

105TH CONGRESS
1ST SESSION

S. 492

To amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees in the civil service and other public sector firefighters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 1997

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

A BILL

To amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees in the civil service and other public sector firefighters, 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 “Firefighters Pay Fair-
5 ness Act of 1997”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

1 (1) to improve pay equality between Federal
2 firefighters, other Federal employees, and municipal
3 and other public sector firefighters;

4 (2) to enhance recruitment and retention of
5 firefighters in order to maintain the highest quality
6 Federal fire service; and

7 (3) to encourage Federal firefighters to pursue
8 career advancement and training opportunities.

9 **SEC. 3. COMPUTATION OF PAY.**

10 (a) COMPUTATION OF PAY.—

11 (1) IN GENERAL.—Section 5504 of title 5,
12 United States Code, is amended by redesignating
13 subsection (c) as subsection (d) and by inserting
14 after subsection (b) the following:

15 “(c)(1) When, in the case of a firefighter, it is nec-
16 essary for computation of pay under this subsection to
17 convert an annual rate of basic pay to a basic hourly,
18 daily, or biweekly rate, the rules set forth in subpara-
19 graphs (A) through (D) shall govern:

20 “(A) To derive an hourly rate, divide the an-
21 nual rate by 2,087.

22 “(B) To derive a daily rate, multiply the hourly
23 rate by the number of hours in the regularly sched-
24 uled daily tour of duty.

1 “(C) To derive a biweekly rate, multiply the
2 hourly rate by the number of hours in the regularly
3 scheduled biweekly tour of duty or 106, whichever is
4 less.

5 “(D) The annual rate of basic pay used in car-
6 rying out the preceding provisions of this para-
7 graph—

8 “(i) shall be the annual rate determined in
9 accordance with otherwise applicable provisions
10 of law (applied as if the Firefighters Pay Fair-
11 ness Act of 1997 had never been enacted); and

12 “(ii) shall not exclude any amount consid-
13 ered to be part of basic pay for any purpose
14 under chapter 83 or 84.

15 “(E) To derive an annual rate for any purpose
16 referred to in the next sentence, multiply the bi-
17 weekly rate by 26. An annual rate determined under
18 this subparagraph shall for all purposes (except the
19 preceding provisions of this paragraph or as other-
20 wise expressly provided by law), be considered to be
21 the annual rate of basic pay for the firefighter in-
22 volved.

23 “(F) Except as provided in section 5542(e), the
24 provisions of sections 5542(a), 5545, 5546, and
25 5547 shall not apply in the case of a firefighter, and

1 pay computed under this paragraph shall be in lieu
2 of—

3 “(i) any amount which might otherwise be
4 payable under any of those provisions;

5 “(ii) any amount required to be taken into
6 account under subparagraph (D); and

7 “(iii) any other similar amount, as identi-
8 fied by the Office of Personnel Management in
9 regulations.

10 “(G) For provisions relating to computation of
11 overtime, see section 5542(e).

12 “(2) Notwithstanding any other provision of law, in
13 the case of an employee who is not a firefighter (nor an
14 employee described in subsection (d)(4)), but whose posi-
15 tion requires such employee to perform firefighting duties,
16 the pay of such employee for any biweekly pay period dur-
17 ing which such employee is required to perform firefight-
18 ing duties shall be determined—

19 “(A) in accordance with otherwise applicable
20 provisions of law, but disregarding paragraph (1), or

21 “(B) in accordance with paragraph (1) (includ-
22 ing the provisions referred to in paragraph (1)(G)),
23 whichever results in the greater total amount.

24 “(3) Rates under this subsection are computed to the
25 nearest cent, counting one-half and over as a whole cent.”.

1 (2) CONFORMING AMENDMENT.—Section
 2 5504(b) of title 5, United States Code, is amended
 3 in the first sentence by striking “in the case of an
 4 employee,” and inserting “in the case of an em-
 5 ployee (other than a firefighter),”.

6 (b) DEFINITIONS.—

7 (1) IN GENERAL.—Section 5504 of title 5,
 8 United States Code, is amended by redesignating
 9 subsection (d) (as so designated by subsection
 10 (a)(1)) as subsection (e) and by inserting before
 11 such subsection the following:

12 “(d) For the purpose of this section—

13 “(1) the term ‘employee’ means—

14 “(A) an employee in or under an Executive
 15 agency;

16 “(B) an employee in or under the judicial
 17 branch; and

18 “(C) an employee in or under the Office of
 19 the Architect of the Capitol, the Botanic Gar-
 20 den, and the Library of Congress, for whom a
 21 basic administrative workweek is established
 22 under section 6101(a)(5);

23 but does not include an employee or individual ex-
 24 cluded from the definition of employee in section

1 5541(2) other than an employee or individual ex-
2 cluded by section 5541(2)(xvi);

3 “(2) the term ‘firefighter’ means an employee
4 who is a firefighter within the meaning of section
5 8331(21) or 8401(14), but does not include an em-
6 ployee described in paragraph (4);

7 “(3) the term ‘firefighting duties’ means duties
8 usually performed by a firefighter in responding to
9 or engaging in the control and extinguishment or the
10 prevention of a fire; and

11 “(4) this paragraph relates to any employee
12 who—

13 “(A) would satisfy the definition of a fire-
14 fighter under paragraph (2), but for the exclu-
15 sion thereunder; and

16 “(B) has a basic administrative workweek
17 of not more than 40 hours.”.

18 (2) CONFORMING AMENDMENTS.—Section 5504
19 of title 5, United States Code, is amended by strik-
20 ing the last sentence in each of subsections (a) and
21 (b) thereof.

22 **SEC. 4. OVERTIME.**

23 Section 5542 of title 5, United States Code, is
24 amended by adding at the end the following:

1 “(e)(1) For the purpose of this subsection, the term
 2 ‘firefighter’ has the meaning given such term by section
 3 5504(d)(2).

4 “(2) In the case of a firefighter, for full-time, part-
 5 time, and intermittent tours of duty, hours of work offi-
 6 cially ordered or approved in excess of 106 hours in a bi-
 7 weekly pay period performed by such firefighter are over-
 8 time work and shall be paid for in accordance with sub-
 9 sections (a) (disregarding the matter in subsection (a) be-
 10 fore paragraph (1) thereof).

11 “(3) For purposes of applying the provisions of sec-
 12 tion 7(k) of the Fair Labor Standards Act of 1938 with
 13 respect to a firefighter, no violation referred to in such
 14 provisions shall be considered to have occurred if the re-
 15 quirements of paragraph (2) are met.”.

16 **SEC. 5. MINIMUM PAY RATE UPON PROMOTION TO A SU-**
 17 **PERVISORY POSITION; PAY RETENTION.**

18 (a) MINIMUM PAY RATE UPON PROMOTION TO A SU-
 19 PERVISORY POSITION.—Section 5334 of title 5, United
 20 States Code, is amended by adding at the end the follow-
 21 ing:

22 “(g)(1) For the purpose of this subsection—

23 “(A) the term ‘firefighter’ has the meaning
 24 given such term by section 5504(d)(2); and

1 “(B) the term ‘required minimum rate’, as used
2 with respect to a firefighter who receives a pro-
3 motion, means—

4 “(i) the total amount of basic pay and
5 overtime pay paid or payable to that individual
6 for service performed as a firefighter during the
7 12-month period ending on the last day of the
8 second month ending before the date of the pro-
9 motion (expressed as a single annual rate); or

10 “(ii) in the case of a firefighter whose pro-
11 motion occurs in the first fiscal year during
12 which this subsection is in effect, the total
13 amount of basic pay and overtime pay (ex-
14 pressed as a single annual rate) which would
15 have been payable to that individual for service
16 performed as a firefighter during the period de-
17 scribed in clause (i), computed—

18 “(I) as if the amendments made by
19 sections 3 and 4 of the Firefighters Pay
20 Fairness Act of 1997 had been in effect
21 throughout such period; and

22 “(II) applying section 8(b) of such
23 Act (using the percentage specified in
24 paragraph (2)(A) thereof).

1 “(2) A firefighter who is promoted to a supervisory
 2 position in a higher grade, and in which the individual con-
 3 tinues to be a firefighter, is entitled to basic pay at not
 4 less than—

5 “(A) the lowest rate of the higher grade which
 6 is at least equal to such individual’s required mini-
 7 mum rate; or

8 “(B) if there is no rate in the higher grade that
 9 satisfies subparagraph (A), a rate equal to such in-
 10 dividual’s required minimum rate.

11 “(3) The regulations under section 5338 shall include
 12 such provisions as may be necessary to carry out the pur-
 13 poses of this subsection in the case of a firefighter who,
 14 at the time of promotion, is receiving basic pay at a rate
 15 saved to such firefighter under subchapter VI.”.

16 (b) PAY RETENTION.—Section 5363(a) of title 5,
 17 United States Code, is amended by striking “or” at the
 18 end of paragraph (3), by inserting “or” after the semi-
 19 colon in paragraph (4), and by adding after paragraph (4)
 20 the following:

21 “(5) who is subject to a reduction or termi-
 22 nation of a rate of pay established under section
 23 5504(c)(1);”.

1 **SEC. 6. TRAINING.**

2 Section 4109 of title 5, United States Code, is
3 amended by adding at the end the following:

4 “(d)(1) For the purpose of this subsection, the term
5 ‘firefighter’ means any firefighter within the meaning of
6 section 5504(d)(2) and any employee described in section
7 5504(d)(4).

8 “(2) Notwithstanding subsection (a)(1), a firefighter
9 who is selected and assigned for training under this chap-
10 ter shall be paid, for the period of training, at the rate
11 of basic pay and overtime pay normally paid for the regu-
12 larly scheduled tour of duty of such firefighter.”.

13 **SEC. 7. TECHNICIAN BONUSES.**

14 (a) IN GENERAL.—Chapter 45 of title 5, United
15 States Code, is amended by adding at the end the follow-
16 ing:

17 “SUBCHAPTER IV—AWARDS TO FIREFIGHTERS
18 FOR SPECIAL SKILLS AND CERTIFICATIONS

19 “§ 4531. Definitions

20 “For the purpose of this subchapter—

21 “(1) the term ‘firefighter’ has the meaning
22 given such term by section 4109(d)(1); and

23 “(2) the term ‘firefighting duties’ has the
24 meaning given such term by section 5504.

1 **“§ 4532. Award authority**

2 “(a) An agency may pay a cash award of up to 5
3 percent of basic pay to a firefighter or other employee who
4 performs firefighting duties, if such employee—

5 “(1) is employed in or under such agency; and

6 “(2) makes substantial use of—

7 “(A) a special skill, such as handling haz-
8 ardous materials; or

9 “(B) a certification or license relating to
10 any firefighting duties, such as certification as
11 an emergency medical technician.

12 “(b) Awards under this section shall be paid under
13 regulations prescribed by the head of the agency involved
14 or pursuant to the terms of any collective bargaining
15 agreement which satisfy the requirements of the next sen-
16 tence. Any such regulations or agreement shall include—

17 “(1) procedures under which any such special
18 skills, certification, or licensure shall be ascertained;

19 “(2) criteria for determining the amount of any
20 award under this subchapter; and

21 “(3) any other provisions which may be nec-
22 essary to carry out the purposes of this sub-
23 chapter.”.

24 (b) CONFORMING AMENDMENT.—The table of sec-
25 tions for chapter 45 of title 5, United States Code, is
26 amended by adding at the end the following:

“SUBCHAPTER IV—AWARDS TO FIREFIGHTERS FOR SPECIAL SKILLS AND
CERTIFICATIONS

“4531. Definitions.

“4532. Award authority.”.

1 **SEC. 8. EFFECTIVE DATE; TRANSITION PROVISIONS; RE-**
2 **PORTING REQUIREMENT.**

3 (a) **EFFECTIVE DATE.**—This Act shall take effect on
4 October 1, 1997.

5 (b) **TRANSITION PROVISIONS.**—

6 (1) **IN GENERAL.**—Except as provided in para-
7 graph (3), instead of the amount which (but for this
8 subsection) would otherwise be payable under any
9 amendment made by section 3(a) or 4, the amount
10 payable under such amendment shall be equal to—

11 (A) the amount which (but for this sub-
12 section) would otherwise be so payable, multi-
13 plied by

14 (B) the applicable percentage under para-
15 graph (2).

16 (2) **APPLICABLE PERCENTAGES.**—The applica-
17 ble percentage under this paragraph is—

18 (A) 85 percent if the amount relates to
19 service performed in fiscal year 1998 or 1999;

20 (B) 90 percent if the amount relates to
21 service performed in fiscal year 2000;

22 (C) 95 percent if the amount relates to
23 service performed in fiscal year 2001; and

1 (D) 100 percent if the amount relates to
 2 service performed in fiscal year 2002 or there-
 3 after.

4 (3) COMPUTATIONS UNDER FORMER PROVI-
 5 SIONS OF LAW NOT AFFECTED.—A computation
 6 under subparagraph (A) of section 5504(c)(2) of
 7 title 5, United States Code, as amended by section
 8 3(a)(1), shall not be affected by this subsection.

9 (c) REPORTING REQUIREMENT.—No later than June
 10 1, 1998, the Office of Personnel Management shall submit
 11 a written report to the Congress on—

12 (1) plans relating to implementing the transi-
 13 tion provisions of subsection (b);

14 (2) plans relating to funding increases in pay
 15 resulting from the enactment of this Act; and

16 (3) the need for and feasibility of making any
 17 regulatory or legislative modifications in the admin-
 18 istration of chapters 83 and 84 of title 5, United
 19 States Code, in order to ensure that no diminution
 20 in retirement benefits occurs, by reason of the tran-
 21 sition provisions of subsection (b), with respect to
 22 any firefighter who separates from service during
 23 fiscal years 1998 through 2004.

