SEC. 513. EXPANSION OF AUTHORITY TO ORDER SELECTED RESERVE AND CERTAIN INDIVIDUAL READY RESERVE MEMBERS TO ACTIVE DUTY OTHER THAN DURING WAR OR NATIONAL EMERGENCY.

(a) EXPANSION OF AUTHORITY.—Subsection (a) of section 12304 of title 10, United States Code, is amended—

(1) by striking "for any operational mission"; and

(2) by inserting "consecutive" after "365".

(b) BUDGETING.—Subsection (c) of such section is amended by adding at the end the following new paragraph:

"(4)(A) Except as provided in subparagraph (B), a unit or member of a reserve component may be ordered to active duty under this section during a fiscal year only if the manpower and associated costs of such active duty were specifically included and identified in the defense budget materials for that fiscal year. The budget information must include a description of the mission for which these Reserve members will be ordered to active duty, the size of the force ordered to active duty, the length of time the involuntary order will last, and the location of the mission. No more than 10,000 members of the Selected Reserves of the Military Services may be on active duty through this paragraph at any one time.

"(B) The limitation in subparagraph (A) does not apply in the case of an order to active duty that is issued—

"(i) to support an operational mission; or

"(ii) to provide assistance referred to in subsection (b).

"(C) In this paragraph, the term 'defense budget materials' has the meaning given that term in section 231(d)(2) of this title.".

(c) NOTIFICATION TO CONGRESS.—Subsection (f) of such section is amended by inserting "to support an operational mission or to provide assistance referred to in subsection (b)," after "subsection (a)".

Section-by-Section Analysis

In the report of the Senate Armed Services Committee accompanying S. 3454, the National Defense Authorization Act for Fiscal Year 2011, under the heading "Access to the Operational Reserve" (S.Rept. 111-201, page 138), the committee recommends that the Secretary of Defense review current mobilization authorities and submit legislative proposals for any additional authority needed to facilitate involuntary orders to active duty to support operational requirements. This proposed amendment to section 12304 of title 10, United States Code, would provide the Department of Defense with sufficient authority to fully use the reserve components (RC) as a rotational, operational force to augment the active component forces in the execution of planned missions in support of the President's national security strategy, as well as for operational missions and to provide support to local, State and federal civilian agencies during emergencies involving the use or threatened use of weapons of mass destruction or the threat or commission of terrorist attacks.

Specifically, this proposal would (1) enable use of 10 U.S.C. 12304 to order the RC to active duty to perform the full spectrum of missions required by the Combatant Commanders in pursuit of our national security strategy; (2) allow repeat orders to active duty per executive order to invoke this authority; (3) require the Department to budget for the expected Reserve manpower cost associated with the planned usage of this amended authority; and (4) limits the department's use of involuntary mobilization, outside of currently authorized operational missions and terrorist threat response, to 10,000 members each year. Operational missions and assistance to local, State and federal civilian agencies during certain emergencies will be specifically exempt from the annual budgeting requirement and the 10,000 strength limit.

The RC has been used as a rotational, operational force over the past ten years. The Department of Defense expects a continued military requirement to augment the active component to meet the force requirements of the Combatant Commanders as we execute the President's national security strategy. Since September 11, 2001, access to the RC has been assured via Presidential action to invoke and annually extend a declaration of national emergency as a result of "certain terrorist acts" that enables the partial mobilization statute (10 U.S.C. 12302) to be invoked.

We have ordered nearly 800,000 RC personnel to active duty since the President first declared a national emergency by reason of certain terrorist acts. Presently, 100,000 RC personnel are on active duty under the partial mobilization authority. These orders to active duty must be connected to our efforts to pursue those organizations that were involved in those terrorist acts. Over time, it has become more difficult to utilize this statute to access the RC for every mission set the Combatant Commanders are required to execute for our national security strategy as our national goals have evolved in an era of persistent conflict. As a matter of

historical fact, we usually utilize the Presidential Reserve Call Up (PRC) statute in section 12304 of title 10 to order the RC to active duty to augment the active component in times of increased demands for forces.

There are two challenges that inhibit the continued use of the RC as an operational force under the PRC authority alone. First, the types of missions RC forces may be assigned are limited to the legal definition of operational missions. Second, the partial mobilization statute and the PRC statute have different language specifying the duration of the orders to active duty. The language in the PRC statute makes repeat activations required by the force generation model in use today to reset, train, mobilize and deploy RC forces legally objectionable.

Adoption of the proposed language would enable the President to access the RC for all missions to support his national security strategy, not just operational missions, weapons of mass destruction scenarios, and terrorist threats or attacks. In addition, the proposed changes would require the Department, and the Services, through the President's budget submission to Congress, to plan for anticipated Reserve manpower costs through the existing planning, programming, budgeting, and execution process vice reliance upon supplemental appropriations to fund planned RC utilization. This limitation would not apply to operational missions, weapons of mass destruction scenarios, or terrorist threats or attacks.

Budget Implications: This proposal would authorize the President to direct the Secretaries of Defense and Homeland Security, when required to augment active forces, to order the RC to active duty, not to exceed 200,000 personnel for a duration no longer than 365 consecutive days, for operational missions, missions to support his national security strategy or to assist local, State and federal civilian agencies for certain emergencies (use or threatened use of weapons of mass destruction or terrorist threat or action). The President would be required to budget for planned RC utilization in his annual budget submission. Operational missions and assistance to local, State and federal civilian agencies for certain emergencies would be exempt from this requirement.

Changes to Existing Law: This proposal would modify section 12304 of title 10, United States Code, as follows:

§ 12304. Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency.

(a) AUTHORITY.—Notwithstanding the provisions of section 12302(a) or any other provision of law, when the President determines that it is necessary to augment the active forces ~~for any operational mission~~ or that it is necessary to provide assistance referred to in subsection (b) to local, State or Federal civilian agencies, he may authorize the Secretary of Defense and the Secretary of Homeland Security 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 10143(a) of this title), or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, under their respective jurisdictions, to active duty for not more than 365 <u>consecutive</u> days.

(b) SUPPORT FOR RESPONSES TO CERTAIN EMERGENCIES.—The authority under subsection (a) includes authority to order a unit or member to active duty to provide assistance in responding to an emergency involving—

(1) a use or threatened use of a weapon of mass destruction; or

(2) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in significant loss of life or property.

(c) LIMITATIONS.—(1) 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 12406 of this title or, except as provided in subsection (b), to provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.

(2) Not more than 200,000 members of the Selected Reserve and the Individual Ready Reserve may be on active duty under this section at any one time, of whom not more than 30,000 may be members of the Individual Ready Reserve.

(3) No unit or member of a reserve component may be ordered to active duty under this section to provide assistance referred to in subsection (b) unless the President determines that the requirements for responding to an emergency referred to in that subsection have exceeded, or will exceed, the response capabilities of local, State, and Federal civilian agencies.

(4)(A) Except as provided in subparagraph (B), a unit or member of a reserve component may be ordered to active duty under this section during a fiscal year only if the manpower and associated costs of such active duty were specifically included and identified in the defense budget materials for that fiscal year. The budget information must include a description of the mission for which these Reserve members will be ordered to active duty, the size of the force ordered to active duty, the length of time the involuntary order will last, and the location of the mission. No more than 10,000 members of the Selected Reserves of the Military Services may be on active duty through this paragraph at any one time.

(B) The limitation in subparagraph (A) does not apply in the case of any order to active duty that is issued—

(i) to support an operational mission; or

(ii) to provide assistance referred to in subsection (b).

(C) In this paragraph, the term "defense budget materials" has the meaning given that term in section 231(d)(2) of this title.

(d) EXCLUSION FROM STRENGTH LIMITATIONS.—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) POLICIES AND PROCEDURES.—The Secretary of Defense and the Secretary of Homeland Security shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section.

(f) NOTIFICATION OF CONGRESS.—Whenever the President authorizes the Secretary of Defense or the Secretary of Homeland Security to order any unit or member of the Selected Reserve or Individual Ready Reserve to active duty, under the authority of subsection (a), to support an operational mission or to provide assistance referred to in subsection (b), he shall, within 24 hours after exercising such authority, submit to Congress a report, in writing, setting forth the circumstances necessitating the action take under this section and describing the anticipated use of these units or members.

(g) TERMINATION OF DUTY.—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, or any member of the Individual Ready Reserve, 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) law.

(h) RELATIONSHIP TO WAR POWERS RESOLUTION.—Nothing contained in this section shall be construed as amending or limiting the application of the provisions of the War Powers Resolution (50 U.S.C. 1541 et seq.).

(i) CONSIDERATIONS FOR INVOLUNTARY ORDER TO ACTIVE DUTY.—(1) In determining which members of the Selected Reserve and Individual Ready Reserve will be ordered to duty without their consent under this section, appropriate consideration shall be given to—

(A) 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;

(B) the frequency of assignments during service career;

(C) family responsibilities; and

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

(2) The Secretary of Defense shall prescribe such policies and procedures as the Secretary considers necessary to carry out this subsection.

(j) DEFINITIONS.—In this section:

(1) The term "Individual Ready Reserve mobilization category" means, in the case of any reserve component, the category of the Individual Ready Reserve described in section 10144(b) of this title.

(2) The term "weapon of mass destruction" has the meaning given that term in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).