

118TH CONGRESS
1ST SESSION

S. 1629

To amend title 5, United States Code, to increase the accountability of the Office of Special Counsel in enforcing certain provisions of that title vigorously, consistently, and without regard to the political affiliation, career status, or personal characteristics of individuals subject to those provisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 16, 2023

Mr. LUJÁN 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 increase the accountability of the Office of Special Counsel in enforcing certain provisions of that title vigorously, consistently, and without regard to the political affiliation, career status, or personal characteristics of individuals subject to those provisions, 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 “Hatch Act Enforce-
5 ment Transparency and Accountability Act”.

1 **SEC. 2. ADDITION OF DEFINITIONS.**

2 (a) IN GENERAL.—Subchapter II of chapter 12 of
3 title 5, United States Code, is amended by adding at the
4 end the following:

5 **“§ 1219a. Definitions**

6 “In this subchapter:

7 “(1) CAREER EMPLOYEE.—The term ‘career
8 employee’ means an individual who is—

9 “(A) an employee, as that term is defined
10 in section 7322; and

11 “(B) not a noncareer employee.

12 “(2) COVERED ALLEGATION.—The term ‘cov-
13 ered allegation’ means an allegation concerning po-
14 litical activity prohibited under subchapter III of
15 chapter 73.

16 “(3) NONCAREER EMPLOYEE.—The term ‘non-
17 career employee’ means an individual who is—

18 “(A) an employee, as defined in section
19 2105, serving in a position in the executive
20 branch; and

21 “(B)(i) serving in a position to which the
22 President appointed the individual (without re-
23 gard to whether the advice and consent of the
24 Senate was required with respect to that ap-
25 pointment), other than an individual who is—

1 “(I) a member of a uniformed service,
2 as that term is defined in section 210(m)
3 of the Social Security Act (42 U.S.C.
4 410(m)); or

5 “(II) a member of the Foreign Service
6 serving under a career appointment, as de-
7 scribed in section 301 of the Foreign Serv-
8 ice Act of 1980 (22 U.S.C. 3941);

9 “(ii) a noncareer appointee, as that term is
10 defined in section 3132(a);

11 “(iii) serving in a position in a Federal ex-
12 ecutive system that is comparable to the Senior
13 Executive Service, the appointment to which is
14 not made through merit-based procedures, such
15 as a position in the Transportation Security
16 Executive Service; or

17 “(iv) serving in a position with respect to
18 which a determination has been made under
19 section 7511(b)(2).”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—
21 The table of sections for subchapter II of chapter 12 of
22 title 5, United States Code, is amended by adding at the
23 end the following:

“1219a. Definitions.”.

1 **SEC. 3. NOTIFYING CONGRESS IN THE EVENT OF A DECI-**
2 **SION NOT TO INVESTIGATE A NONCAREER**
3 **EMPLOYEE.**

4 Section 1217 of title 5, United States Code, is
5 amended by adding at the end the following:

6 “(c) NOTIFICATION OF CONGRESS IN THE EVENT OF
7 CERTAIN DECLINATIONS.—

8 “(1) IN GENERAL.—Not later than 180 days
9 after the date of enactment of this subsection, and
10 once every 180 days thereafter, the Special Counsel
11 shall submit to the Chair and Ranking Member of
12 each of the Committee on Homeland Security and
13 Governmental Affairs of the Senate and the Com-
14 mittee on Oversight and Reform of the House of
15 Representatives a written report that contains, for
16 the period covered by the report, the number of com-
17 plaints received by the Special Counsel that the Spe-
18 cial Counsel referred for disciplinary action.

19 “(2) CONTENTS.—Each report required under
20 paragraph (1) shall—

21 “(A) include—

22 “(i) a copy of the applicable com-
23 plaint;

24 “(ii) the name and position of the em-
25 ployee who is the subject of the applicable
26 complaint; and

1 “(B) be organized to indicate whether the
2 employee who is the subject of each complaint
3 contained in the report is a career employee or
4 a noncareer employee.”.

5 **SEC. 4. REPORTING TO CONGRESS.**

6 (a) IN GENERAL.—Section 1218 of title 5, United
7 States Code, is amended—

8 (1) in the section heading, by striking “**re-**
9 **port**” and inserting “**reports**”;

10 (2) in the matter preceding paragraph (1), by
11 striking “The Special” and inserting the following:

12 “(a) IN GENERAL.—The Special”; and

13 (3) by adding at the end the following:

14 “(b) REPORT REGARDING ALLEGATIONS AGAINST
15 NONCAREER EMPLOYEES.—In addition to each report re-
16 quired under subsection (a), the Special Counsel shall sub-
17 mit to the Chair and Ranking Member of each committee
18 of jurisdiction in Congress, on an annual basis, a report
19 regarding the activities of the Special Counsel with respect
20 to covered allegations against noncareer employees and
21 former noncareer employees, which shall include—

22 “(1) for the year preceding the submission of
23 the report, the number of such covered allegations
24 received by the Special Counsel;

1 “(2) the number of such covered allegations
2 that have resulted in an investigation conducted by
3 the Special Counsel, whether the investigation was
4 initiated during the year covered by the report or
5 thereafter; and

6 “(3) in a confidential addendum submitted to
7 the Chair and Ranking Member of each of the Com-
8 mittee on Homeland Security and Governmental Af-
9 fairs of the Senate and the Committee on Oversight
10 and Reform of the House of Representatives—

11 “(A) with respect to each such covered al-
12 legation not investigated, the name and position
13 of the noncareer employee (or former noncareer
14 employee) who was the subject of the covered
15 allegation; and

16 “(B) a description of each such covered al-
17 legation for which processing of the covered al-
18 legation ceased during the year covered by the
19 report, without regard to whether the covered
20 allegation was received during the year covered
21 by the report or earlier, which shall include—

22 “(i) a description of the outcome of
23 the covered allegation; and

24 “(ii) in the case of a covered allega-
25 tion against a noncareer employee who is

1 not serving in a position with respect to
2 which appointment by the President, by
3 and with the advice and consent of the
4 Senate, is required (or against a former
5 noncareer employee who was not serving in
6 such a position, as of the date on which
7 the actions that are the subject of the cov-
8 ered allegation occurred), a statement as
9 to whether—

10 “(I) the Special Counsel, under
11 section 1215(a), presented a com-
12 plaint to the Merit Systems Protection
13 Board against the noncareer employee
14 (or former noncareer employee) con-
15 cerning the actions that are the sub-
16 ject of the covered allegation; and

17 “(II) any civil penalty assessed
18 by the Merit Systems Protection
19 Board under section 7326 with re-
20 spect to the covered allegation has
21 been collected in full.”.

22 (b) TECHNICAL AND CONFORMING AMENDMENT.—

23 The table of sections for subchapter II of chapter 12 of
24 title 5, United States Code, is amended by striking the
25 item relating to section 1218 and inserting the following:

“1218. Annual reports.”.

1 **SEC. 5. PUBLIC TRANSPARENCY IN HATCH ACT ENFORCE-**
2 **MENT.**

3 Section 1219 of title 5, United States Code, is
4 amended—

5 (1) in subsection (a)—

6 (A) in paragraph (3), by striking “and” at
7 the end;

8 (B) in paragraph (4), by striking the pe-
9 riod at the end and inserting “; and”; and

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

11 “(5) a detailed written explanation of the com-
12 plete basis for each decision of the Special Counsel
13 not to present, under section 1215(a), a complaint
14 to the Merit Systems Protection Board against any
15 noncareer employee determined by the Special Coun-
16 sel to have violated subchapter III of chapter 73, ex-
17 cept that this paragraph shall not apply with respect
18 to a noncareer employee who is serving in a position
19 for which nomination by the President, by and with
20 the advice and consent of the Senate, is required
21 (unless such a noncareer employee is serving in a
22 position in the Foreign Service).”;

23 (2) by redesignating subsection (b) as sub-
24 section (c); and

25 (3) by inserting after subsection (a) the fol-
26 lowing:

1 “(b) PUBLICATION OF DEMOGRAPHIC STATISTICS
2 REGARDING CERTAIN ENFORCEMENT.—

3 “(1) IN GENERAL.—The Special Counsel shall
4 track, publish, and keep current on the official
5 website of the Office of Special Counsel the following
6 information, which shall remain on that website for
7 a period of not less than 10 fiscal years, beginning
8 with the fiscal year to which the information per-
9 tains:

10 “(A) On an ongoing basis, the following
11 anonymized information pertaining to covered
12 allegations against career employees, which
13 shall be organized by fiscal year:

14 “(i) The number of career employees
15 who were the subject of covered allegations
16 received by the Special Counsel during the
17 applicable fiscal year.

18 “(ii) With respect to the career em-
19 ployees identified under clause (i)—

20 “(I) the number of those career
21 employees who the Special Counsel in-
22 vestigated, without regard to whether
23 the investigation occurred during the
24 fiscal year in which the Special Coun-
25 sel received the initial covered allega-

1 tion with respect to such a career em-
2 ployee or during a subsequent fiscal
3 year; and

4 “(II) the number of those career
5 employees who were the subject of a
6 complaint presented to the Special
7 Counsel with the Merit Systems Pro-
8 tection Board with respect to the ap-
9 plicable covered allegation, without re-
10 gard to whether the Special Counsel
11 presented such a complaint during the
12 fiscal year in which the Special Coun-
13 sel received the initial covered allega-
14 tion with respect to such a career em-
15 ployee or during a subsequent fiscal
16 year.

17 “(iii) For clauses (i) and (ii), demo-
18 graphic information pertaining to the race,
19 sex, ethnicity, national origin, and dis-
20 ability status of the applicable career em-
21 ployees.

22 “(B) On an ongoing basis, the following
23 anonymized information pertaining to covered
24 allegations against noncareer employees, which
25 shall be organized by fiscal year:

1 “(i) The number of noncareer employ-
2 ees who were the subject of covered allega-
3 tions received by the Special Counsel dur-
4 ing the applicable fiscal year.

5 “(ii) With respect to the noncareer
6 employees identified under clause (i)—

7 “(I) the number of those non-
8 career employees who the Special
9 Counsel investigated, without regard
10 to whether the investigation occurred
11 during the fiscal year in which the
12 Special Counsel received the initial
13 covered allegation with respect to such
14 a noncareer employee or during a sub-
15 sequent fiscal year; and

16 “(II) the number of those non-
17 career employees who were the subject
18 of a complaint presented to the Spe-
19 cial Counsel with the Merit Systems
20 Protection Board with respect to the
21 applicable covered allegation, without
22 regard to whether the Special Counsel
23 presented such a complaint during the
24 fiscal year in which the Special Coun-
25 sel received the initial covered allega-

1 tion with respect to such a noncareer
2 employee or during a subsequent fis-
3 cal year.

4 “(iii) For clauses (i) and (ii), demo-
5 graphic information pertaining to the race,
6 sex, ethnicity, national origin, and dis-
7 ability status of the applicable noncareer
8 employees.

9 “(2) DEMOGRAPHIC INFORMATION.—The Di-
10 rector of the Office of Personnel Management, the
11 head of the agency employing an individual who is
12 the subject of a complaint filed with the Special
13 Counsel, and, as applicable, the White House Presi-
14 dential Personnel Office shall, upon request, provide
15 the Special Counsel with information pertaining to
16 the race, sex, ethnicity, national origin, disability
17 status, and status as a career employee or noncareer
18 employee of that individual, if that information has
19 already been collected in connection with the Federal
20 employment or former Federal employment of that
21 individual.”.

22 **SEC. 6. SEVERABILITY.**

23 If any provision of this Act, or of any amendment
24 made by this Act, or the application of any provision of
25 this Act, or of any amendment made by this Act, to any

1 person or circumstance is held to be unconstitutional, the
2 remainder of this Act, and the amendments made by this
3 Act, and the application of the provision this Act, or of
4 the amendment made by this Act, to any other person or
5 circumstance shall not be affected by the holding.

○