

109TH CONGRESS
1ST SESSION

S. 2076

To amend title 5, United States Code, to provide to assistant United States attorneys the same retirement benefits as are afforded to Federal law enforcement officers.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2005

Mr. LEAHY (for himself, Mr. HATCH, Ms. MIKULSKI, Mr. DURBIN, Mr. DEWINE, Mr. BIDEN, Mrs. FEINSTEIN, Mr. FEINGOLD, Mr. SMITH, Mr. DODD, Mr. CHAMBLISS, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mrs. BOXER, Mr. WYDEN, Mr. NELSON of Florida, and Mr. CORZINE) 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 to assistant United States attorneys the same retirement benefits as are afforded to Federal law enforcement 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 “Assistant United
5 States Attorney Retirement Benefit Equity Act of 2005”.

1 **SEC. 2. RETIREMENT TREATMENT OF ASSISTANT UNITED**
2 **STATES ATTORNEYS.**

3 (a) CIVIL SERVICE RETIREMENT SYSTEM.—

4 (1) ASSISTANT UNITED STATES ATTORNEY DE-
5 FINED.—Section 8331 of title 5, United States
6 Code, is amended—

7 (A) in paragraph (28), by striking “and”
8 at the end;

9 (B) in the first paragraph (29), by striking
10 the period and inserting a semicolon;

11 (C) in the second paragraph (29)—

12 (i) by striking “(29)” and inserting
13 “(30)”; and

14 (ii) by striking the period and insert-
15 ing “; and”; and

16 (D) by adding at the end the following:

17 “(31) ‘assistant United States attorney’
18 means—

19 “(A) an assistant United States attorney
20 under section 542 of title 28; and

21 “(B) any other attorney employed by the
22 Department of Justice occupying a position des-
23 ignated by the Attorney General upon finding
24 that the position—

25 “(i) involves routine employee respon-
26 sibilities that are substantially similar to

1 those of assistant United States attorneys;
2 and

3 “(ii) is critical to the Department’s
4 successful accomplishment of an important
5 mission.”.

6 (2) RETIREMENT TREATMENT.—Chapter 83 of
7 title 5, United States Code, is amended by adding
8 after section 8351 the following:

9 **“§ 8352. Assistant United States attorneys**

10 “Except as provided under the Assistant United
11 States Attorneys Retirement Benefit Equity Act of 2005
12 (including the provisions relating to the non-applicability
13 of mandatory separation requirements under section
14 8335(b) and 8425(b) of this title), an assistant United
15 States attorney shall be treated in the same manner and
16 to the same extent as a law enforcement officer for pur-
17 poses of this chapter.”.

18 (3) TECHNICAL AND CONFORMING AMEND-
19 MENTS.—(A) The table of sections for chapter 83 of
20 title 5, United States Code, is amended by inserting
21 after the item relating to section 8351 the following:

 “8352. Assistant United States attorneys.”

22 (B) Section 8335(a) of such title is amended by
23 striking “8331(29)(A)” and inserting
24 “8331(30)(A)”.

25 (b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—

1 (1) ASSISTANT UNITED STATES ATTORNEY DE-
2 FINED.—Section 8401 of title 5, United States
3 Code, is amended—

4 (A) in paragraph (34), by striking “and”
5 at the end;

6 (B) in paragraph (35), by striking the pe-
7 riod and inserting “; and”; and

8 (C) by adding at the end the following:

9 “(36) ‘assistant United States attorney’
10 means—

11 “(A) an assistant United States attorney
12 under section 542 of title 28; and

13 “(B) any other attorney employed by the
14 Department of Justice occupying a position des-
15 ignated by the Attorney General upon finding
16 that the position—

17 “(i) involves routine employee respon-
18 sibilities that are substantially similar to
19 those of assistant United States attorneys;
20 and

21 “(ii) is critical to the Department’s
22 successful accomplishment of an important
23 mission.”.

1 (2) RETIREMENT TREATMENT.—Section 8402
2 of title 5, United States Code, is amended by adding
3 at the end the following:

4 “(h) Except as provided under the Assistant United
5 States Attorneys Retirement Benefit Equity Act of 2005
6 (including the provisions relating to the non-applicability
7 of mandatory separation requirements under section
8 8335(b) and 8425(b) of this title), an assistant United
9 States attorney shall be treated in the same manner and
10 to the same extent as a law enforcement officer for pur-
11 poses of this chapter.”.

12 (c) MANDATORY SEPARATION.—Sections 8335(b)
13 and 8425(b) of title 5, United States Code, are amended
14 by adding at the end the following: “The preceding provi-
15 sions of this subsection shall not apply in the case of an
16 assistant United States attorney as defined under section
17 8331(31) or 8401(36).”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on the first day of the first
20 applicable pay period beginning on or after 120 days after
21 the date of enactment of this Act.

22 **SEC. 3. PROVISIONS RELATING TO INCUMBENTS.**

23 (a) DEFINITIONS.—In this section—

24 (1) the term “assistant United States attorney”
25 means—

1 (A) an assistant United States attorney
2 under section 542 of title 28, United States
3 Code; and

4 (B) any other attorney employed by the
5 Department of Justice occupying a position des-
6 ignated by the Attorney General upon finding
7 that the position—

8 (i) involves routine employee respon-
9 sibilities that are substantially similar to
10 those of assistant United States attorneys;
11 and

12 (ii) is critical to the Department's
13 successful accomplishment of an important
14 mission; and

15 (2) the term “incumbent” means an individual
16 who is serving as an assistant United States attor-
17 ney on the effective date of this section.

18 (b) DESIGNATED ATTORNEYS.—If the Attorney Gen-
19 eral makes any designation of an attorney to meet the def-
20 inition under subsection (a)(1)(B) for purposes of being
21 an incumbent under this section—

22 (1) such designation shall be made before the
23 effective date of this section; and

1 (2) the Attorney General shall submit to the
2 Office of Personnel Management before that effective
3 date—

4 (A) the name of the individual designated;
5 and

6 (B) the period of service performed by that
7 individual as an assistant United States attorney
8 before that effective date.

9 (c) NOTICE REQUIREMENT.—Not later than 9
10 months after the date of enactment of this Act, the Department of Justice shall take measures reasonably designed to provide notice to incumbents on—

11 (1) their election rights under this Act; and

12 (2) the effects of making or not making a timely
13 election under this Act.

14 (d) ELECTION AVAILABLE TO INCUMBENTS.—

15 (1) IN GENERAL.—An incumbent may elect, for
16 all purposes, to be treated—

17 (A) in accordance with the amendments
18 made by this Act; or

19 (B) as if this Act had never been enacted.

20 (2) FAILURE TO ELECT.—Failure to make a
21 timely election under this subsection shall be treated
22 in the same way as an election under paragraph
23 in the same way as an election under paragraph
24

1 (1)(A), made on the last day allowable under para-
2 graph (3).

3 (3) TIME LIMITATION.—An election under this
4 subsection shall not be effective unless the election
5 is made not later than the earlier of—

6 (A) 120 days after the date on which the
7 notice under subsection (c) is provided; or

8 (B) the date on which the incumbent in-
9 volved separates from service.

10 (e) LIMITED RETROACTIVE EFFECT.—

11 (1) EFFECT ON RETIREMENT.—In the case of
12 an incumbent who elects (or is deemed to have elect-
13 ed) the option under subsection (d)(1)(A), all service
14 performed by that individual as an assistant United
15 States attorney and, with respect to (B) below, in-
16 cluding any service performed by such individual
17 pursuant to an appointment under sections 515,
18 541, 543, and 546 of title 28, United States Code,
19 shall—

20 (A) to the extent performed on or after the
21 effective date of that election, be treated in ac-
22 cordance with applicable provisions of sub-
23 chapter III of chapter 83 or chapter 84 of title
24 5, United States Code, as amended by this Act;
25 and

1 (B) to the extent performed before the ef-
2 fective date of that election, be treated in ac-
3 cordance with applicable provisions of sub-
4 chapter III of chapter 83 or chapter 84 of such
5 title, as if the amendments made by this Act
6 had then been in effect.

7 (2) NO OTHER RETROACTIVE EFFECT.—Noth-
8 ing in this Act (including the amendments made by
9 this Act) shall affect any of the terms or conditions
10 of an individual's employment (apart from those
11 governed by subchapter III of chapter 83 or chapter
12 84 of title 5, United States Code) with respect to
13 any period of service preceding the date on which
14 such individual's election under subsection (d) is
15 made (or is deemed to have been made).

16 (f) INDIVIDUAL CONTRIBUTIONS FOR PRIOR SERV-
17 ICE.—

18 (1) IN GENERAL.—An individual who makes an
19 election under subsection (d)(1)(A) shall, with re-
20 spect to prior service performed by such individual,
21 deposit, with interest, to the Civil Service Retire-
22 ment and Disability Fund the difference between the
23 individual contributions that were actually made for
24 such service and the individual contributions that
25 would have been made for such service if the amend-

1 ments made by section 2 of this Act had then been
2 in effect.

3 (2) EFFECT OF NOT CONTRIBUTING.—If the
4 deposit required under paragraph (1) is not paid, all
5 prior service of the incumbent shall remain fully
6 creditable as law enforcement officer service, but the
7 resulting annuity shall be reduced in a manner simi-
8 lar to that described in section 8334(d)(2)(B) of
9 title 5, United States Code. This paragraph shall not
10 apply in the case of a disability annuity.

11 (3) PRIOR SERVICE DEFINED.—For purposes of
12 this section, the term “prior service” means, with re-
13 spect to any individual who makes an election (or is
14 deemed to have made an election) under subsection
15 (d)(1)(A), all service performed as an assistant
16 United States attorney, but not exceeding 20 years,
17 performed by such individual before the date as of
18 which applicable retirement deductions begin to be
19 made in accordance with such election.

20 (g) REGULATIONS.—Except as provided under sec-
21 tion 4, the Office of Personnel Management shall prescribe
22 regulations necessary to carry out this Act, including pro-
23 visions under which any interest due on the amount de-
24 scribed under subsection (e) shall be determined.

1 (h) EFFECTIVE DATE.—This section shall take effect
2 120 days after the date of enactment of this Act.

3 **SEC. 4. DEPARTMENT OF JUSTICE ADMINISTRATIVE AC-**
4 **TIONS.**

5 (a) REGULATIONS.—

6 (1) IN GENERAL.—Not later than 120 days
7 after the date of enactment of this Act, the Attorney
8 General, in consultation with the Office of Personnel
9 Management, shall promulgate regulations for desig-
10 nating attorneys described under section 3(a)(1)(B).

11 (2) CONTENTS.—Any regulation promulgated
12 under paragraph (1) shall ensure that attorneys des-
13 igned as assistant United States attorneys de-
14 scribed under section 3(a)(1)(B) have routine em-
15 ployee responsibilities that are substantially similar
16 to those of assistant United States attorneys.

17 (b) DESIGNATIONS.—The designation of any attorney
18 as an assistant United States attorney described under
19 section 3(a)(1)(B) shall be at the discretion of the Attor-
20 ney General.

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