

S 2533

State Secrets Protection Act

Congress: 110 (2007–2009, Ended)

Chamber: Senate

Policy Area: Law

Introduced: Jan 22, 2008

Current Status: Placed on Senate Legislative Calendar under General Orders. Calendar No. 938.

Latest Action: Placed on Senate Legislative Calendar under General Orders. Calendar No. 938. (Aug 1, 2008)

Official Text: <https://www.congress.gov/bill/110th-congress/senate-bill/2533>

Sponsor

Name: Sen. Kennedy, Edward M. [D-MA]

Party: Democratic • State: MA • Chamber: Senate

Cosponsors (12 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Leahy, Patrick J. [D-VT]	D · VT		Jan 22, 2008
Sen. Specter, Arlen [R-PA]	R · PA		Jan 22, 2008
Sen. Feingold, Russell D. [D-WI]	D · WI		Feb 26, 2008
Sen. Whitehouse, Sheldon [D-RI]	D · RI		Feb 28, 2008
Sen. Webb, Jim [D-VA]	D · VA		Mar 10, 2008
Sen. Clinton, Hillary Rodham [D-NY]	D · NY		Apr 1, 2008
Sen. Dodd, Christopher J. [D-CT]	D · CT		Apr 10, 2008
Sen. McCaskill, Claire [D-MO]	D · MO		Apr 14, 2008
Sen. Schumer, Charles E. [D-NY]	D · NY		Apr 23, 2008
Sen. Biden, Joseph R., Jr. [D-DE]	D · DE		Apr 24, 2008
Sen. Menendez, Robert [D-NJ]	D · NJ		May 1, 2008
Sen. Tester, Jon [D-MT]	D · MT		May 15, 2008

Committee Activity

Committee	Chamber	Activity	Date
Judiciary Committee	Senate	Reported By	Aug 1, 2008

Subjects & Policy Tags

Policy Area:

Law

Related Bills

No related bills are listed.

State Secrets Protection Act - Amends the federal judicial code to: (1) require a federal court to determine which filings, motions, and affidavits (or portions) submitted under this Act shall be submitted ex parte; (2) allow a federal court to order a party to provide a redacted, unclassified, or summary substitute of a filing, motion, or affidavit to other parties; and (3) require a federal court to make decisions under this Act, taking into consideration the interests of justice and national security.

Requires any hearing under this Act to be conducted in camera. Prohibits an in camera hearing, however, based on the assertion of the state secrets privilege, if the court determines that the hearing relates only to a question of law and does not present a risk of revealing state secrets.

Allows a federal court to conduct hearings (or portions) ex parte if the court determines, following in camera review of the evidence, that the interests of justice and national security cannot adequately be protected through attorney security clearances, protective orders, sealed opinions or orders, and special masters.

Requires a federal court, at the request of the United States, to limit participation in hearings, or access to motions or affidavits, to attorneys (including guardians ad litem) with appropriate security clearances, if the limiting participation in this manner would serve the interests of national security.

Authorizes a court, If the United States fails to provide a necessary security clearance in a reasonable period of time, to review in camera and ex parte the reasons of the United States for denying or delaying the clearance to ensure that the United States is not withholding a security clearance from a particular attorney or class of attorneys for any reason other than protection of national security.

Authorizes the United States to intervene in any civil action in order to protect information that may be subject to the state secrets privilege. Declares, however, that the state secrets privilege shall not constitute grounds for dismissal of a case or claim. Requires deferral pending completion of the hearings of any motion to dismiss or for summary judgment based in whole or in part on the state secrets privilege, or which may be affected by the assertion of the state secrets privilege, unless the motion can be granted on grounds unrelated to, and unaffected by, assertion of the privilege.

Prescribes procedures for: (1) determining whether evidence is protected from disclosure by the state secrets privilege; and (2) when evidence protected by the state secrets privilege is necessary for adjudication of a claim or counterclaim.

Requires the court to give substantial weight to an assertion by the United States relating to why public disclosure of an item of evidence would be reasonably likely to cause significant harm to the national defense or foreign relations of the United States.

States that any rules (or amendments) relating to security procedures may include procedures to ensure that a sufficient number of attorneys with appropriate security clearances are available in each of the U.S. judicial districts to serve as guardians ad litem.

Grants courts of appeal jurisdiction of an appeal by any party from any interlocutory decision or order of a U.S. district court.

Requires the Attorney General within 30 days to report in writing to Congress on any case in which the United States asserts the state secrets privilege.

Declares that nothing in this Act may be construed to preclude a court from dismissing a claim or counterclaim or entering judgment on grounds unrelated to, and unaffected by, the assertion of the state secrets privilege.

Applies this Act to civil cases pending on or after the enactment of this Act.

Actions Timeline

- **Aug 1, 2008:** Committee on the Judiciary. Reported by Senator Leahy with an amendment in the nature of a substitute. With written report No. 110-442. Minority views filed.
- **Aug 1, 2008:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 938.
- **Apr 24, 2008:** Committee on the Judiciary. Ordered to be reported with amendments favorably.
- **Feb 13, 2008:** Committee on the Judiciary. Hearings held.
- **Jan 23, 2008:** Sponsor introductory remarks on measure. (CR S198-199)
- **Jan 22, 2008:** Introduced in Senate
- **Jan 22, 2008:** Read twice and referred to the Committee on the Judiciary.