

Union Calendar No. 134

113TH CONGRESS
1ST SESSION

H. R. 2579

[Report No. 113–186]

To amend title 5, United States Code, to provide for investigative leave requirements with respect to Senior Executive Service employees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 2013

Mr. KELLY of Pennsylvania (for himself, Mr. MARINO, Mr. RENACCI, Mr. GRIFFIN of Arkansas, Mr. ROSKAM, Mr. YOUNG of Indiana, Mr. FARENTHOLD, Mr. DENHAM, Mr. GOSAR, Mr. BARLETTA, Mr. BENISHEK, Mr. THOMPSON of Pennsylvania, Mr. AMODEI, Mr. GERLACH, Mr. PAULSEN, Mr. HENSARLING, Mrs. BLACKBURN, Mr. BROOKS of Alabama, Mr. CALVERT, Mr. REED, Mr. JOHNSON of Ohio, and Mr. AUSTIN SCOTT of Georgia) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

JULY 31, 2013

Additional sponsors: Mr. COLLINS of New York, Mr. WOMACK, Mr. MCCLINTOCK, Mr. KINGSTON, Mr. WESTMORELAND, Mr. NUGENT, Mr. CRAMER, Mr. BROUN of Georgia, Mrs. MILLER of Michigan, Mr. PEARCE, Mr. CRAWFORD, Mr. MCCAUL, Mr. MULLIN, Mr. LANKFORD, Mr. GINGREY of Georgia, Mr. FITZPATRICK, Mr. WEBSTER of Florida, Mr. ROKITA, and Mrs. WALORSKI

JULY 31, 2013

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on June 28, 2013]

A BILL

To amend title 5, United States Code, to provide for investigative leave requirements with respect to Senior Executive Service employees, 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 “Government Employee*
 5 *Accountability Act”.*

6 **SEC. 2. SUSPENSION FOR 14 DAYS OR LESS FOR SENIOR EX-**
 7 **ECUTIVE SERVICE EMPLOYEES.**

8 *Paragraph (1) of section 7501 of title 5, United States*
 9 *Code, is amended to read as follows:*

10 *“(1) ‘employee’ means—*

11 *“(A) an individual in the competitive serv-*
 12 *ice who is not serving a probationary or trial*
 13 *period under an initial appointment or who has*
 14 *completed 1 year of current continuous employ-*
 15 *ment in the same or similar positions under*
 16 *other than a temporary appointment limited to*
 17 *1 year or less; or*

18 *“(B) a career appointee in the Senior Exec-*
 19 *utive Service who—*

20 *“(i) has completed the probationary*
 21 *period prescribed under section 3393(d); or*

22 *“(ii) was covered by the provisions of*
 23 *subchapter II of this chapter immediately*
 24 *before appointment to the Senior Executive*
 25 *Service; and”.*

1 **SEC. 3. INVESTIGATIVE LEAVE AND TERMINATION AUTHOR-**
 2 **ITY FOR SENIOR EXECUTIVE SERVICE EM-**
 3 **PLOYEES.**

4 (a) *IN GENERAL.*—Chapter 75 of title 5, United States
 5 Code, is amended by adding at the end the following:

6 “SUBCHAPTER VI—INVESTIGATIVE LEAVE FOR
 7 SENIOR EXECUTIVE SERVICE EMPLOYEES

8 “§ 7551. *Definitions*

9 “For the purposes of this subchapter—

10 “(1) ‘employee’ has the meaning given such term
 11 in section 7541; and

12 “(2) ‘investigative leave’ means a temporary ab-
 13 sence without duty for disciplinary reasons, of a pe-
 14 riod not greater than 90 days.

15 “§ 7552. *Actions covered*

16 “This subchapter applies to investigative leave.

17 “§ 7553. *Cause and procedure*

18 “(a)(1) Under regulations prescribed by the Office of
 19 Personnel Management, an agency may place an employee
 20 on investigative leave, without loss of pay and without
 21 charge to annual or sick leave, only for misconduct, neglect
 22 of duty, malfeasance, or misappropriation of funds.

23 “(2) If an agency determines, as prescribed in regula-
 24 tion by the Office of Personnel Management, that such em-
 25 ployee’s conduct is flagrant and that such employee inten-
 26 tionally engaged in such conduct, the agency may place

1 *such employee on investigative leave under this subchapter*
2 *without pay.*

3 “(b)(1) *At the end of each 45-day period during a pe-*
4 *riod of investigative leave implemented under this section,*
5 *the relevant agency shall review the investigation into the*
6 *employee with respect to the misconduct, neglect of duty,*
7 *malfeasance, or misappropriation of funds.*

8 “(2) *Not later than 5 business days after the end of*
9 *each such 45-day period, the agency shall submit a report*
10 *describing such review to the Committee on Oversight and*
11 *Government Reform of the House of Representatives and the*
12 *Committee on Homeland Security and Governmental Af-*
13 *airs of the Senate.*

14 “(3) *At the end of a period of investigative leave imple-*
15 *mented under this section, the agency shall—*

16 “(A) *remove an employee placed on investigative*
17 *leave under this section;*

18 “(B) *suspend such employee without pay; or*

19 “(C) *reinstate or restore such employee to duty.*

20 “(4) *The agency may extend the period of investigative*
21 *leave with respect to an action under this subchapter for*
22 *an additional period not to exceed 90 days.*

23 “(c) *An employee against whom an action covered by*
24 *this subchapter is proposed is entitled to, before being placed*
25 *on investigative leave under this section—*

1 “(1) at least 30 days’ advance written notice,
2 stating specific reasons for the proposed action, un-
3 less—

4 “(A) there is reasonable cause to believe that
5 the employee has committed a crime for which a
6 sentence of imprisonment can be imposed; or

7 “(B) the agency determines, as prescribed in
8 regulation by the Office of Personnel Manage-
9 ment, that the employee’s conduct with respect to
10 which an action covered by this subchapter is
11 proposed is flagrant and that such employee in-
12 tentionally engaged in such conduct;

13 “(2) a reasonable time, but not less than 7 days,
14 to answer orally and in writing and to furnish affi-
15 davits and other documentary evidence in support of
16 the answer;

17 “(3) be represented by an attorney or other rep-
18 resentative; and

19 “(4) a written decision and specific reasons
20 therefor at the earliest practicable date.

21 “(d) An agency may provide, by regulation, for a hear-
22 ing which may be in lieu of or in addition to the oppor-
23 tunity to answer provided under subsection (c)(2).

1 “(e) *An employee against whom an action is taken*
 2 *under this section is entitled to appeal to the Merit Systems*
 3 *Protection Board under section 7701.*

4 “(f) *Copies of the notice of proposed action, the answer*
 5 *of the employee when written, and a summary thereof when*
 6 *made orally, the notice of decision and reasons therefor, and*
 7 *any order effecting an action covered by this subchapter,*
 8 *together with any supporting material, shall be maintained*
 9 *by the agency and shall be furnished to the Merit Systems*
 10 *Protection Board upon its request and to the employee af-*
 11 *fected upon the employee’s request.*

12 “SUBCHAPTER VII—REMOVAL OF SENIOR
 13 EXECUTIVE SERVICE EMPLOYEES

14 “§ 7561. **Definition**

15 “*For purposes of this subchapter, the term ‘employee’*
 16 *has the meaning given such term in section 7541.*

17 “§ 7562. **Removal of Senior Executive Service employ-**
 18 **ees**

19 “(a) *Notwithstanding any other provision of law and*
 20 *consistent with the requirements of subsection (b), the head*
 21 *of an agency may remove an employee for serious neglect*
 22 *of duty, misappropriation of funds, or malfeasance if the*
 23 *head of the agency—*

1 “(1) determines that the employee knowingly
2 acted in a manner that endangers the interest of the
3 agency mission;

4 “(2) considers the removal to be necessary or ad-
5 visable in the interests of the United States; and

6 “(3) determines that the procedures prescribed in
7 other provisions of law that authorize the removal of
8 such employee cannot be invoked in a manner that
9 the head of an agency considers consistent with the ef-
10 ficiency of the Government.

11 “(b) An employee may not be removed under this sec-
12 tion—

13 “(1) on any basis that would be prohibited
14 under—

15 “(A) any provision of law referred to in sec-
16 tion 2302(b)(1); or

17 “(B) paragraphs (8) or (9) of section
18 2302(b); or

19 “(2) on any basis, described in paragraph (1), as
20 to which any administrative or judicial proceeding—

21 “(A) has been commenced by or on behalf of
22 such employee; and

23 “(B) is pending.

24 “(c) An employee removed under this section shall be
25 notified of the reasons for such removal. Within 30 days

1 *after the notification, the employee is entitled to submit to*
2 *the official designated by the head of the agency statements*
3 *or affidavits to show why the employee should be restored*
4 *to duty. If such statements and affidavits are submitted,*
5 *the head of the agency shall provide a written response, and*
6 *may restore the employee's employment if the head of the*
7 *agency chooses.*

8 “(d) *Whenever the head of the agency removes an em-*
9 *ployee under the authority of this section, the head of the*
10 *agency shall notify Congress of such termination, and the*
11 *specific reasons for the action.*

12 “(e) *An employee against whom an action is taken*
13 *under this section is entitled to appeal to the Merit Systems*
14 *Protection Board under section 7701 of this title.*

15 “(f) *Copies of the notice of proposed action, the answer*
16 *of the employee when written, and a summary thereof when*
17 *made orally, the notice of decision and reasons therefor, and*
18 *any order effecting an action covered by this subchapter,*
19 *together with any supporting material, shall be maintained*
20 *by the agency and shall be furnished to the Merit Systems*
21 *Protection Board upon its request and to the employee af-*
22 *ected upon the employee's request.*

23 “(g) *A removal under this section does not affect the*
24 *right of the employee affected to seek or accept employment*
25 *with any other department or agency of the United States*

1 *if that employee is declared eligible for such employment*
 2 *by the Director of the Office of Personnel Management.*

3 “(h) *The authority of the head of the agency under this*
 4 *section may not be delegated.*”.

5 (b) *CLERICAL AMENDMENT.—The table of sections at*
 6 *the beginning of chapter 75 of title 5, United States Code,*
 7 *is amended by adding at the end the following:*

“SUBCHAPTER VI—INVESTIGATIVE LEAVE FOR SENIOR EXECUTIVE SERVICE
EMPLOYEES

“7551. *Definitions.*

“7552. *Actions covered.*

“7553. *Cause and procedure.*

“SUBCHAPTER VII—REMOVAL OF SENIOR EXECUTIVE SERVICE EMPLOYEES

“7561. *Definition.*

“7562. *Removal of Senior Executive Service employees.*”.

8 **SEC. 4. SUSPENSION OF SENIOR EXECUTIVE SERVICE EM-**
 9 **PLOYEES.**

10 *Section 7543 of title 5, United States Code, is amend-*
 11 *ed—*

12 (1) *in subsection (a), by inserting “misappro-*
 13 *priation of funds,” after “malfeasance,”; and*

14 (2) *in subsection (b), by amending paragraph*
 15 *(1) to read as follows:*

16 “(1) *at least 30 days’ advance written notice,*
 17 *stating specific reasons for the proposed action, un-*
 18 *less—*

1 “(A) there is reasonable cause to believe that
2 the employee has committed a crime for which a
3 sentence of imprisonment can be imposed; or

4 “(B) the agency determines, as prescribed in
5 regulation by the Office of Personnel Manage-
6 ment, that the employee’s conduct with respect to
7 which an action covered by this subchapter is
8 proposed is flagrant and that such employee in-
9 tentionally engaged in such conduct;”.

10 **SEC. 5. MISAPPROPRIATION OF FUNDS AMENDMENTS.**

11 (a) *REINSTATEMENT IN THE SENIOR EXECUTIVE*
12 *SERVICE*.—Section 3593 of title 5, United States Code, is
13 amended—

14 (1) in subsection (a)(2), by inserting “misappro-
15 priation of funds,” after “malfeasance,”; and

16 (2) in subsection (b), by striking “or malfea-
17 sance” and inserting “malfeasance, or misappropria-
18 tion of funds”.

19 (b) *PLACEMENT IN OTHER PERSONNEL SYSTEMS*.—
20 Section 3594(a) of title 5, United States Code, is amended
21 by striking “or malfeasance” and inserting “malfeasance,
22 or misappropriation of funds”.

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