

SEC. 341. AUTHORIZATION TO EXERCISE ACQUISITION AUTHORITIES

PROPOSED TEXT:

SEC. 341. NATIONAL INTELLIGENCE PROGRAM FUNDED ACQUISITIONS.

The National Security Act of 1947 is amended by adding a new subparagraph (4) to paragraph (n) of section 102A (section 50 U.S.C. 403-1):

"(4) NATIONAL INTELLIGENCE PROGRAM FUNDED ACQUISITIONS.

(a) In addition to the authority of the Director of National Intelligence under section 102A(n) of the National Security Act of 1947 to exercise the acquisition authorities referred to in the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), the Director is further authorized, for each acquisition undertaken by an agency or element of the intelligence community funded in whole or in the majority by the National Intelligence Program, to authorize intelligence community agencies or elements, or their respective departments, to exercise the acquisition authorities in sections 3 and 8(a) of the Central Intelligence Agency Act of 1949 (50 USC 403c and 403j(a)).

“(A) Each authorization to exercise these authorities may occur only after--

“(i) the head of an element of the intelligence community (without delegation) submits to the Office of the Director of National Intelligence a written request that includes the following:

(a) a description of the authorities required;

(b) an explanation of the need for each authority requested and reason why current authorities are insufficient; and

(c) certification that the requesting agency’s mission would be impaired absent the ability to use the requested authorities or would be significantly and measurably enhanced if the ability to use the requested authorities is granted, and

“(ii) The Director of National Intelligence, the Principal Deputy Director of National Intelligence, or a Deputy Director of National Intelligence designated in accordance with section 102A(n) (3) (B) of the National Security Act, issues a written authorization that includes the following:

(a) a clear description of the authorities authorized to be exercised;

(b) a justification to support the exercise of each identified authority.

“(B) Requests under subparagraph (A) from elements of the intelligence community that are within the Departments of Defense, State, Homeland Security, Treasury, Energy, or Justice must be transmitted in accordance with any procedures that the applicable Department may establish.

“(C) Authorizations that affect a class of acquisitions, rather than a single acquisition, shall not be made for a period exceeding three years, unless approved by the Director of National Intelligence, which approvals shall not exceed six years. All such authorizations may be extended for successive three or six year periods, in accordance with procedures laid out in section (A) above.

“(D) OMB shall be notified in the event that Authorizations made under section (A) exceed \$50,000,000 annually.”

“(E) Requests and authorizations to exercise these authorities shall remain available within the Office of the Director of National Intelligence for a period of at least six years following the date of such authorization.”

“(F) Any request and authorization made under an authority referred to in subparagraph (A) may be made with respect to individual acquisitions, or with respect to a specific class of acquisitions defined in the request and authorization submitted in accordance with subparagraph (A).

(G) Nothing in this section shall alter or otherwise limit the authority of the Central Intelligence Agency to independently exercise its authorities under sections 3 and 8(a) of the Central Intelligence Agency Act of 1949 (50 USC 403c and 403j(a)).

SECTIONAL ANALYSIS:

Sec. 341. National Intelligence Program Funded Acquisitions or Procurements.

Section 341 would allow the Director of National Intelligence (DNI) to authorize agencies and elements in the Intelligence Community to exercise two of the DNI's acquisitions authorities found in sections 3 and 8(a) of the CIA Act of 1949 (50 USC 403c and 403j(a)), and referred to in section 102A(n) of the National Security Act of 1947, for acquisitions that are funded in whole or in majority part (greater than 50%) by the National Intelligence Program (NIP).

Some elements of the intelligence community (the Central Intelligence Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency) are already authorized to exercise these, or similar authorities, either directly or through the CIA. By authorizing all elements of the Intelligence Community to take advantage of the DNI's special acquisition authorities, where justified by the IC element and approved by the DNI, this provision will help to ensure effective acquisition support, improve mission accomplishment, and avoid mission impairment.

It is important to note that the proposal is not a delegation of the DNI's special authorities; under the proposal, an appropriate ODNI official must make a written finding before an IC element can use these special authorities. The request must describe the authorities required, explain the need for the authority and why current authorities are insufficient, and include a certification that the element's mission would be impaired absent the ability to use the requested authorities or significantly enhanced if the ability to use the requested authorities is granted.

The ODNI's approval would clearly describe the authorization, to include findings to support the exercise of these authorities. Authorizations that affect a class of acquisitions, rather than a single acquisition, shall not be made for a period exceeding three years, unless approved by the Director of National Intelligence, which approvals shall not exceed six years. All authorizations made by the Principal Director of National intelligence or

a Deputy Director of National Intelligence may be extended for successive three year periods, provided that the procedures described in subsection 4(A) of the text are followed. Authorizations made by the Director of National Intelligence may be extended for successive six year periods, provided that the procedures described in subsection 4(A) of the text are followed. These limitations will ensure that justifications for use of these special authorities remain valid and necessary. When authorizations to use this authority exceed \$50 million in a given year, the Office of Management and Budget shall be notified.

The proposal also provides that Department Heads may specify how any requests will be submitted to the ODNI. This ensures that Department Heads are included in the process if they desire.

This proposal is not intended to alter or limit the authority of the Central Intelligence Agency to exercise its existing authority under the Central Intelligence Agency Act of 1949 to exercise its authorities under 50 USC 403c and 403j(a), or to alter or limit the authority of the Director of National Intelligence to exercise its acquisition authorities under Section 102A(n) of the National Security Act (50 USC Section 403-1(n)).