

EXPLANATION OF H.R. —, TO MAKE IMPROVEMENTS IN
THE ENACTMENT OF TITLE 41, UNITED STATES CODE,
INTO A POSITIVE LAW TITLE AND TO IMPROVE THE CODE

BACKGROUND

Public Law 111–350, which was signed into law on January 4, 2011, enacted certain laws relating to public contracts as title 41, United States Code. This bill makes conforming amendments in laws classified to various titles of the Code that are necessary because of the enactment of title 41 into positive law and makes technical changes to Public Law 111–350. The Office of the Law Revision Counsel of the House of Representatives has prepared the bill and submitted it to the Committee as part of the responsibilities of the Office under section 285b of title 2, United States Code, to provide revisions in titles of the Code that have been enacted into positive law so that those titles may be kept current and to update the Code to reflect newly enacted law.

SECTION-BY-SECTION EXPLANATION

SECTION 1—TABLE OF CONTENTS

Section 1 of the bill provides a table of contents of the Act.

SECTION 2—PURPOSE

Section 2 of the bill provides the purpose of the Act.

SECTIONS 3 THROUGH 40—TECHNICAL AMENDMENTS

Sections 3 through 40 of the Act make technical amendments to laws classified to various titles of the United States Code. Except as noted below, these amendments simply update statutory references to properly reflect the citation changes made by Public Law 111–350.

In the instances noted below, amendments are made to incorporate recently enacted provisions into title 41, United States Code, to make clarifying amendments, or to correct technical errors in the law.

Throughout the bill, the words “chapter 5 of title 40” and “chapter 5 of title 40, United States Code” are substituted for “the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)” or words of like import for clarity where the provision in which the reference appears relates to the disposal of property. The relevant provisions of the Act are those relating to property management, restated in chapter 5 of title 40.

Section 8(12) of the bill amends section 2878(e)(2) of title 10, United States Code, to clarify the cross-reference and for consistency in the United States Code. Before section 2878(d)(2) (subsequently redesignated (e) by section 2805(d)(1) of Public Law 110–417 (122 Stat. 4723)) was amended by section 3(b)(23) of Public Law 107–217 (116 Stat. 1297), the reference was to the Federal

Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.). All provisions of that Act relating to property management are restated in chapter 5 of title 40.

Section 10(1) of the bill repeals section 5(c)(2) of Public Law 111–350 (124 Stat. 3847). The amendment could not be executed because of the redesignation of paragraph (h) as paragraph (a)(8) by section 201(a)(1) of Public Law 108–293 (118 Stat. 1031).

Section 10(3) of the bill amends section 504(a)(8) of title 14, United States Code, to clarify the cross-reference and for consistency in the United States Code. Before section 93(h) (subsequently redesignated (a)(8) by section 201(a)(1) of Public Law 108–293 (118 Stat. 1031)) was amended by section 3(c)(2) of Public Law 107–217 (116 Stat. 1298), the reference was to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.). Section 93 was renumbered 504 by section 105(b)(2) of the Frank Lobiondo Coast Guard Authorization Act of 2018 (Public Law 115–282, 132 Stat. 4201). All provisions of that Act relating to property management are restated in chapter 5 of title 40.

Section 30(1)(A) of the bill amends section 7(b) of Public Law 111–350 (124 Stat. 3855) insofar as it relates to title III, § 4 of the Act of March 3, 1933 (ch. 212) to correct the United States Code reference.

Section 30(1)(B) of the bill repeals section 7(b) of Public Law 111–350 (124 Stat. 3855) insofar as it relates to sections 1 and 16 of the Contract Disputes Act of 1978 (Public Law 95–563, 41 U.S.C. 601 note), and those provisions are revived to read as if section 7(b) of Public Law 111–350 had not been enacted.

Section 30(2) of the bill inserts chapter 73 in title 41, United States Code, to restate provisions that were repealed and omitted from the restatement of existing law by Public Law 111–350 but that should have been included in the restatement. The source provision citations along with any revision notes are set out below.

CHAPTER 73—FINALITY OF ADMINISTRATIVE DECISIONS IN DISPUTES ARISING UNDER CONTRACTS NOT SUBJECT TO CHAPTER 71

SECTION 7301

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
7301	(no source)	

SECTION 7302

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
7302	41 U.S.C. 321 (proviso)	May 11, 1954, ch. 199, § 1 (proviso), 68 Stat. 81.

SECTION 7303

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
7303	41 U.S.C. 321 (words before proviso)	May 11, 1954, ch. 199, § 1 (words before proviso), 68 Stat. 81.

SECTION 7304

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
7304	41 U.S.C. 322	May 11, 1954, ch. 199, § 2, 68 Stat. 81.

Section 30(4) of the bill inserts sections 154, 171, and 172 in title 41, United States Code, for convenience. Section 154 includes additional definitions for the provisions referred to in section 171(c) of title 41. Sections 171 and 172 provide a way to reference provisions formerly contained in the Federal Property and Administrative Services Act of 1949 and the Office of Federal Procurement Policy Act, respectively. The source provision citations are set out below.

SECTION 154

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
154	(no source)	

SUBCHAPTER IV—REFERENCE TO PROVISIONS FORMERLY
CONTAINED IN OTHER LAWS

SECTION 171

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
171	(no source)	

SECTION 172

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
172	(no source)	

Section 30(12)(A) of the bill amends section 1703(i)(5) of title 41, United States Code, by incorporating section 821(c) of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163, div. A, title VIII, 119 Stat. 3386).

Section 30(16) of the bill amends section 2313(e)(1) of title 41, United States Code, to incorporate language added by section 3010 of the Supplemental Appropriations Act, 2010 (Public Law 111–212, 124 Stat. 2430). Section 3010 amended section 872(e)(1) of the Clean Contracting Act of 2008, which was classified to former 41 U.S.C. 417b(e)(1), and which was repealed and restated as section 2313(e)(1) by Public Law 111–350. The amendment made by section 3010 applies to section 2313(e)(1) by virtue of section 6(a) of Public Law 111–350 (124 Stat. 3854), but the added language could not be directly inserted into the text. Section 30(16) rectifies the problem by formally incorporating the language added by section 3010 into the text of section 2313(e)(1).

Section 30(21) of the bill amends section 6503(b) of title 41, United States Code, to clarify that the party responsible for a breach or violation under subsection (a) is liable for liquidated damages both for each individual under 16 years of age and for each incarcerated individual and to clarify that the party is liable for liquidated damages for all underpayments of wages.

Section 30(22)(A) of the bill amends section 6504(a) of title 41, United States Code. Clause (i) clarifies that the online version of the debarred list is to be made accessible to all agencies. Clause (ii) clarifies that the provision also applies to firms, which is not included in the definition of “person” in section 6501.

Section 30(22)(B) of the bill amends section 6504(b) of title 41, United States Code, to clarify that debarment covers all Federal contract awards.

Section 30(23) of the bill amends section 6506(b) of title 41, United States Code. Paragraph (A) clarifies that the Secretary’s authority also applies to rules, which may be made through adjudication. Paragraph (B) clarifies that the Secretary does not have to prove a necessity, only that the Secretary’s action may be necessary.

Section 30(24)(A) of the bill amends section 6507(b) of title 41, United States Code, to clarify that the Secretary may hold hearings when there is a complaint of breach or violation of a stipulation or representation included in a proposal or contract.

Paragraphs (27)(B) and (28)(A) of section 30 of the bill amend sections 6702(a) and 6703 (matter before paragraph (1)) of title 41, United States Code, to clarify that the \$2,500 threshold applies to Federal service contracts and is not a threshold under the Service Contract Act.

Section 30(28)(B) of the bill amends section 6703(1) of title 41, United States Code, to avoid placing an unintended burden on the Department of Labor to include all classes of service employees performing on a contract when that may not be feasible or desirable when making a particular wage determination.

Section 30(29)(A) of the bill amends section 6705(b)(1) of title 41, United States Code, to avoid placing a limitation on partial amounts being withheld when the available amounts are insufficient to cover the total amount due to any particular employee.

Section 30(29)(B) of the bill amends section 6705(b)(2) of title 41, United States Code, to clarify that the Federal Government may bring action if accrued payments withheld are insufficient to reimburse all service employees and not just one service employee.

Section 30(30) of the bill amends section 6706(b) of title 41, United States Code, to reflect the change in title from “hearing examiner” to “administrative law judge” by Public Law 95–251 (92 Stat. 183). See section 3, which provides that any reference to a hearing examiner appointed under section 3105 of title 5, United States Code, shall be deemed to be a reference to an administrative law judge. Section 3105 authorizes each agency to appoint as many administrative law judges as are necessary for proceedings to be conducted in accordance with sections 556 and 557 of title 5 and a proceeding referred to in section 6706(b) is one that must be conducted in accordance with sections 556 and 557.

Section 30(31)(C)(i) of the bill amends section 6707(c)(1) of title 41, United States Code, to remain consistent with present law as it applies to successor contracts of collectively-bargained rates and fringe benefits negotiated for predecessor contracts. See 29 CFR 4.1b(a) (2d sentence).

Section 30(31)(C)(ii) of the bill amends section 6707(c)(2) of title 41, United States Code, to remain consistent with present law as

it applies to collectively-bargained rates. See 29 CFR 4.1b(a) (2d sentence).

Section 31(58) of the bill amends section 104(i) of the Alaska Power Administration Asset Sale and Termination Act (Public Law 104–58, 42 U.S.C. 7152 note) to clarify the cross-reference and for consistency in the United States Code. Section 484 of title 40, United States Code, which provided for the disposal of property, was restated as subchapter III of chapter 5 of title 40. All provisions of title 40 relating to property management are restated in chapter 5 of title 40. See revision note for “chapter 5 of title 40” and “chapter 5 of title 40, United States Code”.

Section 34(2) of the bill amends section 613(b) of the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1212(b)) to clarify the cross-reference and for consistency in the United States Code. Section 484 of title 40, United States Code, which provided for the disposal of property, was restated as subchapter III of chapter 5 of title 40. All provisions of title 40 relating to property management are restated in chapter 5 of title 40. See revision note for “chapter 5 of title 40” and “chapter 5 of title 40, United States Code”.