

Calendar No. 665

109TH CONGRESS
2^D SESSION

S. 4051

To provide sufficient resources to permit electronic surveillance of United States persons for foreign intelligence purposes to be conducted pursuant to individualized court-issued orders for calls originating in the United States, to provide additional resources to enhance oversight and streamline the procedures of the Foreign Intelligence Surveillance Act of 1978, to ensure review of the Terrorist Surveillance Program by the United States Supreme Court, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2006

Mr. SPECTER introduced the following bill; which was read the first time

NOVEMBER 15, 2006

Read the second time and placed on the calendar

A BILL

To provide sufficient resources to permit electronic surveillance of United States persons for foreign intelligence purposes to be conducted pursuant to individualized court-issued orders for calls originating in the United States, to provide additional resources to enhance oversight and streamline the procedures of the Foreign Intelligence Surveillance Act of 1978, to ensure review of the Terrorist Surveillance Program by the United States Supreme Court, 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.**

4 This Act may be cited as the “Foreign Intelligence
5 Surveillance Oversight and Resource Enhancement Act of
6 2006”.

7 **TITLE I—ENHANCEMENT OF RE-**
8 **SOURCES AND PERSONNEL**
9 **FOR ELECTRONIC SURVEIL-**
10 **LANCE FOR FOREIGN INTEL-**
11 **LIGENCE PURPOSES**

12 **SEC. 101. FOREIGN INTELLIGENCE SURVEILLANCE COURT**
13 **MATTERS.**

14 (a) **AUTHORITY FOR ADDITIONAL JUDGES.**—Section
15 103(a) of the Foreign Intelligence Surveillance Act of
16 1978 (50 U.S.C. 1803(a)) is amended—

17 (1) by inserting “(1)” after “(a)”;

18 (2) in paragraph (1), as so designated, by in-
19 sserting “at least” before “seven of the United States
20 judicial circuits”;

21 (3) by designating the second sentence as para-
22 graph (4) and indenting such paragraph, as so des-
23 ignated, accordingly; and

24 (4) by inserting after paragraph (1), as so des-
25 ignated, the following new paragraph:

1 “(2) In addition to the judges designated under
2 paragraph (1), the Chief Justice of the United
3 States may designate as judges of the court estab-
4 lished by paragraph (1) such judges appointed under
5 Article III of the Constitution of the United States
6 as the Chief Justice determines appropriate in order
7 to provide for the prompt and timely consideration
8 under section 105 of applications under section 104
9 for electronic surveillance under this title. Any judge
10 designated under this paragraph shall be designated
11 publicly.”.

12 (b) CONSIDERATION OF EMERGENCY APPLICA-
13 TIONS.—Such section is further amended by inserting
14 after paragraph (2), as added by subsection (a) of this
15 section, the following new paragraph:

16 “(3) A judge of the court established by para-
17 graph (1) shall make a determination to approve,
18 deny, or seek modification of an application sub-
19 mitted under section subsection (f) or (g) of section
20 105 not later than 24 hours after the receipt of such
21 application by the court.”.

1 **SEC. 102. ADDITIONAL PERSONNEL FOR PREPARATION**
2 **AND CONSIDERATION OF APPLICATIONS FOR**
3 **ORDERS APPROVING ELECTRONIC SURVEIL-**
4 **LANCE.**

5 (a) OFFICE OF INTELLIGENCE POLICY AND RE-
6 VIEW.—

7 (1) ADDITIONAL PERSONNEL.—The Office of
8 Intelligence Policy and Review of the Department of
9 Justice is authorized such additional personnel, in-
10 cluding not fewer than 21 full-time attorneys, as
11 may be necessary to carry out the prompt and time-
12 ly preparation, modification, and review of applica-
13 tions under section 104 of the Foreign Intelligence
14 Surveillance Act of 1978 (50 U.S.C. 1804) for or-
15 ders under section 105 of that Act (50 U.S.C. 1805)
16 approving electronic surveillance for foreign intel-
17 ligence purposes.

18 (2) ASSIGNMENT.—The Attorney General shall
19 assign personnel authorized by paragraph (1) to and
20 among appropriate offices of the National Security
21 Agency in order that such personnel may directly as-
22 sist personnel of the Agency in preparing applica-
23 tions described in that paragraph.

24 (b) FEDERAL BUREAU OF INVESTIGATION.—

25 (1) ADDITIONAL LEGAL AND OTHER PER-
26 SONNEL.—The National Security Branch of the

1 Federal Bureau of Investigation is authorized such
2 additional legal and other personnel as may be nec-
3 essary to carry out the prompt and timely prepara-
4 tion of applications under section 104 of the Foreign
5 Intelligence Surveillance Act of 1978 for orders
6 under section 105 of that Act approving electronic
7 surveillance for foreign intelligence purposes.

8 (2) ASSIGNMENT.—The Director of the Federal
9 Bureau of Investigation shall assign personnel au-
10 thorized by paragraph (1) to and among the field of-
11 fices of the Federal Bureau of Investigation in order
12 that such personnel may directly assist personnel of
13 the Bureau in such field offices in preparing applica-
14 tions described in that paragraph.

15 (c) ADDITIONAL LEGAL AND OTHER PERSONNEL
16 FOR NATIONAL SECURITY AGENCY.—The National Secu-
17 rity Agency is authorized such additional legal and other
18 personnel as may be necessary to carry out the prompt
19 and timely preparation of applications under section 104
20 of the Foreign Intelligence Surveillance Act of 1978 for
21 orders under section 105 of that Act approving electronic
22 surveillance for foreign intelligence purposes.

23 (d) ADDITIONAL LEGAL AND OTHER PERSONNEL
24 FOR FOREIGN INTELLIGENCE SURVEILLANCE COURT.—
25 There is authorized for the Foreign Intelligence Surveil-

1 lance Court such additional personnel (other than judges)
2 as may be necessary to facilitate the prompt and timely
3 consideration by that Court of applications under section
4 104 of the Foreign Intelligence Surveillance Act of 1978
5 for orders under section 105 of that Act approving elec-
6 tronic surveillance for foreign intelligence purposes. Per-
7 sonnel authorized by this paragraph shall perform such
8 duties relating to the consideration of such applications
9 as that Court shall direct.

10 (e) SUPPLEMENT NOT SUPPLANT.—The personnel
11 authorized by this section are in addition to any other per-
12 sonnel authorized by law.

13 **SEC. 103. TRAINING OF FEDERAL BUREAU OF INVESTIGA-**
14 **TION AND NATIONAL SECURITY AGENCY PER-**
15 **SONNEL IN FOREIGN INTELLIGENCE SUR-**
16 **VEILLANCE MATTERS.**

17 The Director of the Federal Bureau of Investigation
18 and the Director of the National Security Agency shall
19 each, in consultation with the Attorney General—

20 (1) develop regulations establishing procedures
21 for conducting and seeking approval of electronic
22 surveillance on an emergency basis, and for pre-
23 paring and properly submitting and receiving appli-
24 cations and orders, under sections 104 and 105 of

1 the Foreign Intelligence Surveillance Act of 1978
2 (50 U.S.C. 1804 and 1805); and

3 (2) prescribe related training for the personnel
4 of the applicable agency.

5 **TITLE II—IMPROVEMENT OF**
6 **FOREIGN INTELLIGENCE**
7 **SURVEILLANCE AUTHORITY**

8 **SEC. 201. EXTENSION OF PERIOD FOR APPLICATIONS FOR**
9 **ORDERS FOR EMERGENCY ELECTRONIC SUR-**
10 **VEILLANCE.**

11 Section 105(f) of the Foreign Intelligence Surveil-
12 lance Act of 1978 (50 U.S.C. 1805(f)) is amended by
13 striking “72 hours” both places it appears and inserting
14 “168 hours”.

15 **SEC. 202. ACQUISITION OF FOREIGN-FOREIGN COMMU-**
16 **NICATIONS.**

17 (a) IN GENERAL.—Notwithstanding any other provi-
18 sion of this Act or the Foreign Intelligence Surveillance
19 Act of 1978 (50 U.S.C. 1801 et seq.), no court order shall
20 be required for the acquisition through electronic surveil-
21 lance of the contents of any communication between one
22 person who is not located within the United States and
23 another person who is not located within the United States
24 for the purpose of collecting foreign intelligence informa-

1 tion even if such communication passes through, or the
2 surveillance device is located within, the United States.

3 (b) TREATMENT OF INTERCEPTED COMMUNICATIONS
4 INVOLVING DOMESTIC PARTY.—If surveillance conducted,
5 as described in subsection (a), inadvertently collects a
6 communication in which at least one party is within the
7 United States, the contents of such communications shall
8 be handled in accordance with the minimization proce-
9 dures set forth in section 101(h)(4) of the Foreign Intel-
10 ligence Surveillance Act of 1978 (50 U.S.C. 1801(h)(4)).

11 (c) DEFINITIONS.—In this section, the terms “con-
12 tents”, “electronic surveillance”, and “foreign intelligence
13 information” have the meaning given such terms in sec-
14 tion 101 of the Foreign Intelligence Surveillance Act of
15 1978 (50 U.S.C. 1801).

16 **SEC. 203. INDIVIDUALIZED FISA APPLICATIONS.**

17 The contents of any wire or radio communication sent
18 by a person who is reasonably believed to be inside the
19 United States to a person outside the United States may
20 not be retained or used unless a court order authorized
21 under the Foreign Intelligence Surveillance Act is ob-
22 tained.

23 **SEC. 204. ISSUES RESERVED FOR THE COURTS.**

24 Nothing in this Act shall be deemed to amend those
25 provisions of FISA concerning any wire or radio commu-

1 nication sent from outside the United States to a person
 2 inside the United States. The constitutionality of such
 3 interceptions shall be determined by the courts, including
 4 the President’s claim that his article II authority super-
 5 sedes FISA.

6 **TITLE III—ENHANCED CONGRES-**
 7 **SIONAL OVERSIGHT AND SU-**
 8 **PREME COURT REVIEW OF**
 9 **THE TERRORIST SURVEIL-**
 10 **LANCE PROGRAM**

11 **SEC. 301. CONGRESSIONAL OVERSIGHT.**

12 (a) ELECTRONIC SURVEILLANCE UNDER FISA.—
 13 Section 108 of the Foreign Intelligence Surveillance Act
 14 of 1978 (50 U.S.C. 1808) is amended—

15 (1) in subsection (a)(2)—

16 (A) in subparagraph (B), by striking
 17 “and” at the end;

18 (B) in subparagraph (C), by striking the
 19 period and inserting “; and”; and

20 (C) by adding at the end the following:

21 “(D) the authority under which the elec-
 22 tronic surveillance is conducted.”; and

23 (2) by striking subsection (b) and inserting the
 24 following:

1 “(b) On a semiannual basis, the Attorney General ad-
2 ditionally shall fully inform the Permanent Select Com-
3 mittee on Intelligence of the House of Representatives and
4 the Select Committee on Intelligence of the Senate on elec-
5 tronic surveillance conducted without a court order.”.

6 (b) INTELLIGENCE ACTIVITIES.—The National Secu-
7 rity Act of 1947 (50 U.S.C. 401 et seq.) is amended—

8 (1) in section 501 (50 U.S.C. 413)—

9 (A) by redesignating subsection (f) as sub-
10 section (g); and

11 (B) by inserting after subsection (e) the
12 following new subsection:

13 “(f) The Chair of each of the congressional intel-
14 ligence committees, in consultation with the ranking mem-
15 ber of the committee for which the person is Chair, may
16 inform, on a bipartisan basis, all members or any indi-
17 vidual members of such committee of a report submitted
18 under subsection (a)(1) or subsection (b) as such Chair
19 considers necessary.”; and

20 (2) in section 502 (50 U.S.C. 414), by adding
21 at the end the following new subsection:

22 “(d) INFORMING OF COMMITTEE MEMBERS.—The
23 Chair of each of the congressional intelligence committees,
24 in consultation with the ranking member of the committee
25 for which the person is Chair, may inform, on a bipartisan

1 basis, all members or any individual members of such com-
 2 mittee of a report submitted under subsection (a) as such
 3 Chair considers necessary.”.

4 **SEC. 302. SUPREME COURT REVIEW OF THE TERRORIST**
 5 **SURVEILLANCE PROGRAM.**

6 (a) IN GENERAL.—Upon appeal by the United States
 7 or any party to the underlying proceedings, the Supreme
 8 Court of the United States shall review the final decision
 9 of any United States court of appeal concerning the legal-
 10 ity of the Terrorist Surveillance Program.

11 (b) EXPEDITED CONSIDERATION.—It shall be the
 12 duty of the Supreme Court of the United States to ad-
 13 vance on the docket and to expedite to the greatest pos-
 14 sible extent the disposition of any matter brought under
 15 subsection (a).

16 (c) DEFINITION.—In this section, the term “Ter-
 17 rorist Surveillance Program” means the program identi-
 18 fied by the President of the United States on December
 19 17, 2005, to intercept international communications into
 20 and out of the United States of persons linked to al Qaeda
 21 or related terrorist organizations.

22 **TITLE IV—OTHER MATTERS**

23 **SEC. 401. DEFINITION.**

24 In this Act, the term “Foreign Intelligence Surveil-
 25 lance Court” means the court established by section

1 103(a) of the Foreign Intelligence Surveillance Act of
2 1978 (50 U.S.C. 1803(a)).

3 **SEC. 402. AUTHORIZATION OF APPROPRIATIONS.**

4 There is authorized to be appropriated such sums as
5 may be necessary to carry out this Act and the amend-
6 ments made by this Act.

7 **SEC. 403. EFFECTIVE DATE.**

8 This Act, and the amendments made by this Act,
9 shall take effect on the date that is 30 days after the date
10 of the enactment of this Act.

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