

Calendar No. 332

110TH CONGRESS
1ST SESSION**S. 2011**Entitled the "Protect America Act of 2007".

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2007

Mr. LEVIN (for himself and Mr. ROCKEFELLER) introduced the following bill;
which was read twice, considered, read the third time, and failed of passage

AUGUST 3, 2007

Ordered to be placed on the calendar

A BILL

Entitled the "Protect America Act of 2007".

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. PURPOSE.**

4 To provide for a procedure before the FISA Court
5 for an order, which may be amended as necessary at the
6 request of the Government with the approval of the Court,
7 authorizing procedures, guidelines, means or methods that
8 will permit the collection of intelligence between foreign
9 persons located outside the United States, while bringing

1 incidental contacts with United States persons at home
2 or abroad into compliance with existing law and minimiza-
3 tion procedures.

4 **SEC. 2. ADDITIONAL PROCEDURE FOR AUTHORIZING CER-**
5 **TAIN ELECTRONIC SURVEILLANCE.**

6 (a) IN GENERAL.—The Foreign Intelligence Surveil-
7 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended
8 by inserting after section 105 the following:

9 “CLARIFICATION OF SURVEILLANCE OF PERSONS
10 OUTSIDE THE UNITED STATES

11 “SEC. 105A. Notwithstanding any other provision of
12 this Act, a court order is not required for the electronic
13 surveillance of the contents of any communication between
14 persons that are not located within the United States for
15 the purpose of collecting foreign intelligence information,
16 without respect to whether the communication passes
17 through the United States or the surveillance device is lo-
18 cated within the United States.

19 “ADDITIONAL PROCEDURE FOR COURT APPROVAL FOR
20 AUTHORIZING CERTAIN ELECTRONIC SURVEILLANCE

21 “SEC. 105B. (a) IN GENERAL.—Notwithstanding
22 any other provision of this title, the Attorney General, in
23 consultation with Director of National Intelligence, upon
24 the authorization of the President, may apply to a judge
25 of the court established under section 103(a) for an ex
26 parte order, or an extension of an order, authorizing elec-

1 tronic surveillance for a period of 1 year, in accordance
2 with this section.

3 “(b) APPLICATION.—

4 “(1) CONTENTS.—An application for an order,
5 or extension of an order, submitted under subsection
6 (a) shall include—

7 “(A) the identity of the Federal officer
8 making the application;

9 “(B) a written certification made under
10 oath by the Director of National Intelligence
11 and the Attorney General that—

12 “(i) there are reasonable procedures
13 in place for determining that the electronic
14 surveillance under this section is directed
15 at persons reasonably believed to be lo-
16 cated outside the United States;

17 “(ii) there are reasonable procedures
18 in place to assess the implementation of
19 the procedures described in subclause (i) to
20 achieve the objective described in that sub-
21 clause;

22 “(iii) the acquisition does not con-
23 stitute electronic surveillance within the
24 meaning of paragraph (1) or (3) of section
25 101(f), and, to the extent any acquisition

1 constitutes electronic surveillance within
2 the meaning of paragraph (2) or (4) of
3 section 101(f), that it is approved or mini-
4 mized as appropriate;

5 “(iv) a significant purpose of the elec-
6 tronic surveillance is to obtain foreign in-
7 telligence information;

8 “(v) the proposed minimization proce-
9 dures meet the definition of minimization
10 procedures under section 101(h); and

11 “(vi) the electronic surveillance in-
12 volves obtaining foreign intelligence infor-
13 mation from or with the assistance of a
14 communications service provider, custo-
15 dian, or other person (including any offi-
16 cer, employee, agent or other specified per-
17 son of such service provider, custodian, or
18 other person) who has access to commu-
19 nications, either as they are transmitted or
20 while they are stored, or equipment that is
21 being or may be used to transmit or store
22 such communications;

23 “(C) a general description of the nature of
24 the foreign intelligence information sought; and

1 “(D) a general statement of the means by
2 which the electronic surveillance will be ef-
3 fected.

4 “(2) SPECIFIC PERSONS AND PLACES NOT RE-
5 QUIRED.—

6 “(A) An application for an order, or exten-
7 sion of an order, submitted under subsection
8 (a) shall not be required to identify—

9 “(i) the persons, other than a foreign
10 power, against whom the electronic surveil-
11 lance will be directed; or

12 “(ii) the specific facilities, places,
13 premises, or property at which the elec-
14 tronic surveillance will be directed or con-
15 ducted.

16 “(c) APPLICATION APPROVAL; ORDER.—

17 “(1) APPLICATION APPROVAL.—Notwith-
18 standing any other law, a judge considering an ap-
19 plication for an order, or extension of an order, sub-
20 mitted under subsection (a) shall—

21 “(A) assess—

22 “(i) the procedures by which the Gov-
23 ernment determines that electronic surveil-
24 lance under this section is directed at per-

1 sons reasonably believed to be located out-
2 side the United States; and

3 “(ii) the minimization procedures to
4 be used with respect to United States per-
5 sons from such electronic surveillance ac-
6 tivity; and

7 “(B) approve such application if the judge
8 determines that the procedures assessed are in
9 accordance with law and are reasonably de-
10 signed to determine whether the targets are
11 outside the United States.

12 “(2) ORDER.—A judge approving an applica-
13 tion pursuant to paragraph (1) shall issue an order
14 that—

15 “(A)(i) authorizes the electronic surveil-
16 lance as requested; and

17 “(ii) approves the minimization procedures
18 with respect to United States persons;

19 “(B) directs the applicant to follow the
20 procedures referred to in section
21 105B(b)(1)(B)(i) and the minimization proce-
22 dures submitted by the Government as ap-
23 proved;

24 “(C) at the request of the applicant, re-
25 quires a specified communications service pro-

1 vider, custodian, or other specified person, to
2 furnish the applicant forthwith with all infor-
3 mation, facilities, or technical assistance nec-
4 essary to accomplish the electronic surveillance
5 in a manner that will protect the secrecy of the
6 electronic surveillance and produce a minimum
7 of interference with the services that provider,
8 custodian, or other person is providing; and

9 “(D) at the request of the applicant, re-
10 quires such communications provider, custo-
11 dian, or other specified person to maintain
12 under security procedures approved by the At-
13 torney General and the Director of National In-
14 telligence any records concerning the electronic
15 surveillance or the aid furnished that such per-
16 son wishes to maintain.

17 “(3) MINIMIZATION PROCEDURES.—An applica-
18 tion for reauthorization of an order issued under
19 this section, shall contain a description of the Gov-
20 ernment’s minimization procedures.

21 “(d) GUIDELINES FOR SURVEILLANCE OF UNITED
22 STATES PERSONS.—Not later than 15 days after the date
23 of the enactment of this section, the Attorney General
24 shall establish guidelines that address communications
25 with persons inside the United States and United States

1 persons outside the United States and are designed to en-
2 sure that an application is filed under section 104 when
3 the Attorney General seeks to continue electronic surveil-
4 lance that began under this section but—

5 “(1) effectively is or has become surveillance of
6 a person within the United States; or

7 “(2) is of a nature or quantity as to infringe on
8 the reasonable expectation of privacy of persons
9 within the United States.

10 “(e) COMPENSATION.—The Government shall com-
11 pensate, at the prevailing rate, a person for providing in-
12 formation, facilities, or assistance pursuant to an order
13 of the court under this section or pursuant to a directive
14 under section 105C.

15 “(f) LIABILITY.—Notwithstanding any other law, no
16 cause of action shall lie in any court against any person
17 for providing any information, facilities, or assistance in
18 accordance with an order under this section or a directive
19 under section 105C.

20 “(g) RETENTION OF ORDERS.—An order granted
21 under this section and directives under section 105C shall
22 be retained for a period of not less than 10 years from
23 the date on which such order or directive is made.

24 “(h) APPEAL.—The Government may appeal any de-
25 nial of an application submitted under this section to the

1 court established under section 103(b). If such court de-
2 termines that the denial was properly entered, the court
3 shall immediately provide for the record a written state-
4 ment of each reason for its decision, and, on petition of
5 the United States for a writ of certiorari, the record shall
6 be transmitted under seal to the Supreme Court of the
7 United States, which shall have jurisdiction to review such
8 decision.

9 “IMMEDIATE AUTHORIZATION OF CERTAIN ELECTRONIC
10 SURVEILLANCE

11 “SEC. 105C. (a) IN GENERAL.—Notwithstanding
12 any law, the Director of National Intelligence and the At-
13 torney General, may, prior to the submission of an appli-
14 cation under section 105B, authorize the immediate elec-
15 tronic surveillance of persons reasonably believed to be
16 outside the United States if the Director of National Intel-
17 ligence and the Attorney General determine that it is in
18 the interest of the national security of the United States
19 to begin the electronic surveillance and such electronic sur-
20 veillance is subject to the certification to be filed as set
21 forth below. The authority in this subsection shall not be
22 used for successive or multiple authorizations of electronic
23 surveillance of the same or similar scope.

24 “(b) In such case, the Attorney General shall—

25 “(1) transmit within 5 days of the initiation of
26 electronic surveillance pursuant to this section under

1 seal to the court established under section 103(a) a
2 copy of a certification made under section
3 105B(b)(1)(B). Such certification shall be main-
4 tained under security measures established by the
5 Chief Justice of the United States and the Attorney
6 General, in consultation with the Director of Na-
7 tional Intelligence, and shall remain sealed except
8 upon motion of the Government;

9 “(2) submit an application for the approval of
10 such electronic surveillance to the court established
11 under section 103(a) as soon as practicable, but in
12 no event more than 10 days after the initiation of
13 the electronic surveillance; and

14 “(3) the court shall act on such application in
15 accordance with section 105B within 30 days after
16 receiving an application under this subsection. The
17 court may grant one or more extensions of not more
18 than 30 days, if the court determines that additional
19 time is needed. Any electronic surveillance subse-
20 quent to the court’s action shall be conducted only
21 if approved in accordance with section 105B. If the
22 application is disapproved, the data collected may be
23 used or disclosed only as authorized by the court.

1 “(c) SPECIFIC PERSONS AND PLACES NOT RE-
2 QUIRED.—A certification under subsection (a) is not re-
3 quired to identify—

4 “(1) the person or foreign power against whom
5 the electronic surveillance will be directed; or

6 “(2) the specific facilities, places, premises, or
7 property at which the electronic surveillance will be
8 directed or conducted.

9 “(d) DIRECTIVE.—With respect to an authorization
10 of electronic surveillance under this section, the Attorney
11 General, in consultation with the Director of National In-
12 telligence, may direct a specified communications service
13 provider, custodian, or other specified person, to—

14 “(1) furnish the applicant forthwith with all in-
15 formation, facilities, or technical assistance nec-
16 essary to accomplish the electronic surveillance in a
17 manner that will protect the secrecy of the electronic
18 surveillance and produce a minimum of interference
19 with the services that provider, custodian, or other
20 person is providing; and

21 “(2) maintain under security procedures ap-
22 proved by the Attorney General and the Director of
23 National Intelligence any records concerning the
24 electronic surveillance or the aid furnished that such
25 person wishes to maintain.

1 in coordination with the Inspector General of the Office
2 of the Director of National Intelligence and the Inspector
3 General of the National Security Agency, shall inform, in
4 a manner consistent with the national security, the Select
5 Committee on Intelligence of the Senate, the Permanent
6 Select Committee on Intelligence of the House of Rep-
7 resentatives, the Committee on the Judiciary of the Sen-
8 ate, and the Committee on the Judiciary of the House of
9 Representatives, concerning electronic surveillance under
10 this section during the previous four-month period. Among
11 the elements of each report made under this section shall
12 be—

13 “(1) an assessment of whether the Act is func-
14 tioning as intended and the degree to which the pro-
15 gram is resulting in the collection of communications
16 that originate or terminate inside the United States;

17 “(2) a description of the incidents of non-com-
18 pliance with a directive issued by the Attorney Gen-
19 eral under section 105C;

20 “(3) a copy of any guidelines and procedures
21 implementing this Act, including the guidelines es-
22 tablished pursuant to section 105B(d);

23 “(4) a description of any incidents of non-com-
24 pliance by an element of the Intelligence Community
25 with guidelines or procedures established for deter-

1 mining that the electronic surveillance authorized by
2 the Attorney General and Director of National Intel-
3 ligence directed at persons reasonably believed to be
4 outside the United States;

5 “(5) a description of any incidents of non-com-
6 pliance with respect to minimization procedures and
7 approval requirements concerning U.S. persons; and

8 “(6) the number of certifications and directives
9 issued under section 105C during the reporting pe-
10 riod.”.

11 (b) TECHNICAL AND CONFORMING AMENDMENT.—
12 The table of contents in the first section of the Foreign
13 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et
14 seq.) is amended by inserting after the item relating to
15 section 105 the following:

“Sec. 105A. Clarification of surveillance of persons outside the United States.

“Sec. 105B. Additional procedure for court approval authorizing certain elec-
tronic surveillance.

“Sec. 105C. Immediate authorization of certain electronic surveillance.

“Sec. 105D. Report to Congress.”.

16 **SEC. 3. EFFECTIVE DATE; TRANSITION PROCEDURES.**

17 (a) Except as otherwise provided, the amendments
18 made by this Act shall take effect immediately after the
19 date of the enactment of this Act.

20 (b) Notwithstanding any other provision of this Act,
21 any order in effect on the date of enactment of this Act
22 issued pursuant to the Foreign Intelligence Surveillance
23 Act of 1978 (50 U.S.C. 1801 et seq.) shall remain in effect

1 until the date of expiration of such order, and, at the re-
2 quest of the applicant, the court established under section
3 103(a) of such Act (50 U.S.C. 1803(a)) shall reauthorize
4 such order as long as the facts and circumstances continue
5 to justify issuance of such order under the provisions of
6 the Foreign Intelligence Surveillance Act of 1978, as in
7 effect on the day before the applicable effective date of
8 this Act. The Government also may file new applications,
9 and the court established under section 103(a) of the For-
10 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
11 1803(a)) shall enter orders granting such applications
12 pursuant to such Act, as long as the application meets
13 the requirements set forth under the provisions of such
14 Act as in effect on the day before the effective date of
15 this Act. At the request of the applicant, the court estab-
16 lished under section 103(a) of the Foreign Intelligence
17 Surveillance Act of 1978 (50 U.S.C. 1803(a)), shall extin-
18 guish any extant authorization to conduct electronic sur-
19 veillance or physical search entered pursuant to such Act.
20 Any electronic surveillance or physical search conducted
21 pursuant to an order entered under this subsection shall
22 be subject to the provisions of the Foreign Intelligence
23 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as in
24 effect on the day before the effective date of this Act.

1 **SEC. 4. SUNSET.**

2 (a) Except as provided in subsections (b) and (c) the
3 amendments made by this Act shall cease to have force
4 or effect 180 days after the date of enactment of this Act.

5 (b) Any order under section 105B of the Foreign In-
6 telligence Surveillance Act of 1978, as added by this Act,
7 in effect on the date described in paragraph (1) shall con-
8 tinue in effect until the date of the expiration of such
9 order.

10 (c) The expiration of amendments pursuant to sub-
11 section (a) shall not have any effect upon the liability of
12 any party under subsection (e) of section 105B. Notwith-
13 standing subsection (a), subsection (e) of section 105B
14 shall remain in effect with regard to action taken in ac-
15 cordance with sections 105A, B, C, and D.

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110TH CONGRESS
1ST Session

S. 2011

A BILL

Entitled the "Protect America Act of 2007".

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