

115TH CONGRESS  
2D SESSION

# S. 3200

To amend title 5, United States Code, to provide for an alternative removal for performance or misconduct for Federal employees.

---

IN THE SENATE OF THE UNITED STATES

JULY 12, 2018

Mr. PERDUE introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

---

## A BILL

To amend title 5, United States Code, to provide for an alternative removal for performance or misconduct for Federal employees.

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 “Modern Employment,  
5       Reform, Improvement, and Transformation Act of 2018”  
6       or the “MERIT Act of 2018”.

1 **SEC. 2. ALTERNATIVE REMOVAL FOR PERFORMANCE OR**  
 2 **MISCONDUCT.**

3 (a) IN GENERAL.—Chapter 75 of title 5, United  
 4 States Code, is amended by adding at the end the fol-  
 5 lowing:

6 “SUBCHAPTER VI—ALTERNATIVE REMOVAL  
 7 FOR PERFORMANCE OR MISCONDUCT

8 “§ 7551. Removal for performance or misconduct

9 “(a) DEFINITIONS.—In this section:

10 “(1) EMPLOYEE.—The term ‘employee’ means  
 11 any individual covered by subchapter II or V of this  
 12 chapter.

13 “(2) MISCONDUCT.—The term ‘misconduct’ in-  
 14 cludes neglect of duty, malfeasance, failure to accept  
 15 a directed reassignment, the commitment of a pro-  
 16 hibited personnel practice, a violation of protocol,  
 17 and failure to accompany a position in a transfer of  
 18 function.

19 “(b) AUTHORITY.—The head of an agency may re-  
 20 move an employee from the civil service if the head of the  
 21 agency determines the performance or misconduct of the  
 22 individual warrants the removal.

23 “(c) PROCEDURE.—

24 “(1) IN GENERAL.—Not later than 7 days and  
 25 not earlier than 21 days before taking a personnel  
 26 action described in subsection (b) against an em-

1       employee, the head of the agency employing the em-  
 2       ployee shall provide the employee with—

3               “(A) notice in writing of the proposed per-  
 4               sonnel action, including the reasons for the pro-  
 5               posed action and the forecasted final date of  
 6               employment; and

7               “(B) an opportunity to respond to the pro-  
 8               posed personnel action within the remaining  
 9               employment period beginning on the date of re-  
 10              ceipt of notice.

11       “(2) APPEAL.—

12              “(A) IN GENERAL.—Subject to subpara-  
 13              graph (B), any removal under subsection (b)  
 14              may be appealed to the Merit Systems Protec-  
 15              tion Board under section 7701.

16              “(B) TIMING.—An appeal under subpara-  
 17              graph (A) of a removal may only be made if the  
 18              appeal is made not later than 7 days after the  
 19              date of the removal.

20              “(3) LIMIT ON REMOVAL PROCEDURES.—The  
 21              procedures under section 7513(b) or section 7543(b)  
 22              shall not apply to a removal under this section.

23       “(d) EXPEDITED REVIEW BY MERIT SYSTEMS PRO-  
 24       TECTION BOARD.—

1           “(1) APPEAL DECISION TIMING.—Upon receipt  
2 of an appeal under subsection (c)(2)(A), the Merit  
3 Systems Protection Board shall issue a decision not  
4 later than 30 days after the date of the appeal.

5           “(2) EVIDENTIARY STANDARD.—Notwithstand-  
6 ing section 7701(c)(1)(B), the Merit Systems Pro-  
7 tection Board shall uphold the decision of the head  
8 of an agency to remove an employee under sub-  
9 section (b) if the decision is supported by substantial  
10 evidence.

11           “(3) FINAL REMOVAL.—In any case in which  
12 the Merit Systems Protection Board cannot issue a  
13 decision in accordance with the 30-day requirement  
14 under paragraph (1), the removal is final.

15           “(4) REPORT REQUIRED.—In the case of a final  
16 removal under paragraph (3), the Merit Systems  
17 Protection Board shall, within 14 days after the  
18 date that the removal is final, submit to Congress,  
19 the Committee on Homeland Security and Govern-  
20 mental Affairs of the Senate, and the Committee on  
21 Oversight and Government Reform of the House of  
22 Representatives a report that explains the reasons  
23 why a decision was not issued in accordance with the  
24 requirement under paragraph (1).

1           “(5) NO STAY OF REMOVAL DURING APPEAL.—  
2       The Merit Systems Protection Board may not stay  
3       any removal under this section unless the basis for  
4       the appeal of the removal is a violation of paragraph  
5       (8) or (9) of section 2302(b).

6           “(6) REQUIREMENT FOR REMOVED INDIVIDUAL  
7       DURING APPEAL.—During the period beginning on  
8       the date on which an individual appeals a removal  
9       from the civil service under subsection (c)(2)(A) and  
10      ending on the date that the Merit Systems Protec-  
11      tion Board issues a final decision on the appeal, the  
12      individual may not receive any pay, awards, bonuses,  
13      incentives, allowances, differentials, student loan re-  
14      payments, special payments, or benefits.

15          “(7) PROVISION OF INFORMATION.—To the  
16      maximum extent practicable, the head of an agency  
17      shall provide to the Merit Systems Protection Board  
18      such information and assistance as may be necessary  
19      to ensure an appeal under this subsection is exped-  
20      ited.

21          “(e) ADDITIONAL AUTHORITY.—The authority pro-  
22      vided by this section is in addition to the authority other-  
23      wise provided under this chapter.”.

1       (b) CONFORMING AMENDMENT.—The table of sec-  
2       tions for chapter 75 of title 5, United States Code, is  
3       amended by adding at the end the following:

“SUBCHAPTER VI—ALTERNATIVE REMOVAL FOR PERFORMANCE OR  
MISCONDUCT

“7551. Removal for performance or misconduct.”.

