Calendar No. 508

112TH CONGRESS *2d Session*	SENATE	REPORT 112–211

HATCH ACT MODERNIZATION ACT OF 2012

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2170

TO AMEND THE PROVISIONS OF TITLE 5, UNITED STATES CODE, WHICH ARE COMMONLY REFERRED TO AS THE "HATCH ACT" TO ELIMINATE THE PROVISION PREVENTING CERTAIN STATE AND LOCAL EMPLOYEES FROM SEEKING ELECTIVE OFFICE, CLARIFY THE APPLICATION OF CERTAIN PROVISIONS TO THE DISTRICT OF COLUMBIA, AND MODIFY THE PENALTIES WHICH MAY BE IMPOSED FOR CERTAIN VIOLATIONS UNDER SUBCHAPTER III OF CHAPTER 73 OF THAT TITLE

SEPTEMBER 13, 2012.—Ordered to be printed

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112th Congress
2d Session

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REPORT
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HATCH ACT MODERNIZATION ACT OF 2012

SEPTEMBER 13, 2012.—Ordered to be printed

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

R E P O R T

[To accompany S. 2170]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2170) to amend the provisions of title 5, United States Code, which are commonly referred to as the "Hatch Act" to eliminate the provision preventing certain State and local employees from seeking elective office, clarify the application of certain provisions to the District of Columbia, and modify the penalties which may be imposed for certain violations under subchapter III of chapter 73 of that title, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

CONTENTS

I. PURPOSE AND SUMMARY

The Hatch Act prohibits certain federal, state, and local government employees from running for partisan political office and from engaging in certain other partisan political activities.[1] S. 2170, as reported by this Committee, will update the Hatch Act by (1) removing the prohibition on certain state and local employees run-

[1] The Hatch Act is codified at 5 U.S.C. §§ 1501–1508 (applicable to state and local employees) and 5 U.S.C. §§ 7321–7326 (applicable to federal employees).

ning for partisan elective office unless their salary is paid entirely from federal funding; (2) providing more flexibility with respect to penalties that may be imposed on federal employees for Hatch Act violations; (3) applying to D.C. government employees the same Hatch Act provisions that apply to state and local government employees; and (4) giving federal employees who are residents of the District of Columbia the same right to participate in municipal political management and political campaigns that federal employees residing in nearby areas of Maryland and Virginia now have.

II. Background and Need for Legislation

A. HISTORICAL DEVELOPMENT OF THE HATCH ACT

Federal employees have faced restrictions on their political activities since the earliest days of the Republic. The Jefferson Administration, for example, issued an order stating—

> [although it is the] right of any officer to give his vote at elections as a qualified citizen . . . it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution.[2]

In 1939, increased concerns about partisan political activity of certain federal employees led Congress to pass what has become known as the "Hatch Act."[3] The legislation was enacted in response to concerns that officials administering certain New Deal relief programs might use their powers for partisan ends, including by inducing political activities by workers employed through the programs.[4] As originally enacted, the legislation restricted the political activities of federal executive branch employees, but one year later, in 1940, Congress amended the law to also impose restrictions on political activities of state and local government employees who work "in connection" with federally funded activities.[5]

In 1974, Congress amended the Hatch Act to remove the federal restriction on state and local employees actively participating in political campaigns.[6] Congress most recently reformed the Hatch Act in 1993, allowing most federal employees to engage in voluntary, partisan political activities as long as those activities take place during their own free time, away from their federal jobs, and off of federal premises.[7]

Under Hatch Act provisions now applicable to state and local government employees,[8] those whose employment is in connection with activities receiving federal funding may not use their official authority to influence an election or nomination, may not pressure or advise another state or local employee to make a political contribution, and generally may not run for partisan elective office. The prohibition against running for partisan office does not apply to state governors and lieutenant governors, city mayors, certain other top state and local officials, and others holding elective office.

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[2] A Compilation of the Messages and Papers of the Presidents, Volume 10, at 98–99 (1899).
[3] Public Law No. 76–252 (Aug. 2, 1939) (commonly referred to as the "Hatch Act," after its sponsor, Senator Carl Hatch of New Mexico).
[4] *See* S. Rep. No. 76–1 (1939); *see, also,* H.R. Rep. No. 103–16, at 7–13 (1993).
[5] Public Law No. 76–753 (1940), 54 Stat. 767, § 4.
[6] Federal Election Campaign Act Amendments, § 401, Public Law 93–443 (Oct. 15, 1974).
[7] Hatch Act Reform Amendments of 1993, § 2, Public Law 103–94 (Oct. 6, 1993).
[8] 5 U.S.C. §§ 1501–1508.

In addition, employees of educational or research agencies and institutions are exempt from all coverage under the Hatch Act.

Other provisions of the Hatch Act[9] apply to federal employees in executive branch agencies (as well as to federal employees in other branches holding positions designated as being in the "competitive service"), and also now apply to employees in the government of the District of Columbia. Employees covered by these provisions may not use their official authority to influence or affect an election and may not knowingly help in political fundraising, run for partisan elective office, knowingly solicit or discourage political activity by persons with certain business before the agency, or engage in political activity on government time or using government resources. Employees at certain listed agencies are further forbidden to take any active part in political management or political campaigns. Exceptions apply for the President and Vice President and for certain other top officials.

The Special Counsel, who heads a small executive branch agency entitled the Office of Special Counsel (OSC), is responsible for investigating violations of the Hatch Act and for bringing charges of violations before the Merit Systems Protection Board (MSPB or the Board).[10] A Hatch Act case is then adjudicated before the MSPB, which decides whether a violation occurred and, if so, determines the penalty.[11]

B. HATCH ACT PROVISIONS BEING UPDATED BY S. 2170

S. 2170 amends several provisions of the Hatch Act that the Committee has concluded are out of date and need to be modernized.

1. Candidacy for partisan political office by state and local employees

Carolyn Lerner, who, as Special Counsel and head of the Office of Special Counsel is responsible for enforcement of the Hatch Act, advised this Committee by letter[12] and hearing testimony[13] that the Hatch Act provision enacted in 1940 forbidding certain state and local employees to run for partisan office now covers too many employees and has become confusing and inequitable, and she urged Congress to repeal it. As discussed below, the Committee decided against complete repeal, but instead decided to scale the prohibition back to apply only to those state and local employees whose salary comes completely from federal funding.

The increase in the size and scope of federal funding of state and local programs since 1940 has vastly expanded the numbers and

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[9] 5 U.S.C. §§ 7321–7326.

[10] 5 U.S.C. §§ 1216, 1504–1506, 7326.

[11] *Id.*

[12] Identical letters from Special Counsel Carolyn N. Lerner to each of Chairman Lieberman and Ranking Member Collins, Committee on Homeland Security and Governmental Affairs, and Chairman Akaka and Ranking Member Johnson of its Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia (OGM), October 6, 2011.

[13] Testimony of Special Counsel Carolyn N. Lerner at the hearing entitled "A Review of the Office of Special Counsel and Merit Systems Protection Board" before the OGM Subcommittee, 112th Congress, 2nd Session, March 20, 2012 ("Senate hearing"). *See also* Testimony of Special Counsel Carolyn N. Lerner at the hearing entitled: "The Hatch Act: Options for Reform" before the United States House of Representatives Committee on Oversight and Government Reform, Subcommittee on the Federal Workforce, U.S. Postal Service and Labor Policy, 112th Congress, 2nd Session, May 16, 2012 ("House hearing").

kinds of state and local employees forbidden by the Hatch Act to run for partisan office. As Special Counsel Lerner explained, hundreds of thousands of state and local employees in every part of the country and in many occupations—law enforcement officers, first responders, healthcare workers, and many others—are now forbidden to run for partisan office.[14]

A number of recent examples illustrate that some state and local employees covered by the Hatch Act have only a tenuous connection to federal funds. For example, in 2011 a transit police officer was forced to abandon his candidacy for a seat on the local school board after OSC advised him that he was covered by the Hatch Act because he was assisted by a police dog partially financed by a Department of Homeland Security grant.[15] That same year, OSC concluded that a county District Attorney had violated the Hatch Act when she had campaigned for that position while employed as a first assistant district attorney, the office having received a 2007 federal grant to battle drug crimes and domestic violence.[16] As a third example, OSC recently advised a paramedic in South Carolina that the Hatch Act prohibited him from running for the office of county coroner while holding his current position, because Medicaid funded the healthcare of some of the patients he transported in his ambulance.[17]

Moreover, the Hatch Act injects the federal government in a way that weakens state and local government by forbidding otherwise qualified individuals from running and serving in elected office. Special Counsel Lerner explained that the Hatch Act has a particularly troubling effect on elections for sheriff in some communities.[18] Because of the great influx of federal grant money to local police departments after the terrorist attacks of September 11, 2001, OSC must frequently advise deputy sheriffs that they may not run for sheriff. As Lerner has stated, "This is a disservice to local communities because the most qualified candidates for law enforcement and other positions are commonly disqualified from participating in a local election." [19]

Scaling back the prohibition on running for partisan political office will not diminish OSC's ability to enforce the Hatch Act in situations where state or local employees actually misuse their authority or engage in coercive conduct for political purposes. Under S. 2170, the Hatch Act will continue to forbid state and local employees whose employment is "in connection with" an activity supported by any federal funding to use their official authority to affect an election or nomination or to coerce or advise another state or local employee to make a political contribution.

Furthermore, as the Special Counsel Lerner pointed out in her October 6, 2011, letter, cutting back the prohibition on state and local employees running for office will allow OSC to focus more of

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[14] Letter from Special Counsel Lerner, note 12 above; testimony of Special Counsel Lerner at House hearing, note 12 above.

[15] OSC Case No. HA–11–3066; *see also* Joan Hellyer, *Arlen Drops Out of the School Board Race,* phillyburbs.com, July 27, 2011, available at: http://www.phillyburbs.com/my_town/yardley/arlen-drops-out-of-school-board-race/article_b8330b6a-44df-5c5c-8c54-b57333fe737b.html.

[16] OSC Case No. HA–10–2919; *see also* Jeremy Roebuck, *Some Say Hatch Act is too Vague, Want to see it Changed,* The Inquirer, July 4, 2011, available at: http://articles.philly.com/2011-07-04/news/29736213_1_hatch-act-election-law-federal-employees.

[17] OSC Case No. AD–11–0140. *See* written statement of Carolyn Lerner, House Hearing, note 13 above.

[18] Written statement of Carolyn Lerner, House Hearing, note 13 above.

[19] *Id.*

its resources on these more serious matters.[20] She reported that 45 percent of the Hatch Act Unit's cases and the vast majority of the Hatch Act Unit's advisory opinions involve state and local political campaign cases that lack any allegation of coercive or abusive political conduct.[21] S. 2170 will greatly reduce the amount of resources OSC must divert to these matters that have little or no value for reducing corruption.

In light of the limited connection of many state and local employees' work to federal funding and the more targeted prohibitions available under the Hatch Act for remedying any political abuse associated with federal programs, the Committee concludes that a broad federal restriction on these state and local employees' ability to run for office, and on the electorate's opportunity to decide whether to elect them, is not justified.

2. Penalty provision for federal employees

In her October 6, 2011, letter to this Committee,[22] Special Counsel Lerner also recommended that Congress rewrite the Hatch Act's penalty provision for federal employees. Current law requires that, if a federal employee is found to have violated the Hatch Act, the employee must be removed from office unless the MSPB unanimously finds that the violation does not warrant termination, in which case the employee must be suspended for at least 30 days without pay.[23] According to Special Counsel Lerner, this structure is overly restrictive, can lead to unjust results, and, therefore, may actually deter agencies from referring potential violations to OSC.[24]

Lerner recommended that Congress amend the Hatch Act penalty provisions to mirror the range of penalties authorized for other disciplinary actions under OSC's jurisdiction.[25] Under that authority, depending on the severity of the violation and other aggravating or mitigating factors, the MSPB may select from a range of penalties consisting of removal, reduction in grade, debarment from federal employment for a period not to exceed five years, suspension, reprimand, or a civil penalty not to exceed $1,000.[26]

The Committee agrees that the Hatch Act's penalty provision should be modified to allow the MSPB to impose a broader range of penalties, and S. 2170 amends the Hatch Act to authorize the same range of penalties authorized for other disciplinary actions under OSC's jurisdiction. Further, the Committee expects that, in selecting a penalty for a Hatch Act violation, the Board will consider the severity of the violation and other aggravating or mitigating factors, as the Board does with respect to non-Hatch Act violations.

3. District of Columbia employees

In 1940 Congress placed employees of the government of the District of Columbia under the same provisions of the Hatch Act that governed federal employees rather than under the provisions that

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[20] Letter from Special Counsel Lerner, note 12 above.
[21] Written statement of Carolyn Lerner, House Hearing, note 13 above.
[22] Letter from Special Counsel Lerner, note 12 above.
[23] 5 U.S.C. § 7326.
[24] Letter from Special Counsel Lerner, note 12 above.
[25] *Id.* (recommending the penalty provisions in 5 U.S.C. § 1215 be adopted for Hatch Act cases).
[26] 5 U.S.C. § 1215(a)(3).

governed state and local employees, at a time when Congress exercised direct control over the District of Columbia.[27] However, the role of the D.C. government, and therefore of its employees, has evolved significantly since 1940. A series of changes culminating in the landmark District of Columbia Home Rule Act of 1973 have provided the District the powers of local self-government[28] and have made D.C. government employees' relationship to the federal government more like that of state and local employees than of federal employees.

Congress has previously recognized the need for the Hatch Act to accommodate the unique nature of the D.C. government and its employees. In 1940, at the same time that Congress placed D.C. government employees under Hatch Act coverage, it exempted "commissioners" and "the Recorder of Deeds of the District of Columbia."[29] Moreover, one year after enacting the D.C. Home Rule law in 1973, Congress amended the Hatch Act to exempt the newly-created positions of Mayor of the District of Columbia and members of the City Council.[30] These exemptions enacted in 1974 for certain D.C. officials are similar to those that had previously been enacted[31] for elected state and local officials.

The Committee concludes that it is now time to more precisely align the Hatch Act's mandates with the current structure of the D.C. government. Accordingly, S. 2170 amends the Hatch Act to remove employees of the District of Columbia from coverage under the provisions that apply to federal employees and place them under the provisions of the Hatch Act that apply to state and local government employees.

4. Designated localities

Notwithstanding the general prohibition against federal employees running for partisan elective office or engaging in political fundraising, the Hatch Act authorizes the Office of Personnel Management (OPM) to prescribe regulations allowing federal employees to take an active part in political management or in political campaigns involving the municipality or political subdivision in which they reside under certain circumstances.[32] For OPM to authorize federal employees to participate in local elections in this manner, either the municipality or political subdivision must be in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or a majority of the voters in the municipality must be federal employees. OPM must also determine that, because of special circumstances, it is in the interest of employees to allow them to actively participate in local political campaigns.

Soon after enactment of the District of Columbia Home Rule Act of 1973, which enabled District residents to elect a local mayor and city council,[33] the Civil Service Commission—which then exercised the authorities now vested in OPM—sought by regulation to add the District to the list of localities in which federal employees could

[27] Public Law No. 76–753 (1940) (codified at 5 U.S.C. § 7322(1)(C)).
[28] Public Law No. 93–198 (1973) (codified at D.C. Code § 1–201.01 *et seq.*).
[29] Public Law No. 76–753 (1940) (codified at 5 U.S.C. § 7322(1)(C)).
[30] Public Law No. 93–268 (1974) (codified at 5 U.S.C. § 7322(1)(C)).
[31] Public Law No. 76–753 (1940) (codified at 5 U.S.C. § 1502(c)).
[32] 5 U.S.C. § 7325.
[33] Public Law No. 93–198 (1973) (codified at D.C. Code § 1–201.01 *et seq.*).

participate in local elections.[34] However, after lengthy litigation, the U.S. Court of Appeals for the District of Columbia invalidated the Commission's efforts, since a majority of District voters are not federal employees and the District of Columbia is not "in Maryland or Virginia in the immediately vicinity of the District of Columbia."[35]

The anomaly that federal employees may participate in local elections if they live "in the immediate vicinity of the District of Columbia" but not actually within D.C. itself was not lost on the appeals court, which explained the situation this way:

> Admittedly the failure to include areas within the District may well have been due to the fact that there were no elective positions within the District government in 1940 when the [Civil Service] Commission was given its exemption authority. . . . [A]lthough a court should interpret the meaning of statutory language in light of the intent of its drafters, we cannot rewrite the statute to compensate for unforeseen circumstances. That power belongs to the legislature alone.[36]

Recognizing that the District government now has a number of partisan elective positions, this Committee has concluded that the Hatch Act should be amended to grant federal employees who reside in D.C. the same ability to run for local office and otherwise to actively participate in local elections as federal employees residing in nearby communities in Virginia and Maryland.

III. Legislative History

In the 111th Congress, this Committee considered H.R. 1345, which would have amended the Hatch Act to apply to D.C. government employees the same provisions of the Hatch Act that govern state and local employees rather than those governing federal employees. H.R. 1345 had passed the House of Representatives on September 8, 2009, by voice vote, and this Committee approved H.R. 1345 by voice vote and on September 28, 2010, favorably reported the bill. However, the 111th Congress ended without the Senate having considered the bill further.

In this 112th Congress, on March 7, 2012, Senator Akaka introduced S. 2170, which was cosponsored by Senators Lieberman, Levin, and Lee, and was referred to the Committee on Homeland Security and Governmental Affairs and further referred to the OGM Subcommittee. On March 22, 2012, the OGM Subcommittee polled the bill out favorably, and at a business meeting on April 25, 2012, the Committee considered the bill. During the business meeting, Senator Collins expressed concern about the provision in S. 2170, as introduced, that would have completely repealed the prohibition on state and local employees running for partisan elective office, and the Committee agreed to hold over the bill to the next markup to enable the Senators to address that concern.

The Committee again considered the bill at a business meeting held on June 27 and continued on June 29, 2012. Senator Akaka

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[34] 39 Fed. Reg. 18761 (1974); 42 Fed. Reg. 23160 (1977).

[35] *Joseph* v. *Civil Service Commission,* 554 F.2d 1140, 1144 (D.C. Cir. 1977); *Ward Three Democratic Committee* v. *United States,* 609 F.2d 10, 12 (D.C. Cir. 1979).

[36] *Joseph* v. *Civil Service Commission*, 554 F.2d at 1154–1155.

offered an amendment in the nature of a substitute on behalf of himself and Senator Lieberman. Rather than repealing the Hatch Act provision forbidding certain state and local employees to run for partisan office as the original bill had done, the amendment limited the prohibition to those state and local employees whose salary comes entirely from federal funding. The amendment also added a provision enabling federal employees who reside in the District to be allowed to run for local elective office and made technical changes to the legislation. The Committee agreed to the substitute amendment and ordered the bill reported favorably, as amended, en bloc by a voice vote. Members present were: Lieberman, Levin, Akaka, Carper, Pryor, Landrieu, Tester, Begich, Collins, Brown, McCain, Johnson, Portman, and Moran.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title of this bill is the "Hatch Act Modernization Act of 2012."

Section 2. Permitting state and local employees to be candidates for elective office

Section 2 of the bill amends 5 U.S.C. § 1502(a)(3) to scale back the provision forbidding state or local employees employed in connection with a federally supported activity to run for partisan elective office. Such state or local employees will be allowed to run for elective office unless the employee's salary is paid completely, directly or indirectly, by loans or grants made by the United States or a federal agency.

Section 3. Applicability of provisions relating to state and local employees

Section 3 amends several provisions of the Hatch Act to subject employees of the government of the District of Columbia to the same restrictions on partisan political activity that currently apply under the Hatch Act to state and local government employees.

Subsection (a) amends 5 U.S.C. § 1501(2) to add the executive branch of the District of Columbia, or an agency or department of the District of Columbia, to the definition of a "state or local agency."

Subsection (b) amends 5 U.S.C. § 1501(4) to exempt individuals employed by an educational or research institution, establishment, agency, or system supported in whole or in part by the District of Columbia from the Hatch Act. The Hatch Act now provides such an exemption for similarly-situated employees of state and local governments.

Subsection (c) amends 5 U.S.C. § 1502(c)(3) to exclude the duly elected head of an executive department of the District of Columbia who is not classified under an applicable merit or civil-service system from the prohibition against running for elective office. The Hatch Act now provides such an exclusion for similarly-situated executive-department heads in state and local governments.

Subsection (d) amends 5 U.S.C. § 1506(a)(2) to require the MSPB to issue an order to withhold federal funds from an agency of the District of Columbia if the Board finds that an employee ordered

removed for violating the Hatch Act has been reappointed in the District of Columbia within 18 months. The Hatch Act now provides such a requirement for state and local agencies under similar circumstances.

Subsection (e) amends 5 U.S.C. § 7322(1) to remove individuals employed or holding office in the government of the District of Columbia from provisions of the Hatch Act applicable to federal employees.

Subsection (f) amends 5 U.S.C. § 7325(1) to provide federal employees living in the District of Columbia the same permission to participate in local politics that the Hatch Act now provides to those living in nearby areas of Maryland or Virginia. The statute now authorizes OPM to prescribe regulations to permit federal employees who live in Maryland or Virginia in the immediate vicinity of the District of Columbia to take an active part in political management and political campaigns in the municipality or political subdivision where they live. Subsection (f) authorizes OPM to grant the same rights to federal employees who reside in the District.

Section 4. Hatch Act penalties for federal employees

Section 4 of the bill strikes and replaces 5 U.S.C. § 7326, which provides the penalty for federal employees who violate the Hatch Act. The statute now requires that a federal employee who violates the Hatch Act must be removed from office, unless the MSPB unanimously finds that the violation does not warrant removal, in which case the Board must impose a penalty of no less than 30 days' suspension without pay. Under the bill, a federal employee who violates the Hatch Act will be subject to removal, reduction in grade, debarment from federal employment for a period not to exceed five years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

Section 5. Effective date

Subsection (a) provides that this legislation will take effect 30 days after the date of enactment.

Subsection (b) provides that the new penalty provisions for federal employees shall apply to any violation occurring before, on, or after the effective date of the Act unless, before the effective date, either (1) the OSC has presented a complaint for disciplinary action pursuant to 5 U.S.C. § 1215 with respect to the alleged violation, or (2) the federal employee alleged to have violated the Hatch Act has entered into a signed settlement agreement with the OSC with respect to the alleged violation.

V. COST OF THE LEGISLATION

JULY 11, 2012.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2170, the Hatch Act Modernization Act of 2012.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 2170—Hatch Act Modernization Act of 2012

S. 2170 would amend the Hatch Act, which covers the political activities of public employees. The legislation would remove some restrictions on the political activities of most District of Columbia government employees and many other state and local officials. In addition, S. 2170 would establish civil penalties for federal employees that violate the Hatch Act.

Under current law, state and local government employees are prohibited from running for a partisan political office if their employment relates to an activity at least partly financed with federal funds. Under S. 2170, many state and local employees, including those from the District of Columbia, could run for partisan office. Based on information from the Office of Special Counsel, CBO estimates that implementing those provisions would have no significant impact on the federal budget.

Because enacting S. 2170 could increase revenues from civil fines that could be imposed on federal employees who violate the Hatch Act, pay-as-you-go procedures apply. However, CBO expects that any additional revenues collected would not be significant in any year. Enacting the bill would not affect direct spending.

S. 2170 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Committee agrees with the Congressional Budget Office (CBO), which states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on State, local, or tribal governments. The legislation contains no other regulatory impact.

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic and existing law, in which no change is proposed, is shown in roman):

TITLE 5, UNITED STATES CODE: GOVERNMENT ORGANIZATION AND EMPLOYEES

PART II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES

CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

SEC. 1501. DEFINITIONS.

For the purpose of this chapter—

* * * * * * *

(2) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof*, or the executive branch of the District of Columbia, or an agency or department thereof*;

* * * * * * *

(4) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

(A) an individual who exercises no functions in connection with that activity; or

[(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization]

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by—

(i) a State or political subdivision thereof;

(ii) the District of Columbia; or

(iii) a recognized religious, philanthropic, or cultural organization.

SEC. 1502. INFLUENCING ELECTIONS; TAKING PART IN POLITICAL CAMPAIGNS; PROHIBITIONS; EXCEPTIONS.

(a) A State or local officer may not—

* * * * * * *

(3) [be a candidate for elective office] *if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency, be a candidate for elective office.*

* * * * * * *

(c) Subsection (a)(3) of this section does not apply to—

(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(2) the mayor of a city;

(3) a duly elected head of an executive department of a State [or municipality], *municipality, or the District of Columbia* who is not classified under a State [or municipal], *municipal, or the District of Columbia* merit or civil-service system; or

(4) an individual holding elective office.

SEC. 1506. ORDERS; WITHOLDING LOANS OR GRANTS; LIMITATIONS

(a) When the Merit Systems Protection Board finds—

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he has violated section 1502 of this title and that the violation warrants removal; or

(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State *(or in the case of the District of Columbia, in the District of Columbia)* in a State or local agency which does not receive loans or grants from a Federal agency;

the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

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PART III—EMPLOYEES

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

Subchapter II—Political Activities

SEC. 7322. DEFINITIONS.

For the purpose of this subchapter—

(1) "employee" means any individual, other than the President and the Vice President, employed or holding office in—

(A) an Executive agency other than the Government Accountability Office; *or*

(B) a position within the competitive service which is not in an Executive agency; [or]

[(C) the government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds;]

but does not include a member of the uniformed [services;] *services or an individual employed or holding office in the government of the District of Columbia;*

SEC. 7325. POLITICAL ACTIVITY PERMITTED; EMPLOYEES RESIDING IN CERTAIN MUNICIPALITIES.

The Office of Personnel Management may prescribe regulations permitting employees, without regard to the prohibitions in paragraphs (2) and (3) of section 7323(a) and paragraph (2) of section

7323(b) of this title, to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

[(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and]

(1) the municipality or political subdivision is—

(A) the District of Columbia;

(B) in Maryland or Virginia and in the immediate vicinity of the District of Columbia; or

(C) a municipality in which the majority of voters are employed by the Government of the United States; and

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[SEC. 7326. POLITICAL ACTIVITY PERMITTED; EMPLOYEES RESIDING IN CERTAIN MUNICIPALITIES.

[An employee or individual who violates section 7323 or 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be sued to pay the employee or individual. However, if the Merit System Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.]

SEC. 7326. PENALTIES.

An employee or individual who violates section 7323 or 7324 shall be subject to removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

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