

119TH CONGRESS
1ST SESSION

S. _____

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

Mr. LUJÁN introduced the following bill; which was read twice and referred to the Committee on _____

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 Government Reform of the
15 House of Representatives a written report that con-
16 tains, for the period covered by the report, the num-
17 ber of complaints received by the Special Counsel
18 that the Special Counsel referred for disciplinary ac-
19 tion.

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

22 “(A) include—

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

1 “(ii) the name and position of the em-
2 ployee who is the subject of the applicable
3 complaint; and

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

8 **SEC. 4. REPORTING TO CONGRESS.**

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

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

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

15 “(a) IN GENERAL.—The Special”; and

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

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

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

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

9 “(3) in a confidential addendum submitted to
10 the Chair and Ranking Member of each of 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 “(A) with respect to each such covered al-
16 legation not investigated, the name and position
17 of the noncareer employee (or former noncareer
18 employee) who was the subject of the covered
19 allegation; and

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

1 “(i) a description of the outcome of
2 the covered allegation; and

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

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

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

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—
2 The table of sections for subchapter II of chapter 12 of
3 title 5, United States Code, is amended by striking the
4 item relating to section 1218 and inserting the following:
“1218. Annual reports.”.

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

7 Section 1219 of title 5, United States Code, is
8 amended—

9 (1) in subsection (a)—

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

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

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

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

1 (unless such a noncareer employee is serving in a
2 position in the Foreign Service).”;

3 (2) by redesignating subsection (b) as sub-
4 section (c); and

5 (3) by inserting after subsection (a) the fol-
6 lowing:

7 “(b) PUBLICATION OF DEMOGRAPHIC STATISTICS
8 REGARDING CERTAIN ENFORCEMENT.—

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

16 “(A) On an ongoing basis, the following
17 anonymized information pertaining to covered
18 allegations against career employees, which
19 shall be organized by fiscal year:

20 “(i) The number of career employees
21 who were the subject of covered allegations
22 received by the Special Counsel during the
23 applicable fiscal year.

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

1 “(I) the number of those career
2 employees who the Special Counsel in-
3 vestigated, without regard to whether
4 the investigation occurred during the
5 fiscal year in which the Special Coun-
6 sel received the initial covered allega-
7 tion with respect to such a career em-
8 ployee or during a subsequent fiscal
9 year; and

10 “(II) the number of those career
11 employees who were the subject of a
12 complaint presented by the Special
13 Counsel to the Merit Systems Protec-
14 tion Board with respect to the appli-
15 cable covered allegation, without re-
16 gard to whether the Special Counsel
17 presented such a complaint during the
18 fiscal year in which the Special Coun-
19 sel received the initial covered allega-
20 tion with respect to such a career em-
21 ployee or during a subsequent fiscal
22 year.

23 “(iii) For clauses (i) and (ii), demo-
24 graphic information pertaining to the race,
25 sex, ethnicity, national origin, and dis-

1 ability status of the applicable career em-
2 ployees.

3 “(B) On an ongoing basis, the following
4 anonymized information pertaining to covered
5 allegations against noncareer employees, which
6 shall be organized by fiscal year:

7 “(i) The number of noncareer employ-
8 ees who were the subject of covered allega-
9 tions received by the Special Counsel dur-
10 ing the applicable fiscal year.

11 “(ii) With respect to the noncareer
12 employees identified under clause (i)—

13 “(I) the number of those non-
14 career employees who the Special
15 Counsel investigated, without regard
16 to whether the investigation occurred
17 during the fiscal year in which the
18 Special Counsel received the initial
19 covered allegation with respect to such
20 a noncareer employee or during a sub-
21 sequent fiscal year; and

22 “(II) the number of those non-
23 career employees who were the subject
24 of a complaint presented by the Spe-
25 cial Counsel to the Merit Systems

1 Protection Board with respect to the
2 applicable covered allegation, without
3 regard to whether the Special Counsel
4 presented such a complaint during the
5 fiscal year in which the Special Coun-
6 sel received the initial covered allega-
7 tion with respect to such a noncareer
8 employee or during a subsequent fis-
9 cal year.

10 “(iii) For clauses (i) and (ii), demo-
11 graphic information pertaining to the race,
12 sex, ethnicity, national origin, and dis-
13 ability status of the applicable noncareer
14 employees.

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

1 employment or former Federal employment of that
2 individual.”.

3 **SEC. 6. SEVERABILITY.**

4 If any provision of this Act, or of any amendment
5 made by this Act, or the application of any provision of
6 this Act, or of any amendment made by this Act, to any
7 person or circumstance is held to be unconstitutional, the
8 remainder of this Act, and the amendments made by this
9 Act, and the application of the provision this Act, or of
10 the amendment made by this Act, to any other person or
11 circumstance shall not be affected by the holding.