

OVER-CLASSIFICATION REDUCTION ACT

JULY 30, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 6575]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 6575) to require the Archivist of the United States to promulgate regulations to prevent the over-classification of information, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 6575, the Over-Classification Reduction Act, was introduced by Reps. Henry A. Waxman and Tom Davis on July 23, 2008. The

purpose of H.R. 6575 is to apply standards and practices to reduce improper classification and encourage information sharing.

H.R. 6575 requires the Archivist, in coordination with affected federal agencies, to promulgate regulations to prevent the over-classification of information. The bill also requires agency inspectors general to randomly audit classified information to ensure that these regulations, and other classification policies, are being followed.

BACKGROUND AND NEED FOR LEGISLATION

The National Commission on Terrorist Attacks upon the United States, popularly known as the 9/11 Commission, recommended limiting the unnecessary classification of documents and providing incentives for information sharing.¹ Seven years has passed since those horrific events and our government still is not sharing important information. This is in part due to over-classification.

The Committee understands there is some information that must be protected because it could easily threaten our national security. Having a system to classify information is necessary. However, there is a tendency to overprotect information, and that has adverse consequences as well. Over-classification actually hurts our efforts to fight terrorism because it prevents agencies from sharing important information with relevant stakeholders including state and local law enforcement and even other federal agencies. In addition, it undermines public access to this important information.

In December 2004, Congress, in the Intelligence Reform and Terrorism Prevention Act, P.L. 108–458, called for reducing disincentives for information sharing including over-classification. Since that time, over-classification continues to be a problem in the federal government.

H.R. 6575 calls on the Archivist to resolve the problem of over-classification by standardizing the use of classifications and by establishing methods to increase oversight of the classification process. These include requiring random inspector general audits of classified information; establishing a process for those challenging classification decisions to be rewarded; requiring individuals to include personal identifiers when classifying information; and increased training.

LEGISLATIVE HISTORY

During the 108th Congress, the Subcommittee on National Security, Emerging Threats, and International Relations held the hearing, *Too Many Secrets: Overclassification as a Barrier to Critical Information Sharing* (Aug. 24, 2004).

During the 109th Congress, the Subcommittee on National Security, Emerging Threats, and International Relations held two hearings on this issue: *Drowning in a Sea of Faux Secrets: Policies on Handling of Classified and Sensitive Information* (Mar. 14, 2006) and *Emerging Threats: Overclassification and Pseudo-classification* (Mar. 2, 2005).

¹National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (July 22, 2004).

H.R. 6575, the Over-Classification Reduction Act, was introduced by Reps. Henry A. Waxman and Tom Davis on July 23, 2008, and referred to the Committee on Oversight and Government Reform.

On July 23, 2008, the Committee on Oversight and Government Reform held a business meeting to consider H.R. 6575 and ordered the bill to be favorably reported by a voice vote.

SECTION-BY-SECTION

Section 1. Short title

This section provides that the short title of the bill is the “Over-Classification Reduction Act.”

Section 2. Purpose

This section provides that the purpose of the Act is to increase the sharing and availability of information within the government and with the public by applying standards and practices to reduce improper classification.

Section 3. Over-classification prevention within the Federal Government

Subsection (a) requires the Archivist, in coordination with the heads of other affected agencies, to promulgate regulations to prevent the over-classification of information. These regulations should apply both to those individuals who have original classification authority and to any individual who has derivative classification authority.

This subsection calls on the Archivist to determine when classified products should be prepared in a standard format and when classified products should be prepared in an unclassified format. In addition, the regulations will ensure that compliance protects national security and privacy rights and will establish a process for individuals that challenge classification decisions to receive incentives for successful challenges.

This subsection requires the Archivist, as appropriate, to consult with various stakeholders including state and local governments, law enforcement entities, organizations with expertise in civil rights, labor rights, civil liberties, and government oversight, and the private sector.

Subsection (b) requires the inspector general of each federal agency, in consultation with the Archivist, to randomly audit classified information from each component of the agency that has employees with classification authority. This section requires the inspector general, in conducting these audits, to determine whether the agency is properly following relevant classification policies and regulations, to describe any problems with implementation, and to recommend improvements in awareness and training to address those problems. The inspector general must report to Congress, the Archivist, and the public on the findings of these audits.

Section 4. Enforcement of over-classification prevention within the Federal Government

Subsection (a) requires that at the time an individual classifies information, that individual provide unique identifying information including the name or personal identifier and the agency, office,

and position of the individual. The purpose of this requirement is to permit the agency to perform oversight of over-classification.

Subsection (b) requires the Archivist, in coordination with the heads of other affected federal agencies, to require, in existing annual training, information on the prevention of over-classification of information, the proper use of classification markings, and the use of portion markings. This subsection clarifies that this training is to be conducted in conjunction with other training programs required by the agency to reduce the burden of this new requirement.

Subsection (c) requires the Archivist to establish a program to detail federal agency personnel to the National Archives and Records Administration (NARA) on a nonreimbursable basis. The purpose of this program is to help NARA conduct its oversight responsibilities, to provide the detailed personnel with more extensive training on the use of classification markings, and to ensure consistent policies across agencies. This subsection provides that the detailee program will continue through the year 2012.

Section 5. Definitions

This section defines “information” as any communicable knowledge or documentary material, regardless of its physical form or characteristics, which is owned by, is produced by or for, or is under the control of the federal government.

This section defines the term “federal agency” to mean: (1) Any executive agency, which means an executive department, a government corporation, and an independent establishment; (2) any military department, which means the Department of the Army, the Department of the Navy, or the Department of the Air Force; and (3) any other entity within the executive branch that comes into the possession of classified information.

EXPLANATION OF AMENDMENTS

No amendments were offered to this legislation.

COMMITTEE CONSIDERATION

On Wednesday, July 23, 2008, the Committee ordered H.R. 6575 to be favorably reported to the House by a voice vote.

ROLLCALL VOTES

No rollcall votes were held.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of P.L. 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. H.R. 6575 relates to the over-classification of documents by the executive branch and therefore does not apply to the legislative branch.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the

descriptive portions of this report, including the need to limit the unnecessary classification of documents.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report, including reducing improper classification and encouraging information sharing.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 6575. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 6575 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 6575. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 6575 from the Director of the Congressional Budget Office:

JULY 29, 2008.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6575, the Over-Classification Reduction Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 6575—Over-Classification Reduction Act

H.R. 6575 would amend federal law concerning the security classification of government documents. The legislation would require the National Archives and Records Administration (NARA), in consultation with the Director of National Intelligence and other affected federal agencies to develop regulations that prevent the overuse of classification procedures to withhold information collected or prepared by the federal government. The legislation would require agencies to consider whether classified information could benefit state, local, or tribal governments, as well as law enforcement activities or the public. The bill also would require annual training for employees and contractors on how to classify information, and audits by inspectors general to determine whether information has been properly classified.

CBO estimates that implementing H.R. 6575 would cost \$2 million in 2009 and \$22 million over the 2009–2013 period, assuming the availability of appropriated funds. Those costs would be incurred to implement new regulations and requirements and to conduct training and audits. Although the legislation could affect agencies not funded through annual appropriations (such as the Tennessee Valley Authority or the U.S. Postal Service), CBO estimates that any net increase in spending by those agencies would not be significant.

Most of the legislation would expand on current law and practices of the federal government. Information from NARA and the Departments of Homeland Security and Defense indicates that most agencies comply with existing NARA regulations regarding the classification of federal information and already provide annual training to employees on classification procedures. However, NARA and agencies would incur additional costs under the bill to implement new regulations, perform audits, and provide additional training.

H.R. 6575 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

No changes to existing law are made by H.R. 6575, as reported.

