

to a record provided to the Office by an element of the intelligence community from the exempted operational files of such element.

“(2) Paragraph (1) shall not apply with respect to a record of the Office that—

“(A) contains information derived or disseminated from an exempted operational file, unless such record is created by the Office for the sole purpose of organizing such exempted operational file for use by the Office;

“(B) is disseminated by the Office to a person other than an officer, employee, or contractor of the Office; or

“(C) is no longer designated as an exempted operational file in accordance with this title.

“(b) EFFECT OF PROVIDING FILES TO ODNI.—Notwithstanding any other provision of this title, an exempted operational file that is provided to the Office by an element of the intelligence community shall not be subject to the provisions of section 552 of title 5, United States Code, that require search, review, publication, or disclosure of a record solely because such element provides such exempted operational file to the Office.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘exempted operational file’ means a file of an element of the intelligence community that, in accordance with this title, is exempted from the provisions of section 552 of title 5, United States Code, that require search, review, publication, or disclosure of such file.

“(2) Except as otherwise specifically provided, the term ‘Office’ means the Office of the Director of National Intelligence.

“(d) SEARCH AND REVIEW FOR CERTAIN PURPOSES.—Notwithstanding subsection (a) or (b), exempted operational files shall continue to be subject to search and review for information concerning any of the following:

“(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5, United States Code.

“(2) Any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code.

“(3) The specific subject matter of an investigation for any impropriety or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity by any of the following:

“(A) The Select Committee on Intelligence of the Senate.

“(B) The Permanent Select Committee on Intelligence of the House of Representatives.

“(C) The Intelligence Oversight Board.

“(D) The Department of Justice.

“(E) The Office.

“(F) The Office of the Inspector General of the Intelligence Community.

“(e) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every 10 years, the Director of National Intelligence shall review the operational files exempted under subsection (a) to determine whether such files, or any portion of such files, may be removed from the category of exempted files.

“(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

“(3) A complainant that alleges that the Director of National Intelligence has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of

the parties reside, or in the District of Columbia. In such a proceeding, the court’s review shall be limited to determining the following:

“(A) Whether the Director has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2010 or before the expiration of the 10-year period beginning on the date of the most recent review.

“(B) Whether the Director of National Intelligence, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

“(f) SUPERSEURE OF OTHER LAWS.—The provisions of this section may not be superseded except by a provision of law that is enacted after the date of the enactment of this section and that specifically cites and repeals or modifies such provisions.

“(g) ALLEGATION; IMPROPER WITHHOLDING OF RECORDS; JUDICIAL REVIEW.—(1) Except as provided in paragraph (2), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that the Office has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

“(2) Judicial review shall not be available in the manner provided for under paragraph (1) as follows:

“(A) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by the Office, such information shall be examined *ex parte*, *in camera* by the court.

“(B) The court shall determine, to the fullest extent practicable, the issues of fact based on sworn written submissions of the parties.

“(C)(i) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the Office shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted files likely to contain responsive records are records provided to the Office by an element of the intelligence community from the exempted operational files of such element.

“(ii) The court may not order the Office to review the content of any exempted file or files in order to make the demonstration required under clause (i), unless the complainant disputes the Office’s showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

“(D) In proceedings under subparagraph (C), a party may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

“(E) If the court finds under this subsection that the Office has improperly withheld requested records because of failure to comply with any provision of this section, the court shall order the Office to search and review the appropriate exempted file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code, and such order shall be the exclusive remedy for failure to comply with this section.

“(F) If at any time following the filing of a complaint pursuant to this paragraph the Office agrees to search the appropriate exempted file or files for the requested records,

the court shall dismiss the claim based upon such complaint.”

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947 is amended by inserting after the item relating to section 705 the following new item:

“Sec. 706. Protection of certain files of the Office of the Director of National Intelligence.”

On page 214, line 6, insert “, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives” after “committees”.

On page 252, line 8, strike “2009,” and insert “2010.”

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on September 16, 2009, at 2:30 p.m., to hold a hearing entitled “Exploring Three Strategies for Afghanistan.”

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on September 16, 2009, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on September 16, 2009, at 2 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. MURRAY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on September 16, 2009, at 10 a.m. in room SD-226 of the Dirksen Senate Office Building, to conduct a hearing entitled “Oversight of the Federal Bureau of Investigation.”

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Committee on Small Business and Entrepreneurship be authorized to meet during the session of the Senate on September 16, 2009.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SCIENCE AND SPACE

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Subcommittee on Science and Space of the Committee on Commerce, Science, and

Transportation be authorized to meet during the session of the Senate on September 16, 2009, at 2:30 p.m. in room 253 of the Russell Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that Amy Pope, a Justice Department legislative detailee in my office, be granted the privilege of the floor for the duration of this Congress.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. CASEY. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar Nos. 371, 372, and 373; that the nominations be confirmed en bloc and that the motions to reconsider be laid upon the table en bloc; that no further motions be in order; that any statements relating to the nominations appear in the appropriate place in the RECORD as if read; that the President be immediately notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF DEFENSE

John M. McHugh, of New York, to be Secretary of the Army.

Joseph W. Westphal, of New York, to be Under Secretary of the Army.

Juan M. Garcia III, of Texas, to be an Assistant Secretary of the Navy.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2010

Mr. CASEY. Mr. President, I ask unanimous consent the Senate proceed to the consideration of Calendar No. 120, S. 1494.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1494) to authorize appropriations for fiscal year 2010 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mrs. FEINSTEIN. Mr. President, I rise today to speak about the Intelligence Authorization Act for fiscal

year 2010, S. 1494, that the Senate has approved by unanimous consent.

The legislation is the product of a bipartisan effort in the Intelligence Committee, which was reflected by the committee's unanimous vote of 15 to 0 on the bill. I thank Vice Chairman BOND for his efforts on the legislation and the full committee staff for their work.

It has been 4 years since the Congress has passed and the President has signed an intelligence authorization act. This has meant that the law has not kept up with changes in the intelligence community and that Congress has not been able to require reforms and provide flexibilities that are sorely needed. I am pleased that the Senate has taken a major step toward enactment.

Before summarizing some of the key provisions of this legislation, let me briefly describe the way in which it was written.

The committee has worked with the Director of National Intelligence, DNI, ADM Dennis Blair, to identify areas where legislation is needed to better run and oversee the Nation's 16 intelligence agencies. Many of these provisions have been proposed and included in previous legislation reported out by the Intelligence Committee but have yet to be passed into law.

At the request of the White House, we have separated issues of terrorist detention and interrogation from this bill and the committee intends to take up legislation on those issues separately. The committee has not changed its position from previous legislation on the need to have an effective and humane interrogation program that operates fully within the nation's laws and international commitments.

The major themes of this bill are to strengthen the Director of National Intelligence to make sure that he has the management authorities and flexibilities needed to direct the intelligence community; insist upon stronger accountability and oversight mechanisms for intelligence activities, both within the executive branch and by the Congress; and to fund fully the intelligence community's share of the war efforts in Iraq and Afghanistan and the continuing counterterrorism operations against al-Qaida and other terrorist organizations worldwide.

There is also a classified annex to this bill, which lays out the authorized funding levels for the National Intelligence Program. The theme of the annex is to shift funds from intelligence activities that are less capable, lower priority, or not performing to those that will provide the Nation with better capabilities for intelligence collection, analysis, counterintelligence, and covert action.

The details of the classified annex are necessarily secret, but all Members are welcome to review them at the committee's offices at any time.

Let me describe some of the notable provisions in more detail.

To add to the management authorities of the Director of National Intelligence, the bill gives the Director of National Intelligence greater flexibility in personnel matters, including extending the length of time that personnel may be detailed to an intelligence agency to 3 years from the current 1 year. It also provides the Director, working with individual intelligence agencies, to shift or hire personnel by up to 5 percent above authorized personnel levels if intelligence requirements demand doing so. The bill authorizes the DNI to conduct accountability reviews of personnel and elements within the intelligence community, further clarifying that the Director is the senior official in the intelligence community. It seeks to prevent repetitions of information sharing problems by enabling the DNI to purchase necessary equipment or technology to improve information sharing with governmental departments or agencies regardless of whether they are part of the intelligence community. The bill also requires the intelligence community to continue putting in place the information technology necessary to assure information flows between its agencies.

The committee has longstanding concerns with the way the intelligence community has briefed, or has failed to brief, the congressional Intelligence Committees on all intelligence activities and covert actions. Two major controversies, over CIA detention and interrogation and over the warrantless surveillance program of the National Security Agency, were both briefed only to the chairman and vice chairman of the Senate Intelligence Committee. The rest of the committee's membership was unaware of these programs for years.

The bill strengthens the statutory requirements to keep the congressional intelligence committees "fully and currently informed" of intelligence activities and covert actions. The legislation makes clear that there is no exception to the obligation to brief Congress on intelligence activities and covert actions; requires that notifications include a description of the legal authority on which activities are undertaken; and requires that all committee members be provided with the broad outlines—the "main features"—of intelligence programs in those instances where the sensitive operational details are provided only to a limited number of Senators.

In addition to ensuring that notifications to the Congress are conducted, the bill includes a number of additional provisions intended to strengthen intelligence oversight. These include creating an independent inspector general, confirmed by the Senate, to help the DNI oversee the intelligence community and strengthening the inspectors general of the National Security Agency, NSA, Defense Intelligence Agency, DIA, National Reconnaissance Office, NRO, and National Geospatial-Intelligence Agency, NGA, by listing them