

116TH CONGRESS
1ST SESSION

S. 1683

To correct problems pertaining to human resources for career and volunteer personnel engaged in wildland fire and structure fire.

IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, MAY 22), 2019

Mr. DAINES introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To correct problems pertaining to human resources for career and volunteer personnel engaged in wildland fire and structure fire.

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 (a) SHORT TITLE.—This Act may be cited as the
5 “Wildland Firefighter Fairness Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Single qualification and certification system.

Sec. 3. Personnel flexibility relating to the Robert T. Stafford Disaster Relief
and Emergency Assistance Act.

Sec. 4. Extension of service limits for seasonal hires.

Sec. 5. Civil service retention rights.

Sec. 6. Computation of pay.

1 **SEC. 2. SINGLE QUALIFICATION AND CERTIFICATION SYS-**
 2 **TEM.**

3 (a) MERGING 2 SYSTEMS.—The Secretary of the In-
 4 terior and the Secretary of Agriculture shall work with
 5 States and the Workforce Development Committee of the
 6 National Wildfire Coordinating Group to merge the Inci-
 7 dent Qualification System and the Incident Qualification
 8 and Certification System into a single system by Sep-
 9 tember 30, 2027.

10 (b) ELIMINATION OF BUREAU ADD-ON REQUIRE-
 11 MENTS.—On and after October 1, 2023, the Secretary of
 12 the Interior and the Secretary of Agriculture may not re-
 13 quire a person to demonstrate additional competencies to
 14 obtain, make use of, or maintain a qualification or certifi-
 15 cation for a fire position, regardless of which jurisdictional
 16 agency employs the person.

17 **SEC. 3. PERSONNEL FLEXIBILITY RELATING TO THE ROB-**
 18 **ERT T. STAFFORD DISASTER RELIEF AND**
 19 **EMERGENCY ASSISTANCE ACT.**

20 (a) DEFINITION OF TIME-LIMITED APPOINTMENT.—
 21 Section 9601 of title 5, United States Code, is amended
 22 by striking paragraph (2) and inserting the following:

23 “(2) the term ‘time-limited appointment’ in-
 24 cludes—

1 “(A) a temporary appointment and a term
2 appointment, as defined by the Office of Per-
3 sonnel Management;

4 “(B) an appointment pursuant to section
5 306(b)(1) of the Robert T. Stafford Disaster
6 Relief and Emergency Assistance Act (42
7 U.S.C. 5149(b)(1)); and

8 “(C) an appointment pursuant to subtitle
9 E of title I of the National and Community
10 Service Act of 1990 (42 U.S.C. 12611 et
11 seq.).”.

12 (b) COMPETITIVE SERVICE; TIME-LIMITED APPOINT-
13 MENTS.—Section 9602 of title 5, United States Code, is
14 amended—

15 (1) by redesignating subsections (b) through (e)
16 as subsections (d) through (g), respectively;

17 (2) in subsection (a), in the matter preceding
18 paragraph (1)—

19 (A) by striking “Notwithstanding” and in-
20 serting “APPOINTMENTS TO LAND MANAGE-
21 MENT AGENCIES.—Notwithstanding”; and

22 (B) by inserting “described in section
23 9601(2)(A)” after “time-limited appointment”;

24 (3) by inserting after subsection (a) the fol-
25 lowing:

1 “(b) APPOINTMENTS UNDER THE ROBERT T. STAF-
2 FORD DISASTER RELIEF AND EMERGENCY ASSISTANCE
3 ACT.—Notwithstanding chapter 33 or any other provision
4 of law relating to the examination, certification, and ap-
5 pointment of individuals in the competitive service—

6 “(1) an employee appointed under the authority
7 described in section 9601(2)(B) and serving under a
8 full-time, time-limited appointment is eligible to
9 compete for a permanent appointment in the com-
10 petitive service at the Federal Emergency Manage-
11 ment Agency or any other agency (as defined in sec-
12 tion 101 of title 31) under the internal merit pro-
13 motion procedures of the applicable agency if—

14 “(A) the employee has served under one or
15 more time-limited appointments for at least 2
16 years without a break in service; and

17 “(B) the performance of the employee has
18 been at an acceptable level of performance
19 throughout the one or more time-limited ap-
20 pointment periods referred to in subparagraph
21 (A); and

22 “(2) an employee appointed under the authority
23 described in section 9601(2)(B) and serving under
24 an intermittent, time-limited appointment is eligible
25 for a permanent appointment in the competitive

1 service at the Federal Emergency Management
2 Agency or any other agency (as defined in section
3 101 of title 31) under the internal merit promotion
4 procedures of the applicable agency if—

5 “(A) the employee has served under one or
6 more time-limited appointments;

7 “(B) the employee has been deployed at
8 least 522 days;

9 “(C) the employee has not declined any de-
10 ployments while in an ‘available’ status; and

11 “(D) the performance of the employee has
12 been at an acceptable level of performance
13 throughout the one or more time-limited ap-
14 pointments referred to in subparagraph (A).

15 “(c) APPOINTMENTS UNDER THE NATIONAL AND
16 COMMUNITY SERVICE ACT OF 1990.—

17 “(1) DEFINITION OF EMPLOYEE.—Notwith-
18 standing section 160(a) of the National and Commu-
19 nity Service Act of 1990 (42 U.S.C. 12620(a)), in
20 this subsection, the term ‘employee’ includes individ-
21 uals appointed under subtitle E of title I of that Act
22 (42 U.S.C. 16211 et seq.).

23 “(2) COMPETITION FOR PERMANENT APPOINT-
24 MENT.—Notwithstanding chapter 33 or any other
25 provision of law relating to the examination, certifi-

1 cation, and appointment of individuals in the com-
 2 petitive service, a member of the National Civilian
 3 Community Corps appointed under subtitle E of title
 4 I of the National and Community Service Act of
 5 1990 (42 U.S.C. 12611 et seq.) who serves 2 con-
 6 secutive terms is eligible to compete for a permanent
 7 appointment in the competitive service at the Fed-
 8 eral Emergency Management Agency or any other
 9 agency (as defined in section 101 of title 31) under
 10 the internal merit promotion procedures during the
 11 2-year period beginning on the date of the expiration
 12 of the appointment under section 160(a) of the Na-
 13 tional and Community Service Act of 1990 (42
 14 U.S.C. 12620(a)), if the performance of the em-
 15 ployee has been at an acceptable level of perform-
 16 ance throughout the period.”;

17 (4) in subsection (d) (as redesignated by para-
 18 graph (1)), by striking “In determining” and insert-
 19 ing “WAIVER OF AGE REQUIREMENTS.—In deter-
 20 mining”;

21 (5) in subsection (e) (as redesignated by para-
 22 graph (1)), by striking “An individual” and insert-
 23 ing “TENURE AND STATUS.—An individual”;

24 (6) in subsection (f) (as redesignated by para-
 25 graph (1)), in the matter preceding paragraph (1)—

1 (A) by striking “A former” and inserting
 2 “FORMER EMPLOYEES.—A former”; and

3 (B) by inserting “or the Federal Emer-
 4 gency Management Agency” after “manage-
 5 ment agency”; and

6 (7) in subsection (g) (as redesignated by para-
 7 graph (1)), by striking “The Office” and inserting
 8 “REGULATIONS.—The Office”.

9 **SEC. 4. EXTENSION OF SERVICE LIMITS FOR SEASONAL**
 10 **HIRES.**

11 (a) DEFINITIONS.—In this section—

12 (1) the term “covered Secretary” means—

13 (A) the Secretary of the Interior; and

14 (B) the Secretary of Agriculture;

15 (2) the term “Director” means the Director of
 16 the Office of Personnel Management; and

17 (3) the term “pilot program” means the pilot
 18 program established under subsection (b).

19 (b) PILOT PROGRAM.—The Director shall establish
 20 a pilot program for seasonal or temporary Federal employ-
 21 ees, the duties of which primarily involve being a fire-
 22 fighter.

23 (c) EXPANSION OF SERVICE YEAR LIMITATIONS.—
 24 Under the pilot program, each covered Secretary may ex-
 25 pand a service year limitation to enable a seasonal fire-

1 fighter to be employed for a period that exceeds 1,040
 2 hours in a given year if the covered Secretary determines
 3 the expansion to be necessary to stage fire crews earlier
 4 or later in a year to accommodate longer fire seasons.

5 (d) STANDARDS.—The Director, in cooperation with
 6 each covered Secretary, shall establish standards and
 7 guidelines for the pilot program.

8 (e) REPORT.—Not later than 2 years after the date
 9 on which the pilot program is established, the Director
 10 shall submit a report that describes the use and impact
 11 of the pilot program to—

12 (1) the Committee on Energy and Natural Re-
 13 sources and the Committee on Homeland Security
 14 and Governmental Affairs of the Senate; and

15 (2) the Committee on Natural Resources and
 16 the Committee on Oversight and Reform of the
 17 House of Representatives.

18 (f) TERMINATION.—The pilot program shall termi-
 19 nate on the date that is 5 years after the date on which
 20 the pilot program is established.

21 **SEC. 5. CIVIL SERVICE RETENTION RIGHTS.**

22 Section 8151 of title 5, United States Code, is
 23 amended by striking subsection (b) and inserting the fol-
 24 lowing:

25 “(b) REGULATIONS.—

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

2 “(A) the term ‘covered employee’ means an
3 employee who—

4 “(i) served in a position in the Forest
5 Service or the Department of the Interior
6 as a wildland firefighter; and

7 “(ii) sustained an injury while in the
8 performance of duty, as determined by the
9 Director of the Office of Personnel Man-
10 agement, that prevents the employee from
11 performing the physical duties of a fire-
12 fighter;

13 “(B) the term ‘equivalent position’ includes
14 a position for a covered employee that—

15 “(i) allows the covered employee to re-
16 ceive the same retirement benefits under
17 subchapter III of chapter 83 or chapter 84
18 that the covered employee would have re-
19 ceived in the former position had the cov-
20 ered employee not been injured or disabled;
21 and

22 “(ii) does not require the covered em-
23 ployee to complete any more years of serv-
24 ice than the covered employee would have
25 been required to complete to receive the

1 benefits described in clause (i) had the cov-
2 ered employee not been injured or disabled;
3 and

4 “(C) the term ‘firefighter’ has the meaning
5 given the term in section 8331.

6 “(2) REGULATIONS.—Under regulations issued
7 by the Office of Personnel Management—

8 “(A) the department or agency that was
9 the last employer shall immediately and uncon-
10 ditionally accord the employee, if the injury or
11 disability has been overcome within 1 year after
12 the date of commencement of compensation or
13 from the time compensable disability recurs if
14 the recurrence begins after the injured em-
15 ployee resumes regular full-time employment
16 with the United States, the right to resume the
17 former position of the employee or an equiva-
18 lent position, as well as all other attendant
19 rights that the employee would have had, or ac-
20 quired, in the former position of the employee
21 had the employee not been injured or disabled,
22 including the rights to tenure, promotion, and
23 safeguards in reductions-in-force procedures;

24 “(B) the department or agency that was
25 the last employer shall, if the injury or dis-

ability is overcome within a period of more than
 1 year after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the employee in the former position of the employee or an equivalent position within the department or agency, or within any other department or agency; and

“(C) a covered employee who was injured during the 20-year period ending on the date of enactment of the Wildland Firefighter Fairness Act may not receive the same retirement benefits described in paragraph (1)(B)(ii) unless the covered employee first makes a payment to the Forest Service or the Department of the Interior, as applicable, equal to the amount that would have been deducted from pay under section 8334 or 8442, as applicable, had the covered employee not been injured or disabled.”.

SEC. 6. COMPUTATION OF PAY.

(a) IN GENERAL.—Section 8114 of title 5, United States Code, is amended by striking subsection (e) and inserting the following:

“(e) OVERTIME.—

“(1) DEFINITION.—In this subsection, the term ‘covered overtime pay’ means pay received by an em-

1 ployee who serves in a position in the Forest Service
 2 or the Department of the Interior as a wildland fire-
 3 fighter while engaged in wildland fire suppression
 4 activity.

5 “(2) OVERTIME.—The value of subsistence and
 6 quarters, and of any other form of remuneration in
 7 kind for services if its value can be estimated in
 8 money, and covered overtime pay and premium pay
 9 under section 5545(c)(1) of this title are included as
 10 part of the pay, but account is not taken of—

11 “(A) overtime pay;

12 “(B) additional pay or allowance author-
 13 ized outside the United States because of dif-
 14 ferential in cost of living or other special cir-
 15 cumstances; or

16 “(C) bonus or premium pay for extraor-
 17 dinary service including bonus or pay for par-
 18 ticularly hazardous service in time of war.”.

19 (b) EFFECTIVE DATE.—The amendment made by
 20 subsection (a) shall take effect on October 1, 2021.

