

1 **SEC. 1553. PROTECTING STATE AND LOCAL GOVERNMENT**  
2 **AND CONTRACTOR WHISTLEBLOWERS.**

3 (a) PROHIBITION OF REPRISALS.—An employee of  
4 any non-Federal employer receiving covered funds may not  
5 be discharged, demoted, or otherwise discriminated  
6 against as a reprisal for disclosing, including a disclosure  
7 made in the ordinary course of an employee's duties, to  
8 the Board, an inspector general, the Comptroller General,  
9 a member of Congress, a State or Federal regulatory or  
10 law enforcement agency, a person with supervisory author-  
11 ity over the employee (or such other person working for  
12 the employer who has the authority to investigate, dis-  
13 cover, or terminate misconduct), a court or grand jury,  
14 the head of a Federal agency, or their representatives in-  
15 formation that the employee reasonably believes is evi-  
16 dence of—

17 (1) gross mismanagement of an agency contract  
18 or grant relating to covered funds;

19 (2) a gross waste of covered funds;

20 (3) a substantial and specific danger to public  
21 health or safety related to the implementation or use  
22 of covered funds;

23 (4) an abuse of authority related to the imple-  
24 mentation or use of covered funds; or

25 (5) a violation of law, rule, or regulation related  
26 to an agency contract (including the competition for

1 or negotiation of a contract) or grant, awarded or  
2 issued relating to covered funds.

3 (b) INVESTIGATION OF COMPLAINTS.—

4 (1) IN GENERAL.—A person who believes that  
5 the person has been subjected to a reprisal prohib-  
6 ited by subsection (a) may submit a complaint re-  
7 garding the reprisal to the appropriate inspector  
8 general. Except as provided under paragraph (3),  
9 unless the inspector general determines that the  
10 complaint is frivolous, does not relate to covered  
11 funds, or another Federal or State judicial or ad-  
12 ministrative proceeding has previously been invoked  
13 to resolve such complaint, the inspector general shall  
14 investigate the complaint and, upon completion of  
15 such investigation, submit a report of the findings of  
16 the investigation to the person, the person's em-  
17 ployer, the head of the appropriate agency, and the  
18 Board.

19 (2) TIME LIMITATIONS FOR ACTIONS.—

20 (A) IN GENERAL.—Except as provided  
21 under subparagraph (B), the inspector general  
22 shall, not later than 180 days after receiving a  
23 complaint under paragraph (1)—

24 (i) make a determination that the  
25 complaint is frivolous, does not relate to

1 covered funds, or another Federal or State  
2 judicial or administrative proceeding has  
3 previously been invoked to resolve such  
4 complaint; or

5 (ii) submit a report under paragraph  
6 (1).

7 (B) EXTENSIONS.—

8 (i) VOLUNTARY EXTENSION AGREED  
9 TO BETWEEN INSPECTOR GENERAL AND  
10 COMPLAINANT.—If the inspector general is  
11 unable to complete an investigation under  
12 this section in time to submit a report  
13 within the 180-day period specified under  
14 subparagraph (A) and the person submit-  
15 ting the complaint agrees to an extension  
16 of time, the inspector general shall submit  
17 a report under paragraph (1) within such  
18 additional period of time as shall be agreed  
19 upon between the inspector general and  
20 the person submitting the complaint.

21 (ii) EXTENSION GRANTED BY INSPEC-  
22 TOR GENERAL.—If the inspector general is  
23 unable to complete an investigation under  
24 this section in time to submit a report  
25 within the 180-day period specified under

1           subparagraph (A), the inspector general  
2           may extend the period for not more than  
3           180 days without agreeing with the person  
4           submitting the complaint to such exten-  
5           sion, provided that the ~~Inspector~~ ~~General~~ lc  
6           provides a written explanation (subject to  
7           the authority to exclude information under  
8           paragraph (4)(C)) for the decision, which  
9           shall be provided to both the person sub-  
10          mitting the complaint and the non-Federal  
11          employer.

12                   (iii) SEMI-ANNUAL REPORT ON EX-  
13                   TENSIONS.—The inspector general shall in-  
14                   clude in semi-annual reports to Congress a  
15                   list of those investigations for which the in-  
16                   spector general received an extension.

17           (3) DISCRETION NOT TO INVESTIGATE COM-  
18           PLAINTS.—

19                   (A) IN GENERAL.—The inspector general  
20                   may decide not to conduct or continue an inves-  
21                   tigation under this section upon providing to  
22                   the person submitting the complaint and the  
23                   non-Federal employer a written explanation  
24                   (subject to the authority to exclude information  
25                   under paragraph (4)(C)) for such decision.

1           (B) ASSUMPTION OF RIGHTS TO CIVIL  
2           REMEDY.—Upon receipt of an explanation of a  
3           decision not to conduct or continue an inves-  
4           tigation under subparagraph (A), the person  
5           submitting a complaint shall immediately as-  
6           sume the right to a civil remedy under sub-  
7           section (c)(3) as if the 210-day period specified  
8           under such subsection has already passed.

9           (C) SEMI-ANNUAL REPORT.—The inspector  
10          general shall include in semi-annual reports to  
11          Congress a list of those investigations the in-  
12          spector general decided not to conduct or con-  
13          tinue under this paragraph.

14          (4) ACCESS TO INVESTIGATIVE FILE OF IN-  
15          SPECTOR GENERAL.—

16          (A) IN GENERAL.—The person alleging a  
17          reprisal under this section shall have access to  
18          the investigation file of the appropriate inspec-  
19          tor general in accordance with section 552a of  
20          title 5, United States Code (commonly referred  
21          to as the “Privacy Act”). The investigation of  
22          the inspector general shall be deemed closed for  
23          purposes of disclosure under such section when  
24          an employee files an appeal to an agency head  
25          or a court of competent jurisdiction.

1 (B) CIVIL ACTION.—In the event the per-  
2 son alleging the reprisal brings suit under sub-  
3 section (c)(3), the person alleging the reprisal  
4 and the non-Federal employer shall have access  
5 to the investigative file of the Inspector General  
6 in accordance with the Privacy Act. (lc)

7 (C) EXCEPTION.—The inspector general  
8 may exclude from disclosure—

9 (i) information protected from disclo-  
10 sure by a provision of law; and

11 (ii) any additional information the in-  
12 spector general determines disclosure of  
13 which would impede a continuing investiga-  
14 tion, provided that such information is dis-  
15 closed once such disclosure would no longer  
16 impede such investigation, unless the in-  
17 spector general determines that disclosure  
18 of law enforcement techniques, procedures,  
19 or information could reasonably be ex-  
20 pected to risk circumvention of the law or  
21 disclose the identity of a confidential  
22 source.

23 (5) PRIVACY OF INFORMATION.—An inspector  
24 general investigating an alleged reprisal under this  
25 section may not respond to any inquiry or disclose

1 any information from or about any person alleging  
2 such reprisal, except in accordance with the provi-  
3 sions of section 552a of title 5, United States Code,  
4 or as required by any other applicable Federal law.

5 (c) REMEDY AND ENFORCEMENT AUTHORITY.—

6 (1) BURDEN OF PROOF.—

7 (A) DISCLOSURE AS CONTRIBUTING FAC-  
8 TOR IN REPRISAL.—

9 (i) IN GENERAL.—A person alleging a  
10 reprisal under this section shall be deemed  
11 to have affirmatively established the occur-  
12 rence of the reprisal if the person dem-  
13 onstrates that a disclosure described in  
14 subsection (a) was a contributing factor in  
15 the reprisal.

16 (ii) USE OF CIRCUMSTANTIAL EVI-  
17 DENCE.—A disclosure may be dem-  
18 onstrated as a contributing factor in a re-  
19 prisal for purposes of this paragraph by  
20 circumstantial evidence, including—

21 (I) evidence that the official un-  
22 dertaking the reprisal knew of the dis-  
23 closure; or

24 (II) evidence that the reprisal oc-  
25 curred within a period of time after

1                   the disclosure such that a reasonable  
2                   person could conclude that the disclo-  
3                   sure was a contributing factor in the  
4                   reprisal.

5                   (B) OPPORTUNITY FOR REBUTTAL.—The  
6                   head of an agency may not find the occurrence  
7                   of a reprisal with respect to a reprisal that is  
8                   affirmatively established under subparagraph  
9                   (A) if the non-Federal employer demonstrates  
10                  by clear and convincing evidence that the non-  
11                  Federal employer would have taken the action  
12                  constituting the reprisal in the absence of the  
13                  disclosure.

14                  (2) AGENCY ACTION.—Not later than 30 days  
15                  after receiving an inspector general report under  
16                  subsection (b), the head of the agency concerned  
17                  shall determine whether there is sufficient basis to  
18                  conclude that the non-Federal employer has sub-  
19                  jected the complainant to a reprisal prohibited by  
20                  subsection (a) and shall either issue an order deny-  
21                  ing relief in whole or in part or shall take 1 or more  
22                  of the following actions:

23                         (A) Order the employer to take affirmative  
24                         action to abate the reprisal.



1           (B) Order the employer to reinstate the  
2           person to the position that the person held be-  
3           fore the reprisal, together with the compensa-  
4           tion (including back pay), compensatory dam-  
5           ages, employment benefits, and other terms and  
6           conditions of employment that would apply to  
7           the person in that position if the reprisal had  
8           not been taken.

9           (C) Order the employer to pay the com-  
10          plainant an amount equal to the aggregate  
11          amount of all costs and expenses (including at-  
12          torneys' fees and expert witnesses' fees) that  
13          were reasonably incurred by the complainant  
14          for, or in connection with, bringing the com-  
15          plaint regarding the reprisal, as determined by  
16          the head of the agency or a court of competent  
17          jurisdiction.

18          (3) CIVIL ACTION.—If the head of an agency  
19          issues an order denying relief in whole or in part  
20          under paragraph (1), has not issued an order within  
21          210 days after the submission of a complaint under  
22          subsection (b), or in the case of an extension of time  
23          under subsection (b)(2)(B)(i), within 30 days after  
24          the expiration of the extension of time, or decides  
25          under subsection (b)(3) not to investigate or to dis-

1 continue an investigation, and there is no showing  
2 that such delay or decision is due to the bad faith  
3 of the complainant, the complainant shall be deemed  
4 to have exhausted all administrative remedies with  
5 respect to the complaint, and the complainant may  
6 bring a de novo action at law or equity against the  
7 employer to seek compensatory damages and other  
8 relief available under this section in the appropriate  
9 district court of the United States, which shall have  
10 jurisdiction over such an action without regard to  
11 the amount in controversy. Such an action shall, at  
12 the request of either party to the action, be tried by  
13 the court with a jury.

14 (4) JUDICIAL ENFORCEMENT OF ORDER.—  
15 Whenever a person fails to comply with an order  
16 issued under paragraph (2), the head of the agency  
17 shall file an action for enforcement of such order in  
18 the United States district court for a district in  
19 which the reprisal was found to have occurred. In  
20 any action brought under this paragraph, the court  
21 may grant appropriate relief, including injunctive re-  
22 lief, compensatory and exemplary damages, and at-  
23 torneys fees and costs.

24 (5) JUDICIAL REVIEW.—Any person adversely  
25 affected or aggrieved by an order issued under para-

1 graph (2) may obtain review of the order's conform-  
2 ance with this subsection, and any regulations issued  
3 to carry out this section, in the United States court  
4 of appeals for a circuit in which the reprisal is al-  
5 leged in the order to have occurred. No petition  
6 seeking such review may be filed more than 60 days  
7 after issuance of the order by the head of the agen-  
8 cy. Review shall conform to chapter 7 of title 5,  
9 United States Code.

10 (d) NONENFORCEABILITY OF CERTAIN PROVISIONS  
11 WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBI-  
12 TRATION OF DISPUTES.—

13 (1) WAIVER OF RIGHTS AND REMEDIES.—Ex-  
14 cept as provided under paragraph (3), the rights and  
15 remedies provided for in this section may not be  
16 waived by any agreement, policy, form, or condition  
17 of employment, including by any predispute arbitra-  
18 tion agreement.

19 (2) PREDISPUTE ARBITRATION AGREEMENTS.—  
20 Except as provided under paragraph (3), no  
21 predispute arbitration agreement shall be valid or  
22 enforceable if it requires arbitration of a dispute  
23 arising under this section.

24 (3) EXCEPTION FOR COLLECTIVE BARGAINING  
25 AGREEMENTS.—Notwithstanding paragraphs (1)

1 and (2), an arbitration provision in a collective bar-  
2 gaining agreement shall be enforceable as to dis-  
3 putes arising under the collective bargaining agree-  
4 ment.

5 (e) REQUIREMENT TO POST NOTICE OF RIGHTS AND  
6 REMEDIES.—Any employer receiving covered funds shall  
7 post notice of the rights and remedies provided under this  
8 section.

9 (f) RULES OF CONSTRUCTION.—

10 (1) NO IMPLIED AUTHORITY TO RETALIATE  
11 FOR NON-PROTECTED DISCLOSURES.—Nothing in  
12 this section may be construed to authorize the dis-  
13 charge of, demotion of, or discrimination against an  
14 employee for a disclosure other than a disclosure  
15 protected by subsection (a) or to modify or derogate  
16 from a right or remedy otherwise available to the  
17 employee.

18 (2) RELATIONSHIP TO STATE LAWS.—Nothing  
19 in this section may be construed to preempt, pre-  
20 clude, or limit the protections provided for public or  
21 private employees under State whistleblower laws.

22 (g) DEFINITIONS.—In this Act:

23 (1) ABUSE OF AUTHORITY.—The term “abuse  
24 of authority” means an arbitrary and capricious ex-  
25 ercise of authority by a contracting official or em-

section

1        ployee that adversely affects the rights of any per-  
2        son, or that results in personal gain or advantage to  
3        the official or employee or to preferred other per-  
4        sons.

5            (2) COVERED FUNDS.—The term “covered  
6        funds” ~~in this section~~ means any contract, grant, or  
7        other payment received by any non-Federal employer  
8        if—

9            (A) the Federal Government provides any  
10        portion of the money or property that is pro-  
11        vided, requested, or demanded; and

12            (B) at least some of the funds are appro-  
13        priated or otherwise made available by this Act.

14            (3) EMPLOYEE.—The term “employee”—

15            (A) except as provided under subparagraph  
16        (B), means an individual performing services on  
17        behalf of an employer; and

18            (B) does not include any Federal employee  
19        or member of the uniformed services (as that  
20        term is defined in section 101(a)(5) of title 10,  
21        United States Code).

22            (4) NON-FEDERAL EMPLOYER.—The term  
23        “non-Federal employer”—

24            (A) means any employer—

25            (i) with respect to covered funds—

1 (I) the contractor, subcontractor,  
 2 grantee, or recipient, as the case may  
 3 be, if the contractor, grantee, or re-  
 4 cipient is an employer; and

Subcontractor

5 (II) any professional membership  
 6 organization, certification or other  
 7 professional body, any agent or li-  
 8 censee of the Federal government, or  
 9 any person acting directly or indi-  
 10 rectly in the interest of an employer  
 11 receiving covered funds; or

12 (ii) with respect to covered funds re-  
 13 ceived by a State or local government, the  
 14 State or local government receiving the  
 15 funds and any contractor or subcontractor  
 16 of the State or local government; and

17 (B) does not mean any department, agen-  
 18 cy, or other entity of the Federal Government.

19 (5) STATE OR LOCAL GOVERNMENT.—The term  
 20 “State or local government” means—

21 (A) the government of each of the several  
 22 States, the District of Columbia, the Common-  
 23 wealth of Puerto Rico, Guam, American Samoa,  
 24 the Virgin Islands, the Northern Mariana Is-

Commonwealth of the

1 lands, or any other territory or possession of  
2 the United States; or

3 (B) the government of any political sub-  
4 division of a government listed in subparagraph  
5 (A).

6 **SEC. 1554. SPECIAL CONTRACTING PROVISIONS.**

7 To the maximum extent possible, contracts funded  
8 under this Act shall be awarded as fixed-price contracts  
9 through the use of competitive procedures. ~~Any~~ contract  
10 awarded with such funds that is not fixed-price and not  
11 awarded using competitive procedures shall be posted in  
12 a special section of the website established in section 1526.

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A summary of