16 sufficient flexibility to utilize the full range of
17 a reservist's skill set;

18 (B) for outlining the processes for calling
19 reservists into service;

20 (C) for determining pay scale for each po-
21 sition, with maximum total annual pay not to
22 exceed the GS–15 level;

23 (D) for developing a training plan out-
24 lining how employees will train and maintain

1 standards and certifications necessary to their
2 reserve position;

3 (E) for determining a base rate of pay
4 made to all reservists not called into service, re-
5 gardless of pay scale determined under sub-
6 paragraph (C), for attending training to main-
7 tain skills or acquire skills immediately prior to
8 knowingly being called into service;

9 (F) for releasing any individuals who do
10 not meet the training or certification standards
11 established for their positions; and

12 (G) for outlining requirements for non-con-
13 flicting obligations of reemployed annuitants
14 and when the component has a right to termi-
15 nate someone from the pool or while working in
16 reserve service capacity.

17 (d) CERTIFICATION.—

18 (1) INITIAL CERTIFICATION.—Not later than
19 180 days after the submittal of the report under
20 subsection (c)(3), the Secretary shall certify to Con-
21 gress that—

22 (A) each covered component has a suffi-
23 cient number of reserve personnel in the Re-
24 serve Service under such section 708 who are

1 ready to be called into service in response to
2 immediate and short-term requirements; or

3 (B) the Secretary has provided an exten-
4 sion to a covered component pursuant to sub-
5 section (c)(2).

6 (2) FINAL CERTIFICATION.—Not later than 180
7 days after the Secretary provides the certification re-
8 quired under paragraph (1), the Secretary shall cer-
9 tify to Congress that—

10 (A) each covered component has completed
11 the implementation of the Reserve Service
12 under such section 708; or

13 (B) the Secretary has provided an exten-
14 sion to a covered component pursuant to sub-
15 section (c)(2).

16 (e) WAIVER AUTHORITY.—After the date that is five
17 years after the submission of the final certification under
18 subsection (d)(2), the Secretary may waive the require-
19 ments of such section 708 for any period of time if the
20 Secretary submits to Congress notice of the waiver by not
21 later than 180 days before the date on which the waiver
22 takes effect.

23 (f) ANNUAL REPORT.—Not later than one year after
24 the date on which the final certification is submitted under
25 subsection (d)(2), and annually thereafter for each of the

1 subsequent five years, the Secretary shall submit to Con-
2 gress a detailed report on the administration of the reserve
3 service during the 12-month period preceding the date of
4 the submittal of the report. Each report shall include, for
5 the period covered by the report, each of the following:

6 (1) A discussion of any changes to the process
7 used to recruit, assess and hire Reserve Service per-
8 sonnel.

9 (2) A discussion of critical needs areas in the
10 Reserve Service and how the Secretary or component
11 plans to fill them, including plans to recruit and re-
12 tain employees in the positions.

13 (3) Any actions taken to fulfill such critical
14 need areas.

15 (4) A description of any new positions created
16 for the reserve service along with demonstrated need
17 for such positions.

18 (5) The number of personnel onboarded or re-
19 leased from the Reserve Service.

20 (6) A discussion of training provided to reserv-
21 ists and identification of additional training and re-
22 source needs.

23 (7) A discussion and description of Reserve
24 Service activations the circumstances under which
25 such activations were made.

- 1 (8) A projection of new activations or main-
2 tained activations for the 12-month period beginning
3 on the date of the submission of the report and ex-
4 planations for such projection.

