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CONGRESSIONAL RECORD — HOUSE

September 22, 1986

WHISTLEBLOWER PROTECTION ACT OF 1986

Mrs. SCHROEDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4033) to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4033

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Whistleblower Protection Act of 1986".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) Federal employees who make disclosures described in section 2302(b)(8) of title 5, United States Code, serve the public interest by assisting in the elimination of fraud, waste, abuse, and unnecessary Government expenditures;

(2) protecting employees who disclose Government illegality, waste, and corruption is a major step toward a more effective civil service; and

(3) in passing the Civil Service Reform Act of 1978, Congress established the Office of Special Counsel to provide whistleblowers (those individuals who make disclosures described in such section 2302(b)(8)) protection from reprisal.

(b) PURPOSES.—The purpose of this Act is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government by—

(1) mandating that employees should not suffer adverse consequences as a result of prohibited personnel practices;

(2) establishing—

(A) that the primary role of the Office of Special Counsel is to protect employees, especially whistleblowers; and

(B) that while disciplining those who commit prohibited personnel practices may be used as a means by which to help accomplish that goal, the protection of individuals remains the paramount consideration; and

(3) providing that the Office of Special Counsel represent employees, former employees, and applicants for employment with the Federal Government who claim to have been subject to prohibited personnel practices.

SEC. 3. MERIT SYSTEMS PROTECTION BOARD; OFFICE OF SPECIAL COUNSEL; EMPLOYEE RIGHT OF ACTION.

(a) IN GENERAL.—Chapter 12 of title 5, United States Code, is amended to read as follows:

CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD; OFFICE OF SPECIAL COUNSEL; AND EMPLOYEE RIGHT OF ACTION

"Subchapter I—Merit Systems Protection Board

"Sec. 1201. Appointment of members of the Merit Systems Protection Board.

"Sec. 1202. Term of office; filling vacancies; removal.

"Sec. 1203. Chairman; Vice Chairman.

"Sec. 1204. Powers and functions of the Merit Systems Protection Board.

"Sec. 1205. Transmittal of information of Congress.

"Sec. 1206. Annual report.

"Subchapter II—Office of Special Counsel

"Sec. 1211. Establishment.

"Sec. 1212. Powers and functions of the

Office of Special Counsel.

"Sec. 1213. Provisions relating to disclosures of violations of law, mismanagement, and certain other matters.

"Sec. 1214. Investigation of prohibited personnel practices; corrective action.

"Sec. 1215. Disciplinary action.

"Sec. 1216. Other matters within the jurisdiction of the Office of Special Counsel.

"Sec. 1217. Transmittal of information of Congress.

"Sec. 1218. Annual report.

"Subchapter III—Individual Right of Action in Cases Involving Prohibited Personnel Practices

"Sec. 1221. Individual right of action.

"Subchapter I—Merit Systems Protection Board

"§ 1201. Appointment of members of the Merit Systems Protection Board

"The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. The members of the Board shall be individuals, who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of the Board. No member of the Board may hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

"§ 1202. Term of office; filling vacancies; removal

"(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

"(b) A member appointed to fill a vacancy occurring before the end of a term of office of the member's predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201.

"(c) Any member appointed for a 7-year term may not be reappointed to any following term but may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that such member may not continue to serve for more than 1 year after the date on which the term of the member would otherwise expire under this section.

"(d) Any member may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

"§ 1203. Chairman; Vice Chairman

"(a) The President shall from time to time appoint, by and with the advice and consent of the Senate, one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

"(b) The President shall from time to time designate one of the members of the Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

"(c) During the absence or disability of both the Chairman and the Vice Chairman, or when the offices of Chairman and Vice Chairman are vacant, the remaining Board member shall perform the functions vested in the Chairman.

§ 1204. Powers and functions of the Merit Systems Protection Board

"(a) The Merit System Protection Board shall—

"(1) hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, section 2023 of title 38, or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;

"(2) order any agency or employee to comply with any order or decision issued by the Board under the authority granted under paragraph (1) and enforce compliance with any such order;

"(3) conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected; and

"(4) review, as provided in subsection (f), rules and regulations of the Office of Personnel Management.

"(b)(1) Any member of the Merit Systems Protection Board, any administrative law judge appointed by the Board under section 3105, and any employee of the Board designated by the Board may administer oaths, examine witnesses, take depositions, and receive evidence.

"(2) Any member of the Board, any administrative law judge appointed by the Board under section 3105, and any employee of the Board designated by the Board may, with respect to any individual—

"(A) issue subpoenas requiring the attendance and presentation of testimony, and the production of documentary or other evidence, by such individual from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; and

"(B) order the taking of depositions from, and responses to written interrogatories by, any such individual.

"(3) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

"(c) In the case of contumacy or failure to obey a subpoena issued under subsection (b)(2)(A), the United States district court for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(d) A subpoena referred to in subsection (b)(2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in such manner as the Federal Rules of Civil Procedure prescribe for service of a subpoena in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such individual, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance under this subsection by such individual that such court would have if such individual were personally within the jurisdiction of such court.

"(e)(1) In any proceeding under subsection (a)(1), any member of the Board may request from the Director of the Office of Personnel Management an advisory opinion concerning the interpretation of any rule,

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regulation, or other policy directive promulgated by the Office of Personnel Management.

"(2)(A) In enforcing compliance with any order under subsection (a)(2), the Board may order that any employee charged with complying with such order, other than an employee appointed by the President by and with the advice and consent of the Senate, shall not be entitled to receive payment for service as an employee during any period that the order has not been complied with. The Board shall certify to the Comptroller General of the United States that such an order has been issued, and no payment shall be made out of the Treasury of the United States for any service specified in such order.

"(B) The Board shall prescribe regulations under which any employee who is aggrieved by the failure of any other employee to comply with an order of the Board may petition the Board to exercise its authority under subparagraph (A).

"(3) In carrying out any study under subsection (a)(3), the Board shall make such inquiries as may be necessary and, unless otherwise prohibited by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed.

"(f)(1) At any time after the effective date of any rule or regulation issued by the Director of the Office of Personnel Management in carrying out functions under section 1103, the Board shall review any provision of such rule or regulation—

"(A) on its own motion;

"(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

"(C) on the filing of a written complaint by the Special Counsel requesting such review.

"(2) In reviewing any provision of any rule or regulation pursuant to this subsection, the Board shall declare such provision—

"(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face, require any employee to violate section 2302(b); or

"(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision, has required any employee to violate section 2302(b).

"(3) The Director of the Office of Personnel Management, and the head of any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

"(4) The Board shall require any agency—

"(A) to cease compliance with any provisions of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

"(B) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been invalidly implemented by the agency.

"(g) The Chairman of the Board may delegate any of the Chairman's administrative responsibilities under this title to any employee of the Board.

"(h) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. All regulations of the Board shall be published in the Federal Register.

"(i) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Board may appear for the Board, and represent the Board, in any civil action brought in connection with any function carried out by the Board pursuant to this title or as otherwise authorized by law.

"(j) The Chairman of the Board may appoint such personnel as may be necessary to perform the functions of the Board. Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

"(k) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall, as revised, be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

"(l) The Board shall submit to the President, and, at the same time, to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title.

"§ 1205. Transmittal of information to Congress

"Notwithstanding any other provision of law or any rule, regulation, or policy directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.

"§ 1206. Annual report

"The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the significant actions of the Office of Personnel Management, including an analysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

"Subchapter II—Office of Special Counsel

"§ 1211. Establishment

"(a) There is established the Office of Special Counsel, which shall be headed by the Special Counsel. The Office shall have an official seal which shall be judicially noticed. The Office shall have its principal office in the District of Columbia and shall have field offices in other appropriate locations.

"(b) The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The Special Counsel shall be an individual who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel's predecessor serves for the remainder of the term. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President.

"§ 1212. Powers and functions of the Office of Special Counsel

"(a) The Office of Special Counsel shall—

"(1) in accordance with applicable provisions of this subchapter, represent and act on behalf of employees, former employees, and applicants for employment alleging prohibited personnel practices;

"(2) receive and investigate allegations of prohibited personnel practices, and, where appropriate—

"(A) bring petitions for stays, and petitions for corrective action, under section 1214; and

"(B) file a complaint or make recommendations for disciplinary action under section 1215;

"(3) receive, review, and, where appropriate, forward to the Attorney General or an agency head under section 1213, disclosures of violations of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

"(4) review rules and regulations issued by the Director of the Office of Personnel Management in carrying out functions under section 1103 and, where the Special Counsel finds that any such rule or regulation would, on its face or as implemented, require the commission of a prohibited personnel practice, file a written complaint with the Board; and

"(5) investigate and bring appropriate actions concerning allegations of violations of other laws within the jurisdiction of the Office of Special Counsel (as referred to in section 1216).

"(b)(1) The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, take depositions, and receive evidence.

"(2) The Special Counsel may—

"(A) issue subpoenas; and

"(B) order the taking of depositions and order responses to written interrogatives; in the same manner as provided under section 1204.

"(3) Section 1204(c), and the second sentence of section 1204(d), shall apply in the case of contumacy or failure to obey a subpoena issued under this subsection.

"(4) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

"(c) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Special Counsel may appear for the Office of Special Counsel, and represent the Office, in any civil action brought in connection with any function carried out by the Office pursuant to this title or as otherwise authorized by law.

"(d)(1) Except as provided in paragraph (2), the Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board.

"(2) The Special Counsel may intervene or otherwise participate in an action brought by an individual under section 1221 or in an appeal brought by an employee under section 7701 only with the consent of such individual or employee.

"(3) (A) The Special Counsel may obtain judicial review of any final order or decision of the Merit Systems Protection Board in which the Special Counsel was a party.

"(B) A petition for review under this paragraph shall be filed with such court, and

within such time, as provided for under section 7703(b).

"(e) (1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

"(2) Any appointment made under this subsection shall be made in accordance with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

"(f) The Special Counsel may prescribe regulations relating to the receipt and investigation of matters under the jurisdiction of the Special Counsel. Such regulations shall be published in the Federal Register.

"(g) The Special Counsel shall not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73).

"§ 1213. Provisions relating to disclosures of violations of law, mismanagement, and certain other matters

"(a) This section applies with respect to—

"(1) any disclosure of information by an employee, former employee, or applicant for employment which the employee, former employee, or applicant reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense of the conduct of foreign affairs; and

"(2) any disclosure by an employee, former employee, or applicant for employment to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee, former employee, or applicant reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(b) Whenever the Special Counsel receives information of a type described in subsection (a), the Special Counsel shall review such information and, within 15 days after receiving the information, determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety.

"(c)(1) Subject to paragraph (2), if the Special Counsel makes a positive determination under subsection (b), the Special Counsel shall promptly transmit the information with respect to which the determination was made to the appropriate agency head and require that the agency head—

"(A) conduct an investigation with respect to the information and any related matters transmitted by the Special Counsel to the agency head; and

"(B) submit a written report setting forth the findings of the agency head within 60 days after the date on which the informa-

tion is transmitted to the agency head or within any longer period of time agreed to in writing by the Special Counsel.

"(2) The Special Counsel may require an agency head to conduct an investigation and submit a written report under paragraph (1) only if the information was transmitted to the Special Counsel by—

"(A) an employee, former employee, or applicant for employment in the agency which the information concerns; or

"(B) an employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

"(d) Any report required under subsection (c) shall be reviewed and signed by the head of the agency and shall include—

"(1) a summary of the information with respect to which the investigation was initiated;

"(2) a description of the conduct of the investigation;

"(3) a summary of any evidence obtained from the investigation;

"(4) a listing of any violation or apparent violation of any law, rule, or regulation; and

"(5) a description of any action taken or planned as a result of the investigation, such as—

"(A) changes in agency rules, regulations, or practices;

"(B) the restoration of any aggrieved employee;

"(C) disciplinary action against any employee; and

"(D) referral to the Attorney General of any evidence of a criminal violation.

"(e)(1) Any such report shall be submitted to the Congress, to the President, and to the Special Counsel for transmittal to the complainant. Whenever the Special Counsel does not receive the report of the agency head within the time prescribed in subsection (c)(1)(B), the Special Counsel shall transmit a copy of the information which was received by the agency head to the President and to the Congress, together with a statement noting the failure of the agency head to file the required report.

"(2) In any case in which evidence of a criminal violation obtained by an agency in an investigation under subsection (c) is referred to the Attorney General—

"(A) the report shall not be transmitted to the complainant; and

"(B) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

"(f) Upon the receipt of any report of any agency head as required under subsection (c), the Special Counsel shall review the report and determine whether—

"(1) the findings of the agency head appear reasonable; and

"(2) the report contains the information required under subsection (d).

"(g) If the Special Counsel does not make a positive determination under subsection (b), or if the information (as described in subsection (a)) is transmitted to the Special Counsel other than by an individual described in subparagraph (A) or (B) of subsection (c)(1), the Special Counsel—

"(1) shall return any information and any other matter provided by the individual who made the disclosure; and

"(2) shall inform that individual of—

"(A) the reasons why the disclosure may not be further acted on under this chapter; and

"(B) any recourse (administrative or otherwise) available under law, rule, or regulation, should the individual wish to pursue the matter further.

"(h)(1) Subject to paragraph (2), the identity of any employee, former employee, or applicant for employment who makes a dis-

closure described in subsection (a) may not be disclosed by the Special Counsel without the consent of the employee, former employee, or applicant unless the Special Counsel determines that the disclosures of the identity of the employee, former employee, or applicant is necessary in order to carry out the functions of the Special Counsel.

"(2) The identity of any employee, former employee, or applicant for employment whose disclosure (as described in subsection (a)) may not, under subsection (g), be further acted on under this chapter may not be disclosed under any circumstances.

"(i) Except as specifically authorized under this section, the provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is—

"(1) specifically prohibited from disclosure by any other provision of law; or

"(2) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

"(j) With respect to any disclosure of information described in subsection (a) which involves foreign intelligence or counterintelligence information, if the disclosure is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

"(k) The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to heads of agencies under subsection (c), together with reports by the heads of agencies under subsection (c)(1)(B) relating to such matters. The Special Counsel shall take steps to ensure that any such public list does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.

"§ 1214. Investigation of prohibited personnel practices; corrective action

"(a)(1) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

"(2) If the Special Counsel terminates any investigation under paragraph (1), the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of the termination of the investigation, the findings of fact ascertained during the course of the investigation, and the reasons for terminating the investigation.

"(3) In addition to any authority granted under paragraph (1), the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken.

"(b)(1)(A)(i) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 45 days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

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"(ii) Any member of the Board requested by the Special Counsel to order a stay under clause (i) shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

"(iii) Unless denied under clause (ii), any stay under this subparagraph shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

"(B) The Board may extend the period of any stay granted under subparagraph (A) for any period which the Board considers appropriate.

"(2)(A) If, during the pendency of a stay ordered under paragraph (1), the agency does not act to correct the prohibited personnel practice, the Special Counsel shall petition the Board for corrective action.

"(B) If the Special Counsel finds, in consultation with the individual subject to the prohibited personnel practice, that the agency has acted to correct the prohibited personnel practice, the Special Counsel shall file such finding with the Board, together with any written comments which the individual may provide.

"(3)(A) Whenever the Special Counsel petitions the Board for corrective action, the Board shall provide an opportunity for oral or written comments by the Special Counsel, the agency involved, and any individual who alleges to be the subject of the prohibited personnel practice.

"(B)(i) Subject to clause (ii), the Board shall order such corrective action as the Board considers appropriate if the Board determines that the Special Counsel has demonstrated that a prohibited personnel practice has occurred, exists, or is to be taken, by—

"(I) substantial evidence, in the case of a prohibited personnel practice described in section 2302(b)(8); or

"(II) a preponderance of the evidence, in the case of a prohibited personnel practice other than one described in section 2302(b)(8).

"(ii) Corrective action under clause (i) shall not be ordered—

"(I) if the personnel action involved is justified on a basis independent of the prohibited personnel practice referred to in clause (i); and

"(II) if the agency demonstrates, by a preponderance of the evidence, that such personnel action was taken, or is to be taken, solely for the reason under subclause (I).

"(c)(1) Judicial review of any final order or decision of the Board under this section may be obtained—

"(A) by any employee, former employee, or applicant for employment adversely affected by such order or decision; or

"(B) by the Special Counsel.

"(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

"(d)(1) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that a criminal violation has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

"(2) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel shall proceed with any investigation or proceeding insti-

tuted under this subchapter notwithstanding that the alleged violation has been reported to the Attorney General.

"(e) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred other than one referred to in subsection (b) or (d), the Special Counsel shall report such violation to the head of the agency involved. The Special Counsel shall require, within 30 days after the receipt of the report by the agency, a certification by the head of the agency which states—

"(1) that the head of the agency has personally reviewed the report; and

"(2) what action has been or is to be taken, and when the action will be completed.

"(f) During any investigation initiated under this subchapter, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

"§ 1215. Disciplinary action

"(a)(1) Except as provided in subsection (b), if the Special Counsel determines that disciplinary action should be taken against any employee for having—

"(A) committed a prohibited personnel practice,

"(B) violated the provisions of any law, rule, or regulation, or engaged in any other conduct within the jurisdiction of the Special Counsel as described in section 1216, or

"(C) knowingly and willfully refused or failed to comply with an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing the Special Counsel's determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Board, in accordance with this subsection.

"(2) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under paragraph (1) is entitled to—

"(A) a reasonable time to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer;

"(B) be represented by an attorney or other representative;

"(C) a hearing before the Board or an administrative law judge appointed under section 3105 and designated by the Board;

"(D) have a transcript kept of any hearing under subparagraph (C); and

"(E) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

"(3) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000.

"(4) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this subsection may obtain judicial review of the order by filing a petition therefor with such court, and within such time, as provided for under section 7703(b).

"(5) In the case of any State or local officer or employee under chapter 15, the Board shall consider the case in accordance with the provisions of such chapter.

"(b) In the case of an employee in a confidential, policy-making, policy-determining,

or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in subsection (a)(1), together with any response of the employee, shall be presented to the President for appropriate action in lieu of being presented under subsection (a).

"(c)(1)(A) In the case of an individual under clause (i) or (ii) of subparagraph (B), the Special Counsel may transmit recommendations for disciplinary or other appropriate action (including the evidence on which such recommendations are based) to the head of the Federal agency concerned.

"(B) This subsection applies with respect to—

"(i) members of the uniformed services; and

"(ii) individuals employed by any person under contract with an agency to provide goods or services.

"(2) In any case in which the Special Counsel transmits recommendations to an agency head under paragraph (1), the agency head shall, within 60 days after receiving such recommendations, transmit a report to the Special Counsel on each recommendation and the action taken, or proposed to be taken, with respect to each such recommendation.

"§ 1216. Other matters within the jurisdiction of the Office of Special Counsel

"(a) In addition to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning—

"(1) political activity prohibited under subchapter III of chapter 73, relating to political activities by Federal employees;

"(2) political activity prohibited under chapter 15, relating to political activities by certain State and local officers and employees;

"(3) arbitrary or capricious withholding of information prohibited under section 552, except that the Special Counsel shall make no investigation of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

"(4) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

"(5) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

"(b) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in subsection (a)(5) if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

"(c)(1) If an investigation by the Special Counsel under subsection (a)(1) substantiates an allegation relating to any activity prohibited under section 7324, the Special Counsel may petition the Merit Systems Protection Board for any penalties provided for under section 7325.

"(2) If the Special Counsel receives allegations of activities described in subsection (a)(4) or involvement described in subsection (a)(5), the Special Counsel may investigate and seek corrective action under section 1214 and, if appropriate, disciplinary action under section 1215 as if the activities

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or involvement were a prohibited personnel practice.

“§ 1217. Transmittal of information to Congress

“Notwithstanding any other provision of law or any rule, regulation, or policy directive, the Special Counsel or any employee of the Special Counsel designated by the Special Counsel, may transmit to the Congress on the request of any committee or subcommittee, thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Office, without review, clearance, or approval by any other administrative authority.

“§ 1218. Annual report

“The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, and actions initiated by it before the Merit Systems Protection Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this subchapter, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this section shall include whatever recommendations for legislation or other action by Congress the Special Counsel may consider appropriate.

“Subchapter III—Individual Right of Action in Cases Involving Prohibited Personnel Practices

“§ 1221. Individual right of action

“(a) An employee, former employee, or applicant for employment may, with respect to any personnel action taken, or proposed to be taken, against such employee, former employee, or applicant for employment, as a result of a prohibited personnel practice, seek corrective action from the Merit Systems Protection Board.

“(b)(1) Any employee, former employee, or applicant for employment seeking corrective action under subsection (a) may request that the Board order a stay of the personnel action involved.

“(2) Any stay requested under paragraph (1) shall be granted within 10 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date the request is made, unless the Board determines—

(A) that there is not a substantial likelihood that the individual will prevail; or

(B) that granting the stay would result in extreme hardship to the agency which would be subject to the order.

“(3)(A) Except as provided in subparagraph (B), a stay granted under this subsection shall remain in effect until a final order or decision is rendered by the Board.

“(B) The Board may modify or dissolve a stay under this subsection at any time upon a showing by the agency involved that a failure to grant the request to modify or dissolve the stay (as the case may be) would result in extreme hardship to the agency.

“(c)(1) At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board may issue a subpoena for the attendance and testimony of any person or the production of documentary or other evidence from any person if the Board finds that such subpoena is necessary for the development of relevant evidence.

“(2) A subpoena under this subsection may be issued, and shall be enforced in the same manner, as applies in the case of subpoenas under section 1204.

“(d)(1) Subject to paragraph (2), the Board shall order such corrective action as the Board considers appropriate if the

Board determines that the individual has demonstrated that a prohibited personnel practice has occurred, exists, or is to be taken, by—

“(A) substantial evidence, in the case of a prohibited personnel practice described in section 2302(b)(8); or

“(B) a preponderance of the evidence, in the case of a prohibited personnel practice other than one described in section 2302(b)(8).

“(2) Corrective action under paragraph (1) shall not be ordered—

“(A) if the personnel action involved is justified on a basis independent of the prohibited personnel practice referred to in paragraph (1); and

“(B) if the agency demonstrates, by a preponderance of the evidence, that such personnel action was taken, is or to be taken, solely for the reason under subparagraph (A).

“(e)(1) A final order or decision shall be rendered by the Board within 60 days after the commencement of any proceeding under this section.

“(2) A decision to terminate an investigation under subchapter II may not be considered in any action or other proceeding under this section.

“(f) If an employee, former employee, or applicant for employment is the prevailing party, and the decision is based on a finding of a prohibited personnel practice, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other costs incurred.

“(g)(1) An employee, former employee, or applicant for employment adversely affected or aggrieved by a final order or decision of the Board under this section may obtain judicial review of the order or decision.

“(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

“(h)(1) An individual eligible to commence proceedings before the Board under this section or section 7513(d) with respect to a prohibited personnel practice may commence proceedings under either such section, but not both.

“(2) Subsections (a) through (g) shall apply in any proceeding brought under section 7513(d) if, or to the extent that, a prohibited personnel practice is involved.”

(b) CONFORMING AMENDMENT.—The analysis for part II of title 5 of the United States Code is amended by striking the item relating to chapter 12 and inserting the following:

“12. Merit Systems Protection Board, Office of Special Counsel, and Employee Right of Action 1201”.

SEC. 4. JUDICIAL REVIEW.

(a) NAMED RESPONDENT.—Section 7703(a)(2) of title 5, United States Code, is amended to read as follows:

“(2)(A) Except as provided in subparagraph (B), the Board shall be the named respondent in any proceeding brought pursuant to this subsection.

“(B) If the employee or applicant for employment seeks review, on the merits, of a final order or decision issued by the Board under section 7701, the agency responsible for taking the action appealed to the Board shall be the named respondent.”.

(b) VENUE.—Section 7703(b)(1) of title 5, United States Code, is amended by striking “Circuit.” and inserting “Circuit or a United States court of appeals for the judicial circuit within which the petitioner resides.”.

SEC. 5. REPRISALS.

Section 2302(b)(9) of title 5, United States Code, is amended to read as follows:

“(9) take or fail to take any personnel action against any employee or applicant for employment as a reprisal—

“(A) for the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

“(B) for testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);

“(C) for cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

“(D) for failing to follow orders to disobey a law”.

SEC. 6. TENNESSEE VALLEY AUTHORITY.

Section 2303(a)(2)(C)(i) of title 5, United States Code, is amended to read as follows:

“(i) a Government corporation (other than the Tennessee Valley Authority);”.

SEC. 7. INTERIM RELIEF.

Section 7701(b) of title 5, United States Code, is amended by adding at the end the following: “In the event that the employee or applicant for employment is the prevailing party in an appeal under this subsection, the employee or applicant shall be granted the relief provided in the decision pending the outcome of any petition for review under subsection (e), except that nothing in this sentence requires that any award of back pay or attorney fees be paid before the decision has become final.”.

SEC. 8. SAVINGS PROVISIONS.

(a) ORDERS, RULES, AND REGULATIONS.—All orders, rules, and regulations issued by the Merit Systems Protection Board or the Special Counsel before the effective date of this Act shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed.

(b) ADMINISTRATIVE PROCEEDINGS.—No provision of this Act shall affect any administrative proceedings pending at the time such provisions take effect. Orders shall be issued in such proceedings, and appeals shall be taken therefrom, as if this Act had not been enacted.

(c) SUITS AND OTHER PROCEEDINGS.—No suit, action, or other proceeding lawfully commenced by or against the members of the Merit Systems Protection Board, the Special Counsel, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act, shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS; RESTRICTION RELATING TO APPROPRIATIONS UNDER THE CIVIL SERVICE REFORM ACT OF 1978.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated—

(1) for each of fiscal years 1987, 1988, 1989, 1990, and 1991, \$20,000,000 to carry out subchapter I of chapter 12 of title 5, United States Code (as amended by this Act); and

(2) for each of fiscal year 1987, 1988, and 1989, \$5,000,000 to carry out subchapter II of chapter 12 of title 5, United States Code (as amended by this Act).

(b) RESTRICTION RELATING TO APPROPRIATIONS UNDER THE CIVIL SERVICE REFORM ACT OF 1978.—No funds may be appropriated to the Merit Systems Protection Board or the Office of Special Counsel pursuant to section 903 of the Civil Service Reform Act of 1978 (5 U.S.C. 5509 note).

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SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.

(a)(1) Section 2303(c) of title 5, United States Code, is amended by striking "the provisions of section 1206" and inserting "applicable provisions of sections 1214 and 1221".

(2) Sections 7502, 7512(E), 7521(b)(C), and 7542 of title 5, United States Code, are amended by striking "1206" and inserting "1215".

(3) Section 1190(a) of the Foreign Service Act of 1980 (22 U.S.C. 4139(a)) is amended by striking "1206" and inserting "1214 or 1221".

(b) Section 3393(g) of title 5, United States Code, is amended by striking "1207" and inserting "1215".

SEC. 11. EFFECTIVE DATE.

The amendments made by this Act shall take effect on October 1, 1986.

The SPEAKER pro tempore. Is a second demanded?

Mr. HORTON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The gentlewoman from Colorado [Mrs. SCHROEDER] will be recognized for 20 minutes and the gentleman from New York [Mr. HORTON] will be recognized for 20 minutes.

The Chair recognizes the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

(Mrs. SCHROEDER asked and was given permission to revise and extend her remarks, and include extraneous material.)

Mrs. SCHROEDER. Mr. Speaker, I am proud to bring the Whistleblower Protection Act to the House today. This bill makes good on the promise which Congress made to the taxpayers in 1978. We promised to protect civil servants who come forward with disclosures of waste or wrongdoing. By protecting whistleblowers, we would encourage disclosure and, thereby, be well on our way to winning the war against waste in Government.

Our 1978 effort to protect whistleblowers, contained in the Civil Service Reform Act, has failed. It has failed for two reasons. The law was not as strong as it should be. And, the Office of Special Counsel, which we created to investigate and prosecute whistleblower cases, has been a disaster. At first, it was energetic but ineffective. More recently, it has been professional but prejudiced against the people it was intended to protect.

The bill before us today deals with both problems. It deals with the weaknesses in the law by adding a number of new provisions which I will describe in a moment. And, the Whistleblower Protection Act circumvents the problem of bad appointees by giving employees the option of going directly to the Merit Systems Protec-

tion Board [MSPB] instead of having to go through the special counsel.

The most important provisions of H.R. 4033 are the following:

First. The bill makes clear that the primary mission of the special counsel is to protect from and make whole employees, applicants, and former employees who have been the victims of prohibited personnel practices.

Second. H.R. 4033 establishes the special counsel as an independent agency. Right now, the special counsel is an independent unit within MSPB. This relationship has led to destructive friction.

Third. The bill provides employees alleging that they have been victims of prohibited personnel practices with a direct right of action to the MSPB. They still can go to the special counsel, if they like.

Fourth. H.R. 4033 changes the burden of proof for proving whistleblower reprisals from preponderance to substantial evidence. This change is made because proving the state of mind of a management official is so difficult. The burden of proof remains a preponderance of the evidence for other prohibited personnel practices. Further, the bill deals with the dual causation case by requiring the agency to prove that the legitimate reason for the action, and not the prohibited reason, was the real reason for acting against the employee.

Fifth. The bill allows both the individual employees and the special counsel to seek judicial review of MSPB decisions on prohibited personnel practice cases.

Sixth. The bill better guards the confidentiality of employees who make protected disclosures through the special counsel. These disclosures can help agencies clean house by themselves, without being subject to unwanted publicity. There are variety of new provisions to ensure that going to the special counsel can not hurt the employee.

Seventh. The bill places the Tennessee Valley Authority under prohibited personnel practice provisions. I have heard a great deal about TVA whistleblowers who have been subject to reprisals for disclosing problems with the TVA's nuclear program. Why should TVA employees have less protection than other civil servants?

Eighth. The bill places both the MSPB and the special counsel under expiring authorizations for fixed sums. This will permit far stronger congressional oversight than has been available up until now.

Ninth. The bill saves money by providing that employees who win before MSPB hearing officers are reinstated pending appeal. Now, they are only reinstated after agency appeals are com-

pleted. This means that agencies pay back pay for the time the employee is appealing the decision, plus paying another employee to do the employee's job.

Tenth. The bill restores old law which permits employees to file appeals with the court of appeals where they live, or with the Federal circuit. This will be more convenient both for the employee and the agency.

This legislation is the result of years of intensive oversight by the Subcommittee on Civil Service. We have had weeks of hearings, reviewed extensive General Accounting Office reports, and spoken with scores of employees and their lawyers. It is supported by outside organizations, including employee unions, the Government Accountability Project, and Peter Grace's Citizens Against Waste. I think it is a very good bill which is deserving of your support.

Mr. Speaker, I include for the RECORD a letter from Rudolph G. Penner of the Congressional Budget Office with a cost estimate for H.R. 4033.

The letter follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,

Washington, DC, September 22, 1986.

Hon. WILLIAM D. FORD,
U.S. House of Representatives, Cannon
House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 4033, the Whistleblower Protection Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE—COST
ESTIMATE

SEPTEMBER 22, 1986.

1. Bill number: H.R. 4033.
2. Bill title: Whistleblower Protection Act of 1986.
3. Bill status:
As ordered reported by the House Committee on Post Office and Civil Service, September 16, 1986.
4. Bill purpose:

The bill would establish the Office of Special Counsel as an independent agency and would clarify that its primary role is to represent federal employees who claim to be victims of prohibited personnel practices. The bill also would create an individual right of action so employees can seek stays and corrective action directly from the Merit Systems Protection Board (MSPB) without involvement of the Special Counsel. Under current law, the Office of Special Counsel is established as part of the MSPB.

The bill authorizes the appropriation of \$20 million to the MSPB for each of the fiscal years 1987 through 1991 and \$5 million to the Office of Special Counsel for each of the fiscal years 1987, 1988, 1989. The bill also would remove the permanent, indefinite authorization that is currently in effect for these entities. In 1986, the MSPB received an appropriation of \$19.1 million, and the Office of Special Counsel received

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\$4.4 million, both after sequestration under the Balance Budget and Emergency Deficit Control Act of 1985. The President's budget for 1987 includes a request of \$20.3 million for the MSPB for 1987 and \$4.6 million for the Office of Special Counsel.

5. Estimated cost to the Federal Government:

Because the bill would replace the permanent, indefinite authorization currently in effect for the MSPB and the Office of Special Counsel with a definite authorization that would expire in 1991 and 1989, respectively, the bill would result in no net cost to the federal government. Relative to the CBO baseline estimates for the two activities, the authorizations provided by H.R. 4033 would be about \$1 million higher in 1987 and 1988, about the same in 1989 and 1990, and about \$1 million less in 1991.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Jim Hearn (226-2860).

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director
for Budget Analysis.

Mr. HORTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4033, the Whistleblower Protection Act of 1986.

Simply stated, H.R. 4033 improves our system of protecting Federal employees who report wrongdoing within their agencies and departments, and who, as a result of their actions, suffer reprisals. The protections set forth in this bill are important for both Federal employees and our Government. Without adequate safeguards, we cannot expect the Federal work force to be a major force in stopping or reporting instances of waste, fraud, and abuse.

H.R. 4033 reaffirms Congress' support for Federal employees who disclose illegal or wasteful practices and provides added protections from reprisal. Specifically, the bill reestablishes the Office of Special Counsel as an independent agency with an expiring authorization; it clarifies that the principal mission of the Office is to represent employees who claim to be victims of prohibited personnel practices. There has been some confusion as to the exact mission of the Office in recent years.

H.R. 4033 creates an individual right of action so that employees can seek action directly from the Merit System Protection Board. Further, it allows either an individual or the special counsel the option of judicial review by the Federal circuit or the court of appeals where the individual resides. The legislation reduces the evidence test in reprisals to "substantial," rather than "a preponderance of," and it expands the list of prohibited personnel practices to include reprisals for cooperating with inspectors general or the special counsel, testifying at a proceeding, or failing to obey an order to disobey a law.

Mr. Speaker, I was a principal author of the legislation creating the

first as well as the subsequent Offices of Inspector General. I know their importance in improving Government efficiency, and I know the importance they place on input from Federal employees in reporting instances where investigations might be warranted. Some argue that H.R. 4033 gives Federal employees too much protection, that the process established in this bill might be abused by employees seeking to avoid reprisals that might otherwise occur. I don't think this is true. The fact is this: Federal employees we heard in the hearings held by our subcommittee—employees who reported illegalities and suffered reprisals—rarely received support through the current process. That is a tragedy. The hardest thing an employee can do is to report an illegality within his or her department, agency or program. Rather than feel shame for such reporting, as most now do, we ought to afford them protections that preserve their dignity and afford them every opportunity to prove their case. Such a system simply does not work today.

It has been a pleasure working with Chair Schroeder on this issue. She has done an outstanding job in developing this bill, in seeking input from a number of sources, and I join her in support of this bill and would urge its acceptance. Let's give some support to our Federal employees for a change, and put in place a better system to protect those who report instances of waste, fraud, and abuse. Mr. Speaker, I urge passage of this bill.

□ 1210

Mr. Speaker, I yield one minute to the gentleman from Virginia [Mr. WOLF].

(By unanimous consent, Mr. WOLF was allowed to speak out of order.)

VOTE TO AMEND THE TAX REFORM ACT TO RESTORE THE 3-YEAR RECOVERY RULE

Mr. WOLF. Mr. Speaker, I wish to address the House on the 3-year annuity basis recovery rule, which is in the tax bill, and I want to ask my colleagues to vote for the motion to recommit, and let me tell you why.

I received a letter today from a woman who works for the Federal Government, who writes as follows:

On the average, women are in the lowest paying jobs. As a result, they will be heavily impacted by the effect of reduced annuities. Many are single mothers who are the sole support of their children. The proposed changes in the retirement recovery provision may contribute to the feminization of poverty. Many of these women are not even aware of the effect these changes will have on their future security.

Not only am I a single woman, but I have a daughter and two grandchildren now living with me. My daughter also recently went through a divorce. She receives little if any support and must work full time to support her family. Without my help, she would not be able to provide for her family. I appeal to you on your compassion.

I would appeal to the Members of this body that, when given an opportunity on the tax bill this Thursday, that they vote for the Archer motion

to recommit, to deal with this problem.

Mr. HORTON. Mr. Speaker, I yield back the balance of my time.

Mrs. SCHROEDER, Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would be remiss if I did not thank the gentleman from New York [Mr. HORTON] for his phenomenal help in moving this legislation and for all the expertise he has brought to the committee from his experience with the inspector general.

Mrs. BYRON. Mr. Speaker, I rise today in full support of the Whistleblower Protection Act of 1986. It is certainly satisfying to see this legislation being taken up by the House at a time when morale among Federal workers is quite low. This bill reaffirms our support for those employees who blow the whistle on illegality of waste in the Federal Government.

I am particularly pleased to see language included in this measure which achieves the same end of legislation I introduced at the outset of the 99th Congress. The language provides that an employee who is the prevailing party in an initial decision by the Board shall be granted the relief provided in the decision pending the outcome of any petition for review.

The purpose of this language is to correct what I believe to be an unfair Board policy. Currently, if a Federal employee is either removed or suspended by his agency, he has the right to appeal to the Merit Systems Protection Board. However, even if the employee is favored in the initial decision, he cannot be reinstated if the agency decides to petition for a review of the initial decision. This policy simply leaves the employee without his job until the Board renders a final decision on the agency's petition.

The review of these petitions by the Board has frequently dragged on for months, sometimes years. I believe that this prolonged delay causes undue hardships on the employee who has already been favored in the Board's initial decision. This is most certainly an obvious case of justice delayed, justice denied.

I want to take this opportunity to thank Civil Service Subcommittee chair, Congresswoman SCHROEDER, and all the members of the House Post Office and Civil Service Committee for recognizing the great need for this legislation. I believe that, through this measure, we are taking important steps toward ensuring that our Federal employees are treated with the fairness and appreciation they deserve.

Therefore, Mr. Speaker, I urge all my colleagues to join me in supporting the passage of H.R. 4033. Thank you.

Mrs. SCHROEDER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Colorado [Mrs. SCHROEDER] that the House suspend the rules and pass the bill, H.R. 4033, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.