

Suspend the Rules and Pass the Bill, H.R. 2579, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

113TH CONGRESS
1ST SESSION

H. R. 2579

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

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Government Employee
3 Accountability Act”.

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

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

8 “(1) ‘employee’ means—

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

16 “(B) a career appointee in the Senior Ex-
17 ecutive Service who—

18 “(i) has completed the probationary
19 period prescribed under section 3393(d); or

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

1 **SEC. 3. INVESTIGATIVE LEAVE AND TERMINATION AU-**
2 **THORITY FOR SENIOR EXECUTIVE SERVICE**
3 **EMPLOYEES.**

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

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

9 “§ 7551. Definitions

10 “For the purposes of this subchapter—

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

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

16 “§ 7552. Actions covered

17 “This subchapter applies to investigative leave.

18 “§ 7553. Cause and procedure

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

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

1 tentiously engaged in such conduct, the agency may place
2 such employee on investigative leave under this subchapter
3 without pay.

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

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

15 “(3) At the end of a period of investigative leave im-
16 plemented under this section, the agency shall—

17 “(A) remove an employee placed on investiga-
18 tive leave under this section;

19 “(B) suspend such employee without pay; or

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

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

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

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

7 “(A) there is reasonable cause to believe
8 that the employee has committed a crime for
9 which a sentence of imprisonment can be im-
10 posed; or

11 “(B) the agency determines, as prescribed
12 in regulation by the Office of Personnel Man-
13 agement, that the employee’s conduct with re-
14 spect to which an action covered by this sub-
15 chapter is proposed is flagrant and that such
16 employee intentionally engaged in such conduct;

17 “(2) a reasonable time, but not less than 7
18 days, to answer orally and in writing and to furnish
19 affidavits and other documentary evidence in sup-
20 port of the answer;

21 “(3) be represented by an attorney or other
22 representative; and

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

1 “(d) An agency may provide, by regulation, for a
2 hearing which may be in lieu of or in addition to the op-
3 portunity to answer provided under subsection (c)(2).

4 “(e) An employee against whom an action is taken
5 under this section is entitled to appeal to the Merit Sys-
6 tems Protection Board under section 7701.

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

15 “SUBCHAPTER VII—REMOVAL OF SENIOR
16 EXECUTIVE SERVICE EMPLOYEES

17 “§ 7561. **Definition**

18 “For purposes of this subchapter, the term ‘em-
19 ployee’ has the meaning given such term in section 7541.

20 “§ 7562. **Removal of Senior Executive Service employ-**
21 **ees**

22 “(a) Notwithstanding any other provision of law and
23 consistent with the requirements of subsection (b), the
24 head of an agency may remove an employee for serious

1 neglect of duty, misappropriation of funds, or malfeasance
2 if the head of the agency—

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

6 “(2) considers the removal to be necessary or
7 advisable in the interests of the United States; and

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

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

15 “(1) on any basis that would be prohibited
16 under—

17 “(A) any provision of law referred to in
18 section 2302(b)(1); or

19 “(B) paragraphs (8) or (9) of section
20 2302(b); or

21 “(2) on any basis, described in paragraph (1),
22 as to which any administrative or judicial pro-
23 ceeding—

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

1 “(B) is pending.

2 “(c) An employee removed under this section shall be
3 notified of the reasons for such removal. Within 30 days
4 after the notification, the employee is entitled to submit
5 to the official designated by the head of the agency state-
6 ments or affidavits to show why the employee should be
7 restored to duty. If such statements and affidavits are
8 submitted, the head of the agency shall provide a written
9 response, and may restore the employee’s employment if
10 the head of the agency chooses.

11 “(d) Whenever the head of the agency removes an
12 employee under the authority of this section, the head of
13 the agency shall notify Congress of such termination, and
14 the specific reasons for the action.

15 “(e) An employee against whom an action is taken
16 under this section is entitled to appeal to the Merit Sys-
17 tems Protection Board under section 7701 of this title.

18 “(f) Copies of the notice of proposed action, the an-
19 swer of the employee when written, and a summary there-
20 of when made orally, the notice of decision and reasons
21 therefor, and any order effecting an action covered by this
22 subchapter, together with any supporting material, shall
23 be maintained by the agency and shall be furnished to the
24 Merit Systems Protection Board upon its request and to
25 the employee affected upon the employee’s request.

1 “(g) A removal under this section does not affect the
2 right of the employee affected to seek or accept employ-
3 ment with any other department or agency of the United
4 States if that employee is declared eligible for such em-
5 ployment by the Director of the Office of Personnel Man-
6 agement.

7 “(h) The authority of the head of the agency under
8 this section may not be delegated.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
10 at the beginning of chapter 75 of title 5, United States
11 Code, is amended by adding after the item relating to sec-
12 tion 7543 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 Employees.”.

13 **SEC. 4. SUSPENSION OF SENIOR EXECUTIVE SERVICE EM-**
14 **PLOYEES.**

15 Section 7543 of title 5, United States Code, is
16 amended—

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

19 (2) in subsection (b), by amending paragraph
20 (1) to read as follows:

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
5 that the employee has committed a crime for
6 which a sentence of imprisonment can be im-
7 posed; or

8 “(B) the agency determines, as prescribed
9 in regulation by the Office of Personnel Man-
10 agement, that the employee’s conduct with re-
11 spect to which an action covered by this sub-
12 chapter is proposed is flagrant and that such
13 employee intentionally engaged in such con-
14 duct;”.

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

16 (a) REINSTATEMENT IN THE SENIOR EXECUTIVE
17 SERVICE.—Section 3593 of title 5, United States Code,
18 is amended—

19 (1) in subsection (a)(2), by inserting “mis-
20 appropriation of funds,” after “malfeasance,”; and

21 (2) in subsection (b), by striking “or malfea-
22 sance” and inserting “malfeasance, or misappropria-
23 tion of funds”.

24 (b) PLACEMENT IN OTHER PERSONNEL SYSTEMS.—
25 Section 3594(a) of title 5, United States Code, is amended

- 1 by striking “or malfeasance” and inserting “malfeasance,
- 2 or misappropriation of funds”.