

S 274

Federal Employee Protection of Disclosures Act

Congress: 110 (2007–2009, Ended)

Chamber: Senate

Policy Area: Government Operations and Politics

Introduced: Jan 11, 2007

Current Status: Held at the desk.

Latest Action: Held at the desk. (Dec 17, 2007)

Official Text: https://www.congress.gov/bill/110th-congress/senate-bill/274

Sponsor

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

Party: Democratic • State: HI • Chamber: Senate

Cosponsors (12 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Carper, Thomas R. [D-DE]	D · DE		Jan 11, 2007
Sen. Collins, Susan M. [R-ME]	R · ME		Jan 11, 2007
Sen. Durbin, Richard J. [D-IL]	D · IL		Jan 11, 2007
Sen. Grassley, Chuck [R-IA]	R · IA		Jan 11, 2007
Sen. Lautenberg, Frank R. [D-NJ]	D · NJ		Jan 11, 2007
Sen. Leahy, Patrick J. [D-VT]	D · VT		Jan 11, 2007
Sen. Levin, Carl [D-MI]	D · MI		Jan 11, 2007
Sen. Lieberman, Joseph I. [ID-CT]	ID · CT		Jan 11, 2007
Sen. Pryor, Mark L. [D-AR]	D · AR		Jan 11, 2007
Sen. Voinovich, George V. [R-OH]	R · OH		Jan 11, 2007
Sen. Kennedy, Edward M. [D-MA]	D · MA		May 24, 2007
Sen. Mikulski, Barbara A. [D-MD]	D · MD		Dec 6, 2007

Committee Activity

Committee	Chamber	Activity	Date
Homeland Security and Governmental Affairs Committee	Senate	Referred to	Mar 30, 2007

Subjects & Policy Tags

Policy Area:

Government Operations and Politics

Related Bills

No related bills are listed.

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) any 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 the discipline of employees 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) implementation or enforcement of any nondisclosure policy, form, or agreement; (2) security clearance suspension or revocation; and (3) 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 is 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 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 prohibited personnel actions against whistleblowers or the Hatch Act.

Permits petitions for review of whistleblower actions to be filed in any court of appeals of competent jurisdiction (currently limited to the US Court of Appeals for the Federal Circuit) for five years after 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 employees on 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.

Requires the Government Accountability Office (GAO) to report to specified congressional committees on the implementation of this Act.

Requires MSPB's annual reports to include as an addendum: (1) information relating to the outcome of cases in which violations were alleged; and (2) the number of such cases filed in the regional and field offices, the number of petitions for review filed in such cases, and the outcomes of such cases.

## **Actions Timeline**

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- **Dec 17, 2007:** Measure laid before Senate by unanimous consent. (consideration: CR S15782-15786; text of measure as reported in Senate: CR S15782-15784)
- **Dec 17, 2007:** The committee substitute as amended agreed to by Unanimous Consent.
- **Dec 17, 2007:** Passed/agreed to in Senate: Passed Senate with an amendment by Unanimous Consent.(text: CR S15784-15786)
- **Dec 17, 2007:** Passed Senate with an amendment by Unanimous Consent. (text: CR S15784-15786)
- **Dec 17, 2007:** Received in the House.
- **Dec 17, 2007:** Message on Senate action sent to the House.
- **Dec 17, 2007:** Held at the desk.
- **Nov 16, 2007:** Committee on Homeland Security and Governmental Affairs. Reported by Senator Lieberman with an amendment in the nature of a substitute. With written report No. 110-232.
- **Nov 16, 2007:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 513.
- **Jun 13, 2007:** Committee on Homeland Security and Governmental Affairs. Ordered to be reported with an amendment favorably.
- **Mar 30, 2007:** Committee on Homeland Security and Governmental Affairs referred to Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia.
- **Jan 11, 2007:** Introduced in Senate
- **Jan 11, 2007:** Sponsor introductory remarks on measure. (CR S455-456)
- **Jan 11, 2007:** Read twice and referred to the Committee on Homeland Security and Governmental Affairs. (text of measure as introduced: CR S456-458)