

Calendar No. 619108TH CONGRESS
2^D SESSION**S. 2386****[Report No. 108-258]****[Report No. 108-300]**

To authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 5, 2004

Mr. ROBERTS, from the Select Committee on Intelligence, reported the following original bill; which was read twice and placed on the calendar

MAY 7, 2004

Referred to the Committee on Armed Services pursuant to section 3(b) of S. Res. 400, 94th Congress, for a period not to exceed 30 days of session

JULY 8, 2004

Reported by Mr. WARNER, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence 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 2005”.

6 (b) TABLE OF CONTENTS.—The table of contents for
 7 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. Intelligence Community Management Account.

Sec. 105. Incorporation of reporting requirements.

Sec. 106. Specific authorization of funds for intelligence or intelligence-related activities for which fiscal year 2004 appropriations exceed amounts authorized.

Sec. 107. Preparation and submittal of reports, reviews, studies, and plans relating to intelligence activities of Department of Defense and Department of Energy.

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. Modification of authority to obligate and expend certain funds for intelligence activities.

Sec. 304. Treatment as agent of a foreign power under the Foreign Intelligence Surveillance Act of 1978 of non-United States persons who engage in international terrorism without affiliation with international terrorist groups.

Sec. 305. Additional annual reporting requirements under the Foreign Intelligence Surveillance Act of 1978.

Sec. 306. Repeal of limitation on length of service as member of the Select Committee on Intelligence of the Senate.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

Sec. 401. Permanent extension of Central Intelligence Agency voluntary separation incentive program.

Sec. 402. Intelligence operations and cover enhancement authority.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

~~Sec. 501. Repeal of sunset on authority to engage in commercial activities as security for intelligence collection activities.~~

~~Sec. 502~~ 501. Defense intelligence exemption from certain Privacy Act requirements.

~~Sec. 503~~ 502. Use of funds for counterdrug and counterterrorism activities for Colombia.

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

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

4 Funds are hereby authorized to be appropriated for
 5 fiscal year 2005 for the conduct of the intelligence and
 6 intelligence-related activities of the following elements of
 7 the United States Government:

8 (1) The Central Intelligence Agency.

9 (2) The Department of Defense.

10 (3) The Defense Intelligence Agency.

11 (4) The National Security Agency.

12 (5) The Department of the Army, the Depart-
 13 ment of the Navy, and the Department of the Air
 14 Force.

15 (6) The Department of State.

16 (7) The Department of the Treasury.

17 (8) The Department of Energy.

18 (9) The Department of Justice.

19 (10) The Federal Bureau of Investigation.

20 (11) The National Reconnaissance Office.

21 (12) The National Geospatial-Intelligence Agen-
 22 cy.

1 (13) The Coast Guard.

2 (14) The Department of Homeland Security.

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

4 (a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL
5 CEILINGS.—The amounts authorized to be appropriated
6 under section 101, and the authorized personnel ceilings
7 as of September 30, 2005, for the conduct of the intel-
8 ligence and intelligence-related activities of the elements
9 listed in such section, are those specified in the classified
10 Schedule of Authorizations prepared to accompany the
11 conference report on the bill ____ of the One Hundred
12 Eighth Congress.

13 (b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AU-
14 THORIZATIONS.—The Schedule of Authorizations shall be
15 made available to the Committees on Appropriations of
16 the Senate and House of Representatives and to the Presi-
17 dent. The President shall provide for suitable distribution
18 of the Schedule, or of appropriate portions of the Sched-
19 ule, within the executive branch.

20 **SEC. 103. PERSONNEL CEILING ADJUSTMENTS.**

21 (a) AUTHORITY FOR ADJUSTMENTS.—With the ap-
22 proval of the Director of the Office of Management and
23 Budget, the Director of Central Intelligence may authorize
24 employment of civilian personnel in excess of the number
25 authorized for fiscal year 2005 under section 102 when

1 the Director of Central Intelligence determines that such
2 action is necessary to the performance of important intel-
3 ligence functions, except that the number of personnel em-
4 ployed in excess of the number authorized under such sec-
5 tion may not, for any element of the intelligence commu-
6 nity, exceed 2 percent of the number of civilian personnel
7 authorized under such section for such element.

8 (b) NOTICE TO INTELLIGENCE COMMITTEES.—The
9 Director of Central Intelligence shall promptly notify the
10 Select Committee on Intelligence of the Senate and the
11 Permanent Select Committee on Intelligence of the House
12 of Representatives whenever the Director exercises the au-
13 thority granted by this section.

14 **SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT AC-**
15 **COUNT.**

16 (a) AUTHORIZATION OF APPROPRIATIONS.—There is
17 authorized to be appropriated for the Intelligence Commu-
18 nity Management Account of the Director of Central Intel-
19 ligence for fiscal year 2005 the sum of \$342,995,000.
20 Within such amount, funds identified in the classified
21 Schedule of Authorizations referred to in section 102(a)
22 for advanced research and development shall remain avail-
23 able until September 30, 2006.

24 (b) AUTHORIZED PERSONNEL LEVELS.—The ele-
25 ments within the Intelligence Community Management

1 Account of the Director of Central Intelligence are author-
2 ized 310 full-time personnel as of September 30, 2005.
3 Personnel serving in such elements may be permanent em-
4 ployees of the Intelligence Community Management Ac-
5 count or personnel detailed from other elements of the
6 United States Government.

7 (c) CLASSIFIED AUTHORIZATIONS.—

8 (1) AUTHORIZATION OF APPROPRIATIONS.—In
9 addition to amounts authorized to be appropriated
10 for the Intelligence Community Management Ac-
11 count by subsection (a), there are also authorized to
12 be appropriated for the Intelligence Community
13 Management Account for fiscal year 2005 such addi-
14 tional amounts as are specified in the classified
15 Schedule of Authorizations referred to in section
16 102(a). Such additional amounts for research and
17 development shall remain available until September
18 30, 2006.

19 (2) AUTHORIZATION OF PERSONNEL.—In addi-
20 tion to the personnel authorized by subsection (b)
21 for elements of the Intelligence Community Manage-
22 ment Account as of September 30, 2005, there are
23 also authorized such additional personnel for such
24 elements as of that date as are specified in the clas-
25 sified Schedule of Authorizations.

1 (d) REIMBURSEMENT.—Except as provided in section
2 113 of the National Security Act of 1947 (50 U.S.C.
3 404h), during fiscal year 2005 any officer or employee of
4 the United States or a member of the Armed Forces who
5 is detailed to the staff of the Intelligence Community Man-
6 agement Account from another element of the United
7 States Government shall be detailed on a reimbursable
8 basis, except that any such officer, employee, or member
9 may be detailed on a nonreimbursable basis for a period
10 of less than one year for the performance of temporary
11 functions as required by the Director of Central Intel-
12 ligence.

13 (e) NATIONAL DRUG INTELLIGENCE CENTER.—

14 (1) IN GENERAL.—Of the amount authorized to
15 be appropriated in subsection (a), \$34,911,000 shall
16 be available for the National Drug Intelligence Cen-
17 ter. Within such amount, funds provided for re-
18 search, development, testing, and evaluation pur-
19 poses shall remain available until September 30,
20 2006, and funds provided for procurement purposes
21 shall remain available until September 30, 2007.

22 (2) TRANSFER OF FUNDS.—The Director of
23 Central Intelligence shall transfer to the Attorney
24 General funds available for the National Drug Intel-
25 ligence Center under paragraph (1). The Attorney

1 General shall utilize funds so transferred for the ac-
2 tivities of the National Drug Intelligence Center.

3 (3) LIMITATION.—Amounts available for the
4 National Drug Intelligence Center may not be used
5 in contravention of the provisions of section
6 103(d)(1) of the National Security Act of 1947 (50
7 U.S.C. 403–3(d)(1)).

8 (4) AUTHORITY.—Notwithstanding any other
9 provision of law, the Attorney General shall retain
10 full authority over the operations of the National
11 Drug Intelligence Center.

12 **SEC. 105. INCORPORATION OF REPORTING REQUIRE-**
13 **MENTS.**

14 (a) IN GENERAL.—Each requirement to submit a re-
15 port to the congressional intelligence committees that is
16 included in the joint explanatory statement to accompany
17 the conference report on the bill ____ of the One Hundred
18 Eighth Congress, or in the classified annex to this Act,
19 is hereby incorporated into this Act, and is hereby made
20 a requirement in law.

21 (b) CONGRESSIONAL INTELLIGENCE COMMITTEES
22 DEFINED.—In this section, the term “congressional intel-
23 ligence committees” means—

24 (1) the Select Committee on Intelligence of the
25 Senate; and

1 (2) the Permanent Select Committee on Intel-
2 ligence of the House of Representatives.

3 **SEC. 106. SPECIFIC AUTHORIZATION OF FUNDS FOR INTEL-**
4 **LIGENCE OR INTELLIGENCE-RELATED AC-**
5 **TIVITIES FOR WHICH FISCAL YEAR 2004 AP-**
6 **PROPRIATIONS EXCEED AMOUNTS AUTHOR-**
7 **IZED.**

8 Funds appropriated for an intelligence or intel-
9 ligence-related activity of the United States Government
10 for fiscal year 2004 in excess of the amount specified for
11 such activity in the classified Schedule of Authorizations
12 prepared to accompany the Intelligence Authorization Act
13 for Fiscal Year 2004 (Public Law 108–177; 117 Stat.
14 2599) shall be deemed to be specifically authorized by
15 Congress for purposes of section 504(a)(3) of the National
16 Security Act of 1947 (50 U.S.C. 414(a)(3)).

17 **SEC. 107. PREPARATION AND SUBMITTAL OF REPORTS, RE-**
18 **VIEWS, STUDIES, AND PLANS RELATING TO**
19 **INTELLIGENCE ACTIVITIES OF DEPARTMENT**
20 **OF DEFENSE AND DEPARTMENT OF ENERGY.**

21 (a) *CONSULTATION IN PREPARATION.*—(1) *The Direc-*
22 *tor of Central Intelligence shall ensure that any report, re-*
23 *view, study, or plan required to be prepared or conducted*
24 *by a provision of this Act, including a provision of the clas-*
25 *sified Schedule of Authorizations referred to in section*

1 102(a) or the classified annex to this Act, that involves the
2 intelligence or intelligence-related activities of the Depart-
3 ment of Defense or the Department of Energy is prepared
4 or conducted in consultation with the Secretary of Defense
5 or the Secretary of Energy, as appropriate.

6 (2) The Secretary of Defense or the Secretary of En-
7 ergy may carry out any consultation required by this sub-
8 section through an official of the Department of Defense or
9 the Department of Energy, as the case may be, designated
10 by such Secretary for that purpose.

11 (b) *SUBMITTAL*.—Any report, review, study, or plan
12 referred to in subsection (a) shall be submitted, in addition
13 to any other committee of Congress specified for submittal
14 in the provision concerned, to the following committees of
15 Congress:

16 (1) The Committee on Armed Services, the Sub-
17 committee on Defense of the Committee on Appropria-
18 tions, and the Select Committee on Intelligence of the
19 Senate.

20 (2) The Committee on Armed Services, and the
21 Subcommittee on Defense of the Committee on Appropria-
22 tions, and the Permanent Select Committee on
23 Intelligence of the House of Representatives.

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 Cen-
7 tral Intelligence Agency Retirement and Disability Fund
8 for fiscal year 2005 the sum of \$239,400,000.

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
17 or 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
22 any intelligence activity which is not otherwise authorized
23 by the Constitution or the laws of the United States.

1 **SEC. 303. MODIFICATION OF AUTHORITY TO OBLIGATE AND**
2 **EXPEND CERTAIN FUNDS FOR INTELLIGENCE**
3 **ACTIVITIES.**

4 Section 504(a)(3) of the National Security Act of
5 1947 (50 U.S.C. 414(a)(3)) is amended—

6 (1) in subparagraph (A), by inserting “and” at
7 the end;

8 (2) by striking subparagraph (B); and

9 (3) by redesignating subparagraph (C) as sub-
10 paragraph (B).

11 **SEC. 304. TREATMENT AS AGENT OF A FOREIGN POWER**
12 **UNDER THE FOREIGN INTELLIGENCE SUR-**
13 **VEILLANCE ACT OF 1978 OF NON-UNITED**
14 **STATES PERSONS WHO ENGAGE IN INTER-**
15 **NATIONAL TERRORISM WITHOUT AFFILI-**
16 **ATION WITH INTERNATIONAL TERRORIST**
17 **GROUPS.**

18 (a) IN GENERAL.—Section 101(b)(1) of the Foreign
19 Intelligence Surveillance Act of 1978 (50 U.S.C.
20 1801(b)(1)) is amended by adding at the end the following
21 new subparagraph:

22 “(C) engages in international terrorism or
23 activities in preparation therefor; or”.

24 (b) SUNSET.—The amendment made by subsection
25 (a) shall be subject to the sunset provision in section 224
26 of the USA PATRIOT Act of 2001 (Public Law 107–56;

1 115 Stat. 295), including the exception provided in sub-
2 section (b) of such section 224.

3 **SEC. 305. ADDITIONAL ANNUAL REPORTING REQUIRE-**
4 **MENTS UNDER THE FOREIGN INTELLIGENCE**
5 **SURVEILLANCE ACT OF 1978.**

6 (a) ADDITIONAL REPORTING REQUIREMENTS.—The
7 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
8 1801 et seq.) is amended—

9 (1) by redesignating title VI as title VII;

10 (2) by redesignating section 601 as section 701;

11 and

12 (3) by inserting after title V the following new
13 title VI:

14 “TITLE VI—REPORTING REQUIREMENT

15 “ANNUAL REPORT OF THE ATTORNEY GENERAL

16 “SEC. 601. (a) In addition to the reports required
17 by sections 107, 108, 306, 406, and 502 in April each
18 year, the Attorney General shall submit to the appropriate
19 committees of Congress each year a report setting forth
20 with respect to the one-year period ending on the date of
21 such report—

22 “(1) the aggregate number of non-United
23 States persons targeted for orders issued under this
24 Act, including a break-down of those targeted for—

1 “(A) electronic surveillance under section
2 105;

3 “(B) physical searches under section 304;

4 “(C) pen registers under section 402; and

5 “(D) access to records under section 501;

6 “(2) the number of individuals covered by an
7 order issued under this Act who were determined
8 pursuant to activities authorized by this Act to have
9 acted wholly alone in the activities covered by such
10 order;

11 “(3) the number of times that the Attorney
12 General has authorized that information obtained
13 under this Act may be used in a criminal proceeding
14 or any information derived therefrom may be used
15 in a criminal proceeding; and

16 “(4) in a manner consistent with the protection
17 of the national security of the United States—

18 “(A) the portions of the documents and
19 applications filed with the courts established
20 under section 103 that include significant con-
21 struction or interpretation of the provisions of
22 this Act, not including the facts of any par-
23 ticular matter, which may be redacted; and

24 “(B) the portions of the opinions and or-
25 ders of the courts established under section 103

1 that include significant construction or interpre-
2 tation of the provisions of this Act, not includ-
3 ing the facts of any particular matter, which
4 may be redacted.

5 “(b) The first report under this section shall be sub-
6 mitted not later than six months after the date of the en-
7 actment of this Intelligence Authorization Act for Fiscal
8 Year 2005. Subsequent reports under this section shall be
9 submitted annually thereafter.

10 “(c) In this section, the term ‘appropriate committees
11 of Congress’ means—

12 “(1) the Select Committee on Intelligence and
13 the Committee on the Judiciary of the Senate; and

14 “(2) the Permanent Select Committee on Intel-
15 ligence and the Committee on the Judiciary of the
16 House of Representatives.”.

17 (b) CLERICAL AMENDMENT.—The table of contents
18 for that Act is amended by striking the items relating to
19 title VI and inserting the following new items:

 “TITLE VI—REPORTING REQUIREMENT

 “Sec. 601. Annual report of the Attorney General.

 “TITLE VII—EFFECTIVE DATE

 “Sec. 701. Effective date.”.

1 **SEC. 306. REPEAL OF LIMITATION ON LENGTH OF SERVICE**
 2 **AS MEMBER OF THE SELECT COMMITTEE ON**
 3 **INTELLIGENCE OF THE SENATE.**

4 (a) REPEAL.—Section 2 of Senate Resolution 400
 5 (94th Congress) is amended—

6 (1) by striking subsection (b); and

7 (2) by redesignating subsection (c) as sub-
 8 section (b).

9 (b) RULES OF THE SENATE.—Subsection (a) is en-
 10 acted—

11 (1) as an exercise of the rulemaking power of
 12 the Senate; and

13 (2) with full recognition of the constitutional
 14 right of the Senate to change the rules of the Senate
 15 at any time and to the same extent as in the case
 16 of any other rule of the Senate.

17 **TITLE IV—CENTRAL**
 18 **INTELLIGENCE AGENCY**

19 **SEC. 401. PERMANENT EXTENSION OF CENTRAL INTEL-**
 20 **LIGENCE AGENCY VOLUNTARY SEPARATION**
 21 **INCENTIVE PROGRAM.**

22 (a) IN GENERAL.—Section 2 of the Central Intel-
 23 ligence Agency Voluntary Separation Pay Act (50 U.S.C.
 24 403–4 note) is amended—

25 (1) by striking subsection (f); and

1 (2) by redesignating subsections (g) and (h) as
2 subsections (f) and (g), respectively.

3 (b) **TERMINATION OF FUNDS REMITTANCE RE-**
4 **QUIREMENT.**—(1) Section 2 of such Act is further amend-
5 ed by striking subsection (i).

6 (2) Section 4(a)(2)(B)(ii) of the Federal Workforce
7 Restructuring Act of 1994 (5 U.S.C. 8331 note) is amend-
8 ed by striking “, or section 2 of the Central Intelligence
9 Agency Voluntary Separation Pay Act (Public Law 103–
10 36; 107 Stat. 104)”.

11 **SEC. 402. INTELLIGENCE OPERATIONS AND COVER EN-**
12 **HANCEMENT AUTHORITY.**

13 The Central Intelligence Agency Act of 1949 (50
14 U.S.C. 403a et seq.) is amended by adding at the end the
15 following:

16 “INTELLIGENCE OPERATIONS AND COVER ENHANCEMENT
17 **AUTHORITY**

18 “SEC. 23. (a) **DEFINITIONS.**—In this section—

19 “(1) the term ‘designated employee’ means an
20 employee designated by the Director under sub-
21 section (b); and

22 “(2) the term ‘Federal retirement system’ in-
23 cludes the Central Intelligence Agency Retirement
24 and Disability System, and the Federal Employees
25 Retirement System (including the Thrift Savings
26 Plan).

1 “(b) IN GENERAL.—

2 “(1) AUTHORITY.—Notwithstanding any other
3 provision of law, the Director may exercise the au-
4 thorities under this section in order to—

5 “(A) protect from unauthorized disclo-
6 sure—

7 “(i) intelligence operations;

8 “(ii) the identities of undercover intel-
9 ligence officers;

10 “(iii) intelligence source and methods;

11 or

12 “(iv) intelligence cover mechanisms; or

13 “(B) meet the special requirements of
14 work related to collection of foreign intelligence
15 or other authorized activities of the Agency.

16 “(2) DESIGNATION OF EMPLOYEES.—The Di-
17 rector may designate any employee of the Agency
18 who is under nonofficial cover to be an employee to
19 whom this section applies. Such designation may be
20 made with respect to any or all authorities exercised
21 under this section.

22 “(c) COMPENSATION.—The Director may pay a des-
23 igned employee salary, allowances, and other benefits in
24 an amount and in a manner consistent with the nonofficial
25 cover of that employee, without regard to any limitation

1 that is otherwise applicable to a Federal employee. A des-
2 ignated employee may accept, utilize, and, to the extent
3 authorized by regulations prescribed under subsection (i),
4 retain any salary, allowances, and other benefits provided
5 under this section.

6 “(d) RETIREMENT BENEFITS.—

7 “(1) IN GENERAL.—The Director may establish
8 and administer a nonofficial cover employee retire-
9 ment system under which a designated employee
10 (and the spouse, former spouses, and survivors of
11 such designated employee) shall receive treatment in
12 the same manner and to the same extent as the
13 Federal retirement system that would otherwise
14 apply to such employee (and the spouse, former
15 spouses, and survivors of that employee). A des-
16 ignated employee may not participate in the retire-
17 ment system established under this paragraph and
18 another Federal retirement system at the same time.

19 “(2) CONVERSION TO OTHER FEDERAL RETIRE-
20 MENT SYSTEM.—

21 “(A) IN GENERAL.—A designated em-
22 ployee participating in the retirement system
23 established under paragraph (1) may convert to
24 coverage under the Federal retirement system
25 which would otherwise apply to that employee

1 at any appropriate time determined by the Di-
2 rector (including at the time of separation of
3 service by reason of retirement), if the Director
4 determines that the employee's participation in
5 the retirement system established under this
6 subsection is no longer necessary to protect
7 from unauthorized disclosure—

8 “(i) intelligence operations;

9 “(ii) the identities of undercover intel-
10 ligence officers;

11 “(iii) intelligence sources and meth-
12 ods; or

13 “(iv) intelligence cover mechanisms.

14 “(B) CONVERSION TREATMENT.—Upon a
15 conversion under this paragraph—

16 “(i) all periods of service under the
17 retirement system established under this
18 subsection shall be deemed periods of cred-
19 itable service under the applicable Federal
20 retirement system;

21 “(ii) the Director shall transmit an
22 amount for deposit in any applicable fund
23 of that Federal retirement system that—

1 “(I) is necessary to cover all em-
2 ployee and agency contributions in-
3 cluding—

4 “(aa) interest as determined
5 by the head of the agency admin-
6 istering the Federal retirement
7 system into which the employee
8 is converting; or

9 “(bb) in the case of an em-
10 ployee converting into the Fed-
11 eral Employee’s Retirement Sys-
12 tem, interest as determined
13 under section 8334(e) of title 5,
14 United States Code; and

15 “(II) ensures that such conver-
16 sion does not result in any unfunded
17 liability to that fund; and

18 “(iii) in the case of a designated em-
19 ployee who participated in a retirement
20 system established under paragraph (1)
21 similar to subchapter III of chapter 84 of
22 title 5, United States Code, and is con-
23 verting to coverage under subchapter III of
24 that chapter, the Director shall transmit
25 all amounts of that designated employee in

1 that similar retirement system (or similar
2 part of that retirement system) to the
3 Thrift Savings Fund.

4 “(C) TRANSMITTED AMOUNTS.—

5 “(i) IN GENERAL.—Amounts de-
6 scribed under subparagraph (B)(ii) shall
7 be paid from the fund or appropriation
8 used to pay the designated employee.

9 “(ii) OFFSET.—The Director may use
10 amounts contributed by the designated em-
11 ployee to a retirement system established
12 under paragraph (1) to offset amounts
13 paid under clause (i).

14 “(D) RECORDS.—The Director shall trans-
15 mit all necessary records relating to a des-
16 ignated employee who converts to a Federal re-
17 tirement system under this paragraph (includ-
18 ing records relating to periods of service which
19 are deemed to be periods of creditable service
20 under subparagraph (B)) to the head of the
21 agency administering that Federal retirement
22 system.

23 “(e) HEALTH INSURANCE BENEFITS.—

24 “(1) IN GENERAL.—The Director may establish
25 and administer a nonofficial cover employee health

1 insurance program under which a designated em-
2 ployee (and the family of such designated employee)
3 shall receive treatment in the same manner and to
4 the same extent as provided under chapter 89 of
5 title 5, United States Code. A designated employee
6 may not participate in the health insurance program
7 established under this paragraph and the program
8 under chapter 89 of title 5, United States Code, at
9 the same time.

10 “(2) CONVERSION TO FEDERAL EMPLOYEES
11 HEALTH BENEFITS PROGRAM.—

12 “(A) IN GENERAL.—A designated em-
13 ployee participating in the health insurance pro-
14 gram established under paragraph (1) may con-
15 vert to coverage under the program under chap-
16 ter 89 of title 5, United States Code, at any ap-
17 propriate time determined by the Director (in-
18 cluding at the time of separation of service by
19 reason of retirement), if the Director deter-
20 mines that the employee’s participation in the
21 health insurance program established under this
22 subsection is no longer necessary to protect
23 from unauthorized disclosure—

24 “(i) intelligence operations;

1 “(ii) the identities of undercover intel-
2 ligence officers;

3 “(iii) intelligence sources and meth-
4 ods; or

5 “(iv) intelligence cover mechanisms.

6 “(B) CONVERSION TREATMENT.—Upon a
7 conversion under this paragraph—

8 “(i) the employee (and family, if ap-
9 plicable) shall be entitled to immediate en-
10 rollment and coverage under chapter 89 of
11 title 5, United States Code;

12 “(ii) any requirement of prior enroll-
13 ment in a health benefits plan under chap-
14 ter 89 of that title for continuation of cov-
15 erage purposes shall not apply;

16 “(iii) the employee shall be deemed to
17 have had coverage under chapter 89 of
18 that title from the first opportunity to en-
19 roll for purposes of continuing coverage as
20 an annuitant; and

21 “(iv) the Director shall transmit an
22 amount for deposit in the Employees
23 Health Benefits Fund that is necessary to
24 cover any costs of such conversion.

1 “(C) TRANSMITTED AMOUNTS.—Any
2 amount described under subparagraph (B)(iv)
3 shall be paid from the fund or appropriation
4 used to pay the designated employee.

5 “(f) LIFE INSURANCE BENEFITS.—

6 “(1) IN GENERAL.—The Director may establish
7 and administer a nonofficial cover employee life in-
8 surance program under which a designated employee
9 (and the family of such designated employee) shall
10 receive treatment in the same manner and to the
11 same extent as provided under chapter 87 of title 5,
12 United States Code. A designated employee may not
13 participate in the life insurance program established
14 under this paragraph and the program under chapter
15 87 of title 5, United States Code, at the same time.

16 “(2) CONVERSION TO FEDERAL EMPLOYEES
17 GROUP LIFE INSURANCE PROGRAM.—

18 “(A) IN GENERAL.—A designated em-
19 ployee participating in the life insurance pro-
20 gram established under paragraph (1) may con-
21 vert to coverage under the program under chap-
22 ter 87 of title 5, United States Code, at any ap-
23 propriate time determined by the Director (in-
24 cluding at the time of separation of service by
25 reason of retirement), if the Director determines

1 that the employee’s participation in the life in-
2 surance program established under this sub-
3 section is no longer necessary to protect from
4 unauthorized disclosure—

5 “(i) intelligence operations;

6 “(ii) the identities of undercover intel-
7 ligence officers;

8 “(iii) intelligence sources and meth-
9 ods; or

10 “(iv) intelligence cover mechanisms.

11 “(B) CONVERSION TREATMENT.—Upon a
12 conversion under this paragraph—

13 “(i) the employee (and family, if ap-
14 plicable) shall be entitled to immediate cov-
15 erage under chapter 87 of title 5, United
16 States Code;

17 “(ii) any requirement of prior enroll-
18 ment in a life insurance program under
19 chapter 87 of that title for continuation of
20 coverage purposes shall not apply;

21 “(iii) the employee shall be deemed to
22 have had coverage under chapter 87 of
23 that title for the full period of service dur-
24 ing which the employee would have been

1 entitled to be insured for purposes of con-
2 tinuing coverage as an annuitant; and

3 “(iv) the Director shall transmit an
4 amount for deposit in the Employees Life
5 Insurance Fund that is necessary to cover
6 any costs of such conversion.

7 “(C) TRANSMITTED AMOUNTS.—Any
8 amount described under subparagraph (B)(iii)
9 shall be paid from the fund or appropriation
10 used to pay the designated employee.

11 “(g) EXEMPTION FROM CERTAIN REQUIREMENTS.—
12 The Director may exempt a designated employee from
13 mandatory compliance with any Federal regulation, rule,
14 standardized administrative policy, process, or procedure
15 that the Director determines—

16 “(1) would be inconsistent with the nonofficial
17 cover of that employee; and

18 “(2) could expose that employee to detection as
19 a Federal employee.

20 “(h) TAXATION AND SOCIAL SECURITY.—

21 “(1) IN GENERAL.—Notwithstanding any other
22 provision of law, a designated employee—

23 “(A) shall file a Federal or State tax re-
24 turn as if that employee is not a Federal em-
25 ployee and may claim and receive the benefit of

1 any exclusion, deduction, tax credit, or other
2 tax treatment that would otherwise apply if
3 that employee was not a Federal employee, if
4 the Director determines that taking any action
5 under this paragraph is necessary to—

6 “(i) protect from unauthorized dislo-
7 sure—

8 “(I) intelligence operations;

9 “(II) the identities of undercover
10 intelligence officers;

11 “(III) intelligence source and
12 methods; or

13 “(IV) intelligence cover mecha-
14 nisms; and

15 “(ii) meet the special requirements of
16 work related to collection of foreign intel-
17 ligence or other authorized activities of the
18 Agency; and

19 “(B) shall receive social security benefits
20 based on the social security contributions made.

21 “(2) IRS REVIEW.—The Director shall establish
22 procedures to carry out this subsection. The proce-
23 dures shall be subject to periodic review by the In-
24 ternal Revenue Service.

1 “(i) REGULATIONS.—The Director shall prescribe
2 regulations to carry out this section. The regulations shall
3 ensure that the combination of salary, allowances, and
4 benefits that an employee designated under this section
5 may retain does not significantly exceed, except to the ex-
6 tent determined by the Director to be necessary to exercise
7 the authority in subsection (b), the combination of salary,
8 allowances, and benefits otherwise received by Federal em-
9 ployees not designated under this section.

10 “(j) FINALITY OF DECISIONS.—Any determinations
11 authorized by this section made by the Director or the
12 Director’s designee shall be final and conclusive and shall
13 not be subject to review by any court.

14 “(k) SUBSEQUENTLY ENACTED LAWS.—No law en-
15 acted after the effective date of this section shall affect
16 the authorities and provisions of this section unless such
17 law specifically refers to this section.”.

1 **TITLE V—DEPARTMENT OF DE-**
2 **FENSE INTELLIGENCE MAT-**
3 **TERS**

4 **SEC. 501. REPEAL OF SUNSET ON AUTHORITY TO ENGAGE**
5 **IN COMMERCIAL ACTIVITIES AS SECURITY**
6 **FOR INTELLIGENCE COLLECTION ACTIVI-**
7 **TIES.**

8 Section 431(a) of title 10, United States Code, is
9 amended by striking the second sentence.

10 **SEC. 502 501. DEFENSE INTELLIGENCE EXEMPTION FROM**
11 **CERTAIN PRIVACY ACT REQUIREMENTS.**

12 Section 552a(e)(3) of title 5, United States Code,
13 shall not apply with respect to the collection of information
14 by intelligence personnel of the Department of Defense
15 who are authorized by the Secretary of Defense to collect
16 intelligence from human sources.

17 **SEC. 503 502. USE OF FUNDS FOR COUNTERDRUG AND**
18 **COUNTERTERRORISM ACTIVITIES FOR CO-**
19 **LOMBIA.**

20 (a) **AUTHORITY.**—Funds designated for intelligence
21 or intelligence-related purposes for assistance to the Gov-
22 ernment of Colombia for counterdrug activities for fiscal
23 year 2005, and any unobligated funds available to any ele-
24 ment of the intelligence community for such activities for
25 a prior fiscal year, shall be available—

1 (1) to support a unified campaign by the Gov-
2 ernment of Colombia against narcotics trafficking
3 and against activities by organizations designated as
4 terrorist organizations (such as the Revolutionary
5 Armed Forces of Colombia (FARC), the National
6 Liberation Army (ELN), and the United Self-De-
7 fense Forces of Colombia (AUC)); and

8 (2) to take actions to protect human health and
9 welfare in emergency circumstances, including un-
10 dertaking rescue operations.

11 (b) **APPLICABILITY OF CERTAIN LAWS AND LIMITA-**
12 **TIONS.**—The use of funds pursuant to the authority in
13 subsection (a) shall be subject to the following:

14 (1) Sections 556, 567, and 568 of the Foreign
15 Operations, Export Financing, and Related Pro-
16 grams Appropriations Act, 2002 (Public Law 107–
17 115; 115 Stat. 2160, 2165, and 2166).

18 (2) Section 8077 of the Department of Defense
19 Appropriations Act, 2004 (Public Law 108–87; 117
20 Stat. 1090).

21 (3) The numerical limitations on the number of
22 United States military personnel and United States
23 individual civilian contractors in section 3204(b)(1)
24 of the Emergency Supplemental Act, 2000 (division
25 B of Public Law 106–246; 114 Stat. 575), as

1 amended by the Foreign Operations, Export Financ-
2 ing, and Related Programs Appropriations Act,
3 2002 (115 Stat. 2131).

4 (c) LIMITATION ON PARTICIPATION OF UNITED
5 STATES PERSONNEL.—No United States Armed Forces
6 personnel or United States civilian contractor employed by
7 the United States Armed Forces will participate in any
8 combat operation in connection with assistance made
9 available under this section, except for the purpose of act-
10 ing in self defense or during the course of search and res-
11 cue operations for United States citizens.

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108TH CONGRESS
2^D SESSION

S. 2386

[Report No. 108-258]

[Report No. 108-300]

A BILL

To authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

JULY 8, 2004

Reported with amendments