

112TH CONGRESS
2D SESSION

H. R. 6092

To implement updated pay and personnel policies in order to improve the recruitment and retention of qualified Federal wildland firefighters and to reduce the Federal Government's reliance on the more costly services of non-Federal wildfire resources.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2012

Ms. DEGETTE introduced the following bill; which was referred to the
Committee on Oversight and Government Reform

A BILL

To implement updated pay and personnel policies in order to improve the recruitment and retention of qualified Federal wildland firefighters and to reduce the Federal Government's reliance on the more costly services of non-Federal wildfire resources.

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; TABLE OF CONTENTS.**

4 This Act may be cited as the “Wildland Firefighters
5 Health Protection Act”.

6 **SEC. 2. DEFINITIONS.**

7 For the purposes of this Act—

1 (1) the term “wildland firefighter” means an
2 employee of a Federal land management agency, the
3 duties of whose position are primarily to perform
4 work directly related to the prevention, control, sup-
5 pression, and management of wildfires, including—

6 (A) an employee of a Federal land man-
7 agement agency who is assigned to support
8 wildland fire suppression activities; and

9 (B) an employee who is transferred to a
10 supervisory or administrative position from a
11 position of wildland firefighter (as defined by
12 the preceding provisions of this paragraph);

13 (2) the term “Federal land management agen-
14 cy” means—

15 (A) within the Department of the Interior,
16 the Bureau of Land Management, the Bureau
17 of Indian Affairs, the National Park Service,
18 and the Fish and Wildlife Service; and

19 (B) within the Department of Agriculture,
20 the Forest Service; and

21 (3) the term “employee” has the meaning given
22 such term by section 2105 of title 5, United States
23 Code.

24 **SEC. 3. CLASSIFICATION OF WILDLAND FIREFIGHTERS.**

25 (a) REQUIREMENTS.—

1 (1) IN GENERAL.—Within 30 days after the
2 date of the enactment of this Act, the Office of Per-
3 sonnel Management, in cooperation with the Federal
4 land management agencies, shall commence develop-
5 ment of a separate and distinct wildland firefighter
6 occupational series that will more accurately reflect
7 the variety of duties performed by wildland fire-
8 fighters.

9 (2) DESIGNATION.—The official title assigned
10 to any occupational series established pursuant to
11 paragraph (1) shall include the designation of
12 “Wildland Firefighter”.

13 (3) POSITIONS DESCRIBED.—Paragraph (1) ap-
14 plies with respect to any class or other category of
15 positions that consists primarily or exclusively of for-
16 estry technician positions, range technician posi-
17 tions, or any other positions the duties and respon-
18 sibilities of which include—

19 (A) significant wildfire preparedness and
20 suppression activities; or

21 (B) activities necessary to meet any other
22 emergency incident to which assigned.

23 (4) CONSULTATION.—Congress encourages the
24 Office of Personnel Management to consult with rec-
25 ognized employee organizations, employee associa-

1 tions, and any other groups that represent Federal
 2 wildland firefighters in carrying out this subsection.

3 (b) HAZARDOUS DUTY DIFFERENTIAL NOT AF-
 4 FECTED.—Section 5545(d)(1) of title 5, United States
 5 Code, is amended by striking all after “except” and insert-
 6 ing an em dash and the following:

7 “(A) an employee in an occupational series
 8 covering positions for which the primary duties
 9 are wildland firefighting, as determined by the
 10 Office; and

11 “(B) in such other circumstances as the
 12 Office may by regulation prescribe; and”.

13 (c) EMPLOYEES CURRENTLY IN 401 SERIES.—Any
 14 individual who, as of the date of the enactment of this
 15 Act, holds a position of wildland firefighter shall have the
 16 option of either remaining in the 401 series (as in effect
 17 on such date under chapter 51 of title 5, United States
 18 Code) or being included in the new wildland firefighter se-
 19 ries, as established pursuant to subsection (a).

20 **SEC. 4. PAY AND BENEFITS.**

21 (a) IN GENERAL.—In the case of a wildland fire-
 22 fighter, for full-time, part-time, and intermittent tours of
 23 duty, hours of work officially ordered or approved in ex-
 24 cess of 40 hours per week or 8 hours per day shall be
 25 considered overtime work, inclusive of all time the fire-

1 fighter is away from their official duty station assigned
2 to an emergency incident, in support of an emergency inci-
3 dent, or pre-positioned for emergency response, and shall
4 be compensable as work time in accordance with section
5 5542(a) of title 5, United States Code, as amended by
6 subsection (b)(1).

7 (b) REQUIREMENTS.—

8 (1) AMENDMENT TO TITLE 5.—Section 5542(a)
9 of title 5, United States Code, is amended by adding
10 at the end (as a flush left sentence) the following:
11 “Notwithstanding paragraphs (1) and (2), for a wildland
12 firefighter assigned to an emergency incident, assigned in
13 support of an emergency incident, or pre-positioned for
14 emergency response, the overtime hourly rate of pay is an
15 amount equal to one and one-half times the hourly rate
16 of the basic pay of the employee, and that entire amount
17 is premium pay.”.

18 (2) FAIR LABOR STANDARDS ACT OF 1938.—For
19 the purpose of applying the provisions of the Fair
20 Labor Standards Act of 1938 (29 U.S.C. 201, et
21 seq.) with respect to wildland firefighters, no viola-
22 tion referred to in such provisions shall be consid-
23 ered to have occurred if the requirements described
24 in paragraph (1) are met.

1 (c) PORTAL-TO-PORTAL COMPENSATION PILOT PRO-
2 GRAM.—

3 (1) FUNDING.—There is authorized to be ap-
4 propriated \$25,000,000 to initiate a portal-to-portal
5 pilot program under this subsection, commencing
6 with the 2013 wildfire season. Any sums required in
7 addition to amounts appropriated pursuant to the
8 preceding sentence may be secured from the existing
9 wildfire suppression budget for the fiscal year in
10 which the season occurs.

11 (2) DURATION.—The pilot program shall be
12 carried out by the Department of the Interior and
13 the Department of Agriculture for a period not to
14 exceed 3 calendar years beginning as of the start of
15 the 2013 wildfire season.

16 (3) REPORT.—No later than 90 days after the
17 completion of the pilot program, the Secretary of the
18 Interior and the Secretary of Agriculture shall sub-
19 mit to Congress a joint report on the effectiveness
20 of the pilot program. Such report shall address the
21 effect of the program with respect to—

22 (A) recruitment and retention of wildland
23 firefighters; and

24 (B) any cost savings.

1 (4) ADDITIONAL REQUIREMENTS.—To ensure
2 adequate funding and to realize maximum wildfire
3 suppression savings, the Secretary of the Interior
4 and the Secretary of Agriculture shall take appro-
5 priate measures to ensure that total funding for
6 non-Federal fire suppression personnel and other re-
7 sources, by their respective Departments—

8 (A) for the first year of the pilot program,
9 do not exceed 90 percent of their combined non-
10 Federal fire suppression costs for the 2011 and
11 2012 wildfire seasons;

12 (B) for the second year of the pilot pro-
13 gram, do not exceed 75 percent of their com-
14 bined non-Federal fire suppression costs for the
15 2011 and 2012 wildfire seasons; and

16 (C) for the third year of the pilot program,
17 do not exceed 65 percent of their combined non-
18 Federal fire suppression costs for the 2011 and
19 2012 wildfire seasons.

20 (d) HAZARDOUS DUTY DIFFERENTIAL TO BE
21 TREATED AS PART OF A WILDLAND FIREFIGHTER'S
22 BASE PAY FOR RETIREMENT PURPOSES.—

23 (1) IN GENERAL.—Section 8331(3) of title 5,
24 United States Code is amended—

1 (A) in subparagraph (G), by striking
2 “and” at the end;

3 (B) in subparagraph (H), by inserting
4 “and” at the end; and

5 (C) by adding after subparagraph (H) the
6 following:

7 “(I) with respect to a wildland firefighter
8 (as defined by section 2 of the Wildland Fire-
9 fighters Health Protection Act), any pay dif-
10 ferential received under section 5545(d);”.

11 (2) CONFORMING AMENDMENT.—Such section
12 8331(3) is further amended, in the matter following
13 subparagraph (I) (as added by paragraph (1)(C)),
14 by striking “subparagraphs (B) through (H) of this
15 paragraph” and inserting “subparagraphs (B)
16 through (I),”.

17 (e) HAZARDOUS DUTY DIFFERENTIAL.—

18 (1) IN GENERAL.—In the administration of sec-
19 tion 5545(d) of title 5, United States Code, the Of-
20 fice of Personnel Management shall take such meas-
21 ures as may be necessary to ensure that, under the
22 schedule or schedules of pay differentials for duty
23 involving unusual physical hardship or hazard, a pay
24 differential of 25 percent shall be payable to an indi-

vidual while serving as a member of a wildland firefighting crew.

(2) DEFINITION.—For purposes of this subsection, the term “wildland firefighting crew” includes ground (hand crew, hotshot, engine, and other fire apparatus personnel) and airborne (smoke jumper or helitack) firefighting personnel on the fire line of any wildfire or prescribed fuel treatment burn or fire, as further defined in regulations of the Office of Personnel Management.

(f) BENEFITS FOR SEASONAL WILDLAND FIREFIGHTERS.—

(1) PROVISIONS RELATING TO LIFE INSURANCE.—Section 8716(b) of title 5, United States Code, is amended—

(A) in paragraph (2), by striking “or” at the end;

(B) in paragraph (3), by striking the period at the end and inserting “; or”; and

(C) by adding after paragraph (3) the following:

“(4) a wildland firefighter within the meaning of section 2 of the Wildland Firefighters Health Protection Act.”.

1 (2) PROVISIONS RELATING TO HEALTH BENE-
2 FITS.—Section 8913(b) of title 5, United States
3 Code, is amended—

4 (A) in paragraph (3), by striking “or” at
5 the end;

6 (B) in paragraph (4), by striking the pe-
7 riod at the end and inserting “; or”; and

8 (C) by adding after paragraph (4) the fol-
9 lowing:

10 “(5) a wildland firefighter within the meaning
11 of section 2 of the Wildland Firefighters Health Pro-
12 tection Act.”.

13 (g) BUY BACK OF CIVILIAN TIME AFTER 1989.—

14 (1) IN GENERAL.—Any individual who is sub-
15 ject to the Federal Employees’ Retirement System
16 as a firefighter (within the meaning of section 8401
17 of title 5, United States Code) on the date of the en-
18 actment of this Act shall be entitled to have any
19 qualifying firefighter service treated as creditable
20 service under section 8411 of such title.

21 (2) QUALIFYING FIREFIGHTER SERVICE.—For
22 purposes of this subsection, the term “qualifying
23 firefighter service” means, in connection with an in-
24 dividual, any service—

1 (A) which was performed by such indi-
2 vidual, as a wildland firefighter, after 1989 and
3 before the date of the enactment of this Act;
4 and

5 (B) for which such individual was not al-
6 lowed to receive retirement credit by reason of
7 section 8347(g) or 8402(c) of such title 5.

8 (3) DEPOSIT REQUIREMENT.—Credit for a pe-
9 riod of service may not be given under this sub-
10 section unless the individual involved makes a de-
11 posit, in such manner as the Office of Personnel
12 Management may by regulation require, equal to the
13 employee contributions that would have been re-
14 quired (in the case of a firefighter) for such period
15 under section 8334(c) or 8422(a) of such title 5,
16 with interest.

17 (4) CERTIFICATION.—The Office of Personnel
18 Management shall accept the certification of the
19 Secretary of the Interior or the Secretary of Agri-
20 culture, as the case may be, concerning whether an
21 individual performed qualifying firefighter service
22 and the length of the period of such service the indi-
23 vidual performed.

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