

No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 77 of title 18, United States Code, is amended by adding at the end the following:

“1596. Additional jurisdiction in certain trafficking offenses.”

The committee substitute amendment, as amended, was agreed to.

The bill (S. 1703), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

NON-FOREIGN AREA RETIREMENT EQUITY ASSURANCE ACT OF 2008

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 954, S. 3013.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 3013) to provide for retirement equity for Federal employees in nonforeign areas outside the 48 contiguous States and the District of Columbia, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics)

S. 3013

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Non-Foreign Area Retirement Equity Assurance Act of 2008” or the “Non-Foreign AREA Act of 2008”.

SEC. 2. EXTENSION OF LOCALITY PAY.

[(a) LOCALITY-BASED COMPARABILITY PAYMENTS.—Section 5304(f)(1) of title 5, United States Code, is amended by striking subparagraph (A) and inserting the following:

“(A) each General Schedule position in the United States, as defined under section 5921(4), and its territories and possessions, including the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands shall be included within a pay locality; and”.]

(a) LOCALITY-BASED COMPARABILITY PAYMENTS.—Section 5304 of title 5, United States Code, is amended—

(1) in subsection (f)(1), by striking subparagraph (A) and inserting the following:

“(A) each General Schedule position in the United States, as defined under section 5921(4), and its territories and possessions, including the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands, shall be included within a pay locality;”;

(2) in subsection (g)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking “and” after the semicolon;

(ii) by redesignating subparagraph (B) as subparagraph (C);

(iii) by inserting after subparagraph (A) the following:

“(B) positions under subsection (h)(1)(D) not covered by appraisal systems certified under section 5382; and”;

(iv) in subparagraph (C) (as redesignated by this paragraph), by striking “under subsection (h)(1)(D)” and inserting “under subsection (h)(1)(E)”;

(B) by adding at the end the following:

“(3) The applicable maximum under this section shall be level II of the Executive Schedule for positions under subsection (h)(1)(D) covered by appraisal systems certified under section 5307(d).”;

(3) in subsection (h)(1)—

(A) in subparagraph (C) by striking “and” after the semicolon;

(B) by redesignating subparagraph (D) as subparagraph (E);

(C) by inserting after subparagraph (C) the following:

“(D) a Senior Executive Service position under section 3132 stationed within the United States, but outside the 48 contiguous States and the District of Columbia in which the incumbent the day before the date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2008 was eligible to receive a cost-of-living allowance under section 5941; and”;

(D) in clause (iii) in the matter following subparagraph (D), by inserting “stationed in the 48 contiguous States and the District of Columbia, or stationed within the United States, but outside the 48 contiguous States and the District of Columbia, in which the incumbent the day before the date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2008 was not eligible to receive a cost-of-living allowance under section 5941; and” before the semicolon.

(b) ALLOWANCES BASED ON LIVING COSTS AND CONDITIONS OF ENVIRONMENT.—Section 5941 of title 5, United States Code, is amended—

(1) in subsection (a), by adding after the last sentence “Notwithstanding any preceding provision of this subsection, the cost-of-living allowance rate based on paragraph (1) of this subsection shall be the cost-of-living allowance rate in effect on December 31, 2008, except as adjusted under subsection (c).”;

(2) by redesignating subsection (b) as subsection (d); and

(3) by inserting after subsection (a) the following:

“(b) This section shall apply only to areas that are designated as cost-of-living allowance areas as in effect on December 31, 2008.

“(c)(1) The cost-of-living allowance rate payable under this section shall be adjusted on the first day of the first applicable pay period beginning on or after—

“(A) January 1, 2009; and

“(B) on January 1 of each calendar year in which a locality-based comparability adjustment takes effect under section 4 (2) and (3) of the Non-Foreign Area Retirement Equity Assurance Act of 2008.

“(2)(A) In this paragraph, the term ‘applicable locality-based comparability pay percentage’ means, with respect to calendar year 2009 and each calendar year thereafter, the applicable percentage under section 4 (1), (2), or (3) of Non-Foreign Area Retirement Equity Assurance Act of 2008.

“(B) Each adjusted cost-of-living allowance rate under paragraph (1) shall be computed by—

“(i) subtracting 65 percent of the applicable locality-based comparability pay percentage from the cost-of-living allowance percentage rate in effect on December 31, 2008; and

“(ii) dividing the resulting percentage determined under clause (i) by the sum of—

“(I) one; and

“(II) the applicable locality-based comparability payment percentage expressed as a numeral.

“(3) No allowance rate computed under paragraph (2) may be less than zero.

“(4) Each allowance rate computed under paragraph (2) shall be paid as a percentage of basic pay (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law).”

SEC. 3. ADJUSTMENT OF SPECIAL RATES.

(a) IN GENERAL.—Each special rate of pay established under section 5305 of title 5, United States Code, and payable in an area designated as a cost-of-living allowance area under section 5941(a) of that title, shall be adjusted, on the dates prescribed by section 4 of this Act, in accordance with regulations prescribed by the Director of the Office of Personnel Management under section 9 of this Act.

(b) DEPARTMENT OF VETERANS AFFAIRS.—Each special rate of pay established under section 7455 of title 38, United States Code, and payable in a location designated as a cost-of-living allowance area under section 5941(a)(1) of title 5, United States Code, shall be adjusted in accordance with regulations prescribed by the Secretary of Veterans Affairs that are consistent with the regulations issued by the Director of the Office of Personnel Management under subsection (a).

(c) TEMPORARY ADJUSTMENT.—Regulations issued under subsection (a) or (b) may provide that statutory limitations on the amount of such special rates may be temporarily raised to a higher level during the transition period described in section 4 ending on the first day of the first pay period beginning on or after January 1, 2011, at which time any special rate of pay in excess of the applicable limitation shall be converted to a retained rate under section 5363 of title 5, United States Code.

SEC. 4. TRANSITION SCHEDULE FOR LOCALITY-BASED COMPARABILITY PAYMENTS.

Notwithstanding any other provision of this Act or section 5304 or 5304a of title 5, United States Code, in implementing the amendments made by this Act, for each nonforeign area determined under section 5941(b) of that title, the applicable rate for the locality-based comparability adjustment that is used in the computation required under section 5941(c) of that title shall be adjusted effective on the first day of the first pay period beginning on or after January 1—

(1) in calendar year 2009, by using $\frac{1}{3}$ of the locality pay percentage for the rest of United States locality pay area;

(2) in calendar year 2010, by using $\frac{2}{3}$ of the otherwise applicable comparability payment approved by the President for each nonforeign area; and

(3) in calendar year 2011 and each subsequent year, by using the full amount of the applicable comparability payment approved by the President for each nonforeign area.

SEC. 5. SAVINGS PROVISION.

[(a) IN GENERAL.—The application of this Act to any employee may not result in the amount of the decrease in the amount of pay attributable to special rate pay and the cost-of-living allowance as in effect on the date of

enactment of this Act exceeding the amount of the increase in the locality-based comparability payments paid to that employee.

[(b)(a) SENSE OF CONGRESS.—It is the sense of Congress that the application of this Act to any employee should not result in a decrease in the take home pay of that employee.]

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Bureau of Labor Statistics will conduct separate surveys pursuant to the establishment by the President's Pay Agent of 1 new locality area for the entire State of Hawaii and 1 new locality area for the entire state of Alaska, and that upon the completion of the phase in period no employee shall receive less than the Rest of the U.S. locality pay rate.

(c) SAVINGS PROVISIONS.—

(1) IN GENERAL.—During the period described under section 4 of this Act, an employee paid a special rate under section 5305 of title 5, United States Code, who the day before the date of enactment of this Act was eligible to receive a cost-of-living allowance under section 5941 of title 5, United States Code, and who continues to be officially stationed in an allowance area, shall receive an increase in the employee's special rate consistent with increases in the applicable special rate schedule. For employees in allowance areas, the minimum step rate for any grade of a special rate schedule shall be increased at the time of an increase in the applicable locality rate percentage for the allowance area by not less than the dollar increase in the locality-based comparability payment for a non-special rate employee at the same minimum step provided under section 4 of the Act, and corresponding increases shall be provided for all step rates of the given pay range.

(2) CONTINUATION OF COST OF LIVING ALLOWANCE RATE.—If an employee, who the day before the date of enactment of this Act was eligible to receive a cost-of-living allowance under section 5941 of title 5, United States Code, would receive a rate of basic pay and applicable locality-based comparability payment which is in excess of the maximum rate limitation set under section 5304(g) of title 5, United States Code, for his position (but for that maximum rate limitation) due to the operation of this Act, the employee shall continue to receive the cost-of-living allowance rate in effect on December 31, 2008 without adjustment until—

(A) the employee leaves the allowance area or pay system; or

(B) the employee is entitled to receive basic pay (including any applicable locality-based comparability payment or similar supplement) at a higher rate,

but, when any such position becomes vacant, the pay of any subsequent appointee thereto shall be fixed in the manner provided by applicable law and regulation.

(3) LOCALITY-BASED COMPARABILITY PAYMENTS.—Any employee covered under paragraph (2) shall receive any applicable locality-based comparability payment extended under section 4 of this Act which is not in excess of the maximum rate set under section 5304(g) of title 5, United States Code, for his position including any future increase to statutory pay caps under 5318 of title 5, United States Code. Notwithstanding paragraph (2), to the extent that an employee covered under that paragraph receives any amount of locality-based comparability payment, the cost-of-living allowance rate under that paragraph shall be reduced accordingly, as provided under section 5941(c)(2)(B) of title 5, United States Code.

SEC. 6. APPLICATION TO OTHER ELIGIBLE EMPLOYEES.

(a) IN GENERAL.—

(1) DEFINITION.—In this subsection, the term "covered employee" means—

(A) any employee who—

(i) on—

(I) the day before the date of enactment of this Act—

(aa) was eligible to be paid a cost-of-living allowance under 5941 of title 5, United States Code; and

(bb) was not eligible to be paid locality-based comparability payments under 5304 or 5304a of that title; or

(II) or after the date of enactment of this Act becomes eligible to be paid a cost-of-living allowance under 5941 of title 5, United States Code; and

(ii) except as provided under paragraph (2), is not covered under—

(I) section 5941 of title 5, United States Code (as amended by section 2 of this Act); and

(II) section 4 of this Act; or

(B) any employee who—

(i) on the day before the date of enactment of this Act—

(I) was eligible to be paid an allowance under section 1603(b) of title 10, United States Code;

(II) was eligible to be paid an allowance under section 1005(b) of title 39, United States Code; or

(III) was employed by the Transportation Security Administration of the Department of Homeland Security and was eligible to be paid an allowance based on section 5941 of title 5, United States Code; or

(ii) on or after the date of enactment of this Act—

(I) becomes eligible to be paid an allowance under section 1603(b) of title 10, United States Code;

(II) becomes eligible to be paid an allowance under section 1005(b) of title 39, United States Code; or

(III) is employed by the Transportation Security Administration of the Department of Homeland Security and becomes eligible to be paid an allowance based on section 5941 of title 5, United States Code.

(2) APPLICATION TO COVERED EMPLOYEES.—

(A) IN GENERAL.—Notwithstanding any provision of title 5, United States Code, other provision of law, for purposes of this Act (including the amendments made by this Act) any covered employee shall be treated as an employee to whom section 5941 of title 5, United States Code (as amended by section 2 of this Act), and section 4 of this Act apply.

(B) PAY FIXED BY STATUTE.—Pay to covered employees under section 5304 or 5304a of title 5, United States Code, as a result of the application of this Act shall be considered to be fixed by statute.

(C) PERFORMANCE APPRAISAL SYSTEM.—With respect to a covered employee who is subject to a performance appraisal system no part of pay attributable to locality-based comparability payments as a result of the application of this Act including section 5941 of title 5, United States Code (as amended by section 2 of this Act), may be reduced on the basis of the performance of that employee.

[(b) POSTAL SERVICE EMPLOYEES IN NON-FOREIGN AREAS.—Section 1005(b) of title 39, United States Code, is amended by inserting "and the Non-Foreign Area Retirement Equity Assurance Act of 2008" after "Section 5941 of title 5".]

(b) POSTAL EMPLOYEES IN NON-FOREIGN AREAS.—

(1) IN GENERAL.—Section 1005(b) of title 39, United States Code, is amended—

(A) by inserting "(1)" after "(b)";

(B) by striking "Section 5941," and inserting "Except as provided under paragraph (2), section 5941";

(C) by striking "For purposes of such section," and inserting "Except as provided under paragraph (2), for purposes of section 5941 of that title;"; and

(D) by adding at the end the following:

"(2) On and after the date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2008—

"(A) the provisions of that Act and section 5941 of title 5 shall apply to officers and employees covered by section 1003(b) and (c) whose duty station is in a nonforeign area; and

"(B) with respect to officers and employees of the Postal Service (other than those officers and employees described under subparagraph (A)) section 6(b)(2) of that Act shall apply."

(2) CONTINUATION OF COST OF LIVING ALLOWANCE.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, any employee of the Postal Service (other than an employee covered by section 1003 (b) and (c) of title 39, United States Code, whose duty station is in a nonforeign area) who is paid an allowance under section 1005(b) of that title shall be treated for all purposes as if the provisions of this Act (including the amendments made by this Act) had not been enacted, except that the cost-of-living allowance rate paid to that employee—

(i) may result in the allowance exceeding 25 percent of the rate of basic pay of that employee; and

(ii) shall be the greater of—

(I) the cost-of-living allowance rate in effect on December 31, 2008 for the applicable area; or

(II) the applicable locality-based comparability pay percentage under section 4.

(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(i) provide for an employee described under subparagraph (A) to be a covered employee as defined under subsection (a); or

(ii) authorize an employee described under subparagraph (A) to file an election under section 7 or 8 of this Act.

SEC. 7. ELECTION OF ADDITIONAL BASIC PAY FOR ANNUITY COMPUTATION BY EMPLOYEES.

(a) DEFINITION.—In this section the term "covered employee" means any employee—

(1) to whom section 4 applies;

(2) who is separated from service by reason of retirement under chapter 83 or 84 of title 5, United States Code, during the period of January 1, 2009, through December 31, 2011; and

(3) who files and election with the Office of Personnel Management under subsection (b).

(b) ELECTION.—

(1) IN GENERAL.—An employee described under subsection (a) (1) and (2) may file an election with the Office of Personnel Management to be covered under this section.

(2) DEADLINE.—An election under this subsection may be filed not later than December 31, 2011.

[(c) COMPUTATION OF ANNUITY.—For purposes of the computation of an annuity of a covered employee any cost-of-living allowance under section 5941 of title 5, United States Code, paid to that employee during the first applicable pay period beginning on or after January 1, 2009 through the first applicable pay period ending on or after December 31, 2011, shall be considered basic pay as defined under section 8331(3) or 8401(4) of that title.]

(c) COMPUTATION OF ANNUITY.—

(1) IN GENERAL.—Except as provided under paragraph (2), for purposes of the computation of an annuity of a covered employee any cost-of-living allowance under section 5941 of title 5, United States Code, paid to that employee during the first applicable pay period beginning on

or after January 1, 2009 through the first applicable pay period ending on or after December 31, 2011, shall be considered basic pay as defined under section 8331(3) or 8401(4) of that title.

(2) **LIMITATION.**—The amount of the cost-of-living allowance which may be considered basic pay under paragraph (1) may not exceed the amount of the locality-based comparability payments the employee would have received during that period for the applicable pay area if the limitation under section 4 of this Act did not apply.

(d) **CIVIL SERVICE RETIREMENT AND DISABILITY RETIREMENT FUND.**—

(1) **EMPLOYEE CONTRIBUTIONS.**—A covered employee shall pay into the Civil Service Retirement and Disability Retirement Fund—

(A) an amount equal to the difference between—

(i) employee contributions that would have been deducted and withheld from pay under section 8334 or 8422 of title 5, United States Code, during the period described under subsection (c) of this section if that subsection had been in effect during that period; and

(ii) employee contributions that were actually deducted and withheld from pay under section 8334 or 8422 of title 5, United States Code, during that period; and

(B) interest as prescribed under section 8334(e) of title 5, United States Code, based on the amount determined under subparagraph (A).

(2) **AGENCY CONTRIBUTIONS.**—

(A) **IN GENERAL.**—The employing agency of a covered employee shall pay into the Civil Service Retirement and Disability Retirement Fund an amount for applicable agency contributions based on payments made under paragraph (1).

(B) **SOURCE.**—Amounts paid under this paragraph shall be contributed from the appropriation or fund used to pay the employee.

(3) **REGULATIONS.**—The Office of Personnel Management may prescribe regulations to carry out this section.

SEC. 8. ELECTION OF COVERAGE BY EMPLOYEES.

(a) **IN GENERAL.**—Notwithstanding any other provision of this Act (other than section 6(b)), an employee may make an irrevocable election in accordance with this section, if—

(1) that employee is paid an allowance under section [5491]5941 of title 5, United States Code, during a pay period in which the date of the enactment of this Act occurs; or

(2) that employee—

(A) is a covered employee as defined under section 6(a)(1); and

(B) during a pay period in which the date of the enactment of this Act occurs is paid an allowance—

(i) under section 1603(b) of title 10, United States Code;

(ii) under section 1005(b) of title 39, United States Code; or

(iii) based on section 5941 of title 5, United States Code.

(b) **FILING ELECTION.**—Not later than 60 days after the date of enactment of this Act, an employee described under subsection (a) may file an election with the Office of Personnel Management to be treated for all purposes—

(1) in accordance with the provisions of this Act (including the amendments made by this Act); or

(2) as if the provisions of this Act (including the amendments made by this Act) had not been enacted, except that the cost-of-living allowance rate paid to that employee shall be the cost-of-living allowance rate in effect on December 31, 2008, for that em-

ployee without any adjustment after that date.

(c) **FAILURE TO FILE.**—Failure to make a timely election under this section shall be treated in the same manner as an election made under subsection (b)(1) on the last day authorized under that subsection.

(d) **NOTICE.**—To the greatest extent practicable, the Office of Personnel Management shall provide timely notice of the election which may be filed under this section to employees described under subsection (a).

SEC. 9. REGULATIONS.

(a) **IN GENERAL.**—The Director of the Office of Personnel Management shall prescribe regulations to carry out this Act, including—

(1) rules for special rate employees described under section 3;

(2) rules for adjusting rates of basic pay for employees in pay systems administered by the Office of Personnel Management when such employees are not entitled to locality-based comparability payments under section 5304 of title 5, United States Code, without regard to otherwise applicable statutory pay limitations during the transition period described in section 4 ending on the first day of the first pay period beginning on or after January 1, 2011; and

(3) rules governing establishment and adjustment of saved or retained rates for any employee whose rate of pay exceeds applicable pay limitations on the first day of the first pay period beginning on or after January 1, 2011.

(b) **OTHER PAY SYSTEMS.**—With the concurrence of the Director of the Office of Personnel Management, the administrator of a pay system not administered by the Office of Personnel Management shall prescribe regulations to carry out this Act with respect to employees in such pay system, consistent with the regulations issued by the Office under subsection (a).

SEC. 10. EFFECTIVE DATES.

(a) **IN GENERAL.**—Except as provided by subsection (b), this Act (including the amendments made by this Act) shall take effect on the date of enactment of this Act.

(b) **LOCALITY PAY AND SCHEDULE.**—The amendments made by section 2 and the provisions of section 4 shall take effect on the first day of the first applicable pay period beginning on or after January 1, 2009.

Mr. DURBIN. Mr. President, I ask unanimous consent that the committee amendments be agreed to as original text, the Collins amendment, which is at the desk, be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements related thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to.

The amendment (No. 5689) was agreed to, as follows:

(Purpose: To strike the provision relating to election of coverage by employees; and for other purposes)

On page 7, line 8, strike “9” and insert “8”.

On page 10, line 12, strike “the” and insert “this”.

On page 17, line 18, strike “or 8”.

On page 21, line 1, strike all through page 22, line 17.

On page 22, line 18, strike “SEC. 9” and insert “SEC. 8”.

On page 23, line 20, strike “SEC. 10” and insert “SEC. 9”.

The bill (S. 3013), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3013

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Non-Foreign Area Retirement Equity Assurance Act of 2008” or the “Non-Foreign AREA Act of 2008”.

SEC. 2. EXTENSION OF LOCALITY PAY.

(a) **LOCALITY-BASED COMPARABILITY PAYMENTS.**—Section 5304 of title 5, United States Code, is amended—

(1) in subsection (f)(1), by striking subparagraph (A) and inserting the following:

“(A) each General Schedule position in the United States, as defined under section 5921(4), and its territories and possessions, including the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands, shall be included within a pay locality;”;

(2) in subsection (g)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking “and” after the semicolon;

(ii) by redesignating subparagraph (B) as subparagraph (C);

(iii) by inserting after subparagraph (A) the following:

“(B) positions under subsection (h)(1)(D) not covered by appraisal systems certified under section 5382; and”;

(iv) in subparagraph (C) (as redesignated by this paragraph), by striking “under subsection (h)(1)(D)” and inserting “under subsection (h)(1)(E)”;

(B) by adding at the end the following:

“(3) The applicable maximum under this subsection shall be level II of the Executive Schedule for positions under subsection (h)(1)(D) covered by appraisal systems certified under section 5307(d).”;

(3) in subsection (h)(1)—

(A) in subparagraph (C) by striking “and” after the semicolon;

(B) by redesignating subparagraph (D) as subparagraph (E);

(C) by inserting after subparagraph (C) the following:

“(D) a Senior Executive Service position under section 3132 stationed within the United States, but outside the 48 contiguous States and the District of Columbia in which the incumbent the day before the date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2008 was eligible to receive a cost-of-living allowance under section 5941; and”;

(D) in clause (iii) in the matter following subparagraph (D), by inserting “stationed in the 48 contiguous States and the District of Columbia, or stationed within the United States, but outside the 48 contiguous States and the District of Columbia, in which the incumbent the day before the date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2008 was not eligible to receive a cost-of-living allowance under section 5941; and” before the semicolon.

(b) **ALLOWANCES BASED ON LIVING COSTS AND CONDITIONS OF ENVIRONMENT.**—Section 5941 of title 5, United States Code, is amended—

(1) in subsection (a), by adding after the last sentence “Notwithstanding any preceding provision of this subsection, the cost-of-living allowance rate based on paragraph (1) of this subsection shall be the cost-of-living allowance rate in effect on December 31, 2008, except as adjusted under subsection (c).”;

(2) by redesignating subsection (b) as subsection (d); and

(3) by inserting after subsection (a) the following:

“(b) This section shall apply only to areas that are designated as cost-of-living allowance areas as in effect on December 31, 2008.

“(c)(1) The cost-of-living allowance rate payable under this section shall be adjusted on the first day of the first applicable pay period beginning on or after—

“(A) January 1, 2009; and

“(B) on January 1 of each calendar year in which a locality-based comparability adjustment takes effect under section 4 (2) and (3) of the Non-Foreign Area Retirement Equity Assurance Act of 2008.

“(2)(A) In this paragraph, the term ‘applicable locality-based comparability pay percentage’ means, with respect to calendar year 2009 and each calendar year thereafter, the applicable percentage under section 4 (1), (2), or (3) of Non-Foreign Area Retirement Equity Assurance Act of 2008.

“(B) Each adjusted cost-of-living allowance rate under paragraph (1) shall be computed by—

“(i) subtracting 65 percent of the applicable locality-based comparability pay percentage from the cost-of-living allowance percentage rate in effect on December 31, 2008; and

“(ii) dividing the resulting percentage determined under clause (i) by the sum of—

“(I) one; and

“(II) the applicable locality-based comparability payment percentage expressed as a numeral.

“(3) No allowance rate computed under paragraph (2) may be less than zero.

“(4) Each allowance rate computed under paragraph (2) shall be paid as a percentage of basic pay (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law).”.

SEC. 3. ADJUSTMENT OF SPECIAL RATES.

(a) IN GENERAL.—Each special rate of pay established under section 5305 of title 5, United States Code, and payable in an area designated as a cost-of-living allowance area under section 5941(a) of that title, shall be adjusted, on the dates prescribed by section 4 of this Act, in accordance with regulations prescribed by the Director of the Office of Personnel Management under section 8 of this Act.

(b) DEPARTMENT OF VETERANS AFFAIRS.—Each special rate of pay established under section 7455 of title 38, United States Code, and payable in a location designated as a cost-of-living allowance area under section 5941(a)(1) of title 5, United States Code, shall be adjusted in accordance with regulations prescribed by the Secretary of Veterans Affairs that are consistent with the regulations issued by the Director of the Office of Personnel Management under subsection (a).

(c) TEMPORARY ADJUSTMENT.—Regulations issued under subsection (a) or (b) may provide that statutory limitations on the amount of such special rates may be temporarily raised to a higher level during the transition period described in section 4 ending on the first day of the first pay period be-

ginning on or after January 1, 2011, at which time any special rate of pay in excess of the applicable limitation shall be converted to a retained rate under section 5363 of title 5, United States Code.

SEC. 4. TRANSITION SCHEDULE FOR LOCALITY-BASED COMPARABILITY PAYMENTS.

Notwithstanding any other provision of this Act or section 5304 or 5304a of title 5, United States Code, in implementing the amendments made by this Act, for each non-foreign area determined under section 5941(b) of that title, the applicable rate for the locality-based comparability adjustment that is used in the computation required under section 5941(c) of that title shall be adjusted effective on the first day of the first pay period beginning on or after January 1—

(1) in calendar year 2009, by using $\frac{1}{3}$ of the locality pay percentage for the rest of United States locality pay area;

(2) in calendar year 2010, by using $\frac{2}{3}$ of the otherwise applicable comparability payment approved by the President for each non-foreign area; and

(3) in calendar year 2011 and each subsequent year, by using the full amount of the applicable comparability payment approved by the President for each non-foreign area.

SEC. 5. SAVINGS PROVISION.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the application of this Act to any employee should not result in a decrease in the take home pay of that employee.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Bureau of Labor Statistics will conduct separate surveys pursuant to the establishment by the President's Pay Agent of 1 new locality area for the entire State of Hawaii and 1 new locality area for the entire state of Alaska, and that upon the completion of the phase in period no employee shall receive less than the Rest of the U.S. locality pay rate.

(c) SAVINGS PROVISIONS.—

(1) IN GENERAL.—During the period described under section 4 of this Act, an employee paid a special rate under 5305 of title 5, United States Code, who the day before the date of enactment of this Act was eligible to receive a cost-of-living allowance under section 5941 of title 5, United States Code, and who continues to be officially stationed in an allowance area, shall receive an increase in the employee's special rate consistent with increases in the applicable special rate schedule. For employees in allowance areas, the minimum step rate for any grade of a special rate schedule shall be increased at the time of an increase in the applicable locality rate percentage for the allowance area by not less than the dollar increase in the locality-based comparability payment for a non-special rate employee at the same minimum step provided under section 4 of this Act, and corresponding increases shall be provided for all step rates of the given pay range.

(2) CONTINUATION OF COST OF LIVING ALLOWANCE RATE.—If an employee, who the day before the date of enactment of this Act was eligible to receive a cost-of-living allowance under section 5941 of title 5, United States Code, would receive a rate of basic pay and applicable locality-based comparability payment which is in excess of the maximum rate limitation set under section 5304(g) of title 5, United States Code, for his position (but for that maximum rate limitation) due to the operation of this Act, the employee shall continue to receive the cost-of-living allowance rate in effect on December 31, 2008 without adjustment until—

(A) the employee leaves the allowance area or pay system; or

(B) the employee is entitled to receive basic pay (including any applicable locality-based comparability payment or similar supplement) at a higher rate,

but, when any such position becomes vacant, the pay of any subsequent appointee thereto shall be fixed in the manner provided by applicable law and regulation.

(3) LOCALITY-BASED COMPARABILITY PAYMENTS.—Any employee covered under paragraph (2) shall receive any applicable locality-based comparability payment extended under section 4 of this Act which is not in excess of the maximum rate set under section 5304(g) of title 5, United States Code, for his position including any future increase to statutory pay caps under 5318 of title 5, United States Code. Notwithstanding paragraph (2), to the extent that an employee covered under that paragraph receives any amount of locality-based comparability payment, the cost-of-living allowance rate under that paragraph shall be reduced accordingly, as provided under section 5941(c)(2)(B) of title 5, United States Code.

SEC. 6. APPLICATION TO OTHER ELIGIBLE EMPLOYEES.

(a) IN GENERAL.—

(1) DEFINITION.—In this subsection, the term “covered employee” means—

(A) any employee who—

(i) on—

(I) the day before the date of enactment of this Act—

(aa) was eligible to be paid a cost-of-living allowance under 5941 of title 5, United States Code; and

(bb) was not eligible to be paid locality-based comparability payments under 5304 or 5304a of that title; or

(II) or after the date of enactment of this Act becomes eligible to be paid a cost-of-living allowance under 5941 of title 5, United States Code; and

(ii) except as provided under paragraph (2), is not covered under—

(I) section 5941 of title 5, United States Code (as amended by section 2 of this Act); and

(II) section 4 of this Act; or

(B) any employee who—

(i) on the day before the date of enactment of this Act—

(I) was eligible to be paid an allowance under section 1603(b) of title 10, United States Code;

(II) was eligible to be paid an allowance under section 1005(b) of title 39, United States Code; or

(III) was employed by the Transportation Security Administration of the Department of Homeland Security and was eligible to be paid an allowance based on section 5941 of title 5, United States Code; or

(ii) on or after the date of enactment of this Act—

(I) becomes eligible to be paid an allowance under section 1603(b) of title 10, United States Code;

(II) becomes eligible to be paid an allowance under section 1005(b) of title 39, United States Code; or

(III) is employed by the Transportation Security Administration of the Department of Homeland Security and becomes eligible to be paid an allowance based on section 5941 of title 5, United States Code.

(2) APPLICATION TO COVERED EMPLOYEES.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for purposes of this Act (including the amendments made by this Act) any covered employee shall be treated as an employee to whom section 5941 of title

5, United States Code (as amended by section 2 of this Act), and section 4 of this Act apply.

(B) **PAY FIXED BY STATUTE.**—Pay to covered employees under section 5304 or 5304a of title 5, United States Code, as a result of the application of this Act shall be considered to be fixed by statute.

(C) **PERFORMANCE APPRAISAL SYSTEM.**—With respect to a covered employee who is subject to a performance appraisal system no part of pay attributable to locality-based comparability payments as a result of the application of this Act including section 5941 of title 5, United States Code (as amended by section 2 of this Act), may be reduced on the basis of the performance of that employee.

(b) **POSTAL EMPLOYEES IN NON-FOREIGN AREAS.**—

(1) **IN GENERAL.**—Section 1005(b) of title 39, United States Code, is amended—

(A) by inserting “(1)” after “(b)”;

(B) by striking “Section 5941,” and inserting “Except as provided under paragraph (2), section 5941”;

(C) by striking “For purposes of such section,” and inserting “Except as provided under paragraph (2), for purposes of section 5941 of that title,”; and

(D) by adding at the end the following:

“(2) On and after the date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2008—

“(A) the provisions of that Act and section 5941 of title 5 shall apply to officers and employees covered by section 1003(b) and (c) whose duty station is in a nonforeign area; and

“(B) with respect to officers and employees of the Postal Service (other than those officers and employees described under subparagraph (A)) section 6(b)(2) of that Act shall apply.”.

(2) **CONTINUATION OF COST OF LIVING ALLOWANCE.**—

(A) **IN GENERAL.**—Notwithstanding any other provision of this Act, any employee of the Postal Service (other than an employee covered by section 1003 (b) and (c) of title 39, United States Code, whose duty station is in a nonforeign area) who is paid an allowance under section 1005(b) of that title shall be treated for all purposes as if the provisions of this Act (including the amendments made by this Act) had not been enacted, except that the cost-of-living allowance rate paid to that employee—

(i) may result in the allowance exceeding 25 percent of the rate of basic pay of that employee; and

(ii) shall be the greater of—

(I) the cost-of-living allowance rate in effect on December 31, 2008 for the applicable area; or

(II) the applicable locality-based comparability pay percentage under section 4.

(B) **RULE OF CONSTRUCTION.**—Nothing in this Act shall be construed to—

(i) provide for an employee described under subparagraph (A) to be a covered employee as defined under subsection (a); or

(ii) authorize an employee described under subparagraph (A) to file an election under section 7 of this Act.

SEC. 7. ELECTION OF ADDITIONAL BASIC PAY FOR ANNUITY COMPUTATION BY EMPLOYEES.

(a) **DEFINITION.**—In this section the term “covered employee” means any employee—

(1) to whom section 4 applies;

(2) who is separated from service by reason of retirement under chapter 83 or 84 of title 5, United States Code, during the period of January 1, 2009, through December 31, 2011; and

(3) who files an election with the Office of Personnel Management under subsection (b).

(b) **ELECTION.**—

(1) **IN GENERAL.**—An employee described under subsection (a) (1) and (2) may file an election with the Office of Personnel Management to be covered under this section.

(2) **DEADLINE.**—An election under this subsection may be filed not later than December 31, 2011.

(c) **COMPUTATION OF ANNUITY.**—

(1) **IN GENERAL.**—Except as provided under paragraph (2), for purposes of the computation of an annuity of a covered employee any cost-of-living allowance under section 5941 of title 5, United States Code, paid to that employee during the first applicable pay period beginning on or after January 1, 2009 through the first applicable pay period ending on or after December 31, 2011, shall be considered basic pay as defined under section 8331(3) or 8401(4) of that title.

(2) **LIMITATION.**—The amount of the cost-of-living allowance which may be considered basic pay under paragraph (1) may not exceed the amount of the locality-based comparability payments the employee would have received during that period for the applicable pay area if the limitation under section 4 of this Act did not apply.

(d) **CIVIL SERVICE RETIREMENT AND DISABILITY RETIREMENT FUND.**—

(1) **EMPLOYEE CONTRIBUTIONS.**—A covered employee shall pay into the Civil Service Retirement and Disability Retirement Fund—

(A) an amount equal to the difference between—

(i) employee contributions that would have been deducted and withheld from pay under section 8334 or 8422 of title 5, United States Code, during the period described under subsection (c) of this section if that subsection had been in effect during that period; and

(ii) employee contributions that were actually deducted and withheld from pay under section 8334 or 8422 of title 5, United States Code, during that period; and

(B) interest as prescribed under section 8334(e) of title 5, United States Code, based on the amount determined under subparagraph (A).

(2) **AGENCY CONTRIBUTIONS.**—

(A) **IN GENERAL.**—The employing agency of a covered employee shall pay into the Civil Service Retirement and Disability Retirement Fund an amount for applicable agency contributions based on payments made under paragraph (1).

(B) **SOURCE.**—Amounts paid under this paragraph shall be contributed from the appropriation or fund used to pay the employee.

(3) **REGULATIONS.**—The Office of Personnel Management may prescribe regulations to carry out this section.

SEC. 8. REGULATIONS.

(a) **IN GENERAL.**—The Director of the Office of Personnel Management shall prescribe regulations to carry out this Act, including—

(1) rules for special rate employees described under section 3;

(2) rules for adjusting rates of basic pay for employees in pay systems administered by the Office of Personnel Management when such employees are not entitled to locality-based comparability payments under section 5304 of title 5, United States Code, without regard to otherwise applicable statutory pay limitations during the transition period described in section 4 ending on the first day of the first pay period beginning on or after January 1, 2011; and

(3) rules governing establishment and adjustment of saved or retained rates for any

employee whose rate of pay exceeds applicable pay limitations on the first day of the first pay period beginning on or after January 1, 2011.

(b) **OTHER PAY SYSTEMS.**—With the concurrence of the Director of the Office of Personnel Management, the administrator of a pay system not administered by the Office of Personnel Management shall prescribe regulations to carry out this Act with respect to employees in such pay system, consistent with the regulations issued by the Office under subsection (a).

SEC. 9. EFFECTIVE DATES.

(a) **IN GENERAL.**—Except as provided by subsection (b), this Act (including the amendments made by this Act) shall take effect on the date of enactment of this Act.

(b) **LOCALITY PAY AND SCHEDULE.**—The amendments made by section 2 and the provisions of section 4 shall take effect on the first day of the first applicable pay period beginning on or after January 1, 2009.

MILITARY VOTING PROTECTION ACT OF 2008

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be discharged from further consideration of S. 3073, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title. The legislative clerk read as follows:

A bill (S. 3073) to amend the Uniformed and Overseas Citizens Absentee Voting Act to improve procedures for the collection and delivery of absentee ballots of absent overseas uniformed services voters, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. DURBIN. Mr. President, I ask unanimous consent that the Cornyn-Feinstein substitute amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, and any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 5690) was agreed to, as follows:

(Purpose: In the nature of a substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. PROCEDURES FOR COLLECTION AND DELIVERY OF MARKED ABSENTEE BALLOTS OF ABSENT OVERSEAS UNIFORMED SERVICES VOTERS.

(a) **PROCEDURES.**—

(1) **IN GENERAL.**—The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) is amended by inserting after section 103 the following new section:

“SEC. 103A. PROCEDURES FOR COLLECTION AND DELIVERY OF MARKED ABSENTEE BALLOTS OF ABSENT OVERSEAS UNIFORMED SERVICES VOTERS.

“(a) **COLLECTION.**—The Presidential designee shall establish procedures for collecting marked absentee ballots of absent overseas uniformed services voters in regularly scheduled general elections for Federal office, including absentee ballots prepared by States and Federal write-in absentee ballots