

In the Senate of the United States,

September 27, 2010.

Resolved, That the bill from the House of Representatives (H.R. 553) entitled “An Act to require the Secretary of Homeland Security to develop a strategy to prevent the over-classification of homeland security and other information and to promote the sharing of unclassified homeland security and other information, and for other purposes.”, do pass with the following

AMENDMENT:

In lieu of the matter proposed to be inserted, insert the following:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Reducing Over-Classi-*
3 *fication Act”.*

4 ***SEC. 2. FINDINGS.***

5 *Congress finds the following:*

6 *(1) The National Commission on Terrorist At-*
7 *tacks Upon the United States (commonly known as*
8 *the “9/11 Commission”) concluded that security re-*

1 *quirements nurture over-classification and excessive*
2 *compartmentation of information among agencies.*

3 *(2) The 9/11 Commission and others have ob-*
4 *erved that the over-classification of information*
5 *interferes with accurate, actionable, and timely infor-*
6 *mation sharing, increases the cost of information se-*
7 *curity, and needlessly limits stakeholder and public*
8 *access to information.*

9 *(3) Over-classification of information causes con-*
10 *siderable confusion regarding what information may*
11 *be shared with whom, and negatively affects the dis-*
12 *semination of information within the Federal Govern-*
13 *ment and with State, local, and tribal entities, and*
14 *with the private sector.*

15 *(4) Over-classification of information is antithet-*
16 *ical to the creation and operation of the information*
17 *sharing environment established under section 1016 of*
18 *the Intelligence Reform and Terrorism Prevention Act*
19 *of 2004 (6 U.S.C. 485).*

20 *(5) Federal departments or agencies authorized*
21 *to make original classification decisions or that per-*
22 *form derivative classification of information are re-*
23 *sponsible for developing, implementing, and admin-*
24 *istering policies, procedures, and programs that pro-*
25 *mote compliance with applicable laws, executive or-*

1 *ders, and other authorities pertaining to the proper*
2 *use of classification markings and the policies of the*
3 *National Archives and Records Administration.*

4 **SEC. 3. DEFINITIONS.**

5 *In this Act:*

6 (1) *DERIVATIVE CLASSIFICATION AND ORIGINAL*
7 *CLASSIFICATION.—The terms “derivative classifica-*
8 *tion” and “original classification” have the meanings*
9 *given those terms in Executive Order No. 13526.*

10 (2) *EXECUTIVE AGENCY.—The term “Executive*
11 *agency” has the meaning given that term in section*
12 *105 of title 5, United States Code.*

13 (3) *EXECUTIVE ORDER NO. 13526.—The term*
14 *“Executive Order No. 13526” means Executive Order*
15 *No. 13526 (75 Fed. Reg. 707; relating to classified*
16 *national security information) or any subsequent cor-*
17 *responding executive order.*

18 **SEC. 4. CLASSIFIED INFORMATION ADVISORY OFFICER.**

19 (a) *IN GENERAL.—Subtitle A of title II of the Home-*
20 *land Security Act of 2002 (6 U.S.C. 121 et seq.) is amended*
21 *by adding at the end the following:*

22 **“SEC. 210F. CLASSIFIED INFORMATION ADVISORY OFFICER.**

23 “(a) *REQUIREMENT TO ESTABLISH.—The Secretary*
24 *shall identify and designate within the Department a Clas-*

1 *sified Information Advisory Officer, as described in this sec-*
2 *tion.*

3 “(b) *RESPONSIBILITIES.*—*The responsibilities of the*
4 *Classified Information Advisory Officer shall be as follows:*

5 “(1) *To develop and disseminate educational*
6 *materials and to develop and administer training*
7 *programs to assist State, local, and tribal govern-*
8 *ments (including State, local, and tribal law enforce-*
9 *ment agencies) and private sector entities—*

10 “(A) *in developing plans and policies to re-*
11 *spond to requests related to classified informa-*
12 *tion without communicating such information to*
13 *individuals who lack appropriate security clear-*
14 *ances;*

15 “(B) *regarding the appropriate procedures*
16 *for challenging classification designations of in-*
17 *formation received by personnel of such entities;*
18 *and*

19 “(C) *on the means by which such personnel*
20 *may apply for security clearances.*

21 “(2) *To inform the Under Secretary for Intel-*
22 *ligence and Analysis on policies and procedures that*
23 *could facilitate the sharing of classified information*
24 *with such personnel, as appropriate.*

1 “(c) *INITIAL DESIGNATION.*—Not later than 90 days
2 after the date of the enactment of the Reducing Over-Classi-
3 fication Act, the Secretary shall—

4 “(1) designate the initial Classified Information
5 Advisory Officer; and

6 “(2) submit to the Committee on Homeland Se-
7 curity and Governmental Affairs of the Senate and
8 the Committee on Homeland Security of the House of
9 Representatives a written notification of the designa-
10 tion.”.

11 “(b) *CLERICAL AMENDMENT.*—The table of contents in
12 section 1(b) of the Homeland Security Act of 2002 (6 U.S.C.
13 101 et seq.) is amended by inserting after the item relating
14 to section 210E the following:

“Sec. 210F. Classified Information Advisory Officer.”.

15 **SEC. 5. INTELLIGENCE INFORMATION SHARING.**

16 “(a) *DEVELOPMENT OF GUIDANCE FOR INTELLIGENCE*
17 *PRODUCTS.*—Paragraph (1) of section 102A(g) of the Na-
18 tional Security Act of 1947 (50 U.S.C. 403–1(g)) is amend-
19 ed—

20 (1) in subparagraph (E), by striking “and” at
21 the end;

22 (2) in subparagraph (F), by striking the period
23 at the end and inserting a semicolon and “and”; and

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

1 “(G) in accordance with Executive Order
2 No. 13526 (75 Fed. Reg. 707; relating to classi-
3 fied national security information) (or any sub-
4 sequent corresponding executive order), and part
5 2001 of title 32, Code of Federal Regulations (or
6 any subsequent corresponding regulation), estab-
7 lish—

8 “(i) guidance to standardize, in appro-
9 priate cases, the formats for classified and
10 unclassified intelligence products created by
11 elements of the intelligence community for
12 purposes of promoting the sharing of intel-
13 ligence products; and

14 “(ii) policies and procedures requiring
15 the increased use, in appropriate cases, and
16 including portion markings, of the classi-
17 fication of portions of information within
18 one intelligence product.”.

19 (b) *CREATION OF UNCLASSIFIED INTELLIGENCE*
20 *PRODUCTS AS APPROPRIATE FOR STATE, LOCAL, TRIBAL,*
21 *AND PRIVATE SECTOR STAKEHOLDERS.—*

22 (1) *RESPONSIBILITIES OF SECRETARY RELATING*
23 *TO INTELLIGENCE AND ANALYSIS AND INFRASTRUC-*
24 *TURE PROTECTION.—Paragraph (3) of section 201(d)*

1 of the Homeland Security Act of 2002 (6 U.S.C.
2 121(d)) is amended to read as follows:

3 “(3) To integrate relevant information, analysis,
4 and vulnerability assessments (regardless of whether
5 such information, analysis or assessments are pro-
6 vided by or produced by the Department) in order
7 to—

8 “(A) identify priorities for protective and
9 support measures regarding terrorist and other
10 threats to homeland security by the Department,
11 other agencies of the Federal Government, State,
12 and local government agencies and authorities,
13 the private sector, and other entities; and

14 “(B) prepare finished intelligence and in-
15 formation products in both classified and unclas-
16 sified formats, as appropriate, whenever reason-
17 ably expected to be of benefit to a State, local, or
18 tribal government (including a State, local, or
19 tribal law enforcement agency) or a private sec-
20 tor entity.”.

21 (2) *ITACG DETAIL.*—Section 210D(d) of the
22 Homeland Security Act of 2002 (6 U.S.C. 124k(d)) is
23 amended—

24 (A) in paragraph (5)—

1 (i) in subparagraph (D), by striking
2 “and” at the end;

3 (ii) by redesignating subparagraph (E)
4 as subparagraph (F); and

5 (iii) by inserting after subparagraph
6 (D) the following:

7 “(E) make recommendations, as appro-
8 priate, to the Secretary or the Secretary’s des-
9 ignee, for the further dissemination of intel-
10 ligence products that could likely inform or im-
11 prove the security of a State, local, or tribal gov-
12 ernment, (including a State, local, or tribal law
13 enforcement agency) or a private sector entity;
14 and”;

15 (B) in paragraph (6)(C), by striking “and”
16 at the end;

17 (C) in paragraph (7), by striking the period
18 at the end and inserting a semicolon and “and”;
19 and

20 (D) by adding at the end the following:

21 “(8) compile an annual assessment of the ITACG
22 Detail’s performance, including summaries of cus-
23 tomer feedback, in preparing, disseminating, and re-
24 questing the dissemination of intelligence products in-
25 tended for State, local and tribal government (includ-

1 *ing State, local, and tribal law enforcement agencies)*
2 *and private sector entities; and*

3 *“(9) provide the assessment developed pursuant*
4 *to paragraph (8) to the program manager for use in*
5 *the annual reports required by subsection (c)(2).”.*

6 *(c) INTERAGENCY THREAT ASSESSMENT AND COORDI-*
7 *NATION GROUP ANNUAL REPORT MODIFICATION.—Sub-*
8 *section (c) of section 210D of the Homeland Security Act*
9 *of 2002 (6 U.S.C. 124k) is amended—*

10 *(1) in the matter preceding paragraph (1), by*
11 *striking “, in consultation with the Information*
12 *Sharing Council,”;*

13 *(2) in paragraph (1), by striking “and” at the*
14 *end;*

15 *(3) in paragraph (2), by striking the period at*
16 *the end and inserting a semicolon and “and”; and*

17 *(4) by adding at the end the following:*

18 *“(3) in each report required by paragraph (2)*
19 *submitted after the date of the enactment of the Re-*
20 *ducing Over-Classification Act, include an assessment*
21 *of whether the detailees under subsection (d)(5) have*
22 *appropriate access to all relevant information, as re-*
23 *quired by subsection (g)(2)(C).”.*

1 **SEC. 6. PROMOTION OF ACCURATE CLASSIFICATION OF IN-**
2 **FORMATION.**

3 (a) *INCENTIVES FOR ACCURATE CLASSIFICATIONS.*—
4 *In making cash awards under chapter 45 of title 5, United*
5 *States Code, the President or the head of an Executive agen-*
6 *cy with an officer or employee who is authorized to make*
7 *original classification decisions or derivative classification*
8 *decisions may consider such officer's or employee's con-*
9 *sistent and proper classification of information.*

10 (b) *INSPECTOR GENERAL EVALUATIONS.*—

11 (1) *REQUIREMENT FOR EVALUATIONS.*—*Not later*
12 *than September 30, 2016, the inspector general of*
13 *each department or agency of the United States with*
14 *an officer or employee who is authorized to make*
15 *original classifications, in consultation with the In-*
16 *formation Security Oversight Office, shall carry out*
17 *no less than two evaluations of that department or*
18 *agency or a component of the department or agency—*

19 (A) *to assess whether applicable classifica-*
20 *tion policies, procedures, rules, and regulations*
21 *have been adopted, followed, and effectively ad-*
22 *ministered within such department, agency, or*
23 *component; and*

24 (B) *to identify policies, procedures, rules,*
25 *regulations, or management practices that may*
26 *be contributing to persistent misclassification of*

1 *material within such department, agency or*
2 *component.*

3 (2) *DEADLINES FOR EVALUATIONS.—*

4 (A) *INITIAL EVALUATIONS.—Each first eval-*
5 *uation required by paragraph (1) shall be com-*
6 *pleted no later than September 30, 2013.*

7 (B) *SECOND EVALUATIONS.—Each second*
8 *evaluation required by paragraph (1) shall re-*
9 *view progress made pursuant to the results of the*
10 *first evaluation and shall be completed no later*
11 *than September 30, 2016.*

12 (3) *REPORTS.—*

13 (A) *REQUIREMENT.—Each inspector gen-*
14 *eral who is required to carry out an evaluation*
15 *under paragraph (1) shall submit to the appro-*
16 *priate entities a report on each such evaluation.*

17 (B) *CONTENT.—Each report submitted*
18 *under subparagraph (A) shall include a descrip-*
19 *tion of—*

20 (i) *the policies, procedures, rules, regu-*
21 *lations, or management practices, if any,*
22 *identified by the inspector general under*
23 *paragraph (1)(B); and*

24 (ii) *the recommendations, if any, of the*
25 *inspector general to address any such iden-*

1 *tified policies, procedures, rules, regulations,*
2 *or management practices.*

3 (C) *COORDINATION.*—*The inspectors general*
4 *who are required to carry out evaluations under*
5 *paragraph (1) shall coordinate with each other*
6 *and with the Information Security Oversight Of-*
7 *fice to ensure that evaluations follow a consistent*
8 *methodology, as appropriate, that allows for*
9 *cross-agency comparisons.*

10 (4) *APPROPRIATE ENTITIES DEFINED.*—*In this*
11 *subsection, the term “appropriate entities” means—*

12 (A) *the Committee on Homeland Security*
13 *and Governmental Affairs and the Select Com-*
14 *mittee on Intelligence of the Senate;*

15 (B) *the Committee on Homeland Security,*
16 *the Committee on Oversight and Government Re-*
17 *form, and the Permanent Select Committee on*
18 *Intelligence of the House of Representatives;*

19 (C) *any other committee of Congress with*
20 *jurisdiction over a department or agency referred*
21 *to in paragraph (1);*

22 (D) *the head of a department or agency re-*
23 *ferred to in paragraph (1); and*

24 (E) *the Director of the Information Secu-*
25 *rity Oversight Office.*

1 **SEC. 7. CLASSIFICATION TRAINING PROGRAM.**

2 (a) *IN GENERAL.*—*The head of each Executive agency,*
3 *in accordance with Executive Order 13526, shall require*
4 *annual training for each employee who has original classi-*
5 *fication authority. For employees who perform derivative*
6 *classification, or are responsible for analysis, dissemina-*
7 *tion, preparation, production, receipt, publication, or other-*
8 *wise communication of classified information, training*
9 *shall be provided at least every two years. Such training*
10 *shall—*

11 (1) *educate the employee, as appropriate, regard-*
12 *ing—*

13 (A) *the guidance established under subpara-*
14 *graph (G) of section 102A(g)(1) of the National*
15 *Security Act of 1947 (50 U.S.C. 403–1(g)(1)), as*
16 *added by section 5(a)(3), regarding the for-*
17 *matting of finished intelligence products;*

18 (B) *the proper use of classification mark-*
19 *ings, including portion markings that indicate*
20 *the classification of portions of information; and*

21 (C) *any incentives and penalties related to*
22 *the proper classification of intelligence informa-*
23 *tion; and*

24 (2) *ensure such training is a prerequisite, once*
25 *completed successfully, as evidenced by an appro-*
26 *priate certificate or other record, for—*

1 (A) obtaining original classification author-
2 ity or derivatively classifying information; and

3 (B) maintaining such authority.

4 (b) *RELATIONSHIP TO OTHER PROGRAMS.*—The head
5 of each Executive agency shall ensure that the training re-
6 quired by subsection (a) is conducted efficiently and in con-
7 junction with any other required security, intelligence, or
8 other training programs to reduce the costs and administra-
9 tive burdens associated with carrying out the training re-
10 quired by subsection (a).

Attest:

Secretary.

11TH CONGRESS
2^D SESSION

H.R. 553

AMENDMENT