

Union Calendar No. 417

103D CONGRESS
2D SESSION

H. R. 2970

[Report No. 103-769]

A BILL

To reauthorize the Office of Special Counsel, and
for other purposes.

SEPTEMBER 30, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1993

Mr. McCLOSKEY introduced the following bill; which was referred to the
Committee on Post Office and Civil Service

SEPTEMBER 30, 1994

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on August 6, 1993]

A BILL

To reauthorize the Office of Special Counsel, 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. REAUTHORIZATIONS.**

4 *Section 8(a) of the Whistleblower Protection Act of*
5 *1989 (5 U.S.C. 5509 note) is amended by striking "fiscal*

1 *years” through “such sums” each place it appears and in-*
2 *serting “fiscal years 1993–1997, such sums”.*

3 **SEC. 2. OFFICE OF SPECIAL COUNSEL.**

4 *(a) AUTHORITY TO CONTINUE SERVING PENDING THE*
5 *APPOINTMENT OF A SUCCESSOR.—Section 1211(b) of title*
6 *5, United States Code, is amended by inserting after the*
7 *third sentence the following: “The Special Counsel may con-*
8 *tinue to serve after the expiration of the Special Counsel’s*
9 *term until a successor has qualified, but for not longer than*
10 *1 year.”.*

11 *(b) LIMITATIONS ON DISCLOSURES.—Section 1212(g)*
12 *of title 5, United States Code, is amended to read as follows:*

13 *“(g)(1) The Special Counsel may not respond to any*
14 *inquiry or provide information concerning either any per-*
15 *son making an allegation under section 1214(a) or any alle-*
16 *gation so made, except in accordance with the provisions*
17 *of section 552a or as required by any other applicable law.*

18 *“(2) If, or to the extent that, the allegation involves*
19 *a prohibited personnel practice described in paragraph (2),*
20 *(8), or (9) of section 2302(b), no disclosure described in*
21 *paragraph (1) may be made unless—*

22 *“(A) either of the exceptions permitting disclo-*
23 *sure under paragraph (1) is met; and*

24 *“(B)(i) the consent of the person who made such*
25 *allegation is obtained in advance; or*

1 “(ii) the information is being sought by an agen-
2 cy which requires such information in order to make
3 a determination concerning access, for the person re-
4 ferred to in paragraph (1), to information the unau-
5 thorized disclosure of which could be expected to cause
6 exceptionally grave damage to national security.”.

7 (c) *STANDARD APPLICABLE WITH RESPECT TO CER-*
8 *TAIN AGENCY FINDINGS.*—Section 1213(e)(2)(A) of title 5,
9 *United States Code, is amended to read as follows:*

10 “(A) the findings of the agency head are sup-
11 ported by clear and convincing evidence; and”.

12 (d) *TECHNICAL CLARIFICATION.*—The first sentence of
13 section 1213(g)(1) of title 5, *United States Code, is amended*
14 *to read as follows: “If the Special Counsel receives informa-*
15 *tion from an individual other than an individual described*
16 *in subparagraph (A) or (B) of subsection (c)(2) which, if*
17 *such individual were an individual described in either of*
18 *such subparagraphs, would be considered information of a*
19 *type described in subsection (a), the Special Counsel may*
20 *transmit the information to the head of the agency which*
21 *the information concerns.”.*

22 (e) *INVESTIGATIONS.*—Section 1214(a)(1) of title 5,
23 *United States Code, is amended—*

24 (1) *in subparagraph (B) by striking “practice*
25 *under paragraph (1),” and inserting “practice,”; and*

1 (2) by striking subparagraph (C) and inserting
2 the following:

3 “(C) Unless an investigation under this section is ter-
4 minated, the Special Counsel shall, within 60 days after
5 notice is provided under subparagraph (B) with respect to
6 a particular allegation, and at least every 60 days there-
7 after, notify the person who made such allegation as to the
8 status of the investigation and any action which has been
9 taken by the Office of Special Counsel since notice was last
10 given under this subsection.

11 “(D)(i) Except as provided in clause (ii), no later than
12 120 days after the date of receiving an allegation of a pro-
13 hibited personnel practice, the Special Counsel shall deter-
14 mine whether there are reasonable grounds to believe that
15 a prohibited personnel practice has occurred, exists, or is
16 to be taken.

17 “(ii) The deadline under clause (i) may be extended
18 by written agreement between the Special Counsel and the
19 person who made the allegation involved.

20 “(E) A determination by the Special Counsel under
21 this paragraph shall not be admissible in any judicial or
22 administrative proceeding except in the same circumstances
23 as would apply under paragraph (2)(B) with respect to a
24 written statement under paragraph (2)(A).”.

1 “(B) is not privileged or otherwise protected
2 from disclosure by law, rule, or regulation; and

3 “(C) is relevant to the subject matter involved in
4 the pending action or appears reasonably calculated
5 to lead to the discovery of admissible evidence.”.

6 (b) *BURDEN OF PROOF.*—

7 (1) *IN GENERAL.*—Section 1221(e) of title 5,
8 United States Code, is amended to read as follows:

9 “(e)(1) Subject to paragraph (2), in any case involving
10 an alleged prohibited personnel practice as described in
11 paragraph (8) or (9) of section 2302(b), the Board shall
12 order such corrective action as the Board considers appro-
13 priate if the employee, former employee, or applicant for
14 employment has demonstrated that protected conduct under
15 such paragraph (8) or (9) (as defined in paragraph (3)(A)
16 or (B), as applicable) was a contributing factor in the per-
17 sonnel action which was taken or is to be taken against
18 such employee, former employee, or applicant.

19 “(2) Corrective action under paragraph (1) may not
20 be ordered if the agency demonstrates by clear and convinc-
21 ing evidence that it would have taken the same personnel
22 action in the absence of the protected conduct involved.

23 “(3) For the purpose of this subsection, the term ‘pro-
24 tected conduct’ means—

1 “(A) with respect to paragraph (8) of section
2 2302(b), any disclosure described in subparagraph
3 (A) or (B) of such paragraph; and

4 “(B) with respect to paragraph (9) of section
5 2302(b), any conduct described in subparagraph (A),
6 (B), (C), or (D) of such paragraph.”.

7 (2) SAME STANDARD IF RELIEF IS SOUGHT
8 THROUGH OFFICE OF SPECIAL COUNSEL.—

9 (A) IN GENERAL.—Subparagraph (B) of
10 section 1214(b)(4) of title 5, United States Code,
11 is amended to read as follows:

12 “(B)(i) Subject to the provisions of clause (ii), in any
13 case involving an alleged prohibited personnel practice as
14 described in paragraph (8) or (9) of section 2302(b), the
15 Board shall order such corrective action as the Board con-
16 siders appropriate if the employee, former employee, or ap-
17 plicant for employment has demonstrated that protected
18 conduct under such paragraph (8) or (9) (as defined in
19 clause (iii)(I) or (II), as applicable) was a contributing fac-
20 tor in the personnel action which was taken or is to be taken
21 against such employee, former employee, or applicant.

22 “(ii) Corrective action under clause (i) may not be or-
23 dered if the agency demonstrates by clear and convincing
24 evidence that it would have taken the same personnel action
25 in the absence of the protected conduct involved.

1 “(iii) For the purpose of this subparagraph, the term
2 ‘protected conduct’ means—

3 “(I) with respect to paragraph (8) of section
4 2302(b), any disclosure described in subparagraph
5 (A) or (B) of such paragraph; and

6 “(II) with respect to paragraph (9) of section
7 2302(b), any conduct described in subparagraph (A),
8 (B), (C), or (D) of such paragraph.”.

9 (B) CONFORMING AMENDMENT.—Section
10 1214(b)(4)(A) is amended by striking “section
11 2302(b)(8),” and inserting “paragraph (8) or (9)
12 of section 2302(b),”.

13 (3) SAME STANDARD IF RELIEF IS SOUGHT
14 THROUGH BINDING ARBITRATION.—Section 7121(b) of
15 title 5, United States Code, as amended by section
16 5(e), is further amended by adding at the end the fol-
17 lowing:

18 “(3) The provisions of a negotiated grievance proce-
19 dure providing for binding arbitration in accordance with
20 paragraph (1)(C)(iii) shall, if or to the extent that an al-
21 leged prohibited personnel practice described in paragraph
22 (8) or (9) of section 2302(b) is involved, require that the
23 arbitrator apply the same standard as would apply under
24 section 1221(e).”.

1 (4) *SAME STANDARD IF RELIEF IS SOUGHT BY*
2 *AN APPEAL UNDER SECTION 7701.—Section 7701(c) of*
3 *title 5, United States Code, is amended—*

4 (A) *in paragraph (1) by striking “Subject*
5 *to paragraph (2)” and inserting “Subject to*
6 *paragraphs (2) and (3)”;* and

7 (B) *by adding at the end the following:*

8 “(3) *To the extent that an appeal involves an alleged*
9 *prohibited personnel practice described in paragraph (8) or*
10 *(9) of section 2302(b), the standard under section 1221(e)*
11 *shall be applied.”.*

12 (c) *REFERRALS FOR POSSIBLE DISCIPLINARY AC-*
13 *TION.—Section 1221(f) of title 5, United States Code, is*
14 *amended by adding after paragraph (2) the following:*

15 “(3) *If, based on evidence presented to it under this*
16 *section, the Merit Systems Protection Board determines that*
17 *there is reason to believe that a current employee may have*
18 *committed a prohibited personnel practice, the Board shall*
19 *refer the matter to the Special Counsel for investigation and*
20 *appropriate action under section 1215.”.*

21 **SEC. 4. PROHIBITED PERSONNEL PRACTICES.**

22 (a) *PERSONNEL ACTIONS.—*

23 (1) *IN GENERAL.—Section 2302(a)(2)(A) of title*
24 *5, United States Code, is amended—*

1 (A) in clause (ix) by striking “and” after
2 the semicolon; and

3 (B) by redesignating clause (x) as clause
4 (xii) and inserting before such clause the
5 following:

6 “(x) a decision to require psychiatric test-
7 ing or examination;

8 “(xi) a denial, revocation, or other deter-
9 mination relating to a security clearance; and”.

10 (2) CONFORMING AMENDMENT.—Section 2303(a)
11 of title 5, United States Code, is amended by striking
12 “clauses (i) through (x)” and inserting “clauses (i)
13 through (xii)”.

14 (b) COVERED POSITIONS.—Section 2302(a)(2)(B) of
15 title 5, United States Code, is amended to read as follows:

16 “(B) ‘covered position’, as used with respect to
17 an employee or applicant for employment, means any
18 position in the competitive service, a career appointee
19 position in the Senior Executive Service, a position
20 in the excepted service, or a position covered by chap-
21 ter 74 of title 38, but does not include any position
22 which, as of the date on which the employee began
23 serving in the position or the applicant applied for
24 such position (as the case may be), was—

1 “(i) *excepted from the competitive service*
2 *because of its confidential, policy-determining,*
3 *policy-making, or policy-advocating character; or*

4 “(ii) *excluded from the coverage of this sec-*
5 *tion by the President based on a determination*
6 *by the President that it is necessary and war-*
7 *ranted by conditions of good administration.”.*

8 (c) *AGENCIES.—Section 2302(a)(2)(C) of title 5,*
9 *United States Code, is amended—*

10 (1) *by striking clause (i); and*

11 (2) *by redesignating clauses (ii) and (iii) as*
12 *clauses (i) and (ii), respectively.*

13 (d) *INFORMATION.—Section 2302(c) of title 5, United*
14 *States Code, is amended in the first sentence by striking*
15 *“management.” and inserting “management, and for ensur-*
16 *ing (in consultation with the Office of Special Counsel) that*
17 *employees of such agency are informed of the rights and*
18 *remedies available to them under this chapter and chapter*
19 *12.”.*

20 (e) *SENSE OF CONGRESS.—It is the sense of the Con-*
21 *gress that a Federal employee or applicant for Federal em-*
22 *ployment who makes a disclosure described in section*
23 *2302(b) of title 5, United States Code, should not be pros-*
24 *ecuted, or threatened with prosecution, under section 205*
25 *of title 18, United States Code, for such disclosure.*

1 **SEC. 5. ADDITIONAL AMENDMENTS RELATING TO PROCE-**
2 **DURES UNDER WHICH INDIVIDUALS MAY**
3 **SEEK RELIEF FROM PROHIBITED PERSONNEL**
4 **PRACTICES.**

5 (a) *INDIVIDUAL RIGHT OF ACTION BEFORE MSPB*
6 *AVAILABLE FOR PROHIBITED PERSONNEL PRACTICES GEN-*
7 *ERALLY.—*

8 (1) *IN GENERAL.—Section 1221(a) of title 5,*
9 *United States Code, is amended by striking “practice*
10 *described in section 2302(b)(8),” and inserting “prac-*
11 *tice,”.*

12 (2) *EXCEPTION.—Subsection (b) of section 1221*
13 *of title 5, United States Code, is amended by redesign-*
14 *ating such subsection as subsection (b)(1), and by*
15 *adding at the end the following:*

16 “(2) *Nothing in this subchapter shall be considered to*
17 *create any right to seek corrective action with respect to*
18 *a prohibited personnel practice described in section*
19 *2302(b)(1).*

20 “(3) *For purposes of subsection (a), the term ‘personnel*
21 *action’, if taken or proposed to be taken as a result of a*
22 *prohibited personnel practice other than one described in*
23 *paragraph (1) or (8) of section 2302(b), means—*

24 “(A) *an action under subchapter II of chapter*
25 *75;*

26 “(B) *a detail, transfer, or reassignment; and*

1 “(C) a reduction in grade or removal under sec-
2 tion 4303.”.

3 (3) *TECHNICAL CORRECTION.*—Section 1221(a)
4 is amended by striking “subsection 1214(a)(3)” and
5 inserting “section 1214(a)(3)”.

6 (b) *APPEALS.*—

7 (1) *IN GENERAL.*—Section 7703 of title 5, *Unit-*
8 *ed States Code*, is amended—

9 (A) in subsection (b)(1) by striking “*Cir-*
10 *cuit.*” and inserting “*Circuit or the United*
11 *States court of appeals for the circuit in which*
12 *the petitioner resides.*”;

13 (B) in subsection (c)—

14 (i) by striking “*In any case filed in*
15 *the United States Court of Appeals for the*
16 *Federal Circuit,*” and inserting “*In any*
17 *case filed under subsection (b)(1),*”; and

18 (ii) by striking “*evidence;*” at the end
19 of paragraph (3) and inserting “*evidence.*”,
20 and by striking “*except that in*” and insert-
21 ing “*In*”; and

22 (C) by adding at the end of subsection (d)
23 the following: “*If a proceeding under this sub-*
24 *section is transferred to another court of appeals,*

1 *the Director shall have the right to appear in the*
2 *proceeding before such other court.”.*

3 (2) *CONFORMING AMENDMENT.—Paragraph (9)*
4 *of section 1295(a) of title 28, United States Code, is*
5 *repealed.*

6 (3) *APPLICABILITY.—The amendments made by*
7 *this subsection shall apply to petitions filed on or*
8 *after the effective date of this Act.*

9 (c) *AMENDMENTS RELATING TO THE “PASS-*
10 *THROUGH” REQUIREMENT.—Section 1214(a)(3) of title 5,*
11 *United States Code, is amended—*

12 (1) *by adding at the end the following:*
13 *“This paragraph shall not apply with respect to a prohib-*
14 *ited personnel practice described in section 2302(b)(8).”;*

15 (2) *by redesignating subparagraphs (A) and (B)*
16 *as subparagraphs (B) and (C), respectively; and*

17 (3) *by striking the matter before subparagraph*
18 *(B) (as so redesignated by paragraph (2)) and insert-*
19 *ing the following:*

20 *“(3) Except as provided in the last sentence of this*
21 *paragraph, an employee, former employee, or applicant for*
22 *employment may not seek corrective action from the Board*
23 *under section 1221 unless—*

1 “(A) such employee, former employee, or appli-
2 cant has sought corrective action from the Special
3 Counsel under this subchapter;”.

4 (d) *CHOICE OF REMEDIES PROVISION INVOLVING JU-*
5 *DICIAL REVIEW.*—

6 (1) *IN GENERAL.*—Chapter 12 of title 5, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 “SUBCHAPTER IV—JUDICIAL REVIEW

10 **“§ 1231. Judicial review**

11 “(a) Subject to subsection (c) and section 1232, an em-
12 ployee, former employee, or applicant for employment may,
13 with respect to a personnel action taken, or proposed to be
14 taken, against such employee, former employee, or appli-
15 cant for employment, as a result of a prohibited personnel
16 practice described in section 2302(b)(8), bring a civil action
17 in the appropriate district court of the United States for
18 relief. For purposes of the preceding sentence, the term ‘per-
19 sonnel action’ means—

20 “(1) an action under subchapter II of chapter
21 75;

22 “(2) a detail, transfer, or reassignment; and

23 “(3) a reduction in grade or removal under sec-
24 tion 4303.

1 “(b) The district courts of the United States shall have
2 jurisdiction of actions brought under this section without
3 regard to the amount in controversy.

4 “(c) An action under this section—

5 “(1) shall be brought in the district court of the
6 United States for the judicial district in which the
7 prohibited personnel practice is alleged to have been
8 committed, in which the employment records relevant
9 to such practice are maintained and administered, or
10 in which the aggrieved person works or would have
11 worked but for the alleged prohibited personnel prac-
12 tice; and

13 “(2) shall be brought within 120 days after the
14 prohibited personnel practice is alleged to have oc-
15 curred.

16 “(d) REVIEW.—In any action brought under this sec-
17 tion, the court—

18 “(1) shall review the matter de novo; and

19 “(2) shall apply the same standard as would the
20 Merit Systems Protection Board under section
21 1214(b)(4)(B) or 1221(e).

22 **“§ 1232. Choice of remedies**

23 “(a) An action under section 1231—

24 “(1) if brought, shall be in lieu of any remedy
25 described in subsection (b); but

1 “(2) may not be brought if the aggrieved person
2 has elected to raise the same matter under any of the
3 remedies described in subsection (b).

4 “(b) The remedies described in this subsection are as
5 follows:

6 “(1) An appeal to the Merit Systems Protection
7 Board under section 7701.

8 “(2) A negotiated grievance procedure under sec-
9 tion 7121.

10 “(3) Procedures for seeking corrective action
11 under subchapters II and III.

12 “(c) For the purpose of this section, a person shall be
13 considered to have elected—

14 “(1) the remedy described in subsection (b)(1) if
15 such person has timely filed a notice of appeal under
16 the applicable appellate procedures;

17 “(2) the remedy described in subsection (b)(2) if
18 such person has timely filed a grievance in writing,
19 in accordance with the provisions of the parties’ nego-
20 tiated procedure; or

21 “(3) the remedy described in subsection (b)(3) if
22 such person has sought corrective action from the Of-
23 fice of Special Counsel by making an allegation under
24 section 1214(a)(1).

1 “(d) For purposes of subsection (a)(1), a person shall
 2 be considered to have elected the remedy under section 1231
 3 if such person has timely commenced an action in an ap-
 4 propriate court, in accordance with applicable procedures.”.

5 (2) CHAPTER ANALYSIS.—The analysis for chap-
 6 ter 12 of title 5, United States Code, is amended by
 7 striking “Sec.” each place it appears, by inserting
 8 “Sec.” as a flush left item after the item relating to
 9 subchapter I, and by adding at the end the following:

“SUBCHAPTER IV—JUDICIAL REVIEW

“1231. Judicial review.

“1232. Choice of remedies.”.

10 (e) AUTHORITIES WHICH MAY BE EXTENDED TO AR-
 11 BITRATORS.—Section 7121(b) of title 5, United States Code,
 12 is amended—

13 (1) by redesignating subparagraphs (A) through
 14 (C) of paragraph (3) as clauses (i) through (iii), re-
 15 spectively;

16 (2) by redesignating paragraphs (1) through (3)
 17 as subparagraphs (A) through (C), respectively;

18 (3) by striking “(b)” and inserting “(b)(1)”; and

19 (4) by adding at the end the following:

20 “(2)(A) The provisions of a negotiated grievance proce-
 21 dure providing for binding arbitration in accordance with
 22 paragraph (1)(C)(iii) shall, if or to the extent that an al-

1 *leged prohibited personnel practice is involved, allow the ar-*
2 *bitrator to order—*

3 “(i) a stay of any personnel action in a manner
4 similar to the manner described in section 1221(c)
5 with respect to the Merit Systems Protection Board;
6 and

7 “(ii) the taking, by an agency, of any discipli-
8 nary action identified under section 1215(a)(3) that
9 is otherwise within the authority of such agency to
10 take.

11 “(B) Any employee who is the subject of any discipli-
12 nary action ordered under subparagraph (A)(ii) may ap-
13 peal such action to the same extent and in the same manner
14 as if the agency had taken the disciplinary action absent
15 arbitration.”.

16 (f) *CHOICE OF REMEDIES PROVISION NOT INVOLVING*
17 *JUDICIAL REVIEW.—Section 7121 of title 5, United States*
18 *Code, is amended by adding at the end the following:*

19 “(g)(1) This subsection applies with respect to a pro-
20 hibited personnel practice other than a prohibited personnel
21 practice to which subsection (d) applies.

22 “(2) An aggrieved employee affected by a prohibited
23 personnel practice described in paragraph (1) may elect not
24 more than one of the remedies described in paragraph (3)
25 with respect thereto. For purposes of the preceding sentence,

1 *a determination as to whether a particular remedy has been*
2 *elected shall be made in the same way as set forth in section*
3 *1232(c).*

4 “(3) *The remedies described in this paragraph are as*
5 *follows:*

6 “(A) *An appeal to the Merit Systems Protection*
7 *Board under section 7701.*

8 “(B) *A negotiated grievance procedure under this*
9 *section.*

10 “(C) *Procedures for seeking corrective action*
11 *under subchapters II and III of chapter 12.”.*

12 **SEC. 6. PERFORMANCE APPRAISALS.**

13 *Paragraph (5) of section 4313 of title 5, United States*
14 *Code, is amended to read as follows:*

15 “(5) *meeting affirmative action goals, achieve-*
16 *ment of equal employment opportunity requirements,*
17 *and compliance with the merit systems principles set*
18 *forth in section 2301.”.*

19 **SEC. 7. IMPLEMENTATION.**

20 (a) *POLICY STATEMENT.*—*No later than 6 months*
21 *after the date of the enactment of this Act, the Special Coun-*
22 *sel shall issue a policy statement regarding the implementa-*
23 *tion of the amendments made by the Whistleblower Protec-*
24 *tion Act of 1989. Such policy statement shall be made avail-*
25 *able to each person alleging a prohibited personnel practice*

1 *described in section 2302(b) of title 5, United States Code,*
2 *and shall include detailed guidelines identifying specific*
3 *categories of information that may (or may not) be commu-*
4 *nicated to agency officials for an investigative purpose, or*
5 *for the purpose of obtaining corrective action under section*
6 *1214 of title 5, United States Code, or disciplinary action*
7 *under section 1215 of such title, the circumstances under*
8 *which such information is likely to be disclosed, and wheth-*
9 *er or not the consent of any person is required in advance*
10 *of any such communication.*

11 *(b) TERMINATION STATEMENT.—The Special Counsel*
12 *shall include in any written statement under section*
13 *1214(a)(2)(A) of title 5, United States Code, the name and*
14 *telephone number of an employee of the Office of Special*
15 *Counsel who shall be available to respond to reasonable*
16 *questions from the person regarding the investigation in-*
17 *volved, the relevant facts ascertained by the Special Counsel,*
18 *and the law applicable to the person’s allegations.*

19 **SEC. 8. AMENDMENTS RELATING TO ATTORNEY’S FEES.**

20 *(a) CHAPTER 12.—Section 1221(g) of title 5, United*
21 *States Code, is amended by striking “attorney’s fees” each*
22 *place it appears and inserting “fees for legal representa-*
23 *tion”.*

24 *(b) CHAPTER 77.—Section 7701(g) of title 5, United*
25 *States Code, is amended—*

1 (1) by striking “attorney fees” each place it ap-
2 pears and inserting “fees for legal representation”;
3 and

4 (2) in paragraph (1)—

5 (A) by inserting “substantially” before
6 “prevailing”; and

7 (B) by striking “agency or any case in
8 which the agency’s action was clearly without
9 merit.” and inserting “agency, in which the
10 agency’s action was clearly without merit, or
11 which is settled or otherwise similarly resolved.”.

12 **SEC. 9. MSPB RETIREMENT APPEALS EXPENSE AUTHORIZA-**
13 **TION.**

14 (a) *IN GENERAL.*—Section 8348(a) of title 5, United
15 States Code, is amended by striking “and” at the end of
16 paragraph (1), by striking the period at the end of para-
17 graph (2) and inserting “; and”, and by adding at the end
18 the following:

19 “(3) is made available, subject to such annual
20 limitation as the Congress may prescribe, for any ex-
21 penses incurred by the Merit Systems Protection
22 Board in connection with the administration of ap-
23 peals authorized under section 8347(d) or 8461(e).”.

24 (b) *EFFECTIVE DATE.*—The amendments made by sub-
25 section (a) shall take effect on October 1, 1995.

1 **SEC. 10. EFFECTIVE DATE.**

2 (a) *IN GENERAL.*—Except as provided in section 9,
3 *this Act and the amendments made by this Act shall take*
4 *effect 120 days after the date of the enactment of this Act.*

5 (b) *SAVINGS PROVISION.*—No provision of this Act
6 *shall affect any administrative proceeding pending at the*
7 *time such provision takes effect. Orders shall be issued in*
8 *such proceedings and appeals shall be taken therefrom as*
9 *if this Act had not been enacted.*

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