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
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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the “Intelligence Community Whistleblower Protection Act of 1998”.

(b) FINDINGS.—The Congress finds that—

(1) national security is a shared responsibility, requiring joint efforts and mutual respect by Congress and the President;
(2) the principles of comity between the Branches apply to the handling of national security information;

(3) Congress, as a co-equal Branch of Government, is empowered by the Constitution to serve as a check on the Executive Branch; in that capacity, it has a “need to know” of allegations of wrongdoing within the Executive Branch, including allegations of wrongdoing in the Intelligence Community;

(4) no basis in law exists for requiring prior authorization of disclosures to the intelligence committees of Congress by employees of the Executive Branch of classified information about wrongdoing within the Intelligence Community;

(5) the risk of reprisal perceived by employees and contractors of the Intelligence Community for reporting serious or flagrant problems to Congress may have impaired the flow of information needed by the intelligence committees to carry out oversight responsibilities; and

(6) to encourage such reporting, an additional procedure should be established that provides a means for such employees and contractors to report to Congress while safeguarding the classified information involved in such reporting.
SEC. 2. PROTECTION OF INTELLIGENCE COMMUNITY EMPLOYEES WHO REPORT URGENT CONCERNS TO CONGRESS.

(a) Inspector General of the Central Intelligence Agency.—

   (1) In general.—Subsection (d) of section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q) is amended by adding at the end the following new paragraph:

   “(5)(A) An employee of the Agency, or of a contractor to the Agency, who intends to report to Congress a complaint or information with respect to an urgent concern may report to the Inspector General.

   “(B) Within the 60-calendar day period beginning on the day of receipt from an employee of a complaint or information under subparagraph (A), the Inspector General shall determine whether the complaint or information appears credible. If the Inspector General determines that the complaint or information appears credible, the Inspector General within such period shall transmit the complaint or information to the Director.

   “(C) The Director shall, within 7 calendar days after receipt of the transmittal from the Inspector General under subparagraph (B), forward such transmittal to the intelligence committees together with any comments the Director considers appropriate.
“(D) If the Inspector General does not transmit, or does not transmit in an accurate form, the complaint or information described in subparagraph (B), the employee may contact the intelligence committees directly to submit the complaint or information, if the employee—

“(i) furnishes to the Director, through the Inspector General, a statement of the employee’s complaint or information and notice of the employee’s intent to contact the intelligence committees directly; and

“(ii) obtains and follows direction from the Director, through the Inspector General, on how to contact the intelligence committees in accordance with appropriate security practices.

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

“(F) In this paragraph:

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

“(I) A serious or flagrant problem, abuse, violation of law or executive order, or deficiency relating to the administration or operations of an intelligence activity involving classified infor-
information, but does not include differences of opinions concerning public policy matters.

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

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

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

“(G) An action taken by the Director or the Inspector General under this paragraph shall not be subject to judicial review.”.

(2) Clerical Amendment.—The heading to subsection (d) of section 17 of such Act is amended by inserting “; Reports to Congress on Urgent Concerns” before the period.
(b) ADDITIONAL PROVISIONS WITH RESPECT TO INSPECTORS GENERAL OF THE INTELLIGENCE COMMUNITY.—

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

“Sec. 8H. (a)(1)(A) Employees of the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, and the National Security Agency, and of contractors to those Agencies, who intend to report to Congress a complaint or information with respect to an urgent concern may report to the Inspector General of the Department of Defense (or designee).

“(B) Employees of the Federal Bureau of Investigation, and of contractors to the Bureau, who intend to report to Congress a complaint or information with respect to an urgent concern may report to the Inspector General of the Department of Justice (or designee).

“(C) Any other employee of, or contractor to, an executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities, who intends to report to Congress a complaint or information with respect to an urgent concern may report to the appro-
priate Inspector General (or designee) under this Act, or section 17 of the Central Intelligence Agency Act of 1949.

“(2) The designee of an Inspector General under this section shall report such employee complaints or information to the Inspector General within 7 calendar days of receipt.

“(b) Within the 60-calendar day period beginning on the day of receipt of an employee complaint or information under subsection (a), the Inspector General shall determine whether the complaint or information appears credible. If the Inspector General determines that the complaint or information appears to be credible, the Inspector General within such period shall transmit the complaint or information to the head of the establishment.

“(c) The head of the establishment shall, within 7 calendar days after receipt of the transmittal from the Inspector General pursuant to subsection (b), forward such transmittal to the intelligence committees, together with any comments the head of the establishment considers appropriate.

“(d) If the Inspector General does not transmit, or does not transmit in an accurate form, the complaint or information pursuant to subsection (b), the employee may contact the intelligence committees directly to submit the complaint or information, if the employee—
“(1) furnishes to the head of the establishment, through the Inspector General, a statement of the employee’s complaint or information and notice of the employee’s intent to contact the intelligence committees directly; and

“(2) obtains and follows direction from the head of the establishment, through the Inspector General, on how to contact the intelligence committees in accordance with appropriate security practices.

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

“(f) In this paragraph:

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

“(A) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the administration or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

“(B) A false statement to Congress, or a willful withholding from Congress, on an issue of
material fact relating to the administration or operation of an intelligence activity.

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

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

“(g) An action taken by the head of an establishment or an Inspector General under this section shall not be subject to judicial review.”.

(2) CONFORMING AMENDMENT.—Section 8I of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking “or 8E” and inserting “8E, or 8H”.
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.

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.