To amend title 5, United States Code, to provide for special base rates of pay for wildland firefighters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. Sinema (for herself, Mr. Barrasso, Mr. Manchin, Mr. Daines, Mr. Padilla, and Mr. Tester) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend title 5, United States Code, to provide for special base rates of pay for wildland firefighters, 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 “Wildland Firefighter
5 Paycheck Protection Act of 2023”.
SEC. 2. SPECIAL BASE RATES OF PAY FOR WILDLAND FIRE-FIGHTERS.

(a) In general.—Subchapter III of chapter 53 of title 5, United States Code, is amended by inserting after section 5332 the following:

“§ 5332a. Special base rates of pay for wildland fire-fighters

“(a) Definitions.—In this section—

“(1) the term ‘firefighter’ means an employee who—

“(A) is a firefighter within the meaning of section 8331(21) or section 8401(14);

“(B) in the case of an employee who holds a supervisory or administrative position and is subject to subchapter III of chapter 83, but who does not qualify to be considered a firefighter within the meaning of section 8331(21), would otherwise qualify if the employee had transferred directly to that position after serving as a firefighter within the meaning of that section;

“(C) in the case of an employee who holds a supervisory or administrative position and is subject to chapter 84, but who does not qualify to be considered a firefighter within the meaning of section 8401(14), would otherwise qualify...
if the employee had transferred directly to that
position after performing duties described in
section 8401(14)(A) for at least 3 years; or

“(D) in the case of an employee who is not
subject to subchapter III of chapter 83 or chap-
ter 84, holds a position that the Office of Per-
sonnel Management determines would satisfy
subparagraph (A), (B), or (C) if the employee
were subject to subchapter III of chapter 83 or
chapter 84;

“(2) the term ‘General Schedule base rate’
means an annual rate of basic pay established under
section 5332 before any additions, such as a locality-
based comparability payment under section 5304 or
5304a or a special rate supplement under section
5305;

“(3) the term ‘special base rate’ means an an-
nual rate of basic pay payable to a wildland fire-
fighter, before any additions or reductions, that re-
places the General Schedule base rate otherwise ap-
pliable to the wildland firefighter and that is ad-
ministered in the same manner as a General Sched-
ule base rate; and

“(4) the term ‘wildland firefighter’ means a
firefighter—
“(A) who is employed by the Forest Service or the Department of the Interior; and

“(B) the duties of the position of whom primarily relate to fires occurring in forests, range lands, or other wildlands, as opposed to structural fires.

“(b) Special Base Rates of Pay.—

“(1) Entitlement to Special Rate.—Notwithstanding section 5332, a wildland firefighter is entitled to a special base rate at grades 1 through 15, which shall—

“(A) replace the otherwise applicable General Schedule base rate for the wildland firefighter;

“(B) be basic pay for all purposes, including the purpose of computing a locality-based comparability payment under section 5304 or 5304a; and

“(C) be computed as described in paragraph (2) and adjusted at the time of adjustments in the General Schedule.

“(2) Computation.—

“(A) In General.—The special base rate for a wildland firefighter shall be derived by increasing the otherwise applicable General
Schedule base rate for the wildland firefighter by the following applicable percentage for the grade of the wildland firefighter and rounding the result to the nearest whole dollar:

“(i) For GS–1, 42 percent.
“(ii) For GS–2, 39 percent.
“(iii) For GS–3, 36 percent.
“(iv) For GS–4, 33 percent.
“(v) For GS–5, 30 percent.
“(vi) For GS–6, 27 percent.
“(vii) For GS–7, 24 percent.
“(viii) For GS–8, 21 percent.
“(ix) For GS–9, 18 percent.
“(x) For GS–10, 15 percent.
“(xi) For GS–11, 12 percent.
“(xii) For GS–12, 9 percent.
“(xiii) For GS–13, 6 percent.
“(xiv) For GS–14, 3 percent.
“(xv) For GS–15, 1.5 percent.

“(B) **Hourly, daily, weekly, or bi-weekly rates.**—When the special base rate with respect to a wildland firefighter is expressed as an hourly, daily, weekly, or biweekly rate, the special base rate shall be computed from the appropriate annual rate of basic pay
derived under subparagraph (A) in accordance with the rules under section 5504(b).”.

(b) Clerical Amendment.—The table of sections for subchapter III of chapter 53 of title 5, United States Code, is amended by inserting after the item relating to section 5332 the following:

“5332a. Special base rates of pay for wildland firefighters.”.

(c) Prevailing Rate Employees.—Section 5343 of title 5, United States Code, is amended by adding at the end the following:

“(g)(1) For a prevailing rate employee described in section 5342(a)(2)(A) who is a wildland firefighter, as defined in section 5332a(a), the Secretary of Agriculture or the Secretary of the Interior (as applicable) shall increase the wage rates of that employee by an amount (determined at the sole and exclusive discretion of the applicable Secretary after consultation with the other Secretary) that is generally consistent with the percentage increases given to wildland firefighters in the General Schedule under section 5332a.

“(2) An increased wage rate under paragraph (1) shall be basic pay for the same purposes as the wage rate otherwise established under this section.

“(3) An increase under this subsection may not cause the wage rate of an employee to increase to a rate that
would produce an annualized rate in excess of the annual rate for level IV of the Executive Schedule.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first applicable pay period beginning on or after October 1, 2023.

(e) APPLICABILITY.—Notwithstanding section 40803(d)(4)(B) of the Infrastructure Investment and Jobs Act (16 U.S.C. 6592(d)(4)(B)), the salary increase in such section 40803(d)(4)(B) shall not apply to the positions described in such section 40803(d)(4)(B) for service performed on or after the effective date described in subsection (d) of this section.

SEC. 3. WILDLAND FIRE INCIDENT RESPONSE PREMIUM PAY.

(a) IN GENERAL.—Subchapter V of chapter 55 of title 5, United States Code, is amended by inserting after section 5545b the following:

“§ 5545c. Incident response premium pay for employees engaged in wildland firefighting

“(a) DEFINITIONS.—In this section—

“(1) the term ‘appropriate committees of Congress’ means—

“(A) the Committee on Homeland Security and Governmental Affairs of the Senate;
“(B) the Committee on Energy and Natural Resources of the Senate;

“(C) the Committee on Agriculture, Nutrition, and Forestry of the Senate;

“(D) the Committee on Appropriations of the Senate;

“(E) the Committee on Oversight and Accountability of the House of Representatives;

“(F) the Committee on Agriculture of the House of Representatives;

“(G) the Committee on Natural Resources of the House of Representatives; and

“(H) the Committee on Appropriations of the House of Representatives;

“(2) the term ‘covered employee’ means an employee of the Forest Service or the Department of the Interior who is—

“(A) a wildland firefighter, as defined in section 5332a(a); or

“(B) certified by the applicable agency to perform wildland fire incident-related duties during the period that employee is deployed to respond to a qualifying incident;
“(3) the term ‘incident response premium pay’ means pay to which a covered employee is entitled under subsection (c);

“(4) the term ‘prescribed fire incident’ means a wildland fire originating from a planned ignition in accordance with applicable laws, policies, and regulations to meet specific objectives;

“(5) the term ‘qualifying incident’—

“(A) means—

“(i) a wildfire incident, a prescribed fire incident, or a severity incident; or

“(ii) an incident that the Secretary of Agriculture or the Secretary of the Interior determines is similar in nature to an incident described in clause (i); and

“(B) does not include an initial response incident that is contained within 36 hours; and

“(6) the term ‘severity incident’ means an incident in which a covered employee is pre-positioned in an area in which conditions indicate there is a high risk of wildfires.

“(b) ELIGIBILITY.—A covered employee is eligible for incident response premium pay under this section if—

“(1) the covered employee is deployed to respond to a qualifying incident; and
“(2) the deployment described in paragraph (1) is—

“(A) outside of the official duty station of the covered employee; or

“(B) within the official duty station of the covered employee and the covered employee is assigned to an incident-adjacent fire camp or other designated field location.

“(c) Entitlement to Incident Response Premium Pay.—

“(1) In general.—A covered employee who satisfies the conditions under subsection (b) is entitled to premium pay for the period in which the covered employee is deployed to respond to the applicable qualifying incident.

“(2) Computation.—

“(A) Formula.—Subject to subparagraphs (B) and (C), premium pay under paragraph (1) shall be paid to a covered employee at a daily rate of 450 percent of the hourly rate of basic pay of the covered employee for each day that the covered employee satisfies the requirements under subsection (b), rounded to the nearest whole cent.
“(B) LIMITATION.—Premium pay under this subsection may not be paid—

“(i) with respect to a covered employee for whom the annual rate of basic pay is greater than that for step 10 of GS–10, at a daily rate that exceeds the daily rate established under subparagraph (A) for step 10 of GS–10; or

“(ii) to a covered employee in a total amount that exceeds $9,000 in any calendar year.

“(C) ADJUSTMENTS.—

“(i) ASSESSMENT.—The Secretary of Agriculture and the Secretary of the Interior shall assess the difference between the average total amount of compensation that was paid to covered employees, by grade, in fiscal years 2023 and 2024.

“(ii) REPORT.—Not later than 180 days after the date that is 1 year after the effective date of this section, the Secretary of Agriculture and the Secretary of the Interior shall jointly publish a report on the results of the assessment conducted under clause (i).
“(iii) Administrative Actions.—

After publishing the report required under clause (ii), the Secretary of Agriculture and the Secretary of the Interior, in consultation with the Director of the Office of Personnel Management, may, in the sole and exclusive discretion of the Secretaries acting jointly, administratively adjust the amount of premium pay paid under this subsection (or take other administrative action) to ensure that the average annual amount of total compensation paid to covered employees, by grade, is more consistent with such amount that was paid to those employees in fiscal year 2023.

“(iv) Congressional Notification.—Not later than 3 days after an adjustment made, or other administrative action taken, under clause (iii) becomes final, the Secretary of Agriculture and the Secretary of the Interior shall jointly submit to the appropriate committees of Congress a notification regarding that adjustment or other administrative action, as applicable.
“(d) **TREATMENT OF INCIDENT RESPONSE PREMIUM PAY.**—Incident response premium pay under this section—

“(1) is not considered part of the basic pay of a covered employee for any purpose;

“(2) may not be considered in determining a covered employee's lump-sum payment for accumulated and accrued annual leave under section 5551 or section 5552;

“(3) may not be used in determining pay under section 8114 (relating to compensation for work injuries);

“(4) may not be considered in determining pay for hours of paid leave or other paid time off during which the premium pay is not payable; and

“(5) shall be disregarded in determining the minimum wage and overtime pay to which a covered employee is entitled under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).”.

(b) **ADDITIONAL PREMIUM PAY AMENDMENTS.**—

Subchapter V of chapter 55 of title 5, United States Code, is amended—

(1) in section 5544—

(A) by amending the section heading to read as follows: “**WAGE-BOARD OVERTIME,”**
SUNDAY RATES, AND OTHER PREMIUM PAY”; and

(B) by adding at the end the following:

“(d) A prevailing rate employee described in section 5342(a)(2)(A) shall receive incident response premium pay under the same terms and conditions that apply to a covered employee under section 5545c if that employee—

“(1) is employed by the Forest Service or the Department of the Interior; and

“(2)(A) is a wildland firefighter, as defined in section 5332a(a); or

“(B) is certified by the applicable agency to perform wildland fire incident-related duties during the period the employee is deployed to respond to a qualifying incident (as defined in section 5545c(a)).”; and

(2) in section 5547(a), in the matter preceding paragraph (1), by inserting “5545c,” after “5545a,”.

(c) CLERICAL AMENDMENTS.—The table of sections for subchapter V of chapter 55 of title 5, United States Code, is amended—

(1) by amending the item relating to section 5544 to read as follows:

“5544. Wage-board overtime, Sunday rates, and other premium pay.”;
and

(2) by inserting after the item relating to section 5545b the following:

"5545c. Incident response premium pay for employees engaged in wildland firefighting."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first applicable pay period beginning on or after October 1, 2023.

SEC. 4. REST AND RECUPERATION LEAVE FOR EMPLOYEES ENGAGED IN WILDLAND FIREFIGHTING.

(a) IN GENERAL.—Subchapter II of chapter 63 of title 5, United States Code, is amended by adding at the end the following:

"§ 6329e. Rest and recuperation leave for employees engaged in wildland firefighting

“(a) DEFINITIONS.—In this section—

“(1) the term ‘applicable Secretary’ means the Secretary of Agriculture or the Secretary of the Interior, as applicable to a covered employee;

“(2) the term ‘covered employee’ means an employee of the Forest Service or the Department of the Interior who—

“(A) qualifies as a wildland firefighter based on the definitions of the terms ‘fire-fighter’ and ‘wildland firefighter’ in section
5332a(a) (applying the definition of ‘employee’ in section 6301(2) in lieu of the definition of ‘employee’ in section 5331(a)); or

“(B) is certified by the applicable Secretary to perform wildland fire incident-related duties during the period the employee is deployed to respond to a qualifying incident; and

“(3) the term ‘qualifying incident’ has the meaning given the term in section 5545c(a).

“(b) REST AND RECUPERATION LEAVE.—

“(1) IN GENERAL.—A covered employee may receive paid rest and recuperation leave following the completion of service in which the covered employee is deployed to respond to a qualifying incident, subject to the policies prescribed under this subsection.

“(2) PRESCRIPTION OF POLICIES.—The Secretary of Agriculture and the Secretary of the Interior shall prescribe uniform policies described in paragraph (1) after consulting with the other applicable Secretary.

“(3) CONTENT OF POLICIES.—The policies prescribed under paragraph (2) may include—

“(A) a maximum period of days in which a covered employee is deployed to respond to a qualifying incident, which shall—
“(i) begin on the date on which the covered employee departs from the official duty station of the covered employee and end on the date on which the covered employee returns to the official duty station of the covered employee; and

“(ii) be followed by a minimum number of days of rest and recuperation for the covered employee; or

“(B) a requirement that prohibits a covered employee from working more than 16 hours per day on average over a 14-day period during which the covered employee is deployed to respond to a qualifying incident.

“(c) Use of Leave.—

“(1) In general.—Rest and recuperation leave granted under this section—

“(A) shall be used during scheduled hours within the tour of duty of the applicable covered employee established for leave-charging purposes;

“(B) shall be paid in the same manner as annual leave;

“(C) shall be used immediately after a qualifying incident; and
“(D) may not be set aside for later use.

“(2) No Payment.—A covered employee may
not receive any payment for unused rest and recu- peration leave granted under this section.

“(d) Intermittent Work Schedule.—A covered employee with an intermittent work schedule—

“(1) shall be excused from duty during the same period of time that other covered employees in the same circumstances are entitled to rest and recupera- tion leave; and

“(2) shall receive a payment as if the covered employee were entitled to rest and recuperation leave under subsection (b).”.

(b) Technical and Conforming Amendment.—
The table of sections for subchapter II of chapter 63 of title 5, United States Code, is amended by inserting after the item relating to section 6329d the following:

“6329e. Rest and recuperation leave for employees engaged in wildland fire-fighting.”.

SEC. 5. TRANSFER AUTHORITY.

Notwithstanding section 40803(c)(2) of the Infra-structure Investment and Jobs Act (16 U.S.C. 6592(c)(2)), not more than $5,000,000 of the unobligated balances of amounts made available under the heading “Wildland Fire Management” under the heading “Forest Service” under the heading “DEPARTMENT
OF AGRICULTURE” in title VI of division J of that Act (Public Law 117–58; 135 Stat. 1410) pursuant to section 40803(c)(2)(B) of that Act (16 U.S.C. 6592(c)(2)(B)) may, as necessary to continue uninterrupted the Federal wildland firefighter base salary increase described in section 40803(d)(4)(B) of that Act (16 U.S.C. 6592(d)(4)(B)), be transferred to and merged with the amounts made available under the heading “WILDLAND FIRE MANAGEMENT” under the heading “DEPARTMENT-WIDE PROGRAMS” under the heading “DEPARTMENT OF THE INTERIOR” in title VI of division J of that Act (Public Law 117–58; 135 Stat. 1393).