

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

S. 138

To waive certain pay limitations for Department of Agriculture and Department of the Interior employees engaged in emergency wildland fire suppression activities, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wildland Firefighter
5 Fair Pay Act”.

6 **SEC. 2. WAIVER OF PREMIUM PAY LIMITATIONS FOR DE-**
7 **PARTMENT OF AGRICULTURE AND DEPART-**
8 **MENT OF THE INTERIOR EMPLOYEES EN-**
9 **GAGED IN EMERGENCY WILDLAND FIRE SUP-**
10 **PRESSION ACTIVITIES.**

11 (a) DEFINITIONS.—In this section:

1 (1) BASIC PAY.—The term “basic pay” includes
2 any applicable locality-based comparability payment
3 under section 5304 of title 5, United States Code,
4 any applicable special rate supplement under section
5 5305 of that title, and any equivalent payment
6 under a similar provision of law.

7 (2) COVERED EMPLOYEE.—The term “covered
8 employee” means an employee of the Department of
9 Agriculture or the Department of the Interior.

10 (3) COVERED SERVICES.—The term “covered
11 services” means services performed by a covered em-
12 ployee serving as a wildland firefighter or a fire
13 management response official, including a regional
14 fire director, a deputy regional fire director, an
15 agency official who directly oversees fire operations,
16 and a fire management officer, or serving on an inci-
17 dent management team, at the National Interagency
18 Fire Center, at a Geographic Area Coordinating
19 Center, or at an operations center.

20 (4) PREMIUM PAY.—The term “premium pay”
21 means the premium pay paid under the provisions of
22 law described in section 5547(a) of title 5, United
23 States Code.

24 (5) RELEVANT COMMITTEES.—The term “rel-
25 evant committees” means—

1 (A) the Committee on Homeland Security
2 and Governmental Affairs of the Senate;

3 (B) the Committee on Oversight and Re-
4 form of the House of Representatives;

5 (C) the Committee on Appropriations of
6 the Senate; and

7 (D) the Committee on Appropriations of
8 the House of Representatives.

9 (6) SECRETARY CONCERNED.—The term “Sec-
10 retary concerned” means—

11 (A) the Secretary of Agriculture, with re-
12 spect to an employee of the Department of Ag-
13 riculture; and

14 (B) the Secretary of the Interior, with re-
15 spect to an employee of the Department of the
16 Interior.

17 (b) WAIVERS OF PREMIUM PAY LIMITATION.—

18 (1) WAIVER OF PREMIUM PAY PERIOD LIMITA-
19 TION.—Any premium pay for covered services shall
20 be disregarded in calculating the aggregate of the
21 basic pay and premium pay for the applicable cov-
22 ered employee for purposes of a limitation under sec-
23 tion 5547 of title 5, United States Code, or under
24 any other provision of law.

1 (2) CALCULATION OF AGGREGATE PAY.—Any
2 pay that is disregarded under paragraph (1) shall be
3 disregarded in calculating the aggregate pay of the
4 applicable covered employee for purposes of applying
5 the limitation under section 5307 of title 5, United
6 States Code, during calendar year 2022.

7 (3) PAY LIMITATION.—A covered employee may
8 not be paid premium pay under this subsection if, or
9 to the extent that, the aggregate amount of the basic
10 pay and premium pay (including premium pay for
11 covered services) of the covered employee for a cal-
12 endar year would exceed the rate of basic pay pay-
13 able for a position at level II of the Executive Sched-
14 ule under section 5313 of title 5, United States
15 Code, as in effect at the end of that calendar year.

16 (4) TREATMENT OF ADDITIONAL PREMIUM
17 PAY.—If the application of this subsection results in
18 the payment of additional premium pay to a covered
19 employee of a type that is normally creditable as
20 basic pay for retirement or any other purpose, that
21 additional premium pay shall not be—

22 (A) considered to be basic pay of the cov-
23 ered employee for any purpose; or

24 (B) used in computing a lump-sum pay-
25 ment to the covered employee for accumulated

1 and accrued annual leave under section 5551 or
2 5552 of title 5, United States Code.

3 (5) EFFECTIVE PERIOD.—This subsection shall
4 be in effect during calendar year 2022 and apply to
5 premium pay payable during that year.

6 (c) SUBMISSION OF PLAN.—Not later than March
7 30, 2022, each Secretary concerned, in consultation with
8 the Director of the Office of Management and Budget and
9 the Director of the Office of Personnel Management, shall
10 submit to the relevant committees a plan that addresses
11 the needs of the Department of Agriculture or the Depart-
12 ment of the Interior, as applicable, to hire and train addi-
13 tional wildland firefighters and modernize compensation
14 for wildland firefighters such that sufficient firefighting
15 resources are available throughout each year without the
16 need for waivers of premium pay limitations.