

Calendar No. 25

112TH CONGRESS
1ST SESSION

S. 719

To authorize appropriations for fiscal year 2011 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.

IN THE SENATE OF THE UNITED STATES

APRIL 4, 2011

Mrs. FEINSTEIN from the Select Committee on Intelligence reported the following original bill; which was read twice and placed on the calendar

A BILL

To authorize appropriations for fiscal year 2011 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.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Intelligence Authorization Act for Fiscal Year 2011”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.
 Sec. 2. Definitions.

TITLE I—BUDGET AND PERSONNEL AUTHORIZATIONS

Sec. 101. Authorization of appropriations.
 Sec. 102. Classified Schedule of Authorizations.
 Sec. 103. Intelligence Community Management Account.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND
 DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.

TITLE III—GENERAL INTELLIGENCE COMMUNITY MATTERS

Sec. 301. Restriction on conduct of intelligence activities.
 Sec. 302. Increase in employee compensation and benefits authorized by law.
 Sec. 303. Non-reimbursable detail of other personnel.

TITLE IV—MATTERS RELATING TO ELEMENTS OF THE
 INTELLIGENCE COMMUNITY

Subtitle A—Office of the Director of National Intelligence

Sec. 401. Schedule and requirements for the National Counterintelligence
 Strategy.
 Sec. 402. Insider threat detection program.
 Sec. 403. Unauthorized disclosure of classified information.

Subtitle B—Other Elements

Sec. 411. Defense Intelligence Agency counterintelligence and expenditures.
 Sec. 412. Accounts and transfer authority for appropriations and other
 amounts for the intelligence elements of the Department of De-
 fense.
 Sec. 413. Confirmation of appointment of the Director of the National Security
 Agency.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) CONGRESSIONAL INTELLIGENCE COMMIT-
 6 TEES.—The term “congressional intelligence com-
 7 mittees” means—

8 (A) the Select Committee on Intelligence of
 9 the Senate; and

1 (B) the Permanent Select Committee on
2 Intelligence of the House of Representatives.

3 (2) INTELLIGENCE COMMUNITY.—The term
4 “intelligence community” has the meaning given
5 that term in section 3(4) of the National Security
6 Act of 1947 (50 U.S.C. 401a(4)).

7 **TITLE I—BUDGET AND**
8 **PERSONNEL AUTHORIZATIONS**

9 **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

10 Funds are hereby authorized to be appropriated for
11 fiscal year 2011 for the conduct of the intelligence and
12 intelligence-related activities of the following elements of
13 the United States Government:

14 (1) The Office of the Director of National Intel-
15 ligence.

16 (2) The Central Intelligence Agency.

17 (3) The Department of Defense.

18 (4) The Defense Intelligence Agency.

19 (5) The National Security Agency.

20 (6) The Department of the Army, the Depart-
21 ment of the Navy, and the Department of the Air
22 Force.

23 (7) The Coast Guard.

24 (8) The Department of State.

25 (9) The Department of the Treasury.

- 1 (10) The Department of Energy.
- 2 (11) The Department of Justice.
- 3 (12) The Federal Bureau of Investigation.
- 4 (13) The Drug Enforcement Administration.
- 5 (14) The National Reconnaissance Office.
- 6 (15) The National Geospatial-Intelligence Agen-
- 7 cy.
- 8 (16) The Department of Homeland Security.

9 **SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.**

10 (a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL
11 LEVELS.—The amounts authorized to be appropriated
12 under section 101 and the authorized personnel levels (ex-
13 pressed as full-time equivalent positions) as of September
14 30, 2011, for the conduct of the intelligence activities of
15 the elements listed in paragraphs (1) through (16) of sec-
16 tion 101, are those specified in the classified Schedule of
17 Authorizations prepared to accompany the bill S. ____ of
18 the One Hundred Twelfth Congress.

19 (b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AU-
20 THORIZATIONS.—The classified Schedule of Authoriza-
21 tions referred to in subsection (a) shall be made available
22 to the Committee on Appropriations of the Senate, the
23 Committee on Appropriations of the House of Representa-
24 tives, and to the President. The President shall provide

1 for suitable distribution of the Schedule, or of appropriate
2 portions of the Schedule, within the executive branch.

3 **SEC. 103. INTELLIGENCE COMMUNITY MANAGEMENT AC-**
4 **COUNT.**

5 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There is
6 authorized to be appropriated for the Intelligence Commu-
7 nity Management Account of the Director of National In-
8 telligence for fiscal year 2011 the sum of \$649,732,000.
9 Within such amount, funds identified in the classified
10 Schedule of Authorizations referred to in section 102(a)
11 for advanced research and development shall remain avail-
12 able until September 30, 2012.

13 (b) **AUTHORIZED PERSONNEL LEVELS.**—The ele-
14 ments within the Intelligence Community Management
15 Account of the Director of National Intelligence are au-
16 thorized 648 full-time equivalent personnel as of Sep-
17 tember 30, 2011. Personnel serving in such elements may
18 be permanent employees of the Office of the Director of
19 National Intelligence or personnel detailed from other ele-
20 ments of the United States Government.

21 (c) **CLASSIFIED AUTHORIZATIONS.**—

22 (1) **AUTHORIZATION OF APPROPRIATIONS.**—In
23 addition to amounts authorized to be appropriated
24 for the Intelligence Community Management Ac-
25 count by subsection (a), there are authorized to be

1 appropriated for the Community Management Ac-
2 count for fiscal year 2011 such additional amounts
3 as are specified in the classified Schedule of Author-
4 izations referred to in section 102(a). Such addi-
5 tional amounts made available for advanced research
6 and development shall remain available until Sep-
7 tember 30, 2012.

8 (2) AUTHORIZATION OF PERSONNEL.—In addi-
9 tion to the personnel authorized by subsection (b)
10 for elements of the Intelligence Community Manage-
11 ment Account as of September 30, 2011, there are
12 authorized such full-time equivalent personnel for
13 the Community Management Account as of that
14 date as are specified in the classified Schedule of
15 Authorizations referred to in section 102(a).

16 **TITLE II—CENTRAL INTEL-**
17 **LIGENCE AGENCY RETIRE-**
18 **MENT AND DISABILITY SYS-**
19 **TEM**

20 **SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

21 There is authorized to be appropriated for the Cen-
22 tral Intelligence Agency Retirement and Disability Fund
23 for fiscal year 2011 the sum of \$292,000,000.

1 **TITLE III—GENERAL INTEL-**
2 **LIGENCE COMMUNITY MAT-**
3 **TERS**

4 **SEC. 301. RESTRICTION ON CONDUCT OF INTELLIGENCE**
5 **ACTIVITIES.**

6 The authorization of appropriations by this Act shall
7 not be deemed to constitute authority for the conduct of
8 any intelligence activity which is not otherwise authorized
9 by the Constitution or the laws of the United States.

10 **SEC. 302. INCREASE IN EMPLOYEE COMPENSATION AND**
11 **BENEFITS AUTHORIZED BY LAW.**

12 Appropriations authorized by this Act for salary, pay,
13 retirement, and other benefits for Federal employees may
14 be increased by such additional or supplemental amounts
15 as may be necessary for increases in such compensation
16 or benefits authorized by law.

17 **SEC. 303. NON-REIMBURSABLE DETAIL OF OTHER PER-**
18 **SONNEL.**

19 (a) IN GENERAL.—Section 113A of the National Se-
20 curity Act of 1947 (50 U.S.C. 404h–1) is amended to read
21 as follows:

22 “NON-REIMBURSABLE DETAIL OF OTHER PERSONNEL

23 “SEC. 113A. An officer or employee of the United
24 States or member of the Armed Forces may be detailed
25 to the staff of an element of the intelligence community

1 funded through the National Intelligence Program from
 2 another element of the intelligence community or from an-
 3 other element of the United States Government on a non-
 4 reimbursable basis, as jointly agreed to by the heads of
 5 the receiving and detailing elements, for a period not to
 6 exceed two years. This section does not limit any other
 7 source of authority for reimbursable or non-reimbursable
 8 details.”.

9 (b) TABLE OF CONTENTS AMENDMENT.—The table
 10 of contents in the first section of such Act is amended
 11 by striking the item relating to section 113A and inserting
 12 the following:

“Sec. 113A. Non-reimbursable detail of other personnel.”.

13 **TITLE IV—MATTERS RELATING**
 14 **TO ELEMENTS OF THE INTEL-**
 15 **LIGENCE COMMUNITY**

16 **Subtitle A—Office of the Director**
 17 **of National Intelligence**

18 **SEC. 401. SCHEDULE AND REQUIREMENTS FOR THE NA-**
 19 **TIONAL COUNTERINTELLIGENCE STRATEGY.**

20 Section 904(d)(2) of the Counterintelligence En-
 21 hancement Act of 2002 (50 U.S.C. 402c(d)(2)) is amend-
 22 ed—

23 (1) by striking “Subject” and inserting the fol-
 24 lowing:

1 “(A) REQUIREMENT TO PRODUCE.—Sub-
2 ject”;

3 (2) by striking “on an annual basis”; and

4 (3) by adding at the end the following:

5 “(B) REVISION AND REQUIREMENT.—The
6 National Counterintelligence Strategy shall be
7 revised or updated at least once every three
8 years and shall be aligned with the strategy and
9 policies of the Director of National Intel-
10 ligence.”.

11 **SEC. 402. INSIDER THREAT DETECTION PROGRAM.**

12 (a) INITIAL OPERATING CAPABILITY.—Not later
13 than October 1, 2012, the Director of National Intel-
14 ligence shall establish an initial operating capability for
15 an effective automated insider threat detection program
16 for the information resources in each element of the intel-
17 ligence community in order to detect unauthorized access
18 to, or use or transmission of, classified intelligence.

19 (b) FULL OPERATING CAPABILITY.—Not later than
20 October 1, 2013, the Director of National Intelligence
21 shall ensure the program described in subsection (a) has
22 reached full operating capability.

23 (c) REPORT.—Not later than December 1, 2011, the
24 Director of National Intelligence shall submit to the con-
25 gressional intelligence committees a report on the re-

1 sources required to implement the insider threat detection
2 program referred to in subsection (a) and any other issues
3 related to such implementation the Director considers ap-
4 propriate to include in the report.

5 (d) INFORMATION RESOURCES DEFINED.—In this
6 section, the term “information resources” means net-
7 works, systems, workstations, servers, routers, applica-
8 tions, databases, websites, online collaboration environ-
9 ments, and any other information resources in an element
10 of the intelligence community designated by the Director
11 of National Intelligence.

12 **SEC. 403. UNAUTHORIZED DISCLOSURE OF CLASSIFIED IN-**
13 **FORMATION.**

14 (a) REQUIREMENT FOR PROHIBITION.—Not later
15 than 90 days after the date of the enactment of this Act,
16 the Director of National Intelligence, in coordination with
17 the head of each element of the intelligence community,
18 shall publish regulations that—

19 (1) are consistent with any procedures estab-
20 lished by Executive order or regulation under section
21 801 of the National Security Act of 1947 (50 U.S.C.
22 435);

23 (2) require each employee of an element of the
24 intelligence community to sign a written agreement
25 as described in subsection (b); and

1 (3) set forth the administrative procedures ap-
2 plicable to an employee who violates the terms of
3 such an agreement.

4 (b) AGREEMENT DESCRIBED.—An agreement de-
5 scribed in this subsection is an agreement, with respect
6 to an individual employed by an element of the intelligence
7 community, that—

8 (1) prohibits the individual from disclosing clas-
9 sified information without authorization at any time
10 during or subsequent to employment with an ele-
11 ment of the intelligence community;

12 (2) requires the individual to comply with all
13 prepublication review requirements contained in any
14 nondisclosure agreement between the individual and
15 an element of the intelligence community;

16 (3) specifies appropriate disciplinary actions, in-
17 cluding the surrender of any current or future Fed-
18 eral Government pension benefit, to be taken against
19 the individual if the Director of National Intelligence
20 or the head of the appropriate element of the intel-
21 ligence community determines that the individual
22 has knowingly violated the prepublication review re-
23 quirements contained in a nondisclosure agreement
24 between the individual and an element of the intel-
25 ligence community in a manner that disclosed classi-

1 fied information to an unauthorized person or entity;
2 and

3 (4) describes procedures for making and review-
4 ing determinations under paragraph (3) in a manner
5 that is consistent with the due process and appeal
6 rights otherwise available to an individual who is
7 subject to the same or similar disciplinary action
8 under other law.

9 (c) FEDERAL GOVERNMENT PENSION BENEFIT DE-
10 SCRIBED.—In this section, the term “Federal Government
11 pension benefit” does not include the following:

12 (1) Any contributions by a person to a Federal
13 Government pension plan, in their fair market value.

14 (2) Any old age benefits payable to a person
15 under title II of the Social Security Act (42 U.S.C.
16 401 et seq.).

17 (3) Any employee benefits or contributions of a
18 person under the Thrift Savings Plan under sub-
19 chapter III of chapter 84 of title 5, United States
20 Code, or any successor benefit program.

21 **Subtitle B—Other Elements**

22 **SEC. 411. DEFENSE INTELLIGENCE AGENCY COUNTER-**
23 **INTELLIGENCE AND EXPENDITURES.**

24 Section 105 of the National Security Act of 1947 (50
25 U.S.C. 403–5) is amended—

1 (1) in subsection (b)(5), by inserting “and
2 counterintelligence” after “human intelligence”;

3 (2) by redesignating subsection (c) as sub-
4 section (d); and

5 (3) by inserting after subsection (b) the fol-
6 lowing:

7 “(c) EXPENDITURE OF FUNDS BY THE DEFENSE IN-
8 TELLIGENCE AGENCY.—(1) Subject to paragraphs (2)
9 and (3), the Director of the Defense Intelligence Agency
10 may expend amounts made available to the Director for
11 human intelligence and counterintelligence activities for
12 objects of a confidential, extraordinary, or emergency na-
13 ture, without regard to the provisions of law or regulation
14 relating to the expenditure of Government funds.

15 “(2) The Director of the Defense Intelligence Agency
16 may not expend more than five percent of the amounts
17 made available to the Director for human intelligence and
18 counterintelligence activities for a fiscal year for objects
19 of a confidential, extraordinary, or emergency nature in
20 accordance with paragraph (1) during such fiscal year un-
21 less—

22 “(A) the Director notifies the congressional in-
23 telligence committees of the intent to expend the
24 amounts; and

1 “(B) 30 days have elapsed from the date of on
2 which the Director notifies the congressional intel-
3 ligence committees in accordance with subparagraph
4 (A).

5 “(3) For each expenditure referred to in paragraph
6 (1), the Director shall certify that such expenditure was
7 made for an object of a confidential, extraordinary, or
8 emergency nature.

9 “(4) Not later than December 31 of each year, the
10 Director of the Defense Intelligence Agency shall submit
11 to the congressional intelligence committees a report on
12 any expenditures made during the preceding fiscal year
13 in accordance with paragraph (1).”.

14 **SEC. 412. ACCOUNTS AND TRANSFER AUTHORITY FOR AP-**
15 **PROPRIATIONS AND OTHER AMOUNTS FOR**
16 **THE INTELLIGENCE ELEMENTS OF THE DE-**
17 **PARTMENT OF DEFENSE.**

18 (a) IN GENERAL.—Chapter 21 of title 10, United
19 States Code, is amended by inserting after section 428 the
20 following new section:

21 **“§ 429. Appropriations for defense intelligence ele-**
22 **ments: accounts for transfer; transfer**

23 “(a) TRANSFERS AUTHORIZED.—(1) There may be
24 transferred to an account established pursuant to sub-
25 section (b) the following:

1 “(A) Appropriations transferred by the Sec-
2 retary of Defense from appropriations of the Depart-
3 ment of Defense available for intelligence, intel-
4 ligence-related activities, and communications.

5 “(B) Appropriations and other amounts trans-
6 ferred by the Director of National Intelligence from
7 appropriations and other amounts available for the
8 defense intelligence elements.

9 “(C) Amounts and reimbursements in connec-
10 tion with transactions authorized by law between the
11 defense intelligence elements and other entities.

12 “(2) The transfer authority of the Secretary of De-
13 fense under paragraph (1)(A) is in addition to any other
14 transfer authority available to the Secretary by law.

15 “(b) ACCOUNTS FOR APPROPRIATIONS FOR DEFENSE
16 INTELLIGENCE ELEMENTS.—The Secretary of the Treas-
17 ury shall establish one or more accounts for the receipt
18 of appropriations and other amounts transferred pursuant
19 to subsection (a).

20 “(c) AVAILABILITY OF APPROPRIATIONS AND
21 AMOUNTS TRANSFERRED.—(1) Appropriations trans-
22 ferred pursuant to subsection (a) shall remain available
23 for the same time period, and shall be available for the
24 same purposes, as the appropriations from which trans-
25 ferred.

1 (2) by inserting before subsection (b), as so
2 designated by paragraph (1), the following new sub-
3 section

4 “(a)(1) There is a Director of the National Security
5 Agency.

6 “(2) The Director of the National Security Agency
7 shall be appointed by the President, by and with the advice
8 and consent of the Senate.

9 “(3) The Director of the National Security Agency
10 shall be the head of the National Security Agency and
11 shall discharge such functions and duties as are provided
12 by this Act or otherwise by law.”.

13 (b) POSITIONS OF IMPORTANCE AND RESPONSIBI-
14 LITY.—The President may designate the Director of the
15 National Security Agency as a position of importance and
16 responsibility under section 601 of title 10, United States
17 Code.

18 (c) EFFECTIVE DATE AND APPLICABILITY.—

19 (1) IN GENERAL.—The amendments made by
20 subsection (a) shall take effect on the date of the en-
21 actment of this Act and shall apply upon the earlier
22 of—

23 (A) the date of the nomination by the
24 President of an individual to serve as the Direc-
25 tor of the National Security Agency, except that

1 the individual serving as such Director as of the
2 date of the enactment of this Act may continue
3 to perform such duties after such date of nomi-
4 nation and until the individual appointed as
5 such Director, by and with the advice and con-
6 sent of the Senate, assumes the duties of such
7 Director; or

8 (B) the date of the cessation of the per-
9 formance of the duties of such Director by the
10 individual performing such duties as of the date
11 of the enactment of this Act.

12 (2) POSITIONS OF IMPORTANCE AND RESPONSI-
13 BILITY.—Subsection (b) shall take effect on the date
14 of the enactment of this Act.

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