

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4892

To make certain laws applicable to the legislative branch of the Federal Government.

---

## IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 1994

Mr. MOAKLEY introduced the following bill; which was referred jointly to the Committees on House Administration, Education and Labor, Government Operations, Rules, and the Judiciary

---

## A BILL

To make certain laws applicable to the legislative branch of the Federal Government.

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. SHORT TITLE.**

4       This Act may be cited as the “Congressional Ac-  
5       countability Act”.

6       **SEC. 2. DEFINITIONS.**

7       As used in this Act:

8               (1) CONGRESSIONAL EMPLOYEE.—The term  
9       “congressional employee” means—

1 (A) an individual on the payroll of an em-  
2 ploying office of the House of Representatives;

3 (B) an individual on the payroll of an em-  
4 ploying office of the Senate;

5 (C) an individual on the payroll of an em-  
6 ploying office of the Architect of the Capitol;  
7 and

8 (D) an individual on the payroll of an em-  
9 ploying office of an instrumentality.

10 (2) EMPLOYEE IN THE HOUSE OF REPRESENT-  
11 ATIVES.—The term “individual on the payroll of an  
12 employing office in the House of Representatives”  
13 means—

14 (A) an individual who is covered under rule  
15 LI of the House of Representatives, as in effect  
16 on the day before the date of enactment of this  
17 Act;

18 (B) any applicant for a position that is to  
19 be occupied by an individual described in sub-  
20 paragraph (A); or

21 (C) any individual who was formerly an  
22 employee described in subparagraph (A) and  
23 whose claim of a violation arises out of the indi-  
24 vidual’s employment.

1           (3) EMPLOYEE IN THE SENATE.—The term  
2 “individual on the payroll of an employing office in  
3 the Senate” means—

4           (A) any employee whose pay is disbursed  
5 by the Secretary of the Senate;

6           (B) any applicant for a position that is to  
7 be occupied by an individual described in sub-  
8 paragraph (A)); or

9           (C) any individual who was formerly an  
10 employee described in subparagraph (A) and  
11 whose claim of a violation arises out of the indi-  
12 vidual’s employment.

13           (4) EMPLOYEE OF THE ARCHITECT OF THE  
14 CAPITOL.—The term “individual on the payroll of an  
15 employing office of the Architect of the Capitol”  
16 means—

17           (A) an employee of the Architect of the  
18 Capitol or an individual within the administra-  
19 tive jurisdiction of the Architect of the Capitol  
20 if such employee or individual is paid from  
21 funds under a law providing appropriations for  
22 the legislative branch;

23           (B) any applicant for a position that is to  
24 be occupied by an employee or individual de-  
25 scribed in subparagraph (A); or

1           (C) any individual who was formerly an  
2           employee or individual described in subpara-  
3           graph (A) and whose claim of a violation arises  
4           out of the individual’s employment.

5           (5) EMPLOYEE OF AN INSTRUMENTALITY.—  
6           The term “individual on the payroll of an employing  
7           office of an instrumentality” means—

8                   (A) any individual on the payroll of an in-  
9                   strumentality of the legislative branch of the  
10                  Federal Government;

11                   (B) any applicant for a position that is to  
12                   be occupied by an individual described in sub-  
13                   paragraph (A); or

14                   (C) any individual who was formerly an  
15                   employee described in subparagraph (A) and  
16                   whose claim of a violation arises out of the indi-  
17                   vidual’s instrumentality employment.

18           (6) HEAD OF AN EMPLOYING OFFICE.—The  
19           term “head of an employing office” means the indi-  
20           vidual who has final authority to appoint, hire, dis-  
21           charge, and set the terms, conditions, or privileges  
22           of the Congressional employment of an employee.

1 **SEC. 3. APPLICATION OF LAWS.**

2 (a) LAWS WHICH WILL APPLY.—The following laws  
3 shall apply, as prescribed by this subsection, to the legisla-  
4 tive branch of the Federal Government:

5 (1) The Fair Labor Standards Act of 1938 (29  
6 U.S.C. 201 et seq.), effective on the earlier of the ef-  
7 fective date of applicable regulations of the Office of  
8 Compliance under section 5 or 1 year after the date  
9 of the enactment of this Act.

10 (2) Title VII of the Civil Rights Act of 1964  
11 (42 U.S.C. 2000e et seq.), effective on the earlier of  
12 the effective date of applicable regulations of the Of-  
13 fice of Compliance under section 5 or 1 year after  
14 the date of the enactment of this Act.

15 (3) The Americans With Disabilities Act of  
16 1990 (42 U.S.C. 12101 et seq.), effective on the ear-  
17 lier of the effective date of applicable regulations of  
18 the Office of Compliance under section 5 or 1 year  
19 after the date of the enactment of this Act.

20 (4) The Age Discrimination in Employment Act  
21 of 1967 (29 U.S.C. 621 et seq.) (including remedies  
22 available to private employees), effective on the ear-  
23 lier of the effective date of applicable regulations of  
24 the Office of Compliance under section 5 or 1 year  
25 after the date of the enactment of this Act.

1           (5) Titles I and V of the Family and Medical  
2           Leave Act of 1993 (29 U.S.C. 2611 et seq.), effec-  
3           tive on the earlier of the effective date of applicable  
4           regulations of the Office of Compliance under sec-  
5           tion 5 or 1 year after the date of the enactment of  
6           this Act.

7           (6) The Occupational Safety and Health Act of  
8           1970 (other than section 19) (29 U.S.C. 651 et seq.)  
9           (subject to subsection (c)), effective on the earlier of  
10          the effective date of applicable regulations of the Of-  
11          fice of Compliance under section 5 or 2 years after  
12          the date of the enactment of this Act.

13          (7) Chapter 71 (relating to Federal labor man-  
14          agement relations) of title 5, United States Code, ef-  
15          fective on the earlier of the effective date of applica-  
16          ble regulations of the Office of Compliance under  
17          section 5 or 2 years after the date of the enactment  
18          of this Act.

19          (8) The Employee Polygraph Protection Act of  
20          1988 (29 U.S.C. 2001 et seq.), effective on the ear-  
21          lier of the effective date of applicable regulations of  
22          the Office of Compliance under section 5 or 1 year  
23          after the date of the enactment of this Act, except  
24          that this Act shall not apply to the United States  
25          Capitol Police.

1           (9) The Worker Adjustment and Retraining  
2           Notification Act (29 U.S.C. 2101 et seq.), effective  
3           on the earlier of the effective date of applicable regu-  
4           lations of the Office of Compliance under section 5  
5           or 1 year after the date of the enactment of this  
6           Act.

7           (10) The Rehabilitation Act of 1973 (29 U.S.C.  
8           791), effective on the earlier of the effective date of  
9           applicable regulations of the Office of Compliance  
10          under section 5 or 1 year after the date of the enact-  
11          ment of this Act.

12       The laws referred to in this subsection which apply now  
13       to congressional employees shall continue to apply to such  
14       employees until the effective date such laws are made ap-  
15       plicable in accordance with this subsection.

16       (b) LAWS WHICH MAY BE MADE APPLICABLE.—Any  
17       provision of Federal law shall, to the extent that it relates  
18       to the terms and conditions of employment (including hir-  
19       ing, promotion or demotion, salary and wages, overtime  
20       compensation, benefits, work assignments or  
21       reassignments, termination, protection from discrimina-  
22       tion in personnel actions, health and safety of employees,  
23       and family and medical leave) of employees apply to the  
24       legislative branch of the Federal Government in accord-  
25       ance with section 5.

1 (c) COMPLIANCE WITH OSHA.—The legislative  
2 branch of the Federal Government shall comply with the  
3 Occupational Safety and Health Act of 1970 as follows:  
4 If a citation of a violation of such Act is received, action  
5 to abate the violation shall take place as soon as possible,  
6 but no later than the fiscal year following the fiscal year  
7 in which the citation is issued.

8 **SEC. 4. OFFICE OF COMPLIANCE.**

9 (a) ESTABLISHMENT.—There is established in the  
10 legislative branch an Office of Compliance (hereinafter in  
11 this Act referred to as the “Office”).

12 (b) COMPOSITION.—

13 (1) BOARD OF DIRECTORS.—The Office shall  
14 have a Board of Directors. The Board of Directors  
15 shall consist of 8 individuals appointed jointly by the  
16 Speaker of the House of Representatives, the Major-  
17 ity Leader of the Senate, and the Minority Leaders  
18 of the House of Representatives and the Senate. Ap-  
19 pointments of the first 8 members of the Board of  
20 Directors shall be completed not later than 120 days  
21 after the date of the enactment of this Act.

22 (2) EXECUTIVE DIRECTOR.—The Chairperson  
23 of the Board of Directors shall—

24 (A) appoint,

25 (B) establish the compensation of, and

1 (C) terminate,  
2 an executive director (referred to in this Act as the  
3 “executive director”), subject to the approval of the  
4 Board of Directors. The compensation of the execu-  
5 tive director may not exceed the annual rate of basic  
6 pay prescribed for level V of the Executive Schedule  
7 under section 5316 of title 5, United States Code.

8 (c) BOARD OF DIRECTORS QUALIFICATIONS.—

9 (1) IN GENERAL.—The members of the Board  
10 of Directors shall be individuals with training or ex-  
11 pertise in—

12 (A) the application of the laws referred to  
13 in section 3 to employment, and

14 (B) employment in the Congress.

15 (2) SPECIFIC QUALIFICATIONS.—

16 (A) LOBBYING.—No individual who en-  
17 gages in, or is otherwise employed in, lobbying  
18 of the Congress and who is required under the  
19 Federal Regulation of Lobbying Act to register  
20 with the Clerk of the House of Representatives  
21 or the Secretary of the Senate shall be consid-  
22 ered eligible for appointment to, or service on,  
23 the Board of Directors.

24 (B) OFFICE.—No member of the Board of  
25 Directors appointed under subsection (b)(1)

1           may hold or may have held the position of  
2           Member of the House of Representatives, Sen-  
3           ator, or employee of the House of Representa-  
4           tives or the Senate.

5           (3) HOLDING OFFICE.—If during a term of of-  
6           fice a member of the Board of Directors engages in  
7           an activity described in paragraph (2)(A), such posi-  
8           tion shall be declared vacant and a successor shall  
9           be selected in accordance with subsection (b)(1).

10           (4) VACANCIES.—A vacancy in the Board of  
11           Directors shall be filled in the manner in which the  
12           original appointment was made.

13           (d) BOARD OF DIRECTORS TERM OF OFFICE.—

14           (1) IN GENERAL.—Except as provided in para-  
15           graph (2), membership on the Board of Directors  
16           shall be for 5 years. A member shall only be eligible  
17           for appointment for a single term of office.

18           (2) FIRST APPOINTMENTS.—Of the members  
19           first appointed to the Board of Directors—

20                   (A) 2 shall have a term of office of 2  
21                   years,

22                   (B) 2 shall have a term of office of 3  
23                   years,

24                   (C) 2 shall have a term of office of 4  
25                   years, and

1                   (D) 2 shall have a term of office of 5  
2                   years,  
3                   as designated at the time of appointment by the per-  
4                   sons specified in subsection (b)(1).

5                   (e) CHAIRPERSON.—The Chairperson of the Board of  
6 Directors shall be appointed from the members of the  
7 Board of Directors by the members of the Board.

8                   (f) COMPENSATION OF MEMBERS.—

9                   (1) PER DIEM.—Each member of the Board of  
10 Directors shall be compensated at a rate equal to  
11 the daily equivalent of the annual rate of basic pay  
12 prescribed for level V of the Executive Schedule  
13 under section 5316 of title 5, United States Code,  
14 for each day (including travel time) during which  
15 such member is engaged in the performance of the  
16 duties of the Board.

17                   (2) TRAVEL EXPENSES.—Each member of the  
18 Board of Directors shall receive travel expenses, in-  
19 cluding per diem in lieu of subsistence, at rates au-  
20 thorized for employees of agencies under subchapter  
21 I of chapter 57 of title 5, United States Code, for  
22 each day the member is engaged in the performance  
23 of duties away from the home or regular place of  
24 business of the member.

1 (g) OFFICE STAFF.—The executive director may ap-  
2 point and fix the compensation of such staff, including  
3 hearing officers, as are necessary to carry out this Act.

4 (h) DETAILEES.—The executive director may, with  
5 the prior consent of the Government department or agency  
6 concerned, use the services of any such department or  
7 agency, including the services of members or personnel of  
8 the General Accounting Office Personnel Appeals Board.

9 (i) CONSULTANTS.—In carrying out this Act, the ex-  
10 ecutive director may procure the temporary (not to exceed  
11 1 year) or intermittent services of individual consultants  
12 or organizations thereof.

13 **SEC. 5. STUDY AND REGULATIONS.**

14 (a) INITIAL ACTION.—

15 (1) IN GENERAL.—The Board of Directors shall  
16 conduct a study of the manner in which the laws  
17 made applicable to the legislative branch of the Fed-  
18 eral Government under section 3(a) should apply.  
19 The Board of Directors shall complete such study  
20 and report the results to Congress not later than  
21 180 days after the date of the first appointment of  
22 all the members of the Board of Directors.

23 (2) INSTRUMENTALITIES.—The Board of Direc-  
24 tors shall include in its study under paragraph (1)  
25 an examination of the procedures used by the instru-

1       mentalities to enforce the application of laws appli-  
2       cable to the legislative branch of the Federal Gov-  
3       ernment and a determination as to whether to direct  
4       the instrumentality to make improvements in its reg-  
5       ulations and procedures so as to assure that proce-  
6       dures as effective as the procedures set forth in sec-  
7       tions 7 through 12 will apply. If the instrumentality  
8       has no such regulations and procedures, the Board  
9       may direct the instrumentality to adopt the requisite  
10      regulations and procedures, or, if deemed necessary,  
11      in lieu thereof may itself adopt regulations pursuant  
12      to this section or authorize use of the procedures  
13      pursuant to sections 7 through 12.

14      (b) CONTINUING ACTION.—On an ongoing basis the  
15      Board of Directors—

16              (1) shall determine which of the laws referred  
17              to in section 3(b) should apply to the legislative  
18              branch of the Federal Government and if it should,  
19              the manner in which it should be made applicable;

20              (2) shall study the application to the legislative  
21              branch of the Federal Government of provisions of  
22              Federal law referred to in section 3 that are enacted  
23              after the date of the enactment of this Act; and

24              (3) may propose regulations with respect to  
25              such application in accordance with subsection (c).

1 (c) REGULATIONS.—

2 (1) LAWS MADE APPLICABLE.—

3 (A) GENERAL RULE.—Not later than 180  
4 days after the date of the completion of the  
5 study under subsection (a), the Board of Direc-  
6 tors shall, in accordance with section 553 of  
7 title 5, United States Code, propose regulations  
8 that specify the manner in which the laws made  
9 applicable to the legislative branch of the Fed-  
10 eral Government under section 3(a) shall apply.  
11 The Board of Directors shall provide a period  
12 of at least 30 days for comment on the pro-  
13 posed regulations.

14 (B) CONGRESSIONAL NOTICE.— In addi-  
15 tion to publishing a general notice of proposed  
16 rulemaking under section 553(b) of title 5,  
17 United States Code, the Board of Directors  
18 shall concurrently submit such notice for publi-  
19 cation in the Congressional Record.

20 (C) AMENDMENTS AND REPEALS.—When  
21 proposing regulations under subparagraph (A)  
22 specifying the manner in which a law referred  
23 to in section 3(a) shall apply to the legislative  
24 branch of the Federal Government, the Board  
25 of Directors shall recommend to the Congress

1 changes in or repeals of existing law to accom-  
2 modate the application of such law to the legis-  
3 lative branch of the Federal Government.

4 (D) FINAL REGULATIONS.—The Board of  
5 Directors shall, in accordance with such section  
6 553, issue final regulations not later than 60  
7 days after the end of the comment period on  
8 the proposed regulations.

9 (2) CONTINUING ACTION.—

10 (A) GENERAL RULE.—Not later than 180  
11 days after the date of the completion of the  
12 study or a determination under subsection (b),  
13 the Board of Directors shall, in accordance with  
14 section 553 of title 5, United States Code, pro-  
15 pose regulations that specify which of the provi-  
16 sions of Federal law considered in such study  
17 shall apply to the legislative branch of the Fed-  
18 eral Government. The Board of Directors shall  
19 provide a period of at least 30 days for com-  
20 ment on the proposed regulations.

21 (B) CONGRESSIONAL NOTICE.— In addi-  
22 tion to publishing a general notice of proposed  
23 rulemaking under section 553(b) of title 5,  
24 United States Code, the Board of Directors

1 shall concurrently submit such notice for publi-  
2 cation in the Congressional Record.

3 (C) AMENDMENTS AND REPEALS.—When  
4 proposing regulations under subparagraph (A)  
5 specifying which of the provisions of Federal  
6 law referred to in section 3(b) shall apply to the  
7 legislative branch of the Federal Government,  
8 the Board of Directors shall recommend to the  
9 Congress changes in or repeals of existing law  
10 to accommodate the application of such law to  
11 the legislative branch of the Federal Govern-  
12 ment.

13 (D) FINAL REGULATIONS.— The Board of  
14 Directors shall, in accordance with such section  
15 553, issue final regulations not later than 60  
16 days after the end of the comment period on  
17 the proposed regulations.

18 (3) REGULATION REQUIREMENTS.—Regulations  
19 under paragraphs (1) and (2) shall be consistent  
20 with the regulations issued by an agency of the exec-  
21 utive branch of the Federal Government under the  
22 provision of law made applicable to the legislative  
23 branch of the Federal Government, including por-  
24 tions relating to remedies.

1 (d) TRANSMITTAL.—A final regulation issued under  
2 subsection (c) shall be transmitted to the Congress for  
3 consideration under subsection (e).

4 (e) TAKING EFFECT OF REGULATIONS.—

5 (1) GENERAL RULE.—Subject to subsection (f),  
6 a final regulation which is issued under subsection  
7 (c) shall take effect upon the expiration of 60 days  
8 from the date the final regulation is issued unless  
9 disapproved by the Congress by concurrent resolu-  
10 tion.

11 (2) CONCURRENT RESOLUTION.—A concurrent  
12 resolution referred to in paragraph (1) may be intro-  
13 duced in the House of Representatives or the Senate  
14 within 5 days of session after the date on which the  
15 Board of Directors issues the final regulation to  
16 which the concurrent resolution applies. The matter  
17 after the resolving clause of the resolution shall be  
18 as follows: “That Congress disapproves the issuance  
19 of final regulations of the Office of Compliance as is-  
20 sued on \_\_\_\_\_ (the blank space being ap-  
21 propriately filled in).”.

22 (3) PROCEDURE.—A concurrent resolution re-  
23 ferred to in paragraph (1) shall be referred to the  
24 appropriate committee of the House involved. If no  
25 concurrent resolution is reported within 15 days of

1 session after the Board of Directors issues final reg-  
2 ulations under subsection (c)(1)(D) or (c)(2)(D), the  
3 committee to which the concurrent resolution was  
4 referred shall be discharged from further consider-  
5 ation of the first such concurrent resolution intro-  
6 duced and the concurrent resolution shall be placed  
7 on the appropriate calendar of the House involved.  
8 Within 5 days of session after the concurrent resolu-  
9 tion is reported or discharged, it shall be in order as  
10 a matter of highest privilege to move to proceed to  
11 its consideration and such motion shall not be debat-  
12 able. The concurrent resolution shall be debatable  
13 for not to exceed 4 hours equally divided between  
14 proponents and opponents and it shall not be subject  
15 to amendment. If, prior to the adoption of a concur-  
16 rent resolution by one House, that House receives a  
17 concurrent resolution of the other House with re-  
18 spect to the same regulations, then the procedure in  
19 that House shall be the same as if no concurrent  
20 resolution had been received from the other House,  
21 but vote on final adoption shall be on the concurrent  
22 resolution of the other House. If a concurrent reso-  
23 lution is received by a House in which no identical  
24 concurrent resolution has been introduced, it shall  
25 be referred to the appropriate committee and the

1 same procedures and 20-day period for action shall  
2 apply to the consideration of the concurrent resolu-  
3 tion by that House as would apply to an introduced  
4 concurrent resolution.

5 (f) RULEMAKING POWER.—The provisions of sub-  
6 section (e) of this section are enacted by the Congress—

7 (1) as an exercise of the rulemaking power of  
8 the House of Representatives and the Senate, re-  
9 spectively, and as such they shall be considered as  
10 part of the rules of each House, respectively, or of  
11 that House to which they specifically apply, and  
12 such rules shall supersede other rules only to the ex-  
13 tent that they are inconsistent therewith; and

14 (2) with full recognition of the constitutional  
15 right of either House to change such rules (so far  
16 as relating to such House) at any time, in the same  
17 manner, and to the same extent as in the case of  
18 any other rule of such House.

19 **SEC. 6. OTHER FUNCTIONS.**

20 (a) RULES OF THE OFFICE.—The executive director  
21 shall adopt rules governing the procedures of the Office,  
22 including the procedures of hearing boards, which shall be  
23 submitted for publication in the Congressional Record.  
24 The rules may be amended in the same manner. The exec-  
25 utive director may consult with the Chairman of the Ad-

1 ministrative Conference of the United States, the Legal  
2 Counsel of the Senate, and the General Counsel of the  
3 House of Representatives on the adoption of rules.

4 (b) INVESTIGATIVE AUTHORITY.—The executive di-  
5 rector shall have authority to conduct such investigations  
6 as the executive director requires to implement sections  
7 8 through 10 and section 12.

8 (c) DUTIES.—The Office shall—

9 (1) carry out a program of education for Mem-  
10 bers of Congress and other employing authorities of  
11 the legislative branch of the Federal Government re-  
12 specting the laws made applicable to them and a  
13 program to inform individuals of their rights under  
14 laws applicable to the legislative branch of the Fed-  
15 eral Government and under sections 7 through 12,

16 (2) in carrying out the program under para-  
17 graph (1), distribute the telephone number and ad-  
18 dress of the Office, procedures for action under sec-  
19 tions 7 through 12, and any other information the  
20 executive director deems appropriate for distribution,  
21 distribute such information to Members of Congress  
22 and other employing authorities of the legislative  
23 branch of the Federal Government in a manner suit-  
24 able for posting, provide such information to new  
25 employees of the legislative branch of the Federal

1 Government, distribute such information to the resi-  
2 dences of congressional employees, and conduct sem-  
3 inars and other activities designed to educate em-  
4 ployers and employees in such information,

5 (3) compile and publish statistics on the use of  
6 the Office by congressional employees, including the  
7 number and type of contacts made with the Office,  
8 on the reason for such contacts, on the number of  
9 employees who initiated proceedings with the Office  
10 under sections 7 through 12 and the result of such  
11 proceedings, and on the number of employees who  
12 filed a complaint under section 10, the basis for the  
13 complaint, and the action taken on the complaint,  
14 and

15 (4) within 180 days of the initial appointment  
16 of the executive director and in conjunction with the  
17 Clerk of the House of Representatives and the Sec-  
18 retary of the Senate, develop a system for the collec-  
19 tion of demographic data respecting the composition  
20 of the congressional employees, including race, sex,  
21 and wages, and a system for the collection of infor-  
22 mation on employment practices, including family  
23 leave and flexible work hours, in Congressional  
24 offices.

1 **SEC. 7. PROCEDURE FOR CONSIDERATION OF ALLEGED**  
2 **VIOLATIONS.**

3 The procedure for consideration of alleged violations  
4 of laws made applicable to the legislative branch of the  
5 Federal Government under the regulation promulgated  
6 under section 5(b) applicable to such laws consists of 4  
7 steps as follows:

8 (1) Step I, counseling, as set forth in section 8.

9 (2) Step II, mediation, as set forth in section  
10 9.

11 (3) Step III, formal complaint and hearing by  
12 a hearing board, as set forth in section 10.

13 (4) Step IV, judicial review if a congressional  
14 employee is aggrieved by a dismissal of a claim  
15 under section 10(c), a final decision under section  
16 10(g), or an order under section 10(h) or if a head  
17 of an employing office is aggrieved by a final deci-  
18 sion under section 10(g) or would be subject to an  
19 order issued under section 10(h).

20 (5) Step V, as an alternative to steps III and  
21 IV, a civil action in a district court of the United  
22 States in accordance with section 12.

23 A congressional employee may elect the procedure de-  
24 scribed in paragraph (3) or (5) but not both procedures.

1 **SEC. 8. STEP I: COUNSELING.**

2 (a) IN GENERAL.—A congressional employee alleging  
3 a violation of a law made applicable to the legislative  
4 branch of the Federal Government under section 5 may  
5 request counseling through the Office. The Office shall  
6 provide the employee with all relevant information with re-  
7 spect to the rights of the employee. A request for counsel-  
8 ing shall be made not later than 180 days after the alleged  
9 violation forming the basis of the request for counseling  
10 occurred.

11 (b) PERIOD OF COUNSELING.—The period for coun-  
12 seling shall be 30 days unless the employee and the Office  
13 agree to reduce the period. The period shall begin on the  
14 date the request for counseling is received.

15 **SEC. 9. STEP II: MEDIATION.**

16 (a) IN GENERAL.—Not later than 15 days after the  
17 end of the counseling period under section 8, the employee  
18 who alleged a violation of a law made applicable to the  
19 legislative branch of the Federal Government under sec-  
20 tion 5 may file a request for mediation with the Office.  
21 Mediation—

22 (1) may include the Office, the employee, the  
23 employing office, and individuals who are rec-  
24 ommended by organizations composed primarily of  
25 individuals experienced in adjudicating or arbitrating  
26 personnel matters, and

1           (2) shall be a process involving meetings with  
2           the parties separately or jointly for the purpose of  
3           resolving the dispute between the employee and the  
4           employing office.

5           (b) **MEDIATION PERIOD.**—The mediation period shall  
6           be 30 days beginning on the date the request for mediation  
7           is received and may be extended for an additional 30 days  
8           at the discretion of the Office. The Office shall notify the  
9           employee and the head of the employing office when the  
10          mediation period has ended.

11          **SEC. 10. STEP III: FORMAL COMPLAINT AND HEARING.**

12          (a) **FORMAL COMPLAINT AND REQUEST FOR HEAR-**  
13          **ING.**—Not later than 30 days after receipt by the congres-  
14          sional employee of notice from the Office of the end of  
15          the mediation period under section 9, the congressional  
16          employee may file a formal complaint with the Office  
17          against the head of the employing office involved. No com-  
18          plaint may be filed unless the employee has made a timely  
19          request for counseling and has completed the procedures  
20          set forth in sections 8 and 9.

21          (b) **HEARING BOARD.**—A board of 3 independent  
22          hearing officers (hereinafter in this Act referred to as a  
23          “hearing board”), who are not Members of the House of  
24          Representatives, Senators, or officers or employees of the  
25          House of Representatives or Senate, chosen by the execu-

1 tive director (one of whom shall be designated by the execu-  
2 tive director as the presiding hearing officer) shall be as-  
3 signed to consider each complaint filed under subsection  
4 (a). The executive director shall appoint hearing officers  
5 from candidates who are recommended by the Federal Me-  
6 diation and Conciliation Service or the Administrative  
7 Conference of the United States. A hearing board shall  
8 act by majority vote.

9 (c) DISMISSAL OF FRIVOLOUS CLAIMS.—Prior to a  
10 hearing under subsection (d), a hearing board may dismiss  
11 any claim that it finds to be frivolous.

12 (d) HEARING.—A hearing shall be conducted—

13 (1) in closed session on the record by a hearing  
14 board; and

15 (2) no later than 30 days after filing of the  
16 complaint under subsection (a), except that the Of-  
17 fice may, for good cause, extend up to an additional  
18 60 days the time for conducting a hearing.

19 (e) DISCOVERY.—Reasonable prehearing discovery  
20 may be permitted at the discretion of the hearing board.

21 (f) SUBPOENA POWER.—

22 (1) IN GENERAL.—A hearing board may au-  
23 thorize subpoenas, which shall be issued by the pre-  
24 siding hearing officer on behalf of the hearing board  
25 for the attendance of witnesses at proceedings of the

1 hearing board and for the production of correspond-  
2 ence, books, papers, documents, and other records.  
3 The attendance of witnesses and the production of  
4 evidence may be required from any place within the  
5 United States.

6 (2) FAILURE TO OBEY A SUBPOENA.—If a per-  
7 son refuses to obey a subpoena issued under para-  
8 graph (1), the hearing board may apply to a United  
9 States district court for an order requiring that per-  
10 son to appear before the hearing board to give testi-  
11 mony, produce evidence, or both, relating to the  
12 matter under investigation. The application may be  
13 made within the judicial district where the hearing  
14 is conducted or where that person is found, resides,  
15 or transacts business. Any failure to obey the order  
16 of the court may be punished by the court as civil  
17 contempt.

18 (3) SERVICE OF SUBPOENAS.—The subpoenas  
19 of the hearing board shall be served in the manner  
20 provided for subpoenas issued by a United States  
21 district court under the Federal Rules of Civil Pro-  
22 cedure for the United States district courts.

23 (4) SERVICE OF PROCESS.—All process of any  
24 court to which application is to be made under para-  
25 graph (2) may be served in the judicial district in

1       which the person required to be served resides or  
2       may be found.

3           (5) IMMUNITY.—The hearing board is an agen-  
4       cy of the United States for the purpose of part V  
5       of title 18, United States Code (relating to immunity  
6       of witnesses).

7           (g) HEARING BOARD DECISION.—As expeditiously as  
8       possible, but in no case more than 45 days after the con-  
9       clusion of the hearing, the hearing board shall make a de-  
10      cision in the matter for which the hearing was held. The  
11      decision of the hearing board shall be transmitted by the  
12      Office to the employee and the employing office. The deci-  
13      sion shall state the issues raised by the complaint, describe  
14      the evidence in the record, and contain a determination  
15      as to whether a violation of a law made applicable to the  
16      legislative branch of the Federal Government under sec-  
17      tion 5 has occurred. Any decision of the hearing board  
18      shall contain a written statement of the reasons for the  
19      hearing board's decision. A final decision of the hearing  
20      board shall be made available to the public by the Office.

21          (h) REMEDY ORDER.—If the decision of the hearing  
22      board under subsection (g) is that a violation of a law  
23      made applicable to the legislative branch of the Federal  
24      Government under section 5, it shall order the remedies  
25      under such law as made applicable to the legislative

1 branch of the Federal Government under section 5, except  
2 that no Member of the House of Representatives, Senator,  
3 any other head of an employing office, or agent of such  
4 a Member or Senator, shall be personally liable for the  
5 payment of compensation. The hearing board shall have  
6 no authority to award punitive damages. The entry of an  
7 order under subsection shall constitute a final decision for  
8 purposes of judicial review under section 11.

9 (i) FUNDS.—There shall be established in the House  
10 of Representatives and in the Senate a fund from which  
11 compensation (including attorney’s fees) may be paid in  
12 accordance with an order under subsection (h) or as a re-  
13 sult of judicial review under section 11. From the outset  
14 of any proceeding in which compensation may be paid  
15 from a fund of the House of Representatives, the General  
16 Counsel of the House of Representatives may provide the  
17 respondent with representation.

18 **SEC. 11. JUDICIAL REVIEW.**

19 (a) IN GENERAL.—

20 (1) TYPES OF REVIEW.—Following any hearing  
21 under section 10 on a complaint relating to a provi-  
22 sion of law described in section 3, any congressional  
23 employee aggrieved by a dismissal of a claim under  
24 section 10(c), a final decision under section 10(g), a  
25 final order under section 10(h), or any head of an

1       employing office aggrieved by a final decision under  
2       section 10(g) or a final order under section 10(h),  
3       may petition for review by the United States Court  
4       of Appeals for the Federal Circuit in accordance  
5       with paragraph (2).

6               (2) PROVISIONS APPLICABLE TO REVIEW.—The  
7       following provisions apply to a review under para-  
8       graph (1):

9               (A) LAW APPLICABLE.—Chapter 158 of  
10       title 28, United States Code, shall apply—

11               (i) with respect to section 2344 of  
12       title 28, United States Code, service of the  
13       petition shall be on the House or Senate  
14       Legal Counsel, or the appropriate entity of  
15       an instrumentality, as the case may be,  
16       rather than on the Attorney General;

17               (ii) the provisions of section 2348 of  
18       title 28, United States Code, on the au-  
19       thority of the Attorney General, shall not  
20       apply;

21               (iii) the petition for review shall be  
22       filed not later than 90 days after the entry  
23       in the Office of a final decision under sec-  
24       tion 10(g), an order under section 10(h);  
25       and

1 (iv) the Office shall be an “agency” as  
2 that term is used in chapter 158 of title  
3 28, United States Code.

4 (B) STANDARD OF REVIEW.—To the ex-  
5 tent necessary for decision and when presented,  
6 the court shall decide all relevant questions of  
7 law and interpret constitutional and statutory  
8 provisions. The court shall set aside a dismissal  
9 under section 10(c), a final decision under sec-  
10 tion 10(g), or an order under section 10(h) if  
11 it is determined that the dismissal, decision, or  
12 order was—

13 (i) arbitrary, capricious, an abuse of  
14 discretion, or otherwise not consistent with  
15 law;

16 (ii) not made consistent with required  
17 procedures; or

18 (iii) unsupported by substantial evi-  
19 dence.

20 (C) RECORD.—In making determinations  
21 under subparagraph (B), the court shall review  
22 the whole record, or those parts of it cited by  
23 a party, and due account shall be taken of the  
24 rule of prejudicial error. The record on review  
25 shall include the record before the hearing

1 board, the decision of the hearing board, and  
2 the order of the hearing board.

3 (b) ATTORNEY'S FEES.—If a congressional employee  
4 is the prevailing party in a proceeding under this section,  
5 attorney's fees for the judicial proceeding may be allowed  
6 by the court in accordance with the standards prescribed  
7 under section 706(k) of the Civil Rights Act of 1964 (42  
8 U.S.C. 2000e-5(k)).

9 **SEC. 12. CIVIL ACTION.**

10 (a) IN GENERAL.—

11 (1) CIVIL ACTION.—An employee may within 30  
12 days after receipt of notice from the Office of the  
13 end of the mediation period under section 9 for a  
14 violation of a law made applicable to the legislative  
15 branch of the Federal Government bring a civil ac-  
16 tion in a district court of the United States seeking  
17 relief from the alleged violation of law if such a civil  
18 action is available under such law. In any such civil  
19 action, any party may demand a jury trial.

20 (2) EXHAUSTION REQUIREMENT.—No civil ac-  
21 tion may be filed under paragraph (1) unless the  
22 employee has made a timely request for counseling  
23 and has completed the procedures set forth in sec-  
24 tions 8 and 9.

1           (3) COURT ORDER.—If a court determines that  
2           a violation of law occurred, the court may only enter  
3           an order described in section 10(h).

4           (b) ATTORNEY'S FEES.—If a congressional employee  
5           is the prevailing party in a proceeding under this section,  
6           attorney's fees may be allowed by the court in accordance  
7           with any standards prescribed under Federal law for the  
8           award of such fees in the event of a violation of such provi-  
9           sion.

10 **SEC. 13. RESOLUTION OF COMPLAINT.**

11           If, after a formal complaint is filed under section 10,  
12           the employee and the head of the employing office resolve  
13           the issues involved, the employee may withdraw the com-  
14           plaint or the parties may enter into a written agreement,  
15           subject to the approval of the executive director.

16 **SEC. 14. PROHIBITION OF INTIMIDATION.**

17           Any intimidation of, or reprisal against, any employee  
18           by any Member of the House of Representatives, Senator,  
19           or officer or employee of the House of Representatives or  
20           Senate, by the Architect of the Capitol or anyone employed  
21           by the Architect of the Capitol, or by an instrumentality  
22           of the legislative branch of the Federal Government be-  
23           cause of the exercise of a right under this Act constitutes  
24           an unlawful employment practice, which may be remedied  
25           in the same manner under this Act as is a violation of

1 a law made applicable to the legislative branch of the Fed-  
2 eral Government under section 5.

3 **SEC. 15. CONFIDENTIALITY.**

4 (a) COUNSELING.—All counseling shall be strictly  
5 confidential except that the Office and the employee may  
6 agree to notify the head of the employing office of the  
7 allegations.

8 (b) MEDIATION.—All mediation shall be strictly  
9 confidential.

10 (c) HEARINGS.—Except as provided in subsections  
11 (d) and (e), the hearings and deliberations of the hearing  
12 board shall be confidential.

13 (d) RELEASE OF RECORDS FOR JUDICIAL ACTION.—  
14 The records of hearing boards may be made public if re-  
15 quired for the purpose of judicial action under section 9.

16 (e) ACCESS BY COMMITTEES OF CONGRESS.—At the  
17 discretion of the executive director, the executive director  
18 may provide to the Committee on Standards of Official  
19 Conduct of the House of Representatives and the Select  
20 Committee on Ethics of the Senate access to the records  
21 of the hearings and decisions of the hearing boards, in-  
22 cluding all written and oral testimony in the possession  
23 of the hearing boards, concerning a decision under section  
24 10(g). The executive director shall not provide such access  
25 until the executive director has consulted with the individ-

1 ual filing the complaint at issue in the hearing, and until  
2 the hearing board has issued the decision.

3 (f) COORDINATION.—The executive director shall co-  
4 ordinate the proceedings with the Committee on Stand-  
5 ards and Official Conduct of the House of Representatives  
6 and the Select Committee on Ethics of the Senate to en-  
7 sure effectiveness, to avoid duplication, and to prevent pe-  
8 nalizing cooperation by respondents in the respective pro-  
9 ceedings.

10 **SEC. 16. POLITICAL AFFILIATION AND PLACE OF RESI-**  
11 **DENCE.**

12 (a) IN GENERAL.—It shall not be a violation of a law  
13 made applicable to the legislative branch of the Federal  
14 Government under section 5 to consider the—

- 15 (1) party affiliation,  
16 (2) domicile, or  
17 (3) political compatibility with the employing  
18 office,  
19 of a congressional employee with respect to employment  
20 decisions.

21 (b) DEFINITION.—For purposes of subsection (a),  
22 the term “employee” means—

- 23 (1) an employee on the staff of the House of  
24 Representatives or Senate leadership,

1           (2) an employee on the staff of a committee or  
2           subcommittee,

3           (3) an employee on the staff of a Member of  
4           the House of Representatives or Senate,

5           (4) an officer or employee of the House of Rep-  
6           resentatives or Senate elected by the House of Rep-  
7           resentatives or Senate or appointed by a Member of  
8           the House of Representatives or Senate, other than  
9           those described in paragraphs (1) through (3), or

10          (5) an applicant for a position that is to be oc-  
11          cupied by an individual described in paragraphs (1)  
12          through (4).

13 **SEC. 17. OTHER REVIEW PROHIBITED.**

14          No congressional employee may commence a judicial  
15          proceeding to redress practices prohibited under section  
16          5, except as provided in this Act.

17 **SEC. 18. STUDY.**

18          (a) **STUDY.**—The Office shall conduct a study—

19               (1) of the ways that access by the public to in-  
20               formation held by the Congress may be improved,  
21               streamlined, and made consistent between the House  
22               of Representatives and the Senate and of the appli-  
23               cation of section 552 of title 5, United States Code  
24               to the legislative branch of the Federal Government;  
25               and

1           (2) of the application of the requirement of sec-  
2           tion 552a of title 5, United States Code, to the legis-  
3           lative branch of the Federal Government.

4           (b) STUDY CONTENT.—The study conducted under  
5           subsection (a) shall examine—

6           (1) information that is currently made available  
7           under such section 552 by Federal agencies and not  
8           by the legislative branch of the Federal Government;

9           (2) information held by the non-legislative of-  
10          fices of the legislative branch of the Federal Govern-  
11          ment, including—

12                   (A) the instrumentalities,

13                   (B) the Architect of the Capitol,

14                   (C) the Director of Non-Legislative and  
15                   Financial Services of the House of Representa-  
16                   tives,

17                   (D) the Clerk of the House of Representa-  
18                   tives,

19                   (E) the Secretary of the Senate,

20                   (F) the Inspector General of the House of  
21                   Representatives,

22                   (G) the Sergeant at Arms of the House of  
23                   Representatives,

24                   (H) the Doorkeeper of the House of Rep-  
25                   resentatives,

- 1 (I) the United States Capitol Police, and  
2 (J) the House Commission on Congressional Mailing Standards;  
3  
4 (3) financial expenditure information of the legislative branch of the Federal Government; and  
5  
6 (4) provisions for judicial review of denial of access to information held by the legislative branch of the Federal Government.  
7  
8  
9 (c) TIME.—The Office shall conduct the study pre-  
10 scribed by subsection (a) and report the results of the  
11 study to the Congress not later than one year after the  
12 date of the initial appointment of the Board of Directors.

○

HR 4892 IH—2

HR 4892 IH—3

HR 4892 IH—4