

115TH CONGRESS  
2D SESSION

# H. R. 6391

To reauthorize and modify the authority of the Merit Systems Protection Board, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2018

Mr. JODY B. HICE of Georgia (for himself, Mr. MEADOWS, and Mr. MITCHELL) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To reauthorize and modify the authority of the Merit Systems Protection Board, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Merit Systems Protection Board Reauthorization Act of  
6 2018”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Reauthorize appropriations for Merit Systems Protection Board.
- Sec. 3. Filing fee for Merit Systems Protection Board claims and appeals.
- Sec. 4. Modification to procedures and authority of the Merit Systems Protection Board.
- Sec. 5. Limitation on furlough appeals to the Merit Systems Protection Board.
- Sec. 6. Reappointment of Merit Systems Protection Board members.
- Sec. 7. Amendments to Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017.

1 **SEC. 2. REAUTHORIZE APPROPRIATIONS FOR MERIT SYS-**  
 2 **TEMS PROTECTION BOARD.**

3 (a) IN GENERAL.—Paragraph (1) of section 8(a) of  
 4 the Whistleblower Protection Act of 1989 (Public Law  
 5 101–12; 5 U.S.C. 5509 note) is amended to read as fol-  
 6 lows:

7 “(1) for each of fiscal years 2019, 2020, 2021,  
 8 2022, and 2023—

9 “(A) \$44,490,000 to carry out subchapter  
 10 I of chapter 12 of title 5, United States Code  
 11 (as amended by this Act); and

12 “(B) not to exceed \$2,345,000, to be  
 13 transferred from the Civil Service Retirement  
 14 and Disability Fund in amounts determined by  
 15 the Merit Systems Protection Board, for admin-  
 16 istrative expenses to adjudicate retirement ap-  
 17 peals; and”.

18 (b) EFFECTIVE DATE.—This section shall take effect  
 19 on October 1, 2018.

1 **SEC. 3. FILING FEE FOR MERIT SYSTEMS PROTECTION**  
2 **BOARD CLAIMS AND APPEALS.**

3 (a) IN GENERAL.—Section 1204 of title 5, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6 “(o)(1) The Board shall establish and collect a filing  
7 fee to be paid by any individual filing a claim or appeal  
8 with the Board under this title, or under any other law,  
9 rule, or regulation, consistent with the requirements of  
10 this subsection.

11 “(2) The filing fee established under paragraph (1)  
12 may—

13 “(A) not exceed the amount that is 50 percent  
14 of the fee required for filing a civil action in a  
15 United States district court;

16 “(B) be adjusted from time to time as the  
17 Board considers appropriate; and

18 “(C) upon request of the individual filing the  
19 claim or appeal, be waived by the Board if the  
20 Board determines the fee would create undue hard-  
21 ship.

22 “(3) A filing fee shall not be required with respect  
23 to any action—

24 “(A) brought by the Special Counsel under sec-  
25 tion 1214, 1215, or 1216; or

1           “(B) taken against an administrative law judge  
2           under section 7521.

3           “(4) A filing fee paid by an individual for an appeal  
4 or claim before the Board shall cover any subsequent filing  
5 by the individual with the Board during the litigation of  
6 that appeal or claim. Such fee shall be returned to the  
7 individual if the individual is the prevailing party.”.

8           (b) DEADLINE.—The Merit Systems Protection  
9 Board shall establish and collect the filing fee required  
10 under subsection (o) of section 1204 of title 5, United  
11 States Code, as added by subsection (a), not later than  
12 1 year after the date of the enactment of this Act.

13          (c) APPLICATION.—The fee required under such sub-  
14 section (o) shall apply to any claim or appeal filed with  
15 the Merit Systems Protection Board after the date the fee  
16 is established pursuant to subsection (b).

17 **SEC. 4. MODIFICATION TO PROCEDURES AND AUTHORITY**  
18 **OF THE MERIT SYSTEMS PROTECTION**  
19 **BOARD.**

20          (a) SUMMARY JUDGMENT.—Section 7701 of title 5,  
21 United States Code, is amended—

22               (1) in subsection (a)(1), by inserting “, except  
23 as provided in subsection (b)” after “kept”; and

24               (2) in subsection (b)(1)—

1 (A) by striking “The Board may” and in-  
2 serting “(A) The Board may”;

3 (B) by striking the second and third sen-  
4 tences; and

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

6 “(B) The Board, an administrative law judge ap-  
7 pointed by the Board under section 3105, and any officer  
8 or employee of the Board designated by the Board (as the  
9 case may be) shall make a decision after receipt of the  
10 written representations of the parties to the appeal and  
11 after opportunity for a hearing under subsection (a)(1) of  
12 this section, except as provided under subparagraph (C).

13 “(C) The Board, an administrative law judge ap-  
14 pointed by the Board under section 3105, and any officer  
15 or employee of the Board designated by the Board (as the  
16 case may be) may, with respect to any party, grant a mo-  
17 tion for summary judgment. Any hearing under subsection  
18 (a)(1) of this section shall be limited to the issues remain-  
19 ing in the case, or, if applicable, a decision may be issued  
20 without holding a hearing.

21 “(D) A copy of the decision under subparagraph (B)  
22 or (C) shall be furnished to each party to the appeal and  
23 to the Office of Personnel Management.”.

1 (b) LIMIT ON MITIGATION.—Paragraph (3) of section  
2 7701(b) of title 5, United States Code, is amended to read  
3 as follows:

4 “(3) With respect to an appeal from a performance  
5 or conduct-based adverse action under subchapter II or  
6 V of chapter 75, the Board may not mitigate the personnel  
7 action involved unless the action is so disproportionate as  
8 to be wholly without justification.”.

9 (c) EVIDENTIARY BURDEN.—Paragraph (1) of sec-  
10 tion 7701(c) of title 5, United States Code, is amended  
11 to read as follows:

12 “(1) Subject to paragraph (2), the decision of the  
13 agency shall be sustained under subsection (b) only if the  
14 agency’s decision is supported by substantial evidence.”.

15 (d) EFFECTIVE DATE; APPLICATION.—

16 (1) EFFECTIVE DATE.—The amendments made  
17 by this section shall take effect on the date that is  
18 90 days after the date of the enactment of this Act.

19 (2) APPLICATION.—The amendments made by  
20 this section shall apply with respect to any appeal  
21 filed under section 7701 of title 5, United States  
22 Code, on or after the effective date in paragraph (1).

1 **SEC. 5. LIMITATION ON FURLOUGH APPEALS TO THE**  
2 **MERIT SYSTEMS PROTECTION BOARD.**

3 (a) IN GENERAL.—Section 3595a of title 5, United  
4 States Code, is amended—

5 (1) by striking subsection (a) and inserting the  
6 following:

7 “(a) For the purposes of this section—

8 “(1) the term ‘furlough’ means the placement  
9 of a senior executive in a temporary status in which  
10 the senior executive has no duties and is not paid  
11 when the placement in such status is by reason of  
12 insufficient work or funds or for other nondiscipli-  
13 nary reasons; and

14 “(2) the term ‘emergency furlough’ has the  
15 meaning given that term in section 7501(3).”;

16 (2) in subsection (b), by adding after the period  
17 at the end the following: “Such regulations shall  
18 provide for procedures for emergency furloughs for  
19 career appointees, consistent with the procedures  
20 promulgated by the Office under section 7504(b).”;  
21 and

22 (3) by striking subsection (c) and inserting the  
23 following:

24 “(c) A career appointee who is furloughed in excess  
25 of 14 days is entitled to appeal to the Merit Systems Pro-

1 tection Board under section 7701. The previous sentence  
 2 shall not apply to any emergency furlough.”.

3 (b) APPLICATION.—The amendments made by sub-  
 4 section (a) shall apply to any furlough occurring on or  
 5 after the date that is 90 days after the date of the enact-  
 6 ment of this Act.

7 **SEC. 6. REAPPOINTMENT OF MERIT SYSTEMS PROTECTION**  
 8 **BOARD MEMBERS.**

9 Subsection (c) of section 1202 of title 5, United  
 10 States Code, is amended—

11 (1) by striking “may not be reappointed to any  
 12 following term but”; and

13 (2) by inserting before the period at the end the  
 14 following: “, unless the member is reappointed”.

15 **SEC. 7. AMENDMENTS TO DEPARTMENT OF VETERANS AF-**  
 16 **FAIRS ACCOUNTABILITY AND WHISTLE-**  
 17 **BLOWER PROTECTION ACT OF 2017.**

18 (a) IN GENERAL.—Section 714 of title 38, United  
 19 States Code, is amended—

20 (1) in subsection (c)(4)(A), by striking “, which  
 21 shall refer such appeal to an administrative judge  
 22 pursuant to section 7701(b)(1) of title 5”; and

23 (2) in subsection (d)—



1 (A) by striking “the administrative judge”  
2 in each place it appears and inserting “the  
3 Merit Systems Protection Board”;

4 (B) by striking paragraph (3);

5 (C) by redesignating paragraphs (4)  
6 through (10) as paragraphs (3) through (9), re-  
7 spectively; and

8 (D) in paragraph (4), as redesignated by  
9 subparagraph (C), by striking “paragraph (3)”  
10 and inserting “paragraph (1)”.

11 (b) APPLICATION.—The amendments made by sub-  
12 section (a) shall apply to any appeal made under section  
13 714(c)(4)(A) of title 38, United States Code, after the  
14 date of the enactment of this Act.

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