

110TH CONGRESS
1ST SESSION

S. 1045

To strengthen performance management in the Federal Government, to make the annual general pay increase for Federal employees contingent on performance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2007

Mr. VOINOVICH introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To strengthen performance management in the Federal Government, to make the annual general pay increase for Federal employees contingent on performance, 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 “Federal Workforce
5 Performance Appraisal and Management Improvement
6 Act of 2007”.

1 **SEC. 2. PERFORMANCE APPRAISAL SYSTEMS.**

2 Subchapter 1 of chapter 43 of title 5, United States
3 Code, is amended—

4 (1) by amending section 4302 to read as fol-
5 lows:

6 **“§ 4302. Establishment of performance appraisal sys-**
7 **tems**

8 “(a)(1) Subject to paragraphs (2) and (3), each agen-
9 cy shall establish 1 or more performance appraisal systems
10 to promote high performance.

11 “(2) In designing and applying a performance ap-
12 praisal system established under this subsection, each
13 agency shall—

14 “(A) link the system with the strategic goals
15 and annual performance plan of the agency;

16 “(B) involve employees in the development of
17 their performance standards;

18 “(C) provide each employee with a written per-
19 formance appraisal annually;

20 “(D) make meaningful distinctions in perform-
21 ance; and

22 “(E) use the results of performance appraisals
23 as a basis for training, rewarding, compensating, re-
24 assigning, promoting, reducing in grade, retaining,
25 and removing employees.

1 “(3) Consistent with section 4304, each performance
2 appraisal system established under this subsection shall
3 be developed with appropriate technical assistance from
4 the Office of Personnel Management and shall be reviewed
5 before implementation and from time to time thereafter
6 by the Director of the Office to determine whether the sys-
7 tem meets the requirements of this subchapter. The agen-
8 cy shall promptly take any corrective action directed by
9 the Director of the Office at any time under section 4304
10 (b)(3).

11 “(b) Under regulations which the Director of the Of-
12 fice of Personnel Management shall prescribe, each per-
13 formance appraisal system shall provide for—

14 “(1) holding supervisors and managers account-
15 able in their performance appraisal for effectively
16 managing the performance of employees, which in-
17 cludes—

18 “(A) assessing performance;

19 “(B) providing ongoing feedback and pre-
20 paring written performance appraisals;

21 “(C) addressing poor performance; and

22 “(D) promoting and rewarding excellent
23 performance;

1 “(2) establishing performance standards related
2 to relevant assigned tasks for each employee or posi-
3 tion under the system which will permit—

4 “(A) the accurate evaluation of perform-
5 ance on the basis of objective criteria, to the
6 maximum extent feasible; and

7 “(B) making meaningful distinctions in
8 performance;

9 “(3) communicating to each employee at the be-
10 ginning of each appraisal period the performance
11 standards and the critical elements of the employee’s
12 position;

13 “(4) evaluating each employee during the ap-
14 praisal period on such standards;

15 “(5) assisting employees in improving unaccept-
16 able performance;

17 “(6) reassigning, reducing in grade, or remov-
18 ing employees who continue to have unacceptable
19 performance, but only after an opportunity to dem-
20 onstrate acceptable performance;

21 “(7) establishing multiple levels of summary
22 performance ratings which provide for making mean-
23 ingful distinctions in performance, including at
24 least—

1 “(A) a summary level of fully successful
2 (or equivalent);

3 “(B) a summary level of unacceptable; and

4 “(C) a summary level above fully success-
5 ful; and

6 “(8) recognizing and rewarding employees
7 whose performance so warrants.”; and

8 (2) by amending section 4304 to read as fol-
9 lows:

10 **“§ 4304. Responsibilities of the Office of Personnel**
11 **Management**

12 “(a) The Office of Personnel Management shall make
13 technical assistance available to agencies in the develop-
14 ment of performance appraisal systems.

15 “(b)(1) The Director of the Office shall review each
16 performance appraisal system developed by any agency
17 under this subchapter prior to its implementation and de-
18 termine whether the performance appraisal system as de-
19 signed meets the requirements of this subchapter.

20 “(2) The Director of the Office shall—

21 “(A) review agency performance appraisal sys-
22 tems developed under this subchapter from time to
23 time after their implementation to determine the ex-
24 tent to which the application of any such system
25 meets the requirements of this subchapter; and

1 “(B) report to the President and Congress any
 2 finding that an agency has failed to meet those re-
 3 quirements.

4 “(3) If the Director of the Office determines that a
 5 system does not meet the requirements of this subchapter
 6 (including regulations prescribed under section 4305), the
 7 Director of the Office shall direct the agency to implement
 8 an appropriate system or to correct operations under the
 9 system, and any such agency shall take any action so re-
 10 quired.”.

11 **SEC. 3. MANDATORY TRAINING PROGRAMS FOR SUPER-**
 12 **VISORS.**

13 (a) IN GENERAL.—Section 4121 of title 5, United
 14 States Code, is amended to read as follows:

15 **“§ 4121. Specific training programs**

16 “(a) In this section, the term ‘supervisor’ means—

17 “(1) a supervisor as defined under section
 18 7103(a)(10); and

19 “(2) any other employee as the Director of the
 20 Office may by regulation prescribe.

21 “(b) Under operating standards promulgated by, and
 22 in consultation with, the Director of the Office of Per-
 23 sonnel Management, the head of each agency shall estab-
 24 lish—

1 “(1) a comprehensive management succession
2 program to provide training to employees to develop
3 managers for the agency; and

4 “(2) a program to provide training to super-
5 visors on actions, options, and strategies a super-
6 visor may use in—

7 “(A) communicating performance expecta-
8 tions and conducting employee performance ap-
9 praisals;

10 “(B) mentoring employees and improving
11 employee performance and productivity;

12 “(C) dealing with employees whose per-
13 formance is unacceptable; and

14 “(D) otherwise carrying out the duties and
15 responsibilities of a supervisor.

16 “(c)(1) Not later than 1 year after the date on which
17 an individual is appointed to the position of supervisor,
18 and every 5 years thereafter, that individual shall be re-
19 quired to complete the program established under sub-
20 section (b)(2).

21 “(2) Each program established under subsection
22 (b)(2) shall include provisions under which credit may be
23 given for periods of similar training previously completed.

1 “(d) The Director of the Office of Personnel Manage-
 2 ment shall prescribe regulations to carry out this sec-
 3 tion.”.

4 (b) EFFECTIVE DATE AND APPLICATION.—

5 (1) IN GENERAL.—The amendments made by
 6 this section shall take effect as provided under sec-
 7 tion 6 and apply to—

8 (A) each individual appointed to the posi-
 9 tion of a supervisor, as defined under section
 10 4121(a) of title 5, United States Code, (as
 11 added by subsection (a) of this section) on or
 12 after that effective date; and

13 (B) each individual who is employed in the
 14 position of a supervisor on that effective date as
 15 provided under paragraph (2).

16 (2) SUPERVISORS ON EFFECTIVE DATE.—Each
 17 individual who is employed in the position of a su-
 18 pervisor on the effective date of this section shall be
 19 required to—

20 (A) complete the program established
 21 under section 4121(b)(2) of title 5, United
 22 States Code (as added by subsection (a) of this
 23 section), not later than 3 years after the effec-
 24 tive date of this section; and

1 (B) complete that program every 5 years
2 thereafter in accordance with section 4121(c) of
3 such title.

4 **SEC. 4. PAY RATES AND SYSTEMS.**

5 Chapter 53 of title 5, United States Code, is amend-
6 ed—

7 (1) in section 5303, by adding at the end the
8 following:

9 “(h)(1) An employee covered under subchapter III
10 whose summary rating of performance for the most re-
11 cently completed appraisal period is below the fully suc-
12 cessful level, as defined by the Director of the Office of
13 Personnel Management, may not receive an increase in the
14 rate of basic pay of that employee as the result of an ad-
15 justment under this section. The Director shall prescribe
16 such rules as may be necessary to administer this sub-
17 section, including rules regarding the treatment of an em-
18 ployee whose rate of basic pay falls below the minimum
19 rate of the applicable grade (or between steps of a grade)
20 and the treatment of an employee whose performance sub-
21 sequently improves.

22 “(2) When a determination is made that an employee
23 covered under subchapter III will not receive an increase
24 in the rate of basic pay of that employee because the em-
25 ployee’s summary rating of performance for the most re-

1 cently completed appraisal period is below the fully suc-
2 cessful level, the employee is entitled to prompt written
3 notice of that determination and an opportunity for recon-
4 sideration of the determination within the agency, as spec-
5 ified in the procedures prescribed by the Director of the
6 Office of Personnel Management under section 5335(c).
7 If the determination is affirmed on reconsideration, the
8 employee is entitled to appeal to the Merit Systems Pro-
9 tection Board under the same terms and conditions as
10 specified in such section.”;

11 (2) in section 5304, by amending subsection (i)
12 to read as follows:

13 “(i) The Director of the Office of Personnel Manage-
14 ment shall prescribe regulations, consistent with this sec-
15 tion, governing the payment of comparability payments to
16 employees. The regulations shall provide that, at the time
17 of an increase in a comparability payment, the rate of
18 basic pay of an employee covered under subchapter III,
19 or any other pay system designated by the Director, whose
20 summary rating of performance for the most recently com-
21 pleted appraisal period is below the fully successful level,
22 as defined by the Director, shall be reduced by an amount
23 that results in retaining the employee’s total rate of pay
24 under this section and sections 5303 and 5304a, as in ef-
25 fect immediately before any increase under such sections.

1 Such a reduction in an employee's rate of basic pay shall
2 not be considered a reduction in pay for the purpose of
3 applying the adverse action procedures under section
4 7512.”; and

5 (3) in section 5305, by amending subsection (f)
6 to read as follows:

7 “(f)(1) When a schedule of special rates established
8 under this section is adjusted under subsection (d), the
9 special rate of an employee shall be adjusted in accordance
10 with conversion rules prescribed by the Director of the Of-
11 fice of Personnel Management (or by such other agency
12 as the President may designate under the last sentence
13 of subsection (a)(1)).

14 “(2) The conversion rules prescribed under para-
15 graph (1), shall provide that a covered employee whose
16 summary rating of performance for the most recently com-
17 pleted appraisal period is below the fully successful level,
18 as defined by the Director of the Office of Personnel Man-
19 agement, may not receive an increase in the special rate
20 of that employee as the result of an adjustment under sub-
21 section (d). The Director shall prescribe such rules as may
22 be necessary to administer this paragraph, including rules
23 regarding the treatment of an employee whose rate of
24 basic pay falls below the minimum rate of the applicable
25 grade (or between pay rates or steps of a grade) and the

1 treatment of an employee whose performance subsequently
2 improves. The rules may provide for reducing an employ-
3 ee's rate of basic pay to the extent necessary to prevent
4 any increase in the employee's special rate. Such a reduc-
5 tion in an employee's rate of basic pay shall not be consid-
6 ered a reduction in pay for the purpose of applying the
7 adverse action procedures in section 7512.

8 “(3) When a determination is made that a covered
9 employee will not receive an increase in the special rate
10 of that employee under this subsection because the em-
11 ployee's summary rating of performance for the most re-
12 cently completed appraisal period is below the fully suc-
13 cessful level, the employee is entitled to prompt written
14 notice of that determination and an opportunity for recon-
15 sideration of the determination within the agency, as spec-
16 ified in the procedures prescribed by the Director under
17 section 5335(c). If the determination is affirmed on recon-
18 sideration, the employee is entitled to appeal to the Merit
19 Systems Protection Board under the same terms and con-
20 ditions as specified in such section.”;

21 (4) in section 5335—

22 (A) in subsection (a) by amending sub-
23 paragraph (B) to read as follows:

24 “(B) the employee's summary rating of
25 performance for the most recently completed

1 appraisal period is at least at the fully success-
2 ful level, as defined by the Director of the Of-
3 fice of Personnel Management.”; and

4 (B) by amending subsection (c) to read as
5 follows:

6 “(c)(1) When an employee’s summary rating of per-
7 formance for the most recently completed appraisal period
8 is below the fully successful level, the pay of that employee
9 may not be increased under this section. Such an employee
10 is entitled to prompt written notice of the determination
11 not to increase the pay of that employee and an oppor-
12 tunity for reconsideration of the determination within the
13 agency under uniform procedures prescribed by the Direc-
14 tor of the Office of Personnel Management. If the deter-
15 mination is affirmed on reconsideration, the employee is
16 entitled to appeal to the Merit Systems Protection Board.
17 If the reconsideration or appeal results in a reversal of
18 the earlier determination, the new determination super-
19 sedes the earlier determination and is deemed to have been
20 made as of the date of the earlier determination. The au-
21 thority of the Director to prescribe procedures and the en-
22 titlement of the employee to appeal to the Board do not
23 apply to a determination made by the Librarian of Con-
24 gress.

1 “(2) Notwithstanding any other provision of law, an
 2 employee may grieve or appeal the first pay determination
 3 under this subsection or under section 5303(h), 5305(f),
 4 or 5363(b)(2)(C) that is based on the employee’s most re-
 5 cent summary rating of performance. An employee may
 6 not grieve or appeal any subsequent pay determination
 7 made that is based on the same summary rating of per-
 8 formance”; and

9 (5) by amending section 5338 to read as fol-
 10 lows:

11 **“§ 5338. Regulations**

12 “The Director of the Office of Personnel Manage-
 13 ment may prescribe regulations necessary for the adminis-
 14 tration of this subchapter. Such regulations shall address
 15 how paysetting rules apply to an employee whose rate of
 16 basic pay is not equal to 1 of the scheduled step rates
 17 as a result of a determination not to increase the rate of
 18 basic pay of that employee under section 5303(h) or
 19 5305(f) or to reduce the rate of basic pay of that employee
 20 under section 5304(i) or 5305(f).”;

21 (6) in section 5343 (relating to prevailing rate
 22 wage systems)—

23 (A) in subsection (e)—

24 (i) by amending paragraph (2) to read
 25 as follows:

1 “(2) A prevailing rate employee under a regular wage
 2 schedule whose summary rating of performance for the
 3 most recently completed appraisal period is at least at the
 4 fully successful level, as defined by the Director of the Of-
 5 fice of Personnel Management, shall advance automati-
 6 cally to the next higher step within the grade at the begin-
 7 ning of the first applicable pay period following the com-
 8 pletion by that employee of—

9 “(A) 26 calendar weeks of service in step 1;

10 “(B) 78 calendar weeks of service in step 2;

11 and

12 “(C) 104 calendar weeks of service in each of
 13 steps 3 and 4.”;

14 (ii) by amending paragraph (4) to
 15 read as follows:

16 “(4) Supervisory wage schedules and special wage
 17 schedules authorized under subsection (c)(3) may have
 18 single or multiple rates or steps according to prevailing
 19 practices in the industry on which the schedule is based.
 20 A prevailing rate employee under a supervisory or special
 21 wage schedule with multiple rates or steps whose summary
 22 rating of performance for the most recently completed ap-
 23 praisal period is at least at the fully successful level, as
 24 defined by the Director of the Office of Personnel Manage-
 25 ment, shall advance automatically to the next higher step

1 within the grade at the beginning of the first applicable
2 pay period following the completion by that employee of
3 any required waiting period.”; and

4 (iii) by adding at the end the fol-
5 lowing:

6 “(5)(A) When a summary rating of performance of
7 an employee covered under this subchapter for the most
8 recently completed appraisal period is below the fully suc-
9 cessful level, as defined by the Director of the Office of
10 Personnel Management, the employee may not be ad-
11 vanced to the next higher step within the grade under
12 paragraph (2) or (4). Such an employee is entitled to
13 prompt written notice of the determination not to increase
14 the pay of that employee and an opportunity for reconsid-
15 eration of the determination within the agency under uni-
16 form procedures prescribed by the Director of the Office
17 of Personnel Management. If the determination is af-
18 firmed on reconsideration, the employee is entitled to ap-
19 peal to the Merit Systems Protection Board. If the recon-
20 sideration or appeal results in a reversal of the earlier de-
21 termination, the new determination supersedes the earlier
22 determination and is deemed to have been made as of the
23 date of the earlier determination.

24 “(B) Notwithstanding any other provision of law, an
25 employee may grieve or appeal the first pay determination

1 under this paragraph, subsection (g), or section
2 5363(b)(2)(C) when such determinations are made based
3 on the same summary rating of performance. An employee
4 may not grieve or appeal any subsequent pay determina-
5 tion made that is based on the same summary rating of
6 performance.”; and

7 (B) by adding at the end the following:

8 “(g)(1) An employee covered under this subchapter
9 whose summary rating of performance for the most re-
10 cently completed appraisal period is below the fully suc-
11 cessful level, as defined by the Director of the Office of
12 Personnel Management, may not receive an increase in the
13 rate of basic pay of that employee as the result of an ad-
14 justment in any wage schedule established under this sub-
15 chapter. The Director may prescribe such rules as may
16 be necessary to administer this subsection, including rules
17 regarding the treatment of an employee whose rate of
18 basic pay falls below the minimum rate of the applicable
19 grade (or between steps of a grade) and the treatment
20 of an employee whose performance subsequently improves.

21 “(2) When a determination is made that a covered
22 employee will not receive an increase in the rate of basic
23 pay of that employee at the time of an adjustment in a
24 wage schedule because the employee’s summary rating of
25 performance for the most recently completed appraisal pe-

1 riod is below the fully successful level, the employee is enti-
 2 tled to prompt written notice of that determination and
 3 an opportunity for reconsideration of the determination
 4 within the agency, as specified in the procedures pre-
 5 scribed by the Director of the Office of Personnel Manage-
 6 ment under subsection (e)(5). If the determination is af-
 7 firmed on reconsideration, the employee is entitled to ap-
 8 peal to the Merit Systems Protection Board under the
 9 same terms and conditions as specified under subsection
 10 (e)(5).”;

11 (7) in section 5363(b)(2) (relating to pay reten-
 12 tion)—

13 (A) in subparagraph (B) by striking “A
 14 rate” and inserting “Except as provided in sub-
 15 paragraph (C), a rate”; and

16 (B) by adding at the end the following:

17 “(C)(i) An employee’s retained rate may not be in-
 18 creased under subparagraph (B) if the employee’s sum-
 19 mary rating of performance for the most recently com-
 20 pleted appraisal period is below the fully successful level,
 21 as defined by the Director of the Office of Personnel Man-
 22 agement. The Director shall prescribe such rules as may
 23 be necessary to administer this subparagraph, including
 24 rules regarding the treatment of an employee whose per-
 25 formance subsequently improves.

1 “(ii) When a determination is made that an employee
 2 will not receive an increase in the retained rate of that
 3 employee because the employee’s summary rating of per-
 4 formance for the most recently completed appraisal period
 5 is below the fully successful level, the employee is entitled
 6 to prompt written notice of that determination and an op-
 7 portunity for reconsideration of the determination within
 8 the agency, as specified in the procedures prescribed by
 9 the Director of the Office of Personnel Management under
 10 section 5335(c). If the determination is affirmed on recon-
 11 sideration, the employee is entitled to appeal to the Merit
 12 Systems Protection Board under the same terms and con-
 13 ditions as specified under section 5335(c).”;

14 (8) in section 5376(b) (relating to pay for cer-
 15 tain senior-level positions)—

16 (A) in paragraph (2), by striking “Subject
 17 to paragraph (1)” and inserting “Subject to
 18 paragraphs (1) and (3)”; and

19 (B) by adding at the end the following:

20 “(3) Notwithstanding any other provision of
 21 this section, an employee covered under this section
 22 whose summary rating of performance for the most
 23 recently completed appraisal period is below the fully
 24 successful level, as defined by the Director of the Of-
 25 fice of Personnel Management, may not receive an

1 increase in the rate of basic pay of that employee.
 2 The Director shall prescribe such rules as may be
 3 necessary to administer this paragraph, including
 4 rules regarding the treatment of an employee whose
 5 rate of basic pay falls below the otherwise applicable
 6 minimum rate prescribed by paragraph (1)(A) and
 7 the treatment of an employee whose performance
 8 subsequently improves.”;

9 (9) in section 5382(a), in the first sentence, by
 10 inserting “(except as provided by section 5383(a))”
 11 after “for the Senior Executive Service, and”; and

12 (10) in section 5383, by amending subsection
 13 (a) to read as follows:

14 “(a) Each appointing authority shall determine, in
 15 accordance with criteria established by the Director of the
 16 Office of Personnel Management, which of the rates within
 17 a range established under section 5382 shall be paid to
 18 each senior executive under such appointing authority.
 19 Such criteria shall provide that a member of the Senior
 20 Executive Service may not receive an increase in the rate
 21 of basic pay of that member if such member’s summary
 22 rating of performance for the most recently completed ap-
 23 praisal period is below the fully successful level, as defined
 24 by the Director. The Director shall prescribe such rules
 25 as may be necessary to administer this subsection, includ-

1 ing rules regarding the treatment of a member whose rate
 2 of basic pay falls below the otherwise applicable minimum
 3 rate prescribed by section 5382(a) and the treatment of
 4 a member whose performance subsequently improves.”.

5 **SEC. 5. SENIOR EXECUTIVE SERVICE PLACEMENT IN**
 6 **OTHER PERSONNEL SYSTEMS.**

7 Section 3594(c)(2) of title 5, United States Code, is
 8 amended to read as follows:

9 “(2)(A) Except as provided in subparagraph (B) of
 10 this paragraph, an employee who is receiving basic pay
 11 under paragraph (1)(B)(ii) or (iii) is entitled to have the
 12 rate of basic pay of the employee increased by 50 percent
 13 of the amount of each increase in the maximum rate of
 14 basic pay for the grade of the position in which the em-
 15 ployee is placed under subsection (a) or (b) until the rate
 16 is equal to the rate in effect under paragraph (1)(B)(i)
 17 for the position in which the employee is placed.

18 “(B) A rate of basic pay established under paragraph
 19 (1)(B)(ii) or (iii) may not be increased under subpara-
 20 graph (A) if the employee’s summary rating of perform-
 21 ance for the most recently completed appraisal period is
 22 below the fully successful level, as defined by the Director
 23 of the Office of Personnel Management. The Director shall
 24 prescribe such rules as may be necessary to administer
 25 this subparagraph, including rules regarding the treat-

1 ment of an employee whose performance subsequently im-
 2 proves.”.

3 **SEC. 6. EFFECTIVE DATES AND IMPLEMENTATION.**

4 (a) SECTIONS 2 AND 3.—

5 (1) EFFECTIVE DATE.—The amendments made
 6 by sections 2 and 3 shall take effect on the earlier
 7 of—

8 (A) 180 days after the date of enactment
 9 of this Act; or

10 (B) the effective date of implementing reg-
 11 ulations prescribed by the Director of the Office
 12 of Personnel Management.

13 (2) SUBMISSIONS.—

14 (A) PERFORMANCE APPRAISAL SYSTEMS.—

15 Not later than July 1, 2007, each agency cov-
 16 ered by subchapter I of chapter 43 of title 5,
 17 United States Code, shall submit to the Direc-
 18 tor of the Office of Personnel Management each
 19 performance appraisal system established under
 20 that subchapter so that the Director may deter-
 21 mine whether the system meets the require-
 22 ments of the subchapter. Each submission
 23 under this paragraph shall include all informa-
 24 tion the Director requires in order to make the
 25 determination.

1 (B) REPORT TO CONGRESS.—Not later
2 than November 1, 2007, the Director of the Of-
3 fice of Personnel Management shall submit a
4 report regarding the Director’s review under
5 section 4304(b)(1) of title 5, United States
6 Code, as amended by section 2 of this Act, to
7 the President and Congress.

8 (b) SECTIONS 4 AND 5.—The amendments made by
9 sections 4 and 5 shall apply with respect to any employee
10 beginning on the first day of the first pay period following
11 the completion of 52 weeks after the date on which the
12 first annual adjustments in rates of basic pay under sec-
13 tion 5303 of title 5, United States Code, occur following
14 the date of enactment of this Act.

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