

The New York Times

ON THE WEB

Congress Moves to Protect Federal Whistleblowers

By ROBERT PEAR

Published: October 3, 2004

WASHINGTON, Oct. 2 - Over strenuous objections from the Bush administration, Congress is moving to increase protections for federal employees who expose fraud, waste and wrongdoing inside the government.

Lawmakers of both parties say the measures are needed to prevent retaliation against such whistleblowers, who reveal threats to public health, safety and security.

But the administration says the bill unconstitutionally interferes with the president's ability to control and manage the government.

On Wednesday, a House committee approved a whistleblower protection bill. In July, a Senate committee approved a similar measure offering more extensive protections to whistleblowers.

Representative Todd R. Platts, Republican of Pennsylvania, the sponsor of the House bill, said: "We need to protect public servants who expose fraud and intentional misconduct. Court decisions in the last 10 years have eroded whistleblower protections, so that if you're a federal employee, you're often risking your job - and the wrath of your superiors - if you come forward with evidence of wrongdoing."

The Senate bill gained momentum when Senator Susan Collins, Republican of Maine, chairwoman of the Committee on Governmental Affairs, joined Senator Daniel K. Akaka, Democrat of Hawaii, in pushing it.

"The campaign for this legislation went from dormant to active when Senator Collins embraced the bill a few months ago," said Thomas M. Devine, legal director of the Government Accountability Project, a watchdog group that works with whistleblowers. "That was the turning point."

While the legislation has broad support and a compromise appears to be within reach, it is impossible to know whether the measure will become law. As evidence of a need for legislation, lawmakers cited dozens of cases, including these:

- Federal investigators found that two Border Patrol agents, Mark Hall and Robert Lindemann, were disciplined after they disclosed weaknesses in security along the Canadian border.
- Teresa C. Chambers was dismissed from her job as chief of the United States Park Police after she said the agency did not have enough money or personnel to protect parks and monuments in the Washington area.
- The nation's top Medicare official threatened to fire Richard S. Foster, the chief Medicare actuary, if he provided data to Congress showing the cost of the new Medicare law, which exceeded White House estimates.

Airport baggage screeners say they have been penalized for raising concerns about aviation security. But in August, an independent federal agency, the Merit Systems Protection Board, ruled that they had none of the whistleblower rights available to other federal employees. The government, it said, can "hire, discipline and terminate screeners without regard to any other law."

The United States Office of Special Counsel, which investigates complaints of reprisal before they go to the board, has a large backlog of whistleblower cases, including many pending more than a year.

The terrorist attacks of Sept. 11, 2001, have made the government more secretive, but have also prompted whistleblowers to come forward in greater numbers. "They feel they can no longer stand by knowing that people's lives are at risk," said Danielle Brian, executive director of the Project on Government Oversight, another watchdog group.

Senator Charles E. Grassley, Republican of Iowa, said he knew of several instances in which federal agencies had retaliated against whistleblowers by revoking their security clearances. Because they can no longer do their jobs, Mr. Grassley said, "the pulling of a security clearance effectively fires employees."

Administration officials gave several reasons for opposing the bills. Peter D. Keisler, an assistant attorney general, said the legislation would encourage frivolous complaints by disgruntled employees, crippling the ability of senior officials to manage the federal work force.

"The bill would convert every federal employee into a potential whistleblower and every minor workplace dispute with a supervisor into a potential whistleblower case," Mr. Keisler said.

Mr. Akaka said the objections came as no surprise. "The Justice Department has an institutional conflict of interest" because it is responsible for defending agencies accused of retaliating against whistleblowers, he said.

Congress has repeatedly tried to protect conscientious civil servants, under laws adopted in 1978, 1989 and 1994. But lawmakers said these efforts had been frustrated by the court that hears appeals from aggrieved federal employees, the United States Court of Appeals for the Federal Circuit.

The court often assumes that a federal agency acted properly unless an employee offers "irrefragable proof to the contrary."

The Senate committee cited this as one of many issues on which the court had misinterpreted the law and the intent of Congress. "By definition," it said, "irrefragable means impossible to refute. This imposes an impossible burden on whistleblowers."

By contrast, the House and Senate bills would protect the disclosure of any information that a whistleblower "reasonably believes" to be evidence of government illegality or misconduct.

The legislation would also clarify the right of federal employees, like Mr. Foster, the Medicare actuary, to provide information to Congress, free of threats or reprisals.