

115TH CONGRESS
2D SESSION

H. R. 6852

To amend the Authorization for Capital and Preventive Maintenance Projects for the Washington Metropolitan Area Transit Authority and the National Capital Area Interest Arbitration Standards Act of 1995, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2018

Mrs. COMSTOCK introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Authorization for Capital and Preventive Maintenance Projects for the Washington Metropolitan Area Transit Authority and the National Capital Area Interest Arbitration Standards Act of 1995, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Grants for Reliable,
5 Efficient, and Accountable Transit Act”.

6 **SEC. 2. DEFINITIONS.**

7 For the purposes of this Act:

1 (1) AUTHORITY.—The term “Authority” means
2 the Washington Metropolitan Area Transit Author-
3 ity established under article III of the compact
4 (Public Law 89–774; 80 Stat. 1324).

5 (2) BOARD.—The term “Board” means the
6 Board of Directors of the Washington Metropolitan
7 Area Transit Authority.

8 (3) COMPACT.—The term “Compact” means
9 the Washington Metropolitan Area Transit Author-
10 ity Compact.

11 (4) DIRECTOR.—The term “Director” means a
12 member of the Board of Directors of the Wash-
13 ington Metropolitan Area Transit Authority.

14 (5) SECRETARY.—The term “Secretary” means
15 the Secretary of Transportation.

16 (6) SIGNATORY.—The term “Signatory” means
17 the State of Maryland, the Commonwealth of Vir-
18 ginia, or the District of Columbia.

19 (7) STATE.—The term “State” includes the
20 District of Columbia.

21 (8) WMATA.—The term “WMATA” means the
22 Washington Metropolitan Area Transit Authority.

23 (9) WASHINGTON METROPOLITAN AREA TRAN-
24 SIT ZONE.—The term “Washington Metropolitan
25 Area Transit Zone” means the zone created by and

1 described in section 3 of the Compact, as well as any
 2 additional area that may be added pursuant to sec-
 3 tion 83(a) of such Compact.

4 **TITLE I—METRO FUNDING**

5 **SEC. 1. REAUTHORIZATION OF THE AUTHORIZATION FOR** 6 **CAPITAL AND PREVENTIVE MAINTENANCE** 7 **PROJECTS FOR THE WASHINGTON METRO-** 8 **POLITAN AREA TRANSIT AUTHORITY.**

9 Section 601(f) of the Passenger Rail Investment and
 10 Improvement Act of 2008 (Public Law 110–432; 126
 11 Stat. 4968) is amended to read as follows:

12 “(f) AMOUNT.—There are authorized to be appro-
 13 priated to the Secretary of Transportation for grants
 14 under this section an aggregate amount not to exceed
 15 \$1,500,000,000 to be available in increments in each fiscal
 16 year next occurring until such funding is expended.”.

17 **TITLE II—ARBITRATION**

18 **SEC. 1. NATIONAL CAPITAL AREA INTEREST ARBITRATION** 19 **STANDARDS.**

20 Sections 18301 through 18304 of chapter 183 of title
 21 40, United States Code, are amended to read as follows:

22 **“§ 18301. Findings and purposes**

23 “(a) FINDINGS.—Congress finds that—

24 “(1) safe, reliable, and affordable public trans-
 25 portation at sufficient levels is essential to the eco-

1 nomic vitality of the national capital area and is an
2 essential component of regional efforts to improve
3 air quality to meet environmental requirements and
4 to improve the health of both residents of and visi-
5 tors to the national capital area as well as to pre-
6 serve the beauty and dignity of the Nation’s capital;

7 “(2) use of mass transit by both residents of
8 and visitors to the national capital area is substan-
9 tially affected by the prices charged for mass transit
10 services, prices that are substantially affected by
11 labor costs, since more than 70 percent of operating
12 costs are attributable to labor costs;

13 “(3) labor costs incurred in providing mass
14 transit in the national capital area have increased at
15 an alarming rate and are unsustainable in light of
16 the financial condition of interstate Compact agen-
17 cies providing mass transit services in the national
18 capital area;

19 “(4) higher operating costs incurred for public
20 transit in the national capital area cannot be offset
21 by increasing costs to patrons, since this often dis-
22 courages ridership and thus undermines the public
23 interest in promoting the use of public transit;

24 “(5) higher operating costs incurred for public
25 transit in the national capital area cannot be offset

1 by service cuts since this undermines the public in-
2 terest in promoting the use of public transit and
3 could impact public safety;

4 “(6) spiraling labor costs cannot be offset by
5 the governmental entities that are responsible for
6 subsidy payments for public transit services since
7 local governments face other substantial financial
8 obligations;

9 “(7) labor costs cannot be increased during pe-
10 riods of time when an interstate Compact agency op-
11 erating in the national capital area providing public
12 transportation is financially stressed taking into ac-
13 count operating costs, legacy benefit obligations,
14 capital needs, and reserve levels;

15 “(8) imposition of mandatory standards appli-
16 cable to arbitrators resolving arbitration disputes in-
17 volving interstate Compact agencies operating in the
18 national capital area will ensure that wages, bene-
19 fits, and other terms and conditions of employment,
20 including work rules, are justified and do not ad-
21 versely impact the ability of the interstate Compact
22 agencies to provide affordable, safe, and reliable
23 public transit services at levels sufficient to serve the
24 needs of the Washington metropolitan area;

1 “(9) Federal legislation is required to ensure
2 that interest arbitration decisions do not adversely
3 impact the ability of interstate Compact agencies op-
4 erating in the national capital area to emerge from
5 periods of financial stress and avoid future periods
6 of financial stress; and

7 “(10) Federal legislation is necessary under
8 section 8 of article I of the Constitution to balance
9 the need to moderate and lower labor costs while
10 maintaining labor peace.

11 “(b) PURPOSE.—The purpose of this chapter is to
12 adopt standards governing arbitration that arbitrators
13 must apply exclusively in resolving disputes involving
14 interstate Compact agencies operating in the national cap-
15 ital area in order to lower operating costs and facilitate
16 the provision of safe, reliable, and affordable public transit
17 services at sufficient levels in the Washington metropoli-
18 tan area.

19 **“§ 18302. Definitions**

20 “In this chapter, the following definitions apply:

21 “(1) ARBITRATION.—The term ‘arbitration’—

22 “(A) means the arbitration of disputes, re-
23 garding the terms and conditions of employ-
24 ment, that is required under an interstate Com-

1 pact governing an interstate Compact agency
2 operating in the national capital area; but

3 “(B) does not include the interpretation
4 and application of rights arising from an exist-
5 ing collective bargaining agreement.

6 “(2) ARBITRATOR.—The term ‘arbitrator’ re-
7 fers to either a single arbitrator, or a board of arbi-
8 trators, chosen under applicable procedures.

9 “(3) INTERSTATE COMPACT AGENCY OPER-
10 ATING IN THE NATIONAL CAPITAL AREA.—The term
11 ‘interstate Compact agency operating in the national
12 capital area’ means any interstate Compact agency
13 that provides public transit services and that was es-
14 tablished by an interstate Compact to which the Dis-
15 trict of Columbia is a signatory.

16 “(4) FINANCIAL STRESS.—The term ‘financial
17 stress’ means that at least two of the following 3 fi-
18 nancial issues are affecting an interstate Compact
19 agency operating in the national capital area:

20 “(A) The interstate Compact agency’s
21 ratio of operating revenues (excluding any sub-
22 sidy payment or budgetary assistance) to oper-
23 ating expenses (as measured on the last date of
24 each fiscal year) has decreased in the aggregate
25 over the preceding 2-year period.

1 “(B) The interstate Compact agency has
2 taken at least one of the following measures
3 during the preceding 2-year period:

4 “(i) Reduced service.

5 “(ii) Increased fares.

6 “(iii) Diverted capital funds to pay for
7 operating expenses during a period in
8 which the interstate Compact agency’s
9 ratio of capital backlog to system value is
10 greater than the average ratio of capital
11 backlog to system value for other United
12 States transit systems.

13 “(C) It is not reasonably foreseeable that
14 the interstate Compact agency will be in a state
15 of good repair within the following 2 years as
16 determined by the Federal Transit Administra-
17 tion’s Transit Economic Requirements Model or
18 any other alternative model that the Federal
19 Transit Administration may utilize in the fu-
20 ture.

21 **“§ 18303. Standards for arbitrators**

22 “(a) DEFINITION.—In this section, the term ‘public
23 welfare’ means, with respect to arbitration under an inter-
24 state Compact—

1 “(1) the ability of the interstate Compact agen-
2 cy to finance wages and benefits resulting from an
3 arbitrator’s award consistent with its projected oper-
4 ating and capital budgets during the term of such
5 award without adversely impacting the agency’s abil-
6 ity to provide safe, reliable, and affordable public
7 transportation at sufficient levels;

8 “(2) the ability of the interstate Compact agen-
9 cy to finance wages and benefits resulting from an
10 arbitrator’s award as set forth in subsection (c); and

11 “(3) the continuity and stability of interstate
12 Compact agency operations to the effect that such
13 operations are not detrimental to any facet of the re-
14 gional economy or to the ability of employees of the
15 Federal, State, or local governments to conduct busi-
16 ness.

17 “(b) FACTORS IN MAKING ARBITRATION AWARD.—

18 An arbitrator rendering an arbitration award involving the
19 employees of an interstate Compact agency operating in
20 the national capital area must exclusively consider the fol-
21 lowing factors, in addition to the factors prescribed in sub-
22 section (c):

23 “(1) The existing wages, benefits, and terms
24 and conditions of employment of the employees in
25 the bargaining unit except that structural changes

1 should be awarded to the benefit of an interstate
2 Compact agency operating in the national capital
3 area where such changes are consistent with the
4 public welfare.

5 “(2) The reasonably available and ongoing fi-
6 nancial resources of the interstate Compact agency,
7 taking into account the liabilities and obligations (in-
8 cluding capital needs, legacy benefit obligations, and
9 reserve levels) of the interstate Compact agency,
10 based on the agency’s budget for the current year
11 and its projected budget for the next 10 years.

12 “(3) The annual increase or decrease in con-
13 sumer prices for goods and services as reflected in
14 the most recent Consumer Price Index for the Wash-
15 ington-Baltimore, DC–MD–VA–WV Consolidated
16 Metropolitan Statistical Area, published by the Bu-
17 reau of Labor Statistics.

18 “(4) The wages, benefits, and terms and condi-
19 tions of the employment of other employees in the
20 District of Columbia, Maryland, and Virginia whose
21 positions require qualifications and skills similar to
22 those required by employees in the bargaining unit
23 except that an arbitrator rendering an arbitration
24 award involving the employees of an interstate Com-
25 pact agency operating in the national capital area

1 may not consider the wages, benefits, and terms and
2 conditions of employment of employees working out-
3 side of the District of Columbia, Maryland, and Vir-
4 ginia.

5 “(5) The wages, benefits, and terms and condi-
6 tions of employment applicable to other employees of
7 the interstate Compact agency taking into account
8 the special nature of the work performed by the em-
9 ployees in the bargaining unit, including any hazards
10 or the relative ease of employment, physical require-
11 ments, educational qualifications, job training and
12 skills, shift assignments, and the demands placed
13 upon the employees as compared to only other em-
14 ployees of the same interstate Compact agency.

15 “(6) The interests and welfare of the employees
16 in the bargaining unit, including—

17 “(A) the overall compensation presently re-
18 ceived by the employees, having regard not only
19 for wage rates but also for wages for time not
20 worked, including vacations, holidays, and other
21 excused absences;

22 “(B) all benefits received by the employees,
23 including previous bonuses, insurance, and pen-
24 sions; and

1 “(C) the continuity and stability of em-
2 ployment, such that the arbitrator shall not
3 issue an award increasing wages or benefits
4 where the interstate Compact agency operating
5 in the national capital area can show that such
6 recommended increases could result in
7 headcount reductions.

8 “(7) The public welfare.

9 “(c) ABILITY TO FINANCE WAGES AND BENEFITS
10 PROVIDED IN AWARD.—

11 “(1) IN GENERAL.—An arbitrator rendering an
12 arbitration award involving the employees of an
13 interstate Compact agency operating in the national
14 capital area shall not, with respect to a collective
15 bargaining agreement governing conditions of em-
16 ployment, provide for wages or other benefits that
17 exceed the reasonable and ongoing ability of the
18 interstate Compact agency operating in the national
19 capital area to obtain the necessary financial re-
20 sources to pay for wage and benefit increases for
21 employees of the interstate compact agency while
22 providing safe, reliable, and affordable transit serv-
23 ices at levels sufficient to serve the needs of the
24 Washington metropolitan area.

1 “(2) COMPLIANCE CONDITIONS.—The following
2 conditions shall be met to comply with this sub-
3 section:

4 “(A) An arbitrator’s award shall not pro-
5 vide for wages and benefits that will result in
6 an annual increase in operating subsidy of more
7 than 1.5 percent inclusive of both labor and
8 nonlabor-related operating costs, unless there is
9 substantial evidence that the interstate Com-
10 pact agency is able to finance the additional
11 costs consistent with its budget and projected
12 budgeted costs without adversely impacting the
13 agency’s ability to provide safe, reliable, and af-
14 fordable public transportation at sufficient lev-
15 els.

16 “(B) During those periods of time when an
17 interstate Compact agency operating in the na-
18 tional capital area is financially stressed, the
19 arbitrator shall issue an award that either re-
20 duces or does not increase the interstate Com-
21 pact agency’s personnel costs.

22 “(C) The arbitrator’s award must give sub-
23 stantial deference to the evidence presented by
24 the interstate Compact agency’s management
25 regarding financial issues.

1 “(D) The arbitrator’s award may not
2 cause the interstate Compact agency operating
3 in the national capital area to be in noncompli-
4 ance with any other legal obligations.

5 “(d) CLARIFICATION.—An arbitrator rendering an
6 arbitration award involving the employees of an interstate
7 Compact agency operating in the national capital area
8 shall consider the factors in subsection (b) independently
9 from the factors in subsection (c).

10 “(e) REQUIREMENTS FOR FINAL AWARD.—

11 “(1) WRITTEN AWARD.—In resolving a dispute
12 submitted to arbitration involving the employees of
13 an interstate Compact agency operating in the na-
14 tional capital area, the arbitrator shall issue a writ-
15 ten award that demonstrates that all the factors set
16 forth in subsections (b) and (c) have been considered
17 and applied and that the arbitrator has not consid-
18 ered and applied any other factors.

19 “(2) PREREQUISITES.—An award may grant an
20 increase in pay rates or benefits (including insurance
21 and pension benefits), or reduce hours of work, only
22 if the arbitrator concludes that any costs to the
23 agency do not adversely affect the public welfare.

1 “(3) SUBSTANTIAL EVIDENCE.—The arbitra-
2 tor’s conclusion regarding the public welfare must be
3 supported by substantial evidence.

4 “(f) COMPLIANCE WITH SECTION 5333(b) OF TITLE
5 49, UNITED STATES CODE.—

6 “(1) CLARIFICATION.—Neither the existence of
7 this statute, nor any arbitrator’s award issues pur-
8 suant to this law, shall be deemed to violate the re-
9 quirements of section 5333(b) of title 49, United
10 States Code.

11 “(2) PROHIBITION ON DENIAL.—For the avoid-
12 ance of doubt, the Department of Labor or the De-
13 partment of Transportation shall not deny any cer-
14 tification of compliance with section 5333(b) of title
15 49, United States Code, and an interstate Compact
16 agency operating in the national capital area shall
17 not be denied any Federal grant as a result of this
18 statute or any arbitrator’s award issued pursuant to
19 this statute.

20 **“§ 18304. Procedures for enforcement of awards**

21 “(a) MODIFICATIONS AND FINALITY OF AWARD.—
22 Within 10 days after the parties receive an arbitration
23 award to which section 18303 of this title applies, the
24 interstate Compact agency and the employees, through
25 their representative, may agree in writing on any modifica-

1 tions to the award. After the end of that 10-day period,
2 the award, and any modifications, become binding on the
3 interstate Compact agency, the employees in the bar-
4 gaining unit, and the employees' representative.

5 “(b) IMPLEMENTATION.—Each party to an award
6 that becomes binding under subsection (a) shall take all
7 actions necessary to implement the award.

8 “(c) JUDICIAL REVIEW.—Not later than 60 days
9 after an award becomes binding under subsection (a), the
10 interstate Compact agency or the exclusive representative
11 of the employees concerned may bring a civil action in a
12 court that has jurisdiction over the interstate Compact
13 agency for review of the award. The court shall review the
14 award on the record, and shall vacate the award or any
15 part of the award, after notice and a hearing, if—

16 “(1) the award is in violation of applicable law;

17 “(2) the arbitrator exceeded the arbitrator's
18 powers;

19 “(3) the decision by the arbitrator is arbitrary
20 or capricious;

21 “(4) the arbitrator conducted the hearing con-
22 trary to the provisions of this chapter or other laws
23 or rules that apply to the arbitration so as to sub-
24 stantially prejudice the rights of a party;

1 “(5) there was partiality or misconduct by the
2 arbitrator prejudicing the rights of a party;

3 “(6) the award was procured by corruption,
4 fraud, or bias on the part of the arbitrator; or

5 “(7) the arbitrator did not comply with the pro-
6 visions of section 18303 of this title.”.

7 **TITLE III—LIMITS ON ANNUAL** 8 **SPENDING INCREASES**

9 **SEC. 301. LIMIT ON ANNUAL CONTRIBUTIONS FROM FUND-** 10 **ING JURISDICTIONS FOR OPERATIONS.**

11 Not later than 1 year after the date of enactment
12 of this Act, the Signatories shall amend the Compact to
13 limit the annual growth in the rate of spending by each
14 Signatory by not more than 3 percent to subsidize oper-
15 ational needs of the Authority.

16 **TITLE IV—EMPLOYEES**

17 **SEC. 401. WMATA EMPLOYEE WHISTLEBLOWER PROTEC-** 18 **TION.**

19 (a) IN GENERAL.—The Authority, a contractor or a
20 subcontractor of the Authority, or an officer or employee
21 of the Authority, shall not discharge, demote, suspend,
22 reprimand, or in any other way discriminate against an
23 employee with respect to the terms and conditions of em-
24 ployment if such discrimination is due, in whole or in part,

1 to the employee's lawful, good faith act done, or perceived
2 by the employer to have been done or about to be done—

3 (1) to provide information, directly cause infor-
4 mation to be provided, or otherwise directly assist in
5 any investigation regarding any conduct which the
6 employee reasonably believes constitutes a violation
7 of any Federal law or regulation or provision adopt-
8 ed by an authority created by an interstate Compact
9 relating to public transportation safety or security,
10 or fraud, waste, or abuse of Federal grants or other
11 public funds intended to be used for public transpor-
12 tation safety or security, if the information or assist-
13 ance is provided to or an investigation stemming
14 from the provided information is conducted by—

15 (A) a Federal, State, or local regulatory or
16 law enforcement agency, or a regulatory or law
17 enforcement agency created by an interstate
18 Compact (including an office of the Inspector
19 General under the Inspector General Act of
20 1978 (5 U.S.C. App.; Public Law 95-452));

21 (B) any Member of Congress, any com-
22 mittee of Congress, or the Government Ac-
23 countability Office; or

24 (C) a person with supervisory authority
25 over the employee or such other person who has

1 the authority to investigate, discover, or termi-
2 nate the misconduct;

3 (2) to refuse to violate or assist in the violation
4 of any Federal law, rule, or regulation relating to
5 public transportation safety or security;

6 (3) to file a complaint or directly cause to be
7 brought a proceeding related to the enforcement of
8 this section or to testify in that proceeding;

9 (4) to notify, or attempt to notify, the Author-
10 ity, the inspector general, or the Secretary of Trans-
11 portation of a work-related personal injury or work-
12 related illness of an employee;

13 (5) to accurately report hours on duty pursuant
14 to chapter 211 of title 49, United States Code;

15 (6) to cooperate with a safety or security inves-
16 tigation by the Secretary of Transportation, the Sec-
17 retary of Homeland Security, or the National Trans-
18 portation Safety Board; or

19 (7) to furnish information to the Secretary of
20 Transportation, the Secretary of Homeland Security,
21 the National Transportation Safety Board, or any
22 Federal, State, or local regulatory or law enforce-
23 ment agency, or a regulatory or law enforcement
24 agency created by an interstate Compact, as to the
25 facts relating to any accident or incident resulting in

1 injury or death to an individual or damage to prop-
2 erty occurring in connection with public transpor-
3 tation.

4 (b) PROMPT MEDICAL ATTENTION.—

5 (1) PROHIBITION.—The Authority or person
6 covered under this section may not deny, delay, or
7 interfere with the medical or first aid treatment of
8 an employee who is injured during the course of em-
9 ployment. If transportation to a hospital is requested
10 by an employee who is injured during the course of
11 employment, the Authority shall promptly arrange to
12 have the injured employee transported to the nearest
13 hospital where the employee can receive safe and ap-
14 propriate medical care.

15 (2) DISCIPLINE.—The Authority or person cov-
16 ered under this section may not discipline, or threat-
17 en discipline to, an employee for requesting medical
18 or first aid treatment, or for following orders or a
19 treatment plan of a treating physician, except that
20 the Authority's refusal to permit an employee to re-
21 turn to work following medical treatment shall not
22 be considered a violation of this section if the refusal
23 is pursuant to Federal Railroad Administration med-
24 ical standards for fitness of duty or, if there are no
25 pertinent Federal Railroad Administration stand-

1 ards, the Authority’s medical standards for fitness
2 for duty. For purposes of this paragraph, the term
3 “discipline” means to bring charges against a person
4 in a disciplinary proceeding, suspend, terminate,
5 place on probation, or make note of reprimand on an
6 employee’s record.

7 (c) HAZARDOUS SAFETY OR SECURITY CONDI-
8 TIONS.—

9 (1) IN GENERAL.—The authority, or a con-
10 tractor or a subcontractor of such authority, or an
11 officer or employee of such authority, shall not dis-
12 charge, demote, suspend, reprimand, or in any other
13 way discriminate against an employee for—

14 (A) reporting, in good faith, a hazardous
15 safety or security condition;

16 (B) refusing to work when confronted by a
17 hazardous safety or security condition related to
18 the performance of the employee’s duties, if the
19 conditions described in paragraph (2) exist; or

20 (C) refusing to authorize the use of any
21 safety or security-related equipment, track, or
22 structures, if the employee is responsible for the
23 inspection or repair of the equipment, track, or
24 structures, when the employee believes that the
25 equipment, track, or structures are in a haz-

1 ardous safety or security condition, if the condi-
2 tions described in paragraph (2) of this sub-
3 section exist.

4 (2) PROTECTED REFUSAL.—A refusal by an
5 employee is protected under paragraphs (1) (B) and
6 (C) if—

7 (A) the refusal is made in good faith and
8 no reasonable alternative to the refusal is avail-
9 able to the employee;

10 (B) a reasonable individual in the cir-
11 cumstances then confronting the employee
12 would conclude that—

13 (i) the hazardous condition presents
14 an imminent danger of death or serious in-
15 jury; and

16 (ii) the urgency of the situation does
17 not allow sufficient time to eliminate the
18 danger without such refusal; and

19 (C) the employee, where possible, has noti-
20 fied the authority of the existence of the haz-
21 ardous condition and the intention not to per-
22 form further work, or not to authorize the use
23 of the hazardous equipment, track, or struc-
24 tures, unless the condition is corrected imme-

1 diately or the equipment, track, or structures
2 are repaired properly or replaced.

3 (3) APPLICABILITY.—In this subsection, only
4 subsection (c)(1)(A) shall apply to security per-
5 sonnel, including transit police, employed or utilized
6 by the authority to protect riders, equipment, assets,
7 or facilities.

8 (d) ENFORCEMENT ACTION.—

9 (1) FILING AND NOTIFICATION.—A person who
10 believes that he or she has been discharged or other-
11 wise discriminated against by any person in violation
12 of subsection (a), (b), or (c) may, not later than 180
13 days after the date on which such violation occurs,
14 file (or have any person file on his or her behalf) a
15 complaint with the Secretary of Labor alleging such
16 discharge or discrimination. Upon receipt of a com-
17 plaint filed under this paragraph, the Secretary of
18 Labor shall notify, in writing, the person named in
19 the complaint and the person's employer of the filing
20 of the complaint, of the allegations contained in the
21 complaint, of the substance of evidence supporting
22 the complaint, and of the opportunities that will be
23 afforded to such person under paragraph (2).

24 (2) INVESTIGATION; PRELIMINARY ORDER.—

1 (A) IN GENERAL.—Not later than 60 days
2 after the date of receipt of a complaint filed
3 under paragraph (1) and after affording the
4 person named in the complaint an opportunity
5 to submit to the Secretary of Labor a written
6 response to the complaint and an opportunity to
7 meet with a representative of the Secretary of
8 Labor to present statements from witnesses, the
9 Secretary of Labor shall conduct an investiga-
10 tion and determine whether there is reasonable
11 cause to believe that the complaint has merit
12 and notify, in writing, the complainant and the
13 person alleged to have committed a violation of
14 subsection (a), (b), or (c) of the Secretary of
15 Labor’s findings. If the Secretary of Labor con-
16 cludes that there is a reasonable cause to be-
17 lieve that a violation of subsection (a), (b), or
18 (c) has occurred, the Secretary of Labor shall
19 accompany the Secretary of Labor’s findings
20 with a preliminary order providing the relief
21 prescribed by paragraph (3)(B). Not later than
22 30 days after the date of notification of find-
23 ings under this paragraph, either the person al-
24 leged to have committed the violation or the
25 complainant may file objections to the findings

1 or preliminary order, or both, and request a
2 hearing on the record. The filing of such objec-
3 tions shall not operate to stay any reinstatement
4 remedy contained in the preliminary
5 order. Such hearings shall be conducted expedi-
6 tiously. If a hearing is not requested in such
7 30-day period, the preliminary order shall be
8 deemed a final order that is not subject to judi-
9 cial review.

10 (B) REQUIREMENTS.—

11 (i) REQUIRED SHOWING BY COM-
12 PLAINANT.—The Secretary of Labor shall
13 dismiss a complaint filed under this sub-
14 section and shall not conduct an investiga-
15 tion otherwise required under subpara-
16 graph (A) unless the complainant makes a
17 prima facie showing that any behavior de-
18 scribed in subsection (a), (b), or (c) was a
19 contributing factor in the unfavorable per-
20 sonnel action alleged in the complaint.

21 (ii) SHOWING BY EMPLOYER.—Not-
22 withstanding a finding by the Secretary of
23 Labor that the complainant has made the
24 showing required under clause (i), no in-
25 vestigation otherwise required under sub-

1 paragraph (A) shall be conducted if the
2 employer demonstrates, by clear and con-
3 vincing evidence, that the employer would
4 have taken the same unfavorable personnel
5 action in the absence of that behavior.

6 (iii) CRITERIA FOR DETERMINATION
7 BY SECRETARY OF LABOR.—The Secretary
8 of Labor may determine that a violation of
9 subsection (a), (b), or (c) has occurred
10 only if the complainant demonstrates that
11 any behavior described in subsection (a),
12 (b), or (c) was a contributing factor in the
13 unfavorable personnel action alleged in the
14 complaint.

15 (iv) PROHIBITION.—Relief may not be
16 ordered under subparagraph (A) if the em-
17 ployer demonstrates by clear and con-
18 vincing evidence that the employer would
19 have taken the same unfavorable personnel
20 action in the absence of that behavior.

21 (3) FINAL ORDER.—

22 (A) DEADLINE FOR ISSUANCE; SETTLE-
23 MENT AGREEMENTS.—Not later than 120 days
24 after the date of conclusion of a hearing under
25 paragraph (2), the Secretary of Labor shall

1 issue a final order providing the relief pre-
2 scribed by this paragraph or denying the com-
3 plaint. At any time before issuance of a final
4 order, a proceeding under this subsection may
5 be terminated on the basis of a settlement
6 agreement entered into by the Secretary of
7 Labor, the complainant, and the person alleged
8 to have committed the violation.

9 (B) REMEDY.—If, in response to a com-
10 plaint filed under paragraph (1), the Secretary
11 of Labor determines that a violation of sub-
12 section (a), (b), or (c) has occurred, the Sec-
13 retary of Labor shall order the person who com-
14 mitted such violation to—

15 (i) take affirmative action to abate the
16 violation; and

17 (ii) provide the remedies described in
18 subsection (e).

19 (C) ORDER.—If an order is issued under
20 subparagraph (B), the Secretary of Labor, at
21 the request of the complainant, shall assess
22 against the person against whom the order is
23 issued a sum equal to the aggregate amount of
24 all costs and expenses (including attorney’s and
25 expert witness fees) reasonably incurred, as de-

1 terminated by the Secretary of Labor, by the
2 complainant for, or in connection with, bringing
3 the complaint upon which the order was issued.

4 (D) FRIVOLOUS COMPLAINTS.—If the Sec-
5 retary of Labor finds that a complaint under
6 paragraph (1) is frivolous or has been brought
7 in bad faith, the Secretary of Labor may award
8 to the prevailing employer reasonable attorney’s
9 fees not exceeding \$1,000.

10 (4) REVIEW.—

11 (A) APPEAL TO COURT OF APPEALS.—Any
12 person adversely affected or aggrieved by an
13 order issued under paragraph (3) may obtain
14 review of the order in the United States Court
15 of Appeals for the District of Columbia Circuit.
16 The petition for review must be filed not later
17 than 60 days after the date of the issuance of
18 the final order of the Secretary of Labor. Re-
19 view shall conform to chapter 7 of title 5,
20 United States Code. The commencement of pro-
21 ceedings under this subparagraph shall not, un-
22 less ordered by the court, operate as a stay of
23 the order.

24 (B) LIMITATION ON COLLATERAL AT-
25 TACK.—An order of the Secretary of Labor

1 with respect to which review could have been
2 obtained under subparagraph (A) shall not be
3 subject to judicial review in any criminal or
4 other civil proceeding.

5 (5) ENFORCEMENT OF ORDER BY SECRETARY
6 OF LABOR.—Whenever any person has failed to com-
7 ply with an order issued under paragraph (3), the
8 Secretary of Labor may file a civil action in the
9 United States district court for the district in which
10 the violation was found to occur to enforce such
11 order. In actions brought under this paragraph, the
12 district courts shall have jurisdiction to grant all ap-
13 propriate relief including, but not limited to, injunc-
14 tive relief and compensatory damages.

15 (6) ENFORCEMENT OF ORDER BY PARTIES.—

16 (A) COMMENCEMENT OF ACTION.—A per-
17 son on whose behalf an order was issued under
18 paragraph (3) may commence a civil action
19 against the person to whom such order was
20 issued to require compliance with such order.
21 The appropriate United States district court
22 shall have jurisdiction, without regard to the
23 amount in controversy or the citizenship of the
24 parties, to enforce such order.

1 (B) ATTORNEY'S FEES.—The court, in
2 issuing any final order under this paragraph,
3 may award costs of litigation (including reason-
4 able attorney's and expert witness fees) to any
5 party whenever the court determines such
6 award is appropriate.

7 (7) DE NOVO REVIEW.—With respect to a com-
8 plaint under paragraph (1), if the Secretary of
9 Labor has not issued a final decision not later than
10 210 days after the filing of the complaint and if the
11 delay is not due to the bad faith of the employee,
12 the employee may bring an original action at law or
13 equity for de novo review in the appropriate district
14 court of the United States, which shall have jurisdic-
15 tion over such an action without regard to the
16 amount in controversy, and which action shall, at
17 the request of either party to such action, be tried
18 by the court with a jury. The action shall be gov-
19 erned by the same legal burdens of proof specified
20 in paragraph (2)(B) for review by the Secretary of
21 Labor.

22 (e) REMEDIES.—

23 (1) IN GENERAL.—An employee prevailing in
24 any action under subsection (d) shall be entitled to
25 all relief necessary to make the employee whole.

1 (2) DAMAGES.—Relief in an action under sub-
2 section (d) (including an action described in sub-
3 section (d)(7)) shall include—

4 (A) reinstatement with the same seniority
5 status that the employee would have had, but
6 for the discrimination;

7 (B) any backpay, with interest; and

8 (C) compensatory damages, including com-
9 pensation for any special damages sustained as
10 a result of the discrimination, including litiga-
11 tion costs, expert witness fees, and reasonable
12 attorney’s fees.

13 (f) ELECTION OF REMEDIES.—An employee may not
14 seek protection under both this section and another provi-
15 sion of law for the same allegedly unlawful act of the au-
16 thority.

17 (g) RIGHTS RETAINED BY EMPLOYEE.—Nothing in
18 this section shall be construed to diminish the rights, privi-
19 leges, or remedies of any employee under any Federal or
20 State law, provision adopted by an authority created by
21 an interstate Compact, or under any collective bargaining
22 agreement. The rights and remedies in this section may
23 not be waived by any agreement, policy, form, or condition
24 of employment.

1 (h) NO PREEMPTION.—Nothing in this section pre-
2 empts or diminishes any other safeguards against dis-
3 crimination, demotion, discharge, suspension, threats, har-
4 assment, reprimand, retaliation, or any other manner of
5 discrimination provided by Federal or State law or provi-
6 sion adopted by an authority created by an interstate
7 Compact.

8 (i) DISCLOSURE OF IDENTITY.—

9 (1) Except as provided in paragraph (2) of this
10 subsection, or with the written consent of the em-
11 ployee, the Secretary of Transportation or the Sec-
12 retary of Homeland Security may not disclose the
13 name of an employee who has provided information
14 described in subsection (a)(1).

15 (2) The Secretary of Transportation or the Sec-
16 retary of Homeland Security shall disclose to the At-
17 torney General the name of an employee described
18 in paragraph (1) of this subsection if the matter is
19 referred to the Attorney General for enforcement.
20 The Secretary making such disclosure shall provide
21 reasonable advance notice to the affected employee if
22 disclosure of that person's identity or identifying in-
23 formation is to occur.

24 (j) PROCESS FOR REPORTING SECURITY PROBLEMS
25 TO THE DEPARTMENT OF HOMELAND SECURITY.—

1 (1) ESTABLISHMENT OF PROCESS.—The Sec-
2 retary shall establish through regulations after an
3 opportunity for notice and comment, and provide in-
4 formation to the public regarding, a process by
5 which any person may submit a report to the Sec-
6 retary regarding public transportation security prob-
7 lems, deficiencies, or vulnerabilities.

8 (2) ACKNOWLEDGMENT OF RECEIPT.—If a re-
9 port submitted under paragraph (1) identifies the
10 person making the report, the Secretary shall re-
11 spond promptly to such person and acknowledge re-
12 ceipt of the report.

13 (3) STEPS TO ADDRESS PROBLEM.—The Sec-
14 retary shall review and consider the information pro-
15 vided in any report submitted under paragraph (1)
16 and shall take appropriate steps to address any
17 problems or deficiencies identified.

18 **SEC. 402. PROTECTION FROM WHISTLEBLOWER RETALIA-**
19 **TIONS FROM LABOR UNION OFFICIALS.**

20 (a) IN GENERAL.—A labor organization or its offi-
21 cers or agents shall not discriminate against an employee
22 if such discrimination is due, in whole or in part, to the
23 employee's lawful, good faith act done, or perceived by the
24 labor organization to have been done or about to be
25 done—

1 (1) to provide information, directly cause infor-
2 mation to be provided, or otherwise directly assist in
3 any investigation regarding any conduct which the
4 employee reasonably believes constitutes a violation
5 of—

6 (A) any Federal law or regulation or provi-
7 sion adopted by an authority created by an
8 interstate Compact;

9 (B) any bylaw of the labor organization; or

10 (C) any fraud, waste, or abuse of the labor
11 organization's funds if the information or as-
12 sistance is provided to or an investigation stem-
13 ming from the provided information is con-
14 ducted by—

15 (i) a Federal, State, or local regu-
16 latory or law enforcement agency, or a reg-
17 ulatory or law enforcement agency created
18 by an interstate Compact (including an of-
19 fice of the inspector general under the In-
20 spector General Act of 1978 (5 U.S.C.
21 App.; Public Law 95-452));

22 (ii) any Member of Congress, any
23 committee of Congress, or the Government
24 Accountability Office; or

1 (iii) a person with supervisory author-
2 ity over the employee or such other person
3 who has the authority to investigate, dis-
4 cover, or terminate the misconduct;

5 (2) to refuse to violate or assist in the violation
6 of any law, rule, or regulation relating to labor pol-
7 icy;

8 (3) to refuse to violate or assist in the violation
9 of any bylaw of the labor organization;

10 (4) to file a complaint or directly cause to be
11 brought a proceeding related to the enforcement of
12 this section or to testify in that proceeding;

13 (5) to notify, or attempt to notify, an officer of
14 the labor union, the employer, the inspector general,
15 or the Secretary of Labor of a violation of a law,
16 rule, regulation, or a bylaw of the labor organiza-
17 tion;

18 (6) to accurately report hours on duty pursuant
19 to chapter 211 of title 49, United States Code;

20 (7) to cooperate with a safety or security inves-
21 tigation by any Federal, State, or local regulatory or
22 law enforcement agency, or a regulatory or law en-
23 forcement agency created by an interstate Compact
24 (including an office of the inspector general under

1 the Inspector General Act of 1978 (5 U.S.C. App.;
2 Public Law 95-452)); or

3 (8) to furnish information to any Federal,
4 State, or local regulatory or law enforcement agency,
5 or a regulatory or law enforcement agency created
6 by an interstate Compact, as to the facts relating to
7 any accident or incident resulting in injury or death
8 to an individual, damage to property, or misappropriation of funds.
9

10 (b) ENFORCEMENT ACTION.—

11 (1) FILING AND NOTIFICATION.—A person who
12 believes that he or she has been discharged or other-
13 wise discriminated against by any person in connec-
14 tion with a violation of subsection (a) may, not later
15 than 180 days after the date on which such violation
16 occurs, file (or have any person file on his or her be-
17 half) a complaint with the Secretary of Labor alleg-
18 ing such discharge or discrimination. Upon receipt
19 of a complaint filed under this paragraph, the Sec-
20 retary of Labor shall notify, in writing, the person
21 named in the complaint and the person's employer
22 of the filing of the complaint, of the allegations con-
23 tained in the complaint, of the substance of evidence
24 supporting the complaint, and of the opportunities

1 that will be afforded to such person under paragraph
2 (2).

3 (2) INVESTIGATION; PRELIMINARY ORDER.—

4 (A) IN GENERAL.—Not later than 60 days
5 after the date of receipt of a complaint filed
6 under paragraph (1) and after affording the
7 person named in the complaint an opportunity
8 to submit to the Secretary of Labor a written
9 response to the complaint and an opportunity to
10 meet with a representative of the Secretary of
11 Labor to present statements from witnesses, the
12 Secretary of Labor shall conduct an investiga-
13 tion and determine whether there is reasonable
14 cause to believe that the complaint has merit
15 and notify, in writing, the complainant and the
16 person alleged to have committed a violation of
17 subsection (a) of the Secretary of Labor's find-
18 ings. If the Secretary of Labor concludes that
19 there is a reasonable cause to believe that a vio-
20 lation of subsection (a) has occurred, the Sec-
21 retary of Labor shall accompany the Secretary
22 of Labor's findings with a preliminary order
23 providing the relief prescribed by paragraph
24 (3)(B). Not later than 30 days after the date
25 of notification of findings under this paragraph,

1 either the person alleged to have committed the
2 violation or the complainant may file objections
3 to the findings or preliminary order, or both,
4 and request a hearing on the record. The filing
5 of such objections shall not operate to stay any
6 reinstatement remedy contained in the prelimi-
7 nary order. Such hearings shall be conducted
8 expeditiously. If a hearing is not requested in
9 such 30-day period, the preliminary order shall
10 be deemed a final order that is not subject to
11 judicial review.

12 (B) REQUIREMENTS.—

13 (i) REQUIRED SHOWING BY COM-
14 PLAINANT.—The Secretary of Labor shall
15 dismiss a complaint filed under this sub-
16 section and shall not conduct an investiga-
17 tion otherwise required under subpara-
18 graph (A) unless the complainant makes a
19 prima facie showing that any behavior de-
20 scribed in subsection (a) was a contrib-
21 uting factor in the unfavorable personnel
22 action alleged in the complaint.

23 (ii) SHOWING BY LABOR ORGANIZA-
24 TION OFFICER.—Notwithstanding a find-
25 ing by the Secretary of Labor that the

1 complainant has made the showing re-
2 quired under clause (i), no investigation
3 otherwise required under subparagraph (A)
4 shall be conducted if the labor organization
5 officer demonstrates, by clear and con-
6 vincing evidence, that the labor organiza-
7 tion officer would have taken the same un-
8 favorable personnel action in the absence
9 of that behavior.

10 (iii) CRITERIA FOR DETERMINATION
11 BY SECRETARY OF LABOR.—The Secretary
12 of Labor may determine that a violation of
13 subsection (a) has occurred only if the
14 complainant demonstrates that any behav-
15 ior described in subsection (a) was a con-
16 tributing factor in the unfavorable per-
17 sonnel action alleged in the complaint.

18 (iv) PROHIBITION.—Relief may not be
19 ordered under subparagraph (A) if the
20 labor union officer demonstrates by clear
21 and convincing evidence that the labor
22 union officer would have taken the same
23 unfavorable personnel action in the ab-
24 sence of that behavior.

25 (3) FINAL ORDER.—

1 (A) DEADLINE FOR ISSUANCE; SETTLE-
2 MENT AGREEMENTS.—Not later than 120 days
3 after the date of conclusion of a hearing under
4 paragraph (2), the Secretary of Labor shall
5 issue a final order providing the relief pre-
6 scribed by this paragraph or denying the com-
7 plaint. At any time before issuance of a final
8 order, a proceeding under this subsection may
9 be terminated on the basis of a settlement
10 agreement entered into by the Secretary of
11 Labor, the complainant, and the person alleged
12 to have committed the violation.

13 (B) REMEDY.—If, in response to a com-
14 plaint filed under paragraph (1), the Secretary
15 of Labor determines that a violation of sub-
16 section (a) has occurred, the Secretary of Labor
17 shall order the person who committed such vio-
18 lation to—

19 (i) take affirmative action to abate the
20 violation; and

21 (ii) provide the remedies described in
22 subsection (c).

23 (C) ORDER.—If an order is issued under
24 subparagraph (B), the Secretary of Labor, at
25 the request of the complainant, shall assess

1 against the person against whom the order is
2 issued a sum equal to the aggregate amount of
3 all costs and expenses (including attorney's and
4 expert witness fees) reasonably incurred, as de-
5 termined by the Secretary of Labor, by the
6 complainant for, or in connection with, bringing
7 the complaint upon which the order was issued.

8 (D) FRIVOLOUS COMPLAINTS.—If the Sec-
9 retary of Labor finds that a complaint under
10 paragraph (1) is frivolous or has been brought
11 in bad faith, the Secretary of Labor may award
12 to the prevailing labor organization officer rea-
13 sonable attorney's fees not exceeding \$1,000.

14 (4) REVIEW.—

15 (A) APPEAL TO COURT OF APPEALS.—Any
16 person adversely affected or aggrieved by an
17 order issued under paragraph (3) may obtain
18 review of the order in the United States Court
19 of Appeals for the District of Columbia Circuit.
20 The petition for review must be filed not later
21 than 60 days after the date of the issuance of
22 the final order of the Secretary of Labor. Re-
23 view shall conform to chapter 7 of title 5,
24 United States Code. The commencement of pro-
25 ceedings under this subparagraph shall not, un-

1 less ordered by the court, operate as a stay of
2 the order.

3 (B) LIMITATION ON COLLATERAL AT-
4 TACK.—An order of the Secretary of Labor
5 with respect to which review could have been
6 obtained under subparagraph (A) shall not be
7 subject to judicial review in any criminal or
8 other civil proceeding.

9 (5) ENFORCEMENT OF ORDER BY SECRETARY
10 OF LABOR.—Whenever any person has failed to com-
11 ply with an order issued under paragraph (3), the
12 Secretary of Labor shall file a civil action in the
13 United States district court for the district in which
14 the violation was found to occur to enforce such
15 order. In actions brought under this paragraph, the
16 district courts shall have jurisdiction to grant all ap-
17 propriate relief including, but not limited to, injunc-
18 tive relief and compensatory damages.

19 (6) ENFORCEMENT OF ORDER BY PARTIES.—

20 (A) COMMENCEMENT OF ACTION.—A per-
21 son on whose behalf an order was issued under
22 paragraph (3) may commence a civil action
23 against the person to whom such order was
24 issued to require compliance with such order.
25 The appropriate United States district court

1 shall have jurisdiction, without regard to the
2 amount in controversy or the citizenship of the
3 parties, to enforce such order.

4 (B) ATTORNEY'S FEES.—The court, in
5 issuing any final order under this paragraph,
6 may award costs of litigation (including reason-
7 able attorney's and expert witness fees) to any
8 party whenever the court determines such
9 award is appropriate.

10 (7) DE NOVO REVIEW.—With respect to a com-
11 plaint under paragraph (1), if the Secretary of
12 Labor has not issued a final decision within 210
13 days after the filing of the complaint and if the
14 delay is not due to the bad faith of the employee,
15 the employee may bring an original action at law or
16 equity for de novo review in the appropriate district
17 court of the United States, which shall have jurisdic-
18 tion over such an action without regard to the
19 amount in controversy, and which action shall, at
20 the request of either party to such action, be tried
21 by the court with a jury. The action shall be gov-
22 erned by the same legal burdens of proof specified
23 in paragraph (2)(B) for review by the Secretary of
24 Labor.

25 (c) REMEDIES.—

1 (1) IN GENERAL.—An employee prevailing in
2 any action under subsection (b) shall be entitled to
3 all relief necessary to make the employee whole.

4 (2) DAMAGES.—Relief in an action under sub-
5 section (b) shall include—

6 (A) reinstatement with the same seniority
7 status that the employee would have had, but
8 for the discrimination;

9 (B) any backpay, with interest, to be paid
10 by the labor organization in lieu of the em-
11 ployer; and

12 (C) compensatory damages, including com-
13 pensation for any special damages sustained as
14 a result of the discrimination, including litiga-
15 tion costs, expert witness fees, and reasonable
16 attorney’s fees.

17 (3) POSSIBLE RELIEF.—Relief in any action
18 under subsection (b) may include punitive damages
19 in an amount not to exceed \$250,000.

20 (d) ELECTION OF REMEDIES.—An employee may not
21 seek protection under both this section and another provi-
22 sion of law for the same allegedly unlawful act of the au-
23 thority.

24 (e) NO PREEMPTION.—Nothing in this section pre-
25 empts or diminishes any other safeguards against dis-

1 crimination, demotion, discharge, suspension, threats, har-
2 assment, reprimand, retaliation, or any other manner of
3 discrimination provided by Federal or State law or provi-
4 sion adopted by an authority created by an interstate
5 Compact.

6 (f) RIGHTS RETAINED BY EMPLOYEE.—Nothing in
7 this section shall be construed to diminish the rights, privi-
8 leges, or remedies of any employee under any Federal or
9 State law, provision adopted by an authority created by
10 an interstate Compact, or under any collective bargaining
11 agreement. The rights and remedies in this section may
12 not be waived by any agreement, policy, form, or condition
13 of employment.

14 **SEC. 403. RETIREMENT PLANS.**

15 With respect to pension and retirement benefits plans
16 for employees of the Authority—

17 (1) the Authority shall honor all pension obliga-
18 tions for employees retired from the Authority and
19 currently receiving a pension;

20 (2) the Authority shall, for employees who, on
21 the date of enactment of this Act, have accumulated
22 a total of 5 years of employment with the Authority,
23 devise a system which limits those enrolled in the
24 Authority's pension plan to having not more than
25 100 percent of base annual salary as the amount

1 counted toward the highest salary level for purposes
2 of calculating pension benefits;

3 (3) the Authority may, with respect to those
4 employees who were hired before the date of enact-
5 ment of this Act but who had yet to accumulate a
6 total of 5 years of employment with the Authority,
7 determine a benefits plan which may include a com-
8 bination of a defined benefit and a defined contribu-
9 tion; and

10 (4) the Authority shall, for all employees not
11 enrolled in the Authority's pension system on the
12 date of enactment of this Act, provide defined con-
13 tribution retirement plans.

○