

AMENDMENT NO. _____ Calendar No. _____

Purpose: To strengthen the protections for employees of Department of Defense contractors from reprisal for disclosure of certain information.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

(no.) _____

To authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. MCCASKILL

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . PROTECTION FOR CONTRACTOR EMPLOYEES**
3 **FROM REPRISAL FOR DISCLOSURE OF CER-**
4 **TAIN INFORMATION.**

5 (a) INCREASED PROTECTION FROM REPRISAL.—

6 Subsection (a) of section 2409 of title 10, United States

7 Code, is amended—

1 (1) by striking “disclosing to a Member of Con-
2 gress or an authorized official of an agency or the
3 Department of Justice” and inserting “disclosing to
4 a Member of Congress, a representative of a com-
5 mittee of Congress, an Inspector General, the Gov-
6 ernment Accountability Office, a Department of De-
7 fense employee responsible for contract oversight or
8 management, or an authorized official of an agency
9 or the Department of Justice, including in the case
10 of a disclosure made in the ordinary course of an
11 employee’s duties,”; and

12 (2) by striking “information relating to a sub-
13 stantial violation of law related to a contract” and
14 inserting “information that the employee reasonably
15 believes is evidence of gross mismanagement of a
16 Department of Defense contract, a gross waste of
17 Department of Defense funds, a substantial and spe-
18 cific danger to public health or safety, or a violation
19 of law related to a Department of Defense con-
20 tract”.

21 (b) ACCELERATION OF SCHEDULE FOR DENYING RE-
22 LIEF OR PROVIDING REMEDY.—Subsection (c) of such
23 section is amended—

24 (1) in paragraph (1)—

1 (A) by inserting after “(1)” the following:

2 “Not later than 90 days after receiving an In-
3 spector General report pursuant to subsection
4 (b), the head of the agency concerned shall de-
5 termine whether the contractor concerned has
6 subjected the complainant to a reprisal prohib-
7 ited under subsection (a).”; and

8 (B) by adding at the end the following new
9 subparagraphs:

10 “(D) In the event the disclosure relates to a
11 cost-plus contract, prohibit the contractor from re-
12 ceiving one or more award fee payments to which
13 the contractor would otherwise be eligible until such
14 time as the contractor takes the actions ordered by
15 the head of the agency pursuant to subparagraphs
16 (A) through (C).

17 “(E) Take the reprisal into consideration in any
18 past performance evaluation of the contractor for
19 the purpose of a contract award.”;

20 (2) by redesignating paragraph (3) as para-
21 graph (4); and

22 (3) by inserting after paragraph (2) the fol-
23 lowing new paragraph:

24 “(3)(A) In the case of a disclosure that relates to a
25 contract covered under subsection (f), not later than 90

1 days after receipt of a written determination under para-
2 graph (1), a complainant who is aggrieved by the deter-
3 mination or by an action that the agency head has taken
4 or failed to take pursuant to such determination may
5 bring an action at law or equity for de novo review to seek
6 compensatory damages and other relief available under
7 this section in the appropriate district court of the United
8 States, which shall have jurisdiction over such an action
9 without regard to the amount in controversy. Such an ac-
10 tion shall, at the request of either party to the action, be
11 tried by the court with a jury.

12 “(B) In the event that a determination by an agency
13 head pursuant to paragraph (1) has not been made within
14 15 months after a complaint is submitted under sub-
15 section (b), and such delay is not shown to be due to the
16 bad faith of the complainant, the complainant shall be
17 deemed to have exhausted the complainant’s administra-
18 tive remedies with respect to the complaint and may bring
19 an action at law or equity described under subparagraph
20 (A).”.

21 (c) LEGAL BURDEN OF PROOF.—Such section is fur-
22 ther amended—

23 (1) by redesignating subsection (e) as sub-
24 section (g); and

1 (2) by inserting after subsection (d) the fol-
2 lowing new subsection:

3 “(e) LEGAL BURDEN OF PROOF.—The legal burdens
4 of proof specified in section 1221(e) of title 5 shall be con-
5 trolling for the purposes of any investigation conducted
6 by an inspector general, decision by the head of an agency,
7 or hearing to determine whether discrimination prohibited
8 under this section has occurred.”.

9 (d) REQUIREMENT TO NOTIFY EMPLOYEES OF
10 RIGHTS RELATED TO PROTECTION FROM REPRISAL.—
11 Such section, as amended by subsection (c), is further
12 amended by inserting after subsection (e) the following
13 new subsection:

14 “(f) NOTICE OF RIGHTS RELATED TO PROTECTION
15 FROM REPRISAL.—

16 “(1) IN GENERAL.—Each Department of De-
17 fense contract in excess of \$5,000,000, other than a
18 contract for the purchase of commercial items, shall
19 include a clause requiring the contractor to ensure
20 that all employees of the contractor who are working
21 on Department of Defense contracts are notified
22 of—

23 “(A) their rights under this section;

24 “(B) the fact that the restrictions imposed
25 by any employee contract, employee agreement,

1 or non-disclosure agreement may not supersede,
2 conflict with, or otherwise alter the employee
3 rights provided for under this section; and

4 “(C) the telephone number for the whistle-
5 blower hotline of the Inspector General of the
6 Department of Defense.

7 “(2) FORM OF NOTICE.—The notice required by
8 paragraph (1) shall be made by posting the required
9 information at a prominent place in each workplace
10 where employees working on the contract regularly
11 work.”.