

115TH CONGRESS  
1ST SESSION

# S. 29

To permit disabled law enforcement officers, customs and border protection officers, firefighters, air traffic controllers, nuclear materials couriers, members of the Capitol Police, members of the Supreme Court Police, employees of the Central Intelligence Agency performing intelligence activities abroad or having specialized security requirements, and diplomatic security special agents of the Department of State to receive retirement benefits in the same manner as if they had not been disabled.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2017

Mr. TESTER (for himself and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To permit disabled law enforcement officers, customs and border protection officers, firefighters, air traffic controllers, nuclear materials couriers, members of the Capitol Police, members of the Supreme Court Police, employees of the Central Intelligence Agency performing intelligence activities abroad or having specialized security requirements, and diplomatic security special agents of the Department of State to receive retirement benefits in the same manner as if they had not been disabled.

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 “Fair Return for Em-  
3 ployees on Their Initial Retirement Earned Act of 2017”  
4 or the “Fair RETIRE Act”.

5 **SEC. 2. SENSE OF CONGRESS.**

6       It is the sense of Congress that—

7           (1) it is in the best national and homeland se-  
8 curity interests of the United States for Federal  
9 agencies to retain the specialized knowledge and ex-  
10 perience of individuals who suffer an injury or illness  
11 while serving in a covered position (as defined under  
12 the amendments made by this Act); and

13           (2) in developing regulations to carry out this  
14 Act and the amendments made by this Act, the Di-  
15 rector of the Office of Personnel Management and  
16 the Secretary of Labor should ensure, to the great-  
17 est extent possible, that the reappointment of an in-  
18 dividual to a position in the civil service that is not  
19 a covered position is with the same Federal agency,  
20 in the same geographic location, and at a level of  
21 pay commensurate to the position which the indi-  
22 vidual held immediately prior to such injury or ill-  
23 ness.

24 **SEC. 3. RETIREMENT FOR CERTAIN EMPLOYEES.**

25       (a) CSRS.—Section 8336(c) of title 5, United States  
26 Code, is amended by adding at the end the following:

1 “(3)(A) In this paragraph—

2 “(i) the term ‘covered individual’ means an in-  
3 dividual covered under this subchapter who—

4 “(I) is performing service in a covered po-  
5 sition;

6 “(II) has performed not less than 3 years  
7 of creditable service in a covered position;

8 “(III) while in the performance of the du-  
9 ties of the individual, becomes ill or is injured  
10 before the date on which the individual becomes  
11 entitled to an annuity under paragraph (1) of  
12 this subsection or subsection (e), (m), or (n), as  
13 applicable;

14 “(IV) because of the illness or injury de-  
15 scribed in subclause (III), is permanently un-  
16 able to continue service in a covered position,  
17 determined in accordance with regulations pro-  
18 mulgated by the Director of the Office of Per-  
19 sonnel Management, in consultation with the  
20 Secretary of Labor; and

21 “(V) is appointed to a position in the civil  
22 service that is not a covered position; and

23 “(ii) the term ‘covered position’ means a posi-  
24 tion as a law enforcement officer, customs and bor-  
25 der protection officer, firefighter, air traffic con-

1 troller, nuclear materials courier, member of the  
2 Capitol Police, member of the Supreme Court Police,  
3 an employee of the Central Intelligence Agency des-  
4 ignated under section 302(a) of the Central Intel-  
5 ligence Agency Retirement Act (50 U.S.C. 2152(a)),  
6 or special agent described in section 804(15) of the  
7 Foreign Service Act of 1980 (22 U.S.C. 4044(15)).

8 “(B) Unless a covered individual files an election de-  
9 scribed in subparagraph (C), creditable service by the cov-  
10 ered individual in a position described in subparagraph  
11 (A)(i)(V) shall be treated as creditable service in a covered  
12 position for purposes of this chapter, including eligibility  
13 for an annuity under paragraph (1) of this subsection or  
14 subsection (e), (m), or (n), as applicable, and determining  
15 the amount to be deducted and withheld from the pay of  
16 the covered individual under section 8334.

17 “(C) In accordance with procedures established by  
18 the Director of the Office of Personnel Management, a  
19 covered individual may file an election to have any cred-  
20 itable service performed by the covered individual treated  
21 in accordance with this chapter, without regard to sub-  
22 paragraph (B).

23 “(D) If a covered individual who has not filed an elec-  
24 tion described in subparagraph (C) separates from service  
25 before the date on which the covered individual becomes

1 entitled to an annuity under paragraph (1) of this sub-  
 2 section or subsection (e), (m), or (n), as applicable, the  
 3 covered individual shall be entitled to a lump sum payment  
 4 from the Fund of the difference between—

5 “(i) the amount that was deducted and withheld  
 6 from the pay of the covered individual; and

7 “(ii) the amount that would have been deducted  
 8 and withheld from the pay of the covered individual  
 9 if the covered individual had made an election de-  
 10 scribed in subparagraph (C).”.

11 (b) FERS.—

12 (1) IN GENERAL.—Section 8412(d) of title 5,  
 13 United States Code, is amended—

14 (A) by redesignating paragraphs (1) and  
 15 (2) as subparagraphs (A) and (B), respectively;

16 (B) by inserting “(1)” before “An em-  
 17 ployee”; and

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

19 “(2)(A) In this paragraph—

20 “(i) the term ‘covered individual’ means an in-  
 21 dividual covered under this chapter who—

22 “(I) is performing service in a covered po-  
 23 sition;

24 “(II) has performed not less than 3 years  
 25 of creditable service in a covered position;

1           “(III) while in the performance of the du-  
 2           ties of the individual, becomes ill or is injured  
 3           before the date on which the individual becomes  
 4           entitled to an annuity under paragraph (1) of  
 5           this subsection or subsection (e), as applicable;

6           “(IV) because of the illness or injury de-  
 7           scribed in subclause (III), is permanently un-  
 8           able to continue service in a covered position,  
 9           determined in accordance with regulations pro-  
 10          mulgated by the Director of the Office of Per-  
 11          sonnel Management, in consultation with the  
 12          Secretary of Labor; and

13          “(V) is appointed to a position in the civil  
 14          service that is not a covered position; and

15          “(ii) the term ‘covered position’ means a posi-  
 16          tion as a law enforcement officer, customs and bor-  
 17          der protection officer, firefighter, air traffic con-  
 18          troller, nuclear materials courier, member of the  
 19          Capitol Police, member of the Supreme Court Police,  
 20          an employee of the Central Intelligence Agency des-  
 21          ignated under section 302(a) of the Central Intel-  
 22          ligence Agency Retirement Act (50 U.S.C. 2152(a)),  
 23          or special agent described in section 804(15) of the  
 24          Foreign Service Act of 1980 (22 U.S.C. 4044(15)).

1       “(B) Unless a covered individual files an election de-  
 2       scribed in subparagraph (C), creditable service by the cov-  
 3       ered individual in a position described in subparagraph  
 4       (A)(i)(V) shall be treated as creditable service in a covered  
 5       position for purposes of this chapter, including eligibility  
 6       for an annuity under paragraph (1) of this subsection or  
 7       subsection (e), as applicable, and determining the amount  
 8       to be deducted and withheld from the pay of the covered  
 9       individual under section 8422.

10       “(C) In accordance with procedures established by  
 11       the Director of the Office of Personnel Management, a  
 12       covered individual may file an election to have any cred-  
 13       itable service performed by the covered individual treated  
 14       in accordance with this chapter, without regard to sub-  
 15       paragraph (B).

16       “(D) If a covered individual who has not filed an elec-  
 17       tion described in subparagraph (C) separates from service  
 18       before the date on which the covered individual becomes  
 19       entitled to an annuity under paragraph (1) of this sub-  
 20       section or subsection (e), as applicable, the covered indi-  
 21       vidual shall be entitled to a lump sum payment from the  
 22       Fund of the difference between—

23               “(i) the amount that was deducted and withheld  
 24       from the pay of the covered individual; and

“(ii) the amount that would have been deducted and withheld from the pay of the covered individual if the covered individual had made an election described in subparagraph (C).”.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Chapter 84 of title 5, United States Code, is amended—

(i) in section 8414(b)(3), by inserting “(1)” after “subsection (d)”;

(ii) in section 8415—

(I) in subsection (e), in the matter preceding paragraph (1), by inserting “(1)” after “subsection (d)”;

and

(II) in subsection (h)(2)(A), by striking “(d)(2)” and inserting “(d)(1)(B)”;

(iii) in section 8421(a)(1), by inserting “(1)” after “(d)”;

(iv) in section 8421a(b)(4)(B)(ii), by inserting “(1)” after “section 8412(d)”;

(v) in section 8425, by inserting “(1)” after “section 8412(d)” each place it appears; and

1 (vi) in section 8462(c)(3)(B)(ii), by  
 2 inserting “(1)” after “subsection (d)”.

3 (B) Title VIII of the Foreign Service Act  
 4 of 1980 (22 U.S.C. 4041 et seq.) is amended—

5 (i) in section 805(d)(5) (22 U.S.C.  
 6 4045(d)(5)), by inserting “(1)” after “or  
 7 8412(d)”; and

8 (ii) in section 812(a)(2)(B) (22  
 9 U.S.C. 4052(a)(2)(B)), by inserting “(1)”  
 10 after “or 8412(d)”.

11 (c) CIA EMPLOYEES.—Section 302 of the Central In-  
 12 telligence Agency Retirement Act (50 U.S.C. 2152) is  
 13 amended by adding at the end the following:

14 “(d) EMPLOYEES DISABLED ON DUTY.—

15 “(1) DEFINITIONS.—In this subsection—

16 “(A) the term ‘covered employee’ means an  
 17 employee of the Agency covered under sub-  
 18 chapter II of chapter 84 of title 5, United  
 19 States Code, who—

20 “(i) is performing service in a position  
 21 designated under subsection (a);

22 “(ii) has performed not less than 3  
 23 years of creditable service in a covered po-  
 24 sition;

1           “(iii) while in the performance of the  
 2           duties of the employee in the position des-  
 3           ignated under subsection (a), becomes ill  
 4           or is injured before the date on which the  
 5           employee becomes entitled to an annuity  
 6           under section 233 of this Act or section  
 7           8412(d)(1) of title 5, United States Code;

8           “(iv) because of the illness or injury  
 9           described in clause (iii), is permanently un-  
 10          able to continue service in a covered posi-  
 11          tion, determined in accordance with regula-  
 12          tions promulgated by the Director of the  
 13          Office of Personnel Management, in con-  
 14          sultation with the Secretary of Labor; and

15          “(v) is appointed to a position in the  
 16          civil service that is not a covered position;  
 17          and

18          “(B) the term ‘covered position’ means a  
 19          position as—

20               “(i) a law enforcement officer de-  
 21               scribed in section 8331(20) or 8401(17) of  
 22               title 5, United States Code;

23               “(ii) a customs and border protection  
 24               officer described in section 8331(31) or  
 25               8401(36) of title 5, United States Code;

1 “(iii) a firefighter described in section  
2 8331(21) or 8401(14) of title 5, United  
3 States Code;

4 “(iv) an air traffic controller described  
5 in section 8331(30) or 8401(35) of title 5,  
6 United States Code;

7 “(v) a nuclear materials courier de-  
8 scribed in section 8331(27) or 8401(33) of  
9 title 5, United States Code;

10 “(vi) a member of the United States  
11 Capitol Police;

12 “(vii) a member of the Supreme Court  
13 Police;

14 “(viii) a covered employee; or

15 “(ix) a special agent described in sec-  
16 tion 804(15) of the Foreign Service Act of  
17 1980 (22 U.S.C. 4044(15)).

18 “(2) TREATMENT OF SERVICE AFTER DIS-  
19 ABILITY.—Unless a covered employee files an elec-  
20 tion described in paragraph (3), creditable service by  
21 the covered employee in a position described in para-  
22 graph (1)(A)(v) shall be treated as creditable service  
23 in a covered position for purposes of this Act and  
24 chapter 84 of title 5, United States Code, including  
25 eligibility for an annuity under section 233 of this

1 Act or 8412(d)(1) of title 5, United States Code,  
 2 and determining the amount to be deducted and  
 3 withheld from the pay of the covered employee under  
 4 section 8422 of title 5, United States Code.

5 “(3) OPT OUT.—In accordance with procedures  
 6 established by the Director of the Office of Per-  
 7 sonnel Management, a covered employee may file an  
 8 election to have any creditable service performed by  
 9 the covered employee treated in accordance with  
 10 chapter 84 of title 5, United States Code, without  
 11 regard to paragraph (2).

12 “(4) SEPARATION BEFORE RETIREMENT ELIGI-  
 13 BILITY.—If a covered employee who has not filed an  
 14 election described in paragraph (3) separates from  
 15 service before the date on which the covered em-  
 16 ployee becomes entitled to an annuity under section  
 17 233 of this Act or 8412(d)(1) of title 5, United  
 18 States Code, the covered employee shall be entitled  
 19 to a lump sum payment from the Fund of the dif-  
 20 ference between—

21 “(A) the amount that was deducted and  
 22 withheld from the pay of the covered employee;  
 23 and

24 “(B) the amount that would have been de-  
 25 ducted and withheld from the pay of the cov-

1           ered employee if the covered employee had  
2           made an election described in paragraph (3).”.

3           (d) FOREIGN SERVICE RETIREMENT AND DIS-  
4 ABILITY SYSTEM.—Section 806(a)(6) of the Foreign Serv-  
5 ice Act of 1980 (22 U.S.C. 4046(a)(6)) is amended by  
6 adding at the end the following:

7           “(D)(i) In this subparagraph—

8           “(I) the term ‘covered special agent’ means an  
9 individual covered under this subchapter who—

10           “(aa) is performing service as a special  
11 agent;

12           “(bb) has performed not less than 3 years  
13 of creditable service in a covered position;

14           “(cc) while in the performance of the du-  
15 ties of the individual as a special agent, be-  
16 comes ill or is injured before the date on which  
17 the individual becomes entitled to an annuity  
18 under section 811;

19           “(dd) because of the illness or injury de-  
20 scribed in item (cc), is permanently unable to  
21 continue service in a covered position, deter-  
22 mined in accordance with regulations promul-  
23 gated by the Director of the Office of Personnel  
24 Management, in consultation with the Secretary  
25 of Labor; and

1 “(ee) is appointed to a position in the For-  
2 eign Service that is not a covered position; and

3 “(II) the term ‘covered position’ means a posi-  
4 tion as—

5 “(aa) a law enforcement officer described  
6 in section 8331(20) or 8401(17) of title 5,  
7 United States Code;

8 “(bb) a customs and border protection offi-  
9 cer described in section 8331(31) or 8401(36)  
10 of title 5, United States Code;

11 “(cc) a firefighter described in section  
12 8331(21) or 8401(14) of title 5, United States  
13 Code;

14 “(dd) an air traffic controller described in  
15 section 8331(30) or 8401(35) of title 5, United  
16 States Code;

17 “(ee) a nuclear materials courier described  
18 in section 8331(27) or 8401(33) of title 5,  
19 United States Code;

20 “(ff) a member of the United States Cap-  
21 itol Police;

22 “(gg) a member of the Supreme Court Po-  
23 lice;

24 “(hh) an employee of the Central Intel-  
25 ligence Agency designated under section 302(a)

1 of the Central Intelligence Agency Retirement  
2 Act (50 U.S.C. 2152(a)); or

3 “(ii) a special agent.

4 “(ii) Unless a covered special agent files an election  
5 described in clause (iii), creditable service by the covered  
6 special agent in a position described in clause (i)(I)(ee)  
7 shall be treated as creditable service as a special agent  
8 for purposes of this subchapter, including determining the  
9 amount to be deducted and withheld from the pay of the  
10 individual under section 805.

11 “(iii) In accordance with procedures established by  
12 the Secretary, a covered special agent may file an election  
13 to have any creditable service performed by the covered  
14 special agent treated in accordance with this subchapter,  
15 without regard to clause (ii).

16 “(iv) If a covered special agent who has not filed an  
17 election described in clause (iii) separates from service be-  
18 fore the date on which the covered special agent becomes  
19 entitled to an annuity under section 811, the covered spe-  
20 cial agent shall be entitled to a lump sum payment from  
21 the Fund of the difference between—

22 “(I) the amount that was deducted and with-  
23 held from the pay of the covered special agent; and

24 “(II) the amount that would have been de-  
25 ducted and withheld from the pay of the covered

1 special agent if the covered special agent had made  
2 an election described in clause (iii).”.

3 (e) IMPLEMENTATION.—

4 (1) IN GENERAL.—The Director of the Office of  
5 Personnel Management—

6 (A) not later than 60 days after the date  
7 of enactment of this Act, and in consultation  
8 with the Secretary of Labor, shall promulgate  
9 regulations regarding determining when an in-  
10 dividual is permanently unable to continue serv-  
11 ice in a covered position (as defined in section  
12 302(d) of the Central Intelligence Agency Re-  
13 tirement Act (50 U.S.C. 2152(d)), as added by  
14 this Act);

15 (B) shall promulgate regulations to carry  
16 out the amendments made by subsections (a),  
17 (b), and (c); and

18 (C) not later than 1 year after the date of  
19 enactment of this Act, shall issue guidance for  
20 agencies regarding implementation of the  
21 amendments made by subsections (a), (b), and  
22 (c).

23 (2) FOREIGN SERVICE RETIREMENT AND DIS-  
24 ABILITY SYSTEM.—The Secretary of State shall pro-

1       mulgate regulations to carry out the amendment  
2       made by subsection (d).

3       (f) EFFECTIVE DATE; APPLICABILITY.—The amend-  
4       ments made by this section—

5           (1) shall take effect on the date of enactment  
6       of this Act; and

7           (2) shall apply to an individual who suffers an  
8       illness or injury described in section  
9       8336(c)(3)(A)(i)(III) or section  
10      8412(d)(2)(A)(i)(III) of title 5, United States Code,  
11      as amended by this section, section 302(d)(1)(A)(iii)  
12      of the Central Intelligence Agency Retirement Act,  
13      as amended by this section, or section  
14      806(a)(6)(D)(i)(I)(cc) of the Foreign Service Act of  
15      1980, as amended by this section, on or after the  
16      date that is 2 years after the date of enactment of  
17      this Act.

○