

118TH CONGRESS
1ST SESSION

S. 991

To amend the National Labor Relations Act to reform the National Labor Relations Board, the Office of the General Counsel, and the process for appellate review, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 28, 2023

Mrs. BLACKBURN (for herself, Mr. CASSIDY, Mr. BRAUN, and Mr. SCOTT of South Carolina) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the National Labor Relations Act to reform the National Labor Relations Board, the Office of the General Counsel, and the process for appellate review, 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 “National Labor Rela-
5 tions Board Reform Act”.

1 **SEC. 2. NATIONAL LABOR RELATIONS BOARD.**

2 (a) COMPOSITION; TERMS.—Section 3(a) of the Na-
3 tional Labor Relations Act (29 U.S.C. 153(a)) is amend-
4 ed—

5 (1) in the first sentence—

6 (A) by striking “prior to its amendment by
7 the National Labor Management Relations Act,
8 1947,” and inserting “prior to its amendment
9 by the National Labor Relations Board Reform
10 Act”;

11 (B) by striking “five instead of three mem-
12 bers” and inserting “6 instead of 5 members”;
13 and

14 (C) by striking “appointed by the Presi-
15 dent by and with the advice and consent of the
16 Senate” and inserting “appointed by the Presi-
17 dent, after consultation with the leader of the
18 Senate representing the party opposing the
19 party of the President, by and with the advice
20 and consent of the Senate”;

21 (2) by striking the second sentence and insert-
22 ing the following: “The sixth member added by the
23 first sentence of this section shall be appointed for
24 a term that expires on the day before the first date
25 on which a full term of another member of the
26 Board commences that is after the date of enact-

ment of the National Labor Relations Board Reform Act. Of the 6 members, there shall be 3 members representing each of the 2 major political parties and, beginning on January 1, 2028, each of the 2 members of the Board whose terms expire on the same date, as established under subsection (e), shall represent a different major political party.”; and

(3) in the fourth sentence (including the amendment made by paragraph (2))—

(A) by striking “Their successors, and the successors of the other members,” and inserting “The successor of such sixth member, and the successors of the other members,”;

(B) by inserting “(except as otherwise provided during the transition period under subsection (e))” after “each”; and

(C) by striking “he” and inserting “the individual”.

(b) AUTHORITY.—Section 3(b) of the National Labor Relations Act (29 U.S.C. 153(b)) is amended—

(1) in the first sentence—

(A) by striking “three or more” and inserting “4 or more”; and

(B) by inserting before the period the following: “, with such group consisting of an

1 equal number of members representing each
 2 major political party”; and

3 (2) in the third sentence—

4 (A) by striking “three members” and in-
 5 serting “4 members”; and

6 (B) by striking “Board, except that” and
 7 all that follows through “hereof.” and inserting
 8 the following: “Board. Any determination of the
 9 Board shall be approved by a majority of the
 10 members present.”.

11 (c) TRANSITION TO IMPROVED STAGGERED
 12 TERMS.—Section 3 of the National Labor Relations Act
 13 (29 U.S.C. 153) is further amended by adding at the end
 14 the following:

15 “(e) TRANSITION TO IMPROVED STAGGERED
 16 TERMS.—Notwithstanding subsection (a) or any other
 17 provision of this Act—

18 “(1) each term of a member of the Board ap-
 19 pointed after the date of enactment of the National
 20 Labor Relations Board Reform Act and before De-
 21 cember 31, 2027, shall terminate on December 31,
 22 2027, or the date on which the term otherwise ex-
 23 pires, whichever is earlier, and new terms for all 6
 24 members of the Board shall begin on January 1,
 25 2028; and

1 “(2) of the 6 members of the Board who are
 2 appointed for the terms beginning on January 1,
 3 2028—

4 “(A) 2 of the members shall be appointed
 5 for terms ending on December 31, 2029;

6 “(B) 2 of the members shall be appointed
 7 for terms ending on December 31, 2031; and

8 “(C) 2 of the members shall be appointed
 9 for terms ending on December 31, 2032.”.

10 **SEC. 3. GENERAL COUNSEL.**

11 The National Labor Relations Act (29 U.S.C. 151
 12 et seq.), as amended by section 2, is further amended—

13 (1) in section 3 (29 U.S.C. 153)—

14 (A) in subsection (d)—

15 (i) in the second sentence, by striking
 16 “trial examiners” and inserting “adminis-
 17 trative law judges”; and

18 (ii) in the third sentence, by striking
 19 “He shall” and inserting “Subject to sub-
 20 section (f), the General Counsel shall”; and

21 (B) by adding at the end the following:

22 “(f) REVIEW OF GENERAL COUNSEL COMPLAINTS.—

23 “(1) IN GENERAL.—Any person subject to a
 24 complaint that is issued or authorized by the Gen-
 25 eral Counsel under subsection (d) may obtain review

1 of the complaint in any district court of the United
2 States in the judicial district wherein the unfair
3 labor practice in question was alleged to have oc-
4 curred, wherein such person resides or transacts
5 business, or in the United States District Court for
6 the District of Columbia, by filing in such court, not
7 later than 30 days after such issuance or authoriza-
8 tion, a written petition for review of the complaint.
9 The court may prohibit any further proceedings re-
10 lating to such complaint if the court determines that
11 the General Counsel does not have substantial evi-
12 dence that such person has violated this Act.

13 “(2) DISCOVERY.—Any party to a complaint
14 under paragraph (1) may file a request to the Gen-
15 eral Counsel to obtain any advice memorandum pre-
16 pared by an attorney of the Division of Advice of the
17 Office of the General Counsel, any internal memo-
18 randum of the Office of the General Counsel, or any
19 other inter-agency or intra-agency memorandum or
20 letter described in section 552(b)(5) of title 5,
21 United States Code, related to the complaint. Not
22 later than 10 days after the filing of such request,
23 the General Counsel shall provide such party the re-
24 quested memorandum or letter.”; and

25 (2) in section 4(a) (29 U.S.C. 154(a))—

(A) in the second sentence by striking “examiners” and inserting “administrative law judges”; and

(B) in the fourth sentence—

(i) by striking “trial examiner’s report” and inserting “report of an administrative law judge”; and

(ii) by striking “trial examiner shall advise” and inserting “administrative law judge shall advise”.

SEC. 4. FINAL ORDERS; DISCHARGE.

Section 10 of the National Labor Relations Act (29 U.S.C. 160) is amended—

(1) in subsection (c)—

(A) by striking “before an examiner or examiners thereof” and inserting “before an administrative law judge or administrative law judges thereof”; and

(B) by striking “such examiner or examiners” and inserting “such judge or judges”; and

(2) in subsection (d)—

(A) by inserting “or the Board has issued a final order” after “have been filed in a court”;

1 (B) by striking “at any time upon reason-
2 able notice” and inserting “, not later than 1
3 year after the submission of a report of an ad-
4 ministrative law judge, or a decision of a re-
5 gional director, pertaining to such case or
6 order, upon reasonable notice,”; and

7 (C) by adding at the end the following:
8 “The Board shall issue a final order reviewing
9 an appeal of a report of an administrative law
10 judge or decision of a regional director filed
11 within 1 year after such report or decision. If
12 the Board does not issue a final order within 1
13 year after the report of an administrative law
14 judge or decision of a regional director, any
15 party to the case may move to discharge the
16 case. Upon such motion, the report of the ad-
17 ministrative law judge or decision of the re-
18 gional director shall be deemed to be a final
19 agency action and the Board may not take fur-
20 ther action on the matter under subchapter II
21 of chapter 5 of title 5, United States Code. Any
22 party to the case may obtain review of the order
23 of the Board in any court of appeals of the
24 United States in the circuit wherein the unfair
25 labor practice in question was alleged to have

1 occurred, wherein such person resides or trans-
2 acts business, or in the United States Court of
3 Appeals for the District of Columbia, by filing
4 in such court, not later than 60 days after the
5 issuance of the order, a written petition for the
6 court to modify or set aside the order. The
7 court shall review the order de novo.”.

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