

110TH CONGRESS
2D SESSION

S. 3041

To establish the Foreign Intelligence and Information Commission to assess needs and provide recommendations to improve foreign intelligence and information collection, analysis, and reporting, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2008

Mr. FEINGOLD (for himself and Mr. HAGEL) introduced the following bill;
which was read twice and referred to the Select Committee on Intelligence

A BILL

To establish the Foreign Intelligence and Information Commission to assess needs and provide recommendations to improve foreign intelligence and information collection, analysis, and reporting, 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 “Foreign Intelligence
5 and Information Commission Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) 2005 NATIONAL INTELLIGENCE STRAT-
2 EGY.—The term “2005 National Intelligence Strat-
3 egy” means the National Intelligence Strategy of the
4 United States of America released by the Director of
5 National Intelligence on October 26, 2005.

6 (2) 2006 ANNUAL REPORT OF THE UNITED
7 STATES INTELLIGENCE COMMUNITY AND 2006 AN-
8 NUAL REPORT.—The terms “2006 Annual Report of
9 the United States Intelligence Community” and
10 “2006 Annual Report” mean the 2006 Annual Re-
11 port of the United States Intelligence Community
12 released by the Director of National Intelligence in
13 February 2007.

14 (3) COMMISSION.—The term “Commission”
15 means the Foreign Intelligence and Information
16 Commission established in section 4(a).

17 (4) CONGRESSIONAL INTELLIGENCE COMMIT-
18 TEES.—The term “congressional intelligence com-
19 mittees” means—

20 (A) the Select Committee on Intelligence of
21 the Senate; and

22 (B) the Permanent Select Committee on
23 Intelligence of the House of Representatives.

24 (5) FOREIGN INTELLIGENCE, INTELLIGENCE,
25 INTELLIGENCE COMMUNITY.—The terms “foreign

1 intelligence”, “intelligence”, and “intelligence com-
2 munity” have the meaning given those terms in sec-
3 tion 3 of the National Security Act of 1947 (50
4 U.S.C. 401a).

5 (6) INFORMATION.—The term “information”
6 includes information of relevance to the foreign pol-
7 icy of the United States collected and conveyed
8 through diplomatic reporting and other reporting by
9 personnel of the Government of the United States
10 who are not employed by an element of the intel-
11 ligence community, including public and open-source
12 information.

13 (7) STRATEGIC PLAN OF THE DEPARTMENT OF
14 STATE.—The term “Strategic Plan of the Depart-
15 ment of State” means the Strategic Plan for Fiscal
16 Years 2007–2012 of the Department of State and
17 the United States Agency for International Develop-
18 ment revised on May 2, 2007.

19 **SEC. 3. FINDINGS.**

20 Congress makes the following findings:

21 (1) Accurate, timely, and comprehensive foreign
22 intelligence and information are critical to the na-
23 tional security of United States and the furtherance
24 of the foreign policy goals of the United States.

1 (2) It is in the national security and foreign
2 policy interest of the United States to ensure the
3 global deployment of personnel of the Government of
4 the United States who are responsible for collecting,
5 reporting, and analyzing foreign intelligence and in-
6 formation, including specifically personnel from the
7 intelligence community and the Department of
8 State, as well as other elements of the Government
9 of the United States, and that adequate resources
10 are committed to effect such collection, reporting,
11 and analysis.

12 (3) The National Security Strategy of the
13 United States of America issued on March 16, 2006
14 summarized the National Security Strategy of the
15 United States of America issued on September 17,
16 2002 and provided that “defeating terrorism re-
17 quires a long-term strategy and a break with old
18 patterns”.

19 (4) The National Security Strategy of the
20 United States of America issued on March 16, 2006
21 asserts that “our diplomats must be able to step
22 outside their traditional role to become more in-
23 volved with the challenges within other societies,
24 helping them directly, channeling assistance, and
25 learning from their experience”.

1 (5) The 2005 National Intelligence Strategy
2 and the 2006 Annual Report of the United States
3 Intelligence Community identified 5 major missions
4 of the intelligence community to support the na-
5 tional security requirements of the United States,
6 the first 2 of which, defeating terrorism and pre-
7 venting and countering the spread of weapons of
8 mass destruction, are global and transnational in na-
9 ture.

10 (6) The third major mission identified by the
11 2005 National Intelligence Strategy and the 2006
12 Annual Report, bolstering the growth of democracy
13 and sustaining peaceful democratic states, requires a
14 global commitment of intelligence resources.

15 (7) The 2005 National Intelligence Strategy
16 and the 2006 Annual Report identify as a major
17 mission the need to “anticipate developments of
18 strategic concern and identify opportunities as well
19 as vulnerabilities for decision makers”.

20 (8) The 2006 Annual Report provides the fol-
21 lowing:

22 (A) “In a world in which developments in
23 distant reaches of the globe can quickly affect
24 American citizens and interests at home and
25 abroad, the Intelligence Community must alert

1 policy makers to problems before they escalate
2 and provide insights into their causes and ef-
3 fects. Analysis must do more than just describe
4 what is happening and why; it must identify a
5 range of opportunities for (and likely con-
6 sequences of) diplomatic, military, law enforce-
7 ment, economic, financial, or homeland security
8 action. To support policymakers, the Intel-
9 ligence Community should develop, sustain, and
10 maintain access to expertise on every region,
11 every transnational security issue, and every
12 threat to the American people.”.

13 (B) “[I]ntelligence collectors and analysts
14 provide a great deal of information to help pol-
15 icymakers understand the spread of free institu-
16 tions and the perils they often face.”.

17 (C) “We still need to re-balance, integrate,
18 and optimize collection capabilities to meet cur-
19 rent and future customer and analytic prior-
20 ities. Collection is . . . what gives the [Intel-
21 ligence Community] its ‘competitive advantage’
22 in protecting the United States and its inter-
23 ests.”.

24 (D) “One challenge to improving the cov-
25 erage of emerging and strategic issues across

1 the Intelligence Community has been the diver-
2 sion of resources to current crisis support
3 . . .”.

4 (E) “Collection against terrorists in places
5 like Iraq and Afghanistan took a substantial
6 share of the [Intelligence Community’s] re-
7 sources and efforts in FY 2006.”.

8 (F) “With so many [Intelligence Commu-
9 nity] resources dedicated to the War on Terror
10 and WMD programs in closed regimes, the [In-
11 telligence] Community’s collection efforts still
12 have to devote significant attention to potential
13 or emerging threats of strategic consequence.”.

14 (9) On January 23, 2007, the Deputy Director
15 of National Intelligence for Collection testified to the
16 Select Committee on Intelligence of the Senate that
17 there is a “need to get the Intelligence Community
18 back to what I grew up calling global reach”, stating
19 that “we don’t have that today”. She further testi-
20 fied that “our challenge is . . . with [Congress’s]
21 help [to get back] to a place where we can do global
22 reach, and pay attention to places that we are not”.

23 (10) On February 14, 2008, the Director of
24 National Intelligence testified to the Select Com-
25 mittee on Intelligence of the Senate that “certainly

current crisis support takes a disproportionate share” of intelligence resources over emerging and strategic issues.

(11) The Strategic Plan of the Department of State—

(A) provides that “National security starts overseas, and our mission is to create conditions abroad that serve and protect American citizens and interests.”;

(B) provides as a strategic goal that “Our diplomatic and development activities will reduce the threat or impact of violent conflict by developing early warning . . . capability.”; and

(C) establishes that the Department of State will “emphasize regional solutions to regional problems and sustainable, long-term strategies to address complex challenges”.

SEC. 4. ESTABLISHMENT AND FUNCTIONS OF COMMISSION.

(a) ESTABLISHMENT.—There is established in the legislative branch a Foreign Intelligence and Information Commission.

(b) FUNCTIONS.—The Commission shall—

(1)(A) evaluate all global strategies of the Government of the United States to collect foreign intelligence and information, including public and open

1 source information, based on current and projected
2 national security and foreign policy priorities; and

3 (B) provide recommendations to improve the
4 process for formulating such collection strategies;

5 (2)(A) evaluate the extent to which the Govern-
6 ment of the United States coordinates foreign intel-
7 ligence and information collection and analysis strat-
8 egies across agencies and clandestine, diplomatic,
9 military, and open source channels; and

10 (B) provide recommendations to improve that
11 coordination;

12 (3)(A) evaluate the extent to which the Govern-
13 ment of the United States directs human and budg-
14 etary resources toward foreign intelligence and infor-
15 mation collection and analysis across all agencies
16 and through the interagency process based on collec-
17 tion and analysis requirements; and

18 (B) provide recommendations to ensure that
19 adequate resources are provided to meet such re-
20 quirements;

21 (4)(A) evaluate the extent to which country
22 missions participate in the interagency strategies
23 and budget allocations for foreign intelligence and
24 information collection, analysis, and reporting; and

1 (B) provide recommendations for the relevant
2 role of country missions;

3 (5)(A) evaluate the extent to which major mis-
4 sions identified in the 2005 National Intelligence
5 Strategy and the 2006 Annual Report of the United
6 States Intelligence Community, specifically related to
7 global and transnational issues, have been supported
8 with human and budgetary resources; and

9 (B) provide recommendations for directing re-
10 sources to such missions;

11 (6)(A) evaluate the extent to which the require-
12 ment, stated in 2005 National Intelligence Strategy
13 and the 2006 Annual Report, to provide policy mak-
14 ers with intelligence and information to anticipate
15 crises before they occur and respond accordingly has
16 been supported with sustained human and budgetary
17 resources, particularly in countries and regions tra-
18 ditionally underserved by the intelligence community;
19 and

20 (B) provide recommendations for directing re-
21 sources to such requirement;

22 (7)(A) evaluate the extent to which require-
23 ments to collect foreign intelligence and information
24 to anticipate crises or emerging threats have been

1 met through existing collection and analytical capa-
2 bilities; and

3 (B) provide recommendations for improving the
4 prepositioning of foreign intelligence and information
5 collection and analytical capabilities to meet such re-
6 quirements;

7 (8)(A) evaluate—

8 (i) the extent to which foreign intelligence
9 and information collection, including diplomatic
10 reporting and public and open source informa-
11 tion and analytical resources, have been dis-
12 proportionately directed toward current crises,
13 rather than toward predictive analysis; and

14 (ii) the impact of the allocation of re-
15 sources on finished intelligence production and
16 diplomatic reporting; and

17 (B) provide recommendations for improving col-
18 lection, reporting, and analysis of intelligence and
19 information in accordance with the need for pre-
20 dictive analysis, finished intelligence production, and
21 diplomatic reporting on emerging and strategic
22 issues and on current crises;

23 (9)(A) evaluate all existing strategic plans for
24 the collection, reporting, and analysis of information
25 obtained through diplomatic reporting by the De-

1 partment of State and other agencies and depart-
2 ments of the United States that are not elements of
3 the intelligence community and the extent to which
4 human and budgetary resources have supported such
5 plans; and

6 (B) provide recommendations to improve proc-
7 esses for establishing such strategies;

8 (10)(A) evaluate the extent to which out-of-cap-
9 ital embassy posts of personnel of the Department
10 of State and other agencies and departments of the
11 United States contribute to information collection
12 objectives; and

13 (B) provide recommendations for improving col-
14 lection, analysis, and reporting capabilities of such
15 posts or if such posts do not exist, provide an assess-
16 ment of whether there is a need for the creation of
17 such posts;

18 (11)(A) evaluate the extent to which the re-
19 quirement, stated in the Strategic Plan of the De-
20 partment of State, to provide policy makers informa-
21 tion to anticipate crises before they occur and re-
22 spond accordingly, has been supported with sus-
23 tained human and budgetary resources, particularly
24 in countries and regions traditionally underserved by
25 the Department of State staff and posts; and

1 (B) provide recommendations for directing re-
2 sources to such requirements;

3 (12)(A) evaluate the extent to which the ele-
4 ments of the intelligence community, the Depart-
5 ment of State, and other agencies and departments
6 of the United States have promoted and developed
7 language, cultural training, and other qualifications
8 for effective collection of foreign intelligence and in-
9 formation in countries and regions to which the re-
10 sources of the intelligence community and the posi-
11 tioning of country mission personnel have tradition-
12 ally been limited; and

13 (B) provide recommendations for improving
14 such language and other qualifications;

15 (13)(A) evaluate the capabilities of the Govern-
16 ment of the United States to collect and report on
17 foreign intelligence and information, including public
18 and open source information, and conduct analysis
19 with regard to ungoverned and undergoverned coun-
20 tries and regions, terrorist safe havens, civil and re-
21 gional conflicts, arms trafficking, stability, corrup-
22 tion, radicalization and marginalization of specific
23 groups and human rights and governance concerns;
24 and

1 (B) provide recommendations to improve collec-
2 tion, reporting, and analysis with regard to such
3 countries and regions and the issues described in
4 subparagraph (A);

5 (14)(A) identify any regional and thematic gaps
6 in foreign intelligence and information collection,
7 analysis, and reporting; and

8 (B) provide recommendations to overcome such
9 gaps, including gaps related to the allocation of
10 human and budgetary resources and processes for
11 collection, reporting, and analysis of such intel-
12 ligence and information;

13 (15)(A) identify impediments to directing
14 human and budgetary resources toward collection,
15 analysis, and reporting gaps, including the reasons
16 for, and consequences of, such impediments; and

17 (B) provide recommendations for overcoming
18 such impediments;

19 (16)(A) evaluate policies of the elements of the
20 intelligence community, the Department of State
21 and other agencies and departments of the United
22 States to ensure sustained deployment of qualified
23 personnel in remote or hardship areas of strategic
24 significance; and

1 (B) provide recommendations for improving
2 such policies; and

3 (17)(A) evaluate processes and mechanisms for
4 reporting of information from country missions to
5 policy makers and human and budgetary resources
6 directed toward such reporting; and

7 (B) provide recommendations to improve such
8 reporting.

9 **SEC. 5. MEMBERS AND STAFF OF THE COMMISSION.**

10 (a) MEMBERS OF THE COMMISSION.—

11 (1) APPOINTMENT.—The Commission shall be
12 composed of 14 members as follows:

13 (A) Three members appointed by the ma-
14 jority leader of the Senate.

15 (B) Three members appointed by the mi-
16 nority leader of the Senate.

17 (C) Three members appointed by the
18 Speaker of the House of Representatives.

19 (D) Three members appointed by the mi-
20 nority leader of the House of Representatives.

21 (E) One nonvoting member appointed by
22 the Director of National Intelligence.

23 (F) One nonvoting member appointed by
24 the Secretary of State.

25 (2) SELECTION.—

1 (A) IN GENERAL.—Members of the Com-
2 mission shall be individuals who—

3 (i) are private citizens; and

4 (ii) have—

5 (I) knowledge and experience in
6 foreign information and intelligence
7 collection, analysis, and reporting, in-
8 cluding clandestine collection and clas-
9 sified analysis, diplomatic reporting
10 and analysis, and collection of public
11 and open source information;

12 (II) knowledge and experience in
13 issues related to the national security
14 and foreign policy of the United
15 States gained by serving as a senior
16 official of the Department of State, a
17 member of the Foreign Service, or an
18 employee or officer of an appropriate
19 agency or department of the United
20 States or an independent organization
21 with expertise in the field of inter-
22 national affairs; or

23 (III) knowledge and experience
24 with foreign policy decision making.

1 (B) DIVERSITY OF EXPERIENCE.—The in-
2 dividuals appointed to the Commission should
3 be selected with a view to establishing diversity
4 of experience with regard to various geographic
5 regions, functions, and issues.

6 (3) TIME OF APPOINTMENT.—The appoint-
7 ments under subsection (a) shall be made not later
8 than 60 days after the date of the enactment of this
9 Act.

10 (4) TERM OF APPOINTMENT.—Members shall
11 be appointed for the life of the Commission.

12 (5) VACANCIES.—Any vacancy of the Commis-
13 sion shall not affect the powers of the Commission
14 and shall be filled in the manner in which the origi-
15 nal appointment was made.

16 (6) CHAIR.—The members of the Commission
17 shall designate 1 of the voting members to serve as
18 the chair of the Commission.

19 (7) QUORUM.—Eight members of the Commis-
20 sion shall constitute a quorum for purposes of
21 transacting the business of the Commission.

22 (8) MEETINGS.—The Commission shall meet at
23 the call of the chair and shall meet regularly, not
24 less than once every 3 months, during the life of the
25 Commission.

1 (b) STAFF.—

2 (1) IN GENERAL.—The chair of the Commission
3 may, without regard to the civil service laws and
4 regulations, appoint and terminate an executive di-
5 rector and, in consultation with the executive direc-
6 tor, appoint and terminate such other additional per-
7 sonnel as may be necessary to enable the Commis-
8 sion to perform its duties. In addition to the execu-
9 tive director and 1 full-time support staff for the ex-
10 ecutive director, there shall be additional staff with
11 relevant intelligence and foreign policy experience to
12 help support the Commission’s work.

13 (2) SELECTION OF THE EXECUTIVE DIREC-
14 TOR.—The executive director shall be selected with
15 the approval of a majority of the members of the
16 Commission.

17 (3) COMPENSATION.—

18 (A) EXECUTIVE DIRECTOR.—The executive
19 director shall be compensated at the rate pay-
20 able for level IV of the Executive Schedule
21 under section 5315 of title 5, United States
22 Code.

23 (B) STAFF.—The chair of the Commission
24 may fix the compensation of other staff of the
25 Commission without regard to the provisions of

chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such personnel may not exceed the rate payable for level IV of the Executive Schedule under section 5315 of such title.

(c) EXPERTS AND CONSULTANTS.—This Commission is authorized to procure temporary or intermittent services of experts and consultants as necessary to the extent authorized by section 3109 of title 5, United States Code, at rates not to exceed the maximum annual rate of basic pay payable under section 5376 of such title.

(d) STAFF AND SERVICES OF OTHER AGENCIES OR DEPARTMENT OF THE UNITED STATES.—Upon the request of the Commission, the head of any agency or department of the United States may detail, on a reimbursable or nonreimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out this Act. The detail of any such personnel shall be without interruption or loss of civil service or Foreign Service status or privilege.

(e) SECURITY CLEARANCE.—The appropriate agencies or departments of the United States shall cooperate with the Commission in expeditiously providing to the

1 members and staff of the Commission appropriate security
 2 clearances to the extent possible pursuant to existing pro-
 3 cedures and requirements.

4 **SEC. 6. POWERS AND DUTIES OF THE COMMISSION.**

5 (a) IN GENERAL.—

6 (1) HEARINGS AND EVIDENCE.—The Commis-
 7 sion may, for the purpose of carrying out this Act—

8 (A) hold hearings, sit and act at times and
 9 places in the United States and in countries in
 10 which the United States has a diplomatic pres-
 11 ence, take testimony, and receive evidence as
 12 the Commission considers advisable to carry out
 13 this Act; and

14 (B) subject to subsection (b)(1), require,
 15 by subpoena or otherwise, the attendance and
 16 testimony of such witnesses and the production
 17 of such books, records, correspondence, memo-
 18 randa, papers, and documents, as the Commis-
 19 sion considers necessary.

20 (b) SUBPOENAS.—

21 (1) ISSUANCE.—

22 (A) IN GENERAL.—A subpoena may be
 23 issued under this section only—

24 (i) by the agreement of the chair of
 25 the Commission; and

1 (ii) by the affirmative vote of 6 mem-
2 bers of the Commission.

3 (B) SIGNATURE.—Subject to subparagraph
4 (A), subpoenas issued under this section may be
5 issued under the signature of the chair or any
6 member designated by a majority of the Com-
7 mission and may be served by any person des-
8 ignated by the chair or by a member designated
9 by a majority of the Commission.

10 (2) ENFORCEMENT.—

11 (A) IN GENERAL.—In the case of contu-
12 macy or failure to obey a subpoena issued
13 under this section, the United States district
14 court for the judicial district in which the sub-
15 poenaed person resides, is served, or may be
16 found, or where the subpoena is returnable,
17 may issue an order requiring such person to ap-
18 pear at any designated place to testify or to
19 produce documentary or other evidence. Any
20 failure to obey the order of the court may be
21 punished by the court as a contempt of that
22 court.

23 (B) ADDITIONAL ENFORCEMENT.—In the
24 case of any failure of any witness to comply
25 with any subpoena or to testify when sum-

1 moned under authority of this section, the Com-
2 mission may, by majority vote, certify a state-
3 ment of fact constituting such failure to the ap-
4 propriate United States attorney, who may
5 bring the matter before the grand jury for its
6 action, under the same statutory authority and
7 procedures as if the United States attorney had
8 received a certification under sections 102
9 through 104 of the Revised Statutes of the
10 United States (2 U.S.C. 192 through 194).

11 (c) INFORMATION FROM FEDERAL AGENCIES.—The
12 Commission may secure directly from any agency or de-
13 partment of the United States such information as the
14 Commission considers necessary to carry out this Act.
15 Upon request of the chair of the Commission, the head
16 of such agency or department shall furnish such informa-
17 tion to the Commission, subject to applicable law.

18 (d) POSTAL SERVICES.—The Commission may use
19 the United States mails in the same manner and under
20 the same conditions as other departments and agencies of
21 the United States.

22 (e) ADMINISTRATIVE SUPPORT.—The Administrator
23 of General Services shall provide to the Commission on
24 a reimbursable basis (or, in the discretion of the Adminis-
25 trator, on a nonreimbursable basis) such administrative

1 support services as the Commission may request to carry
2 out this Act.

3 (f) ADMINISTRATIVE PROCEDURES.—The Commis-
4 sion may adopt such rules and regulations, relating to ad-
5 ministrative procedure, as may be reasonably necessary to
6 enable it to carry out this Act.

7 (g) TRAVEL.—

8 (1) IN GENERAL.—The members and staff of
9 the Commission may, with the approval of the Com-
10 mission, conduct such travel as is necessary to carry
11 out this Act.

12 (2) EXPENSES.—Members of the Commission
13 shall serve without pay but shall be allowed travel
14 expenses, including per diem in lieu of subsistence,
15 at rates authorized for employees of agencies under
16 subchapter I of chapter 57 of title 5, United States
17 Code, while away from their homes or regular places
18 of business in the performance of services for the
19 Commission.

20 (h) GIFTS.—No member of the Commission may re-
21 ceive a gift or benefit by reason of such member's service
22 on the Commission.

23 **SEC. 7. REPORT OF THE COMMISSION.**

24 (a) IN GENERAL.—

1 (1) INTERIM REPORT.—Not later than 18
2 months after the members of the Commission are
3 appointed under section 5(a), the Commission shall
4 submit an interim report to the congressional intel-
5 ligence committees setting forth the preliminary
6 findings and recommendations of the Commission
7 described in section 4(b).

8 (2) FINAL REPORT.—Not later than 6 months
9 after the submission of the report required by para-
10 graph (1), the Commission shall submit a final re-
11 port setting forth the final findings and rec-
12 ommendations of the Commission described in sec-
13 tion 4(b) to the following:

14 (A) The President.

15 (B) The Director of National Intelligence.

16 (C) The Secretary of State.

17 (D) The congressional intelligence commit-
18 tees.

19 (b) INDIVIDUAL OR DISSENTING VIEWS.—Each
20 member of the Commission may include that member's
21 dissenting views in a report required by paragraph (1) or
22 (2) of subsection (a).

23 (c) FORM OF REPORT.—The reports required by
24 paragraphs (1) and (2) of subsection (a), including any

1 finding or recommendation of such report, shall be sub-
2 mitted in both an unclassified and a classified form.

3 **SEC. 8. TERMINATION.**

4 The Commission shall terminate 60 days after the
5 submission of the report required by section 7(a)(2).

6 **SEC. 9. NONAPPLICABILITY OF FEDERAL ADVISORY COM-
7 MITTEE ACT.**

8 The Federal Advisory Committee Act (5 U.S.C. App.)
9 shall not apply to the Commission.

10 **SEC. 10. FUNDING.**

11 (a) TRANSFER FROM THE NATIONAL INTELLIGENCE
12 PROGRAM.—Of the amounts available for the National In-
13 telligence Program for fiscal year 2008, \$5,000,000 shall
14 be available for transfer to the Commission to carry out
15 this Act.

16 (b) AVAILABILITY.—The amounts made available to
17 the Commission pursuant to subsection (a) shall remain
18 available until the termination of the Commission.

○