

H.L.C.  
*Tom Davis*

**AMENDMENT TO H.R. 1588, AS REPORTED  
OFFERED BY MR. TOM DAVIS OF VIRGINIA**

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At the end of subtitle A of title XI (page 349, after line 10), insert the following new section (and redesignate subsequent sections accordingly):

**1 SEC. 1111. HUMAN CAPITAL PERFORMANCE FUND.**

2 (a) IN GENERAL.—Subpart D of part III of title 5,  
3 United States Code, is amended by inserting after chapter  
4 53 the following:

5 **“CHAPTER 54—HUMAN CAPITAL**  
6 **PERFORMANCE FUND**

- “Sec.
- “5401. Purpose.
- “5402. Definitions.
- “5403. Human Capital Performance Fund.
- “5404. Human capital performance payments.
- “5405. Regulations.
- “5406. Agency plan.
- “5407. Nature of payment.
- “5408. Appropriations.

7 **“§ 5401. Purpose**

8 “The purpose of this chapter is to promote, through  
9 the creation of a Human Capital Performance Fund,  
10 greater performance in the Federal Government. Monies  
11 from the Fund will be used to reward agencies’ highest  
12 performing and most valuable employees. This Fund will  
13 offer Federal managers a new tool to recognize employee  
14 performance that is critical to the achievement of agency  
15 missions.



1 **“§ 5402. Definitions**

2 “For the purpose of this chapter—

3 “(1) ‘agency’ means an Executive agency under  
4 section 105, but does not include the General Ac-  
5 counting Office;

6 “(2) ‘employee’ includes—

7 “(A) an individual paid under a statutory  
8 pay system defined in section 5302(1);

9 “(B) a prevailing rate employee, as defined  
10 in section 5342(a)(2); and

11 “(C) a category of employees included by  
12 the Office of Personnel Management following  
13 the review of an agency plan under section  
14 5403(b)(1);

15 but does not include—

16 “(i) an individual paid at an annual rate of  
17 basic pay for a level of the Executive Schedule,  
18 under subchapter II of chapter 53, or at a rate  
19 provided for one of those levels under another  
20 provision of law;

21 “(ii) a member of the Senior Executive  
22 Service paid under subchapter VIII of chapter  
23 53, or an equivalent system;

24 “(iii) an administrative law judge paid  
25 under section 5372;



1           “(iv) a contract appeals board member  
2           paid under section 5372a;

3           “(v) an administrative appeals judge paid  
4           under section 5372b; and

5           “(vi) an individual in a position which is  
6           excepted from the competitive service because of  
7           its confidential, policy-determining, policy-mak-  
8           ing, or policy-advocating character; and

9           “(3) ‘Office’ means the Office of Personnel  
10          Management.

11   **“§ 5403. Human Capital Performance Fund**

12          “(a) There is hereby established the Human Capital  
13          Performance Fund, to be administered by the Office for  
14          the purpose of this chapter.

15          “(b)(1)(A) An agency shall submit a plan as de-  
16          scribed in section 5406 to be eligible for consideration by  
17          the Office for an allocation under this section. An alloca-  
18          tion shall be made only upon approval by the Office of  
19          an agency’s plan.

20          “(B)(i) After the reduction for training required  
21          under section 5408, ninety percent of the remaining  
22          amount appropriated to the Fund may be allocated by the  
23          Office to the agencies. Of the amount to be allocated, an  
24          agency’s pro rata distribution may not exceed its pro rata  
25          share of Executive branch payroll.



1       “(ii) If the Office does not allocate an agency’s full  
2 pro rata share, the undistributed amount remaining from  
3 that share will become available for distribution to other  
4 agencies, as provided in subparagraph (C).

5       “(C)(i) After the reduction for training under section  
6 5408, ten percent of the remaining amount appropriated  
7 to the Fund, as well as the amount of the pro rata share  
8 not distributed because of an agency’s failure to submit  
9 a satisfactory plan, shall be allocated among agencies with  
10 exceptionally high-quality plans.

11       “(ii) An agency with an exceptionally high-quality  
12 plan is eligible to receive an additional distribution in addi-  
13 tion to its full pro rata distribution.

14       “(2) Each agency is required to provide to the Office  
15 such payroll information as the Office specifies necessary  
16 to determine the Executive branch payroll.

17 **“§ 5404. Human capital performance payments**

18       “(a)(1) Notwithstanding any other provision of law,  
19 the Office may authorize an agency to provide human cap-  
20 ital performance payments to individual employees based  
21 on exceptional performance contributing to the achieve-  
22 ment of the agency mission.

23       “(2) The number of employees in an agency receiving  
24 payments from the Fund, in any year, shall not be more  
25 than the number equal to 15 percent of the agency’s aver-



1 age total civilian full- and part-time permanent employ-  
2 ment for the previous fiscal year.

3 “(b)(1) A human capital performance payment pro-  
4 vided to an individual employee from the Fund, in any  
5 year, shall not exceed 10 percent of the employee’s rate  
6 of basic pay.

7 “(2) The aggregate of an employee’s rate of basic  
8 pay, adjusted by any locality-based comparability pay-  
9 ments, and human capital performance pay, as defined by  
10 regulation, may not exceed the rate of basic pay for Execu-  
11 tive Level IV in any year.

12 “(3) Any human capital performance payment pro-  
13 vided to an employee from the Fund is in addition to any  
14 annual pay adjustment (under section 5303 or any similar  
15 provision of law) and any locality-based comparability pay-  
16 ment that may apply.

17 “(c) No monies from the Human Capital Perform-  
18 ance Fund may be used to pay for a new position, for  
19 other performance-related payments, or for recruitment or  
20 retention incentives paid under sections 5753 and 5754.

21 “(d)(1) An agency may finance initial human capital  
22 performance payments using monies from the Human  
23 Capital Performance Fund, as available.

24 “(2) In subsequent years, continuation of previously  
25 awarded human capital performance payments shall be fi-



1 nanced from other agency funds available for salaries and  
2 expenses.

3 **“§ 5405. Regulations**

4 “The Office shall issue such regulations as it deter-  
5 mines to be necessary for the administration of this chap-  
6 ter, including the administration of the Fund. The Office’s  
7 regulations shall include criteria governing—

8 “(1) an agency plan under section 5406;

9 “(2) the allocation of monies from the Fund to  
10 agencies;

11 “(3) the nature, extent, duration, and adjust-  
12 ment of, and approval processes for, payments to in-  
13 dividual employees under this chapter;

14 “(4) the relationship to this chapter of agency  
15 performance management systems;

16 “(5) training of supervisors, managers, and  
17 other individuals involved in the process of making  
18 performance distinctions; and

19 “(6) the circumstances under which funds may  
20 be allocated by the Office to an agency in amounts  
21 below or in excess of the agency’s pro rata share.

22 **“§ 5406. Agency plan**

23 “(a) To be eligible for consideration by the Office for  
24 an allocation under this section, an agency shall—



1           “(1) develop a plan that incorporates the fol-  
2           lowing elements:

3                   “(A) adherence to merit principles set  
4                   forth in section 2301;

5                   “(B) a fair, credible, and transparent em-  
6                   ployee performance appraisal system;

7                   “(C) a link between the pay-for-perform-  
8                   ance system, the employee performance ap-  
9                   praisal system, and the agency’s strategic plan;

10                   “(D) a means for ensuring employee in-  
11                   volvement in the design and implementation of  
12                   the system;

13                   “(E) adequate training and retraining for  
14                   supervisors, managers, and employees in the  
15                   implementation and operation of the pay-for-  
16                   performance system;

17                   “(F) a process for ensuring ongoing per-  
18                   formance feedback and dialogue between super-  
19                   visors, managers, and employees throughout the  
20                   appraisal period, and setting timetables for re-  
21                   view;

22                   “(G) effective safeguards to ensure that  
23                   the management of the system is fair and equi-  
24                   table and based on employee performance; and



1           “(H) a means for ensuring that adequate  
2           agency resources are allocated for the design,  
3           implementation, and administration of the pay-  
4           for-performance system;

5           “(2) upon approval, receive an allocation of  
6           funding from the Office;

7           “(3) make payments to individual employees in  
8           accordance with the agency’s approved plan; and

9           “(4) provide such information to the Office re-  
10          garding payments made and use of funds received  
11          under this section as the Office may specify.

12          “(b) The Office, in consultation with the Chief  
13          Human Capital Officers Council, shall review and approve  
14          an agency’s plan before the agency is eligible to receive  
15          an allocation of funding from the Office.

16          “(c) The Chief Human Capital Officers Council shall  
17          include in its annual report to Congress under section  
18          1303(d) of the Homeland Security Act of 2002 an evalua-  
19          tion of the formulation and implementation of agency per-  
20          formance management systems.

21          **“§ 5407. Nature of payment**

22          “Any payment to an employee under this section shall  
23          be part of the employee’s basic pay for the purposes of  
24          subchapter III of chapter 83, and chapters 84 and 87,



1 and for such other purposes (other than chapter 75) as  
2 the Office shall determine by regulation.

3 **“§ 5408. Appropriations**

4 “There is authorized to be appropriated  
5 \$500,000,000 for fiscal year 2004, and, for each subse-  
6 quent fiscal year, such sums as may be necessary to carry  
7 out the provisions of this chapter. In the first year of im-  
8 plementation, up to 10 percent of the amount appro-  
9 priated to the Fund shall be available to participating  
10 agencies to train supervisors, managers, and other individ-  
11 uals involved in the appraisal process on using perform-  
12 ance management systems to make meaningful distinc-  
13 tions in employee performance and on the use of the  
14 Fund.”.

15 (b) CLERICAL AMENDMENT.—The table of chapters  
16 for part III of title 5, United States Code, is amended  
17 by inserting after the item relating to chapter 53 the fol-  
18 lowing:

“54. Human Capital Performance Fund ..... 5401”.

