

105TH CONGRESS  
1ST SESSION

# S. 877

To disestablish the National Oceanic and Atmospheric Administration Corps  
of Commissioned Officers.

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IN THE SENATE OF THE UNITED STATES

JUNE 11, 1997

Mr. McCAIN (by request) introduced the following bill; which was read twice  
and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To disestablish the National Oceanic and Atmospheric  
Administration Corps of Commissioned Officers.

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 “NOAA Corps Disestab-  
5 lishment Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to disestablish the Corps of Commissioned  
9 Officers of the National Oceanic and Atmospheric

1 Administration, a uniformed service within the De-  
2 partment of Commerce;

3 (2) to provide for fair treatment of retired offi-  
4 cers and officers on the active list of the NOAA  
5 Corps, and other employees of the National Oceanic  
6 and Atmospheric Administration and the Depart-  
7 ment of Commerce; and

8 (3) to provide for the retention of professional  
9 skills and experience required by NOAA to continue  
10 to carry out its mission effectively.

11 **SEC. 3. CONVERSION.**

12 (a) IN GENERAL.—Not later than the disestablish-  
13 ment date each conversion-eligible officer who has signed  
14 a conversion agreement and the position to which such of-  
15 ficer is assigned as of that date shall be converted into  
16 the civilian service.

17 (b) CREDIT FOR PRIOR SERVICE.—The total time  
18 served in the NOAA Corps and in any other uniformed  
19 service by an officer who is converted to the civilian service  
20 under subsection (a) shall be—

21 (1) credited under the Federal Employees' Re-  
22 tirement System in accordance with section 8411(c)  
23 of title 5, United States Code (and subject to any  
24 limitations in such section 8411(c) of such title), if

1 the officer pays the deposit required by section  
2 8422(e) of such title;

3 (2) deemed to be creditable civilian service for  
4 the purposes of section 8410 of such title concerning  
5 eligibility for annuity, section 8442(b) of such title  
6 concerning rights of a widow or widower, and section  
7 8451(a) of such title concerning disability retire-  
8 ment; and

9 (3) credited in accordance with, and subject to  
10 limitations in, section 3502(a) of such title concern-  
11 ing retention in a reduction in force, and section  
12 6303(a) of such title concerning annual leave ac-  
13 crual.

14 (c) All officers converted to the civilian service under  
15 subsection (a) shall be eligible for health insurance in ac-  
16 cordance with chapter 89 of title 5, United States Code,  
17 with such coverage effective retroactively to the effective  
18 date of that officer's conversion.

19 **SEC. 4. CONVERSION BENEFIT.**

20 (a) IN GENERAL.—The Secretary shall, subject to the  
21 availability of appropriations, provide a conversion benefit  
22 to be calculated using the formula provided in section  
23 1174a(b)(2)(A) of title 10, United States Code, to each  
24 conversion-eligible officer converted to the civilian service  
25 under section 3.

1 (b) REPAYMENT OF BENEFIT UPON LEAVING WITH-  
 2 IN 180 DAYS OF CONVERSION.—Any officer leaving the  
 3 employment of NOAA within 180 days after conversion  
 4 to the civilian service under section 3 shall refund to the  
 5 Treasury an amount equal to 5 percent of the product  
 6 of—

7 (1) the member's years of active service, multi-  
 8 plied by

9 (2) 12 times the monthly basic pay to which the  
 10 member is entitled on the date of the disestablish-  
 11 ment of the NOAA Corps.

12 (c) CONTRIBUTIONS TO THE THRIFT SAVINGS  
 13 FUND.—Notwithstanding the time periods set forth at 5  
 14 U.S.C. 8432(b), each conversion-eligible officer converted  
 15 to the civilian service under section 3 shall be eligible im-  
 16 mediately to make an election to contribute to the Thrift  
 17 Savings Fund.

18 **SEC. 5. LEAVE AND SUPPLEMENTAL RETIREMENT LIABIL-**  
 19 **ITY.**

20 (a) CREDIT FOR UNUSED LEAVE.—

21 (1) TRANSFERRED LEAVE.—Each officer who is  
 22 in the NOAA Corps on the date of enactment of this  
 23 Act and who is converted into or appointed to the  
 24 civilian service without a break in service, shall re-  
 25 ceive a credit for unused leave which shall be trans-

1       ferred to that officer's credit in the employing agen-  
2       cy in accordance with regulations promulgated by  
3       the Office of Personnel Management. No lump-sum  
4       payment shall be made for the leave that is trans-  
5       ferred.

6               (2) LUMP-SUM PAYMENT FOR LEAVE.—Each  
7       officer who is in the NOAA Corps on the date of en-  
8       actment of this Act and who receives a lump-sum  
9       payment for unused leave and is employed in the ci-  
10      vilian service prior to the expiration of the period  
11      covered by the lump-sum payment, shall refund to  
12      the employing agency an amount equal to the com-  
13      pensation covering the period between the date of  
14      employment and the expiration of the period covered  
15      by such leave payment. The leave represented by any  
16      such refund shall be recredited to that officer by the  
17      employing agency in accordance with regulations  
18      promulgated by the Office of Personnel Manage-  
19      ment.

20              (b) RETIREMENT FUND SUPPLEMENTAL LIABIL-  
21      ITY.—There is authorized to be appropriated to the Civil  
22      Service Retirement and Disability Fund an amount equal  
23      to the Federal Employee Retirement System supplemental  
24      liability created by granting service credit under section  
25      8411 of title 5, United States Code, to those NOAA Corps

1 officers converted into the civilian service under section  
2 3(a) of this Act. Such amount, as determined by the Office  
3 of Personnel Management, shall be credited to such Fund  
4 no later than September 30, 1998.

5 **SEC. 6. ADDITIONAL CIVILIAN POSITIONS.**

6 (a) IN GENERAL.—Not later than the disestablish-  
7 ment date, the Under Secretary shall establish additional  
8 civilian positions in NOAA as determined to be necessary  
9 for fulfilling essential mission functions and may fill such  
10 positions in accordance with customary recruitment proce-  
11 dures.

12 (b) VACANCY INFORMATION PROVIDED TO RETIRED  
13 OFFICERS AND CURRENT DEPARTMENT OF COMMERCE  
14 EMPLOYEES.—Vacancy announcements for any positions  
15 described in subsection (a) shall be provided to each officer  
16 who retires after the date of enactment of this act and  
17 vacancy information shall be made available to current  
18 employees of the Department of Commerce at the initi-  
19 ation of a recruitment action concerning such positions.

20 **SEC. 7. DISESTABLISHMENT.**

21 (a) DISESTABLISHMENT.—The Commissioned Offi-  
22 cers Corps of the National Oceanic and Atmospheric Ad-  
23 ministration is disestablished as of October 1, 1997.

24 (b) ELIGIBILITY FOR NONCOMPETITIVE APPOINT-  
25 MENTS.—

1           (1) INVOUNTARY SEPARATIONS.—Each officer  
2           in the NOAA Corps on the date of enactment of this  
3           Act, shall be afforded noncompetitive appointment  
4           eligibility for any competitive service position within  
5           the Department of Commerce for which the officer  
6           meets the minimum qualification requirements. Eli-  
7           gibility for this special noncompetitive appointment  
8           shall begin on the effective date of this Act and ex-  
9           tend for—

10                   (A) 1 year, in the case of an officer who  
11                   has less than 3 years of service in the NOAA  
12                   Corps, after the officer is involuntarily sepa-  
13                   rated; and

14                   (B) 2 years, in the case of any other offi-  
15                   cer.

16           (2) APPOINTMENTS AND CONVERSIONS.—Each  
17           officer in the NOAA Corps on the date of enactment  
18           of this Act who has completed at least 1 year of con-  
19           tinuous service as a NOAA Corps officer will acquire  
20           competitive status upon appointment or conversion  
21           under this Act. Officers who have completed at least  
22           3 years of service in the NOAA Corps or other uni-  
23           formed service will receive career appointments. All  
24           other officers will receive career-conditional appoint-  
25           ments and their time in the Corps will be credited

1 towards career tenure. Annual fitness reports shall  
2 constitute annual performance ratings for purposes  
3 of 5 CFR Part 351, for any officer who is appointed  
4 to or is converted into the civilian service, so as to  
5 provide entitlement to additional service credit for  
6 performance where needed.

7 **SEC. 8. SEPARATION AND RETIREMENT OF OFFICERS.**

8 (a) SEPARATION.—Each conversion-eligible officer  
9 who has not signed a conversion agreement shall be invol-  
10 untarily separated from the NOAA Corps not later than  
11 September 30, 1997.

12 (b) RETIREMENT.—Each officer who is on the active  
13 list of the NOAA Corps on the date of the enactment of  
14 this Act shall, if eligible to retire not later than September  
15 30, 1997, under any provision of law, be retired under  
16 such provision not later than such date.

17 (c) SEPARATION PAY.—Notwithstanding section  
18 11(b) of this Act, any officer involuntarily separated from  
19 the NOAA Corps by reason of subsection (a) shall be eligi-  
20 ble for separation pay as authorized by section 9 of the  
21 Coast and Geodetic Survey Commissioned Officers Act of  
22 1948 (33 U.S.C. 853h).

23 (d) REPEAL OF CAP ON SEPARATION PAY.—Section  
24 9 of the Coast and Geodetic Survey Commissioned Offi-

1 cers Act of 1948 (33 U.S.C. 853h) is amended by strik-  
2 ing—

3 (1) “, or \$30,000, whichever is less” in sub-  
4 section (b)(1)(B);

5 (2) “, but in no event no more than \$15,000”  
6 in subsection (b)(2); and

7 (3) subsection (d)(2).

8 (e) RETIREMENT ELIGIBILITY BASED ON UNUSED  
9 LEAVE.—

10 (1) OFFICERS WITH 15 YEARS’ SERVICE.—A  
11 conversion-eligible officer shall be deemed to have 15  
12 years of active service for purposes of all provisions  
13 and regulations concerning retirement of a member  
14 of a uniformed service for which a NOAA Corps offi-  
15 cer is otherwise eligible if, as of the day prior to the  
16 disestablishment date the sum of such officer’s  
17 length of active service in the NOAA Corps and  
18 other uniformed services plus an amount of such of-  
19 ficer’s unused leave equals or exceeds 15 years.

20 (2) RETIREMENT TERMS.—An officer described  
21 in paragraph (1)—

22 (A) is ineligible for conversion into the ci-  
23 vilian service under section 3(a);

24 (B) shall not qualify as a “conversion-eli-  
25 gible officer” as defined in section 13(3);

1 (C) shall be retired under subsection (b) of  
2 this section;

3 (D) shall receive retirement pay computed  
4 on the sum obtained in paragraph (1); and

5 (E) shall not receive a lump sum payment  
6 for leave that is used to qualify for retirement  
7 under paragraph (1).

8 **SEC. 9. STATUS OF OFFICERS AND ADMINISTRATION OF**  
9 **RETIREMENT BENEFITS.**

10 (a) ACTIVE NOAA SERVICE DEEMED TO BE SERV-  
11 ICE IN THE NAVY.—Effective on the disestablishment  
12 date, and as determined and credited by the Secretary of  
13 Commerce, the active service of each officer in the NOAA  
14 Corps and its predecessors who has retired shall be  
15 deemed to have been active service in the United States  
16 Navy for purposes of determining the rights, privileges,  
17 and benefits administered by the Department of Defense  
18 to which such officer and the officer's dependents and sur-  
19 vivors are entitled.

20 (b) ADMINISTRATION BY DEPARTMENT OF DEFENSE  
21 OF RETIRED PAY, SURVIVOR AND OTHER BENEFITS.—  
22 Effective on the disestablishment date, authority and re-  
23 sponsibility for the administration of retired pay for re-  
24 tired officers of the former NOAA Corps, survivor benefit  
25 annuities for their survivors, and all rights, privileges and

1 benefits to which retired officers of the former NOAA  
2 Corps and its predecessors, their dependents and survivors  
3 are entitled in accordance with subsection (a) is trans-  
4 ferred to the Secretary of the Navy. Such retired pay and  
5 survivor benefits shall be paid from the Department of De-  
6 fense Military Retirement Fund. The one-time change in  
7 unfunded liability in that fund resulting from this sub-  
8 section shall be considered to be an actuarial loss under  
9 the provisions of section 1465(c)(3) of title 10, United  
10 States Code. The cost of all other benefits, including those  
11 concerning health and dental care, provided to each officer  
12 and the officer's dependents and survivors in accordance  
13 with subsection (a) shall be paid from amounts appro-  
14 priated to the Department of Defense.

15 (c) RETIRED PAY ADMINISTRATION.—Effective on  
16 the disestablishment date—

17 (1) Section 1461(b) of title 10, United States  
18 Code, is amended—

19 (A) by striking “and” at the end of para-  
20 graph (2);

21 (B) by striking the period at the end of  
22 paragraph (3) and inserting “, and”; and

23 (C) by adding at the end the following new  
24 paragraph:

1           “(4) the provisions of law that created entitle-  
2           ment to, and determined the amount of, retired pay  
3           for retired officers of the former Commissioned Offi-  
4           cers Corps of the National Oceanic and Atmospheric  
5           Administration and its predecessors (as in effect be-  
6           fore the disestablishment of that corps by the NOAA  
7           Corps Disestablishment Act).”.

8           (2) Section 1461 of such title is amended by  
9           adding at the end thereof the following new sub-  
10          section:

11          “(c) For purposes of subsection (b)(2) and section  
12          1463(a)(4) of this title, the term ‘armed forces’ shall be  
13          considered to include the former Commissioned Officers  
14          Corps of the National Oceanic and Atmospheric Adminis-  
15          tration and its predecessors.”.

16          (3) Section 1463(a)(1) of such title is amended  
17          by inserting “and to retired officers of the former  
18          Commissioned Officers Corps of the National Oce-  
19          anic and Atmospheric Administration and its prede-  
20          cessors” before the semicolon at the end.

21          (d) ACTIONS BY SECRETARY.—The Secretary shall—

22                  (1) transfer promptly to the Secretary of the  
23                  Navy all records required to implement this section;  
24                  and

1           (2) advise all retired members of the former  
2 NOAA Corps and its predecessors or their survivors  
3 of the functions to be assumed by the Secretary of  
4 the Navy under this Act.

5           (e) TREATMENT OF PRIOR ACTIVE SERVICE.—Effec-  
6 tive on the disestablishment date, and except as provided  
7 in subsection (a), the active service of an officer in the  
8 NOAA Corps and its predecessors (including that of an  
9 officer who has retired) shall continue to be treated as ac-  
10 tive duty in a uniformed service as provided in applicable  
11 law.

12 **SEC. 10. DISABILITY DETERMINATIONS.**

13           (a) IN GENERAL.—Not later than the disestablish-  
14 ment date, the Secretary of Commerce shall, under section  
15 1210(b) of title 10, United States Code, and based upon  
16 a physical examination, make a final determination of the  
17 case of each officer of the NOAA Corps whose name is  
18 on the temporary disabled retired list under section 1202  
19 of such title. As provided in the second sentence of section  
20 1210(b) of such title, if, at the time of that determination,  
21 the physical disability for which the officer's name was  
22 carried on the temporary disability retired list still exists,  
23 it shall be considered to be permanent and stable. Such  
24 an officer shall be retired in accordance with section

1 1210(c) or 1210(d) of such title or separated in accord-  
 2 ance with section 1210(e) of such title, as applicable.

3 (b) SUBSTITUTION OF TERMS.—For purposes of  
 4 making the determination required by subsection (a)  
 5 under section 1210(b) of title 10, United States Code, “15  
 6 years of service” shall be substituted for “20 years of serv-  
 7 ice” in sections 1210(d) and 1210(e) of that title.

8 (c) DISPOSITION OF OFFICERS DETERMINED NOT  
 9 TO BE DISABLED.—If, upon a final determination under  
 10 subsection (a), it is determined that the officer is phys-  
 11 ically fit to perform the duties of the officer’s rank, the  
 12 officer shall be either—

13 (1) converted into the civilian service if eligible  
 14 in accordance with section 3(a), provided that the  
 15 officer has signed a conversion agreement; or

16 (2) retired or separated in accordance with sec-  
 17 tion 8.

18 **SEC. 11. AMENDMENTS AND REPEALS.**

19 (a) AMENDMENTS.—The Coast and Geodetic Survey  
 20 Commissioned Officers Act of 1948 (33 U.S.C. 853a–  
 21 853u) is amended—

22 (1) by striking subsection (b) in section 8 and  
 23 redesignating subsection (c) as subsection (b); and

24 (2) by striking “under section 8” in section 9.

1 (b) REPEALS.—The following provisions of law are  
2 repealed effective on the disestablishment date:

3 (1) The Coast and Geodetic Survey Commis-  
4 sioned Officers Act of 1948, (33 U.S.C. 853a–853u).

5 (2) The Act of February 16, 1929, (Chapter  
6 221, section 5, 45 Stat. 1187; 33 U.S.C. 852a).

7 (3) The Act of January 19, 1942, (Chapter 6;  
8 56 Stat. 6).

9 (4) Section 9 of Public Law 87–649, (76 Stat.  
10 495).

11 (5) The Act of May 22, 1917, (Chapter 20,  
12 Section 16; 40 Stat. 87; 33 U.S.C. 854 et seq.).

13 (6) The Act of December 3, 1942, (Chapter  
14 670; 56 Stat.1038).

15 (7) Sections 1 through 5 of Public Law 91–  
16 621, (84 Stat. 1863; 33 U.S.C. 857–1 et seq.).

17 (8) The Act of August 10, 1956, (Chapter  
18 1041, section 3; 70A Stat. 619; 33 U.S.C. 857a).

19 (9) The Act of May 18, 1920, (Chapter 190,  
20 section 11; 41 Stat. 603; 33 U.S.C. 864).

21 (10) The Act of July 22, 1947, (Chapter 286;  
22 61 Stat. 400; 33 U.S.C. 873, 874).

23 (11) The Act of August 3, 1956, (Chapter 932;  
24 70 Stat. 988; 33 U.S.C. 875, 876).

1 (c) CONTINUING APPLICATION.—No repeal under  
2 this section shall affect any annuity or other benefit au-  
3 thorized under provision of law so repealed, based on the  
4 separation of any person from the NOAA Corps or its  
5 predecessors.

6 **SEC. 12. IMPLEMENTING AUTHORITIES.**

7 Without regard to any other provision of law and  
8 without prior notification, the Secretary is authorized to  
9 establish, eliminate or reorganize any office within NOAA  
10 as determined by the Secretary to be necessary or appro-  
11 priate to carry out the purposes of this Act. Not later than  
12 2 years after enactment, the Secretary shall submit a re-  
13 port to the appropriate committees of Congress describing  
14 the actions taken under this section.

15 **SEC. 13. DEFINITIONS.**

16 For purposes of this Act, the term —

17 (1) “Conversion Agreement” means an agree-  
18 ment which states that a conversion-eligible officer  
19 agrees to be converted to the civilian service and will  
20 remain in the position assigned at the time of con-  
21 version or in another NOAA position as assigned  
22 after conversion for 180 days following such conver-  
23 sion;

24 (2) “Conversion Eligible Officer” means an offi-  
25 cer in the NOAA Corps on the date of enactment of

1 this Act whose active service in the NOAA Corps  
2 and in any other uniformed service as of the dis-  
3 establishment date will total less than 15 years, ex-  
4 cept as provided in section 8(e);

5 (3) “disestablishment date” means October 1,  
6 1997;

7 (4) “NOAA” means the National Oceanic and  
8 Atmospheric Administration;

9 (5) “NOAA Corps” means the Corps of Com-  
10 missioned Officers of the National Oceanic and At-  
11 mospheric Administration;

12 (6) “Predecessors” means the former Commis-  
13 sioned Officers Corps of the Environmental Sciences  
14 Services Administration and the former Commis-  
15 sioned Officers Corps of the Coast and Geodetic  
16 Survey;

17 (7) “Secretary” means the Secretary of Com-  
18 merce; and

19 (8) “Under Secretary” means the Under Sec-  
20 retary of Commerce for Oceans and Atmosphere.

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