

Calendar No. 125

112TH CONGRESS }
1st Session }

SENATE

{ REPORT
112-44

VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2011

AUGUST 1, 2011.—Ordered to be printed

Mrs. MURRAY, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany S. 894]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs (hereinafter, "Committee"), to which was referred the bill (S. 894) to increase, effective as of December 1, 2011, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes, having considered the same, reports favorably thereon, and recommends that the bill do pass.

INTRODUCTION

On May 5, 2011, Committee Chairman Patty Murray introduced S. 894, a bill to increase, effective as of December 1, 2011, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes. Committee Ranking Member Richard Burr, Members John D. Rockefeller IV, Daniel K. Akaka, Bernard Sanders, Sherrod Brown, Jim Webb, Jon Tester, Mark Begich, Johnny Isakson, Roger F. Wicker, Mike Johanns, Scott P. Brown, Jerry Moran, and John Boozman are original cosponsors of the bill, which was referred to the Committee upon introduction.

COMMITTEE HEARING

On June 8, 2011, the Committee held a hearing on legislation pending before the Committee. Testimony on S. 894 was received

from: Joseph Violante, National Legislative Director, Disabled American Veterans; Raymond Kelley, Director, National Legislative Service, Veterans of Foreign Wars of the United States; Jeff Steele, Assistant Legislative Director, The American Legion; and Robert L. Jesse, M.D., Ph.D., Principal Deputy Under Secretary for Health, Veterans Health Administration, Department of Veterans Affairs.

COMMITTEE MEETING

On June 29, 2011, the Committee met in open session to consider legislation pending before the Committee. Among the measures so considered was S. 894. The Committee voted by voice vote, without objection, to report favorably S. 894 to the Senate.

SUMMARY OF S. 894 AS REPORTED

The Committee bill contains freestanding provisions that would require the Secretary of Veterans Affairs to increase, effective December 1, 2011, the rates of certain benefits paid by the Department of Veterans Affairs (hereinafter, "VA") by the same percentage as the cost-of-living adjustment (hereinafter, "COLA") provided to Social Security recipients and VA pension beneficiaries that become effective on the same date. The COLA would apply to:

1. Basic compensation rates for veterans with service-connected disabilities and the rates payable for certain severe disabilities;
2. The allowance for spouses, children, and dependent parents paid to service-connected disabled veterans rated 30 percent or more disabled;
3. The annual clothing allowance paid to veterans whose compensable disability requires the use of a prosthetic or orthopedic appliance (including a wheelchair) that tends to tear or wear out clothing or requires the use of a medication prescribed by a physician for a service-connected skin condition if the medication causes irreparable damage to the veteran's outer garments; and
4. The dependency and indemnity compensation (hereinafter, "DIC") rates paid to:
 - (a) surviving spouses of veterans whose deaths were service-connected;
 - (b) surviving spouses for dependent children below the age of 18;
 - (c) surviving spouses who are so disabled that they need aid and attendance or are permanently housebound;
 - (d) surviving spouses covered under section 1318 of title 38, United States Code (hereinafter, "U.S.C."); and
 - (e) the children of veterans whose deaths were service-connected if no surviving spouse is entitled to DIC, the child is age 18 through 22 and attending an approved educational institution, or the child is age 18 or over and became permanently incapable of self-support prior to reaching age 18.

The Congressional Budget Office (hereinafter, "CBO") currently estimates that the COLA to be provided to Social Security recipients in 2011 will be 1.1 percent.

BACKGROUND AND DISCUSSION

A. Disability compensation

The service-connected disability compensation program under chapter 11 of title 38, U.S.C., provides monthly cash benefits to veterans who have disabilities incurred or aggravated during active duty in the Armed Forces.

The amount of compensation paid depends on the nature and severity of the veteran's disability or combination of disabilities. VA rates compensable disabilities according to its Schedule for Rating Disabilities on a graduated scale ranging from 10 to 100 percent, in 10 percent increments. VA pays higher monthly rates (known as "special monthly compensation") to disabled veterans with certain specific, very severe disabilities or combinations of disabilities.

According to VA, as set forth in its fiscal year 2012 budget, the Department estimates that it will provide disability compensation to 3,588,315 veterans with service-connected disabilities in fiscal year 2012. Among the veterans estimated to receive such compensation are 265,903 World War II veterans; 184,818 Korean-conflict veterans; 1,499,132 Vietnam-era veterans; 1,329,508 veterans of the Persian Gulf War era; and 696,757 veterans who served during peacetime.

A veteran with a disability rated at 30 percent or more may receive additional compensation on behalf of the veteran's spouse, children, and dependent parents. These dependents' allowances are prorated according to the percentage of disability.

B. Dependency and indemnity compensation

Under chapter 13 of title 38, U.S.C., VA pays DIC to the survivors of servicemembers or veterans who died on or after January 1, 1957, from a disease or injury incurred or aggravated during military service. Survivors eligible for DIC include surviving spouses, unmarried children under the age of 18, children age 18 or older who are permanently incapable of self-support, children between the ages of 18 and 22 who are enrolled in school, and certain needy parents. Under section 5312 of title 38, U.S.C., parents' DIC rates are adjusted automatically at the same time and by the same percentage as Social Security and VA pension benefits. Surviving spouses, children, and parents who are receiving death compensation based on deaths before January 1, 1957, may elect to receive DIC instead of death compensation.

For deaths on or after January 1, 1957, but prior to January 1, 1993, surviving spouses received DIC at rates determined by the pay grade (service rank) of the deceased veteran. For deaths on or after January 1, 1993, DIC is paid at a flat rate. Surviving spouses currently receive \$1,154 per month and, if the deceased veteran was totally disabled for eight years prior to death, an additional \$246 per month. Surviving spouses who had been receiving benefits under the prior DIC program are paid under whichever program will pay the higher benefit.

A surviving spouse who is so disabled as to be housebound or in need of regular aid and attendance is eligible to receive an additional amount. A surviving spouse also may receive additional allowances on behalf of the veteran's surviving children.

Children are entitled to DIC if there is no surviving spouse, if they are 18 years of age or older and became permanently incapable of self-support before reaching age 18, or if they are 18 to 22 years old and pursuing an approved course of education.

Parents of deceased veterans whose incomes are below statutorily prescribed income thresholds are eligible for DIC under section 1315 of title 38, U.S.C. As previously noted, parents' DIC rates are adjusted automatically at the same time and by the same percentage as Social Security and VA pension benefits.

In its fiscal year 2012 budget, VA estimates that it will pay DIC benefits to 388,214 survivors, a total that includes surviving spouses, children, and needy surviving parents.

Under section 1318 of title 38, U.S.C., VA pays benefits at DIC rates to the surviving spouses and children of veterans whose deaths are not service-connected if the veteran, immediately prior to his or her death, had been receiving (or had been entitled to receive) compensation at the 100 percent rate continuously for 10 or more years or for at least five years from the date of discharge or release from active duty. VA also pays DIC benefits to the surviving spouses and children of veterans who were former prisoners of war who die after September 30, 1999, and whose deaths were not service-connected if the veterans had been receiving (or had been entitled to receive) compensation at the 100 percent rate continuously for not less than one year preceding death.

Committee bill

The Committee bill would direct VA to compute and provide increases in the monthly rates of compensation and DIC, effective December 1, 2011. The rates would be increased by the same percentage as the Social Security and VA pension COLA that will take effect on that date. In accordance with section 8031 of the Balanced Budget Act of 1997 (Public Law 105–33), amounts of compensation so computed that are not even multiples of \$1 will be rounded down to the next lower whole dollar amount. In 2003, this provision was extended until 2013 by section 706 of Public Law 108–183.

The increases in DIC would automatically result in identical percentage increases in benefits paid at DIC rates under section 1318 of title 38, U.S.C., to the surviving spouses and children of veterans who had a service-connected disability at the time of death for which they continuously were rated totally disabled for at least (1) 10 years, (2) five years from the date of discharge from active duty, or (3) one year if the veteran was a former prisoner of war who died after September 30, 1999, and whose death was not service-connected if the veteran had been receiving (or had been entitled to receive) compensation at the 100 percent rate continuously for not less than one year preceding death.

Under section 156(e)(1)(A) of Public Law 97–377, the DIC increases also would automatically result in the same percentage increases in Social Security benefits that were terminated by section 2205 of the Omnibus Budget Reconciliation Act of 1981 (hereinafter, "OBRA 1981") (Public Law 97–35). Prior to OBRA 1981, those Social Security benefits had been paid to certain surviving spouses of those who died on active duty or from a service-connected disability on behalf of their children under 18 and children

over age 19 who were secondary-school students; OBRA 1981 reduced the eligibility cutoff age from 18 to 16 years old.

Section 314 of Public Law 100–322 amended section 156(a)(1) of Public Law 97–377, the Further Continuing Appropriations Act of 1993, to restore the benefits eliminated by OBRA 1981. The DIC increase also would apply to these restored benefits, effective December 1, 2011.

The CBO, in its most recent baseline, estimated that the Social Security COLA affecting fiscal year 2012 payments, and thus the COLA provided for by the Committee bill, will be 1.1 percent. The actual Social Security COLA could differ from this estimate. Rather than selecting any particular percentage adjustment at the time the Committee ordered the bill reported, the Committee followed its prior practice of setting the COLA by reference to the Social Security increase. The Committee believes this is the most equitable means of providing increases in these important service-connected benefits.

COMMITTEE BILL COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the CBO, estimates that enactment of S. 894 would, relative to current law, increase spending by \$475 million in fiscal year 2012 and by \$630 million annually in subsequent years, but that such increases in spending are assumed in the budget resolution baseline and thus will have no budgetary effect relative to the baseline. Enactment of the Committee bill would not affect the budget of state, local, or tribal governments.

The cost estimate provided by CBO, setting forth a detailed breakdown of costs, follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 5, 2011.

Hon. PATTY MURRAY,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 894, the Veterans' Compensation Cost-of-Living Adjustment Act of 2011.

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

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

S. 894—Veterans' Compensation Cost-of-Living Adjustment Act of 2011

S. 894 would increase the amounts paid to veterans for disability compensation and to their survivors for dependency and indemnity compensation by the same cost-of-living adjustment (COLA) payable to Social Security recipients. The increase would take effect on December 1, 2011, and the resulting adjustment would be rounded to the next lower dollar.

The COLA that would be authorized by this bill is assumed in CBO's baseline, consistent with section 257 of the Balanced Budget and Emergency Deficit Control Act, and savings from rounding it down were achieved by the Balanced Budget Act of 1997 (Public Law 105-33) as extended by the Veterans Benefits Act of 2003 (Public Law 108-183).

Because the COLA is assumed in CBO's baseline, the COLA provision would have no budgetary effect relative to the baseline. Relative to current law, CBO estimates that enacting this bill would increase spending for those programs by \$475 million in fiscal year 2012. (The annualized cost would be about \$630 million in subsequent years.) This estimate assumes that the COLA effective on December 1, 2011, would be 1.1 percent.

S. 894 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.

Enacting S. 894 would not affect direct spending or revenues relative to CBO's baseline projections; therefore, pay-as-you-go procedures do not apply.

On May 16, 2011, CBO transmitted a cost estimate for H.R. 1407, the Veterans' Compensation Cost-of-Living Adjustment Act of 2011, as ordered reported by the House Committee on Veterans' Affairs on May 12, 2011. S. 894 contains language similar to that in section 2 of H.R. 1407 and the estimated costs are the same.

The CBO staff contact for this estimate is Dwayne M. Wright. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has made an evaluation of the regulatory impact that would be incurred in carrying out S. 894. The Committee finds that S. 894 would not entail any regulation of individuals or businesses or result in any impact on the personal privacy of any individuals and that the paperwork resulting from enactment would be minimal.

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its June 29, 2011, meeting. On that date, the Committee voted without dissent to order reported S. 894, a bill to increase, effective as of December 1, 2011, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes.

AGENCY REPORT

On June 8, 2011, Robert L. Jesse, M.D., Ph.D., Principal Deputy Under Secretary for Health, Veterans Health Administration, Department of Veterans Affairs, appeared before the Committee on Veterans' Affairs and submitted testimony on, among other things, S. 894. Excerpts from this statement are reprinted below:

STATEMENT OF ROBERT L. JESSE, M.D., PH.D., PRINCIPAL DEPUTY UNDER SECRETARY FOR HEALTH, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Good Morning Chairman Murray, Ranking Member Burr and Members of the Committee: Thank you for inviting me here today to present the Administration's views on several bills that would affect Department of Veterans Affairs (VA) benefits programs and services.

* * * * *

S. 894, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2011

S. 894, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2011," would mandate a cost-of-living adjustment (COLA) in the rates of disability compensation and dependency indemnity compensation payable for periods beginning on or after December 1, 2011. The COLA would be the same as the COLA that will be provided under current law to Social Security benefit recipients, which is currently estimated to be an increase of 0.9 percent. This increase is identical to that proposed in the President's fiscal year 2012 budget request to protect the affected benefits from the eroding effects of inflation. VA supports the bill and believes that our Veterans and their dependents deserve no less. VA estimates that enactment would result in benefit costs of \$329 million for fiscal year 2012, \$2.1 billion over five years, and \$4.6 billion over ten years. However, because COLA costs are assumed in the baseline for Compensation and Pensions each year, enactment of this bill does not result in PAYGO costs.

* * * * *

CHANGES IN EXISTING LAW

Because the Committee bill would not repeal or amend any provisions of current law, this report does not contain the material described in clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.