

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
111-231 }

UNITED STATES SECRET SERVICE
RETIREMENT ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1862

TO PROVIDE THAT CERTAIN SECRET SERVICE EMPLOYEES MAY
ELECT TO TRANSITION TO COVERAGE UNDER THE DISTRICT OF
COLUMBIA POLICE AND FIRE FIGHTER RETIREMENT AND DIS-
ABILITY SYSTEM



JULY 26, 2010.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

89-010

WASHINGTON : 2010

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UNITED STATES SECRET SERVICE RETIREMENT
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JULY 26, 2010.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

REPORT

[To accompany S. 1862]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1862) to provide that certain Secret Service employees may elect to transition to coverage under the District of Columbia Police and Fire Fighter Retirement and Disability System, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 1862 is to permit certain employees of the U.S. Secret Service (USSS) who were hired between January 1, 1984 and December 31, 1986, to transfer from the Federal Employees' Retirement System (FERS) to the District of Columbia Police and Firefighter Retirement and Disability System (DC Retirement System). The bill would thereby resolve a longstanding dispute between the federal government and these employees regarding the employees' appropriate retirement coverage and help ensure that the USSS does not lose a significant number of highly experienced and critical personnel.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The Uniformed Division (UD) of the USSS has its origins in a local District of Columbia special police force dedicated to protecting the White House, known as the White House Police. Although UD officers became federal employees in the first half of the last century, the local origins of the USSS led to an unusual situation in which these federal employees, as well as their colleagues in the Secret Service division responsible for protecting current and former Presidents and their families (Secret Service agents),¹ received their retirement coverage under the DC Retirement System.² That began to change in the mid-1980s, when Congress enacted sweeping reforms to Federal employees' retirement coverage. The Federal Employees' Retirement System Act of 1986 ("the FERS Act") began the process of phasing out the Civil Service Retirement System (CSRS) by putting most federal employees hired thereafter into the Federal Employees' Retirement System, which was slated to be up and running in 1987. The FERS Act required Federal employees to make Social Security contributions and made them eligible for Social Security benefits upon retirement. The FERS Act also established the Thrift Savings Plan, a defined contribution plan where each employee makes contributions into an individual account. The Executive Branch has long interpreted the FERS Act as requiring members of the U.S. Secret Service Division (USSS agents) and the U.S. Secret Service Uniformed Division (UD officers) hired after December 31, 1983 to receive their retirement coverage through FERS, not the DC Retirement System.³

USSS agents and UD officers hired between January 1, 1984 and December 31, 1986, however, have since then alleged that the USSS, in part as a recruiting and subsequently retention tool, promised them eligibility for retirement under the more generous DC Retirement System.⁴ Many of them have filed judicial or administrative actions seeking to obtain coverage under the DC Retirement System, but they have thus far been unsuccessful in obtaining relief.⁵

After reviewing the matter, the Committee has determined that both fairness and the interests of the government in retaining the services of these highly qualified and experienced USSS employees warrants enabling certain USSS agents and UD officers to transfer from the FERS system to the DC Retirement System. Most importantly, as an increasing number of this group of agents and officers become eligible for retirement⁶ without the option to elect into the DC Retirement System, many are leaving the Secret Service for

¹ Unlike Uniformed Division Officers, who were automatically placed into the DC Retirement System, agents who were hired before January 1, 1984 who had accrued 10 years of protection time were eligible to transfer into the DC Retirement System.

² The USSS reimburses the District of Columbia on a monthly basis to cover the cost of annuity benefits for UD officers and agents, pursuant to P.L. 71-221 and P.L. 76-847.

³ See USSS memorandum on the District of Columbia Police and Firefighters Retirement and Disability System, March 27, 2001.

⁴ Numerous agents and officers submitted letters to senior USSS employees attesting that when they were recruited, they were informed of the generous retirement system and the ability to participate in the DC Retirement System.

⁵ The USSS agents and UD officers have pursued actions to participate in the DC Retirement System through the Office of Personnel Management (OPM), the Merit Systems Protection Board (MSPB), the U.S. Secret Service, and the U.S. District Court for the District of Columbia.

⁶ The number of FERS retirees covered under S. 1862 retiring every year has increased from 4 retirees in Fiscal Year 2004 to 10 retirees in Fiscal Year 2009. Currently, 146 agents and officers hired between 1984 and 1986 are eligible to retire.

higher-paying positions in the private sector.⁷ The reasons are clear: Secret Service employees participating in the DC Retirement System have a significantly greater incentive to continue working after 20 years of service than do those covered by FERS. Those covered by the DC Retirement System receive an additional 3 percent of their pay for each year they work after twenty years of service, while FERS employees receive only an additional 1 percent for each year over twenty.

To remedy this situation, S. 1862 would offer a very carefully defined group of UD officers and Secret Service agents the opportunity to transfer into the DC Retirement System.⁸ Only agents and officers hired between January 1, 1984 and December 31, 1986 would be eligible to transfer into the DC Retirement System. In order to make the transfer, the employees would have to apply and would agree to give up certain benefits they received under FERS, such as eligibility to receive Social Security in the future. Also, S. 1862 would only apply to current Secret Service employees, and thus, this legislation would not be applicable to current retirees who were hired between January 1, 1984 and December 31, 1986.

III. LEGISLATIVE HISTORY

S. 1862 was introduced by Senator Lieberman on October 22, 2009 and referred to the Committee. Senator Akaka was added as a cosponsor on October 29, 2009. The Committee considered the bill on November 4, 2009, and then reported the bill to the full Senate favorably by voice vote. Chairman Lieberman, Senators Levin, Akaka, Carper, Pryor, Landrieu, Burriss, Collins, and Bennett were present.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the short title of the bill is the “United States Secret Service Retirement Act of 2009.”

Section 2. Retirement treatment of certain Secret Service employees

This section sets forth the criteria for coverage under S. 1862 and the procedures for transferring covered USSS employees from FERS to the DC Retirement System.

Subsection (a) defines “covered employees” as individuals who: (1) were hired as members of the U.S. Secret Service Division (USSS agents) or the U.S. Secret Service Uniformed Division (UD officers) between January 1, 1984 through December 31, 1986; (2) actively performed duties directly related to the protection mission of the USSS for 10 or more years; (3) serve as agents or UD officers on the effective date of S. 1862; and (4) file an election to be covered employees under S. 1862.

Subsection (b) provides that not later than 60 days after the date of enactment of this Act, covered employees under subsection (a) shall file an election with the USSS to be a covered employee and to transition to the DC Retirement System. It also requires that within 30 days of enactment of this Act, the Office of Personnel

⁷ According to the USSS, more than 60 percent of the agents and officers eligible to retire hold senior leadership positions within the agency.

⁸ The USSS informs the Committee that the bill would apply to approximately 180 employees.

Management and the USSS shall notify USSS employees of the enactment of S. 1862 and that covered employees are qualified to file an election.

Subsection (c) provides that within 180 days of the date of enactment of this Act, and in consultation with the Secretary of Homeland Security and the Thrift Savings Board, the Office of Personnel Management shall prescribe regulations regarding the transition of covered USSS agents and UD officers from FERS to CSRS.

Subsection (c)(2)(A) provides that after a covered employee files an election under subsection (b), the covered employee shall be converted from FERS to CSRS, and then to the DC Retirement System. All funds held for the covered employees shall be transferred from FERS to CSRS, and then to the general revenues of the District of Columbia. S. 1862 also provides that all covered employees shall be entitled to the same benefits as the other participants of the DC Retirement System.

Subsection(c)(2)(B) provides that a covered employee who transfers to the DC Retirement System forfeits the portion of his or her TSP account that came from federal agency contributions and associated earnings, but keeps the portion that derived from his or her own contributions. Covered employees may keep the employee contributions in their TSP accounts or withdraw or transfer their contributions in accordance with the Federal Retirement Thrift Investment Board's rules and regulations.

Subsection (c)(2)(C) provides that upon conversion into the CSRS, a covered employee shall forfeit all contributions made for purposes of title II of the Social Security Act, meaning that, like other employees covered by the DC system, they will give up eligibility to receive Social Security upon retirement. Subsection (c)(2)(C) provides that S. 1862 will not affect the covered employees' contributions to Medicare. Finally, this subsection provides that the Office of Personnel Management, the Department of Homeland Security, the Social Security Administration, and the Thrift Savings Board shall take the necessary actions to implement S. 1862.

Subsection (d) provides that S. 1862 shall take effect on the first day of the first applicable pay period that begins 180 days after the date of enactment of this Act. The election of coverage pursuant to subsection (b) and the provisions under subsection (c)(1) and (c)(3) shall take effect on the date of enactment of this Act.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of S. 1862. The Congressional Budget Office states that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandate Reform Act and would impose no costs on state, local, or tribal governments, or private entities. The enactment of this legislation will not have significant regulatory impact.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 3, 2009.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1862, the U.S. Secret Service Retirement Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Santiago Vallinas.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

S. 1862—United States Secret Service Retirement Act of 2009

Summary: S. 1862 would provide a 60-day period after enactment of the bill during which certain employees of the U.S. Secret Service hired between January 1, 1984, and December 31, 1986, could elect to receive coverage under the District of Columbia Police and Firefighter Retirement and Disability System (DC system). Such a transition would increase benefit payments as well as affect individual and agency contributions to Social Security and the Thrift Savings Plan (TSP).

CBO estimates that enacting S. 1862 would, on net, increase direct spending by \$12 million over the 2010–2019 period, mostly as a result of additional retirement benefits paid to the affected employees. The bill also would eliminate employee contributions to the Federal Employee Retirement System (FERS) and Social Security by those employees, reducing revenues by \$2 million over the 2010–2019 period. On balance, CBO estimates that enacting S. 1862 would increase the deficit by \$14 million over the 2010–2019 period, consisting of a \$15 million increase in the on-budget deficit and a \$1 million reduction in the off-budget deficit (Social Security effects are classified as off-budget).

CBO also estimates that implementing the bill would lower discretionary spending by \$13 million over the 2010–2019 period, because agency contributions to Social Security, FERS, and TSP on behalf of those employees would cease. Such reductions assume discretionary spending would be reduced by the estimated amounts. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1862 is shown in the following table. The direct spending impacts of the bill fall within budget functions 600 (income security), 650 (Social Security). The discretionary costs fall within budget function 750 (administration of justice).

By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010– 2014	2010– 2019
CHANGES IN DIRECT SPENDING (OUTLAYS)												
Total Changes in Direct Spending	*	*	*	1	1	2	2	2	2	2	2	2
On-Budget Spending	*	*	*	1	1	2	2	2	2	2	2	2
Off-Budget Spending	0	0	0	0	*	*	*	*	–1	–1	*	–2
CHANGES IN REVENUES												
Total Changes in Revenues	*	–1	–1	*	*	*	0	0	0	0	–2	–2
On-Budget Revenues	*	*	*	*	*	*	0	0	0	0	–1	–1
Off-Budget Revenues	*	–1	*	*	*	0	0	0	0	0	–1	–1
NET IMPACT ON THE DEFICIT FROM REVENUES AND DIRECT SPENDING												
Net Effect on Deficit ¹	1	1	1	1	1	2	2	2	2	2	4	14
On-Budget Effects	*	1	*	1	1	2	2	2	2	2	3	15
Off-Budget Effects	*	1	*	*	*	*	*	*	–1	–1	1	–1
CHANGES IN SPENDING SUBJECT TO APPROPRIATION (ON-BUDGET)												
Estimated Authorization Level	*	–2	–5	–3	–2	–1	0	0	0	0	–12	–13
Estimated Outlays	*	–2	–5	–3	–2	–1	0	0	0	0	–12	–13
Memorandum:												
Total Intragovernmental Collections from Agency Contributions	*	2	4	3	2	1	0	0	0	0	10	11
On-Budget	0	1	4	2	2	1	0	0	0	0	9	10
Off-Budget	*	1	*	*	*	0	0	0	0	0	1	1

¹ Negative numbers represent decreases in the deficit; positive numbers indicate increases in the deficit.

² Agency contributions are intragovernmental transactions that do not affect the deficit.

Notes: Components may not sum to totals because of rounding.

Off-budget effects reflect changes in revenues and spending in Social Security.

* = between –\$500,000 and \$500,000.

Basis of estimate: Based on information from the Department of Homeland Security, CBO estimates that 180 employees of the Secret Service would be eligible to transfer to the DC system under S. 1862, and that 90 percent of them would choose to transfer. For this estimate CBO assumes that S. 1862 will be enacted early in calendar year 2010.

Direct spending

Because the DC system provides a higher basic pension than FERS, the current retirement plan for those Secret Service employees, CBO estimates that enacting the bill would result in additional spending of about \$18 million for benefit payments to employees who transfer over the 2010–2019 period. (The DC system is run by the Washington, DC, government, but receives a payment from the federal government to cover certain employees.) That additional spending would be partially offset by \$4 million in contributions that transitioning employees would make to the DC system. In addition, the bill stipulates that employees who elect to change to the DC system would forfeit any Social Security benefits that would be based on their earnings as employees of the Secret Service. That provision would reduce direct spending on Social Security benefits by \$2 million (off-budget) over the 10-year period. CBO estimates that, in total, those changes would lead to a net increase in direct spending of \$12 million over the 2010–2019 period.

Revenues

CBO estimates that enacting S. 1862 would reduce revenues over the 2010–2019 period by \$2 million because individuals who elect to transfer to the DC system under the bill would no longer contribute to Social Security or FERS. Those contributions are recorded on the budget as revenues. The reduction in Social Security revenues (\$1 million) would be off-budget.

Spending subject to appropriation

Under S. 1862 the Secret Service would no longer make contributions to FERS, TSP, or Social Security for employees who move to the DC system. CBO estimates that spending subject to appropriation for the Secret Service thus would decline by \$13 million over the 2010–2019 period. Such reductions in discretionary spending assume appropriations would be reduced by the estimated amounts. Contributions to FERS and Social Security are intragovernmental transactions that are recorded as offsetting receipts elsewhere in the budget. CBO estimates that those forgone contributions would total about \$11 million over the 2010–2019 period.

Intergovernmental and private-sector impact: S. 1510 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Retirement—Santiago Vallinas and Jared Brewster Social Security—Sheila Dacey; Impact on state, local, and tribal governments: Elizabeth Cove Delisle; Impact on the private sector: Brian Prest.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.

