

Suspend the Rules and Pass the Bill, H.R. 4639, With an Amendment

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

114TH CONGRESS
2^D SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2016

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

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

6 “(2) \$24,119,000 for each of fiscal years 2016,
7 2017, 2018, 2019, and 2020 to carry out subchapter
8 II of chapter 12 of title 5, United States Code (as
9 amended by this Act).”.

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

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

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

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

18 “(i) have access to any record or other informa-
19 tion (including a report, audit, review, document,
20 recommendation, or other material) of any agency
21 under the jurisdiction of the Office of Special Coun-
22 sel, consistent with the requirements of subpara-
23 graph (C); and

24 “(ii) require any employee of such an agency to
25 provide to the Office any record or other information

1 during an investigation, review, or inquiry of any
2 agency under the jurisdiction of the Office.

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

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

18 **SEC. 4. WHISTLEBLOWER PROVISIONS.**

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

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

23 (2) in subsection (d)—

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

1 (B) in paragraph (5)—

2 (i) in the matter before subparagraph
3 (A), by striking “such as” and inserting
4 “including”; and

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

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

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

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

16 “(5) If an agency head submits a report to the Spe-
17 cial Counsel under subsection (d) that includes a descrip-
18 tion of any agency action proposed to be taken as a result
19 of the investigation, the agency head shall, not later than
20 180 days after the date of such submission, submit a sup-
21 plemental report to the Special Counsel stating whether
22 any proposed action has been taken, and if the action has
23 not been taken, the reason why it has not been taken.”.

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

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

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

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

13 (I) had previously been made by the per-
14 son and previously investigated by the Special
15 Counsel; or

16 (II) had previously been filed by the per-
17 son with the Merit Systems Protection Board;

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

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

24 (B) If the Special Counsel terminates an investiga-
25 tion under subparagraph (A), not later than 30 days after
26 the date of such termination the Special Counsel shall pro-

1 vide a written notification stating the basis for the termi-
2 nation to the person who made the allegation. Paragraph
3 (1)(D) shall not apply to any termination under such sub-
4 paragraph.”.

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

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

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

13 **SEC. 6. REPORTING REQUIREMENTS.**

14 (a) OSC ANNUAL REPORT TO CONGRESS.—Section
15 1218 of title 5, United States Code, is amended to read
16 as follows:

17 **“§ 1218. Annual report**

18 “(a) The Special Counsel shall submit an annual re-
19 port to Congress on the activities of the Special Counsel.
20 Any such report shall include—

21 “(1) the number, types, and disposition of alle-
22 gations of prohibited personnel practices filed with
23 the Special Counsel, and the cost of allegations so
24 disposed of;

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

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

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

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

16 “(6) the number of—

17 “(A) actions initiated before the Merit Sys-
18 tems Protection Board, including the number of
19 corrective action petitions and disciplinary ac-
20 tion complaints so initiated; and

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

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

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

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

7 “(b) The report required by subsection (a) shall in-
8 clude whatever recommendations for legislation or other
9 action by Congress the Special Counsel may consider ap-
10 propriate.”.

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

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

17 “(A) the applicable transmittal of the mat-
18 ter to the agency head under section
19 1213(c)(1);

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

22 “(C) if appropriate, not otherwise prohib-
23 ited by law, and with the consent of the com-
24 plainant, any comments from the complainant

1 under section 1213(e)(1) relating to the matter;
2 and

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

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

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

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

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

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

23 **“§ 7326. Penalties**

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

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

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

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

9 (b) APPLICATION.—The amendment made by sub-
10 section (a) shall apply to any violation of section 7323 or
11 7324 of title 5, United States Code, occurring after the
12 date of enactment of this Act.

13 **SEC. 9. REGULATIONS.**

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