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INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2015

JULY 31, 2014.—Ordered to be printed

Mrs. FEINSTEIN, from the Select Committee on Intelligence,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 2741]

The Select Committee on Intelligence, having considered an original bill (S. 2741) to authorize appropriations for fiscal year 2015 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, reports favorably thereon and recommends that the bill do pass.

CLASSIFIED ANNEX TO THE COMMITTEE REPORT

On June 30, 2014, acting pursuant to Section 364 of the Intelligence Authorization Act for Fiscal Year 2010 (Public Law 111-259), the Director of National Intelligence (DNI) publicly disclosed that the President's aggregate request for the National Intelligence Program (NIP) for Fiscal Year 2015 is \$49.4 billion. Other than for limited unclassified appropriations, primarily the Intelligence Community Management Account, the classified nature of United States intelligence activities precludes any further disclosure, including by the Committee, of the details of its budgetary recommendations. Accordingly, the Committee has prepared a classified annex to this report that contains a classified Schedule of Authorizations. The classified Schedule of Authorizations is incorporated by reference in the Act and has the legal status of public

law. The classified annex is made available to the Committees on Appropriations of the Senate and the House of Representatives and to the President. It is also available for review by any Member of the Senate subject to the provisions of Senate Resolution 400 of the 94th Congress (1976).

SECTION-BY-SECTION ANALYSIS AND EXPLANATION

The following is a section-by-section analysis and explanation of the Intelligence Authorization Act for Fiscal Year 2015 that is being reported by the Committee.

Title I—Budget and Personnel Authorizations

Section 101. Authorization of appropriations

Section 101 lists the United States Government departments, agencies, and other elements for which the Act authorizes appropriations for intelligence and intelligence-related activities for Fiscal Year 2015.

Section 102. Classified Schedule of Authorizations

Section 102 provides that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and the applicable personnel levels by program for Fiscal Year 2015 are contained in the classified Schedule of Authorizations and that the classified Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President.

Section 103. Personnel ceiling adjustments

Section 103 is intended to provide additional flexibility to the DNI in managing the civilian personnel of the Intelligence Community (IC). Section 103 provides that the DNI may authorize employment of civilian personnel in Fiscal Year 2015 in excess of the number of authorized positions by an amount not exceeding three percent of the total limit applicable to each IC element under Section 102. The DNI may do so only if necessary to the performance of important intelligence functions.

Section 104. Intelligence Community Management Account

Section 104 authorizes appropriations for the Intelligence Community Management Account (ICMA) of the DNI and sets the authorized personnel levels for the elements within the ICMA for Fiscal Year 2015.

Title II—Central Intelligence Agency Retirement and Disability System

Section 201. Authorization of appropriations

Section 201 authorizes appropriations in the amount of \$514,000,000 for Fiscal Year 2015 for the Central Intelligence Agency Retirement and Disability Fund.

TITLE III—General Intelligence Community Matters

SUBTITLE A—GENERAL MATTERS

Section 301. Increase in employee compensation and benefits authorized by law

Section 301 provides that funds authorized to be appropriated by the Act for salary, pay, retirement, and other benefits for federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in compensation or benefits authorized by law.

Section 302. Restriction on conduct of intelligence activities

Section 302 provides that the authorization of appropriations by the Act shall not be deemed to constitute authority for the conduct of any intelligence activity that is not otherwise authorized by the Constitution or laws of the United States.

Section 303. Quadrennial Intelligence Strategic Review

Section 303 requires the DNI to perform a quadrennial intelligence strategic review of the intelligence strategy, capabilities, structure, policies, infrastructure, budget plans, and other relevant aspects of intelligence programs and activities of the United States to meet national security objectives for the next ten years and to submit to the congressional intelligence committees a report on each such review.

Given the IC's size, scope and complexity, the Committee believes that the IC would benefit from a structured strategic review effort—similar to the statutory Quadrennial Defense Review conducted by the Department of Defense and the statutory Quadrennial Homeland Security Review conducted by the Department of Homeland Security (DHS)—to ensure that the IC is operating in an integrated and effective manner.

Section 304. Management and oversight of financial intelligence

Section 304 requires the DNI to prepare a plan for management of the elements of the IC that carry out financial intelligence activities.

Section 305. Plan for applying private sector best practices to improving insider threat detection

Section 305 directs the DNI to submit to the congressional intelligence committees a plan for applying private sector best practices for employee access and monitoring systems to certain positions within the IC.

Section 306. Procedures for the retention of incidentally acquired communications

Section 306 requires the head of each element of the IC to adopt Attorney General-approved procedures that govern the retention of nonpublic telephone or electronic communications acquired without consent of a person who is a party to the communications, including communications in electronic storage.

The procedures required under this section shall apply to any intelligence activity that is reasonably anticipated to result in the ac-

quisition of such telephone or electronic communications to or from a United States person not otherwise authorized by court order, subpoena, or similar legal process, regardless of the location where the collection occurs. The procedures shall prohibit the retention of such telephone or electronic communications for a period in excess of five years, unless the communications are determined to fall within one of several categories, enumerated in subsection (b)(3)(A), for which retention in excess of five years is authorized, to include communications that have been affirmatively determined to constitute foreign intelligence or counterintelligence, communications that are reasonably believed to constitute evidence of a crime and are retained by a law enforcement agency, and communications that are enciphered or reasonably believed to have a secret meaning.

The Committee recognizes that it may be necessary in certain instances for IC elements to retain communications covered by this section for a period in excess of five years that do not fall into the categories specifically enumerated in subsection (b)(3)(A). Therefore, subsection (b)(3)(A)(vii) provides flexibility for the head of each element of the intelligence community to authorize such extended retention where the head of the element determines that it is necessary to protect the national security of the United States. In the absence of such a determination, the Committee intends Section 306 to establish a default rule for intelligence collection activities, not otherwise authorized by legal process, that requires agencies to delete communications covered by this section after five years, unless a determination is made that the communications constitute foreign intelligence or counterintelligence or otherwise meet the retention requirements set forth in this section.

Section 307. Feasibility study on consolidating classified cyber threat indicator and malware databases

Section 307 requires the DNI to conduct a feasibility study on consolidating classified cyber threat indicator and malware sample databases in the IC and to provide a report to the congressional intelligence committees summarizing the feasibility study.

Section 308. Sense of Congress on cybersecurity threat and cybercrime cooperation with Ukraine

Section 308 expresses the sense of Congress concerning cybersecurity threat and cybercrime cooperation between the United States and Ukraine.

Section 309. Replacement of locally employed staff serving at United States diplomatic facilities in the Russian Federation

Section 309 requires the Secretary of State to ensure that every supervisory position at a U.S. diplomatic facility in the Russian Federation is occupied by a citizen of the United States who has passed a background check and to provide Congress with a plan to further reduce reliance on locally employed staff.

Section 310. Inclusion of restricted access spaces in United States diplomatic facilities in the Russian Federation and adjacent countries

Section 310 requires that each U.S. diplomatic facility that is constructed in, or undergoes a construction upgrade in, the Russian Federation, any country that shares a land border with the Russian Federation, or any country that is a former member of the Soviet Union shall be constructed to include restricted access spaces. The Secretary of State may waive the requirements of this section upon a determination that it is in the national security interest of the United States.

SUBTITLE B—REPORTING

Section 311. Report on declassification process

Section 311 requires the DNI to submit a report to Congress describing proposals to improve the declassification process and steps the IC could take or legislation that may be necessary, to enable the National Declassification Center to better accomplish the missions assigned to the Center by Executive Order 13526.

Section 312. Report on intelligence community efficient spending targets

Section 312 requires the DNI to submit a report to the congressional intelligence committees on the status and effectiveness of efforts to reduce administrative costs for the IC during the preceding year.

Section 313. Annual report on violations of law or executive order

Section 313 requires the DNI to report annually to the congressional intelligence committees on violations of law or Executive order by personnel of an element of the IC that were identified during the previous calendar year. Under the National Security Act, the President is required to keep the congressional intelligence committees fully and currently informed of the intelligence activities of the United States government. Nonetheless, the Committee has determined that this annual reporting requirement is necessary to better ensure that the intelligence oversight committees of the House and Senate are made aware of violations of law or Executive order, including, in particular, violations of Executive order 12333 for activities not otherwise subject to the Foreign Intelligence Surveillance Act.

Section 314. Annual report on intelligence activities of the Department of Homeland Security

Section 314 requires the Under Secretary for Intelligence and Analysis of the DHS to provide the congressional intelligence committees with a report on each intelligence activity of each intelligence component of the Department that includes, among other things, the amount of funding requested, the number of full-time employees, and the number of full-time contractor employees. In addition, Section 314 requires the Secretary of Homeland Security, to submit to the congressional intelligence committees a report that examines the feasibility and advisability of consolidating the plan-

ning, programming, and resourcing of such activities within the Homeland Security Intelligence Program (HSIP).

The HSIP budget was established to fund those intelligence activities that principally support missions of the DHS separately from those of the NIP. To date, however, this mechanism has only been used to supplement the budget for the office of Intelligence and Analysis. It has not been used to fund the activities of the non-IC components in the DHS that conduct intelligence-related activities. As a result, there is no comprehensive reporting to Congress regarding the overall resources and personnel required in support of the Department's intelligence activities.

Section 315. Report on intelligence sharing with Ukraine

Section 315 expresses the sense of Congress that the President should provide the Government and armed forces of Ukraine with appropriate intelligence sharing support. Section 315 also requires the DNI and the Secretary of Defense to conduct an assessment of U.S. intelligence sharing with the Government of Ukraine and to submit a report on the assessment to the congressional intelligence committees.

Section 316. Report on political prison camps in North Korea

Section 316 requires the DNI to submit a report on political prison camps in North Korea to the congressional intelligence committees.

COMMITTEE COMMENTS

Preventing surprise

In the last several years, the Nation has been caught off guard by “surprises”—the Arab Spring, Russia’s incursion in Crimea, and the implosion of Iraq. None are of the scale of attacks on September 11, 2001, but suggest that the IC can improve performance of a core function of warning policymakers of important shifts in the security environment.

After every perceived intelligence “failure,” there are calls to instill greater “imagination” in analytic thinking—to surface the low-risk, high-impact contingencies that intelligence analysts may overlook. The IC has pursued this agenda over the decades through dedicated “warning” offices, tradecraft requirements to employ certain structured analytic techniques, and alternative methodologies. The latest effort in this vein is described as “anticipatory intelligence.”

Given the dynamism of the security environment and the new analytic tools available to the IC, the Committee believes greater IC-wide focus to this indispensable intelligence function is required.

Therefore, the Committee directs the DNI, in coordination with the heads of analysis of several IC elements, to develop a plan for implementing the IC-wide adoption of alternative analysis methodologies. While conceived through DNI leadership, the Committee envisions this plan may be executed through multiple IC elements as executive agents. This plan shall be provided to the committees within 90 days of enactment of this act.

Evaluation of demonstration programs

Various elements across the IC develop and acquire demonstration programs to evaluate and test new technologies. These experimental efforts may have multiple outcomes, such as deployment as a new stand-alone system, integration into another IC program of record, extension into another test phase, or termination. To support these decisions, it is critical to have an objective, data-driven assessment of the programs' demonstrated capabilities, benefits to users, cost and risk. The Committee believes the IC would benefit from a more structured, rigorous and transparent process to support this goal.

Therefore, the Committee directs the DNI to brief the Committee within 90 days of enactment of this Act on a more effective process to evaluate demonstration programs and provide recommendations for future acquisition decisions.

Financial Exchange and Intelligence Integration (FIX-IIT)

The Committee commends the Office of the DNI for its recent efforts to enhance coordination and integration in the collection and analysis of financial intelligence across the IC. In particular, the Committee applauds the recent initiative by the National Intelligence Manager for Threat Finance and Transnational Organized Crime known as Financial Exchange and Intelligence Integration (FIX-IIT).

Successful cross-community collaboration on financial intelligence holds significant promise as a force multiplier in the government's efforts to understand, map, and disrupt terrorist organizations, narco-trafficking networks, proliferation networks, organized crime, and other threats. However, FIX-IIT will only be as valuable as the information and intelligence shared through it by members of the IC. To support that objective, the Committee expects members of the Intelligence and Law Enforcement Communities to share intelligence through FIX-IIT to the greatest extent possible, under existing laws and regulations.

The Committee understands that FIX-IIT will be deployed in July 2014 and that its success over time will be contingent on properly assessing its performance against stated objectives. Therefore, the Committee directs the DNI to provide an assessment to the Committee of FIX-IIT's performance against key performance metrics, to include the degree to which relevant stakeholders are participating, within six months of its deployment. This assessment should include recommendations for any changes in authorities, funding, policy, or personnel to ensure the success of FIX-IIT.

Space launch range services and capability

The Committee believes it is critical to preserve a variety of launch range capabilities to support national security space missions. Spaceports or launch and range complexes may provide capabilities to reach mid-to-low inclination orbits or polar-to-high inclination orbits. The Committee believes an important component of this effort may be spaceports and launch and range complexes that are commercially licensed by the Federal Aviation Administration and operate in partnership with a local or state government. Therefore, the Committee encourages the IC, in partnership with the U.S. Air Force, to brief the Committee on the relative role and con-

tribution of spaceports or launch and range complexes to our national security space launch capacity.

COMMITTEE ACTION

On July 29, 2014, a quorum being present, the Committee met to consider the bill and amendments. The Committee took the following actions:

Votes on amendments to committee bill, this report and the classified annex

By unanimous consent, the Committee made the Chairman and Vice Chairman's bill the base text for purposes of amendment.

The Committee moved to consideration of a manager's amendment by the Chairman that made changes throughout the bill and this report. By unanimous consent, the Committee agreed to a second degree amendment to the manager's amendment to require that every supervisory position at a United States diplomatic facility in the Russian Federation be occupied by a citizen of the United States who has passed a background check and to require that any diplomatic facility that undergoes construction in the Russian Federation, or an adjacent country, includes a restricted access space. By unanimous consent, the Committee agreed to the manager's amendment.

The Committee moved to consideration *en bloc* of an amendment by Senator Udall that made changes to the classified annex, an amendment by Senator Warner that made changes to the classified annex, an amendment by Senator King that required a report on intelligence community spending, an amendment by Senator King that made changes to the classified annex, an amendment by Senator Risch that made changes to the classified annex, an amendment by Senator Rubio that required a report on intelligence sharing with Ukraine, an amendment by Senator Rubio that made changes to the classified annex, and an amendment by Senator Wyden that made changes to the classified annex. By unanimous consent, the Committee agreed *en bloc* to second degree amendments that made modifications to each of these amendments. By unanimous consent, the Committee agreed *en bloc* to the amendments, as modified.

The Committee moved to consideration of an amendment by Senator Rubio that required a report on political prison camps in North Korea. By unanimous consent, the Committee agreed to the amendment.

The Committee moved to consideration of an amendment by Senator Warner that made changes to the classified annex. By unanimous consent, the Committee agreed to a second degree amendments that made modifications to the amendment. By unanimous consent, the Committee agreed to the amendment.

The Committee moved to consideration of an amendment by Senator Warner that made changes to the classified annex. By unanimous consent, the Committee agreed to a second degree amendments that made modifications the amendment. By unanimous consent, the Committee agreed to the amendment.

The Committee authorized the staff to make technical and conforming changes in the bill, report, and classified annex, following the completion of the mark-up.

Vote to report the committee bill

The Committee voted to report the bill, as amended, by a vote of 15 ayes to 0 noes. The votes in person or by proxy were as follows: Chairman Feinstein—aye; Senator Rockefeller—aye; Senator Wyden—aye; Senator Mikulski—aye; Senator Udall—aye; Senator Warner—aye; Senator Heinrich—aye; Senator King—aye; Vice Chairman Chambliss—aye; Senator Burr—aye; Senator Risch—aye; Senator Coats—aye; Senator Rubio—aye; Senator Collins—aye; Senator Coburn—aye.

COMPLIANCE WITH RULE XLIV

Rule XLIV of the Standing Rules of the Senate requires publication of a list of any “congressionally directed spending item, limited tax benefit, and limited tariff benefit” that is included in the bill or the committee report accompanying the bill. Consistent with the determination of the Committee not to create any congressionally directed spending items or earmarks, none have been included in the bill, the report to accompany it, or the classified schedule of authorizations. The bill, report, and classified schedule also contain no limited tax benefits or limited tariff benefits.

ESTIMATE OF COSTS

Pursuant to paragraph 11(a)(3) of rule XXVI of the Standing Rules of the Senate, the Committee deems it impractical to include an estimate of the costs incurred in carrying out the provisions of this report due to the classified nature of the operations conducted pursuant to this legislation. On July 31, 2014, the Committee transmitted this bill to the Congressional Budget Office and requested an estimate of the costs incurred in carrying out the unclassified provisions.

EVALUATION OF REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds that no substantial regulatory impact will be incurred by implementing the provisions of this legislation.

ADDITIONAL VIEWS OF SENATOR WARNER

I strongly believe that America's intelligence agencies must be second-to-none. We live in an increasingly complex world and rely upon our intelligence community to provide our policymakers and military leaders with ample warning—so the United States can make smart decisions and avoid strategic surprise. Our intelligence professionals need the tools and resources to keep the country secure. This bill provides for these resources. But we must also be second-to-none in ensuring that Americans' civil liberties and constitutional freedoms are strongly protected. This bill provides improvements to protecting civil liberties as well. And it is my intention to ensure that the Senate Intelligence Committee continues to provide robust oversight of the nation's intelligence activities.

In this year's bill—as in previous years—I have been a strong advocate of ensuring that America's space architecture, systems and technology remain second-to-none. As computing power increases and technology becomes more powerful and more sophisticated, it is vital that our nation's reconnaissance systems maintain their technical edge. At a time when commercial satellite companies and foreign nations are launching smaller and more powerful satellites—including so-called “small-sats”—I want to ensure that the innovation and revolution we see in the commercial sector does not leave our intelligence agencies behind.

As potential adversaries rush to blunt our advantage in space by developing ever more sophisticated practices and countermeasures, I want to ensure our intelligence agencies can embrace the advantages, efficiencies, cost-savings, innovative acquisition practices, resiliency and burden- and risk-sharing of working more closely with the commercial sector. As we make serious decisions about investment priorities that will be felt decades in the future, I firmly believe the intelligence community cannot afford to ignore the innovation and cost-savings that adopting successful commercial-like practices can bring. As intelligence budgets decline due to budgetary constraints, it is critical that strong oversight and persistence on the part of this Committee guarantee that these expensive systems are the best they can be, and provide the best deal to the taxpayer. I will continue to work hard to ensure that this is so.

I am proud to say that several amendments I offered on this issue—with help from my colleagues—especially Senators Udall, Mikulski and King, as well as the Chairman and Vice Chairman—were accepted into the bill. While most of these amendments are classified, I am also pleased to note that my unclassified amendment supporting commercial space launch facilities that operate in partnership with state and local government was agreed to. Such facilities provide the promise of cost savings, innovation, and flexibility in space launch—an area that has otherwise become increasingly expensive.

While we sometimes hear about intelligence failures in the press, we seldom hear of their successes—of which there are many—and even more rarely do we say “thank you” to the men and women who, often at great personal sacrifice to themselves and their families, work tirelessly every day to keep us safe. That is why I have worked with Senators Mikulski, Chambliss, Feinstein, Burr, Udall, King and many others to give a small token of thanks to the thousands of men and women of the Intelligence Community who give their best to the nation—but who do so in secrecy. We have designated July 26 as Intelligence Professionals Day, and I am proud to note that for the second year in a row the United States Senate has unanimously approved my resolution to designate this day and say thank you to these professionals. I note with pride that Virginia is the home to thousands of these men and women, and is also home to the headquarters of the Director of National Intelligence, the Department of Defense, the Central Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, the Federal Bureau of Investigation’s Academy, as well as elements of every other civilian and military intelligence agency.

MARK R. WARNER.

CHANGES IN EXISTING LAWS

In the opinion of the Committee, it is necessary to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

