

Union Calendar No. 401

114TH CONGRESS
2^D SESSION

H. R. 4639

[Report No. 114–521]

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

APRIL 25, 2016

Additional sponsors: Mr. CONNOLLY and Mr. CUMMINGS

APRIL 25, 2016

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Insert the part printed in *italic*]

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”.

6 **SEC. 2. REAUTHORIZATION OF THE OFFICE OF SPECIAL**
7 **COUNSEL.**

8 (a) IN GENERAL.—Section 8(a)(2) of the Whistle-
9 blower Protection Act of 1989 (5 U.S.C. 5509 note) is
10 amended by striking “2003, 2004, 2005, 2006, and 2007”
11 and inserting “2016, 2017, 2018, 2019, and 2020”.

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

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

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

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

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

1 “(ii) require any employee of such an agency to
2 provide to the Office any record or other information
3 during an investigation, review, or inquiry of any
4 agency under the jurisdiction of the Office.

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

10 **SEC. 4. WHISTLEBLOWER PROVISIONS.**

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

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

15 (2) in subsection (d)—

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

18 (B) in paragraph (5)—

19 (i) in the matter before subparagraph
20 (A), by striking “such as” and inserting
21 “including”; and

22 (ii) in subparagraph (D), by striking
23 the period at the end and inserting “;
24 and”; and

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

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

6 (3) in subsection (e), by adding at the end the
7 following:

8 “(5) If an agency head submits a report to the Spe-
9 cial Counsel under subsection (d) that includes a descrip-
10 tion of any agency action proposed to be taken as a result
11 of the investigation, the agency head shall, not later than
12 180 days after the date of such submission, submit a sup-
13 plemental report to the Special Counsel stating whether
14 any proposed action has been taken, and if the action has
15 not been taken, the reason why it has not been taken.”.

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

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

20 “(6)(A) Within 30 days of receiving an allegation
21 from a person under paragraph (1), the Special Counsel
22 may terminate an investigation under such paragraph
23 with respect to the allegation, without further inquiry or
24 an opportunity for the person to respond, if the Special
25 Counsel determines that—

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

3 “(I) had previously been made by the per-
4 son and previously investigated by the Special
5 Counsel; or

6 “(II) had previously been filed by the per-
7 son with the Merit Systems Protection Board;

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

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

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

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

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

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

4 **SEC. 6. REPORTING REQUIREMENTS.**

5 (a) OSC ANNUAL REPORT TO CONGRESS.—Section
6 1218 of title 5, United States Code, is amended to read
7 as follows:

8 **“§ 1218. Annual report**

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

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

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

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

20 “(4) the number of cases in which the Special
21 Counsel did not make a determination whether there
22 are reasonable grounds to believe that a prohibited
23 personnel practice has occurred, exists, or is to be
24 taken within the 240-day period specified in section
25 1214(b)(2)(A)(i);

1 “(5) a description of the recommendations and
2 reports made by the Special Counsel to other agen-
3 cies pursuant to this subchapter, and the actions
4 taken by the agencies as a result of the reports or
5 recommendations;

6 “(6) the number of—

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

11 “(B) stays and stay extensions obtained
12 from the Board; and

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

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

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

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

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

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

7 “(A) the applicable transmittal of the mat-
8 ter to the agency head under section
9 1213(c)(1);

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

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

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

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

21 (a) IN GENERAL.—The Office of Special Counsel
22 shall design and establish a survey pilot program under
23 which the Office shall conduct, with respect to fiscal years
24 2017 and 2018, a survey of individuals who have filed a
25 complaint or disclosure with the Office. The survey shall

1 be designed to gather responses from the individuals for
2 the purpose of collecting information and improving cus-
3 tomer service at various stages of the review or investiga-
4 tive process. The results of the survey shall be published
5 in the annual report of the Office.

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

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

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

12 **“§ 7326. Penalties**

13 “An employee or individual who violates section 7323
14 or 7324 shall be subject to—

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

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

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

23 (b) APPLICATION.—The amendment made by sub-
24 section (a) shall apply to any violation of section 7323 or

1 7324 of title 5, United States Code, occurring after the
2 date of enactment of this Act.

3 **SEC. 9. REGULATIONS.**

4 *Not later than two years after the date of enactment*
5 *of this Act, the Special Counsel shall prescribe such regula-*
6 *tions as may be necessary to perform the functions of the*
7 *Special Counsel under subchapter II of chapter 12 of title*
8 *5, United States Code, including regulations necessary to*
9 *carry out sections 1213, 1214, and 1215 of such title, and*
10 *any functions required due to the amendments made by this*
11 *Act. Such regulations shall be published in the Federal Reg-*
12 *ister.*

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