

In the Senate of the United States,

June 26, 1998.

Resolved, That the bill from the House of Representatives (H.R. 3694) entitled “An Act to authorize appropriations for fiscal year 1999 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.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

2 (a) *SHORT TITLE.*—*This Act may be cited as the “In-*
3 *telligence Authorization Act for Fiscal Year 1999”.*

4 (b) *TABLE OF CONTENTS.*—*The table of contents for*
5 *this Act is as follows:*

Sec. 1. Short title; table of contents.

TITLE I—INTELLIGENCE ACTIVITIES

Sec. 101. Authorization of appropriations.

Sec. 102. Classified schedule of authorizations.

Sec. 103. Personnel ceiling adjustments.

Sec. 104. Community Management Account.

*TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND
DISABILITY SYSTEM*

Sec. 201. Authorization of appropriations.

TITLE III—GENERAL PROVISIONS

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

Sec. 302. Restriction on conduct of intelligence activities.

Sec. 303. Extension of application of sanctions laws to intelligence activities.

*Sec. 304. Extension of authority to engage in commercial activities as security
for intelligence collection activities.*

Sec. 305. Modification of National Security Education Program.

Sec. 306. Technical amendments.

*Sec. 307. Authority to direct competitive analysis of analytical products having
national importance.*

*Sec. 308. Annual study and report on the safety and security of Russian nuclear
facilities and nuclear military forces.*

Sec. 309. quadrennial intelligence review.

*Sec. 310. Designation of Headquarters Building of Central Intelligence Agency as
the George Herbert Walker Bush Center for Central Intelligence.*

TITLE IV—CENTRAL INTELLIGENCE AGENCY

*Sec. 401. Extension of separation pay program for voluntary separation of CIA
employees.*

*Sec. 402. Additional duties for Inspector General of Central Intelligence
Agency.*

TITLE V—DISCLOSURE OF INFORMATION TO CONGRESS

Sec. 501. Encouragement of disclosure of certain information to Congress.

*TITLE VI—FOREIGN INTELLIGENCE AND INTERNATIONAL
TERRORISM INVESTIGATIONS*

*Sec. 601. Pen registers and trap and trace devices in foreign intelligence and
international terrorism investigations.*

*Sec. 602. Access to certain business records for foreign intelligence and inter-
national terrorism investigations.*

Sec. 603. Conforming and clerical amendments.

1 ***TITLE I—INTELLIGENCE***
2 ***ACTIVITIES***

3 ***SEC. 101. AUTHORIZATION OF APPROPRIATIONS.***

4 *Funds are hereby authorized to be appropriated for fis-*
5 *cal year 1999 for the conduct of the intelligence and intel-*
6 *ligence-related activities of the following elements of the*
7 *United States Government:*

1 (1) *The Central Intelligence Agency.*

2 (2) *The Department of Defense.*

3 (3) *The Defense Intelligence Agency.*

4 (4) *The National Security Agency.*

5 (5) *The Department of the Army, the Depart-*
6 *ment of the Navy, and the Department of the Air*
7 *Force.*

8 (6) *The Department of State.*

9 (7) *The Department of the Treasury.*

10 (8) *The Department of Energy.*

11 (9) *The Federal Bureau of Investigation.*

12 (10) *The National Reconnaissance Office.*

13 (11) *The National Imagery and Mapping Agen-*
14 *cy.*

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

16 (a) *SPECIFICATIONS OF AMOUNTS AND PERSONNEL*
17 *CEILINGS.*—*The amounts authorized to be appropriated*
18 *under section 101, and the authorized personnel ceilings as*
19 *of September 30, 1999, for the conduct of the intelligence*
20 *and intelligence-related activities of the elements listed in*
21 *such section, are those specified in the classified Schedule*
22 *of Authorizations prepared to accompany the conference re-*
23 *port on the bill H.R. 3694 of the One Hundred Fifth Con-*
24 *gress.*

1 (b) *AVAILABILITY OF CLASSIFIED SCHEDULE OF AU-*
2 *THORIZATIONS.*—*The Schedule of Authorizations shall be*
3 *made available to the Committees on Appropriations of the*
4 *Senate and House of Representatives and to the President.*
5 *The President shall provide for suitable distribution of the*
6 *Schedule, or of appropriate portions of the Schedule, within*
7 *the Executive Branch.*

8 **SEC. 103. PERSONNEL CEILING ADJUSTMENTS.**

9 (a) *AUTHORITY FOR ADJUSTMENTS.*—*With the ap-*
10 *proval of the Director of the Office of Management and*
11 *Budget, the Director of Central Intelligence may authorize*
12 *employment of civilian personnel in excess of the number*
13 *authorized for fiscal year 1999 under section 102 when the*
14 *Director of Central Intelligence determines that such action*
15 *is necessary to the performance of important intelligence*
16 *functions, except that the number of personnel employed in*
17 *excess of the number authorized under such section may not,*
18 *for any element of the intelligence community, exceed two*
19 *percent of the number of civilian personnel authorized*
20 *under such section for such element.*

21 (b) *NOTICE TO INTELLIGENCE COMMITTEES.*—*The Di-*
22 *rector of Central Intelligence shall promptly notify the Per-*
23 *manent Select Committee on Intelligence of the House of*
24 *Representatives and the Select Committee on Intelligence of*

1 *the Senate whenever the Director exercises the authority*
2 *granted by this section.*

3 **SEC. 104. COMMUNITY MANAGEMENT ACCOUNT.**

4 *(a) AUTHORIZATION OF APPROPRIATIONS.—*

5 *(1) AUTHORIZATION.—There is authorized to be*
6 *appropriated for the Community Management Ac-*
7 *count of the Director of Central Intelligence for fiscal*
8 *year 1999 the sum of \$173,633,000.*

9 *(2) AVAILABILITY OF CERTAIN FUNDS.—Within*
10 *such amount, funds identified in the classified Sched-*
11 *ule of Authorizations referred to in section 102(a) for*
12 *the Advanced Research and Development Committee,*
13 *the Advanced Technology Group, and the Environ-*
14 *mental Intelligence and Applications Program shall*
15 *remain available until September 30, 2000.*

16 *(b) AUTHORIZED PERSONNEL LEVELS.—The elements*
17 *within the Community Management Account of the Direc-*
18 *tor of Central Intelligence are authorized a total of 283 full-*
19 *time personnel as of September 30, 1999. Personnel serving*
20 *in such elements may be permanent employees of the Com-*
21 *munity Management Account element or personnel detailed*
22 *from other elements of the United States Government.*

23 *(c) CLASSIFIED AUTHORIZATIONS.—*

24 *(1) AUTHORIZATION OF APPROPRIATIONS.—In*
25 *addition to amounts authorized to be appropriated*

1 *for the Community Management Account by sub-*
2 *section (a), there is also authorized to be appropriated*
3 *for the Community Management Account for fiscal*
4 *year 1999 such additional amounts as are specified*
5 *in the classified Schedule of Authorizations referred to*
6 *in section 102(a). Such additional amounts shall re-*
7 *main available until September 30, 2000.*

8 (2) *AUTHORIZATION OF PERSONNEL.—In addi-*
9 *tion to the personnel authorized by subsection (b) for*
10 *elements of the Community Management Account as*
11 *of September 30, 1999, there is hereby authorized such*
12 *additional personnel for such elements as of that date*
13 *as is specified in the classified Schedule of Authoriza-*
14 *tions.*

15 (d) *REIMBURSEMENT.—Except as provided in section*
16 *113 of the National Security Act of 1947 (50 U.S.C. 404h),*
17 *during fiscal year 1999, any officer or employee of the*
18 *United States or member of the Armed Forces who is de-*
19 *tailed to the staff of an element within the Community*
20 *Management Account from another element of the United*
21 *States Government shall be detailed on a reimbursable*
22 *basis, except that any such officer, employee, or member*
23 *may be detailed on a nonreimbursable basis for a period*
24 *of less than one year for the performance of temporary func-*
25 *tions as required by the Director of Central Intelligence.*

1 (e) *NATIONAL DRUG INTELLIGENCE CENTER.*—

2 (1) *IN GENERAL.*—*Of the amount authorized to*
3 *be appropriated in subsection (a), the amount of*
4 *\$27,000,000 shall be available for the National Drug*
5 *Intelligence Center. Within such amount, funds pro-*
6 *vided for research, development, test, and evaluation*
7 *purposes shall remain available until September 30,*
8 *2000, and funds provided for procurement purposes*
9 *shall remain available until September 30, 2001.*

10 (2) *TRANSFER OF FUNDS.*—*The Director of Cen-*
11 *tral Intelligence shall transfer to the Attorney General*
12 *of the United States funds available for the National*
13 *Drug Intelligence Center under paragraph (1). The*
14 *Attorney General shall utilize funds so transferred for*
15 *the activities of the Center.*

16 (3) *LIMITATION.*—*Amounts available for the*
17 *Center may not be used in contravention of the provi-*
18 *sions of section 103(d)(1) of the National Security Act*
19 *of 1947 (50 U.S.C. 403–3(d)(1)).*

20 (4) *AUTHORITY OVER CENTER.*—*Notwithstand-*
21 *ing any other provision of law, the Attorney General*
22 *shall retain full authority over the operations of the*
23 *Center.*

1 **TITLE II—CENTRAL INTEL-**
2 **LIGENCE AGENCY RETIRE-**
3 **MENT AND DISABILITY SYS-**
4 **TEM**

5 **SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

6 *There is authorized to be appropriated for the Central*
7 *Intelligence Agency Retirement and Disability Fund for fis-*
8 *cal year 1999 the sum of \$201,500,000.*

9 **TITLE III—GENERAL**
10 **PROVISIONS**

11 **SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND**
12 **BENEFITS AUTHORIZED BY LAW.**

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

18 **SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE**
19 **ACTIVITIES.**

20 *The authorization of appropriations by this Act shall*
21 *not be deemed to constitute authority for the conduct of any*
22 *intelligence activity which is not otherwise authorized by*
23 *the Constitution or the laws of the United States.*

1 **SEC. 303. EXTENSION OF APPLICATION OF SANCTIONS**
2 **LAWS TO INTELLIGENCE ACTIVITIES.**

3 *Section 905 of the National Security Act of 1947 (50*
4 *U.S.C. 441d) is amended by striking out “January 6,*
5 *1999” and inserting in lieu thereof “January 6, 2000”.*

6 **SEC. 304. EXTENSION OF AUTHORITY TO ENGAGE IN COM-**
7 **MERCIAL ACTIVITIES AS SECURITY FOR IN-**
8 **TELLIGENCE COLLECTION ACTIVITIES.**

9 *Section 431(a) of title 10, United States Code, is*
10 *amended in the second sentence by striking out “December*
11 *31, 1998” and inserting in lieu thereof “December 31,*
12 *2000”.*

13 **SEC. 305. MODIFICATION OF NATIONAL SECURITY EDU-**
14 **CATION PROGRAM.**

15 *(a) ASSISTANCE FOR COUNTERPROLIFERATION STUD-*
16 *IES.—The David L. Boren National Security Education*
17 *Act of 1991 (50 U.S.C. 1901 et seq.) is amended as follows:*

18 *(1) In section 801 (50 U.S.C. 1901), by inserting*
19 *“counterproliferation studies,” after “area studies,”*
20 *each place it appears in subsections (b)(7) and (c)(2).*

21 *(2) In section 802 (50 U.S.C. 1902)—*

22 *(A) by inserting “counterproliferation stud-*
23 *ies,” after “area studies,” each place it appears*
24 *in paragraphs (1)(B)(i), (1)(C), and (4) of sub-*
25 *section (a); and*

1 (B) by inserting “counterproliferation
2 study,” after “area study,” each place it appears
3 subparagraphs (A)(i) and (B)(i) of subsection
4 (b)(2).

5 (3) In section 803(b)(8) (50 U.S.C. 1903(b)(8)),
6 by striking out “and area” and inserting in lieu
7 thereof “area, and counterproliferation”.

8 (4) In section 806(b)(1) (50 U.S.C. 1906(b)(1)),
9 by striking out “and area” and inserting in lieu
10 thereof “area, and counterproliferation”.

11 (b) *REVISION OF MEMBERSHIP OF NATIONAL SECUR-*
12 *ITY EDUCATION BOARD.*—Section 803(b) of that Act (50
13 *U.S.C. 1903(b)) is further amended—*

14 (1) by striking out paragraph (6); and

15 (2) by inserting in lieu thereof the following new
16 paragraph (6):

17 “(6) *The Secretary of Energy.*”.

18 **SEC. 306. TECHNICAL AMENDMENTS.**

19 (a) *CENTRAL INTELLIGENCE AGENCY ACT OF 1949.*—
20 (1) Section 5(a)(1) of the Central Intelligence Agency Act
21 of 1949 (50 U.S.C. 403f(a)(1)) is amended—

22 (A) by striking out “subparagraphs (B) and (C)
23 of section 102(a)(2), subsections (c)(5)” and inserting
24 in lieu thereof “paragraphs (2) and (3) of section
25 102(a), subsections (c)(6)”;

1 **SEC. 308. ANNUAL STUDY AND REPORT ON THE SAFETY**
2 **AND SECURITY OF RUSSIAN NUCLEAR FACILI-**
3 **TIES AND NUCLEAR MILITARY FORCES.**

4 (a) *ANNUAL STUDY.*—*The Director of Central Intel-*
5 *ligence shall, on an annual basis, conduct a study of the*
6 *safety and security of the nuclear facilities and nuclear*
7 *military forces in Russia.*

8 (b) *ANNUAL REPORTS.*—(1) *The Director shall, on an*
9 *annual basis, submit to the committees referred to in para-*
10 *graph (4) an intelligence report assessing the safety and se-*
11 *curity of the nuclear facilities and nuclear military forces*
12 *in Russia.*

13 (2) *Each report shall include a discussion of the follow-*
14 *ing:*

15 (A) *The ability of the Russia Government to*
16 *maintain its nuclear military forces.*

17 (B) *Security arrangements at civilian and mili-*
18 *tary nuclear facilities in Russia.*

19 (C) *The reliability of controls and safety systems*
20 *at civilian nuclear facilities in Russia.*

21 (D) *The reliability of command and control sys-*
22 *tems and procedures of the nuclear military forces in*
23 *Russia.*

24 (3) *Each report shall be submitted in unclassified*
25 *form, but may contain a classified annex.*

1 (4) *The committees referred to in paragraph (1) are*
2 *the following:*

3 (A) *The Select Committee on Intelligence, Com-*
4 *mittee on Armed Services, and Committee on Foreign*
5 *Relations of the Senate.*

6 (B) *The Permanent Select Committee on Intel-*
7 *ligence, Committee on National Security, and Com-*
8 *mittee on International Relations of the House of*
9 *Representatives.*

10 **SEC. 309. QUADRENNIAL INTELLIGENCE REVIEW.**

11 (a) *SENSE OF CONGRESS.—It is the sense of Congress*
12 *that—*

13 (1) *the Director of Central Intelligence and the*
14 *Secretary of Defense should jointly complete, in 1999*
15 *and every 4 years thereafter, a comprehensive review*
16 *of United States intelligence programs and activities;*

17 (2) *each review under paragraph (1) should—*

18 (A) *include assessments of intelligence pol-*
19 *icy, resources, manpower, organization, and re-*
20 *lated matters; and*

21 (B) *encompass the programs and activities*
22 *funded under the National Foreign Intelligence*
23 *Program (NFIP), the Joint Military Intelligence*
24 *Program (JMIP), and the Tactical Intelligence*
25 *and Related Activities (TIARA) accounts;*

1 (3) *the results of each review should be shared*
2 *with the appropriate committees of Congress; and*

3 (4) *the Director, in conjunction with the Sec-*
4 *retary, should establish a nonpartisan, independent*
5 *panel (with members chosen in consultation with the*
6 *committees referred to in subsection (b)(2) from indi-*
7 *viduals in the private sector) in order to—*

8 (A) *assess each review under paragraph (1);*

9 (B) *conduct an assessment of alternative in-*
10 *telligence structures to meet the anticipated in-*
11 *telligence requirements for the national security*
12 *and foreign policy of the United States through*
13 *the year 2010; and*

14 (C) *make recommendations to the Director*
15 *and the Secretary regarding the optimal intel-*
16 *ligence structure for the United States in light of*
17 *the assessment under subparagraph (B).*

18 (b) *REPORT.—(1) Not later than August 15, 1998, the*
19 *Director and the Secretary shall jointly submit to the com-*
20 *mittees referred to in paragraph (2) the views of the Direc-*
21 *tor and the Secretary regarding—*

22 (A) *the potential value of conducting reviews as*
23 *described in subsection (a)(1); and*

24 (B) *the potential value of assessments of such re-*
25 *views as described in subsection (a)(4)(A).*

1 (2) *The committees referred to in paragraph (1) are*
2 *the following:*

3 (A) *The Select Committee on Intelligence, Com-*
4 *mittee on Armed Services, and Committee on Appro-*
5 *priations of the Senate.*

6 (B) *The Permanent Select Committee on Intel-*
7 *ligence, Committee on National Security, and Com-*
8 *mittee on Appropriations of the House of Representa-*
9 *tives.*

10 **SEC. 310. DESIGNATION OF HEADQUARTERS BUILDING OF**
11 **CENTRAL INTELLIGENCE AGENCY AS THE**
12 **GEORGE HERBERT WALKER BUSH CENTER**
13 **FOR CENTRAL INTELLIGENCE.**

14 (a) *DESIGNATION.*—*The Headquarters Building of the*
15 *Central Intelligence Agency located in Langley, Virginia,*
16 *shall be known and designated as the “George Herbert*
17 *Walker Bush Center for Central Intelligence”.*

18 (b) *REFERENCES.*—*Any reference in a law, map, regu-*
19 *lation, document, paper, or other record of the United*
20 *States to the Headquarters Building referred to in sub-*
21 *section (a) shall be deemed to be a reference to the George*
22 *Herbert Walker Bush Center for Central Intelligence.*

1 **TITLE IV—CENTRAL**
2 **INTELLIGENCE AGENCY**

3 **SEC. 401. EXTENSION OF SEPARATION PAY PROGRAM FOR**
4 **VOLUNTARY SEPARATION OF CIA EMPLOY-**
5 **EES.**

6 (a) *EXTENSION.*—Subsection (f) of section 2 of the
7 *Central Intelligence Agency Voluntary Separation Pay Act*
8 *(50 U.S.C. 403–4 note)* is amended by striking out “Sep-
9 *tember 30, 1999*” and inserting in lieu thereof “September
10 *30, 2001*”.

11 (b) *CONFORMING AMENDMENT.*—Subsection (i) of that
12 *section* is amended by striking out “fiscal year 1998 or fis-
13 *cal year 1999*” and inserting in lieu thereof “fiscal year
14 *1998, 1999, 2000, or 2001*”

15 **SEC. 402. ADDITIONAL DUTIES FOR INSPECTOR GENERAL**
16 **OF CENTRAL INTELLIGENCE AGENCY.**

17 Section 17(c) of the *Central Intelligence Agency Act*
18 *of 1949 (50 U.S.C. 403q(c))* is amended—

19 (1) by redesignating paragraphs (3) and (4) as
20 paragraphs (4) and (5), respectively; and

21 (2) by inserting after paragraph (2) the follow-
22 ing new paragraph (3):

23 “(3) to review existing and proposed legislation
24 relating to the programs and operations of the Agency
25 and to make recommendations in the semiannual re-

1 ports required by subsection (d) concerning the im-
2 pact of such legislation on economy and efficiency in
3 the administration of, or prevention and detection of
4 fraud and abuse in, the programs and operations ad-
5 ministered or financed by the Agency;”.

6 **TITLE V—DISCLOSURE OF**
7 **INFORMATION TO CONGRESS**

8 **SEC. 501. ENCOURAGEMENT OF DISCLOSURE OF CERTAIN**
9 **INFORMATION TO CONGRESS.**

10 (a) *ENCOURAGEMENT.*—

11 (1) *IN GENERAL.*—Not later than 30 days after
12 the date of enactment of this Act, the President shall
13 take appropriate actions to inform the employees of
14 the covered agencies, and employees of contractors
15 carrying out activities under classified contracts with
16 covered agencies, that—

17 (A) except as provided in paragraph (4),
18 the disclosure of information described in para-
19 graph (2) to the individuals referred to in para-
20 graph (3) is not prohibited by law, executive
21 order, or regulation or otherwise contrary to
22 public policy;

23 (B) the individuals referred to in para-
24 graph (3) are presumed to have a need to know

1 *and to be authorized to receive such information;*
2 *and*

3 *(C) the individuals referred to in paragraph*
4 *(3) may receive information so disclosed only in*
5 *their capacity as members of the committees con-*
6 *cerned.*

7 (2) *COVERED INFORMATION.*—*Paragraph (1) ap-*
8 *plies to information, including classified information,*
9 *that an employee reasonably believes to provide direct*
10 *and specific evidence of—*

11 *(A) a violation of any law, rule, or regula-*
12 *tion;*

13 *(B) a false statement to Congress on an*
14 *issue of material fact; or*

15 *(C) gross mismanagement, a gross waste of*
16 *funds, a flagrant abuse of authority, or a sub-*
17 *stantial and specific danger to public health or*
18 *safety.*

19 (3) *COVERED INDIVIDUALS.*—*The individuals to*
20 *whom information described in paragraph (2) may be*
21 *disclosed are the members of a committee of Congress*
22 *having as its primary responsibility the oversight of*
23 *a department, agency, or element of the Federal Gov-*
24 *ernment to which such information relates.*

1 (4) *SCOPE.*—Paragraph (1)(A) does not apply to
2 information otherwise described in paragraph (2) if
3 the disclosure of the information is prohibited by Rule
4 6(e) of the Federal Rules of Criminal Procedure.

5 (b) *REPORT.*—Not later than 60 days after the date
6 of enactment of this Act, the President shall submit to Con-
7 gress a report on the actions taken under subsection (a).

8 (c) *CONSTRUCTION WITH OTHER REPORTING RE-*
9 *QUIREMENTS.*—Nothing in this section may be construed to
10 modify, alter, or otherwise affect any reporting requirement
11 relating to intelligence activities that arises under the Na-
12 tional Security Act of 1947 (50 U.S.C. 401 et seq.) or any
13 other provision of law.

14 (d) *COVERED AGENCIES DEFINED.*—In this section,
15 the term “covered agencies” means the following:

16 (1) *The Central Intelligence Agency.*

17 (2) *The Defense Intelligence Agency.*

18 (3) *The National Imagery and Mapping Agency.*

19 (4) *The National Security Agency.*

20 (5) *The Federal Bureau of Investigation.*

21 (6) *The National Reconnaissance Office.*

22 (7) *Any other Executive agency, or element or*
23 *unit thereof, determined by the President under sec-*
24 *tion 2302(a)(2)(C)(ii) of title 5, United States Code,*

1 to have as its principal function the conduct of for-
2 eign intelligence or counterintelligence activities.

3 **TITLE VI—FOREIGN INTEL-**
4 **LIGENCE AND INTER-**
5 **NATIONAL TERRORISM INVES-**
6 **TIGATIONS**

7 **SEC. 601. PEN REGISTERS AND TRAP AND TRACE DEVICES**
8 **IN FOREIGN INTELLIGENCE AND INTER-**
9 **NATIONAL TERRORISM INVESTIGATIONS.**

10 *The Foreign Intelligence Surveillance Act of 1978 (50*
11 *U.S.C. 1801 et seq.) is amended—*

12 (1) *by redesignating title IV as title VI and sec-*
13 *tion 401 as section 601, respectively; and*

14 (2) *by inserting after title III the following new*
15 *title:*

16 **“TITLE IV—PEN REGISTERS AND TRAP AND**
17 **TRACE DEVICES FOR FOREIGN INTEL-**
18 **LIGENCE PURPOSES**

19 **“DEFINITIONS**

20 **“SEC. 401. As used in this title:**

21 **“(1) The terms ‘foreign power’, ‘agent of a for-**
22 **eign power’, ‘international terrorism’, ‘foreign intel-**
23 **ligence information’, ‘Attorney General’, ‘United**
24 **States person’, ‘United States’, ‘person’, and ‘State’**

1 *shall have the same meanings as in section 101 of this*
2 *Act.*

3 “(2) *The terms ‘pen register’ and ‘trap and trace*
4 *device’ have the meanings given such terms in section*
5 *3127 of title 18, United States Code.*

6 “(3) *The term ‘aggrieved person’ means any per-*
7 *son—*

8 “(A) *whose telephone line was subject to the*
9 *installation or use of a pen register or trap and*
10 *trace device authorized by this title; or*

11 “(B) *whose communication instrument or*
12 *device was subject to the use of a pen register or*
13 *trap and trace device authorized by this title to*
14 *capture incoming electronic or other communica-*
15 *tions impulses.*

16 “*PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOR-*
17 *EIGN INTELLIGENCE AND INTERNATIONAL TERRORISM*
18 *INVESTIGATIONS*

19 “*SEC. 402. (a) Notwithstanding any provision of title*
20 *I of this Act with respect to electronic surveillance under*
21 *that title as defined in section 101(f)(4) of this Act, the At-*
22 *torney General or a designated attorney for the Government*
23 *may make an application for an order or an extension of*
24 *an order authorizing or approving the installation and use*
25 *of a pen register or trap and trace device for any investiga-*
26 *tion to gather foreign intelligence information or informa-*

1 *tion concerning international terrorism which is being con-*
2 *ducted by the Federal Bureau of Investigation under such*
3 *guidelines as the Attorney General approves pursuant to*
4 *Executive Order No. 12333, or a successor order.*

5 “(b) *Each application under this section shall be in*
6 *writing under oath or affirmation to—*

7 “(1) *a judge of the court established by section*
8 *103(a) of this Act; or*

9 “(2) *a United States Magistrate Judge under*
10 *chapter 43 of title 28, United States Code, who is*
11 *publicly designated by the Chief Justice of the United*
12 *States to have the power to hear applications for and*
13 *grant orders approving the installation and use of a*
14 *pen register or trap or trace device on behalf of a*
15 *judge of that court.*

16 “(c) *Each application under this section shall require*
17 *the approval of the Attorney General, or a designated attor-*
18 *ney for the Government, and shall include—*

19 “(1) *the identity of the Federal officer seeking to*
20 *use the pen register or trap and trace device covered*
21 *by the application;*

22 “(2) *a certification by the applicant that the in-*
23 *formation likely to be obtained is relevant to an ongo-*
24 *ing foreign intelligence or international terrorism in-*
25 *vestigation being conducted by the Federal Bureau of*

1 *Investigation under guidelines approved by the Attor-*
2 *ney General; and*

3 *“(3) information which demonstrates that there*
4 *is reason to believe that the telephone line to which*
5 *the pen register or trap and trace device is to be at-*
6 *tached, or the communication instrument or device to*
7 *be covered by the pen register or trap and trace de-*
8 *vice, has been or is about to be used in communica-*
9 *tion with—*

10 *“(A) an individual who is engaging or has*
11 *engaged in international terrorism or clandes-*
12 *tine intelligence activities that involve or may*
13 *involve a violation of the criminal laws of the*
14 *United States; or*

15 *“(B) a foreign power or agent of a foreign*
16 *power under circumstances giving reason to be-*
17 *lieve that the communication concerns or con-*
18 *cerned international terrorism or clandestine in-*
19 *telligence activities that involve or may involve*
20 *a violation of the criminal laws of the United*
21 *States.*

22 *“(d)(1) Upon an application made pursuant to this*
23 *section, the judge shall enter an ex parte order as requested,*
24 *or as modified, approving the installation and use of a pen*

1 *register or trap and trace device if the judge finds that the*
2 *application satisfies the requirements of this section.*

3 *“(2) An order issued under this section—*

4 *“(A) shall specify—*

5 *“(i) the identity, if known, of the person*
6 *who is the subject of the foreign intelligence or*
7 *international terrorism investigation;*

8 *“(ii) in the case of an application for the*
9 *installation and use of a pen register or trap*
10 *and trace device with respect to a telephone*
11 *line—*

12 *“(I) the identity, if known, of the per-*
13 *son to whom is leased or in whose name the*
14 *telephone line is listed; and*

15 *“(II) the number and, if known, phys-*
16 *ical location of the telephone line; and*

17 *“(iii) in the case of an application for the*
18 *use of a pen register or trap and trace device*
19 *with respect to a communication instrument or*
20 *device not covered by clause (ii)—*

21 *“(I) the identity, if known, of the per-*
22 *son who owns or leases the instrument or*
23 *device or in whose name the instrument or*
24 *device is listed; and*

1 “(II) the number of the instrument or
2 device; and

3 “(B) shall direct that—

4 “(i) upon request of the applicant, the pro-
5 vider of a wire or electronic communication serv-
6 ice, landlord, custodian, or other person shall
7 furnish any information, facilities, or technical
8 assistance necessary to accomplish the installa-
9 tion and operation of the pen register or trap
10 and trace device in such a manner as will pro-
11 tect its secrecy and produce a minimum amount
12 of interference with the services that such pro-
13 vider, landlord, custodian, or other person is
14 providing the person concerned;

15 “(ii) such provider, landlord, custodian, or
16 other person—

17 “(I) shall not disclose the existence of
18 the investigation or of the pen register or
19 trap and trace device to any person unless
20 or until ordered by the court; and

21 “(II) shall maintain, under security
22 procedures approved by the Attorney Gen-
23 eral and the Director of Central Intelligence
24 pursuant to section 105(b)(2)(C) of this Act,
25 any records concerning the pen register or

1 *trap and trace device or the aid furnished;*

2 *and*

3 “(iii) *the applicant shall compensate such*
4 *provider, landlord, custodian, or other person for*
5 *reasonable expenses incurred by such provider,*
6 *landlord, custodian, or other person in providing*
7 *such information, facilities, or technical assist-*
8 *ance.*

9 “(e) *An order issued under this section shall authorize*
10 *the installation and use of a pen register or trap and trace*
11 *device for a period not to exceed 90 days. Extensions of such*
12 *an order may be granted, but only upon an application*
13 *for an order under this section and upon the judicial find-*
14 *ing required by subsection (d). The period of extension shall*
15 *be for a period not to exceed 90 days.*

16 “(f) *No cause of action shall lie in any court against*
17 *any provider of a wire or electronic communication service,*
18 *landlord, custodian, or other person (including any officer,*
19 *employee, agent, or other specified person thereof) that fur-*
20 *nishes any information, facilities, or technical assistance*
21 *under subsection (d) in accordance with the terms of a court*
22 *under this section.*

23 “(g) *Unless otherwise ordered by the judge, the results*
24 *of a pen register or trap and trace device shall be furnished*
25 *at reasonable intervals during regular business hours for*

1 *the duration of the order to the authorized Government offi-*
2 *cial or officials.*

3 *“AUTHORIZATION DURING EMERGENCIES*

4 *“SEC. 403. (a) Notwithstanding any other provision*
5 *of this title, when the Attorney General makes a determina-*
6 *tion described in subsection (b), the Attorney General may*
7 *authorize the installation and use of a pen register or trap*
8 *and trace device on an emergency basis to gather foreign*
9 *intelligence information or information concerning inter-*
10 *national terrorism if—*

11 *“(1) a judge referred to in section 402(b) of this*
12 *Act is informed by the Attorney General or his des-*
13 *ignee at the time of such authorization that the deci-*
14 *sion has been made to install and use the pen register*
15 *or trap and trace device, as the case may be, on an*
16 *emergency basis; and*

17 *“(2) an application in accordance with section*
18 *402 of this Act is made to such judge as soon as prac-*
19 *ticable, but not more than 48 hours, after the Attor-*
20 *ney General authorizes the installation and use of the*
21 *pen register or trap and trace device, as the case may*
22 *be, under this section.*

23 *“(b) A determination under this subsection is a reason-*
24 *able determination by the Attorney General that—*

25 *“(1) an emergency requires the installation and*
26 *use of a pen register or trap and trace device to ob-*

1 tain foreign intelligence information or information
2 concerning international terrorism before an order
3 authorizing the installation and use of the pen reg-
4 ister or trap and trace device, as the case may be, can
5 with due diligence be obtained under section 402 of
6 this Act; and

7 “(2) the factual basis for issuance of an order
8 under such section 402 to approve the installation
9 and use of the pen register or trap and trace device,
10 as the case may be, exists.

11 “(c)(1) In the absence of an order applied for under
12 subsection (a)(2) approving the installation and use of a
13 pen register or trap and trace device authorized under this
14 section, the installation and use of the pen register or trap
15 and trace device, as the case may be, shall terminate at
16 the earlier of—

17 “(A) when the information sought is obtained;

18 “(B) when the application for the order is denied
19 under section 402 of this Act; or

20 “(C) 48 hours after the time of the authorization
21 by the Attorney General.

22 “(2) In the event that an application for an order ap-
23 plied for under subsection (a)(2) is denied, or in any other
24 case where the installation and use of a pen register or trap
25 and trace device under this section is terminated and no

1 order under section 402 of this Act is issued approving the
2 installation and use of the pen register or trap and trace
3 device, as the case may be, no information obtained or evi-
4 dence derived from the use of the pen register or trap and
5 trace device, as the case may be, shall be received in evidence
6 or otherwise disclosed in any trial, hearing, or other pro-
7 ceeding in or before any court, grand jury, department, of-
8 fice, agency, regulatory body, legislative committee, or other
9 authority of the United States, a State, or political subdivi-
10 sion thereof, and no information concerning any United
11 States person acquired from the use of the pen register or
12 trap and trace device, as the case may be, shall subsequently
13 be used or disclosed in any other manner by Federal officers
14 or employees without the consent of such person, except with
15 the approval of the Attorney General if the information in-
16 dicates a threat of death or serious bodily harm to any per-
17 son.

18 “AUTHORIZATION DURING TIME OF WAR

19 “SEC. 404. Notwithstanding any other provision of
20 law, the President, through the Attorney General, may au-
21 thorize the use of a pen register or trap and trace device
22 without a court order under this title to acquire foreign in-
23 telligence information for a period not to exceed 15 calendar
24 days following a declaration of war by Congress.

1 *at a reasonable time before an effort to so disclose or so*
2 *use that information or submit it in evidence, notify the*
3 *aggrieved person and the court or other authority in which*
4 *the information is to be disclosed or used that the United*
5 *States intends to so disclose or so use such information.*

6 “(d) Whenever any State or political subdivision there-
7 of intends to enter into evidence or otherwise use or disclose
8 in any trial, hearing, or other proceeding in or before any
9 court, department, officer, agency, regulatory body, or other
10 authority of the State or political subdivision thereof
11 against an aggrieved person any information obtained or
12 derived from the use of a pen register or trap and trace
13 device pursuant to this title, the State or political subdivi-
14 sion thereof shall notify the aggrieved person, the court or
15 other authority in which the information is to be disclosed
16 or used, and the Attorney General that the State or political
17 subdivision thereof intends to so disclose or so use such in-
18 formation.

19 “(e)(1) Any aggrieved person against whom evidence
20 obtained or derived from the use of a pen register or trap
21 and trace device is to be, or has been, introduced or other-
22 wise used or disclosed in any trial, hearing, or other pro-
23 ceeding in or before any court, department, officer, agency,
24 regulatory body, or other authority of the United States,
25 or a State or political subdivision thereof, may move to sup-

1 *press the evidence obtained or derived from the use of the*
2 *pen register or trap and trace device, as the case may be,*
3 *on the grounds that—*

4 “(A) *the information was unlawfully acquired;*
5 *or*

6 “(B) *the use of the pen register or trap and trace*
7 *device, as the case may be, was not made in conform-*
8 *ity with an order of authorization or approval under*
9 *this title.*

10 “(2) *A motion under paragraph (1) shall be made be-*
11 *fore the trial, hearing, or other proceeding unless there was*
12 *no opportunity to make such a motion or the aggrieved per-*
13 *son concerned was not aware of the grounds of the motion.*

14 “(f)(1) *Whenever a court or other authority is notified*
15 *pursuant to subsection (c) or (d), whenever a motion is*
16 *made pursuant to subsection (e), or whenever any motion*
17 *or request is made by an aggrieved person pursuant to any*
18 *other statute or rule of the United States or any State before*
19 *any court or other authority of the United States or any*
20 *State to discover or obtain applications or orders or other*
21 *materials relating to the use of a pen register or trap and*
22 *trace device authorized by this title or to discover, obtain,*
23 *or suppress evidence or information obtained or derived*
24 *from the use of a pen register or trap and trace device au-*
25 *thorized by this title, the United States district court or,*

1 *where the motion is made before another authority, the*
2 *United States district court in the same district as the au-*
3 *thority shall, notwithstanding any other provision of law*
4 *and if the Attorney General files an affidavit under oath*
5 *that disclosure or any adversary hearing would harm the*
6 *national security of the United States, review in camera*
7 *and ex parte the application, order, and such other mate-*
8 *rials relating to the use of the pen register or trap and trace*
9 *device, as the case may be, as may be necessary to determine*
10 *whether the use of the pen register or trap and trace device,*
11 *as the case may be, was lawfully authorized and conducted.*

12 “(2) *In making a determination under paragraph (1),*
13 *the court may disclose to the aggrieved person, under appro-*
14 *priate security procedures and protective orders, portions*
15 *of the application, order, or other materials relating to the*
16 *use of the pen register or trap and trace device, as the case*
17 *may be, or may require the Attorney General to provide*
18 *to the aggrieved person a summary of such materials, only*
19 *where such disclosure is necessary to make an accurate de-*
20 *termination of the legality of the use of the pen register or*
21 *trap and trace device, as the case may be.*

22 “(g)(1) *If the United States district court determines*
23 *pursuant to subsection (f) that the use of a pen register or*
24 *trap and trace device was not lawfully authorized or con-*
25 *ducted, the court may, in accordance with the requirements*

1 *of law, suppress the evidence which was unlawfully obtained*
2 *or derived from the use of the pen register or trap and trace*
3 *device, as the case may be, or otherwise grant the motion*
4 *of the aggrieved person.*

5 “(2) *If the court determines that the use of the pen*
6 *register or trap and trace device, as the case may be, was*
7 *lawfully authorized or conducted, it may deny the motion*
8 *of the aggrieved person except to the extent that due process*
9 *requires discovery or disclosure.*

10 “(h) *Orders granting motions or requests under sub-*
11 *section (g), decisions under this section that the use of a*
12 *pen register or trap and trace device was not lawfully au-*
13 *thorized or conducted, and orders of the United States dis-*
14 *trict court requiring review or granting disclosure of appli-*
15 *cations, orders, or other materials relating to the installa-*
16 *tion and use of a pen register or trap and trace device shall*
17 *be final orders and binding upon all courts of the United*
18 *States and the several States except a United States Court*
19 *of Appeals or the Supreme Court.*

20 “CONGRESSIONAL OVERSIGHT

21 “SEC. 406. (a) *On a semiannual basis, the Attorney*
22 *General shall fully inform the Permanent Select Committee*
23 *on Intelligence of the House of Representatives and the Se-*
24 *lect Committee on Intelligence of the Senate concerning all*
25 *uses of pen registers and trap and trace devices pursuant*
26 *to this title.*

1 “(b) On a semiannual basis, the Attorney General
2 shall also provide to the committees referred to in subsection
3 (a) and to the Committees on the Judiciary of the House
4 of Representatives and the Senate a report setting forth
5 with respect to the preceding six-month period—

6 “(1) the total number of applications made for
7 orders approving the use of pen registers or trap and
8 trace devices under this title; and

9 “(2) the total number of such orders either grant-
10 ed, modified, or denied.”.

11 **SEC. 602. ACCESS TO CERTAIN BUSINESS RECORDS FOR**
12 **FOREIGN INTELLIGENCE AND INTER-**
13 **NATIONAL TERRORISM INVESTIGATIONS.**

14 *The Foreign Intelligence Surveillance Act of 1978 (50*
15 *U.S.C. 1801 et seq.), as amended by section 601 of this Act,*
16 *is further amended by inserting after title IV, as added by*
17 *such section 601, the following new title:*

18 **“TITLE V—ACCESS TO CERTAIN BUSINESS**
19 **RECORDS FOR FOREIGN INTELLIGENCE PUR-**
20 **POSES**

21 **“DEFINITIONS**

22 **“SEC. 501. As used in this title:**

23 “(1) The terms ‘foreign power’, ‘agent of a for-
24 eign power’, ‘foreign intelligence information’, ‘inter-

1 *national terrorism’, and ‘Attorney General’ shall have*
2 *the same meanings as in section 101 of this Act.*

3 *“(2) The term ‘common carrier’ means any per-*
4 *son or entity transporting people or property by land,*
5 *rail, water, or air for compensation.*

6 *“(3) The term ‘physical storage facility’ means*
7 *any business or entity that provides space for the*
8 *storage of goods or materials, or services related to the*
9 *storage of goods or materials, to the public or any seg-*
10 *ment thereof.*

11 *“(4) The term ‘public accommodation facility’*
12 *means any inn, hotel, motel, or other establishment*
13 *that provides lodging to transient guests.*

14 *“(5) The term ‘vehicle rental facility’ means any*
15 *person or entity that provides vehicles for rent, lease,*
16 *loan, or other similar use to the public or any seg-*
17 *ment thereof.*

18 *“ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN*
19 *INTELLIGENCE AND INTERNATIONAL TERRORISM IN-*
20 *VESTIGATIONS*

21 *“SEC. 502. (a) The Director of the Federal Bureau of*
22 *Investigation or a designee of the Director (whose rank shall*
23 *be no lower than Assistant Special Agent in Charge) may*
24 *make an application for an order authorizing a common*
25 *carrier, public accommodation facility, physical storage fa-*
26 *cility, or vehicle rental facility to release records in its pos-*

1 *session for an investigation to gather foreign intelligence*
2 *information or an investigation concerning international*
3 *terrorism which investigation is being conducted by the*
4 *Federal Bureau of Investigation under such guidelines as*
5 *the Attorney General approves pursuant to Executive Order*
6 *No. 12333, or a successor order.*

7 “(b) *Each application under this section—*

8 “(1) *shall be made to—*

9 “(A) *a judge of the court established by sec-*
10 *tion 103(a) of this Act; or*

11 “(B) *a United States Magistrate Judge*
12 *under chapter 43 of title 28, United States Code,*
13 *who is publicly designated by the Chief Justice*
14 *of the United States to have the power to hear*
15 *applications and grant orders for the release of*
16 *records under this section on behalf of a judge of*
17 *that court; and*

18 “(2) *shall specify that—*

19 “(A) *the records concerned are sought for an*
20 *investigation described in subsection (a); and*

21 “(B) *there are specific and articulable facts*
22 *giving reason to believe that the person to whom*
23 *the records pertain is a foreign power or an*
24 *agent of a foreign power.*

1 “(c)(1) Upon application made pursuant to this sec-
2 tion, the judge shall enter an *ex parte* order as requested,
3 or as modified, approving the release of records if the judge
4 finds that the application satisfies the requirements of this
5 section.

6 “(2) An order under this subsection shall not disclose
7 that it is issued for purposes of an investigation described
8 in subsection (a).

9 “(d)(1) Any common carrier, public accommodation
10 facility, physical storage facility, or vehicle rental facility
11 shall comply with an order under subsection (c).

12 “(2) No common carrier, public accommodation facil-
13 ity, physical storage facility, or vehicle rental facility, or
14 officer, employee, or agent thereof, shall disclose to any per-
15 son (other than those officers, agents, or employees of such
16 common carrier, public accommodation facility, physical
17 storage facility, or vehicle rental facility necessary to fulfill
18 the requirement to disclose information to the Federal Bu-
19 reau of Investigation under this section) that the Federal
20 Bureau of Investigation has sought or obtained records pur-
21 suant to an order under this section.

22 “CONGRESSIONAL OVERSIGHT

23 “SEC. 503. (a) On a semiannual basis, the Attorney
24 General shall fully inform the Permanent Select Committee
25 on Intelligence of the House of Representatives and the Se-

1 lect Committee on Intelligence of the Senate concerning all
2 requests for records under this title.

3 “(b) On a semiannual basis, the Attorney General
4 shall provide to the Committees on the Judiciary of the
5 House of Representatives and the Senate a report setting
6 forth with respect to the preceding six-month period—

7 “(1) the total number of applications made for
8 orders approving requests for records under this title;
9 and

10 “(2) the total number of such orders either grant-
11 ed, modified, or denied.”.

12 **SEC. 603. CONFORMING AND CLERICAL AMENDMENTS.**

13 (a) *CONFORMING AMENDMENT.*—Section 601 of the
14 *Foreign Intelligence Surveillance Act of 1978*, as redesign-
15 nated by section 601(1) of this Act, is amended by striking
16 out “other than title III” and inserting in lieu thereof
17 “other than titles III, IV, and V”.

18 (b) *CLERICAL AMENDMENT.*—The table of contents at
19 the beginning of the *Foreign Intelligence Surveillance Act*
20 of 1978 is amended by striking out the items relating to
21 title IV and section 401 and inserting in lieu thereof the
22 following:

“TITLE IV—PEN REGISTERS AND TRAP AND TRACE DEVICES FOR
FOREIGN INTELLIGENCE PURPOSES

“401. Definitions.

“402. Pen registers and trap and trace devices for foreign intelligence and inter-
national terrorism investigations.

“403. Authorization during emergencies.

“404. Authorization during time of war.

“405. Use of information.

“406. Congressional oversight.

*“TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN
INTELLIGENCE PURPOSES*

“501. Definitions.

*“502. Access to certain business records for foreign intelligence and international
terrorism investigations.*

“503. Congressional oversight.

“TITLE VI—EFFECTIVE DATE

“601. Effective date.”.

Attest:

Secretary.

105TH CONGRESS
2^D SESSION

H. R. 3694

AMENDMENT

HR 3694 EAS—2

HR 3694 EAS—3

HR 3694 EAS—4

HR 3694 EAS—5