

113TH CONGRESS  
2D SESSION

# S. 2814

To amend the National Labor Relations Act to reform the National Labor Relations Board, the Office of the General Counsel, and the process for appellate review, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 2014

Mr. ALEXANDER (for himself and Mr. McCONNELL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the National Labor Relations Act to reform the National Labor Relations Board, the Office of the General Counsel, and the process for appellate review, 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 “National Labor Rela-  
5       tions Board Reform Act”.

1 **SEC. 2. NATIONAL LABOR RELATIONS BOARD.**

2 (a) COMPOSITION; TERMS.—Section 3(a) of the Na-  
3 tional Labor Relations Act (29 U.S.C. 153(a)) is amend-  
4 ed—

5 (1) in the first sentence—

6 (A) by striking “prior to its amendment by  
7 the National Labor Management Relations Act,  
8 1947,” and inserting “prior to its amendment  
9 by the National Labor Relations Board Reform  
10 Act”;

11 (B) by striking “five instead of three mem-  
12 bers” and inserting “6 instead of 5 members”;  
13 and

14 (C) by striking “appointed by the Presi-  
15 dent by and with the advice and consent of the  
16 Senate” and inserting “appointed by the Presi-  
17 dent, after consultation with the leader of the  
18 Senate representing the party opposing the  
19 party of the President, by and with the advice  
20 and consent of the Senate”;

21 (2) by striking the second sentence and insert-  
22 ing the following: “The sixth member added by the  
23 first sentence of this section shall be appointed for  
24 a term that expires on the day before the first date  
25 on which a full term of another member of the  
26 Board commences that is after the date of enact-

1       ment of the National Labor Relations Board Reform  
 2       Act. Of the 6 members, there shall be 3 members  
 3       representing each of the 2 major political parties  
 4       and, beginning on January 1, 2020, each of the 2  
 5       members of the Board whose terms expire on the  
 6       same date, as established under subsection (e), shall  
 7       represent a different major political party.”; and

8               (3) in the fourth sentence (including the  
 9       amendment made by paragraph (2))—

10               (A) by striking “Their successors, and the  
 11               successors of the other members,” and inserting  
 12               “The successor of such sixth member, and the  
 13               successors of the other members,”;

14               (B) by inserting “(except as otherwise pro-  
 15               vided during the transition period under sub-  
 16               section (e))” after “each”; and

17               (C) by striking “he” and inserting “the in-  
 18               dividual”.

19       (b) AUTHORITY.—Section 3(b) of the National Labor  
 20       Relations Act (29 U.S.C. 153(b)) is amended—

21               (1) in the first sentence—

22               (A) by striking “three or more” and insert-  
 23               ing “4 or more”; and

24               (B) by inserting before the period the fol-  
 25               lowing: “, with such group consisting of an

1 equal number of members representing each  
2 major political party”; and

3 (2) in the third sentence—

4 (A) by striking “three members” and in-  
5 serting “4 members”; and

6 (B) by striking “Board, except that” and  
7 all that follows through “hereof.” and inserting  
8 the following: “Board. Any determination of the  
9 Board shall be approved by a majority of the  
10 members present.”.

11 (c) TRANSITION TO IMPROVED STAGGERED  
12 TERMS.—Section 3 of the National Labor Relations Act  
13 (29 U.S.C. 153) is further amended by adding at the end  
14 the following:

15 “(e) TRANSITION TO IMPROVED STAGGERED  
16 TERMS.—Notwithstanding subsection (a) or any other  
17 provision of this Act—

18 “(1) each term of a member of the Board ap-  
19 pointed after the date of enactment of the National  
20 Labor Relations Board Reform Act and before De-  
21 cember 31, 2019, shall terminate on December 31,  
22 2019, or the date on which the term otherwise ex-  
23 pires, whichever is earlier, and new terms for all 6  
24 members of the Board shall begin on January 1,  
25 2020; and

1 “(2) of the 6 members of the Board who are  
 2 appointed for the terms beginning on January 1,  
 3 2020—

4 “(A) 2 of the members shall be appointed  
 5 for terms ending on December 31, 2021;

6 “(B) 2 of the members shall be appointed  
 7 for terms ending on December 31, 2023; and

8 “(C) 2 of the members shall be appointed  
 9 for terms ending on December 31, 2024.”.

10 **SEC. 3. GENERAL COUNSEL.**

11 (a) REVIEW OF GENERAL COUNSEL DECISIONS.—  
 12 Section 3 of the National Labor Relations Act (29 U.S.C.  
 13 153), as amended by section 2, is further amended—

14 (1) in subsection (d)—

15 (A) in the second sentence, by striking  
 16 “trial examiners” and inserting “administrative  
 17 law judges”; and

18 (B) in the third sentence, by striking “He  
 19 shall” and inserting “Subject to subsection (f),  
 20 the General Counsel shall”; and

21 (2) by adding at the end the following:

22 “(f) REVIEW OF GENERAL COUNSEL COMPLAINTS.—

23 “(1) IN GENERAL.—Any person subject to a  
 24 complaint that is issued or authorized by the Gen-  
 25 eral Counsel under subsection (d) may obtain review

1 of the complaint in any district court of the United  
2 States in the judicial district wherein the unfair  
3 labor practice in question was alleged to have oc-  
4 curred, wherein such person resides or transacts  
5 business, or in the United States District Court for  
6 the District of Columbia, by filing in such court, not  
7 later than 30 days after such issuance or authoriza-  
8 tion, a written petition for review of the complaint.  
9 The court may prohibit any further proceedings re-  
10 lating to such complaint if the court determines that  
11 the General Counsel does not have substantial evi-  
12 dence that such person has violated this Act.

13 “(2) DISCOVERY.—Any party to a complaint  
14 under paragraph (1) may file a request to the Gen-  
15 eral Counsel to obtain any advice memorandum pre-  
16 pared by an attorney of the Division of Advice of the  
17 Office of the General Counsel, any internal memo-  
18 randum of the Office of the General Counsel, or any  
19 other inter-agency or intra-agency memorandum or  
20 letter described in section 552(b)(5) of title 5,  
21 United States Code, related to the complaint. Not  
22 later than 10 days after the filing of such request,  
23 the General Counsel shall provide such party the re-  
24 quested memorandum, letter, or document.”.

1 (b) SALARY.—Section 4(a) of the National Labor Re-  
2 lations Act (29 U.S.C. 154(a)) is amended—

3 (1) in the first sentence, by striking “shall re-  
4 ceive a salary of \$12,000 a year,” and inserting  
5 “shall be compensated at a level equivalent to level  
6 IV of the Executive Schedule, in accordance with  
7 section 5315 of title 5, United States Code. The  
8 Chairman of the Board shall be compensated at a  
9 level equivalent to level III of the Executive Sched-  
10 ule, in accordance with section 5314 of title 5,  
11 United States Code. Each member of the Board, the  
12 General Counsel, and the Chairman”;

13 (2) in the fourth sentence, including the amend-  
14 ment made by paragraph (1), by striking “exam-  
15 iners” and inserting “administrative law judges”;  
16 and

17 (3) in the sixth sentence, including the amend-  
18 ment made by paragraph (1)—

19 (A) by striking “trial examiner’s report”  
20 and inserting “report of an administrative law  
21 judge”; and

22 (B) by striking “trial examiner shall ad-  
23 vise” and inserting “administrative law judge  
24 shall advise”.

1 **SEC. 4. FINAL ORDERS; DISCHARGE.**

2 Section 10 of the National Labor Relations Act (29  
3 U.S.C. 160) is amended—

4 (1) in subsection (c)—

5 (A) by striking “before an examiner or ex-  
6 aminers thereof” and inserting “before an ad-  
7 ministrative law judge or administrative law  
8 judges thereof”; and

9 (B) by striking “such examiner or exam-  
10 iners” and inserting “such judge or judges”;  
11 and

12 (2) in subsection (d)—

13 (A) by inserting “or the Board has issued  
14 a final order” after “have been filed in a  
15 court”;

16 (B) by striking “at any time upon reason-  
17 able notice” and inserting “, not later than 1  
18 year after the submission of a report of an ad-  
19 ministrative law judge, or a decision of a re-  
20 gional director, pertaining to such case or  
21 order, upon reasonable notice,”; and

22 (C) by adding at the end the following:  
23 “The Board shall issue a final order reviewing  
24 an appeal of a report of an administrative law  
25 judge or decision of a regional director filed  
26 within 1 year after such report or decision. If

1 the Board does not issue a final order within 1  
2 year after the report of an administrative law  
3 judge or decision of a regional director, any  
4 party to the case may move to discharge the  
5 case. Upon such motion, the report of the ad-  
6 ministrative law judge or decision of the re-  
7 gional director shall be deemed to be a final  
8 agency action and the Board may not take fur-  
9 ther action on the matter under subchapter II  
10 of chapter 5 of title 5, United States Code. Any  
11 party to the case may obtain review of the order  
12 in any court of appeals of the United States in  
13 the circuit wherein the unfair labor practice in  
14 question was alleged to have occurred, wherein  
15 such person resides or transacts business, or in  
16 the United States Court of Appeals for the Dis-  
17 trict of Columbia, by filing in such court, not  
18 later than 60 days after the issuance of the  
19 order, a written petition for the court to modify  
20 or set aside the order of the Board. The court  
21 shall review the order de novo.”.

22 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS TO FUR-**  
23 **THE EFFECTIVE GOVERNMENT.**

24 The National Labor Relations Act (29 U.S.C. 151  
25 et seq.) is amended by adding at the end the following:

1   **“SEC. 20. AUTHORIZATION OF APPROPRIATIONS TO FUR-**  
2                   **THE EFFECTIVE GOVERNMENT.**

3           “(a) 2-YEAR DEADLINE.—If, 2 years after the date  
4 of enactment of the National Labor Relations Board Re-  
5 form Act, the Board has failed to issue a final order, in  
6 accordance with section 10(d), on more than 90 percent  
7 of the cases pending on (or filed on or after) such date  
8 of enactment, then the amount authorized to be appro-  
9 priated to carry out this Act for each of the succeeding  
10 2 fiscal years shall be 80 percent of the average amount  
11 so authorized for the prior 2 fiscal years.

12          “(b) 4-YEAR DEADLINE.—If, 4 years after the date  
13 of enactment of the National Labor Relations Board Re-  
14 form Act, the Board has failed to issue a final order, in  
15 accordance with section 10(d), on more than 90 percent  
16 of the cases pending on (or filed on or after) the date that  
17 is 2 years after the date of such enactment, then the  
18 amount authorized to be appropriated to carry out this  
19 Act for each succeeding fiscal year shall remain the  
20 amount so appropriated for the fiscal year that is 4 years  
21 after the date of such enactment.”.

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