

LAND MANAGEMENT WORKFORCE FLEXIBILITY ACT

JUNE 25, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 1531]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 1531) to amend title 5, United States Code, to provide a pathway for temporary seasonal employees in Federal land management agencies to compete for vacant permanent positions under internal merit promotion procedures, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The Land Management Workforce Flexibility Act (H.R. 1531) authorizes qualifying employees serving under time-limited appointments in federal land management agencies to compete for vacant permanent positions under internal merit promotion procedures, just as any permanent federal employee is eligible to do. H.R. 1531 increases the pool of individuals eligible to compete for vacant federal permanent positions. The bill does not change the total number of federal jobs available or the salaries paid to federal employees.

Removing arbitrary barriers that prevent long-term temporary seasonal employees from competing for vacant permanent positions under internal merit promotion procedures will improve government effectiveness by enhancing the quality of the pool of applicants to include proven, experienced individuals serving under temporary appointments in land management agencies that were originally obtained through open, competitive examination.

BACKGROUND AND NEED FOR LEGISLATION

Federal agencies are authorized to make temporary appointments to fill positions that do not require an employee's services on a permanent basis. According to OPM's testimony at a June 30, 2010, oversight hearing before the House Oversight and Government Reform Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, ". . . a temporary appointment can be used to fill a position that is not expected to last more than one year, or to meet an employment need that is scheduled to be terminated within one or two years for reasons such as an agency's reorganization or abolishment, or the completion of a specific project or peak workload."¹

Certain individuals serving under temporary appointments, including employees at federal land management agencies who receive temporary appointments lasting less than 6 months or 1,040 hours, often have their temporary appointments repeatedly extended on an annual basis. As the then-Chairman of the Federal Workforce Subcommittee stated at the 2010 hearing, "Oftentimes, seasonal temporary employees have worked in the same capacity year after year, decade after decade."²

Temporary employees, irrespective of experience, are not eligible to compete for vacant permanent positions under internal merit promotion procedures. Internal merit promotion procedures vary by agency, but must adhere to the first merit system principle³ and

¹ Statement of Angela Bailey, Deputy Associate Director for Recruitment and Diversity, U.S. Office of Personnel Management, for hearing, "Temporary Employee Practices: How Long Does Temporary Last?" U.S. House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia (June 30, 2010) at 22. Available at: <http://www.gpo.gov/fdsys/pkg/CHRG-111hrg62948/pdf/CHRG-111hrg62948.pdf>

² Statement of Representative Stephen F. Lynch, Chairman, Subcommittee Federal Workforce, Postal Service, and the District of Columbia, for hearing, "Temporary Employee Practices: How Long Does Temporary Last?" U.S. House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia (June 30, 2010) at 3. Available at: <http://www.gpo.gov/fdsys/pkg/CHRG-111hrg62948/pdf/CHRG-111hrg62948.pdf>

³ 5 USC §2301(b)(1) describes the first merit system principle: "Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis

according to the United States Merit Systems Protection Board (MSPB), “. . . are generally open to current or former Federal employees who have or had permanent appointments.”⁴ Many agencies fill non-entry level jobs using merit promotion procedures.

No matter how long an individual serves under a time-limited appointment that he or she initially obtained under open, competitive examination, the employee never acquires the status that would enable them to compete for vacant permanent positions being filled under internal merit promotion procedures.

Bipartisan concerns have been raised over the prohibition on temporary employees competing for permanent positions. For example, a former Chairman of the House Civil Service Subcommittee noted at 1993 oversight hearing, “Furthermore, there needs to be better access for all temporary employees, not just term employees, to apply for permanent positions within the Federal Government. It is simply unfair that after years of employment, a temporary applying for a permanent position job is no better off than someone off of the street applying for a job. Agencies could save large sums of money on education and training by hiring more temporary employees for permanent positions.”⁵ At the same hearing, another Member submitted a statement for the record expressing the view that, “One of the best things we can do for temporary employees is to increase their opportunities to compete for permanent positions in the Federal workforce when these become available. I think that a temporary employee who has done a good job should be eligible to compete for permanent Federal positions that currently are open only to permanent Federal employees.”⁶

In a May 17, 2011 letter, the Chief of the U.S. Forest Service committed to work with stakeholders towards establishing a “path to permanence” for long-term seasonal employees, noting that legislation would be necessary to accomplish this outcome.⁷ A specific goal identified by the Forest Service Chief was to “Grant competitive standing to long-term temporary seasonal employees so they can compete for career jobs like any other federal employee.”⁸ The Land Management Workforce Flexibility Act achieves this objective.

To be eligible to compete under H.R. 1531, an employee of a land management agency would need to be serving under a temporary or term appointment that he or she was initially appointed to under open, competitive examination; have served with that land management agency under one or more time-limited appointments for a period or periods totaling more than 24 months of service, without an intervening break in service of two or more years; and

of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.”

⁴U.S. Merit Systems Protection Board, Office of Policy and Evaluation, Report to the President and Congress, “Help Wanted: A Review of Federal Vacancy Announcements” (April 2003) at 5-6. Available at: <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=253634&version=253921&>

⁵Statement of Representative Frank McClosky, Chairman of the Subcommittee on the Civil Service, for the hearing “Use of Temporary Employee in the Federal Government” U.S. House Subcommittee on the Civil Service (June 22, 1993), Available at https://www.archive.org/stream/useoftemporaryem00unit/useoftemporaryem00unit_djvu.txt

⁶*Id.* Statement of Representative Dan Burton

⁷Letter issued by Thomas L. Tidwell, Chief of the United States Forest Service (May 17, 2011), available at http://www.nffe-fsc.org/committees/legislative/FS_110517_Chief_Templtr.pdf

⁸*Id.*

achieve an acceptable level of performance for the duration of his or her service under the time-limited appointment or appointments.

Former temporary land management agency employees that meet all of the qualification requirements would be eligible to compete under H.R. 1531 if these former employees apply for a vacant permanent position within two years of their date of separation from the land management agency, and the separation was for reasons other than misconduct or performance.

In determining an employee's eligibility to compete under H.R. 1531, an examining agency is required to waive age requirements, unless an age requirement is essential to the performance of the position in question. This ensures that an experienced temporary seasonal firefighter is eligible to compete for a permanent position that he or she may be well qualified for.

An individual that successfully competes for a vacant permanent position under H.R. 1531 would, upon appointment, become a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure; and acquire competitive status upon appointment.

H.R. 1531 is consistent with the United States Office of Personnel Management's (OPM) stated support for the goal that, ". . . long-term temporaries who have demonstrated their abilities on the job should not have to compete with the public for permanent vacancies."⁹ The federal government benefits from the dedicated service of long-serving temporary seasonal wildland firefighters and other long-term temporary employees. It is appropriate that these individuals be provided the same opportunity to compete for career advancement opportunities available to other federal employees.

LEGISLATIVE HISTORY

H.R. 1531, the Land Management Workforce Flexibility Act, was introduced on March 23, 2015, by Rep. Gerald E. Connolly (D-VA), and referred to the Committee on Oversight and Government Reform. Representatives Don Young (R-AK) and Rob Bishop (R-UT) are original cosponsors.

On March 25, 2014, the Committee held a Full Committee Business Meeting to consider H.R. 1531. The bill was ordered favorably reported, without amendment, by voice vote.

SECTION-BY-SECTION

Section 1. Short title

Designates the short title of the bill as the "Land Management Workforce Flexibility Act."

Section 2. Personnel flexibilities relating to land management agencies

Amends Subpart I of part III of title 5, United States Code, by inserting a new chapter addressing personnel flexibilities for land management agencies. The new chapter, "Chapter 96—Personnel

⁹Federal Register, Vol. 59, No. 176 (September 13, 1994). Available at: <http://www.gpo.gov/fdsys/pkg/FR-1994-09-13/html/94-22447.htm>

Flexibilities Relating to Land Management Agencies,” contains two sections, “Section 9601. Definitions” and “Section 9602. Competitive service; time-limited appointments.”

Section 9601 defines the term “land management agency” to mean the Forest Service of the United States Department of Agriculture, and the following component agencies of the United States Department of the Interior: Bureau of Land Management, National Park Service, Fish and Wildlife Service, Bureau of Indian Affairs, and Bureau of Reclamation. Section 9601 also defines the term “time-limited appointment” to include temporary appointments and term appointments, as defined by OPM.

Section 9602 establishes that notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, an employee of a land management agency serving under a time-limited appointment in the competitive service is eligible to compete for a permanent appointment in the competitive service at any land management agency or any other agency (as defined in section 101 of title 31) under the internal merit promotion procedures of the applicable agency if the employee meets three criteria.

First, the employee must have been appointed initially under open, competitive examination under subchapter I of chapter 33 to the time-limited appointment. Second, the employee has served under one or more time-limited appointments by a land management agency for a period or periods totaling more than 24 months without a break of 2 or more years. Third, the employee’s performance must have been at an acceptable level of performance throughout the period or periods of service.

Section 9602 also authorizes that in determining the eligibility of a time-limited employee under this section to be examined for or appointed in the competitive service, OPM or another examining agency shall waive requirements as to age, unless the requirement is essential to the performance of the duties of the vacant position.

Section 9602 also establishes that an individual appointed under the section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure; and acquires competitive status upon appointment.

Section 9602 also requires that a former employee of a land management agency who served under a time-limited appointment and who otherwise meets the requirements of Section 9602 shall be deemed a time-limited employee for purposes of the section if such employee applies for a position covered by this section within 2 years after the most recent date of separation; and if such employee’s separation was for reasons other than misconduct or performance.

Section 9602 authorizes OPM to prescribe such regulations as may be necessary to carry out the Act.

EXPLANATION OF AMENDMENTS

No amendments were offered during Full Committee consideration of H.R. 1531.

COMMITTEE CONSIDERATION

On March 25, 2015, the Committee met in open session and ordered reported favorably the bill, H.R. 1531, by voice vote, a quorum being present.

ROLL CALL VOTES

There were no recorded votes during Full Committee consideration of H.R. 1531.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This amends title 5, United States Code, to provide a pathway for temporary seasonal employees in Federal land management agencies to compete for vacant permanent positions under internal merit promotion procedures. Thus, the bill does relate to the terms and conditions of employment.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of the bill is to provide a pathway for temporary seasonal employees in Federal land management agencies to compete for vacant permanent positions under internal merit promotion procedures.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does direct the completion of a specific rule making within the meaning of 5 U.S.C. 551. Section 2 requires that the Office of Personnel Management prescribe such regulations as may be necessary to carry out the requirements of the bill.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement, the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

H.R. 1531—Land Management Workforce Flexibility Act

H.R. 1531 would make individuals serving as temporary employees for federal land management agencies eligible to compete for permanent positions with those agencies under internal merit promotion procedures. CHO estimates that implementing the legislation would have no significant effect on the federal budget. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Information from the Office of Personnel Management indicates that while the bill would expand the pool of people eligible for federal land management positions, it would not change the total number of federal jobs available or the salaries paid to federal employees.

H.R. 1531 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

Chap		Sec.
21	Definitions	2101
	* * * * *	
96	<i>Personnel flexibilities relating to land management agencies</i>	9601
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Subpart I—Miscellaneous

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CHAPTER 96—PERSONNEL FLEXIBILITIES RELATING TO LAND MANAGEMENT AGENCIES

Sec.
9601. *Definitions.*
9602. *Competitive service; time-limited appointments.*

§ 9601. Definitions

For purposes of this chapter—

(1) *the term “land management agency” means—*

- (A) *the Forest Service of the Department of Agriculture;*
- (B) *the Bureau of Land Management of the Department of the Interior;*
- (C) *the National Park Service of the Department of the Interior;*
- (D) *the Fish and Wildlife Service of the Department of the Interior;*
- (E) *the Bureau of Indian Affairs of the Department of the Interior; and*
- (F) *the Bureau of Reclamation of the Department of the Interior; and*

(2) *the term “time-limited appointment” includes a temporary appointment and a term appointment, as defined by the Office of Personnel Management.*

§9602. Competitive service; time-limited appointments

(a) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, an employee of a land management agency serving under a time-limited appointment in the competitive service is eligible to compete for a permanent appointment in the competitive service at any land management agency or any other agency (as defined in section 101 of title 31) under the internal merit promotion procedures of the applicable agency if—

(1) the employee was appointed initially under open, competitive examination under subchapter I of chapter 33 to the time-limited appointment;

(2) the employee has served under 1 or more time-limited appointments by a land management agency for a period or periods totaling more than 24 months without a break of 2 or more years; and

(3) the employee’s performance has been at an acceptable level of performance throughout the period or periods (as the case may be) referred to in paragraph (2).

(b) In determining the eligibility of a time-limited employee under this section to be examined for or appointed in the competitive service, the Office of Personnel Management or other examining agency shall waive requirements as to age, unless the requirement is essential to the performance of the duties of the position.

(c) An individual appointed under this section—

(1) becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure; and

(2) acquires competitive status upon appointment.

(d) A former employee of a land management agency who served under a time-limited appointment and who otherwise meets the requirements of this section shall be deemed a time-limited employee for purposes of this section if—

(1) such employee applies for a position covered by this section within the period of 2 years after the most recent date of separation; and

(2) such employee’s most recent separation was for reasons other than misconduct or performance.

(e) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this section.

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