

Union Calendar No. 495

110TH CONGRESS
2D SESSION

H. R. 4806

[Report No. 110-776]

To require the Secretary of Homeland Security to develop a strategy to prevent the over-classification of homeland security and other information and to promote the sharing of unclassified homeland security and other information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 2007

Ms. HARMAN (for herself, Mrs. LOWEY, Mr. LANGEVIN, Mr. MARKEY, Mrs. CHRISTENSEN, Mr. PERLMUTTER, Ms. LORETTA SANCHEZ of California, Ms. ZOE LOFGREN of California, Ms. NORTON, Mr. DICKS, Mr. CARNEY, Ms. CLARKE, Ms. JACKSON-LEE of Texas, and Mr. ETHERIDGE) introduced the following bill; which was referred to the Committee on Homeland Security

JULY 24, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on December 18, 2007]

A BILL

To require the Secretary of Homeland Security to develop a strategy to prevent the over-classification of homeland security and other information and to promote the sharing of unclassified homeland security and other information, 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.**

4 *This Act may be cited as the “Reducing Over-Classi-*
5 *fication Act of 2008”.*

6 **SEC. 2. FINDINGS.**

7 *Congress finds the following:*

8 *(1) A key conclusion in the Final Report of the*
9 *National Commission on Terrorist Attacks Upon the*
10 *United States (commonly known as the “9/11 Com-*
11 *mission”)* *was the need to prevent over-classification*
12 *by the Federal Government.*

13 *(2) The 9/11 Commission and others have ob-*
14 *erved that the over-classification of homeland secu-*
15 *rity information interferes with accurate, actionable,*
16 *and timely homeland security information sharing,*
17 *increases the cost of information security, and need-*
18 *lessly limits public access to information.*

19 *(3) The over-classification problem, which has*
20 *worsened since the 9/11 attacks, causes considerable*
21 *confusion about what information can be shared with*
22 *whom both internally at the Department of Homeland*
23 *Security and with its external partners. This problem*
24 *negatively impacts the dissemination of homeland se-*
25 *curity information to the Department’s State, local,*

1 *tribal, and territorial homeland security and law en-*
2 *forcement partners, private sector customers, and the*
3 *public.*

4 (4) *Excessive government secrecy stands in the*
5 *way of a safer and more secure homeland. This trend*
6 *is antithetical to the creation and operation of the in-*
7 *formation sharing environment established under sec-*
8 *tion 1016 of the Intelligence Reform and Terrorism*
9 *Prevention Act of 2004 (6 U.S.C. 485), and must be*
10 *halted and reversed.*

11 (5) *To do so, the Department should start with*
12 *the understanding that all departmental information*
13 *that is not properly classified, or marked as con-*
14 *trolled unclassified information and otherwise exempt*
15 *from disclosure, should be made available to members*
16 *of the public pursuant to section 552 of title 5, United*
17 *States Code (commonly referred to as the “Freedom of*
18 *Information Act”).*

19 (6) *The Department should also develop and ad-*
20 *minister policies, procedures, and programs that pro-*
21 *mote compliance with applicable laws, executive or-*
22 *ders, and other authorities pertaining to the proper*
23 *use of classification markings and the United States*
24 *National Archives and Records Administration poli-*
25 *cies implementing them.*

1 **SEC. 3. OVER-CLASSIFICATION PREVENTION WITHIN THE**
2 **DEPARTMENT OF HOMELAND SECURITY.**

3 *Subtitle A of title II of the Homeland Security Act*
4 *of 2002 (6 U.S.C. 121 et seq.) is amended by adding at*
5 *the end the following new section:*

6 **“SEC. 210F. OVER-CLASSIFICATION PREVENTION PROGRAM.**

7 *“(a) IN GENERAL.—The Secretary shall develop and*
8 *administer policies, procedures, and programs within the*
9 *Department to prevent the over-classification of homeland*
10 *security information, terrorism information, weapons of*
11 *mass destruction information, and other information with-*
12 *in the scope of the information sharing environment estab-*
13 *lished under section 1016 of the Intelligence Reform and*
14 *Terrorism Prevention Act of 2004 (6 U.S.C. 485) that must*
15 *be disseminated to prevent and to collectively respond to*
16 *acts of terrorism. The Secretary shall coordinate with the*
17 *Archivist of the United States and consult with representa-*
18 *tives of State, local, tribal, and territorial government and*
19 *law enforcement, organizations with expertise in civil*
20 *rights, civil liberties, and government oversight, and the*
21 *private sector, as appropriate, to develop such policies, pro-*
22 *cedures, and programs.*

23 *“(b) REQUIREMENTS.—Not later than one year after*
24 *the date of the enactment of the Reducing Over-Classifica-*
25 *tion Act of 2008, the Secretary, in administering the poli-*

1 *cies, procedures, and programs required under subsection*
2 *(a), shall—*

3 “(1) *create, in consultation with the Archivist of*
4 *the United States, standard classified and unclassi-*
5 *fied formats for finished intelligence products created*
6 *by the Department, consistent with any government-*
7 *wide standards, practices or procedures for similar*
8 *products;*

9 “(2) *require that all finished intelligence prod-*
10 *ucts created by the Department be simultaneously*
11 *prepared in the standard unclassified format, pro-*
12 *vided that such an unclassified product would reason-*
13 *ably be expected to be of any benefit to a State, local,*
14 *tribal or territorial government, law enforcement*
15 *agency or other emergency response provider, or the*
16 *private sector, based on input provided by the Inter-*
17 *agency Threat Assessment and Coordination Group*
18 *Detail established under section 210D;*

19 “(3) *ensure that such policies, procedures, and*
20 *programs protect the national security as well as the*
21 *information privacy rights and legal rights of United*
22 *States persons pursuant to all applicable law and*
23 *policy, including the privacy guidelines for the infor-*
24 *mation sharing environment established pursuant to*
25 *section 1016 of the Intelligence Reform and Terrorism*

1 *Prevention Act of 2004 (6 U.S.C. 485), as appro-*
2 *priate;*

3 “(4) *establish an ongoing auditing mechanism*
4 *administered by the Inspector General of the Depart-*
5 *ment or other appropriate senior Department official*
6 *that randomly selects, on a periodic basis, classified*
7 *information from each component of the Department*
8 *that generates finished intelligence products to—*

9 “(A) *assess, on an individualized basis,*
10 *whether applicable classification policies, proce-*
11 *dures, rules, and regulations have been followed;*

12 “(B) *describe any problems with the admin-*
13 *istration of the applicable classification policies,*
14 *procedures, rules, and regulations, including spe-*
15 *cific non-compliance issues;*

16 “(C) *recommend improvements in aware-*
17 *ness and training to address them; and*

18 “(D) *report at least annually to the Com-*
19 *mittee on Homeland Security of the House of*
20 *Representatives, the Committee on Homeland Se-*
21 *curity and Governmental Affairs of the Senate,*
22 *and the public, in an appropriate format, on the*
23 *findings of the Inspector General’s audits under*
24 *this section;*

1 “(5) establish a process whereby employees may
2 challenge original classification decisions made by
3 Department employees or contractors and be rewarded
4 with specific incentives for successful challenges re-
5 sulting in the removal of classification markings or
6 the downgrading of them;

7 “(6) inform employees and contractors that fail-
8 ure to comply with the policies, procedures, and pro-
9 grams established under this section could subject
10 them to a series of penalties; and

11 “(7) institute a series of penalties for employees
12 and contractors who repeatedly fail to comply with
13 the policies, procedures, and programs established
14 under this section after having received both notice of
15 their noncompliance and appropriate training or re-
16 training to address such noncompliance.

17 “(c) *FINISHED INTELLIGENCE PRODUCT DEFINED.*—
18 The term ‘finished intelligence product’ means a document
19 in which an intelligence analyst has evaluated, interpreted,
20 integrated, or placed into context raw intelligence or infor-
21 mation.”.

1 **SEC. 4. ENFORCEMENT OF OVER-CLASSIFICATION PREVEN-**
2 **TION WITHIN THE DEPARTMENT OF HOME-**
3 **LAND SECURITY.**

4 *Subtitle A of title II of the Homeland Security Act*
5 *of 2002 (6 U.S.C. 121 et seq.) is further amended by adding*
6 *at the end the following new section:*

7 **“SEC. 210G. ENFORCEMENT OF OVER-CLASSIFICATION PRE-**
8 **VENTION PROGRAMS.**

9 *“(a) PERSONAL IDENTIFIERS.—The Secretary shall—*

10 *“(1) assess the technologies available or in use at*
11 *the Department by which an electronic personal iden-*
12 *tification number or other electronic identifying*
13 *marker can be assigned to each Department employee*
14 *and contractor with original classification authority*
15 *in order to—*

16 *“(A) track which documents have been clas-*
17 *sified by a particular employee or contractor;*

18 *“(B) determine the circumstances when such*
19 *documents have been shared;*

20 *“(C) identify and address over-classification*
21 *problems, including the misapplication of classi-*
22 *fication markings to documents that do not*
23 *merit such markings; and*

24 *“(D) assess the information sharing impact*
25 *of any such problems or misuse;*

1 “(2) develop an implementation plan for a De-
2 partment standard for such technology with appro-
3 priate benchmarks, a timetable for its completion,
4 and cost estimate for the creation and implementa-
5 tion of a system of electronic personal identification
6 numbers or other electronic identifying markers for
7 all relevant Department employees and contractors;
8 and

9 “(3) upon completion of the implementation
10 plan described in paragraph (2), or not later than
11 180 days after the date of the enactment of the Reduc-
12 ing Over-Classification Act of 2008, whichever is ear-
13 lier, the Secretary shall provide a copy of the plan to
14 the Committee on Homeland Security of the House of
15 Representatives and the Committee on Homeland Se-
16 curity and Governmental Affairs of the Senate.

17 “(b) TRAINING.—The Secretary, in coordination with
18 the Archivist of the United States, shall—

19 “(1) require annual training for each Depart-
20 ment employee and contractor with classification au-
21 thority and who are responsible for analysis, dissemi-
22 nation, preparation, production, receiving, pub-
23 lishing, or otherwise communicating written classified
24 information, including training to—

1 “(A) educate each employee and contractor
2 about—

3 “(i) the Department’s requirement that
4 all classified finished intelligence products
5 that they create be simultaneously prepared
6 in unclassified form in a standard format
7 prescribed by the Department, provided that
8 the unclassified product would reasonably
9 be expected to be of any benefit to a State,
10 local, tribal, or territorial government, law
11 enforcement agency, or other emergency re-
12 sponse provider, or the private sector, based
13 on input provided by the Interagency
14 Threat Assessment and Coordination Group
15 Detail established under section 210D;

16 “(ii) the proper use of classification
17 markings, including portion markings; and

18 “(iii) the consequences of over-classi-
19 fication and other improper uses of classi-
20 fication markings, including the
21 misapplication of classification markings to
22 documents that do not merit such markings,
23 and of failing to comply with the Depart-
24 ment’s policies and procedures established
25 under or pursuant to this section, including

1 *the negative consequences for the individ-*
2 *ual’s personnel evaluation, homeland secu-*
3 *rity, information sharing, and the overall*
4 *success of the Department’s missions;*

5 “(B) *serve as a prerequisite, once completed*
6 *successfully, as evidenced by an appropriate cer-*
7 *tificate, for—*

8 “(i) *obtaining classification authority;*
9 *and*

10 “(ii) *renewing such authority annu-*
11 *ally; and*

12 “(C) *count as a positive factor, once com-*
13 *pleted successfully, in the Department’s employ-*
14 *ment, evaluation, and promotion decisions; and*

15 “(2) *ensure that such program is conducted effi-*
16 *ciently, in conjunction with any other security, intel-*
17 *ligence, or other training programs required by the*
18 *Department to reduce the costs and administrative*
19 *burdens associated with the additional training re-*
20 *quired by this section.*

21 “(c) *DETAILEE PROGRAM.—The Secretary shall—*

22 “(1) *implement a Departmental detailee pro-*
23 *gram to detail Departmental personnel to the Na-*
24 *tional Archives and Records Administration for one*
25 *year, for the purpose of—*

1 “(A) training and educational benefit for
2 the Department personnel assigned so that they
3 may better understand the policies, procedures
4 and laws governing original classification au-
5 thorities;

6 “(B) bolstering the ability of the National
7 Archives and Records Administration to conduct
8 its oversight authorities over the Department and
9 other Departments and agencies; and

10 “(C) ensuring that the policies and proce-
11 dures established by the Secretary remain con-
12 sistent with those established by the Archivist of
13 the United States;

14 “(2) ensure that the program established under
15 paragraph (1) includes at least one individual for
16 each Department office with delegated original classi-
17 fication authority; and

18 “(3) in coordination with the Archivist of the
19 United States, report to Congress not later than 90
20 days after the conclusion of the first year of the pro-
21 gram established under paragraph (1), on—

22 “(A) the advisability of expanding the pro-
23 gram on a government-wide basis, whereby other
24 departments and agencies would send detailees to

1 *the National Archives and Records Administra-*
2 *tion; and*

3 “(B) *the administrative and monetary costs*
4 *of full compliance with this section.*

5 “(d) *SUNSET OF DETAILEE PROGRAM.—Except as oth-*
6 *erwise provided by law, subsection (c) shall cease to have*
7 *effect on December 31, 2012.*

8 “(e) *FINISHED INTELLIGENCE PRODUCT DEFINED.—*
9 *The term ‘finished intelligence product’ has the meaning*
10 *given the term in section 210F(c).”.*

11 **SEC. 5. TECHNICAL AMENDMENT.**

12 *The table of contents in section 1(b) of the Homeland*
13 *Security Act of 2002 (6 U.S.C. 101(b)) is amended by add-*
14 *ing after the item relating to section 210E the following*
15 *new items:*

 “Sec. 210F. *Over-classification prevention program.*

 “Sec. 210G. *Enforcement of over-classification prevention programs.”.*

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