

118TH CONGRESS
1ST SESSION

S. 399

To place limitations on excepting positions from the competitive service,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2023

Mr. KAINE (for himself, Mrs. FEINSTEIN, Mr. WARNER, Mr. CARDIN, Mr. VAN HOLLEN, Mr. SCHATZ, Mr. MARKEY, Ms. DUCKWORTH, Ms. HIRONO, Mr. KING, Mrs. SHAHEEN, Mr. CASEY, Mr. DURBIN, Mr. WHITEHOUSE, and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To place limitations on excepting positions from the
competitive service, 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 “Saving the Civil Serv-
5 ice Act”.

1 **SEC. 2. LIMITATIONS ON EXCEPTING POSITIONS FROM**
2 **COMPETITIVE SERVICE AND TRANSFERRING**
3 **POSITIONS.**

4 (a) DEFINITIONS.—In this section—

5 (1) the term “agency” means any department,
6 agency, or instrumentality of the Federal Govern-
7 ment;

8 (2) the term “competitive service” has the
9 meaning given the term in section 2102 of title 5,
10 United States Code;

11 (3) the term “Director” means the Director of
12 the Office of Personnel Management; and

13 (4) the term “excepted service” has the mean-
14 ing given the term in section 2103 of title 5, United
15 States Code.

16 (b) LIMITATIONS.—A position in the competitive
17 service may not be excepted from the competitive service
18 unless that position is placed—

19 (1) in any of schedules A through E, as de-
20 scribed in section 6.2 of title 5, Code of Federal
21 Regulations, as in effect on September 30, 2020;
22 and

23 (2) under the terms and conditions under part
24 6 of title 5, Code of Federal Regulations, as in effect
25 on September 30, 2020.

26 (c) TRANSFERS.—

1 (1) WITHIN EXCEPTED SERVICE.—A position in
2 the excepted service may not be transferred to any
3 schedule other than a schedule described in sub-
4 section (b)(1).

5 (2) OPM CONSENT REQUIRED.—An agency
6 may not transfer any occupied position from the
7 competitive service or the excepted service into
8 schedule C of subpart C of part 213 of title 5, Code
9 of Federal Regulations, or any successor regulations,
10 without the prior consent of the Director.

11 (3) LIMIT DURING PRESIDENTIAL TERM.—Dur-
12 ing any 4-year presidential term, an agency may not
13 transfer from a position in the competitive service to
14 a position in the excepted service the greater of the
15 following:

16 (A) A total number of employees that is
17 more than 1 percent of the total number of em-
18 ployees employed by that agency, as of the first
19 day of that presidential term.

20 (B) 5 employees.

21 (4) EMPLOYEE CONSENT REQUIRED.—Notwith-
22 standing any other provision of this section—

23 (A) an employee who occupies a position in
24 the excepted service may not be transferred to
25 an excepted service schedule other than the

1 schedule in which that position is located with-
2 out the prior written consent of the employee;
3 and

4 (B) an employee who occupies a position in
5 the competitive service may not be transferred
6 to the excepted service without the prior written
7 consent of the employee.

8 (d) OTHER MATTERS.—

9 (1) APPLICATION.—Notwithstanding section
10 7425(b) of title 38, United States Code, this section
11 shall apply to a position under chapter 73 or 74 of
12 that title.

13 (2) REPORT.—Not later than March 15 of each
14 calendar year, the Director shall submit to Congress
15 a report on the immediately preceding calendar year
16 that lists—

17 (A) each position that, during the year cov-
18 ered by the report, was transferred from the
19 competitive service to the excepted service and
20 a justification as to why each such position was
21 so transferred; and

22 (B) any violation of this section that oc-
23 curred during the year covered by the report.

1 (e) REGULATIONS.—Not later than 90 days after the
2 date of enactment of this Act, the Director shall issue reg-
3 ulations to implement this section.

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