

Calendar No. 88

109TH CONGRESS
1ST SESSION

S. 871

To amend title 10, United States Code, to ensure that the strength of the Armed Forces and the protections and benefits for members of the Armed Forces and their families are adequate for keeping the commitment of the people of the United States to support their servicemembers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 21, 2005

Mr. LEVIN introduced the following bill; which was read the first time

APRIL 22, 2005

Read the second time and placed on the calendar

A BILL

To amend title 10, United States Code, to ensure that the strength of the Armed Forces and the protections and benefits for members of the Armed Forces and their families are adequate for keeping the commitment of the people of the United States to support their servicemembers, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Standing With Our
3 Troops Act of 2005”.

4 **DIVISION A—FULFILLMENT OF**
5 **OBLIGATIONS TO THE MEM-**
6 **BERS OF THE ARMED FORCES**
7 **TITLE I—STRENGTHS OF THE**
8 **ARMY AND MARINE CORPS**
9 **ACTIVE FORCES**

10 **SEC. 101. FINDINGS.**

11 Congress makes the following findings:

12 (1) While the United States Armed Forces re-
13 main the premier fighting force in the world, the De-
14 fense Science Board, in a study carried out in the
15 summer of 2004, found that “When we match the
16 existing and projected force structure with the cur-
17 rent and projected need for stabilization forces we
18 see an enduring shortfall in both total numbers of
19 people and their ability to sustain the continuity of
20 stabilization efforts.”.

21 (2) Between 1989 and 2004, the military per-
22 sonnel end strength of the Army has been reduced
23 by more than 34 percent, and the Department of the
24 Army’s civilian workforce has been reduced by more
25 than 45 percent, while the mission rate of the Army
26 has increased by 300 percent.

1 (3) Because of the personnel reductions, the
2 Army National Guard and the Army Reserve are re-
3 peatedly being called to active duty to meet Army
4 mission requirements that the active-duty force of
5 the Army is no longer large enough to meet alone.
6 Army National Guard and Army Reserve units have
7 provided up to 40 percent of the military personnel
8 engaged in Operation Iraqi Freedom while they have
9 also been performing a dramatically increased role in
10 homeland defense and continuing to respond to nat-
11 ural disasters, other domestic emergencies, and mili-
12 tary contingencies. As a result, the reserve compo-
13 nents of the Army have been pushed to the breaking
14 point.

15 **SEC. 102. ARMY.**

16 (a) **STRENGTH FOR FISCAL YEAR 2006.**—Effective
17 on October 1, 2005, section 691(b)(1) of title 10, United
18 States Code, is amended by striking “502,400” and in-
19 serting “522,400”.

20 (b) **STRENGTH FOR FISCAL YEARS AFTER FISCAL**
21 **YEAR 2006.**—Effective on October 1, 2006, section
22 691(b)(1) of such title is amended by striking “522,400”
23 and inserting “532,400”.

1 **SEC. 103. MARINE CORPS.**

2 (a) STRENGTH FOR FISCAL YEAR 2006.—Effective
3 on October 1, 2005, section 691(b)(3) of title 10, United
4 States Code, is amended by striking “178,000” and in-
5 serting “183,000”.

6 (b) STRENGTH FOR FISCAL YEARS AFTER FISCAL
7 YEAR 2006.—Effective on October 1, 2006, section
8 691(b)(3) of title 10, United States Code, is amended by
9 striking “183,000” and inserting “188,000”.

10 **TITLE II—FULL RECOGNITION**
11 **OF SACRIFICE AND VALOR OF**
12 **UNITED STATES**
13 **SERVICEMEMBERS**
14 **Subtitle A—Findings**

15 **SEC. 201. FINDINGS.**

16 Congress makes the following findings:

17 (1) On November 21, 2004, the Columbia
18 Broadcasting System television program 60 Minutes
19 reported that the staff of that program had received
20 from the Department of Defense a letter containing
21 the assertion that “[m]ore than 15,000 troops with
22 so-called ‘non-battle’ injuries and diseases have been
23 evacuated from Iraq.”.

24 (2) This report was a rare disclosure by the De-
25 partment of Defense, as it is the policy of the De-
26 partment of Defense not to disclose publicly the

1 number of Armed Forces personnel that sustain
2 non-combat injuries.

3 **Subtitle B—Accounting for Casual-**
4 **ties Incurred in the Prosecution**
5 **of the Global War on Terrorism**

6 **SEC. 211. MONTHLY ACCOUNTING.**

7 Not later than five days after the end of each month,
8 the Secretary of Defense shall publish, for such month for
9 each operation described in section 212, a full accounting
10 of the casualties among the members of the Armed Forces
11 that were incurred in such operation during that month.

12 **SEC. 212. OPERATIONS COVERED.**

13 The operations referred to in section 211 are as fol-
14 lows:

15 (1) Operation Iraqi Freedom.

16 (2) Operation Enduring Freedom.

17 (3) Each other operation undertaken by the
18 Armed Forces in the prosecution of the Global War
19 on Terrorism.

20 **SEC. 213. COMPREHENSIVE CONTENT OF ACCOUNTING.**

21 For the purpose of providing a full and complete ac-
22 counting of casualties covered by a report under section
23 211, the Secretary of Defense shall include in the report
24 the number of casualties in each casualty status in accord-
25 ance with section 214.

1 **SEC. 214. CASUALTY STATUS.**

2 (a) STATUS TYPES.—In a report under this title,
3 each casualty among members of the Armed Forces shall
4 be characterized by the most specific casualty status appli-
5 cable to the member as follows:

6 (1) Killed in action.

7 (2) Killed in non-hostile duty.

8 (3) Killed, self-inflicted.

9 (4) Wounded in action, not returned to duty.

10 (5) Wounded in action, returned to duty (to the
11 extent that data is available to support this charac-
12 terization of casualty status).

13 (6) Evacuated for medical reasons.

14 (b) DEFINITIONS.—In this section:

15 (1) KILLED IN ACTION.—The term “killed in
16 action”, with respect to a member of the Armed
17 Forces, means that the member incurred one or
18 more mortal wounds while involved in an action
19 against a hostile force, whether or not the wounds
20 are inflicted by the hostile force.

21 (2) KILLED IN NON-HOSTILE DUTY.—The term
22 “killed in non-hostile duty”, with respect to a mem-
23 ber of the Armed Forces, means that the member
24 incurred one or more mortal wounds that were not
25 self-inflicted and not inflicted during an action
26 against a hostile force.

1 (3) KILLED, SELF-INFLICTED.—The term
2 “killed, self-inflicted”, with respect to a member of
3 the Armed Forces, means a suicide of the member
4 or the death of the member as a result of one or
5 more self-inflicted injuries.

6 (4) WOUNDED IN ACTION, NOT RETURNED TO
7 DUTY.—The term “wounded in action, not returned
8 to duty”, with respect to a member of the Armed
9 Forces, means that the member, while involved in an
10 action against a hostile force, incurred one or more
11 non-mortal injuries that required medical attention
12 and that prevented the member from returning to
13 duty within 72 hours after incurring the injury or
14 injuries.

15 (5) WOUNDED IN ACTION, RETURNED TO
16 DUTY.—The term “wounded in action, returned to
17 duty”, with respect to a member of the Armed
18 Forces, means that the member, while involved in an
19 action against a hostile force, incurred one or more
20 non-mortal injuries that required medical attention
21 but did not prevent the member from returning to
22 duty within 72 hours after incurring the injury or
23 injuries.

24 (6) EVACUATED FOR MEDICAL REASONS.—The
25 term “evacuated for medical reasons”, with respect

1 to a member of the Armed Forces, means that the
2 member was evacuated from a theater of operations
3 for medical reasons.

4 **SEC. 215. PUBLICATION AND RELEASE OF REPORT.**

5 The Secretary of Defense shall—

6 (1) post the report under this title on the offi-
7 cial website of the Department of Defense; and

8 (2) transmit a copy of the report to the chair-
9 men and ranking members of the Committees on
10 Armed Services of the Senate and the House of Rep-
11 resentatives.

12 **SEC. 216. SENSE OF CONGRESS.**

13 It is the sense of Congress that the Secretary of De-
14 fense has an obligation to ensure full and accurate report-
15 ing of casualties among the members of the Armed Forces
16 to Congress and the people of the United States.

17 **Subtitle C—Advisory Panel on**
18 **Military Awards and Decorations**

19 **SEC. 221. ESTABLISHMENT.**

20 The Secretary of Defense shall establish within the
21 Department of Defense an Advisory Panel on Military
22 Awards and Decorations.

23 **SEC. 222. DUTIES.**

24 (a) **COMPREHENSIVE REVIEW OF MILITARY DECORA-**
25 **TIONS SYSTEM.**—The Advisory Panel shall conduct a com-

1 prehensive review of the standards and processes used in
2 the Armed Forces to award medals and decorations to
3 members of the Armed Forces. The review shall include
4 the following matters:

5 (1) An examination and evaluation of the
6 standards of each of the Armed Forces for awarding
7 each medal and decoration.

8 (2) A comparison of the standards of each of
9 the Armed Forces with the standards of each of the
10 other Armed Forces for awarding comparable med-
11 als and decorations.

12 (3) An examination and evaluation of the speed
13 with which—

14 (A) each of the Armed Forces identifies
15 and considers members for the awarding of
16 medals and decorations; and

17 (B) the medals and decorations are ulti-
18 mately awarded.

19 (4) A review of the medals and decorations
20 awarded by the Armed Forces during 2002, 2003,
21 and 2004, together with a review of the ranks of the
22 recipients and the mission-related and other cir-
23 cumstances that are associated with the awarding of
24 the medals and decorations to those recipients.

25 (b) REPORT.—

1 (1) REQUIREMENT FOR REPORT.—Not later
2 than 18 months after the date of the enactment of
3 this Act, the Advisory Panel shall submit a report on
4 the results of the review under this section to the
5 Secretary of Defense and to Congress.

6 (2) CONTENT.—The report under this sub-
7 section shall contain the findings and conclusions of
8 the Advisory Panel together with any recommenda-
9 tions for action that the panel considers appropriate,
10 and shall include the following matters:

11 (A) A discussion of the merits of maintain-
12 ing for each of the Armed Forces separate poli-
13 cies for the awarding of comparable medals and
14 decorations of the Armed Forces, together with
15 a discussion of the merits of adopting uniform
16 standards for awarding such medals and deco-
17 rations.

18 (B) Measures that can be taken by each of
19 the Armed Forces to expedite the process for
20 timely identifying a member who deserves a
21 medal of decoration, determining the appro-
22 priateness of awarding the medal or decoration
23 to the member, and, in each appropriate case,
24 awarding the medal or decoration to the mem-
25 ber.

1 (C) Measures that can be taken to ensure
2 that—

3 (i) members serving in combat are at
4 least equally as likely to be considered for
5 the awarding of medals and decorations as
6 are personnel not exposed to combat; and

7 (ii) enlisted personnel are at least as
8 likely to be considered for the awarding of
9 medals and decorations as are officers.

10 (D) A recommendation regarding whether
11 the Valor device awarded by each of the Armed
12 Forces should be replaced by a separate class of
13 medals honoring special bravery in combat.

14 (E) A determination of the desirability of
15 adding a new class of medals, similar to the
16 Purple Heart, to be awarded to military per-
17 sonnel who incur non-combat injuries in connec-
18 tion with performance of an official mission or
19 duty during a combat operation in order to
20 honor their sacrifice in service to the people of
21 the United States.

22 (c) SCOPE LIMITED TO DEPARTMENT OF DE-
23 FENSE.—The scope of the review and report under this
24 section does not include the Coast Guard.

1 **SEC. 223. COMPOSITION AND ADMINISTRATION.**

2 (a) COMPOSITION.—

3 (1) NUMBER; APPOINTMENT.—The Advisory
4 Panel shall be composed of not more than seven
5 members appointed by the Secretary of Defense.

6 (2) GENERAL AND FLAG OFFICERS.—The Sec-
7 retary shall ensure that the membership of the task
8 force includes a retired general or flag officer from
9 each of the Army, Navy, Air Force, and Marine
10 Corps who is familiar with the policies of the Armed
11 Forces regarding military awards and decorations.

12 (3) VETERANS.—The Secretary shall appoint at
13 least one representative of a leading veterans' advo-
14 cacy organization as a member of the Advisory
15 Panel.

16 (b) TIME FOR APPOINTMENT.—All members of the
17 Advisory Panel shall be appointed within 60 days after
18 the date of the enactment of this Act.

19 (c) CHAIRPERSON.—The chairperson of the Advisory
20 Panel shall be selected from among the members of the
21 Advisory Panel by a majority vote of the members.

22 (d) COMPENSATION AND EXPENSES OF MEMBERS.—
23 Each member of the Advisory Panel shall serve without
24 compensation, but shall be allowed travel expenses, includ-
25 ing per diem in lieu of subsistence, at rates authorized
26 for employees of agencies under subchapter I of chapter

1 57 of title 5, United States Code, while away from the
2 member's home or regular places of business in the per-
3 formance of services for the Advisory Panel.

4 (e) FEDERAL ADVISORY COMMITTEE ACT.—The
5 Federal Advisory Committee Act (5 U.S.C. App) shall not
6 apply to the Advisory Panel.

7 **SEC. 224. COOPERATION OF FEDERAL AGENCIES.**

8 (a) INFORMATION.—The Advisory Panel may obtain
9 directly from the Department of Defense, the Department
10 of Veterans Affairs, or any other department or agency
11 of the United States any information of such department
12 or agency that the panel considers necessary for the panel
13 to carry out its duties.

14 (b) OTHER COOPERATION.—The Secretary of De-
15 fense, the Secretary of Veterans Affairs, and any other
16 official of the United States shall provide the Advisory
17 Panel with full and timely cooperation requested by the
18 panel in carrying out its duties under this section.

19 **SEC. 225. TERMINATION.**

20 The Advisory Panel on Military Awards and Decora-
21 tions shall terminate 30 days after the submission of the
22 report to Congress under section 222(b).

1 **TITLE III—MILITARY**
2 **EQUIPMENT AND MATERIEL**

3 **SEC. 301. FINDINGS.**

4 Congress makes the following findings:

5 (1) United States military personnel serving in
6 Operations Iraqi Freedom have experienced signifi-
7 cant shortages of critical equipment, such as body
8 armor, aircraft survivability equipment, and armored
9 trucks, including up-armored High Mobility Multi-
10 purpose Wheeled Vehicles. In many cases the short-
11 ages have lasted several months. For example, the
12 individual body armor needed for protecting every
13 member of the Armed Forces and Department of
14 Defense civilians in Iraq was not produced and field-
15 ed until February 2004, 11 months after Operation
16 Iraqi Freedom was launched. Shortages of armor for
17 Army trucks still existed as of the beginning of
18 2005.

19 (2) Operation Iraqi Freedom and Operation
20 Enduring Freedom have taken a substantial toll on
21 military equipment of the Armed Forces. The com-
22 manding general of the Army Material Command es-
23 timated in 2004 that the Army is wearing out its
24 equipment in Iraq and Afghanistan at a rate that
25 could be up to 10 times faster than the rate at

1 which it wears out its equipment elsewhere during
2 peacetime, and there are no significant reserve
3 stocks of that equipment remaining.

4 (3) It is a solemn obligation of the United
5 States Government to ensure that, whenever the
6 Armed Forces are called into battle, the military
7 personnel fighting or supporting the battle are pro-
8 vided with the safest, most effective technology and
9 equipment.

10 **SEC. 302. MOBILIZATION PLANNING AND PREPAREDNESS.**

11 (a) DIRECTOR OF MOBILIZATION PLANNING AND
12 PREPAREDNESS.—Title I of the National Security Act of
13 1947 (50 U.S.C. 402 et seq.) is amended by striking sec-
14 tion 107 and inserting the following new sections:

15 “DIRECTOR OF MOBILIZATION PLANNING AND
16 PREPAREDNESS.

17 “Definitions.

18 “SEC. 107. (a) In this section:

19 “(1) The term ‘Director’ means the Director of
20 Mobilization Planning and Preparedness referred to
21 in subsection (b)(1), except where the context clearly
22 indicates otherwise.

23 “(2) The term ‘national security emergency’
24 means any occurrence, including a natural disaster,
25 a military or terrorist attack against the territory of
26 the United States, a military operation carried out

1 by the Armed Forces abroad, a technological emer-
2 gency, or any other emergency, that either seriously
3 degrades or threatens the security of the United
4 States or the Armed Forces.

5 “(3) The term ‘mobilization’ means the act of
6 assembling and organizing national resources, in-
7 cluding military personnel and equipment, labor,
8 transportation systems, industry, and financial re-
9 sources, to support national objectives of the United
10 States in time of a national security emergency.

11 “(4) The term ‘mobilization planning and pre-
12 paredness’ means all aspects of planning and pre-
13 paring for a mobilization for a national security
14 emergency, including the identification of functions
15 that would have to be performed during a national
16 security emergency, development of plans for per-
17 forming such functions, development of the capa-
18 bility to execute such plans, and development of poli-
19 cies that maximize the speed and efficiency with
20 which such plans can be executed during a national
21 security emergency.

22 “Position of Director

23 “(b)

1 “(1) ESTABLISHMENT.—There is a Director of
2 Mobilization Planning and Preparedness on the staff
3 of the National Security Council.

4 “(2) APPOINTMENT.—The Director is ap-
5 pointed by the Assistant to the President for Na-
6 tional Security Affairs.

7 “(3) RELATIONSHIP TO NATIONAL SECURITY
8 ADVISOR.—The Director reports directly to the As-
9 sistant to the President for National Security Af-
10 fairs.

11 “Duties

12 “(c)

13 “(1) PRINCIPAL DUTY.—The Director is the
14 principal adviser to the Assistant to the President
15 for National Security Affairs on matters of mobiliza-
16 tion planning and preparedness.

17 “(2) SPECIFIC DUTIES.—The duties of the Di-
18 rector include the following:

19 “(A) Identify which governmental and pri-
20 vate sector functions must be performed on a
21 sustained basis during a national security emer-
22 gency.

23 “(B) Develop plans for the sustained per-
24 formance of the identified functions.

1 “(C) Provide guidance on the development
2 of the capability to execute the plans.

3 “(D) Recommend policies for the maxi-
4 mization of the speed and efficiency with which
5 the plans can be executed during a national se-
6 curity emergency.

7 “(E) Recommend planning and policy
8 guidance regarding involvement of the National
9 Guard in 2 or more national security emergency
10 operations concurrently.

11 “(F) Administer quarterly exercises simu-
12 lating mobilization for various types of national
13 security emergencies, including the following:

14 “(i) A major military operation car-
15 ried out in and around 1 or more foreign
16 countries.

17 “(ii) An occupation and reconstruc-
18 tion mission.

19 “(iii) A terrorist attack within the
20 United States.

21 “(iv) A natural disaster within the
22 United States.

23 “(v) A major humanitarian crisis in 1
24 or more foreign countries.

1 “(vi) A minor military intervention in
2 a foreign country.

3 “(3) RELATED DUTIES.—

4 “(A) MOBILIZATION PLANNING AND PRE-
5 PAREDNESS POLICY COORDINATING COM-
6 MITTEE.—The Director serves on the Mobiliza-
7 tion Planning and Preparedness Policy Coordi-
8 nating Committee as provided in section 107A.

9 “(B) DEPARTMENT OF DEFENSE PRIMARY
10 ALLOCATION OF INDUSTRIAL RESOURCES TASK
11 FORCE.—The Director serves as a member of
12 the Primary Allocation of Industrial Resources
13 Task Force of the Department of Defense.

14 “Office of Mobilization Planning and Preparedness

15 “(d)

16 “(1) ESTABLISHMENT.—There is an Office of
17 Mobilization Planning and Preparedness within the
18 National Security Council. The Director is the head
19 of the office.

20 “(2) COMPOSITION.—The Office of Mobilization
21 Planning and Preparedness is composed of the fol-
22 lowing personnel:

23 “(A) Thirty employees appointed by the
24 Assistant to the President for National Security
25 Affairs.

1 “(B) An employee of the Department of
2 Defense, who shall be detailed to the Office by
3 the Under Secretary of Defense for Acquisition,
4 Technology, and Logistics to serve as liaison be-
5 tween the Department of Defense and the Di-
6 rector to ensure that comprehensive and accu-
7 rate information on the needs of the Armed
8 Forces for equipment and materiel in a national
9 security emergency are timely communicated to
10 the Director.

11 “Coordination With National Counterterrorism Center

12 “(e)

13 “(1) LIAISON OFFICER.—The Director shall de-
14 tail an employee of the Office to the National
15 Counterterrorism Center to serve as a liaison officer
16 between the Director of Mobilization Planning and
17 Preparedness and the Director of the National
18 Counterterrorism Center for collaboration on
19 counterterrorism-related information and issues nec-
20 essary for effective mobilization planning and pre-
21 paredness.

22 “(2) RESPONSIBILITY OF DIRECTOR OF NA-
23 TIONAL COUNTERTERRORISM CENTER.—The Direc-
24 tor of the National Counterterrorism Center shall
25 ensure that the liaison officer is accorded such privi-

1 leges at the Center as are necessary to ensure that
2 the collaboration between the Director of the Na-
3 tional Counterterrorism Center and the Director of
4 Mobilization Planning and Preparedness on
5 counterterrorism-related information and issues is
6 effective.

7 “Annual Report

8 “(f)

9 “(1) REQUIREMENT FOR REPORT.—The Presi-
10 dent, acting through the Director, shall submit to
11 Congress each year a report on mobilization plan-
12 ning and preparedness.

13 “(2) CONTENT.—The annual report under this
14 subsection shall include the following information:

15 “(A) Funding needs for mobilization plan-
16 ning and preparedness.

17 “(B) An assessment of the state of mobili-
18 zation planning and preparedness in the United
19 States.

20 “(C) Any recommended policies on mobili-
21 zation planning and preparedness that the
22 President, in consultation with the Assistant to
23 the President for National Security Affairs and
24 the Director, considers appropriate.

1 “MOBILIZATION PLANNING AND PREPAREDNESS POLICY
2 COORDINATING COMMITTEE.

3 “Mobilization Planning and Preparedness Defined.

4 “SEC. 107A. (a) In this section, the term ‘mobiliza-
5 tion planning and preparedness’ has the meaning given
6 that term in section 107(a).

7 “Establishment

8 “(b) There is in the executive branch an interagency
9 committee known as the ‘Mobilization Planning and Pre-
10 paredness Policy Coordinating Committee’.

11 “Composition

12 “(c) The Committee shall be composed of the fol-
13 lowing members:

14 “(1) The Director of Mobilization Planning and
15 Preparedness of the National Security Council, who
16 shall chair the committee.

17 “(2) The Under Secretary for Emergency Pre-
18 paredness and Response of the Department of
19 Homeland Security.

20 “(3) The Under Secretary of State for Eco-
21 nomic, Business, and Agricultural Affairs.

22 “(4) The Under Secretary of Defense for Ac-
23 quisition, Technology, and Logistics.

24 “(5) The Associate Attorney General.

1 “(6) The Assistant Secretary of the Interior for
2 Land and Minerals Management.

3 “(7) The Under Secretary of Commerce for In-
4 dustry and Security.

5 “(8) The Deputy Secretary of Labor.

6 “(9) The Assistant Secretary of Health and
7 Human Services for Public Health Emergency Pre-
8 paredness.

9 “(10) The Under Secretary of Transportation
10 for Policy.

11 “(11) The Under Secretary of Energy for En-
12 ergy, Science, and Environment.

13 “(12) One member designated by the Assistant
14 to the President for National Security Affairs.

15 “(13) One member designated by the Director
16 of National Intelligence.

17 “Duties

18 “(d) The Committee has the following duties:

19 “(1) To review, at least once each year, the mo-
20 bilization planning and preparedness policies of the
21 United States.

22 “(2) To make any recommendations for action
23 to improve mobilization planning and preparedness
24 that the Committee determines appropriate.

1 “(3) To participate in the exercises conducted
2 by the Director of Mobilization Planning and Pre-
3 paredness of the Department under section
4 510(b)(2)(F).”.

5 (b) CLERICAL AMENDMENT.—The table of contents
6 in the first section of the National Security Act of 1947
7 is amended by striking the item relating to section 107
8 and inserting the following new items:

 “Sec. 107. Director of Mobilization Planning and Preparedness.

 “Sec. 107A. Mobilization Planning and Preparedness Policy Coordinating Com-
 mittee.”.

9 **SEC. 303. REPORT ON RECONSTITUTION NEEDS OF THE**
10 **ARMED FORCES.**

11 (a) REPORT REQUIRED.—

12 (1) REQUIREMENT FOR REPORT.—Not later
13 than March 1, 2005, the Secretary of Defense shall
14 submit to the congressional defense committees a re-
15 port on the needs of the Armed Forces for reconsti-
16 tuting its stocks of military equipment and other
17 materiel in view of the attrition of military equip-
18 ment and other materiel experienced by the Armed
19 Forces in Operation Iraqi Freedom and Operation
20 Enduring Freedom.

21 (2) CONSULTATION.—The Secretary shall con-
22 sult with the Chief of Staff of the Army, the Chief
23 of Staff of the Air Force, the Chief of Naval Oper-
24 ations, the Commandant of the Marine Corps, and

1 the Inspector General of each of the Armed Forces
2 in preparing the report under this section.

3 (b) CONTENT.—The report shall include an assess-
4 ment of each of the following matters:

5 (1) The extent of the damage and destruction
6 of military equipment and other military materiel in
7 Operation Iraqi Freedom and Operation Enduring
8 Freedom.

9 (2) The amount of such equipment, if any, that
10 has become ineffective or obsolete by age or other
11 causes.

12 (3) The needs of each of the Armed Forces, in-
13 cluding the reserve components as well as the reg-
14 ular components, for repair and replacement of
15 equipment.

16 (4) The total cost of reconstituting the stocks
17 of military equipment and other materiel of the
18 Armed Forces to meet the needs of the Armed
19 Forces.

20 (5) The time needed to reconstitute such stocks
21 to meet those needs.

22 (c) FORM OF REPORT.—The report shall be sub-
23 mitted in unclassified form, but may include a classified
24 annex.

1 **SEC. 304. AUTHORIZATIONS OF APPROPRIATIONS.**

2 (a) ARMY.—Funds are hereby authorized to be ap-
3 propriated for fiscal year 2005 for the use of the Army
4 for the repair, refurbishment, and replacement of equip-
5 ment used by the Army in Operation Iraqi Freedom or
6 Operation Enduring Freedom, as follows:

7 (1) OPERATION AND MAINTENANCE.—For ex-
8 penses, not otherwise provided for, for operation and
9 maintenance, \$6,000,000,000.

10 (2) PROCUREMENT.—For procurement,
11 \$2,500,000,000.

12 (b) MARINE CORPS.—Funds are hereby authorized to
13 be appropriated for fiscal year 2005 for the use of the
14 Marine Corps for the repair, refurbishment, and replace-
15 ment of equipment used by the Marine Corps in Operation
16 Iraqi Freedom or Operation Enduring Freedom, as fol-
17 lows:

18 (1) OPERATION AND MAINTENANCE.—For ex-
19 penses, not otherwise provided for, for operation and
20 maintenance, \$640,000,000.

21 (2) PROCUREMENT.—For procurement,
22 \$1,500,000,000.

23 (c) AVAILABILITY THROUGH FISCAL YEAR 2006.—
24 Amounts authorized to be appropriated under this section
25 shall remain available until September 30, 2006.

1 (d) LIMITATION.—None of the funds appropriated
2 pursuant to an authorization of appropriations in this sec-
3 tion may be obligated or expended until the date that is
4 15 days after the date on which the Secretary of Defense
5 transmits to the congressional defense committees a report
6 on the specific use for which the funds are to be obligated
7 or expended, respectively.

8 **SEC. 305. CONGRESSIONAL DEFENSE COMMITTEES DE-**
9 **FINED.**

10 In this title, the term “congressional defense commit-
11 tees” has the meaning given such term in section
12 101(a)(16) of title 10, United States Code.

13 **TITLE IV—PERIODS OF OVER-**
14 **SEAS DEPLOYMENTS OF RE-**
15 **SERVES**

16 **SEC. 401. FINDINGS.**

17 Congress makes the following findings:

18 (1) The Department of Defense failed to estab-
19 lish an adequate troop deployment and rotation pol-
20 icy for Operation Iraqi Freedom until several
21 months after the operation had begun. For several
22 reserve component units involved in that operation
23 before 2005, the demobilization date was resched-
24 uled three or more times before the unit members
25 were finally allowed to return home.

1 (2) Without an adequate deployment and rota-
2 tion plan, the Department of Defense has relied on
3 a series of stop-gap measures to retain a sufficient
4 number of troops to carry out the United States
5 missions in Operation Iraqi Freedom and Operation
6 Enduring Freedom, including—

7 (A) institution of a so-called “stop-loss”
8 policy that prevents personnel from leaving
9 their units during deployment;

10 (B) extensions of deployments beyond
11 scheduled demobilization dates; and

12 (C) activation of members of the Individual
13 Ready Reserve.

14 (3) In September 2004, the Government Ac-
15 countability Office reported that “Many of DOD’s
16 policies that affect mobilized reserve component per-
17 sonnel were implemented in a piecemeal manner and
18 were not linked within the context of a strategic
19 framework to meet the organizational goals. . . .
20 Without a strategic framework, OSD and the serv-
21 ices made several changes to their personnel policies
22 to increase the availability of the reserve components
23 for the longer-term requirements of the Global War
24 on Terrorism, and predictability declined for reserve
25 component members.”.

1 (4) Fairness to the men and women of the
2 Armed Forces deployed overseas requires that the
3 Department of Defense—

4 (A) have clear policies regarding lengths of
5 deployment periods; and

6 (B) communicate these policies and other
7 deployment-related information to them and
8 their families.

9 **SEC. 402. SENSE OF CONGRESS ON TWO-YEAR LIMIT ON MO-**
10 **BILIZATION.**

11 It is the sense of Congress that the Secretary of De-
12 fense should continue the existing Department of Defense
13 policy of limiting to a total of 24 months the period for
14 which members of the reserve components serve on active
15 duty to which called or ordered in support of a contingency
16 operation.

17 **SEC. 403. COMMUNICATION OF LENGTHS OF DEPLOYMENT**
18 **PERIODS TO RESERVES IN OPERATION IRAQI**
19 **FREEDOM.**

20 (a) REPORT OF DEPARTMENT OF DEFENSE POLI-
21 CIES.—

22 (1) REQUIREMENT FOR REPORT.—Not later
23 than March 1, 2005, the Secretary of Defense shall
24 submit to the Committees on Armed Services of the

1 Senate and the House of Representatives a report
2 on—

3 (A) Department of Defense policies gov-
4 erning the length of mobilization and deploy-
5 ment periods applicable to members of reserve
6 components of the Armed Forces in connection
7 with Operation Iraqi Freedom, and on the com-
8 munication between the Department of Defense
9 and reserve component personnel and their
10 families regarding the lengths of the mobiliza-
11 tion deployment periods; and

12 (B) Department of Defense stop-loss poli-
13 cies.

14 (2) CONSULTATION REQUIREMENT.—In pre-
15 paring the report, the Secretary shall consult with
16 the Chairman and other members of the Joint
17 Chiefs of Staff and with such other officials as the
18 Secretary considers appropriate.

19 (b) CONTENT OF REPORT.—The report under this
20 section shall contain a discussion of the matters described
21 in subsection (a)(1), including a discussion of the following
22 matters:

23 (1) The process by which the Department of
24 Defense determined its policy regarding the lengths
25 of mobilization deployment periods.

1 (2) The reason that an adequate troop deploy-
2 ment policy was not in place before Operation Iraqi
3 Freedom began.

4 (3) A comparison of the policies during Oper-
5 ation Iraqi Freedom with Department of Defense
6 policies that applied to previous contingency oper-
7 ations.

8 (4) The timeliness of the process for notifying
9 reserve component units for activation.

10 (5) The process for communicating with acti-
11 vated reserve component members and their families
12 about demobilization schedules.

13 (6) The justification for delaying demobilization
14 after members and their families have been notified
15 of the anticipated demobilization schedule.

16 (7) The justification for current stop-loss poli-
17 cies, together with a statement of the period for
18 which those policies are to remain in effect and the
19 conditions under which management of personnel
20 under those policies would terminate.

21 (8) The family support programs provided by
22 the National Guard and other reserve components
23 for families of activated Reserves.

24 (9) An assessment of lessons learned about how
25 the increased operation tempos of the National

1 Guard and other reserve components can be ex-
2 pected to affect readiness, recruitment and reten-
3 tion, civilian employers of Reserves, and equipment
4 and supply resources of the National Guard and the
5 other reserve components.

6 (c) MATTERS FOR PARTICULAR EMPHASIS.—In the
7 discussion of the matters included in the report under this
8 section, the Secretary of Defense shall place particular em-
9 phasis on—

10 (1) lessons learned, including deficiencies identi-
11 fied; and

12 (2) near-term and long-term corrective actions
13 to address the identified deficiencies.

14 (d) FORM OF REPORT.—The report under this sec-
15 tion shall be submitted in unclassified form, but may in-
16 clude a classified annex.

17 **TITLE V—TIMELY** 18 **COMPENSATION**

19 **SEC. 501. FINDINGS.**

20 Congress makes the following findings:

21 (1) In November 2003, the General Accounting
22 Office reported, in connection with a study con-
23 ducted by that office, that among Army National
24 Guard soldiers “450 of the 481 soldiers from our 6
25 case study units had at least 1 pay problem associ-

1 ated with their mobilization. These pay problems se-
2 verely constrain the Army’s and the Department of
3 Defense’s (DOD) ability to provide a most basic
4 service to these personnel, many of whom were risk-
5 ing their lives in combat.”.

6 (2) In August 2004, a second study by that of-
7 fice (by then renamed the Government Account-
8 ability Office) found that among Army Reserve sol-
9 diers “332 of 348 soldiers (95 percent) we audited
10 at 8 case study units that were mobilized, deployed,
11 and demobilized at some time during the 18-month
12 period from August 2002 through January 2004
13 had at least 1 pay problem.”.

14 (3) The August 2004 report concluded that
15 “These pay problems often had a profound adverse
16 impact on individual soldiers and their families. For
17 example, soldiers were required to spend consider-
18 able time, sometimes while deployed in remote, hos-
19 tile environments overseas, seeking help on pay in-
20 quiries or in correcting errors in their active duty
21 pays, allowances, and related tax benefits.”.

1 **SEC. 502. CORRECTION OF MILITARY PAY PROBLEMS FOR**
2 **ACTIVATED RESERVE COMPONENT PER-**
3 **SONNEL.**

4 The Secretary of the Army shall designate a senior
5 level official of the Department of the Army to imple-
6 ment—

7 (1) the recommendations for executive action
8 that are set forth in the report of the Comptroller
9 General of the United States entitled “Military Pay,
10 Army National Guard Personnel Mobilized to Active
11 Duty Experienced Significant Pay Problems”, dated
12 November 2003; and

13 (2) the recommendations for executive action
14 that are set forth in the report of the Comptroller
15 General of the United States entitled “Military Pay,
16 Army Reserve Soldiers Mobilized to Active Duty Ex-
17 perience Significant Pay Problems”, dated August
18 2004.

19 **SEC. 503. SUPERVISION BY COMPTROLLER OF DEPART-**
20 **MENT OF DEFENSE.**

21 The official designated under section 502 shall report
22 directly to, and be subject to the direction of, the Under
23 Secretary of Defense (Comptroller) regarding performance
24 of the duties that the official is designated to carry out
25 under such section.

1 **SEC. 504. TERMINATION OF REQUIREMENT.**

2 The designation under section 502 shall terminate
3 upon the submission of a certification of the Under Sec-
4 retary of Defense (Comptroller) to Congress that all rec-
5 ommendations referred to in such section have been imple-
6 mented.

7 **TITLE VI—IMPROVED REP-**
8 **RESENTATION OF RESERVE**
9 **PERSONNEL INTERESTS IN**
10 **DEPARTMENT OF DEFENSE**
11 **SECRETARIAT**

12 **SEC. 601. FINDINGS.**

13 Congress makes the following findings:

14 (1) Since September 11, 2001, the National
15 Guard and the other reserve components of the
16 Armed Forces have experienced an expansion of
17 their role in the total force structure of the Armed
18 Forces to an unprecedented level. In 2004, the re-
19 serve components comprised 40 percent of the total
20 force of the Armed Forces. Reservists are experi-
21 encing a dramatic increase in operation tempo and
22 average length of deployment.

23 (2) While the extent of the role of the reserve
24 component has changed so dramatically, the Depart-
25 ment of Defense approach to management of the re-
26 serve components has remained much the same. No

1 new senior leadership positions have been established
 2 to manage the reserve components more effectively
 3 in the expanded role.

4 **SEC. 602. DEPUTY UNDER SECRETARY OF DEFENSE FOR**
 5 **PERSONNEL AND READINESS (RESERVE AF-**
 6 **FAIRS).**

7 (a) ESTABLISHMENT OF POSITION.—

8 (1) POSITION AND DUTIES.—Chapter 4 of title
 9 10, United States Code, is amended by inserting
 10 after section 136a the following new section:

11 **“§ 136b. Deputy Under Secretary of Defense for Per-**
 12 **sonnel and Readiness (reserve affairs)**

13 “(a) There is a Deputy Under Secretary of Defense
 14 for Personnel and Readiness (Reserve Affairs), appointed
 15 from civilian life by the President, by and with the advice
 16 and consent of the Senate.

17 “(b) The Deputy Under Secretary of Defense for Per-
 18 sonnel and Readiness (Reserve Affairs) shall have as his
 19 principal duty the overall supervision of reserve component
 20 affairs of the Department of Defense.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
 22 tions at the beginning of such chapter is amended
 23 by inserting after the item relating to section 136a
 24 the following new item:

“136b. Deputy Under Secretary of Defense for Personnel and Readiness (Re-
 serve Affairs).”.

1 (b) EXECUTIVE LEVEL IV.—Section 5315 of title 5,
2 United States Code, is amended by inserting after “Dep-
3 uty Under Secretary of Defense for Personnel and Readi-
4 ness.” the following:

5 “Deputy Under Secretary of Defense for Per-
6 sonnel and Readiness (Reserve Affairs).”.

7 **SEC. 603. ELIMINATION OF POSITION OF ASSISTANT SEC-**
8 **RETARY OF DEFENSE FOR RESERVE AFFAIRS.**

9 (a) REPEAL OF REQUIREMENT FOR POSITION.—Sub-
10 section (b) of section 138 of title 10, United States Code,
11 is amended—

12 (1) by striking paragraph (2); and

13 (2) by redesignating paragraphs (3), (4), and
14 (5), as paragraphs (2), (3), and (4), respectively.

15 (b) REDUCTION IN TOTAL NUMBER OF ASSISTANT
16 SECRETARIES OF DEFENSE.—

17 (1) AUTHORIZED NUMBER.—Subsection (a) of
18 such section is amended by striking “nine” and in-
19 serting “eight”.

20 (2) CONFORMING AMENDMENT.—Section 5315
21 of title 5, United States Code, is amended by strik-
22 ing “(9)” after “Assistant Secretaries of Defense”
23 and inserting “(8)”.

24 (c) EFFECTIVE DATE.—The amendments made by
25 subsections (a) and (b) shall take effect on the date on

1 which a person is first appointed as Deputy Under Sec-
2 retary of Defense for Personnel and Readiness (Reserve
3 Affairs).

4 **DIVISION B—MILITARY FAMILY**
5 **PROTECTIONS**
6 **TITLE XXI—GUARDSMEN AND**
7 **RESERVISTS FINANCIAL RELIEF**

8 **SEC. 2101. FINDINGS.**

9 Congress makes the following findings:

10 (1) According to a Government Accountability
11 Office report in November 2004, “The September
12 11, 2001, terrorist attacks and the global war on
13 terrorism have triggered the largest activation of
14 National Guard forces since World War II. As of
15 June 2004, over one-half of the National Guard’s
16 457,000 personnel had been activated for overseas
17 warfighting or domestic homeland security missions
18 in Federal and State active duty roles.”. In all, over
19 400,000 reservists have been mobilized between Sep-
20 tember 11, 2001, and the beginning of 2005.

21 (2) In March 2003, the General Accounting Of-
22 fice reported that among members of the National
23 Guard and other reserve components of the Armed
24 Forces “. . . data for past military operations show
25 that 41 percent of drilling unit members reported in-

1 come loss . . .”. The report further noted that senior
2 officers in the reserve component reported average
3 losses of \$5,000 in income upon activation.

4 (3) Not only has operation tempo drastically in-
5 creased for members of the reserve components,
6 meaning that reservists are being called away from
7 their civilian jobs more often, but also the durations
8 of deployments have increased dramatically as well,
9 meaning that reservists are being called away from
10 their civilian jobs for longer periods. The Govern-
11 ment Accountability Office reported in September
12 2004 that the average annual days of duty per-
13 formed by members of the reserve components has
14 risen from approximately 40 days in 1989 to ap-
15 proximately 120 days in 2003. A consequence of
16 both increased operations tempo and increased dura-
17 tion of deployment has been a far greater loss of in-
18 come for reservists answering their country’s call to
19 duty.

20 **SEC. 2102. PENALTY-FREE WITHDRAWALS FROM RETIRE-**
21 **MENT PLANS FOR INDIVIDUALS CALLED TO**
22 **ACTIVE DUTY FOR AT LEAST 179 DAYS.**

23 (a) IN GENERAL.—Paragraph (2) of section 72(t) of
24 the Internal Revenue Code of 1986 (relating to 10-percent
25 additional tax on early distributions from qualified retire-

1 ment plans) is amended by adding at the end the following
2 new subparagraph:

3 “(G) DISTRIBUTIONS FROM RETIREMENT
4 PLANS TO INDIVIDUALS CALLED TO ACTIVE
5 DUTY.—

6 “(i) IN GENERAL.—Any qualified re-
7 servist distribution.

8 “(ii) QUALIFIED RESERVIST DIS-
9 TRIBUTION.—For purposes of this sub-
10 paragraph, the term ‘qualified reservist
11 distribution’ means any distribution to an
12 individual if—

13 “(I) such distribution is from any
14 qualified retirement plan (as defined
15 in section 4974(c)),

16 “(II) such individual was (by rea-
17 son of being a member of a reserve
18 component (as defined in section 101
19 of title 37, United States Code)), or-
20 dered or called to active duty for a pe-
21 riod in excess of 179 days or for an
22 indefinite period, and

23 “(III) such distribution is made
24 during the period beginning on the

1 date of such order or call and ending
2 at the close of the active duty period.

3 “(iii) APPLICATION OF SUBPARA-
4 GRAPH.—This subparagraph applies to in-
5 dividuals ordered or called to active duty
6 after September 11, 2001, and before Sep-
7 tember 12, 2005.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall apply to distributions after September
10 11, 2001.

11 **SEC. 2103. INCOME TAX WITHHOLDING ON DIFFERENTIAL**
12 **WAGE PAYMENTS.**

13 (a) IN GENERAL.—Section 3401 of the Internal Rev-
14 enue Code of 1986 (relating to definitions) is amended by
15 adding at the end the following new subsection:

16 “(i) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE
17 DUTY MEMBERS OF THE UNIFORMED SERVICES.—

18 “(1) IN GENERAL.—For purposes of subsection
19 (a), any differential wage payment shall be treated
20 as a payment of wages by the employer to the em-
21 ployee.

22 “(2) DIFFERENTIAL WAGE PAYMENT.—For
23 purposes of paragraph (1), the term ‘differential
24 wage payment’ means any payment which—

1 “(A) is made by an employer to an indi-
 2 vidual with respect to any period during which
 3 the individual is performing service in the uni-
 4 formed services while on active duty for a pe-
 5 riod of more than 30 days, and

6 “(B) represents all or a portion of the
 7 wages the individual would have received from
 8 the employer if the individual were performing
 9 service for the employer.”.

10 (b) EFFECTIVE DATE.—The amendment made by
 11 subsection (a) shall apply to remuneration paid after De-
 12 cember 31, 2004.

13 **SEC. 2104. TREATMENT OF DIFFERENTIAL WAGE PAY-**
 14 **MENTS FOR RETIREMENT PLAN PURPOSES.**

15 (a) PENSION PLANS.—

16 (1) IN GENERAL.—Section 414(u) of the Inter-
 17 nal Revenue Code of 1986 (relating to special rules
 18 relating to veterans’ reemployment rights under
 19 USERRA) is amended by adding at the end the fol-
 20 lowing new paragraph:

21 “(11) TREATMENT OF DIFFERENTIAL WAGE
 22 PAYMENTS.—

23 “(A) IN GENERAL.—Except as provided in
 24 this paragraph, for purposes of applying this

1 title to a retirement plan to which this sub-
2 section applies—

3 “(i) an individual receiving a differen-
4 tial wage payment shall be treated as an
5 employee of the employer making the pay-
6 ment,

7 “(ii) the differential wage payment
8 shall be treated as compensation, and

9 “(iii) the plan shall not be treated as
10 failing to meet the requirements of any
11 provision described in paragraph (1)(C) by
12 reason of any contribution which is based
13 on the differential wage payment.

14 “(B) SPECIAL RULE FOR DISTRIBU-
15 TIONS.—

16 “(i) IN GENERAL.—Notwithstanding
17 subparagraph (A)(i), for purposes of sec-
18 tion 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii),
19 403(b)(11)(A), or 457(d)(1)(A)(ii), an in-
20 dividual shall be treated as having been
21 severed from employment during any pe-
22 riod the individual is performing service in
23 the uniformed services described in section
24 3401(i)(2)(A).

1 “(ii) LIMITATION.—If an individual
2 elects to receive a distribution by reason of
3 clause (i), the plan shall provide that the
4 individual may not make an elective deferral or employee contribution during the 6-
5 month period beginning on the date of the
6 distribution.
7

8 “(C) NONDISCRIMINATION REQUIRE-
9 MENT.—Subparagraph (A)(iii) shall apply only
10 if all employees of an employer performing service in the uniformed services described in section 3401(i)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5), of section 410(b) shall apply.
11
12
13
14
15
16
17
18
19

20 “(D) DIFFERENTIAL WAGE PAYMENT.—
21 For purposes of this paragraph, the term ‘differential wage payment’ has the meaning given
22 such term by section 3401(i)(2).”
23

24 (2) CONFORMING AMENDMENT.—The heading
25 for section 414(u) of such Code is amended by in-

1 serting “AND TO DIFFERENTIAL WAGE PAYMENTS
2 TO MEMBERS ON ACTIVE DUTY” after “USERRA”.

3 (b) DIFFERENTIAL WAGE PAYMENTS TREATED AS
4 COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS.—
5 Section 219(f)(1) of the Internal Revenue Code of 1986
6 (defining compensation) is amended by adding at the end
7 the following new sentence: “The term ‘compensation’ in-
8 cludes any differential wage payment (as defined in sec-
9 tion 3401(i)(2)).”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to plan years beginning after De-
12 cember 31, 2004.

13 (d) PROVISIONS RELATING TO PLAN AMEND-
14 MENTS.—

15 (1) IN GENERAL.—If this subsection applies to
16 any plan or annuity contract amendment—

17 (A) such plan or contract shall be treated
18 as being operated in accordance with the terms
19 of the plan or contract during the period de-
20 scribed in paragraph (2)(B)(i), and

21 (B) except as provided by the Secretary of
22 the Treasury, such plan shall not fail to meet
23 the requirements of the Internal Revenue Code
24 of 1986 or the Employee Retirement Income

1 Security Act of 1974 by reason of such amend-
2 ment.

3 (2) AMENDMENTS TO WHICH SECTION AP-
4 PLIES.—

5 (A) IN GENERAL.—This subsection shall
6 apply to any amendment to any plan or annuity
7 contract which is made—

8 (i) pursuant to any amendment made
9 by this section, and

10 (ii) on or before the last day of the
11 first plan year beginning on or after Janu-
12 ary 1, 2007.

13 (B) CONDITIONS.—This subsection shall
14 not apply to any plan or annuity contract
15 amendment unless—

16 (i) during the period beginning on the
17 date the amendment described in subpara-
18 graph (A)(i) takes effect and ending on the
19 date described in subparagraph (A)(ii) (or,
20 if earlier, the date the plan or contract
21 amendment is adopted), the plan or con-
22 tract is operated as if such plan or con-
23 tract amendment were in effect; and

24 (ii) such plan or contract amendment
25 applies retroactively for such period.

1 **SEC. 2105. READY RESERVE-NATIONAL GUARD EMPLOYEE**
 2 **CREDIT AND READY RESERVE-NATIONAL**
 3 **GUARD REPLACEMENT EMPLOYEE CREDIT.**

4 (a) READY RESERVE-NATIONAL GUARD CREDIT.—

5 (1) IN GENERAL.—Subpart D of part IV of
 6 subchapter A of chapter 1 of the Internal Revenue
 7 Code of 1986 (relating to business-related credits) is
 8 amended by inserting after section 45I the following
 9 new section:

10 **“SEC. 45J. READY RESERVE-NATIONAL GUARD EMPLOYEE**
 11 **CREDIT.**

12 “(a) GENERAL RULE.—For purposes of section 38,
 13 in the case of an eligible taxpayer, the Ready Reserve-Na-
 14 tional Guard employee credit determined under this sec-
 15 tion for any taxable year with respect to each Ready Re-
 16 serve-National Guard employee of such taxpayer is an
 17 amount equal to 50 percent of the lesser of—

18 “(1) the actual compensation amount with re-
 19 spect to such employee for such taxable year, or

20 “(2) \$30,000.

21 “(b) DEFINITION OF ACTUAL COMPENSATION
 22 AMOUNT.—For purposes of this section, the term ‘actual
 23 compensation amount’ means the amount of compensation
 24 paid or incurred by an eligible taxpayer with respect to
 25 a Ready Reserve-National Guard employee on any day

1 when the employee was absent from employment for the
2 purpose of performing qualified active duty.

3 “(c) LIMITATIONS.—No credit shall be allowed with
4 respect to any day that a Ready Reserve-National Guard
5 employee who performs qualified active duty was not
6 scheduled to work (for reason other than to participate
7 in qualified active duty).

8 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
9 poses of this section—

10 “(1) ELIGIBLE TAXPAYER.—

11 “(A) IN GENERAL.—The term ‘eligible tax-
12 payer’ means a small business employer.

13 “(B) SMALL BUSINESS EMPLOYER.—

14 “(i) IN GENERAL.—The term ‘small
15 business employer’ means, with respect to
16 any taxable year, any employer who em-
17 ployed an average of 50 or fewer employees
18 on business days during such taxable year.

19 “(ii) CONTROLLED GROUPS.—For
20 purposes of clause (i), all persons treated
21 as a single employer under subsection (b),
22 (c), (m), or (o) of section 414 shall be
23 treated as a single employer.

24 “(2) QUALIFIED ACTIVE DUTY.—The term
25 ‘qualified active duty’ means—

1 “(A) active duty under an order or call for
2 a period in excess of 179 days or for an indefi-
3 nite period, other than the training duty speci-
4 fied in section 10147 of title 10, United States
5 Code (relating to training requirements for the
6 Ready Reserve), or section 502(a) of title 32,
7 United States Code (relating to required drills
8 and field exercises for the National Guard), in
9 connection with which an employee is entitled to
10 reemployment rights and other benefits or to a
11 leave of absence from employment under chap-
12 ter 43 of title 38, United States Code, and

13 “(B) hospitalization incident to such duty.

14 “(3) COMPENSATION.—The term ‘compensa-
15 tion’ means any remuneration for employment,
16 whether in cash or in kind, which is paid or incurred
17 by a taxpayer and which is deductible from the tax-
18 payer’s gross income under section 162(a)(1).

19 “(4) READY RESERVE-NATIONAL GUARD EM-
20 PLOYEE.—The term ‘Ready Reserve-National Guard
21 employee’ means an employee who is a member of
22 the Ready Reserve of a reserve component of an
23 Armed Force of the United States as described in
24 sections 10142 and 10101 of title 10, United States
25 Code.

1 “(5) CERTAIN RULES TO APPLY.—Rules similar
2 to the rules of section 52 shall apply.

3 “(e) TERMINATION.—This section shall not
4 apply to any amount paid or incurred after Decem-
5 ber 31, 2005.”.

6 (2) CREDIT TO BE PART OF GENERAL BUSI-
7 NESS CREDIT.—Subsection (b) of section 38 of the
8 Internal Revenue Code of 1986 (relating to general
9 business credit) is amended by striking “plus” at the
10 end of paragraph (18), by striking the period at the
11 end of paragraph (19) and inserting “, plus”, and
12 by adding at the end the following:

13 “(20) the Ready Reserve-National Guard em-
14 ployee credit determined under section 45J(a).”.

15 (3) DENIAL OF DOUBLE BENEFIT.—Section
16 280C(a) of the Internal Revenue Code of 1986 (re-
17 lating to rule for employment credits) is amended by
18 inserting “45J(a),” after “45A(a),”.

19 (4) CONFORMING AMENDMENT.—The table of
20 sections for subpart D of part IV of subchapter A
21 of chapter 1 of the Internal Revenue Code of 1986
22 is amended by inserting after the item relating to
23 section 45I the following:

“Sec. 45J. Ready Reserve-National Guard employee credit.”.

24 (5) EFFECTIVE DATE.—The amendments made
25 by this subsection shall apply to amounts paid or in-

1 curred after September 30, 2004, in taxable years
2 ending after such date.

3 (b) READY RESERVE-NATIONAL GUARD REPLACE-
4 MENT EMPLOYEE CREDIT.—

5 (1) IN GENERAL.—Paragraph (1) of section
6 51(d) of the Internal Revenue Code of 1986 (relat-
7 ing to members of targeted groups) is amended by
8 striking “or” at the end of subparagraph (G), by
9 striking the period at the end of subparagraph (H)
10 and inserting “, or” and by adding at the end the
11 following new subparagraph:

12 “(I) a qualified replacement employee.”.

13 (2) QUALIFIED REPLACEMENT EMPLOYEE.—
14 Section 51(d) of the Internal Revenue Code of 1986
15 is amended by redesignating paragraphs (10), (11),
16 and (12) as paragraphs (11), (12), and (13), respec-
17 tively, and by inserting after paragraph (9) the fol-
18 lowing new paragraph:

19 “(10) QUALIFIED REPLACEMENT EMPLOYEE.—

20 “(A) IN GENERAL.—The term ‘qualified
21 replacement employee’ means an individual who
22 is certified by the designated local agency as
23 being hired by an eligible taxpayer to replace a
24 Ready Reserve-National Guard employee of
25 such taxpayer, but only with respect to the pe-

1 riod during which such Ready Reserve-National
2 Guard employee participates in qualified active
3 duty, including time spent in travel status.

4 “(B) GENERAL DEFINITIONS AND SPECIAL
5 RULES.—For purposes of this paragraph—

6 “(i) ELIGIBLE TAXPAYER.—The term
7 ‘eligible taxpayer’ means a small business
8 employer.

9 “(ii) SMALL BUSINESS EMPLOYER.—

10 “(I) IN GENERAL.—The term
11 ‘small business employer’ means, with
12 respect to any taxable year, any em-
13 ployer who employed an average of 50
14 or fewer employees on business days
15 during such taxable year.

16 “(II) CONTROLLED GROUPS.—

17 For purposes of subclause (I), all per-
18 sons treated as a single employer
19 under subsection (b), (c), (m), or (o)
20 of section 414 shall be treated as a
21 single employer.

22 “(iii) READY RESERVE-NATIONAL
23 GUARD EMPLOYEE.—The term ‘Ready Re-
24 serve-National Guard employee’ has the

1 meaning given such term by section
2 45J(d)(3).

3 “(iv) QUALIFIED ACTIVE DUTY.—The
4 term ‘qualified active duty’ has the mean-
5 ing given such term by section 45J(d)(1).

6 “(C) DISALLOWANCE FOR FAILURE TO
7 COMPLY WITH EMPLOYMENT OR REEMPLOY-
8 MENT RIGHTS OF MEMBERS OF THE RESERVE
9 COMPONENTS OF THE ARMED FORCES OF THE
10 UNITED STATES.—No credit shall be allowed
11 under subsection (a) by reason of paragraph
12 (1)(I) to a taxpayer for—

13 “(i) any taxable year, beginning after
14 the date of the enactment of this section,
15 in which the taxpayer is under a final
16 order, judgment, or other process issued or
17 required by a district court of the United
18 States under section 4323 of title 38 of the
19 United States Code with respect to a viola-
20 tion of chapter 43 of such title, and

21 “(ii) the 2 succeeding taxable years.”.

22 (3) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to amounts paid or in-
24 curred to an individual who begins work for the em-
25 ployer after September 30, 2004.

1 (c) STUDY BY GAO.—

2 (1) IN GENERAL.—The Comptroller General of
3 the United States shall study the following:

4 (A) What, if any, problems exist in recruit-
5 ing individuals for a reserve component of an
6 Armed Force of the United States.

7 (B) What, if any, problems exist as the re-
8 sult of providing differential wage payments (as
9 defined in section 3401(i)(2) of the Internal
10 Revenue Code of 1986 (as added by this Act))
11 to individuals described in subparagraph (A) in
12 the recruitment and retention of individuals as
13 regular members of the Armed Forces of the
14 United States.

15 (C) Whether the credit allowed under sec-
16 tion 45J of the Internal Revenue Code of 1986
17 (as added by this section) is an effective incen-
18 tive for the hiring and retention of employees
19 who are individuals described in subparagraph
20 (A) and whether there exists any compliance
21 problems in the administration of such credit.

22 (2) REPORT.—The Comptroller General of the
23 United States shall report on the results of the
24 study required under paragraph (1) to the Com-
25 mittee of Finance of the Senate and the Committee

1 on Ways and Means of the House of Representatives
2 before July 1, 2005.

3 **SEC. 2106. NONREDUCTION IN PAY WHILE FEDERAL EM-**
4 **PLOYEE IS PERFORMING ACTIVE SERVICE IN**
5 **THE UNIFORMED SERVICES OR NATIONAL**
6 **GUARD.**

7 (a) PRESERVATION OF PAY LEVEL.—

8 (1) REQUIREMENTS.—Subchapter IV of chapter
9 55 of title 5, United States Code, is amended by
10 adding at the end the following:

11 **“§ 5538. Nonreduction in pay while serving in the**
12 **uniformed services or National Guard**

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

21 “(1) the amount of basic pay which would oth-
22 erwise have been payable to such employee for such
23 pay period if such employee’s civilian employment
24 with the Government had not been interrupted by
25 that service, exceeds (if at all)

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

3 “(A) is payable to such employee for that
4 service; and

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

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

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

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

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

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

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

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

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

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

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

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

21 “(e)(1) The head of each agency referred to in section
22 2302(a)(2)(C)(ii) shall, in consultation with the Office,
23 prescribe procedures to ensure that the rights under this
24 section apply to the employees of such agency.

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

5 “(f) For purposes of this section—

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

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

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

19 (2) CLERICAL AMENDMENT.—The table of sec-
20 tions for chapter 55 of title 5, United States Code,
21 is amended by inserting after the item relating to
22 section 5537 the following:

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

23 (b) EFFECTIVE DATE.—

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

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

8 (A) Section 5538 of title 5, United States
 9 Code (as added by subsection (a)), shall apply
 10 with respect to pay periods (as described in
 11 subsection (b) of such section) beginning on or
 12 after October 11, 2002 through the date of the
 13 enactment of this Act, subject to the availability
 14 of appropriations.

15 (B) There are authorized to be appro-
 16 priated \$100,000,000 for purposes of subpara-
 17 graph (A).

18 **TITLE XXII—NATIONAL GUARD**
 19 **AND RESERVE COMPREHEN-**
 20 **SIVE HEALTH BENEFITS**

21 **SEC. 2201. SHORT TITLE.**

22 This title may be cited as the “National Guard and
 23 Reserve Comprehensive Health Benefits Act of 2005”.

24 **SEC. 2202. FINDINGS.**

25 Congress makes the following findings:

1 (1) According to the results of a Department of
2 Defense survey conducted in 2000, 20 percent of
3 members of the reserve components of the Armed
4 Forces, including 40 percent of junior enlisted per-
5 sonnel, had no health care coverage while not on ac-
6 tive duty.

7 (2) In 2004, Congress passed legislation au-
8 thorizing reservists to obtain access to the military
9 TRICARE health care program for one year for
10 each 90-day period of active duty service. While the
11 enactment of this law was an important step for-
12 ward, the law only provides eligibility for health care
13 after active duty has been completed and fails to
14 provide the complete health care coverage necessary
15 to ensure that reservists are medically ready to an-
16 swer a future call to active duty.

17 (3) In September 2004, the Government Ac-
18 countability Office, after reviewing pre-deployment
19 health screenings of over 240,000 reservists, re-
20 ported finding that nearly 7 percent of activated re-
21 servists were categorized as nondeployable for health
22 reasons, including nearly 10 percent of the Army
23 Reserve.

1 **SEC. 2203. TRICARE COVERAGE FOR MEMBERS OF THE**
2 **READY RESERVE.**

3 (a) ELIGIBILITY.—Section 1076b of title 10, United
4 States Code, is amended to read as follows:

5 **“§ 1076b. TRICARE program: coverage for members**
6 **of the Ready Reserve**

7 “(a) ELIGIBILITY.—Members of the Selected Reserve
8 of the Ready Reserve of a reserve component of the armed
9 forces and members of the Individual Ready Reserve de-
10 scribed in subsection 10144(b) of this title are eligible,
11 subject to subsection (h)(1), to enroll in the following
12 TRICARE program options:

13 “(1) TRICARE Prime.

14 “(2) TRICARE Standard.

15 “(b) TYPES OF COVERAGE.—(1) A member eligible
16 under subsection (a) may enroll for either of the following
17 types of coverage:

18 “(A) Self alone coverage.

19 “(B) Self and family coverage.

20 “(2) An enrollment by a member for self and family
21 covers the member and the dependents of the member who
22 are described in subparagraph (A), (D), or (I) of section
23 1072(2) of this title.

24 “(c) OPEN ENROLLMENT PERIODS.—The Secretary
25 of Defense shall provide for at least one open enrollment
26 period each year. During an open enrollment period, a

1 member eligible under subsection (a) may enroll in the
2 TRICARE program or change or terminate an enrollment
3 in the TRICARE program.

4 “(d) SCOPE OF CARE.—(1) A member and the de-
5 pendants of a member enrolled in the TRICARE program
6 under this section shall be entitled to the same benefits
7 under this chapter as a member of the uniformed services
8 on active duty or a dependent of such a member, respec-
9 tively.

10 “(2) Section 1074(c) of this title shall apply with re-
11 spect to a member enrolled in the TRICARE program
12 under this section.

13 “(e) PREMIUMS.—(1) The Secretary of Defense shall
14 charge premiums for coverage pursuant to enrollments
15 under this section. The Secretary shall prescribe for each
16 of the TRICARE program options referred to in sub-
17 section (a) a premium for self alone coverage and a pre-
18 mium for self and family coverage.

19 “(2) The monthly amount of the premium in effect
20 for a month for a type of coverage under this section shall
21 be the amount equal to 28 percent of the total amount
22 determined by the Secretary on an appropriate actuarial
23 basis as being reasonable for the coverage.

24 “(3) The premiums payable by a member under this
25 subsection may be deducted and withheld from basic pay

1 payable to the member under section 204 of title 37 or
2 from compensation payable to the member under section
3 206 of such title. The Secretary shall prescribe the re-
4 quirements and procedures applicable to the payment of
5 premiums by members not entitled to such basic pay or
6 compensation.

7 “(4) Amounts collected as premiums under this sub-
8 section shall be credited to the appropriation available for
9 the Defense Health Program Account under section 1100
10 of this title, shall be merged with sums in such Account
11 that are available for the fiscal year in which collected,
12 and shall be available under subsection (b) of such section
13 for such fiscal year.

14 “(f) OTHER CHARGES.—A person who receives
15 health care pursuant to an enrollment in a TRICARE pro-
16 gram option under this section, including a member who
17 receives such health care, shall be subject to the same
18 deductibles, copayments, and other nonpremium charges
19 for health care as apply under this chapter for health care
20 provided under the same TRICARE program option to de-
21 pendents described in subparagraph (A), (D), or (I) of sec-
22 tion 1072(2) of this title.

23 “(g) TERMINATION OF ENROLLMENT.—(1) A mem-
24 ber enrolled in the TRICARE program under this section
25 may terminate the enrollment only during an open enroll-

1 ment period provided under subsection (c), except as pro-
2 vided in subsection (h)(2).

3 “(2) An enrollment of a member for self alone or for
4 self and family under this section shall terminate on the
5 first day of the first month beginning after the date on
6 which the member ceases to be eligible under subsection
7 (a).

8 “(3) The enrollment of a member under this section
9 may be terminated on the basis of failure to pay the pre-
10 mium charged the member under this section.

11 “(h) RELATIONSHIP TO TRANSITION TRICARE COV-
12 ERAGE UPON SEPARATION FROM ACTIVE DUTY.—(1) A
13 member may not enroll in the TRICARE program under
14 this section while entitled to transitional health care under
15 subsection (a) of section 1145 of this title or while author-
16 ized to receive health care under subsection (c) of such
17 section.

18 “(2) A member who enrolls in the TRICARE pro-
19 gram under this section within 90 days after the date of
20 the termination of the member’s entitlement or eligibility
21 to receive health care under subsection (a) or (c) of section
22 1145 of this title may terminate the enrollment at any
23 time within one year after the date of the enrollment.

24 “(i) REGULATIONS.—The Secretary of Defense, in
25 consultation with the other administering Secretaries,

1 shall prescribe regulations for the administration of this
2 section.”.

3 (b) DEFINITIONS.—

4 (1) TRICARE OPTIONS.—Section 1072 of title
5 10, United States Code, is amended by adding at
6 the end the following new paragraphs:

7 “(10) The term ‘TRICARE Prime’ means the
8 managed care option of the TRICARE program.

9 “(11) The term ‘TRICARE Standard’ means
10 the Civilian Health and Medical Program of the
11 Uniformed Services option under the TRICARE pro-
12 gram.”.

13 (2) CONFORMING AMENDMENTS.—

14 (A) Section 1076d(f) of such title is
15 amended—

16 (i) by striking “(f) **DEFINITIONS.**—”
17 and all that follows through “(1) The” and
18 inserting “(f) **IMMEDIATE FAMILY DE-**
19 **FINED.**—In this section, the”; and

20 (ii) by striking paragraph (2).

21 (B) Section 1097a(f) of such title is
22 amended by striking “**DEFINITIONS.**—In this
23 section:” and all that follows through “(2) The
24 term” and inserting “**CATCHMENT AREA DE-**
25 **FINED.**—In this section, the term”.

1 (c) PERIOD FOR IMPLEMENTATION.—Section 1076b
2 of title 10, United States Code (as added by subsection
3 (a)), shall apply with respect to months that begin on or
4 after the date that is 180 days after the date of the enact-
5 ment of this Act.

6 (d) COORDINATION WITH OVERLAPPING AUTHOR-
7 ITY.—

8 (1) REPEAL.—Effective one year after the date
9 of the enactment of this Act—

10 (A) section 1076d of title 10, United
11 States Code, is repealed; and

12 (B) the table of sections at the beginning
13 of chapter 55 of such title is amended by strik-
14 ing the item relating to section 1076d.

15 (2) TRANSITION COVERAGE.—The Secretary of
16 Defense shall provide for an orderly transition to
17 TRICARE coverage under section 1076b of title 10,
18 United States Code (as amended by subsection (a)),
19 for persons enrolled for TRICARE coverage under
20 section 1076d of such title before the repeal of such
21 section takes effect under paragraph (1)(A).

22 **SEC. 2204. ALLOWANCE FOR CONTINUATION OF NON-**
23 **TRICARE HEALTH BENEFITS COVERAGE FOR**
24 **CERTAIN MOBILIZED RESERVES.**

25 (a) PAYMENT OF PREMIUMS.—

1 (1) REQUIREMENT TO PAY PREMIUMS.—Chap-
2 ter 55 of title 10, United States Code, is amended
3 by inserting after section 1078a the following new
4 section:

5 **“§ 1078b. Continuation of non-tricare health benefits**
6 **plan coverage for certain Reserves called**
7 **or ordered to active duty and their de-**
8 **pendents**

9 “(a) PAYMENT OF PREMIUMS.—The Secretary con-
10 cerned shall pay the applicable premium to continue in
11 force any qualified health benefits plan coverage for an
12 eligible reserve component member for the benefits cov-
13 erage continuation period if timely elected by the member
14 in accordance with regulations prescribed under sub-
15 section (j).

16 “(b) ELIGIBLE MEMBER.—A member of a reserve
17 component is eligible for payment of the applicable pre-
18 mium for continuation of qualified health benefits plan
19 coverage under subsection (a) while serving on active duty
20 pursuant to a call or order issued under a provision of
21 law referred to in section 101(a)(13)(B) of this title dur-
22 ing a war or national emergency declared by the President
23 or Congress.

24 “(c) QUALIFIED HEALTH BENEFITS PLAN COV-
25 ERAGE.—For the purposes of this section, health benefits

1 plan coverage for a member called or ordered to active
2 duty is qualified health benefits plan coverage if—

3 “(1) the coverage was in force on the date on
4 which the Secretary notified the member that
5 issuance of the call or order was pending or, if no
6 such notification was provided, the date of the call
7 or order;

8 “(2) on such date, the coverage applied to the
9 member and dependents of the member described in
10 subparagraph (A), (D), or (I) of section 1072(2) of
11 this title; and

12 “(3) the coverage has not lapsed.

13 “(d) APPLICABLE PREMIUM.—The applicable pre-
14 mium payable under this section for continuation of health
15 benefits plan coverage in the case of a member is the
16 amount of the premium payable by the member for the
17 coverage of the member and dependents.

18 “(e) MAXIMUM AMOUNT.—The total amount that
19 may be paid for the applicable premium of a health bene-
20 fits plan for a member under this section in a fiscal year
21 may not exceed the amount determined by multiplying—

22 “(1) the sum of one plus the number of the
23 member’s dependents covered by the health benefits
24 plan, by

1 “(2) the per capita cost of providing TRICARE
2 coverage and benefits for dependents under this
3 chapter for such fiscal year, as determined by the
4 Secretary of Defense.

5 “(f) BENEFITS COVERAGE CONTINUATION PE-
6 RIOD.—The benefits coverage continuation period under
7 this section for qualified health benefits plan coverage in
8 the case of a member called or ordered to active duty is
9 the period that—

10 “(1) begins on the date of the call or order; and

11 “(2) ends on the earlier of the date on which—

12 “(A) the member’s eligibility for transi-
13 tional health care under section 1145(a) of this
14 title terminates under paragraph (3) of such
15 section; or

16 “(B) the member elects to terminate the
17 continued qualified health benefits plan cov-
18 erage of the dependents of the member.

19 “(g) EXTENSION OF PERIOD OF COBRA COV-
20 ERAGE.—Notwithstanding any other provision of law—

21 “(1) any period of coverage under a COBRA
22 continuation provision (as defined in section
23 9832(d)(1) of the Internal Revenue Code of 1986)
24 for a member under this section shall be deemed to

1 be equal to the benefits coverage continuation period
2 for such member under this section; and

3 “(2) with respect to the election of any period
4 of coverage under a COBRA continuation provision
5 (as so defined), rules similar to the rules under sec-
6 tion 4980B(f)(5)(C) of such Code shall apply.

7 “(h) NONDUPLICATION OF BENEFITS.—A dependent
8 of a member who is eligible for benefits under qualified
9 health benefits plan coverage paid on behalf of a member
10 by the Secretary concerned under this section is not eligi-
11 ble for benefits under the TRICARE program during a
12 period of the coverage for which so paid.

13 “(i) REVOCABILITY OF ELECTION.—A member who
14 makes an election under subsection (a) may revoke the
15 election. Upon such a revocation, the member’s depend-
16 ents shall become eligible for benefits under the
17 TRICARE program as provided for under this chapter.

18 “(j) REGULATIONS.—The Secretary of Defense shall
19 prescribe regulations for carrying out this section. The
20 regulations shall include such requirements for making an
21 election of payment of applicable premiums as the Sec-
22 retary considers appropriate.”.

23 (2) CLERICAL AMENDMENT.—The table of sec-
24 tions at the beginning of such chapter is amended

1 by inserting after the item relating to section 1078a
 2 the following new item:

“1078b. Continuation of non-TRICARE health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents.”.

3 (b) APPLICABILITY.—Section 1078b of title 10,
 4 United States Code (as added by subsection (a)), shall
 5 apply with respect to calls or orders of members of reserve
 6 components of the Armed Forces to active duty as de-
 7 scribed in subsection (b) of such section, that are issued
 8 by the Secretary of a military department on or after the
 9 date of the enactment of this Act.

10 **TITLE XXIII—IMPROVED DEATH**
 11 **GRATUITY AND OTHER SUR-**
 12 **VIVOR BENEFITS**

13 **SEC. 2301. FINDINGS.**

14 Congress makes the following findings:

15 (1) No amount of money can make up for the
 16 loss of a loved one. But the United States can, and
 17 is obliged to, honor the service of lost
 18 servicemembers by ensuring that their families are
 19 financially supported at the time of great need occa-
 20 sioned by those losses.

21 (2) The Federal Government owes families of
 22 servicemembers dying on duty a death gratuity that
 23 is sufficient to help each family pay for costs associ-
 24 ated with the death of the servicemember and to

1 help the members of the family adjust to the finan-
2 cial instability that results from termination of the
3 servicemember's income.

4 (3) Survivors of fallen military personnel who
5 are eligible for both a Survivor Benefit Plan annuity
6 and Dependency and Indemnity Compensation suffer
7 a loss of income as a result of the law that requires
8 a reduction in the Survivor Benefit Plan annuity by
9 the amount of the Dependency and Indemnity Com-
10 pensation. This unjust prohibition against concur-
11 rent receipt of two independent benefits prevents the
12 United States from fulfilling its obligation to the
13 survivors during the time of financial need that is
14 occasioned by the deaths of the fallen
15 servicemembers.

16 **SEC. 2302. INCREASED AMOUNT OF DEATH GRATUITY.**

17 (a) AMOUNT OF DEATH GRATUITY.—Section
18 1478(a) of title 10, United States Code, is amended by
19 striking “\$12,000” in the first sentence and inserting
20 “\$100,000”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect as of September 11, 2001,
23 and shall apply with respect to deaths occurring on or
24 after that date.

1 **SEC. 2303. DEATH GRATUITY EXCLUDABLE FROM FEDERAL**
2 **INCOME TAXATION.**

3 (a) IN GENERAL.—Paragraph (1) of section 134(b)
4 of the Internal Revenue Code of 1986 (relating to certain
5 military benefits) is amended by adding at the end the
6 following new flush sentence:

7 “Such term shall include any death gratuity to
8 which the limitation in section 1478(a) of title
9 10, United States Code, applies.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) shall apply to amounts paid with respect
12 to deaths occurring on or after September 11, 2001.

13 **SEC. 2304. REPEAL OF REQUIREMENT OF REDUCTION OF**
14 **SBP SURVIVOR ANNUITIES BY DEPENDENCY**
15 **AND INDEMNITY COMPENSATION.**

16 (a) REPEAL.—Subchapter II of chapter 73 of title
17 10, United States Code is amended—

18 (1) in section 1450(c)(1), by inserting after “to
19 whom section 1448 of this title applies” the fol-
20 lowing: “(except in the case of a death as described
21 in subsection (d) or (f) of such section)”; and

22 (2) in section 1451(c)—

23 (A) by striking paragraph (2); and

24 (B) by redesignating paragraphs (3) and
25 (4) as paragraphs (2) and (3), respectively.

1 (b) PROHIBITION ON RETROACTIVE BENEFITS.—No
2 benefits may be paid to any person for any period before
3 the effective date provided under subsection (e) by reason
4 of the amendments made by subsection (a).

5 (c) PROHIBITION ON RECOUPMENT OF CERTAIN
6 AMOUNTS PREVIOUSLY REFUNDED TO SBP RECIPI-
7 ENTS.—A surviving spouse who is or has been in receipt
8 of an annuity under the Survivor Benefit Plan under sub-
9 chapter II of chapter 73 of title 10, United States Code,
10 that is in effect before the effective date provided under
11 subsection (e) and that is adjusted by reason of the
12 amendments made by subsection (a) and who has received
13 a refund of retired pay under section 1450(e) of title 10,
14 United States Code, shall not be required to repay such
15 refund to the United States.

16 (d) RECONSIDERATION OF OPTIONAL ANNUITY.—
17 Section 1448(d)(2) of title 10, United States Code, is
18 amended by adding at the end the following new sen-
19 tences: “The surviving spouse, however, may elect to ter-
20minate an annuity under this subparagraph in accordance
21 with regulations prescribed by the Secretary concerned.
22 Upon such an election, payment of an annuity to depend-
23 ent children under this subparagraph shall terminate ef-
24 fective on the first day of the first month that begins after
25 the date on which the Secretary concerned receives notice

1 of the election, and, beginning on that day, an annuity
2 shall be paid to the surviving spouse under paragraph (1)
3 instead.”.

4 (e) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on the later of—

6 (1) the first day of the first month that begins
7 after the date of the enactment of this Act; or

8 (2) the first day of the fiscal year that begins
9 in the calendar year in which this Act is enacted.

10 **SEC. 2305. EFFECTIVE DATE FOR PAID-UP COVERAGE**
11 **UNDER SURVIVOR BENEFIT PLAN.**

12 Section 1452(j) of title 10, United States Code, is
13 amended by striking “October 1, 2008” and inserting
14 “October 1, 2005”.

15 **DIVISION C—TAXPAYER**
16 **PROTECTION**
17 **TITLE XXXI—FUNDING OF**
18 **RECONSTRUCTION IN IRAQ**

19 **SEC. 3101. FINDINGS.**

20 Congress makes the following findings:

21 (1) The international community’s support for
22 Iraq’s efforts to reconstruct the infrastructure of
23 Iraq following the overthrow of Saddam Hussein’s
24 regime is critical to the achievement of regional and

1 international stability and to the protection of na-
2 tional security interests of the United States.

3 (2) United States taxpayers have borne a dis-
4 proportionate burden in supporting the reconstruc-
5 tion of Iraq. The United States Government has
6 committed to providing Iraq with grants of financial
7 assistance worth more than 500 percent more than
8 the grant assistance that has been committed by the
9 governments of all of the rest of the countries of the
10 world combined.

11 (3) The disproportionate contribution of the
12 United States to the reconstruction of Iraq has re-
13 sulted in a commitment of United States resources
14 to reconstruction that otherwise would be available
15 for supporting the efforts of United States military
16 personnel to rid Iraq and Afghanistan of hostile in-
17 surgents.

18 (4) Iraq possesses the world's second largest re-
19 serve of crude oil, with 112,000,000,000 barrels, and
20 administration officials have stated on several occa-
21 sions that revenue from Iraq's oil industry could
22 fund a significant portion of the costs of the recon-
23 struction of Iraq.

1 **SEC. 3102. REPORT ON ADDITIONAL NEEDS FOR FUNDING**
2 **MILITARY AND RECONSTRUCTION EFFORTS.**

3 (a) **REQUIREMENT FOR REPORT.**—Whenever the
4 President submits to Congress a request for a supple-
5 mental appropriation of funds for use in connection with
6 United States military or reconstruction efforts in Iraq,
7 the President shall submit to the chairmen and ranking
8 members of the appropriate committees of Congress in ac-
9 cordance with this section a report on the status of United
10 States financial commitments to the reconstruction of
11 Iraq.

12 (b) **CONTENT.**—The report under subsection (a) shall
13 include the following information:

14 (1) An estimate of the amount of the United
15 States Government funds spent for the reconstruc-
16 tion of Iraq between March 19, 2003, and the date
17 of the report that is attributable to tax revenue col-
18 lected from United States taxpayers.

19 (2) An assessment of the activities funded by
20 that amount, together with a discussion of the re-
21 sults that such activities have achieved.

22 (3) An estimate of the amount of the funds
23 that have been contributed by all other foreign gov-
24 ernments for the reconstruction of Iraq and in relief
25 of Iraq's national debt.

1 (4) The amount of the crude oil that has been
2 extracted by Iraq since March 19, 2003, and the
3 total value of that oil in United States dollars.

4 (c) TIME FOR REPORT.—The President shall submit
5 the report under this section not later than 24 hours after
6 any proposed legislation to provide a supplemental appro-
7 priation of funds requested by the President for use in
8 connection with United States military or reconstruction
9 activities in Iraq is introduced in either the Senate or the
10 House of Representatives.

11 (d) FORM.—The report under this section shall be
12 submitted in unclassified form.

13 **SEC. 3103. LIMITATION ON USE OF FUNDS.**

14 (a) LIMITATION.—Funds appropriated or otherwise
15 available for providing financial assistance for reconstruc-
16 tion activities in Iraq may not be obligated or expended
17 for providing financial assistance for such activities other
18 than in the form of a collateralized loan until the Presi-
19 dent submits to the chairmen and ranking members of the
20 appropriate committees of Congress a report that contains
21 the following matters:

22 (1) The President’s plan for seeking increased
23 financial support for reconstruction activities in Iraq
24 from the international community.

1 (1) The Committee on Foreign Relations Com-
2 mittee, the Committee on Armed Services, and the
3 Committee on Appropriations of the Senate.

4 (2) The Committee on International Relations,
5 the Committee on Armed Services, and the Com-
6 mittee on Appropriations of the House of Represent-
7 atives.

Calendar No. 88

109TH CONGRESS
1ST Session
S. 871

A BILL

To amend title 10, United States Code, to ensure that the strength of the Armed Forces and the protections and benefits for members of the Armed Forces and their families are adequate for keeping the commitment of the people of the United States to support their servicemembers, and for other purposes.

APRIL 22, 2005

Read the second time and placed on the calendar