

103D CONGRESS
1ST SESSION

S. 317

To reform Customs Service operations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 5), 1993

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To reform Customs Service operations, 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 “Customs Inspector
5 Benefit Reform Act of 1993”.

6 **SEC. 2. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFI-**
7 **CERS.**

8 (a) IN GENERAL.—Section 5 of the Act of February
9 13, 1911 (19 U.S.C. 261 and 267) is amended to read
10 as follows:

1 **“SEC. 5. OVERTIME AND PREMIUM PAY FOR CUSTOMS OF-**
2 **FICERS.**

3 “(a) OVERTIME PAY.—

4 “(1) IN GENERAL.—Subject to paragraph (2)
5 and subsection (c), a customs officer who is officially
6 assigned to perform work in excess of 40 hours in
7 the administrative workweek of the officer or in ex-
8 cess of 8 hours in a day shall be compensated for
9 that work at an hourly rate of pay that is equal to
10 2 times the hourly rate of the basic pay of the offi-
11 cer. For purposes of this paragraph, the hourly rate
12 of basic pay for a customs officer does not include
13 any premium pay provided for under subsection (b).

14 “(2) SPECIAL PROVISIONS RELATING TO OVER-
15 TIME WORK ON CALLBACK BASIS.—

16 “(A) MINIMUM DURATION.—Any work for
17 which compensation is authorized under para-
18 graph (1) and for which the customs officer is
19 required to return to the officer’s place of work
20 shall be treated as being not less than 2 hours
21 in duration; but only if such work begins at
22 least 1 hour after the end of any previous regu-
23 larly scheduled work assignment.

24 “(B) COMPENSATION FOR COMMUTING
25 TIME.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), in addition to the com-
3 pensation authorized under paragraph (1)
4 for work to which subparagraph (A) ap-
5 plies, the customs officer is entitled to be
6 paid, as compensation for commuting time,
7 an amount equal to 3 times the hourly rate
8 of basic pay of the officer.

9 “(ii) EXCEPTION.—Compensation for
10 commuting time is not payable under
11 clause (i) if the work for which compensa-
12 tion is authorized under paragraph (1)
13 commences within 2 hours of the next reg-
14 ularly scheduled work assignment of the
15 customs officer.

16 “(b) PREMIUM PAY FOR CUSTOMS OFFICERS.—

17 “(1) NIGHT WORK DIFFERENTIAL.—

18 “(A) 3 P.M. TO MIDNIGHT SHIFTWORK.—If
19 the majority of the hours of regularly scheduled
20 work of a customs officer occur during the pe-
21 riod beginning at 3 p.m. and ending at 12 a.m.,
22 the officer is entitled to pay for work during
23 such period (except for work to which para-
24 graph (2) or (3) applies) at the officer’s hourly

1 rate of basic pay plus premium pay amounting
2 to 15 percent of that basic rate.

3 “(B) 11 P.M. TO 8 A.M. SHIFTWORK.—If
4 the majority of the hours of regularly scheduled
5 work of a customs officer occur during the pe-
6 riod beginning at 11 p.m. and ending at 8 a.m.,
7 the officer is entitled to pay for work during
8 such period (except for work to which para-
9 graph (2) or (3) applies) at the officer’s hourly
10 rate of basic pay plus premium pay amounting
11 to 20 percent of that basic rate.

12 “(C) 7:30 P.M. TO 3:30 A.M. SHIFTWORK.—
13 If the regularly scheduled work assignment of a
14 customs officer is 7:30 p.m. to 3:30 a.m, the of-
15 ficer is entitled to pay for work during such pe-
16 riod (except for work to which paragraph (2) or
17 (3) applies) at the officer’s hourly rate of basic
18 pay plus premium pay amounting to 15 percent
19 of that basic rate for the period from 7:30 p.m.
20 to 11:30 p.m. and at the officer’s hourly rate of
21 basic pay plus premium pay amounting to 20
22 percent of that basic rate for the period from
23 11:30 p.m. to 3:30 a.m.

24 “(2) SUNDAY DIFFERENTIAL.—A customs offi-
25 cer who performs any regularly scheduled work on a

1 Sunday that is not a holiday is entitled to pay for
2 that work at the officer's hourly rate of basic pay
3 plus premium pay amounting to 100 percent of that
4 basic rate.

5 “(3) HOLIDAY DIFFERENTIAL.—A customs offi-
6 cer who performs any regularly scheduled work on a
7 holiday is entitled to pay for that work at the offi-
8 cer's hourly rate of basic pay plus premium pay
9 amounting to 100 percent of that basic rate.

10 “(4) TREATMENT OF PREMIUM PAY.—Premium
11 pay provided for under this subsection may not be
12 treated as being overtime pay or compensation for
13 any purpose.

14 “(c) EXCLUSIVITY OF PAY UNDER THIS SECTION.—
15 A customs officer who receives overtime pay under sub-
16 section (a) or premium pay under subsection (b) for time
17 worked may not receive pay or other compensation for
18 that work under any other provision of law.

19 “(d) REGULATIONS.—The Secretary of the Treasury
20 shall prescribe such regulations as are necessary or appro-
21 priate to carry out this section, including regulations—

22 “(1) to ensure that callback work assignments
23 are commensurate with the overtime pay authorized
24 for such work; and

1 “(2) to prevent the disproportionate assignment
2 of overtime work to customs officers who are near
3 to retirement.

4 “(e) DEFINITIONS.—As used in this section:

5 “(1) The term ‘customs officer’ means an indi-
6 vidual performing those functions specified by regu-
7 lation by the Secretary of the Treasury for a cus-
8 toms inspector or canine enforcement officer. Such
9 functions shall be consistent with such applicable
10 standards as may be promulgated by the Office of
11 Personnel Management.

12 “(2) The term ‘holiday’ means any day des-
13 igned as a holiday under a Federal statute or Ex-
14 ecutive order.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Section 2 of the Act of June 3, 1944 (19
17 U.S.C. 1451a), is repealed.

18 (2) Section 450 of the Tariff Act of 1930 (19
19 U.S.C. 1450) is amended—

20 (A) by striking out “**AT NIGHT**” in the
21 section heading and inserting “**DURING OVER-**
22 **TIME HOURS**”;

23 (B) by striking out “at night” and insert-
24 ing “during overtime hours”; and

1 (C) by inserting “aircraft,” immediately
2 before “vessel”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 subsections (a) and (b) apply to customs inspectional serv-
5 ices provided on or after the date occurring 90 days after
6 the date of the enactment of this Act.

7 **SEC. 3. FOREIGN LANGUAGE PROFICIENCY AWARDS FOR**
8 **CUSTOMS OFFICERS.**

9 Cash awards for foreign language proficiency may,
10 under regulations prescribed by the Secretary of the
11 Treasury, be paid to customs officers (as referred to in
12 section 5(e)(1) of the Act of February 13, 1911) to the
13 same extent and in the same manner as would be allowable
14 under subchapter III of chapter 45 of title 5, United
15 States Code, with respect to law enforcement officers (as
16 defined by section 4521 of such title).

17 **SEC. 4. APPROPRIATIONS REIMBURSEMENTS FROM THE**
18 **CUSTOMS USER FEE ACCOUNT.**

19 Section 13031(f)(3) of the Consolidated Omnibus
20 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3))
21 is amended by amending clause (i) of subparagraph (A)
22 to read as follows:

23 “(i) in—

1 “(I) paying overtime compensation and
2 premium pay under section 5 (a) and (b) of the
3 Act of February 13, 1911,

4 “(II) paying necessary expenses for agency
5 contributions to the Civil Service Retirement
6 and Disability Fund or the Federal Employees
7 Retirement System to match deductions from
8 the overtime compensation paid under
9 subclause (I), and

10 “(III) providing all preclearance services
11 for which the recipients of such services are not
12 required to reimburse the Secretary of the
13 Treasury, and”.

14 **SEC. 5. TREATMENT OF CERTAIN PAY OF CUSTOMS OFFI-**
15 **CERS FOR RETIREMENT PURPOSES.**

16 (a) IN GENERAL.—Section 8331(3) of title 5, United
17 States Code, is amended—

18 (1) by striking out “and” at the end of sub-
19 paragraph (C);

20 (2) by striking out the semicolon at the end of
21 subparagraph (D) and inserting “; and”;

22 (3) by adding after subparagraph (D) the fol-
23 lowing:

24 “(E) with respect to a customs officer (re-
25 ferred to in subsection (e)(1) of section 5 of the

1 Act of February 13, 1911), compensation for
2 overtime inspectional services provided for
3 under subsection (a) of such section 5, but not
4 to exceed 50 percent of any statutory maximum
5 in overtime pay for customs officers which is in
6 effect for the year involved;” and

7 (4) by striking out “subparagraphs (B), (C),
8 and (D) of this paragraph,” and inserting “subpara-
9 graphs (B), (C), (D), and (E) of this paragraph”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 subsection (a) take effect on the date of the enactment
12 of this Act and apply only with respect to service per-
13 formed on or after such date.

14 **SEC. 6. REPORTS.**

15 (a) CUSTOMS USER FEE ACCOUNT REPORTS.—Sub-
16 paragraph (D) of section 13031(f)(3) of the Consolidated
17 Omnibus Budget Reconciliation Act of 1985 (19 U.S.C.
18 58c(f)(3)(D)) is amended to read as follows:

19 “(D) At the close of each fiscal year, the Secretary
20 of the Treasury shall submit a report to the Committee
21 on Finance of the Senate and the Committee on Ways and
22 Means of the House of Representatives—

23 “(i) containing a detailed accounting of all ex-
24 penditures from the Customs User Fee Account dur-
25 ing such year, including a summary of the expendi-

1 tures, on a port-by-port basis, for which reimburse-
2 ment has been provided under subparagraph (A)(ii);
3 and

4 “(ii) containing a listing of all callback assign-
5 ments of customs officers for which overtime com-
6 pensation was paid under section 5(a) of the Act of
7 February 13, 1911, and that were less than 1 hour
8 in duration.”.

9 (b) OTHER REPORTS.—

10 (1) GAO REPORT.—The Comptroller General of
11 the United States shall undertake—

12 (A) an evaluation of the appropriateness
13 and efficiency of the customs user fee laws for
14 financing the provision of customs inspectional
15 services; and

16 (B) a study to determine whether cost sav-
17 ings in the provision of overtime inspectional
18 services could be realized by the United States
19 Customs Service through the use of additional
20 inspectors as opposed to continuing the current
21 practice of relying on overtime pay.

22 The Comptroller General shall submit a report on
23 the evaluation and study required under this sub-
24 section to the Committees by no later than the 1st
25 anniversary of the date of the enactment of this Act.

1 (2) TREASURY RECOMMENDATION.—On the day
2 that the President submits the budget for the
3 United States Government for fiscal year 1994 to
4 the Congress under section 1105(a) of title 31,
5 United States Code, the Secretary of the Treasury
6 shall submit to the Committees recommended legis-
7 lative proposals for improving the operation of cus-
8 toms user fee laws in financing the provision of cus-
9 toms inspectional services.

10 (3) DEFINITION OF COMMITTEES.—For pur-
11 poses of this subsection, the term “Committees”
12 means the Committee of Ways and Means of the
13 House of Representatives and the Committee on Fi-
14 nance of the Senate.

15 **SEC. 7. HAZARDOUS DUTY DIFFERENTIAL.**

16 (a) IN GENERAL.—Notwithstanding section 5545(d)
17 of title 5, United States Code, in the administration of
18 such section, the Commissioner of Customs of the United
19 States Customs Service may designate hazardous duty
20 functions for the purpose of paying hazardous duty dif-
21 ferentials to customs officers.

22 (b) DEFINITION.—For purposes of this section the
23 term “customs officer” means an individual performing
24 those functions specified by regulation by the Secretary
25 of the Treasury for a customs inspector or canine enforce-

1 ment officer. Such functions shall be consistent with such
2 applicable standards as may be promulgated by the Office
3 of Personnel Management.

4 (c) EFFECTIVE DATE.—This section shall take effect
5 and apply to inspectional services provided on or after Oc-
6 tober 1, 1993.

7 **SEC. 8. SPECIAL PAY ADJUSTMENT FOR CUSTOMS SERVICE**
8 **EMPLOYEES.**

9 (a) IN GENERAL.—Section 405 of the Federal Em-
10 ployees Pay Comparability Act of 1990 (5 U.S.C. 5305
11 note; 104 Stat. 1466) is amended by adding at the end
12 thereof the following new subsection:

13 “(d)(1) The provisions of subsection (a) shall apply
14 to customs officers.

15 “(2) For purposes of this section the appropriate
16 agency head for prescribing regulations shall be the Sec-
17 retary of the Treasury.

18 “(3) For purposes of this section the term ‘customs
19 officer’ means an individual performing those functions
20 specified by regulation by the Secretary of the Treasury
21 for a customs inspector or canine enforcement officer.
22 Such functions shall be consistent with such applicable
23 standards as may be promulgated by the Office of Person-
24 nel Management.”.

25 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Subject to the provisions of
2 paragraph (2), the amendment made by this section
3 shall be effective on and after the first day of the
4 first applicable pay period beginning on or after Oc-
5 tober 1, 1993.

6 (2) REGULATIONS.—The Secretary of the
7 Treasury may prescribe regulations after the date of
8 the enactment of this section to provide for the im-
9 plementation of the amendment made by this section
10 on or after the effective date under paragraph (1).

11 **SEC. 9. CUSTOMS INSPECTOR AND CANINE ENFORCEMENT**
12 **OFFICER CREDITABLE SERVICE FOR RETIRE-**
13 **MENT.**

14 (a) DESIGNATION OF ARDUOUS ENFORCEMENT PO-
15 SITIONS.—The Commissioner of Customs (hereafter in
16 this section referred to as the “Commissioner”) may des-
17 ignate positions in the Customs Service as arduous en-
18 forcement positions. An arduous enforcement position may
19 only be filled by an employee who—

20 (1) is a customs inspector or canine enforce-
21 ment officer;

22 (2) is capable of performing duties which are
23 sufficiently rigorous that employment opportunities
24 should be limited to young and physically vigorous
25 individuals, as determined by the Commissioner;

1 (3) is less than 57 years of age;

2 (4) qualifies in firearms tests conducted on a
3 quarterly basis under regulations promulgated by
4 the Commissioner; and

5 (5) qualifies in all physical fitness standards
6 under regulations promulgated by the Commissioner
7 that are generally applicable to all Federal law en-
8 forcement officers.

9 (b) REMOVAL FROM ARDUOUS ENFORCEMENT POSI-
10 TION.—A customs inspector or canine enforcement officer
11 who fails to qualify on any quarterly firearms test as re-
12 quired under subsection (a)(4) or fails to maintain the
13 physical fitness standards under subsection (a)(5) shall be
14 removed from an arduous enforcement position. Such in-
15 spector or officer may not be assigned to an arduous en-
16 forcement position for a period of no less than 6 months.

17 (c) CIVIL SERVICE RETIREMENT SYSTEM.—

18 (1) DEFINITIONS.—Section 8331 of title 5,
19 United States Code, is amended—

20 (A) in paragraph (25) by striking out
21 “and” after the semicolon;

22 (B) in paragraph (26) by striking out the
23 period and inserting in lieu thereof a semicolon
24 and “and”; and

1 (C) by adding at the end thereof the fol-
2 lowing new paragraph:

3 “(27) ‘designated customs inspector’ means a
4 customs inspector or canine enforcement officer who
5 is serving in an arduous enforcement position as
6 designated by the Commissioner of Customs under
7 section 9 of the Customs Inspector Benefit Reform
8 Act of 1993.”.

9 (2) CREDITABLE SERVICE.—Section 8332 of
10 title 5, United States Code, is amended by adding
11 at the end thereof the following new subsection:

12 “(o)(1) For purposes of this chapter, and subject to
13 the provisions of this subsection, a designated customs in-
14 spector shall receive 1½ years of creditable service for
15 each year of actual service as a designated customs inspec-
16 tor. Such service shall be based on full years and twelfth
17 parts thereof, excluding from the aggregate the fractional
18 part of a month, if any.

19 “(2) The provisions of paragraph (1) shall not apply
20 to any customs inspector or canine enforcement officer un-
21 less such inspector or officer has no less than 5 years of
22 actual service as an employee (which is otherwise cred-
23 itable service under this section).

1 “(3) No customs inspector or canine enforcement of-
2 ficer may be credited with more than 20 years of cred-
3 itable service under the provisions of paragraph (1).

4 “(4) This subsection shall not be construed to give
5 any customs inspector or canine enforcement officer credit
6 for both service as such inspector or officer and service
7 as a designated customs inspector during any specified
8 time period.”.

9 (3) DEDUCTIONS, CONTRIBUTIONS, AND DEPOS-
10 ITS.—Section 8334 of title 5, United States Code, is
11 amended—

12 (A) in the first sentence of subsection
13 (a)(1) by inserting “designated customs inspec-
14 tor,” after “law enforcement officer,”; and

15 (B) in the table under subsection (c) by in-
16 serting after the item relating to law enforce-
17 ment officers and firefighters the following new
18 item:

“Designated customs inspector for
designated customs inspector
service 7½..... After September 30, 1993.”.

19 (4) COMPUTATION OF ANNUITY.—Section 8339
20 of title 5, United States Code, is amended by adding
21 at the end thereof the following new subsection:

22 “(r) The annuity of an employee with creditable serv-
23 ice under section 8332(o) retiring under this subchapter
24 is computed under subsection (a) of this section, except

1 the annuity of such employee is computed with respect to
2 the service credited under section 8322(o)(1) as a des-
3 ignated customs inspector by multiplying 2½ percent of
4 his average pay by the years of that service.”.

5 (5) APPLICATION.—The amendments made by
6 this subsection shall be effective on and after Octo-
7 ber 1, 1993, and shall apply with regard to service
8 performed by a customs inspector or canine enforce-
9 ment officer in an arduous enforcement position on
10 and after such date.

11 (d) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—

12 (1) DEFINITIONS.—Section 8401 of title 5,
13 United States Code, is amended—

14 (A) in paragraph (31) by striking out
15 “and” after the semicolon;

16 (B) in paragraph (32) by striking out the
17 period and inserting in lieu thereof a semicolon
18 and “and”; and

19 (C) by adding at the end thereof the fol-
20 lowing new paragraph:

21 “(33) ‘designated customs inspector’ means a
22 customs inspector or canine enforcement officer who
23 is serving in an arduous enforcement position as
24 designated by the Commissioner of Customs under

1 section 9 of the Customs Inspector Benefit Reform
2 Act of 1993.”.

3 (2) CREDITABLE SERVICE.—Section 8411 of
4 title 5, United States Code, is amended by adding
5 at the end thereof the following new subsection:

6 “(h)(1) For purposes of this chapter, and subject to
7 the provisions of this subsection, a designated customs in-
8 spector shall receive 1½ years of creditable service for
9 each year of actual service as a designated customs inspec-
10 tor. Such service shall be based on full years and twelfth
11 parts thereof, excluding from the aggregate the fractional
12 part of a month, if any.

13 “(2) The provisions of paragraph (1) shall not apply
14 to any customs inspector or canine enforcement officer un-
15 less such inspector or officer has no less than 5 years of
16 actual service as an employee (which is otherwise cred-
17 itable service under this section).

18 “(3) No customs inspector or canine enforcement of-
19 ficer may be credited with more than 20 years of cred-
20 itable service under the provisions of paragraph (1).

21 “(4) This subsection shall not be construed to give
22 any customs inspector or canine enforcement officer credit
23 for both service as such inspector or officer and service
24 as a designated customs inspector during any specified
25 time period.”.

1 (3) DEDUCTIONS FROM PAY.—Section
2 8422(a)(2)(B) of title 5, United States Code, is
3 amended by inserting “designated customs inspec-
4 tor,” after “law enforcement officer,”.

5 (4) GOVERNMENT CONTRIBUTIONS.—Section
6 8423(a) is amended—

7 (A) in paragraph (1)(B) by inserting “des-
8 ignated customs inspector,” after “law enforce-
9 ment officer,”; and

10 (B) in paragraph (3)(A) by inserting “des-
11 ignated customs inspector,” after “law enforce-
12 ment officer,”.

13 (5) COMPUTATION OF ANNUITY.—Section 8415
14 of title 5, United States Code, is amended—

15 (A) in subsection (g)(2) by inserting “des-
16 ignated customs inspector,” after “law enforce-
17 ment officer,”; and

18 (B) by adding at the end thereof the fol-
19 lowing new subsection:

20 “(h) The annuity of an employee with creditable serv-
21 ice under section 8411(h) retiring under this subchapter
22 is computed under subsection (a) of this section, except
23 the annuity of such employee is computed with respect to
24 the service credited under section 8411(h)(1) as a des-

1 igned customs inspector by multiplying $1\frac{7}{10}$ percent of
 2 his average pay by the years of that service.”.

3 (6) APPLICATION.—The amendments made by
 4 this subsection shall be effective on and after Octo-
 5 ber 1, 1993, and shall apply with regard to service
 6 performed by a customs inspector or canine enforce-
 7 ment officer in an arduous enforcement position on
 8 and after such date.

9 **SEC. 10. APPLICATION OF CUSTOMS SERVICE FEES TO PAS-**
 10 **SENGERS.**

11 (a) IN GENERAL.—Subparagraph (A) of section
 12 13031(b)(1) of the Consolidated Omnibus Budget Rec-
 13 onciliation Act of 1985 (19 U.S.C. 58c(b)(1)(A)) is
 14 amended to read as follows:

15 “(A) the arrival of any passenger whose jour-
 16 ney—

17 “(i) originated in—

18 “(I) a territory or possession of the
 19 United States; or

20 “(ii) originated in the United States and
 21 was limited to—

22 “(I) territories and possessions of the
 23 United States; and

24 (b) EFFECTIVE DATE.—The amendment made by
 25 this section shall apply with respect to customs services

1 rendered in regard to arriving passengers using transpor-
2 tation for which documents or tickets were issued after
3 the date that is 90 days after the date of the enactment
4 of this Act.

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