

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

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 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 (ii) 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
 20 of facts and circumstances—

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

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

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

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

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

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

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

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

1 **SEC. 6. REPORTING REQUIREMENTS.**

2 (a) OSC ANNUAL REPORT TO CONGRESS.—Section
3 1218 of title 5, United States Code, is amended to read
4 as follows:

5 **“§ 1218. Annual report**

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

9 “(1) the number, types, and disposition of alle-
10 gations of prohibited personnel practices filed with
11 the Special Counsel, and the cost of allegations so
12 disposed of;

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

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

17 “(4) the number of cases in which the Special
18 Counsel did not make a determination whether there
19 are reasonable grounds to believe that a prohibited
20 personnel practice has occurred, exists, or is to be
21 taken within the 240-day period specified in section
22 1214(b)(2)(A)(i);

23 “(5) a description of the recommendations and
24 reports made by the Special Counsel to other agen-
25 cies pursuant to this subchapter, and the actions

1 taken by the agencies as a result of the reports or
2 recommendations;

3 “(6) the number of—

4 “(A) actions initiated before the Merit Sys-
5 tems Protection Board, including the number of
6 corrective action petitions and disciplinary ac-
7 tion complaints so initiated; and

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

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

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

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

18 “(b) The report required by subsection (a) shall in-
19 clude whatever recommendations for legislation or other
20 action by Congress the Special Counsel may consider ap-
21 propriate.”.

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

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

4 “(A) the applicable transmittal of the mat-
5 ter to the agency head under section
6 1213(c)(1);

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

9 “(C) if appropriate, not otherwise prohib-
10 ited by law, and with the consent of the com-
11 plainant, any comments from the complainant
12 under section 1213(e)(1) relating to the matter;
13 and

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

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

18 (a) IN GENERAL.—The Office of Special Counsel
19 shall design and establish a survey pilot program under
20 which the Office shall conduct, with respect to fiscal years
21 2017 and 2018, a survey of individuals who have filed a
22 complaint or disclosure with the Office. The survey shall
23 be designed to gather responses from the individuals for
24 the purpose of collecting information and improving cus-
25 tomer service at various stages of the review or investiga-

1 tive process. The results of the survey shall be published
 2 in the annual report of the Office.

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

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

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

9 **“§ 7326. Penalties**

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

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

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

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

20 (b) APPLICATION.—The amendment made by sub-
 21 section (a) shall apply to any violation of section 7323 or
 22 7324 of title 5, United States Code, occurring after the
 23 date of enactment of this Act.

