



# United States Senate Committee on Governmental Affairs

Senator Susan M. Collins, Chairman

## SUMMARY OF INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004 December 6, 2004

### TITLE I

#### **Director of National Intelligence**

There is established a Senate-confirmed Director of National Intelligence (DNI) who shall not also serve as the Director of the Central Intelligence Agency (CIA) or as the head of any other element of the intelligence community. The DNI shall not be located in the Executive Office of the President.

#### **National Intelligence Program**

The National Foreign Intelligence Program is redesignated as the National Intelligence Program (NIP).

#### **Authorities of the DNI**

##### *Budget Build*

The DNI shall “develop and determine” an annual budget for the National Intelligence Program (NIP) budget based on budget proposals provided by the heads of agencies and organizations of the intelligence community and their respective department heads. The heads of such agencies and organizations must also provide to the DNI such other information as the DNI requests for the purpose of determining the NIP budget.

##### *Budget Execution*

The DNI shall “ensure the effective execution” of the annual budget for intelligence and intelligence-related activities. The Director of OMB must apportion NIP funds at the “exclusive direction” of the DNI for allocation to the elements of the intelligence community. The DNI is further responsible for managing NIP appropriations by “directing the allotment or allocation” of such appropriations through the heads of departments containing agencies or organizations of the intelligence community. Department comptrollers must allot, allocate, reprogram, or transfer NIP funds “in an expeditious manner.”

The DNI “shall monitor the implementation and execution of the National Intelligence Program by the heads of elements of the intelligence community” that manage NIP programs or

activities, including with audits and evaluations. The DNI shall report to the President and to Congress within 15 days of learning that a department comptroller has acted in a manner that is inconsistent with the direction of the DNI in carrying out the NIP.

### *Transfer and Reprogramming of Funds*

NIP funds may not be transferred or reprogrammed without approval of the DNI, except in accordance with procedures prescribed by the DNI. All transfers or reprogrammings by the DNI (1) must be for a higher priority intelligence activity; (2) must support an emergent need, improve program effectiveness, or increase efficiency; and (3) may not involve funds from the CIA Reserve for Contingencies or a DNI Reserve for Contingencies. With approval from OMB and after consulting with affected department heads, the DNI may transfer or reprogram NIP funds out of any department or agency as long as the amount in a single fiscal year is less than \$150 million, is less than 5% of the department's or agency's NIP funds, and does not terminate an acquisition program. These limits would not apply if the DNI obtains the concurrence of the affected department head.

### *Transfer of Personnel*

In the fiscal year after the effective date of the Act, the DNI (1) is authorized 500 new personnel billets within the Office of the DNI, and (2) may, with the approval of the OMB director, transfer 150 personnel funded within the NIP to the Office of the DNI for not more than 2 years.

For the first 12 months after a national intelligence center is created, the DNI may transfer 100 personnel authorized for elements of the intelligence community to that center. The DNI must receive the approval of the director of OMB and notify appropriate Congressional committees of such transfers. In accordance with procedures developed between the DNI and the heads of departments and agencies concerned, and upon approval of the director of OMB, the DNI may also transfer unlimited numbers of personnel authorized for an element of the intelligence community to another such element for a period of not more than two years. The DNI may only make such transfer if the personnel are being transferred to an activity that is a higher priority intelligence activity, and the transfer supports an emergent need, improves program effectiveness, or increases efficiency. The DNI must notify appropriate Congressional committees of such transfers.

It is the Sense of the Congress that 21<sup>st</sup> Century national security threats continue to challenge the intelligence community to respond rapidly and flexibly to bring analytic resources to bear, that the Office of the DNI and any analytic centers should be fully supported with appropriate personnel levels, and the President should utilize all legal and administrative discretion to ensure that the DNI and the intelligence community have the necessary resources and procedures to meet emerging threats.

### *Tasking and Analysis*

The DNI establishes objectives and priorities for the intelligence community and manages and directs tasking of collection, analysis, production, and dissemination of national intelligence. The DNI approves requirements for collection and analysis, including requirements

responding to the needs of consumers. The DNI also provides advisory tasking to intelligence elements outside of the NIP. The DNI may establish national intelligence centers as the DNI determines necessary. To ensure accurate all-source intelligence, the DNI must implement policies and procedures to, among other things, ensure competitive analysis and that alternative views are brought to the attention of policymakers.

#### *Personnel Management*

The DNI, in consultation with the heads of other agencies or elements of the intelligence community, develops personnel policies and programs to enhance the capacity for joint operation and facilitate staffing of community management functions. An individual's service in more than one element of the intelligence community would be a condition of promotion to certain positions. The policies shall not be inconsistent with those applicable to uniformed services personnel.

In addition, the NID will prescribe regulations to provide incentives for service on the staff of the DNI, the national intelligence centers, NCTC, or other positions in support of the intelligence community management functions. It is the Sense of the Congress that policies to facilitate the rotation of personnel should seek to duplicate within the intelligence community the joint officer management policies established by the Goldwater-Nichols Department of Defense Reorganization Act of 1986 and the amendments on joint officer management made by that Act. Assignment of commissioned officers to the Office of the DNI will be considered joint-duty assignments for the purposes of the amendments on Department of Defense joint officer management made by the Goldwater-Nichols Department of Defense Reorganization Act of 1986.

The DNI has the same personnel authorities over employees of the Office of the DNI that the Director of Central Intelligence has under current law with respect to CIA employees. Employees and applicants for employment of the Office of the DNI have the same rights and protections as CIA employees under current law.

#### *Protection of Sources and Methods / Classification*

The DNI shall protect sources and methods from unauthorized disclosure and, in order to maximize the dissemination of intelligence, establish and implement guidelines for classification under applicable law, Executive orders, or Presidential directives.

#### *Foreign Liaison*

The DNI shall oversee the coordination of relationships with the intelligence or security services of foreign governments or international organizations.

#### *Acquisition / Milestone*

The DNI has the same acquisition and appropriation authorities given to the CIA Director in the CIA Act of 1949 except for that Act's section 8(b), which allows the CIA Director to expend sums made available to the CIA without regard to any of the laws or regulations relating to the expenditure of government funds. The DNI also has the same authority as the CIA Director to waive provisions of the Federal Property and Administrative Services Act of 1949. The DNI has exclusive milestone decision authority for NIP-funded major systems, except that with respect to Department of Defense programs the DNI has joint authority with the Secretary of Defense. If the DNI and the Secretary of Defense are unable to reach agreement on a milestone decision, the President resolves the conflict.

#### *Common Services*

The DNI shall, in consultation with department heads, coordinate the performance by elements of the intelligence community of services of common concern to the intelligence community that the DNI determines can be more efficiently accomplished in a consolidated manner.

#### *Appointments*

The DNI shall recommend to the President nominees for Principal Deputy DNI and for CIA Director. The DNI has the right to concur in the appointment or the recommendation for nomination of the heads of NSA, NRO, and NGA; the Assistant Secretary of State for INR; the Directors of the Offices of Intelligence and Counterintelligence at DOE; the Assistant Secretary for Intelligence and Analysis at the Department of the Treasury; the Executive Assistant Director for Intelligence of the FBI; and the Assistant Secretary of Homeland Security for Information Analysis. The DNI must be consulted for appointments or recommendations for the Director of DIA and the Deputy Assistant Commandant of the Coast Guard for Intelligence.

#### **Office of the DNI**

##### *Staff*

The DNI shall employ and utilize a professional staff in the Office of the DNI. That staff includes the Community Management Staff, which will be transferred to the Office of the DNI.

##### *Co-Location*

Commencing October 1, 2008, the Office of the DNI shall not be co-located with any other element of the intelligence community.

##### *Deputy Directors*

There shall be a Senate-confirmed Principal Deputy DNI, recommended by the DNI and appointed by the President, who shall not simultaneously serve in any other capacity in the intelligence community. The Principal Deputy DNI shall assist the DNI and serve in the absence

or disability of the DNI, who may also appoint not more than four additional Deputies with such duties, responsibilities, and authorities as the DNI may assign. The DNI and the Principal Deputy may not both be commissioned officers in active status, but it is the sense of Congress that one of them should be an active duty officer, or at least have by training or experience an appreciation of military intelligence activities and requirements.

#### *National Intelligence Council*

The National Intelligence Council is established in the Office of the DNI.

#### *General Counsel*

There is established a Senate-confirmed General Counsel in the Office of the DNI, who may not simultaneously serve as the General Counsel of any other department or agency.

#### *Civil Liberties Protection Officer*

The DNI shall appoint a Civil Liberties Protection Officer.

#### *Director of Science and Technology*

There is established a Director of Science and Technology in the Office of the DNI.

#### *National Counterintelligence Executive*

The National Counterintelligence Executive is moved to the Office of the DNI.

#### *Inspector General*

The DNI is authorized to establish an Inspector General in the Office of the DNI.

### **Definition of National Intelligence**

The bill defines national intelligence to include information gathered in the U.S. or abroad that pertains to more than one agency and involves threats to the U.S., its people, property, or interests; the development, proliferation, or use of weapons of mass destruction; or any other matter bearing on national or homeland security.

### **Information Sharing**

The 9/11 Commission found that the biggest impediment to a greater likelihood of “connecting the dots” was the resistance to information sharing, and recommended a new, government-wide approach to information sharing. This section addresses this recommendation by requiring the President to establish an Information Sharing Environment (ISE) to facilitate the

sharing of terrorism information among all appropriate Federal, State, local, tribal and private sector entities, through the use of policy guidelines and technologies.

The section provides for a staged development process, with periodic reporting. Within 180 days of enactment, a review must be conducted of current agency capabilities; in addition, a description of the technological, legal and policy issues presented by the creation of the ISE, and how they will be addressed, must be submitted to the President and Congress. Within 270 days, the President is required to issue guidelines for acquiring, accessing, sharing, and using information, and, in consultation with the Privacy and Civil Liberties Oversight Board established elsewhere in the bill, guidelines to protect privacy and civil liberties in the development and use of the ISE. Within a year, an implementation plan for the ISE must be submitted to Congress. Finally, in two years, and annually thereafter, the President must submit a report to Congress on the state of the ISE and of information sharing across the Federal Government.

The President is also required to designate a Program Manager who responsible for information sharing across the Federal Government and who is to oversee the implementation of, and manage, the ISE. The program manager is to serve for two years, during the planning and initial implementation of the ISE; after that, recommendations are to be made for the future management structure of the ISE. During the initial two-year start up period, this section also establishes an interagency panel, based on the Information Sharing Council created by Executive Order 13356, to advise the President and Program Manager and to facilitate interagency coordination in the development and implementation of the ISE.

## **Privacy and Civil Liberties**

### *Privacy and Civil Liberties Oversight Board*

This section creates a Privacy and Civil Liberties Oversight Board within the Executive Office of the President that would ensure that privacy and civil liberties concerns are appropriately considered in the implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism. The Board's responsibilities encompass both advice and counsel and oversight and would include reviewing regulations and policies, including information sharing guidelines, and providing advice to the President and departments and agencies in the Executive branch. The Board would be required to report at least annually to Congress on its major activities.

The Board would be composed of a chairman, vice chairman, and three other members appointed by the President. The chairman and vice chairman would be Senate-confirmed and the chairman may serve on a full-time basis. All members would serve at the pleasure of the President.

In order to carry out its responsibilities, the Board is authorized to have access to information from departments and agencies. If the requested information is necessary to withhold to protect national security interests, as determined by the National Intelligence

Director, in consultation with the Attorney General, or sensitive law enforcement, counterterrorism or ongoing operations, as determined by the Attorney General, the information may be withheld. The Board is also authorized to make written requests to persons outside of government to produce information, documents and other evidence. If the person to whom such a request does not comply within 45 days, the Board is authorized to notify the Attorney General and the Attorney General, in his discretion, could take such steps as are appropriate to ensure compliance with the request.

### *Sense of the Congress on the Designation of Privacy and Civil Liberties Officers*

This section is a sense of the congress that each executive department or agency with law enforcement or anti-terrorism functions should designate a privacy and civil liberties officer.

## **Analysis**

### *Alternative Analysis*

Not later than 180 days after the effective date of the Act, the DNI shall establish a process and assign an individual or entity the responsibility of ensuring that elements of the intelligence community conduct alternative analysis as appropriate. Not later than 270 days after the effective date of the Act, the DNI must submit a report to the Congressional intelligence committees concerning implementation.

### *Safeguarding Objectivity in Intelligence Analysis*

Not later than 180 days after the effective date of this Act, the DNI shall identify an individual within the Office of the DNI who shall be available to analysts within the Office of the Director of National Intelligence to counsel, conduct arbitration, offer recommendations, and, as appropriate, initiate inquiries into real or perceived problems of analytic tradecraft or politicization, biased reporting, or lack of objectivity in intelligence analysis. Not later than 270 days after the effective date of this Act, the DNI shall provide a report to the Congressional intelligence committees on implementation.

### *Analytic Integrity*

Not later than 180 days after the date of the enactment of this Act, the DNI shall assign an individual or entity to be responsible for ensuring that finished intelligence products produced by any element or elements of the intelligence community are timely, objective, independent of political considerations, based upon all sources of available intelligence, and employ the standards of proper analytic tradecraft.

The individual or entity assigned responsibility shall perform, on a regular basis, detailed reviews of finished intelligence product or other analytic products by an element or elements of

the intelligence community covering a particular topic or subject matter; and shall be responsible for identifying on an annual basis functional or topical areas of analysis for specific reviews. Each review should include, among other things, whether the product or products concerned were based on all sources of available intelligence, properly describe the quality and reliability of underlying sources, properly caveat and express uncertainties or confidence in analytic judgments, and properly distinguish between underlying intelligence and the assumptions and judgments of analysts. Not later than December 1 each year, the DNI shall submit to the Congressional intelligence committees and other entities a report containing a description and the associated findings of each review.

### **Preservation of Authorities**

The bill provides that the President shall issue guidelines to ensure effective implementation of the authorities provided to the DNI in a manner that respects and does not abrogate the statutory responsibilities of the Director of OMB and the heads of executive branch departments.

### **National Counterterrorism Center**

The National Counterterrorism Center (NCTC) is established in the Office of the DNI. The Director of the NCTC is Senate-confirmed and may not simultaneously serve in any other capacity in the executive branch. The Director of the NCTC reports to the DNI on budget and intelligence matters, but to the President on the planning and progress of joint counterterrorism operations (other than intelligence operations). The NCTC will conduct “strategic operational planning,” which is defined to include the mission, the objectives to be achieved, the tasks to be performed, interagency coordination of operational activities, and the assignment of roles and responsibilities. The NCTC Director shall monitor the implementation of strategic operational plans and shall obtain relevant information from departments and agencies on the progress of such entities in implementing the plans.

### **National Counterproliferation Center**

The President shall establish a National Counterproliferation Center (NCPC) not later than 18 months after the date of enactment. The President may waive this requirement if the President determines that it does not materially improve the government’s ability to halt the proliferation of weapons of mass destruction. Such a waiver shall be made in writing and it must be submitted to Congress.

### **National Intelligence Centers**

The DNI is authorized to establish national intelligence centers to address intelligence priorities, such as regional issues. These centers shall have primary responsibility, in their areas of intelligence responsibility, for providing all-source analysis and for identifying and proposing to the DNI intelligence collection and production requirements. The DNI shall ensure that the

centers have sufficient personnel and that the intelligence community shares information in order to facilitate their mission. Each center shall have a separate budget account.

### **Joint Intelligence Community Council**

There is established a Joint Intelligence Community Council (JICC), chaired by the DNI, which is composed of the Secretaries of State, Treasury, Defense, Energy, and Homeland Security, as well as the Attorney General and such other officers as the President may designate. The JICC shall assist the DNI by advising on budget and other matters and by ensuring the timely execution of the programs, policies, and directives of the DNI.

### **Education and Training**

The DNI develops a comprehensive education, recruitment, and training plan to meet the linguistic requirements for the intelligence community. The DNI is further responsible for establishing an integrated framework that brings together the educational components of the intelligence community to promote joint education and training. Finally, the DNI establishes an Intelligence Community Scholarship Program, to provide college scholarships for students in exchange for service within the intelligence community.

### **Open Source Intelligence**

The DNI shall ensure that the intelligence community makes efficient and effective use of open source information and analysis. It is the sense of Congress that the DNI should establish an intelligence center for the purpose of coordinating the collection, analysis, production, and dissemination of open source intelligence, and the DNI must report to Congress on this matter.

### **Effective Date / Implementation Plan**

Title I shall take effect not later than six months after enactment. The President shall submit to Congress an implementation plan not later than 180 days after the effective date. Not later than 60 days after the appointment of the initial DNI, the DNI shall appoint individuals to positions within the Office of the DNI.

### **'Lookback' Provision**

Not later than one year after the effective date of the Act, the DNI shall submit to the Congressional intelligence committees a report on the progress being made to implement this title and such recommendations for additional legislative or administrative action as the DNI considers appropriate.

## **TITLE II**

### **Federal Bureau of Investigation**

*Improvement of FBI Intelligence Capabilities*

The FBI will improve its intelligence capabilities through the development of a national intelligence workforce. The FBI Office of Intelligence shall be redesignated the Directorate of Intelligence.

*Personnel authorities*

The FBI Director is given greater flexibility in establishing analyst positions and corresponding rates of pay. The FBI is given additional authority to raise the mandatory retirement age to 65 years of age for up to 50 FBI employees per fiscal year through September 30, 2007.

*Federal Bureau of Investigation Reserve Service*

The FBI has discretionary authority to establish and train a reserve service for the temporary reemployment of up to 500 former employees of the Bureau during periods of emergency. Reserve members are not subject to a reduction in annuity.

*Use of translators*

The Attorney General will submit annual reports to the Judiciary Committees of the House and Senate regarding the Department of Justice's translator program.

**TITLE III**

**Security Clearances**

The President designates a single entity to oversee the security clearance process and develop uniform standards and policies for access to classified information. The President also designates a single entity to conduct clearance investigations. Additional investigative agencies could be designated if appropriate for national security and efficiency purposes. Reciprocity among clearances at the same level is required.

A national database is established to track clearances. The head of the entity selected to oversee the security clearance process evaluates and reports to Congress on the use of available technology in clearance investigations and adjudications. The head of the entity is further responsible for consulting with Congress and adjudicative agencies to develop a plan to reduce the length of the security clearance process within five years.

**TITLE IV – TRANSPORTATION SECURITY**

**Subtitle A- National Strategy for Transportation Security**

This section implements key 9/11 Commission recommendations with respect to transportation security by requiring that the Secretary of Homeland Security develop and implement a national strategy for transportation security.

### **Subtitle B- Aviation Security**

These sections implement 9/11 Commission recommendations to improve passenger prescreening (including improved use of the “no fly” and “automatic selectee” lists), and to ensure that these watchlists do not violate privacy or civil liberties. It also implements a recommendation to give priority attention to screening passengers and their bags for explosives.

This subtitle also directs the Transportation Security Administration to develop a plan for implementing improved explosives detection equipment. Other provisions help protect air marshals, improve performance of airport screeners and enhance in-line baggage screening. Additional provisions improve pilot licenses, general aviation security, biometric technology and technology to protect against shoulder fired missiles.

### **Subtitle C- Air Cargo Security**

Pursuant to a general 9/11 Commission recommendation to improve air cargo security, this subtitle requires the Transportation Security Administration to develop better technologies for air cargo security, authorizes funding for equipment and research and development, requires the Department finalize its air cargo regulations within 8 months, and requires a pilot program to evaluate the use of currently available and next generation blast-resistant containers.

### **Subtitle D- Maritime Security**

This subtitle directs the Transportation Security Administration to begin screening passengers and crew of cruise ships against comprehensive consolidated terrorist databases within 180 days. It also requires certain maritime-security plans, reports and assessments to be completed in a timely manner.

## **Title V—BORDER PROTECTION, IMMIGRATION AND VISA MATTERS**

### **Subtitle A—Advanced Technology Northern Border Security Pilot Program**

This subtitle permits the Secretary of Homeland Security to carry out a pilot program to test advanced technologies that will improve border security between ports of entry along the northern border of the U.S., requires a report to Congress, and authorizes appropriation of such sums as may be necessary to carry out the pilot program. Among the program’s features would be the use of advanced technology for border surveillance, and operation in remote stretches along the border with long distances between 24-hour ports of entry and a relatively small presence of border patrol agents.

### **Subtitle B—Border and Immigration Enforcement**

*Border Surveillance*

This section requires the Secretary of Homeland Security to submit to the President and Congress a plan for the systematic surveillance of the southwest border of the U.S. by remotely piloted aircraft, and to implement such plan as a pilot program. Among the missions of this program would be the interdiction of the illegal movement of people, weapons, and other contraband across the border, and assisting in the dismantling of smuggling and criminal networks along the border. This section also authorizes the appropriation of such sums as may be necessary to carry out this provision.

*Increase in Full-Time Border Patrol Agents*

This section requires the Secretary of Homeland Security, in each of fiscal years 2006 through 2010, to increase the numbers of border patrol agents by not less than 2,000, subject to available appropriations. In addition, this provision would require a number of agents equaling at least 20% of each year's increase in agents to be assigned to the northern border.

*Increase in Full-Time Immigration and Customs Enforcement Investigators*

This section requires the Secretary of Homeland Security, in each of the fiscal years 2006 through 2010, to increase the numbers of Immigration and Customs Enforcement investigators by not less than 800, subject to available appropriations.

*Increase in Detention Bed Space*

This section requires the Department of Homeland Security, in each of the fiscal years 2006 through 2010, to increase the number of beds available for immigration detention and removal operations by not less than 8,000, subject to available appropriations. It would also require the Secretary to give priority for the use of these additional beds to the detention of those charged with removability under section 237(a)(4) or inadmissibility under section 212(a)(3) of the Immigration and Nationality Act.

**Subtitle C—Visa Requirements**

*In Person Interviews of Visa Applicants*

This section requires an in-person consular interview of most applicants for nonimmigrant visas between the ages of 14 and 79. It includes certain waivers that may be granted by consular officials or the Secretary of State.

*Visa Application Requirements*

This section requires an alien applying for a nonimmigrant visa to completely and accurately respond to any request for information contained in the application.

*Revocation of Visas and Other Travel Documentation*

This section makes the revocation of a non-immigrant visa by the State Department grounds for removal. The visa revocation would be reviewable in a removal proceeding where the revocation provided the sole ground for removal.

**Subtitle D—Immigration Reform**

*Bringing in and Harboring Certain Aliens*

This section increases criminal penalties for alien smuggling and requires the Secretary of DHS to develop an outreach program in the U.S. and abroad to educate the public about the penalties for illegally bringing in and harboring aliens.

*Deportation of Aliens Who Have Received Military-Type Training from Terrorist Organizations*

This section renders deportable any alien who has received military training from or on behalf of an organization that, at the time of training, was a designated terrorist organization.

*Study and Report on Terrorists in the Asylum System*

This section requires the General Accounting Office to conduct a study evaluating the extent to which weaknesses in U.S. asylum system could be exploited by terrorists.

**Subtitle E—Treatment of Aliens Who Commit Acts of Torture, Extrajudicial Killings, or Other Atrocities Abroad**

*Inadmissibility and Deportability of Aliens who have Committed Acts of Torture or Extrajudicial Killings Abroad*

This section renders inadmissible and deportable any alien who has ordered, incited, assisted, or participated in conduct that would be considered genocide under U.S. law, and any alien who committed or participated in an act of torture or extrajudicial killing.

*Inadmissibility and Deportability of Foreign Government Officials Who Have Committed Particularly Severe Violations of Religious Freedom*

This section renders inadmissible and deportable any alien who, while serving as a foreign official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom.

*Waiver of Inadmissibility*

This section amends the waivers of inadmissibility for aliens who have participated in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing.

*Bar to Good Moral Character for Aliens Who Have Committed Acts of Torture, Extrajudicial Killings, or Severe Violations of Religious Freedom*

This section prevents a finding of good moral character with respect to any alien who is inadmissible for having participated in genocide, torture, extrajudicial killing, or particularly severe violations of religious freedom.

*Establishment of the Office of Special Investigations*

This section creates within the Criminal Division of the Department of Justice an Office of Special Investigations to detect, investigate, and take legal action to denaturalize any alien who is inadmissible for having participated in genocide, torture, or extrajudicial killing.

*Report on Implementation*

This section requires the Attorney General, in consultation with the Secretary of Homeland Security, to submit to the House and Senate Judiciary Committees a report on the implementation of this subtitle.

## **TITLE VI-TERRORISM PREVENTION**

### **Subtitle A - Individual Terrorists As Agents of Foreign Powers (“Lone Wolf” Provision)**

Sec. 6001 authorizes the issuance of warrants under the Foreign Intelligence Surveillance Act of 1978 (FISA) for individuals involved in international terrorism, but not affiliated with a known terrorist group. The authority is subject to a sunset at the end of 2005.

Sec. 6002 requires semiannual reports by the Attorney General to the House and Senate Committees on Intelligence and Judiciary regarding the number of persons targeted for FISA orders allowing electronic surveillance, searches, and access to records; the frequency of use of information in criminal proceedings; and summaries of significant legal interpretations of the Act and copies of decisions of FISA courts. Such reports are to be submitted in a manner consistent with the protection of the national security.

### **Subtitle B - Money Laundering and Terrorist Financing**

This section authorizes funding for a series of technology enhancements to improve the data maintained by the Department of Treasury’s Financial Crimes Enforcement Network (FinCEN), while reducing compliance burdens on financial institutions. It also reauthorizes the

National Money Laundering Strategy and the Financial Crime-Free Communities Support Program.

### **Subtitle C - Money Laundering Abatement and Financial Antiterrorism Technical Corrections**

This subtitle makes a number of technical corrections to the USA PATRIOT Act. It also makes permanent the provisions of title III of the USA PATRIOT Act, which include only provisions related to money laundering and financial transactions, by repealing section 303 of the Act, which provides that the provisions of title III will terminate after September 30, 2004, if both Houses of Congress enact a joint resolution to that effect.

### **Subtitle D - Additional Enforcement Tools**

This subtitle contains miscellaneous additional financial tools to combat terrorism. For instance, it authorizes the Secretary of the Treasury to produce currency and other security documents at the request of foreign governments. It directs the Secretary of Treasury to prescribe regulations requiring the reporting to FINCEN of certain cross-border transmittals of funds relevant to the Department of Treasury's anti-money laundering and anti-terrorist financing efforts. It requires a report from the Secretary of Treasury regarding U.S. efforts to combat terrorism financing. It contains a provision that restricts federal examiners of financial institutions, for one-year upon leaving the federal government, from accepting compensation for employment from a financial institution for which the examiner had responsibility for examining.

### **Subtitle E - Criminal History Background Checks**

#### *PROTECT Act*

Sec. 6401 extends for 12 months a pilot program for criminal history background checks on volunteers at mentoring groups.

#### *Criminal History Background Checks*

Sec. 6402 establishes a mechanism by which authorized employers of security guards can request criminal history background checks of employees using existing State identification bureaus.

Sec. 6403 requires the Attorney General to report to the Committees on Judiciary of the House and Senate regarding criminal history record checks that are statutorily required to be conducted by the Department of Justice. The AG is to make recommendations for improving, standardizing, and consolidating existing background check programs for non-criminal justice purposes.

### **Subtitle F - Grand Jury Information Sharing**

Sec. 6501 allows the sharing of grand jury information about terrorist threats with state, local, tribal, and foreign government officials. This provision, originally enacted as part of the Homeland Security Act, did not take effect due to the failure to take account of changes made to the grand jury rules by the Supreme Court. It also allows the disclosure of grand jury information to a foreign court or prosecutor for use in an official criminal investigation.

### **Subtitle G – Providing Material Support to Terrorism**

The first section in this subtitle makes it illegal to knowingly receive military-type training from a designated foreign terrorist organization. In order to be prosecuted for this offense, a person must have knowledge that the terrorist group is so designated or that it engages in terrorist activity or terrorism, as defined by statute.

The second section in this subtitle makes a number of changes to the statutes prohibiting the provision of material support to terrorists and designated foreign terrorist organizations. Key changes include:

- The changes made to current law by this section are subject to a sunset date of December 31, 2006.
- It clarifies the definitions of several types of material support – training, personnel, and expert advice or assistance – in order to respond to rulings by the U.S. Court of Appeals for the Ninth Circuit. Also in response to the Ninth Circuit’s concerns that “training” and “expert advice or assistance” could include constitutionally-protected speech, this provides that nothing in the section can be construed to abridge rights protected under the Constitution.
- This provision also clarifies current law’s requirement that the defendant knowingly provide material support to a designated foreign terrorist organization. This provision makes it clear that under this section, the defendant must know that the organization has been designated as an foreign terrorist organization by the Secretary of State, or that it engages in the type of terrorist activity that can cause an organization to be designated.
- This provision also includes a provision allowing a person to apply to the Secretary of State, acting in concurrence with the Attorney General, for a waiver in order to provide personnel, training, or expert advice or assistance to a designated foreign terrorist organization. The Secretary of State cannot grant the waiver if any of the material support may be used to carry out terrorist activities.

The third section in this subtitle makes two changes to the statute prohibiting terrorist financing. First, it ensures that the concealment of the proceeds of funds can be prosecuted, in addition to the concealment of the funds themselves. Second, it modifies the statute so that it is criminal to conceal funds when they are to be used to support terrorism, in addition to when they have been used to support terrorism.

### **Subtitle H – Terrorist and Military Hoaxes**

The first section of this subtitle establishes criminal penalties for hoaxes relating to terrorism, or the death or disappearance of a member of the Armed Services during a war. A violation of either offense is punishable up to 5 years in prison. If serious injury results from the hoax, the defendant may be imprisoned up to 20 years, and if death results, the defendant may be imprisoned up to life in prison.

The second section of this subtitle increases the maximum penalties for obstruction of justice and false statements in terrorism cases from 5 years to 8 years in prison.

The third section of this subtitle makes a technical amendment affecting the statute prohibiting acts of terrorism transcending national boundaries. Federal jurisdiction over such crimes exists, among other cases, when any facility of interstate or foreign commerce is used in the offense. However, the definition of “facility of interstate or foreign commerce” is unclear as to whether facilities of foreign commerce are truly covered. This provision would make it clear that they are covered.

### **Subtitle I – Weapons of Mass Destruction Prohibition Improvement Act**

Sec. 6802 expands Federal jurisdiction over crimes involving weapons of mass destruction and re-establishes chemical weapons as weapons of mass destruction.

Sec. 6803 provides that a person who participates in or provides material support to a nuclear weapons or weapons of mass destruction program of a foreign terrorist organization is subject to imprisonment for up to 20 years. Makes possession, attempt to possess or conspiracy to possess a radiological weapon subject to imprisonment for a period of a term of years, up to life.

### **Subtitle J – Prevention of Terrorist Access to Destructive Weapons Act of 2004**

Sec. 6903 strengthens penalties for the production, possession, and use of missile system designed to destroy aircraft. It establishes a fine of up to \$ 2 million, mandatory minimum penalties of not less than 25 years for; and life imprisonment if death of another results from violation of the prohibitions.

Sec. 6904 strengthens penalties for the production, possession and use of atomic weapons. It establishes a fine of up to \$ 2 million; a mandatory minimum penalty of 25 years; and life imprisonment if death of another results from a violation of the prohibitions.

Sec. 6905 strengthens penalties for the production, possession, and use of radiological dispersal devices. It establishes a fine of up to \$ 2 million; a mandatory minimum penalty of 25 years; and life imprisonment if death of another results from a violation of the section's prohibitions.

Sec. 6906 strengthens penalties for the production, possession, and use of the variola virus. It establishes a fine of up to \$ 2million; a mandatory minimum penalty of 25 years; and life imprisonment if death of another results from a violation of the sections's prohibitions.

Sec. 6907 adds the offenses described in Sec. 6903-6906 to the offenses for which wire taps can be authorized.

Sec. 6908 adds the offenses contained in Sec. 6903-6909 to the crimes listed in the definition of "Federal crime of terrorism" contained in 18 U.S.C. 2332b(g)(5)(B).

Sec. 6909 adds to the crimes identified in Sec. 6903-6906 to the list of predicate crimes for the crimes of money laundering and providing material support or resources to designated foreign terrorist organizations

Sec. 6910 amends the Arms Export Control Act by adding the crimes listed in Sec. 6903-6906 to the crimes for which individuals who are convicted or indicted can be denied export licenses.

### **Subtitle K – Pretrial Detention of Terrorists**

This provision adds federal crimes of terrorism punishable by more than 10 years in prison to the list of offenses that are subject to a rebuttable presumption of pretrial detention. The defendant would be able to obtain bail if he could show the judge that he was not a flight risk or a danger to the community. A similar presumption exists for federal drug crimes punishable by more than 10 years in prison, and certain other crimes.

## **TITLE VII--911 COMMISSION IMPLEMENTATION ACT OF 2004**

### **Subtitle A- The Role of Diplomacy, Foreign Aid, and the Military in the War on Terrorism**

This subtitle reflects and implements 9/11 Commission recommendations regarding the importance of using all elements of national power, including diplomacy, military action, intelligence, covert action, law enforcement, economic policy, foreign aid, public diplomacy, and homeland defense to win the war on terrorism. It includes findings and a Sense of Congress on the role of terrorist sanctuaries in providing support for terrorist operations and the need to identify terrorist sanctuaries and develop and implement a strategy to eliminate such sanctuaries. It includes a provision that would amend the Export Administration Act to include a government's actions to prevent and eliminate terrorist sanctuaries as a criterion for the licensing for export of sensitive dual-

use technology to that country. It also amends current law to ensure that the State Department Patterns of Global Terrorism reports include assessments of the actions countries have taken to prevent their territories from being used as terrorist sanctuaries.

This subtitle includes findings regarding Pakistan's role in countering the growth of terrorism, and a Sense of Congress that the United States should make a long-term commitment to ensuring a stable and secure future in Pakistan, as long as its leaders remain committed to combating extremists, with a range of assistance to Pakistan. It includes language extending the ability of the President to waive foreign assistance restrictions on Pakistan for fiscal years 2005 and 2006.

This subtitle includes a series of provisions entitled the "Afghanistan Freedom Support Act Amendments of 2004" designed to provide flexibility to United States assistance to Afghanistan. Among other things, these provisions amend the Afghanistan Freedom Support Act of 2002 to make permanent a Coordinator for Assistance for Afghanistan, authorize the Coordinator to support and develop education, the rule of law, democratic and cultural institutions in Afghanistan, and repeal the current law prohibiting assistance to Afghanistan. It authorizes such sums as may be necessary to the President for each fiscal year from FY2005-FY2009 to provide assistance to Afghanistan.

The subtitle includes findings regarding the need to strengthen the relationship and dialogue between the United States and Saudi Arabia. It includes findings regarding the need to combat the stereotypes of the U.S. in the Muslim world and a Sense of Congress that the Government of the United States should offer an example of moral leadership in the world that includes a commitment to treat all people humanely and encourage reform, freedom, democracy, and moderation in the Islamic world.

The subtitle recognizes the importance of integrating public diplomacy into the planning and execution of foreign policy. It requires an annual strategic plan be prepared and implemented for public diplomacy policies. The conference report calls for the Foreign Service to recruit individuals with expertise and professional experience in public diplomacy, and to emphasize the importance of public diplomacy skills and techniques in Foreign Service training. It also requires Foreign Service promotion boards to consider whether a Foreign Service Officer has demonstrated public diplomacy skills.

The subtitle includes provisions encouraging the President and the Secretary of State to support and expand the work of the United Nations democracy caucus, and to undertake reform of membership in United Nations bodies and other multilateral institutions. It directs the State Department to require multilateral diplomacy training for Foreign Service Officers and civil service employees.

The subtitle authorizes the President to expand international exchange programs and calls for a long-term and sustainable investment in promoting engagement with countries with predominately Muslim populations. It also establishes a pilot program to provide grants to students from countries with predominantly Muslim populations to study in American-sponsored school in their countries. The subtitle includes findings regarding the need to improve education in the Middle East and authorizes the President

to establish an International Youth Opportunity Fund to provide financial assistance for the improvement of public education in the Middle East.

The subtitle includes findings regarding the importance of economic development in combating the breeding grounds for terrorism and declares it is a Sense of Congress that a comprehensive United States strategy to counter terrorism should include economic development policies. It authorizes to be appropriated such sums as may be necessary for each of fiscal years 2005 and 2006 for the Middle East Partnership Initiative, a program that is currently authorized in law, and expresses the Sense of Congress that a significant portion of those fund should be made available to promote the rule of law in the Middle East.

The subtitle recognizes the need to cut off funding for terrorists and emphasizes the importance of targeting terrorist financial facilitators. It includes a provision that eliminates the current requirement that designations of Foreign Terrorist Organizations (FTOs) lapse after two years unless renewed by the Secretary of State and replaces this requirement with procedures allowing entities designated as FTOs to petition the Secretary every two years to have their designations revoked, and a mandatory review of designations after five years if they have not previously been reviewed as a result of a petition.

The subtitle includes a provision requiring that the President submit to Congress not later than 180 days after the date of enactment a report on the activities of the United States government to carry out this title. The subtitle also includes amendments to the Case-Zablocki Act to require the Administration to submit all international agreements to Congress.

### **Subtitle B- Terrorist Travel and Effective Screening**

This subtitle requires the Director of the NCTC to submit to Congress a strategy for combining terrorist travel intelligence, operations and law enforcement into a cohesive effort to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility domestically and internationally. This section also requires improvements in technology and training that will assist border, consular and immigration officers in detecting and combating terrorist travel. The subtitle establishes in law the Human Smuggling and Trafficking Center, which includes an interagency program devoted to countering terrorist travel. Additionally, the subtitle requires the Secretary of Homeland Security, in consultation with the Director of the NCTC, to establish a program to oversee DHS's responsibilities with respect to terrorist travel and establishes a Visa and Passport Security Program within the Bureau of Diplomatic Security at the Department of State to strengthen efforts to prevent theft and misuse of U.S.-issued passports and visas.

This subtitle also provides authorization for an increase in the number of consular officers by 150 per year from fiscal year 2006 through 2009 and ensures that there will be at least one full-time anti-fraud specialist at all high-fraud diplomatic and consular posts where visas are issued unless there is a full-time employee of the Department of Homeland Security assigned to such post pursuant to section 428 of the Homeland

Security Act. Other provisions in this subtitle include a section encouraging international agreements to track and curtail terrorist travel through the use of fraudulent documents and a section encouraging international agreements to establish international standards for transliteration of names into the Roman alphabet for international travel documents and name-based watchlist systems.

This subtitle also includes provisions that strengthen control over access at U.S. ports-of-entry. The subtitle calls for the accelerated deployment a biometric entry and exit system that would help verify the identities of individuals entering and leaving the U.S. based not just on the identity documents they carry, but on their physical features. The subtitle also calls for individuals entering into the U.S., including U.S. citizens and visitors from Canada and other Western Hemisphere countries to bear a passport or other document sufficient to denote citizenship and identity. Additionally, the bill requires DHS to promulgate minimum standards for identification documents required of passengers seeking to board domestic flights subject to Congressional approval.

The subtitle also includes programs that “push out our borders” by increases the screening of threatening individuals before they reach the U.S. These measures include expanding the program that places U.S. immigration experts at foreign airports both to provide expert advice to airlines and foreign immigration officials concerning individuals bordering flights bound for the U.S., and increasing the number of foreign airports where visitors will be “pre-inspected” before reaching the U.S.

Finally, the subtitle requires the establishment of new standards to ensure the integrity of the three basic documents Americans use to establish their identity – birth certificates, state-issued driver’s licenses and identification cards, and social security cards. The provisions in the subtitle establish new requirements to ensure that the applicant for the identity document is actually the person whom the applicant is claiming to be and the physical security of the document. States would receive grants to assist them in implementing new birth certificate and driver’s license requirements.

### **Subtitle C -- National Preparedness**

#### *The Incident Command System*

This section expresses the Sense of Congress that the United States needs to implement a 9-11 Commission recommendation by adopting a unified incident command system and significantly enhancing communications connectivity between and among all levels of government and emergency response providers.

#### *The National Capital Region Mutual Aid*

This section authorizes mutual aid for first responders in the National Capital Region. A recommendation of the 9-11 Commission, this provision removes obstacles to mutual aid by addressing liability and other issues that arise when first responders in jurisdictions neighboring and including the nation’s capital provide assistance to other jurisdictions in the region.

*Enhancement of Public Safety Communications Capabilities*

This section establishes programs for the enhancement of public safety communications interoperability, and urban and other high-risk area communications capabilities. It authorizes the establishment of an office within the Directorate of Science and Technology to carry out programs related to SAFECOM and other related programs. It authorizes the use of multi-year commitments by the Secretary of Homeland Security when funding public safety interoperable communications projects at the state and local level, and mandates reports to Congress on the development of national voluntary consensus standards for public safety interoperable communications.

*Regional Model Strategic Plan Pilot Projects*

This section establishes pilot projects in no fewer than two high threat urban areas to develop a regional strategic plan to foster interagency communications.

*Private Sector Preparedness*

This section expresses the Sense of Congress that the Department of Homeland Security should promote adoption of voluntary national preparedness standards for the private sector.

*Critical Infrastructure and Readiness Assessments*

This section requires the Department of Homeland Security to report to Congress on its assessment of critical infrastructure protection needs and the readiness of the Government to respond to threats against the U.S.

*Report on the Northern Command and Defense of the United States Homeland*

This section expresses the Sense of Congress that the Secretary of Defense should regularly assess the adequacy of the Northern Command's plans and strategies.

**Subtitle D- Homeland Security Grants**

*Homeland Security Grants*

This section expresses the Sense of Congress that Congress must act to pass legislation in the first session of the 109<sup>th</sup> Congress to reform the system for distributing grants to enhance state and local government prevention of, preparedness for, and response to acts of terrorism.

*Emergency Preparedness Compacts*

This section requires FEMA to establish a program supporting the development of emergency preparedness compacts.

*Office of Counternarcotics Enforcement*

This section elevates and expands the duties of the Counternarcotics officer in the Department of Homeland Security. The Director of this office is tasked with coordinating policy with respect to counternarcotic activities.

**Subtitle E – Public Safety Spectrum**

*Public Safety Spectrum*

This section requires studies of the need for allocation of additional spectrum for first responder needs and to assess strategies that may be used to meet public safety telecommunications needs. A separate provision expresses the Sense of Congress that Congress must act in the first session of the 109<sup>th</sup> Congress to establish a comprehensive approach to the timely return of analog broadcast spectrum as early as December 31, 2006.

*Pilot study regarding warning systems*

This section provides for a pilot project similar to the AMBER alert network to notify the public in the event of a terrorist attack.

**Subtitle F- Presidential Transition**

This section requires the outgoing administrations to provide the president-elect with a classified, compartmented summary of specific threats to national security. Each major party presidential candidate would have discretionary authority to submit the names of transition team members shortly after their nomination to expedite the issuance of security clearances. The President-elect is directed to submit the names of candidates for national security positions as soon as possible after the date of the general election to expedite the issuance of security clearances. The language expresses the sense of the Senate that nominees for national security positions should be processed in an expeditious manner.

**Subtitle G – Improving International Standards and Cooperation to Fight Terrorist Financing**

This subsection works to better combat terrorist financing by requiring better coordination and building on international coalitions. It states the Sense of Congress that the Secretary of the Treasury should continue to promote the dissemination of international anti-money laundering and combating the financing of terrorism standards. It expands reporting requirements for the Secretary of Treasury to include assessments of progress made in these areas. It also requires the Secretary of Treasury to convene an inter-agency council to develop policies to be pursued by the United States regarding the

development of common international anti-money laundering and combating the financing of terrorism standards.

### **Subtitle H-Emergency Financial Preparedness**

This subtitle would provide a number of measures to enhance emergency financial preparedness for fiscal authorities and markets.

Chapter One provides for enhanced delegation authority for the Secretary of the Treasury to appoint a Fiscal Assistant Secretary in the absence or inability to serve of the current Fiscal Assistant Secretary. Under current law, the Secretary may only appoint “an officer” of the Treasury Department. The new provision would make any Treasury employee eligible for such appointment. The Fiscal Assistant Secretary is the head of the Fiscal Service, an entity in the Treasury Department comprised of the Bureau of Government Financial Operations and the Bureau of the Public Debt.

Chapter Two empowers the SEC to take action in an “emergency” to maintain or restore fair and orderly securities markets, ensure “prompt, accurate and safe” transaction settlement, and prevent disruptions of markets or market activities. Such action shall last for 10 business days, but may extend up to 30 calendar days should the public interest require. The action can only pertain to markets and actors normally within the SEC’s jurisdiction. The Secretary of the Treasury is given comparable authority over markets for government securities. In addition, the subtitle contains a “sense of Congress” that insurance and credit rating firms should consider a firm’s “compliance with standards for private sector disaster and emergency preparedness” when assessing the firm’s insurability and creditworthiness. This is consistent with the 9/11 Commission Report, which made the identical recommendation.

## **TITLE VIII– GENERAL PROVISIONS**

### **Subtitle A–Intelligence Matters**

#### *Intelligence Community Use of National Infrastructure Simulation and Analysis Center*

This section provides that the National Intelligence Director shall establish a formal relationship, including information sharing, between elements of the intelligence community and the National Infrastructure Simulation Center.

### **Subtitle B– Department of Homeland Security Matters**

#### *Homeland Security Geographic Information*

This section creates an Office of Geospatial Management under the Chief Information Officer in the Department of Homeland Security to coordinate the geospatial information needs of the Department. Geospatial information, which includes maps, charts, remote sensing data and images, and aerial photographic images, is an integral tool used by most government agencies.

### **Subtitle C– Homeland Security Civil Rights and Civil Liberties Protection**

#### *Homeland Security Civil Rights and Civil Liberties Protection*

This subtitle includes the provisions of the Homeland Security Civil Rights and Civil Liberties Protection Act of 2004. These provisions would codify existing responsibilities of the Officer for Civil Rights and Civil Liberties at the Department of Homeland Security, which include assisting the Secretary of Homeland Security in developing, implementing, and reviewing Department policies and procedures to ensure civil rights and civil liberties are appropriately considered; overseeing compliance with constitutional, statutory, and policy requirements relating to civil rights and civil liberties; and investigating complaints.

This subtitle also provides that the Officer for Civil Rights and Civil Liberties and the Privacy Officer of the Department of Homeland Security coordinate on programs, policies, and procedures that involve civil rights, civil liberties, and privacy considerations.

This subtitle also provides for the Inspector General of the Department of Homeland Security to designate a senior official within the Office of the Inspector General who would be responsible for coordinating the activities of the Office with respect to civil rights and civil liberties and consulting with the Officer for Civil Rights and Civil Liberties.

#### *Protections for human research subjects of the Department of Homeland Security*

This section requires the Department of Homeland Security to ensure that the Department complies with the protections for human research subjects in Title 45, part 46 of the CFR, widely known as the “Common Rule.” The Common Rule specifies how research involving human subjects is to be conducted and reviewed, including requirements for obtaining informed consent. While these protections have been adopted by 17 federal departments and agencies to date, the Department of Homeland Security has not yet become a signatory to the Common Rule.

### **Subtitle D – Other Matters**

#### *Amendments to Clinger-Cohen Act Provisions to Enhance Agency Planning for Information Security Needs*

This provision amends the Clinger-Cohen Act to explicitly require federal agencies to emphasize information security from the earliest possible stages of a new system's IT capital planning and investment decision-making process.

#### *Enterprise Architecture*

This section requires the Federal Bureau of Investigation (FBI) to continually maintain and update an enterprise architecture; and maintain a state of the art and up to date information technology infrastructure that is in compliance with the enterprise architecture of the FBI. Specifically the FBI is required to develop a detailed outline or blueprint of its information technology that will satisfy the ongoing mission and goals of the FBI and that sets forth specific and identifiable benchmarks. The Director of the FBI shall report to the House and Senate Judiciary Committees on whether the major information technology investments of the FBI are in compliance with its enterprise architecture and identify any inability or expectation of inability to meet the terms set forth in the enterprise architecture.

*Financial disclosure and records*

This section would require the Office of Government Ethics to submit a report to Congress evaluating the financial disclosure process for executive branch employees within 90 days of the date of enactment; require the Office of Personnel Management to electronically submit a list of Presidentially appointed positions to each major party candidate after his or her nomination; and require the Office of Government Ethics, in consultation with the Attorney General, to report to Congress on the conflict of interest laws relating to federal employment. The provision would also require each agency to submit a plan to the President and Congress that includes recommendations on reducing the number of positions requiring Senate confirmation.

*Extension of requirement for air carriers to honor tickets for suspended air passenger service*

This provision would extend an existing provision of law requiring airlines to honor, under certain conditions, tickets issued by bankrupt carriers that have suspended passenger service.