

## S 494

### Federal Employee Protection of Disclosures Act

**Congress:** 109 (2005–2007, Ended)

**Chamber:** Senate

**Policy Area:** Government Operations and Politics

**Introduced:** Mar 2, 2005

**Current Status:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 114.

**Latest Action:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 114. (May 25, 2005)

**Official Text:** <https://www.congress.gov/bill/109th-congress/senate-bill/494>

## Sponsor

**Name:** Sen. Akaka, Daniel K. [D-HI]

**Party:** Democratic • **State:** HI • **Chamber:** Senate

## Cosponsors (14 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Carper, Thomas R. [D-DE]	D · DE		Mar 2, 2005
Sen. Coleman, Norm [R-MN]	R · MN		Mar 2, 2005
Sen. Collins, Susan M. [R-ME]	R · ME		Mar 2, 2005
Sen. Dayton, Mark [D-MN]	D · MN		Mar 2, 2005
Sen. Durbin, Richard J. [D-IL]	D · IL		Mar 2, 2005
Sen. Grassley, Chuck [R-IA]	R · IA		Mar 2, 2005
Sen. Johnson, Tim [D-SD]	D · SD		Mar 2, 2005
Sen. Lautenberg, Frank R. [D-NJ]	D · NJ		Mar 2, 2005
Sen. Leahy, Patrick J. [D-VT]	D · VT		Mar 2, 2005
Sen. Levin, Carl [D-MI]	D · MI		Mar 2, 2005
Sen. Lieberman, Joseph I. [D-CT]	D · CT		Mar 2, 2005
Sen. Pryor, Mark L. [D-AR]	D · AR		Mar 2, 2005
Sen. Voinovich, George V. [R-OH]	R · OH		Mar 2, 2005
Sen. Chafee, Lincoln [R-RI]	R · RI		Apr 12, 2005

## Committee Activity

Committee	Chamber	Activity	Date
Homeland Security and Governmental Affairs Committee	Senate	Referred to	Mar 9, 2005

## Subjects & Policy Tags

### Policy Area:

Government Operations and Politics

## Related Bills

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Bill	Relationship	Last Action
109 HR 1317	Related bill	Nov 17, 2006: House Committee on Armed Services Granted an extension for further consideration ending not later than Dec. 8, 2006.

**(This measure has not been amended since it was introduced. The summary has been expanded because action occurred on the measure.)**

Federal Employee Protection of Disclosures Act - Includes as a protected disclosure by a Federal employee: (1) any lawful disclosure an employee or applicant reasonably believes is credible evidence of waste, abuse, or gross mismanagement, without restriction as to time, place, form, motive, context, or prior disclosure; and (2) the disclosure of information required to be kept secret in the interest of national defense or the conduct of foreign affairs that the employee or applicant reasonably believes is direct evidence of waste, abuse, or gross mismanagement if such disclosure is made to a Member or employee of Congress who is authorized to receive information of the type disclosed. Excludes disclosures pertaining to policy decisions that lawfully exercise discretionary authority unless the disclosing employee reasonably believes that there is evidence of a violation of law or government waste, fraud, or abuse. Provides for employee discipline for disclosures to congressional employees who are not authorized to receive such information.

Codifies the legal standard for determining whether a whistleblower has a reasonable belief that a disclosure evidences governmental waste, fraud, or abuse, or a violation of law.

Provides that the following actions may not be taken against whistleblowers for protected disclosures: (1) the implementation or enforcement of any nondisclosure policy, form, or agreement; (2) a security clearance suspension or revocation; and (3) an investigation (other than routine nondiscretionary agency investigations) of an employee or applicant for employment.

Authorizes the Merit Systems Protection Board (MSPB) to conduct an expedited review of cases charging retaliation for whistleblowing when the whistleblower's security clearance or access determination is suspended, revoked, or otherwise adversely affected. Requires an agency that improperly revokes a whistleblower's security clearance to report to Congress explaining its actions. Exempts an agency from this requirement if the agency can show by a preponderance of the evidence (currently, clear and convincing evidence required) that it would have taken the same personnel action in the absence of the whistleblower disclosure.

Authorizes the President to exclude certain agencies engaged in the conduct of foreign intelligence or counterintelligence activities from whistleblower protections if such exclusion is made prior to any personnel action against the whistleblower.

Expands the authority of the MSPB to impose disciplinary action for prohibited personnel practices.

Authorizes the Office of Special Counsel to appear as amicus curiae (friend of the court) in any civil action involving whistleblowers and the Hatch Act.

Permits petitions for review of whistleblower actions to be filed in any U.S. Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction (currently limited to the US Court of Appeals for the Federal Circuit), for five years after the date of enactment of this Act.

Requires all Federal agency nondisclosure policies, forms, and agreements to contain specified language preserving the right of Federal employees to disclose certain protected information.

Amends the Homeland Security Act of 2002 to provide that, for purposes of provisions regarding the protection of voluntarily shared critical infrastructure information, a permissible use of independently obtained critical infrastructure

information includes any lawful disclosure an employee or applicant reasonably believes is credible evidence of waste, fraud, abuse, or gross mismanagement, without restriction as to time, place, form, motive, context, or prior disclosure.

Requires Federal agencies to instruct employee how to make a lawful disclosure of classified information to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such information.

## **Actions Timeline**

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- **May 25, 2005:** Committee on Homeland Security and Governmental Affairs. Reported by Senator Collins without amendment. With written report No. 109-72.
- **May 25, 2005:** Committee on Homeland Security and Governmental Affairs. Reported by Senator Collins without amendment. With written report No. 109-72.
- **May 25, 2005:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 114.
- **Apr 13, 2005:** Committee on Homeland Security and Governmental Affairs. Ordered to be reported without amendment favorably.
- **Mar 9, 2005:** Committee on Homeland Security and Governmental Affairs referred to Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia.
- **Mar 2, 2005:** Introduced in Senate
- **Mar 2, 2005:** Sponsor introductory remarks on measure. (CR S1935-1936)
- **Mar 2, 2005:** Read twice and referred to the Committee on Homeland Security and Governmental Affairs. (text of measure as introduced: CR S1936-1938)