

**Suspend the Rules and Pass the Bill, H.R. 5169, With an Amendment**

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

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5169

To amend title 5, United States Code, to enhance accountability within the Senior Executive Service, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2014

Mr. WALBERG (for himself and Mr. ISSA) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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## A BILL

To amend title 5, United States Code, to enhance accountability within the Senior Executive Service, 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 “Senior Executive Serv-  
5 ice Accountability Act”.

1 **SEC. 2. BIENNIAL JUSTIFICATION OF POSITIONS.**

2 Section 3133(a)(2) of title 5, United States Code, is  
3 amended by inserting after “positions” the following: “,  
4 with a justification for each position (by title and organi-  
5 zational location) and the specific result expected from  
6 each position, including the impact of such result on the  
7 agency mission,”.

8 **SEC. 3. EXTENSION OF PROBATIONARY PERIOD.**

9 (a) IN GENERAL.—Section 3393(d) of title 5, United  
10 States Code, is amended by striking “1-year” and insert-  
11 ing “2-year”.

12 (b) CONFORMING AMENDMENT.—Section 3592(a)(1)  
13 of such title is amended by striking “1-year” and inserting  
14 “2-year”.

15 **SEC. 4. MODIFICATION OF PAY RETENTION FOR SENIOR**  
16 **EXECUTIVE SERVICE MEMBERS REMOVED**  
17 **FOR UNDER PERFORMANCE.**

18 Section 3594(c)(1)(B) of title 5, United States Code,  
19 is amended to read as follows:

20 “(B)(i) any career appointee placed under  
21 subsection (a) or (b)(2) of this section shall be  
22 entitled to receive basic pay at the highest of—

23 “(I) the rate of basic pay in effect for  
24 the position in which placed;

25 “(II) the rate of basic pay in effect at  
26 the time of the placement for the position

1 the career appointee held in the civil serv-  
2 ice immediately before being appointed to  
3 the Senior Executive Service; or

4 “(III) the rate of basic pay in effect  
5 for the career appointee immediately before  
6 being placed under subsection (a) or (b) of  
7 this section; and

8 “(ii) any career appointee placed under  
9 subsection (b)(1) of this section shall be entitled  
10 to receive basic pay at the rate of basic pay in  
11 effect for the position in which placed; and”.

12 **SEC. 5. REQUIREMENT THAT PERFORMANCE REQUIRE-**  
13 **MENTS BE ESTABLISHED IN ADVANCE.**

14 Section 4312(b)(1) of title 5, United States Code, is  
15 amended—

16 (1) by striking “on or” and inserting “not later  
17 than 30 calendar days”; and

18 (2) by inserting “in writing” after “commu-  
19 nicated”.

20 **SEC. 6. AMENDMENTS TO ADVERSE ACTION PROVISIONS**  
21 **WITH RESPECT TO CAREER APPOINTEES IN**  
22 **THE SENIOR EXECUTIVE SERVICE.**

23 (a) **SUSPENSION FOR 14 DAYS OR LESS FOR SENIOR**  
24 **EXECUTIVE SERVICE EMPLOYEE.**—Paragraph (1) of Sec-

1 tion 7501 of title 5, United States Code, is amended to  
2 read as follows:

3 “(1) ‘employee’ means—

4 “(A) an individual in the competitive serv-  
5 ice who is not serving a probationary period or  
6 trial period under an initial appointment or who  
7 has completed 1 year of current continuous em-  
8 ployment in the same or similar positions under  
9 other than a temporary appointment limited to  
10 1 year or less; or

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

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

15 “(ii) was covered by the provisions of  
16 subchapter II of this chapter immediately  
17 before appointment to the Senior Executive  
18 Service; and”.

19 (b) MODIFICATION OF CAUSE AND PROCEDURE FOR  
20 SUSPENSION AND TERMINATION.—

21 (1) IN GENERAL.—Section 7543 of title 5,  
22 United States Code, is amended—

23 (A) in subsection (a), by striking “mis-  
24 conduct,” and inserting “such cause as would

1 promote the efficiency of the service, mis-  
2 conduct,”;

3 (B) in subsection (b)(4), by adding at the  
4 end before the period the following: “, but no  
5 later than 30 days after the date that the em-  
6 ployee’s answer was received under paragraph  
7 (2)”;

8 (C) by redesignating subsections (c), (d),  
9 and (e) as subsections (d), (e), and (f), respec-  
10 tively;

11 (D) by inserting after subsection (b) the  
12 following:

13 “(c) An agency head may extend the deadline for an  
14 employee to answer under subsection (b)(2) or the dead-  
15 line for the agency to issue a written decision under sub-  
16 section (b)(4) for no more than 30 days each. Any exten-  
17 sion by the agency head under this subsection must be  
18 in writing and document the reasons for granting the ex-  
19 tension.”; and

20 (E) by adding at the end the following:

21 “(g)(1) With respect to an employee subject to re-  
22 moval under this subchapter, if a final order or decision  
23 is issued in favor of the agency by the agency, the Merit  
24 Systems Protection Board, or the applicable reviewing  
25 court under section 7703, the employee—

1           “(A) shall pay to the agency an amount equal  
2           to any pay received by the employee during the pe-  
3           riod beginning on the date that the employee re-  
4           ceived notice under subsection (b)(1) and ending on  
5           the date of such final order or decision; and

6           “(B) have removed from such employee’s credit  
7           any annual leave accrued during such period.

8           “(2) Paragraph (1) shall apply only to an employee  
9           who, during the period described in paragraph (1)(A), is  
10          placed on administrative leave or any other type of leave  
11          whereby the employee is in a status without duties but  
12          with pay.”.

13           (2) CONFORMING AMENDMENTS.—Subchapter  
14          V of chapter 35 of title 5, United States Code, is  
15          amended—

16                   (A) in section 3593—

17                           (i) in subsection (a)(2), by striking  
18                           “misconduct,” and inserting “such cause  
19                           as would promote the efficiency of the  
20                           service, misconduct,”; and

21                           (ii) in subsection (b), by striking  
22                           “misconduct,” and inserting “such cause  
23                           as would promote the efficiency of the  
24                           service, misconduct,”; and

1                   (B) in section 3594(a), by striking “mis-  
2                   conduct,” and inserting “such cause as would  
3                   promote the efficiency of the service, mis-  
4                   conduct,”.