

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1132  
OFFERED BY M . \_\_\_\_\_**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Political Appointee  
3 Burrowing Prevention Act”.

4 **SEC. 2. LIMITATION ON EMPLOYMENT OF POLITICAL AP-  
5 POINTEES IN CAREER CIVIL SERVICE POSI-  
6 TIONS.**

7 (a) IN GENERAL.—Subchapter I of chapter 31 of title  
8 5, United States Code, is amended by adding at the end  
9 the following:

10 **“§ 3115. Employment of political appointees**

11 “(a) APPOINTMENT APPROVAL REQUIRED.—

12 “(1) IN GENERAL.—An individual described in  
13 paragraph (4) may not be appointed to a career po-  
14 sition without receiving prior written approval from  
15 the Director of the Office of Personnel Management  
16 with respect to such appointment, consistent with  
17 the requirements of this subsection.

1           “(2) APPOINTMENT REQUEST.—If the head of  
2           an agency requests the Director to approve the ap-  
3           pointment of any individual described in paragraph  
4           (4) to a career position, the head shall provide to the  
5           Director information, in such form and manner as  
6           the Director may require, to ensure the appointment  
7           process regarding the career position was fair, open,  
8           and free from political influence.

9           “(3) CERTIFICATION.—Prior to approving any  
10          request submitted with respect to an appointment  
11          described under paragraph (2), the Director shall  
12          certify (in writing) to the Committee on Oversight  
13          and Government Reform of the House of Represent-  
14          atives and the Committee on Homeland Security and  
15          Governmental Affairs of the Senate that the ap-  
16          pointment is critical to the agency’s ability to meet  
17          its mission.

18          “(4) COVERED INDIVIDUALS.—An individual  
19          described in this paragraph is—

20                 “(A) a political appointee;

21                 “(B) a former political appointee who held  
22                 any political position during the five-year period  
23                 before the date of the request described in para-  
24                 graph (2); or

1           “(C) at the discretion of the Director, a  
2           former political appointee who held any political  
3           position before the five-year period described in  
4           subparagraph (B).

5           “(b) RESTRICTION ON APPOINTMENT.—

6           “(1) IN GENERAL.—Notwithstanding any other  
7           law, rule, or regulation, during the 2-year period fol-  
8           lowing the date a political appointee separates from  
9           a political position, such appointee may not be ap-  
10          pointed to any career position in the civil service.

11          “(2) EXCEPTION.—Paragraph (1) shall not  
12          apply to a political appointee who has not personally  
13          and substantially participated in any particular mat-  
14          ter while employed in a political position.

15          “(c) APPLICATION.—Nothing in this section shall be  
16          construed to restrict the appointment of an individual who  
17          is—

18                 “(1) entitled to reinstatement under section  
19                 3593(b); or

20                 “(2) eligible for reinstatement under section  
21                 3593(a).

22          “(d) DEFINITIONS.—In this section—

23                 “(1) the term ‘agency’ has the meaning given  
24                 the term ‘Executive agency’ in section 105;

1           “(2) the term ‘political appointee’ means an in-  
2           dividual serving in an appointment of any duration  
3           to a political position;

4           “(3) the term ‘political position’ means—

5                   “(A) a position which has been excepted  
6                   from the competitive service by reason of its  
7                   confidential, policy-determining, policy-making,  
8                   or policy-advocating character;

9                   “(B) a position described under sections  
10                  5312 through 5316 (relating to the Executive  
11                  Schedule); and

12                  “(C) a general position in the Senior Exec-  
13                  utive Service during such time as it is filled  
14                  by—

15                          “(i) a noncareer appointee, as defined  
16                          in paragraph (7) of section 3132(a); or

17                          “(ii) a limited term appointee or lim-  
18                          ited emergency appointee, as defined in  
19                          paragraphs (5) and (6) of section 3132(a),  
20                          who is serving under a political appoint-  
21                          ment.

22           “(4) the term ‘career position’ means—

23                   “(A) a position in the competitive service  
24                   filled by career or career-conditional appoint-  
25                   ment;

1           “(B) a position in the excepted service  
2           filled by an appointment of equivalent tenure as  
3           a position described in subparagraph (A);

4           “(C) a career reserved position, as defined  
5           in paragraph (8) of section 3132(a), in the Sen-  
6           ior Executive Service; or

7           “(D) a general position in the Senior Exec-  
8           utive Service when filled by a career appointee,  
9           as defined in section 3132(a)(4);

10          “(5) the term ‘participated’ means an action  
11          taken as an officer or employee through decision, ap-  
12          proval, disapproval, recommendation, the rendering  
13          of advice, investigation, or other such action; and

14          “(6) the term ‘particular matter’ includes any  
15          investigation, application, request for a ruling or de-  
16          termination, rulemaking, contract, controversy,  
17          claim, charge, accusation, arrest, or judicial or other  
18          proceeding.”.

19          (b) CLERICAL AMENDMENT.—The table of sections  
20          of chapter 31 of title 5, United States Code, is amended  
21          by adding after the item relating to section 3114 the fol-  
22          lowing:

          “3115. Employment of political appointees.”.

23          (c) APPLICATION.—

24                 (1) APPOINTMENT REQUESTS.—Section  
25          3115(a) of title 5, United States Code, as added by

1 subsection (a), shall apply to any appointment or re-  
2 quest for appointment described in such section sub-  
3 mitted to the Office of Personnel Management after  
4 the date of enactment of this Act.

5 (2) LIMITATION ON APPOINTMENTS.—Section  
6 3115(b) of title 5, United States Code, as added by  
7 subsection (a), shall apply to any individual who sep-  
8 arates from a political position (as that term is de-  
9 fined in section 3115(c)(2) of such title, as added by  
10 such subsection) after the date of enactment of this  
11 Act.

12 (d) REGULATIONS REQUIRED.—The Director of the  
13 Office of Personnel Management shall issue such regula-  
14 tions as are necessary to define the term “personally and  
15 substantially participated” as such term is used in section  
16 3115(b)(2) of title 5, United States Code, as added by  
17 subsection (a).

