113TH CONGRESS
2D SESSION

S. _____

To amend the National Labor Relations Act to reform the National Labor Relations Board, the Office of the General Counsel, and the process for appellate review, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. ALEXANDER (for himself and Mr. MCCONNELL) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the National Labor Relations Act to reform the National Labor Relations Board, the Office of the General Counsel, and the process for appellate review, 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.

This Act may be cited as the ''National Labor Relations Board Reform Act''.

SEC. 2. NATIONAL LABOR RELATIONS BOARD.

(a) COMPOSITION; TERMS.—Section 3(a) of the National Labor Relations Act (29 U.S.C. 153(a)) is amended—

(1) in the first sentence—

(A) by striking ''prior to its amendment by the National Labor Management Relations Act, 1947,'' and inserting ''prior to its amendment by the National Labor Relations Board Reform Act'';

(B) by striking ''five instead of three members'' and inserting ''6 instead of 5 members''; and

(C) by striking ''appointed by the President by and with the advice and consent of the Senate'' and inserting ''appointed by the President, after consultation with the leader of the Senate representing the party opposing the party of the President, by and with the advice and consent of the Senate'';

(2) by striking the second sentence and inserting the following: ''The sixth member added by the first sentence of this section shall be appointed for a term that expires on the day before the first date on which a full term of another member of the Board commences that is after the date of enact-

ment of the National Labor Relations Board Reform Act. Of the 6 members, there shall be 3 members representing each of the 2 major political parties and, beginning on January 1, 2020, each of the 2 members of the Board whose terms expire on the same date, as established under subsection (e), shall represent a different major political party.''; and

(3) in the fourth sentence (including the amendment made by paragraph (2))—

(A) by striking ''Their successors, and the successors of the other members,'' and inserting ''The successor of such sixth member, and the successors of the other members,'';

(B) by inserting ''(except as otherwise provided during the transition period under subsection (e))'' after ''each''; and

(C) by striking ''he'' and inserting ''the individual''.

(b) AUTHORITY.—Section 3(b) of the National Labor Relations Act (29 U.S.C. 153(b)) is amended—

(1) in the first sentence—

(A) by striking ''three or more'' and inserting ''4 or more''; and

(B) by inserting before the period the following: '', with such group consisting of an

equal number of members representing each major political party''; and

(2) in the third sentence—

(A) by striking ''three members'' and inserting ''4 members''; and

(B) by striking ''Board, except that'' and all that follows through ''hereof.'' and inserting the following: ''Board. Any determination of the Board shall be approved by a majority of the members present.''.

(c) TRANSITION TO IMPROVED STAGGERED TERMS.—Section 3 of the National Labor Relations Act (29 U.S.C. 153) is further amended by adding at the end the following:

''(e) TRANSITION TO IMPROVED STAGGERED TERMS.—Notwithstanding subsection (a) or any other provision of this Act—

''(1) each term of a member of the Board appointed after the date of enactment of the National Labor Relations Board Reform Act and before December 31, 2019, shall terminate on December 31, 2019, or the date on which the term otherwise expires, whichever is earlier, and new terms for all 6 members of the Board shall begin on January 1, 2020; and

''(2) of the 6 members of the Board who are appointed for the terms beginning on January 1, 2020—

''(A) 2 of the members shall be appointed for terms ending on December 31, 2021;

''(B) 2 of the members shall be appointed for terms ending on December 31, 2023; and

''(C) 2 of the members shall be appointed for terms ending on December 31, 2024.''.

SEC. 3. GENERAL COUNSEL.

(a) REVIEW OF GENERAL COUNSEL DECISIONS.—Section 3 of the National Labor Relations Act (29 U.S.C. 153), as amended by section 2, is further amended—

(1) in subsection (d)—

(A) in the second sentence, by striking ''trial examiners'' and inserting ''administrative law judges''; and

(B) in the third sentence, by striking ''He shall'' and inserting ''Subject to subsection (f), the General Counsel shall''; and

(2) by adding at the end the following:

''(f) REVIEW OF GENERAL COUNSEL COMPLAINTS.—

''(1) IN GENERAL.—Any person subject to a complaint that is issued or authorized by the General Counsel under subsection (d) may obtain review

of the complaint in any district court of the United States in the judicial district wherein the unfair labor practice in question was alleged to have occurred, wherein such person resides or transacts business, or in the United States District Court for the District of Columbia, by filing in such court, not later than 30 days after such issuance or authorization, a written petition for review of the complaint. The court may prohibit any further proceedings relating to such complaint if the court determines that the General Counsel does not have substantial evidence that such person has violated this Act.

''(2) DISCOVERY.—Any party to a complaint under paragraph (1) may file a request to the General Counsel to obtain any advice memorandum prepared by an attorney of the Division of Advice of the Office of the General Counsel, any internal memorandum of the Office of the General Counsel, or any other inter-agency or intra-agency memorandum or letter described in section 552(b)(5) of title 5, United States Code, related to the complaint. Not later than 10 days after the filing of such request, the General Counsel shall provide such party the requested memorandum, letter, or document.''.

(b) SALARY.—Section 4(a) of the National Labor Relations Act (29 U.S.C. 154(a)) is amended—

(1) in the first sentence, by striking ''shall receive a salary of $12,000 a year,'' and inserting ''shall be compensated at a level equivalent to level IV of the Executive Schedule, in accordance with section 5315 of title 5, United States Code. The Chairman of the Board shall be compensated at a level equivalent to level III of the Executive Schedule, in accordance with section 5314 of title 5, United States Code. Each member of the Board, the General Counsel, and the Chairman'';

(2) in the fourth sentence, including the amendment made by paragraph (1), by striking ''examiners'' and inserting ''administrative law judges''; and

(3) in the sixth sentence, including the amendment made by paragraph (1)—

(A) by striking ''trial examiner's report'' and inserting ''report of an administrative law judge''; and

(B) by striking ''trial examiner shall advise'' and inserting ''administrative law judge shall advise''.

SEC. 4. FINAL ORDERS; DISCHARGE.

Section 10 of the National Labor Relations Act (29 U.S.C. 160) is amended—

(1) in subsection (c)—

(A) by striking ''before an examiner or examiners thereof'' and inserting ''before an administrative law judge or administrative law judges thereof''; and

(B) by striking ''such examiner or examiners'' and inserting ''such judge or judges''; and

(2) in subsection (d)—

(A) by inserting ''or the Board has issued a final order'' after ''have been filed in a court'';

(B) by striking ''at any time upon reasonable notice'' and inserting '', not later than 1 year after the submission of a report of an administrative law judge, or a decision of a regional director, pertaining to such case or order, upon reasonable notice,''; and

(C) by adding at the end the following: ''The Board shall issue a final order reviewing an appeal of a report of an administrative law judge or decision of a regional director filed within 1 year after such report or decision. If

the Board does not issue a final order within 1 year after the report of an administrative law judge or decision of a regional director, any party to the case may move to discharge the case. Upon such motion, the report of the administrative law judge or decision of the regional director shall be deemed to be a final agency action and the Board may not take further action on the matter under subchapter II of chapter 5 of title 5, United States Code. Any party to the case may obtain review of the order in any court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have occurred, wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, not later than 60 days after the issuance of the order, a written petition for the court to modify or set aside the order of the Board. The court shall review the order de novo.''.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS TO FURTHER EFFECTIVE GOVERNMENT.

The National Labor Relations Act (29 U.S.C. 151 et seq.) is amended by adding at the end the following:

"SEC. 20. AUTHORIZATION OF APPROPRIATIONS TO FURTHER EFFECTIVE GOVERNMENT.

''(a) 2-YEAR DEADLINE.—If, 2 years after the date of enactment of the National Labor Relations Board Reform Act, the Board has failed to issue a final order, in accordance with section 10(d), on more than 90 percent of the cases pending on (or filed on or after) such date of enactment, then the amount authorized to be appropriated to carry out this Act for each of the succeeding 2 fiscal years shall be 80 percent of the average amount so authorized for the prior 2 fiscal years.

''(b) 4-YEAR DEADLINE.—If, 4 years after the date of enactment of the National Labor Relations Board Reform Act, the Board has failed to issue a final order, in accordance with section 10(d), on more than 90 percent of the cases pending on (or filed on or after) the date that is 2 years after the date of such enactment, then the amount authorized to be appropriated to carry out this Act for each succeeding fiscal year shall remain the amount so appropriated for the fiscal year that is 4 years after the date of such enactment.''.