

Calendar No. 703

110TH CONGRESS
2D SESSION**S. 1046****[Report No. 110–328]**

To modify pay provisions relating to certain senior-level positions in the Federal Government, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2007

Mr. VOINOVICH introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

APRIL 22, 2008

Reported by Mr. LIEBERMAN, without amendment

A BILL

To modify pay provisions relating to certain senior-level positions in the Federal Government, 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 “Senior Professional
5 Performance Act of 2007”.

1 **SEC. 2. PAY PROVISIONS RELATING TO CERTAIN SENIOR-**
 2 **LEVEL POSITIONS.**

3 (a) LOCALITY PAY.—Section 5304 of title 5, United
 4 States Code, is amended—

5 (1) in subsection (g), by amending paragraph
 6 (2) to read as follows:

7 “(2) The applicable maximum under this sub-
 8 section shall be level III of the Executive Schedule
 9 for—

10 “(A) positions under subparagraphs (A)
 11 and (B) of subsection (h)(1); and

12 “(B) any positions under subsection
 13 (h)(1)(C) as the President may determine.”;
 14 and

15 (2) in subsection (h)—

16 (A) in paragraph (1)—

17 (i) by striking subparagraph (A);

18 (ii) in subparagraph (D)—

19 (I) in clause (v), by striking “or”
 20 at the end;

21 (II) in clause (vi), by striking the
 22 period at the end and inserting “; or”;
 23 and

24 (III) by adding at the end the
 25 following:

1 “(vii) a position to which section 5376
 2 applies (relating to certain senior-level and
 3 scientific and professional positions).”; and

4 (iii) by redesignating subparagraphs
 5 (B), (C), and (D) as subparagraphs (A),
 6 (B), and (C), respectively; and
 7 (B) in paragraph (2)(B)—

8 (i) in clause (i)—

9 (I) by striking “subparagraphs
 10 (A) through (C)” and inserting “sub-
 11 paragraphs (A) and (B)”; and

12 (II) by striking “or (vi)” and in-
 13 serting “(vi), or (vii)”; and

14 (ii) in clause (ii)—

15 (I) by striking “paragraph
 16 (1)(D)” and inserting “paragraph
 17 (1)(C)”; and

18 (II) by striking “or (vi)” and in-
 19 serting “(vi), or (vii)”.

20 (b) ACCESS TO HIGHER MAXIMUM RATE OF BASIC
 21 PAY.—Section 5376(b) of title 5, United States Code, is
 22 amended—

23 (1) in paragraph (1) by amending subpara-
 24 graph (B) to read as follows:

1 “(B) subject to paragraph (3), not greater
 2 than the rate of basic pay payable for level III
 3 of the Executive Schedule.”; and
 4 (2) by adding at the end the following:

5 “(3) In the case of an agency which, under sec-
 6 tion 5307(d), has a performance appraisal system
 7 which, as designed and applied, is certified as mak-
 8 ing meaningful distinctions based on relative per-
 9 formance, paragraph (1)(B) shall apply as if the ref-
 10 erence to ‘level III’ were a reference to ‘level II’.

11 “(4) No employee may suffer a reduction in pay
 12 by reason of transfer from an agency with an appli-
 13 cable maximum rate of pay prescribed under para-
 14 graph (3) to an agency with an applicable maximum
 15 rate of pay prescribed under paragraph (1)(B).”.

16 (c) AUTHORITY FOR EMPLOYMENT; APPOINTMENTS;
 17 CLASSIFICATION STANDARDS.—Title 5, United States
 18 Code is amended—

19 (1) in section 3104(a), in the second sentence,
 20 by striking “prescribes” and inserting “prescribes
 21 and publishes in such form as the Office may deter-
 22 mine”;

23 (2) in section 3324(a) by striking “the Office of
 24 Personnel Management” and inserting: “the Direc-
 25 tor of the Office of Personnel Management on the

1 basis of qualification standards developed by the
 2 agency involved in accordance with criteria specified
 3 in regulations prescribed by the Director”;

4 (3) in section 3325—

5 (A) in subsection (a), in the second sen-
 6 tence, by striking “or its designee for this pur-
 7 pose” and inserting the following: “on the basis
 8 of standards developed by the agency involved
 9 in accordance with criteria specified in regula-
 10 tions prescribed by the Director of the Office of
 11 Personnel Management”; and

12 (B) by adding at the end the following:

13 “(c) The Director of the Office of Personnel Manage-
 14 ment shall prescribe such regulations as may be necessary
 15 to carry out the purpose of this section.”; and

16 (4) in section 5108(a)(2) by inserting “pub-
 17 lished by the Director of the Office of Personnel
 18 Management in such form as the Office may deter-
 19 mine” after “and procedures”.

20 (d) EFFECTIVE DATE AND APPLICATION.—

21 (1) EFFECTIVE DATE.—The amendments made
 22 by this section shall take effect on the first day of
 23 the first pay period beginning on or after the 180th
 24 day following the date of enactment of this Act.

25 (2) NO REDUCTIONS IN RATES OF PAY.—

1 (A) IN GENERAL.—The amendments made
2 by this section may not result, at the time such
3 amendments take effect, in a reduction in the
4 rate of basic pay for an individual holding a po-
5 sition to which section 5376 of title 5, United
6 States Code, applies.

7 (B) DETERMINATION OF RATE OF PAY.—
8 For the purposes of subparagraph (A), the rate
9 of basic pay for an individual described in that
10 subparagraph shall be deemed to be the rate of
11 basic pay set for the individual under such sec-
12 tion 5376, plus applicable locality pay paid to
13 that individual, as of the effective date under
14 paragraph (1).

15 (3) REFERENCES TO MAXIMUM RATES.—Except
16 as otherwise provided by law, any reference in a pro-
17 vision of law to the maximum rate under section
18 5376 of title 5, United States Code—

19 (A) as provided before the effective date of
20 the amendments made by this section, shall be
21 considered a reference to the rate of basic pay
22 for level IV of the Executive Schedule; and

23 (B) as provided on or after the effective
24 date of the amendments made by this section,
25 shall be considered a reference to—

1 (i) the rate of basic pay for level III
2 of the Executive Schedule; or

3 (ii) if the head of the agency respon-
4 sible for administering the applicable pay
5 system certifies that the employees are cov-
6 ered by a performance appraisal system
7 meeting requirements established by the
8 Director of the Office of Personnel Man-
9 agement, level II of the Executive Sched-
10 ule.

11 **SEC. 3. LIMITATIONS ON CERTAIN PAYMENTS.**

12 (a) IN GENERAL.—Section 5307(d) of title 5, United
13 States Code, is amended—

14 (1) in paragraph (2), by striking all after “pur-
15 poses of” and inserting: “applying the limitation in
16 the calendar year involved, has a performance ap-
17 praisal system certified under this subsection as
18 making, in its design and application, meaningful
19 distinctions based on relative performance.”; and

20 (2) in paragraph (3)(B)—

21 (A) by striking all beginning with “An”
22 through “2 calendar years” and inserting “The
23 certification of an agency performance appraisal
24 system under this subsection shall be for a pe-
25 riod not to exceed 24 months beginning on the

1 date of certification, unless extended by the Di-
 2 rector of the Office of Personnel Management
 3 for up to 6 additional months”; and

4 (B) by striking “, for purposes of either or
 5 both of those years,”.

6 (b) EXTENSION OF CERTIFICATION.—

7 (1) EXTENSION TO 2008.—

8 (A) IN GENERAL.—For any certification of
 9 a performance appraisal system under section
 10 5307(d) of title 5, United States Code, in effect
 11 on the date of enactment of this Act and sched-
 12 uled to expire at the end of calendar year 2007,
 13 the Director of the Office of Personnel Manage-
 14 ment may provide that such a certification shall
 15 be extended without requiring additional jus-
 16 tification by the agency.

17 (B) LIMITATION.—The expiration of any
 18 extension under this paragraph shall be not
 19 later than the later of—

20 (i) June 30, 2008; or

21 (ii) the first anniversary of the date of
 22 the certification.

23 (2) EXTENSION TO 2009.—

24 (A) IN GENERAL.—For any certification of
 25 a performance appraisal system under section

1 5307(d) of title 5, United States Code, in effect
2 on the date of enactment and scheduled to ex-
3 pire at the end of calendar year 2008, the Di-
4 rector of the Office of Personnel Management
5 may provide that such a certification shall be
6 extended without requiring additional justifica-
7 tion by the agency.

8 (B) LIMITATION.—The expiration of any
9 extension under this paragraph shall be not
10 later than the later of—

11 (i) June 30, 2009; or

12 (ii) the second anniversary of the date
13 of the certification.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect on the date of enactment of
16 this Act.

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