

Union Calendar No. 468

105TH CONGRESS
2^D SESSION

H. R. 3829

[Report No. 105-747, Part I]

To amend the Central Intelligence Agency Act of 1949 to provide a process for agency employees to submit urgent concerns to Congress, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1998

Mr. GOSS (for himself, Mr. BASS, Mr. BOEHLERT, Mr. YOUNG of Florida, Mr. LEWIS of California, Mr. GIBBONS, and Mr. MCCOLLUM) introduced the following bill; which was referred to the Committee on Intelligence (Permanent Select), and in addition to the Committee on Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER 25, 1998

Reported from the Permanent Select Committee on Intelligence with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

SEPTEMBER 25, 1998

Referral to the Committee on Government Reform and Oversight extended for a period ending not later than October 9, 1998

SEPTEMBER 25, 1998

Referred to the Committees on the Judiciary and National Security for a period ending not later than October 9, 1998 for consideration of such provisions of the bill and amendments as fall within their jurisdiction pursuant to clause 1(j) and (k), rule X, respectively

OCTOBER 9, 1998

Referral to the Committees on Government Reform and Oversight, the Judiciary, and National Security extended for a period ending not later than October 16, 1998

OCTOBER 16, 1998

Referral to the Committees on Government Reform and Oversight, the Judiciary, and National Security extended for a period ending not later than October 20, 1998

OCTOBER 20, 1998

Additional sponsors: Mr. CASTLE, Mr. BEREUTER, Mr. SHUSTER, and Mr. HYDE

OCTOBER 20, 1998

The Committees on Government Reform and Oversight, the Judiciary, and National Security discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on May 12, 1998]

A BILL

To amend the Central Intelligence Agency Act of 1949 to provide a process for agency employees to submit urgent concerns to Congress, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the “In-*
 5 *telligence Community Whistleblower Protection Act of*
 6 *1998”.*

7 (b) *FINDINGS.*—*The Congress finds that—*

8 (1) *national security is a shared responsibility,*
 9 *requiring joint efforts and mutual respect by Congress*
 10 *and the President;*

1 (2) *the principles of comity between the Branches*
2 *apply to the handling of national security informa-*
3 *tion;*

4 (3) *Congress, as a co-equal Branch of Govern-*
5 *ment, is empowered by the Constitution to serve as a*
6 *check on the Executive Branch; in that capacity, it*
7 *has a “need to know” of allegations of wrongdoing*
8 *within the Executive Branch, including allegations of*
9 *wrongdoing in the Intelligence Community;*

10 (4) *no basis in law exists for requiring prior au-*
11 *thorization of disclosures to the intelligence commit-*
12 *tees of Congress by employees of the Executive Branch*
13 *of classified information about wrongdoing within the*
14 *Intelligence Community;*

15 (5) *the risk of reprisal perceived by employees*
16 *and contractors of the Intelligence Community for re-*
17 *porting serious or flagrant problems to Congress may*
18 *have impaired the flow of information needed by the*
19 *intelligence committees to carry out oversight respon-*
20 *sibilities; and*

21 (6) *to encourage such reporting, an additional*
22 *procedure should be established that provides a means*
23 *for such employees and contractors to report to Con-*
24 *gress while safeguarding the classified information in-*
25 *volved in such reporting.*

1 “(D) If the Inspector General does not transmit, or
2 does not transmit in an accurate form, the complaint or
3 information described in subparagraph (B), the employee
4 may contact the intelligence committees directly to submit
5 the complaint or information, if the employee—

6 “(i) furnishes to the Director, through the Inspec-
7 tor General, a statement of the employee’s complaint
8 or information and notice of the employee’s intent to
9 contact the intelligence committees directly; and

10 “(ii) obtains and follows direction from the Di-
11 rector, through the Inspector General, on how to con-
12 tact the intelligence committees in accordance with
13 appropriate security practices.

14 “(E) The Inspector General shall notify the employee
15 of each action taken under this paragraph with respect to
16 the employee’s complaint or information not later than
17 three days after any such action is taken.

18 “(F) In this paragraph:

19 “(i) The term ‘urgent concern’ means any of the
20 following:

21 “(I) A serious or flagrant problem, abuse,
22 violation of law or executive order, or deficiency
23 relating to the administration or operations of
24 an intelligence activity involving classified infor-

1 *mation, but does not include differences of opin-*
2 *ions concerning public policy matters.*

3 *“(II) A false statement to Congress, or a*
4 *willful withholding from Congress, on an issue of*
5 *material fact relating to the administration or*
6 *operation of an intelligence activity.*

7 *“(III) An action, including a personnel ac-*
8 *tion described in section 2302(a)(2)(A) of title 5,*
9 *United States Code, constituting reprisal or*
10 *threat of reprisal prohibited under subsection*
11 *(e)(3)(B) in response to the employee’s reporting*
12 *an urgent concern pursuant to the terms of this*
13 *act.*

14 *“(ii) The term ‘intelligence committees’ means*
15 *the Permanent Select Committee on Intelligence of the*
16 *House of Representatives and the Select Committee on*
17 *Intelligence of the Senate.*

18 *“(G) An action taken by the Director or the Inspector*
19 *General under this paragraph shall not be subject to judi-*
20 *cial review.”.*

21 *(2) CLERICAL AMENDMENT.—The heading to*
22 *subsection (d) of section 17 of such Act is amended by*
23 *inserting “; REPORTS TO CONGRESS ON URGENT*
24 *CONCERNS” before the period.*

1 (b) *ADDITIONAL PROVISIONS WITH RESPECT TO IN-*
2 *SPECTORS GENERAL OF THE INTELLIGENCE COMMUNITY.—*

3 (1) *IN GENERAL.—The Inspector General Act of*
4 *1978 (5 U.S.C. App.) is amended by redesignating*
5 *section 8H as section 8I and by inserting after section*
6 *8G the following new section:*

7 “*SEC. 8H. (a)(1)(A) Employees of the Defense Intel-*
8 *ligence Agency, the National Imagery and Mapping Agen-*
9 *cy, the National Reconnaissance Office, and the National*
10 *Security Agency, and of contractors to those Agencies, who*
11 *intend to report to Congress a complaint or information*
12 *with respect to an urgent concern may report to the Inspec-*
13 *tor General of the Department of Defense (or designee).*

14 “*(B) Employees of the Federal Bureau of Investiga-*
15 *tion, and of contractors to the Bureau, who intend to report*
16 *to Congress a complaint or information with respect to an*
17 *urgent concern may report to the Inspector General of the*
18 *Department of Justice (or designee).*

19 “*(C) Any other employee of, or contractor to, an execu-*
20 *tive agency, or element or unit thereof, determined by the*
21 *President under section 2302(a)(2)(C)(ii) of title 5, United*
22 *States Code, to have as its principal function the conduct*
23 *of foreign intelligence or counterintelligence activities, who*
24 *intends to report to Congress a complaint or information*
25 *with respect to an urgent concern may report to the appro-*

1 *priate Inspector General (or designee) under this Act, or*
2 *section 17 of the Central Intelligence Agency Act of 1949.*

3 “(2) *The designee of an Inspector General under this*
4 *section shall report such employee complaints or informa-*
5 *tion to the Inspector General within 7 calendar days of re-*
6 *ceipt.*

7 “(b) *Within the 60-calendar day period beginning on*
8 *the day of receipt of an employee complaint or information*
9 *under subsection (a), the Inspector General shall determine*
10 *whether the complaint or information appears credible. If*
11 *the Inspector General determines that the complaint or in-*
12 *formation appears to be credible, the Inspector General*
13 *within such period shall transmit the complaint or infor-*
14 *mation to the head of the establishment.*

15 “(c) *The head of the establishment shall, within 7 cal-*
16 *endar days after receipt of the transmittal from the Inspec-*
17 *tor General pursuant to subsection (b), forward such trans-*
18 *mittal to the intelligence committees, together with any*
19 *comments the head of the establishment considers appro-*
20 *priate.*

21 “(d) *If the Inspector General does not transmit, or does*
22 *not transmit in an accurate form, the complaint or infor-*
23 *mation pursuant to subsection (b), the employee may con-*
24 *tact the intelligence committees directly to submit the com-*
25 *plaint or information, if the employee—*

1 “(1) furnishes to the head of the establishment,
2 through the Inspector General, a statement of the em-
3 ployee’s complaint or information and notice of the
4 employee’s intent to contact the intelligence commit-
5 tees directly; and

6 “(2) obtains and follows direction from the head
7 of the establishment, through the Inspector General,
8 on how to contact the intelligence committees in ac-
9 cordance with appropriate security practices.

10 “(e) The Inspector General shall notify the employee
11 of each action taken under this section with respect to the
12 employee’s complaint or information not later than three
13 days after any such action is taken.

14 “(f) In this paragraph:

15 “(1) The term ‘urgent concern’ means any of the
16 following:

17 “(A) A serious or flagrant problem, abuse,
18 violation of law or Executive order, or deficiency
19 relating to the administration or operations of
20 an intelligence activity involving classified infor-
21 mation, but does not include differences of opin-
22 ions concerning public policy matters.

23 “(B) A false statement to Congress, or a
24 willful withholding from Congress, on an issue of

1 *material fact relating to the administration or*
2 *operation of an intelligence activity.*

3 “(C) *An action, including a personnel ac-*
4 *tion described in section 2302(a)(2)(A) of title 5,*
5 *United States Code, constituting reprisal or*
6 *threat of reprisal prohibited under section 7(c)*
7 *in response to the employee’s reporting an urgent*
8 *concern pursuant to the terms of this Act.*

9 “(2) *The term ‘intelligence committees’ means*
10 *the Permanent Select Committee on Intelligence of the*
11 *House of Representatives and the Select Committee on*
12 *Intelligence of the Senate.*

13 “(g) *An action taken by the head of an establishment*
14 *or an Inspector General under this section shall not be sub-*
15 *ject to judicial review.”.*

16 (2) *CONFORMING AMENDMENT.—Section 8I of*
17 *such Act (as redesignated by paragraph (1) of this*
18 *subsection) is amended by striking “or 8E” and in-*
19 *serting “8E, or 8H”.*

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