

Calendar No. 1047110TH CONGRESS
2D SESSION**S. 3426**

To amend the Foreign Service Act of 1980 to extend comparability pay adjustments to members of the Foreign Service assigned to posts abroad, and to amend the provision relating to the death gratuity payable to surviving dependents of Foreign Service employees who die as a result of injuries sustained in the performance of duty abroad.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2008

Mr. KERRY (for himself, Mr. VOINOVICH, Mr. WHITEHOUSE, Mr. AKAKA, Mr. DURBIN, and Mr. HAGEL) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

SEPTEMBER 23 (legislative day, SEPTEMBER 17), 2008

Reported by Mr. DODD, without amendment

A BILL

To amend the Foreign Service Act of 1980 to extend comparability pay adjustments to members of the Foreign Service assigned to posts abroad, and to amend the provision relating to the death gratuity payable to surviving dependents of Foreign Service employees who die as a result of injuries sustained in the performance of duty abroad.

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 “Foreign Service Over-
3 seas Pay Equity Act of 2008”.

4 **SEC. 2. OVERSEAS COMPARABILITY PAY ADJUSTMENT.**

5 (a) OVERSEAS COMPARABILITY PAY ADJUSTMENT.—

6 (1) IN GENERAL.—Chapter 4 of the Foreign
7 Service Act of 1980 (22 U.S.C. 3961 et seq.) is
8 amended by adding at the end the following:

9 **“SEC. 415. OVERSEAS COMPARABILITY PAY ADJUSTMENT.**

10 “(a) IN GENERAL.—A member of the Service who is
11 designated class 1 or below for purposes of section 403
12 and whose official duty station is not in the continental
13 United States or in a nonforeign area shall receive, in ac-
14 cordance with the phase-in schedule set forth in subsection
15 (c), the same locality-based comparability payment under
16 section 5304 of title 5, United States Code (stated as a
17 percentage) as would be payable to such member if such
18 member’s official duty station were in the District of Co-
19 lumbia.

20 “(b) TREATMENT AS BASIC PAY.—The amount of
21 any locality-based comparability payment which is payable
22 to a member of the Service under this section—

23 “(1) shall be considered a part of the basic pay
24 of such member for the purposes described in—

25 “(A) section 5304(c)(2)(A) of title 5,
26 United States Code; and

1 “(B) chapter 8 of this Act; and

2 “(2) shall be subject to any limitations on pay
3 applicable to locality-based comparability payments
4 under section 5304 of such title.

5 “(c) PHASE-IN.—The locality-based comparability
6 payment payable to a member of the Service under this
7 section shall be equal to—

8 “(1) 33.33 percent of the payment which would
9 otherwise apply under subsection (a) during the pe-
10 riod beginning on the first day of the first pay pe-
11 riod beginning on or after the earlier of April 1,
12 2009, or the date on which appropriations for fiscal
13 year 2009 are made available pursuant to the enact-
14 ment of the Department of State, Foreign Oper-
15 ations, and Related Programs Appropriations Act,
16 2009, and ending on the last day of the last pay pe-
17 riod in fiscal year 2009;

18 “(2) 66.67 percent of the payment which would
19 otherwise apply under subsection (a) during the pe-
20 riod beginning on the first day of the first pay pe-
21 riod in fiscal year 2010 and ending on the last day
22 of the last pay period in fiscal year 2010; and

23 “(3) 100 percent of the payment determined
24 under subsection (a), beginning on the first day of
25 the first pay period in fiscal year 2011.

1 “(d) NONFOREIGN AREA DEFINED.—As used in this
 2 section, the term ‘nonforeign area’ means 1 of the areas
 3 listed in section 591.205 of title 5, Code of Federal Regu-
 4 lations.”.

5 (2) CONFORMING AMENDMENT.—The table of
 6 contents under section 2 of the Foreign Service Act
 7 of 1980 is amended by inserting after the item relat-
 8 ing to section 414 the following:

“Sec. 415. Overseas comparability pay adjustment.”.

9 (b) CONFORMING AMENDMENTS RELATING TO THE
 10 FOREIGN SERVICE RETIREMENT SYSTEMS.—

11 (1) CONTRIBUTIONS TO THE FUND.—

12 (A) IN GENERAL.—Section 805(a) of the
 13 Foreign Service Act of 1980 (22 U.S.C.
 14 4045(a)) is amended—

15 (i) in paragraph (1)—

16 (I) by striking “7.25 percent”
 17 and inserting “7 percent”; and

18 (II) by striking “The contribu-
 19 tion by the employing agency” and all
 20 that follows through “and shall be
 21 made” and inserting “An equal
 22 amount shall be contributed by the
 23 employing agency”;

24 (ii) in paragraph (2)—

1 (I) in subparagraph (A), by strik-
2 ing “, plus an amount equal to .25
3 percent of basic pay”; and

4 (II) in subparagraph (B), by
5 striking “, plus an amount equal to
6 .25 percent of basic pay”; and

7 (iii) in paragraph (3), by striking “,
8 plus .25 percent”.

9 (B) EFFECTIVE DATE.—The amendments
10 made by subparagraph (A) shall take effect on
11 the first day of the first pay period beginning
12 on or after October 1, 2010.

13 (2) COMPUTATION OF ANNUITIES.—Section
14 806(a)(9) of the Foreign Service Act of 1980 (22
15 U.S.C. 4046(a)(9)) is amended by striking “is out-
16 side the continental United States shall” and insert-
17 ing “was outside the continental United States dur-
18 ing the period beginning on December 29, 2002, and
19 ending on the day before the first day of the first
20 pay period beginning on or after October 1, 2010 (or
21 during any portion of such period) shall, to the ex-
22 tent that such computation is based on the basic sal-
23 ary or basic pay of such member for such period (or
24 portion of such period),”.

1 (3) ENTITLEMENT TO ANNUITY.—Section
 2 855(a)(3) of the Foreign Service Act of 1980 (22
 3 U.S.C. 4071d(a)(3)) is amended—

4 (A) by striking “section 8414” and insert-
 5 ing “section 8415”; and

6 (B) by striking “is outside the continental
 7 United States shall” and inserting “was outside
 8 the continental United States during the period
 9 beginning on December 29, 2002, and ending
 10 on the day before the first day of the first pay
 11 period beginning on or after October 1, 2010
 12 (or during any portion of such period) shall, to
 13 the extent that such computation is based on
 14 the basic salary or basic pay of such member
 15 for such period (or portion of such period),”.

16 (4) DEDUCTIONS AND WITHHOLDINGS FROM
 17 PAY.—Section 856(a)(2) of such Act (22 U.S.C.
 18 4071e(a)(2)) is amended to read as follows:

19 “(2) The applicable percentage under this sub-
 20 section shall be as follows:

“Percentage	Time Period
7.5	Before January 1, 1999.
7.75	January 1, 1999, to December 31, 1999.
7.9	January 1, 2000, to December 31, 2000.
7.55	January 11, 2003, to the day before the first day of the first pay period beginning on or after October 1, 2010.
7.5	Beginning on the first day of the first pay period begin- ning on or after October 1, 2010.”.

1 (c) REPORTING REQUIREMENT.—Not later than Oc-
 2 tober 1, 2010, the Secretary of State shall submit a report
 3 to the Committee on Foreign Relations of the Senate, the
 4 Committee on Homeland Security and Governmental Af-
 5 fairs of the Senate, the Committee on Foreign Affairs of
 6 the House of Representatives, and the Committee on
 7 Oversight and Government Reform of the House of Rep-
 8 resentatives that includes—

9 (1) an assessment of all allowances provided to
 10 members of the Foreign Service under the Foreign
 11 Service Act of 1980 or under title 5, United States
 12 Code; and

13 (2) an explanation of how such allowances have
 14 been or will be affected by the amendments to the
 15 Foreign Service Act of 1980 made under this Act.

16 **SEC. 3. DEATH GRATUITY.**

17 Section 413(a) of the Foreign Service Act of 1980
 18 (22 U.S.C. 3973(a)) is amended by striking “at the time
 19 of death” and inserting “at level II of the Executive
 20 Schedule under section 5313 of title 5, United States
 21 Code, at the time of death. If the deceased employee was
 22 compensated under a local compensation plan established
 23 under section 408, the amount of such gratuity shall be
 24 equal to the greater of 1 year’s salary at the time of death
 25 or 1 year’s salary at the highest step of the highest grade

- 1 on the local compensation plan from which the employee
- 2 was being paid at the time of death”.

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