

109TH CONGRESS
1ST SESSION

H. R. 1310

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 with respect to the Privacy and Civil Liberties Oversight Board, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2005

Mrs. MALONEY (for herself, Mr. UDALL of New Mexico, Mr. SHAYS, Ms. CARSON, Mr. SANDERS, Mr. CASE, Mr. FILNER, Mr. CUMMINGS, Mr. HONDA, Ms. BALDWIN, Ms. MCCOLLUM of Minnesota, Mr. GEORGE MILLER of California, Mr. PALLONE, Mr. BAIRD, Mr. OWENS, Ms. WOOLSEY, Mr. GONZALEZ, Mrs. DAVIS of California, Mr. ISRAEL, Ms. WATSON, Ms. LEE, Mr. WEXLER, Mr. SCOTT of Virginia, and Mr. VAN HOLLEN) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committees on the Judiciary, Homeland Security, and Select Intelligence (Permanent Select), 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

A BILL

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 with respect to the Privacy and Civil Liberties Oversight Board, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protection of Civil Lib-
3 erties Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) On July 22, 2004 the National Commission
7 on Terrorist Attacks Upon the United States issued
8 a report that included 41 specific recommendations
9 to help prevent future terrorist attacks, including de-
10 tails of a global strategy and government reorganiza-
11 tion necessary to implement that strategy.

12 (2) One of the recommendations focused on the
13 protections of civil liberties. Specifically the following
14 recommendation was made: “At this time of in-
15 creased and consolidated government authority,
16 there should be a board within the executive branch
17 to oversee adherence to the guidelines we rec-
18 ommend and the commitment the government makes
19 to defend our civil liberties.”.

20 (3) The report also states that “the choice be-
21 tween security and liberty is a false choice, as noth-
22 ing is more likely to endanger America’s liberties
23 than the success of a terrorist attack at home. Our
24 History has shown that the insecurity threatens lib-
25 erty at home. Yet if our liberties are curtailed, we
26 lose the values that we are struggling to defend.”.

1 (4) On December 17, 2004, Public Law 108–
2 458, the National Intelligence Reform Act, was
3 signed into law. This law created a civil liberties
4 board that does not have the authority necessary to
5 protect civil liberties.

6 **SEC. 3. MAKING THE PRIVACY AND CIVIL LIBERTIES OVER-**
7 **SIGHT BOARD INDEPENDENT.**

8 Section 1061(b) of the Intelligence Reform and Ter-
9 rorism Prevention Act of 2004 is amended by striking
10 “within the Executive Office of the President” and insert-
11 ing “as an independent agency within the Executive
12 branch”.

13 **SEC. 4. REQUIRING ALL MEMBERS OF THE PRIVACY AND**
14 **CIVIL LIBERTIES OVERSIGHT BOARD BE CON-**
15 **FIRMED BY THE SENATE.**

16 Subsection (e) of section 1061 of the Intelligence Re-
17 form and Terrorism Prevention Act of 2004 is amended
18 to read as follows:

19 “(e) MEMBERSHIP.—

20 “(1) MEMBERS.—The Board shall be composed
21 of a full-time chairman and 4 additional members,
22 who shall be appointed by the President, by and
23 with the advice and consent of the Senate.

24 “(2) QUALIFICATIONS.—Members of the Board
25 shall be selected solely on the basis of their profes-

1 sional qualifications, achievements, public stature,
2 expertise in civil liberties and privacy, and relevant
3 experience, and without regard to political affiliation,
4 but in no event shall more than 3 members of the
5 Board be members of the same political party. The
6 President shall, before appointing an individual who
7 is not a member of the same political party as the
8 President consult with the leadership of that party,
9 if any, in the Senate and House of Representatives.

10 “(3) INCOMPATIBLE OFFICE.—An individual
11 appointed to the Board may not, while serving on
12 the Board, be an elected official, officer, or employee
13 of the Federal Government, other than in the capac-
14 ity as a member of the Board.

15 “(4) TERM.—Each member of the Board shall
16 serve a term of six years, except that—

17 “(A) a member appointed to a term of of-
18 fice after the commencement of such term may
19 serve under such appointment only for the re-
20 mainder of such term;

21 “(B) upon the expiration of the term of of-
22 fice of a member, the member shall continue to
23 serve until the member’s successor has been ap-
24 pointed and qualified, except that no member
25 may serve under this subparagraph—

1 “(i) for more than 60 days when Con-
2 gress is in session unless a nomination to
3 fill the vacancy shall have been submitted
4 to the Senate; or

5 “(ii) after the adjournment sine die of
6 the session of the Senate in which such
7 nomination is submitted; and

8 “(C) the members initially appointed under
9 this subsection shall serve terms of two, three,
10 four, five, and six years, respectively, from the
11 effective date of this Act, with the term of each
12 such member to be designated by the President.

13 “(5) QUORUM AND MEETINGS.—The Board
14 shall meet upon the call of the chairman or a major-
15 ity of its members. Three members of the Board
16 shall constitute a quorum.”.

17 **SEC. 5. SUBPOENA POWER FOR THE PRIVACY AND CIVIL**
18 **LIBERTIES OVERSIGHT BOARD.**

19 Section 1061(d) of the Intelligence Reform and Ter-
20 rorism Prevention Act of 2004 is amended—

21 (1) so that subparagraph (D) of paragraph (1)
22 reads as follows:

23 “(D) require, by subpoena issued at the di-
24 rection of a majority of the members of the
25 Board, persons (other than departments, agen-

1 cies, and elements of the executive branch) to
2 produce any relevant information, documents,
3 reports, answers, records, accounts, papers, and
4 other documentary or testimonial evidence.”;
5 and

6 (2) so that paragraph (2) reads as follows:

7 “(2) ENFORCEMENT OF SUBPOENA.—In the
8 case of contumacy or failure to obey a subpoena
9 issued under paragraph (1)(D), the United States
10 district court for the judicial district in which the
11 subpoenaed person resides, is served, or may be
12 found may issue an order requiring such person to
13 produce the evidence required by such subpoena.”.

14 **SEC. 6. REPORTING REQUIREMENTS.**

15 (a) DUTIES OF BOARD.—Paragraph (4) of section
16 1061(c) of the Intelligence Reform and Terrorism Preven-
17 tion Act of 2004 is amended to read as follows:

18 “(4) REPORTS.—

19 “(A) RECEIPT, REVIEW, AND SUBMIS-
20 SION.—

21 “(i) IN GENERAL.—The Board shall—

22 “(I) receive and review reports
23 from privacy officers and civil liberties
24 officers described in section 212; and

1 “(II) periodically submit, not less
2 than semiannually, reports to the ap-
3 propriate committees of Congress, in-
4 cluding the Committees on the Judici-
5 ary of the Senate and the House of
6 Representatives, the Committee on
7 Homeland Security and Governmental
8 Affairs of the Senate, the Committee
9 on Government Reform of the House
10 of Representatives, the Select Com-
11 mittee on Intelligence of the Senate,
12 and the Permanent Select Committee
13 on Intelligence of the House of Rep-
14 resentatives, and to the President.

15 Such reports shall be in unclassified form
16 to the greatest extent possible, with a clas-
17 sified annex where necessary.

18 “(ii) CONTENTS.—Not less than 2 re-
19 ports the Board submits each year under
20 clause (i)(II) shall include—

21 “(I) a description of the major
22 activities of the Board during the pre-
23 ceding period;

24 “(II) information on the findings,
25 conclusions, and recommendations of

1 the Board resulting from its advice
2 and oversight functions under sub-
3 section (c);

4 “(III) the minority views on any
5 findings, conclusions, and rec-
6 ommendations of the Board resulting
7 from its advice and oversight func-
8 tions under subsection (c); and

9 “(IV) each proposal reviewed by
10 the Board under subsection (c)(1)
11 that the Board advised against imple-
12 menting, but that notwithstanding
13 such advice, was implemented.

14 “(B) INFORMING THE PUBLIC.—The
15 Board shall—

16 “(i) make its reports, including its re-
17 ports to Congress, available to the public
18 to the greatest extent that is consistent
19 with the protection of classified informa-
20 tion and applicable law; and

21 “(ii) hold public hearings and other-
22 wise inform the public of its activities, as
23 appropriate and in a manner consistent
24 with the protection of classified informa-
25 tion and applicable law.”.

1 (b) PRIVACY AND CIVIL LIBERTIES OFFICERS.—Sec-
2 tion 1062 of the Intelligence Reform and Terrorism Pre-
3 vention Act of 2004 is amended to read as follows:

4 **“SEC. 1062. PRIVACY AND CIVIL LIBERTIES OFFICERS.**

5 “(a) DESIGNATION AND FUNCTIONS.—The Attorney
6 General, the Secretary of Defense, the Secretary of State,
7 the Secretary of the Treasury, the Secretary of Health and
8 Human Services, the Secretary of Homeland Security, the
9 National Intelligence Director, the Director of the Central
10 Intelligence Agency, any other entity within the intel-
11 ligence community (as defined in section 3 of the National
12 Security Act of 1947 (50 U.S.C. 401a)), and the head of
13 any other department, agency, or element of the executive
14 branch designated by the Privacy and Civil Liberties Over-
15 sight Board to be appropriate for coverage under this sec-
16 tion shall designate not less than 1 senior officer to—

17 “(1) assist the head of such department, agen-
18 cy, or element and other officials of such depart-
19 ment, agency, or element in appropriately consid-
20 ering privacy and civil liberties concerns when such
21 officials are proposing, developing, or implementing
22 laws, regulations, policies, procedures, or guidelines
23 related to efforts to protect the Nation against ter-
24 rorism;

1 “(2) periodically investigate and review depart-
2 ment, agency, or element actions, policies, proce-
3 dures, guidelines, and related laws and their imple-
4 mentation to ensure that such department, agency,
5 or element is adequately considering privacy and
6 civil liberties in its actions;

7 “(3) ensure that such department, agency, or
8 element has adequate procedures to receive, inves-
9 tigate, respond to, and redress complaints from indi-
10 viduals who allege such department, agency, or ele-
11 ment has violated their privacy or civil liberties; and

12 “(4) in providing advice on proposals to retain
13 or enhance a particular governmental power the offi-
14 cer shall consider whether such department, agency,
15 or element has established—

16 “(A) that the power actually enhances se-
17 curity and the need for the power is balanced
18 with the need to protect privacy and civil lib-
19 erties;

20 “(B) that there is adequate supervision of
21 the use by such department, agency, or element
22 of the power to ensure protection of privacy and
23 civil liberties; and

24 “(C) that there are adequate guidelines
25 and oversight to properly confine its use.

1 “(b) EXCEPTION TO DESIGNATION AUTHORITY.—

2 “(1) PRIVACY OFFICERS.—In any department,
3 agency, or element referred to in subsection (a) or
4 designated by the Board, which has a statutorily
5 created privacy officer, such officer shall perform the
6 functions specified in subsection (a) with respect to
7 privacy.

8 “(2) CIVIL LIBERTIES OFFICERS.—In any de-
9 partment, agency, or element referred to in sub-
10 section (a) or designated by the Board, which has a
11 statutorily created civil liberties officer, such officer
12 shall perform the functions specified in subsection
13 (a) with respect to civil liberties.

14 “(c) SUPERVISION AND COORDINATION.—Each pri-
15 vacy officer or civil liberties officer described in subsection
16 (a) or (b) shall—

17 “(1) report directly to the head of the depart-
18 ment, agency, or element concerned; and

19 “(2) coordinate their activities with the Inspec-
20 tor General of such department, agency, or element
21 to avoid duplication of effort.

22 “(d) AGENCY COOPERATION.—The head of each de-
23 partment, agency, or element shall ensure that each pri-
24 vacy officer and civil liberties officer—

1 “(1) has the information, material, and re-
2 sources necessary to fulfill the functions of such offi-
3 cer;

4 “(2) is advised of proposed policy changes;

5 “(3) is consulted by decisionmakers; and

6 “(4) is given access to material and personnel
7 the officer determines to be necessary to carry out
8 the functions of such officer.

9 “(e) REPRISAL FOR MAKING COMPLAINT.—No ac-
10 tion constituting a reprisal, or threat of reprisal, for mak-
11 ing a complaint or for disclosing information to a privacy
12 officer or civil liberties officer described in subsection (a)
13 or (b), or to the Privacy and Civil Liberties Oversight
14 Board, that indicates a possible violation of privacy protec-
15 tions or civil liberties in the administration of the pro-
16 grams and operations of the Federal Government relating
17 to efforts to protect the Nation from terrorism shall be
18 taken by any Federal employee in a position to take such
19 action, unless the complaint was made or the information
20 was disclosed with the knowledge that it was false or with
21 willful disregard for its truth or falsity.

22 “(f) PERIODIC REPORTS.—

23 “(1) IN GENERAL.—The privacy officers and
24 civil liberties officers of each department, agency, or
25 element referred to or described in subsection (a) or

1 (b) shall periodically, but not less than quarterly,
2 submit a report on the activities of such officers—

3 “(A)(i) to the appropriate committees of
4 Congress, including the Committees on the Ju-
5 diciary of the Senate and the House of Rep-
6 resentatives, the Committee on Homeland Secu-
7 rity and Governmental Affairs of the Senate,
8 the Committee on Government Reform of the
9 House of Representatives, the Select Committee
10 on Intelligence of the Senate, and the Perma-
11 nent Select Committee on Intelligence of the
12 House of Representatives;

13 “(ii) to the head of such department, agen-
14 cy, or element; and

15 “(iii) to the Privacy and Civil Liberties
16 Oversight Board; and

17 “(B) which shall be in unclassified form to
18 the greatest extent possible, with a classified
19 annex where necessary.

20 “(2) CONTENTS.—Each report submitted under
21 paragraph (1) shall include information on the dis-
22 charge of each of the functions of the officer con-
23 cerned, including—

24 “(A) information on the number and types
25 of reviews undertaken;

1 “(B) the type of advice provided and the
2 response given to such advice;

3 “(C) the number and nature of the com-
4 plaints received by the department, agency, or
5 element concerned for alleged violations; and

6 “(D) a summary of the disposition of such
7 complaints, the reviews and inquiries conducted,
8 and the impact of the activities of such officer.

9 “(g) INFORMING THE PUBLIC.—Each privacy officer
10 and civil liberties officer shall—

11 “(1) make the reports of such officer, including
12 reports to Congress, available to the public to the
13 greatest extent that is consistent with the protection
14 of classified information and applicable law; and

15 “(2) otherwise inform the public of the activi-
16 ties of such officer, as appropriate and in a manner
17 consistent with the protection of classified informa-
18 tion and applicable law.

19 “(h) SAVINGS CLAUSE.—Nothing in this section shall
20 be construed to limit or otherwise supplant any other au-
21 thorities or responsibilities provided by law to privacy offi-
22 cers or civil liberties officers.

23 “(i) PROTECTIONS FOR HUMAN RESEARCH SUB-
24 JECTS.—The Secretary of Homeland Security shall ensure
25 that the Department of Homeland Security complies with

1 the protections for human research subjects, as described
2 in part 46 of title 45, Code of Federal Regulations, or
3 in equivalent regulations as promulgated by such Sec-
4 retary, with respect to research that is conducted or sup-
5 ported by such Department.”.

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