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INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2016

JULY 16, 2015.—Ordered to be printed

Mr. BURR, from the Select Committee on Intelligence,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1705]

The Select Committee on Intelligence, having considered an original bill (S. 1705) to authorize appropriations for Fiscal Year 2016 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability, and for other purposes, reports favorably thereon and recommends that the bill do pass.

CLASSIFIED ANNEX TO THE COMMITTEE REPORT

On February 2, 2015, acting pursuant to Section 364 of the Intelligence Authorization Act for Fiscal Year 2010 (Public Law 111-259), the Director of National Intelligence (DNI) publicly disclosed that the President's aggregate request for the National Intelligence Program (NIP) for Fiscal Year 2016 is \$53.9 billion. Other than for limited unclassified appropriations, primarily the Intelligence Community Management Account, the classified nature of United States intelligence activities precludes any further disclosure, including by the Committee, of the details of its budgetary recommendations. Accordingly, the Committee has prepared a classified annex to this report that contains a classified Schedule of Authorizations. The classified Schedule of Authorizations is incorporated by reference in the Act and has the legal status of public

law. The classified annex is made available to the Committees on Appropriations of the Senate and the House of Representatives and to the President. It is also available for review by any Member of the Senate subject to the provisions of Senate Resolution 400 of the 94th Congress (1976).

SECTION-BY-SECTION ANALYSIS AND EXPLANATION

The following is a section-by-section analysis and explanation of the Intelligence Authorization Act for Fiscal Year 2016 that is being reported by the Committee.

TITLE I—BUDGET AND PERSONNEL AUTHORIZATIONS

Section 101. Authorization of appropriations

Section 101 lists the United States Government departments, agencies, and other elements for which the Act authorizes appropriations for intelligence and intelligence-related activities for Fiscal Year 2016.

Section 102. Classified Schedule of Authorizations

Section 102 provides that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and the applicable personnel levels by program for Fiscal Year 2016 are contained in the classified Schedule of Authorizations and that the classified Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President.

Section 103. Personnel ceiling adjustments

Section 103 is intended to provide additional flexibility to the DNI in managing the civilian personnel of the Intelligence Community (IC). Section 103 provides that the DNI may authorize employment of civilian personnel (expressed as full-time equivalent positions) in Fiscal Year 2016 in excess of the number of authorized positions by an amount not exceeding three percent of the total limit applicable to each IC element under Section 102. The DNI may do so only if necessary to the performance of important intelligence functions, and must notify the congressional intelligence committees in writing at least 15 days prior to each exercise of this authority.

Section 104. Intelligence Community Management Account

Section 104 authorizes appropriations for the Intelligence Community Management Account (ICMA) of the ODNI and sets the authorized personnel levels for the elements within the ICMA for Fiscal Year 2016.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 201. Authorization of appropriations

Section 201 authorizes appropriations in the amount of \$514,000,000 for Fiscal Year 2016 for the Central Intelligence Agency (CIA) Retirement and Disability Fund.

TITLE III—GENERAL INTELLIGENCE COMMUNITY MATTERS

Section 301. Increase in employee compensation and benefits authorized by law

Section 301 provides that funds authorized to be appropriated by this Act for salary, pay, retirement, and other benefits for federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in compensation or benefits authorized by law.

Section 302. Restriction on conduct of intelligence activities

Section 302 provides that the authorization of appropriations by the Act shall not be deemed to constitute authority for the conduct of any intelligence activity that is not otherwise authorized by the Constitution or laws of the United States.

Section 303. Notification of appointment and separation of senior level personnel of the intelligence community

Section 303 requires the DNI to establish a policy to ensure that the head of each appropriate element of the Intelligence Community shall notify the appropriate congressional committees, quarterly, of each appointment of an individual to a senior level position, separation from a senior level position, or reassignment within the senior level framework, during the previous 3-month period.

A notification of appointment shall include a summary of the significant previous employment and accomplishments of the individual, such as a career biography and any academic degrees earned, and any other information appropriate to demonstrate that the individual is well-qualified to meet the needs of the intelligence community and that there is no significant and credible information to suggest that the individual is unfit or unqualified for such a position.

A notification of separation shall include the effective date of an individual's separation from a senior level position.

TITLE IV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

Subtitle A—Director of National Intelligence

Section 401. Appointment and confirmation of the National Counterintelligence Executive

Section 401 makes subject to Presidential appointment and Senate confirmation, the Executive Branch position of National Counterintelligence Executive (NCIX), which was created by the 2002 Counterintelligence Enhancement Act. Effective December 2014, the NCIX was also dual-hatted as the Director of the National Counterintelligence and Security Center.

Section 402. Inclusion of Inspector General of the Intelligence Community in Council of Inspectors General on Integrity and Efficiency

Section 402 affirms that the Inspector General of the Intelligence Community (ICIG) is a member of the Council of the Inspectors General on Integrity and Efficiency.

Section 403. Provision of information and assistance to Inspector General of the Intelligence Community

Section 403 amends the National Security Act of 1947 to clarify the ICIG's authority to seek information and assistance from state and local governmental agencies or units thereof in addition to federal agencies.

Subtitle B—Central Intelligence Agency

Section 411. Analytic Objectivity Review

The ODNI's Analytic Integrity and Standards (AIS) office was established in response to the requirement in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) for the designation of an entity responsible for ensuring that the Intelligence Community's finished intelligence products are timely, objective, independent of political considerations, based upon all sources of available intelligence, and demonstrative of the standards of proper analytic tradecraft.

Consistent with responsibilities prescribed under IRTPA, Section 411 requires the DNI to assign the AIS Chief, in consultation with the Senior Analytic Service at the CIA, with conducting a review of finished intelligence products produced by the CIA to assess whether the reorganization of the Agency, announced publicly on March 6, 2015, has resulted in any loss of analytic objectivity. The report is due two years from the date that the reorganization was announced, March 6, 2017.

Section 412. Authorities of the Inspector General for the Central Intelligence Agency

Section 412 amends the CIA Act of 1949 to make a technical correction to Section 17 and to clarify the CIA Inspector General's authority to seek information and assistance from state and local governmental agencies or units thereof, in addition to federal agencies, and to make technical changes to the Inspector General's personnel authorities in the same paragraph.

TITLE V—MATTERS RELATING TO FOREIGN COUNTRIES

Subtitle A—Matters Relating to Russia

Section 501. Notice of deployment or transfer of Club-K container missile system by the Russian Federation

Section 501 requires the DNI to submit written notice to the appropriate congressional committees if the Intelligence Community receives intelligence that the Russian Federation has deployed, or is about to deploy, the Club-K container missile system through the Russian military, or transferred or sold, or intends to transfer or sell, such system to another state or non-state actor.

Section 502. Assessment on the funding of political parties and non-governmental organizations by the Russian Federation

Section 502 requires the DNI to submit an Intelligence Community assessment to the appropriate congressional committees concerning the funding of political parties and non-governmental organizations in the former Soviet States and Europe by the Russian

Federation and the Russian Federation security and intelligence services since January 1, 2006, not later than 180 days after the enactment of the Fiscal Year 2016 Intelligence Authorization Act.

Section 503. Assessment on the use of political assassinations as a form of statecraft by the Russian Federation

Section 503 requires the DNI to submit an Intelligence Community assessment concerning the use of political assassinations as a form of statecraft by the Russian Federation to the appropriate congressional committees, not later than 180 days after the enactment of the Fiscal Year 2016 Intelligence Authorization Act.

Subtitle B—Matters Relating to Other Countries

Section 511. Report of resources and collection posture with regard to the South China Sea and East China Sea

Section 511 requires the DNI to submit to the appropriate congressional committees an Intelligence Community assessment on Intelligence Community resourcing and collection posture with regard to the South China Sea and East China Sea, not later than 180 days after the enactment of the Fiscal Year 2016 Intelligence Authorization Act.

Section 512. Replacement of locally employed staff serving at United States diplomatic facilities in Cuba

Section 512 requires the Secretary of State, not later than one year after the date of the enactment of this Act, to ensure that every supervisory position at a United States diplomatic facility in Cuba is occupied by a citizen of the United States who has passed a thorough background check. Further, not later than 180 days after the date of the enactment of this Act, the provision requires the Secretary of State, in coordination with other appropriate government agencies, to submit to the appropriate congressional committees a plan to further reduce the reliance on locally employed staff in United States diplomatic facilities in Cuba. The plan shall, at a minimum, include cost estimates, timelines, and numbers of employees to be replaced.

Section 513. Inclusion of sensitive compartmented information facilities in United States diplomatic facilities in Cuba

Section 513 requires that each United States diplomatic facility in Cuba that is constructed, or undergoes a construction upgrade, be constructed to include a sensitive compartmented information facility.

Section 514. Report on use by Iran of funds made available through sanctions relief

Section 514 requires the DNI, in consultation with the Secretary of the Treasury, to submit to the appropriate congressional committees a report assessing the monetary value of any direct or indirect form of sanctions relief Iran has received since the Joint Plan of Action (JPOA) entered into effect, and how Iran has used funds made available through such sanctions relief. This report shall be submitted every 180 days while the JPOA is in effect, and not later than 1 year after an agreement relating to Iran's nuclear program

takes effect, and annually thereafter while that agreement remains in effect.

TITLE VI—GENERAL PROVISIONS

Section 601. Intelligence oversight exception for contractual non-disclosure provisions

Section 601 provides that no provision of a contract with an element of the Intelligence Community that prohibits the disclosure of information may be construed to prohibit the Intelligence Community from providing information to the congressional intelligence committees.

The section would also preclude as a cause of action the provision of information pertinent to or arising from the contractual agreement, consistent with Congressional reporting obligations.

Section 602. Notification of changes to retention of call detail record policies

Section 602 requires the DNI to notify the appropriate congressional committees in writing not later than 15 days after learning that an electronic communications service provider that generates call detail records in the ordinary course of business has changed its policy on the retention of such call details records to result in a retention period of less than 18 months.

Section 603. Requirement to report terrorist activities and the unlawful distribution of information relating to explosives

Section 603 requires companies providing an interstate electronic communication service or remote computing service to the public to report to appropriate authorities as determined by the Attorney General when they know their technology is being used to carry out a potential terrorist attack, similar to the process required by existing federal law in cases of child pornography.

Section 604. Broadening the scope of Office of the Director of National Intelligence tradecraft review

As required by IRTPA, ODNI's AIS office conducts a regular, detailed review of finished intelligence products, aimed at continually monitoring the quality of the Intelligence Community's analytic work product.

Section 604 amends section 1019 of IRTPA by broadening reviews of finished intelligence products conducted by AIS to include an explanation of how substantially similar, contemporaneous intelligence products are distinct in terms of source material, timeframe, methodology, or other distinguishing analytic characteristic.

Section 605. Strategy for comprehensive interagency review of the United States national security overhead satellite architecture

Section 605 requires the DNI, in collaboration with the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff, to develop a strategy, with milestones and benchmarks, to ensure that there is a comprehensive interagency review of policies and practices for planning and acquiring national security satellite systems and architectures, including the capabilities of commercial systems and partner countries, consistent with the National Space Policy

issued on June 28, 2010. Where applicable, this strategy shall account for the unique missions and authorities vested in the Department of Defense and the Intelligence Community.

Section 606. Unauthorized dealings in special nuclear material

Section 606 includes the DNI among the senior government officials with whom the Secretary of Energy must consult, prior to issuing authorization to directly or indirectly engage or participate in the development or production of any special nuclear material outside the United States, by amending the Atomic Energy Act of 1954 (42 U.S.C. 2077).

Section 607. Enhancing government personnel security programs

Section 607 directs the DNI to develop and implement a plan for eliminating the backlog of overdue periodic investigations, and further requires the DNI to direct each agency to implement a program to provide enhanced security review to individuals determined eligible for access to classified information or eligible to hold a sensitive position.

These enhanced personnel security programs, which will integrate information relevant to suitability for access to classified information, and be conducted at least 2 times every 5 years, are to commence not later than 5 years after the date of enactment of the Fiscal Year 2016 Intelligence Authorization Act, or the elimination of the backlog of overdue periodic investigations, whichever occurs first.

Section 608. Technical amendments relating to pay under title 5, United States Code

Section 608 amends 5 U.S.C. § 5102(a)(1) to expressly exclude the ODNI from the provisions of chapter 51 of title 5, relating to position classification, pay, and allowances for General Schedule employees, which do not apply to ODNI by virtue of the National Security Act. Section 102A(m) of the National Security Act of 1947 (50 U.S.C. § 3024) provides that the DNI may “exercise with respect to the personnel of the ODNI any authority of the Director of the Central Intelligence Agency . . . under the Central Intelligence Agency Act of 1949 . . . and other applicable provisions of law, as of December 17, 2004.” As the exclusion of the CIA from the definition of an agency in chapter 51 was in effect as of that date, the ODNI is also excluded from chapter 51 by section 102A(m) of the National Security Act. This proposal would have no substantive effect except to align the two statutes.

COMMITTEE COMMENTS

Declassification review of video of the 2012 Benghazi Terrorist Attacks

Numerous investigations have been conducted regarding the 2012 terrorist attack against U.S. facilities in Benghazi. This Committee produced one of the first declassified Congressional reports and continues to believe that the public should have access to information about the attacks, so long as it does not jeopardize intelligence sources and methods.

The closed circuit television videos from the Temporary Mission Facility (TMF) captured some of the activity that took place at the State Department facility on September 11, 2012, and their release would contribute to the public's understanding of the event without compromising sources or methods.

Therefore, the Committee directs the DNI, or the appropriate federal official, to conduct a declassification review and to facilitate the release to the public of the declassified closed-circuit television videos of the September 11, 2012 terrorist attack on the TMF in Benghazi, Libya, consistent with the protection of sources and methods, not later than 120 days after the enactment of this Act.

COMMITTEE ACTION

On June 24, 2015, a quorum being present, the Committee met to consider the bill and amendments. The Committee took the following actions:

Votes on amendments to committee bill, this report, and the classified annex

By unanimous consent, the Committee moved to consideration of the Chairman and Vice Chairman Mark and the classified annex.

The Committee moved to consideration *en bloc* of four amendments by Senator Burr and Senator Feinstein that made changes to the classified annex, an amendment by Senator Rubio that made changes to the classified annex, and five amendments by Senator Warner that made changes to the classified annex. By voice vote, the Committee agreed *en bloc* to the amendments.

The Committee moved to consideration *en bloc* of an amendment by Senator Rubio that requires a report on the use by Iran of funds made available through sanctions relief, an amendment by Senator Collins that enhances government personnel security programs, and an amendment by Senator Cotton that requires that the DNI be consulted before the Department of Energy issues authorization to directly or indirectly engage or participate in the development or production of any special nuclear material outside the United States. By voice vote, the Committee agreed *en bloc* to the amendments.

The Committee moved to consideration of an amendment by Senator Feinstein that requires the DNI to establish a policy to ensure the appropriate congressional committees are notified, quarterly, of each appointment of an individual to or separation from a senior level position in the IC during the previous 3-month period. The amendment, as modified by Senator Feinstein and Senator Collins, was adopted by voice vote.

The Committee moved to consideration of an amendment by Senator Cotton that made changes to the classified annex. The amendment, as modified by Senator Cotton, was adopted by voice vote.

The Committee moved to consideration of an amendment by Senator Warner that made changes to the classified annex. The amendment, as modified by Senator Warner, was adopted by voice vote.

The Committee authorized the staff to make technical and conforming changes in the bill, report, and classified annex, following the completion of the mark-up.

Vote to report the committee bill

The Committee voted to report the bill, as amended, by a vote of 15 ayes to 0 noes. The votes in person or by proxy were as follows: Chairman Burr—aye; Senator Risch—aye; Senator Coats—aye; Senator Rubio—aye; Senator Collins—aye; Senator Blunt—aye; Senator Lankford—aye; Senator Cotton—aye; Vice Chairman Feinstein—aye; Senator Wyden—aye; Senator Mikulski—aye; Senator Warner—aye; Senator Heinrich—aye; Senator King—aye; and Senator Hirono—aye.

COMPLIANCE WITH RULE XLIV

Rule XLIV of the Standing Rules of the Senate requires publication of a list of any “congressionally directed spending item, limited tax benefit, and limited tariff benefit” that is included in the bill or the Committee report accompanying the bill. Consistent with the determination of the Committee not to create any congressionally directed spending items or earmarks, none have been included in the bill, the report to accompany it, or the classified schedule of authorizations. The bill, report, and classified schedule also contain no limited tax benefits or limited tariff benefits.

ESTIMATE OF COSTS

Pursuant to paragraph 11(a)(3) of rule XXVI of the Standing Rules of the Senate, the Committee deems it impractical to include an estimate of the costs incurred in carrying out the provisions of this report due to the classified nature of the operations conducted pursuant to this legislation. On June 26, 2015, the Committee transmitted this bill to the Congressional Budget Office and requested an estimate of the costs incurred in carrying out the unclassified provisions.

EVALUATION OF REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds that no substantial regulatory impact will be incurred by implementing the provisions of this legislation.

ADDITIONAL VIEWS OF SENATORS WYDEN, HEINRICH, AND
HIRONO

We appreciate the bipartisan work that our colleagues have put into assembling this bill. We look forward to further discussion as it moves forward, especially on those provisions that have not yet been subject to public debate. We are particularly interested to hear from Internet and communications companies regarding Section 603, which would require these companies to notify authorities if they become aware of terrorist activity. Since this provision expressly does not require these companies to monitor their users, it appears to us that this would not actually change the current practices of these companies, and we will confirm that point with those companies before the full Senate considers this legislation on the floor.

We are disappointed that an amendment that we filed to expand the mandate and responsibilities of the Privacy and Civil Liberties Oversight Board (PCLOB) was not accepted, but we look forward to future opportunities to strengthen oversight of intelligence activities. We certainly do not look favorably on a provision in the House-passed FY 2016 Intelligence Authorization Act (H.R. 2596) that would restrict PCLOB's mandate.

Additionally, there are certain provisions in the classified annex accompanying the bill that do not precisely reflect our positions, and we have addressed those provisions in more detailed classified additional views filed with that annex.

RON WYDEN.
MARTIN HEINRICH.
MAZIE K. HIRONO.

ADDITIONAL VIEWS OF SENATORS WARNER, KING, RUBIO,
HIRONO, AND MIKULSKI

This legislation includes an amendment we supported to require a comprehensive approach to the overhead satellite architecture that supports U.S. intelligence and defense programs.

We believe this bill sends a strong message that we need a strategy for our space architecture that safeguards our national security by taking advantage of cutting-edge technology. The U.S. is in danger of losing our technological edge due to our current overreliance on a big-government acquisition model. Our current approach to overhead satellites is increasingly unsustainable due to growing costs, long design time, lack of competition, and an inability to take advantage of rapid innovation in the private sector. Given the cost of maintaining our satellite infrastructure and the dangers and constraints imposed by the threat of anti-satellite weapons, our space infrastructure will be stronger and more efficient if it integrates commercial capabilities into government solutions.

On September 23, 1971, National Security Adviser Henry Kissinger issued a short memo regarding President Nixon's decision to pursue the first electro-optical imaging (EOI) satellite, to be undertaken "under a realistic funding program, with a view toward achieving an operational capability in 1976." It took almost exactly five years to design and launch the first KH-11 satellite into orbit on December 19, 1976. The United States needs to get back to this kind of timeline in designing and launching overhead reconnaissance satellites. We cannot afford to wait a decade or more from design to launch of a satellite if the United States is to maintain its technological edge.

Our amendment also recognizes that space is no longer an uncontested environment, as it once was, and that the U.S. government must be open to innovative solutions such as distributed, disaggregated architectures that could allow for better resiliency against the space threat, and also allow for ready reconstitution, constant replenishment, and frequent technological refresh. Moreover, the current cost-constrained budget environment dictates that the U.S. must more seriously consider the costs of space systems and be open to potentially less expensive alternatives that include commercial solutions.

In April 2009, Secretary of Defense Robert Gates said that the United States needed to reform acquisition practices across the Department of Defense, that the costs of the "exquisite solution" were making defense unaffordable, and that "we needed to shift away from the 99-percent exquisite service-centric platforms that are so costly and so complex that they take forever to build and only then in very limited quantities. With the pace of technological and geopolitical change and the range of possible contingencies, we must

look more to the 80-percent multi-service solution that can be produced on time, on budget and in significant numbers.”

In line with Secretary Gates’s thinking about the “80-percent solution,” the U.S. National Space Policy issued on June 28, 2010, already states that to the maximum extent possible, the U.S. government should use commercial space capabilities when these are available, and develop “exquisite” governmental space systems “only when it is in the national interest and there is no suitable, cost-effective United States commercial or, as appropriate, foreign commercial service or system that is or will be available.”

Therefore, consistent with the National Space Policy, we believe the U.S. government should make maximum use of mature commercial space capabilities and acquisition practices for national security systems where the required performance can be met with commodity technology to reduce acquisition timelines and costs, promote competition, capitalize on the pace of commercial technology advances, and avoid unnecessary government-unique investments. National Intelligence and Department of Defense investments in technology development utilizing a unique, dedicated industrial base should only be reserved for cases where commercial commodity technology does not exist or where revolutionary technology is judged to be achievable and worth the attendant risk, cost, and time to acquire.

Satellite systems and architectures should also be designed in such a way that a number of elements common to multiple spacecraft could be standardized, to reduce costs, simplify execution and preserve a competitive industrial base; and the entire overhead satellite architecture of the United States, including programs funded by the Department of Defense or by an element of the intelligence community, commercial providers, and foreign partners, should be viewed and treated as an integrated whole, not simply as a series of independent and unrelated satellite systems.

Given the importance of space systems to the national security and their huge costs, we believe that the current state of the U.S. space systems architecture, and planning for the future architecture, should receive priority attention from the President, his senior national security and scientific advisors, the Director of National Intelligence, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff.

Our amendment therefore requires the Director of National Intelligence, the Secretary of Defense and Chairman of the Joint Chiefs to develop a strategy—with milestones and benchmarks—to ensure that the nation’s satellite architecture meets the nation’s needs in peace- and war-time; responsibly stewards the taxpayers’ dollars; accurately takes into account cost- and performance tradeoffs of the architecture; meets realistic requirements; produces and fosters excellence, innovation and competition; produces innovative satellite systems in under five years that can leverage common, standardized design elements and commercially-available technologies; takes advantage of rapid advances in commercial technology, innovation and commercial-like acquisition practices; and fosters competition and a robust industrial base.

MARK R. WARNER.
ANGUS S. KING.
MARCO RUBIO.
MAZIE K. HIRONO.
BARBARA A. MIKULSKI.

