

114TH CONGRESS
2D SESSION

H. R. 4639

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2016

Received

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Read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To reauthorize the Office of Special Counsel, to amend title 5, United States Code, to provide modifications to authorities relating to the Office of Special Counsel, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Thoroughly Inves-
3 tigating Retaliation Against Whistleblowers Act”.

4 **SEC. 2. REAUTHORIZATION OF THE OFFICE OF SPECIAL**
5 **COUNSEL.**

6 (a) IN GENERAL.—Section 8(a)(2) of the Whistle-
7 blower Protection Act of 1989 (5 U.S.C. 5509 note) is
8 amended to read as follows:

9 “(2) \$24,119,000 for fiscal year 2016 and
10 \$25,735,000 for each of fiscal years 2017, 2018,
11 2019, and 2020 to carry out subchapter II of chap-
12 ter 12 of title 5, United States Code (as amended
13 by this Act).”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 subsection (a) shall be deemed to apply beginning on Octo-
16 ber 1, 2015.

17 **SEC. 3. ACCESS TO AGENCY INFORMATION.**

18 Section 1212(b) of title 5, United States Code, is
19 amended by adding at the end the following:

20 “(5)(A) In carrying out this subchapter, the Special
21 Counsel is authorized to—

22 “(i) have access to any record or other informa-
23 tion (including a report, audit, review, document,
24 recommendation, or other material) of any agency
25 under the jurisdiction of the Office of Special Coun-

1 sel, consistent with the requirements of subpara-
2 graph (C); and

3 “(ii) require any employee of such an agency to
4 provide to the Office any record or other information
5 during an investigation, review, or inquiry of any
6 agency under the jurisdiction of the Office.

7 “(B) With respect to any record or other information
8 made available by an agency under this subchapter, the
9 Office shall apply a level of confidentiality to such record
10 or information at the level of confidentiality applied to the
11 record by the agency.

12 “(C) With respect to any record or other information
13 described under subparagraph (A), the Attorney General
14 or an Inspector General may withhold access to any such
15 record or other information if the disclosure could reason-
16 ably be expected to interfere with an ongoing criminal in-
17 vestigation or prosecution, but only if the Attorney Gen-
18 eral or applicable agency head submits a written report
19 to the Office of Special Counsel describing the record or
20 other information withheld and the reason for the with-
21 holding.”.

22 **SEC. 4. WHISTLEBLOWER PROVISIONS.**

23 Section 1213 of title 5, United States Code, is
24 amended—

1 (1) in subsection (b), by striking “15 days” and
2 inserting “45 days”;

3 (2) in subsection (d)—

4 (A) in paragraph (4), by striking “and” at
5 the end;

6 (B) in paragraph (5)—

7 (i) in the matter before subparagraph
8 (A), by striking “such as” and inserting
9 “including”; and

10 (ii) in subparagraph (D), by striking
11 the period at the end and inserting “;
12 and”; and

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

14 “(6) if any disclosure referred to an agency
15 head under subsection (c) is substantiated in whole
16 or in part by the agency head, a detailed explanation
17 of the failure to take any action described under
18 paragraph (5).”; and

19 (3) in subsection (e), by adding at the end the
20 following:

21 “(5) If an agency head submits a report to the Spe-
22 cial Counsel under subsection (d) that includes a descrip-
23 tion of any agency action proposed to be taken as a result
24 of the investigation, the agency head shall, not later than
25 180 days after the date of such submission, submit a sup-

1 plemental report to the Special Counsel stating whether
 2 any proposed action has been taken, and if the action has
 3 not been taken, the reason why it has not been taken.”.

4 **SEC. 5. TERMINATION OF CERTAIN OSC INVESTIGATIONS.**

5 (a) IN GENERAL.—Section 1214(a) of title 5, United
 6 States Code, is amended by adding at the end the fol-
 7 lowing:

8 “(6)(A) Within 30 days of receiving an allegation
 9 from a person under paragraph (1), the Special Counsel
 10 may terminate an investigation under such paragraph
 11 with respect to the allegation, without further inquiry or
 12 an opportunity for the person to respond, if the Special
 13 Counsel determines that—

14 “(i) the same allegation, based on the same set
 15 of facts and circumstances—

16 “(I) had previously been made by the per-
 17 son and previously investigated by the Special
 18 Counsel; or

19 “(II) had previously been filed by the per-
 20 son with the Merit Systems Protection Board;

21 “(ii) the Office of Special Counsel does not have
 22 jurisdiction to investigate the allegation; or

23 “(iii) the person knew or should have known of
 24 the alleged prohibited personnel practice earlier than

1 the date that is 3 years before the date Special
2 Counsel received the allegation.

3 “(B) If the Special Counsel terminates an investiga-
4 tion under subparagraph (A), not later than 30 days after
5 the date of such termination the Special Counsel shall pro-
6 vide a written notification stating the basis for the termi-
7 nation to the person who made the allegation. Paragraph
8 (1)(D) shall not apply to any termination under such sub-
9 paragraph.”.

10 (b) CONFORMING AMENDMENTS.—Section 1214 of
11 title 5, United States Code, is amended—

12 (1) in subsection (a)(1)(A), by striking “The
13 Special Counsel” and inserting “Except as provided
14 in paragraph (6), the Special Counsel”; and

15 (2) in subsection (a)(1)(C), in the matter before
16 clause (i), by inserting “or paragraph (6)” after
17 “paragraph (2)”.

18 **SEC. 6. REPORTING REQUIREMENTS.**

19 (a) OSC ANNUAL REPORT TO CONGRESS.—Section
20 1218 of title 5, United States Code, is amended to read
21 as follows:

22 **“§ 1218. Annual report**

23 “(a) The Special Counsel shall submit an annual re-
24 port to Congress on the activities of the Special Counsel.

25 Any such report shall include—

1 “(1) the number, types, and disposition of alle-
2 gations of prohibited personnel practices filed with
3 the Special Counsel, and the cost of allegations so
4 disposed of;

5 “(2) the number of investigations conducted by
6 the Special Counsel;

7 “(3) the number of stays or disciplinary actions
8 negotiated by the Special Counsel with agencies;

9 “(4) the number of cases in which the Special
10 Counsel did not make a determination whether there
11 are reasonable grounds to believe that a prohibited
12 personnel practice has occurred, exists, or is to be
13 taken within the 240-day period specified in section
14 1214(b)(2)(A)(i);

15 “(5) a description of the recommendations and
16 reports made by the Special Counsel to other agen-
17 cies pursuant to this subchapter, and the actions
18 taken by the agencies as a result of the reports or
19 recommendations;

20 “(6) the number of—

21 “(A) actions initiated before the Merit Sys-
22 tems Protection Board, including the number of
23 corrective action petitions and disciplinary ac-
24 tion complaints so initiated; and

1 “(B) stays and stay extensions obtained
2 from the Board; and

3 “(7) the number of prohibited personnel prac-
4 tice complaints that result in—

5 “(A) a favorable action for the complain-
6 ant, categorized by actions with respect to whis-
7 tleblower reprisal cases and all other cases; and

8 “(B) a favorable outcome for the complain-
9 ant, categorized by outcomes with respect to
10 whistleblower reprisal cases and all other cases.

11 “(b) The report required by subsection (a) shall in-
12 clude whatever recommendations for legislation or other
13 action by Congress the Special Counsel may consider ap-
14 propriate.”.

15 (b) OSC PUBLIC INFORMATION.—Section 1219(a)(1)
16 of title 5, United States Code, is amended to read as fol-
17 lows:

18 “(1) a list of any noncriminal matter referred
19 to an agency head under section 1213(c), together
20 with—

21 “(A) the applicable transmittal of the mat-
22 ter to the agency head under section
23 1213(c)(1);

24 “(B) any report from agency head under
25 section 1213(c)(1)(B) relating to such matter;

1 “(C) if appropriate, not otherwise prohib-
2 ited by law, and with the consent of the com-
3 plainant, any comments from the complainant
4 under section 1213(e)(1) relating to the matter;
5 and

6 “(D) the Special Counsel’s comments or
7 recommendations under section 1213(e)(3) or
8 (4) relating to the matter;”.

9 **SEC. 7. ESTABLISHMENT OF SURVEY PILOT PROGRAM.**

10 (a) IN GENERAL.—The Office of Special Counsel
11 shall design and establish a survey pilot program under
12 which the Office shall conduct, with respect to fiscal years
13 2017 and 2018, a survey of individuals who have filed a
14 complaint or disclosure with the Office. The survey shall
15 be designed to gather responses from the individuals for
16 the purpose of collecting information and improving cus-
17 tomer service at various stages of the review or investiga-
18 tive process. The results of the survey shall be published
19 in the annual report of the Office.

20 (b) SUSPENSION OF OTHER SURVEYS.—During fiscal
21 years 2017 and 2018, section 13 of Public Law 103–424
22 shall have no force or effect.

23 **SEC. 8. PENALTIES UNDER THE HATCH ACT.**

24 (a) IN GENERAL.—Section 7326 of title 5, United
25 States Code, is amended to read as follows:

1 **“§ 7326. Penalties**

2 “An employee or individual who violates section 7323
3 or 7324 shall be subject to—

4 “(1) disciplinary action consisting of removal,
5 reduction in grade, debarment from Federal employ-
6 ment for a period not to exceed 5 years, suspension,
7 or reprimand;

8 “(2) an assessment of a civil penalty not to ex-
9 ceed \$1,000; or

10 “(3) any combination of the penalties described
11 in paragraph (1) or (2).”.

12 (b) APPLICATION.—The amendment made by sub-
13 section (a) shall apply to any violation of section 7323 or
14 7324 of title 5, United States Code, occurring after the
15 date of enactment of this Act.

16 **SEC. 9. REGULATIONS.**

17 Not later than 2 years after the date of enactment
18 of this Act, the Special Counsel shall prescribe such regu-
19 lations as may be necessary to perform the functions of
20 the Special Counsel under subchapter II of chapter 12 of
21 title 5, United States Code, including regulations nec-
22 essary to carry out sections 1213, 1214, and 1215 of such
23 title, and any functions required due to the amendments

1 made by this Act. Such regulations shall be published in
2 the Federal Register.

Passed the House of Representatives June 21, 2016.

Attest:

KAREN L. HAAS,
Clerk.