

Calendar No. 600

109TH CONGRESS
2^D SESSION

S. 3877

Entitled the “Foreign Intelligence Surveillance Improvement and Enhancement Act of 2006”.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7 (legislative day, SEPTEMBER 6), 2006

Mrs. FEINSTEIN introduced the following bill; which was read the first time

SEPTEMBER 8, 2006

Read the second time and placed on the calendar

A BILL

Entitled the “Foreign Intelligence Surveillance Improvement and Enhancement Act of 2006”.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE I—CONSTRUCTION OF**
2 **FOREIGN INTELLIGENCE**
3 **SURVEILLANCE AUTHORITY**

4 **SEC. 101. REITERATION OF CHAPTERS 119, 121, AND 206 OF**
5 **TITLE 18, UNITED STATES CODE, AND FOR-**
6 **EIGN INTELLIGENCE SURVEILLANCE ACT OF**
7 **1978 AS EXCLUSIVE MEANS BY WHICH DOMES-**
8 **TIC ELECTRONIC SURVEILLANCE MAY BE**
9 **CONDUCTED.**

10 (a) **EXCLUSIVE MEANS.**—Notwithstanding any other
11 provision of law, chapters 119, 121, and 206 of title 18,
12 United States Code, and the Foreign Intelligence Surveil-
13 lance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the
14 exclusive means by which electronic surveillance (as that
15 term is defined in section 101(f) of the Foreign Intel-
16 ligence Surveillance Act of 1978 (50 U.S.C. 1801(f)) may
17 be conducted.

18 (b) **AMENDMENT TO FOREIGN INTELLIGENCE SUR-**
19 **VEILLANCE ACT OF 1978.**—Section 109(a) of the Foreign
20 Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a))
21 is amended by striking “authorized by statute” each place
22 it appears and inserting “authorized by this title or chap-
23 ter 119, 121 or 206 of title 18, United States Code”.

24 (c) **AMENDMENT TO TITLE 18, UNITED STATES**
25 **CODE.**—Section 2511(2)(a)(ii)(B) of title 18, United

1 States Code, is amended by striking “statutory require-
 2 ments” and inserting “requirements under the Foreign In-
 3 telligence Surveillance Act of 1978 (50 U.S.C. 1801 et
 4 seq.), this chapter, or chapters 121 or 206 of this title”.

5 **SEC. 102. SPECIFIC AUTHORIZATION REQUIRED FOR ANY**
 6 **REPEAL OR MODIFICATION OF TITLE I OF**
 7 **THE FOREIGN INTELLIGENCE SURVEIL-**
 8 **LANCE ACT OF 1978.**

9 (a) IN GENERAL.—Title I of the Foreign Intelligence
 10 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is
 11 amended by inserting after section 109 the following new
 12 section:

13 “SPECIFIC AUTHORIZATION REQUIRED FOR ANY REPEAL
 14 OR MODIFICATION OF TITLE

15 “SEC. 109A. No provision of law shall be construed
 16 to implicitly repeal or modify this title or any provision
 17 thereof, nor shall any provision of law be deemed to repeal
 18 or modify this title in any manner unless such provision
 19 of law, if enacted after the date of the enactment of the
 20 Foreign Intelligence Surveillance Improvement and En-
 21 hancement Act of 2006, expressly amends or otherwise
 22 specifically cites this title.”.

23 (b) CLERICAL AMENDMENT.—The table of contents
 24 for that Act is amended by inserting after the item relat-
 25 ing to section 109 the following new item:

“Sec. 109A. Specific authorization required for any repeal or modification of title.”.

1 **SEC. 103. INFORMATION FOR CONGRESS ON THE TER-**
2 **RORIST SURVEILLANCE PROGRAM AND SIMI-**
3 **LAR PROGRAMS.**

4 As soon as practicable after the date of the enactment
5 of this Act, but not later than seven days after such date,
6 the President shall brief and inform each member of the
7 congressional intelligence committees on the following:

8 (1) The Terrorist Surveillance Program of the
9 National Security Agency.

10 (2) Any program which involves, whether in
11 part or in whole, the electronic surveillance of
12 United States persons in the United States for for-
13 eign intelligence purposes, and which is conducted
14 by any department, agency, or other element of the
15 United States Government, or by any entity at the
16 direction of a department, agency, or other element
17 of the United States Government, without fully com-
18 plying with the procedures set forth in the Foreign
19 Intelligence Surveillance Act of 1978 (50 U.S.C.
20 1801 et seq.) or chapter 119, 121, or 206 of title
21 18, United States Code.

1 **TITLE II—APPLICATIONS AND**
2 **PROCEDURES FOR ELEC-**
3 **TRONIC SURVEILLANCE FOR**
4 **FOREIGN INTELLIGENCE**
5 **PURPOSES**

6 **SEC. 201. EXTENSION OF PERIOD FOR APPLICATIONS FOR**
7 **ORDERS FOR EMERGENCY ELECTRONIC SUR-**
8 **VEILLANCE.**

9 Section 105(f) of the Foreign Intelligence Surveil-
10 lance Act of 1978 (50 U.S.C. 1805(f)) is amended by
11 striking “72 hours” both places it appears and inserting
12 “168 hours”.

13 **SEC. 202. DELEGATION OF AUTHORITY TO APPROVE APPLI-**
14 **CATIONS FOR ELECTRONIC SURVEILLANCE.**

15 (a) IN GENERAL.—Section 104 of the Foreign Intel-
16 ligence Surveillance Act of 1978 (50 U.S.C. 1804) is
17 amended—

18 (1) in subsection (a), by striking “Attorney
19 General based upon his finding” and inserting “At-
20 torney General (or a delegee of the Attorney General
21 under subsection (f)) based upon a finding”; and

22 (2) by adding at the end the following new sub-
23 section:

24 “(f) The Attorney General may delegate the authority
25 to approve an application under this section for an order

1 approving electronic surveillance under this title to each
2 of the following:

3 “(1) The Deputy Attorney General.

4 “(2) The Assistant Attorney General for Na-
5 tional Security.”.

6 (b) CONFORMING AMENDMENT.—Section 102(b) of
7 such Act (50 U.S.C. 1802(b)) is amended by inserting
8 “(or delegee of the Attorney General under section
9 104(f))” after “Attorney General”.

10 **SEC. 203. ADDITIONAL AUTHORITY FOR EMERGENCY ELEC-**
11 **TRONIC SURVEILLANCE.**

12 Section 105 of the Foreign Intelligence Surveillance
13 Act of 1978 (50 U.S.C. 1805) is amended—

14 (1) by redesignating subsections (g), (h), (i),
15 and (j) as subsections (h), (i), (j), and (k), respec-
16 tively; and

17 (2) by inserting after subsection (f) the fol-
18 lowing new subsection (g):

19 “(g)(1)(A) Notwithstanding any other provision of
20 this title and subject to the provisions of this subsection,
21 the Attorney General may, with the concurrence of the Di-
22 rector of National Intelligence, appoint appropriate super-
23 visory or executive personnel within the Federal Bureau
24 of Investigation and the National Security Agency to au-
25 thorize electronic surveillance on a United States person

1 in the United States on an emergency basis pursuant to
2 the provisions of this subsection.

3 “(B) For purposes of this subsection, an intelligence
4 agent or employee acting under the supervision of a super-
5 visor or executive appointed under subparagraph (A) may
6 conduct emergency electronic surveillance under this sub-
7 section if such supervisor or executive reasonably deter-
8 mines that—

9 “(i) an emergency situation exists with respect
10 to the employment of electronic surveillance to ob-
11 tain foreign intelligence information before an order
12 authorizing such surveillance can with due diligence
13 be obtained; and

14 “(ii) the factual basis exists for the issuance of
15 an order approving such surveillance under this title.

16 “(2) The supervisors and executives appointed by the
17 Attorney General under paragraph (1) may only be offi-
18 cials as follows:

19 “(A) In the case of the Federal Bureau of In-
20 vestigation, officials at or above the level of Special
21 Agent in Charge.

22 “(B) In the case of the National Security Agen-
23 cy, officials at or above the level of head of branch
24 of the National Security Agency.

1 “(3) A supervisor or executive responsible for the
2 emergency employment of electronic surveillance under
3 this subsection shall submit to the Attorney General (and,
4 if authorized by the Attorney General, to the Deputy At-
5 torney General and the Assistant Attorney General for
6 National Security) a request for approval of the surveil-
7 lance within 24 hours of the commencement of the surveil-
8 lance. The request shall set forth the ground for the belief
9 specified in paragraph (1), together with such other infor-
10 mation as the Attorney General shall require.

11 “(4)(A) The review of a request under paragraph (3)
12 shall be completed by the official concerned under that
13 paragraph as soon as practicable, but not more than 72
14 hours after the commencement of the electronic surveil-
15 lance concerned under paragraph (1).

16 “(B)(i) If the official concerned determines that the
17 electronic surveillance does not meet the requirements of
18 paragraph (1), the surveillance shall terminate imme-
19 diately and may not be recommenced by any supervisor
20 or executive appointed under paragraph (1), or any agent
21 or employee acting under the supervision of such super-
22 visor or executive, absent additional facts or changes in
23 circumstances that lead a supervisor or executive ap-
24 pointed under paragraph (1) to reasonably believe that the
25 requirements of paragraph (1) are satisfied.

1 “(ii) In the event of a determination under clause (i),
2 the Attorney General shall not be required, under section
3 106(j), to notify any United States person of the fact that
4 the electronic surveillance covered by such determination
5 was conducted before the termination of the surveillance
6 under that clause. However, the official making such de-
7 termination shall notify the court established by section
8 103(a) of such determination, and shall also provide notice
9 of such determination in the first report that is submitted
10 under section 108(a) after such determination is made.

11 “(C) If the official concerned determines that the sur-
12 veillance meets the requirements of subsection (f), the sur-
13 veillance may continue, subject to the requirements of
14 paragraph (5).

15 “(5)(A) An application in accordance with this title
16 shall be made to a judge having jurisdiction under section
17 103 as soon as practicable but not more than 168 hours
18 after the commencement of electronic surveillance under
19 paragraph (1).

20 “(B) In the absence of a judicial order approving
21 electronic surveillance commenced under paragraph (1),
22 the surveillance shall terminate at the earlier of—

23 “(i) when the information sought is obtained; or

1 “(ii) when the application under subparagraph
2 (A) for an order approving the surveillance is de-
3 nied; or

4 “(iii) 168 hours after the commencement of the
5 surveillance, unless an application under subpara-
6 graph (A) is pending, in which case the surveillance
7 may continue for up to an additional 24 hours while
8 the judge has the application under advisement.

9 “(C) If an application under subparagraph (A) for
10 an order approving electronic surveillance commenced
11 under paragraph (1) is denied, or in any other case in
12 which the surveillance is terminated and no order approv-
13 ing the surveillance is issued by a court, the use of infor-
14 mation obtained or evidence derived from the surveillance
15 shall be governed by the provisions of subsection (f).

16 “(D) The denial of an application submitted under
17 subparagraph (A) may be reviewed as provided in section
18 103.

19 “(6) Any person who engages in the emergency em-
20 ployment of electronic surveillance under paragraph (1)
21 shall follow the minimization procedures otherwise re-
22 quired by this title for the issuance of a judicial order ap-
23 proving the conduct of electronic surveillance.

24 “(7) Not later than 30 days after appointing super-
25 visors and executives under paragraph (1) to authorize the

1 exercise of authority in that paragraph, the Attorney Gen-
2 eral, in consultation with the Director of National Intel-
3 ligence, shall submit to the Foreign Intelligence Surveil-
4 lance Court and the congressional intelligence committees,
5 and bring up to date as required, a report that—

6 “(A) identifies the number of supervisors and
7 executives who have been so appointed and the posi-
8 tions held by such supervisors and executives; and

9 “(B) sets forth guidelines or other directives
10 that describe the responsibilities of such supervisors
11 and executives under this subsection.”.

12 **SEC. 204. FOREIGN INTELLIGENCE SURVEILLANCE COURT**
13 **MATTERS.**

14 (a) **AUTHORITY FOR ADDITIONAL JUDGES.**—Section
15 103(a) of the Foreign Intelligence Surveillance Act of
16 1978 (50 U.S.C. 1803(a)) is amended—

17 (1) by inserting “(1)” after “(a)”;

18 (2) in paragraph (1), as so designated, by in-
19 serting “at least” before “seven of the United States
20 judicial circuits”;

21 (3) by designating the second sentence as para-
22 graph (4) and indenting such paragraph, as so des-
23 ignated, two ems from the left margin; and

24 (4) by inserting after paragraph (1), as so des-
25 ignated, the following new paragraph:

1 “(2) In addition to the judges designated under para-
2 graph (1), the Chief Justice of the United States may des-
3 ignate as judges of the court established by paragraph (1)
4 such judges appointed under Article III of the Constitu-
5 tion of the United States as the Chief Justice determines
6 appropriate in order to provide for the prompt and timely
7 consideration under section 105 of applications under sec-
8 tion 104 for electronic surveillance under this title. Any
9 judge designated under this paragraph shall be designated
10 publicly.”.

11 (b) CONSIDERATION OF EMERGENCY APPLICA-
12 TIONS.—Such section is further amended by inserting
13 after paragraph (2), as added by subsection (a)(3) of this
14 section, the following new paragraph:

15 “(3) A judge of the court shall make a determination
16 to approve, deny, or seek modification of an application
17 submitted pursuant to section subsection (f) or (g) of sec-
18 tion 105 not later than 24 hours after the receipt of such
19 application by the court.”.

20 **SEC. 205. DOCUMENT MANAGEMENT SYSTEM FOR APPLICA-**
21 **TIONS FOR ORDERS APPROVING ELEC-**
22 **TRONIC SURVEILLANCE.**

23 (a) SYSTEM REQUIRED.—The Attorney General
24 shall, in consultation with the Director of the Federal Bu-
25 reau of Investigation, the Director of the National Secu-

1 rity Agency, and the Foreign Intelligence Surveillance
2 Court, develop and implement a secure, classified docu-
3 ment management system that permits the prompt prepa-
4 ration, modification, and review by appropriate personnel
5 of the Department of Justice, the Federal Bureau of In-
6 vestigation, the National Security Agency, and other appli-
7 cable elements of the United States Government of appli-
8 cations under section 104 of the Foreign Intelligence Sur-
9 veillance Act of 1978 (50 U.S.C. 1804) before their sub-
10 mittal to the Foreign Intelligence Surveillance Court.

11 (b) SCOPE OF SYSTEM.—The document management
12 system required by subsection (a) shall—

13 (1) permit and facilitate the prompt submittal
14 of applications to the Foreign Intelligence Surveil-
15 lance Court under section 104 or 105(g)(5) of the
16 Foreign Intelligence Surveillance Act of 1978; and

17 (2) permit and facilitate the prompt transmittal
18 of rulings of the Foreign Intelligence Surveillance
19 Court to personnel submitting applications described
20 in paragraph (1).

1 **SEC. 206. ADDITIONAL PERSONNEL FOR PREPARATION**
2 **AND CONSIDERATION OF APPLICATIONS FOR**
3 **ORDERS APPROVING ELECTRONIC SURVEIL-**
4 **LANCE.**

5 (a) OFFICE OF INTELLIGENCE POLICY AND RE-
6 VIEW.—

7 (1) ADDITIONAL PERSONNEL.—The Office of
8 Intelligence Policy and Review of the Department of
9 Justice is hereby authorized such additional per-
10 sonnel, including not fewer than 21 full-time attor-
11 neys, as may be necessary to carry out the prompt
12 and timely preparation, modification, and review of
13 applications under section 104 of the Foreign Intel-
14 ligence Surveillance Act of 1978 (50 U.S.C. 1804)
15 for orders under section 105 of that Act (50 U.S.C.
16 1805) approving electronic surveillance for foreign
17 intelligence purposes.

18 (2) ASSIGNMENT.—The Attorney General shall
19 assign personnel authorized by paragraph (1) to and
20 among appropriate offices of the National Security
21 Agency in order that such personnel may directly as-
22 sist personnel of the Agency in preparing applica-
23 tions described in that paragraph.

24 (b) FEDERAL BUREAU OF INVESTIGATION.—

25 (1) ADDITIONAL LEGAL AND OTHER PER-
26 SONNEL.—The National Security Branch of the

1 Federal Bureau of Investigation is hereby authorized
2 such additional legal and other personnel as may be
3 necessary to carry out the prompt and timely prepara-
4 tion of applications under section 104 of the For-
5 eign Intelligence Surveillance Act of 1978 for orders
6 under section 105 of that Act approving electronic
7 surveillance for foreign intelligence purposes.

8 (2) ASSIGNMENT.—The Director of the Federal
9 Bureau of Investigation shall assign personnel au-
10 thorized by paragraph (1) to and among the field of-
11 fices of the Federal Bureau of Investigation in order
12 that such personnel may directly assist personnel of
13 the Bureau in such field offices in preparing applica-
14 tions described in that paragraph.

15 (c) ADDITIONAL LEGAL AND OTHER PERSONNEL
16 FOR NATIONAL SECURITY AGENCY.—The National Secu-
17 rity Agency is hereby authorized such additional legal and
18 other personnel as may be necessary to carry out the
19 prompt and timely preparation of applications under sec-
20 tion 104 of the Foreign Intelligence Surveillance Act of
21 1978 for orders under section 105 of that Act approving
22 electronic surveillance for foreign intelligence purposes.

23 (d) ADDITIONAL LEGAL AND OTHER PERSONNEL
24 FOR FOREIGN INTELLIGENCE SURVEILLANCE COURT.—
25 There is hereby authorized for the Foreign Intelligence

1 Surveillance Court such additional staff personnel as may
2 be necessary to facilitate the prompt and timely consider-
3 ation by that Court of applications under section 104 of
4 the Foreign Intelligence Surveillance Act of 1978 for or-
5 ders under section 105 of that Act approving electronic
6 surveillance for foreign intelligence purposes. Personnel
7 authorized by this paragraph shall perform such duties re-
8 lating to the consideration of such applications as that
9 Court shall direct.

10 (e) SUPPLEMENT NOT SUPPLANT.—The personnel
11 authorized by this section are in addition to any other per-
12 sonnel authorized by law.

13 **SEC. 207. TRAINING OF FEDERAL BUREAU OF INVESTIGA-**
14 **TION AND NATIONAL SECURITY AGENCY PER-**
15 **SONNEL IN FOREIGN INTELLIGENCE SUR-**
16 **VEILLANCE MATTERS.**

17 The Director of the Federal Bureau of Investigation
18 and the Director of the National Security Agency shall
19 each, in consultation with the Attorney General—

20 (1) develop regulations to establish procedures
21 for conducting and seeking approval of electronic
22 surveillance on an emergency basis, and for pre-
23 paring and properly submitting and receiving appli-
24 cations and orders, under sections 104 and 105 of

1 the Foreign Intelligence Surveillance Act of 1978;
2 and

3 (2) prescribe related training for the personnel
4 of the applicable agency.

5 **SEC. 208. ENHANCEMENT OF ELECTRONIC SURVEILLANCE**
6 **AUTHORITY IN WARTIME.**

7 Section 111 of the Foreign Intelligence Surveillance
8 Act of 1978 (50 U.S.C. 1811) is amended by striking “fol-
9 lowing a declaration of war by the Congress” and inserting
10 “following any of the following:

11 “(1) A declaration of war by the Congress.

12 “(2) An authorization for the use of military
13 force within the meaning of section 2(c)(2) of the
14 War Powers Resolution (50 U.S.C. 1541(c)(2)).

15 “(3) A national emergency created by attack
16 upon the United States, its territories or posses-
17 sions, or the Armed Forces within the meaning of
18 section 2(c)(3) of the War Powers Resolution (50
19 U.S.C. 1541(c)(3)).”.

20 **TITLE III—FOREIGN-FOREIGN**
21 **COMMUNICATIONS**

22 **SEC. 301. ACQUISITION OF FOREIGN-FOREIGN COMMU-**
23 **NICATIONS.**

24 (a) IN GENERAL.—Notwithstanding any other provi-
25 sion of this Act or the Foreign Intelligence Surveillance

1 Act of 1978 (50 U.S.C. 1801 et seq.), no court order shall
2 be required for the acquisition through electronic surveil-
3 lance of the contents of any communication between one
4 person who is not located within the United States and
5 another person who is not located within the United States
6 for the purpose of collecting foreign intelligence informa-
7 tion even if such communication passes through, or the
8 surveillance device is located within, the United States.

9 (b) TREATMENT OF INTERCEPTED COMMUNICATIONS
10 INVOLVING DOMESTIC PARTY.—If surveillance conducted
11 as described in subsection (a) inadvertently collects a com-
12 munication in which at least one party is within the
13 United States, the contents of such communications shall
14 be handled in accordance with the minimization proce-
15 dures set forth in section 101(h)(4) of the Foreign Intel-
16 ligence Surveillance Act of 1978 (50 U.S.C. 1801(h)(4)).

17 (c) DEFINITIONS.—In this section, the terms “con-
18 tents”, “electronic surveillance”, and “foreign intelligence
19 information” have the meaning given such terms in sec-
20 tion 101 of the Foreign Intelligence Surveillance Act of
21 1978 (50 U.S.C. 1801).

22 **TITLE IV—OTHER MATTERS**

23 **SEC. 401. DEFINITIONS.**

24 In this Act:

1 (1) The term “congressional intelligence com-
2 mittees” means—

3 (A) the Select Committee on Intelligence of
4 the Senate; and

5 (B) the Permanent Select Committee on
6 Intelligence of the House of Representatives.

7 (2) The term “Foreign Intelligence Surveillance
8 Court” means the court established by section
9 103(a) of the Foreign Intelligence Surveillance Act
10 of 1978 (50 U.S.C. 1803(a)).

11 (3) The term “Foreign Intelligence Surveillance
12 Court of Review” means the court established by
13 section 103(b) of the Foreign Intelligence Surveil-
14 lance Act of 1978 (50 U.S.C. 1803(b)).

15 (4) The term “United States person” has the
16 meaning given such term in section 101(i) of the
17 Foreign Intelligence Surveillance Act of 1978 (50
18 U.S.C. 1801(i)).

19 **SEC. 402. AUTHORIZATION OF APPROPRIATIONS.**

20 There is authorized to be appropriated such sums as
21 may be necessary to carry out this Act and the amend-
22 ments made by this Act.

23 **SEC. 403. EFFECTIVE DATE.**

24 Except as provided in section 103, this Act, and the
25 amendments made by this Act, shall take effect on the

1 date that is 30 days after the date of the enactment of
2 this Act.

Calendar No. 600

109TH CONGRESS
2^D SESSION

S. 3877

A BILL

Entitled the “Foreign Intelligence Surveillance
Improvement and Enhancement Act of 2006”.

SEPTEMBER 8, 2006

Read the second time and placed on the calendar