



***Department of Energy and Nuclear Regulatory Commission
Whistleblower Protection Act***

Senator Duckworth, joined by the Chair and Vice Chair of the Senate Whistleblower Protection Caucus—Senators Chuck Grassley (R-IA) and Ron Wyden (D-OR)—and Senators James Lankford (R-OK) and Ed Markey (D-MA), introduced the bipartisan Department of Energy and Nuclear Regulatory Commission Act to restore due process rights to U.S. Department of Energy (DOE) and Nuclear Regulatory Commission (NRC) civil servants that allege retaliation for blowing the whistle on nuclear safety violations.

This modest legislative fix would enable DOE and NRC employees to have serious allegations of violations of whistleblower protection rights under Section 211 of the Energy Reorganization Act (ERA) adjudicated on the merits by U.S. Department of Labor (DOL) Administrative Law Judges (ALJs)—just as Congress intended 18 years ago when it passed Section 629 of the Energy Policy Act of 2005 to add DOE and NRC as covered employers under Section 211.

BACKGROUND:

IMPLEMENTATION HISTORY—Initially, there was zero confusion about the purpose and effect of Section 629, as evidenced by the DOL Occupational Safety and Health Administration promulgating regulations and developing materials to be displayed in DOE and NRC offices **that included guidance on how DOE and NRC employees could file a complaint if retaliated against for engaging in protected activity under Section 211 of the ERA.**

PROBLEM—However, DOL ALJs and the United States Court of Appeals for the Fourth Circuit subsequently determined that such complaints from DOL or NRC personnel would **always** be summarily dismissed, because Section 629 of the Energy Policy Act of 2005 did not contain the clear and unequivocal waiver of sovereign immunity that Supreme Court precedent requires to enable whistleblower claims against the United States Government to move forward and be adjudicated on the merits of the complaint.

LEGISLATIVE FIX—The bipartisan Duckworth-Grassley-Wyden-Lankford-Markey Department of Energy and Nuclear Regulatory Commission Whistleblower Protection Act would simply clarify Section 211 to provide a clear and unequivocal waiver of sovereign immunity for a narrow purpose: restoring due process under Section 211’s civil remedies provisions to enable DOE and NRC civil servants to have complaints adjudicated properly on the merits—just as Congress originally intended in passing the 2005 law and implementing Federal Agencies originally understood.

The bill is endorsed by the following members of the Make It Safe Coalition: *Government Accountability Project, National Taxpayers Union, National Whistleblower Center, Project on Government Oversight, Public Citizen, Taxpayer Protection Alliance, Acorn 8, Public Employees for Environmental Responsibility, Transparency International – U.S. Office, Whistleblowers of America.*