

Calendar No. 499108TH CONGRESS
2^D SESSION**S. 2386****[Report No. 108-258]**

To authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 5, 2004

Mr. ROBERTS, from the Select Committee on Intelligence, reported the following original bill; which was read twice and placed on the calendar

A BILL

To authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency 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 2005”.

★(Star Print)

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 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. Intelligence Community Management Account.
- Sec. 105. Incorporation of reporting requirements.
- Sec. 106. Specific authorization of funds for intelligence or intelligence-related activities for which fiscal year 2004 appropriations exceed amounts authorized.

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. Modification of authority to obligate and expend certain funds for intelligence activities.
- Sec. 304. Treatment as agent of a foreign power under the Foreign Intelligence Surveillance Act of 1978 of non-United States persons who engage in international terrorism without affiliation with international terrorist groups.
- Sec. 305. Additional annual reporting requirements under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 306. Repeal of limitation on length of service as member of the Select Committee on Intelligence of the Senate.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

- Sec. 401. Permanent extension of Central Intelligence Agency voluntary separation incentive program.
- Sec. 402. Intelligence operations and cover enhancement authority.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

- Sec. 501. Repeal of sunset on authority to engage in commercial activities as security for intelligence collection activities.
- Sec. 502. Defense intelligence exemption from certain Privacy Act requirements.
- Sec. 503. Use of funds for counterdrug and counterterrorism activities for Colombia.

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

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

4 Funds are hereby authorized to be appropriated for
5 fiscal year 2005 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 Department of Justice.

19 (10) The Federal Bureau of Investigation.

20 (11) The National Reconnaissance Office.

21 (12) The National Geospatial-Intelligence Agen-
22 cy.

23 (13) The Coast Guard.

24 (14) The Department of Homeland Security.

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, 2005, 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 _____ of the One Hundred
10 Eighth 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 2005 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 2 percent of the number of civilian personnel
4 authorized under such section for such element.

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

11 **SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT AC-**
12 **COUNT.**

13 (a) AUTHORIZATION OF APPROPRIATIONS.—There is
14 authorized to be appropriated for the Intelligence Commu-
15 nity Management Account of the Director of Central Intel-
16 ligence for fiscal year 2005 the sum of \$342,995,000.
17 Within such amount, funds identified in the classified
18 Schedule of Authorizations referred to in section 102(a)
19 for advanced research and development shall remain avail-
20 able until September 30, 2006.

21 (b) AUTHORIZED PERSONNEL LEVELS.—The ele-
22 ments within the Intelligence Community Management
23 Account of the Director of Central Intelligence are author-
24 ized 310 full-time personnel as of September 30, 2005.
25 Personnel serving in such elements may be permanent em-

1 ployees of the Intelligence Community Management Ac-
2 count or personnel detailed from other elements of the
3 United States Government.

4 (c) CLASSIFIED AUTHORIZATIONS.—

5 (1) AUTHORIZATION OF APPROPRIATIONS.—In
6 addition to amounts authorized to be appropriated
7 for the Intelligence Community Management Ac-
8 count by subsection (a), there are also authorized to
9 be appropriated for the Intelligence Community
10 Management Account for fiscal year 2005 such addi-
11 tional amounts as are specified in the classified
12 Schedule of Authorizations referred to in section
13 102(a). Such additional amounts for research and
14 development shall remain available until September
15 30, 2006.

16 (2) AUTHORIZATION OF PERSONNEL.—In addi-
17 tion to the personnel authorized by subsection (b)
18 for elements of the Intelligence Community Manage-
19 ment Account as of September 30, 2005, there are
20 also authorized such additional personnel for such
21 elements as of that date as are specified in the clas-
22 sified Schedule of Authorizations.

23 (d) REIMBURSEMENT.—Except as provided in section
24 113 of the National Security Act of 1947 (50 U.S.C.
25 404h), during fiscal year 2005 any officer or employee of

1 the United States or a member of the Armed Forces who
2 is detailed to the staff of the Intelligence Community Man-
3 agement Account from another element of the United
4 States Government shall be detailed on a reimbursable
5 basis, except that any such officer, employee, or member
6 may be detailed on a nonreimbursable basis for a period
7 of less than one year for the performance of temporary
8 functions as required by the Director of Central Intel-
9 ligence.

10 (e) NATIONAL DRUG INTELLIGENCE CENTER.—

11 (1) IN GENERAL.—Of the amount authorized to
12 be appropriated in subsection (a), \$34,911,000 shall
13 be available for the National Drug Intelligence Cen-
14 ter. Within such amount, funds provided for re-
15 search, development, testing, and evaluation pur-
16 poses shall remain available until September 30,
17 2006, and funds provided for procurement purposes
18 shall remain available until September 30, 2007.

19 (2) TRANSFER OF FUNDS.—The Director of
20 Central Intelligence shall transfer to the Attorney
21 General funds available for the National Drug Intel-
22 ligence Center under paragraph (1). The Attorney
23 General shall utilize funds so transferred for the ac-
24 tivities of the National Drug Intelligence Center.

1 (3) LIMITATION.—Amounts available for the
2 National Drug Intelligence Center may not be used
3 in contravention of the provisions of section
4 103(d)(1) of the National Security Act of 1947 (50
5 U.S.C. 403–3(d)(1)).

6 (4) AUTHORITY.—Notwithstanding any other
7 provision of law, the Attorney General shall retain
8 full authority over the operations of the National
9 Drug Intelligence Center.

10 **SEC. 105. INCORPORATION OF REPORTING REQUIRE-**
11 **MENTS.**

12 (a) IN GENERAL.—Each requirement to submit a re-
13 port to the congressional intelligence committees that is
14 included in the joint explanatory statement to accompany
15 the conference report on the bill ____ of the One Hundred
16 Eighth Congress, or in the classified annex to this Act,
17 is hereby incorporated into this Act, and is hereby made
18 a requirement in law.

19 (b) CONGRESSIONAL INTELLIGENCE COMMITTEES
20 DEFINED.—In this section, the term “congressional intel-
21 ligence committees” means—

22 (1) the Select Committee on Intelligence of the
23 Senate; and

24 (2) the Permanent Select Committee on Intel-
25 ligence of the House of Representatives.

1 **SEC. 106. SPECIFIC AUTHORIZATION OF FUNDS FOR INTEL-**
2 **LIGENCE OR INTELLIGENCE-RELATED AC-**
3 **TIVITIES FOR WHICH FISCAL YEAR 2004 AP-**
4 **PROPRIATIONS EXCEED AMOUNTS AUTHOR-**
5 **IZED.**

6 Funds appropriated for an intelligence or intel-
7 ligence-related activity of the United States Government
8 for fiscal year 2004 in excess of the amount specified for
9 such activity in the classified Schedule of Authorizations
10 prepared to accompany the Intelligence Authorization Act
11 for Fiscal Year 2004 (Public Law 108–177; 117 Stat.
12 2599) shall be deemed to be specifically authorized by
13 Congress for purposes of section 504(a)(3) of the National
14 Security Act of 1947 (50 U.S.C. 414(a)(3)).

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 2005 the sum of \$239,400,000.

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. MODIFICATION OF AUTHORITY TO OBLIGATE AND**
17 **EXPEND CERTAIN FUNDS FOR INTELLIGENCE**
18 **ACTIVITIES.**

19 Section 504(a)(3) of the National Security Act of
20 1947 (50 U.S.C. 414(a)(3)) is amended—

21 (1) in subparagraph (A), by inserting “and” at
22 the end;

23 (2) by striking subparagraph (B); and

24 (3) by redesignating subparagraph (C) as sub-
25 paragraph (B).

1 **SEC. 304. TREATMENT AS AGENT OF A FOREIGN POWER**
2 **UNDER THE FOREIGN INTELLIGENCE SUR-**
3 **VEILLANCE ACT OF 1978 OF NON-UNITED**
4 **STATES PERSONS WHO ENGAGE IN INTER-**
5 **NATIONAL TERRORISM WITHOUT AFFILI-**
6 **ATION WITH INTERNATIONAL TERRORIST**
7 **GROUPS.**

8 (a) IN GENERAL.—Section 101(b)(1) of the Foreign
9 Intelligence Surveillance Act of 1978 (50 U.S.C.
10 1801(b)(1)) is amended by adding at the end the following
11 new subparagraph:

12 “(C) engages in international terrorism or
13 activities in preparation therefor; or”.

14 (b) SUNSET.—The amendment made by subsection
15 (a) shall be subject to the sunset provision in section 224
16 of the USA PATRIOT Act of 2001 (Public Law 107–56;
17 115 Stat. 295), including the exception provided in sub-
18 section (b) of such section 224.

19 **SEC. 305. ADDITIONAL ANNUAL REPORTING REQUIRE-**
20 **MENTS UNDER THE FOREIGN INTELLIGENCE**
21 **SURVEILLANCE ACT OF 1978.**

22 (a) ADDITIONAL REPORTING REQUIREMENTS.—The
23 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
24 1801 et seq.) is amended—

25 (1) by redesignating title VI as title VII;

1 (2) by redesignating section 601 as section 701;

2 and

3 (3) by inserting after title V the following new

4 title VI:

5 “TITLE VI—REPORTING REQUIREMENT

6 “ANNUAL REPORT OF THE ATTORNEY GENERAL

7 “SEC. 601. (a) In addition to the reports required
8 by sections 107, 108, 306, 406, and 502 in April each
9 year, the Attorney General shall submit to the appropriate
10 committees of Congress each year a report setting forth
11 with respect to the one-year period ending on the date of
12 such report—

13 “(1) the aggregate number of non-United
14 States persons targeted for orders issued under this
15 Act, including a break-down of those targeted for—

16 “(A) electronic surveillance under section
17 105;

18 “(B) physical searches under section 304;

19 “(C) pen registers under section 402; and

20 “(D) access to records under section 501;

21 “(2) the number of individuals covered by an
22 order issued under this Act who were determined
23 pursuant to activities authorized by this Act to have
24 acted wholly alone in the activities covered by such
25 order;

1 “(3) the number of times that the Attorney
2 General has authorized that information obtained
3 under this Act may be used in a criminal proceeding
4 or any information derived therefrom may be used
5 in a criminal proceeding; and

6 “(4) in a manner consistent with the protection
7 of the national security of the United States—

8 “(A) the portions of the documents and
9 applications filed with the courts established
10 under section 103 that include significant con-
11 struction or interpretation of the provisions of
12 this Act, not including the facts of any par-
13 ticular matter, which may be redacted; and

14 “(B) the portions of the opinions and or-
15 ders of the courts established under section 103
16 that include significant construction or interpre-
17 tation of the provisions of this Act, not includ-
18 ing the facts of any particular matter, which
19 may be redacted.

20 “(b) The first report under this section shall be sub-
21 mitted not later than six months after the date of the en-
22 actment of this Intelligence Authorization Act for Fiscal
23 Year 2005. Subsequent reports under this section shall be
24 submitted annually thereafter.

1 “(c) In this section, the term ‘appropriate committees
2 of Congress’ means—

3 “(1) the Select Committee on Intelligence and
4 the Committee on the Judiciary of the Senate; and

5 “(2) the Permanent Select Committee on Intel-
6 ligence and the Committee on the Judiciary of the
7 House of Representatives.”.

8 (b) CLERICAL AMENDMENT.—The table of contents
9 for that Act is amended by striking the items relating to
10 title VI and inserting the following new items:

“TITLE VI—REPORTING REQUIREMENT

“Sec. 601. Annual report of the Attorney General.

“TITLE VII—EFFECTIVE DATE

“Sec. 701. Effective date.”.

11 **SEC. 306. REPEAL OF LIMITATION ON LENGTH OF SERVICE**
12 **AS MEMBER OF THE SELECT COMMITTEE ON**
13 **INTELLIGENCE OF THE SENATE.**

14 (a) REPEAL.—Section 2 of Senate Resolution 400
15 (94th Congress) is amended—

16 (1) by striking subsection (b); and

17 (2) by redesignating subsection (c) as sub-
18 section (b).

19 (b) RULES OF THE SENATE.—Subsection (a) is en-
20 acted—

21 (1) as an exercise of the rulemaking power of
22 the Senate; and

1 (2) with full recognition of the constitutional
2 right of the Senate to change the rules of the Senate
3 at any time and to the same extent as in the case
4 of any other rule of the Senate.

5 **TITLE IV—CENTRAL**
6 **INTELLIGENCE AGENCY**

7 **SEC. 401. PERMANENT EXTENSION OF CENTRAL INTEL-**
8 **LIGENCE AGENCY VOLUNTARY SEPARATION**
9 **INCENTIVE PROGRAM.**

10 (a) IN GENERAL.—Section 2 of the Central Intel-
11 ligence Agency Voluntary Separation Pay Act (50 U.S.C.
12 403–4 note) is amended—

13 (1) by striking subsection (f); and

14 (2) by redesignating subsections (g) and (h) as
15 subsections (f) and (g), respectively.

16 (b) TERMINATION OF FUNDS REMITTANCE RE-
17 QUIREMENT.—(1) Section 2 of such Act is further amend-
18 ed by striking subsection (i).

19 (2) Section 4(a)(2)(B)(ii) of the Federal Workforce
20 Restructuring Act of 1994 (5 U.S.C. 8331 note) is amend-
21 ed by striking “, or section 2 of the Central Intelligence
22 Agency Voluntary Separation Pay Act (Public Law 103–
23 36; 107 Stat. 104)”.

1 **SEC. 402. INTELLIGENCE OPERATIONS AND COVER EN-**
2 **HANCEMENT AUTHORITY.**

3 The Central Intelligence Agency Act of 1949 (50
4 U.S.C. 403a et seq.) is amended by adding at the end the
5 following:

6 “INTELLIGENCE OPERATIONS AND COVER ENHANCEMENT
7 AUTHORITY

8 “SEC. 23. (a) DEFINITIONS.—In this section—

9 “(1) the term ‘designated employee’ means an
10 employee designated by the Director under sub-
11 section (b); and

12 “(2) the term ‘Federal retirement system’ in-
13 cludes the Central Intelligence Agency Retirement
14 and Disability System, and the Federal Employees
15 Retirement System (including the Thrift Savings
16 Plan).

17 “(b) IN GENERAL.—

18 “(1) AUTHORITY.—Notwithstanding any other
19 provision of law, the Director may exercise the au-
20 thorities under this section in order to—

21 “(A) protect from unauthorized disclo-
22 sure—

23 “(i) intelligence operations;

24 “(ii) the identities of undercover intel-
25 ligence officers;

1 “(iii) intelligence source and methods;

2 or

3 “(iv) intelligence cover mechanisms; or

4 “(B) meet the special requirements of
5 work related to collection of foreign intelligence
6 or other authorized activities of the Agency.

7 “(2) DESIGNATION OF EMPLOYEES.—The Di-
8 rector may designate any employee of the Agency
9 who is under nonofficial cover to be an employee to
10 whom this section applies. Such designation may be
11 made with respect to any or all authorities exercised
12 under this section.

13 “(c) COMPENSATION.—The Director may pay a des-
14 ignated employee salary, allowances, and other benefits in
15 an amount and in a manner consistent with the nonofficial
16 cover of that employee, without regard to any limitation
17 that is otherwise applicable to a Federal employee. A des-
18 ignated employee may accept, utilize, and, to the extent
19 authorized by regulations prescribed under subsection (i),
20 retain any salary, allowances, and other benefits provided
21 under this section.

22 “(d) RETIREMENT BENEFITS.—

23 “(1) IN GENERAL.—The Director may establish
24 and administer a nonofficial cover employee retire-
25 ment system under which a designated employee

1 (and the spouse, former spouses, and survivors of
2 such designated employee) shall receive treatment in
3 the same manner and to the same extent as the
4 Federal retirement system that would otherwise
5 apply to such employee (and the spouse, former
6 spouses, and survivors of that employee). A des-
7 ignated employee may not participate in the retire-
8 ment system established under this paragraph and
9 another Federal retirement system at the same time.

10 “(2) CONVERSION TO OTHER FEDERAL RETIRE-
11 MENT SYSTEM.—

12 “(A) IN GENERAL.—A designated em-
13 ployee participating in the retirement system
14 established under paragraph (1) may convert to
15 coverage under the Federal retirement system
16 which would otherwise apply to that employee
17 at any appropriate time determined by the Di-
18 rector (including at the time of separation of
19 service by reason of retirement), if the Director
20 determines that the employee’s participation in
21 the retirement system established under this
22 subsection is no longer necessary to protect
23 from unauthorized disclosure—

24 “(i) intelligence operations;

1 “(ii) the identities of undercover intel-
2 ligence officers;

3 “(iii) intelligence sources and meth-
4 ods; or

5 “(iv) intelligence cover mechanisms.

6 “(B) CONVERSION TREATMENT.—Upon a
7 conversion under this paragraph—

8 “(i) all periods of service under the
9 retirement system established under this
10 subsection shall be deemed periods of cred-
11 itable service under the applicable Federal
12 retirement system;

13 “(ii) the Director shall transmit an
14 amount for deposit in any applicable fund
15 of that Federal retirement system that—

16 “(I) is necessary to cover all em-
17 ployee and agency contributions in-
18 cluding—

19 “(aa) interest as determined
20 by the head of the agency admin-
21 istering the Federal retirement
22 system into which the employee
23 is converting; or

24 “(bb) in the case of an em-
25 ployee converting into the Fed-

1 eral Employee’s Retirement Sys-
2 tem, interest as determined
3 under section 8334(e) of title 5,
4 United States Code; and

5 “(II) ensures that such conver-
6 sion does not result in any unfunded
7 liability to that fund; and

8 “(iii) in the case of a designated em-
9 ployee who participated in a retirement
10 system established under paragraph (1)
11 similar to subchapter III of chapter 84 of
12 title 5, United States Code, and is con-
13 verting to coverage under subchapter III of
14 that chapter, the Director shall transmit
15 all amounts of that designated employee in
16 that similar retirement system (or similar
17 part of that retirement system) to the
18 Thrift Savings Fund.

19 “(C) TRANSMITTED AMOUNTS.—

20 “(i) IN GENERAL.—Amounts de-
21 scribed under subparagraph (B)(ii) shall
22 be paid from the fund or appropriation
23 used to pay the designated employee.

24 “(ii) OFFSET.—The Director may use
25 amounts contributed by the designated em-

1 ployee to a retirement system established
2 under paragraph (1) to offset amounts
3 paid under clause (i).

4 “(D) RECORDS.—The Director shall trans-
5 mit all necessary records relating to a des-
6 ignated employee who converts to a Federal re-
7 tirement system under this paragraph (includ-
8 ing records relating to periods of service which
9 are deemed to be periods of creditable service
10 under subparagraph (B)) to the head of the
11 agency administering that Federal retirement
12 system.

13 “(e) HEALTH INSURANCE BENEFITS.—

14 “(1) IN GENERAL.—The Director may establish
15 and administer a nonofficial cover employee health
16 insurance program under which a designated em-
17 ployee (and the family of such designated employee)
18 shall receive treatment in the same manner and to
19 the same extent as provided under chapter 89 of
20 title 5, United States Code. A designated employee
21 may not participate in the health insurance program
22 established under this paragraph and the program
23 under chapter 89 of title 5, United States Code, at
24 the same time.

1 “(2) CONVERSION TO FEDERAL EMPLOYEES
2 HEALTH BENEFITS PROGRAM.—

3 “(A) IN GENERAL.—A designated em-
4 ployee participating in the health insurance pro-
5 gram established under paragraph (1) may con-
6 vert to coverage under the program under chap-
7 ter 89 of title 5, United States Code, at any ap-
8 propriate time determined by the Director (in-
9 cluding at the time of separation of service by
10 reason of retirement), if the Director deter-
11 mines that the employee’s participation in the
12 health insurance program established under this
13 subsection is no longer necessary to protect
14 from unauthorized disclosure—

15 “(i) intelligence operations;

16 “(ii) the identities of undercover intel-
17 ligence officers;

18 “(iii) intelligence sources and meth-
19 ods; or

20 “(iv) intelligence cover mechanisms.

21 “(B) CONVERSION TREATMENT.—Upon a
22 conversion under this paragraph—

23 “(i) the employee (and family, if ap-
24 plicable) shall be entitled to immediate en-

1 rollment and coverage under chapter 89 of
2 title 5, United States Code;

3 “(ii) any requirement of prior enroll-
4 ment in a health benefits plan under chap-
5 ter 89 of that title for continuation of cov-
6 erage purposes shall not apply;

7 “(iii) the employee shall be deemed to
8 have had coverage under chapter 89 of
9 that title from the first opportunity to en-
10 roll for purposes of continuing coverage as
11 an annuitant; and

12 “(iv) the Director shall transmit an
13 amount for deposit in the Employees
14 Health Benefits Fund that is necessary to
15 cover any costs of such conversion.

16 “(C) TRANSMITTED AMOUNTS.—Any
17 amount described under subparagraph (B)(iv)
18 shall be paid from the fund or appropriation
19 used to pay the designated employee.

20 “(f) LIFE INSURANCE BENEFITS.—

21 “(1) IN GENERAL.—The Director may establish
22 and administer a nonofficial cover employee life in-
23 surance program under which a designated employee
24 (and the family of such designated employee) shall
25 receive treatment in the same manner and to the

1 same extent as provided under chapter 87 of title 5,
2 United States Code. A designated employee may not
3 participate in the life insurance program established
4 under this paragraph and the program under chapter
5 87 of title 5, United States Code, at the same time.

6 “(2) CONVERSION TO FEDERAL EMPLOYEES
7 GROUP LIFE INSURANCE PROGRAM.—

8 “(A) IN GENERAL.—A designated em-
9 ployee participating in the life insurance pro-
10 gram established under paragraph (1) may con-
11 vert to coverage under the program under chap-
12 ter 87 of title 5, United States Code, at any ap-
13 propriate time determined by the Director (in-
14 cluding at the time of separation of service by
15 reason of retirement), if the Director deter-
16 mines that the employee’s participation in the
17 life insurance program established under this
18 subsection is no longer necessary to protect
19 from unauthorized disclosure—

20 “(i) intelligence operations;

21 “(ii) the identities of undercover intel-
22 ligence officers;

23 “(iii) intelligence sources and meth-
24 ods; or

25 “(iv) intelligence cover mechanisms.

1 “(B) CONVERSION TREATMENT.—Upon a
2 conversion under this paragraph—

3 “(i) the employee (and family, if ap-
4 plicable) shall be entitled to immediate cov-
5 erage under chapter 87 of title 5, United
6 States Code;

7 “(ii) any requirement of prior enroll-
8 ment in a life insurance program under
9 chapter 87 of that title for continuation of
10 coverage purposes shall not apply;

11 “(iii) the employee shall be deemed to
12 have had coverage under chapter 87 of
13 that title for the full period of service dur-
14 ing which the employee would have been
15 entitled to be insured for purposes of con-
16 tinuing coverage as an annuitant; and

17 “(iv) the Director shall transmit an
18 amount for deposit in the Employees Life
19 Insurance Fund that is necessary to cover
20 any costs of such conversion.

21 “(C) TRANSMITTED AMOUNTS.—Any
22 amount described under subparagraph (B)(iii)
23 shall be paid from the fund or appropriation
24 used to pay the designated employee.

1 “(g) EXEMPTION FROM CERTAIN REQUIREMENTS.—

2 The Director may exempt a designated employee from
3 mandatory compliance with any Federal regulation, rule,
4 standardized administrative policy, process, or procedure
5 that the Director determines—

6 “(1) would be inconsistent with the nonofficial
7 cover of that employee; and

8 “(2) could expose that employee to detection as
9 a Federal employee.

10 “(h) TAXATION AND SOCIAL SECURITY.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of law, a designated employee—

13 “(A) shall file a Federal or State tax re-
14 turn as if that employee is not a Federal em-
15 ployee and may claim and receive the benefit of
16 any exclusion, deduction, tax credit, or other
17 tax treatment that would otherwise apply if
18 that employee was not a Federal employee, if
19 the Director determines that taking any action
20 under this paragraph is necessary to—

21 “(i) protect from unauthorized dislo-
22 sure—

23 “(I) intelligence operations;

24 “(II) the identities of undercover
25 intelligence officers;

1 “(III) intelligence source and
2 methods; or

3 “(IV) intelligence cover mecha-
4 nisms; and

5 “(ii) meet the special requirements of
6 work related to collection of foreign intel-
7 ligence or other authorized activities of the
8 Agency; and

9 “(B) shall receive social security benefits
10 based on the social security contributions made.

11 “(2) IRS REVIEW.—The Director shall establish
12 procedures to carry out this subsection. The proce-
13 dures shall be subject to periodic review by the In-
14 ternal Revenue Service.

15 “(i) REGULATIONS.—The Director shall prescribe
16 regulations to carry out this section. The regulations shall
17 ensure that the combination of salary, allowances, and
18 benefits that an employee designated under this section
19 may retain does not significantly exceed, except to the ex-
20 tent determined by the Director to be necessary to exercise
21 the authority in subsection (b), the combination of salary,
22 allowances, and benefits otherwise received by Federal em-
23 ployees not designated under this section.

24 “(j) FINALITY OF DECISIONS.—Any determinations
25 authorized by this section made by the Director or the

1 Director’s designee shall be final and conclusive and shall
 2 not be subject to review by any court.

3 “(k) SUBSEQUENTLY ENACTED LAWS.—No law en-
 4 acted after the effective date of this section shall affect
 5 the authorities and provisions of this section unless such
 6 law specifically refers to this section.”.

7 **TITLE V—DEPARTMENT OF DE-**
 8 **FENSE INTELLIGENCE MAT-**
 9 **TERS**

10 **SEC. 501. REPEAL OF SUNSET ON AUTHORITY TO ENGAGE**
 11 **IN COMMERCIAL ACTIVITIES AS SECURITY**
 12 **FOR INTELLIGENCE COLLECTION ACTIVI-**
 13 **TIES.**

14 Section 431(a) of title 10, United States Code, is
 15 amended by striking the second sentence.

16 **SEC. 502. DEFENSE INTELLIGENCE EXEMPTION FROM CER-**
 17 **TAIN PRIVACY ACT REQUIREMENTS.**

18 Section 552a(e)(3) of title 5, United States Code,
 19 shall not apply with respect to the collection of information
 20 by intelligence personnel of the Department of Defense
 21 who are authorized by the Secretary of Defense to collect
 22 intelligence from human sources.

1 **SEC. 503. USE OF FUNDS FOR COUNTERDRUG AND**
2 **COUNTERTERRORISM ACTIVITIES FOR CO-**
3 **LOMBIA.**

4 (a) **AUTHORITY.**—Funds designated for intelligence
5 or intelligence-related purposes for assistance to the Gov-
6 ernment of Colombia for counterdrug activities for fiscal
7 year 2005, and any unobligated funds available to any ele-
8 ment of the intelligence community for such activities for
9 a prior fiscal year, shall be available—

10 (1) to support a unified campaign by the Gov-
11 ernment of Colombia against narcotics trafficking
12 and against activities by organizations designated as
13 terrorist organizations (such as the Revolutionary
14 Armed Forces of Colombia (FARC), the National
15 Liberation Army (ELN), and the United Self-De-
16 fense Forces of Colombia (AUC)); and

17 (2) to take actions to protect human health and
18 welfare in emergency circumstances, including un-
19 dertaking rescue operations.

20 (b) **APPLICABILITY OF CERTAIN LAWS AND LIMITA-**
21 **TIONS.**—The use of funds pursuant to the authority in
22 subsection (a) shall be subject to the following:

23 (1) Sections 556, 567, and 568 of the Foreign
24 Operations, Export Financing, and Related Pro-
25 grams Appropriations Act, 2002 (Public Law 107–
26 115; 115 Stat. 2160, 2165, and 2166).

1 (2) Section 8077 of the Department of Defense
2 Appropriations Act, 2004 (Public Law 108–87; 117
3 Stat. 1090).

4 (3) The numerical limitations on the number of
5 United States military personnel and United States
6 individual civilian contractors in section 3204(b)(1)
7 of the Emergency Supplemental Act, 2000 (division
8 B of Public Law 106–246; 114 Stat. 575), as
9 amended by the Foreign Operations, Export Financ-
10 ing, and Related Programs Appropriations Act,
11 2002 (115 Stat. 2131).

12 (c) LIMITATION ON PARTICIPATION OF UNITED
13 STATES PERSONNEL.—No United States Armed Forces
14 personnel or United States civilian contractor employed by
15 the United States Armed Forces will participate in any
16 combat operation in connection with assistance made
17 available under this section, except for the purpose of act-
18 ing in self defense or during the course of search and res-
19 cue operations for United States citizens.

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108TH CONGRESS
2D SESSION

S. 2386

[Report No. 108-258]

A BILL

To authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

MAY 5, 2004

Read twice and placed on the calendar