

117TH CONGRESS
1ST SESSION

S. 129

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.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2021

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

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 “First Responder Fair
3 Return for Employees on Their Initial Retirement Earned
4 Act of 2021” or the “First Responder Fair RETIRE
5 Act”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

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

14 (2) Federal agencies should ensure, to the
15 greatest extent possible, that an individual who can
16 no longer carry out the duties of a covered position,
17 and is reappointed to a position in the civil service
18 that is not a covered position, is reappointed within
19 the same Federal agency, in the same geographic lo-
20 cation, and at a level of pay commensurate to the
21 position which the individual held immediately prior
22 to such injury or illness.

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

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

26 “(3)(A) In this paragraph—

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

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

5 “(II) while performing official duties, be-
 6 comes ill or is injured as a direct result of the
 7 performance of such duties before the date on
 8 which the individual becomes entitled to an an-
 9 nuity under paragraph (1) of this subsection or
 10 subsection (e), (m), or (n), as applicable;

11 “(III) because of the illness or injury de-
 12 scribed in subclause (II), is permanently unable
 13 to render useful and efficient service in the cov-
 14 ered position held by the employee, as deter-
 15 mined by the agency in which the individual
 16 was serving when such individual incurred the
 17 illness or injury; and

18 “(IV) is appointed to a position in the civil
 19 service that—

20 “(aa) is not a covered position; and

21 “(bb) is within an agency that regu-
 22 larly appoints individuals to supervisory or
 23 administrative positions related to the ac-
 24 tivities of the former covered position of
 25 the individual; and

1 “(ii) the term ‘covered position’ means a posi-
 2 tion as a law enforcement officer, customs and bor-
 3 der protection officer, firefighter, air traffic con-
 4 troller, nuclear materials courier, member of the
 5 Capitol Police, or member of the Supreme Court Po-
 6 lice.

7 “(B) Creditable service by an affected individual in
 8 a position described in subparagraph (A)(i)(IV) shall be
 9 treated as creditable service in a covered position for pur-
 10 poses of this chapter and determining the amount to be
 11 deducted and withheld from the pay of the affected indi-
 12 vidual under section 8334, unless—

13 “(i) the affected individual files an election de-
 14 scribed in subparagraph (C);

15 “(ii) there is a break in service exceeding 3
 16 days before the affected individual transitions to the
 17 position described in subparagraph (A)(i)(IV); or

18 “(iii) the service occurs after the affected indi-
 19 vidual—

20 “(I) is transferred to a supervisory or ad-
 21 ministrative position related to the activities of
 22 the former covered position of the affected indi-
 23 vidual; or

24 “(II) meets the age and service require-
 25 ments that would subject the individual to man-

1 datory separation under section 8335 if the af-
 2 fected individual had remained in the former
 3 covered position.

4 “(C) In accordance with procedures established by
 5 the Director of the Office of Personnel Management, an
 6 affected individual may file an election to have any cred-
 7 itable service performed by the affected individual treated
 8 in accordance with this chapter without regard to subpara-
 9 graph (B).

10 “(D) Nothing in this paragraph shall be construed
 11 to apply to an affected individual any other pay-related
 12 laws or regulations applicable to a covered position.”.

13 (b) FERS.—

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

16 (A) by redesignating paragraphs (1) and
 17 (2) as subparagraphs (A) and (B), respectively;

18 (B) by inserting “(1)” before “An em-
 19 ployee”; and

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

21 “(2)(A) In this paragraph—

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

24 “(I) is performing service in a covered po-
 25 sition;

“(II) while performing official duties, becomes ill or is injured as a direct result of the performance of such duties before the date on which the individual becomes entitled to an annuity under paragraph (1) of this subsection or subsection (e), as applicable;

“(III) because of the illness or injury described in subclause (II), is permanently unable to render useful and efficient service in the covered position held by the employee, as determined by the agency in which the individual was serving when such individual incurred the illness or injury; and

“(IV) is appointed to a position in the civil service that—

“(aa) is not a covered position; and

“(bb) is within an agency that regularly appoints individuals to supervisory or administrative positions related to the activities of the former covered position of the individual;

“(ii) the term ‘covered position’ means a position as a law enforcement officer, customs and border protection officer, firefighter, air traffic controller, nuclear materials courier, member of the

1 Capitol Police, or member of the Supreme Court Po-
 2 lice.

3 “(B) Creditable service by an affected individual in
 4 a position described in subparagraph (A)(i)(IV) shall be
 5 treated as creditable service in a covered position for pur-
 6 poses of this chapter and determining the amount to be
 7 deducted and withheld from the pay of the affected indi-
 8 vidual under section 8422, unless—

9 “(i) the affected individual files an election de-
 10 scribed in subparagraph (C);

11 “(ii) there is a break in service exceeding 3
 12 days before the affected individual transitions to the
 13 position described in subparagraph (A)(i)(IV); or

14 “(iii) the service occurs after the affected indi-
 15 vidual—

16 “(I) is transferred to a supervisory or ad-
 17 ministrative position related to the activities of
 18 the former covered position of the affected indi-
 19 vidual; or

20 “(II) meets the age and service require-
 21 ments that would subject the affected individual
 22 to mandatory separation under section 8425 if
 23 the affected individual had remained in the
 24 former covered position.

1 “(C) In accordance with procedures established by
 2 the Director of the Office of Personnel Management, an
 3 affected individual may file an election to have any cred-
 4 itable service performed by the affected individual treated
 5 in accordance with this chapter without regard to subpara-
 6 graph (B).

7 “(D) Nothing in this paragraph shall be construed
 8 to apply to an affected individual any other pay-related
 9 laws or regulations applicable to a covered position.”.

10 (2) TECHNICAL AND CONFORMING AMEND-
 11 MENTS.—

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

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

16 (ii) in section 8415—

17 (I) in subsection (e), in the mat-
 18 ter preceding paragraph (1), by in-
 19 serting “(1)” after “subsection (d)”;
 20 and

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

24 (iii) in section 8421(a)(1), by insert-
 25 ing “(1)” after “(d)”;

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

3 (v) in section 8425, by inserting “(1)”
 4 after “section 8412(d)” each place it ap-
 5 pears; and

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

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

10 (i) in section 805(d)(5) (22 U.S.C.
 11 4045(d)(5)), by inserting “(1)” after “or
 12 8412(d)”;

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

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

19 “(d) EMPLOYEES DISABLED ON DUTY.—

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

21 “(A) the term ‘affected employee’ means
 22 an employee of the Agency covered under sub-
 23 chapter II of chapter 84 of title 5, United
 24 States Code, who—

1 “(i) is performing service in a position
2 designated under subsection (a);

3 “(ii) while performing official duties
4 in the position designated under subsection
5 (a), becomes ill or is injured as a direct re-
6 sult of the performance of such duties be-
7 fore the date on which the employee be-
8 comes entitled to an annuity under section
9 233 of this Act or section 8412(d)(1) of
10 title 5, United States Code;

11 “(iii) because of the illness or injury
12 described in clause (ii), is permanently un-
13 able to render useful and efficient service
14 in the covered position held by the em-
15 ployee, as determined by the Director; and

16 “(iv) is appointed to a position in the
17 civil service within the Agency that is not
18 a covered position; and

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

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

1 “(ii) a customs and border protection
2 officer described in section 8331(31) or
3 8401(36) of title 5, United States Code;

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

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

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

13 “(vi) a member of the United States
14 Capitol Police;

15 “(vii) a member of the Supreme Court
16 Police;

17 “(viii) an affected employee; or

18 “(ix) a special agent described in sec-
19 tion 804(15) of the Foreign Service Act of
20 1980 (22 U.S.C. 4044(15)).

21 “(2) TREATMENT OF SERVICE AFTER DIS-
22 ABILITY.—Creditable service by an affected em-
23 ployee in a position described in paragraph
24 (1)(A)(iv) shall be treated as creditable service in a
25 covered position for purposes of this Act and chapter

1 84 of title 5, United States Code, including eligi-
 2 bility for an annuity under section 233 of this Act
 3 or 8412(d)(1) of title 5, United States Code, and de-
 4 termining the amount to be deducted and withheld
 5 from the pay of the affected employee under section
 6 8422 of title 5, United States Code, unless—

7 “(A) the affected employee files an election
 8 described in paragraph (3);

9 “(B) there is a break in service exceeding
 10 3 days before the affected employee transitions
 11 to the position described in paragraph
 12 (1)(A)(iv); or

13 “(C) the service occurs after the affected
 14 employee is transferred to a supervisory or ad-
 15 ministrative position related to the activities of
 16 the former covered position of the affected em-
 17 ployee.

18 “(3) OPT OUT.—An affected employee may file
 19 an election to have any creditable service performed
 20 by the affected employee treated in accordance with
 21 chapter 84 of title 5, United States Code, without
 22 regard to paragraph (2).”.

23 (d) FOREIGN SERVICE RETIREMENT AND DIS-
 24 ABILITY SYSTEM.—Section 806(a)(6) of the Foreign Serv-

1 ice Act of 1980 (22 U.S.C. 4046(a)(6)) is amended by
 2 adding at the end the following:

3 “(D)(i) In this subparagraph—

4 “(I) the term ‘affected special agent’ means an
 5 individual covered under this subchapter who—

6 “(aa) is performing service as a special
 7 agent;

8 “(bb) while performing official duties as a
 9 special agent, becomes ill or is injured as a di-
 10 rect result of the performance of such duties be-
 11 fore the date on which the individual becomes
 12 entitled to an annuity under section 811;

13 “(cc) because of the illness or injury de-
 14 scribed in item (bb), is permanently unable to
 15 render useful and efficient service as a special
 16 agent, as determined by the Secretary; and

17 “(dd) is appointed to a position in the For-
 18 eign Service that is not a covered position; and

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

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

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

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

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

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

13 “(ff) a member of the United States Cap-
14 itol Police;

15 “(gg) a member of the Supreme Court Po-
16 lice;

17 “(hh) an employee of the Agency des-
18 ignated under section 302(a) of the Central In-
19 telligence Agency Retirement Act (50 U.S.C.
20 2152(a)); or

21 “(ii) a special agent.

22 “(ii) Creditable service by an affected special agent
23 in a position described in clause (i)(I)(dd) shall be treated
24 as creditable service as a special agent for purposes of this
25 subchapter, including determining the amount to be de-

1 ducted and withheld from the pay of the individual under
 2 section 805, unless—

3 “(I) the affected special agent files an election
 4 described in clause (iii);

5 “(II) there is a break in service exceeding 3
 6 days before the special agent transitions to a posi-
 7 tion described in clause (i)(I)(dd); or

8 “(III) the service occurs after the affected spe-
 9 cial agent is transferred to a supervisory or adminis-
 10 trative position related to the activities of the former
 11 covered position of the affected special agent.

12 “(iii) In accordance with procedures established by
 13 the Secretary, an affected special agent may file an elec-
 14 tion to have any creditable service performed by the af-
 15 fected special agent treated in accordance with this sub-
 16 chapter, without regard to clause (ii).”.

17 (e) IMPLEMENTATION.—

18 (1) OFFICE OF PERSONNEL MANAGEMENT.—

19 Not later than 1 year after the date of enactment
 20 of this Act, the Director of the Office of Personnel
 21 Management shall promulgate regulations to carry
 22 out the amendments made by subsections (a) and
 23 (b).

24 (2) CIA EMPLOYEES.—The Director of the
 25 Central Intelligence Agency shall promulgate regula-

1 tions to carry out the amendment made by sub-
2 section (c).

3 (3) FOREIGN SERVICE RETIREMENT AND DIS-
4 ABILITY SYSTEM.—The Secretary of State shall pro-
5 mulgate regulations to carry out the amendment
6 made by subsection (d).

7 (4) AGENCY CERTIFICATION.—The regulations
8 promulgated to carry out the amendments made by
9 this Act shall include a requirement that the head
10 of the agency at which an affected individual, af-
11 fected employee, or affected special agent (as the
12 case may be) incurred the applicable illness or injury
13 certifies that such illness or injury—

14 (A) was incurred in the course of per-
15 forming official duties; and

16 (B) permanently precludes the affected in-
17 dividual, affected employee, or affected special
18 agent from rendering useful and efficient serv-
19 ice in the covered position but would not pre-
20 clude the affected individual, affected employee,
21 or affected special agent from continuing to
22 serve in the Federal service.

23 (5) AGENCY REAPPOINTMENT.—The regula-
24 tions promulgated to carry out the amendments
25 made by this Act shall ensure that, to the greatest

1 extent possible, the head of each agency appoints an
2 affected individual, affected employee, or affected
3 special agent to a supervisory or administrative posi-
4 tion related to the activities of the former covered
5 position of the affected individual, affected employee,
6 or affected special agent.

7 (6) TREATMENT OF SERVICE.—The regulations
8 promulgated to carry out the amendments made by
9 this Act shall ensure that the creditable service of an
10 affected individual, affected employee, or affected
11 special agent (as the case may be) that is not in a
12 covered position pursuant to an election made under
13 such amendments shall be treated as the same type
14 of service as the covered position in which the af-
15 fected individual, affected employee, or affected spe-
16 cial agent suffered the qualifying illness or injury.

17 (f) EFFECTIVE DATE; APPLICABILITY.—The amend-
18 ments made by this Act—

19 (1) shall take effect on the date of enactment
20 of this Act; and

21 (2) shall apply to an individual who suffers an
22 illness or injury described in section
23 8336(c)(3)(A)(i)(II) or section 8412(d)(2)(A)(i)(II)
24 of title 5, United States Code, as amended by this
25 section, section 302(d)(1)(A)(ii) of the Central Intel-

1 ligence Agency Retirement Act, as amended by this
2 section, or section 806(a)(6)(D)(i)(I)(bb) of the For-
3 eign Service Act of 1980, as amended by this sec-
4 tion, on or after the date that is 2 years after the
5 date of enactment of this Act.

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