

109TH CONGRESS
1ST SESSION

S. 2076

To amend title 5, United States Code, to provide to assistant United States attorneys the same retirement benefits as are afforded to Federal law enforcement officers.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2005

Mr. LEAHY (for himself, Mr. HATCH, Ms. MIKULSKI, Mr. DURBIN, Mr. DEWINE, Mr. BIDEN, Mrs. FEINSTEIN, Mr. FEINGOLD, Mr. SMITH, Mr. DODD, Mr. CHAMBLISS, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mrs. BOXER, Mr. WYDEN, Mr. NELSON of Florida, and Mr. CORZINE) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend title 5, United States Code, to provide to assistant United States attorneys the same retirement benefits as are afforded to Federal law enforcement officers.

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 “Assistant United
5 States Attorney Retirement Benefit Equity Act of 2005”.

1 **SEC. 2. RETIREMENT TREATMENT OF ASSISTANT UNITED**
2 **STATES ATTORNEYS.**

3 (a) CIVIL SERVICE RETIREMENT SYSTEM.—

4 (1) ASSISTANT UNITED STATES ATTORNEY DE-
5 FINED.—Section 8331 of title 5, United States
6 Code, is amended—

7 (A) in paragraph (28), by striking “and”
8 at the end;

9 (B) in the first paragraph (29), by striking
10 the period and inserting a semicolon;

11 (C) in the second paragraph (29)—

12 (i) by striking “(29)” and inserting
13 “(30)”; and

14 (ii) by striking the period and insert-
15 ing “; and”; and

16 (D) by adding at the end the following:

17 “(31) ‘assistant United States attorney’
18 means—

19 “(A) an assistant United States attorney
20 under section 542 of title 28; and

21 “(B) any other attorney employed by the
22 Department of Justice occupying a position des-
23 ignated by the Attorney General upon finding
24 that the position—

25 “(i) involves routine employee respon-
26 sibilities that are substantially similar to

1 those of assistant United States attorneys;
 2 and
 3 “(ii) is critical to the Department’s
 4 successful accomplishment of an important
 5 mission.”.

6 (2) RETIREMENT TREATMENT.—Chapter 83 of
 7 title 5, United States Code, is amended by adding
 8 after section 8351 the following:

9 **“§ 8352. Assistant United States attorneys**

10 “Except as provided under the Assistant United
 11 States Attorneys Retirement Benefit Equity Act of 2005
 12 (including the provisions relating to the non-applicability
 13 of mandatory separation requirements under section
 14 8335(b) and 8425(b) of this title), an assistant United
 15 States attorney shall be treated in the same manner and
 16 to the same extent as a law enforcement officer for pur-
 17 poses of this chapter.”.

18 (3) TECHNICAL AND CONFORMING AMEND-
 19 MENTS.—(A) The table of sections for chapter 83 of
 20 title 5, United States Code, is amended by inserting
 21 after the item relating to section 8351 the following:

“8352. Assistant United States attorneys.”

22 (B) Section 8335(a) of such title is amended by
 23 striking “8331(29)(A)” and inserting
 24 “8331(30)(A)”.

25 (b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—

1 (1) ASSISTANT UNITED STATES ATTORNEY DE-
2 FINED.—Section 8401 of title 5, United States
3 Code, is amended—

4 (A) in paragraph (34), by striking “and”
5 at the end;

6 (B) in paragraph (35), by striking the pe-
7 riod and inserting “; and”; and

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

9 “(36) ‘assistant United States attorney’
10 means—

11 “(A) an assistant United States attorney
12 under section 542 of title 28; and

13 “(B) any other attorney employed by the
14 Department of Justice occupying a position des-
15 ignated by the Attorney General upon finding
16 that the position—

17 “(i) involves routine employee respon-
18 sibilities that are substantially similar to
19 those of assistant United States attorneys;
20 and

21 “(ii) is critical to the Department’s
22 successful accomplishment of an important
23 mission.”.

1 (2) RETIREMENT TREATMENT.—Section 8402
 2 of title 5, United States Code, is amended by adding
 3 at the end the following:

4 “(h) Except as provided under the Assistant United
 5 States Attorneys Retirement Benefit Equity Act of 2005
 6 (including the provisions relating to the non-applicability
 7 of mandatory separation requirements under section
 8 8335(b) and 8425(b) of this title), an assistant United
 9 States attorney shall be treated in the same manner and
 10 to the same extent as a law enforcement officer for pur-
 11 poses of this chapter.”.

12 (c) MANDATORY SEPARATION.—Sections 8335(b)
 13 and 8425(b) of title 5, United States Code, are amended
 14 by adding at the end the following: “The preceding provi-
 15 sions of this subsection shall not apply in the case of an
 16 assistant United States attorney as defined under section
 17 8331(31) or 8401(36).”.

18 (d) EFFECTIVE DATE.—The amendments made by
 19 this section shall take effect on the first day of the first
 20 applicable pay period beginning on or after 120 days after
 21 the date of enactment of this Act.

22 **SEC. 3. PROVISIONS RELATING TO INCUMBENTS.**

23 (a) DEFINITIONS.—In this section—

24 (1) the term “assistant United States attorney”
 25 means—

1 (A) an assistant United States attorney
2 under section 542 of title 28, United States
3 Code; and

4 (B) any other attorney employed by the
5 Department of Justice occupying a position des-
6 ignated by the Attorney General upon finding
7 that the position—

8 (i) involves routine employee respon-
9 sibilities that are substantially similar to
10 those of assistant United States attorneys;
11 and

12 (ii) is critical to the Department’s
13 successful accomplishment of an important
14 mission; and

15 (2) the term “incumbent” means an individual
16 who is serving as an assistant United States attor-
17 ney on the effective date of this section.

18 (b) DESIGNATED ATTORNEYS.—If the Attorney Gen-
19 eral makes any designation of an attorney to meet the def-
20 inition under subsection (a)(1)(B) for purposes of being
21 an incumbent under this section—

22 (1) such designation shall be made before the
23 effective date of this section; and

1 (2) the Attorney General shall submit to the
 2 Office of Personnel Management before that effec-
 3 tive date—

4 (A) the name of the individual designated;
 5 and

6 (B) the period of service performed by that
 7 individual as an assistant United States attor-
 8 ney before that effective date.

9 (c) NOTICE REQUIREMENT.—Not later than 9
 10 months after the date of enactment of this Act, the De-
 11 partment of Justice shall take measures reasonably de-
 12 signed to provide notice to incumbents on—

13 (1) their election rights under this Act; and

14 (2) the effects of making or not making a time-
 15 ly election under this Act.

16 (d) ELECTION AVAILABLE TO INCUMBENTS.—

17 (1) IN GENERAL.—An incumbent may elect, for
 18 all purposes, to be treated—

19 (A) in accordance with the amendments
 20 made by this Act; or

21 (B) as if this Act had never been enacted.

22 (2) FAILURE TO ELECT.—Failure to make a
 23 timely election under this subsection shall be treated
 24 in the same way as an election under paragraph

1 (1)(A), made on the last day allowable under para-
 2 graph (3).

3 (3) TIME LIMITATION.—An election under this
 4 subsection shall not be effective unless the election
 5 is made not later than the earlier of—

6 (A) 120 days after the date on which the
 7 notice under subsection (c) is provided; or

8 (B) the date on which the incumbent in-
 9 volved separates from service.

10 (e) LIMITED RETROACTIVE EFFECT.—

11 (1) EFFECT ON RETIREMENT.—In the case of
 12 an incumbent who elects (or is deemed to have elect-
 13 ed) the option under subsection (d)(1)(A), all service
 14 performed by that individual as an assistant United
 15 States attorney and, with respect to (B) below, in-
 16 cluding any service performed by such individual
 17 pursuant to an appointment under sections 515,
 18 541, 543, and 546 of title 28, United States Code,
 19 shall—

20 (A) to the extent performed on or after the
 21 effective date of that election, be treated in ac-
 22 cordance with applicable provisions of sub-
 23 chapter III of chapter 83 or chapter 84 of title
 24 5, United States Code, as amended by this Act;
 25 and

(B) to the extent performed before the effective date of that election, be treated in accordance with applicable provisions of subchapter III of chapter 83 or chapter 84 of such title, as if the amendments made by this Act had then been in effect.

(2) NO OTHER RETROACTIVE EFFECT.—Nothing in this Act (including the amendments made by this Act) shall affect any of the terms or conditions of an individual's employment (apart from those governed by subchapter III of chapter 83 or chapter 84 of title 5, United States Code) with respect to any period of service preceding the date on which such individual's election under subsection (d) is made (or is deemed to have been made).

(f) INDIVIDUAL CONTRIBUTIONS FOR PRIOR SERVICE.—

(1) IN GENERAL.—An individual who makes an election under subsection (d)(1)(A) shall, with respect to prior service performed by such individual, deposit, with interest, to the Civil Service Retirement and Disability Fund the difference between the individual contributions that were actually made for such service and the individual contributions that would have been made for such service if the amend-

1 ments made by section 2 of this Act had then been
2 in effect.

3 (2) EFFECT OF NOT CONTRIBUTING.—If the
4 deposit required under paragraph (1) is not paid, all
5 prior service of the incumbent shall remain fully
6 creditable as law enforcement officer service, but the
7 resulting annuity shall be reduced in a manner simi-
8 lar to that described in section 8334(d)(2)(B) of
9 title 5, United States Code. This paragraph shall not
10 apply in the case of a disability annuity.

11 (3) PRIOR SERVICE DEFINED.—For purposes of
12 this section, the term “prior service” means, with re-
13 spect to any individual who makes an election (or is
14 deemed to have made an election) under subsection
15 (d)(1)(A), all service performed as an assistant
16 United States attorney, but not exceeding 20 years,
17 performed by such individual before the date as of
18 which applicable retirement deductions begin to be
19 made in accordance with such election.

20 (g) REGULATIONS.—Except as provided under sec-
21 tion 4, the Office of Personnel Management shall prescribe
22 regulations necessary to carry out this Act, including pro-
23 visions under which any interest due on the amount de-
24 scribed under subsection (e) shall be determined.

1 (h) EFFECTIVE DATE.—This section shall take effect
2 120 days after the date of enactment of this Act.

3 **SEC. 4. DEPARTMENT OF JUSTICE ADMINISTRATIVE AC-**
4 **TIONS.**

5 (a) REGULATIONS.—

6 (1) IN GENERAL.—Not later than 120 days
7 after the date of enactment of this Act, the Attorney
8 General, in consultation with the Office of Personnel
9 Management, shall promulgate regulations for designating attorneys described under section 3(a)(1)(B).
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11 (2) CONTENTS.—Any regulation promulgated
12 under paragraph (1) shall ensure that attorneys designated as assistant United States attorneys described under section 3(a)(1)(B) have routine employee responsibilities that are substantially similar
13 to those of assistant United States attorneys.
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17 (b) DESIGNATIONS.—The designation of any attorney
18 as an assistant United States attorney described under
19 section 3(a)(1)(B) shall be at the discretion of the Attorney General.
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