

113TH CONGRESS
1ST SESSION

H. R. 2858

To implement reforms to the Federal land management agency fire programs in order to address the complexities of 21st century wildfires in a more cost-effective and efficient manner.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2013

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

A BILL

To implement reforms to the Federal land management agency fire programs in order to address the complexities of 21st century wildfires in a more cost-effective and efficient manner.

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 “Wildland Firefighters
5 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) PORTAL-TO-PORTAL COMPENSATION PILOT PRO-
 22 GRAM.—

23 (1) IN GENERAL.—In the case of a wildland
 24 firefighter, for full-time, part-time, and intermittent
 25 tours of duty, hours of work officially ordered or ap-

1 proved in excess of 40 hours per week or 8 hours
2 per day shall be considered overtime work, inclusive
3 of all time the firefighter is away from their official
4 duty station assigned to an emergency incident, in
5 support of an emergency incident (including
6 wildfires, hurricanes, and other natural disasters to
7 which employees are assigned) in support of an
8 emergency incident, or pre-positioned for emergency
9 response, and shall be compensable as work time in
10 accordance with section 5542(a) of title 5, United
11 States Code, as amended by paragraph (2)(A). The
12 provisions of this subsection and the amendments
13 made by this subsection comprise the portal-to-portal
14 compensation pilot program.

15 (2) REQUIREMENTS.—

16 (A) AMENDMENT TO TITLE 5.—Section
17 5542(a) of title 5, United States Code, is
18 amended by adding at the end (as a flush left
19 sentence) the following:

20 “Notwithstanding paragraphs (1) and (2), and only for
21 the duration of the portal-to-portal compensation program
22 under section 4 of the Wildland Firefighters Protection
23 Act, for a wildland firefighter assigned to an emergency
24 incident, assigned in support of an emergency incident, or
25 pre-positioned for emergency response, the overtime hour-

1 ly rate of pay is an amount equal to one and one-half times
2 the hourly rate of the basic pay of the employee, and that
3 entire amount is premium pay.”.

4 (B) FAIR LABOR STANDARDS ACT OF
5 1938.—For the purpose of applying the provi-
6 sions of the Fair Labor Standards Act of 1938
7 (29 U.S.C. 201 and following) with respect to
8 wildland firefighters, no violation referred to in
9 such provisions shall be considered to have oc-
10 curred if the requirements described in the
11 amendment made by subparagraph (A) are met.

12 (C) DURATION AND SCOPE OF PILOT PRO-
13 GRAM.—The pilot program shall be carried out
14 by the Department of the Interior and the De-
15 partment of Agriculture—

16 (i) for a period not to exceed 3 cal-
17 endar years beginning as of the start of
18 the 2014 wildfire season; and

19 (ii) with respect to wildland fire-
20 fighters holding positions within such geo-
21 graphic areas as the Secretary of Agri-
22 culture shall, in consultation with the Sec-
23 retary of the Interior, determine.

24 (D) FUNDING.—Notwithstanding any
25 other provision of law, there shall be made

1 available from the FLAME Wildfire Suppres-
2 sion Reserve Funds, established by section
3 502(b) of the FLAME Act of 2009 (43 U.S.C.
4 1748a(b)), an amount—

5 (i) sufficient to carry out the portal-
6 to-portal compensation pilot program; but

7 (ii) only to the extent that—

8 (I) in the case of the 2014 wild-
9 fire season and any subsequent wild-
10 fire season during which the pilot pro-
11 gram is in effect, such amount ex-
12 ceeds

13 (II) the average corresponding
14 expenses which were paid, with re-
15 spect to wildland firefighters holding
16 positions within the geographic area
17 or areas covered by the program (as
18 specified under subparagraph (C)(ii))
19 for the 2012 and 2013 wildfire sea-
20 sons.

21 (E) REPORT.—No later than 90 days after
22 the completion of the pilot program, the Sec-
23 retary of the Interior and the Secretary of Agri-
24 culture shall submit to Congress a joint report
25 on the effectiveness of the pilot program. Such

1 report shall address the effect of the program
2 with respect to—

3 (i) recruitment and retention of
4 wildland firefighters; and

5 (ii) any cost savings.

6 (F) EXEMPTION.—Employees compensated
7 under the pilot program shall, for the period of
8 such program, be exempt from any limitation
9 on premium pay under section 5547 of title 5,
10 United States Code.

11 (b) HAZARDOUS DUTY DIFFERENTIAL TO BE
12 TREATED AS PART OF A WILDLAND FIREFIGHTER’S
13 BASE PAY FOR RETIREMENT PURPOSES.—

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

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

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

20 (C) by adding after subparagraph (H) the
21 following:

22 “(I) with respect to a wildland firefighter
23 (as defined by section 2 of the Wildland Fire-
24 fighters Protection Act), any pay differential re-
25 ceived under section 5545(d);”.

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

7 (c) HAZARDOUS DUTY DIFFERENTIAL.—

8 (1) IN GENERAL.—In the administration of sec-
9 tion 5545(d) of title 5, United States Code, the Of-
10 fice of Personnel Management shall take such meas-
11 ures as may be necessary to ensure that, under the
12 schedule or schedules of pay differentials for duty
13 involving unusual physical hardship or hazard, a pay
14 differential of 25 percent shall be payable to an indi-
15 vidual while serving as a member of a wildland fire-
16 fighting crew.

17 (2) DEFINITION.—For purposes of this sub-
18 section, the term “wildland firefighting crew” in-
19 cludes ground (hand crew, hotshot, engine, and
20 other fire apparatus personnel) and airborne (smoke
21 jumper or helitack) firefighting personnel on the fire
22 line of any wildfire or prescribed fuel treatment burn
23 or fire, as further defined in regulations of the Of-
24 fice of Personnel Management.

25 (d) BUY BACK OF CIVILIAN TIME AFTER 1989.—

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

8 (2) QUALIFYING FIREFIGHTER SERVICE.—For
9 purposes of this subsection, the term “qualifying
10 firefighter service” means, in connection with an in-
11 dividual, any service—

12 (A) which was performed by such indi-
13 vidual, as a wildland firefighter, after 1989 and
14 before the date of the enactment of this Act;
15 and

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

19 (3) DEPOSIT REQUIREMENT.—Credit for a pe-
20 riod of service may not be given under this sub-
21 section unless the individual involved makes a de-
22 posit, in such manner as the Office of Personnel
23 Management may by regulation require, equal to the
24 employee contributions that would have been re-
25 quired (in the case of a firefighter) for such period

1 under section 8334(c) or 8422(a) of such title 5,
2 with interest.

3 (4) CERTIFICATION.—The Office of Personnel
4 Management shall accept the certification of the
5 Secretary of the Interior or the Secretary of Agri-
6 culture, as the case may be, concerning whether an
7 individual performed qualifying firefighter service
8 and the length of the period of such service the indi-
9 vidual performed.

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