

113TH CONGRESS  
1ST SESSION

# S. 1460

To create two additional judge positions on the court established by the Foreign Intelligence Surveillance Act of 1978 and modify the procedures for the appointment of judges to that court, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2013

Mr. BLUMENTHAL (for himself, Mr. WYDEN, Mr. UDALL of New Mexico, Mr. TESTER, Ms. BALDWIN, Mr. HEINRICH, Mr. SCHATZ, Mr. DURBIN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To create two additional judge positions on the court established by the Foreign Intelligence Surveillance Act of 1978 and modify the procedures for the appointment of judges to that 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 “FISA Judge Selection  
5 Reform Act of 2013”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1           (1) FISA COURT.—The term “FISA Court”  
2 means the court established under section 103(a) of  
3 the Foreign Intelligence Surveillance Act of 1978  
4 (50 U.S.C. 1803(a)).

5           (2) FISA COURT OF REVIEW.—The term  
6 “FISA Court of Review” means the court of review  
7 established under section 103(b) of the Foreign In-  
8 telligence Surveillance Act of 1978 (50 U.S.C.  
9 1803(b)).

10 **SEC. 3. REFORMS TO THE FOREIGN INTELLIGENCE SUR-**  
11 **VEILLANCE COURT.**

12           (a) FISA COURT JUDGES.—

13           (1) NUMBER AND DESIGNATION OF JUDGES.—  
14 Section 103(a)(1) of the Foreign Intelligence Sur-  
15 veillance Act of 1978 (50 U.S.C. 1803(a)(1)) is  
16 amended to read as follows:

17           “(1)(A) There is a court (referred to in this para-  
18 graph as the ‘FISA Court’) which shall have jurisdiction  
19 to hear applications for and to grant orders approving  
20 electronic surveillance anywhere within the United States  
21 under the procedures set forth in this Act.

22           “(B)(i) The FISA Court shall consist of 13 judges,  
23 one of whom shall be designated from each judicial circuit  
24 (including the United States Court of Appeals for the Dis-

1 triet of Columbia and the United States Court of Appeals  
2 for the Federal Circuit).

3 “(ii) The Chief Justice of the United States shall—

4 “(I) designate each judge of the FISA Court  
5 from the nominations made under subparagraph  
6 (C); and

7 “(II) make the name of each judge of the FISA  
8 Court available to the public.

9 “(C)(i) When a vacancy occurs in the position of a  
10 judge of FISA Court from a judicial circuit, the chief  
11 judge of the circuit shall propose a district judge for a  
12 judicial district within the judicial circuit to be designated  
13 for that position.

14 “(ii) If the Chief Justice does not designate a district  
15 judge proposed under clause (i), the chief judge shall pro-  
16 pose 2 other district judges for a judicial district within  
17 the judicial circuit to be designated for that position and  
18 the Chief Justice shall designate 1 such district judge to  
19 that position.

20 “(D) No judge of the FISA Court (except when sit-  
21 ting en banc under paragraph (2)) shall hear the same  
22 application for electronic surveillance under this Act which  
23 has been denied previously by another judge of the FISA  
24 Court.

1       “(E) If any judge of the FISA Court denies an appli-  
2 cation for an order authorizing electronic surveillance  
3 under this Act, such judge shall provide immediately for  
4 the record a written statement of each reason for the  
5 judge’s decision and, on motion of the United States, the  
6 record shall be transmitted, under seal, to the court of  
7 review established in subsection (b).”.

8           (2) TENURE.—Section 103(d) of the Foreign  
9 Intelligence Surveillance Act of 1978 (50 U.S.C.  
10 1803(b)) is amended by striking “redesignation,”  
11 and all that follows through the end and inserting  
12 “redesignation.”.

13           (3) IMPLEMENTATION.—

14           (A) INCUMBENTS.—A district judge des-  
15 igned to serve on the court established under  
16 section 103(a) of the Foreign Intelligence Sur-  
17 veillance Act of 1978 (50 U.S.C. 1803(a)) be-  
18 fore the date of enactment of this Act may con-  
19 tinue to serve in that position until the end of  
20 the term of the district judge under section  
21 103(d) of such Act, as in effect on the day be-  
22 fore the date of enactment of this Act.

23           (B) INITIAL APPOINTMENT AND TERM.—  
24 Notwithstanding any provision of section 103 of  
25 the Foreign Intelligence Surveillance Act of

1           1978 (50 U.S.C. 1803), as amended by para-  
2           graphs (1) and (2), and not later than 180 days  
3           after the date of enactment of this Act, the  
4           Chief Justice of the United States shall—

5                   (i) designate a district court judge  
6                   who is serving in a judicial district within  
7                   the District of Columbia circuit and pro-  
8                   posed by the chief judge of such circuit to  
9                   be a judge of the FISA Court for an initial  
10                  term of 7 years; and

11                   (ii) designate a district court judge  
12                   who is serving in a judicial district within  
13                   the Federal circuit and proposed by the  
14                   chief judge of such circuit to be a judge of  
15                   the FISA Court for an initial term of 4  
16                  years.

17           (b) COURT OF REVIEW.—Section 103(b) of the For-  
18           eign Intelligence Surveillance Act of 1978 (50 U.S.C.  
19           1803(b)) is amended—

20                   (1) by striking “The Chief Justice” and insert-  
21                   ing “(1) Subject to paragraph (2), the Chief Jus-  
22                   tice”; and

23                   (2) by adding at the end the following:

24                   “(2) The Chief Justice may designate a district court  
25                   judge or circuit court judge to a position on the court es-

1 tablished under paragraph (1) only if at least 5 associate  
2 justices approve the designation of such individual.”.

3 **SEC. 4. STUDY AND REPORT ON DIVERSITY AND REP-**  
4 **RESENTATION ON THE FISA COURTS.**

5 (a) STUDY.—The Committee on Intercircuit Assign-  
6 ments of the Judicial Conference of the United States  
7 shall carry out a study on how to ensure judges are ap-  
8 pointed to the FISA Court and the FISA Court of Review  
9 in a manner that ensures such Courts are diverse and rep-  
10 resentative.

11 (b) REPORT.—Not later than 1 year after the date  
12 of the enactment of this Act, the Committee on Intercir-  
13 cuit Assignments shall submit to Congress a report on the  
14 study carried out under subsection (a).

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