

113TH CONGRESS
1ST SESSION

S. 1378

To amend title 5, United States Code, to provide for investigative leave requirements with respect to Senior Executive Service employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 25, 2013

Mr. BLUNT (for himself, Mr. RISCH, Mr. ROBERTS, Ms. AYOTTE, Mr. GRASSLEY, Mr. CORNYN, Mr. COATS, Mrs. FISCHER, and Mr. JOHANNIS) 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 investigative leave requirements with respect to Senior Executive Service employees, 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 “Government Employee
5 Accountability Act”.

1 **SEC. 2. SUSPENSION FOR 14 DAYS OR LESS FOR SENIOR EX-**
 2 **ECUTIVE SERVICE EMPLOYEES.**

3 Paragraph (1) of section 7501 of title 5, United
 4 States Code, is amended to read as follows:

5 “(1) ‘employee’ means—

6 “(A) an individual in the competitive serv-
 7 ice who is not serving a probationary or trial
 8 period under an initial appointment or who has
 9 completed 1 year of current continuous employ-
 10 ment in the same or similar positions under
 11 other than a temporary appointment limited to
 12 1 year or less; or

13 “(B) a career appointee in the Senior Ex-
 14 ecutive Service who—

15 “(i) has completed the probationary
 16 period prescribed under section 3393(d); or

17 “(ii) was covered by the provisions of
 18 subchapter II of this chapter immediately
 19 before appointment to the Senior Executive
 20 Service; and”.

21 **SEC. 3. INVESTIGATIVE LEAVE AND TERMINATION AU-**
 22 **THORITY FOR SENIOR EXECUTIVE SERVICE**
 23 **EMPLOYEES.**

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

1 “SUBCHAPTER VI—INVESTIGATIVE LEAVE FOR
2 SENIOR EXECUTIVE SERVICE EMPLOYEES

3 **“§ 7551. Definitions**

4 “For the purposes of this subchapter—

5 “(1) the term ‘employee’ has the meaning given
6 such term in section 7541; and

7 “(2) the term ‘investigative leave’ means a tem-
8 porary absence without duty for disciplinary reasons
9 that, except as provided in section 7553(b)(4), shall
10 not exceed a period of more than 90 days.

11 **“§ 7552. Actions covered**

12 “This subchapter applies to investigative leave.

13 **“§ 7553. Cause and procedure**

14 “(a) PLACING ON INVESTIGATIVE LEAVE.—

15 “(1) IN GENERAL.—Under regulations pre-
16 scribed by the Office of Personnel Management, an
17 agency may place an employee on investigative leave,
18 without loss of pay and without charge to annual or
19 sick leave, only for alleged misconduct, neglect of
20 duty, malfeasance, or misappropriation of funds.

21 “(2) WITHOUT PAY.—If an agency determines
22 that the alleged conduct of an employee is serious or
23 flagrant, the agency may place the employee on in-
24 vestigative leave without pay.

25 “(b) REVIEW.—

1 “(1) IN GENERAL.—At the end of each 45-day
2 period during a period of investigative leave, the
3 agency employing the employee on investigative leave
4 shall review the investigation of the alleged mis-
5 conduct, neglect of duty, malfeasance, or misappro-
6 priation of funds by the employee.

7 “(2) REPORT.—Not later than 5 business days
8 after the end of each 45-day period described in
9 paragraph (1), an agency shall submit a report de-
10 scribing the review under paragraph (1) to the Com-
11 mittee on Homeland Security and Governmental Af-
12 fairs of the Senate and the Committee on Oversight
13 and Government Reform of the House of Represent-
14 atives.

15 “(3) ACTION.—At the end of a period of inves-
16 tigative leave implemented under this section, the
17 agency shall—

18 “(A) remove an employee placed on inves-
19 tigative leave under this section;

20 “(B) suspend the employee without pay; or

21 “(C) reinstate or restore the employee to
22 duty.

23 “(4) EXTENSION OF PERIOD.—An agency may
24 extend the period of investigative leave with respect

1 to an employee for 1 additional period not to exceed
2 90 days.

3 “(c) PROCEDURE.—An employee against whom an
4 action under this subchapter is proposed is entitled to, be-
5 fore being placed on investigative leave under this sec-
6 tion—

7 “(1) at least 30 days advance written notice,
8 stating specific reasons for the proposed action, un-
9 less—

10 “(A) there is reasonable cause to believe
11 that the employee has committed a crime for
12 which a sentence of imprisonment can be im-
13 posed; or

14 “(B) the agency determines that the con-
15 duct of the employee with respect to which an
16 action covered by this subchapter is proposed is
17 serious or flagrant, in accordance with regula-
18 tions prescribed by the Office of Personnel
19 Management;

20 “(2) a reasonable time, but not less than 7
21 days, to answer orally and in writing and to furnish
22 affidavits and other documentary evidence in sup-
23 port of the answer;

24 “(3) be represented by an attorney or other
25 representative; and

1 “(4) a written decision and specific reasons
2 therefor at the earliest practicable date.

3 “(d) HEARINGS PERMISSIBLE.—An agency may pro-
4 vide, by regulation, for a hearing which may be in lieu
5 of or in addition to the opportunity to answer provided
6 under subsection (c)(2).

7 “(e) APPEAL.—An employee against whom an action
8 is taken under this section is entitled to appeal to the
9 Merit Systems Protection Board under section 7701.

10 “(f) MATERIALS.—Copies of the notice of proposed
11 action, the answer of the employee when written, and a
12 summary thereof when made orally, the notice of decision
13 and reasons therefor, and any order effecting an action
14 covered by this subchapter, together with any supporting
15 material, shall be maintained by the agency and shall be
16 furnished to the Merit Systems Protection Board upon its
17 request and to the employee affected upon the employee’s
18 request.

19 “SUBCHAPTER VII—REMOVAL OF SENIOR
20 EXECUTIVE SERVICE EMPLOYEES

21 “§ 7561. **Definition**

22 “For purposes of this subchapter, the term ‘em-
23 ployee’ has the meaning given such term in section 7541.

1 **“§ 7562. Removal of Senior Executive Service employ-**
2 **ees**

3 “(a) IN GENERAL.—Notwithstanding any other pro-
4 vision of law, the head of an agency may remove an em-
5 ployee for neglect of duty, misappropriation of funds, or
6 malfeasance if the head of the agency—

7 “(1) determines that the employee acted in a
8 manner that endangers the interest of the agency
9 mission;

10 “(2) considers the removal to be necessary or
11 advisable in the interests of the United States; and

12 “(3) determines that the procedures prescribed
13 in other provisions of law that authorize the removal
14 of the employee cannot be used in a manner that the
15 head of the agency considers consistent with the effi-
16 ciency of the Government.

17 “(b) PROCEDURE.—An employee removed under this
18 section—

19 “(1) shall be notified of the reasons for such re-
20 moval;

21 “(2) is entitled to submit, within 30 days after
22 the notification, to the official designated by the
23 head of the agency statements or affidavits to show
24 why the employee should be restored to duty;

1 “(3) shall be provided a written response by the
2 head of the agency if statements and affidavits are
3 submitted under paragraph (2); and

4 “(4) may be restored to duty if the head of the
5 agency determines it appropriate.

6 “(c) NOTICE.—If the head of an agency removes an
7 employee under the authority under this section, the head
8 of the agency shall notify Congress of the removal and
9 the reasons for the removal.

10 “(d) APPEAL.—An employee against whom an action
11 is taken under this section is entitled to appeal to the
12 Merit Systems Protection Board under section 7701.

13 “(e) RECORDS.—Copies of the notice of proposed ac-
14 tion, the answer of the employee when written, a summary
15 of the answer when made orally, the notice of decision and
16 reasons therefor, and any order effecting an action covered
17 by this section, together with any supporting material,
18 shall be maintained by the agency and shall be furnished
19 to the Merit Systems Protection Board upon its request
20 and to the employee affected upon the request of the em-
21 ployee.

22 “(f) OTHER EMPLOYMENT.—A removal under this
23 section shall not affect the right of the employee removed
24 to seek or accept employment with any other agency if

1 that employee is declared eligible for such employment by
 2 the Director of the Office of Personnel Management.

3 “(g) NO DELEGATION.—The authority of the head
 4 of the agency under this section may not be delegated.”.

5 (b) CLERICAL AMENDMENT.—The table of sections
 6 for chapter 75 of title 5, United States Code, is amended
 7 by adding after the item relating to section 7543 the fol-
 8 lowing:

“SUBCHAPTER VI—INVESTIGATIVE LEAVE FOR SENIOR EXECUTIVE SERVICE
 EMPLOYEES

“7551. Definitions.

“7552. Actions covered.

“7553. Cause and procedure.

“SUBCHAPTER VII—REMOVAL OF SENIOR EXECUTIVE SERVICE EMPLOYEES

“7561. Definition.

“7562. Removal of Senior Executive Service employees.”.

9 **SEC. 4. SUSPENSION OF SENIOR EXECUTIVE SERVICE EM-**
 10 **PLOYEES.**

11 Section 7543 of title 5, United States Code, is
 12 amended—

13 (1) in subsection (a), by inserting “misappro-
 14 priation of funds,” after “malfeasance,”; and

15 (2) in subsection (b), by amending paragraph
 16 (1) to read as follows:

17 “(1) at least 30 days’ advance written notice,
 18 stating specific reasons for the proposed action, un-
 19 less—

1 “(A) there is reasonable cause to believe
2 that the employee has committed a crime for
3 which a sentence of imprisonment can be im-
4 posed; or

5 “(B) the agency determines that the con-
6 duct of the employee with respect to which an
7 action covered by this subchapter is proposed is
8 serious or flagrant, in accordance with regula-
9 tions prescribed by the Office of Personnel
10 Management;”.

11 **SEC. 5. MISAPPROPRIATION OF FUNDS AMENDMENTS.**

12 (a) REINSTATEMENT IN THE SENIOR EXECUTIVE
13 SERVICE.—Section 3593 of title 5, United States Code,
14 is amended—

15 (1) in subsection (a)(2), by inserting “mis-
16 appropriation of funds,” after “malfeasance,”; and

17 (2) in subsection (b), by striking “or malfea-
18 sance” and inserting “malfeasance, or misappropria-
19 tion of funds”.

20 (b) PLACEMENT IN OTHER PERSONNEL SYSTEMS.—
21 Section 3594(a) of title 5, United States Code, is amended
22 by striking “or malfeasance” and inserting “malfeasance,
23 or misappropriation of funds”.

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