

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 47

To amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees in the civil service and other public sector firefighters, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

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

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## A BILL

To amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees in the civil service and other public sector 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 “Firefighters Pay Fair-  
5 ness Act of 1995”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to—

1           (1) improve pay equality between Federal fire-  
2 fighters and municipal and other public sector fire-  
3 fighters;

4           (2) enhance recruitment and retention of fire-  
5 fighters in order to maintain the highest quality  
6 Federal fire service; and

7           (3) encourage Federal firefighters to pursue  
8 career advancement and training opportunities.

9 **SEC. 3. BIWEEKLY PAY PERIODS; COMPUTATION OF PAY.**

10         Section 5504 of title 5, United States Code, is  
11 amended—

12           (1) by amending subsection (a) to read as fol-  
13 lows:

14         “(a) The pay period for an employee covers 2 admin-  
15 istrative workweeks. For the purpose of this section, the  
16 term—

17           “(1) ‘employee’ means—

18                 “(A) an employee in or under an executive  
19 agency;

20                 “(B) an employee in or under the judicial  
21 branch;

22                 “(C) an employee in or under the Office of  
23 the Architect of the Capitol, the Botanic Gar-  
24 den, and the Library of Congress, for whom a

1 basic administrative workweek is established  
2 under section 6101(a)(5); and

3 “(D) an individual employed by the gov-  
4 ernment of the District of Columbia;

5 but does not include an employee or individual ex-  
6 cluded from the definition of an employee in section  
7 5541(2) other than an employee or individual ex-  
8 cluded by section 5541(2)(xvi);

9 “(2) ‘firefighter’ has the same meaning as such  
10 term is defined under sections 8331 and 8401; and

11 “(3) ‘firefighting duties’ means those duties  
12 usually performed by a firefighter in responding to  
13 or engaging in the control and extinguishment of a  
14 fire.”;

15 (2) in subsection (b) in the first sentence by in-  
16 serting “(except as provided under subsection (c))”  
17 after “in the case of an employee”;

18 (3) by redesignating subsection (c) as sub-  
19 section (d); and

20 (4) by inserting after subsection (b) the follow-  
21 ing subsection:

22 “(c)(1) For pay computation purposes affecting a  
23 firefighter, the annual rate of basic pay established by or  
24 under statute is deemed the annual basic pay to be used  
25 in calculating payment for employment during 26 adminis-

1 trative biweekly work periods of up to 106 hours each.  
2 When it is necessary for computation of pay under this  
3 subsection to convert an annual rate of basic pay to a  
4 basic hourly, daily, or biweekly rate, the following rules  
5 govern:

6           “(A) To derive an hourly rate, divide the an-  
7 nual rate by 2,087.

8           “(B) To derive a daily rate, multiply the hourly  
9 rate by the number of hours in the regularly sched-  
10 uled daily tour of duty.

11           “(C) To derive a biweekly rate, multiply the  
12 hourly rate by the total number of hours not to ex-  
13 ceed 106 hours, in the regularly scheduled tours of  
14 duty during the biweekly period.

15 Rates are computed to the nearest cent, counting one-half  
16 and over as a whole cent.

17           “(2) Notwithstanding the provisions of paragraph  
18 (1), for pay computation purposes affecting an employee  
19 who is not a firefighter but who performs firefighting du-  
20 ties during a biweekly pay period, the biweekly pay for  
21 that period shall be the greater of pay calculated under—

22           “(A) subsection (b) of this section and sections  
23 5542(a), 5545, and 5546, using the employee’s an-  
24 nual rate of basic pay; or

1           “(B) paragraph (1) and section 5542(d), using  
2           the employee’s annual rate of basic pay.

3 Rates are computed to the nearest cent, counting one-half  
4 and over as a whole cent.”.

5 **SEC. 4. OVERTIME.**

6           (d) OVERTIME.—

7           (1) APPLICATION OF FAIR LABOR STANDARDS  
8           ACT OF 1938.—Section 5542(c) of title 5, United  
9           States Code, is amended to read as follows:

10          “(c) Subsection (a) shall not apply to an employee  
11 who is subject to the overtime provisions of section 7 of  
12 the Fair Labor Standards Act of 1938 (29 U.S.C. 207).  
13 In the case of a firefighter subject to the provisions of  
14 section 7(k) of the Fair Labor Standards Act of 1938 (29  
15 U.S.C. 207(k)), overtime shall be determined in accord-  
16 ance with the provisions of subsection (d). In the case of  
17 all other employees who would, were it not for the preced-  
18 ing sentences, be subject to the provisions of subsection  
19 (a), the Office of Personnel Management shall by regula-  
20 tion prescribe what hours shall be deemed to be hours of  
21 work and what hours of work shall be deemed to be over-  
22 time hours for the purpose of such section 7 so as to en-  
23 sure that no employee receives less pay by reason of the  
24 preceding sentence.”.

1           (2) APPLICATION TO FIREFIGHTERS.—Section  
2           5542 of title 5, United States Code, is amended by  
3           adding at the end thereof the following new sub-  
4           section:

5           “(d) Firefighters who are subject to the provisions  
6 of section 7(k) of the Fair Labor Standards Act of 1938  
7 (29 U.S.C. 207(k)), for full-time, part-time, and intermit-  
8 tent tours of duty, hours ordered or approved which in  
9 the aggregate exceed 106 hours in a biweekly period, shall  
10 be compensated at one and one-half times the hourly rate  
11 of basic pay of such employee as determined under sub-  
12 section (b)(2). Firefighters under this subsection shall be  
13 subject to the same overtime pay limitations as an em-  
14 ployee under subsection (a)(4).”.

15           (3) LIMITATION ON PAYMENT OF OTHER PRE-  
16 MIUM PAY.—Section 5545(c) of title 5, United  
17 States Code, is amended by adding a new sentence  
18 at the end thereof to read as follows:

19 “Paragraphs (1) and (2) of this subsection shall not be  
20 applicable to employees who are subject to the provisions  
21 of section 7(k) of the Fair Labor Standards Act of 1938  
22 (29 U.S.C. 207(k)) and the overtime calculations provided  
23 for under section 5542(d).”.

1 **SEC. 5. MINIMUM PAY RATE FOR FIREFIGHTER PROMOTED**  
2 **TO SUPERVISORY POSITION.**

3 (1) IN GENERAL.—Chapter 53 of title 5, United  
4 States Code, is amended—

5 (A) by redesignating section 5385 as sec-  
6 tion 5386; and

7 (B) by inserting after section 5384 the fol-  
8 lowing new section:

9 **“§ 5385. Minimum pay rate for firefighter promoted**  
10 **to supervisory position**

11 “(a) For purposes of this section, the term—

12 “(1) ‘agency’ has the meaning as such term is  
13 defined under section 5102(1);

14 “(2) ‘employee’ has the meaning as such term  
15 is defined under section 5102(2); and

16 “(3) ‘firefighter’ has the meaning as such term  
17 is defined under sections 8331 and 8401.

18 “(b)(1) The position to which an employee described  
19 under paragraph (2) is promoted shall be paid at a basic  
20 rate of pay equal to or greater than the annual aggregate  
21 rate of pay based on basic pay and regularly scheduled  
22 overtime pay received by such employee in the calendar  
23 year immediately preceding the promotion.

24 “(2) Paragraph (1) applies to an employee who—

25 “(A) is in a position as a firefighter;

1           “(B) is promoted to a supervisory position as a  
2 firefighter; and

3           “(C) after such promotion, is not subject to the  
4 provisions of section 7(k) of the Fair Labor Stand-  
5 ards Act of 1938 (29 U.S.C. 207(k)).”.

6           (2) TECHNICAL AND CONFORMING AMEND-  
7 MENTS.—The table of sections for chapter 53 of title  
8 5, United States Code, is amended by striking out  
9 the item relating to section 5385 and inserting in  
10 lieu thereof the following:

“5385. Minimum pay rate for firefighter promoted to supervisory position.  
“5386. Regulations.”.

11 **SEC. 6. TRAINING.**

12           Section 4109 of title 5, United States Code, is  
13 amended by adding at the end thereof the following new  
14 subsection:

15           “(d) Notwithstanding subsection (a)(1), a firefighter,  
16 as defined under sections 8331 and 8401, who is selected  
17 and assigned for training under this chapter, shall be paid  
18 during the period of training at the rate of basic pay of  
19 such employee and overtime which is normally paid for  
20 the regularly scheduled tour of duty of such employee.”.

21 **SEC. 7. TECHNICIAN BONUSES.**

22           (1) IN GENERAL.—Chapter 45 of title 5, United  
23 States Code, is amended by adding at the end there-  
24 of the following new subchapter:

1 “SUBCHAPTER IV—AWARD TO FIREFIGHTERS  
2 FOR SPECIAL SKILLS AND CERTIFICATIONS

3 **“§ 4531. Definitions**

4 “For the purpose of this subchapter, the term—

5 “(1) ‘firefighter’ has the same meaning as such  
6 term is defined under sections 8331 and 8401; and

7 “(2) ‘firefighting duties’ means those duties  
8 usually performed by a firefighter in responding to  
9 or engaging in the control and extinguishment of a  
10 fire.

11 **“§ 4532. Award authority**

12 “(a) An agency may pay a cash award of up to 5  
13 percent of basic pay, to a firefighter or other employee  
14 who performs firefighting duties, employed in or under  
15 such agency who possesses and makes substantial use of  
16 special skills or certifications, including handling hazard-  
17 ous materials or certification as an emergency medical  
18 technician.

19 “(b) Awards under this section shall be paid under  
20 regulations prescribed by the head of the agency involved  
21 or pursuant to negotiations as the case may be. Such regu-  
22 lations or collective bargaining provisions shall include—

23 “(1) procedures under which such special skills  
24 or certifications shall be ascertained;

1           “(2) criteria for determining the amount paid  
2 to individuals for recognition under this section; and

3           “(3) any other provisions which may be nec-  
4 essary to carry out the purposes of this sub-  
5 chapter.”.

6           (2) TECHNICAL AND CONFORMING AMEND-  
7 MENT.—The table of sections for chapter 45 of title  
8 5, United States Code, is amended by adding at the  
9 end thereof the following:

“SUBCHAPTER IV—AWARD TO FIREFIGHTERS FOR SPECIAL  
SKILLS AND CERTIFICATIONS

“4531. Definitions.

“4532. Award authority.”.

10 **SEC. 8. IMPLEMENTATION.**

11           (1) IN GENERAL.—Effective on the date of the  
12 enactment of this Act, the Office of Personnel Man-  
13 agement and the Office of Management and Budget  
14 shall take such actions as necessary (including the  
15 promulgation of regulations) to provide for the or-  
16 derly implementation of this section. Regulations  
17 promulgated under this paragraph shall take effect  
18 on October 1, 1995.

19           (2) COMPUTATION OF PAY; OVERTIME.—(A)  
20 Notwithstanding the amendments made by sub-  
21 sections (c) and (d) of this section, a firefighter shall  
22 be paid in accordance with such amendments, except  
23 that such firefighter shall be paid the percentage de-

1 scribed under subparagraph (B) of the amount he  
2 would otherwise be paid under such amendments if  
3 not for this paragraph, for each of fiscal years 1996,  
4 1997, 1998, 1999, and 2000.

5 (B) The percentage referred to under subpara-  
6 graph (A) shall be—

7 (i) 85 percent during fiscal year 1996;

8 (ii) 85 percent during fiscal year 1997;

9 (iii) 90 percent during fiscal year 1998;

10 (iv) 95 percent during fiscal year 1999;

11 and

12 (v) 100 percent during fiscal year 2000,  
13 and each fiscal year thereafter.

14 (3) REPORT TO CONGRESS.—No later than  
15 June 1, 1995, the Office of Personnel Management  
16 shall submit a report to the Congress on—

17 (A) plans to implement the provisions of  
18 this section;

19 (B) plans for funding increases in pay by  
20 affected Federal departments and agencies as a  
21 result of the enactment of the provisions of this  
22 section; and

23 (C) the need and feasibility of making reg-  
24 ulatory or legislative modifications in the ad-  
25 ministration of chapters 83 and 84 of title 5,

1 United States Code, to ensure no diminution of  
2 Federal retirement benefits for any firefighter  
3 who separates from service by reason of retire-  
4 ment during the implementation of the provi-  
5 sions of this section during fiscal years 1996  
6 through 2000.

7 **SEC. 9. EFFECTIVE DATES.**

8 (1) COMPUTATION OF PAY; OVERTIME; SUPER-  
9 VISORY RATES.—Subsections (c), (d), and (e) of this  
10 section shall be effective beginning on the first day  
11 of the first applicable pay period beginning on or  
12 after October 1, 1995.

13 (2) TRAINING AND BONUSES.—Subsections (f)  
14 and (g) shall take effect on October 1, 1995.

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