

# MAKING MINORITY PARTY APPOINTMENTS

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of S. Res. 251, which is at the desk.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 251) making Minority party appointments for the Committee on Environment and Public Works and the Governmental Affairs Committee for the 107th Congress.

There being no objection, the Senate proceeded to the immediate consideration of the resolution.

Mr. REID. I ask consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 251) was agreed to, as follows:

## S. RES. 251

*Resolved*, That the following be the minority membership on the Committees on Environment and Public Works and Governmental Affairs for the remainder of the 107th Congress, or until their successors are appointed:

Environment and Public Works: Mr. Smith, of New Hampshire, Mr. Warner, Mr. Inhofe, Mr. Bond, Mr. Voinovich, Mr. Crapo, Mr. Chafee, Mr. Specter, and Mr. Domenici.

Governmental Affairs: Mr. Thompson, Mr. Stevens, Ms. Collins, Mr. Voinovich, Mr. Cochran, Mr. Bennett, Mr. Bunning, and Mr. Fitzgerald.

# NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002

Mr. REID. I ask consent the Senate proceed to the consideration of Calendar No. 346, H.R. 169.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 169) to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws; to require that each Federal agency post quarterly on its public Web site certain statistical data relating to Federal sector equal employment opportunity complaints filed with such agency; and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with amendments.

(Omit the parts in black brackets and insert the part printed in italic.)

## H.R. 169

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Notification and Federal Employee Antidiscrimination and Retaliation Act of [2001] 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

### [TITLE I—GENERAL PROVISIONS

[Sec. 101. Findings.

[Sec. 102. Definitions.

[Sec. 103. Effective date.]

### TITLE I—GENERAL PROVISIONS

Sec. 101. Findings.

Sec. 102. Sense of Congress.

Sec. 103. Definitions.

Sec. 104. Effective date.

### TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND RETALIATION

Sec. 201. Reimbursement requirement.

Sec. 202. Notification requirement.

Sec. 203. Reporting requirement.

Sec. 204. Rules and guidelines.

Sec. 205. Clarification of remedies.

[Sec. 206. Study by General Accounting Office regarding exhaustion of administrative remedies.]

Sec. 206. *Studies by General Accounting Office on exhaustion of remedies and certain Department of Justice costs.*

### TITLE III—EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT DATA DISCLOSURE

Sec. 301. Data to be posted by employing Federal agencies.

Sec. 302. Data to be posted by the Equal Employment Opportunity Commission.

Sec. 303. Rules.

### TITLE I—GENERAL PROVISIONS

#### [SEC. 101. FINDINGS.

[The Congress finds that—

(1) Federal agencies cannot be run effectively if they practice or tolerate discrimination,

(2) the Committee on the Judiciary of the House of Representatives has heard testimony from individuals, including representatives of the National Association for the Advancement of Colored People and the American Federation of Government Employees that point to chronic problems of discrimination and retaliation against Federal employees,

(3) in August 2000, a jury found that the Environmental Protection Agency had discriminated against a senior social scientist, and awarded that scientist \$600,000,

(4) in October 2000, an Occupational Safety and Health Administration investigation found that the Environmental Protection Agency had retaliated against a senior scientist for disagreeing with that agency on a matter of science and for helping Congress to carry out its oversight responsibilities,

(5) there have been several recent class action suits based on discrimination brought against Federal agencies, including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, the Immigration and Naturalization Service, and the United States Marshals Service,

(6) notifying Federal employees of their rights under discrimination and whistleblower laws should increase agency compliance with the law,

(7) requiring annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each Federal agency should enable Congress to improve its oversight over agencies’ compliance with the law, and

(8) penalizing Federal agencies by requiring them to pay for any discrimination or whistleblower judgments, awards, and settlements should improve agency accountability with respect to discrimination and whistleblower laws.]

#### SEC. 101. FINDINGS.

*Congress finds that—*

(1) Federal agencies cannot be run effectively if those agencies practice or tolerate discrimination;

(2) Congress has heard testimony from individuals, including representatives of the National Association for the Advancement of Colored People and the American Federation of Government Employees, that point to chronic problems of discrimination and retaliation against Federal employees;

(3) in August 2000, a jury found that the Environmental Protection Agency had discriminated against a senior social scientist, and awarded that scientist \$600,000;

(4) in October 2000, an Occupational Safety and Health Administration investigation found that the Environmental Protection Agency had retaliated against a senior scientist for disagreeing with that agency on a matter of science and for helping Congress to carry out its oversight responsibilities;

(5) there have been several recent class action suits based on discrimination brought against Federal agencies, including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Marshals Service, the Department of Agriculture, the United States Information Agency, and the Social Security Administration;

(6) notifying Federal employees of their rights under discrimination and whistleblower laws should increase Federal agency compliance with the law;

(7) requiring annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each Federal agency should enable Congress to improve its oversight over compliance by agencies with the law; and

(8) requiring Federal agencies to pay for any discrimination or whistleblower judgment, award, or settlement should improve agency accountability with respect to discrimination and whistleblower laws.

#### SEC. 102. SENSE OF CONGRESS.

*It is the sense of Congress that—*

(1) Federal agencies should not retaliate for court judgments or settlements relating to discrimination and whistleblower laws by targeting the claimant or other employees with reductions in compensation, benefits, or workforce to pay for such judgments or settlements;

(2) the mission of the Federal agency and the employment security of employees who are blameless in a whistleblower incident should not be compromised;

(3) Federal agencies should not use a reduction in force or furloughs as means of funding a reimbursement under this Act;

(4)(A) accountability in the enforcement of employee rights is not furthered by terminating—

(i) the employment of other employees; or

(ii) the benefits to which those employees are entitled through statute or contract; and

(B) this Act is not intended to authorize those actions;

(5)(A) nor is accountability furthered if Federal agencies react to the increased accountability under this Act by taking unfounded disciplinary actions against managers or by violating the procedural rights of managers who have been accused of discrimination; and

(B) Federal agencies should ensure that managers have adequate training in the management of a diverse workforce and in dispute resolution and other essential communication skills; and

(6)(A) Federal agencies are expected to reimburse the General Fund of the Treasury within a reasonable time under this Act; and

(B) a Federal agency, particularly if the amount of reimbursement under this Act is large relative to annual appropriations for that agency, may need to extend reimbursement over several years in order to avoid—

(i) reductions in force;

(ii) furloughs;

(iii) other reductions in compensation or benefits for the workforce of the agency; or

(iv) an adverse effect on the mission of the agency.

#### SEC. [102]. 103. DEFINITIONS.

For purposes of this Act—

(1) the term “applicant for Federal employment” means an individual applying for employment in or under a Federal agency[.];

(2) the term “basis of alleged discrimination” shall have the meaning given such term under section 303[.];

(3) the term “Federal agency” means an Executive agency (as defined in section 105 of title 5, United States Code), the United States Postal Service, or the Postal Rate Commission[.];

(4) the term “Federal employee” means an individual employed in or under a Federal agency[.];

(5) the term “former Federal employee” means an individual formerly employed in or under a Federal agency[.]; and

(6) the term “issue of alleged discrimination” shall have the meaning given such term under section 303.

#### SEC. [103]. 104. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the 1st day of the 1st fiscal year beginning more than 180 days after the date of the enactment of this Act.

### TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND RETALIATION

#### SEC. 201. REIMBURSEMENT REQUIREMENT.

(a) APPLICABILITY.—This section applies with respect to any payment made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code (relating to judgments, awards, and compromise settlements) to any Federal employee, former Federal employee, or applicant for Federal employment, in connection with any proceeding brought by or on behalf of such employee, former employee, or applicant under—

(1) any provision of law cited in subsection (c)[.]; or

(2) any other provision of law which prohibits any form of discrimination, as identified under rules issued under section 204.

(b) REQUIREMENT.—An amount equal to the amount of each payment described in subsection (a) shall be reimbursed to the fund described in section 1304 of title 31, United States Code, out of any appropriation, fund, or other account (excluding any part of such appropriation, of such fund, or of such account available for the enforcement of any Federal law) available for operating expenses of the Federal agency to which the discriminatory conduct involved is attributable as determined under section 204.

(c) SCOPE.—The provisions of law cited in this subsection are the following:

(1) Section 2302(b) of title 5 [of the], United States Code, as applied to discriminatory conduct described in paragraphs (1) and (8), or described in paragraph (9) of such section as applied to discriminatory conduct described in paragraphs (1) and (8), of such section.

(2) The provisions of law specified in section 2302(d) of title 5 [of the], United States Code.

[(3) The Whistleblower Protection Act of 1986 and the amendments made by such Act.]

#### SEC. 202. NOTIFICATION REQUIREMENT.

(a) IN GENERAL.—Written notification of the rights and protections available to Federal employees, former Federal employees, and applicants for Federal employment (as the case may be) in connection with the respective provisions of law covered by para-

graphs (1) and (2) of section 201(a) shall be provided to such employees, former employees, and applicants—

(1) in accordance with otherwise applicable provisions of law[.]; or

(2) [if to the extent that] if, or to the extent that, no such notification would otherwise be required, in such time, form, and manner as shall under section 204 be required in order to carry out the requirements of this section.

(b) POSTING ON THE INTERNET.—Any written notification under this section shall include, but not be limited to, the posting of the information required under paragraph (1) or (2) (as applicable) of subsection (a) on the Internet site of the Federal agency involved.

(c) EMPLOYEE TRAINING.—Each Federal agency shall provide to the employees of such agency training regarding the rights and remedies applicable to such employees under the laws cited in section 201(c).

#### SEC. 203. REPORTING REQUIREMENT.

(a) ANNUAL REPORT.—Subject to subsection (b), not later than 180 days after the end of each fiscal year, each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity Commission, and the Attorney General an annual report which shall include, with respect to the fiscal year—

(1) the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged[.];

(2) the status or disposition of cases described in paragraph (1)[.];

(3) the amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorneys' fees, if any[.];

(4) the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1)[.];

(5) the final year-end data posted under section 301(c)(1)(B) for such fiscal year (without regard to section 301(c)(2)) [and];

[(6) a detailed description of—

[(A) the policy implemented by such agency to discipline employees who are determined in any judicial or administrative proceeding to have discriminated against any individual in violation of any of the laws cited in section 201(c), and

[(B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken.]

(6) a detailed description of—

(A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who—

(i) discriminated against any individual in violation of any of the laws cited under section 201(a) (1) or (2); or

(ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a) (1) or (2); and

(B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;

(7) an analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including—

(A) an examination of trends;

(B) causal analysis;

(C) practical knowledge gained through experience; and

(D) any actions planned or taken to improve complaint or civil rights programs of the agency; and

(8) any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.

(b) FIRST REPORT.—The 1st report submitted under subsection (a) shall include for each item under subsection (a) data for each of the 5 immediately preceding fiscal [years (or, if not available for all 5 fiscal years, for however many of those 5 fiscal years for which data are available).] years (or, if data are not available for all 5 fiscal years, for each of those 5 fiscal years for which data are available).

#### SEC. 204. RULES AND GUIDELINES.

(a) ISSUANCE OF RULES AND GUIDELINES.—The President (or the designee of the President) shall issue—

(1) rules to carry out this title[.];

[(2) rules to require that a comprehensive study be conducted in the Executive Branch to determine the best practices for Federal agencies to take appropriate disciplinary actions against Federal employees who are determined in any judicial or administrative proceeding to have discriminated against any individual in violation of any of the laws cited in section 201(c), and]

(2) rules to require that a comprehensive study be conducted in the executive branch to determine the best practices relating to the appropriate disciplinary actions against Federal employees who commit the actions described under clauses (i) and (ii) of section 203(a)(6)(A); and

(3) based on the results of such study, advisory guidelines incorporating best practices that Federal agencies may follow to take such actions against such employees.

(b) AGENCY NOTIFICATION REGARDING IMPLEMENTATION OF GUIDELINES.—Not later than 30 days after the issuance of guidelines under subsection (a), each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a written statement specifying in detail—

(1) whether such agency has adopted and will fully follow such guidelines[.];

(2) if such agency has not adopted such guidelines, the reasons for the failure to adopt such guidelines[.]; and

(3) if such agency will not fully follow such guidelines, the reasons for the decision not to fully follow such guidelines and an explanation of the extent to which such agency will not follow such guidelines.

#### SEC. 205. CLARIFICATION OF REMEDIES.

Consistent with Federal law, nothing in this title shall prevent any Federal employee, former Federal employee, or applicant for Federal employment from exercising any right otherwise available under the laws of the United States.

#### ISEC. 206. STUDY BY GENERAL ACCOUNTING OFFICE REGARDING EXHAUSTION OF ADMINISTRATIVE REMEDIES.

[(a) STUDY.—Not later than 180 days after the date of the enactment of this Act, the General Accounting Office shall conduct a study relating to the effects of eliminating the requirement that Federal employees aggrieved by violations of any of the laws specified in paragraphs (7) and (8) of section 201(c) exhaust administrative remedies before filing complaints with the Equal Employment Opportunity Commission. Such study shall include a detailed summary of matters investigated, of information collected, and of conclusions formulated that

lead to determinations of how the elimination of such requirement will—

[(1) expedite handling of allegations of such violations within Federal agencies and will streamline the complaint-filing process,

[(2) affect the workload of the Commission,

[(3) affect established alternative dispute resolution procedures in such agencies, and

[(4) affect any other matters determined by the General Accounting Office to be appropriate for consideration.

[(b) REPORT.—Not later than 90 days after completion of the study required by subsection (a), the General Accounting Office shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a report containing the information required to be included in such study.]

**SEC. 206. STUDIES BY GENERAL ACCOUNTING OFFICE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ON ASCERTAINMENT OF CERTAIN DEPARTMENT OF JUSTICE COSTS.**

(a) **STUDY ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.**—

(1) **STUDY.**—

(A) *IN GENERAL.*—Not later than 180 days after the date of enactment of this Act, the General Accounting Office shall conduct a study relating to the effects of eliminating the requirement that Federal employees aggrieved by violations of any of the laws specified under section 201(c) exhaust administrative remedies before filing complaints with the Equal Employment Opportunity Commission.

(B) **CONTENTS.**—The study shall include a detailed summary of matters investigated, information collected, and conclusions formulated that lead to determinations of how the elimination of such requirement will—

(i) expedite handling of allegations of such violations within Federal agencies and will streamline the complaint-filing process;

(ii) affect the workload of the Commission;

(iii) affect established alternative dispute resolution procedures in such agencies; and

(iv) affect any other matters determined by the General Accounting Office to be appropriate for consideration.

(2) **REPORT.**—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a report containing the information required to be included in such study.

(b) **STUDY ON ASCERTAINMENT OF CERTAIN COSTS OF THE DEPARTMENT OF JUSTICE IN DEFENDING DISCRIMINATION AND WHISTLEBLOWER CASES.**—

(1) **STUDY.**—Not later than 180 days after the date of enactment of this Act, the General Accounting Office shall conduct a study of the methods that could be used for, and the extent of any administrative burden that would be imposed on, the Department of Justice to ascertain the personnel and administrative costs incurred in defending in each case arising from a proceeding identified under section 201(a) (1) and (2).

(2) **REPORT.**—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report containing the information required to be included in the study.

**TITLE III—EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT DATA DISCLOSURE**

**SEC. 301. DATA TO BE POSTED BY EMPLOYING FEDERAL AGENCIES.**

(a) *IN GENERAL.*—Each Federal agency shall post on its public Web site, in the time,

form, and manner prescribed under section 303 (in conformance with the requirements of this section), summary statistical data relating to equal employment opportunity complaints filed with such agency by employees or former employees of, or applicants for employment with, such agency.

(b) **CONTENT REQUIREMENTS.**—The data posted by a Federal agency under this section shall include, for the then current fiscal year, the following:

(1) The number of complaints filed with such agency in such fiscal year.

(2) The number of individuals filing those complaints (including as the agent of a class).

(3) The number of individuals who filed 2 or more of those complaints.

(4) The number of complaints (described in paragraph (1)) in which each of the various bases of alleged discrimination is alleged.

(5) The number of complaints (described in paragraph (1)) in which each of the various issues of alleged discrimination is alleged.

(6) The average length of time, for each step of the process, it is taking such agency to process complaints (taking into account all complaints pending for any length of time in such fiscal year, whether first filed in such fiscal year or earlier). Average times under this paragraph shall be posted—

(A) for all such complaints,

(B) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is not requested, and

(C) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is requested.

(7) The total number of final agency actions rendered in such fiscal year involving a finding of discrimination and, of that number—

(A) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

(B) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

(8) Of the total number of final agency actions rendered in such fiscal year involving a finding of discrimination—

(A) the number and percentage involving a finding of discrimination based on each of the respective bases of alleged discrimination, and

(B) of the number specified under subparagraph (A) for each of the respective bases of alleged discrimination—

(i) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

(ii) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

(9) Of the total number of final agency actions rendered in such fiscal year involving a finding of discrimination—

(A) the number and percentage involving a finding of discrimination in connection with each of the respective issues of alleged discrimination, and

(B) of the number specified under subparagraph (A) for each of the respective issues of alleged discrimination—

(i) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

(ii) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

(10)(A) Of the total number of complaints pending in such fiscal year (as described in the parenthetical matter in paragraph (6)), the number that were first filed before the start of the then current fiscal year.

(B) With respect to those pending complaints that were first filed before the start of the then current fiscal year—

(i) the number of individuals who filed those complaints, and

(ii) the number of those complaints which are at the various steps of the complaint process.

(C) Of the total number of complaints pending in such fiscal year (as described in the parenthetical matter in paragraph (6)), the total number of complaints with respect to which the agency violated the requirements of section 1614.106(e)(2) of title 29 of the Code of Federal Regulations (as in effect on July 1, 2000, and amended from time to time) by failing to conduct within 180 days of the filing of such complaints an impartial and appropriate investigation of such complaints.

(c) **TIMING AND OTHER REQUIREMENTS.**—

(1) **CURRENT YEAR DATA.**—Data posted under this section for the then current fiscal year shall include both—

(A) interim year-to-date data, updated quarterly, and

(B) final year-end data.

(2) **DATA FOR PRIOR YEARS.**—The data posted by a Federal agency under this section for a fiscal year (both interim and final) shall include, for each item under subsection (b), such agency's corresponding year-end data for each of the 5 immediately preceding fiscal years (or, if not available for all 5 fiscal years, for however many of those 5 fiscal years for which data are available).

**SEC. 302. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.**

(a) *IN GENERAL.*—The Equal Employment Opportunity Commission shall post on its public Web site, in the time, form, and manner prescribed under section 303 for purposes of this section, summary statistical data relating to—

(1) hearings requested before an administrative judge of the Commission on complaints described in section 301, and

(2) appeals filed with the Commission from final agency actions on complaints described in section 301.

(b) **SPECIFIC REQUIREMENTS.**—The data posted under this section shall, with respect to the hearings and appeals described in subsection (a), include summary statistical data corresponding to that described in paragraphs (1) through (10) of section 301(b), and shall be subject to the same timing and other requirements as set forth in section 301(c).

(c) **COORDINATION.**—The data required under this section shall be in addition to the data the Commission is required to post under section 301 as an employing Federal agency.

**SEC. 303. RULES.**

The Equal Employment Opportunity Commission shall issue any rules necessary to carry out this title.

Mr. REID. Mr. President, I ask unanimous consent that the committee amendments be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to.

AMENDMENTS NOS. 3327 AND 3328, EN BLOC

Mr. REID. It is my belief that Senator THOMPSON has two amendments at the desk. I ask consent it be in order to consider these amendments en bloc and

that the amendments be considered agreed to.

The PRESIDING OFFICER. The clerk will report the amendments.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. THOMPSON, proposes amendments Nos. 3327 and 3328, en bloc.

The amendments are as follows:

AMENDMENT NO. 3327

(Purpose: To provide for the General Accounting Office to conduct studies on the effects of the Act and of the Contract Disputes Act of 1978 (41 U.S.C. 601 note; Public Law 95-563) on operations of agencies)

On page \_\_\_\_, insert between lines \_\_\_\_ and the following:

(C) STUDIES ON STATUTORY EFFECTS ON AGENCY OPERATIONS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall conduct—

(A) a study on the effects of section 201 on the operations of Federal agencies; and

(B) a study on the effects of section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) on the operations of Federal agencies.

(2) CONTENTS.—Each study under paragraph (1) shall include, with respect to the applicable statutes of the study—

(A) a summary of the number of cases in which a payment was made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code;

(B) a summary of the length of time Federal agencies used to complete reimbursements of payments described under subparagraph (A); and

(C) conclusions that assist in making determinations on how the reimbursements of payments described under subparagraph (A) will affect—

(i) the operations of Federal agencies;

(ii) funds appropriated on an annual basis;

(iii) employee relations and other human capital matters;

(iv) settlements; and

(v) any other matter determined by the General Accounting Office to be appropriate for consideration.

(3) REPORTS.—Not later than 90 days after the completion of each study under paragraph (1), the General Accounting Office shall submit a report on each study, respectively, to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Attorney General.

AMENDMENT NO. 3328

(Purpose: To provide for the General Accounting Office to conduct a study on the administrative and personnel costs incurred by the Department of the Treasury in the administration of the Judgment Fund)

On page \_\_\_\_, insert between lines \_\_\_\_ and the following:

(C) STUDY ON ADMINISTRATIVE AND PERSONNEL COSTS INCURRED BY THE DEPARTMENT OF THE TREASURY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall conduct a study on the extent of any administrative and personnel costs incurred by the Department of the Treasury to account for payments made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code, as a result of—

(A) this Act; and

(B) the Contracts Dispute Act of 1978 (41 U.S.C. 601 note; Public Law 95-563).

(2) REPORT.—Not later than 90 days after the completion of the study under paragraph (1), the General Accounting Office shall submit a report on the study to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Attorney General.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments (Nos. 3327 and 3328) were agreed to.

Mr. REID. I ask unanimous consent the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I support H.R. 169, the Notification and Federal Employee Anti-Discrimination Act. This historic bill—the first civil rights bill of the new century—strengthens existing laws protecting Federal employees from discrimination and harassment in the workplace.

H.R. 169 will create a more productive work environment by ensuring that agencies enforce the laws intended to protect Federal employees from harassment, discrimination and retaliation for whistleblowing.

I thank the chairman of the Government Affairs Committee, Senator LIEBERMAN, as well as Ranking Member THOMPSON and Senator AKAKA for their leadership on this issue in committee. Their dedication to the passage of this ground-breaking initiative has proven to be of monumental importance.

I applaud the leadership of Congressman JIM SENSENBRENNER for introducing this important legislation. Working with Congressman SENSENBRENNER, I introduced a similar bill in the Senate S. 201, the Federal Employee Protection Act. After the House passed H.R. 169 by a vote of 420 to 0, I urged the Senate Committee on Governmental Affairs to act on H.R. 169 rather than my bill in the interest of moving the process forward.

Finally, I recognize the work of the No Fear Coalition led by Marsha-Coleman Adebayo on this bill. Their efforts have been incredible.

The Notification and Federal Employee Anti-discrimination Act contains three main provisions: one, when agencies lose judgments or make settlements in harassment, discrimination and whistleblower cases, the responsible Federal agency would pay any financial penalty out of its own budget, rather than out of a general Federal judgment fund; two, Federal agencies are required to notify their employees about any applicable discrimination, harassment and whistleblower protection laws; and three, each Federal agency is required to send an annual report to Congress and the Attorney General.

Under current law, agencies are not accountable financially when they lose

harassment, discrimination and retaliation cases because any financial penalties are paid out of a Government-wide fund and not the agency's budget. I firmly believe that because there is no financial consequence to their actions, Federal agencies are essentially able to escape responsibility when they fail to comply with the law and are unresponsive to their employees' concerns.

Reports that Federal agencies are indifferent or hostile to complaints of sexual harassment and racial discrimination undermine the ability of the Federal Government to enforce civil rights laws, and hamper efforts to recruit talented individuals for Federal employment. Retaliation against whistleblowers creates a climate in which those people best able to provide accountability to the Government—and to the taxpayer—are unwilling to speak out.

The Federal Government must set an example for the private sector by promoting a workplace that does not tolerate harassment or discrimination of any kind but encourages employees to report illegal activity and mismanagement without fear of reprisal. I urge my colleagues to support this meaningful legislation.

Mr. REID. I ask unanimous consent the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 169), as amended, was read the third time and passed, as follows:

*Resolved*, That the bill from the House of Representatives (H.R. 169) entitled "An Act to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws; to require that each Federal agency post quarterly on its public Web site, certain statistical data relating to Federal sector equal employment opportunity complaints filed with such agency; and for other purposes.", do pass with the following amendments:

(1) Page 2, line 6, strike out [2001] and insert: 2002

(2) Page 2, in the table of contents, strike out [TITLE I—GENERAL PROVISIONS]

[Sec. 101. Findings.]

[Sec. 102 Definitions.]

[Sec. 103 Effective date.]

and insert:

TITLE I—GENERAL PROVISIONS

Sec. 101. Findings.

Sec. 102. Sense of Congress.

Sec. 103. Definitions.

Sec. 104. Effective date.

(3) Page 2, in the table of contents, strike out

[Sec. 206 Study by the General Accounting Office regarding exhaustion of administrative remedies.]

and insert:

Sec. 206. Studies by General Accounting Office on exhaustion of remedies and certain Department of Justice costs.

(4) Page 2, strike out all after line 9 over to and including line 13 on page 4 and insert:

**SEC. 101. FINDINGS.**

Congress finds that—

(1) Federal agencies cannot be run effectively if those agencies practice or tolerate discrimination;

(2) Congress has heard testimony from individuals, including representatives of the National Association for the Advancement of Colored People and the American Federation of Government Employees, that point to chronic problems of discrimination and retaliation against Federal employees;

(3) in August 2000, a jury found that the Environmental Protection Agency had discriminated against a senior social scientist, and awarded that scientist \$600,000;

(4) in October 2000, an Occupational Safety and Health Administration investigation found that the Environmental Protection Agency had retaliated against a senior scientist for disagreeing with that agency on a matter of science and for helping Congress to carry out its oversight responsibilities;

(5) there have been several recent class action suits based on discrimination brought against Federal agencies, including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Marshals Service, the Department of Agriculture, the United States Information Agency, and the Social Security Administration;

(6) notifying Federal employees of their rights under discrimination and whistleblower laws should increase Federal agency compliance with the law;

(7) requiring annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each Federal agency should enable Congress to improve its oversight over compliance by agencies with the law; and

(8) requiring Federal agencies to pay for any discrimination or whistleblower judgment, award, or settlement should improve agency accountability with respect to discrimination and whistleblower laws.

**SEC. 102. SENSE OF CONGRESS.**

It is the sense of Congress that—

(1) Federal agencies should not retaliate for court judgments or settlements relating to discrimination and whistleblower laws by targeting the claimant or other employees with reductions in compensation, benefits, or workforce to pay for such judgments or settlements;

(2) the mission of the Federal agency and the employment security of employees who are blameless in a whistleblower incident should not be compromised;

(3) Federal agencies should not use a reduction in force or furloughs as means of funding a reimbursement under this Act;

(4)(A) accountability in the enforcement of employee rights is not furthered by terminating—

(i) the employment of other employees; or

(ii) the benefits to which those employees are entitled through statute or contract; and

(B) this Act is not intended to authorize those actions;

(5)(A) nor is accountability furthered if Federal agencies react to the increased accountability under this Act by taking unfounded disciplinary actions against managers or by violating the procedural rights of managers who have been accused of discrimination; and

(B) Federal agencies should ensure that managers have adequate training in the management of a diverse workforce and in dispute resolution and other essential communication skills; and

(6)(A) Federal agencies are expected to reimburse the General Fund of the Treasury within a reasonable time under this Act; and

(B) a Federal agency, particularly if the amount of reimbursement under this Act is large

relative to annual appropriations for that agency, may need to extend reimbursement over several years in order to avoid—

(i) reductions in force;

(ii) furloughs;

(iii) other reductions in compensation or benefits for the workforce of the agency; or

(iv) an adverse effect on the mission of the agency.

(5)Page 4, line 14, strike out [102.] and insert: 103.

(6)Page 4, line 18, strike out [agency.] and insert: agency;

(7)Page 4, line 21, strike out [303.] and insert: 303;

(8)Page 4, line 25, strike out [Commission.] and insert: Commission;

(9)Page 5, line 2, strike out [agency.] and insert: agency;

(10)Page 5, line 5, strike out [agency.] and insert: agency;

(11)Page 5, line 9, strike out [103.] and insert: 104.

(12)Page 6, line 3, strike out [(c).] and insert: (c);

(13)Page 6, line 19, strike out [of the] and insert: ,

(14)Page 7, line 2, strike out [of the] and insert: ,

(15)Page 7, strike out lines 3 and 4

(16)Page 7, line 14, strike out [law.] and insert: law;

(17)Page 7, line 15, strike out [if to the extent that] and insert: if, or to the extent that,

(18)Page 8, line 8, after "ate," insert: the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency,

(19)Page 8, line 14, strike out [alleged.] and insert: alleged;

(20)Page 8, line 16, strike out [(1).] and insert: (1);

(21)Page 8, line 21, strike out [any.] and insert: any;

(22)Page 8, line 25, strike out [(1).] and insert: (1);

(23)Page 9, line 3, strike out [, and] and insert: ;

(24)Page 9, strike out lines 4 through 14 and insert:

(6) a detailed description of—

(A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who—

(i) discriminated against any individual in violation of any of the laws cited under section 201(a) (1) or (2); or

(ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a) (1) or (2); and

(B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;

(7) an analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including—

(A) an examination of trends;

(B) causal analysis;

(C) practical knowledge gained through experience; and

(D) any actions planned or taken to improve complaint or civil rights programs of the agency; and

(8) any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.

(25)Page 9, strike out lines 18 and 19 and insert:

years (or, if data are not available for all 5 fiscal years, for each of those 5 fiscal years for which data are available).

(26)Page 9, line 23, strike out [title.] and insert: title;

(27)Page 9, strike out all after line 23 over to and including line 6 on page 10 and insert:

(2) rules to require that a comprehensive study be conducted in the executive branch to determine the best practices relating to the appropriate disciplinary actions against Federal employees who commit the actions described under clauses (i) and (ii) of section 203(a)(6)(A); and

(28)Page 10, line 20, strike out [guidelines.] and insert: guidelines;

(29)Page 10, lines 22 and 23, strike out [guidelines.] and insert: guidelines;

(30)Page 11, strike out all after line 9 over to and including line 16 on page 12 and insert:

**SEC. 206. STUDIES BY GENERAL ACCOUNTING OFFICE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ON ASCERTAINMENT OF CERTAIN DEPARTMENT OF JUSTICE COSTS.**

(a) **STUDY ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.**—

(1) **STUDY.**—

(A) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the General Accounting Office shall conduct a study relating to the effects of eliminating the requirement that Federal employees aggrieved by violations of any of the laws specified under section 201(c) exhaust administrative remedies before filing complaints with the Equal Employment Opportunity Commission.

(B) **CONTENTS.**—The study shall include a detailed summary of matters investigated, information collected, and conclusions formulated that lead to determinations of how the elimination of such requirement will—

(i) expedite handling of allegations of such violations within Federal agencies and will streamline the complaint-filing process;

(ii) affect the workload of the Commission;

(iii) affect established alternative dispute resolution procedures in such agencies; and

(iv) affect any other matters determined by the General Accounting Office to be appropriate for consideration.

(2) **REPORT.**—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a report containing the information required to be included in such study.

(b) **STUDY ON ASCERTAINMENT OF CERTAIN COSTS OF THE DEPARTMENT OF JUSTICE IN DEFENDING DISCRIMINATION AND WHISTLEBLOWER CASES.**—

(1) **STUDY.**—Not later than 180 days after the date of enactment of this Act, the General Accounting Office shall conduct a study of the methods that could be used for, and the extent of any administrative burden that would be imposed on, the Department of Justice to ascertain the personnel and administrative costs incurred in defending in each case arising from a proceeding identified under section 201(a) (1) and (2).

(2) **REPORT.**—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report containing the information required to be included in the study.

(31)Page 12, after line 16, insert:

(c) **STUDIES ON STATUTORY EFFECTS ON AGENCY OPERATIONS.**—

(1) **IN GENERAL.**—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall conduct—

(A) a study on the effects of section 201 on the operations of Federal agencies; and

(B) a study on the effects of section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) on the operations of Federal agencies.

(2) CONTENTS.—Each study under paragraph (1) shall include, with respect to the applicable statutes of the study—

(A) a summary of the number of cases in which a payment was made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code;

(B) a summary of the length of time Federal agencies used to complete reimbursements of payments described under subparagraph (A); and

(C) conclusions that assist in making determinations on how the reimbursements of payments described under subparagraph (A) will affect—

- (i) the operations of Federal agencies;
- (ii) funds appropriated on an annual basis;
- (iii) employee relations and other human capital matters;
- (iv) settlements; and
- (v) any other matter determined by the General Accounting Office to be appropriate for consideration.

(3) REPORTS.—Not later than 90 days after the completion of each study under paragraph (1), the General Accounting Office shall submit a report on each study, respectively, to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Attorney General.

(32)Page 12, after line 16, insert:

(d) STUDY ON ADMINISTRATIVE AND PERSONNEL COSTS INCURRED BY THE DEPARTMENT OF THE TREASURY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall conduct a study on the extent of any administrative and personnel costs incurred by the Department of the Treasury to account for payments made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code, as a result of—

(A) this Act; and

(B) the Contracts Dispute Act of 1978 (41 U.S.C. 601 note; Public Law 95-563).

(2) REPORT.—Not later than 90 days after the completion of the study under paragraph (1), the General Accounting Office shall submit a report on the study to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Attorney General.

#### ORDERS FOR WEDNESDAY, APRIL 24, 2002

Mr. REID. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., tomorrow, Wednesday, April 24; following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the Senate resume consideration of the energy reform bill; that the next amendment to be offered be a

Craig amendment regarding hydro; further, that 18 hours remain under closure on the Daschle-Bingaman substitute amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PROGRAM

Mr. REID. In the morning, the first issue we will take up is the Cantwell amendment, followed by the amendment of the Senator from Idaho, Mr. CRAIG.

#### ADJOURNMENT UNTIL 9:30 A. M. TOMORROW

Mr. REID. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:41 p.m., adjourned until Wednesday, April 24, 2002, at 9:30 a.m.

#### CONFIRMATION

Executive nomination confirmed by the Senate April 23, 2002:

#### THE JUDICIARY

JEFFREY R. HOWARD, OF NEW HAMPSHIRE, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIRST CIRCUIT.