

113TH CONGRESS
2D SESSION

S. 2439

To amend the Inspector General Act of 1978 to provide for the Inspector General of the National Security Agency to be appointed by the President, by and with the advice and consent of the Senate, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 5, 2014

Mrs. MCCASKILL (for herself, Mr. COATS, Ms. MIKULSKI, Mr. TESTER, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence

A BILL

To amend the Inspector General Act of 1978 to provide for the Inspector General of the National Security Agency to be appointed by the President, by and with the advice and consent of the Senate, 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 “NSA Internal Watch-
5 dog Act”.

1 **SEC. 2. INSPECTOR GENERAL OF THE NATIONAL SECURITY**
2 **AGENCY.**

3 (a) **ELEVATION OF INSPECTOR GENERAL STATUS.**—
4 The Inspector General Act of 1978 (5 U.S.C. App.) is
5 amended—

6 (1) in section 8G(a)(2), by striking “the Na-
7 tional Security Agency,”; and

8 (2) in section 12—

9 (A) in paragraph (1), by inserting “the Di-
10 rector of the National Security Agency,” after
11 “Export-Import Bank;”; and

12 (B) in paragraph (2), by inserting “the
13 National Security Agency,” after “the National
14 Aeronautics and Space Administration,”.

15 (b) **DATE OF APPOINTMENT.**—Not later than 90
16 days after the date of the enactment of this Act, the Presi-
17 dent shall nominate a person for appointment, by and with
18 the advice and consent of the Senate, as Inspector General
19 of the National Security Agency under section 3(a) of the
20 Inspector General Act of 1978 (5 U.S.C. App.) consistent
21 with the amendments made by subsection (a).

22 (c) **TRANSITION RULE.**—An individual serving as In-
23 spector General of the National Security Agency on the
24 date of the enactment of this Act pursuant to an appoint-
25 ment made under section 8G of the Inspector General Act
26 of 1978 (5 U.S.C. App.)—

1 (1) may continue so serving until the President
2 makes an appointment under section 3(a) of such
3 Act with respect to the National Security Agency
4 consistent with the amendments made by subsection
5 (a); and

6 (2) shall, while serving under paragraph (1), re-
7 main subject to the provisions of section 8G of such
8 Act that, immediately before the date of the enact-
9 ment of this Act, applied with respect to the Inspec-
10 tor General of the National Security Agency and
11 suffer no reduction in pay.

12 **SEC. 3. ANNUAL REVIEW OF MECHANISMS FOR REPORTING**
13 **EMPLOYEE OR CONTRACTOR COMPLAINTS.**

14 Section 8H(g)(1) of the Inspector General Act of
15 1978 (5 U.S.C. App.) is amended by adding at the end
16 the following new subparagraph:

17 “(E) In the case of the Inspector General
18 of the National Security Agency, a review of the
19 mechanisms for submitting complaints that are
20 available to an employee of or contractor to the
21 National Security Agency and any recommenda-
22 tions of the Inspector General for improving
23 such mechanisms.”.

1 **SEC. 4. SPECIAL PROVISIONS CONCERNING THE NATIONAL**
 2 **SECURITY AGENCY.**

3 The Inspector General Act of 1978 (5 U.S.C. App.)
 4 is amended by inserting after section 8J the following new
 5 section:

6 **“SEC. 8K. SPECIAL PROVISIONS CONCERNING THE NA-**
 7 **TIONAL SECURITY AGENCY.**

8 “(a) GENERAL COUNSEL TO THE INSPECTOR GEN-
 9 ERAL.—

10 “(1) IN GENERAL.—There is a General Counsel
 11 to the Inspector General of the National Security
 12 Agency, who shall be appointed by the Inspector
 13 General of the National Security Agency.

14 “(2) DUTIES.—The General Counsel to the In-
 15 spector General of the National Security Agency
 16 shall—

17 “(A) serve as the chief legal officer of the
 18 Office of the Inspector General of the National
 19 Security Agency;

20 “(B) provide legal services only to the In-
 21 spector General of the National Security Agen-
 22 cy;

23 “(C) perform such functions as the Inspec-
 24 tor General may prescribe; and

25 “(D) serve at the discretion of the Inspec-
 26 tor General.

1 “(3) OFFICE OF THE GENERAL COUNSEL.—

2 There is an Office of the General Counsel to the In-
3 specter General of the National Security Agency.

4 The Inspector General may appoint to the Office to
5 serve as staff of the General Counsel such legal
6 counsel as the Inspector General considers appro-
7 priate.

8 “(b) TESTIMONY.—

9 “(1) AUTHORITY TO COMPEL.—The Inspector
10 General of the National Security Agency is author-
11 ized to require by subpoena the attendance and tes-
12 timony of former employees of the National Security
13 Agency or contractors, former contractors, or former
14 detailees to the National Security Agency as nec-
15 essary in the performance of functions assigned to
16 the Inspector General by this Act.

17 “(2) REFUSAL TO OBEY.—A subpoena issued
18 under this subsection, in the case of contumacy or
19 refusal to obey, shall be enforceable by order of any
20 appropriate United States district court.

21 “(3) NOTIFICATION.—The Inspector General
22 shall notify the Attorney General 7 days before
23 issuing any subpoena under this section.

24 “(c) PROHIBITIONS ON INVESTIGATIONS FOR NA-
25 TIONAL SECURITY REASONS.—

1 “(1) EVALUATIONS OF PROHIBITIONS.—Not
2 later than 7 days after the date on which the Inspec-
3 tor General of the National Security Agency receives
4 notice or a statement under section 8G(d)(2)(C) of
5 the reasons the Secretary of Defense is prohibiting
6 the Inspector General from initiating, carrying out,
7 or completing any audit or investigation, the Inspec-
8 tor General shall submit to the Permanent Select
9 Committee on Intelligence and the Committee on
10 Armed Services of the House of Representatives and
11 the Select Committee on Intelligence and the Com-
12 mittee on Armed Services of the Senate an evalua-
13 tion of such notice or such statement.

14 “(2) INCLUSION IN SEMI-ANNUAL REPORT.—
15 The Inspector General shall include in the semi-
16 annual report prepared by the Inspector General in
17 accordance with section 5(a) a description of the in-
18 stances in which the Secretary of Defense prohibited
19 the Inspector General from initiating, carrying out,
20 or completing any audit or investigation during the
21 period covered by such report.

22 “(d) STANDARD FOR AUDITS AND INVESTIGA-
23 TIONS.—In carrying out any audit or investigation of a
24 surveillance or data collection program, the Inspector Gen-
25 eral shall—

1 “(1) assess the impact of such program on civil
2 rights and civil liberties;

3 “(2) assess the effectiveness and use, including
4 any improper or illegal use, of such program; and

5 “(3) make any recommendations the Inspector
6 General considers appropriate to improve the protec-
7 tion of civil rights and civil liberties in the operation
8 of such program.

9 “(e) AVAILABILITY OF REPORTS.—

10 “(1) AVAILABILITY.—Each report to Congress
11 or a committee of Congress by the Inspector General
12 shall be made available to all Members of Congress.

13 “(2) MEMBER OF CONGRESS DEFINED.—In this
14 subsection, the term ‘Member of Congress’ means a
15 Senator, a Member of the House of Representatives,
16 or a Delegate or Resident Commissioner to the Con-
17 gress.”.

18 **SEC. 5. AUDIT OF SURVEILLANCE PROGRAMS AND BACK-**
19 **GROUND INVESTIGATIONS.**

20 (a) AUDIT.—The Inspector General of the National
21 Security Agency appointed under section 3(a) of the In-
22 spector General Act of 1978 (5 U.S.C. App.) consistent
23 with the amendments made by section 2(a) of this Act
24 shall perform a comprehensive audit of—

1 (1) the effectiveness and use, including im-
2 proper or illegal use, of surveillance and data collec-
3 tion programs of the National Security Agency, in-
4 cluding programs conducted pursuant to sections
5 501 and 702 of the Foreign Intelligence Surveillance
6 Act of 1978 (50 U.S.C. 1861 and 1881a);

7 (2) the interactions between the National Secu-
8 rity Agency and the court established under section
9 103(a) of the Foreign Intelligence Surveillance Act
10 of 1978 (50 U.S.C. 1803(a)), including the accuracy
11 of the information provided to such court by the
12 Agency and the compliance of the Agency with or-
13 ders of such court; and

14 (3) the process for conducting background in-
15 vestigations of persons for purposes of employment
16 or potential employment by the National Security
17 Agency or for receiving access to classified informa-
18 tion.

19 (b) REPORT.—Not later than 180 days after the date
20 on which the Inspector General of the National Security
21 Agency is appointed under section 3(a) of the Inspector
22 General Act of 1978 (5 U.S.C. App.) consistent with the
23 amendments made by section 2(a) of this Act, the Inspec-
24 tor General of the National Security Agency shall submit
25 to the Permanent Select Committee on Intelligence of the

1 House of Representatives and the Select Committee on In-
2 telligence of the Senate a report containing the results of
3 the audit conducted under subsection (a).

4 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
5 tion shall be construed to alter the responsibility of the
6 Inspector General of the National Security Agency to con-
7 duct audits or investigations of the surveillance programs
8 of the National Security Agency and the background in-
9 vestigation process for employment or access to classified
10 information on an ongoing basis in accordance with the
11 Inspector General Act of 1978 (5 U.S.C. App.).

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