

Calendar No. 235

113TH CONGRESS
1ST SESSION**S. 1631**

To consolidate the congressional oversight provisions of the Foreign Intelligence Surveillance Act of 1978 and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 31, 2013

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

A BILL

To consolidate the congressional oversight provisions of the Foreign Intelligence Surveillance Act of 1978 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 “FISA Improvements
5 Act of 2013”.

1 **SEC. 2. SUPPLEMENTAL PROCEDURES FOR ACQUISITION**
2 **OF CERTAIN BUSINESS RECORDS FOR**
3 **COUNTERTERRORISM PURPOSES.**

4 (a) SUPPLEMENTAL PROCEDURES FOR ACQUISITION
5 OF CERTAIN BUSINESS RECORDS FOR INTERNATIONAL
6 TERRORISM INVESTIGATIONS.—Section 501 of the For-
7 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
8 1861) is amended by adding at the end the following:

9 “(i) GENERAL PROHIBITION ON BULK COLLECTION
10 OF COMMUNICATION RECORDS.—No order issued pursu-
11 ant to an application made under subsection (a) may au-
12 thorize the acquisition in bulk of wire communication or
13 electronic communication records from an entity that pro-
14 vides an electronic communication service to the public if
15 such order does not name or otherwise identify either indi-
16 viduals or facilities, unless such order complies with the
17 supplemental procedures under subsection (j).

18 “(j) AUTHORIZATION FOR BULK COLLECTION OF
19 NON-CONTENT METADATA.—

20 “(1) SUPPLEMENTAL PROCEDURES.—Any order
21 directed to the Government under subsection (a)
22 that authorizes the acquisition in bulk of wire com-
23 munication or electronic communication records,
24 which shall not include the content of such commu-
25 nications, shall be subject to supplemental proce-

1 dures, which are in addition to any other require-
2 ments or procedures imposed by this Act, as follows:

3 “(A) CONTENT PROHIBITION.—Such an
4 order shall not authorize the acquisition of the
5 content of any communication.

6 “(B) AUTHORIZATION AND RENEWAL PE-
7 RIODS.—Such an order—

8 “(i) shall be effective for a period of
9 not more than 90 days; and

10 “(ii) may be extended by the court on
11 the same basis as an original order upon
12 an application under this title for an exten-
13 sion and new findings by the court in ac-
14 cordance with subsection (c).

15 “(C) SECURITY PROCEDURES FOR AC-
16 QUIRED DATA.—Information acquired pursuant
17 to such an order (other than information prop-
18 erly returned in response to a query under sub-
19 paragraph (D)(iii)) shall be retained by the
20 Government in accordance with security proce-
21 dures approved by the court in a manner de-
22 signed to ensure that only authorized personnel
23 will have access to the information in the man-
24 ner prescribed by this section and the court’s
25 order.

1 “(D) LIMITED ACCESS TO DATA.—Access
2 to information retained in accordance with the
3 procedures described in subparagraph (C) shall
4 be prohibited, except for access—

5 “(i) to perform a query using a selec-
6 tor for which a recorded determination has
7 been made that there is a reasonable
8 articulable suspicion that the selector is as-
9 sociated with international terrorism or ac-
10 tivities in preparation therefor;

11 “(ii) to return information as author-
12 ized under paragraph (3); or

13 “(iii) as may be necessary for tech-
14 nical assurance, data management or com-
15 pliance purposes, or for the purpose of
16 narrowing the results of queries, in which
17 case no information produced pursuant to
18 the order may be accessed, used, or dis-
19 closed for any other purpose, unless the in-
20 formation is responsive to a query author-
21 ized under paragraph (3).

22 “(2) RECORD REQUIREMENT.—

23 “(A) DETERMINATION.—For any deter-
24 mination made pursuant to paragraph
25 (1)(D)(i), a record shall be retained of the se-

1 lector, the identity of the individual who made
2 the determination, the date and time of the de-
3 termination, and the information indicating
4 that, at the time of the determination, there
5 was a reasonable articulable suspicion that the
6 selector was associated with international ter-
7 rorism or activities in preparation therefor.

8 “(B) QUERY.—For any query performed
9 pursuant to paragraph (1)(D)(i), a record shall
10 be retained of the identity of the individual who
11 made the query, the date and time of the query,
12 and the selector used to perform the query.

13 “(3) SCOPE OF PERMISSIBLE QUERY RETURN
14 INFORMATION.—For any query performed pursuant
15 to paragraph (1)(D)(i), the query only may return
16 information concerning communications—

17 “(A) to or from the selector used to per-
18 form the query;

19 “(B) to or from a selector in communica-
20 tion with the selector used to perform the
21 query; or

22 “(C) to or from any selector reasonably
23 linked to the selector used to perform the
24 query, in accordance with the court approved

1 minimization procedures required under sub-
2 section (g).

3 “(4) LIMITS ON PERSONNEL AUTHORIZED TO
4 MAKE DETERMINATIONS OR PERFORM QUERIES.—A
5 court order issued pursuant to an application made
6 under subsection (a), and subject to the require-
7 ments of this subsection, shall impose strict, reason-
8 able limits, consistent with operational needs, on the
9 number of Government personnel authorized to
10 make a determination or perform a query pursuant
11 to paragraph (1)(D)(i). The Director of National In-
12 telligence shall ensure that each such personnel re-
13 ceives comprehensive training on the applicable laws,
14 policies, and procedures governing such determina-
15 tions and queries prior to exercising such authority.

16 “(5) AUTOMATED REPORTING.—

17 “(A) REQUIREMENT FOR AUTOMATED RE-
18 PORTING.—The Director of the National Intel-
19 ligence, in consultation with the head of the
20 agency responsible for acquisitions pursuant to
21 orders subject to the requirements of this sub-
22 section, shall establish a technical procedure
23 whereby the aggregate number of queries per-
24 formed pursuant to this subsection in the pre-
25 vious quarter shall be recorded automatically,

1 and subsequently reported to the appropriate
2 committees of Congress.

3 “(B) AVAILABILITY UPON REQUEST.—The
4 information reported under subparagraph (A)
5 shall be available to each of the following upon
6 request:

7 “(i) The Inspector General of the Na-
8 tional Security Agency.

9 “(ii) The Inspector General of the In-
10 telligence Community.

11 “(iii) The Inspector General of the
12 Department Justice.

13 “(iv) Appropriate officials of the De-
14 partment of Justice.

15 “(v) Appropriate officials of the Na-
16 tional Security Agency.

17 “(vi) The Privacy and Civil Liberties
18 Oversight Board.

19 “(6) COURT REVIEW OF RECORDS.—

20 “(A) REQUIREMENT TO PROVIDE
21 RECORDS.—In accordance with minimization
22 procedures required by subsection (g), and sub-
23 ject to subparagraph (B), a copy of each record
24 for a determination prepared pursuant to para-

1 graph (2)(A) shall be promptly provided to the
2 court established under section 103(a).

3 “(B) RECORDS ASSOCIATED WITH UNITED
4 STATES PERSONS.—In accordance with mini-
5 mization procedures required by subsection (g),
6 a copy of each record for a determination pre-
7 pared pursuant to paragraph (2)(A) that is rea-
8 sonably believed to be associated with a par-
9 ticular, known United States person shall be
10 promptly provided the court established under
11 section 103(a), but no more than 7 days after
12 the determination.

13 “(C) REMEDY FOR IMPROPER DETERMINA-
14 TIONS.—If the court finds that the record of
15 the determination indicates the determination
16 did not meet the requirements of this section or
17 is otherwise unlawful, the court may order that
18 production of records under the applicable order
19 be terminated or modified, that the information
20 returned in response to queries using the selec-
21 tor identified in the determination be destroyed,
22 or another appropriate remedy.

23 “(7) RECORD RETENTION AND QUERY RESTRIC-
24 TIONS.—

1 “(A) RECORD RETENTION.—All records
2 and information produced pursuant to an order
3 subject to this subsection, other than the re-
4 sults of queries as described in paragraph (3),
5 shall be retained no longer than 5 years from
6 the date of acquisition.

7 “(B) QUERY RESTRICTIONS.—The Govern-
8 ment shall not query any data acquired under
9 this subsection and retained in accordance with
10 the procedures described in paragraph (1)(C)
11 more than 3 years after such data was acquired
12 unless the Attorney General determines that the
13 query meets the standard set forth in para-
14 graph (1)(D)(i).

15 “(8) CONGRESSIONAL OVERSIGHT.—A copy of
16 each order issued pursuant to an application made
17 under subsection (a), and subject to the require-
18 ments of this subsection, shall be provided to the ap-
19 propriate committees of Congress.

20 “(9) DEFINITIONS.—In this subsection:

21 “(A) APPROPRIATE COMMITTEES OF CON-
22 GRESS.—The term ‘appropriate committees of
23 Congress’ means—

1 “(i) the Committee on the Judiciary
2 and the Select Committee on Intelligence
3 of the Senate; and

4 “(ii) the Committee on the Judiciary
5 and the Permanent Select Committee on
6 Intelligence of the House of Representa-
7 tives.

8 “(B) CONTENT.—The term ‘content’, with
9 respect to a communication—

10 “(i) means any information con-
11 cerning the substance, purport, or meaning
12 of that communication; and

13 “(ii) does not include any dialing,
14 routing, addressing, signaling information.

15 “(C) ELECTRONIC COMMUNICATION.—The
16 term ‘electronic communication’ has the mean-
17 ing given that term in section 2510 of title 18,
18 United States Code.

19 “(D) ELECTRONIC COMMUNICATION SERV-
20 ICE.—The term ‘electronic communication serv-
21 ice’ has the meaning given that term in section
22 2510 of title 18, United States Code.

23 “(E) SELECTOR.—The term ‘selector’
24 means an identifier, such as a phone number or

1 electronic account identifier, that is associated
2 with a particular communicant or facility.

3 “(F) UNITED STATES PERSON.—The term
4 ‘United States person’ has the meaning given
5 that term in section 101 of this Act.

6 “(G) WIRE COMMUNICATION.—The term
7 ‘wire communication’ has the meaning given
8 that term in section 2510 of title 18, United
9 States Code.”.

10 (b) ANNUAL UNCLASSIFIED REPORT.—Section
11 502(c)(1) of the Foreign Intelligence Surveillance Act of
12 1978 (50 U.S.C. 1862(c)(1)) is amended—

13 (1) in subparagraph (A), by striking “and” at
14 the end;

15 (2) in subparagraph (B), by striking the period
16 at the end and inserting “; and”; and

17 (3) by adding at the end the following:

18 “(C) for each order subject to the supplemental
19 procedures under section 501(j)—

20 “(i) the number of unique selectors for
21 which a recorded determination has been made
22 under section 501(j)(1)(D)(i) that reasonable
23 articulable suspicion exists that the selector is
24 associated with international terrorism or ac-
25 tivities in preparation therefor;

1 “(ii) the aggregate number of queries per-
2 formed pursuant to such section;

3 “(iii) the aggregate number of investigative
4 leads developed as a direct result of any query
5 performed pursuant to subsection (j)(1)(D)(i);
6 and

7 “(iv) the aggregate number of warrants or
8 court orders, based upon a showing of probable
9 cause, issued pursuant to title I or III of this
10 Act or chapter 119, 121, or 205 of title 18,
11 United States Code, in response to applications
12 for such warrants or court orders containing in-
13 formation produced by such queries.”.

14 **SEC. 3. ENHANCED CRIMINAL PENALTIES FOR UNAUTHOR-**
15 **IZED ACCESS TO COLLECTED DATA.**

16 Section 1030 of title 18, United States Code, is
17 amended as follows:

18 (1) Subsection (a) is amended—

19 (A) in paragraph (5)(C), by striking the
20 period at the end and inserting a semicolon;

21 (B) in paragraph (7)(C), by adding “or”
22 at the end; and

23 (C) by inserting after paragraph (7)(C) the
24 following:

1 “(8) accesses a computer without authorization
2 or exceeds authorized access and thereby obtains in-
3 formation from any department or agency of the
4 United States knowing or having reason to know
5 that such computer was operated by or on behalf of
6 the United States and that such information was ac-
7 quired by the United States pursuant to the Foreign
8 Intelligence Surveillance Act (50 U.S.C. 1801 et
9 seq.) pursuant to an order issued by a court estab-
10 lished under section 103 of that Act (50 U.S.C.
11 1803).”.

12 (2) Subsection (c) is amended—

13 (A) in paragraph (4)(G)(ii), by striking the
14 period at the end and inserting a semicolon and
15 “or”; and

16 (B) by adding at the end the following:

17 “(5) a fine under this title, imprisonment for
18 not more than 10 years, or both, in the case of an
19 offense under subsection (a)(8) of this section.”.

20 **SEC. 4. APPOINTMENT OF AMICUS CURIAE.**

21 Section 103 of the Foreign Intelligence Surveillance
22 Act of 1978 (50 U.S.C. 1803) is amended by adding at
23 the end the following:

24 “(i) AMICUS CURIAE.—

1 “(1) AUTHORIZATION.—Notwithstanding any
2 other provision of law, a court established under
3 subsection (a) or (b) is authorized, consistent with
4 the requirement of subsection (c) and any other stat-
5 utory requirement that the court act expeditiously or
6 within a stated time, to appoint amicus curiae to as-
7 sist the court in the consideration of a covered appli-
8 cation.

9 “(2) DEFINITIONS.—In this subsection:

10 “(A) APPROPRIATE COMMITTEES OF CON-
11 GRESS.—The term ‘appropriate committees of
12 Congress’ means—

13 “(i) the Committee on the Judiciary
14 and the Select Committee on Intelligence
15 of the Senate; and

16 “(ii) the Committee on the Judiciary
17 and the Permanent Select Committee on
18 Intelligence of the House of Representa-
19 tives.

20 “(B) COVERED APPLICATION.—The term
21 ‘covered application’ means an application for
22 an order or review made to a court established
23 under subsection (a) or (b)—

1 “(i) that, in the opinion of such a
2 court, presents a novel or significant inter-
3 pretation of the law; and

4 “(ii) that is—

5 “(I) an application for an order
6 under this title, title III, IV, or V of
7 this Act, or section 703 or 704 of this
8 Act;

9 “(II) a review of a certification
10 or procedures under section 702 of
11 this Act; or

12 “(III) a notice of non-compliance
13 with any such order, certification, or
14 procedures.

15 “(3) DESIGNATION.—The courts established by
16 subsection (a) and (b) shall each designate 1 or
17 more individuals who have been determined by ap-
18 propriate executive branch officials to be eligible for
19 access to classified national security information, in-
20 cluding sensitive compartmented information, who
21 may be appointed to serve as *amicus curiae*. In ap-
22 pointing an *amicus curiae* pursuant to paragraph
23 (1), the court may choose from among those so des-
24 ignated.

1 “(4) EXPERTISE.—An individual appointed as
2 an amicus curiae under paragraph (1) may be a spe-
3 cial counsel or an expert on privacy and civil lib-
4 erties, intelligence collection, telecommunications, or
5 any other area that may lend legal or technical ex-
6 pertise to the court.

7 “(5) DUTIES.—An amicus curiae appointed
8 under paragraph (1) to assist with the consideration
9 of a covered application shall carry out the duties
10 assigned by the appointing court. That court may
11 authorize, to the extent consistent with the case or
12 controversy requirements of Article III of the Con-
13 stitution of the United States and the national secu-
14 rity of the United States, the amicus curiae to re-
15 view any application, certification, petition, motion,
16 or other submission that the court determines is rel-
17 evant to the duties assigned by the court.

18 “(6) NOTIFICATION.—A court established under
19 subsection (a) or (b) shall notify the Attorney Gen-
20 eral of each exercise of the authority to appoint an
21 amicus curiae under paragraph (1).

22 “(7) ASSISTANCE.—A court established under
23 subsection (a) or (b) may request and receive (in-
24 cluding on a non-reimbursable basis) the assistance

1 of the executive branch in the implementation of this
2 subsection.

3 “(8) ADMINISTRATION.—A court established
4 under subsection (a) or (b) may provide for the des-
5 ignation, appointment, removal, training, support, or
6 other administration of an amicus curiae appointed
7 under paragraph (1) in a manner that is not incon-
8 sistent with this subsection.

9 “(9) CONGRESSIONAL OVERSIGHT.—The Attor-
10 ney General shall submit to the appropriate commit-
11 tees of Congress an annual report on the number of
12 notices described in paragraph (6) received by Attor-
13 ney General for the preceding 12-month period.”.

14 **SEC. 5. CONSOLIDATION OF CONGRESSIONAL OVERSIGHT**
15 **PROVISIONS UNDER THE FOREIGN INTEL-**
16 **LIGENCE SURVEILLANCE ACT OF 1978.**

17 (a) REPEAL OF CONGRESSIONAL OVERSIGHT PROVI-
18 SIONS.—

19 (1) REPEAL.—The Foreign Intelligence Surveil-
20 lance Act of 1978 is amended by striking sections
21 107, 108, 306, and 406 (50 U.S.C. 1807, 1808,
22 1826, and 1846).

23 (2) TABLE OF CONTENTS AMENDMENT.—The
24 table of contents in the first section of the Foreign
25 Intelligence Surveillance Act of 1978 is amended by

1 striking the items relating to sections 107, 108, 306,
2 and 406.

3 (b) SEMIANNUAL REPORT OF THE ATTORNEY GEN-
4 ERAL.—Section 601 of the Foreign Intelligence Surveil-
5 lance Act of 1978 (50 U.S.C. 1871) is amended to read
6 as follows:

7 **“SEC. 601. SEMIANNUAL REPORT OF THE ATTORNEY GEN-
8 ERAL.**

9 “(a) IN GENERAL.—

10 “(1) INFORMATION.—On a semiannual basis,
11 the Attorney General shall submit to the appropriate
12 committees of Congress a report pursuant to para-
13 graph (2) concerning all electronic surveillance,
14 physical searches, and uses of pen registers and trap
15 and trace devices conducted under this Act.

16 “(2) REPORT.—The report required by para-
17 graph (1) shall include the following:

18 “(A) ELECTRONIC SURVEILLANCE.—The
19 total number of—

20 “(i) applications made for orders ap-
21 proving electronic surveillance under this
22 Act;

23 “(ii) such orders either granted, modi-
24 fied, or denied;

1 “(iii) proposed applications for orders
2 for electronic surveillance submitted pursu-
3 ant to Rule 9(a) of the Rules of Procedure
4 for the Foreign Intelligence Surveillance
5 Court, or any successor rule, that are not
6 formally presented in the form of a final
7 application under Rule 9(b) of the Rules of
8 Procedure for the Foreign Intelligence Sur-
9 veillance Court, or any successor rule;

10 “(iv) named United States person tar-
11 gets of electronic surveillance;

12 “(v) emergency authorizations of elec-
13 tronic surveillance granted under this Act
14 and the total number of subsequent orders
15 approving or denying such electronic sur-
16 veillance; and

17 “(vi) new compliance incidents arising
18 from electronic surveillance under this Act.

19 “(B) PHYSICAL SEARCHES.—The total
20 number of—

21 “(i) applications made for orders ap-
22 proving physical search under this Act;

23 “(ii) such orders either granted, modi-
24 fied, or denied;

1 “(iii) proposed applications for orders
2 for physical searches submitted pursuant
3 to Rule 9(a) of the Rules of Procedure for
4 the Foreign Intelligence Surveillance
5 Court, or any successor rule, that are not
6 formally presented in the form of a final
7 application under Rule 9(b) of the Rules of
8 Procedure for the Foreign Intelligence Sur-
9 veillance Court, or any successor rule;

10 “(iv) named United States person tar-
11 gets of physical searches;

12 “(v) emergency authorizations of
13 physical searches granted under this Act
14 and the total number of subsequent orders
15 approving or denying such physical
16 searches; and

17 “(vi) new compliance incidents arising
18 from physical searches under this Act.

19 “(C) PEN REGISTER AND TRAP AND TRACE
20 DEVICES.—The total number of—

21 “(i) applications made for orders ap-
22 proving the use of pen registers or trap
23 and trace devices under this Act;

24 “(ii) such orders either granted, modi-
25 fied, or denied;

1 “(iii) proposed applications for orders
2 for pen registers or trap and trace devices
3 submitted pursuant to Rule 9(a) of the
4 Rules of Procedure for the Foreign Intel-
5 ligence Surveillance Court, or any suc-
6 cessor rule, that are not formally presented
7 in the form of a final application under
8 Rule 9(b) of the Rules of Procedure for the
9 Foreign Intelligence Surveillance Court, or
10 any successor rule;

11 “(iv) named United States person tar-
12 gets of pen registers or trap and trace de-
13 vices;

14 “(v) emergency authorizations of the
15 use of pen registers or trap and trace de-
16 vices granted under this Act and the total
17 number of subsequent orders approving or
18 denying such use of pen registers or trap
19 and trace devices; and

20 “(vi) new compliance incidents arising
21 from the use of pen registers or trap and
22 trace devices under this Act.

23 “(D) COMPLIANCE INCIDENTS.—A sum-
24 mary of each compliance incident reported

1 under subparagraphs (A)(vi), (B)(vi), and
2 (C)(vi).

3 “(E) SIGNIFICANT LEGAL INTERPRETA-
4 TIONS.—A summary of significant legal inter-
5 pretations of this Act involving matters before
6 the Foreign Intelligence Surveillance Court or
7 the Foreign Intelligence Surveillance Court of
8 Review, including interpretations presented in
9 applications or pleadings filed with the Foreign
10 Intelligence Surveillance Court or the Foreign
11 Intelligence Surveillance Court of Review.

12 “(b) SUBMISSIONS OF SIGNIFICANT DECISIONS, OR-
13 DERS, AND OPINIONS.—The Attorney General shall sub-
14 mit to the appropriate committees of Congress a copy of
15 any decision, order, or opinion issued by the Foreign Intel-
16 ligence Surveillance Court or the Foreign Intelligence Sur-
17 veillance Court of Review that includes a significant con-
18 struction or interpretation of any provision of this Act,
19 and any pleadings, applications, or memoranda of law as-
20 sociated with such decision, order, or opinion, not later
21 than 45 days after such decision, order, or opinion is
22 issued.

23 “(c) PROTECTION OF NATIONAL SECURITY.—The
24 Director of National Intelligence, in consultation with the
25 Attorney General, may authorize redactions of materials

1 described in subsection (b) that are provided to the appro-
2 priate committees of Congress if such redactions are nec-
3 essary to protect properly classified information.

4 “(d) AVAILABILITY TO MEMBERS OF CONGRESS.—
5 Consistent with the rules and practices of the Senate and
6 the House of Representatives, each report submitted pur-
7 suant to subsection (a)(2) and each submission made pur-
8 suant to subsection (b) shall be made available to every
9 member of Congress, subject to appropriate procedures for
10 the storage and handling of classified information.

11 “(e) PUBLIC REPORT.—

12 “(1) IN GENERAL.—Subject to paragraph (2),
13 the Attorney General, in consultation with the Direc-
14 tor of National Intelligence, shall make available to
15 the public an unclassified annual summary of the re-
16 ports submitted under subsection (a) that, to the
17 maximum extent practicable consistent with the pro-
18 tection of classified information, includes the infor-
19 mation contained in the report submitted pursuant
20 to subsection (a)(2).

21 “(2) MINIMUM REQUIREMENTS.—In each re-
22 port made available to the public under paragraph
23 (1), the Attorney General shall include, at a min-
24 imum, the information required under subpara-

1 graphs (A), (B), and (C) of subsection (a)(2), which
2 may be presented as annual totals.

3 “(f) CONSTRUCTION.—Nothing in this title may be
4 construed to limit the authority and responsibility of an
5 appropriate committee of Congress to obtain any informa-
6 tion required by such committee to carry out its functions
7 and duties.

8 “(g) DEFINITIONS.—In this section:

9 “(1) APPROPRIATE COMMITTEES OF CON-
10 GRESS.—The term ‘appropriate committees of Con-
11 gress’ means—

12 “(A) the Select Committee on Intelligence
13 and the Committee on the Judiciary of the Sen-
14 ate; and

15 “(B) the Permanent Select Committee on
16 Intelligence and the Committee on the Judici-
17 ary of the House of Representatives.

18 “(2) ELECTRONIC SURVEILLANCE.—The term
19 ‘electronic surveillance’ has the meaning given that
20 term in section 101 of this Act.

21 “(3) FOREIGN INTELLIGENCE SURVEILLANCE
22 COURT.—The term ‘Foreign Intelligence Surveillance
23 Court’ means the court established under section
24 103(a) of this Act.

1 “(4) FOREIGN INTELLIGENCE SURVEILLANCE
2 COURT OF REVIEW.—The term ‘Foreign Intelligence
3 Surveillance Court of Review’ means the court estab-
4 lished under section 103(b) of this Act.

5 “(5) PEN REGISTER.—The term ‘pen register’
6 has the meaning given that term in section 401 of
7 this Act.

8 “(6) PHYSICAL SEARCH.—The term ‘physical
9 search’ has the meaning given that term in section
10 301 of this Act.

11 “(7) TRAP AND TRACE DEVICE.—The term
12 ‘trap and trace device’ has the meaning given that
13 term in section 401 of this Act.

14 “(8) UNITED STATES PERSON.—The term
15 ‘United States person’ has the meaning given that
16 term in section 101 of this Act.”.

17 (c) AVAILABILITY OR REPORTS AND SUBMISSIONS.—

18 (1) IN GENERAL.—Title VI of the Foreign In-
19 telligence Surveillance Act of 1978 (50 U.S.C. 1871)
20 is amended by adding after section 601 the fol-
21 lowing:

22 **“SEC. 602. AVAILABILITY OF REPORTS AND SUBMISSIONS.**

23 “(a) AVAILABILITY TO MEMBERS OF CONGRESS.—
24 Consistent with the rules and practices of the Senate and
25 the House of Representatives, each submission to Con-

1 gress made pursuant to section 502(b), 702(l)(1), or 707
 2 shall be made available, to every member of Congress, sub-
 3 ject to appropriate procedures for the storage and han-
 4 dling of classified information.

5 “(b) PUBLIC REPORT.—The Attorney General or the
 6 Director of National Intelligence, as appropriate, shall
 7 make available to the public unclassified reports that, to
 8 the maximum extent practicable consistent with the pro-
 9 tection of classified information, include the information
 10 contained in each submission to Congress made pursuant
 11 to section 502(b), 702(l)(1), or 707.”

12 (2) TABLE OF CONTENTS AMENDMENT.—The
 13 table of contents in the first section of the Foreign
 14 Intelligence Surveillance Act of 1978 is amended by
 15 inserting after the item relating to section 601 the
 16 following:

“Sec. 602. Availability of reports and submissions.”

17 **SEC. 6. RESTRICTIONS ON QUERYING THE CONTENTS OF**
 18 **CERTAIN COMMUNICATIONS.**

19 Section 702 of the Foreign Intelligence Surveillance
 20 Act of 1978 (50 U.S.C. 1881a) is amended by adding at
 21 the end the following:

22 “(m) QUERIES.—

23 “(1) LIMITATION ON QUERY TERMS THAT
 24 IDENTIFY A UNITED STATES PERSON.—A query of
 25 the contents of communications acquired under this

1 section with a selector known to be used by a United
2 States person may be conducted by personnel of ele-
3 ments of the Intelligence Community only if the pur-
4 pose of the query is to obtain foreign intelligence in-
5 formation or information necessary to understand
6 foreign intelligence information or to assess its im-
7 portance.

8 “(2) RECORD.—

9 “(A) IN GENERAL.—For any query per-
10 formed pursuant to paragraph (1) a record
11 shall be retained of the identity of the Govern-
12 ment personnel who performed the query, the
13 date and time of the query, and the information
14 indicating that the purpose of the query was to
15 obtain foreign intelligence information or infor-
16 mation necessary to understand foreign intel-
17 ligence information or to assess its importance.

18 “(B) AVAILABILITY.—Each record pre-
19 pared pursuant to subparagraph (A) shall be
20 made available to the Department of Justice,
21 the Office of the Director of National Intel-
22 ligence, appropriate Inspectors General, the
23 Foreign Intelligence Surveillance Court, and the
24 appropriate committees of Congress.

1 “(3) CONSTRUCTION.—Nothing in this sub-
2 section may be construed—

3 “(A) to prohibit access to data collected
4 under this section as may be necessary for tech-
5 nical assurance, data management or compli-
6 ance purposes, or for the purpose of narrowing
7 the results of queries, in which case no informa-
8 tion produced pursuant to the order may be
9 accessed, used, or disclosed other than for such
10 purposes;

11 “(B) to limit the authority of a law en-
12 forcement agency to conduct a query for law
13 enforcement purposes of the contents of com-
14 munications acquired under this section; or

15 “(C) to limit the authority of an agency to
16 conduct a query for the purpose of preventing
17 a threat to life or serious bodily harm to any
18 person.

19 “(4) DEFINITIONS.—In this subsection:

20 “(A) APPROPRIATE COMMITTEES OF CON-
21 GRESS.—The term ‘appropriate committees of
22 Congress’ means—

23 “(i) the Select Committee on Intel-
24 ligence and the Committee on the Judici-
25 ary of the Senate; and

1 “(ii) the Permanent Select Committee
2 on Intelligence and the Committee on the
3 Judiciary of the House of Representa-
4 tives.”.

5 “(B) CONTENT.—The term ‘content’, with
6 respect to a communication—

7 “(i) means any information con-
8 cerning the substance, purport, or meaning
9 of that communication; and

10 “(ii) does not include any dialing,
11 routing, addressing, or signaling informa-
12 tion.

13 “(C) SELECTOR.—The term ‘selector’
14 means an identifier, such as a phone number or
15 electronic account identifier, that is associated
16 with a particular communicant or facility.”.

17 **SEC. 7. TEMPORARY TARGETING OF PERSONS OTHER THAN**
18 **UNITED STATES PERSONS TRAVELING INTO**
19 **THE UNITED STATES.**

20 (a) IN GENERAL.—Section 105 of the Foreign Intel-
21 ligence Surveillance Act of 1978 (50 U.S.C. 1805) is
22 amended—

23 (1) by redesignating subsections (f), (g), (h),
24 and (i) as subsections (g), (h), (i), and (j), respec-
25 tively; and

1 (2) by inserting after subsection (e) the fol-
2 lowing:

3 “(f)(1) Notwithstanding any other provision of this
4 Act, acquisition of foreign intelligence information by tar-
5 geting a non-United States person reasonably believed to
6 be located outside the United States that was lawfully ini-
7 tiated by an element of the intelligence community may
8 continue for a transitional period not to exceed 72 hours
9 from the time when it is recognized that the non-United
10 States person is reasonably believed to be located inside
11 the United States and that the acquisition is subject to
12 this title or title III of this Act, provided that the head
13 of the element determines that there exists an exigent cir-
14 cumstance and—

15 “(A) there is reason to believe that the target
16 of the acquisition has communicated or received or
17 will communicate or receive foreign intelligence in-
18 formation relevant to the exigent circumstance; and

19 “(B) it is determined that a request for emer-
20 gency authorization from the Attorney General in
21 accordance with the terms of this Act is impracti-
22 cable in light of the exigent circumstance.

23 “(2) The Director of National Intelligence or the
24 head of an element of the intelligence community shall
25 promptly notify the Attorney General of the decision to

1 exercise the authority under this section and shall request
2 emergency authorization from the Attorney General pur-
3 suant to this Act as soon as practicable, to the extent such
4 request is warranted by the facts and circumstances.

5 “(3) Subject to subparagraph (4), the authority
6 under this section to continue acquisition of foreign intel-
7 ligence information is limited to 72 hours. However, if the
8 Attorney General authorizes an emergency acquisition
9 pursuant to this Act, then acquisition of foreign intel-
10 ligence information may continue for the period of time
11 that the Attorney General’s emergency authorization or
12 any subsequent court order authorizing the acquisition re-
13 mains in effect.

14 “(4) The authority to acquire foreign intelligence in-
15 formation under this subsection shall terminate upon any
16 of the following, whichever occurs first—

17 “(A) 72 hours have elapsed since the com-
18 mencement of the transitional period;

19 “(B) the Attorney General has directed that the
20 acquisition be terminated; or

21 “(C) the exigent circumstance is no longer rea-
22 sonably believed to exist.

23 “(5) If the Attorney General authorizes an emergency
24 authorization during the transitional period, the acquisi-
25 tion of foreign intelligence shall continue during any tran-

1 sition to, and consistent with, the Attorney General emer-
2 gency authorization or court order.

3 “(6) Any information of or concerning unconsenting
4 United States persons acquired during the transitional pe-
5 riod may only be disseminated during the transitional pe-
6 riod if necessary to investigate, prevent, reduce, or elimi-
7 nate the exigent circumstance or if it indicates a threat
8 of death or serious bodily harm to any person.

9 “(7) In the event that during the transition period
10 a request for an emergency authorization from the Attor-
11 ney General pursuant to this Act for continued acquisition
12 of foreign intelligence is not approved or an order from
13 a court is not obtained to continue the acquisition, infor-
14 mation obtained during the transitional period shall not
15 be retained, except with the approval of the Attorney Gen-
16 eral if the information indicates a threat of death or seri-
17 ous bodily harm to any person.

18 “(8) The Attorney General shall assess compliance
19 with the requirements of paragraph (7).”.

20 (b) NOTIFICATION OF EMERGENCY EMPLOYMENT OF
21 ELECTRONIC SURVEILLANCE.—Section 106(j) of the For-
22 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
23 1806(j)) is amended by striking “section 105(e)” and in-
24 serting “subsection (e) or (f) of section 105”.

1 **SEC. 8. CONFIRMATION OF APPOINTMENT OF THE DIREC-**
2 **TOR OF THE NATIONAL SECURITY AGENCY.**

3 (a) DIRECTOR OF THE NATIONAL SECURITY AGEN-
4 CY.—Section 2 of the National Security Agency Act of
5 1959 (50 U.S.C. 3602) is amended—

6 (1) by inserting “(b)” before “There”; and

7 (2) by inserting before subsection (b), as so
8 designated by paragraph (1), the following:

9 “(a)(1) There is a Director of the National Security
10 Agency.

11 “(2) The Director of the National Security Agency
12 shall be appointed by the President, by and with the advice
13 and consent of the Senate.

14 “(3) The Director of the National Security Agency
15 shall be the head of the National Security Agency and
16 shall discharge such functions and duties as are provided
17 by this Act or otherwise by law or executive order.”.

18 (b) POSITION OF IMPORTANCE AND RESPONSI-
19 BILITY.—The President may designate the Director of the
20 National Security Agency as a position of importance and
21 responsibility under section 601 of title 10, United States
22 Code.

23 (c) EFFECTIVE DATE AND APPLICABILITY.—

24 (1) IN GENERAL.—The amendments made by
25 subsection (a) shall take effect on the date of the en-

1 actment of this Act and shall apply upon the earlier
2 of—

3 (A) the date of the nomination by the
4 President of an individual to serve as the Direc-
5 tor of the National Security Agency, except that
6 the individual serving as such Director as of the
7 date of the enactment of this Act may continue
8 to perform such duties after such date of nomi-
9 nation and until the individual appointed as
10 such Director, by and with the advice and con-
11 sent of the Senate, assumes the duties of such
12 Director; or

13 (B) the date of the cessation of the per-
14 formance of the duties of such Director by the
15 individual performing such duties as of the date
16 of the enactment of this Act.

17 (2) POSITIONS OF IMPORTANCE AND RESPONSI-
18 BILITY.—Subsection (b) shall take effect on the date
19 of the enactment of this Act.

20 **SEC. 9. PRESIDENTIAL APPOINTMENT AND SENATE CON-**
21 **FIRMATION OF THE INSPECTOR GENERAL OF**
22 **THE NATIONAL SECURITY AGENCY.**

23 (a) IN GENERAL.—The Inspector General Act of
24 1978 (5 U.S.C. App.) is amended—

1 (1) in section 8G(a)(2), by striking “the Na-
2 tional Security Agency,”; and

3 (2) in section 12—

4 (A) in paragraph (1), by striking “or the
5 Federal Cochairpersons of the Commissions es-
6 tablished under section 15301 of title 40,
7 United States Code” and inserting “the Federal
8 Cochairpersons of the Commissions established
9 under section 15301 of title 40, United States
10 Code; or the Director of the National Security
11 Agency”; and

12 (B) in paragraph (2), by striking “or the
13 Commissions established under section 15301
14 of title 40, United States Code” and inserting
15 “the Commissions established under section
16 15301 of title 40, United States Code, or the
17 National Security Agency”.

18 (b) EFFECTIVE DATE; INCUMBENT.—

19 (1) EFFECTIVE DATE.—The amendments made
20 by subsection (a) shall take effect on the date on
21 which the first Director of the National Security
22 Agency takes office on or after the date of the enact-
23 ment of this Act.

24 (2) INCUMBENT.—The individual serving as In-
25 spector General of the National Security Agency on

1 the date of the enactment of this Act shall be eligible
2 to be appointed by the President to a new term of
3 service under section 3 of the Inspector General Act
4 of 1978 (5 U.S.C. App.), by and with the advice and
5 consent of the Senate.

6 **SEC. 10. ANNUAL REPORTS ON VIOLATIONS OF LAW OR EX-**
7 **ECUTIVE ORDER.**

8 (a) IN GENERAL.—Title V of the National Security
9 Act of 1947 (50 U.S.C. 3091 et seq.) is amended by add-
10 ing at the end the following:

11 **“SEC. 509. ANNUAL REPORT ON VIOLATIONS OF LAW OR EX-**
12 **ECUTIVE ORDER.**

13 “(a) ANNUAL REPORTS REQUIRED.—Not later than
14 April 1 of each year, the Director of National Intelligence
15 shall submit to the congressional intelligence committees
16 a report on violations of law or executive order by per-
17 sonnel of an element of the intelligence community that
18 were identified during the previous calendar year.

19 “(b) ELEMENTS.—Each report required subsection
20 (a) shall include a description of any violation of law or
21 executive order (including Executive Order No. 12333 (50
22 U.S.C. 3001 note)) by personnel of an element of the intel-
23 ligence community in the course of such employment that,
24 during the previous calendar year, was determined by the

1 director, head, general counsel, or inspector general of any
2 element of the intelligence community to have occurred.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 in the first section of the National Security Act of 1947
5 is amended by adding after the section relating to section
6 508 the following:

“Sec. 509. Annual report on violations of law or executive order.”.

7 **SEC. 11. PERIODIC REVIEW OF INTELLIGENCE COMMUNITY**
8 **PROCEDURES FOR THE ACQUISITION, RETEN-**
9 **TION, AND DISSEMINATION OF INTEL-**
10 **LIGENCE.**

11 (a) IN GENERAL.—Title V of the National Security
12 Act of 1947 (50 U.S.C. 3091 et seq.), as amended by sec-
13 tion 10, is further amended by adding at the end the fol-
14 lowing:

15 **“SEC. 510. PERIODIC REVIEW OF INTELLIGENCE COMMU-**
16 **NITY PROCEDURES FOR THE ACQUISITION,**
17 **RETENTION, AND DISSEMINATION OF INTEL-**
18 **LIGENCE.**

19 “(a) HEAD OF AN ELEMENT OF THE INTELLIGENCE
20 COMMUNITY DEFINED.—In this section, the term ‘head
21 of an element of the intelligence community’ means, as
22 appropriate—

23 “(1) the head of an element of the intelligence
24 community; or

1 “(2) the head of the department or agency con-
2 taining such element.

3 “(b) REVIEW OF PROCEDURES APPROVED BY THE
4 ATTORNEY GENERAL.—

5 “(1) REQUIREMENT FOR IMMEDIATE RE-
6 VIEW.—Each head of an element of the intelligence
7 community that has not obtained the approval of the
8 Attorney General for the procedures, in their en-
9 tirety, required by section 2.3 of Executive Order
10 12333 (50 U.S.C. 3001 note) within 5 years prior
11 to the date of the enactment of the FISA Improve-
12 ments Act of 2013, shall initiate, not later than 180
13 days after such date of enactment, a review of the
14 procedures for such element, in accordance with
15 paragraph (3).

16 “(2) REQUIREMENT FOR REVIEW.—Not less
17 frequently than once every 5 years, each head of an
18 element of the intelligence community shall conduct
19 a review of the procedures approved by the Attorney
20 General for such element that are required by sec-
21 tion 2.3 of Executive Order 12333 (50 U.S.C. 3001
22 note), or any successor order, in accordance with
23 paragraph (3).

24 “(3) REQUIREMENTS FOR REVIEWS.—In coordi-
25 nation with the Director of National Intelligence and

1 the Attorney General, the head of an element of the
2 intelligence community required to perform a review
3 under paragraphs (1) or (2) shall—

4 “(A) review existing procedures for such
5 element that are required by section 2.3 of Ex-
6 ecutive Order 12333 (50 U.S.C. 3001 note), or
7 any successor order, to assess whether—

8 “(i) advances in communications or
9 other technologies since the time the proce-
10 dures were most recently approved by the
11 Attorney General have affected the privacy
12 protections that the procedures afford to
13 United States persons, to include the pro-
14 tections afforded to United States persons
15 whose nonpublic communications are inci-
16 dentally acquired by an element of the in-
17 telligence community; or

18 “(ii) aspects of the existing proce-
19 dures impair the acquisition, retention, or
20 dissemination of timely, accurate, and in-
21 sightful information about the activities,
22 capabilities, plans, and intentions of for-
23 eign powers, organization, and persons,
24 and their agents; and

1 “(B) propose any modifications to existing
2 procedures for such element in order to—

3 “(i) clarify the guidance such proce-
4 dures afford to officials responsible for the
5 acquisition, retention, and dissemination of
6 intelligence;

7 “(ii) eliminate unnecessary impedi-
8 ments to the acquisition, retention, and
9 dissemination of intelligence; or

10 “(iii) ensure appropriate protections
11 for the privacy of United States persons
12 and persons located inside the United
13 States.

14 “(4) NOTICE.—The Director of National Intel-
15 ligence and the Attorney General shall notify the
16 congressional intelligence committees following the
17 completion of each review required under this sec-
18 tion.

19 “(5) REQUIREMENT TO PROVIDE PROCE-
20 DURES.—Upon the implementation of any modifica-
21 tions to procedures required by section 2.3 of Execu-
22 tive Order 12333 (50 U.S.C. 3001 note), or any suc-
23 cessor order, the head of the element of the intel-
24 ligence community to which the modified procedures
25 apply shall promptly provide a copy of the modified

1 procedures to the congressional intelligence commit-
2 tees.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 in the first section of the National Security Act of 1947,
5 as amended by section 10, is further amended by adding
6 after the section relating to section 509 the following:

“Sec. 510. Periodic review of intelligence community procedures for the acqui-
sition, retention, and dissemination of intelligence.”.

7 **SEC. 12. PRIVACY AND CIVIL LIBERTIES OVERSIGHT**
8 **BOARD ENHANCEMENTS RELATING TO THE**
9 **FOREIGN INTELLIGENCE SURVEILLANCE ACT**
10 **OF 1978.**

11 (a) DEFINITIONS.—In this section:

12 (1) APPROPRIATE OFFICIAL.—The term “ap-
13 propriate official” means the appropriate official of
14 an agency or department of the United States who
15 is responsible for preparing or submitting a covered
16 application.

17 (2) BOARD.—The term “Board” means the Pri-
18 vacy and Civil Liberties Oversight Board established
19 in section 1061 of the Intelligence Reform and Ter-
20 rorism Prevention Act of 2004 (42 U.S.C. 2000ee).

21 (3) COVERED APPLICATION.—The term “cov-
22 ered application” means a submission to a FISA
23 Court—

24 (A) that—

1 (i) presents a novel or significant in-
2 terpretation of the law; and

3 (ii) relates to efforts to protect the
4 United States from terrorism; and

5 (B) that is—

6 (i) a final application for an order
7 under title I, III, IV, or V of the Foreign
8 Intelligence Surveillance Act of 1978 (50
9 U.S.C. 1801 et seq.) or section 703 or 704
10 of that Act (50 U.S.C. 1881b and 1881c);

11 (ii) a review of a certification or pro-
12 cedure under section 702 of that Act (50
13 U.S.C. 1881a); or

14 (iii) a notice of non-compliance with
15 such an order, certification, or procedures.

16 (4) FISA COURT.—The term “FISA Court”
17 means a court established under subsection (a) or
18 (b) of section 103 of the Foreign Intelligence Sur-
19 veillance Act of 1978 (50 U.S.C. 1803).

20 (b) NOTICE OF SUBMISSIONS AND ORDERS.—

21 (1) SUBMISSION TO FISA COURT.—Notwith-
22 standing any provision of section 103 of the Foreign
23 Intelligence Surveillance Act of 1978 (50 U.S.C.
24 1803), if a covered application is filed with a FISA
25 Court, the appropriate official shall provide such

1 covered application to the Board not later than the
2 date of such filing, provided the provision of such
3 covered application does not delay any filing with a
4 FISA Court.

5 (2) FISA COURT ORDERS.—Notwithstanding
6 any provision of section 103 of the Foreign Intel-
7 ligence Surveillance Act of 1978 (50 U.S.C. 1803),
8 the appropriate official shall provide to the Board
9 each order of a FISA Court related to a covered ap-
10 plication.

11 (c) DISCRETIONARY ASSESSMENT OF THE BOARD.—

12 (1) NOTICE OF DECISION TO CONDUCT ASSESS-
13 MENT.—Upon receipt of a covered application under
14 subsection (b)(1), the Board shall—

15 (A) elect whether to conduct the assess-
16 ment described in paragraph (3); and

17 (B) submit to the appropriate official a no-
18 tice of the Board’s election under subparagraph

19 (A).

20 (2) TIMELY SUBMISSION.—The Board shall in
21 a timely manner prepare and submit to the appro-
22 priate official—

23 (A) the notice described in paragraph
24 (1)(B); and

1 (B) the associated assessment, if the
2 Board elects to conduct such an assessment.

3 (3) CONTENT.—An assessment of a covered ap-
4 plication prepared by the Board shall address wheth-
5 er the covered application is balanced with the need
6 to protect privacy and civil liberties, including ade-
7 quate supervision and guidelines to ensure protection
8 of privacy and civil liberties.

9 (d) ANNUAL REVIEW.—The Board shall conduct an
10 annual review of the activities of the National Security
11 Agency related to information collection under the Foreign
12 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et
13 seq.).

14 (e) PROVISION OF COMMUNICATIONS SERVICES AND
15 OFFICE SPACE TO CERTAIN MEMBERS OF PRIVACY AND
16 CIVIL LIBERTIES OVERSIGHT BOARD.—Section 1061(g)
17 of the Intelligence Reform and Terrorism Prevention Act
18 of 2004 (42 U.S.C. 2000ee(g)) is amended by adding at
19 the end the following:

20 “(5) PROVISION OF COMMUNICATIONS SERVICES
21 AND OFFICE SPACE.—The Director of National In-
22 telligence shall provide to each member of the Board
23 who resides more than 100 miles from the District
24 of Columbia such communications services and office
25 space as may be necessary for the member to access

1 and use classified information. Such services and of-
2 fice space shall be located at an existing secure gov-
3 ernment or contractor facility located within the vi-
4 cinity of such member's place of residence.”.

Calendar No. 235

113TH CONGRESS
1ST Session

S. 1631

A BILL

To consolidate the congressional oversight provisions of the Foreign Intelligence Surveillance Act of 1978 and for other purposes.

OCTOBER 31, 2013

Read twice and placed on the calendar