

108TH CONGRESS  
2D SESSION

# S. 2672

To establish an Independent National Security Classification Board in the executive branch, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 15, 2004

Mr. WYDEN (for himself, Mr. LOTT, Mr. GRAHAM of Florida, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence

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## A BILL

To establish an Independent National Security Classification Board in the executive branch, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Independent National  
5   Security Classification Board Act of 2004”.

### 6   **SEC. 2. PURPOSE.**

7       The purpose of this Act is to establish in the execu-  
8   tive branch an Independent National Security Classifica-  
9   tion Board—

1           (1) to review the standards and procedures  
2       used in the classification system for national security  
3       information;

4           (2) to propose and submit to Congress and the  
5       President for comment new standards and proce-  
6       dures to be used in the classification system for such  
7       information;

8           (3) to establish the new standards and proce-  
9       dures after Congress and the President have had the  
10      opportunity to comment; and

11          (4) to review, and make recommendations with  
12      respect to, classifications of current and new infor-  
13      mation made under the applicable classification sys-  
14      tem.

15 **SEC. 3. INDEPENDENT NATIONAL SECURITY CLASSIFICA-**  
16 **TION BOARD.**

17       (a) ESTABLISHMENT.—The Independent National  
18      Security Classification Board (in this Act referred to as  
19      the “Board”) is established as an independent agency in  
20      the executive branch.

21       (b) COMPOSITION.—The Board shall be composed of  
22      one member appointed by the President, one member  
23      jointly recommended by the Majority Leader and the Mi-  
24      nority Leader of the Senate and appointed by the Presi-  
25      dent, and one member jointly recommended by the Speak-

1 er of the House of Representatives and the Minority Lead-  
2 er of the House of Representatives and appointed by the  
3 President, each by and with the advice and consent of the  
4 Senate. Each member shall be knowledgeable on classifica-  
5 tion matters.

6 (c) TERM OF MEMBERS.—Each member of the Board  
7 shall be appointed for a term of 5 years. A member may  
8 be reappointed for one additional 5-year term. A member  
9 whose term has expired shall continue to serve on the  
10 Board until a replacement has been appointed.

11 (d) VACANCIES.—Any vacancy in the Board shall not  
12 affect its powers, but shall be filled in the same manner  
13 as the original appointment.

14 (e) SEPARATE OFFICE.—The Board shall have its  
15 own office for carrying out its activities, and shall not  
16 share office space with any element of the intelligence  
17 community or with any other department or agency of the  
18 Federal Government.

19 (f) CHAIRMAN.—The Board shall select a Chairman  
20 from among its members.

21 (g) MEETINGS.—The Board shall meet at the call of  
22 the Chairman.

23 (h) QUORUM.—A majority of the members of the  
24 Board shall constitute a quorum, but a lesser number of  
25 members may hold hearings.

1 (i) AVAILABILITY OF INFORMATION.—The decision-  
 2 making process of the Board may be classified, but the  
 3 final decisions of the Board and the reports submitted  
 4 under this Act shall be made available to the public.

5 (j) INITIAL APPOINTMENTS AND MEETING.—

6 (1) INITIAL APPOINTMENTS.—Initial appoint-  
 7 ments of members of the Board shall be made not  
 8 later than 90 days after the date of the enactment  
 9 of this Act.

10 (2) INITIAL MEETING.—The Board shall hold  
 11 its first meeting not later than 30 days after the  
 12 date on which all members of the Board have been  
 13 appointed.

14 (k) WEBSITE.—The Board shall establish a website  
 15 not later than 90 days after the date on which all members  
 16 of the Board have been appointed.

17 **SEC. 4. DUTIES OF BOARD.**

18 (a) REVIEW OF CLASSIFICATION SYSTEM.—

19 (1) IN GENERAL.—The Board shall conduct a  
 20 thorough review of the classification system for na-  
 21 tional security information, including the policy, pro-  
 22 cedures, and practices of the system. The Board  
 23 shall recommend reforms of such system to ensure—

24 (A) the protection of the national security  
 25 of the United States;

1 (B) the sharing of information among Gov-  
2 ernment agencies; and

3 (C) an open and informed public discussion  
4 of national security issues.

5 (2) SCOPE OF REVIEW.—

6 (A) CONSULTATION.—The Board shall  
7 consult with the Select Committee on Intel-  
8 ligence, the Committee on Armed Services, and  
9 the Committee on Foreign Relations of the Sen-  
10 ate and the Permanent Select Committee on In-  
11 telligence, the Committee on Armed Services,  
12 and the Committee on International Relations  
13 of the House of Representatives in determining  
14 the scope of its review of the classification sys-  
15 tem.

16 (B) REVIEW.—The Board shall submit a  
17 report describing the proposed scope of review  
18 to the President and the committees of Con-  
19 gress referred to in subparagraph (A) for com-  
20 ment.

21 (C) REVISIONS.—Not later than 30 days  
22 after receiving the report under subparagraph  
23 (B)—

1 (i) the President shall notify the  
2 Board in writing of any revisions to such  
3 scope of review; and

4 (ii) each committee of Congress re-  
5 ferred to in subparagraph (A) may submit  
6 to the Board, in writing, any comments of  
7 the committee on the proposed scope of re-  
8 view.

9 (b) ADOPTION OF NATIONAL SECURITY INFORMA-  
10 TION CLASSIFICATION SYSTEM.—

11 (1) AUTHORITY.—The Board shall prescribe  
12 the classification system for national security infor-  
13 mation, which shall apply to all departments and  
14 agencies of the United States.

15 (2) FINDINGS AND RECOMMENDATIONS.—The  
16 Board shall, in accordance with the scope of review  
17 developed under subsection (a)(2), review the classi-  
18 fication system for national security information and  
19 submit to the President and Congress its findings  
20 and recommendations for new procedures and stand-  
21 ards to be used in such classification system.

22 (3) CLASSIFICATION SYSTEM.—Not later than  
23 180 days after the date on which all members of the  
24 Board have been confirmed by the Senate, the  
25 Board shall adopt a classification system for na-

1 tional security information, incorporating any com-  
2 ments received from the President and considering  
3 any comments received from Congress. Upon the  
4 adoption of the classification system, the system  
5 shall be used for the classification of all national se-  
6 curity information.

7 (c) REVIEW OF CLASSIFICATION DECISIONS.—

8 (1) IN GENERAL.—The Board shall, upon its  
9 own initiative or pursuant to a request under para-  
10 graph (3), review any classification decision made by  
11 an Executive agency with respect to national secu-  
12 rity information.

13 (2) ACCESS.—The Board shall have access to  
14 all documents or other materials that are classified  
15 on the basis of containing national security informa-  
16 tion.

17 (3) REQUESTS FOR REVIEW.—The Board shall  
18 review in a timely manner the existing or proposed  
19 classification of any document or other material the  
20 review of which is requested by—

21 (A) the head or Inspector General of an  
22 Executive agency who is an authorized holder of  
23 such document or material; or

24 (B) the chairman or ranking member of—

(i) the Committee on Armed Services,  
the Committee on Foreign Relations, or  
the Select Committee on Intelligence of the  
Senate; or

(ii) the Committee on Armed Services,  
the Committee on International Relations,  
or the Permanent Select Committee on In-  
telligence of the House of Representatives.

(4) RECOMMENDATIONS.—

(A) IN GENERAL.—The Board may make  
recommendations to the President regarding de-  
cisions to classify all or portions of documents  
or other material for national security purposes  
or to declassify all or portions of documents or  
other material classified for such purposes.

(B) IMPLEMENTATION.—Upon receiving a  
recommendation from the Board under sub-  
paragraph (A), the President shall either—

(i) accept and implement such rec-  
ommendation; or

(ii) not later than 60 days after re-  
ceiving the recommendation if the Presi-  
dent does not accept and implement such  
recommendation, transmit in writing to  
Congress and have posted on the Board's



1 website a notification in unclassified form  
 2 of the justification for the President’s deci-  
 3 sion not to implement such recommenda-  
 4 tion.

5 (5) EXEMPTION FROM FREEDOM OF INFORMA-  
 6 TION ACT.—The Board shall not be required to  
 7 make documents or materials reviewed under this  
 8 subsection available to the public under section 552  
 9 of title 5, United States Code (commonly referred to  
 10 as the Freedom of Information Act).

11 (6) REGULATIONS.—The Board shall prescribe  
 12 regulations to carry out this subsection.

13 (7) EXECUTIVE AGENCY DEFINED.—In this sec-  
 14 tion, the term “Executive agency” has the meaning  
 15 given that term in section 105 of title 5, United  
 16 States Code.

17 **SEC. 5. POWERS OF BOARD.**

18 (a) HEARINGS.—The Board may hold such hearings,  
 19 sit and act at such times and places, take such testimony,  
 20 and receive such evidence as the Board considers advisable  
 21 to carry out this Act.

22 (b) INFORMATION FROM FEDERAL AGENCIES.—The  
 23 Board may secure directly from any Federal department  
 24 or agency such information as the Board considers nec-  
 25 essary to carry out this Act. Upon request of the Chair-

1 man of the Board, the head of such department or agency  
2 shall furnish such information to the Board.

3 (c) ADMINISTRATIVE SUPPORT SERVICES.—Upon re-  
4 quest of the Board, the Administrator of General Services  
5 shall provide to the Board, on a reimbursable basis, the  
6 administrative support necessary for the Board to carry  
7 out its duties under this Act.

8 (d) POSTAL SERVICES.—The Board may use the  
9 United States mails in the same manner and under the  
10 same conditions as other departments and agencies of the  
11 Federal Government.

12 (e) GIFTS.—The Board may accept, use, and dispose  
13 of gifts or donations of services or property.

14 **SEC. 6. BOARD PERSONNEL MATTERS.**

15 (a) EXECUTIVE SCHEDULE LEVEL IV.—Section  
16 5315 of title 5, United States Code, is amended by adding  
17 at the end the following:

18 “Members, Independent National Security Clas-  
19 sification Board.”.

20 (b) STAFF.—

21 (1) IN GENERAL.—The Chairman of the Board  
22 may, without regard to the civil service laws and  
23 regulations, appoint and terminate an executive di-  
24 rector and such other additional personnel as may be  
25 necessary to enable the Board to perform its duties

1 under this Act. The employment of an executive di-  
2 rector shall be subject to confirmation by the Board.

3 (2) COMPENSATION.—The Chairman of the  
4 Board may fix the compensation of the executive di-  
5 rector and other personnel without regard to chapter  
6 51 and subchapter III of chapter 53 of title 5,  
7 United States Code, relating to classification of posi-  
8 tions and General Schedule pay rates, except that  
9 the rate of pay for the executive director and other  
10 personnel may not exceed the rate payable for level  
11 V of the Executive Schedule under section 5316 of  
12 such title.

13 (c) DETAIL OF GOVERNMENT EMPLOYEES.—Any  
14 employee of the Federal Government may be detailed to  
15 the Board without reimbursement, and such detail shall  
16 be without interruption or loss of civil service status or  
17 privilege.

18 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated to the Board  
20 \$2,000,000 for fiscal year 2005, and such sums as may  
21 be necessary thereafter.

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