The original documents are located in Box 45, folder "5/14/76 S2115 Reserve Call-up Authority" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

S 5/14/76

APPROVED
MAY 14 1976
Signed in Ceremony,
Galt House Hotel,
Louisville, Ky 6:12 pm

Announced in Kentucky 5/14/76

To archives 5/17/76

THE WHITE HOUSE

WASHINGTON

May 13, 1976

ACTION

Last Day: May 15

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: S. 2115 - Reserve Call-up Authority

Attached for your decision is S. 2115, sponsored by Senators Stennis and Thurmond.

The enrolled bill permits the President, when he determines that it is necessary to augment the active forces for any operational mission, to authorize the involuntary order to active duty of up to 50,000 members of the Selected Reserve (either in units or as individuals) for periods not to exceed 90 days.

The enrolled bill contains authority requested by the Defense Department but also contains several Senate-added amendments, one of which provides that the service of members ordered to active duty may be terminated by a concurrent resolution of the Congress.

A detailed explanation of the provisions of the bill, including arguments for approval and disapproval is provided in OMB's enrolled bill report at Tab A.

OMB recommends disapproval in view of your recent disapproval of S. 2662, the International Security Assistance and Arms Export Control Act, which contained a number of similar concurrent resolution "veto" provisions.

Phil Buchen, Bob Hartmann, Jack Marsh, Max Friedersdorf, NSC and I recommend approval of the enrolled bill and the attached signing statement which has been cleared by the White House Editorial Office. (Smith) NSC recommends that Secretary Rumsfeld be given the opportunity to discuss the bill if you are inclined to veto it.

DECISIONS

Sign S. 2115 at Tab B

Approve _____ Disapprove _____

Approve signing statement at Tab C.

Approve _____ Disapprove _____

Veto S. 2115 and sign the veto message at Tab D.

Approve _____ Disapprove _____

THE WHITE HOUSE
WASHINGTON

Jim -

I understand that it has been recommended that this bill - if signed - be signed while on the trip.

If so, we will need to know if the statement is approved.

If he decides to veto, this must be done before he leaves - so it can be returned.

Trudy

Will sign

BILL WILL BE SIGNED ON TRIP IF YOU APPROVE

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 12 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2115 - Reserve call-up authority
Sponsors - Sen. Stennis (D) Mississippi and Sen. Thurmond (R) South Carolina

Last Day for Action

May 15, 1976 - Saturday

Purpose

Permits the President, when he determines that it is necessary to augment the active forces for any operational mission, to authorize the involuntary order to active duty of up to 50,000 members of the Selected Reserve (either in units or as individuals) for periods not to exceed 90 days.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto Message attached)
Department of Defense	Approval
Department of State	Approval
Department of Transportation	Approval
Civil Service Commission	Approval
National Security Council	No objection (informally)
Department of Labor	No objection
Department of Justice	Defers to other agencies
Veterans Administration	Defers to other agencies

Discussion

Under current law, in a time of national emergency declared by the President after January 1, 1953, up to one million Ready Reservists may be ordered to active duty (other than for training) without their consent for not more than 24 consecutive months.

While such a state of national emergency now exists, another national emergency would probably have to be declared to activate this authority, as the existing state of emergency rests on two declarations based on narrow grounds -- the 1970 postal strike and the 1971 balance of payments crisis.

Other statutory authorities, not contingent upon the existence of a national emergency, provide for the involuntary call-up of reservists in certain, limited situations (e.g., for not to exceed 15 days, or to suppress domestic disturbances and enforce Federal and State laws in certain circumstances).

The enrolled bill contains authority requested by the Defense Department. It would enable the President, without a declaration of national emergency or war, to authorize the involuntary order to active duty of not to exceed 50,000 Selected Reservists for periods up to 90 days when he determines that such action is necessary to augment the active forces for any operational mission. As requested, the bill would prohibit such call-ups for purposes of training or providing assistance during domestic disturbances or disasters, and the reemployment rights of members ordered to active duty under the bill would be protected.

S. 2115 also contains several Senate-added amendments. It would require the President, within 24 hours of exercising the call-up authority, to report in writing to the Speaker of the House and the President of the Senate, setting forth the circumstances necessitating his action and the anticipated use of the members or units ordered to active duty. Furthermore, the service of the activated members or units could be terminated by order of the President or by a concurrent resolution of the Congress. Finally, S. 2115 states explicitly that none of its provisions "shall be construed as amending or limiting the application ... of the War Powers Resolution."

While deferring to other agencies as to whether S. 2115 should be approved, Justice states in its letter on the enrolled bill that:

> "The Department of Justice has traditionally

> opposed on constitutional grounds the use of the concurrent resolution device to affect the exercise of Executive powers. In the particular and limited circumstances covered by /the enrolled bill/, however, these reservations may have less direct application."

Defense, in its letter, states that the bill is one of its top-priority legislative items and that:

> "The importance of this legislation in establishing the Guard and Reserve as a credible and viable part of the Total Force cannot be overemphasized. It would allow us to place greater dependence on the Reserve Components in Defense planning, and would thereby enhance the credibility of the National Guard and Reserve as a usable force."

Defense also believes that the President should be able to augment the active forces for operational missions without a declaration of a national emergency with its international and domestic implications. The Department anticipates that the call-up authority would be used in limited emergencies such as the airlift resupply of Israeli forces during the 1973 Middle East conflict. In that situation, volunteer reservists helped meet the airlift requirements, but Defense has indicated that if the conflict had continued much longer, the airlift mission could not have been carried out with volunteers augmenting active force crews.

While acknowledging that the bill's provision for terminating active service of Reservists by concurrent resolution is constitutionally objectionable, the Defense letter states that, " ... the substantive provisions of the Act are so important that a veto on that ground would be inappropriate, especially since numerous other bills presented to the President over the past 30 years containing provisions for Congressional veto by concurrent resolution were similarly not vetoed ...." To indicate a firm stand against such provisions, however, Defense recommends that you issue a statement upon signing

S. 2115 in which you would cite the above constitutional objections, welcome a speedy and decisive judicial test of this provision, and pending a court decision, reserve the question of compliance should a concurrent resolution envisaged by the bill be adopted. Proposed language for a statement is incorporated in the Department's views letter.

The Office of Management and Budget, while recognizing the importance Defense attaches to this legislation, does not concur in the Department's recommendation of approval in view of your recent disapproval of S. 2662, the International Security Assistance and Arms Export Control Act, which contained a number of similar concurrent resolution "veto" provisions. In your veto message, you noted that such provisions are incompatible with the constitutional requirement that a resolution having the force and effect of law must be presented to the President and, if disapproved, repassed by two-thirds of the Senate and the House of Representatives. Moreover, you stated that, "they would involve the Congress directly in the performance of Executive functions in disregard of the fundamental principle of separation of powers," and that they would violate "the President's constitutional authority to conduct our relations with other nations."

Just as you disapproved S. 2662 because it would have interfered with the President's exercise of his constitutional responsibilities for the conduct of foreign affairs, we believe you should also veto S. 2115, which would impose serious limitations on the President's responsibilities under the Constitution as Commander-in-Chief. We would also point out that Defense has been able to meet limited emergency situations that have arisen in the past several years without the need for such limited involuntary Reserve call-up authority. A proposed veto message for your consideration is attached.

In January of this year, the Senate adopted S. 2115 by a vote of 77-0 after a lengthy debate on the concurrent resolution termination provision. Proponents of the amendment, noting that it is consistent with similar provisions in the War Powers Act and in legislation pending before the Senate to

terminate existing national emergencies and provide for the declaration of future national emergencies, argued that it was necessary to check the expansion of Presidential authority to the detriment of Congress' constitutional responsibilities in the areas of foreign policy and warpowers (e.g., to declare war, to raise and support armed forces). Opponents of the amendment argued that it would violate the President's constitutional authority as Commander-in-Chief and could create practical problems for the President in carrying out these constitutional responsibilities. The amendment was adopted without a recorded vote. On May 3, 1976, the House accepted the Senate version of the bill without any debate on the concurrent resolution provision. No vote was recorded.

James T. Lynn
Director

Enclosure

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

7 May 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Defense with respect to the enrolled enactment of S. 2115, an Act, "To amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared."

The Department of Defense has increased and is continuing to increase the reliance on the Guard and Reserve in conformity with the "Total Force Policy." The Guard and Reserve will be the initial and prime source of augmentation should our military capability have to be increased to meet any contingency.

The purpose of this enrolled enactment is to amend the provisions of title 10, United States Code, in order to grant the President limited authority to authorize the ordering of up to 50,000 members of the Selected Reserve to active duty for not more than 90 days under conditions short of a declaration of war or national emergency as declared by either the President or the Congress. Provisions have also been included to assure reemployment rights of those members who would be ordered to active duty under this authority. Reserve Components or individual members of the Selected Reserve may not be ordered to active duty under this authority for the purpose of suppressing civil disturbance, domestic insurrection, or providing assistance in time of natural or man-made disaster.

Senate amendments were: (1) that the President shall report in writing to Congress within 24 hours after ordering Guardsmen and Reservists to active duty under this authority, setting forth the circumstances necessitating the action taken and the troops' anticipated use; (2) the service of all units or members so ordered to active duty may be terminated by order of the President or a concurrent resolution of the Congress, and that nothing in the bill shall be construed as amending or limiting the provisions of the War Powers Resolution.

The importance of this legislation in establishing the Guard and Reserve as a credible and viable part of the Total Force cannot be overemphasized. It would allow us to place greater dependence upon the Reserve Components in Defense planning, and would thereby enhance the credibility of the National Guard and Reserve as a usable force. Thus, this legislation would help to improve our deterrent posture, and would help us to make better use of our total military manpower resources, active and Reserve. The true integration of the Reserve forces and active duty forces is a reality today, and this legislation is essential as a means of overcoming any artificial boundary that presently exists.

The Department of Defense considers this enrolled enactment to be one of the top-priority items in the Department of Defense legislative program for the 94th Congress. We interpose no objection to the Senate amendments except the provision relating to the termination of active service by concurrent resolution to which we previously objected. The Department of Justice has consistently pointed out that such provisions are constitutionally objectionable as violative of the separation of powers. However, the Department of Defense is of the view that the substantive provisions of the Act are so important that a veto on that ground would be inappropriate, especially since numerous other bills presented to the President over the past 30 years containing provisions for Congressional "veto" by concurrent resolution were similarly not vetoed by the President. Although a veto is not recommended, the Department of Defense position is that a firm stand must be taken against such legislation. Accordingly, it is recommended that the President issue a statement upon signature of S. 2115 which includes a passage substantially as follows:

> "I am signing this bill in view of the increased importance of, and reliance on, the Guard and Reserve as part of the Total Force Policy. The Guard and Reserve will be the initial and prime source of augmentation should our military capability have to be increased to meet any contingency. I do this despite the serious concern I have with the unconstitutional provisions relating to the purported power of the Congress to 'veto' by concurrent resolution my exercise of authority granted by law. Article I, Section 7, Clause 2, of the Constitution states that:
>
> > 'Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House

> shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.'

"The Congress cannot evade this Constitutional requirement by the simple expedient of adopting a concurrent resolution. The founding fathers closed that loophole in Clause 3 of Article I, Section 7. It states that:

> 'Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.'

"Accordingly, any concurrent resolution which is not submitted to the President for approval does not become the law. Not being law, it cannot modify or repeal the law.

"I would welcome a speedy and decisive judicial test of these provisions. Meanwhile, I am instructing the Executive Branch to comply with the prescribed requirements of Congressional notification, in a spirit of comity with the Congress. Pending a court decision, however, I reserve the question of compliance should a concurrent resolution envisaged by this bill be adopted."

Sincerely,

Richard A. Wiley

DEPARTMENT OF STATE

Washington, D.C. 20520

MAY 7 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

Reference is made to Mr. Frey's request of May 5 for the views and recommendations of the Department of State on S. 2115, an enrolled bill.

The enrolled enactment would amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to temporary active duty of Selected Reservists in the absence of a declaration of war or national emergency. S. 2115 results from a legislative proposal originating in the Department of Defense and the provisions of the bill are more fully described in the report of that Department.

The Department of State recommends that the President approve the enrolled bill. We note two issues however which we believe should be brought to his attention.

Subsection (f) of the new 10 U.S.C. §673b would require the Secretary of Defense (or the Secretary of Transportation with respect to the Coast Guard) to report to Congress within 24 hours after executing an order authorized by the President to call any unit or member of the Selected Reserve to active duty. This report must set forth in writing, inter alia, a description of the anticipated use of the units or members called to active duty. It seems possible that contingencies could arise wherein a written report of the anticipated deployment of military forces could give rise to problems of security, and thus interfere with the exercise of the President's responsibilities as Commander-in-Chief of the Armed Forces. Although this difficulty might be obviated by a report setting forth only such detail as security considerations would permit at the time the forces were to be deployed,

the President might wish in signing this bill to comment on the need for consideration of security requirements in determining the extent of detail that could be included in any particular report.

A more serious difficulty with the enrolled bill is raised by the procedure in the proposed subsection (g), whereby an order calling Selective Reservists to active duty could be terminated not only by the President but also by a concurrent resolution of Congress.

In vetoing S. 2662, the FY 1976 Security Assistance Authorization bill, the President described similar provisions for legislative veto of executive acts by concurrent resolution as being "incompatible with ... the Constitution ... [and] in disregard of the fundamental principle of separation of powers." The legislative veto provision in S. 2115, in our judgment, is constitutionally objectionable for the same reasons cited by the President in his veto message on S. 2662.

Accordingly, we strongly recommend that the President maintain a consistent position on the constitutional issue through a statement upon signing the bill. We understand that the text of a signing statement has been recommended by the Department of Defense.

Sincerely yours,

Robert J. McCloskey
Assistant Secretary for
Congressional Relations

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

MAY 7 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Transportation concerning S. 2115, an enrolled bill

> "To amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared."

Section 1 of the enrolled bill adds a new section 673b to title 10, United States Code, which permits the President, when he determines that it is necessary to augment the active armed forces for any operational mission, to authorize the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, to order any unit, and any member not assigned to a unit organized to serve as a unit, to active duty for not more than 90 days. The bill limits the number of members which may be ordered to active duty at any one time under the section to 50,000. Whenever the President authorizes the order to active duty of any member in the Selected Reserve, he must submit a report to both Houses of Congress setting forth the circumstances necessitating the action. The service of all units or members ordered to active duty under the new section 673b may be terminated by order of the President or by a concurrent resolution of Congress.

Section 2 of the enrolled bill adds a new subsection (g) to section 2024 of title 38, United States Code, which entitles any member of a Reserve component ordered to active duty under the new section 673b to all reemployment rights and benefits provided for persons ordered to an initial period of active duty for training of not less than three consecutive months.

Section 764 of title 14, United States Code, already authorizes the Secretary of Transportation, with the approval of the President, to order to active duty for specified periods from the Coast Guard Ready Reserve any organized training unit, any member or members thereof, or any member not assigned to a unit organized to serve as a unit, for the emergency augmentation of Regular Coast Guard forces at times of serious natural or manmade disaster, accident, or catastrophe. The enrolled bill would give this Department the additional authority to augment our regular forces by ordering the reserve forces to active duty for limited periods for operational missions. We support the inclusion of the Coast Guard in this legislation, since there are several operational missions for which the Coast Guard is particularly qualified (e.g., missions involving port safety or port security).

Therefore, we favor the President signing the enrolled bill.

Sincerely,

John Hart Ely
General Counsel

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

CHAIRMAN

May 6, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Attention: Assistant Director for
Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of the Civil Service Commission on enrolled bill S. 2115, "To amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared."

This legislation would grant the President authority to order not more than 50,000 members of the Selected Reserve to active duty for not more than 90 days under conditions short of a declaration of war or national emergency as declared by either the President or the Congress.

The only Federal personnel provision is section 2 which adds a new subsection (g) to section 2024 of title 38, United States Code, granting Selected Reservists who are called up for this purpose the same reemployment rights and benefits now available to Reservists called up for active training duty. We agree with the idea, but we believe this provision is unnecessary since Reservists and National Guardsmen ordered to active duty already are accorded reemployment rights under 5 U.S.C. 3551.

Nevertheless, from the personnel standpoint, we recommend that the President sign enrolled bill S. 2115.

By direction of the Commission:

Sincerely yours,

Robert Hampton

Chairman

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

MAY 7 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request for the Department of Labor's comments on S. 2115, an Enrolled Enactment, "To amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared."

The Enactment would enable the President to authorize the Secretary of Defense and the Secretary of Transportation, in the case of the Coast Guard, to order any unit of the Selected Reserve or member not assigned to a unit to active duty involuntarily for not more than 90 days upon a determination that it is necessary to augment the active forces for any operational mission without a declaration of war or national emergency. Instances are specified when units or members may not be called to active duty. When this authority is exercised, the President shall submit to the Congress a report setting forth the reasons for such action and the anticipated use of the Reserves affected. The service of the units or members may be terminated by an order of the President or concurrent resolution of the Congress. It is further specified that any member of a Reserve component who is ordered to active duty pursuant to this Enactment shall be entitled to the reemployment rights and benefits provided under section 2024 of title 38, United States Code, relating to persons ordered to an initial period of active duty for training of not less than three consecutive months. Lastly, the period of eligibility for reemployment rights is extended by the period of such active duty.

The Department of Labor has no objections to the President's approval of this Enrolled Enactment.

Sincerely,

W J Usery Jr.

Secretary of Labor

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

May 6, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill, S. 2115, "To amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared".

Under present law, members and units of the Reserve forces of the United States may be ordered to active duty only for a period of not more than 15 days a year unless the member consents to the order or unless a declaration of war or of national emergency has been issued, 10 U.S.C. §672, or where a member is not assigned to or participating satisfactorily in units when a member of the Ready Reserve. 10 U.S.C. §673a. The enrolled bill would considerably expand the authority of the President to order to active duty up to 50,000 members of Selected Reserve units established under 10 U.S.C. §268(b). The bill adds a new section 673b to title 10 of the United States Code, which authorizes the President to order such members or units to active duty for not more than 90 days. Proposed §673(a). He could do so to augment the armed forces for any operational mission, regardless of whether a declaration of war or of national emergency had issued from the Congress. These forces would not, however, be available for the purposes for which the President may call into Federal service the National Guard, 10 U.S.C. §§3500, 8500 (repel invasion, counter rebellion, or to execute the laws of the United States) and would not be authorized to assist in countering a serious natural or manmade disaster, accident, or catastrophe. Proposed §673(b). Upon ordering members of the Selected Reserve to active duty under the authority of the proposed section, the President

would be required to send a report, within 24 hours of exercising that authority, in writing to the Speaker of the House of Representatives and to the President pro tempore of the Senate. The report must set forth the circumstances necessitating use of the authority and describe anticipated uses of the units or members ordered to active duty. Proposed §673b(f). By concurrent resolution, the Congress could terminate the active duty period prior to the expiration of the ninety-day term of duty. Persons ordered to active duty would retain full reemployment rights. Proposed 38 U.S.C. §2024(g).

The Department of Justice has traditionally opposed on constitutional grounds the use of the concurrent resolution device to affect the exercise of Executive powers. In the particular and limited circumstances covered by proposed §673b, however, these reservations may have less direct application. Subject to these considerations, the Department of Justice defers to those agencies more directly concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,

Michael M. Uhlmann

Michael M. Uhlmann
Assistant Attorney General

VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420

May 6, 1976

The Honorable
James T. Lynn
Director, Office of
Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

I am pleased to respond to the request from the Assistant Director for Legislative Reference for the views and recommendations of the Veterans Administration on the enrolled enactment of S. 2115, 94th Congress.

The measure would grant the President limited power, when he determines that it is necessary to augment the active forces for operational missions, to authorize the order of not more than 50,000 members of the Selected Reserve to active duty for a period of not more than ninety days. There are limitations on functions such reserves would be permitted to perform and there is provision for notification to Congress by the President of circumstances necessitating the order to active duty and of the anticipated use of the forces concerned. It is also provided that the order to active duty may be terminated by order of the President or by a concurrent resolution of the Congress. Additionally, section 2 of the bill provides that any reserve member ordered to active duty under the Act (1) would be entitled to the same reemployment rights and benefits as are currently provided reservists ordered to initial active duty for training for three months or more; and (2) shall have the service limitation (four or five years), governing eligibility for reemployment rights of persons who enlist or are called to active duty, extended by his period of such service.

The Honorable James T. Lynn

Currently, under section 2024(c) of title 38, United States Code, a member of a reserve component of the Armed Forces who is ordered to an initial period of active duty for training of not less than three consecutive months shall, upon application within the time limitation prescribed, be entitled to reinstatement in his former employment with such seniority, status, pay and other benefits as he would have had, but for such absence for active duty for training. Likewise, persons enlisting or entering upon active duty in the Armed Forces enjoy similar reemployment rights under sections 2024(a) and 2024(b)(1), subject to a proviso that the period of such active duty does not exceed four or five years (depending on when the duty was performed).

Section 2 of S. 2115 would amend section 2024 of title 38 by adding a subsection (g) which would provide the same reemployment rights to persons ordered to active duty under this Act as are now provided reservists under section 2024(c) and would extend the four or five year maximum period of active duty, for purposes of reemployment rights under sections 2024(a) and 2024(b)(1), by the period of active duty performed pursuant to this Act.

Under the circumstances, we defer to the Department of Defense as to the overall merits of the bill. As a matter of principle, the equity of section 2 of the bill, extending reemployment rights to persons affected, is apparent. However, since matters relating to the reemployment rights of members and former members of the Armed Forces are administered by the United States Civil Service Commission and the Department of Labor, we will defer to their views as to the technical merits of section 2 of the subject bill.

Sincerely,

RICHARD L. ROUDEBUSH
Administrator

MEMORANDUM

NATIONAL SECURITY COUNCIL

MEMORANDUM FOR: JAMES CANNON

FROM: JEANNE W. DAVIS

SUBJECT: S. 2115 Reserve Call-Up Authority

The NSC staff continues to recommend that the President sign S. 2115.

In the event the President might be inclined to veto the bill, it is recommended that Secretary Rumsfeld be given the opportunity to discuss the matter with him first.

Attached is a draft signing statement for your further coordination.

DRAFT

FOR IMMEDIATE RELEASE May 12, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

After extensive review, I have decided that the Reserve Call-Up Authority Bill (S. 2115) warrants my signature.

I am signing this bill in view of the increased importance of, and reliance on, the Guard and Reserve as part of the Total Force Policy. The Guard and Reserve will be the initial and prime source of augmentation should our military capability have to be increased to meet any contingency. I do this despite the serious concern I have with the unconstitutional provisions relating to the purported power of the Congress to "veto" by concurrent resolution my exercise of authority granted by law. Article I, Section 7, Clause 2, of the Constitution states that:

> "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such

> Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law."

The Congress cannot evade this Constitutional requirement by the simple expedient of adopting a concurrent resolution. The founding fathers closed that loophole in Clause 3 of Article I, Section 7. It states that:

> "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presentedto the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

Accordingly, any concurrent resolution which is not submitted to the President for approval does not become the law. Not being law, it cannot modify or repeal the law.

I would welcome a speedy and decisive judicial test of these provisions. Meanwhile, I am instructing the Executive Branch to comply with the prescribed requirements of Congressional notification, in a spirit of comity with the Congress. Pending a court decision, however, I reserve the question of compliance should a concurrent resolution envisaged by this bill be adopted.

S. 2115

Wednesday 5/12/76

5:15 Ken said he would like to recommend approval for three reasons:

1. It isn't as egregious a situation as was presented by S-2662
2. It puts the President in the posture of being pro-military which has certain political pluses
3. Veto would be overridden

Buchen votes for signing per Ken Lazarus.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: May 12 Time: 1130am

FOR ACTION: NSC/S sign
Max Friedersdorf sign
Ken Lazarus sign
David Lissy sign
Robert Hartmann (veto message attached) sign

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: May 13 Time: 530pm

SUBJECT:

S. 2115 - Reserve call-up authority

ACTION REQUESTED:

____ For Necessary Action
____ For Your Recommendations
____ Prepare Agenda and Brief
____ Draft Reply
X For Your Comments
____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

WASHINGTON

May 13, 1976

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF

SUBJECT: S. 2115 - Reserve call-up authority and statement

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed with statement.

Attachments

Ken Lazarus version

DRAFT May 13, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I have today signed into law S. 2115, a bill which enables the President to authorize the involuntary order to active duty of selected reservists under certain circumstances.

S. 2115 would permit the President, without declaring a national emergency and when he determines that it is necessary to augment the national forces for any operational mission, to authorize the involuntary order to active duty of up to 50,000 members of the Selected Reserve for not more than 90 days. Unfortunately, however, a provision of the bill provides that the service of members ordered to active duty may be terminated by concurrent resolution of the Congress.

I have often expressed the view that provisions for Congressional override of Executive action by concurrent resolution are constitutionally infirm. Such provisions take on added significance when the Congress attempts to interfere with the exercise of core Executive functions, such as the authority to conduct our relations with other nations.

I am signing this bill in view of the increased importance of, and reliance on, the National Guard and Reserve as part of the total defense force of the nation. The Guard and Reserve are

the initial and prime source of augmentation should our military capability have to be increased to meet any manpower emergency. I do this despite the serious concern I have with the constitutionally defective provision of the measure relating to the purported power of the Congress to "veto" by concurrent resolution my authority to activate standby forces. The Constitution prohibits legislative encroachments of this sort upon the powers of the Executive Branch. Accordingly, although I would comply with the prescribed requirement of Congressional notification, I reserve the question of compliance should the concurrent resolution envisaged by this legislation at any time be adopted.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: May 12 Time: 1130am

FOR ACTION: NSC/S
Max Friedersdorf
Ken Lazarus
David Lissy
Robert Hartmann (veto message attached)

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: May 12 Time: 530pm

SUBJECT:

S. 2115 - Reserve call-up authority

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

X___ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

5/12

I would recommend approval and a signing statement which reflects the points noted in DOD and State letters.

JMF

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: May 12 Time: ~~1130am~~

FOR ACTION: NSC/S
Max Friedersdorf
Ken Lazarus
David Lissy
Robert Hartmann (veto message attached)

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: May 12 Time: 530pm

SUBJECT:

S. 2115 - Reserve call-up authority

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

X ____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

x2684

Approve

JM

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

5/12- 11:55 am

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: May 12 Time: 1130am

FOR ACTION: NSC/S
Max Friedersdorf
Ken Lazarus
David Lissy
Robert Hartmann (veto message attached)

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: May 12 Time: 530pm

SUBJECT:

S. 2115 - Reserve call-up authority

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

X For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

5/12- sent copy to Buzz for researching. mm

Sign it

Cong. veto on mobilization has more Constitutional merit than on foreign aid because of Cong. power to declare & fund wars.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED. ~~Should~~

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: May 12 Time: 1130am

FOR ACTION: NSC/S
Max Friedersdorf
Ken Lazarus
David Lissy
Robert Hartmann (veto message attached)

cc (for information): to Res 5/12 1:30 GAms
to DJS 5/12 3:31 GAms
of J.C.

FROM THE STAFF SECRETARY

DUE: Date: May 12 Time: 530pm

SUBJECT:

S. 2115 - Reserve call-up authority

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

X ____ For Your Comments ____ Draft Remarks

REMARKS:

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On May 7, 1976, I disapproved S. 2662, a bill authorizing foreign military aid for this fiscal year. That bill contained several similar provisions for congressional override of Executive action by concurrent resolution. In my veto message on S. 2662, I noted that such provisions are incompatible with the express provision in the Constitution that a resolution having the force and effect of law must be presented to the President and, if disapproved, repassed by a two-thirds majority in the Senate and House of Representatives. Moreover, I stated that such provisions would involve the Congress directly in the performance of Executive functions in disregard of the fundamental principle of separation of powers and, in the case of S. 2662, would violate the President's constitutional authority to conduct our relations with other nations. Just as I disapproved S. 2662 because it would have seriously obstructed the President's constitutional responsibili[illegible]

of foreign affairs, I cannot now approve S. 2115, which would impose unacceptable limitations on the President's responsibilities under the Constitution as Commander-in-Chief.

Recognizing the important contribution that the Reserve Components can make in meeting our national defense requirements, I support the call-up authority provided in S. 2115. Moreover, I believe such authority would permit an effective and appropriate response in certain, limited situations short of a national emergency. For the reasons noted above, however, I cannot approve S. 2115 in its present form. I urge Congress to repass this legislation without the objectionable concurrent resolution termination provision.

THE WHITE HOUSE

May , 1976

STATEMENT BY THE PRESIDENT

I have today signed into law S. 2115, a bill which permits the President to authorize the involuntary order to active duty of selected reservists under certain circumstances. This law would permit the President, without declaring a national emergency, to augment the national forces for an operational mission, when he determines that it is necessary, by authorizing the involuntary order to active duty of up to 50,000 members of the Selected Reserve for not more than 90 days.

Unfortunately, however, the bill provides that the service of members ordered to active duty may be terminated by concurrent resolution of the Congress. I have often expressed the view that provisions for Congressional override of Executive action by concurrent resolution are unconstitutional. Such provisions take on added significance when the Congress attempts to interfere with the exercise of exclusively Executive functions, such as the authority to conduct our relations with other nations.

I am signing this bill despite that defect because of the increased importance of the National Guard and Reserve and our reliance upon them as part of the total defense force of the nation. The Guard and Reserve are the initial and prime source of augmentation in the event that our military capability must be increased to meet any manpower emergency.

I have serious concern as to the constitutionally defective provision relating to the purported power of the Congress to "veto" by concurrent resolution my authority to activate standby forces. The Constitution prohibits such legislative

encroachments upon the powers of the Executive Branch. Accordingly, although I would comply with the prescribed requirement of Congressional notification, I reserve the right to refuse compliance with a concurrent resolution envisaged by this legislation should one be adopted.

May 13, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

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I am signing this bill despite that ~~[illegible]~~ defect because of the increased importance of the National Guard and Reserve and our reliance upon them as part of the total defense force of the nation. The Guard and Reserve are the initial and prime source of augmentation in the event that our military capability must be increased to meet any manpower emergency. I have serious

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To- J. Cavanaugh 5-12-76 11:00 a.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 12 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2115 - Reserve call-up authority
Sponsors - Sen. Stennis (D) Mississippi and Sen. Thurmond (R) South Carolina

Last Day for Action

May 15, 1976 - Saturday

Purpose

Permits the President, when he determines that it is necessary to augment the active forces for any operational mission, to authorize the involuntary order to active duty of up to 50,000 members of the Selected Reserve (either in units or as individuals) for periods not to exceed 90 days.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto Message attached)
Department of Defense	Approval
Department of State	Approval
Department of Transportation	Approval
Civil Service Commission	Approval
National Security Council	No objection (informally)
Department of Labor	No objection
Department of Justice	Defers to other agencies
Veterans Administration	Defers to other agencies

Discussion

Under current law, in a time of national emergency declared by the President after January 1, 1953, up to one million Ready Reservists may be ordered to active duty (other than for training) without their consent for not more than 24 consecutive months.

TO THE SENATE OF THE UNITED STATES:

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of foreign affairs, I cannot now approve S. 2115, which would impose unacceptable limitations on the President's responsibilities under the Constitution as Commander-in-Chief.

Recognizing the important contribution that the Reserve Components can make in meeting our national defense requirements, I support the call-up authority provided in S. 2115. Moreover, I believe such authority would permit an effective and appropriate response in certain, limited situations short of a national emergency. For the reasons noted above, however, I cannot approve S. 2115 in its present form. I urge Congress to repass this legislation without the objectionable concurrent resolution termination provision.

THE WHITE HOUSE

May , 1976

5/14/76 Version

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I have serious concern as to the constitutionally defective provision relating to the purported power of the Congress to "veto" by concurrent resolution my authority to activate standby forces. The Constitution prohibits such legislative

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Burke version
5/15/76

STATEMENT BY THE PRESIDENT

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~~However,~~ I am signing this bill despite ~~that defect~~ because of the increased importance of the National Guard and Reserve and our reliance upon them as part of the total defense force of the nation. The Guard and Reserve are the initial and prime source of augmentation in the event that our military capability must be increased to meet ~~any~~ an emergency which suddenly threatens our national security.

~~I have serious concern~~ as to the ~~constitutionally defective~~ provision relating to the purported power of the ~~Congress~~ to "veto" by concurrent ~~resolution~~ my authority to activate standby ~~forces. The Constitution prohibits such legislative~~

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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94-1069

AUTHORITY FOR LIMITED RESERVE MOBILIZATION

APRIL 29, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NEDZI, from the Committee on Armed Services, submitted the following

REPORT

[To accompany S. 2115]

The Committee on Armed Services, to whom was referred the bill (S. 2115) to amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

This legislation is intended to provide authority for the President to call to active duty for a period of not more than 90 days up to 50,000 members of the Selected Reserve (essentially individual members of both the Guard and Reserve assigned to drilling units) without a declaration of national emergency.

At present, the President has limited authority to activate Reservists. The authority provided in this legislation simply amplifies the President's existing powers by relieving the requirement for declaring a national emergency when Reservists are activated under the limited conditions prescribed by this legislation. Relief from this requirement, even under these narrowly-prescribed conditions, will provide the opportunity for increased reliance on Reserve units and benefit the entire Reserve program and the active structure as well.

SUMMARY

In this legislation, the President is provided authority to order to active duty for a period not to exceed 90 days, up to 50,000 members of the Selected Reserve without a declaration of national emergency.

The authority contained in this legislation may not be utilized to activate Reservists to serve during a domestic disturbance.

The number of Reservists activated by this authority will not be counted in computing authorized strength or grade levels for the active forces.

Upon the exercise of this authority, the President must notify the Congress in writing of the circumstances behind its exercise and the anticipated use for the Reservists ordered to duty. The exercise of this authority may be terminated by order of the President or a concurrent resolution of the Congress.

The authority in this legislation cannot be construed to amend or limit the application of the War Powers Resolution.

Reservists ordered to active duty under this authority are entitled to re-employment rights identical to those currently provided Reservists on initial active duty for training.

Discussion

S. 2115 provides authority for the President to order a carefully-limited call-up of the Reserves. The Reservists subject to activation under this authority are those assigned to that segment of the Reserve structure known as the Selected Reserve. The Selected Reserve is comprised of those individuals in the Reserve components of each Service, including the Air and Army National Guard, who are in a paid-drill status. Except for some Reservists in the Air Force and Navy Reserve, Selected Reservists are assigned to specific Reserve units. The Selected Reserve is also that portion of the Reserve components which requires annual strength authorization by the Congress.

This authority may only be utilized when the President determines that Reserve forces are necessary to augment active forces in an operational mission. The prerogative provided in S. 2115 is limited to situations of actual military operations. Authority already exists in the law to order Reservists involuntarily to active duty for no more than 15 days (10 USC 672).

It is also clear that this authority is not meant to circumvent existing controls on active duty strengths through successive, unbroken call-ups of Reservists. The 90-day duration for activation is sufficient to clarify the operational situation and ascertain whether some degree of national mobilization is required or that no further necessity exists for troops in augmentation of active forces.

The numerical limit of 50,000 for Reservists ordered to active duty under this legislation is appropriate to accommodate most anticipated scenarios in which a limited call-up may be used. For example, this number would encompass the activation of a full Army division (roughly 48,000 personnel with all of its supporting elements) or a full augmentation of airlift capacity. This number, while operationally significant and appropriate to anticipated non-mobilization mission demands on the Reserves, is not so large as to present an opportunity to substantially augment active forces in being for major contingencies otherwise justifying a Presidential declaration of national emergency or a Congressional decalaration of war.

Why This Authority Is Needed

Even the strongest proponents of this nation's Reserve program concede that deficiencies exist. Many citizens of the country have expressed their personal concern to Members of Congress and the Committee that their own experiences in the Reserves indicate that the Reserve program is less vital than it should be. While aware of these deficiencies, the Committee on Armed Services and the Congress have supported the Reserve concurrently with efforts to cure these faults. This legislation is intended to ease access to a specific portion of the Reserve structure in a manner which will energize the entire Reserve program.

In reality, it should be recognized that many of the ills suffered by the Reserves were the result of benign neglect on the part of their active counterparts. The Reserve program has been handicapped by serious shortages of modern military equipment as well as a reluctance on the part of the active military establishment to assign them realistic, meaningful missions. With these handicaps, it should not be unexpected that some Reservists had a difficult time in maintaining a high level of dedication.

The failure on the part of the active force to provide scarce modern equipment and meaningful missions may perhaps be attributed in part to a perception on the part of the active establishment that the allocation of critical equipment and missions to the Reserves, in the absence of their immediate availability, could be detrimental to the nation's defense force in general. If the decision could not be made to activate the Reserves for whatever reason, these critical assets would not be available when needed. At present, barring a declaration of national emergency by the President, or of war by the Congress, the Reserve units may not be activated for an operational military mission.

The declaration of a national emergency by a President is a very significant act which often may unnecessarily trigger undesirable consequences far beyond the military emergency itself.

The Vietnam conflict—one of the largest military commitments this country has become engaged in—was conducted almost entirely without Reserve assistance. (Approximately 37,000 Reservists were activated in 1968 under authority provided in the "Russell Amendment", Public Law 89–687.) Although the explicit basis for the Presidential decision not to mobilize the Reserves for service during that conflict is not available, it is clear that a prime reason was to avoid having to declare a national emergency concerning the nation's Vietnam commitment because of potential international and domestic consequences. One unfortunate effect of that decision was to confirm doubts as to the availability of the Reserves.

S. 2115 addresses this perception of unavailability and in so doing represents an important step in the continued development of a truly effective co-equal partnership between the Reserves and the active forces in the nation's defense.

The essential element in this legislation is the authority it provides to utilize Reservists for operational missions—no matter how severely

prescribed—without a declaration of national emergency. The erasure, even in part, of this artificial boundary underwrites the availability of Reserves in time of need and dissolves the basis for reluctance to provide modern equipment and meaningful missions to this component.

In addition to redressing this active force concern, this authority will also provide motivation throughout the Reserve structure. Training will become more meaningful as it becomes clear the unit could, in fact, be activated during peacetime. Reservists concerned for their own well-being will demand it be so.

A Catalyst for Total Force Concept

Since the Vietnam experience, the number of active forces has declined almost 1,500,000 personnel below the Vietnam peak in 1969. Even comparing today's active force against our 1964 force level—a pre-Vietnam era, active forces have shrunk by almost 600,000.

One of the reasons for this continued reduction was a decision that increased reliance would be placed on the Reserve components. In reality, this shift of responsibility to the Reserves occurred only in part because of the perceived problems in the Reserve program. The intended effect of providing this authority is to spur the introduction of Reserve forces into many areas to which they are uniquely suited.

Active forces, because of their continuous training opportunities, can more readily maintain levels of readiness required by the demands of combat missions. The maintenance of active forces is extremely costly. On the other hand, the character of Reserve forces is uniquely suited to support missions which in many cases do not demand sustained training. At present, the active force maintains units with support missions to insure their early availability when the potential for Reserve assumption of these missions exists. With this increased availability for recall, Reserve units could assume many of these support missions, thus freeing additional active force assets for a combat role.

A recent example of the potential for this re-allocation of mission responsibilities has begun to evolve as the congressionally-directed reductions in the support structure in Europe have been implemented. The Nunn Amendment (section 302 of P.L. 93–365) dictated that by June 30, 1976, 18,000 troops be withdrawn from support elements in the U.S. troop structure in Europe. The amendment also provided for the assignment of up to 18,000 additional combat forces in substitution for the withdrawn support troops. Many of the support functions affected by this substitution are being transferred to Reserve units. This assignment of missions with early mobilization and deployment responsibilities is particularly appropriate to the character of these complementing forces—actives and Reserves. Yet, its operational feasibility depends on the early availability of these Reserve units for performance of the support mission.

There are other compelling examples of the synergistic aspects of this relationship.

In the 1973 Mid-East war, the United States engaged in an intensive effort, not declared to be a national emergency, to provide military assistance to Israel. The transportation of military equipment in the magnitude necessary demanded a large percentage of this country's airlift capacity. At that time and today, 43 percent of the nation's strategic airlift crews are assigned to Guard and Reserve forces where they are maintained in readiness at a lesser cost than in the active military. These Reserve aircrews operating in a volunteer capacity provided the critical manpower which permited the United States to bring to bear the bulk of its airlift capacity and support Israel. Absent this voluntary commitment though, the immediacy of the resupply would have been curtailed with potentially dramatic consequences for our ally. Continued voluntary participation is to be expected, but its reliability for such critical assistance in future demanding situations—absent a declaration of war or national emergency—is a factor any responsible leader must question.

The current responsibilities of Guard and Reserve forces indicate their importance to the nation's defense structure. Illustratively, in the Army, Reserve forces account for 46 percent of total combat forces, 25 percent of maneuver battalions in non-deployed active divisions and 30 percent of all helicopter forces.

In the Air Force, where a complementary relationship between active and Reserve forces has been carefully developed, Reserve units have assigned 56 percent of the nation's tactical airlift aircraft, 50 percent of the tactical reconnaissance aircraft, 50 percent of all air defense interceptors, 28 percent of the nation's tactical fighter aircraft, and will operate 20 percent of the jet tanker force by the end of fiscal year 1978.

Existing Presidential Authority To Activate the Reserve

in general

The authority contained in this legislation amplifies existing Presidential authority in only one respect—activation of some Reserve units could occur without a declaration of national emergency.

In many substantial respects, the President's current authority far exceeds in breadth the powers provided in this legislation. Section 673 of title 10 now allows the President, upon a declaration of national emergency, to order to active duty up to 1,000,000 members of the Ready Reserve for a period of less than 24 consecutive months. Section 673a permits the President to order to active duty for a period not exceeding 24 months, members of the Ready Reserve who are not assigned to a unit or not participating satisfactorily in a unit who have not completed their 6-year statutory military obligation and have not served on active duty for two years. (The authority contained in section 673a is the remaining portion of that provided by legislation effective in 1968 and 1969 which allowed the President in general to activate Reservists and Reserve units for a period of 24 months without a declaration of national emergency. This legislation, known as the Russell Amendment, was the authority for the activation of approximately 37,000 Reservists in 1968 and 1969. The portion of this authority permitting the activation of Reserve units was in effect for two years and not extended.)

Each of these authorities is flawed, with Reserve availability the measure, since one requires a declaration of national emergency, and the other precludes the activation of units—the bulk of the Ready Reserve program.

FOR DOMESTIC PURPOSES

Having dwelled on what this legislation does, it is important to note what it does not. Reserve forces activated under this authority cannot be utilized to provide assistance during a domestic disturbance such as an insurrection or natural disaster.

Adequate authority for these circumstances is currently contained in the law:

Section 331 of title 10, United States Code, authorizes the President, upon the request of a state legislature or its governor, to call into Federal service the militia of other states to suppress an insurrection against the state.

Section 332 of title 10, United States Code, authorizes the President to call into Federal service the state militia when he considers that unlawful obstructions, or rebellion make it impractical to enforce the law.

Section 333 of title 10, United States Code, authorizes the President to use the militia to suppress insurrection or conspiracy which interferes with Federal law or abridges constitutional rights.

Sections 3500 and 8500, respectively, of title 10, United States Code, authorize the President to call into Federal service the Army National Guard and Air National Guard to repel an invasion or execute the laws.

Authority also exists in section 2105 of title 10, United States Code, for the Secretary of a military department to order to active duty an advanced ROTC cadet, who is a member of a Reserve component, for up to 2 years if the cadet does not satisfactorily complete his course or declines a commission.

OPERATIONAL MISSIONS ONLY

Reservists may be activated under the terms of this legislation only for operational missions. Because of the demands of civilian occupations, Reservists cannot be summoned to active duty for extended periods for trivial reasons. Adequate authority is currently provided the Secretaries of each service to order Reservists to active duty for up to 15 days to perform required training. The activation of Reservists contemplated in this legislation is not to be used for training exercises, but rather for actual military missions where an augmentation to the active force is required.

WAR POWERS RESOLUTION

S. 2115 is consistent with the provisions of the War Powers Resolution. Public Law 93–148, enacted on November 7, 1973, the War Powers Resolution, requires the President to consult with and report to the Congress concerning the introduction of United States forces into hostilities or situations where hostilities are likely. The Resolution also fixes specific dates for the termination of the use of United States forces introduced to such situations unless the Congress has declared

war, enacted a specific statutory authorization for the use of United States forces in this manner, or is physically unable to meet as a result of an armed attack against the United States.

The War Powers Resolution does not affect the President's authority to activate the Reserves. Once on active duty, the Selected Reservists activated under this authority would be subject to the same constraints as other active forces by the terms of the War Powers Resolution.

Subsection 1(h) of S. 2115 specifically indicates that the legislation shall not be construed as amending or limiting the application of the provisions of the War Powers Resolution.

PENDING LEGISLATION ON NATIONAL EMERGENCIES

S. 2115 is consistent with legislation recently passed by the House on national emergencies.

On September 4, 1975, the House passed H.R. 3884 which would terminate all powers and authorities operative because of existing national emergencies declared by a President. That legislation would also provide new procedures for the declaration and termination of future emergencies.

At present, there are four separate national emergency declarations in effect. The first was declared by President Roosevelt in 1933 in connection with the depression; the second by President Truman in 1950 for the Korean conflict; the third by President Nixon in 1970 because of the Post Office strike; and the fourth by President Nixon in 1971 to deal with the balance of payments and other international economic problems.

None of these existing declarations of national emergency empower the President to activate the Reserves as the first two were issued prior to January 1, 1953—the operative date for the authority in 10 U.S.C. 673, and the last two were limited by their own terms to specific circumstances.

RE-EMPLOYMENT RIGHTS

Section 2 of this legislation provides that Reservists ordered to active duty under this authority will be entitled to the same re-employment rights as those now provided Reservists undergoing their initial period of active duty for training. These re-employment rights entitle a qualified Reservist to reinstatement to his original position with the seniority, status, pay, and vacation benefits to which he would have been entitled had he not been ordered to active service. This provision also extends the entitlement to these re-entitlement rights—which is limited to either four or five years (the exact period being dependent on when the active duty was performed)—to insure that an individual activated under this authority receives these benefits.

RETENTION OF CONGRESSIONAL PREROGATIVES

S. 2115 is an Administration proposal. The original text of the proposal (introduced in the House as H.R. 7460) was amended by the Senate. The Senate amendments require that the President notify the Congress in writing within 24 hours of exercising the authority setting

forth the reason for its use and the anticipated manner in which the Reservists will be utilized. The amendments also provide that any call-up under this authority can be terminated by either (1) order of the President, or (2) a concurrent resolution of the Congress. As mentioned in a prior section of this report, the bill was amended in the Senate in a manner to insure that it is not construed as amending or limiting the application of the provisions of the War Powers Resolution.

The Committee on Armed Services has not reported any change in the form of the bill as amended by the Senate.

Background

The spring from which this proposal originally flowed was the Congress. Section 403(b)(4) of Public Law 93–365, the fiscal year 1975 Defense Authorization Bill, directed the Secretary of Defense to conduct a study concerning the feasibility of utilizing the resources of the Reserve components to effectuate a proposed increase in the strategic airlift crew ratio. As an adjunct to this study, the Secretary was directed to consider "the desirability of new statutory authority for the limited selective mobilization of members of the Air National Guard under circumstances not leading to a declaration of a national emergency by the Congress or the President."

Hearings

Testimony concerning S. 2115 was taken during the Committee's annual oversight hearings on defense matters in conjunction with consideration of the fiscal year 1977 Defense Authorization Bill (H.R. 12438 which passed the House on April 9, 1976). The hearings relating to this legislation are printed and available as Part 3 of H.A.S.C. 94–33.

Departmental Views

The bill, to which the Office of Management and Budget interposes no objection, is part of the legislative program of the Department of Defense, as indicated in the following correspondence which is hereby made a part of this report.

General Counsel of the Department of Defense,
Washington, D.C., April 30, 1975.

Hon. Carl Albert,
Speaker of the House of Representatives,
Washington, D.C.

Dear Mr. Speaker: Forwarded herewith is draft legislation "To amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists for a limited period, whether or not a declaration of war or national emergency has been declared."

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. As a part of the Department of Defense Legislative Program for the 94th Congress, it is hereby submitted for enactment at the earliest possible time.

Purpose of the Legislation

The purpose of the proposal is to amend the provisions of title 10, United States Code, in order to grant the President limited authority, when he determines that it is necessary to augment the active forces for operational missions, to order not more than 50,000 members of the Selected Reserve to active duty for not more than ninety days under conditions short of a declaration of war or national emergency as declared by either the President or the Congress. This proposal is identical to a proposal submitted to the 93d Congress and the authority it would provide is being sought for availability on a continuing basis without reference to any particular situation.

This legislation is an important element in achieving greater reliance on Reserve Components for accomplishing the responsibilities of the Department of Defense. It is important that the President be able to augment the active forces with the Reserves for operational missions without having to declare a full-scale national emergency with all the attendant international and domestic implications this can have. Such authority could be used, for example, to augment our Strategic Airlift capability (and other areas as appropriate) in situations similar to that which occurred in the Middle East last year.

In the recent past, augmentation of the active forces on a limited scale has been accomplished under current authority by relying on individual volunteers from among the Reserves. The limitations of this approach are quite apparent, however, particularly in those situations which may require the activation of entire units. There needs to be firm assurance of Reserve availability for employment in crisis situations, short of national emergency, in order that active force commanders may place a high degree of reliance on the Guard and Reserves.

Another aspect of this legislative proposal is having the Guard and Reserve readily available under conditions that are not a national emergency or without a declaration of war. Such authority would demonstrate the swift response capability in our mobilization planning and would serve as a deterrent to potential aggressors and as an encouragement as seen by our allies.

With respect to authority to order units of the Selected Reserve to active duty to test their readiness, current authority under section 672(b) of title 10, United States Code, while limited to 15 days, is considered adequate for this training purpose.

In order to avoid possible jurisdictional conflict with the States, the bill prohibits members or units of a Reserve Component from being ordered to active duty under proposed section 673b of title 10, United States Code, for the purpose of suppressing insurrection or civil disturbance enforcing the laws of the United States or any State, or providing assistance in time of natural or man-made disaster, accident or catastrophe. These situations will continue to be met under authority provided in existing federal and state laws.

The authorities requested in this legislation will be used judiciously and will enable the Services to plan for broader application of the "Total Force Policy" in satisfying contemporary national defense requirements. The "Total Force Policy" dictates that all available forces, U.S. Active Forces, U.S. Guard and Reserve Forces, and the forces of our allies—would be considered in determining the Defense needs to meet future contingencies. Our national policy of greater reliance on the Guard and Reserve is resulting in missions being assigned to the Reserve forces that were previously the sole responsibility of the Active Forces. In some cases the capability to perform certain missions will be primarily the responsibility of the Reserve Forces. In carrying out these missions, the volunteer potential of the Reserve Forces will continue to be fully exploited.

The bill also amends section 9(g) of the Military Selective Service Act in order to assure that any member who is ordered to active duty under proposed section 673b of title 10, United States Code, as added by the bill, would be entitled to reemployment rights upon release from that active duty, providing he meets the other requirements under the law for entitlement to reemployment rights.

The Department of Defense strongly recommends enactment.

COST AND BUDGET DATA

The enactment of this proposal would cause no increase in the budgetary requirements of the Department of Defense.

Sincerely,

MARTIN R. HOFFMANN.

Enclosure.

A BILL To amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 39 of title 10, United States Code, is amended by inserting the following new section after section 673(a) and inserting a corresponding item in the chapter analysis:

"§ 673(b). Selected Reserve: order to active duty other than during war or national emergency

"(a). Notwithstanding any other law, when the President determines that it is necessary to augment the active forces for operational missions, he may authorize the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a Service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit, of the Selected Reserve as defined in section 268 of this title, under their respective jurisdictions, to active duty for not more than 90 days whether or not the Congress has declared war or Congress or the President has declared a national emergency.

"(b) No unit or member of a reserve component may be ordered to active duty under this section to perform any of the functions authorized by chapter 15 or sections 3500 or 8500 of this title, or to provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident or catastrophe.

"(c) Not more than 50,000 members of the Selected Reserve may be on active duty under this section at any one time.

"(d) Units and individual members on active duty under this section may be assigned outside the United States and its Territories and possessions.

"(e) Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or members in grade under this title or any other law.

"(f) The Secretary of Defense and the Secretary of Transportation shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section."

SEC. 2. Section 2024 of title 38, United States Code, is amended by adding the following new subsection after subsection (f):

"(g) Any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty for not more than 90 days under section 673(b) of title 10, United States Code, whether or not voluntarily, shall be entitled to all reemployment rights and benefits provided under paragraph (3) of this subsection for persons ordered to an initial period of active duty for training of not less than three consecutive months; and shall have the service limitation governing eligibility for reemployment rights under paragraphs (1) and (2)(A) of this subsection extended by his period of such active duty."

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., March 3, 1976.

HON. MELVIN PRICE,
Chairman, Committee on Armed Services,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to S. 2115, 94th Congress, a bill "To amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared."

The purpose of the bill is to amend the provisions of title 10, United States Code, in order to grant the President limited authority when he determines that it is necessary to augment the Active forces for any operational mission, to order not more than 50,000 members of the Selected Reserve to Active Duty for not more than ninety days under conditions short of a declaration of war or National emergency as declared by either the President or the Congress. This bill is basically the same as the Department of Defense proposal submitted to the 94th Congress in April 1975 with the exception of certain amendments made by the Senate.

The substantive amendments are as follows:

"(f) Whenever the President authorizes the Secretary of Defense or the Secretary of Transporttaion to order any unit or member of the Selected Reserve to active duty, under the authority of subsection

(a), he shall, within 24 hours after exercising such authority, submit to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth the circumstances necessitating the action taken under this section and describing the anticipated use of these units or members.

"(g) Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit is ordered to active duty under authority of subsection (a), the service of all units or members so ordered to active duty may be terminated by—

"(1) order of the President, or

"(2) a concurrent resolution of the Congress.

"(h) Nothing contained in this section shall be construed as amending or limiting the application of the provisions of the War Powers Resolution.".

The Department of Defense strongly supports the enactment of this legislation and we interpose no objection to the amendments except the provisions in subsection (g) (2) above relating to the termination of active service by concurrent resolution. The Department of Justice has consistently pointed out that such provisions are constitutionally objectionable as violative of the separation of powers.

The importance of this legislation in establishing the Guard and Reserve as a credible and viable part of the Total Force cannot be over emphasized. It would allow us to place greater dependence upon the Reserve Components in Defense planning, and would thereby enhance the credibility of the National Guard and Reserve as a useable force. Thus, this legislation would help to improve our deterrent posture, and would help us to make better use of our total military manpower resources, Active and Reserve. The true integration of the Reserve forces and Active Duty forces is a reality today and this legislation is essential as a means of overcoming any artificial boundary that presently exists.

The enactment of S. 2115 would cause no increase in the budgetary requirements of the Department of Defense.

The Office of Management and Budget advises that the enactment of this proposal would be in accordance with the program of the President. It is recommended that S. 2115 be enacted by the Congress.

Sincerely,

L. NIEDERLEHMER
(For Richard A. Wiley).

SECTION-BY-SECTION ANALYSIS

Section 1

a. When the President determines it necessary to augment the active forces for an operational mission, he may authorize the Secretary of Defense and Secretary of Transportation with respect to the Coast Guard, when it is not operating as a part of the Navy, may involuntarily order any unit, or member not assigned to a unit, in the Selected Reserve to active duty for not more than 90 days.

b. Reservists ordered to active duty under this authority may not be used to serve during a domestic disturbance.

c. No more than 50,000 Reservists may be activated under this authority at any one time.

d. The number of Reservists activated by this authority will not be counted in computing authorized strength or grade levels for the active forces.

e. The Secretaries of Defense and Transportation are authorized to prescribe appropriate policies to implement this authority.

f. Upon the exercise of this authority, the President is required to notify the Congress in writing of the circumstances behind its exercise and the anticipated use for the Reservists ordered to active duty.

g. The exercise of this authority may be terminated by order of the President or a concurrent resolution of the Congress.

h. The authority in this legislation cannot be construed to amend or limit the application of the War Powers Resolution.

Section 2

Reservists ordered to active duty under this authority are entitled to re-employment rights identical to those currently provided Reservists on initial active duty for training which essentially insure retention of their job with seniority and other job benefits unaffected.

COMMITTEE POSITION

The Committee on Armed Services on April 27, 1976, a quorum being present, approved the bill without objection.

FISCAL DATA

1. EXECUTIVE BRANCH ESTIMATE

According to the Department of Defense, there will be no requirement for additional appropriations to support the enactment of the proposed legislation. If there is no mobilization during the budget year, there will be no costs related to the existence of the 50,000 callup authority. Costs related to an actual callup would be met within the existing appropriations for the service(s) concerned, insofar as possible. Depending upon the magnitude and duration of the mobilization, it may be necessary for the Department of Defense to go to the Congress for a supplemental appropriation and/or appropriation transfers to avoid adverse impact upon normal operations of the particular service(s).

There will be no requirement for new, special, or additional routine operational missions for any units as a result of the enactment of the proposed callup authority.

Fiscal year:	*Millions*
1976	111.0
Transition quarter	111.0
1977	116.0
1978	126.7
1979	134.0
1980	142.7
1981	150.7

The estimated costs associated with a callup of 50,000 Reservists for 90 days for fiscal years 1976 through 1981 are indicated above. These costs were computed from table 252–4 fiscal year 1976 composite standard rates for military pay. The costing is based on costs of Air Force personnel, comprised of 20 percent officers and 80 percent enlisted. The

costs are illustrative in the sense that costs for a different mix of personnel or a different service component would be different. Estimates for fiscal year 1977 through fiscal year 1981 assume pay raises of 4.54 percent, 8.30 percent, 6.77 percent, 6.30 percent, 5.59 percent as indicated in the fiscal year 1977 President's budget.

Additionally, these estimates reflect the savings that would occur in Reserve personnel appropriations in the event of callup.

II. CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office and submitted pursuant to section 403 of the Congressional Budget Act of 1974 is included hereafter:

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

DECEMBER 4, 1975, Revised APRIL 26, 1976.

1. Bill number: S. 2115.

2. Bill title: A bill to enable the President to authorize the involuntary order to active duty of Selected Reservists for a limited period whether or not a declaration of war or national emergency has been declared.

3. Purpose of bill: This bill will grant the President limited authority to augment the active forces with members of the Selected Reserve under conditions short of a declaration of war or national emergency as declared by the President or the Congress. The bill would authorize the order by the President of not more than 50,000 Selected Reservists to active duty for a period not to exceed 90 days, whether or not a war or national emergency has been declared.

4. Budget impact: (a) If the President does not choose to call up Reserves as a result of this legislation then there will be no budget impact; (b) if the President should call up the Reserves as a result of this legislation and would not have called them up without the legislation, then there will be a budget impact. The budget authority and outlays which result are the same as for a comparable Reserve callup under the conditions of a declaration of war or national emergency. The budget authority and outlays required for a 90-day period of active duty for a typical call up are as follows:

Illustrative budget authority and outlays

[In millions of dollars]

Fiscal year:	
1976	92
Transition quarter	92
1977	103
1978	112
1979	121
1980	129
1981	138

5. Basis for estimate: The estimates assume an involuntary callup of 50,000 men for a period of three months. The costing is based on the average costs for Air Force personnel. The costs of Air Force personnel were used since in the justification for the bill it was stated that a likely use for the legislation would be a callup of airlift units. The costs shown are the net cost of paying 50,000 individuals for 90 days less savings of one active duty for training period and 25 percent of a year's drills per individual. Estimates for fiscal year 1976 through fiscal year 1981 assume pay raises of 12 percent on October 1, 1976, and 8.8 percent, 8.3 percent, 6.9 percent and 6.9 percent in succeeding years.

6. Estimate comparison: The Department of Defense has stated that there are no costs associated with the legislation. The CBO concurs, as long as reserves are not called up. The Department of Defense estimates the cost of the legislation, assuming 50,000 reserves are called up for 90 days as being 21 percent higher than the CBO estimate, in constant dollars. The difference is the result of differing assumptions about annual active duty for training. CBO has assumed that all reservists called up would be excused from a training period, while the DOD estimate assumes 25 percent of those called up would be excused from a training period. The current dollar estimates also differ due to different pay raise assumptions. The Assistant Secretary of Defense for Manpower and Reserve Affairs provided an estimate of $180 million in testimony before a Senate Committee. The estimate, which is nearly twice the CBO estimate, includes an allowance for wartime tempo of operations with associated increases in consumption of supplies.

This CBO estimate revises and corrects the illustrative costs shown in the CBO estimate of 4 December 1975.

INFLATION-IMPACT STATEMENT

Because as indicated above, there will be no increase in the budgetary requirements of the Department of Defense as a result of the enactment of this legislation, unless the Reserves are actually called up, the bill does not contain an inflation factor. If, in fact, the Reserves are called up, the Department has indicated that it will either absorb the costs or seek a supplemental appropriation from the Congress. In either case, the amounts estimated for expenditure will not be in an amount to be inflationary in nature. It is the belief of the committee that the legislation will not have a significant effect on the national economy.

OVERSIGHT FINDINGS

With reference to clause 2(l)(3)(D) of Rule IX of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to this subject. It should be noted that the conception behind this legislation originated in the oversight activities of the Committee associated with its annual consideration of authorization for defense expenditures.

Changes in Existing Law

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, there is herewith printed in parallel columns the text of existing law which would be repealed or amended by the various provisions of the bill as reported.

EXISTING LAW

Section 673 of title 10, United States Code

§ 673. Ready Reserve

(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) not for more than 24 consecutive months.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

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(2) family responsibilities; and

(3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committees on Armed Services of the Senate and the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.

(d) Whenever one or more units of the Ready Reserve are ordered to active duty, the President shall, on the first day of the second fiscal year quarter immediately following the quarter in which the first unit or units are ordered to active duty and on the first day of each succeeding six-month period thereafter, so long as such unit is retained on active duty, submit a report to the Congress regarding the necessity for such unit or units being ordered to and retained on active duty. The President shall include in each such report a statement of the mission of each such unit ordered to active duty, an evaluation of such unit's performance of that missoin where each such unit is being deployed at the time of the report, and such other information regarding each unit as the President deems appropriate.

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EXISTING LAW

Section 673a of title 10, United States Code

§ 673a. Ready Reserve: members not assigned to, or participating satisfactorily in, units

(a) Notwithstanding any other provision of law, the President may order to active duty any member of the Ready Reserve of an armed force who—

(1) is not assigned to, or participating satisfactorily in, a unit of the Ready Reserve;

(2) has not fulfilled his statutory reserve obligation; and

(3) has not served on active duty for a total of 24 months.

(b) A member who is ordered to active duty under this section may be required to serve on active duty until his total service on active duty equals 24 months. If his enlistment or other period of military service would expire before he has served the required period under this section, it may be extended until he has served the required period.

(c) To achieve fair treatment among members of the Ready Reserve who are being considered for active duty under this section, appropriate consideration shall be given to—

(1) family responsibilities; and

(2) employment necessary to maintain the national health, safety, or interest.

THE BILL AS REPORTED

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 39 of title 10, United States Code, is amended by inserting the following new section after section 673a and inserting a corresponding item in the chapter analysis:

"§ 673b. Selected Reserve; order to active duty other than during war or national emergency

"(a) Notwithstanding the provisions of section 673(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any operational mission, he may authorize the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit, of the Selected Reserve (as defined in section 268(b)of this title), under their respective jurisdictions, to active duty (other than for training) for not more than 90 days.

"(b) No unit or member of a Reserve component may be ordered to active duty under this section to perform any of the functions authorized by chapter 15 or section 3500 or 8500 of this title, or to provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.

"(c) Not more than 50,000 members of the Selected Reserve may be on active duty under this section at any one time.

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"(d) Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or members in grade under this title or any other law.

"(e) The Secretary of Defense and the Secretary of Transportation shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section.

"(f) Whenever the President authorizes the Secretary of Defense or the Secretary of Transportation to order any unit or member of the Selected Reserve to active duty, under the authority of subsection (a), he shall, within 24 hours after exercising such authority, submit to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report in writing, setting forth the circumstances necessitating the action taken under this section and describing the anticipated use of these units or members.

"(g) Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit is ordered to active duty under authority of subsection (a), the service of all units or members so ordered to active duty may be terminated by—

"(1) order of the President, or

"(2) a concurrent resolution of the Congress.

"(h) Nothing contained in this section shall be construed as amending or limiting the application of the provisions of the War Powers Resolution.".

Section 2024 of title 38 United States Code

§ 2024. Rights of persons who enlist or are called to active duty; Reserves

(a) Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enlists in the Armed Forces of the United States (other than in a Reserve component) shall be entitled upon release from service under honorable conditions to all of the reemployment rights and other benefits provided for by this section in the case of persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such person's service performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any service, additional or otherwise, performed by such person after August 1, 1961, does not exceed five years, and if the service in excess of four years after August 1, 1961, is at the request and for the convenience of the Federal Government (plus in each case any period of additional service imposed pursuant to law).

SEC. 2. Section 2024 of title 38, United States Code, is amended by adding the following new subsection after subsection (f):

EXISTING LAW

(b) (1) Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enters upon active duty (other than for the purpose of determining physical fitness and other than for training), whether or not voluntarily, in the Armed Forces of the United States or the Public Health Service in response to an order or call to active duty shall, upon such person's relief from active duty under honorable conditions, be entitled to all of the reemployment rights and benefits provided for by this chapter in the case of persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such active duty performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any such active duty, additional or otherwise, performed after August 1, 1961, does not exceed four years (plus in each case any additional period in which such person was unable to obtain orders relieving such person from active duty).

(2) Any member of a Reserve component of the Armed Forces of the United States who voluntarily or involuntarily enters upon active duty (other than for the purpose of determining physical fitness and other than for training) or whose active duty is voluntarily or involuntarily extended during a period when the President is authorized to order units of the Ready Reserve or members of a Reserve component to active duty shall have the service

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limitation governing eligibility for reemployment rights under subsection (b) (1) of this section extended by such member's period of such active duty, but not to exceed that period of active duty to which the President is authorized to order units of the Ready Reserve or members of a Reserve component. With respect to a member who voluntarily enters upon active duty or whose active duty is voluntarily extended, the provisions of this subsection shall apply only when such additional active duty is at the request and for the convenience of the Federal Government.

(c) Any member of a Reserve component of the Armed Forces of the United States who is ordered to an initial period of active duty for training of not less than three consecutive months shall, upon application for reemployment within thirty-one days after (1) such member's release from such active duty for training after satisfactory service, or (2) such member's discharge from hospitalization incident to such active duty for training, or one year after such member's scheduled release from such training, which ever is earlier, be entitled to all reemployment rights and benefits provided by this chapter for persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), except that (A) any person restored to or employed in a position in accordance with the provisions of this subsection shall not be discharged from such position without cause within six months after that restoration, and (B) no

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reemployment rights granted by this subsection shall entitle any person to retention, preference, or displacement rights over any veteran with a superior claim under those provisions of title 5 relating to veterans and other preference eligibles.

(d) Any employee not covered by subsection (c) of this section who holds a position described in clause (A) or (B) of section 2021(a) shall upon request be granted a leave of absence by such person's employer for the period required to perform active duty for training or inactive duty training in the Armed Forces of the United States. Upon such employee's release from a period of such active duty for training or inactive duty training, or upon such employee's discharge from hospitalization incident to that training, such employee shall be permitted to return to such employee's position with such seniority, status, pay, and vacation as such employee would have had if such employee had not been absent for such purposes. Such employee shall report for work at the beginning of the next regularly scheduled working period after expiration of the last calendar day necessary to travel from the place of training to the place of employment following such employee's release, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control. Failure to report for work at such next regularly scheduled working period shall make the employee subject to the conduct rules of the employer pertaining to explanations and discipline with respect to absence from scheduled work. If such an

employee is hospitalized incident to active duty for training or inactive duty training, such employee shall be required to report for work at the beginning of the next regularly scheduled work period after expiration of the time necessary to travel from the place of discharge from hospitalization to the place of employment, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control, or within one year after such employee's release from active duty for training or inactive duty training, whichever is earlier. If an employee covered by this subsection is not qualified to perform the duties of such employee's position by reason of disability sustained during active duty for training or inactive duty training, but is qualified to perform the duties of any other position in the employ of the employer or his successor in interest, such employee shall be offered employment and, if such person so requests, be employed by that employer or his successor in interest in such other position the duties of which such employee is qualified to perform as will provide such employee like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such employee's case.

(e) Any employee not covered by subsection (c) of this section who holds a position described in clause (A) or (B) of section 2021(a) shall be considered as having been on leave of absence during the period required to report for the purpose of being inducted into, entering, or determining, by a preinduction or other examination, physical fitness to enter the Armed Forces. Upon such em-

THE BILL AS REPORTED

"(g) Any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty for not more than 90 days under section 673b of title 10, United States Code, whether or not voluntarily, shall be entitled to all reemployment rights and benefits provided under subsection (c) of this section for persons ordered to an initial period of active duty for training of not less than three consecutive months; and shall have the service limitation governing eligibility for reemployment rights under subsections (a) and (b)(1) of this section extended by his period of such active duty.".

EXISTING LAW

ployee's rejection, upon completion of such employee's preinduction or other examination, or upon such employee's discharge from hospitalization incident to such rejection or examination, such employee shall be permitted to return to such employee's position in accordance with the provisions of subsection (d) of this section.

(f) For the purposes of subsections (c) and (d) of this section, full-time training or other full-time duty performed by a member of the National Guard under section 316, 503, 504, or 505 of title 32, is considered active duty for training; and for the purpose of subsection (d) of this section, inactive duty training performed by that member under section 502 of title 32 or section 206, 301, 309, 402, or 1002 of title 37, is considered inactive duty training.

Summary

PURPOSE OF THE BILL

This legislation is intended to provide authority for the President to call to active duty for a period of less than 90 days up to 50,000 members of the Selected Reserve (essentially composed of individual members of the Guard and Reserve assigned to drilling units in a pay status) without a declaration of national emergency.

At present, the President has limited authority to activate Reservists. The authority provided in this legislation amplifies the President's existing powers only by relieving the requirement for declaring a national emergency when Reservists are activated under the conditions of this legislation. Relief from this requirement, under these narrowly-prescribed conditions, will provide the opportunity for increased reliance and utilization of existing Reserve units and significantly benefit the entire Reserve program.

The authority contained in this legislation is consistent with the requirements of the War Powers Resolution, and the recent House action with respect to the termination of existing national emergencies.

FISCAL DATA

The legislation will have no impact on budget authority or outlays if the Reserves are not called up. If 50,000 Reservists are activated for the entire 90 days, the costs, which are estimated to be from $92–111 million—depending upon how estimated—in the current fiscal year, will be absorbed within the current budgetary allocation or a supplementary appropriation sought from the Congress.

DEPARTMENTAL POSITION

The legislation is a Department of Defense proposal and the Office of Management and Budget interposes no objection.

COMMITTEE POSITION

The Committee on Armed Services, on April 27, 1976, a quorum being present, approved the bill without objection.

○

Calendar No. 538

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-562

ENABLING THE PRESIDENT TO AUTHORIZE THE INVOLUNTARY ORDER TO ACTIVE DUTY OF SELECTED RESERVISTS FOR A LIMITED PERIOD WITHOUT A DECLARATION OF WAR OR NATIONAL EMERGENCY

DECEMBER 15, 1975.—Ordered to be printed

Mr. NUNN, from the Committee on Armed Services, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 2115]

The Committee on Armed Services, to which was referred the bill (S. 2115) to amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

COMMITTEE AMENDMENTS

1. On page 1, line 4, strike out "673(a)" and insert in lieu thereof "673a".
2. On page 1, line 6, strike out "673(b)" and insert in lieu thereof "673b".
3. On page 1, line 8, strike out "any other law" and insert in lieu thereof "the provisions of section 673(a) or any other provision of law".
4. On page 2, line 1, strike out "agument" and insert in lieu thereof "augment".
5. On page 2, line 2, strike out "operational missions" and insert in lieu thereof "any operational mission".

6. On page 2, line 8, strike out "as defined in section 268 of this title" and insert in lieu thereof "(as defined in section 268(b) of this title)".

7. On page 2, line 9, immediately after the word "duty" insert the following: "(other than for training)".

8. On page 2, line 10, beginning with the word "whether" strike out all down through the word "emergency" in line 11.

9. On page 2, beginning with line 21, strike out all down through line 23.

10. On page 3, line 1, strike out "(e)" and insert in lieu thereof "(d)".

11. On page 3, line 5, strike out "(f)" and insert in lieu thereof "(e)".

12. On page 3, line 8, strike out the quotation marks and the period following the quotation marks.

13. On page 3, between lines 8 and 9, insert the following:

> (f) Whenever the President authorizes the Secretary of Defense or the Secretary of Transportation to order any unit or member of the Selected Reserve to active duty, under the authority of subsection (a), he shall, within 24 hours after exercising such authority, notify both Houses of Congress of such action.

14. On page 3, line 14, strike out "673(b)" and insert in lieu thereof "673b".

15. On page 3, line 17, strike out "paragraph (3) of this subsection" and insert in lieu thereof "subsection (c) of this section".

16. On page 3, line 21, strike out "paragraphs (1) and (2)(A) of this subsection" and insert in lieu thereof "subsections (a) and (b)(1) of this section".

Nature of the Committee Amendments

Requirement for Presidential notification of Congress

This amendment requires the President to notify the Congress each time he exercises the Reserve call-up authority granted in the bill. It requires the President to notify both Houses of Congress within 24 hours of his exercise of such authority.

The committee felt that congressional notification of the use of this important presidential authority was necessary. The amendment adopted by the committee would insure that the Congress is immediately aware whenever the President authorizes the call up of Selected Reservists under this legislation. While the committee amendment retains congressional interest and responsibility in this important national defense matter, it does not inhibit the flexibility necessary for a reserve call-up.

Technical amendments

The remaining committee amendments to the bill are technical amendments to (1) delete superfluous language; (2) further clarify the proposed legislation; (3) correct inaccurate citations of title 10 and title 38, United States Code; and (4) correct misspelling.

Purpose of the Bill

This legislation would enable the President to authorize the involuntary order to active duty of a maximum of 50,000 Selected Reservists for a limited 90-day period, without a declaration of war or national emergency. Such authority is designed to permit more effective use of the reserve components. The authority would make the reserve component forces a more credible part of the total force.

What the Bill Does

This legislation would do the following as a matter of permanent law:

1. Notwithstanding any other law, authorize the President to determine it is necessary to augment active forces for operational missions and to authorize the involuntary call-up of Selected Reserve units (and members not assigned to units) by the Secretary of Defense (or Secretary of Transportation in the case of the Coast Guard Reserve) for not more than 90 days without a declaration of war or national emergency.

2. Prohibit call-up of reserves under this bill to perform functions relating to insurrection or enforcement of law within the States, or to assist Federal or State Governments in time of disaster, accident or catastrophe (10 USC 331–336, 3500, 8500).

3. Limit the number called up under this section to not more than 50,000 members at any one time.

4. Exclude members called up under this section from computation of active duty strength and grade structure.

5. Require the Secretary of Defense (or Transportation in the case of the Coast Guard Reserve) to prescribe policies and procedures to carry out this section.

6. Entitle any reserve member ordered to active duty under this section, voluntarily or involuntarily, to the same reemployment rights and benefits currently provided reservists ordered to initial active duty for training for three months or more (38 USC 2024).

Legislative Background

In the fiscal year 1974 administration request for defense manpower, the Air Force requested over 10,000 additional active duty military and civilian personnel to increase the aircrew to aircraft ratio for strategic transport aircraft in emergency situations. During hearings on the fiscal year 1975 Military Authorization bill, the Senate Armed Services Committee discussed this request at length. Since the requested aircrew ratio would have been needed primarily for emergency mobilizations or for a full-scale conventional mobilization, the committee felt that the additional personnel were not needed in peacetime. In addition, the Air National Guard and the Air Force Reserve could be used to supplement the peacetime aircrews in case of emergency.

The Fiscal Year 1975 Military Authorization Act (Public Law 93–365) stated the policy of Congress that:

> * * * any increase in the ratio of aircrew to aircraft for the strategic airlift mission of the Air Force above the present ratio of crewmembers per aircraft should be achieved to the maximum extent possible through the components of the Selected Reserve * * * (Public Law 93–365, section 403(b)).

In further response to the congressional policy just stated, the Secretary of Defense was directed to assess the desirability of new statutory authority "* * * for the limited selective mobilization of members of the Air National Guard under circumstances not leading to a declaration of a national emergency by the Congress or the President." (Public Law 93–365, section 403(b)). S. 2115 is a direct resonse to this statutory directive. The Department of Defense submitted its legislative proposal for Reserve call-up authority to the Congress on April 30, 1975. The proposal was introduced on request as S. 2115 on July 15, 1975.

Committee Action

On July 30, 1975, the Senate Armed Services Subcommittee on Manpower and Personnel held a hearing on S. 2115. Testifying before the subcommittee were James R. Schlesinger, Secretary of Defense; William R. Brehm, Assistant Secretary of Defense for Manpower and Reserve Affairs; and Will Hill Tankersley, Deputy Assistant Secretary of Defense for Reserve Affairs. During this hearing, the subcommittee discussed issues basic to the bill such as the authority of the executive branch to use the reserves and the role of Congress in the use of such authority, the relationship of the bill to the War Powers Act, and the impact of the proposal on the people and communities associated with the Reserves.

On September 29, 1975, Subcommittee Chairman Nunn sent copies of the hearings to each Member of the Senate and requested their views and comments on this legislation.

The subcommittee then met on December 4 and 9, 1975 to further consider and mark up S. 2115. The subcommittee made one substantive amendment to the bill to require the President to notify both Houses of Congress within 24 hours of any exercise of the authority granted in the bill. After lengthy consideration of the many important issues surrounding the bill, the subcommittee voted to report the bill as amended favorably to the full committee.

The full Armed Services Committee took up S. 2115 on December 9, 1975, to discuss the fundamental issues and questions on the bill. On December 12, 1975, the committee voted 15–1 to report the bill, as amended by the subcommittee, favorably. Senators Stennis, Symington, Jackson, Cannon, McIntyre, Byrd (Va.), Nunn, Culver, Leahy, Thurmond, Tower, Goldwater, Scott (Va.), Taft, and Bartlett voted in favor of the bill. Senator Hart (Colo.) voted against the bill.

Need for the Legislation

This legislation is needed for two principal reasons: To enchance the credibility of the reserve forces and to improve the efficiency of the total force concept. The President already has far greater authority under a national emergency declaration to order reserve forces to active duty than provided in this bill. However, there has been some reluctance to use this authority because of the broad implications of a declaration of national emergency. Reluctance to use reserve forces leads to reduced credibility of a timely reserve capability on the part of potential adversaries, allies, the active duty and reserve establishments and the general public. It also tends to create reserve forces that are designed as a carbon copy supplement to the active forces rather than a carefully tailored complement to active force missions. As a result, the total active and reserve force would be less efficiently designed and realistic missions would be less likely to be assigned the reserve forces.

Increased Reliance on Reserve Forces

Active duty military strength has been reduced some 601,000 (−22 percent) since 1964 pre-Vietnam levels—from 2,687,000 in 1964 to 2,086,000 in 1976. Part of this reduction has been accomplished through increased reliance on reserve forces, even though there has been a 6 percent reduction in Selected Reserve strength in the same period. Selected Reserve members will make up about 31 percent of the total active duty plus selected reserve strength in 1976.

In addition to increased reliance on reserve manpower, funds for reserve component forces have been steadily increased in recent years as shown below.

Reserve Component budget

Fiscal year:	*Billions*
1972	$3.5
1973	3.9
1974	4.4
1975	4.7
1976[1]	5.5

[1] President's budget.

The above figures include funds for procurement of new weapons systems which increased from $313 million in fiscal year 1972 to $786 million in fiscal year 1976.

This legislation is needed to provide a more flexible use of reserve units and personnel and thus make more credible the reliance on reserve forces and the large expenditure of funds for this purpose.

Utility of Limited and Selected Call-Up Authority

This bill originated as a result of hearings in the committee on a requested increase in Air Force active duty strength for the airlift function two years ago. This request for over 10,000 personnel was made after the experience of the airlift to aid Israel during the Mideast war of 1973. The committee denied this requested increase and suggested that emergency missions requiring a surge capability could be performed by National Guard and Reserve forces. The Department of Defense was requested to study ways to improve the use of the Reserve and Guard forces. This legislation is the result of that study.

There are two basic concepts on how this authority might be used. First, there may be minor situations requiring short term use of capabilities which are unique to the reserve components or which only exist in the active forces in small number. Examples of existing unique reserve component capabilities are shown below:

Examples of capability in Reserve Components

Type of capability:	*Percent of total capability in Reserve Components*
Navy coastal riverine	100
Navy ocean minesweeping	88
Navy cargo handling	50
Marine Corps 155 mm SP howitzer	100
Marine Corps interrogation/translator	100
Air Force C–7 STOL transport	100
Air Force Air Defense (F–101, 102, 106)	70
Air Force reconnaissance (RF–4, RF–101)	56

This legislation would permit a more efficient design of the total active and reserve component force by increasing the confidence that special purpose capabilities of the reserve components could be used from time to time. It could lead to other mission capabilities being assigned to the reserve components.

The second concept would relate to getting certain reserve component units in place during a period of international tension but before a major confrontation and declaration of national emergency. For example, this legislation would permit the President to call up certain reserve component units needed for operating the deployment system to Europe, or needed for mobilizing other reserve component units for a NATO contingency. However, with this legislation, the President could hold off the declaration of a national emergency until such time as a major mobilization became inevitable. This would tend to reduce the appearance of major escalation while at the same time permitting the activation of selected units needed to carry out an effective and timely deployment to Europe.

Relationship to the War Powers Act

This legislation would not alter or circumvent the provisions of the War Powers Act. The War Powers Act limits the power of the President, acting alone, to introduce United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstance. It also requires consultation, reports and other information and fixes specific dates for the termination of the use of United States forces so introduced unless Congress has approved or unless other specified circumstances exist. This reserve call-up legislation only provides limited authority for the President to order units and members of the Selected Reserve to active duty. Once on active duty under this authority, such reserve members and units would be subject to the War Powers Act in the same manner as any other active duty military units and members.

Relationship to National Emergency Legislation

Under current law relating to national emergencies, the President may, upon declaring a national emergency, order to active duty for 24

months up to 1 million members of the Ready Reserve, including the Selected Reserve. This new legislation would not change existing call-up authority under a national emergency. Instead, it would provide for a selected callup of reserves without a declaration of war or national emergency. Since, by previous declarations, a state of national emergency is currently in effect, it could be argued that the President already has authority to call up many more reserve members for a considerably longer time than under this legislation. However, as a practical matter, it is unlikely that a President would so exercise this existing authority.

H.R. 3884, a House-passed bill called the National Emergencies Act, would, if enacted, provide for termination of existing national emergency authorities after a 2-year transition period. The transition period would allow time to pass legislation to provide authority for, or phase out actions now in effect under national emergency authorities. H.R. 3884 would also provide for a method of terminating future national emergencies declared by the President and require certain records to be maintained and reports to be made to Congress during war or emergency. H.R. 3884 would *not* limit the power of the President to declare a national emergency.

This legislation on limited reserve call-up authority is separate and distinct from both existing national emergency legislation or the proposed H.R. 3884 terminating emergencies. It provides limited call-up authority that is not dependent on a declaration of war or national emergency. It would not change either the existing or proposed legislation relating to national emergency authority. Finally, the limited number of reserves that could be called up under authority of this legislation would become subject to the War Powers Act upon entering active duty, and are prohibited by this legislation from use within the United States in case of insurrection, for the enforcement of Federal or State law or for assistance in catastrophe, accident or disaster.

The Bill Sets Up No Precedent on Reserve Callup Authority

This bill would set no precedent relating to the congressional grant of authority to the President for calling up reserves.

Longstanding statutes already provide authority for the President to call to active service a large number of reserves for a wide range of contingencies. This statutory authority generally rests in the Constitutional provisions for Congress to provide for calling forth the militia and for raising and supporting armies.

Five sections of title 10 grant broad authority to the President to order the militia, including the National Guard, to active duty even during periods when no formal state of war or emergency exists. These sections are summarized below:

10 U.S.C. 331 enables the President, upon the request of a State legislature or its governor if the legislature cannot be convened, to call into Federal service such of the militia of the other States . . . "and use such of the armed forces as he considers necessary to suppress (an) insurrection" against the government of the concerned State.

10 U.S.C. 332 enables the President to call into Federal service the militia of any State (as well as use U.S. armed forces) "whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States,

make it impracticable to enforce the laws of the United States . . . by the ordinary course of judicial proceedings . . ."

10 U.S.C. 333 empowers the President to use the militia (or armed forces) to suppress in a State any insurrection, domestic violence, unlawful combination or conspiracy which interferes with the execution of State or Federal law or abridges Constitutional rights, privileges, immunities or protections.

10 U.S.C. 3500 and 8500 empower the President to call into Federal service members and units of the Army and Air National Guard in such numbers as he considers necessary to repel invasion, suppress rebellion, or execute U.S. laws.

In addition to these authorities, three other sections of title 10 grant the President broad authority to order units or members of the Ready Reserve (including the Selected Reserve) components to active duty. These are briefly described below:

10 U.S.C. 673 provides, in essence, that "in time of national emergency declared by the President after January 1, 1953 . . ." a designated authority may order Ready Reserve units and members not assigned to units to active duty for not more than 24 consecutive months. Under this section the President may order up to 1,000,000 men to active duty. This authority, enacted in 1952, gives the President much broader power than would S. 2115.

10 U.S.C. 673a empowers the President to order to active duty certain members of the Ready Reserve who have not fulfilled the statutory reserve obligation (normally six years) and who have not served for 24 months on active duty. Members subject to this provision are: (1) those not assigned to a unit of the Ready Reserve (currently approximately 128,000 members with less than two years of active duty), and (2) those assigned but not participating satisfactorily in a unit of the Ready Reserve. These members may be required to serve until their active duty time equals 24 months. The President may use this authority at any time; no state of war or emergency is required.

10 U.S.C. 2105 empowers the Secretary of a military department to order an advanced ROTC cadet (who must also be a member of a Reserve Component) to active duty for a period of up to two years if that cadet does not complete the course of instruction or declines to accept a commission.

Another law, which expired in 1969, is relevant to this discussion:

Public Law 89–687, October 15, 1966, containing the so-called "Russell amendment" granted the President authority to order units and certain members of the Ready Reserve to active duty. This law did not require the existence of a state of war or emergency as a condition precedent to its use, nor did it limit the number of Reservists who could be called. This measure expired (after one extension) on June 30, 1969; however, a part of the amendment relating to the authority of the President to call certain individual Ready Reservists to active duty was incorporated into permanent law.

Selected Reserve Components are Federal Troops

The Congress has established seven Federal Reserve components which have blended members of the militia into the Armed Forces.

Five of these components are manned by members with a military obligation to the Federal Government alone; the other two, the Army National Guard of the United States and the Air National Guard of the United States, are manned with members bearing a dual military obligation—to their State National Guard unit and to a Federal Reserve component. This dual obligation stems from legislation enacted in 1933, when Congress adopted a dual enlistment concept. Under this concept an incoming guardsman joins both the *State* National Guard and the National Guard of the *United States*. The express purpose of the 1933 legislation was to organize members of the National Guard into the Federal armed forces under the broad power given Congress by the Constitution to raise and support armies.

The intent of Congress in this regard is made even clearer in 10 U.S.C. 101 (9), (10), (11) and (12). These subsections define the Army and Air National Guard of the United States Federal entities, separate and distinct from the State Army and Air National Guard. As such, they are directly under the control of the President, subject, of course, to applicable legislation.

Thus, the Congress has created, in evolutionary fashion, a system of seven Reserve components, two composed solely of National Guardsmen, which has become an integral part of the Armed Forces of the United States. These components have become increasingly important under the total force concept, the current strategy which places heavy reliance on Reserve forces.

The Selected Reserve is a part of the Ready Reserve. It was established by Congress in 1967, and consists of those elements in the Ready Reserve components which have the highest priority in terms of personnel, training and equipment, and which are expected to be in the highest state of readiness. As has been noted, S. 2115 would grant limited authority to the President to call units and certain members of the Selected Reserve to active duty for not to exceed 90 days.

Prohibits the Use of This Authority for Domestic Civil Purposes

Selected Reserve Forces, if called to active duty under this authority, could not be used for domestic or civil purposes. During the consideration of this bill, the committee gave careful consideration to constitutional and statutory provisions regulating such use of the militia and the Armed Forces.

Today, even without the existence of an emergency, current law permits the President to use the militia, the Federal Reserve components, and, in certain cases the active forces, for such purposes as suppressing insurrections, enforcing Federal and State laws under certain conditions, and other similar purposes.

S. 2115, while prohibiting the use of Selected Reserve Forces called to active duty under its authority for such purposes, does not alter in any way the President's existing authority in this area.

Small Units May Be Called

The committee expressly intends that this authority be available for use in calling up small units such as companies, groups, platoons

and detachments, whether or not they are elements of larger size organizations. In other words, the scope of this special authority is not limited to units of any minimum size.

This call-up authority is small compared to the size of the active forces—50,000 limit for reserve members called up compared to a 2 million member active duty force. Therefore the reserve units and members called up under this authority would be carefully tailored to complement the active forces. Testimony before the committee indicated the intent to call units the size of companies and even two-man detachments if needed. The committee concurs in this intent for units now and in the future.

There are several kinds of capabilities that exist solely or mainly in the reserve forces and not in the active forces, or that are tailored to augment active forces. These are often found in smaller units and should be available for call up under this authority. Typical but not exclusive examples of these units are shown below for each service:

Type unit:	*Unit strength*
Army petroleum supply company	304
Army water supply company	112
Army dump truck company	107
Army aircraft maintenance battalion	60
Army decontamination detachment	21
Army well digging team	5
Navy coastal river squadron	118
Navy shipping control unit	208
Navy ocean minesweeper	47
Navy cargo handling battalion	128
Navy mobile construction battalion	761
Navy destroyer escort complement	116
Marine Corps tank battalion	475
Marine Corps 155 mm artillery battalion	767
Marine Corps interrogation/translation unit	6
Marine Corps Redeye Platoon	44
Air Force AC–130 special operations squadron	304
Air Force C–130 tactical airlift squadron	76
Air Force Red Horse Unit (construction)	418
Air Force C–5 strategic airlift squadron and maintenance personnel	673
Air Force mobile communication squadron	185

Controls Length of Active Duty, Grade Strengths, Active Duty and Seletced Reserve Strengths

Under this bill, Congress retains stringent controls over the numbers of members who can be called, their strength of active duty, authorized grade strengths, active duty end strengths and Selected Reserve average strengths.

No more than 50,000 members of the Selected Reserve may be on active duty under this authority at any one time. The President may not order members to active duty for a period longer than ninety days. The annual authorized average strength prescribed for each Selected Reserve Component would be automatically reduced by the total number of members called under this authority; further, the number of members called cannot be used as a base to expand authorized officer grade strengths.

Conversely, the grades of members called under this authority do not count against statutory active duty grade ceilings. This treatment

of grade strengths parallels provisions of current law which exclude the grades of reservists on active duty for training from accountability from pertinent statutes.

Annual active duty military personnel end strengths would, in effect, be increased temporarily by the number of members on active duty under this authority at the end of any fiscal year.

Protection of Reservists' Reemployment Rights

Section 2 of S. 2115 would guarantee to reserve members ordered to active duty under this legislation, all reemployment rights and benefits currently provided reservists ordered to an initial period of active duty for training of not less than three consecutive months. Sections 2021 and 2024 of title 38, United States Code, provide that such a Reservist shall be entitled to reinstatement in his original position with such seniority, status, pay, and vacation as he would have had had he not been absent for such active duty for training.

Currently an individual cannot claim reemployment rights if his total active duty exceeds four or five years (depending on when that active duty was performed). Section 2 of this legislation would extend that period by a Reservist's period of active duty under its provisions, thus insuring no loss of reemployment rights because of such active duty.

Fiscal Data

Executive branch estimate

The Department of Defense estimated that the costs associated with a call-up of 50.000 Reservists for 90 days in fiscal year 1976 would be $179 million. However, since need for the authority cannot be foreseen, such costs would not be included in the Defense Department budget and would have to be included in a supplemental appropriation after the fact. Thus the Department found that the enactment of the proposed legislation would cause no increase in the Defense Department's requirements.

Congressional Budget Office estimate

Congress of the United States,
Congressional Budget Office,
Washington, D.C., December 5, 1975.

Hon. John C. Stennis,
Chairman, Senate Armed Services Committee,
U.S. Senate,
Washington, D.C.

Dear Mr. Chairman: This letter is in response to a request from the Committee staff for a cost estimate for S. 2115, "a bill to amend Chapter 39 of Title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared." In accordance with our responsibilities under the Congressional Budget Act of 1974, we have reviewed this bill.

We have concluded that this bill will have no effect on budget authority and outlays if reserves are not called up. If, as a result of this legislation, the President should call up reserves the cost will be no different than the cost if reserves were to be called up after a declaration of war or national emergency. The enclosed cost estimate gives the estimated budget authority and outlays for a typical unit which might be called up as a result of this legislation.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

December 4, 1975.

1. Bill number: S. 2115

2. Bill title: A bill to enable the President to authorize the involuntary order to active duty of Selected Reservists for a limited period whether or not a declaration of war or national emergency has been declared.

3. Purpose of bill: This bill will grant the President limited authority to augment the active forces with members of the Selected Reserve under conditions short of a declaration of war or national emergency as declared by the President or the Congress. The bill would authorize the order by the President of not more than 50,000 Selected Reservists to active duty for a period not to exceed 90 days, whether or not a war or national emergency has been declared.

4. Budget impact:

(a) If the President does not choose to call up reserves as a result of this legislation then there will be no budget impact.

(b) If the President should call up the reserves as a result of this legislation and would not have called them up without the legislation then there will be a budget impact. The budget authority and outlays which result are the same as for a comparable reserve call up under the conditions of a declaration of war or national emergency. The budget authority and outlays required for each month of active duty for a typical call up are as follows:

Illustrative budget authority[1] and outlays

Fiscal year:	*Millions*
1976	$16.8
Transition quarter	16.8
1977	18.8
1978	20.4
1979	22.3
1980	23.7
1981	25.3

[1] Estimates are for a period of active duty of one month. Estimates for a longer period can be made by multiplying the one-month estimates by the appropriate number of months.

5. Basis for estimate: The estimates for a period of one month assume an involuntary call up of 50,000 men. The costing is based on costs for airlift personnel, comprised of 20 percent officers and 80 percent enlisted. The costs are illustrative in the sense that costs for a different mix of officers and enlisted or a different service component would be different. Estimates for FY76 through FY81 assume pay raises of 5 percent on October 1, 1975, and 12 percent, 8.8 percent, 8.3 percent, 6.9 percent and 6.9 percent in succeeding years.

6. Estimate comparison: The Department of Defense has stated that there are no costs associated with the legislation. The CBO concurs, as long as reserves are not called up. The Department of Defense has not submitted an estimate of costs if reserves are called up as a result of the legislation.

DEPARTMENTAL POSITION

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., April 30, 1975.

Hon. NELSON ROCKEFELLER,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Forwarded herewith is draft legislation "To amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared."

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. As a part of the Department of Defense Legislative Program for the 94th Congress, it is hereby submitted for enactment at the earliest possible time.

PURPOSE OF THE LEGISLATION

The purpose of the proposal is to amend the provisions of title 10, United States Code, in order to grant the President limited authority, when he determines that it is necessary to augment the active forces for operational missions, to order not more than 50,000 members of the Selected Reserve to active duty for not more than ninety days under conditions short of a declaration of war or national emergency as declared by either the President or the Congress. This proposal is identical to a proposal submitted to the 93d Congress and authority it would provide is being sought for availability on a continuing basis without reference to any particular situation.

This legislation is an important element in achieving greater reliance on Reserve Components for accomplishing the responsibilities of the Department of Defense. It is important that the President be able to augment the active forces with the Reserves for operational missions without having to declare a full-scale national emergency with all the attendant international and domestic implications this can have. Such authority could be used, for example, to augment our Strategic Airlift capability (and other areas as appropriate) in situations similar to that which occurred in the Middle East last year.

In the recent past, augmentation of the active forces on a limited scale has been accomplished under current authority by relying on individual volunteers from among the Reserves. The limitations of this approach are quite apparent, however, particularly in those situations

which may require the activation of entire units. There needs to be firm assurance of Reserve availability for employment in crisis situations, short of national emergency, in order that active force commanders may place a high degree of reliance on the Guard and Reserves.

Another aspect of this legislative proposal is having the Guard and Reserve readily available under conditions that are not a national emergency or without a declaration of war. Such authority would demonstrate the swift response capability of our mobilization planning and would serve as a deterrent to potential aggressors and as an encouragement as seen by our allies.

With respect to authority to order units of the Selected Reserve to active duty to test their readiness, current authority under section 672(b) of title 10, United States Code, while limited to 15 days, is considered adequate for this training purpose.

In order to avoid possible jurisdictional conflict with the States, the bill prohibits members or units of a Reserve Component from being ordered to active duty under proposed section 673b of title 10, United States Code, for the purpose of suppressing insurrection or civil disturbance enforcing the laws of the United States or any State, or providing assistance in time of natural or man-made disaster, accident or catastrophe. These situations will continue to be met under authority provided in existing federal and state laws.

The authorities requested in this legislation will be used judiciously and will enable the Services to plan for broader application of the "Total Force Policy" in satisfying contemporary national defense requirements. The "Total Force Policy" dictates that all available forces, U.S. Active Forces, U.S. Guard and Reserve Forces, and the forces of our allies—would be considered in determining the Defense needs to meet future contingencies. Our national policy of greater reliance on the Guard and Reserve is resulting in missions being assigned to the Reserve forces that were previously the sole responsibility of the Active Force. In some cases the capability to perform certain missions will be primarily the responsibility of the Reserve Forces. In carrying out these missions, the volunteer potential of the Reserve Forces will continue to be fully exploited.

The bill also amends section 9(g) of the Military Selective Service Act in order to assure that any member who is ordered to active duty under proposed section 673b of title 10, United States Code, as added by the bill, would be entitled to reemployment rights upon release from that active duty, providing he meets the other requirements under the law for entitlement to reemployment rights.

The Department of Defense strongly recommends enactment.

Cost and Budget Data

The enactment of this proposal would cause no increase in the budgetary requirements of the Department of Defense.

Sincerely,

Martin R. Hoffmann.

Enclosure.

A BILL To amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 39 of title 10, United States Code, is amended by inserting the following new section after section 673(a) and inserting a corresponding item in the chapter analysis:

"§ 673(b). Selected Reserve: order to active duty other than during war or national emergency

"(a) Notwithstanding any other law, when the President determines that it is necessary to augment the active forces for operational missions, he may authorize the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a Service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit, of the Selected Reserve as defined in section 268 of this title, under their respective jurisdictions, to active duty for not more than 90 days whether or not the Congress has declared war or Congress or the President has declared a national emergency.

"(b) No unit or member of a Reserve component may be ordered to active duty under this section to perform any of the functions authorized by chapter 15 or sections 3500 or 8500 of this title, or to provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident or catastrophe.

"(c) Not more than 50,000 members of the Selected Reserve may be on active duty under this section at any one time.

"(d) Units and individual members on active duty under this section may be assigned outside the United States and its Territories and possessions.

"(e) Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or members in grade under this title or any other law.

"(f) The Secretary of Defense and Secretary of Transportation shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section."

Sec. 2. Section 2024 of title 38, United States Code, is amended by adding the following new subsection after subsection (f):

"(g) Any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty for not more than 90 days under section 673(b) of title 10, United States Code, whether or not voluntarily, shall be entitled to all reemployment rights and benefits provided under paragraph (3) of this subsection for persons ordered to an initial

period of active duty for training of not less than three consecutive months; and shall have the service limitation governing eligibility for reemployment rights under paragraphs (1) and (2) (A) of this subsection extended by this period of such active duty."

CHANGES IN EXISTING LAW

In compliance with paragraph 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law proposed to be made by the bill are shown as follows: New matter is printed in italic, and existing law in which no change is proposed is shown in roman, and existing law to be omitted is enclosed in black brackets.

TITLE 10, UNITED STATES CODE—ARMED FORCES

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Chapter 39.—Active Duty

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§ 673. Ready Reserve

(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(2) family responsibilities; and

(3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committees on Armed Services of the Senate and the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.

(d) Whenever one or more units of the Ready Reserve are ordered to active duty, the President shall, on the first day of the second fiscal year quarter immediately following the quarter in which the first unit or units are ordered to active duty and on the first day of each succeeding six-month period thereafter. so long as such unit is retained on active duty, submit a report to the Congress regarding the necessity for such unit or units being ordered to and retained on active duty.

The President shall include in each such report a statement of the mission of each such unit ordered to active duty, an evaluation of such unit's performance of that mission, where each such unit is being deployed at the time of the report, and such other information regarding each unit as the President deems appropriate.

§ 673a. Ready Reserve: members not assigned to, or participating satisfactorily in, units

(a) Notwithstanding any other provision of law, the President may order to active duty any member of the Ready Reserve of an armed force who—

(1) is not assigned to, or participating satisfactorily in, a unit of the Ready Reserve;

(2) has not fulfilled his statutory reserve obligation; and

(3) has not served on active duty for a total of 24 months.

(b) A member who is ordered to active duty under this section may be required to serve on active duty until his total service on active duty equals 24 months. If his enlistment or other period of military service would expire before he has served the required period under this section, it may be extended until he has served the required period.

(c) To achieve fair treatment among members of the Ready Reserve who are being considered for active duty under this section, appropriate consideration shall be given to—

(1) family responsibilities; and

(2) employment necessary to maintain the national health, safety, or interest.

§ 673b. Selected Reserve; order to active duty other than during war or national emergency

(a) Notwithstanding the provisions of section 673(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any operational mission, he may authorize the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit, of the Selected Reserve (as defined in section 268(b) of this title), under their respective jurisdictions, to active duty (other than for training) for not more than 90 days.

(b) No unit or member of a Reserve component may be ordered to active duty under this section to perform any of the functions authorized by chapter 15 or sections 3500 or 8500 of this title, or to provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.

(c) Not more than 50,000 members of the Selected Reserve may be on active duty under this section at any one time.

(d) Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or members in grade under this title or any other law.

(e) The Secretary of Defense and the Secretary of Transportation shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section.

(f) Whenever the President authorizes the Secretary of Defense or the Secretary of Transportation to order any unit or member of the Selected Reserve to active duty, under the authority of subsection (a), he shall, with in 24 hours after exerising such authority, notify both Houses of Congress of such action.

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TITLE 38, UNITED STATES CODE—VETERANS' BENEFITS

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Chapter 43—Veterans' Reemployment Rights

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§ 2024. Rights of persons who enlist or are called to active duty; Reserves

(a) Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enlists in the Armed Forces of the United States (other than in a Reserve component) shall be entitled upon release from service under honorable conditions to all of the reemployment rights and other benefits provided for by this section in the case of persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such person's service performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any service, additional or otherwise, performed by such person after August 1, 1961, does not exceed five years, and if the service in excess of four years after August 1, 1961, is at the request and for the convenience of the Federal Government (plus in each case any period of additional service imposed pursuant to law).

(b)(1) Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enters upon active duty (other than for the purpose of determining physical fitness and other than for training), whether or not voluntarily, in the Armed Forces of the United States or the Public Health Service in response to an order or call to active duty shall, upon such person's relief from active duty under honorable conditions, be entitled to all of the reemployment rights and benefits provided for by this chapter in the case of persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such active duty performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any such active duty, additional or otherwise performed after August 1, 1961, does not exceed four years (plus in each case any additional period in which such person was unable to obtain orders relieving such person from active duty).

(2) Any member of a Reserve component of the Armed Forces of the United States who voluntarily or involuntarily enters upon active duty (other than for the purpose of determining physical fitness and other than for training) or whose active duty is voluntarily or involuntarily extended during a period when the President is authorized to order units of the Ready Reserve or members of a Reserve component to active duty shall have the service limitation governing eligibility for reemployment rights under subsection (b)(1) of this section extended by such member's period of such active duty, but not to exceed that period of active duty to which the President is authorized to order units of the Ready Reserve or members of a Reserve component. With respect to a member who voluntarily enters upon active duty or whose active duty is voluntarily extended, the provisions of this subsection shall apply only when such additional active duty is at the request and for the convenience of the Federal Government.

(c) Any member of a Reserve component of the Armed Forces of the United States who is ordered to an initial period of active duty for training of not less than three consecutive months shall, upon application for reemployment within thirty-one days after (1) such member's release from such active duty for training after satisfactory service, or (2) such member's discharge from hospitalization incident to such active duty for training, or one year after such member's scheduled release from such training, whichever is earlier, be entitled to all reemployment rights and benefits provided by this chapter for persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), except that (A) any person restored to or employed in a position in accordance with the provisions of this subsection shall not be discharged from such position without cause within six months after that restoration, and (B) no reemployment rights granted by this subsection shall entitle any person to retention, preference, or displacement rights over any veteran with a superior claim under those provisions of title 5 relating to veterans and other preference eligibles.

(d) Any employee not covered by subsection (c) of this section who holds a position described in clause (A) or (B) of section 2021 (a) shall upon request be granted a leave of absence by such person's employer for the period required to perform active duty for training or inactive duty training in the Armed Forces of the United States. Upon such employee's release from a period of such active duty for training or inactive duty training, or upon such employee's discharge from hospitalization incident to that training, such employee shall be permitted to return to such employee's position with such seniority, status, pay, and vacation as such employee would have had if such employee had not been absent for such purposes. Such employee shall report for work at the beginning of the next regularly scheduled working period after expiration of the last calendar day necessary to travel from the place of training to the place of employment following such employee's release, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control. Failure to report for work at such next regularly scheduled working period shall make the employee subject to the conduct rules of the employer pertaining to explanations and

discipline with respect to absence from scheduled work. If such an employee is hospitalized incident to active duty for training or inactive duty training, such employee shall be required to report for work at the beginning of the next regularly scheduled work period after expiration of the time necessary to travel from the place of discharge from hospitalization to the place of employment, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control, or within one year after such employee's release from active duty for training or inactvie duty training, whichever is earlier. If an employee covered by this subsection is not qualified to perform the duties of such employee's position by reason of disability sustained during active duty for training or inactive duty training, but is qualified to perform the duties of any other position in the employ of the employer or his successor in interest, such employee shall be offered employment and, if such person so requests, be employed by that employer or his successor in interest in such other position the duties of which such employee is qualified to perform as will provide such employee like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such employee's case.

(e) Any employee not covered by subsection (c) of this section who holds a position described in clause (A) or (B) of section 2021 (a) shall be considered as having been on leave of absence during the period required to report for the purpose of being inducted into, entering, or determining, by a preinduction or other examination, physical fitness to enter the Armed Forces. Upon such employee's rejection, upon completion of such employee's preinduction or other examination, or upon such employee's discharge from hospitalization incident to such rejection or examination, such employee shall be permitted to return to such employee's position in accordance with the provisions of subsection (d) of this section.

(f) For the purposes of subsections (c) and (d) of this section, full-time training or other full-time duty performed by a member of the National Guard under section 316, 503, 504, or 505 of title 32, is considered active duty for training; and for the purpose of subsection (d) of this section, inactive duty training performed by that member under section 502 of title 32 or section 206, 301, 309, 402, or 1002 of title 37, is considered inactive duty training.

(g) Any member of a Reserve component of the armed forces of the United States who is ordered to active duty for not more than 90 days under section 673b of title 10, United States Code, whether or not voluntarily, shall be entitled to all reemployment rights and benefits provided under subsection (c) of this section for persons ordered to an initial period of active duty for training of not less than three consecutive months; and shall have the service limitation governing eligibility for reemployment rights under subsections (a) and (b)(1) of this section extended by his period of such active duty.

* * * * * * *

MINORITY VIEWS OF SENATOR GARY W. HART

The fundamental defect of S. 2115 is that it turns over Congress' responsibilities to the President without providing safeguards to prevent misuse of the new authority granted. Although this fact should be apparent to anyone who knows present callup laws and has carefully read S. 2115, those who do not have the necessary background do not have to take any word on the subject. At the request of the Armed Services Committee, the Library of Congress looked into the bill to determine whether it was consistent with other legislation passed or pending. As part of this analysis, the Library found: "Certainly, presidential use of the authority proposed in S. 2115 would not conflict with the terms of the War Powers Resolution. If Selected Reserve Forces were introduced into hostilities or situations described in this Resolution, consultation, reporting and termination requirements of that Resolution would apply. There appears to be no conflict, therefore, between the provisions of S. 2115 and the War Powers Resolution."

S. 2115 does, however, affect the status quo of this distribution of shared war powers between Congress and the President. The power of Congress to raise and support armed forces is one of the strongest potential sources of Congressional control over the President's authority to involve the U.S. in war. Since the President's induction authority has been terminated, he must rely solely on the Reserve Components for manpower to augment quickly the active force. And, since the active forces are considered to be too small to fight a prolonged, major conventional war, the President's authority to order Reserves to active duty without specific authorization is critical to his conventional war-making capacity. In short, control of Reserves by the Congress is tantamount to control of the President's capacity to wage a major conventional war. Consequently, a grant of authority over the use of Reserves by Congress to the President represents a significant shift in the executive-legislative conventional war-power balance. Whether such a shift is wise or not, depends upon one's view of the necessity for quick reacting Reserve augmentation.

Conclusion

S. 2115, if enacted, would not conflict with the terms of the War Powers Resolution. It would, however, represent a significant grant of the Congress' war power to the President.

I cannot improve upon or find fault with this language.

S. 2115 should be amended to require the maintenance of congressional control. The Subcommittee recognized that this was needed, but added an amendment which falls far short of insuring Congress will learn of callups ordered by the President until the world at large does or that we shall know more of the justification for the callup

than public announcements will contain. The subcommittee amendment says simply that the President must tell Congress he has ordered a callup within 24 hours after he has done so. He need not tell us why, nor will we be able, in the absence of this information, to do much about it.

It can be said, of course, that the world will readily appreciate that the 50,000-man callup does not mean we are mobilizing for war, so little harm can be done by giving the President the uncontrolled discretion provided by S. 2115. Therefore, this reasoning continues, it is unimportant that Congress, having granted the President a large share of its own powers, pay any further attention to possible abuses of them. Unfortunately, potentially hostile nations might not see the President's signal, as represented by his limited callup, in the same way that the President wishes them to view it. I would feel much more comfortable if Congress had some hand in the decision in order to insure crises are dampened rather than intensified.

The advocates of this bill have also said we should pass it without delay in order to put the military services and the reserve components on notice that they should be reorganizing in order to better implement the Total Force concept. The idea is that the active forces will be induced to give the reserves better equipment and training and the reserves put on notice that they should be ready for callup at any time. This is a worthy purpose, but much more is needed before the reserves are the backup the nation requires.

Furthermore, even if we think that this bill has merit and that it is a good idea to let the President make the decisions which are the proper concern of Congress, there is absoluately no reason to rush through this legislation. The President will have the authority to call up reservists for two more years without seeking Congress' permission. He can do this because we are in four states of emergency, any one of which allows him to do as he likes with the Ready Reserve. The pending emergency termination bill would not end this situation until two years after its passage. Therefore, even if we need a bill such as S. 2115, we can safely wait.

The bill to terminate the several states of national emergency and to put Congressional controls on the declaration of future ones has already passed the House and will soon be taken up in the Senate. The House report on the termination bill notes that it originally contained authority for the President to activate reserves in the absence of an emergency, but that the House struck his provision on the grounds that an emergency should be declared before the reserve components are called to active service. It is apparent that S. 2115 is an evasion of the pending emergency termination bill. It allows the President to avoid declaring an emergency even if a real one exists, a point the Library of Congress concedes, and it thereby nullifies Congress' power to declare by concurrent resolution any future emergency declarations to be void.

S. 2115 has other faults, but, if the Committee is determined it should pass, it needs to be amended so that Congressional responsibility for its own war power is maintained. As a minimum, the bill should require more than simple notice to the Congress that a callup has occurred. Congress should be given information setting forth the reasons

why the reserves are needed and what activities the President plans for their use. This provision could be derived from language in the War Powers Act [Sec. 4(a)(3)(A), (C)]. Second, Congress should insist on writing into S. 2115 that it can, if circumstances dictate, cancel the callup by concurrent resolution—wording that appears in the pending emergency termination bill [H.R. 3884, Sec. 202(a)].

The Defense Department understandably objects to permitting Congress to void any callups which this body sees as unjustified on the grounds that it wants no Congressional meddling in its plans. The bill's advocates in this Committee have added yet another reason for keeping Congress out of business which is properly ours. They have said that Congress would react to constituent pressure and automatically cancel any callups unless there was "a very grave emergency." Of course, if there were such an emergency, the President should so declare. If there were not, I have confidence that the Congress would respond to the country's interests rather than merely respond to pressure from our states' reservists, who are, after all, being paid to be ready.

S. 2115 is not a good bill, not because it promises grave damage to the military strength of our nation, but because, as it is written, it signs over to the President one more slice of Congressional responsibility for hardly any reason at all. There are other ways to threaten the reserves to keep them on their toes and to encourage the active forces to give them what they need to do their likely wartime jobs. What are the purposes of this bill? Its advocates say they are coercion and convenience, insufficient reason to make bad law.

The bill must be modified so that Congress does not once again unthinkingly give the President more of its war powers.

GARY HART.

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S. 2115

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To amend chapter 39 of title 10, United States Code, to enable the President to authorize the involuntary order to active duty of Selected Reservists, for a limited period, whether or not a declaration of war or national emergency has been declared.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 39 of title 10, United States Code, is amended by inserting the following new section after section 673a and inserting a corresponding item in the chapter analysis:

"§ 673b. Selected Reserve; order to active duty other than during war or national emergency

"(a) Notwithstanding the provisions of section 673(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any operational mission, he may authorize the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit, of the Selected Reserve (as defined in section 268(b) of this title), under their respective jurisdictions, to active duty (other than for training) for not more than 90 days.

"(b) No unit or member of a Reserve component may be ordered to active duty under this section to perform any of the functions authorized by chapter 15 or section 3500 or 8500 of this title, or to provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.

"(c) Not more than 50,000 members of the Selected Reserve may be on active duty under this section at any one time.

"(d) Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or members in grade under this title or any other law.

"(e) The Secretary of Defense and the Secretary of Transportation shall prescribe such policies and procedures for the Armed Forces under their respective jurisdictions as they consider necessary to carry out this section.

"(f) Whenever the President authorizes the Secretary of Defense or the Secretary of Transportation to order any unit or member of the Selected Reserve to active duty, under the authority of subsection (a), he shall, within 24 hours after exercising such authority, submit to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth the circumstances necessitating the action taken under this section and describing the anticipated use of these units or members.

"(g) Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit is ordered to active duty under authority of subsection (a),

the service of all units or members so ordered to active duty may be terminated by—

"(1) order of the President, or

"(2) a concurrent resolution of the Congress.

"(h) Nothing contained in this section shall be construed as amending or limiting the application of the provisions of the War Powers Resolution.".

SEC. 2. Section 2024 of title 38, United States Code, is amended by adding the following new subsection after subsection (f):

"(g) Any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty for not more than 90 days under section 673b of title 10, United States Code, whether or not voluntarily, shall be entitled to all reemployment rights and benefits provided under subsection (c) of this section for persons ordered to an initial period of active duty for training of not less than three consecutive months; and shall have the service limitation governing eligibility for reemployment rights under subsections (a) and (b)(1) of this section extended by his period of such active duty.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

FOR IMMEDIATE RELEASE MAY 14, 1976

OFFICE OF THE WHITE HOUSE PRESS SECRETARY
(Louisville, Kentucky)

THE WHITE HOUSE

REMARKS OF THE PRESIDENT
UPON SIGNING
S. 2115, RESERVE CALL-UP AUTHORITY

GALT HOUSE HOTEL

6:09 P.M. EDT

Congressman Carter, distinguished members of the military:

It is a great privilege to be in Louisville and to have the opportunity of signing this very important legislation.

In creating an all-volunteer military force, our country has strongly emphasized the very key role which our National Guard and Reserve forces play in our overall defense.

Existing law requires that a national emergency be declared prior to any involuntary immobilization of our Reserve forces. This means that these forces are not now available to augment our active forces in the very cases where their prompt availability might indeed prevent a situation from developing into a genuine emergency.

This bill provides the President of the United States with the authority to call to active duty not more than 50,000 members of the Selected Reserve to serve for a period not to exceed 90 days.

Under this legislation, we can more effectively utilize many key elements of our Reserve and National Guard forces. For example, over 60 percent of our tactical airlift and over 50 percent of our strategic airlift capability are made up of Reserve and National Guard personnel.

In signing this bill, I can assure the American people that its provisions will be invoked only when clearly warranted and at such times most judiciously.

I congratulate the Congress in enacting this legislation which was requested by me and the Department of Defense, and I am sure it will very strongly help and assist our overall efforts to be ready for any emergency and to preserve the peace.

END (AT 6:12 P.M. EDT)

May 4, 1976

Dear Mr. Director:

The following bills were received at the White House on May 4th:

S. 2115
H.R. 2782
H.R. 11876

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C.