AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1132
OFFERED BY M__.

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. LIMITATION ON EMPLOYMENT OF POLITICAL APPOINTEES IN CAREER CIVIL SERVICE POSITIONS.

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

“§ 3115. Employment of political appointees
“(a) APPOINTMENT APPROVAL REQUIRED.—
“(1) IN GENERAL.—An individual described in paragraph (4) may not be appointed to a career position without receiving prior written approval from the Director of the Office of Personnel Management with respect to such appointment, consistent with the requirements of this subsection.
“(2) APPOINTMENT REQUEST.—If the head of an agency requests the Director to approve the appointment of any individual described in paragraph (4) to a career position, the head shall provide to the Director information, in such form and manner as the Director may require, to ensure the appointment process regarding the career position was fair, open, and free from political influence.

“(3) CERTIFICATION.—Prior to approving any request submitted with respect to an appointment described under paragraph (2), the Director shall certify (in writing) to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate that the appointment is critical to the agency’s ability to meet its mission.

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

“(A) a political appointee;

“(B) a former political appointee who held any political position during the five-year period before the date of the request described in paragraph (2); or
“(C) at the discretion of the Director, a
former political appointee who held any political
position before the five-year period described in
subparagraph (B).

“(b) Restriction on Appointment.—

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

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

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

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

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

“(d) Definitions.—In this section—

“(1) the term ‘agency’ has the meaning given
the term ‘Executive agency’ in section 105;
“(2) the term ‘political appointee’ means an individual serving in an appointment of any duration to a political position;

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

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

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

“(C) a general position in the Senior Executive Service during such time as it is filled by—

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

“(ii) a limited term appointee or limited emergency appointee, as defined in paragraphs (5) and (6) of section 3132(a), who is serving under a political appointment.

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

“(A) a position in the competitive service filled by career or career-conditional appointment;
“(B) a position in the excepted service filled by an appointment of equivalent tenure as a position described in subparagraph (A); “(C) a career reserved position, as defined in paragraph (8) of section 3132(a), in the Senior Executive Service; or “(D) a general position in the Senior Executive Service when filled by a career appointee, as defined in section 3132(a)(4); “(5) the term ‘participated’ means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and “(6) the term ‘particular matter’ includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.”.

(b) CLERICAL AMENDMENT.—The table of sections of chapter 31 of title 5, United States Code, is amended by adding after the item relating to section 3114 the following:

“3115. Employment of political appointees.”.

c) APPLICATION.— 

(1) APPOINTMENT REQUESTS.—Section 3115(a) of title 5, United States Code, as added by
subsection (a), shall apply to any appointment or request for appointment described in such section submitted to the Office of Personnel Management after the date of enactment of this Act.

(2) LIMITATION ON APPOINTMENTS.—Section 3115(b) of title 5, United States Code, as added by subsection (a), shall apply to any individual who separates from a political position (as that term is defined in section 3115(c)(2) of such title, as added by such subsection) after the date of enactment of this Act.

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