

115TH CONGRESS
2D SESSION

S. 2581

To amend title 5, United States Code, to provide for a 2-year prohibition on employment in a career civil service position for any former political appointee, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2018

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

A BILL

To amend title 5, United States Code, to provide for a 2-year prohibition on employment in a career civil service position for any former political appointee, 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 “Political Appointee
5 Burrowing Prevention Act”.

1 **SEC. 2. LIMITATION ON EMPLOYMENT OF POLITICAL AP-**
 2 **POINTEES IN CAREER CIVIL SERVICE POSI-**
 3 **TIONS.**

4 (a) IN GENERAL.—Subchapter I of chapter 31 of title
 5 5, United States Code, is amended by adding at the end
 6 the following:

7 **“§ 3115. Employment of political appointees**

8 “(a) APPOINTMENT APPROVAL REQUIRED.—

9 “(1) IN GENERAL.—The head of an agency may
 10 not appoint any individual described in paragraph
 11 (5) to a career position within the agency without
 12 receiving prior written approval from the Associate
 13 Director for Merit Systems Accountability and Com-
 14 pliance, consistent with the requirements of this sub-
 15 section.

16 “(2) REQUEST.—The head of an agency shall
 17 submit a request to the Associate Director to ap-
 18 prove the appointment of any individual described in
 19 paragraph (5) to a career position. Any such request
 20 shall include certification by the head of the agency
 21 to the Associate Director that the appointment is
 22 necessary for the agency to meet its mission.

23 “(3) REVIEW AND DETERMINATION.—The As-
 24 sociate Director shall review any request received
 25 pursuant to paragraph (2) and deny any such re-
 26 quest unless the Associate Director determines that

1 the appointment process with respect to the request
2 was fair, open, and free from political influence. If
3 the Associate Director makes that determination,
4 the Associate Director may approve the request.

5 “(4) NOTIFICATION TO CONGRESS.—With re-
6 spect to any request approved under paragraph (3),
7 the Associate Director shall, not less than five days
8 before the date the Associate Director provides ap-
9 proval to the head of the requesting agency, provide
10 to the Committee on Oversight and Government Re-
11 form of the House of Representatives and the Com-
12 mittee on Homeland Security and Governmental Af-
13 fairs of the Senate the agency certification under
14 paragraph (2) and the agency head’s rationale for
15 that certification.

16 “(5) COVERED INDIVIDUALS.—An individual
17 described in this paragraph is—

18 “(A) a political appointee;

19 “(B) a former political appointee who held
20 any political position during the five-year period
21 before the date of the request described in para-
22 graph (2); or

23 “(C) at the discretion of the Director of
24 the Office of Personnel Management, a former
25 political appointee who held any political posi-

1 tion before the five-year period described in
2 subparagraph (B).

3 “(b) RESTRICTION ON APPOINTMENT.—

4 “(1) IN GENERAL.—Notwithstanding any other
5 law, rule, or regulation, during the 2-year period fol-
6 lowing the date a political appointee leaves or de-
7 parts from a political position, such appointee may
8 not be appointed to any career position in the civil
9 service.

10 “(2) EXCEPTION.—Paragraph (1) shall not
11 apply to a political appointee who has not personally
12 and substantially participated in any particular mat-
13 ter while employed in a political position.

14 “(c) APPLICATION.—Nothing in this section shall be
15 construed to restrict the appointment of an individual who
16 is—

17 “(1) entitled to reinstatement under section
18 3593(b); or

19 “(2) eligible for reinstatement under section
20 3593(a).

21 “(d) DEFINITIONS.—In this section—

22 “(1) the term ‘agency’ has the meaning given
23 the term ‘Executive agency’ in section 105;

24 “(2) the term ‘Associate Director’ means the
25 Associate Director for Merit Systems Accountability

1 and Compliance at the Office of Personnel Manage-
2 ment;

3 “(3) the term ‘political appointee’ means an in-
4 dividual serving in an appointment of any duration
5 to a political position;

6 “(4) the term ‘political position’ means—

7 “(A) a position with respect to which ap-
8 pointment is made—

9 “(i) by the President; or

10 “(ii) by the President, by and with the
11 advice and consent of the Senate;

12 “(B) a position which has been excepted
13 from the competitive service by reason of its
14 confidential, policy-determining, policy-making,
15 or policy-advocating character;

16 “(C) a position described under sections
17 5312 through 5316 (relating to the Executive
18 Schedule); and

19 “(D) a general position in the Senior Exec-
20 utive Service during such time as it is filled
21 by—

22 “(i) a noncareer appointee, as defined
23 in paragraph (7) of section 3132(a); or

24 “(ii) a limited term appointee or lim-
25 ited emergency appointee, as defined in

1 paragraphs (5) and (6) of section 3132(a),
 2 who is serving under a political appoint-
 3 ment;

4 “(5) the term ‘career position’ means—

5 “(A) a position in the competitive service
 6 filled by career or career-conditional appoint-
 7 ment;

8 “(B) a position in the excepted service
 9 filled by an appointment of equivalent tenure as
 10 a position described in subparagraph (A);

11 “(C) a career reserved position, as defined
 12 in paragraph (8) of section 3132(a), in the Sen-
 13 ior Executive Service; or

14 “(D) a general position in the Senior Exec-
 15 utive Service when filled by a career appointee,
 16 as defined in section 3132(a)(4);

17 “(6) the term ‘participated’ means an action
 18 taken as an officer or employee through decision, ap-
 19 proval, disapproval, recommendation, the rendering
 20 of advice, investigation, or other such action; and

21 “(7) the term ‘particular matter’ includes any
 22 investigation, application, request for a ruling or de-
 23 termination, rulemaking, contract, controversy,
 24 claim, charge, accusation, arrest, or judicial or other
 25 proceeding.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 of chapter 31 of title 5, United States Code, is amended
 3 by adding after the item relating to section 3114 the fol-
 4 lowing:

“3115. Employment of political appointees.”.

5 (c) APPLICATION.—

6 (1) APPOINTMENT REQUESTS.—Section
 7 3115(a) of title 5, United States Code, as added by
 8 subsection (a), shall apply to any appointment or re-
 9 quest for appointment described in such section sub-
 10 mitted to the Associate Director for Merit Systems
 11 Accountability and Compliance after the date of en-
 12 actment of this Act.

13 (2) LIMITATION ON APPOINTMENTS.—Section
 14 3115(b) of title 5, United States Code, as added by
 15 subsection (a), shall apply to any individual who
 16 leaves or departs from a political position (as that
 17 term is defined in section 3115(d) of such title, as
 18 added by such subsection) after the date of enact-
 19 ment of this Act.

20 (d) REGULATIONS REQUIRED.—The Director of the
 21 Office of Personnel Management shall issue regulations
 22 necessary to carry out this Act. Such regulations shall in-
 23 clude guidance on the definition of the term “personally
 24 and substantially participated in any particular matter”
 25 in section 3115(b)(2) of title 5, United States Code, as

- 1 added by subsection (a), consistent with section 2641.201
- 2 of title 5, Code of Federal Regulations.

