

Calendar No. 254

116TH CONGRESS
1ST SESSION

S. 607

[Report No. 116-134]

To amend the Department of Energy Organization Act to address insufficient compensation of employees and other personnel of the Federal Energy Regulatory Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2019

Mr. CASSIDY (for himself, Mr. GARDNER, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

OCTOBER 22, 2019

Reported by Ms. MURKOWSKI, with an amendment

[Insert the part printed in italic]

A BILL

To amend the Department of Energy Organization Act to address insufficient compensation of employees and other personnel of the Federal Energy Regulatory Commission, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Timely Review of In-
3 frastructure Act”.

4 **SEC. 2. ADDRESSING INSUFFICIENT COMPENSATION OF**
5 **EMPLOYEES AND OTHER PERSONNEL OF THE**
6 **FEDERAL ENERGY REGULATORY COMMIS-**
7 **SION.**

8 (a) IN GENERAL.—Section 401 of the Department of
9 Energy Organization Act (42 U.S.C. 7171) is amended
10 by adding at the end the following:

11 “(k) ADDRESSING INSUFFICIENT COMPENSATION OF
12 EMPLOYEES AND OTHER PERSONNEL OF THE COMMIS-
13 SION.—

14 “(1) IN GENERAL.—Notwithstanding any other
15 provision of law, if the Chairman publicly certifies
16 that compensation for a category of employees or
17 other personnel of the Commission is insufficient to
18 retain or attract employees and other personnel to
19 allow the Commission to carry out the functions of
20 the Commission in a timely, efficient, and effective
21 manner, the Chairman may fix the compensation for
22 the category of employees or other personnel without
23 regard to chapter 51 and subchapter III of chapter
24 53 of title 5, United States Code, or any other civil
25 service law.

1 “(2) CERTIFICATION REQUIREMENTS.—A cer-
2 tification issued under paragraph (1) shall—

3 “(A) apply with respect to a category of
4 employees or other personnel responsible for
5 conducting work of a scientific, technological,
6 engineering, or mathematical nature;

7 “(B) specify a maximum amount of rea-
8 sonable compensation for the category of em-
9 ployees or other personnel;

10 “(C) be valid for a 5-year period beginning
11 on the date on which the certification is issued;

12 “(D) be no broader than necessary to
13 achieve the objective of retaining or attracting
14 employees and other personnel to allow the
15 Commission to carry out the functions of the
16 Commission in a timely, efficient, and effective
17 manner; and

18 “(E) include an explanation for why the
19 other approaches available to the Chairman for
20 retaining and attracting employees and other
21 personnel are inadequate.

22 “(3) RENEWAL.—

23 “(A) IN GENERAL.—Not later than 90
24 days before the date of expiration of a certifi-
25 cation issued under paragraph (1), the Chair-

1 man shall determine whether the certification
2 should be renewed for a subsequent 5-year pe-
3 riod.

4 “(B) REQUIREMENT.—If the Chairman de-
5 termines that a certification should be renewed
6 under subparagraph (A), the Chairman may
7 renew the certification, subject to the certifi-
8 cation requirements under paragraph (2) that
9 were applicable to the initial certification.

10 “(4) NEW HIRES.—

11 “(A) IN GENERAL.—An employee or other
12 personnel that is a member of a category of em-
13 ployees or other personnel that would have been
14 covered by a certification issued under para-
15 graph (1), but was hired during a period in
16 which the certification has expired and has not
17 been renewed under paragraph (3) shall not be
18 eligible for compensation at the level that would
19 have applied to the employee or other personnel
20 if the certification had been in effect on the
21 date on which the employee or other personnel
22 was hired.

23 “(B) COMPENSATION OF NEW HIRES ON
24 RENEWAL.—On renewal of a certification under
25 paragraph (3), the Chairman may fix the com-

1 pensation of the employees or other personnel
2 described in subparagraph (A) at the level es-
3 tablished for the category of employees or other
4 personnel in the certification.

5 “(5) RETENTION OF LEVEL OF FIXED COM-
6 PENSATION.—A category of employees or other per-
7 sonnel, the compensation of which was fixed by the
8 Chairman in accordance with paragraph (1), may, at
9 the discretion of the Chairman, have the level of
10 fixed compensation for the category of employees or
11 other personnel retained, regardless of whether a
12 certification described under that paragraph is in ef-
13 fect with respect to the compensation of the category
14 of employees or other personnel.

15 “(6) CONSULTATION REQUIRED.—The Chair-
16 man shall consult with the Director of the Office of
17 Personnel Management in implementing this sub-
18 section, including in the determination of the
19 amount of compensation with respect to each cat-
20 egory of employees or other personnel.

21 “(7) EXPERTS AND CONSULTANTS.—

22 “(A) IN GENERAL.—Subject to subpara-
23 graph (B), the Chairman may—

1 “(i) obtain the services of experts and
2 consultants in accordance with section
3 3109 of title 5, United States Code;

4 “(ii) compensate those experts and
5 consultants for each day (including travel
6 time) at rates not in excess of the rate of
7 pay for level IV of the Executive Schedule
8 under section 5315 of that title; and

9 “(iii) pay to the experts and consult-
10 ants serving away from the homes or reg-
11 ular places of business of the experts and
12 consultants travel expenses and per diem
13 in lieu of subsistence at rates authorized
14 by sections 5702 and 5703 of that title for
15 persons in Government service employed
16 intermittently.

17 “(B) LIMITATIONS.—The Chairman
18 shall—

19 “(i) to the maximum extent prac-
20 ticable, limit the use of experts and con-
21 sultants pursuant to subparagraph (A);
22 and

23 “(ii) ensure that the employment con-
24 tract of each expert and consultant em-
25 ployed pursuant to subparagraph (A) is

1 subject to renewal not less frequently than
2 annually.”.

3 (b) REPORTS.—

4 (1) IN GENERAL.—Not later than 1 year after
5 the date of enactment of this Act, and every 2 years
6 thereafter for 10 years, the Chairman of the Federal
7 Energy Regulatory Commission shall submit to the
8 Committee on Energy and Commerce of the House
9 of Representatives and the Committee on Energy
10 and Natural Resources of the Senate a report on in-
11 formation relating to hiring, vacancies, and com-
12 pensation at the Federal Energy Regulatory Com-
13 mission.

14 (2) INCLUSIONS.—Each report under para-
15 graph (1) shall include—

16 (A) an analysis of any trends with respect
17 to hiring, vacancies, and compensation at the
18 Federal Energy Regulatory Commission; and

19 (B) a description of the efforts to retain
20 and attract employees or other personnel re-
21 sponsible for conducting work of a scientific,
22 technological, engineering, or mathematical na-
23 ture at the Federal Energy Regulatory Com-
24 mission.

1 (c) APPLICABILITY.—The amendment made by sub-
2 section (a) shall apply beginning on the date that is 30
3 days after the date of enactment of this Act.

4 **SEC. 3. REPORT ON THE AUTHORITY OF THE SECRETARY**
5 **OF ENERGY TO IMPLEMENT FLEXIBLE COM-**
6 **PENSATION MODELS.**

7 *Not later than 180 days after the date of enactment*
8 *of this Act, the Secretary of Energy shall submit to Congress*
9 *a report examining the full scope of the hiring authority*
10 *made available to the Secretary by the Office of Personnel*
11 *Management to implement flexible compensation models,*
12 *including pay for performance and pay banding, through-*
13 *out the Department of Energy, including at the National*
14 *Laboratories, for the purposes of hiring, recruiting, and re-*
15 *taining employees responsible for conducting work of a sci-*
16 *entific, technological, engineering, or mathematical nature.*

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