

MILITARY RESIDENCY CHOICE ACT

JULY 24, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROE of Tennessee, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany H.R. 282]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 282) to amend the Servicemembers Civil Relief Act to authorize spouses of servicemembers to elect to use the same residences as the servicemembers, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 282, the "Military Residency Choice Act," was introduced by Representative Elise Stefanik of New York on January 4, 2017.

H.R. 282 would amend the Servicemember Civil Relief Act (SCRA) to allow a servicemember's spouse to claim the same state of residency as the servicemember for voting and tax purposes regardless of whether the spouse has lived in that state.

BACKGROUND AND NEED FOR LEGISLATION

Section 2. Residence of spouses of servicemembers for tax purposes

Since the codification of the SCRA in title 50, United States Code (U.S.C.) in 1942, Congress has recognized that active duty servicemembers should be afforded certain legal protections during periods of military service. Among other provisions, the SCRA allows servicemembers to maintain their place of residency in a State for certain purposes, such as voting and State and local income taxes, regardless of whether the servicemember is currently residing in that State or is absent from that State due to active duty military service. These protections are in place due to the transient nature of military service and they allow servicemembers to avoid the burdens of reestablishing a place of residence for tax purposes after each permanent change of duty station.

In November of 2009, Congress passed the Military Spouse Civil Relief Act (Public Law (P.L.) 111-970, which amended the SCRA to extend these same protections to certain spouses of servicemembers. The law only applies to spouses of servicemembers who actually lived in the same State in which the servicemember established residency prior to a permanent change of duty station. Therefore, under current law, spouses who marry a servicemember, after the servicemember has already been transferred from the State where they established their residency, cannot claim that same State as their place of residence. This leaves that spouse having to legally change his or her State of residency for State and local income tax purposes after each move, whereas the servicemember and other spouses do not have to. Mr. Gabriel Stultz, Legislative Counsel for Paralyzed Veterans of America, testified at a June 29, 2017 Subcommittee on Economic Opportunity hearing and outlined an example of how the current law is negatively affecting some military spouses:

“The caveat in the law requiring the couple to share the same state unfortunately excludes from the benefit a number of military spouses who marry after the service member established domicile or residency elsewhere. For example, if the service member maintained his home state domicile of Florida while stationed in Georgia, and then he marries his spouse who is a resident of Georgia, the spouse is unable to maintain her Georgia residency for tax purposes when the service member subsequently gets stationed in Kentucky. While she can feasibly maintain domicile in Georgia, current law does not protect her from statutory residency laws in Kentucky. If she was able to independently establish domicile in Florida, she would be eligible for this benefit upon moving to Kentucky. Similarly, if the service member changed his domicile to Georgia, she would be eligible. But it is unlikely the spouse can meet the requirements for Florida, and because Florida has no

state income tax, few service members would abandon that state as their domicile.”

The Committee believes that this discrepancy was not the intention of P.L. 111–97 and that it can put an unfair burden on some military spouses despite the fact that these military families are facing the same transient lifestyle and undergoing the same stress as other military families. Therefore, section 2 of H.R. 282 would amend section 511(a)(2) of title 50, U.S.C., to allow the spouse of a servicemember to elect to use the same State of residence as the servicemember for State or local tax purposes regardless of when or where the two individuals were married. These changes would apply with respect to any return of State or local income tax filed for any taxable year beginning with the taxable year that includes enactment. While this provision would not require the spouse to claim the same residence as the servicemember, the Committee believes that this change in the law would better fulfill the intent of the SCRA and the protections that are extended to our servicemembers and their families while they are serving on active duty.

Section 3. Residence of spouses of servicemembers for voting

The SCRA also protects servicemembers by allowing them to maintain a certain State of residency or domicile, despite absence from that State due to military orders, for voting purposes in Federal, State, or local elections. Allowing them to continue voting in the State that they consider home regardless of where the military moves them, benefits the servicemember similarly as allowing them to maintain the same State of residence for tax purposes, and alleviates arduous voter registration requirements on our military men and women after each move.

Public Law 111–97 also extended these voting protections to military spouses after concern that “[spouses] are disenfranchised from voting; often times not arriving to a new state in time to vote in primaries and do not have ample opportunity to get to know the Federal, state or local candidates or adequate time to learn their policies and legislative agendas. It is confusing when one state allows a military spouse to vote via absentee ballot, yet the state where the spouse is physically located does not.”¹ As was the case with maintaining a certain residence for tax purposes, this law did not extend these same voting protections to spouses who marry the servicemember after the active duty member has already moved from the State in which they are claiming residence. The Committee believes that comparable to updating tax forms after each move, updating voter registration paperwork after each permanent change in duty station puts an unfair and complicated burden on some military spouses that is not required for other spouses just due to when they married the servicemember. The Committee also believes that spouses and servicemembers should be able to vote in the same area for which they pay taxes.

Section 3 of H.R. 282 would amend Section 705(b) title 50, U.S.C., by allowing the spouse of a servicemember to elect to use the same residence as the servicemember for State and local voting purposes, even if they are absent from that State due to military

¹ Senate Report 111–046—MILITARY SPOUSES RESIDENCY RELIEF ACT.

orders and regardless of when or where they got married. The Committee believes that this will fulfill the intent of SCRA and P.L. 111–97 and lessen the confusion and burdens of being a military spouse.

HEARINGS

On June 29, 2017, the Subcommittee on Economic Opportunity held a legislative hearing on several bill pending before the subcommittee including H.R. 282. The following witnesses testified:

The Honorable Elise Stefanik, U.S. House of Representatives, 21st district of New York; The Honorable Robert Wittman, U.S. House of Representatives, 1st district of Virginia; The Honorable Claudia Tenney, U.S. House of Representatives, 22nd district of New York; The Honorable David Cicilline, U.S. House of Representatives, 1st district of Rhode Island; The Honorable Scott Taylor, U.S. House of Representatives, 2nd district of Virginia; Mr. Curtis L. Coy, Deputy Under Secretary for Economic Opportunity, Veterans Benefits Administration, U.S. Department of Veterans Affairs, who was accompanied by Ms. Tia Butler, Executive Director, Corporate Senior Executive Management Office, Human Resources and Administration, U.S. Department of Veterans Affairs, and Mr. Jeffrey London, Director, Loan Guaranty Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Maj. Gen. Jeffrey E. Phillips, USAR (Ret.), Executive Director, Reserve Officers Association; and Mr. Gabriel Stultz, Legislative Counsel, Paralyzed Veterans of America.

The following organizations submitted statements for the record:

U.S. Department of Defense and U.S. Chamber of Commerce.

SUBCOMMITTEE CONSIDERATION

On July 12, 2017 the Subcommittee on Economic Opportunity met in an open markup session, a quorum being present, and ordered H.R. 282 favorably forwarded to the Full Committee by voice vote.

COMMITTEE CONSIDERATION

On July 19, 2017, the full Committee met in open markup session, a quorum being present, and ordered H.R. 282 be reported favorably to the House of Representatives by voice vote.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, no recorded votes were taken on amendments or in connection with ordering H.R. 282 favorably reported to the House.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are to ensure that spouses of servicemembers are able to claim the same state of residence as the servicemember even if the spouse has not lived in that state to ensure that, for tax purposes and voting purposes, the spouse is not negatively impacted by the mobility of active duty service.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 282 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee believes that enactment of this bill would result in no direct spending.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested did not receive at the time of the filing of the bill report, from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Committee believes and CBO has preliminarily estimated that there are no effects on direct spending or revenues.

FEDERAL MANDATES STATEMENT

With respect to the requirements of Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4), the Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether the provisions of the reported bill include unfunded mandates. The Committee believes, and the Congressional Budget Office has preliminarily estimated that legislation does not contain any unfunded mandates.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 282.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 282 is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 282 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee finds that no provision of H.R. 282 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), H.R. 282 would not prescribe the Secretary to create any new regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 cites the short title of H.R. 282 to be the "Military Residency Choice Act."

Section 2. Residence of spouses of servicemembers for tax purposes

Section 2(a) would amend Section 511(a)(2) of the Servicemembers Civil Relief Act (title 50, U.S.C. 4001(a)(2)) by adding at the end of the section a new sentence to allow the spouse of a servicemember to elect to use the same residence as the serv-

icemember for tax purposes, regardless of the date of when or where the spouse and the servicemember got married.

Section 2(b) would make the changes made in Section 2(a) applicable for any return of State or local income tax filed for any taxable year beginning with the taxable year that includes the date of enactment.

Section. 3. Residence of spouses of servicemembers for voting

Section 3(a) would amend Section 705(b) of the Servicemembers Civil Relief Act (title 50, U.S.C.) by striking “State or local office” and all that follows through the period and inserting a new paragraph which would allow a person who is absent from a State because the person is accompanying their spouse who is also absent from that same State due to military or naval orders shall not, solely by reason of that absence be deemed to have lost residence or domicile in that state regardless of whether that person intends to return to that state or gained residency in any other State. Section 3(a) would also allow for the spouse of a servicemember to elect to use the same State of residence as the servicemember regardless of the day on which they got married.

Section 3(b) would make the changes made in Section 3(a) effective 90 days following enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

SERVICEMEMBERS CIVIL RELIEF ACT

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TITLE V—TAXES AND PUBLIC LANDS

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SEC. 511. RESIDENCE FOR TAX PURPOSES.

(a) RESIDENCE OR DOMICILE.—

(1) IN GENERAL.—A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) SPOUSES.—A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse. *The spouse of a servicemember may elect to use the same residence for purposes of taxation as the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred.*

(b) MILITARY SERVICE COMPENSATION.—Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) INCOME OF A MILITARY SPOUSE.—Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(d) PERSONAL PROPERTY.—

(1) RELIEF FROM PERSONAL PROPERTY TAXES.—The personal property of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) EXCEPTION FOR PROPERTY WITHIN MEMBER'S DOMICILE OR RESIDENCE.—This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) EXCEPTION FOR PROPERTY USED IN TRADE OR BUSINESS.—This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) RELATIONSHIP TO LAW OF STATE OF DOMICILE.—Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(e) INCREASE OF TAX LIABILITY.—A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f) FEDERAL INDIAN RESERVATIONS.—An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g) DEFINITIONS.—For purposes of this section:

(1) PERSONAL PROPERTY.—The term "personal property" means intangible and tangible property (including motor vehicles).

(2) **TAXATION.**—The term “taxation” includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember’s State of domicile or residence.

(3) **TAX JURISDICTION.**—The term “tax jurisdiction” means a State or a political subdivision of a State.

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TITLE VII—FURTHER RELIEF

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SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL AND SPOUSES OF MILITARY PERSONNEL.

(a) **IN GENERAL.**—For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

(2) be deemed to have acquired a residence or domicile in any other State; or

(3) be deemed to have become a resident in or a resident of any other State.

(b) **SPOUSES.**—For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State because the person is accompanying the person’s spouse who is absent from that same State in compliance with military or naval orders shall not, solely by reason of that absence—

[(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

[(2) be deemed to have acquired a residence or domicile in any other State; or

[(3) be deemed to have become a resident in or a resident of any other State.] *State or local office—*

(1) a person who is absent from a State because the person is accompanying the person’s spouse who is absent from that same State in compliance with military or naval orders shall not, solely by reason of that absence—

(A) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

(B) be deemed to have acquired a residence or domicile in any other State; or

(C) be deemed to have become a resident in or a resident of any other State; and

(2) the spouse of a servicemember may elect to use the same residence as the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred.

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