H. R. 115

To reauthorize and modify the authority of the Merit Systems Protection Board, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. JODY B. HICE of Georgia introduced the following bill; which was referred to the Committee on ____________________

A BILL

To reauthorize and modify the authority of the Merit Systems Protection Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Merit Systems Protection Board Reauthorization Act of 2018”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Reauthorize appropriations for Merit Systems Protection Board.
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Sec. 3. Filing fee for Merit Systems Protection Board claims and appeals.
Sec. 4. Modification to procedures and authority of the Merit Systems Protection Board.
Sec. 5. Limitation on furlough appeals to the Merit Systems Protection Board.
Sec. 6. Reappointment of Merit Systems Protection Board members.
Sec. 7. Amendments to Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017.

1 SEC. 2. REAUTHORIZE APPROPRIATIONS FOR MERIT SYSTEMS PROTECTION BOARD.

2 (a) In General.—Paragraph (1) of section 8(a) of the Whistleblower Protection Act of 1989 (Public Law 101–12; 5 U.S.C. 5509 note) is amended to read as follows:

3 “(1) for each of fiscal years 2019, 2020, 2021, 2022, and 2023—

4 “(A) $44,490,000 to carry out subchapter I of chapter 12 of title 5, United States Code (as amended by this Act); and

5 “(B) not to exceed $2,345,000, to be transferred from the Civil Service Retirement and Disability Fund in amounts determined by the Merit Systems Protection Board, for administrative expenses to adjudicate retirement appeals; and”.

6 (b) Effective Date.—This section shall take effect on October 1, 2018.
SEC. 3. FILING FEE FOR MERIT SYSTEMS PROTECTION

BOARD CLAIMS AND APPEALS.

(a) In general.—Section 1204 of title 5, United States Code, is amended by adding at the end the following:

“(o)(1) The Board shall establish and collect a filing fee to be paid by any individual filing a claim or appeal with the Board under this title, or under any other law, rule, or regulation, consistent with the requirements of this subsection.

“(2) The filing fee established under paragraph (1) may—

“(A) not exceed the amount that is 50 percent of the fee required for filing a civil action in a United States district court;

“(B) be adjusted from time to time as the Board considers appropriate; and

“(C) upon request of the individual filing the claim or appeal, be waived by the Board if the Board determines the fee would create undue hardship.

“(3) A filing fee shall not be required with respect to any action—

“(A) brought by the Special Counsel under section 1214, 1215, or 1216; or
“(B) taken against an administrative law judge under section 7521.

“(4) A filing fee paid by an individual for an appeal or claim before the Board shall cover any subsequent filing by the individual with the Board during the litigation of that appeal or claim. Such fee shall be returned to the individual if the individual is the prevailing party.”.

(b) DEADLINE.—The Merit Systems Protection Board shall establish and collect the filing fee required under subsection (o) of section 1204 of title 5, United States Code, as added by subsection (a), not later than 1 year after the date of the enactment of this Act.

(c) APPLICATION.—The fee required under such subsection (o) shall apply to any claim or appeal filed with the Merit Systems Protection Board after the date the fee is established pursuant to subsection (b).

SEC. 4. MODIFICATION TO PROCEDURES AND AUTHORITY OF THE MERIT SYSTEMS PROTECTION BOARD.

(a) SUMMARY JUDGMENT.—Section 7701 of title 5, United States Code, is amended—

(1) in subsection (a)(1), by inserting “, except as provided in subsection (b)” after “kept”; and

(2) in subsection (b)(1)—
(A) by striking “The Board may” and inserting “(A) The Board may”;

(B) by striking the second and third sentences; and

(C) by adding at the end the following:

“(B) The Board, an administrative law judge appointed by the Board under section 3105, and any officer or employee of the Board designated by the Board (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a)(1) of this section, except as provided under subparagraph (C).

“(C) The Board, an administrative law judge appointed by the Board under section 3105, and any officer or employee of the Board designated by the Board (as the case may be) may, with respect to any party, grant a motion for summary judgment. Any hearing under subsection (a)(1) of this section shall be limited to the issues remaining in the case, or, if applicable, a decision may be issued without holding a hearing.

“(D) A copy of the decision under subparagraph (B) or (C) shall be furnished to each party to the appeal and to the Office of Personnel Management.”.
(b) LIMIT ON MITIGATION.—Paragraph (3) of section 7701(b) of title 5, United States Code, is amended to read as follows:

“(3) With respect to an appeal from a performance or conduct-based adverse action under subchapter II or V of chapter 75, the Board may not mitigate the personnel action involved unless the action is so disproportionate as to be wholly without justification.”.

(e) EVIDENTIAL BURDEN.—Paragraph (1) of section 7701(c) of title 5, United States Code, is amended to read as follows:

“(1) Subject to paragraph (2), the decision of the agency shall be sustained under subsection (b) only if the agency’s decision is supported by substantial evidence.”.

(d) EFFECTIVE DATE; APPLICATION.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 90 days after the date of the enactment of this Act.

(2) APPLICATION.—The amendments made by this section shall apply with respect to any appeal filed under section 7701 of title 5, United States Code, on or after the effective date in paragraph (1).
SEC. 5. LIMITATION ON FURLOUGH APPEALS TO THE
MERIT SYSTEMS PROTECTION BOARD.

(a) IN GENERAL.—Section 3595a of title 5, United
States Code, is amended—

(1) by striking subsection (a) and inserting the
following:

“(a) For the purposes of this section—

“(1) the term ‘furlough’ means the placement
of a senior executive in a temporary status in which
the senior executive has no duties and is not paid
when the placement in such status is by reason of
insufficient work or funds or for other nondisciplinary
reasons; and

“(2) the term ‘emergency furlough’ has the
meaning given that term in section 7501(3).”;

(2) in subsection (b), by adding after the period
at the end the following: “Such regulations shall
provide for procedures for emergency furloughs for
career appointees, consistent with the procedures
promulgated by the Office under section 7504(b).”;

(3) by striking subsection (c) and inserting the
following:

“(c) A career appointee who is furloughed in excess
of 14 days is entitled to appeal to the Merit Systems Pro-
tection Board under section 7701. The previous sentence shall not apply to any emergency furlough.”.

(b) APPLICATION.—The amendments made by subsection (a) shall apply to any furlough occurring on or after the date that is 90 days after the date of the enactment of this Act.

SEC. 6. REAPPOINTMENT OF MERIT SYSTEMS PROTECTION BOARD MEMBERS.

Subsection (e) of section 1202 of title 5, United States Code, is amended—

(1) by striking “may not be reappointed to any following term but”; and

(2) by inserting before the period at the end the following: “, unless the member is reappointed”.


(a) IN GENERAL.—Section 714 of title 38, United States Code, is amended—

(1) in subsection (c)(4)(A), by striking “, which shall refer such appeal to an administrative judge pursuant to section 7701(b)(1) of title 5”; and

(2) in subsection (d)—
(A) by striking “the administrative judge” in each place it appears and inserting “the Merit Systems Protection Board”; 

(B) by striking paragraph (3); 

(C) by redesignating paragraphs (4) through (10) as paragraphs (3) through (9), respectively; and 

(D) in paragraph (4), as redesignated by subparagraph (C), by striking “paragraph (3)” and inserting “paragraph (1)”. 

(b) APPLICATION.—The amendments made by subsection (a) shall apply to any appeal made under section 714(c)(4)(A) of title 38, United States Code, after the date of the enactment of this Act.