

115TH CONGRESS
1ST SESSION

S. 29

To permit disabled law enforcement officers, customs and border protection officers, firefighters, air traffic controllers, nuclear materials couriers, members of the Capitol Police, members of the Supreme Court Police, employees of the Central Intelligence Agency performing intelligence activities abroad or having specialized security requirements, and diplomatic security special agents of the Department of State to receive retirement benefits in the same manner as if they had not been disabled.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2017

Mr. TESTER (for himself and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To permit disabled law enforcement officers, customs and border protection officers, firefighters, air traffic controllers, nuclear materials couriers, members of the Capitol Police, members of the Supreme Court Police, employees of the Central Intelligence Agency performing intelligence activities abroad or having specialized security requirements, and diplomatic security special agents of the Department of State to receive retirement benefits in the same manner as if they had not been disabled.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fair Return for Em-
 3 ployees on Their Initial Retirement Earned Act of 2017”
 4 or the “Fair RETIRE Act”.

5 **SEC. 2. SENSE OF CONGRESS.**

6 It is the sense of Congress that—

7 (1) it is in the best national and homeland se-
 8 curity interests of the United States for Federal
 9 agencies to retain the specialized knowledge and ex-
 10 perience of individuals who suffer an injury or illness
 11 while serving in a covered position (as defined under
 12 the amendments made by this Act); and

13 (2) in developing regulations to carry out this
 14 Act and the amendments made by this Act, the Di-
 15 rector of the Office of Personnel Management and
 16 the Secretary of Labor should ensure, to the great-
 17 est extent possible, that the reappointment of an in-
 18 dividual to a position in the civil service that is not
 19 a covered position is with the same Federal agency,
 20 in the same geographic location, and at a level of
 21 pay commensurate to the position which the indi-
 22 vidual held immediately prior to such injury or ill-
 23 ness.

24 **SEC. 3. RETIREMENT FOR CERTAIN EMPLOYEES.**

25 (a) CSRS.—Section 8336(c) of title 5, United States
 26 Code, is amended by adding at the end the following:

1 “(3)(A) In this paragraph—

2 “(i) the term ‘covered individual’ means an in-
3 dividual covered under this subchapter who—

4 “(I) is performing service in a covered po-
5 sition;

6 “(II) has performed not less than 3 years
7 of creditable service in a covered position;

8 “(III) while in the performance of the du-
9 ties of the individual, becomes ill or is injured
10 before the date on which the individual becomes
11 entitled to an annuity under paragraph (1) of
12 this subsection or subsection (e), (m), or (n), as
13 applicable;

14 “(IV) because of the illness or injury de-
15 scribed in subclause (III), is permanently un-
16 able to continue service in a covered position,
17 determined in accordance with regulations pro-
18 mulgated by the Director of the Office of Per-
19 sonnel Management, in consultation with the
20 Secretary of Labor; and

21 “(V) is appointed to a position in the civil
22 service that is not a covered position; and

23 “(ii) the term ‘covered position’ means a posi-
24 tion as a law enforcement officer, customs and bor-
25 der protection officer, firefighter, air traffic con-

1 troller, nuclear materials courier, member of the
2 Capitol Police, member of the Supreme Court Police,
3 an employee of the Central Intelligence Agency des-
4 ignated under section 302(a) of the Central Intel-
5 ligence Agency Retirement Act (50 U.S.C. 2152(a)),
6 or special agent described in section 804(15) of the
7 Foreign Service Act of 1980 (22 U.S.C. 4044(15)).

8 “(B) Unless a covered individual files an election de-
9 scribed in subparagraph (C), creditable service by the cov-
10 ered individual in a position described in subparagraph
11 (A)(i)(V) shall be treated as creditable service in a covered
12 position for purposes of this chapter, including eligibility
13 for an annuity under paragraph (1) of this subsection or
14 subsection (e), (m), or (n), as applicable, and determining
15 the amount to be deducted and withheld from the pay of
16 the covered individual under section 8334.

17 “(C) In accordance with procedures established by
18 the Director of the Office of Personnel Management, a
19 covered individual may file an election to have any cred-
20 itable service performed by the covered individual treated
21 in accordance with this chapter, without regard to sub-
22 paragraph (B).

23 “(D) If a covered individual who has not filed an elec-
24 tion described in subparagraph (C) separates from service
25 before the date on which the covered individual becomes

1 entitled to an annuity under paragraph (1) of this sub-
 2 section or subsection (e), (m), or (n), as applicable, the
 3 covered individual shall be entitled to a lump sum payment
 4 from the Fund of the difference between—

5 “(i) the amount that was deducted and withheld
 6 from the pay of the covered individual; and

7 “(ii) the amount that would have been deducted
 8 and withheld from the pay of the covered individual
 9 if the covered individual had made an election de-
 10 scribed in subparagraph (C).”.

11 (b) FERS.—

12 (1) IN GENERAL.—Section 8412(d) of title 5,
 13 United States Code, is amended—

14 (A) by redesignating paragraphs (1) and
 15 (2) as subparagraphs (A) and (B), respectively;

16 (B) by inserting “(1)” before “An em-
 17 ployee”; and

18 (C) by adding at the end the following:

19 “(2)(A) In this paragraph—

20 “(i) the term ‘covered individual’ means an in-
 21 dividual covered under this chapter who—

22 “(I) is performing service in a covered po-
 23 sition;

24 “(II) has performed not less than 3 years
 25 of creditable service in a covered position;

1 “(III) while in the performance of the du-
 2 ties of the individual, becomes ill or is injured
 3 before the date on which the individual becomes
 4 entitled to an annuity under paragraph (1) of
 5 this subsection or subsection (e), as applicable;

6 “(IV) because of the illness or injury de-
 7 scribed in subclause (III), is permanently un-
 8 able to continue service in a covered position,
 9 determined in accordance with regulations pro-
 10 mulgated by the Director of the Office of Per-
 11 sonnel Management, in consultation with the
 12 Secretary of Labor; and

13 “(V) is appointed to a position in the civil
 14 service that is not a covered position; and

15 “(ii) the term ‘covered position’ means a posi-
 16 tion as a law enforcement officer, customs and bor-
 17 der protection officer, firefighter, air traffic con-
 18 troller, nuclear materials courier, member of the
 19 Capitol Police, member of the Supreme Court Police,
 20 an employee of the Central Intelligence Agency des-
 21 ignated under section 302(a) of the Central Intel-
 22 ligence Agency Retirement Act (50 U.S.C. 2152(a)),
 23 or special agent described in section 804(15) of the
 24 Foreign Service Act of 1980 (22 U.S.C. 4044(15)).

1 “(B) Unless a covered individual files an election de-
2 scribed in subparagraph (C), creditable service by the cov-
3 ered individual in a position described in subparagraph
4 (A)(i)(V) shall be treated as creditable service in a covered
5 position for purposes of this chapter, including eligibility
6 for an annuity under paragraph (1) of this subsection or
7 subsection (e), as applicable, and determining the amount
8 to be deducted and withheld from the pay of the covered
9 individual under section 8422.

10 “(C) In accordance with procedures established by
11 the Director of the Office of Personnel Management, a
12 covered individual may file an election to have any cred-
13 itable service performed by the covered individual treated
14 in accordance with this chapter, without regard to sub-
15 paragraph (B).

16 “(D) If a covered individual who has not filed an elec-
17 tion described in subparagraph (C) separates from service
18 before the date on which the covered individual becomes
19 entitled to an annuity under paragraph (1) of this sub-
20 section or subsection (e), as applicable, the covered indi-
21 vidual shall be entitled to a lump sum payment from the
22 Fund of the difference between—

23 “(i) the amount that was deducted and withheld
24 from the pay of the covered individual; and

“(ii) the amount that would have been deducted and withheld from the pay of the covered individual if the covered individual had made an election described in subparagraph (C).”.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Chapter 84 of title 5, United States Code, is amended—

(i) in section 8414(b)(3), by inserting “(1)” after “subsection (d)”;

(ii) in section 8415—

(I) in subsection (e), in the matter preceding paragraph (1), by inserting “(1)” after “subsection (d)”;

and

(II) in subsection (h)(2)(A), by striking “(d)(2)” and inserting “(d)(1)(B)”;

(iii) in section 8421(a)(1), by inserting “(1)” after “(d)”;

(iv) in section 8421a(b)(4)(B)(ii), by inserting “(1)” after “section 8412(d)”;

(v) in section 8425, by inserting “(1)” after “section 8412(d)” each place it appears; and

1 (vi) in section 8462(c)(3)(B)(ii), by
 2 inserting “(1)” after “subsection (d)”.

3 (B) Title VIII of the Foreign Service Act
 4 of 1980 (22 U.S.C. 4041 et seq.) is amended—

5 (i) in section 805(d)(5) (22 U.S.C.
 6 4045(d)(5)), by inserting “(1)” after “or
 7 8412(d)”; and

8 (ii) in section 812(a)(2)(B) (22
 9 U.S.C. 4052(a)(2)(B)), by inserting “(1)”
 10 after “or 8412(d)”.

11 (c) CIA EMPLOYEES.—Section 302 of the Central In-
 12 telligence Agency Retirement Act (50 U.S.C. 2152) is
 13 amended by adding at the end the following:

14 “(d) EMPLOYEES DISABLED ON DUTY.—

15 “(1) DEFINITIONS.—In this subsection—

16 “(A) the term ‘covered employee’ means an
 17 employee of the Agency covered under sub-
 18 chapter II of chapter 84 of title 5, United
 19 States Code, who—

20 “(i) is performing service in a position
 21 designated under subsection (a);

22 “(ii) has performed not less than 3
 23 years of creditable service in a covered po-
 24 sition;

1 “(iii) while in the performance of the
 2 duties of the employee in the position des-
 3 ignated under subsection (a), becomes ill
 4 or is injured before the date on which the
 5 employee becomes entitled to an annuity
 6 under section 233 of this Act or section
 7 8412(d)(1) of title 5, United States Code;

8 “(iv) because of the illness or injury
 9 described in clause (iii), is permanently un-
 10 able to continue service in a covered posi-
 11 tion, determined in accordance with regula-
 12 tions promulgated by the Director of the
 13 Office of Personnel Management, in con-
 14 sultation with the Secretary of Labor; and

15 “(v) is appointed to a position in the
 16 civil service that is not a covered position;
 17 and

18 “(B) the term ‘covered position’ means a
 19 position as—

20 “(i) a law enforcement officer de-
 21 scribed in section 8331(20) or 8401(17) of
 22 title 5, United States Code;

23 “(ii) a customs and border protection
 24 officer described in section 8331(31) or
 25 8401(36) of title 5, United States Code;

1 “(iii) a firefighter described in section
2 8331(21) or 8401(14) of title 5, United
3 States Code;

4 “(iv) an air traffic controller described
5 in section 8331(30) or 8401(35) of title 5,
6 United States Code;

7 “(v) a nuclear materials courier de-
8 scribed in section 8331(27) or 8401(33) of
9 title 5, United States Code;

10 “(vi) a member of the United States
11 Capitol Police;

12 “(vii) a member of the Supreme Court
13 Police;

14 “(viii) a covered employee; or

15 “(ix) a special agent described in sec-
16 tion 804(15) of the Foreign Service Act of
17 1980 (22 U.S.C. 4044(15)).

18 “(2) TREATMENT OF SERVICE AFTER DIS-
19 ABILITY.—Unless a covered employee files an elec-
20 tion described in paragraph (3), creditable service by
21 the covered employee in a position described in para-
22 graph (1)(A)(v) shall be treated as creditable service
23 in a covered position for purposes of this Act and
24 chapter 84 of title 5, United States Code, including
25 eligibility for an annuity under section 233 of this

1 Act or 8412(d)(1) of title 5, United States Code,
2 and determining the amount to be deducted and
3 withheld from the pay of the covered employee under
4 section 8422 of title 5, United States Code.

5 “(3) OPT OUT.—In accordance with procedures
6 established by the Director of the Office of Per-
7 sonnel Management, a covered employee may file an
8 election to have any creditable service performed by
9 the covered employee treated in accordance with
10 chapter 84 of title 5, United States Code, without
11 regard to paragraph (2).

12 “(4) SEPARATION BEFORE RETIREMENT ELIGI-
13 BILITY.—If a covered employee who has not filed an
14 election described in paragraph (3) separates from
15 service before the date on which the covered em-
16 ployee becomes entitled to an annuity under section
17 233 of this Act or 8412(d)(1) of title 5, United
18 States Code, the covered employee shall be entitled
19 to a lump sum payment from the Fund of the dif-
20 ference between—

21 “(A) the amount that was deducted and
22 withheld from the pay of the covered employee;
23 and

24 “(B) the amount that would have been de-
25 ducted and withheld from the pay of the cov-

1 ered employee if the covered employee had
2 made an election described in paragraph (3).”.

3 (d) FOREIGN SERVICE RETIREMENT AND DIS-
4 ABILITY SYSTEM.—Section 806(a)(6) of the Foreign Serv-
5 ice Act of 1980 (22 U.S.C. 4046(a)(6)) is amended by
6 adding at the end the following:

7 “(D)(i) In this subparagraph—

8 “(I) the term ‘covered special agent’ means an
9 individual covered under this subchapter who—

10 “(aa) is performing service as a special
11 agent;

12 “(bb) has performed not less than 3 years
13 of creditable service in a covered position;

14 “(cc) while in the performance of the du-
15 ties of the individual as a special agent, be-
16 comes ill or is injured before the date on which
17 the individual becomes entitled to an annuity
18 under section 811;

19 “(dd) because of the illness or injury de-
20 scribed in item (cc), is permanently unable to
21 continue service in a covered position, deter-
22 mined in accordance with regulations promul-
23 gated by the Director of the Office of Personnel
24 Management, in consultation with the Secretary
25 of Labor; and

1 “(ee) is appointed to a position in the For-
2 eign Service that is not a covered position; and

3 “(II) the term ‘covered position’ means a posi-
4 tion as—

5 “(aa) a law enforcement officer described
6 in section 8331(20) or 8401(17) of title 5,
7 United States Code;

8 “(bb) a customs and border protection offi-
9 cer described in section 8331(31) or 8401(36)
10 of title 5, United States Code;

11 “(cc) a firefighter described in section
12 8331(21) or 8401(14) of title 5, United States
13 Code;

14 “(dd) an air traffic controller described in
15 section 8331(30) or 8401(35) of title 5, United
16 States Code;

17 “(ee) a nuclear materials courier described
18 in section 8331(27) or 8401(33) of title 5,
19 United States Code;

20 “(ff) a member of the United States Cap-
21 itol Police;

22 “(gg) a member of the Supreme Court Po-
23 lice;

24 “(hh) an employee of the Central Intel-
25 ligence Agency designated under section 302(a)

1 of the Central Intelligence Agency Retirement
2 Act (50 U.S.C. 2152(a)); or

3 “(ii) a special agent.

4 “(ii) Unless a covered special agent files an election
5 described in clause (iii), creditable service by the covered
6 special agent in a position described in clause (i)(I)(ee)
7 shall be treated as creditable service as a special agent
8 for purposes of this subchapter, including determining the
9 amount to be deducted and withheld from the pay of the
10 individual under section 805.

11 “(iii) In accordance with procedures established by
12 the Secretary, a covered special agent may file an election
13 to have any creditable service performed by the covered
14 special agent treated in accordance with this subchapter,
15 without regard to clause (ii).

16 “(iv) If a covered special agent who has not filed an
17 election described in clause (iii) separates from service be-
18 fore the date on which the covered special agent becomes
19 entitled to an annuity under section 811, the covered spe-
20 cial agent shall be entitled to a lump sum payment from
21 the Fund of the difference between—

22 “(I) the amount that was deducted and with-
23 held from the pay of the covered special agent; and

24 “(II) the amount that would have been de-
25 ducted and withheld from the pay of the covered

1 special agent if the covered special agent had made
2 an election described in clause (iii).”.

3 (e) IMPLEMENTATION.—

4 (1) IN GENERAL.—The Director of the Office of
5 Personnel Management—

6 (A) not later than 60 days after the date
7 of enactment of this Act, and in consultation
8 with the Secretary of Labor, shall promulgate
9 regulations regarding determining when an in-
10 dividual is permanently unable to continue serv-
11 ice in a covered position (as defined in section
12 302(d) of the Central Intelligence Agency Re-
13 tirement Act (50 U.S.C. 2152(d)), as added by
14 this Act);

15 (B) shall promulgate regulations to carry
16 out the amendments made by subsections (a),
17 (b), and (c); and

18 (C) not later than 1 year after the date of
19 enactment of this Act, shall issue guidance for
20 agencies regarding implementation of the
21 amendments made by subsections (a), (b), and
22 (c).

23 (2) FOREIGN SERVICE RETIREMENT AND DIS-
24 ABILITY SYSTEM.—The Secretary of State shall pro-

1 mulgate regulations to carry out the amendment
2 made by subsection (d).

3 (f) EFFECTIVE DATE; APPLICABILITY.—The amend-
4 ments made by this section—

5 (1) shall take effect on the date of enactment
6 of this Act; and

7 (2) shall apply to an individual who suffers an
8 illness or injury described in section
9 8336(c)(3)(A)(i)(III) or section
10 8412(d)(2)(A)(i)(III) of title 5, United States Code,
11 as amended by this section, section 302(d)(1)(A)(iii)
12 of the Central Intelligence Agency Retirement Act,
13 as amended by this section, or section
14 806(a)(6)(D)(i)(I)(cc) of the Foreign Service Act of
15 1980, as amended by this section, on or after the
16 date that is 2 years after the date of enactment of
17 this Act.

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