

Public Law 96-135
96th Congress

An Act

Dec. 5, 1979

[H.R. 1885]

Indians.
Civil service
retirement
provisions.

To amend Civil Service retirement provisions as they apply to certain employees of the Bureau of Indian Affairs and of the Indian Health Service who are not entitled to Indian employment preference and to modify the application of the Indian employment preference laws as it applies to those agencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 8336 of title 5, United States Code, is amended by redesignating subsection (j) as subsection (k) and inserting after subsection (i) the following new subsection:

“(j)(1) Except as provided in paragraph (3), an employee is entitled to an annuity if he—

“(A)(i) is separated from the service after completing 25 years of service or after becoming 50 years of age and completing 20 years of service, or

“(ii) is involuntarily separated, except by removal for cause on charges of misconduct or delinquency, during the 2-year period before the date on which he would meet the years of service and age requirements under clause (i),

“(B) was employed in the Bureau of Indian Affairs, the Indian Health Service, a tribal organization (to the extent provided in paragraph (2)), or any combination thereof, continuously from December 21, 1972, to the date of his separation, and

“(C) is not entitled to preference under the Indian preference laws.

“(2) Employment in a tribal organization may be considered for purposes of paragraph (1)(B) of this subsection only if—

“(A) the employee was employed by the tribal organization after January 4, 1975, and immediately before such employment he was an employee of the Bureau of Indian Affairs or the Indian Health Service, and

“(B) at the time of such employment such employee and the tribal organization were eligible to elect, and elected, to have the employee retain the coverage, rights, and benefits of this chapter under section 105(e)(2) of the Indian Self-Determination Act (25 U.S.C. 450i(a)(2); 88 Stat. 2209).

“(3)(A) The provisions of paragraph (1) of this subsection shall not apply with respect to any separation of any employee which occurs after the date 5 years after—

“(i) the date the employee first meets the years of service and age requirements of paragraph (1)(A)(i), or

“(ii) the date of the enactment of this paragraph, if the employee met those requirements before that date.

“(B) For purposes of applying this paragraph with respect to any employee of the Bureau of Indian Affairs in the Department of the Interior or of the Indian Health Service in the Department of Health, Education, and Welfare, the Secretary of the department involved may postpone the date otherwise applicable under subparagraph (A) if—

"(i) such employee consents to such postponement, and

"(ii) the Secretary finds that such postponement is necessary for the continued effective operation of the agency.

The period of any postponement under this subparagraph shall not exceed 12 months and the total period of all postponements with respect to any employee shall not exceed 5 years.

"(4) For the purpose of this subsection—

"(A) 'Bureau of Indian Affairs' means (i) the Bureau of Indian Affairs and (ii) all other organizational units in the Department of the Interior directly and primarily related to providing services to Indians and in which positions are filled in accordance with the Indian preference laws.

"Bureau of Indian Affairs."

"(B) 'Indian preference laws' means section 12 of the Act of June 18, 1934 (25 U.S.C. 472; 48 Stat. 986), or any other provision of law granting a preference to Indians in promotions or other Federal personnel actions."

"Indian preference laws."

(b) Section 8339(d) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) The annuity of an employee retiring under section 8336(j) of this title is computed under subsection (a) of this section, except that with respect to service on or after December 21, 1972, the employee's annuity is—

5 USC 8336.

"(A) 2½ percent of the employee's average pay multiplied by so much of the employee's service on or after that date as does not exceed 20 years; plus

"(B) 2 percent of the employee's average pay multiplied by so much of the employee's service on or after that date as exceeds 20 years."

(c) The first sentence of section 8339(h) of title 5, United States Code, is amended—

(1) by inserting "(d)(5)," after "(b),"; and

(2) by striking out "or (h)" and inserting in lieu thereof ", (h), or (j)".

(d) The amendments made by this section shall take effect on the date of the enactment of this Act.

Effective date.
5 USC 8336 note.

SEC. 2. (a) For purposes of applying reduction-in-force procedures under subsection (a) of section 3502 of title 5, United States Code, with respect to positions within the Bureau of Indian Affairs and the Indian Health Service, the competitive and excepted service retention registers shall be combined, and any employee entitled to Indian preference who is within a retention category established under regulations prescribed under such subsection to provide due effect to military preference shall be entitled to be retained in preference to other employees not entitled to Indian preference who are within such retention category.

Reductions in force.
25 USC 472a.

(b)(1) The Indian preference laws shall not apply in the case of any reassignment within the Bureau of Indian Affairs or within the Indian Health Service (other than to a position in a higher grade) of an employee not entitled to Indian preference if it is determined that under the circumstances such reassignment is necessary—

Reassignment.

(A) to assure the health or safety of the employee or of any member of the employee's household;

(B) in the course of a reduction in force; or

(C) because the employee's working relationship with a tribe has so deteriorated that the employee cannot provide effective service for such tribe or the Federal Government.

(2) The authority to make any determination under subparagraph (A), (B), or (C) of paragraph (1) is vested in the Secretary of the Interior with respect to the Bureau of Indian Affairs and the Secretary of Health, Education, and Welfare with respect to the Indian Health Service, and, notwithstanding any other provision of law, the Secretary involved may not delegate such authority to any individual other than an Under Secretary or Assistant Secretary of the respective department.

Waiver.

(c)(1) Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action respecting an employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action.

(2) The provisions of section 8336(j) of title 5, United States Code (as added by the preceding section of this Act), shall not apply to any individual who has accepted a waiver with respect to a personnel action pursuant to paragraph (1) of this subsection or to section 1131(f) of the Education Amendments of 1978 (25 U.S.C. 2011(f); 92 Stat. 2324).

Reports to Congress.

(d) The Secretaries of the Interior and Health, Education, and Welfare shall each submit to the Congress a report following the close of each fiscal year with respect to the actions which they took in such fiscal year to recruit and train Indians to qualify such Indians for positions which are subject to preference under the Indian preference laws. Such report shall also include information as to the grade levels and occupational classifications of Indian and non-Indian employees in the Bureau of Indian Affairs and the Indian Health Service.

Office of Personnel Management, placement assistance.

(e)(1) The Office of Personnel Management shall provide all appropriate assistance to the Bureau of Indian Affairs and the Indian Health Service in placing non-Indian employees of such agencies in other Federal positions. All other Federal agencies shall cooperate to the fullest extent possible in such placement efforts.

Reports to Congress.

(2) The Secretaries of the Interior and Health, Education, and Welfare, and the Director of the Office of Personnel Management shall each submit a report to Congress following the close of each fiscal year with respect to the actions which they took in such fiscal year to place non-Indian employees of the Bureau of Indian Affairs and the Indian Health Service in other Federal positions.

Definitions.

(f) For purposes of this section—

(1) The term "tribal organization" means—

(A) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c); 85 Stat. 688)); or

(B) in connection with any personnel action referred to in subsection (c)(1) of this section, any legally established organization of Indians which is controlled, sanctioned, or chartered by a governing body referred to in subparagraph (A) of this paragraph and which has been delegated by such governing body the authority to grant a waiver under such subsection with respect to such personnel action.

(2) The term "Indian preference laws" means section 12 of the Act of June 18, 1934 (25 U.S.C. 472; 48 Stat. 986) or any other provision of law granting a preference to Indians in promotions and other personnel actions.

(3) The term "Bureau of Indian Affairs" means (A) the Bureau of Indian Affairs and (B) all other organizational units in the Department of the Interior directly and primarily related to providing services to Indians and in which positions are filled in accordance with the Indian preference laws.

Approved December 5, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORT NO. 96-370, Pt. 1 (Comm. on Post Office and Civil Service) and Pt. 2 (Comm. on Appropriations).
CONGRESSIONAL RECORD, Vol. 125 (1979):
Oct. 26, considered and passed House.
Nov. 26, considered and passed Senate.