

(4) Divesting itself of these assets would make an important contribution to reducing Government's debt and interest costs.

(b) **POLICY ON ASSET SALES.**—It is the policy of this budget resolution that the House and Senate shall each develop a package of asset sales and transfers of government activities to the private sector. These proposals, which are to yield revenues or savings of at least \$260,000,000,000 through fiscal year 2028, shall be submitted to the respective chambers for enactment in fiscal year 2013.

(c) **ASSUMPTIONS REGARDING ASSET SALES.**—The assets in the package must include, though not be limited to, the following:

(1) Land administered by the Bureau of Land Management and the Department of Agriculture.

(2) Federal buildings and other real estate.

(3) Mineral rights.

(4) Electromagnetic spectrum.

(5) Facilities administered by the Power Marketing Administrations and by the Tennessee Valley Authority.

(6) Federal loans and other financial assets.

(7) Amtrak.

(d) **ASSUMPTIONS REGARDING TRANSFER OF GOVERNMENT ACTIVITIES.**—Transfers of government activities to the private must include, though not be limited to, the following:

(1) The Neighborhood Reinvestment Corporation.

(2) The Government Printing Office.

(3) The Architect of the Capitol.

(4) The Bureau of Reclamation.

#### **SEC. 506. POLICY ON REPEALING OBAMACARE.**

(a) **FINDINGS.**—The Senate finds the following:

(1) The quality of United States health care, as well as the stability of the nation's economy and the Federal budget, depend on solving the genuine cost and delivery challenges in the health sector.

(2) But the pervasive government intrusiveness and \$1,390,000,000,000 cost of Obamacare are precisely the wrong prescription for problems that have developed from faulty government policy, particularly on the part of the Federal Government.

(3) Obamacare will generate fewer choices, less access, and greater dependence on the Government for health care, while increasing taxes, regulation and mandates on individuals and businesses.

(4) A majority of Americans continue to oppose this one-size-fits-all "remedy," a Government takeover of one sixth of the economy that was rammed through Congress despite a clear lack of consensus.

(b) **POLICY ON OBAMACARE.**—It is the policy of this budget resolution that Congress should repeal Obamacare and develop a fresh strategy built on a patient-centered, market-based solution.

#### **TITLE VI—SENSE OF CONGRESS**

##### **SEC. 601. REGULATORY REFORM.**

It is the policy of this concurrent resolution that Congress and the relevant committees of jurisdiction enact legislation to ensure a regulatory reform as follows:

(1) **APPLY REGULATORY ANALYSIS REQUIREMENTS TO INDEPENDENT AGENCIES.**—It shall be the policy of Congress to pass into law a requirement for independent agencies to abide by the same regulatory analysis requirement as those required by executive branch agencies.

(2) **ADOPT THE REGULATIONS FROM THE EXECUTIVE IN NEED OF SCRUTINY ACT (REINS).**—It shall be the policy of Congress to vote on the Regulation from the Executive In Need of Scrutiny Act, legislation that would require all regulations that impose a burden greater

than \$100 million in economic aggregate may not be implemented as law unless Congress gives their consent by voting on the rule.

(3) **SUNSET ALL REGULATIONS.**—It shall be the policy of Congress that regulations imposed by the Federal Government shall automatically sunset every 2 years unless re-promulgated by Congress.

(4) **PROCESS REFORM.**—It shall be the policy of Congress to implement regulatory process reform by instituting statutorily required regulatory impact analysis for all agencies, require the publication of regulatory impact analysis before the regulation is finalized, and ensure that not only are regulatory impact analysis conducted, but applied to the issued regulation or rulemaking.

(5) **INCORPORATION OF FORMAL RULEMAKING FOR MAJOR RULES.**—It shall be the policy of Congress to apply formal rulemaking procedures to all major regulations or those regulations that exceed \$100,000,000 in aggregate economic costs.

##### **SEC. 602. RESCIND UNSPENT OR UNOBLIGATED BALANCES AFTER 36 MONTHS.**

It is the sense of Congress that—

(1) any adjustments of allocations and aggregates made pursuant to this resolution shall require that any unobligated or unspent allocations be rescinded after 36 months;

(2) revised allocations and aggregates resulting from these adjustments resulting from the required rescissions shall be considered for the purposes of the Congressional Budget Act of 1974 as allocations and aggregates contained in this resolution; and

(3) for purposes of this resolution the levels of new budget authority, outlays, direct spending, new entitlement authority, revenues, deficits, and surpluses for a fiscal year or period of fiscal years shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

#### **NOTICES OF HEARINGS**

##### **COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS**

Mr. HARKIN. Mr. President, I wish to announce that the Subcommittee on Primary Health and Aging of the Committee on Health, Education, Labor, and Pensions will meet in open session on Tuesday, May 15, 2012 at 10 a.m. in SD-430 Dirksen Senate Office Building to conduct a hearing entitled "The High Cost of High Prices for HIV/AIDS Drugs and the Prize Fund Alternative."

For further information regarding this hearing, please contact the subcommittee on (202) 224-5480.

##### **COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS**

Mr. HARKIN. Mr. President, I wish to announce that the Committee on Health, Education, Labor, and Pensions will meet in open session on Wednesday, May 16, 2012 at 10 a.m. in SD-430 Dirksen Senate Office Building to conduct a hearing entitled "Identifying Opportunities for Health Care Delivery System Reform: Lessons from the Front Line."

For further information regarding this meeting, please contact the committee on (202) 224-7675.

##### **COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS**

Mr. HARKIN. Mr. President, I wish to announce that the Committee on

Health, Education, Labor, and Pensions will meet in open session on Thursday, May 17, 2012 at 10 a.m. in SD-G50 Dirksen Senate Office Building to conduct a hearing entitled "Beyond Seclusion and Restraint: Creating Positive Learning Environments for All Students."

For further information regarding this meeting, please contact the committee on (202) 228-3453.

##### **COMMITTEE ON INDIAN AFFAIRS**

Mr. AKAKA. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on May 17, 2012 in room SD-628 of the Dirksen Senate Office Building at 2:15 p.m. to conduct a hearing entitled "Fulfilling the Federal Trust Responsibility: The Foundation of the Government-to-Government Relationship."

Those wishing additional information may contact the Indian Affairs Committee at (202) 224-2251.

#### **AUTHORITY FOR COMMITTEES TO MEET**

##### **COMMITTEE ON ARMED SERVICES**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on May 8, 2012, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### **COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on May 8, 2012, at 10 a.m., to conduct a hearing entitled "Expanding Refinancing Opportunities to Improve the Housing Market."

The PRESIDING OFFICER. Without objection, it is so ordered.

##### **COMMITTEE ON FINANCE**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on May 8, 2012, at 10 a.m., in room 215 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### **SELECT COMMITTEE ON INTELLIGENCE**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 8, 2012, at 2:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### **SUBCOMMITTEE ON AIRLAND**

Mr. HARKIN. Mr. President, I ask unanimous consent that the Subcommittee on Airland of the Committee on Armed Services be authorized to meet during the session of the Senate on May 8, 2012, at 3 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PRIVILEGES OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that Joe Mahoney, a fellow in Senator BINGAMAN's office, be granted the privilege of the floor during consideration of today's bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I ask unanimous consent that Marissa Wizig of my staff be granted floor privileges for the duration of today's session.

The PRESIDING OFFICER. Without objection, it is so ordered.

WHISTLEBLOWER PROTECTION  
ENHANCEMENT ACT OF 2012

Ms. STABENOW. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 358, S. 743.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 743) to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the special counsel, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with amendments, as follows:

[Omit the parts printed in boldface brackets and insert the part printed in italic]

S. 743

*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 Enhancement Act of [2011] 2012".

## TITLE I—PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES

## SEC. 101. CLARIFICATION OF DISCLOSURES COVERED.

(a) IN GENERAL.—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)(i), by striking "a violation" and inserting "any violation"; and

(2) in subparagraph (B)(i), by striking "a violation" and inserting "any violation (other than a violation of this section)".

(b) PROHIBITED PERSONNEL PRACTICES UNDER SECTION 2302(b)(9).—

(1) TECHNICAL AND CONFORMING AMENDMENTS.—Title 5, United States Code, is amended in subsections (a)(3), (b)(4)(A), and (b)(4)(B)(i) of section 1214, in subsections (a), (e)(1), and (i) of section 1221, and in subsection (a)(2)(C)(i) of section 2302, by inserting "or section 2302(b)(9) (A)(i), (B), (C), or (D)" after "section 2302(b)(8)" or "(b)(8)" each place it appears.

(2) OTHER REFERENCES.—(A) Title 5, United States Code, is amended in subsection (b)(4)(B)(i) of section 1214 and in subsection (e)(1) of section 1221, by inserting "or pro-

TECTED activity" after "disclosure" each place it appears.

(B) Section 2302(b)(9) of title 5, United States Code, is amended—

(i) by striking subparagraph (A) and inserting the following:

"(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—

"(i) with regard to remedying a violation of paragraph (8); or

"(ii) other than with regard to remedying a violation of paragraph (8) [any other law, rule, or regulation];"; and

(ii) in subparagraph (B), by inserting "(i) or (ii)" after "subparagraph (A)".

(C) Section 2302 of title 5, United States Code, is amended by adding at the end the following:

"(f)(1) A disclosure shall not be excluded from subsection (b)(8) because—

"(A) the disclosure was made to a person, including a supervisor, who participated in an activity that the employee or applicant reasonably believed to be covered by subsection (b)(8)(A)(ii);

"(B) the disclosure revealed information that had been previously disclosed;

"(C) of the employee's or applicant's motive for making the disclosure;

"(D) the disclosure was not made in writing;

"(E) the disclosure was made while the employee was off duty; or

"(F) of the amount of time which has passed since the occurrence of the events described in the disclosure.

"(2) If a disclosure is made during the normal course of duties of an employee, the disclosure shall not be excluded from subsection (b)(8) if any employee who has authority to take, direct others to take, recommend, or approve any personnel action with respect to the employee making the disclosure, took, failed to take, or threatened to take or fail to take a personnel action with respect to that employee in reprisal for the disclosure."

## SEC. 102. DEFINITIONAL AMENDMENTS.

Section 2302(a)(2) of title 5, United States Code, is amended—

(1) in subparagraph (B)(ii), by striking "and" at the end;

(2) in subparagraph (C)(iii), by striking the period at the end and inserting "; and"; and (3) by adding at the end the following:

"(D) 'disclosure' means a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences—

"(i) any violation of any law, rule, or regulation[, and occurs during the conscientious carrying out of official duties]; or

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

## SEC. 103. REBUTTABLE PRESUMPTION.

Section 2302(b) of title 5, United States Code, is amended by amending the matter following paragraph (12) to read as follows:

"This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) [For purposes of paragraph (8),] a determination as to whether an employee or applicant rea-

sonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger."

## SEC. 104. PERSONNEL ACTIONS AND PROHIBITED PERSONNEL PRACTICES.

(a) PERSONNEL ACTION.—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(1) in clause (x), by striking "and" after the semicolon; and

(2) by redesignating clause (xi) as clause (xii) and inserting after clause (x) the following:

"(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and"

(b) PROHIBITED PERSONNEL PRACTICE.—

(1) IN GENERAL.—Section 2302(b) of title 5, United States Code, is amended—

(A) in paragraph (11), by striking "or" at the end;

(B) in paragraph (12), by striking the period and inserting "; or"; and

(C) by inserting after paragraph (12) the following:

"(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: 'These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order 13526 (75 Fed. Reg. 707; relating to classified national security information), or any successor thereto; Executive Order 12968 (60 Fed. Reg. 40245; relating to access to classified information), or any successor thereto; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.'"

(2) NONDISCLOSURE POLICY, FORM, OR AGREEMENT IN EFFECT BEFORE THE DATE OF ENACTMENT.—A nondisclosure policy, form, or agreement that was in effect before the date of enactment of this Act, but that does not contain the statement required under section 2302(b)(13) of title 5, United States Code, (as added by this Act) for implementation or enforcement—

[(A) may be enforced with regard to a current employee if the agency gives such employee notice of the statement; and

[(B) may continue to be enforced after the effective date of this Act with regard to a former employee if the agency posts notice of the statement on the agency website for the 1-year period following that effective date.]