

## “The Department of Energy Whistleblower Accountability Act”

The bill strengthens and updates the whistleblower protection provisions contained in Sec. 211 of the Energy Reorganization Act (42 U.S.C. 5851) which were adopted in 1992. These provisions cover non-federal contractor employees who work at Department of Energy (DOE) and U.S. Nuclear Regulatory Commission facilities pursuant to the Atomic Energy Act. The U.S. Department of Labor (DOL) is charged with independently investigating and adjudicating whistleblower claims under this law.

The bill would do the following:

- Expand the definition of protected disclosures to include waste, fraud and abuse (now limited to violations of the Atomic Energy Act, which have been interpreted as primarily related to safety); the proposed language for disclosure of waste, fraud and abuse mirrors that contained in the Whistleblower Protection Act.
- Add whistleblowers' disclosures to contractors' employee concerns programs as a protected disclosure in addition to disclosures to the employer.
- Clarify that a disclosure to Congress, the U.S. Government Accountability Office (GAO) or an Inspector General (IG) counts as a protected disclosure and not just congressional testimony.
- Extend the period during which the employee may file a complaint from 180 days from the date of violation to one year.
- Allow whistleblowers to request an administrative hearing at the Labor Department on their case if the Labor Department has not completed its investigation within 6 months; now they can go to Federal Court if no DOL finding is forthcoming after one year, but there is no interim administrative “step” that they can use to advance their case.
- Require contractors to be assessed the legal and administrative costs of the whistleblower case unless they can show DOE contributed or caused the retaliation. Currently, contractors' legal and administrative costs are paid for by DOE creating a disincentive to resolve or settle the complaints.
- Allow imposition of exemplary (punitive) damages, where the contractor/employer has been found to have retaliated against the whistleblower. This can include penalties or suspension or debarment of the contractor as a DOE contractor.
- Require DOE to amend all of its contracts to include these new protections within 180 days of enactment and preserves whistleblowers' rights under the statute if they fail to do so.
- Clarify that a whistleblower can demand a jury trial in Federal Court if investigations of their complaints are not completed within one year. Currently, whistleblowers have a right to take the complaint to Federal Court, but recent decisions have raised questions about their right to a jury trial.
- Give the Secretary of Energy the authority to discipline DOE managers who exercise management direction over a contractor in cases where the claim of retaliation against the whistleblower is substantiated and the DOE manager directly or indirectly permitted or sanctioned the violation or incident that was the subject of the complaint.
- Modernize the language in the statute, such as incorporating gender-neutral terms i.e. current statutory language says “Any employee who believes he has been discharged or discriminated against...” and the bill would change that provision to “Any employee who believes that employee has been discharged or discriminated against...”), and updating the statutory structure of the section.