

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-123

LAND MANAGEMENT WORKFORCE
FLEXIBILITY ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 1531

TO AMEND TITLE 5, UNITED STATES CODE, TO PROVIDE A
PATHWAY FOR TEMPORARY SEASONAL EMPLOYEES IN FEDERAL
LAND MANAGEMENT AGENCIES TO COMPETE FOR VACANT
PERMANENT POSITIONS UNDER INTERNAL MERIT PROMOTION
PROCEDURES, AND FOR OTHER PURPOSES



AUGUST 28, 2015.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

49-010

WASHINGTON : 2015

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

RON JOHNSON, Wisconsin, *Chairman*

JOHN McCAIN, Arizona	THOMAS R. CARPER, Delaware
ROB PORTMAN, Ohio	CLAIRE McCASKILL, Missouri
RAND PAUL, Kentucky	JON TESTER, Montana
JAMES LANKFORD, Oklahoma	TAMMY BALDWIN, Wisconsin
MICHAEL B. ENZI, Wyoming	HEIDI HEITKAMP, North Dakota
KELLY AYOTTE, New Hampshire	CORY A. BOOKER, New Jersey
JONI ERNST, Iowa	GARY C. PETERS, Michigan
BEN SASSE, Nebraska	

KEITH B. ASHDOWN, *Staff Director*

CHRISTOPHER R. HIXON, *Chief Counsel*

PATRICK J. BAILEY, *Chief Counsel for Governmental Affairs*

GABRIELLE D'ADAMO SINGER, *Deputy Chief Counsel for Governmental Affairs*

GABRIELLE A. BATKIN, *Minority Staff Director*

JOHN P. KILVINGTON, *Minority Deputy Staff Director*

MARY BETH SCHULTZ, *Minority Chief Counsel*

KATHERINE C. SYBENGA, *Minority Senior Counsel*

LAURA W. KILBRIDE, *Chief Clerk*

LAND MANAGEMENT WORKFORCE FLEXIBILITY ACT

—————
AUGUST 28, 2015.—Ordered to be printed
—————

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

R E P O R T

[To accompany H.R. 1531]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 1531) to amend title 5, United States Code, to provide a pathway for temporary seasonal employees in Federal land management agencies to compete for vacant permanent positions under internal merit promotion procedures, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	3
IV. Section-by-Section Analysis	3
V. Evaluation of Regulatory Impact	4
VI. Congressional Budget Office Cost Estimate	5
VII. Changes in Existing Law Made by the Act, as Reported	5

I. PURPOSE AND SUMMARY

The purpose of H.R. 1531, the Land Management Workforce Flexibility Act, is to remove unnecessary regulations that prevent long-term temporary seasonal employees from competing for vacant permanent positions under the procedures that other federal employees enjoy. The Act authorizes qualifying employees serving in temporary seasonal appointments to compete for vacant permanent positions under internal merit promotion procedures. H.R. 1531 does not affect the number of federal jobs or the salaries paid to

federal employees; it simply allows greater and more common-sense competition for vacant permanent positions.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Federal agencies are authorized to make temporary appointments to fill positions that do not require an employee's services on a permanent basis, such as those that are not expected to last more than one year.¹ Some of these positions are seasonal positions and are repeatedly extended on an annual basis for no more than six months at a time.² Many of the individuals who fill these positions have done so year after year, in some cases racking up decades of experience.³ Temporary seasonal employees at land management agencies (the Forest Service, Land Management Bureau, National Park Service, Fish and Wildlife Service, Indian Affairs Bureau and Reclamation Bureau) can work no more than six months per year, and receive few benefits.⁴

Regardless of how long temporary employees have performed the exact same job, year after year, they are ineligible to compete for vacant permanent positions under internal merit promotion procedures. According to the United States Merit Systems Protection Board (MSPB), such procedures "are generally open to current or former Federal employees who have or had permanent appointments."⁵ Because many agencies fill non-entry level jobs using these merit promotion procedures that favor current permanent employees, qualified temporary employees may never be considered for these jobs.⁶

Americans benefit from the contributions of long-serving temporary seasonal wildland firefighters and other long-term temporary employees. These individuals should be provided the same opportunity to compete for career advancement opportunities available to other federal employees. Accordingly, H.R. 1531 would extend eligibility to compete for a permanent seasonal job to a land management agency employee who: serves under a temporary or term appointment that he or she was initially appointed to under open, competitive examination; has served with that land management agency under one or more time-limited appointments for a period or periods totaling more than 24 months of service, without an intervening break in service of two or more years; and achieved an acceptable level of performance for the duration of his or her service under the time-limited appointment or appointments. A qualified employee would then be eligible to compete if applying for a vacant, permanent position within two years of their date of separation from the land management agency, and only if the separation was for reasons other than misconduct or performance.

¹ 5 C.F.R. § 316.401(a), (d) (1994).

² 5 C.F.R. § 316.401(d) (1994).

³ Information provided by the National Federation of Federal Employees to Committee staff (June, 2015), available at <http://www.nffe-fsc.org/documents/3/20150406-temp-reform-brief-150406.pdf>.

⁴ 5 C.F.R. § 316.401(d) (1994); U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-02-296, DATA DO NOT IDENTIFY IF TEMPORARY EMPLOYEES WORK FOR EXTENDED PERIODS, 7 (2002), available at <http://www.gao.gov/new.items/d02296.pdf>.

⁵ U.S. MERIT SYSTEMS PROTECTION BOARD, HELP WANTED: A REVIEW OF FEDERAL VACANCY ANNOUNCEMENTS, 5 (Apr. 2003), available at <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=253634&version=253921&application=ACROBAT>.

⁶ *Id.* at 5, Figure 1.

Additionally, H.R. 1531 would require an examining agency to waive age requirements to determine an employee's eligibility to compete, unless the age requirement is essential to the performance of the position in question. This ensures that an experienced temporary seasonal firefighter is eligible to compete for a permanent position for which he or she may be well qualified. H.R. 1531 would increase competition for these important jobs.

Bipartisan concerns have been raised for years over the prohibition on temporary employees competing for permanent positions.⁷ The Act has broad bipartisan support and support from numerous agencies and federal employee union groups.⁸

III. LEGISLATIVE HISTORY

Rep. Gerald E. Connolly (D–VA–11) introduced H.R. 1531 on March 23, 2015, with Reps. Don Young (R–AK) and Rob Bishop (R–UT–1). On March 25, 2015, the Committee on Oversight and Government Reform reported the bill favorably, without amendment, by voice vote. H.R. 1531 was passed by the House on July 7, 2015, and referred to the Committee on Homeland Security and Governmental Affairs.

There are two companion bills to H.R. 1531 in the Senate: S. 1522, filed by Senator Ron Johnson (R–WI), and S. 1591, filed by Senator Jon Tester (D–MT) with Senators Claire McCaskill (D–MO) and Gary Peters (D–MI) as cosponsors.

The Committee considered H.R. 1531 at a business meeting on July 29, 2015, and ordered the Act reported favorably en bloc by voice vote. Senators present for the vote on the Act were Johnson, Portman, Lankford, Ernst, Sasse, Carper, Baldwin, Heitkamp and Peters.

IV. SECTION-BY-SECTION ANALYSIS OF THE ACT, AS REPORTED

Section 1. Short title

Section 1 designates the short title of the Act as the “Land Management Workforce Flexibility Act.”

Section 2. Personnel flexibilities relating to land management agencies

Amends Subpart I of part III of title 5, United States Code, by inserting a new chapter addressing personnel flexibilities for land management agencies. The new chapter 96 contains two sections.

Section 9601 defines the term “land management agency” to mean the Forest Service of the United States Department of Agriculture, and the following component agencies of the United States Department of the Interior: Bureau of Land Management, National Park Service, Fish and Wildlife Service, Bureau of Indian Affairs, and Bureau of Reclamation. Section 9601 also defines the term “time-limited appointment” to include temporary appointments and

⁷ See, e.g., *Use of Temporary Employees in the Federal Government: Hearing Before the Subcommittee on Civil Service*, 103rd Cong. (June 22, 1993); TEMPORARY EMPLOYMENT REFORM, NATIONAL FEDERATION OF FEDERAL EMPLOYEES FOREST SERVICE COUNCIL, <http://www.nffe-fsc.org/committees/legislative/temp-hire.php> (last visited July 31, 2015).

⁸ See, e.g., Letter from Thomas L. Tidwell, Chief of the United States Forest Service (May 17, 2011), available at http://nffe-fsc.org/committees/legislative/FS_110517_Chief_TempLtr.pdf; information provided by the National Federation of Federal Employees to Committee staff (June, 2015), available at <http://www.nffe-fsc.org/documents3/20150406-temp-reform-brief-150406.pdf>.

term appointments, as defined by the Office of Personnel Management (OPM).

Section 9602 establishes that an employee of a land management agency serving under a time-limited appointment in the competitive service is eligible to compete for a permanent appointment in the competitive service at any land management agency or any other agency (as defined in section 101 of title 31) under the internal merit promotion procedures of the applicable agency if the employee meets the following three criteria:

1. Was appointed initially under open, competitive examination under subchapter I of chapter 33 to the time-limited appointment.

2. Has served under one or more time-limited appointments by a land management agency for a period or periods totaling more than 24 months without a break of 2 or more years.

3. His or her performance was at an acceptable level throughout the period or periods of service.

Section 9602 also directs OPM or another examining agency to waive requirements as to age when determining the eligibility of a time-limited employee for appointment to competitive service, unless the requirement is essential to the performance of the duties of the vacant position.

Section 9602 also establishes that an individual appointed under the section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure; and acquires competitive status upon appointment.

Section 9602 also requires that a former employee of a land management agency who served under a time-limited appointment and who otherwise meets the requirements of Section 9602 shall be deemed a time-limited employee for purposes of the section if such employee applies for a position covered by this section within 2 years after the most recent date of separation; and if such employee's separation was for reasons other than misconduct or performance.

Finally, Section 9602 authorizes OPM to prescribe such regulations as may be necessary to carry out the 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 this Act and determined that the Act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

AUGUST 4, 2015.

Hon. RON JOHNSON,
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 H.R. 1531, the Land Management Workforce Flexibility Act.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1531—Land Management Workforce Flexibility Act

H.R. 1531 would make individuals serving as temporary employees of federal land management agencies eligible to compete for permanent positions with those agencies under internal procedures for merit promotions. CBO estimates that implementing the legislation would have no significant effect on the federal budget. Enacting H.R. 1531 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Information from the Office of Personnel Management indicates that while the legislation would expand the pool of people eligible to be hired for federal land management positions, it would not change the total number of jobs available or the salaries paid to employees.

H.R. 1531 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On April 27, 2015, CBO transmitted a cost estimate for H.R. 1531 as ordered reported by the House Committee on Oversight and Government Reform on March 25, 2015. The two versions of the legislation are identical, and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE ACT, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R. 1531 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**TITLE 5—GOVERNMENT ORGANIZATION AND
 EMPLOYEES**

* * * * *

PART III—EMPLOYEES

* * * * *

**CHAPTER 96—PERSONNEL FLEXIBILITIES RELATING TO
LAND MANAGEMENT AGENCIES**

SEC. 9601. DEFINITIONS.

For purposes of this chapter—

(1) the term land management agency' means—

(A) the Forest Service of the Department of Agriculture;

(B) the Bureau of Land Management of the Department of the Interior;

(C) the National Park Service of the Department of the Interior;

(D) the Fish and Wildlife Service of the Department of the Interior;

(E) the Bureau of Indian Affairs of the Department of the Interior; and

(F) the Bureau of Reclamation of the Department of the Interior; and

(2) the term time-limited appointment includes a temporary appointment and a term appointment, as defined by the Office of Personnel Management.

SEC. 9602. COMPETITIVE SERVICE; TIME-LIMITED APPOINTMENTS.

(a) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, an employee of a land management agency serving under a time-limited appointment in the competitive service is eligible to compete for a permanent appointment in the competitive service at any land management agency or any other agency (as defined in section 101 of title 31) under the internal merit promotion procedures of the applicable agency if—

(1) the employee was appointed initially under open, competitive examination under subchapter I of chapter 33 to the time-limited appointment;

(2) the employee has served under 1 or more time-limited appointments by a land management agency for a period or periods totaling more than 24 months without a break of 2 or more years; and

(3) the employee's performance has been at an acceptable level of performance throughout the period or periods (as the case may be) referred to in paragraph (2).

(b) In determining the eligibility of a time-limited employee under this section to be examined for or appointed in the competitive service, the Office of Personnel Management or other examining agency shall waive requirements as to age, unless the requirement is essential to the performance of the duties of the position.

(c) An individual appointed under this section—

(1) becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure; and

(2) acquires competitive status upon appointment.

(d) A former employee of a land management agency who served under a time-limited appointment and who otherwise meets the requirements of this section shall be deemed a time-limited employee for purposes of this section if—

(1) such employee applies for a position covered by this section within the period of 2 years after the most recent date of separation; and

(2) such employe's most recent separation was for reasons other than misconduct or performance.

(e) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this section.

* * * * *

