

Calendar No. 489

105TH CONGRESS
2D Session

S. 712

[Report No. 105-258]

A BILL

To provide for a system to classify information in the interests of national security and a system to declassify such information.

JULY 22, 1998

Reported with an amendment

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2D SESSION**S. 712****[Report No. 105–258]**

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IN THE SENATE OF THE UNITED STATES

MAY 7, 1997

Mr. MOYNIHAN (for himself, Mr. HELMS, Mr. ROTH, Mr. LOTT, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

JULY 22, 1998

Reported by Mr. THOMPSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**A BILL**

To provide for a system to classify information in the interests of national security and a system to declassify such information.

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 “Government Secrecy
5 Act of 1997”.

1 **SEC. 2. PURPOSE.**

2 It is the purpose of this Act to promote the effective
3 protection of classified information and the disclosure of
4 information where there is not a well-founded basis for
5 protection or where the costs of maintaining a secret out-
6 weigh the benefits.

7 **SEC. 3. FINDINGS.**

8 The Congress makes the following findings:

9 (1) The system for classifying and declassifying
10 national security information has been based in reg-
11 ulation, not in statute, and has been governed by six
12 successive Executive orders since 1951.

13 (2) The Commission on Protecting and Reduc-
14 ing Government Secrecy, established under Public
15 Law 103-236, issued its report on March 4, 1997
16 (S. Doc. 105-2), in which it recommended reducing
17 the volume of information classified and strengthen-
18 ing the protection of classified information.

19 (3) The absence of a statutory framework has
20 resulted in unstable and inconsistent classification
21 and declassification policies, excessive costs, and in-
22 adequate implementation.

23 (4) The implementation of Executive orders will
24 be even more costly as more documents are prepared
25 and used on electronic systems.

1 (5) United States taxpayers incur substantial
 2 costs as several million documents are classified each
 3 year. According to figures submitted to the Informa-
 4 tion Security Oversight Office and the Congress, the
 5 executive branch and private industry together spent
 6 more than \$5.2 billion in 1996 to protect classified
 7 information.

8 (6) A statutory foundation for the classification
 9 and declassification of information is likely to result
 10 in a more stable and cost-effective set of policies and
 11 a more consistent application of rules and proce-
 12 dures.

13 (7) Enactment of a statute would create an op-
 14 portunity for greater oversight by the Congress of
 15 executive branch classification and declassification
 16 activities, without impairing the responsibility of ex-
 17 ecutive branch officials for the day-to-day adminis-
 18 tration of the system.

19 **SEC. 4. CLASSIFICATION AND DECLASSIFICATION OF IN-**
 20 **FORMATION.**

21 (a) **CLASSIFICATION FOR NATIONAL SECURITY REA-**
 22 **SONS.**—The President may, in accordance with this Act,
 23 protect from unauthorized disclosure information in the
 24 possession and control of the executive branch when there
 25 is a demonstrable need to do so in order to protect the

1 national security of the United States. The President shall
 2 ensure that the amount of information classified is the
 3 minimum necessary to protect the national security.

4 (b) PROCEDURES FOR CLASSIFICATION AND DECLASSIFICATION.—
 5

6 (1) IN GENERAL.—The President shall, to the
 7 extent necessary, establish categories of information
 8 that may be classified and procedures for classifying
 9 information under subsection (a). The President
 10 shall, concurrently with the establishment of such
 11 categories and procedures, establish, and allocate resources for the implementation of, procedures for declassifying information previously classified.

14 (2) PUBLICATION OF CATEGORIES AND PROCEDURES.—
 15

16 (A) The President shall publish notice in
 17 the Federal Register of any categories and procedures proposed to be established under paragraph (1) with respect to both the classification and declassification of information, and shall provide an opportunity for interested agencies and other interested persons to submit comments thereon. The President shall take into account such comments before establishing the

1 categories and procedures, which shall also be
2 published in the Federal Register.

3 (B) The procedures set forth in subpara-
4 graph (A) shall apply to any modifications in
5 categories or procedures established under
6 paragraph (1).

7 (3) AGENCY STANDARDS AND PROCEDURES.—

8 The head of each agency shall establish standards
9 and procedures for classifying and declassifying in-
10 formation created by that agency on the basis of the
11 categories and procedures established by the Presi-
12 dent under paragraph (1). Each agency head, in es-
13 tablishing and modifying standards and procedures
14 under this paragraph, shall follow the procedures re-
15 quired of the President in paragraph (2) for estab-
16 lishing and modifying categories and procedures
17 under that paragraph.

18 (c) CONSIDERATIONS IN DETERMINING CLASSIFICA-
19 TION AND DECLASSIFICATION.—

20 (1) IN GENERAL.—In determining whether in-
21 formation should be classified or declassified, the
22 agency official making the determination shall weigh
23 the benefit from public disclosure of the information
24 against the need for initial or continued protection
25 of the information under the classification system. If

1 there is significant doubt as to whether information
2 requires such protection, it shall not be classified.

3 ~~(2)~~ WRITTEN JUSTIFICATION.—

4 (A) ORIGINAL CLASSIFICATION.—The
5 agency official who makes the decision to clas-
6 sify information shall identify himself or herself
7 and shall provide in writing a detailed justifica-
8 tion for that decision.

9 (B) DERIVATIVE CLASSIFICATION.—In any
10 case in which an agency official classifies a doc-
11 ument on the basis of information previously
12 classified that is included or referenced in the
13 document, that agency official shall identify
14 himself or herself in that document.

15 ~~(d)~~ STANDARDS FOR DECLASSIFICATION.—

16 (1) INITIAL CLASSIFICATION PERIOD.—Infor-
17 mation may not remain classified under this Act for
18 longer than a 10-year period unless the head of the
19 agency that created the information certifies to the
20 President at the end of such period that the infor-
21 mation requires continued protection, based on a
22 current assessment of the risks of disclosing the in-
23 formation, carried out in accordance with subsection
24 (c)(1).

1 (2) ~~ADDITIONAL CLASSIFICATION PERIOD.~~—In-
 2 formation not declassified prior to or at the end of
 3 the ~~10-year~~ period referred to in paragraph (1) may
 4 not remain classified for more than a ~~30-year~~ period
 5 unless the head of the agency that created the infor-
 6 mation certifies to the President at the end of such
 7 30-year period that continued protection of the in-
 8 formation from unauthorized disclosure is essential
 9 to the national security of the United States or that
 10 demonstrable harm to an individual will result from
 11 release of the information.

12 (3) ~~DECLASSIFICATION SCHEDULES.~~—All clas-
 13 sified information shall be subject to regular review
 14 pursuant to schedules each agency head shall estab-
 15 lish and publish in the Federal Register. Each agen-
 16 cy shall follow the schedule established by the agen-
 17 cy head in declassifying information created by that
 18 agency.

19 (4) ~~ASSESSMENT OF EXISTING CLASSIFIED IN-~~
 20 ~~FORMATION.~~—Each agency official responsible for
 21 information which, before the effective date of this
 22 Act—

23 (A) was determined to be kept protected
 24 from unauthorized disclosure in the interest of
 25 national security; and

1 (B) had been kept so protected for longer
 2 than the 10-year period referred to in para-
 3 graph (1);

4 shall, to the extent feasible, give priority to making
 5 decisions with respect to declassifying that informa-
 6 tion as soon as is practicable.

7 (e) REPORTS TO CONGRESS.—Not later than Decem-
 8 ber 31 of each year, the head of each agency that is re-
 9 sponsible for the classification and declassification of in-
 10 formation shall submit to the Congress a report that de-
 11 scribes the application of the classification and declas-
 12 sification standards and procedures of that agency during
 13 the preceding fiscal year.

14 (f) AMENDMENT TO FREEDOM OF INFORMATION
 15 ACT.—Section 552(b)(1) of title 5, United States Code,
 16 is amended to read as follows:

17 “(1)(A) specifically authorized to be classified
 18 under the Government Secrecy Act of 1997, or spe-
 19 cifically authorized, before the effective date of that
 20 Act, under criteria established by an Executive order
 21 to be kept secret in the interest of national security
 22 (as defined by section 7(6) of the Government Se-
 23 crecy Act of 1997), and (B) are in fact properly
 24 classified pursuant to that Act or Executive order.”.

1 **SEC. 5. NATIONAL DECLASSIFICATION CENTER.**

2 (a) ~~ESTABLISHMENT.~~—The President shall establish,
3 within an existing agency, a National Declassification
4 Center, the functions of which shall be—

5 (1) to coordinate and oversee the declassifica-
6 tion policies and practices of the Federal Govern-
7 ment; and

8 (2) to provide technical assistance to agencies
9 in implementing such policies and practices; in ac-
10 cordance with this section.

11 (b) ~~FUNCTIONS.~~—

12 (1) ~~DECLASSIFICATION OF INFORMATION.~~—The
13 Center shall, at the request of any agency and on a
14 reimbursable basis, declassify information within the
15 possession of that agency pursuant to the guidance
16 of that agency on the basis of the declassification
17 standards and procedures established by that agency
18 under section 4, or if another agency created the in-
19 formation, pursuant to the guidance of that other
20 agency on the basis of the declassification standards
21 and procedures established by that agency under
22 section 4. In carrying out this paragraph, the Center
23 may use the services of officers or employees or the
24 resources of another agency, with the consent of the
25 head of that agency.

1 (2) COORDINATION OF POLICIES.—The Center
 2 shall coordinate implementation by agencies of the
 3 declassification policies and procedures established
 4 by the President under section 4 and shall ensure
 5 that declassification of information occurs in an effi-
 6 cient, cost-effective, and consistent manner among
 7 all agencies that create or otherwise are in posses-
 8 sion of classified information.

9 (3) DISPUTES.—If disputes arise among agen-
 10 cies regarding whether information should or should
 11 not be classified, or between the Center and any
 12 agency regarding the Center's functions under this
 13 section, the heads of the agencies concerned or of
 14 the Center may refer the matter to the President for
 15 resolution of the dispute.

16 (c) NATIONAL DECLASSIFICATION ADVISORY COM-
 17 MITTEE.—

18 (1) IN GENERAL.—There is established a 12-
 19 member National Declassification Advisory Commit-
 20 tee. 4 members of the Advisory Committee shall be
 21 appointed by the President and 2 members each
 22 shall be appointed by the majority and minority
 23 leaders of the Senate, the Speaker of the House of
 24 Representatives, and the minority leader of the
 25 House of Representatives.

1 (2) ~~MEMBERSHIP.~~—The members of the Advi-
 2 sory Committee shall be appointed from among dis-
 3 tinguished historians, political scientists, archivists,
 4 other social scientists, and other members of the
 5 public who have a demonstrable expertise in declas-
 6 sification and the management of Government
 7 records. No officer or employee of the United States
 8 Government shall be appointed to the Advisory Com-
 9 mittee.

10 (3) ~~DUTIES.~~—The Advisory Committee shall
 11 provide advice to the Center and make recommenda-
 12 tions concerning declassification priorities and activi-
 13 ties.

14 (d) ~~ANNUAL REPORTS.~~—The Center shall submit to
 15 the President and the Congress, not later than December
 16 31 of each year, a report on its activities during the pre-
 17 ceding fiscal year, and on the implementation of agency
 18 declassification practices and its efforts to coordinate
 19 those practices.

20 **SEC. 6. INFORMATION TO THE CONGRESS.**

21 Nothing in this Act shall be construed to authorize
 22 the withholding of information from the Congress.

23 **SEC. 7. DEFINITIONS.**

24 As used in this Act—

1 (1) the term “Advisory Committee” means the
2 National Declassification Advisory Committee estab-
3 lished under section 5(e);

4 (2) the term “agency” means any executive
5 agency as defined in section 105 of title 5, United
6 States Code; any military department as defined in
7 section 102 of such title; and any other entity in the
8 executive branch of the Government that comes into
9 the possession of classified information;

10 (3) the term “Center” means the National De-
11 classification Center established under section 5(a);

12 (4) the terms “classify”, “classified”, and “clas-
13 sification” refer to the process by which information
14 is determined to require protection from unauthor-
15 ized disclosure pursuant to this Act in order to pro-
16 tect the national security of the United States;

17 (5) the terms “declassify”, “declassified”, and
18 “declassification” refer to the process by which in-
19 formation that has been classified is determined to
20 no longer require protection from unauthorized dis-
21 closure pursuant to this Act; and

22 (6) the term “national security of the United
23 States” means the national defense or foreign rela-
24 tions of the United States.

1 **SEC. 8. EFFECTIVE DATE.**

2 This Act shall take effect 180 days after the date of
3 the enactment of this Act.

4 **SECTION 1. SHORT TITLE.**

5 *This Act may be cited as the “Government Secrecy Re-*
6 *form Act of 1998”.*

7 **SEC. 2. CLASSIFICATION AND DECLASSIFICATION OF IN-**
8 **FORMATION.**

9 (a) *IN GENERAL.*—*The President may, in accordance*
10 *with this Act, protect from unauthorized disclosure any in-*
11 *formation owned by, produced by or for, or under the con-*
12 *trol of the executive branch when there is a demonstrable*
13 *need to do so in order to protect the national security of*
14 *the United States.*

15 (b) *ESTABLISHMENT OF STANDARDS AND PROCE-*
16 *DURES FOR CLASSIFICATION AND DECLASSIFICATION.*—

17 (1) *GOVERNMENTWIDE PROCEDURES.*—

18 (A) *CLASSIFICATION.*—*The President shall,*
19 *to the extent necessary, establish categories of in-*
20 *formation that may be classified and procedures*
21 *for classifying information under subsection (a).*

22 (B) *DECLASSIFICATION.*—*At the same time*
23 *the President establishes categories and proce-*
24 *dures under subparagraph (A), the President*
25 *shall establish procedures for declassifying infor-*
26 *mation that was previously classified.*

1 (2) *NOTICE AND COMMENT.*—

2 (A) *NOTICE.*—*The President shall publish*
3 *in the Federal Register notice regarding the cat-*
4 *egories and procedures proposed to be established*
5 *under paragraph (1).*

6 (B) *COMMENT.*—*The President shall provide*
7 *an opportunity for interested persons to submit*
8 *comments on the categories and procedures cov-*
9 *ered by subparagraph (A).*

10 (C) *DEADLINE.*—*The President shall com-*
11 *plete the establishment of categories and proce-*
12 *dures under this subsection not later than 60*
13 *days after publishing notice in the Federal Reg-*
14 *ister under subparagraph (A). Upon completion*
15 *of the establishment of such categories and proce-*
16 *dures, the President shall publish in the Federal*
17 *Register notice regarding such categories and*
18 *procedures.*

19 (3) *MODIFICATION.*—*In the event the President*
20 *determines to modify any categories or procedures es-*
21 *tablished under paragraph (1), subparagraphs (A)*
22 *and (B) of paragraph (2) shall apply to the modifica-*
23 *tion of such categories or procedures.*

24 (4) *AGENCY STANDARDS AND PROCEDURES.*—

1 (A) *IN GENERAL.*—The head of each agency
2 shall establish standards and procedures to per-
3 mit such agency to classify and declassify infor-
4 mation created by such agency in accordance
5 with the categories and procedures established by
6 this President under this section and otherwise
7 to carry out this Act. Such standards and proce-
8 dures shall include mechanisms to minimize the
9 risk of inadvertent or inappropriate declassifica-
10 tion of previously classified information (includ-
11 ing information classified by other agencies).

12 (B) *REQUIREMENT FOR CERTAIN AGEN-*
13 *CIES.*—The President shall require each agency
14 head with original classification authority to
15 produce written guidance on classification and
16 declassification of information in order to mini-
17 mize the derivative classification process and to
18 improve the subsequent declassification process.
19 Such written guidance may be treated as classi-
20 fied information under this Act.

21 (C) *DEADLINE.*—Each agency head shall es-
22 tablish standards and procedures under subpara-
23 graph (A) not later than 60 days after the date
24 on which the President publishes notice under
25 paragraph (2)(C) of the categories and standards

1 *established by the President under this sub-*
2 *section.*

3 (D) *PUBLICATION.*—*Each agency head shall*
4 *publish in the Federal Register the standards*
5 *and procedures established by such agency head*
6 *under this paragraph.*

7 (c) *STANDARD FOR CLASSIFICATION AND DECLAS-*
8 *SIFICATION.*—

9 (1) *IN GENERAL.*—*Subject to paragraphs (2) and*
10 *(3), information may be classified under this Act, and*
11 *classified information under review for declassifica-*
12 *tion under this Act may remain classified, only if the*
13 *harm to national security that might reasonably be*
14 *expected from disclosure of such information out-*
15 *weighs the public interest in disclosure of such infor-*
16 *mation.*

17 (2) *DEFAULT RULE.*—*In the event of significant*
18 *doubt whether the harm to national security that*
19 *might reasonably be expected from the disclosure of*
20 *information would outweigh the public interest in the*
21 *disclosure of such information, such information shall*
22 *not be classified or, in the case of classified informa-*
23 *tion under review for declassification, declassified.*

24 (3) *CRITERIA.*—*For purposes of this subsection,*
25 *in determining the harm to national security that*

1 *might reasonably be expected from disclosure of infor-*
2 *mation, and the public interest in the disclosure of*
3 *information, the official making the determination*
4 *shall consider the following:*

5 *(A) With regard to the harm to national se-*
6 *curity that might reasonably be expected from*
7 *disclosure of information, whether or not disclo-*
8 *sure of the information would—*

9 *(i) reveal the identity of a confidential*
10 *human source, or reveal information about*
11 *the application of an intelligence source or*
12 *method, or reveal the identity of a human*
13 *intelligence source when the unauthorized*
14 *disclosure of that source would clearly and*
15 *demonstrably damage the national security*
16 *interests of the United States;*

17 *(ii) reveal information that would as-*
18 *sist in the development or use of weapons of*
19 *mass destruction;*

20 *(iii) reveal information that would im-*
21 *pair United States cryptologic systems or*
22 *activities;*

23 *(iv) reveal information that would im-*
24 *pair the application of state of the art tech-*

1 *nology within a United States weapons sys-*
2 *tem;*

3 *(v) reveal actual United States mili-*
4 *tary war plans that remain in effect;*

5 *(vi) reveal information that would se-*
6 *riously and demonstrably impair relations*
7 *between the United States and a foreign*
8 *government, or seriously and demonstrably*
9 *undermine ongoing diplomatic activities of*
10 *the United States;*

11 *(vii) reveal information that would*
12 *clearly and demonstrably impair the cur-*
13 *rent ability of United States Government*
14 *officials to protect the President, Vice Presi-*
15 *dent, and other officials for whom protec-*
16 *tion services, in the interest of national se-*
17 *curity, are authorized;*

18 *(viii) reveal information that would se-*
19 *riously and demonstrably impair current*
20 *national security emergency preparedness*
21 *plans; or*

22 *(ix) violate a statute, treaty, or inter-*
23 *national agreement.*

24 *(B) With regard to the public interest in*
25 *disclosure of information—*

1 (i) *whether or not disclosure of the in-*
 2 *formation would better enable United States*
 3 *citizens to hold Government officials ac-*
 4 *countable for their actions and policies;*

5 (ii) *whether or not disclosure of the in-*
 6 *formation would assist the United States*
 7 *criminal justice system in holding persons*
 8 *responsible for criminal acts or acts con-*
 9 *trary to the Constitution;*

10 (iii) *whether or not disclosure of the*
 11 *information would assist Congress, or any*
 12 *committee or subcommittee thereof, in car-*
 13 *rying out its oversight responsibilities with*
 14 *regard to the executive branch or in ade-*
 15 *quately informing itself of executive branch*
 16 *policies and activities in order to carry out*
 17 *its legislative responsibilities; or*

18 (iv) *whether or not disclosure of the in-*
 19 *formation would bring about any other sig-*
 20 *nificant benefit, including an increase in*
 21 *public awareness or understanding of Gov-*
 22 *ernment activities or an enhancement of*
 23 *Government efficiency.*

24 (4) *WRITTEN JUSTIFICATION FOR CLASSIFICA-*
 25 *TION.—*

1 (A) *ORIGINAL CLASSIFICATION.*—*Each*
 2 *agency official who makes a decision to classify*
 3 *information not previously classified shall, at the*
 4 *time of the classification decision—*

5 (i) *identify himself or herself; and*

6 (ii) *provide in writing a detailed jus-*
 7 *tification of that decision.*

8 (B) *DERIVATIVE CLASSIFICATION.*—*In any*
 9 *case in which an agency official or contractor*
 10 *employee classifies a document on the basis of in-*
 11 *formation previously classified that is included*
 12 *or referenced in the document, the official or em-*
 13 *ployee, as the case may be, shall—*

14 (i) *identify himself or herself in that*
 15 *document; and*

16 (ii) *provide a concise explanation of*
 17 *that decision.*

18 (d) *DECLASSIFICATION OF INFORMATION CLASSIFIED*
 19 *UNDER ACT.*—

20 (1) *IN GENERAL.*—*Except as provided in para-*
 21 *graphs (2), (3), and (4), information may not remain*
 22 *classified under this Act after the date that is 10*
 23 *years after the date of the original classification of the*
 24 *information.*

1 (2) *EARLIER DECLASSIFICATION.*—When
 2 *classifying information under this Act, an agency of-*
 3 *ficial may provide for the declassification of the infor-*
 4 *mation as of a date or event that is earlier than the*
 5 *date otherwise provided for under paragraph (1).*

6 (3) *LATER DECLASSIFICATION.*—When
 7 *classifying information under this Act, an agency of-*
 8 *ficial may provide for the declassification of the infor-*
 9 *mation on the date that is 25 years after the date of*
 10 *the classification if the head of the agency—*

11 (A) *determines that there is no likely set of*
 12 *circumstances under which declassification*
 13 *would occur within the time otherwise provided*
 14 *for under paragraph (1);*

15 (B) *obtains the concurrence of the Director*
 16 *of the Office of National Classification and De-*
 17 *classification Oversight in the determination;*
 18 *and*

19 (C) *submits to the President a certification*
 20 *of the determination.*

21 (4) *POSTPONEMENT OF DECLASSIFICATION.*—

22 (A) *IN GENERAL.*—*The declassification of*
 23 *any information or category of information that*
 24 *would otherwise be declassified under paragraph*
 25 *(1) or (2) may be postponed if an official of the*

1 *agency with original classification authority*
 2 *over the information or category of information,*
 3 *as the case may be, determines, before the time*
 4 *of declassification under such paragraph, that*
 5 *the information or category of information, as*
 6 *the case may be, should remain classified.*

7 *(B) PROCEDURE.—An official may not im-*
 8 *plement a determination under subparagraph*
 9 *(A) until the official—*

10 *(i) obtains the concurrence of the Di-*
 11 *rector of the Office of National Classifica-*
 12 *tion and Declassification Oversight in the*
 13 *determination; and*

14 *(ii) submits to the President a certifi-*
 15 *cation of the determination.*

16 *(C) GENERAL DURATION OF POSTPONE-*
 17 *MENT.—Except as provided in subparagraph*
 18 *(D), information the declassification of which is*
 19 *postponed under this paragraph may remain*
 20 *classified not longer than 15 years after the date*
 21 *of the postponement.*

22 *(D) EXTENDED DURATION OF POSTPONE-*
 23 *MENT.—*

24 *(i) IN GENERAL.—Subject to clauses*

25 *(ii) and (iii), the declassification of any in-*

formation that would otherwise be declassified under subparagraph (C) or paragraph (3) may be postponed if an official of the agency with original classification authority over the information determines that extraordinary circumstances require that the information remain classified.

(ii) *PROCEDURE*.—An official may not implement a determination under clause (i) until the official—

(I) obtains the concurrence of the Director of the Office of National Classification and Declassification Oversight in the determination; and

(II) submits to the President a certification of the determination.

(iii) *REVIEW*.—The President shall establish a schedule for the review of the need for continued classification of any information the declassification of which is postponed under this subparagraph. Such information shall be declassified at the earliest possible time after the termination of the circumstances with respect to such information referred to in clause (i).

1 (E) CONCURRENCES.—A concurrence at the
2 direction of the Classification and Declassifica-
3 tion Review Board on appeal under section
4 4(c)(2) and a concurrence at the direction of the
5 President on appeal under section 5(a) shall be
6 treated as a concurrence of the Director of the
7 Office of National Classification and Declassi-
8 fication Oversight for purposes of subpara-
9 graphs (B)(i) and (D)(i).

10 (5) APPROVAL REQUIRED FOR DECLASSIFICATION
11 OF CERTAIN INFORMATION.—Except as provided in
12 this Act, no information may be declassified or re-
13 leased without the approval of the agency that origi-
14 nated the information.

15 (6) BASIS FOR DETERMINATIONS.—An agency of-
16 ficial making a determination under this subsection
17 with respect to the duration of classification of infor-
18 mation, or the declassification of information, shall
19 make the determination required under subsection (c)
20 with respect to classification or declassification in ac-
21 cordance with an assessment of the criteria specified
22 in paragraph (3) of such subsection (c) that is current
23 as of the determination.

24 (7) SPECIFICATION OF DECLASSIFICATION
25 DATE.—Each agency official making a decision to

1 *classify information shall specify upon such informa-*
 2 *tion the date or event of its declassification under this*
 3 *subsection.*

4 *(e) DECLASSIFICATION OF CURRENT CLASSIFIED IN-*
 5 *FORMATION.—*

6 *(1) PROCEDURES.—The President shall establish*
 7 *procedures for declassifying information that was*
 8 *classified before the effective date of this Act. Such*
 9 *procedures shall, to the maximum extent practicable,*
 10 *be consistent with the provisions of this section.*

11 *(2) AUTOMATIC DECLASSIFICATION.—The proce-*
 12 *dures established under paragraph (1) shall include*
 13 *procedures for the automatic declassification of infor-*
 14 *mation referred to in paragraph (1) that has re-*
 15 *mained classified for more than 25 years as of such*
 16 *date.*

17 *(3) NOTICE AND COMMENT.—*

18 *(A) NOTICE.—The President shall publish*
 19 *notice in the Federal Register of the procedures*
 20 *proposed to be established under this subsection.*

21 *(B) COMMENT.—The President shall provide*
 22 *an opportunity for interested persons to submit*
 23 *comments on the procedures covered by subpara-*
 24 *graph (A).*

(f) CONFORMING AMENDMENT TO FOIA.—Section b)(1) of title 5, United States Code, is amended to read as follows:

SEC. 3. OFFICE OF NATIONAL CLASSIFICATION AND DE-CLASSIFICATION OVERSIGHT.

(1) *IN GENERAL.*—There is established within Executive Office of the President an office to be known as the Office of National Classification and Classification Oversight (in this section referred to as the “Oversight Office”).

1 (2) *PURPOSE.*—*The purpose of the Oversight Of-*
 2 *fice is to standardize the policies and procedures used*
 3 *by agencies to assess information for initial classifica-*
 4 *tion and to review information for declassification.*

5 (b) *DIRECTOR.*—

6 (1) *IN GENERAL.*—*There shall be a Director of*
 7 *the Office of National Classification and Declassifica-*
 8 *tion Oversight who shall be appointed by the Presi-*
 9 *dent, by and with the advice and consent of the Sen-*
 10 *ate. The Director shall be the head of the Oversight*
 11 *Office.*

12 (2) *QUALIFICATIONS.*—*To the maximum extent*
 13 *practicable, the President shall nominate for appoint-*
 14 *ment as Director individuals who have experience in*
 15 *policy relating to classification and declassification of*
 16 *information, records management, and information*
 17 *technology.*

18 (3) *SUPERVISION.*—*The Director shall report di-*
 19 *rectly to the President.*

20 (4) *EXECUTIVE SCHEDULE.*—*Section 5314 of*
 21 *title 5, United States Code, is amended by adding at*
 22 *the end the following:*

23 *“Director, Office of National Classification and*
 24 *Declassification Oversight.”.*

25 (c) *PERSONNEL AND RESOURCES.*—

1 (1) *TRANSFER.*—All personnel, funds, and other
2 resources of the Information Security Oversight Office
3 are hereby transferred to the Oversight Office and
4 shall constitute the personnel, funds, and other re-
5 sources of the Oversight Office.

6 (2) *INTERIM DIRECTOR.*—The Director of the In-
7 formation Security Oversight Office shall serve as act-
8 ing Director of the Oversight Office until a Director
9 of the Oversight Office is appointed under subsection
10 (b)(1).

11 (d) *DUTIES.*—The Oversight Office shall—

12 (1) coordinate and oversee the classification and
13 declassification policies and practices of agencies in
14 order to ensure the compliance of such policies and
15 procedures with the requirements of this Act;

16 (2) develop and issue directives, instructions,
17 and educational aids and forms to assist in the im-
18 plementation of the provisions of this Act;

19 (3) develop a program of research and develop-
20 ment of technologies to improve the efficiency of clas-
21 sification and declassification processes under this
22 Act;

23 (4) determine whether or not information is clas-
24 sified in violation of this Act and direct that informa-
25 tion determined to be classified in violation of this

1 *Act be declassified by the agency that originated the*
2 *classification;*

3 *(5) determine whether the concurrence of the Di-*
4 *rector in an agency determination to postpone the de-*
5 *classification of information under section 2(d)(4) is*
6 *consistent with the provisions of this Act;*

7 *(6) review the proposed budgets of agencies for*
8 *classification and declassification programs and make*
9 *recommendations to the Office of Management and*
10 *Budget as to means of ensuring that such budgets*
11 *provide sufficient funds to permit agencies to comply*
12 *with the requirements of this Act;*

13 *(7) subject to the supervision and control of the*
14 *President, oversee special access programs;*

15 *(8) conduct audits and on-site reviews of agency*
16 *classification and declassification programs; and*

17 *(9) establish and maintain a Government-wide*
18 *database on the declassification activities of the Gov-*
19 *ernment, including an unclassified version of the*
20 *database available to the public.*

21 *(e) AGENCY COOPERATION.—Subject to the control and*
22 *supervision of the President, each agency shall provide the*
23 *Oversight Office with such information and other coopera-*
24 *tion as the Director of the Oversight Office considers appro-*
25 *priate to permit the Oversight Office to carry out its duties.*

1 (f) *PROTECTION OF INFORMATION.*—*The Director of*
 2 *the Oversight Office shall take appropriate actions to pre-*
 3 *vent disclosure to the public of classified information that*
 4 *is provided to the Oversight Office. Such actions may in-*
 5 *clude a requirement that the staff of the Oversight Office*
 6 *possess security clearances appropriate for the information*
 7 *considered and reviewed by the Oversight Office.*

8 (g) *ANNUAL REPORT.*—

9 (1) *REQUIREMENT.*—*Not later than March 31*
 10 *each year, the Director of the Oversight Office shall*
 11 *submit to Congress and to the President a report on*
 12 *the compliance of agencies with the requirements of*
 13 *this Act.*

14 (2) *ELEMENTS.*—*Each report under paragraph*
 15 *(1) shall—*

16 (A) *include a summary of the extent of the*
 17 *compliance of agencies Government-wide with*
 18 *the requirements of this Act as of the date of such*
 19 *report; and*

20 (B) *set forth an assessment of the compli-*
 21 *ance of each agency with such requirements as of*
 22 *that date.*

23 (3) *FORM.*—*Each report under paragraph (1)*
 24 *shall be submitted in unclassified form, but may in-*
 25 *clude a classified annex.*

1 (4) *AVAILABILITY.*—*The Oversight Office shall*
 2 *make available to the public the unclassified form of*
 3 *each report under paragraph (1) on an Internet Web*
 4 *site maintained by the Oversight Office.*

5 **SEC. 4. CLASSIFICATION AND DECLASSIFICATION REVIEW**
 6 **BOARD.**

7 (a) *ESTABLISHMENT.*—*There is established within the*
 8 *Executive Office of the President a board to be known as*
 9 *the Classification and Declassification Review Board (in*
 10 *this section referred to as the “Board”).*

11 (b) *MEMBERSHIP.*—

12 (1) *IN GENERAL.*—*The Board shall consist of five*
 13 *members appointed by the President, by and with the*
 14 *advice and consent of the Senate, from among indi-*
 15 *viduals who are distinguished historians, political sci-*
 16 *entists, archivists, and other social scientists, and*
 17 *from among members of the public with demonstrated*
 18 *expertise in matters relating to the national security*
 19 *of the United States, records management, or govern-*
 20 *ment information policy.*

21 (2) *NOMINATION.*—

22 (A) *CONSULTATION.*—*In nominating indi-*
 23 *viduals for appointment to the Board, the Presi-*
 24 *dent shall consult with the Secretary of Defense,*
 25 *Secretary of State, Attorney General, National*

1 *Security Advisor, Director of Central Intel-*
 2 *ligence, Archivist of the United States, and Di-*
 3 *rector of the Office of Management and Budget.*

4 *(B) LIMITATION.—The President may not*
 5 *nominate for appointment to the Board any in-*
 6 *dividual who is currently an officer or employee*
 7 *of the United States or who has previously served*
 8 *as a member of the Board.*

9 *(C) INITIAL NOMINATIONS.—The President*
 10 *shall make the first nominations of members for*
 11 *appointment to the Board not later than 120*
 12 *days after the effective date of this Act.*

13 *(3) TERM.—Members of the Board shall be ap-*
 14 *pointed for a term of 4 years, except that of the mem-*
 15 *bers first nominated for appointment to the Board*
 16 *under paragraph (2)(C)—*

17 *(A) two shall be nominated for a 4-year*
 18 *term (including the member who shall be the Di-*
 19 *rector of the Board);*

20 *(B) two shall be nominated for a 3-year*
 21 *term; and*

22 *(C) one shall be nominated for a 2-year*
 23 *term.*

1 (4) *VACANCIES.*—*An individual appointed to fill*
 2 *a vacancy shall be appointed for the unexpired term*
 3 *of the member replaced.*

4 (5) *LIMITATION ON EMPLOYMENT.*—*No member*
 5 *of the Board may, while serving as a member of the*
 6 *Board, serve as an officer or employee of the Federal*
 7 *Government in any other capacity.*

8 (c) *POWERS AND DUTIES.*—*The Board shall—*

9 (1) *decide on appeals by agencies which chal-*
 10 *lenge a declassification order of the Director of the Of-*
 11 *fice of National Classification and Declassification*
 12 *Oversight under section 3(d)(4);*

13 (2) *decide on appeals by agencies which chal-*
 14 *lenge a determination of the Director not to concur in*
 15 *the postponement of the declassification of informa-*
 16 *tion under section 3(d)(5); and*

17 (3) *decide on appeals by persons or entities who*
 18 *have filed requests for mandatory declassification re-*
 19 *view.*

20 (d) *DEADLINES FOR CERTAIN APPEALS.*—*An agency*
 21 *may appeal a declassification order or determination under*
 22 *subsection (c) only if the agency submits the appeal to the*
 23 *Board not later than 60 days after the date of the declas-*
 24 *sification order or determination, as the case may be.*

1 (e) *PROTECTION OF INFORMATION.*—*The Board shall*
 2 *take appropriate actions to prevent the disclosure to the*
 3 *public of classified information that is provided to the*
 4 *Board. Such actions shall include a requirement that the*
 5 *members and staff of the Board possess security clearances*
 6 *appropriate for the information considered and reviewed by*
 7 *the Board.*

8 (f) *PERSONNEL MATTERS.*—

9 (1) *COMPENSATION.*—

10 (A) *COMPENSATION OF MEMBERS.*—*Each*
 11 *member of the Board shall be compensated at a*
 12 *rate equal to the daily equivalent of the annual*
 13 *rate of basic pay prescribed for level IV of the*
 14 *Executive Schedule under section 5315 of title 5,*
 15 *United States Code, for each day (including*
 16 *travel time) during which such member is en-*
 17 *gaged in the performance of the duties of the*
 18 *Board.*

19 (B) *TRAVEL EXPENSES.*—*The members of*
 20 *the Board shall be allowed travel expenses, in-*
 21 *cluding per diem in lieu of subsistence, at rates*
 22 *authorized for employees of agencies under sub-*
 23 *chapter I of chapter 57 of title 5, United States*
 24 *Code, while away from their homes or regular*

1 *places of business in the performance of services*
 2 *for the Board.*

3 (2) *STAFF.—The Director of the Board may,*
 4 *with the concurrence of the Board, appoint such staff,*
 5 *including an executive secretary, as the Board re-*
 6 *quires to carry out its duties.*

7 (3) *DETAIL OF GOVERNMENT EMPLOYEES.—Any*
 8 *Federal Government employee may be detailed to the*
 9 *Board without reimbursement, and such detail shall*
 10 *be without interruption or loss of civil service status*
 11 *or privilege.*

12 (g) *RULES AND PROCEDURES.—*

13 (1) *REQUIREMENT.—The Board shall establish,*
 14 *and may from time to time modify, such rules and*
 15 *procedures as the Board considers appropriate to*
 16 *carry out its duties. Such rules and procedures shall*
 17 *provide that a decision of the Board requires a vote*
 18 *of a majority of the members of the Board.*

19 (2) *PUBLICATION.—The Board shall publish its*
 20 *rules and procedures in the Federal Register.*

21 (3) *INITIAL RULES AND PROCEDURES.—The*
 22 *Board shall establish its initial rules and procedures*
 23 *not later than 270 days after the date of enactment*
 24 *of this Act.*

1 **SEC. 5. APPEAL OF DETERMINATIONS OF CLASSIFICATION**
 2 **AND DECLASSIFICATION REVIEW BOARD.**

3 (a) *APPEAL.*—Subject to subsection (c), any agency
 4 may appeal to the President a decision or other action of
 5 the Classification and Declassification Review Board under
 6 section 4(c).

7 (b) *DEADLINE.*—An agency may appeal a decision or
 8 other action under subsection (a) only if the agency submits
 9 the appeal to the President not later than 60 days after
 10 the date of the decision or other action concerned.

11 (c) *FINALITY.*—A decision of the President on an ap-
 12 peal under subsection (a) shall be final.

13 **SEC. 6. PROHIBITIONS.**

14 (a) *WITHHOLDING INFORMATION FROM CONGRESS.*—
 15 Nothing in this Act shall be construed to authorize the with-
 16 holding of information from Congress.

17 (b) *JUDICIAL REVIEW.*—Except in the case of the
 18 amendment to section 552 of title 5, United States Code,
 19 made by section 2(f), no person may seek or obtain judicial
 20 review of any provision of this Act or any action taken
 21 under a provision of this Act.

22 **SEC. 7. DEFINITIONS.**

23 *In this Act:*

24 (1) The term “agency” means any executive
 25 agency as defined in section 105 of title 5, United
 26 States Code, any military department as defined in

1 *section 102 of such title, and any other entity in the*
2 *executive branch of the Government that comes into*
3 *the possession of classified information.*

4 *(2) The terms “classify”, “classified”, and “clas-*
5 *sification” refer to the process by which information*
6 *is determined to require protection from unauthorized*
7 *disclosure pursuant to this Act in order to protect the*
8 *national security of the United States.*

9 *(3) The terms “declassify”, “declassified”, and*
10 *“declassification” refer to the process by which infor-*
11 *mation that has been classified is determined to no*
12 *longer require protection from unauthorized disclosure*
13 *pursuant to this Act.*

14 **SEC. 8. EFFECTIVE DATE.**

15 *This Act and the amendment made by section 3(f)*
16 *shall take effect 180 days after the date of enactment of this*
17 *Act.*