

113TH CONGRESS
2D SESSION

S. 1939

To repeal the War Powers Resolution and to provide for proper war powers consultation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2014

Mr. KAINE (for himself, Mr. MCCAIN, and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To repeal the War Powers Resolution and to provide for proper war powers consultation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “War Powers Consulta-
5 tion Act of 2014”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

9 (1) The War Powers Resolution (50 U.S.C.
10 1541 et seq.) has not worked as intended, and has

1 added to the divisiveness and uncertainty that exists
2 regarding the war powers of the President and Con-
3 gress.

4 (2) The American people want both the Presi-
5 dent and Congress involved in the decisionmaking
6 process when United States Armed Forces are com-
7 mitted to significant armed conflict, and the involve-
8 ment of both branches is important in building do-
9 mestic understanding and political support for doing
10 so and ensuring the soundness of the resulting deci-
11 sion.

12 (3) Past efforts to call upon the judicial branch
13 to define the constitutional limits of the war powers
14 of the executive and legislative branches of govern-
15 ment have generally failed because courts, for the
16 most part, have declined jurisdiction on the grounds
17 that the issues involved are “political questions” or
18 that the plaintiffs lack standing.

19 (4) It harms the country to have the War Pow-
20 ers Resolution, the centerpiece statute in this vital
21 area of United States law, regularly and openly
22 questioned or ignored.

23 (5) The country needs to replace the War Pow-
24 ers Resolution with a constructive means by which
25 the judgment of both the President and Congress

1 can be brought to bear when deciding whether the
2 United States should engage in a significant armed
3 conflict, without prejudice to the rights of either
4 branch to assert its constitutional war powers or to
5 challenge the constitutional war powers of the other
6 branch.

7 (b) PURPOSE.—The purpose of this Act is to estab-
8 lish a constructive and practical means by which the judg-
9 ment of both the President and Congress can be brought
10 to bear when deciding whether the United States should
11 engage in a significant armed conflict. This Act is not
12 meant to define, circumscribe, or enhance the constitu-
13 tional war powers of either the executive or legislative
14 branch of government, and neither branch by supporting
15 or complying with this Act shall in any way limit or preju-
16 dice its right or ability to assert its constitutional war pow-
17 ers or its right or ability to question or challenge the con-
18 stitutional war powers of the other branch.

19 **SEC. 3. SIGNIFICANT ARMED CONFLICT DEFINED.**

20 (a) IN GENERAL.—In this Act, except as provided
21 under paragraph (2), the term “significant armed con-
22 flict” means any conflict expressly authorized by Con-
23 gress, or any combat operation involving members of the
24 Armed Forces lasting more than a week or expected by
25 the President to last more than a week.

1 (b) EXCEPTIONS.—The term “significant armed con-
2 flict” does not include any commitment of members of the
3 Armed Forces for the following purposes:

4 (1) Actions taken by the President to repel at-
5 tacks, or to prevent imminent attacks, on the United
6 States, its territorial possessions, its embassies, its
7 consulates, or its Armed Forces abroad.

8 (2) Limited acts of reprisal against terrorists or
9 states that sponsor terrorism.

10 (3) Humanitarian missions in response to nat-
11 ural disasters.

12 (4) Investigations or acts to prevent criminal
13 activity abroad.

14 (5) Covert operations.

15 (6) Training exercises.

16 (7) Missions to protect or rescue United States
17 citizens or military or diplomatic personnel abroad.

18 **SEC. 4. REPEAL OF WAR POWERS RESOLUTION.**

19 The War Powers Resolution (50 U.S.C. 1541 et seq.)
20 is hereby repealed.

21 **SEC. 5. JOINT CONGRESSIONAL CONSULTATION COM-
22 MITTEE.**

23 (a) ESTABLISHMENT.—There is established the Joint
24 Congressional Consultation Committee.

25 (b) MEMBERSHIP.—

1 (1) COMPOSITION.—The Commission shall be
2 composed of the following members:

3 (A) The majority leader of the Senate and
4 the Speaker of the House of Representatives.

5 (B) The minority leaders of the Senate
6 and the House of Representatives.

7 (C) The chairman and ranking member of
8 each of the following committees of the Senate:

9 (i) The Committee on Foreign Rela-
10 tions.

11 (ii) The Committee on Armed Serv-
12 ices.

13 (iii) The Select Committee on Intel-
14 ligence.

15 (iv) The Committee on Appropria-
16 tions.

17 (D) The chairman and ranking member of
18 each of the following committees of the House
19 of Representatives:

20 (i) The Committee on Foreign Affairs.

21 (ii) The Committee on Armed Serv-
22 ices.

23 (iii) The Permanent Select Committee
24 on Intelligence.

1 (iv) The Committee on Appropria-
2 tions.

3 (c) CHAIRMANSHIP.—The chairmanship and vice
4 chairmanship of the Joint Congressional Consultation
5 Committee shall alternate between the majority leader of
6 the Senate and the Speaker of the House of Representa-
7 tives, with the former serving as the chairman in each odd-
8 numbered Congress and the latter serving as the chairman
9 in each even-numbered Congress.

10 (d) STAFF OF JOINT COMMITTEE.—The chairman
11 and vice chairman of the Joint Congressional Consultation
12 Committee may jointly appoint and fix the compensation
13 of a permanent, bipartisan staff as they deem necessary,
14 within the guidelines for employees of the Senate and fol-
15 lowing all applicable rules and employment requirements
16 of the Senate. The staff shall have access to all relevant
17 national security and intelligence information considered
18 by the Committee.

19 **SEC. 6. CONSULTATION AND REPORTING.**

20 (a) REGULAR CONSULTATION.—The President shall
21 consult regularly with the Joint Congressional Consulta-
22 tion Committee regarding significant matters of foreign
23 policy and national security.

1 (b) CONSULTATION AND REPORTING REQUIRED
2 PRIOR TO ENGAGEMENT IN SIGNIFICANT ARMED CON-
3 Flicts.—

4 (1) IN GENERAL.—Before ordering the deploy-
5 ment of members of the Armed Forces into a signifi-
6 cant armed conflict, the President shall—

7 (A) consult with the Joint Congressional
8 Consultation Committee, including providing
9 sufficient time for the exchange of views regard-
10 ing whether to engage in the significant armed
11 conflict; and

12 (B) submit in writing to the Joint Con-
13 gressional Consultation Committee a classified
14 report setting forth the circumstances necessi-
15 tating the significant armed conflict, the objec-
16 tives, and the estimated scope and duration of
17 the conflict.

18 (2) EXCEPTION.—If the President determines
19 that the need for secrecy or other emergency cir-
20 cumstances preclude carrying out the consultation
21 required under subparagraph (A) of paragraph (1)
22 or submitting the report required under subpara-
23 graph (B) of such paragraph before significant
24 armed conflict is ordered or begins, the President
25 shall carry out such consultation or submit such re-

1 port not later than three calendar days after the be-
2 ginning of the significant armed conflict.

3 (c) ONGOING CONSULTATION DURING SIGNIFICANT
4 ARMED CONFLICTS.—The President shall consult with the
5 Joint Congressional Consultation Committee at least every
6 two months for the duration of any significant armed con-
7 flict.

8 (d) ANNUAL REPORT.—Not later than April 15 of
9 each year, the President shall submit to the Joint Con-
10 gressional Consultation Committee a classified written re-
11 port describing, for the previous calendar year—

12 (1) all significant armed conflicts in which the
13 United States was engaged; and

14 (2) all other operations, as described in section
15 3(b), other than covert operations, in which the
16 United States was engaged.

17 **SEC. 7. CONGRESSIONAL APPROVAL OR DISAPPROVAL.**

18 (a) JOINT RESOLUTION OF APPROVAL.—

19 (1) REQUIREMENT.—Not later than 30 days
20 after the deployment of members of the Armed
21 Forces into a significant armed conflict with respect
22 to which Congress has not enacted a formal declara-
23 tion of war or otherwise enacted a specific authoriza-
24 tion for the use of military force, the chair and vice

1 chair of the Joint Congressional Consultative Com-
2 mittee shall introduce a joint resolution of approval.

3 (2) CONTENTS OF RESOLUTION.—For purposes
4 of this subsection, the term “joint resolution of ap-
5 proval” means a joint resolution the sole matter
6 after the resolving clause of which is as follows:
7 “That Congress approves the use of members of the
8 Armed Forces for the significant armed conflict cov-
9 ered in the report submitted to the Joint Congres-
10 sional Consultation Committee pursuant to section
11 6(b) of the War Powers Consultation Act of 2014 on
12 _____.”, with the blank space being filled with the
13 appropriate date.

14 (3) REFERRAL TO COMMITTEE.—A joint resolu-
15 tion of approval introduced in the Senate shall be re-
16 ferred to the Committee on Foreign Relations of the
17 Senate. A joint resolution of approval introduced in
18 the House of Representatives shall be referred to the
19 Committee on Foreign Affairs of the House of Rep-
20 resentatives.

21 (4) DISCHARGE OF COMMITTEE.—If the com-
22 mittee to which is referred a joint resolution of ap-
23 proval has not reported such resolution (or an iden-
24 tical resolution) at the end of 7 calendar days after
25 its introduction, such committee shall be deemed to

1 be discharged from further consideration of such
2 resolution and such resolution shall be placed on the
3 appropriate calendar of the House involved.

4 (5) FLOOR CONSIDERATION.—

5 (A) IN GENERAL.—When the committee to
6 which a resolution is referred has reported, or
7 has been deemed to be discharged (under para-
8 graph (4)) from further consideration of, a joint
9 resolution of approval, it is at any time there-
10 after in order (even though a previous motion
11 to the same effect has been disagreed to) for
12 any Member of the respective House to move to
13 proceed to the consideration of the resolution,
14 and all points of order against the resolution
15 (and against consideration of the resolution)
16 are waived. The motion is highly privileged in
17 the House of Representatives and is privileged
18 in the Senate and is not debatable. The motion
19 is not subject to amendment, or to a motion to
20 postpone, or to a motion to proceed to the con-
21 sideration of other business. A motion to recon-
22 sider the vote by which the motion is agreed to
23 or disagreed to shall not be in order. If a mo-
24 tion to proceed to the consideration of the reso-
25 lution is agreed to, the resolution shall remain

1 the unfinished business of the respective House
2 until disposed of.

3 (B) DEBATE.—Debate on the resolution,
4 and on all debatable motions and appeals in
5 connection therewith, shall be limited to not
6 more than 10 hours, which shall be divided
7 equally between those favoring and those oppos-
8 ing the resolution. A motion further to limit de-
9 bate is in order and not debatable. An amend-
10 ment to, or a motion to postpone, or a motion
11 to proceed to the consideration of other busi-
12 ness, or a motion to recommit the resolution is
13 not in order. A motion to reconsider the vote by
14 which the resolution is agreed to or disagreed to
15 is not in order.

16 (C) VOTE ON FINAL PASSAGE.—Imme-
17 diately following the conclusion of the debate on
18 the joint resolution of approval and a single
19 quorum call at the conclusion of the debate if
20 requested in accordance with the rules of the
21 appropriate House, the vote on final passage of
22 the resolution shall occur.

23 (D) RULINGS OF THE CHAIR ON PROCE-
24 DURE.—Appeals from the decisions of the Chair
25 relating to the application of the rules of the

1 Senate or the House of Representatives, as the
2 case may be, to the procedure relating to a joint
3 resolution of approval shall be decided without
4 debate.

5 (6) COORDINATION WITH ACTION BY OTHER
6 HOUSE.—If, before the passage by one House of a
7 joint resolution of approval of that House, that
8 House receives from the other House a joint resolu-
9 tion of approval, then the following procedures shall
10 apply:

11 (A) The resolution of the other House shall
12 not be referred to a committee.

13 (B) With respect to the joint resolution of
14 approval of the House receiving the resolu-
15 tion—

16 (i) the procedure in that House shall
17 be the same as if no resolution had been
18 received from the other House; but

19 (ii) the vote on final passage shall be
20 on the resolution of the other House.

21 (7) RULES OF HOUSE OF REPRESENTATIVES
22 AND SENATE.—This subsection is enacted by Con-
23 gress—

24 (A) as an exercise of the rulemaking power
25 of the Senate and House of Representatives, re-

1 spectively, and as such it is deemed a part of
2 the rules of each House, respectively, but appli-
3 cable only with respect to the procedure to be
4 followed in that House in the case of a joint
5 resolution of approval, and it supersedes other
6 rules only to the extent that it is inconsistent
7 with such rules; and

8 (B) with full recognition of the constitu-
9 tional right of either House to change the rules
10 (so far as relating to the procedure of that
11 House) at any time, in the same manner and
12 to the same extent as in the case of any other
13 rule of that House.

14 (b) JOINT RESOLUTION OF DISAPPROVAL.—

15 (1) CONTENTS OF RESOLUTION.—For purposes
16 of this subsection, the term “joint resolution of dis-
17 approval” means a joint resolution introduced in a
18 House after that House has voted against passage of
19 a joint resolution of approval under subsection (a),
20 the sole matter after the resolving clause of which is
21 as follows: “That Congress disapproves the use of
22 members of the Armed Forces for the significant
23 armed conflict covered in the report submitted to the
24 Joint Congressional Consultation Committee pursu-
25 ant to section 6(b) of the War Powers Consultation

1 Act of 2014 on _____.”, with the blank space being
2 filled with the appropriate date.

3 (2) FLOOR CONSIDERATION.—

4 (A) IN GENERAL.—After a joint resolution
5 of disapproval has been introduced under this
6 subsection, it is at any time thereafter in order
7 (even though a previous motion to the same ef-
8 fect has been disagreed to) for any Member of
9 the respective House to move to proceed to the
10 consideration of the resolution, and all points of
11 order against the resolution (and against con-
12 sideration of the resolution) are waived. The
13 motion is highly privileged in the House of Rep-
14 resentatives and is privileged in the Senate and
15 is not debatable. The motion is not subject to
16 amendment, or to a motion to postpone, or to
17 a motion to proceed to the consideration of
18 other business. A motion to reconsider the vote
19 by which the motion is agreed to or disagreed
20 to shall not be in order. If a motion to proceed
21 to the consideration of the resolution is agreed
22 to, the resolution shall remain the unfinished
23 business of the respective House until disposed
24 of.

1 (B) DEBATE.—Debate on the resolution,
2 and on all debatable motions and appeals in
3 connection therewith, shall be limited to not
4 more than 10 hours, which shall be divided
5 equally between those favoring and those oppos-
6 ing the resolution. A motion further to limit de-
7 bate is in order and not debatable. An amend-
8 ment to, or a motion to postpone, or a motion
9 to proceed to the consideration of other busi-
10 ness, or a motion to recommit the resolution is
11 not in order. A motion to reconsider the vote by
12 which the resolution is agreed to or disagreed to
13 is not in order.

14 (C) VOTE ON FINAL PASSAGE.—Imme-
15 diately following the conclusion of the debate on
16 the joint resolution of disapproval and a single
17 quorum call at the conclusion of the debate if
18 requested in accordance with the rules of the
19 appropriate House, the vote on final passage of
20 the resolution shall occur.

21 (D) RULINGS OF THE CHAIR ON PROCE-
22 DURE.—Appeals from the decisions of the Chair
23 relating to the application of the rules of the
24 Senate or the House of Representatives, as the
25 case may be, to the procedure relating to a joint

1 resolution of disapproval shall be decided with-
2 out debate.

3 (3) COORDINATION WITH ACTION BY OTHER
4 HOUSE.—If, before the passage by one House of a
5 joint resolution of disapproval of that House, that
6 House receives from the other House a joint resolu-
7 tion of disapproval, then the following procedures
8 shall apply:

9 (A) The resolution of the other House shall
10 not be referred to a committee.

11 (B) With respect to the joint resolution of
12 disapproval of the House receiving the resolu-
13 tion—

14 (i) the procedure in that House shall
15 be the same as if no resolution had been
16 received from the other House; but

17 (ii) the vote on final passage shall be
18 on the resolution of the other House.

19 (4) RULES OF HOUSE OF REPRESENTATIVES
20 AND SENATE.—This subsection is enacted by Con-
21 gress—

22 (A) as an exercise of the rulemaking power
23 of the Senate and House of Representatives, re-
24 spectively, and as such it is deemed a part of
25 the rules of each House, respectively, but appli-

1 cable only with respect to the procedure to be
2 followed in that House in the case of a joint
3 resolution of disapproval, and it supersedes
4 other rules only to the extent that it is incon-
5 sistent with such rules; and

6 (B) with full recognition of the constitu-
7 tional right of either House to change the rules
8 (so far as relating to the procedure of that
9 House) at any time, in the same manner and
10 to the same extent as in the case of any other
11 rule of that House.

12 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-
13 tion shall be construed as limiting or otherwise affecting
14 the right of any Member of Congress to introduce a resolu-
15 tion or bill approving, disapproving, expanding, narrowing,
16 or ending a significant armed conflict.

17 **SEC. 8. TREATIES.**

18 Nothing in this Act shall be construed as modifying
19 any obligations of the United States under any treaty or
20 international agreement.

21 **SEC. 9. SEVERABILITY.**

22 If any provision of this Act, or the application of a
23 provision to any person or circumstance, is held to be un-
24 constitutional, the remainder of the Act, and the applica-

- 1 tion of the provisions to any person or circumstance, shall
- 2 not be affected by the holding.

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