

117TH CONGRESS
2D SESSION

S. 4634

To require the Secretary of Energy to administer polygraph examinations to certain foreign nationals with access to nonpublic areas or information of the National Laboratories.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2022

Mr. BARRASSO introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To require the Secretary of Energy to administer polygraph examinations to certain foreign nationals with access to nonpublic areas or information of the National Laboratories.

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. POLYGRAPH EXAMINATIONS FOR CERTAIN**
4 **FOREIGN NATIONALS WITH ACCESS TO NON-**
5 **PUBLIC NATIONAL LABORATORY AREAS OR**
6 **INFORMATION.**

7 (a) DEFINITIONS.—In this section:

8 (1) COVERED FOREIGN NATIONAL.—

1 (A) IN GENERAL.—The term “covered for-
2 eign national” means a foreign national who—

3 (i) is a citizen or national of, or other-
4 wise owes allegiance to, a country that, as
5 of the date described in subparagraph (B),
6 is designated as a country of particular
7 concern under section 402 of the Inter-
8 national Religious Freedom Act of 1998
9 (22 U.S.C. 6442); and

10 (ii) is not—

11 (I) a national of the United
12 States; or

13 (II) lawfully admitted for perma-
14 nent residence.

15 (B) DATE DESCRIBED.—The date referred
16 to in subparagraph (A)(i) is, as applicable—

17 (i) the date on which the foreign na-
18 tional begins work—

19 (I) in a position at a National
20 Laboratory; or

21 (II) in any other position at the
22 Department in which the foreign na-
23 tional will have access to nonpublic
24 areas, data, or information of a Na-
25 tional Laboratory; or

1 (ii) the date on which the foreign na-
2 tional is initially granted access to non-
3 public areas, data, or information of a Na-
4 tional Laboratory under a contract or
5 agreement with the Department.

6 (2) DEPARTMENT.—The term “Department”
7 means the Department of Energy.

8 (3) LAWFULLY ADMITTED FOR PERMANENT
9 RESIDENCE.—The term “lawfully admitted for per-
10 manent residence” has the meaning given the term
11 in section 101(a) of the Immigration and Nationality
12 Act (8 U.S.C. 1101(a)).

13 (4) NATIONAL OF THE UNITED STATES.—The
14 term “national of the United States” has the mean-
15 ing given the term in section 101(a) of the Immigra-
16 tion and Nationality Act (8 U.S.C. 1101(a)).

17 (5) NATIONAL LABORATORY.—The term “Na-
18 tional Laboratory” has the meaning given the term
19 in section 2 of the Energy Policy Act of 2005 (42
20 U.S.C. 15801).

21 (6) QUALIFYING POLYGRAPH EXAMINATION.—
22 The term “qualifying polygraph examination” means
23 a polygraph examination that is carried out in a
24 manner that, as determined by the Secretary, is con-
25 sistent with Intelligence Community Policy Guidance

1 704.6 published by the Director of National Intel-
2 ligence and entitled “Conduct of Polygraph Exami-
3 nations for Personnel Security Vetting” (or suc-
4 cessor guidance).

5 (7) SECRETARY.—The term “Secretary” means
6 the Secretary of Energy, acting through the Director
7 of the Office of Intelligence and Counterintelligence.

8 (b) QUALIFYING POLYGRAPH EXAMINATIONS.—

9 (1) POTENTIAL EMPLOYEES OF THE DEPART-
10 MENT.—Before a covered foreign national is hired
11 by the Department to work in a position at a Na-
12 tional Laboratory or in any position in which the
13 covered foreign national will have access to non-
14 public areas, data, or information of a National Lab-
15 oratory, the Secretary shall administer a qualifying
16 polygraph examination to the covered foreign na-
17 tional.

18 (2) EXISTING EMPLOYEES OF THE DEPART-
19 MENT.—

20 (A) IN GENERAL.—Before an employee of
21 the Department who is a covered foreign na-
22 tional may be transferred to a position at a Na-
23 tional Laboratory or to any other position at
24 the Department in which the employee will have
25 access to nonpublic areas, data, or information

1 of a National Laboratory, the Secretary shall
2 administer a qualifying polygraph examination
3 to the employee.

4 (B) CERTAIN EXISTING EMPLOYEES WITH
5 ACCESS TO NONPUBLIC INFORMATION.—

6 (i) EXISTING EMPLOYEES WHO ARE
7 COVERED FOREIGN NATIONALS.—Each em-
8 ployee of the Department who, as of the
9 date of enactment of this Act, is a covered
10 foreign national who works in a position at
11 a National Laboratory or in any other po-
12 sition at the Department in which the em-
13 ployee has access to nonpublic areas, data,
14 or information of a National Laboratory
15 shall be required to submit to a qualifying
16 polygraph examination by a date deter-
17 mined by the Secretary, but not later than
18 1 year after the date of enactment of this
19 Act, to remain in that position.

20 (ii) EXISTING EMPLOYEES WHO BE-
21 COME COVERED FOREIGN NATIONALS.—An
22 employee of the Department who works in
23 a position at a National Laboratory or in
24 any other position at the Department in
25 which the employee has access to nonpublic

1 areas, data, or information of a National
2 Laboratory shall be required to submit to
3 a qualifying polygraph examination—

4 (I) as soon as practicable after
5 becoming a covered foreign national;
6 and

7 (II) before being transferred,
8 promoted, or otherwise hired into an-
9 other position at the Department in
10 which the employee will have access to
11 nonpublic areas, data, or information
12 of a National Laboratory if the em-
13 ployee is a covered foreign national as
14 of the date of the transfer, promotion,
15 or hiring.

16 (3) CONTRACTORS AND OTHER INDIVIDUALS
17 WITH ACCESS TO NONPUBLIC INFORMATION.—Be-
18 fore a covered foreign national is initially granted
19 access to nonpublic areas, data, or information of a
20 National Laboratory under a contract or agreement
21 with the Department, the Secretary shall administer
22 a qualifying polygraph examination to the covered
23 foreign national.

24 (c) SPECIFIC ISSUE POLYGRAPH EXAMINATIONS.—

25 The Secretary may require a covered foreign national to

1 submit to a Specific Issue Polygraph examination (within
2 the meaning of Intelligence Community Policy Guidance
3 704.6 published by the Director of National Intelligence
4 and entitled “Conduct of Polygraph Examinations for Per-
5 sonnel Security Vetting” (or successor guidance)) at any
6 time during which the covered foreign national is employed
7 by the Department.

8 (d) REEXAMINATION.—The Secretary shall require
9 each employee of the Department who is a covered foreign
10 national to be reexamined with an appropriate polygraph
11 examination—

12 (1) not less frequently than once every 5 years
13 while employed by the Department; and

14 (2) in a manner consistent with other members
15 of the intelligence community (as defined in section
16 3 of the National Security Act of 1947 (50 U.S.C.
17 3003)) that require reexamination every 5 years.

18 (e) REFUSAL OF EXAMINATION; TERMINATION OF
19 EMPLOYMENT.—

20 (1) IN GENERAL.—If a covered foreign national
21 refuses to submit to a polygraph examination under
22 this section—

23 (A) the covered foreign national shall not
24 be granted access to any nonpublic areas, data,
25 or information of a National Laboratory, and

any existing grant of access to such areas, data,
or information shall be immediately revoked;
and

(B) if the covered foreign national is an
employee of the Department, the employment of
the covered foreign national at the Department
shall be terminated.

(2) CERTAIN EMPLOYEES OF THE DEPART-
MENT.—

(A) EMPLOYEES UNDER CONSIDERATION
FOR TRANSFER TO CERTAIN POSITIONS.—Para-
graph (1)(B) shall apply to an employee of the
Department described in subsection (b)(2)(A)
who does not have access to nonpublic areas,
data, or information of the Department but is
under consideration for a transfer to a position
described in that paragraph such that, if the
employee refuses to submit to a polygraph ex-
amination under this section—

(i) the employee shall be ineligible for
the transfer; and

(ii) the employment of the employee
at the Department shall be terminated.

(B) EMPLOYEES WITH ACCESS TO NON-
PUBLIC AREAS OR INFORMATION.—Paragraph

1 (1)(B) shall apply to any employee of the De-
2 partment who is a covered foreign national and
3 works in a position at a National Laboratory or
4 in any other position at the Department in
5 which the employee has access to nonpublic
6 areas, data, or information of a National Lab-
7 oratory such that, if the employee refuses to
8 submit to a polygraph examination under this
9 section, the employment of the employee at the
10 Department, including at any National Labora-
11 tory, shall be terminated.

12 (3) POTENTIAL EMPLOYEES OF THE DEPART-
13 MENT.—A covered foreign national who is under
14 consideration for employment in a position described
15 in subsection (b)(1) and refuses to submit to a poly-
16 graph examination under this section—

17 (A) shall be removed from consideration
18 for employment in that position; and

19 (B) in accordance with paragraph (4),
20 shall not be eligible for employment at the De-
21 partment, including at any National Labora-
22 tory.

23 (4) SUBSEQUENT EMPLOYMENT AT THE DE-
24 PARTMENT.—

1 (A) IN GENERAL.—A covered foreign na-
2 tional shall not be eligible for employment at
3 the Department, including at any National Lab-
4 oratory, if the covered foreign national pre-
5 viously refused to submit to a polygraph exam-
6 ination under this section.

7 (B) CHANGE IN STATUS.—A foreign na-
8 tional who is lawfully admitted for permanent
9 residence shall not be eligible for employment at
10 the Department, including at any National Lab-
11 oratory, if the foreign national previously re-
12 fused to submit to a polygraph examination
13 under this section at a time when the foreign
14 national was a covered foreign national.

15 (f) SAVINGS PROVISION.—Nothing in this section au-
16 thorizes the Secretary to require an individual who is not
17 a covered foreign national to submit to a polygraph exam-
18 ination.

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