

In the Senate of the United States,

April 23, 2002.

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

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

[TITLE I—GENERAL PROVISIONS]

[Sec. 101. Findings.]

[Sec. 102. Definitions.]

[Sec. 103. Effective date.]

3 and insert:

TITLE I—GENERAL PROVISIONS

Sec. 101. Findings.

Sec. 102. Sense of Congress.

Sec. 103. Definitions.

Sec. 104. Effective date.

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

【Sec. 206 Study by the General Accounting Office regarding exhaustion of administrative remedies.】

2 and insert:

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

3 **(4)**Page 2, strike out all after line 9 over to and including

4 line 13 on page 4 and insert:

5 **SEC. 101. FINDINGS.**

6 *Congress finds that—*

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

9 *(2) Congress has heard testimony from individ-*
10 *uals, including representatives of the National Asso-*
11 *ciation for the Advancement of Colored People and*
12 *the American Federation of Government Employees,*
13 *that point to chronic problems of discrimination and*
14 *retaliation against Federal employees;*

15 *(3) in August 2000, a jury found that the Envi-*
16 *ronmental Protection Agency had discriminated*
17 *against a senior social scientist, and awarded that*
18 *scientist \$600,000;*

19 *(4) in October 2000, an Occupational Safety and*
20 *Health Administration investigation found that the*
21 *Environmental Protection Agency had retaliated*
22 *against a senior scientist for disagreeing with that*

1 *agency on a matter of science and for helping Con-*
2 *gress to carry out its oversight responsibilities;*

3 *(5) there have been several recent class action*
4 *suits based on discrimination brought against Federal*
5 *agencies, including the Federal Bureau of Investiga-*
6 *tion, the Bureau of Alcohol, Tobacco, and Firearms,*
7 *the Drug Enforcement Administration, the Immigra-*
8 *tion and Naturalization Service, the United States*
9 *Marshals Service, the Department of Agriculture, the*
10 *United States Information Agency, and the Social Se-*
11 *curity Administration;*

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

15 *(7) requiring annual reports to Congress on the*
16 *number and severity of discrimination and whistle-*
17 *blower cases brought against each Federal agency*
18 *should enable Congress to improve its oversight over*
19 *compliance by agencies with the law; and*

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

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

25 *It is the sense of Congress that—*

1 (1) *Federal agencies should not retaliate for*
2 *court judgments or settlements relating to discrimina-*
3 *tion and whistleblower laws by targeting the claimant*
4 *or other employees with reductions in compensation,*
5 *benefits, or workforce to pay for such judgments or*
6 *settlements;*

7 (2) *the mission of the Federal agency and the*
8 *employment security of employees who are blameless*
9 *in a whistleblower incident should not be com-*
10 *promised;*

11 (3) *Federal agencies should not use a reduction*
12 *in force or furloughs as means of funding a reim-*
13 *bursement under this Act;*

14 (4)(A) *accountability in the enforcement of em-*
15 *ployee rights is not furthered by terminating—*

16 (i) *the employment of other employees; or*

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

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

21 (5)(A) *nor is accountability furthered if Federal*
22 *agencies react to the increased accountability under*
23 *this Act by taking unfounded disciplinary actions*
24 *against managers or by violating the procedural*

1 *rights of managers who have been accused of discrimi-*
2 *nation; and*

3 *(B) Federal agencies should ensure that man-*
4 *agers have adequate training in the management of*
5 *a diverse workforce and in dispute resolution and*
6 *other essential communication skills; and*

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

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

15 *(i) reductions in force;*

16 *(ii) furloughs;*

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

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

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

22 **(6)**Page 4, line 18, strike out **[agency,]** and insert: *agen-*
23 *cy;*

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

- 1 **(8)**Page 4, line 25, strike out **【Commission,】** and insert:
2 *Commission*;
- 3 **(9)**Page 5, line 2, strike out **【agency,】** and insert: *agency*;
- 4 **(10)**Page 5, line 5, strike out **【agency,】** and insert: *agen-*
5 *cy*;
- 6 **(11)**Page 5, line 9, strike out **【103.】** and insert: *104.*
- 7 **(12)**Page 6, line 3, strike out **【(c),】** and insert: *(c)*;
- 8 **(13)**Page 6, line 19, strike out **【of the】** and insert: ,
- 9 **(14)**Page 7, line 2, strike out **【of the】** and insert: ,
- 10 **(15)**Page 7, strike out lines 3 and 4
- 11 **(16)**Page 7, line 14, strike out **【law,】** and insert: *law*;
- 12 **(17)**Page 7, line 15, strike out **【if to the extent that】**
13 and insert: *if, or to the extent that,*
- 14 **(18)**Page 8, line 8, after “ate,” insert: *the Committee on*
15 *Governmental Affairs of the Senate, the Committee on Gov-*
16 *ernment Reform of the House of Representatives, each com-*
17 *mittee of Congress with jurisdiction relating to the agency,*
- 18 **(19)**Page 8, line 14, strike out **【alleged,】** and insert: *al-*
19 *leged*;
- 20 **(20)**Page 8, line 16, strike out **【(1),】** and insert: *(1)*;

1 **(21)**Page 8, line 21, strike out **【any,】** and insert: *any*;

2 **(22)**Page 8, line 25, strike out **【(1),】** and insert: *(1)*;

3 **(23)**Page 9 , line 3, strike out **【, and】** and insert: ;

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

5 *(6) a detailed description of—*

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

9 *(i) discriminated against any indi-*
10 *vidual in violation of any of the laws cited*
11 *under section 201(a) (1) or (2); or*

12 *(ii) committed another prohibited per-*
13 *sonnel practice that was revealed in the in-*
14 *vestigation of a complaint alleging a viola-*
15 *tion of any of the laws cited under section*
16 *201(a) (1) or (2); and*

17 *(B) with respect to each of such laws, the*
18 *number of employees who are disciplined in ac-*
19 *cordance with such policy and the specific na-*
20 *ture of the disciplinary action taken;*

21 *(7) an analysis of the information described*
22 *under paragraphs (1) through (6) (in conjunction*
23 *with data provided to the Equal Employment Oppor-*
24 *tunity Commission in compliance with part 1614 of*

1 *title 29 of the Code of Federal Regulations)*
2 *including—*

3 *(A) an examination of trends;*

4 *(B) causal analysis;*

5 *(C) practical knowledge gained through ex-*
6 *perience; and*

7 *(D) any actions planned or taken to im-*
8 *prove complaint or civil rights programs of the*
9 *agency; and*

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

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

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

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

17 **(27)**Page 9, strike out all after line 23 over to and includ-
18 ing line 6 on page 10 and insert:

19 *(2) rules to require that a comprehensive study*
20 *be conducted in the executive branch to determine the*
21 *best practices relating to the appropriate disciplinary*
22 *actions against Federal employees who commit the ac-*
23 *tions described under clauses (i) and (ii) of section*
24 *203(a)(6)(A); and*

1 **(28)**Page 10, line 20, strike out **【guidelines,】** and insert:
2 *guidelines*;

3 **(29)**Page 10, lines 22 and 23, strike out **【guidelines,】**
4 and insert: *guidelines*;

5 **(30)**Page 11, strike out all after line 9 over to and includ-
6 ing line 16 on page 12 and insert:

7 **SEC. 206. STUDIES BY GENERAL ACCOUNTING OFFICE ON**
8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
9 **AND ON ASCERTAINMENT OF CERTAIN DE-**
10 **PARTMENT OF JUSTICE COSTS.**

11 *(a) STUDY ON EXHAUSTION OF ADMINISTRATIVE REM-*
12 *EDIES.—*

13 *(1) STUDY.—*

14 *(A) IN GENERAL.—Not later than 180 days*
15 *after the date of enactment of this Act, the Gen-*
16 *eral Accounting Office shall conduct a study re-*
17 *lating to the effects of eliminating the require-*
18 *ment that Federal employees aggrieved by viola-*
19 *tions of any of the laws specified under section*
20 *201(c) exhaust administrative remedies before*
21 *filing complaints with the Equal Employment*
22 *Opportunity Commission.*

23 *(B) CONTENTS.—The study shall include a*
24 *detailed summary of matters investigated, infor-*
25 *mation collected, and conclusions formulated*

1 that lead to determinations of how the elimi-
2 nation of such requirement will—

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

6 (ii) affect the workload of the Commis-
7 sion;

8 (iii) affect established alternative dis-
9 pute resolution procedures in such agencies;
10 and

11 (iv) affect any other matters deter-
12 mined by the General Accounting Office to
13 be appropriate for consideration.

14 (2) *REPORT.*—Not later than 90 days after com-
15 pletion of the study required by paragraph (1), the
16 General Accounting Office shall submit to the Speaker
17 of the House of Representatives, the President pro
18 tempore of the Senate, the Equal Employment Oppor-
19 tunity Commission, and the Attorney General a re-
20 port containing the information required to be in-
21 cluded in such study.

22 (b) *STUDY ON ASCERTAINMENT OF CERTAIN COSTS OF*
23 *THE DEPARTMENT OF JUSTICE IN DEFENDING DISCRIMI-*
24 *NATION AND WHISTLEBLOWER CASES.*—

1 (1) *STUDY.*—Not later than 180 days after the
2 date of enactment of this Act, the General Accounting
3 Office shall conduct a study of the methods that could
4 be used for, and the extent of any administrative bur-
5 den that would be imposed on, the Department of
6 Justice to ascertain the personnel and administrative
7 costs incurred in defending in each case arising from
8 a proceeding identified under section 201(a) (1) and
9 (2).

10 (2) *REPORT.*—Not later than 90 days after com-
11 pletion of the study required by paragraph (1), the
12 General Accounting Office shall submit to the Speaker
13 of the House of Representatives and the President pro
14 tempore of the Senate a report containing the infor-
15 mation required to be included in the study.

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

17 (c) *STUDIES ON STATUTORY EFFECTS ON AGENCY OP-*
18 *ERATIONS.*—

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

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

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

4 (2) CONTENTS.—Each study under paragraph
5 (1) shall include, with respect to the applicable stat-
6 utes of the study—

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

12 (B) a summary of the length of time Fed-
13 eral agencies used to complete reimbursements of
14 payments described under subparagraph (A);
15 and

16 (C) conclusions that assist in making deter-
17 minations on how the reimbursements of pay-
18 ments described under subparagraph (A) will
19 affect—

20 (i) the operations of Federal agencies;

21 (ii) funds appropriated on an annual
22 basis;

23 (iii) employee relations and other
24 human capital matters;

25 (iv) settlements; and

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

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

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

13 (d) *STUDY ON ADMINISTRATIVE AND PERSONNEL*
14 *COSTS INCURRED BY THE DEPARTMENT OF THE TREAS-*
15 *URY.*—

16 (1) *IN GENERAL.*—Not later than 1 year after
17 the date of enactment of this Act, the General Ac-
18 counting Office shall conduct a study on the extent of
19 any administrative and personnel costs incurred by
20 the Department of the Treasury to account for pay-
21 ments made in accordance with section 2414, 2517,
22 2672, or 2677 of title 28, United States Code, and
23 under section 1304 of title 31, United States Code, as
24 a result of—

25 (A) this Act; and

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

3 (2) *REPORT.—Not later than 90 days after the*
4 *completion of the study under paragraph (1), the*
5 *General Accounting Office shall submit a report on*
6 *the study to the Speaker of the House of Representa-*
7 *tives, the President pro tempore of the Senate, the*
8 *Committee on Governmental Affairs of the Senate, the*
9 *Committee on Government Reform of the House of*
10 *Representatives, and the Attorney General.*

Attest:

Secretary.

107TH CONGRESS
2D SESSION

H. R. 169

AMENDMENTS