

Calendar No. 442

105TH CONGRESS
2^D SESSION

S. 2052

[Report No. 105-185]

To authorize appropriations for fiscal year 1999 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Retirement and Disability System, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 1998

Mr. SHELBY, from the Select Committee on Intelligence, reported the following original bill; which was read twice and referred to the Committee on Armed Services, pursuant to the order of section 3(b) of S. Res. 400 for a period not to exceed 30 days of session

JUNE 26, 1998

Committee on Armed Services discharged; considered, amended, and read the third time; ordered to be placed on the calendar

A BILL

To authorize appropriations for fiscal year 1999 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Retirement and Disability System, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Intelligence Authorization Act for Fiscal Year 1999”.

6 (b) TABLE OF CONTENTS.—The table of contents for
 7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—INTELLIGENCE ACTIVITIES

- Sec. 101. Authorization of appropriations.
- Sec. 102. Classified schedule of authorizations.
- Sec. 103. Personnel ceiling adjustments.
- Sec. 104. Community Management Account.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND
 DISABILITY SYSTEM

- Sec. 201. Authorization of appropriations.

TITLE III—GENERAL PROVISIONS

- Sec. 301. Increase in employee compensation and benefits authorized by law.
- Sec. 302. Restriction on conduct of intelligence activities.
- Sec. 303. Extension of application of sanctions laws to intelligence activities.
- Sec. 304. Extension of authority to engage in commercial activities as security
 for intelligence collection activities.
- Sec. 305. Modification of National Security Education Program.
- Sec. 306. Technical amendments.
- Sec. 307. Authority to direct competitive analysis of analytical products having
 national importance.
- Sec. 308. Annual study and report on the safety and security of Russian nu-
 clear facilities and nuclear military forces.
- Sec. 309. quadrennial intelligence review.
- Sec. 310. Designation of Headquarters Building of Central Intelligence Agency
 as the George Herbert Walker Bush Center for Central Intel-
 ligence.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

- Sec. 401. Extension of separation pay program for voluntary separation of CIA
 employees.
- Sec. 402. Additional duties for Inspector General of Central Intelligence
 Agency.

TITLE V—DISCLOSURE OF INFORMATION TO CONGRESS

- Sec. 501. Encouragement of disclosure of certain information to Congress.

TITLE VI—FOREIGN INTELLIGENCE AND INTERNATIONAL
TERRORISM INVESTIGATIONS

Sec. 601. Pen registers and trap and trace devices in foreign intelligence and international terrorism investigations.

Sec. 602. Access to certain business records for foreign intelligence and international terrorism investigations.

Sec. 603. Conforming and clerical amendments.

1 **TITLE I—INTELLIGENCE**
2 **ACTIVITIES**

3 **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

4 Funds are hereby authorized to be appropriated for
5 fiscal year 1999 for the conduct of the intelligence and
6 intelligence-related activities of the following elements of
7 the United States Government:

8 (1) The Central Intelligence Agency.

9 (2) The Department of Defense.

10 (3) The Defense Intelligence Agency.

11 (4) The National Security Agency.

12 (5) The Department of the Army, the Depart-
13 ment of the Navy, and the Department of the Air
14 Force.

15 (6) The Department of State.

16 (7) The Department of the Treasury.

17 (8) The Department of Energy.

18 (9) The Federal Bureau of Investigation.

19 (10) The National Reconnaissance Office.

20 (11) The National Imagery and Mapping Agen-
21 cy.

1 **SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.**

2 (a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL
3 CEILINGS.—The amounts authorized to be appropriated
4 under section 101, and the authorized personnel ceilings
5 as of September 30, 1999, for the conduct of the intel-
6 ligence and intelligence-related activities of the elements
7 listed in such section, are those specified in the classified
8 Schedule of Authorizations prepared to accompany the
9 conference report on the bill H.R. 3694 of the One Hun-
10 dred Fifth Congress.

11 (b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AU-
12 THORIZATIONS.—The Schedule of Authorizations shall be
13 made available to the Committees on Appropriations of
14 the Senate and House of Representatives and to the Presi-
15 dent. The President shall provide for suitable distribution
16 of the Schedule, or of appropriate portions of the Sched-
17 ule, within the Executive Branch.

18 **SEC. 103. PERSONNEL CEILING ADJUSTMENTS.**

19 (a) AUTHORITY FOR ADJUSTMENTS.—With the ap-
20 proval of the Director of the Office of Management and
21 Budget, the Director of Central Intelligence may authorize
22 employment of civilian personnel in excess of the number
23 authorized for fiscal year 1999 under section 102 when
24 the Director of Central Intelligence determines that such
25 action is necessary to the performance of important intel-
26 ligence functions, except that the number of personnel em-

1 ployed in excess of the number authorized under such sec-
2 tion may not, for any element of the intelligence commu-
3 nity, exceed two percent of the number of civilian person-
4 nel authorized under such section for such element.

5 (b) NOTICE TO INTELLIGENCE COMMITTEES.—The
6 Director of Central Intelligence shall promptly notify the
7 Permanent Select Committee on Intelligence of the House
8 of Representatives and the Select Committee on Intel-
9 ligence of the Senate whenever the Director exercises the
10 authority granted by this section.

11 **SEC. 104. COMMUNITY MANAGEMENT ACCOUNT.**

12 (a) AUTHORIZATION OF APPROPRIATIONS.—

13 (1) AUTHORIZATION.—There is authorized to
14 be appropriated for the Community Management
15 Account of the Director of Central Intelligence for
16 fiscal year 1999 the sum of \$173,633,000.

17 (2) AVAILABILITY OF CERTAIN FUNDS.—Within
18 such amount, funds identified in the classified
19 Schedule of Authorizations referred to in section
20 102(a) for the Advanced Research and Development
21 Committee, the Advanced Technology Group, and
22 the Environmental Intelligence and Applications
23 Program shall remain available until September 30,
24 2000.

1 (b) AUTHORIZED PERSONNEL LEVELS.—The ele-
2 ments within the Community Management Account of the
3 Director of Central Intelligence are authorized a total of
4 283 full-time personnel as of September 30, 1999. Person-
5 nel serving in such elements may be permanent employees
6 of the Community Management Account element or per-
7 sonnel detailed from other elements of the United States
8 Government.

9 (c) CLASSIFIED AUTHORIZATIONS.—

10 (1) AUTHORIZATION OF APPROPRIATIONS.—In
11 addition to amounts authorized to be appropriated
12 for the Community Management Account by sub-
13 section (a), there is also authorized to be appro-
14 priated for the Community Management Account for
15 fiscal year 1999 such additional amounts as are
16 specified in the classified Schedule of Authorizations
17 referred to in section 102(a). Such additional
18 amounts shall remain available until September 30,
19 2000.

20 (2) AUTHORIZATION OF PERSONNEL.—In addi-
21 tion to the personnel authorized by subsection (b)
22 for elements of the Community Management Ac-
23 count as of September 30, 1999, there is hereby au-
24 thorized such additional personnel for such elements

1 as of that date as is specified in the classified Sched-
2 ule of Authorizations.

3 (d) REIMBURSEMENT.—Except as provided in section
4 113 of the National Security Act of 1947 (50 U.S.C.
5 404h), during fiscal year 1999, any officer or employee
6 of the United States or member of the Armed Forces who
7 is detailed to the staff of an element within the Commu-
8 nity Management Account from another element of the
9 United States Government shall be detailed on a reimburs-
10 able basis, except that any such officer, employee, or mem-
11 ber may be detailed on a nonreimbursable basis for a pe-
12 riod of less than one year for the performance of tem-
13 porary functions as required by the Director of Central
14 Intelligence.

15 (e) NATIONAL DRUG INTELLIGENCE CENTER.—

16 (1) IN GENERAL.—Of the amount authorized to
17 be appropriated in subsection (a), the amount of
18 \$27,000,000 shall be available for the National
19 Drug Intelligence Center. Within such amount,
20 funds provided for research, development, test, and
21 evaluation purposes shall remain available until Sep-
22 tember 30, 2000, and funds provided for procure-
23 ment purposes shall remain available until Septem-
24 ber 30, 2001.

1 (2) TRANSFER OF FUNDS.—The Director of
2 Central Intelligence shall transfer to the Attorney
3 General of the United States funds available for the
4 National Drug Intelligence Center under paragraph
5 (1). The Attorney General shall utilize funds so
6 transferred for the activities of the Center.

7 (3) LIMITATION.—Amounts available for the
8 Center may not be used in contravention of the pro-
9 visions of section 103(d)(1) of the National Security
10 Act of 1947 (50 U.S.C. 403–3(d)(1)).

11 (4) AUTHORITY OVER CENTER.—Notwithstand-
12 ing any other provision of law, the Attorney General
13 shall retain full authority over the operations of the
14 Center.

15 **TITLE II—CENTRAL INTEL-**
16 **LIGENCE AGENCY RETIRE-**
17 **MENT AND DISABILITY SYS-**
18 **TEM**

19 **SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

20 There is authorized to be appropriated for the Cen-
21 tral Intelligence Agency Retirement and Disability Fund
22 for fiscal year 1999 the sum of \$201,500,000.

1 **TITLE III—GENERAL**
2 **PROVISIONS**

3 **SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND**
4 **BENEFITS AUTHORIZED BY LAW.**

5 Appropriations authorized by this Act for salary, pay,
6 retirement, and other benefits for Federal employees may
7 be increased by such additional or supplemental amounts
8 as may be necessary for increases in such compensation
9 or benefits authorized by law.

10 **SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE**
11 **ACTIVITIES.**

12 The authorization of appropriations by this Act shall
13 not be deemed to constitute authority for the conduct of
14 any intelligence activity which is not otherwise authorized
15 by the Constitution or the laws of the United States.

16 **SEC. 303. EXTENSION OF APPLICATION OF SANCTIONS**
17 **LAWS TO INTELLIGENCE ACTIVITIES.**

18 Section 905 of the National Security Act of 1947 (50
19 U.S.C. 441d) is amended by striking out “January 6,
20 1999” and inserting in lieu thereof “January 6, 2000”.

21 **SEC. 304. EXTENSION OF AUTHORITY TO ENGAGE IN COM-**
22 **MERCIAL ACTIVITIES AS SECURITY FOR IN-**
23 **TELLIGENCE COLLECTION ACTIVITIES.**

24 Section 431(a) of title 10, United States Code, is
25 amended in the second sentence by striking out “Decem-

1 ber 31, 1998” and inserting in lieu thereof “December 31,
2 2000”.

3 **SEC. 305. MODIFICATION OF NATIONAL SECURITY EDU-**
4 **CATION PROGRAM.**

5 (a) ASSISTANCE FOR COUNTERPROLIFERATION
6 STUDIES.—The David L. Boren National Security Edu-
7 cation Act of 1991 (50 U.S.C. 1901 et seq.) is amended
8 as follows:

9 (1) In section 801 (50 U.S.C. 1901), by insert-
10 ing “counterproliferation studies,” after “area stud-
11 ies,” each place it appears in subsections (b)(7) and
12 (c)(2).

13 (2) In section 802 (50 U.S.C. 1902)—

14 (A) by inserting “counterproliferation
15 studies,” after “area studies,” each place it ap-
16 pears in paragraphs (1)(B)(i), (1)(C), and (4)
17 of subsection (a); and

18 (B) by inserting “counterproliferation
19 study,” after “area study,” each place it ap-
20 pears subparagraphs (A)(ii) and (B)(ii) of sub-
21 section (b)(2).

22 (3) In section 803(b)(8) (50 U.S.C.
23 1903(b)(8)), by striking out “and area” and insert-
24 ing in lieu thereof “area, and counterproliferation”.

1 (4) In section 806(b)(1) (50 U.S.C.
2 1906(b)(1)), by striking out “and area” and insert-
3 ing in lieu thereof “area, and counterproliferation”.

4 (b) REVISION OF MEMBERSHIP OF NATIONAL SECUR-
5 ITY EDUCATION BOARD.—Section 803(b) of that Act (50
6 U.S.C. 1903(b)) is further amended—

7 (1) by striking out paragraph (6); and

8 (2) by inserting in lieu thereof the following
9 new paragraph (6):

10 “(6) The Secretary of Energy.”.

11 **SEC. 306. TECHNICAL AMENDMENTS.**

12 (a) CENTRAL INTELLIGENCE AGENCY ACT OF
13 1949.—(1) Section 5(a)(1) of the Central Intelligence
14 Agency Act of 1949 (50 U.S.C. 403f(a)(1)) is amended—

15 (A) by striking out “subparagraphs (B) and (C)
16 of section 102(a)(2), subsections (c)(5)” and insert-
17 ing in lieu thereof “paragraphs (2) and (3) of sec-
18 tion 102(a), subsections (c)(6)”; and

19 (B) by striking out “(50 U.S.C. 403(a)(2)” and
20 inserting in lieu thereof “(50 U.S.C. 403(a))”.

21 (2) Section 6 of that Act (50 U.S.C. 403g) is amend-
22 ed by striking out “section 103(c)(5) of the National Secu-
23 rity Act of 1947 (50 U.S.C. 403–3(c)(5))” and inserting
24 in lieu thereof “section 103(c)(6) of the National Security
25 Act of 1947 (50 U.S.C. 403–3(c)(6))”.

1 (b) CENTRAL INTELLIGENCE AGENCY RETIREMENT
2 ACT.—Section 201(e) of the Central Intelligence Agency
3 Retirement Act (50 U.S.C. 2011(e)) is amended by strik-
4 ing out “section 103(c)(5) of the National Security Act
5 of 1947 (50 U.S.C. 403–3(c)(5))” and inserting in lieu
6 thereof “section 103(c)(6) of the National Security Act
7 of 1947 (50 U.S.C. 403–3(c)(6))”.

8 **SEC. 307. AUTHORITY TO DIRECT COMPETITIVE ANALYSIS**
9 **OF ANALYTICAL PRODUCTS HAVING NA-**
10 **TIONAL IMPORTANCE.**

11 Section 102(g)(2) of the National Security Act of
12 1947 (50 U.S.C. 403(g)(2)) is amended—

13 (1) by redesignating subparagraphs (D) and
14 (E) as subparagraphs (E) and (F), respectively; and

15 (2) by inserting after subparagraph (C) the fol-
16 lowing new subparagraph (D):

17 “(D) direct competitive analysis of analytical
18 products having National importance;”.

19 **SEC. 308. ANNUAL STUDY AND REPORT ON THE SAFETY**
20 **AND SECURITY OF RUSSIAN NUCLEAR FA-**
21 **CILITIES AND NUCLEAR MILITARY FORCES.**

22 (a) ANNUAL STUDY.—The Director of Central Intel-
23 ligence shall, on an annual basis, conduct a study of the
24 safety and security of the nuclear facilities and nuclear
25 military forces in Russia.

1 (b) ANNUAL REPORTS.—(1) The Director shall, on
2 an annual basis, submit to the committees referred to in
3 paragraph (4) an intelligence report assessing the safety
4 and security of the nuclear facilities and nuclear military
5 forces in Russia.

6 (2) Each report shall include a discussion of the fol-
7 lowing:

8 (A) The ability of the Russia Government to
9 maintain its nuclear military forces.

10 (B) Security arrangements at civilian and mili-
11 tary nuclear facilities in Russia.

12 (C) The reliability of controls and safety sys-
13 tems at civilian nuclear facilities in Russia.

14 (D) The reliability of command and control sys-
15 tems and procedures of the nuclear military forces
16 in Russia.

17 (3) Each report shall be submitted in unclassified
18 form, but may contain a classified annex.

19 (4) The committees referred to in paragraph (1) are
20 the following:

21 (A) The Select Committee on Intelligence, Com-
22 mittee on Armed Services, and Committee on For-
23 eign Relations of the Senate.

24 (B) The Permanent Select Committee on Intel-
25 ligence, Committee on National Security, and Com-

1 mittee on International Relations of the House of
2 Representatives.

3 **SEC. 309. QUADRENNIAL INTELLIGENCE REVIEW.**

4 (a) SENSE OF CONGRESS.—It is the sense of Con-
5 gress that—

6 (1) the Director of Central Intelligence and the
7 Secretary of Defense should jointly complete, in
8 1999 and every 4 years thereafter, a comprehensive
9 review of United States intelligence programs and
10 activities;

11 (2) each review under paragraph (1) should—

12 (A) include assessments of intelligence poli-
13 cy, resources, manpower, organization, and re-
14 lated matters; and

15 (B) encompass the programs and activities
16 funded under the National Foreign Intelligence
17 Program (NFIP), the Joint Military Intel-
18 ligence Program (JMIP), and the Tactical In-
19 telligence and Related Activities (TIARA) ac-
20 counts;

21 (3) the results of each review should be shared
22 with the appropriate committees of Congress; and

23 (4) the Director, in conjunction with the Sec-
24 retary, should establish a nonpartisan, independent
25 panel (with members chosen in consultation with the

1 committees referred to in subsection (b)(2) from in-
2 dividuals in the private sector) in order to—

3 (A) assess each review under paragraph
4 (1);

5 (B) conduct an assessment of alternative
6 intelligence structures to meet the anticipated
7 intelligence requirements for the national secu-
8 rity and foreign policy of the United States
9 through the year 2010; and

10 (C) make recommendations to the Director
11 and the Secretary regarding the optimal intel-
12 ligence structure for the United States in light
13 of the assessment under subparagraph (B).

14 (b) REPORT.—(1) Not later than August 15, 1998,
15 the Director and the Secretary shall jointly submit to the
16 committees referred to in paragraph (2) the views of the
17 Director and the Secretary regarding—

18 (A) the potential value of conducting reviews as
19 described in subsection (a)(1); and

20 (B) the potential value of assessments of such
21 reviews as described in subsection (a)(4)(A).

22 (2) The committees referred to in paragraph (1) are
23 the following:

1 (A) The Select Committee on Intelligence, Com-
2 mittee on Armed Services, and Committee on Appro-
3 priations of the Senate.

4 (B) The Permanent Select Committee on Intel-
5 ligence, Committee on National Security, and Com-
6 mittee on Appropriations of the House of Represent-
7 atives.

8 **SEC. 310. DESIGNATION OF HEADQUARTERS BUILDING OF**
9 **CENTRAL INTELLIGENCE AGENCY AS THE**
10 **GEORGE HERBERT WALKER BUSH CENTER**
11 **FOR CENTRAL INTELLIGENCE.**

12 (a) DESIGNATION.—The Headquarters Building of
13 the Central Intelligence Agency located in Langley, Vir-
14 ginia, shall be known and designated as the “George Her-
15 bert Walker Bush Center for Central Intelligence”.

16 (b) REFERENCES.—Any reference in a law, map, reg-
17 ulation, document, paper, or other record of the United
18 States to the Headquarters Building referred to in sub-
19 section (a) shall be deemed to be a reference to the George
20 Herbert Walker Bush Center for Central Intelligence.

1 **TITLE IV—CENTRAL**
2 **INTELLIGENCE AGENCY**

3 **SEC. 401. EXTENSION OF SEPARATION PAY PROGRAM FOR**
4 **VOLUNTARY SEPARATION OF CIA EMPLOY-**
5 **EES.**

6 (a) **EXTENSION.**—Subsection (f) of section 2 of the
7 Central Intelligence Agency Voluntary Separation Pay Act
8 (50 U.S.C. 403–4 note) is amended by striking out “Sep-
9 tember 30, 1999” and inserting in lieu thereof “Septem-
10 ber 30, 2001”.

11 (b) **CONFORMING AMENDMENT.**—Subsection (i) of
12 that section is amended by striking out “fiscal year 1998
13 or fiscal year 1999” and inserting in lieu thereof “fiscal
14 year 1998, 1999, 2000, or 2001”

15 **SEC. 402. ADDITIONAL DUTIES FOR INSPECTOR GENERAL**
16 **OF CENTRAL INTELLIGENCE AGENCY.**

17 Section 17(c) of the Central Intelligence Agency Act
18 of 1949 (50 U.S.C. 403q(c)) is amended—

19 (1) by redesignating paragraphs (3) and (4) as
20 paragraphs (4) and (5), respectively; and

21 (2) by inserting after paragraph (2) the follow-
22 ing new paragraph (3):

23 “(3) to review existing and proposed legislation
24 relating to the programs and operations of the Agen-
25 cy and to make recommendations in the semiannual

1 reports required by subsection (d) concerning the
2 impact of such legislation on economy and efficiency
3 in the administration of, or prevention and detection
4 of fraud and abuse in, the programs and operations
5 administered or financed by the Agency;”.

6 **TITLE V—DISCLOSURE OF**
7 **INFORMATION TO CONGRESS**

8 **SEC. 501. ENCOURAGEMENT OF DISCLOSURE OF CERTAIN**
9 **INFORMATION TO CONGRESS.**

10 (a) ENCOURAGEMENT.—

11 (1) IN GENERAL.—Not later than 30 days after
12 the date of enactment of this Act, the President
13 shall take appropriate actions to inform the employ-
14 ees of the covered agencies, and employees of con-
15 tractors carrying out activities under classified con-
16 tracts with covered agencies, that—

17 (A) except as provided in paragraph (4),
18 the disclosure of information described in para-
19 graph (2) to the individuals referred to in para-
20 graph (3) is not prohibited by law, executive
21 order, or regulation or otherwise contrary to
22 public policy;

23 (B) the individuals referred to in para-
24 graph (3) are presumed to have a need to know

1 and to be authorized to receive such informa-
2 tion; and

3 (C) the individuals referred to in para-
4 graph (3) may receive information so disclosed
5 only in their capacity as members of the com-
6 mittees concerned.

7 (2) COVERED INFORMATION.—Paragraph (1)
8 applies to information, including classified informa-
9 tion, that an employee reasonably believes to provide
10 direct and specific evidence of—

11 (A) a violation of any law, rule, or regula-
12 tion;

13 (B) a false statement to Congress on an
14 issue of material fact; or

15 (C) gross mismanagement, a gross waste
16 of funds, a flagrant abuse of authority, or a
17 substantial and specific danger to public health
18 or safety.

19 (3) COVERED INDIVIDUALS.—The individuals to
20 whom information described in paragraph (2) may
21 be disclosed are the members of a committee of Con-
22 gress having as its primary responsibility the over-
23 sight of a department, agency, or element of the
24 Federal Government to which such information re-
25 lates.

1 (4) SCOPE.—Paragraph (1)(A) does not apply
2 to information otherwise described in paragraph (2)
3 if the disclosure of the information is prohibited by
4 Rule 6(e) of the Federal Rules of Criminal Proce-
5 dure.

6 (b) REPORT.—Not later than 60 days after the date
7 of enactment of this Act, the President shall submit to
8 Congress a report on the actions taken under subsection
9 (a).

10 (c) CONSTRUCTION WITH OTHER REPORTING RE-
11 QUIREMENTS.—Nothing in this section may be construed
12 to modify, alter, or otherwise affect any reporting require-
13 ment relating to intelligence activities that arises under
14 the National Security Act of 1947 (50 U.S.C. 401 et seq.)
15 or any other provision of law.

16 (d) COVERED AGENCIES DEFINED.—In this section,
17 the term “covered agencies” means the following:

18 (1) The Central Intelligence Agency.

19 (2) The Defense Intelligence Agency.

20 (3) The National Imagery and Mapping Agen-
21 cy.

22 (4) The National Security Agency.

23 (5) The Federal Bureau of Investigation.

24 (6) The National Reconnaissance Office.

1 (7) Any other Executive agency, or element or
 2 unit thereof, determined by the President under sec-
 3 tion 2302(a)(2)(C)(ii) of title 5, United States Code,
 4 to have as its principal function the conduct of for-
 5 eign intelligence or counterintelligence activities.

6 **TITLE VI—FOREIGN INTEL-**
 7 **LIGENCE AND INTER-**
 8 **NATIONAL TERRORISM IN-**
 9 **VESTIGATIONS**

10 **SEC. 601. PEN REGISTERS AND TRAP AND TRACE DEVICES**
 11 **IN FOREIGN INTELLIGENCE AND INTER-**
 12 **NATIONAL TERRORISM INVESTIGATIONS.**

13 The Foreign Intelligence Surveillance Act of 1978
 14 (50 U.S.C. 1801 et seq.) is amended—

15 (1) by redesignating title IV as title VI and sec-
 16 tion 401 as section 601, respectively; and

17 (2) by inserting after title III the following new
 18 title:

19 **“TITLE IV—PEN REGISTERS AND TRAP AND**
 20 **TRACE DEVICES FOR FOREIGN INTEL-**
 21 **LIGENCE PURPOSES**

22 **“DEFINITIONS**

23 **“SEC. 401. As used in this title:**

24 **“(1) The terms ‘foreign power’, ‘agent of a for-**
 25 **eign power’, ‘international terrorism’, ‘foreign intel-**

1 ligence information’, ‘Attorney General’, ‘United
2 States person’, ‘United States’, ‘person’, and ‘State’
3 shall have the same meanings as in section 101 of
4 this Act.

5 “(2) The terms ‘pen register’ and ‘trap and
6 trace device’ have the meanings given such terms in
7 section 3127 of title 18, United States Code.

8 “(3) The term ‘aggrieved person’ means any
9 person—

10 “(A) whose telephone line was subject to
11 the installation or use of a pen register or trap
12 and trace device authorized by this title; or

13 “(B) whose communication instrument or
14 device was subject to the use of a pen register
15 or trap and trace device authorized by this title
16 to capture incoming electronic or other commu-
17 nications impulses.

18 “PEN REGISTERS AND TRAP AND TRACE DEVICES FOR
19 FOREIGN INTELLIGENCE AND INTERNATIONAL TER-
20 RORISM INVESTIGATIONS

21 “SEC. 402. (a) Notwithstanding any provision of title
22 I of this Act with respect to electronic surveillance under
23 that title as defined in section 101(f)(4) of this Act, the
24 Attorney General or a designated attorney for the Govern-
25 ment may make an application for an order or an exten-
26 sion of an order authorizing or approving the installation

1 and use of a pen register or trap and trace device for any
2 investigation to gather foreign intelligence information or
3 information concerning international terrorism which is
4 being conducted by the Federal Bureau of Investigation
5 under such guidelines as the Attorney General approves
6 pursuant to Executive Order No. 12333, or a successor
7 order.

8 “(b) Each application under this section shall be in
9 writing under oath or affirmation to—

10 “(1) a judge of the court established by section
11 103(a) of this Act; or

12 “(2) a United States Magistrate Judge under
13 chapter 43 of title 28, United States Code, who is
14 publicly designated by the Chief Justice of the
15 United States to have the power to hear applications
16 for and grant orders approving the installation and
17 use of a pen register or trap or trace device on be-
18 half of a judge of that court.

19 “(c) Each application under this section shall require
20 the approval of the Attorney General, or a designated at-
21 torney for the Government, and shall include—

22 “(1) the identity of the Federal officer seeking
23 to use the pen register or trap and trace device cov-
24 ered by the application;

1 “(2) a certification by the applicant that the in-
2 formation likely to be obtained is relevant to an on-
3 going foreign intelligence or international terrorism
4 investigation being conducted by the Federal Bureau
5 of Investigation under guidelines approved by the
6 Attorney General; and

7 “(3) information which demonstrates that there
8 is reason to believe that the telephone line to which
9 the pen register or trap and trace device is to be at-
10 tached, or the communication instrument or device
11 to be covered by the pen register or trap and trace
12 device, has been or is about to be used in commu-
13 nication with—

14 “(A) an individual who is engaging or has
15 engaged in international terrorism or clandes-
16 tine intelligence activities that involve or may
17 involve a violation of the criminal laws of the
18 United States; or

19 “(B) a foreign power or agent of a foreign
20 power under circumstances giving reason to be-
21 lieve that the communication concerns or con-
22 cerned international terrorism or clandestine in-
23 telligence activities that involve or may involve
24 a violation of the criminal laws of the United
25 States.

1 “(d)(1) Upon an application made pursuant to this
2 section, the judge shall enter an ex parte order as re-
3 quested, or as modified, approving the installation and use
4 of a pen register or trap and trace device if the judge finds
5 that the application satisfies the requirements of this sec-
6 tion.

7 “(2) An order issued under this section—

8 “(A) shall specify—

9 “(i) the identity, if known, of the person
10 who is the subject of the foreign intelligence or
11 international terrorism investigation;

12 “(ii) in the case of an application for the
13 installation and use of a pen register or trap
14 and trace device with respect to a telephone
15 line—

16 “(I) the identity, if known, of the per-
17 son to whom is leased or in whose name
18 the telephone line is listed; and

19 “(II) the number and, if known, phys-
20 ical location of the telephone line; and

21 “(iii) in the case of an application for the
22 use of a pen register or trap and trace device
23 with respect to a communication instrument or
24 device not covered by clause (ii)—

1 “(I) the identity, if known, of the per-
2 son who owns or leases the instrument or
3 device or in whose name the instrument or
4 device is listed; and

5 “(II) the number of the instrument or
6 device; and

7 “(B) shall direct that—

8 “(i) upon request of the applicant, the pro-
9 vider of a wire or electronic communication
10 service, landlord, custodian, or other person
11 shall furnish any information, facilities, or tech-
12 nical assistance necessary to accomplish the in-
13 stallation and operation of the pen register or
14 trap and trace device in such a manner as will
15 protect its secrecy and produce a minimum
16 amount of interference with the services that
17 such provider, landlord, custodian, or other per-
18 son is providing the person concerned;

19 “(ii) such provider, landlord, custodian, or
20 other person—

21 “(I) shall not disclose the existence of
22 the investigation or of the pen register or
23 trap and trace device to any person unless
24 or until ordered by the court; and

1 “(II) shall maintain, under security
2 procedures approved by the Attorney Gen-
3 eral and the Director of Central Intel-
4 ligence pursuant to section 105(b)(2)(C) of
5 this Act, any records concerning the pen
6 register or trap and trace device or the aid
7 furnished; and

8 “(iii) the applicant shall compensate such
9 provider, landlord, custodian, or other person
10 for reasonable expenses incurred by such pro-
11 vider, landlord, custodian, or other person in
12 providing such information, facilities, or tech-
13 nical assistance.

14 “(e) An order issued under this section shall author-
15 ize the installation and use of a pen register or trap and
16 trace device for a period not to exceed 90 days. Extensions
17 of such an order may be granted, but only upon an appli-
18 cation for an order under this section and upon the judi-
19 cial finding required by subsection (d). The period of ex-
20 tension shall be for a period not to exceed 90 days.

21 “(f) No cause of action shall lie in any court against
22 any provider of a wire or electronic communication service,
23 landlord, custodian, or other person (including any officer,
24 employee, agent, or other specified person thereof) that
25 furnishes any information, facilities, or technical assist-

1 ance under subsection (d) in accordance with the terms
2 of a court under this section.

3 “(g) Unless otherwise ordered by the judge, the re-
4 sults of a pen register or trap and trace device shall be
5 furnished at reasonable intervals during regular business
6 hours for the duration of the order to the authorized Gov-
7 ernment official or officials.

8 “AUTHORIZATION DURING EMERGENCIES

9 “SEC. 403. (a) Notwithstanding any other provision
10 of this title, when the Attorney General makes a deter-
11 mination described in subsection (b), the Attorney General
12 may authorize the installation and use of a pen register
13 or trap and trace device on an emergency basis to gather
14 foreign intelligence information or information concerning
15 international terrorism if—

16 “(1) a judge referred to in section 402(b) of
17 this Act is informed by the Attorney General or his
18 designee at the time of such authorization that the
19 decision has been made to install and use the pen
20 register or trap and trace device, as the case may be,
21 on an emergency basis; and

22 “(2) an application in accordance with section
23 402 of this Act is made to such judge as soon as
24 practicable, but not more than 48 hours, after the
25 Attorney General authorizes the installation and use

1 of the pen register or trap and trace device, as the
2 case may be, under this section.

3 “(b) A determination under this subsection is a rea-
4 sonable determination by the Attorney General that—

5 “(1) an emergency requires the installation and
6 use of a pen register or trap and trace device to ob-
7 tain foreign intelligence information or information
8 concerning international terrorism before an order
9 authorizing the installation and use of the pen reg-
10 ister or trap and trace device, as the case may be,
11 can with due diligence be obtained under section 402
12 of this Act; and

13 “(2) the factual basis for issuance of an order
14 under such section 402 to approve the installation
15 and use of the pen register or trap and trace device,
16 as the case may be, exists.

17 “(c)(1) In the absence of an order applied for under
18 subsection (a)(2) approving the installation and use of a
19 pen register or trap and trace device authorized under this
20 section, the installation and use of the pen register or trap
21 and trace device, as the case may be, shall terminate at
22 the earlier of—

23 “(A) when the information sought is obtained;

24 “(B) when the application for the order is de-
25 nied under section 402 of this Act; or

1 “(C) 48 hours after the time of the authoriza-
2 tion by the Attorney General.

3 “(2) In the event that an application for an order
4 applied for under subsection (a)(2) is denied, or in any
5 other case where the installation and use of a pen register
6 or trap and trace device under this section is terminated
7 and no order under section 402 of this Act is issued ap-
8 proving the installation and use of the pen register or trap
9 and trace device, as the case may be, no information ob-
10 tained or evidence derived from the use of the pen register
11 or trap and trace device, as the case may be, shall be re-
12 ceived in evidence or otherwise disclosed in any trial, hear-
13 ing, or other proceeding in or before any court, grand jury,
14 department, office, agency, regulatory body, legislative
15 committee, or other authority of the United States, a
16 State, or political subdivision thereof, and no information
17 concerning any United States person acquired from the
18 use of the pen register or trap and trace device, as the
19 case may be, shall subsequently be used or disclosed in
20 any other manner by Federal officers or employees with-
21 out the consent of such person, except with the approval
22 of the Attorney General if the information indicates a
23 threat of death or serious bodily harm to any person.

24 “AUTHORIZATION DURING TIME OF WAR

25 “SEC. 404. Notwithstanding any other provision of
26 law, the President, through the Attorney General, may au-

1 thorize the use of a pen register or trap and trace device
2 without a court order under this title to acquire foreign
3 intelligence information for a period not to exceed 15 cal-
4 endar days following a declaration of war by Congress.

5 “USE OF INFORMATION

6 “SEC. 405. (a)(1) Information acquired from the use
7 of a pen register or trap and trace device installed pursu-
8 ant to this title concerning any United States person may
9 be used and disclosed by Federal officers and employees
10 without the consent of the United States person only in
11 accordance with the provisions of this section.

12 “(2) No information acquired from a pen register or
13 trap and trace device installed and used pursuant to this
14 title may be used or disclosed by Federal officers or em-
15 ployees except for lawful purposes.

16 “(b) No information acquired pursuant to this title
17 shall be disclosed for law enforcement purposes unless
18 such disclosure is accompanied by a statement that such
19 information, or any information derived therefrom, may
20 only be used in a criminal proceeding with the advance
21 authorization of the Attorney General.

22 “(c) Whenever the United States intends to enter into
23 evidence or otherwise use or disclose in any trial, hearing,
24 or other proceeding in or before any court, department,
25 officer, agency, regulatory body, or other authority of the
26 United States against an aggrieved person any informa-

1 tion obtained or derived from the use of a pen register
2 or trap and trace device pursuant to this title, the United
3 States shall, before the trial, hearing, or the other proceed-
4 ing or at a reasonable time before an effort to so disclose
5 or so use that information or submit it in evidence, notify
6 the aggrieved person and the court or other authority in
7 which the information is to be disclosed or used that the
8 United States intends to so disclose or so use such infor-
9 mation.

10 “(d) Whenever any State or political subdivision
11 thereof intends to enter into evidence or otherwise use or
12 disclose in any trial, hearing, or other proceeding in or
13 before any court, department, officer, agency, regulatory
14 body, or other authority of the State or political subdivi-
15 sion thereof against an aggrieved person any information
16 obtained or derived from the use of a pen register or trap
17 and trace device pursuant to this title, the State or politi-
18 cal subdivision thereof shall notify the aggrieved person,
19 the court or other authority in which the information is
20 to be disclosed or used, and the Attorney General that the
21 State or political subdivision thereof intends to so disclose
22 or so use such information.

23 “(e)(1) Any aggrieved person against whom evidence
24 obtained or derived from the use of a pen register or trap
25 and trace device is to be, or has been, introduced or other-

1 wise used or disclosed in any trial, hearing, or other pro-
2 ceeding in or before any court, department, officer, agen-
3 cy, regulatory body, or other authority of the United
4 States, or a State or political subdivision thereof, may
5 move to suppress the evidence obtained or derived from
6 the use of the pen register or trap and trace device, as
7 the case may be, on the grounds that—

8 “(A) the information was unlawfully acquired;
9 or

10 “(B) the use of the pen register or trap and
11 trace device, as the case may be, was not made in
12 conformity with an order of authorization or ap-
13 proval under this title.

14 “(2) A motion under paragraph (1) shall be made be-
15 fore the trial, hearing, or other proceeding unless there
16 was no opportunity to make such a motion or the ag-
17 grieved person concerned was not aware of the grounds
18 of the motion.

19 “(f)(1) Whenever a court or other authority is noti-
20 fied pursuant to subsection (c) or (d), whenever a motion
21 is made pursuant to subsection (e), or whenever any mo-
22 tion or request is made by an aggrieved person pursuant
23 to any other statute or rule of the United States or any
24 State before any court or other authority of the United
25 States or any State to discover or obtain applications or

1 orders or other materials relating to the use of a pen reg-
2 ister or trap and trace device authorized by this title or
3 to discover, obtain, or suppress evidence or information
4 obtained or derived from the use of a pen register or trap
5 and trace device authorized by this title, the United States
6 district court or, where the motion is made before another
7 authority, the United States district court in the same dis-
8 trict as the authority shall, notwithstanding any other pro-
9 vision of law and if the Attorney General files an affidavit
10 under oath that disclosure or any adversary hearing would
11 harm the national security of the United States, review
12 in camera and ex parte the application, order, and such
13 other materials relating to the use of the pen register or
14 trap and trace device, as the case may be, as may be nec-
15 essary to determine whether the use of the pen register
16 or trap and trace device, as the case may be, was lawfully
17 authorized and conducted.

18 “(2) In making a determination under paragraph (1),
19 the court may disclose to the aggrieved person, under ap-
20 propriate security procedures and protective orders, por-
21 tions of the application, order, or other materials relating
22 to the use of the pen register or trap and trace device,
23 as the case may be, or may require the Attorney General
24 to provide to the aggrieved person a summary of such ma-
25 terials, only where such disclosure is necessary to make

1 an accurate determination of the legality of the use of the
2 pen register or trap and trace device, as the case may be.

3 “(g)(1) If the United States district court determines
4 pursuant to subsection (f) that the use of a pen register
5 or trap and trace device was not lawfully authorized or
6 conducted, the court may, in accordance with the require-
7 ments of law, suppress the evidence which was unlawfully
8 obtained or derived from the use of the pen register or
9 trap and trace device, as the case may be, or otherwise
10 grant the motion of the aggrieved person.

11 “(2) If the court determines that the use of the pen
12 register or trap and trace device, as the case may be, was
13 lawfully authorized or conducted, it may deny the motion
14 of the aggrieved person except to the extent that due proc-
15 ess requires discovery or disclosure.

16 “(h) Orders granting motions or requests under sub-
17 section (g), decisions under this section that the use of
18 a pen register or trap and trace device was not lawfully
19 authorized or conducted, and orders of the United States
20 district court requiring review or granting disclosure of
21 applications, orders, or other materials relating to the in-
22 stallation and use of a pen register or trap and trace de-
23 vice shall be final orders and binding upon all courts of
24 the United States and the several States except a United
25 States Court of Appeals or the Supreme Court.

1 “CONGRESSIONAL OVERSIGHT

2 “SEC. 406. (a) On a semiannual basis, the Attorney
3 General shall fully inform the Permanent Select Commit-
4 tee on Intelligence of the House of Representatives and
5 the Select Committee on Intelligence of the Senate con-
6 cerning all uses of pen registers and trap and trace devices
7 pursuant to this title.

8 “(b) On a semiannual basis, the Attorney General
9 shall also provide to the committees referred to in sub-
10 section (a) and to the Committees on the Judiciary of the
11 House of Representatives and the Senate a report setting
12 forth with respect to the preceding six-month period—

13 “(1) the total number of applications made for
14 orders approving the use of pen registers or trap
15 and trace devices under this title; and

16 “(2) the total number of such orders either
17 granted, modified, or denied.”.

18 **SEC. 602. ACCESS TO CERTAIN BUSINESS RECORDS FOR**
19 **FOREIGN INTELLIGENCE AND INTER-**
20 **NATIONAL TERRORISM INVESTIGATIONS.**

21 The Foreign Intelligence Surveillance Act of 1978
22 (50 U.S.C. 1801 et seq.), as amended by section 601 of
23 this Act, is further amended by inserting after title IV,
24 as added by such section 601, the following new title:

1 “TITLE V—ACCESS TO CERTAIN BUSINESS
2 RECORDS FOR FOREIGN INTELLIGENCE
3 PURPOSES

4 “DEFINITIONS

5 “SEC. 501. As used in this title:

6 “(1) The terms ‘foreign power’, ‘agent of a for-
7 eign power’, ‘foreign intelligence information’, ‘inter-
8 national terrorism’, and ‘Attorney General’ shall
9 have the same meanings as in section 101 of this
10 Act.

11 “(2) The term ‘common carrier’ means any per-
12 son or entity transporting people or property by
13 land, rail, water, or air for compensation.

14 “(3) The term ‘physical storage facility’ means
15 any business or entity that provides space for the
16 storage of goods or materials, or services related to
17 the storage of goods or materials, to the public or
18 any segment thereof.

19 “(4) The term ‘public accommodation facility’
20 means any inn, hotel, motel, or other establishment
21 that provides lodging to transient guests.

22 “(5) The term ‘vehicle rental facility’ means
23 any person or entity that provides vehicles for rent,
24 lease, loan, or other similar use to the public or any
25 segment thereof.

1 “ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN
2 INTELLIGENCE AND INTERNATIONAL TERRORISM IN-
3 VESTIGATIONS

4 “SEC. 502. (a) The Director of the Federal Bureau
5 of Investigation or a designee of the Director (whose rank
6 shall be no lower than Assistant Special Agent in Charge)
7 may make an application for an order authorizing a com-
8 mon carrier, public accommodation facility, physical stor-
9 age facility, or vehicle rental facility to release records in
10 its possession for an investigation to gather foreign intel-
11 ligence information or an investigation concerning inter-
12 national terrorism which investigation is being conducted
13 by the Federal Bureau of Investigation under such guide-
14 lines as the Attorney General approves pursuant to Execu-
15 tive Order No. 12333, or a successor order.

16 “(b) Each application under this section—

17 “(1) shall be made to—

18 “(A) a judge of the court established by
19 section 103(a) of this Act; or

20 “(B) a United States Magistrate Judge
21 under chapter 43 of title 28, United States
22 Code, who is publicly designated by the Chief
23 Justice of the United States to have the power
24 to hear applications and grant orders for the

1 release of records under this section on behalf
2 of a judge of that court; and

3 “(2) shall specify that—

4 “(A) the records concerned are sought for
5 an investigation described in subsection (a); and

6 “(B) there are specific and articulable
7 facts giving reason to believe that the person to
8 whom the records pertain is a foreign power or
9 an agent of a foreign power.

10 “(c)(1) Upon application made pursuant to this sec-
11 tion, the judge shall enter an ex parte order as requested,
12 or as modified, approving the release of records if the
13 judge finds that the application satisfies the requirements
14 of this section.

15 “(2) An order under this subsection shall not disclose
16 that it is issued for purposes of an investigation described
17 in subsection (a).

18 “(d)(1) Any common carrier, public accommodation
19 facility, physical storage facility, or vehicle rental facility
20 shall comply with an order under subsection (c).

21 “(2) No common carrier, public accommodation facil-
22 ity, physical storage facility, or vehicle rental facility, or
23 officer, employee, or agent thereof, shall disclose to any
24 person (other than those officers, agents, or employees of
25 such common carrier, public accommodation facility, phys-

1 ical storage facility, or vehicle rental facility necessary to
 2 fulfill the requirement to disclose information to the Fed-
 3 eral Bureau of Investigation under this section) that the
 4 Federal Bureau of Investigation has sought or obtained
 5 records pursuant to an order under this section.

6 “CONGRESSIONAL OVERSIGHT

7 “SEC. 503. (a) On a semiannual basis, the Attorney
 8 General shall fully inform the Permanent Select Commit-
 9 tee on Intelligence of the House of Representatives and
 10 the Select Committee on Intelligence of the Senate con-
 11 cerning all requests for records under this title.

12 “(b) On a semiannual basis, the Attorney General
 13 shall provide to the Committees on the Judiciary of the
 14 House of Representatives and the Senate a report setting
 15 forth with respect to the preceding six-month period—

16 “(1) the total number of applications made for
 17 orders approving requests for records under this
 18 title; and

19 “(2) the total number of such orders either
 20 granted, modified, or denied.”.

21 **SEC. 603. CONFORMING AND CLERICAL AMENDMENTS.**

22 (a) CONFORMING AMENDMENT.—Section 601 of the
 23 Foreign Intelligence Surveillance Act of 1978, as redesign-
 24 nated by section 601(1) of this Act, is amended by striking
 25 out “other than title III” and inserting in lieu thereof
 26 “other than titles III, IV, and V”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 at the beginning of the Foreign Intelligence Surveillance
3 Act of 1978 is amended by striking out the items relating
4 to title IV and section 401 and inserting in lieu thereof
5 the following:

“TITLE IV—PEN REGISTERS AND TRAP AND TRACE DEVICES
FOR FOREIGN INTELLIGENCE PURPOSES

“401. Definitions.

“402. Pen registers and trap and trace devices for foreign intelligence and inter-
national terrorism investigations.

“403. Authorization during emergencies.

“404. Authorization during time of war.

“405. Use of information.

“406. Congressional oversight.

“TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR
FOREIGN INTELLIGENCE PURPOSES

“501. Definitions.

“502. Access to certain business records for foreign intelligence and inter-
national terrorism investigations.

“503. Congressional oversight.

“TITLE VI—EFFECTIVE DATE

“601. Effective date.”.

Calendar No. 442

105TH CONGRESS
2^D SESSION

S. 2052

[Report No. 105-185]

A BILL

To authorize appropriations for fiscal year 1999 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Retirement and Disability System, and for other purposes.

JUNE 26, 1998

Committee on Armed Services discharged; considered, amended, and read the third time; ordered to be placed on the calendar