

118TH CONGRESS
1ST SESSION

S. 2272

To amend title 5, United States Code, to provide for special base rates of pay for wildland firefighters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 12, 2023

Ms. SINEMA (for herself, Mr. BARRASSO, Mr. MANCHIN, Mr. DAINES, Mr. PADILLA, and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend title 5, United States Code, to provide for special base rates of pay for wildland firefighters, and for other purposes.

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 Firefighter
5 Paycheck Protection Act of 2023”.

1 **SEC. 2. SPECIAL BASE RATES OF PAY FOR WILDLAND FIRE-**
 2 **FIGHTERS.**

3 (a) IN GENERAL.—Subchapter III of chapter 53 of
 4 title 5, United States Code, is amended by inserting after
 5 section 5332 the following:

6 **“§ 5332a. Special base rates of pay for wildland fire-**
 7 **fighters**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘firefighter’ means an employee
 10 who—

11 “(A) is a firefighter within the meaning of
 12 section 8331(21) or section 8401(14);

13 “(B) in the case of an employee who holds
 14 a supervisory or administrative position and is
 15 subject to subchapter III of chapter 83, but
 16 who does not qualify to be considered a fire-
 17 fighter within the meaning of section 8331(21),
 18 would otherwise qualify if the employee had
 19 transferred directly to that position after serv-
 20 ing as a firefighter within the meaning of that
 21 section;

22 “(C) in the case of an employee who holds
 23 a supervisory or administrative position and is
 24 subject to chapter 84, but who does not qualify
 25 to be considered a firefighter within the mean-
 26 ing of section 8401(14), would otherwise qualify

1 if the employee had transferred directly to that
2 position after performing duties described in
3 section 8401(14)(A) for at least 3 years; or

4 “(D) in the case of an employee who is not
5 subject to subchapter III of chapter 83 or chap-
6 ter 84, holds a position that the Office of Per-
7 sonnel Management determines would satisfy
8 subparagraph (A), (B), or (C) if the employee
9 were subject to subchapter III of chapter 83 or
10 chapter 84;

11 “(2) the term ‘General Schedule base rate’
12 means an annual rate of basic pay established under
13 section 5332 before any additions, such as a locality-
14 based comparability payment under section 5304 or
15 5304a or a special rate supplement under section
16 5305;

17 “(3) the term ‘special base rate’ means an an-
18 nual rate of basic pay payable to a wildland fire-
19 fighter, before any additions or reductions, that re-
20 places the General Schedule base rate otherwise ap-
21 plicable to the wildland firefighter and that is ad-
22 ministered in the same manner as a General Sched-
23 ule base rate; and

24 “(4) the term ‘wildland firefighter’ means a
25 firefighter—

1 “(A) who is employed by the Forest Serv-
2 ice or the Department of the Interior; and

3 “(B) the duties of the position of whom
4 primarily relate to fires occurring in forests,
5 range lands, or other wildlands, as opposed to
6 structural fires.

7 “(b) SPECIAL BASE RATES OF PAY.—

8 “(1) ENTITLEMENT TO SPECIAL RATE.—Not-
9 withstanding section 5332, a wildland firefighter is
10 entitled to a special base rate at grades 1 through
11 15, which shall—

12 “(A) replace the otherwise applicable Gen-
13 eral Schedule base rate for the wildland fire-
14 fighter;

15 “(B) be basic pay for all purposes, includ-
16 ing the purpose of computing a locality-based
17 comparability payment under section 5304 or
18 5304a; and

19 “(C) be computed as described in para-
20 graph (2) and adjusted at the time of adjust-
21 ments in the General Schedule.

22 “(2) COMPUTATION.—

23 “(A) IN GENERAL.—The special base rate
24 for a wildland firefighter shall be derived by in-
25 creasing the otherwise applicable General

1 Schedule base rate for the wildland firefighter
 2 by the following applicable percentage for the
 3 grade of the wildland firefighter and rounding
 4 the result to the nearest whole dollar:

5 “(i) For GS–1, 42 percent.

6 “(ii) For GS–2, 39 percent.

7 “(iii) For GS–3, 36 percent.

8 “(iv) For GS–4, 33 percent.

9 “(v) For GS–5, 30 percent.

10 “(vi) For GS–6, 27 percent.

11 “(vii) For GS–7, 24 percent.

12 “(viii) For GS–8, 21 percent.

13 “(ix) For GS–9, 18 percent.

14 “(x) For GS–10, 15 percent.

15 “(xi) For GS–11, 12 percent.

16 “(xii) For GS–12, 9 percent.

17 “(xiii) For GS–13, 6 percent.

18 “(xiv) For GS–14, 3 percent.

19 “(xv) For GS–15, 1.5 percent.

20 “(B) HOURLY, DAILY, WEEKLY, OR BI-
 21 WEEKLY RATES.—When the special base rate
 22 with respect to a wildland firefighter is ex-
 23 pressed as an hourly, daily, weekly, or biweekly
 24 rate, the special base rate shall be computed
 25 from the appropriate annual rate of basic pay

1 derived under subparagraph (A) in accordance
2 with the rules under section 5504(b).”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for subchapter III of chapter 53 of title 5, United States
5 Code, is amended by inserting after the item relating to
6 section 5332 the following:

“5332a. Special base rates of pay for wildland firefighters.”.

7 (c) PREVAILING RATE EMPLOYEES.—Section 5343
8 of title 5, United States Code, is amended by adding at
9 the end the following:

10 “(g)(1) For a prevailing rate employee described in
11 section 5342(a)(2)(A) who is a wildland firefighter, as de-
12 fined in section 5332a(a), the Secretary of Agriculture or
13 the Secretary of the Interior (as applicable) shall increase
14 the wage rates of that employee by an amount (determined
15 at the sole and exclusive discretion of the applicable Sec-
16 retary after consultation with the other Secretary) that is
17 generally consistent with the percentage increases given
18 to wildland firefighters in the General Schedule under sec-
19 tion 5332a.

20 “(2) An increased wage rate under paragraph (1)
21 shall be basic pay for the same purposes as the wage rate
22 otherwise established under this section.

23 “(3) An increase under this subsection may not cause
24 the wage rate of an employee to increase to a rate that

1 would produce an annualized rate in excess of the annual
2 rate for level IV of the Executive Schedule.”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the first day of the first
5 applicable pay period beginning on or after October 1,
6 2023.

7 (e) APPLICABILITY.—Notwithstanding section
8 40803(d)(4)(B) of the Infrastructure Investment and
9 Jobs Act (16 U.S.C. 6592(d)(4)(B)), the salary increase
10 in such section 40803(d)(4)(B) shall not apply to the posi-
11 tions described in such section 40803(d)(4)(B) for service
12 performed on or after the effective date described in sub-
13 section (d) of this section.

14 **SEC. 3. WILDLAND FIRE INCIDENT RESPONSE PREMIUM**
15 **PAY.**

16 (a) IN GENERAL.—Subchapter V of chapter 55 of
17 title 5, United States Code, is amended by inserting after
18 section 5545b the following:

19 **“§ 5545c. Incident response premium pay for employ-**
20 **ees engaged in wildland firefighting**

21 “(a) DEFINITIONS.—In this section—

22 “(1) the term ‘appropriate committees of Con-
23 gress’ means—

24 “(A) the Committee on Homeland Security
25 and Governmental Affairs of the Senate;

1 “(B) the Committee on Energy and Nat-
2 ural Resources of the Senate;

3 “(C) the Committee on Agriculture, Nutri-
4 tion, and Forestry of the Senate;

5 “(D) the Committee on Appropriations of
6 the Senate;

7 “(E) the Committee on Oversight and Ac-
8 countability of the House of Representatives;

9 “(F) the Committee on Agriculture of the
10 House of Representatives;

11 “(G) the Committee on Natural Resources
12 of the House of Representatives; and

13 “(H) the Committee on Appropriations of
14 the House of Representatives;

15 “(2) the term ‘covered employee’ means an em-
16 ployee of the Forest Service or the Department of
17 the Interior who is—

18 “(A) a wildland firefighter, as defined in
19 section 5332a(a); or

20 “(B) certified by the applicable agency to
21 perform wildland fire incident-related duties
22 during the period that employee is deployed to
23 respond to a qualifying incident;

1 “(3) the term ‘incident response premium pay’
2 means pay to which a covered employee is entitled
3 under subsection (c);

4 “(4) the term ‘prescribed fire incident’ means a
5 wildland fire originating from a planned ignition in
6 accordance with applicable laws, policies, and regula-
7 tions to meet specific objectives;

8 “(5) the term ‘qualifying incident’—

9 “(A) means—

10 “(i) a wildfire incident, a prescribed
11 fire incident, or a severity incident; or

12 “(ii) an incident that the Secretary of
13 Agriculture or the Secretary of the Interior
14 determines is similar in nature to an inci-
15 dent described in clause (i); and

16 “(B) does not include an initial response
17 incident that is contained within 36 hours; and

18 “(6) the term ‘severity incident’ means an inci-
19 dent in which a covered employee is pre-positioned
20 in an area in which conditions indicate there is a
21 high risk of wildfires.

22 “(b) ELIGIBILITY.—A covered employee is eligible for
23 incident response premium pay under this section if—

24 “(1) the covered employee is deployed to re-
25 spond to a qualifying incident; and

1 “(2) the deployment described in paragraph (1)
2 is—

3 “(A) outside of the official duty station of
4 the covered employee; or

5 “(B) within the official duty station of the
6 covered employee and the covered employee is
7 assigned to an incident-adjacent fire camp or
8 other designated field location.

9 “(c) ENTITLEMENT TO INCIDENT RESPONSE PRE-
10 MIUM PAY.—

11 “(1) IN GENERAL.—A covered employee who
12 satisfies the conditions under subsection (b) is enti-
13 tled to premium pay for the period in which the cov-
14 ered employee is deployed to respond to the applica-
15 ble qualifying incident.

16 “(2) COMPUTATION.—

17 “(A) FORMULA.—Subject to subpara-
18 graphs (B) and (C), premium pay under para-
19 graph (1) shall be paid to a covered employee
20 at a daily rate of 450 percent of the hourly rate
21 of basic pay of the covered employee for each
22 day that the covered employee satisfies the re-
23 quirements under subsection (b), rounded to
24 the nearest whole cent.

1 “(B) LIMITATION.—Premium pay under
2 this subsection may not be paid—

3 “(i) with respect to a covered em-
4 ployee for whom the annual rate of basic
5 pay is greater than that for step 10 of GS-
6 10, at a daily rate that exceeds the daily
7 rate established under subparagraph (A)
8 for step 10 of GS-10; or

9 “(ii) to a covered employee in a total
10 amount that exceeds \$9,000 in any cal-
11 endar year.

12 “(C) ADJUSTMENTS.—

13 “(i) ASSESSMENT.—The Secretary of
14 Agriculture and the Secretary of the Inte-
15 rior shall assess the difference between the
16 average total amount of compensation that
17 was paid to covered employees, by grade,
18 in fiscal years 2023 and 2024.

19 “(ii) REPORT.—Not later than 180
20 days after the date that is 1 year after the
21 effective date of this section, the Secretary
22 of Agriculture and the Secretary of the In-
23 terior shall jointly publish a report on the
24 results of the assessment conducted under
25 clause (i).

1 “(iii) ADMINISTRATIVE ACTIONS.—
2 After publishing the report required under
3 clause (ii), the Secretary of Agriculture
4 and the Secretary of the Interior, in con-
5 sultation with the Director of the Office of
6 Personnel Management, may, in the sole
7 and exclusive discretion of the Secretaries
8 acting jointly, administratively adjust the
9 amount of premium pay paid under this
10 subsection (or take other administrative
11 action) to ensure that the average annual
12 amount of total compensation paid to cov-
13 ered employees, by grade, is more con-
14 sistent with such amount that was paid to
15 those employees in fiscal year 2023.

16 “(iv) CONGRESSIONAL NOTIFICA-
17 TION.—Not later than 3 days after an ad-
18 justment made, or other administrative ac-
19 tion taken, under clause (iii) becomes final,
20 the Secretary of Agriculture and the Sec-
21 retary of the Interior shall jointly submit
22 to the appropriate committees of Congress
23 a notification regarding that adjustment or
24 other administrative action, as applicable.

1 “(d) TREATMENT OF INCIDENT RESPONSE PREMIUM
2 PAY.—Incident response premium pay under this sec-
3 tion—

4 “(1) is not considered part of the basic pay of
5 a covered employee for any purpose;

6 “(2) may not be considered in determining a
7 covered employee’s lump-sum payment for accumu-
8 lated and accrued annual leave under section 5551
9 or section 5552;

10 “(3) may not be used in determining pay under
11 section 8114 (relating to compensation for work in-
12 juries);

13 “(4) may not be considered in determining pay
14 for hours of paid leave or other paid time off during
15 which the premium pay is not payable; and

16 “(5) shall be disregarded in determining the
17 minimum wage and overtime pay to which a covered
18 employee is entitled under the Fair Labor Standards
19 Act of 1938 (29 U.S.C. 201 et seq.).”.

20 (b) ADDITIONAL PREMIUM PAY AMENDMENTS.—
21 Subchapter V of chapter 55 of title 5, United States Code,
22 is amended—

23 (1) in section 5544—

24 (A) by amending the section heading to
25 read as follows: “**WAGE-BOARD OVERTIME,**

1 **SUNDAY RATES, AND OTHER PREMIUM**
 2 **PAY**”; and

3 (B) by adding at the end the following:

4 “(d) A prevailing rate employee described in section
 5 5342(a)(2)(A) shall receive incident response premium
 6 pay under the same terms and conditions that apply to
 7 a covered employee under section 5545c if that em-
 8 ployee—

9 “(1) is employed by the Forest Service or the
 10 Department of the Interior; and

11 “(2)(A) is a wildland firefighter, as defined in
 12 section 5332a(a); or

13 “(B) is certified by the applicable agency to
 14 perform wildland fire incident-related duties during
 15 the period the employee is deployed to respond to a
 16 qualifying incident (as defined in section
 17 5545c(a)).”; and

18 (2) in section 5547(a), in the matter preceding
 19 paragraph (1), by inserting “5545c,” after
 20 “5545a,”.

21 (c) CLERICAL AMENDMENTS.—The table of sections
 22 for subchapter V of chapter 55 of title 5, United States
 23 Code, is amended—

24 (1) by amending the item relating to section
 25 5544 to read as follows:

“5544. Wage-board overtime, Sunday rates, and other premium pay.”;

1 and

2 (2) by inserting after the item relating to sec-
3 tion 5545b the following:

“5545c. Incident response premium pay for employees engaged in wildland fire-
fighting.”.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on the first day of the first
6 applicable pay period beginning on or after October 1,
7 2023.

8 **SEC. 4. REST AND RECUPERATION LEAVE FOR EMPLOYEES**
9 **ENGAGED IN WILDLAND FIREFIGHTING.**

10 (a) IN GENERAL.—Subchapter II of chapter 63 of
11 title 5, United States Code, is amended by adding at the
12 end the following:

13 **“§ 6329e. Rest and recuperation leave for employees**
14 **engaged in wildland firefighting**

15 “(a) DEFINITIONS.—In this section—

16 “(1) the term ‘applicable Secretary’ means the
17 Secretary of Agriculture or the Secretary of the In-
18 terior, as applicable to a covered employee;

19 “(2) the term ‘covered employee’ means an em-
20 ployee of the Forest Service or the Department of
21 the Interior who—

22 “(A) qualifies as a wildland firefighter
23 based on the definitions of the terms ‘fire-
24 fighter’ and ‘wildland firefighter’ in section

1 5332a(a) (applying the definition of ‘employee’
2 in section 6301(2) in lieu of the definition of
3 ‘employee’ in section 5331(a)); or

4 “(B) is certified by the applicable Sec-
5 retary to perform wildland fire incident-related
6 duties during the period the employee is de-
7 ployed to respond to a qualifying incident; and

8 “(3) the term ‘qualifying incident’ has the
9 meaning given the term in section 5545c(a).

10 “(b) REST AND RECUPERATION LEAVE.—

11 “(1) IN GENERAL.—A covered employee may
12 receive paid rest and recuperation leave following the
13 completion of service in which the covered employee
14 is deployed to respond to a qualifying incident, sub-
15 ject to the policies prescribed under this subsection.

16 “(2) PRESCRIPTION OF POLICIES.—The Sec-
17 retary of Agriculture and the Secretary of the Inte-
18 rior shall prescribe uniform policies described in
19 paragraph (1) after consulting with the other appli-
20 cable Secretary.

21 “(3) CONTENT OF POLICIES.—The policies pre-
22 scribed under paragraph (2) may include—

23 “(A) a maximum period of days in which
24 a covered employee is deployed to respond to a
25 qualifying incident, which shall—

1 “(i) begin on the date on which the
2 covered employee departs from the official
3 duty station of the covered employee and
4 end on the date on which the covered em-
5 ployee returns to the official duty station
6 of the covered employee; and

7 “(ii) be followed by a minimum num-
8 ber of days of rest and recuperation for the
9 covered employee; or

10 “(B) a requirement that prohibits a cov-
11 ered employee from working more than 16
12 hours per day on average over a 14-day period
13 during which the covered employee is deployed
14 to respond to a qualifying incident.

15 “(c) USE OF LEAVE.—

16 “(1) IN GENERAL.—Rest and recuperation
17 leave granted under this section—

18 “(A) shall be used during scheduled hours
19 within the tour of duty of the applicable covered
20 employee established for leave-charging pur-
21 poses;

22 “(B) shall be paid in the same manner as
23 annual leave;

24 “(C) shall be used immediately after a
25 qualifying incident; and

1 “(D) may not be set aside for later use.

2 “(2) NO PAYMENT.—A covered employee may
3 not receive any payment for unused rest and recu-
4 peration leave granted under this section.

5 “(d) INTERMITTENT WORK SCHEDULE.—A covered
6 employee with an intermittent work schedule—

7 “(1) shall be excused from duty during the
8 same period of time that other covered employees in
9 the same circumstances are entitled to rest and re-
10 cuperation leave; and

11 “(2) shall receive a payment as if the covered
12 employee were entitled to rest and recuperation leave
13 under subsection (b).”.

14 (b) TECHNICAL AND CONFORMING AMENDMENT.—
15 The table of sections for subchapter II of chapter 63 of
16 title 5, United States Code, is amended by inserting after
17 the item relating to section 6329d the following:

“6329e. Rest and recuperation leave for employees engaged in wildland fire-
fighting.”.

18 **SEC. 5. TRANSFER AUTHORITY.**

19 Notwithstanding section 40803(c)(2) of the Infra-
20 structure Investment and Jobs Act (16 U.S.C.
21 6592(c)(2)), not more than \$5,000,000 of the unobligated
22 balances of amounts made available under the heading
23 “WILDLAND FIRE MANAGEMENT” under the heading
24 “FOREST SERVICE” under the heading “DEPARTMENT

1 OF AGRICULTURE” in title VI of division J of that Act
2 (Public Law 117–58; 135 Stat. 1410) pursuant to section
3 40803(c)(2)(B) of that Act (16 U.S.C. 6592(c)(2)(B))
4 may, as necessary to continue uninterrupted the Federal
5 wildland firefighter base salary increase described in sec-
6 tion 40803(d)(4)(B) of that Act (16 U.S.C.
7 6592(d)(4)(B)), be transferred to and merged with the
8 amounts made available under the heading “WILDLAND
9 FIRE MANAGEMENT” under the heading “DEPARTMENT-
10 WIDE PROGRAMS” under the heading “DEPARTMENT
11 OF THE INTERIOR” in title VI of division J of that
12 Act (Public Law 117–58; 135 Stat. 1393).

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