

.....
(Original Signature of Member)

114TH CONGRESS
2D 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

Mr. BLUM introduced the following bill; which was referred to the Committee
on _____

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 by striking “2003, 2004, 2005, 2006, and 2007”
6 and inserting “2016, 2017, 2018, 2019, and 2020”.

7 (b) **EFFECTIVE DATE.**—The amendment made by
8 subsection (a) shall be deemed to apply beginning on Octo-
9 ber 1, 2015.

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

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

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

15 “(i) have access to any record or other informa-
16 tion (including a report, audit, review, document,
17 recommendation, or other material) of any agency
18 under the jurisdiction of the Office of Special Coun-
19 sel; and

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

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

1 or information at the level of confidentiality applied to the
2 record by the agency.”.

3 **SEC. 4. WHISTLEBLOWER PROVISIONS.**

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

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

8 (2) in subsection (d)—

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

11 (B) in paragraph (5)—

12 (i) in the matter before subparagraph
13 (A), by striking “such as” and inserting
14 “including”; and

15 (iii) in subparagraph (D), by striking
16 the period at the end and inserting “;
17 and”; and

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

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

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

1 “(5) If an agency head submits a report to the Spe-
2 cial Counsel under subsection (d) that includes a descrip-
3 tion of any agency action proposed to be taken as a result
4 of the investigation, the agency head shall, not later than
5 180 days after the date of such submission, submit a sup-
6 plemental report to the Special Counsel stating whether
7 any proposed action has been taken, and if the action has
8 not been taken, the reason why it has not been taken.”.

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

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

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

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

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

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

1 “(ii) the Office of Special Counsel does not have juris-
2 diction to investigate the allegation; or

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

7 “(B) If the Special Counsel terminates an investiga-
8 tion under subparagraph (A), not later than 30 days after
9 the date of such termination the Special Counsel shall pro-
10 vide a written notification stating the basis for the termi-
11 nation to the person who made the allegation. Paragraph
12 (1)(D) shall not apply to any termination under such sub-
13 paragraph.”.

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

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

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

22 **SEC. 6. REPORTING REQUIREMENTS.**

23 (a) OSC ANNUAL REPORT TO CONGRESS.—Section
24 1218 of title 5, United States Code, is amended to read
25 as follows:

1 **“§ 1218. Annual report**

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

5 “(1) the number, types, and disposition of alle-
6 gations of prohibited personnel practices filed with
7 the Special Counsel, and the cost of allegations so
8 disposed of;

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

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

13 “(4) the number of cases in which the Special
14 Counsel did not make a determination whether there
15 are reasonable grounds to believe that a prohibited
16 personnel practice has occurred, exists, or is to be
17 taken within the 240-day period specified in section
18 1214(b)(2)(A)(i);

19 “(5) a description of the recommendations and
20 reports made by the Special Counsel to other agen-
21 cies pursuant to this subchapter, and the actions
22 taken by the agencies as a result of the reports or
23 recommendations;

24 “(6) the number of—

25 “(A) actions initiated before the Merit Sys-
26 tems Protection Board, including the number of

1 corrective action petitions and disciplinary ac-
2 tion complaints so initiated; and

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

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

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

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

13 “(b) The report required by subsection (a) shall in-
14 clude whatever recommendations for legislation or other
15 action by Congress the Special Counsel may consider ap-
16 propriate.”.

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

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

23 “(A) the applicable transmittal of the mat-
24 ter to the agency head under section
25 1213(c)(1);

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

3 “(C) if appropriate, not otherwise prohib-
4 ited by law, and with the consent of the com-
5 plainant, any comments from the complainant
6 under section 1213(e)(1) relating to the matter;
7 and

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

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

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

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

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

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

4 **“§ 7326. Penalties**

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

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

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

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

15 (b) APPLICATION.—The amendment made by sub-
16 section (a) shall apply to any violation of section 7323 or
17 7324 of title 5, United States Code, occurring after the
18 date of enactment of this Act.