

THOROUGHLY INVESTIGATING RETALIATION AGAINST WHISTLEBLOWERS ACT

Mr. BLUM. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4639) 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, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4639

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Thoroughly Investigating Retaliation Against Whistleblowers Act”.

SEC. 2. REAUTHORIZATION OF THE OFFICE OF SPECIAL COUNSEL.

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

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

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be deemed to apply beginning on October 1, 2015.

SEC. 3. ACCESS TO AGENCY INFORMATION.

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

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

“(i) have access to any record or other information (including a report, audit, review, document, recommendation, or other material) of any agency under the jurisdiction of the Office of Special Counsel, consistent with the requirements of subparagraph (C); and

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

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

“(C) With respect to any record or other information described under subparagraph (A), the Attorney General or an Inspector General may withhold access to any such record or other information if the disclosure could reasonably be expected to interfere with an ongoing criminal investigation or prosecution, but only if the Attorney General or applicable agency head submits a written report to the Office of Special Counsel describing the record or other information withheld and the reason for the withholding.”.

SEC. 4. WHISTLEBLOWER PROVISIONS.

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

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

(2) in subsection (d)—

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

(B) in paragraph (5)—

(1) in the matter before subparagraph (A), by striking “such as” and inserting “including”; and

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

(C) by adding at the end the following:

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

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

“(5) If an agency head submits a report to the Special Counsel under subsection (d) that includes a description of any agency action proposed to be taken as a result of the investigation, the agency head shall, not later than 180 days after the date of such submission, submit a supplemental report to the Special Counsel stating whether any proposed action has been taken, and if the action has not been taken, the reason why it has not been taken.”.

SEC. 5. TERMINATION OF CERTAIN OSC INVESTIGATIONS.

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

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

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

“(I) had previously been made by the person and previously investigated by the Special Counsel; or

“(II) had previously been filed by the person with the Merit Systems Protection Board;

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

“(iii) the person knew or should have known of the alleged prohibited personnel practice earlier than the date that is 3 years before the date Special Counsel received the allegation.

“(B) If the Special Counsel terminates an investigation under subparagraph (A), not later than 30 days after the date of such termination the Special Counsel shall provide a written notification stating the basis for the termination to the person who made the allegation. Paragraph (1)(D) shall not apply to any termination under such subparagraph.”.

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

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

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

SEC. 6. REPORTING REQUIREMENTS.

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

“§ 1218. Annual report

“(a) The Special Counsel shall submit an annual report to Congress on the activities of the Special Counsel. Any such report shall include—

“(1) the number, types, and disposition of allegations of prohibited personnel practices filed with the Special Counsel, and the cost of allegations so disposed of;

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

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

“(4) the number of cases in which the Special Counsel did not make a determination

whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214(b)(2)(A)(i);

“(5) a description of the recommendations and reports made by the Special Counsel to other agencies pursuant to this subchapter, and the actions taken by the agencies as a result of the reports or recommendations;

“(6) the number of—

“(A) actions initiated before the Merit Systems Protection Board, including the number of corrective action petitions and disciplinary action complaints so initiated; and

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

“(7) the number of prohibited personnel practice complaints that result in—

“(A) a favorable action for the complainant, categorized by actions with respect to whistleblower reprisal cases and all other cases; and

“(B) a favorable outcome for the complainant, categorized by outcomes with respect to whistleblower reprisal cases and all other cases.

“(b) The report required by subsection (a) shall include whatever recommendations for legislation or other action by Congress the Special Counsel may consider appropriate.”.

(b) OSC PUBLIC INFORMATION.—Section 1219(a)(1) of title 5, United States Code, is amended to read as follows:

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

“(A) the applicable transmittal of the matter to the agency head under section 1213(c)(1);

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

“(C) if appropriate, not otherwise prohibited by law, and with the consent of the complainant, any comments from the complainant under section 1213(e)(1) relating to the matter; and

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

SEC. 7. ESTABLISHMENT OF SURVEY PILOT PROGRAM.

(a) IN GENERAL.—The Office of Special Counsel shall design and establish a survey pilot program under which the Office shall conduct, with respect to fiscal years 2017 and 2018, a survey of individuals who have filed a complaint or disclosure with the Office. The survey shall be designed to gather responses from the individuals for the purpose of collecting information and improving customer service at various stages of the review or investigative process. The results of the survey shall be published in the annual report of the Office.

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

SEC. 8. PENALTIES UNDER THE HATCH ACT.

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

“§ 7326. Penalties

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

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

“(2) an assessment of a civil penalty not to exceed \$1,000; or

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

(b) APPLICATION.—The amendment made by subsection (a) shall apply to any violation of section 7323 or 7324 of title 5, United States

Code, occurring after the date of enactment of this Act.

SEC. 9. REGULATIONS.

Not later than two years after the date of enactment of this Act, the Special Counsel shall prescribe such regulations as may be necessary to perform the functions of the Special Counsel under subchapter II of chapter 12 of title 5, United States Code, including regulations necessary to carry out sections 1213, 1214, and 1215 of such title, and any functions required due to the amendments made by this Act. Such regulations shall be published in the Federal Register.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Iowa (Mr. BLUM) and the gentlewoman from Michigan (Mrs. LAWRENCE) each will control 20 minutes.

The Chair recognizes the gentleman from Iowa.

GENERAL LEAVE

Mr. BLUM. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. BLUM. Mr. Speaker, I yield myself such time as I may consume.

I rise today in support of my bill, H.R. 4639, the Thoroughly Investigating Retaliation Against Whistleblowers Act.

This is a bill to reauthorize the Office of Special Counsel, or OSC, over the next 5 years. The bipartisan legislation was passed unanimously out of the Oversight and Government Reform Committee. It also has the support of the whistleblower community.

Mr. Speaker, OSC is tasked with a variety of responsibilities, including policing whistleblower retaliation across the entire executive branch, an immense responsibility.

OSC's last reauthorization expired in 2007, so this bill is long overdue.

In addition to reauthorizing the agency, this bill aims to give OSC the tools it needs to continue the good work it is already doing. For example, this legislation would ensure that OSC has the access to agency records that it needs. Agencies should not be able to stonewall OSC to stop the Special Counsel from investigating retaliation within their agency.

Like inspectors general, OSC must have access to agency information in order to properly conduct the duties they are charged with by Congress. OSC is part of the executive branch, just the same as the agencies that Special Counsel oversees, so those agencies should not be able to invoke legal privileges to withhold information. Take the attorney-client privilege as an example. These agencies all represent the same client—the Federal Government—which works for the taxpayer.

Mr. Speaker, the bill also allows OSC to use a simplified process to close out duplicate complaints so it can focus its

resources on new whistleblower allegations. It puts a statute of limitations on whistleblower retaliation cases of 3 years, after which documents and witness recollections can be hard to obtain. These steps will help to improve the efficiency and effectiveness of OSC operations.

Mr. Speaker, OSC has an immensely important role to play in protecting whistleblowers, helping to root out waste, fraud, and abuse. I believe this bill will be good for the agency and good for the whistleblowers that they are charged to protect.

I urge that we pass it here in the House of Representatives.

I reserve the balance of my time.

Mrs. LAWRENCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 4639, a bill to reauthorize the Office of Special Counsel.

I thank Ranking Member CUMMINGS and Representatives CONNOLLY, BLUM, and MEADOWS for their leadership in crafting this bipartisan bill.

While the Office of Special Counsel plays a vital role in the Federal Government, the Office of Special Counsel, or OSC, protects Federal employees, especially whistleblowers, from prohibited personnel practices, such as discrimination, retaliation, and improper hiring practices.

OSC also serves as a safe place for Federal whistleblowers to disclose wrongdoings. The agency also safeguards the preference and employment rights of veterans, guardsmen, and reservists to ensure that they are not disadvantaged or discriminated against because of their service.

Reauthorization of OSC is long overdue. The last statutory authorization for the agency expired in fiscal year 2007. This bill will authorize nearly \$26 million in annual funding for OSC for the fiscal years 2017 through 2020.

I commend current Special Counsel, Carolyn Lerner, for her leadership and work in making the OSC a more effective investigative body.

This bill would make changes that would help OSC conduct investigations and hold agencies accountable when wrongdoing is identified. For example, the bill would provide OSC with clear authority to obtain information from agencies during an investigation. Providing this authority to OSC would make clear that agencies must cooperate in the same way Congress expects agencies to cooperate with the inspectors general and GAO.

If disclosing certain information could interfere with an ongoing criminal investigation or prosecution, this measure would allow the attorney general or an inspector general to withhold access to such information.

This bill would also increase agency accountability when allegations of misconduct are substantiated. Agencies that fail to implement a recommendation made by OSC will be required to explain why they have failed to take such actions.

This legislation is critically important for ensuring that Federal employees have a venue for seeking redress against prohibited personnel practices.

I urge my colleagues to join me in supporting passage of this legislation.

I yield back the balance of my time.

Mr. BLUM. Mr. Speaker, I urge adoption of the bill.

I yield back the balance of my time.

Mr. CUMMINGS. Mr. Speaker, I am proud to be a cosponsor of this legislation to reauthorize the Office of Special Counsel. I thank Representatives BLUM, CONNOLLY, and MEADOWS, as well as Chairman CHAFFETZ, for working with me in such a bipartisan way on this legislation.

As my colleagues know, one of my top priorities as Ranking Member of the Oversight Committee is the protection of federal employees from discrimination and retaliation.

The Office of Special Counsel plays an especially important role in ensuring that the work environment of federal employees is free of such prohibited personnel practices. OSC's last reauthorization ended in 2007. It is unacceptable that OSC still hasn't been authorized nearly ten years later.

This legislation would reauthorize OSC through 2020, and it would make changes to help OSC be more effective. For example, it would make clear that OSC is entitled to access agency information in its investigations.

This bill would also allow OSC to hold agencies more accountable for whistleblower retaliation. Under the bill, if an agency substantiates a whistleblower disclosure from OSC but fails to take a recommended corrective action, the agency must explain why it failed to take the action. This legislation would strengthen the tools available to OSC for addressing and correcting retaliation and discrimination in the federal workplace.

I ask that my colleagues join me in supporting passage of H.R. 4639.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa (Mr. BLUM) that the House suspend the rules and pass the bill, H.R. 4639, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

MARY ELEANORA MCCOY POST OFFICE BUILDING

Mr. BLUM. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5028) to designate the facility of the United States Postal Service located at 10721 E. Jefferson Ave in Detroit, Michigan, as the "Mary Eleanor McCoy Post Office Building", as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5028

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MARY E. MCCOY POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 10721