



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 11, 1998

H.R. 3213

A bill to amend title 38, United States Code, to clarify enforcement of veterans' employment and reemployment rights with respect to a State as an employer or a private employer, to extend veterans' employment and reemployment rights to members of the uniformed services employed abroad by U.S. companies, and for other purposes

As ordered reported by the House Committee on Veterans' Affairs on March 11, 1998

SUMMARY

H.R. 3213 would expand the scope of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to include certain employers in foreign countries, and would make certain procedural changes to the act's enforcement provisions in response to a recent Supreme Court decision.

CBO estimates that implementing H.R. 3213 would have no significant cost to the federal government. Because it could affect direct spending and receipts, pay-as-you-go procedures would apply, but any such effects would not be significant. The bill is excluded from consideration under the Unfunded Mandates Reform Act of 1995 (UMRA) because it is necessary for the national security.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Implementing H.R. 3213 would raise costs of the Veterans' Employment and Training Service (VETS) and the Merit Systems Protection Board (MSPB). However, CBO estimates that the additional costs would not be significant. The bill would also have an insignificant effect on direct spending and receipts.

USERRA authorized an eligible individual to bring an action against a state employer in federal district court for violations of the rights guaranteed under the act. However, in 1996 the Supreme Court held that the 11th Amendment to the U.S. Constitution precluded Congressionally authorized suits by private parties against unconsenting states (*Seminole Tribe of Florida v. The State of Florida*, 517 U.S. 44 (1996)). In order to ensure states' continuing adherence to the rights and protections afforded employees under USERRA and in response to the *Seminole* decision, H.R. 3213 would require the United States to be the plaintiff in any enforcement action against a state if the action alleges a violation of rights protected under USERRA. The bill would also subject U.S. employers in foreign countries to USERRA, thus increasing both the number of cases heard in district courts and the number of claims processed by VETS.

Based on information from VETS, CBO estimates that H.R. 3213 would not affect caseloads for VETS or district courts significantly because the current USERRA caseload is small and the marginal effects of the bill would be even smaller. In 1997, VETS investigated about 1,200 claims, and about five of those claims were taken to a district court.

The bill would also require MSPB to hear complaints against the federal government that were filed after enactment of USERRA but which were based on events occurring before its enactment. Under current law, MSPB does not hear any USERRA claims against a federal employer that accrued before October 13, 1994, the enactment date of USERRA. H.R. 3213 would require the MSPB to hear claims filed after that date, regardless of when the claim accrued. The MSPB hears about 60 USERRA claims each year at an average cost of \$2,500 per claim. CBO estimates that any backlog of claims would be small and that the costs of dealing with them would be insignificant.

PAY-AS-YOU-GO CONSIDERATIONS

The bill would require the United States to be the plaintiff in any enforcement action against a state as an employer for violations of USERRA and, therefore, any monetary damages awarded would be revenues to the United States. The damages would be placed in a depository account and would be paid to the veteran harmed by the state's actions. These payments would be federal outlays and direct spending. CBO estimates that the deposits and payments to veterans would be small and offsetting in any given year, and that there would be no net impact on the deficit or surplus in any year.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

Section 4 of the Unfunded Mandates Reform Act (Public Law 104-4) excludes from consideration under that act any bill that is necessary for the national security. CBO has determined that H.R. 3213 fits within this exclusion. The bill would enforce the employment and reemployment rights of individuals currently in, or applying to be a member of, the uniformed services.

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