

103^D CONGRESS
1ST SESSION

S. 797

To amend title 5, United States Code, to establish an optional early retirement program for Federal Government employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 20 (legislative day, APRIL 19), 1993

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

A BILL

To amend title 5, United States Code, to establish an optional early retirement program for Federal Government employees, 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 “Federal Employees’
5 Optional Early Retirement Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to reduce Federal Government civilian pay-
9 rolls in an orderly and voluntary manner;

1 (2) to accommodate the personal plans of cer-
2 tain Federal Government employees who desire to
3 retire but have not satisfied the applicable age and
4 service requirements;

5 (3) to allow current Federal Government em-
6 ployees to retire early in order to avoid possible ad-
7 verse effects of Federal budgetary conditions; and

8 (4) to provide increased job protection and ca-
9 reer opportunities for Federal Government employ-
10 ees, especially women, members of minority groups,
11 and young workers.

12 **SEC. 3. TEMPORARY VOLUNTARY EARLY RETIREMENT AU-**
13 **THORITY.**

14 Section 8336 of title 5, United States Code, is
15 amended—

16 (1) by redesignating subsection (n) as sub-
17 section (o); and

18 (2) by inserting after subsection (m) the follow-
19 ing new subsection (n):

20 “(n)(1) Except as provided in paragraph (2) of this
21 subsection, an employee who—

22 “(A) during the 60-day period beginning 30
23 days after the beginning of the fiscal year next fol-
24 lowing the date of the enactment of the Federal Em-
25 ployees’ Optional Early Retirement Act, is separated

1 from the service, except by removal for cause on
2 charges of misconduct or delinquency—

3 “(i) after completing 25 years of service;

4 “(ii) after becoming 50 years of age and
5 completing 20 years of service;

6 “(iii) after becoming 55 years of age and
7 completing 15 years of service; or

8 “(iv) after becoming 57 years of age and
9 completing 5 years of service; and

10 “(B) is not entitled to an annuity under section
11 8337 of this title or subsection (a), (b), (d), (f), (h),
12 or (j) of this section,

13 is entitled to an annuity.

14 “(2) Paragraph (1) of this subsection shall not apply
15 to a bankruptcy judge, a judge of the United States Court
16 of Military Appeals, or any law enforcement officer, fire-
17 fighter, or air traffic controller who is not in a supervisory
18 or administrative position, as determined by the Director
19 of the Office of Personnel Management.”.

20 **SEC. 4. COMPUTATION OF ANNUITY.**

21 The first sentence of section 8339(h) of title 5, Unit-
22 ed States Code, is amended by striking out “or (j)” and
23 inserting in lieu thereof “, (j), or (n)”.

1 **SEC. 5. APPLICATION OF AMENDMENTS TO OTHER FED-**
2 **ERAL GOVERNMENT RETIREMENT SYSTEMS.**

3 The President shall extend the application of the
4 amendments made by sections 3 and 4—

5 (1) to participants in the Central Intelligence
6 Agency Retirement and Disability System and their
7 survivors under section 292 of the Central Intel-
8 ligence Agency Retirement Act of 1964 for Certain
9 Employees (50 U.S.C. 403 note);

10 (2) to participants in the Foreign Service Re-
11 tirement and Disability System and their survivors
12 under section 827 of the Foreign Service Act of
13 1980 (94 Stat. 2124; 22 U.S.C. 4067);

14 (3) to each employee of the Federal Govern-
15 ment who is subject to chapter 84 of title 5, United
16 States Code, by reason of an election under section
17 301 of the Federal Employees' Retirement System
18 Act of 1986 (Public Law 99-335; 100 Stat. 599),
19 except that section 302 of such Act (100 Stat. 601)
20 shall apply in the case of such employee; and

21 (4) if determined appropriate by the President,
22 in like manner to employees of the Executive branch
23 who are participants in any other Federal Govern-
24 ment retirement system and their survivors.

1 **SEC. 6. EXEMPTION FOR ESSENTIAL OCCUPATIONAL CAT-**
2 **EGORIES.**

3 (a) IN GENERAL.—An officer or employee in the Ex-
4 ecutive branch retiring under section 8336(n) of title 5,
5 United States Code (as added by section 3 of this Act),
6 or pursuant to section 5 of this Act is not entitled to an
7 annuity under or pursuant to such section if, immediately
8 before the retirement, the officer or employee—

9 (1) is serving in a position in an exempt occu-
10 pational category,

11 (2) is working on an exempt project, or

12 (3) is serving in a position in an exempt loca-
13 tion,
14 designated under subsection (b).

15 (b) EXEMPTION AUTHORITY.—The President or his
16 designee may, for the purposes of this section, designate—

17 (1) as an exempt occupational category any oc-
18 cupational category in an Executive agency that is
19 essential for the continuous performance of a critical
20 mission of the Executive agency;

21 (2) as an exempt project any project carried out
22 by an Executive agency that is an essential project
23 in the interests of the Federal Government; and

24 (3) as an exempt location any location at which
25 a responsibility of an Executive agency is carried out
26 if, because of the undesirability of such location, it

1 is difficult to fill employee vacancies at the location
2 by voluntary transfers of other employees.

3 (c) LIMITATIONS ON AUTHORITY.—(1) A designation
4 under subsection (b) shall be effective for the purposes of
5 this section only if it is made in writing not later than
6 the day before the optional early retirement period com-
7 mences.

8 (2)(A) The authority provided in subsection (b) may
9 not be exercised in a manner that precludes more than
10 25 percent of the eligible officers and employees in an Ex-
11 ecutive agency from being entitled to an annuity under
12 section 8336(n) of title 5, United States Code, or pursuant
13 to section 5 of this Act.

14 (B) For the purpose of subparagraph (A), the term
15 “eligible officers and employees” means the officers and
16 employees of the Federal Government who, without regard
17 to subsection (a), would be entitled, upon separation from
18 Federal Government employment, to an annuity under
19 section 8336(n) of title 5, United States Code, or pursuant
20 to section 5 of this Act.

21 **SEC. 7. HOLDOVER OF ESSENTIAL EMPLOYEES.**

22 (a) IN GENERAL.—(1) An officer or employee in the
23 Executive branch is not entitled to an annuity under sec-
24 tion 8336(n) of title 5, United States Code (as added by
25 section 3(2) of this Act), or pursuant to section 5 of this

1 Act if, immediately before separating from Federal Gov-
2 ernment employment, the officer or employee is serving
3 as an essential employee designated under subsection (b)
4 of this section.

5 (2) An officer or employee of an Executive agency
6 who—

7 (A) separates from Federal Government em-
8 ployment immediately upon the termination of a des-
9 ignation under subsection (b); and

10 (B) during the optional early retirement period,
11 has given such Executive agency appropriate notice
12 of his intention to separate from Federal Govern-
13 ment employment under section 8336(n) of title 5,
14 United States Code, or pursuant to section 5 of this
15 Act, as the case may be,

16 shall be entitled to an annuity under or pursuant to such
17 section notwithstanding that the separation becomes effec-
18 tive after the expiration of such period.

19 (b) **HOLDOVER AUTHORITY.**—The head of an Execu-
20 tive agency may designate, for the purposes of this section,
21 any officer or employee in such Executive agency as essen-
22 tial for—

23 (1) the continuous progress of a critical project
24 under the responsibility of the Executive agency; or

1 (2) the continuous performance of a critical re-
2 sponsibility assigned to such officer or employee by
3 the Executive agency.

4 (c) LIMITATION ON AUTHORITY.—A designation
5 under subsection (b) may not be effective for more than
6 6 months.

7 **SEC. 8. LIMITATION ON REPLACEMENT OF RETIREES.**

8 (a) IN GENERAL.—Notwithstanding any other provi-
9 sion of law, except as provided in subsection (b), (c), (d),
10 or (e), an appointment may not be made to a position of
11 civilian employment in the Executive branch on any day
12 during the hiring limitation period, unless the full-time
13 employee equivalent of the total number of civilian employ-
14 ees in the Executive branch after such appointment on
15 such day does not exceed the maximum authorized full-
16 time employee equivalent number determined for such day,
17 as provided in subsection (g)(2).

18 (b) WAIVER.—(1) The President or his designee may
19 waive the application of subsection (a) in the case of a
20 position or a category of positions in the Executive branch
21 if the President (or his designee) determines that—

22 (A) the position or positions are essential for
23 the performance of an Executive responsibility; or

24 (B) the estimated aggregate cost of such posi-
25 tion or positions during the hiring limitation period

1 does not exceed the estimated aggregate amount of
2 user fees that will be collected by the Federal Gov-
3 ernment for services performed under a Federal
4 Government program or programs during such pe-
5 riod by an employee in such position or employees
6 in such positions.

7 (2) The President (or his designee) may not exercise
8 the waiver authority provided in paragraph (1) in a man-
9 ner that results in increased pay and other personnel costs
10 in any Executive agency that exceed the amount of the
11 cost savings which result from the implementation of this
12 Act and the amendments made by this Act in the case
13 of such Executive agency.

14 (c) INAPPLICABILITY OF LIMITATION TO CERTAIN
15 REINSTATEMENTS.—Subsection (a) does not apply in the
16 case of an individual who is reinstated to a position of
17 employment the individual formerly held in the Executive
18 branch by order of a court of the United States having
19 jurisdiction to issue such order or by reason of an action
20 of the Merit Systems Protection Board or the Special
21 Counsel of the Merit Systems Protection Board authorized
22 by law.

23 (d) INAPPLICABILITY OF LIMITATION TO CERTAIN
24 TRANSFERS.—Subsection (a) does not prohibit the trans-

1 fer of employees in the Executive branch for the purpose
2 of filling a vacancy in an Executive branch position.

3 (e) INAPPLICABILITY OF LIMITATION DURING A PE-
4 RIOD OF WAR OR NATIONAL EMERGENCY.—Subsection
5 (a) shall not apply during a period of war declared by the
6 Congress or a period of national emergency declared by
7 the Congress or the President.

8 (f) LIMITATION ON PROCUREMENT OF PERSONAL
9 SERVICES.—The President shall take appropriate action
10 to ensure that there is no increase in the procurement
11 of personal services by contract by reason of the enact-
12 ment of this section except in cases in which it is to the
13 financial advantage of the Federal Government to increase
14 the procurement of such services.

15 (g) DEFINITIONS.—For the purposes of this sec-
16 tion—

17 (1) the term “employee” has the same meaning
18 as provided in section 2105 of title 5, United States
19 Code;

20 (2) the term “maximum authorized full-time
21 employee equivalent number” means the excess of—

22 (A) the full-time employee equivalent num-
23 ber that describes the total number of civilian
24 employees employed in positions in the Execu-

1 tive branch on the day before the optional early
2 retirement period commences, over

3 (B) the full-time employee equivalent num-
4 ber that describes the total number of—

5 (i) such employees who, on or before
6 the day for which the maximum authorized
7 number is computed, have retired during
8 such period entitled to an annuity under
9 subchapter III of chapter 83 of title 5,
10 United States Code, or any other Federal
11 Government retirement system for officers
12 and employees of the Federal Government;
13 and

14 (ii) such employees who, on or before
15 such day, have retired after such period
16 entitled to such an annuity as provided in
17 section 7(a)(2) of this Act; and

18 (3) the term “hiring limitation period” means
19 the period beginning on the date which occurs 30
20 days after the beginning of the fiscal year next fol-
21 lowing the date of the enactment of this Act and
22 ending at the end of the fifth fiscal year which be-
23 gins on or after the first day of such period.

1 **SEC. 9. REGULATIONS.**

2 The President or his designee may prescribe regula-
3 tions to carry out sections 6, 7, and 8.

4 **SEC. 10. LIMITATION ON USE OF SAVINGS.**

5 (a) IN GENERAL.—(1) Beginning in the second quar-
6 ter of the fiscal year after the date of the enactment of
7 this Act, the Director of the Office of Management and
8 Budget shall determine the amount equal to the savings
9 resulting from the implementation of the provisions of this
10 Act for each agency and shall notify the President. The
11 Director shall make such determinations and notifications
12 in each applicable quarter of such fiscal year.

13 (2) At the beginning of each applicable quarter of the
14 fiscal year next following the date of the enactment of this
15 Act, the President shall cancel an amount of the budget
16 authority of each agency equal to the amount determined
17 by the Director of the Office of Management and Budget
18 under paragraph (1).

19 (3) The total amount of budget authority and outlays
20 saved under the provisions of this section shall be credited
21 against any amount of pay and other personnel costs re-
22 quired to be sequestered in such fiscal year under the Bal-
23 anced Budget and Emergency Deficit Control Act of 1985
24 (Public Law 99–177), as amended.

25 (b) AUDITS.—The Comptroller General of the United
26 States may audit the records of any agency of the Federal

1 Government to determine the level of compliance with the
2 requirements of subsection (a).

3 (c) NOTICE OF NONCOMPLIANCE.—The Comptroller
4 General of the United States shall notify Congress, in
5 writing, of each noncompliance with the requirements of
6 subsection (a).

7 **SEC. 11. PROGRAM REPORT.**

8 (a) IN GENERAL.—No later than one year after the
9 first day of the optional early retirement period, the Direc-
10 tor of the Office of Personnel Management shall transmit
11 to Congress a report containing an evaluation of the op-
12 tional early retirement program and the limitation on re-
13 placement of retirees provided in this Act.

14 (b) CONTENTS OF REPORT.—The report under sub-
15 section (a) shall include the following matters:

16 (1) The number of employees who have retired
17 under the optional early retirement program, stated
18 by employing agency, by age group of the retirees,
19 and by grade or other position classification of the
20 retirees.

21 (2) The number and description of the exempt
22 occupational categories, projects, and locations des-
23 igned under section 6(b) and the reasons such cat-
24 egories, projects, and locations have been so des-
25 igned.

1 (3) The number of employees who have been
2 designated as essential employees under section 7(b)
3 and the reasons such employees have been so des-
4 ignated.

5 (4) The number of employees appointed under
6 the waiver authority provided in section 8(b) (stated
7 as a full-time employee equivalent number) and the
8 reasons for the appointments.

9 (5) The amount of the savings in pay and other
10 personnel costs that have resulted, before the date of
11 the report, from the implementation of this Act and
12 the amendments made by this Act.

13 (c) ADMINISTRATIVE PROVISION.—The Director of
14 the Office of Personnel Management may obtain from any
15 agency of the Federal Government such information as the
16 Director determines necessary to prepare the report re-
17 quired by subsection (a).

18 **SEC. 12. DEFINITIONS.**

19 For purposes of this Act—

20 (1) the term “Executive agency” has the same
21 meaning provided in section 105 of title 5, United
22 States Code; and

23 (2) the term “optional early retirement period”
24 means the 60-day period provided in section 8336(n)

1 of title 5, United States Code, or pursuant to section
2 5 of this Act.

3 **SEC. 13. REVISIONS IN BUDGET ALLOCATIONS AND AGGRE-**
4 **GATES.**

5 (a) REPORTS BY COMMITTEES ON THE BUDGET.—
6 Upon the enactment of this Act, the Committees on the
7 Budget of the Senate and the House of Representatives
8 shall report to their respective Houses revised allocations,
9 pursuant to section 302(a) of the Congressional Budget
10 Act of 1974, and revised budget aggregates to carry out
11 this Act and the amendments made by this Act.

12 (b) REPORTS BY OTHER COMMITTEES OF CON-
13 GRESS.—Upon the reporting of revised allocations under
14 subsection (a), the appropriate committees of the Senate
15 and the House of Representatives shall report revised allo-
16 cations, pursuant to section 302(b) of the Congressional
17 Budget Act of 1974, to carry out this Act and the amend-
18 ments made by this Act.

19 (c) TREATMENT OF REPORTED REVISIONS.—Revised
20 allocations and budget aggregates reported under this sec-
21 tion shall be considered for the purposes of the Congres-
22 sional Budget Act of 1974 as aggregates contained in the
23 latest concurrent resolution on the budget.

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