

118TH CONGRESS
1ST SESSION

S. 1518

To improve the classification and declassification of national security information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2023

Mr. CORNYN (for himself, Mr. WARNER, Mr. MORAN, Mr. WYDEN, Ms. COLLINS, Mr. KING, Mr. ROUNDS, Mr. HEINRICH, Mr. CASEY, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To improve the classification and declassification of national security information, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Sensible Classification Act of 2023”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Findings and sense of the Senate.
- Sec. 4. Classification authority.
- Sec. 5. Promoting efficient declassification review.

- Sec. 6. Training to promote sensible classification.
 Sec. 7. Improvements to Public Interest Declassification Board.
 Sec. 8. Implementation of technology for classification and declassification.
 Sec. 9. Studies and recommendations on necessity of security clearances.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) AGENCY.—The term “agency” has the
 4 meaning given the term “Executive agency” in sec-
 5 tion 105 of title 5, United States Code.

6 (2) CLASSIFIED INFORMATION.—The term
 7 “classified information” means information that has
 8 been determined pursuant to Executive order 12958
 9 (50 U.S.C. 3161 note; relating to classified national
 10 security information), or successor order, to require
 11 protection against unauthorized disclosure and is
 12 marked to indicate its classified status when in doc-
 13 umentary form.

14 (3) CLASSIFICATION.—The term “classifica-
 15 tion” means the act or process by which information
 16 is determined to be classified information.

17 (4) DECLASSIFICATION.—The term “declas-
 18 sification” means the authorized change in the sta-
 19 tus of information from classified information to un-
 20 classified information.

21 (5) DOCUMENT.—The term “document” means
 22 any recorded information, regardless of the nature of

1 the medium or the method or circumstances of re-
2 cording.

3 (6) DOWNGRADE.—The term “downgrade”
4 means a determination by a declassification author-
5 ity that information classified and safeguarded at a
6 specified level shall be classified and safeguarded at
7 a lower level.

8 (7) INFORMATION.—The term “information”
9 means any knowledge that can be communicated or
10 documentary material, regardless of its physical
11 form or characteristics, that is owned by, is pro-
12 duced by or for, or is under the control of the
13 United States Government.

14 (8) ORIGINATE, ORIGINATING, AND ORIGI-
15 NATED.—The term “originate”, “originating”, and
16 “originated”, with respect to classified information
17 and an authority, means the authority that classified
18 the information in the first instance.

19 (9) RECORDS.—The term “records” means the
20 records of an agency and Presidential papers or
21 Presidential records, as those terms are defined in
22 title 44, United States Code, including those created
23 or maintained by a government contractor, licensee,
24 certificate holder, or grantee that are subject to the

1 sponsoring agency’s control under the terms of the
 2 contract, license, certificate, or grant.

3 (10) SECURITY CLEARANCE.—The term “secu-
 4 rity clearance” means an authorization to access
 5 classified information.

6 (11) UNAUTHORIZED DISCLOSURE.—The term
 7 “unauthorized disclosure” means a communication
 8 or physical transfer of classified information to an
 9 unauthorized recipient.

10 (12) UNCLASSIFIED INFORMATION.—The term
 11 “unclassified information” means information that is
 12 not classified information.

13 **SEC. 3. FINDINGS AND SENSE OF THE SENATE.**

14 (a) FINDINGS.—The Senate makes the following
 15 findings:

16 (1) According to a report released by the Office
 17 of the Director of Intelligence in 2020 titled “Fiscal
 18 Year 2019 Annual Report on Security Clearance De-
 19 terminations”, more than 4,000,000 individuals have
 20 been granted eligibility for a security clearance.

21 (2) At least 1,300,000 of such individuals have
 22 been granted access to information classified at the
 23 Top Secret level.

24 (b) SENSE OF THE SENATE.—It is the sense of the
 25 Senate that—

1 (1) the classification system of the Federal Gov-
2 ernment is in urgent need of reform;

3 (2) the number of people with access to classi-
4 fied information is exceedingly high and must be jus-
5 tified or reduced;

6 (3) reforms are necessary to reestablish trust
7 between the Federal Government and the people of
8 the United States; and

9 (4) classification should be limited to the min-
10 imum necessary to protect national security while
11 balancing the public's interest in disclosure.

12 **SEC. 4. CLASSIFICATION AUTHORITY.**

13 (a) IN GENERAL.—The authority to classify informa-
14 tion originally may be exercised only by—

15 (1) the President and, in the performance of ex-
16 ecutive duties, the Vice President;

17 (2) the head of an agency or an official of any
18 agency authorized by the President pursuant to a
19 designation of such authority in the Federal Reg-
20 ister; and

21 (3) an official of the Federal Government to
22 whom authority to classify information originally has
23 been delegated pursuant to subsection (c).

24 (b) SCOPE OF AUTHORITY.—An individual author-
25 ized by this section to classify information originally at

1 a specified level may also classify the information origi-
2 nally at a lower level.

3 (c) DELEGATION OF ORIGINAL CLASSIFICATION AU-
4 THORITY.—An official of the Federal Government may be
5 delegated original classification authority subject to the
6 following:

7 (1) Delegation of original classification author-
8 ity shall be limited to the minimum required to ad-
9 minister this section. Agency heads shall be respon-
10 sible for ensuring that designated subordinate offi-
11 cials have a demonstrable and continuing need to ex-
12 ercise this authority.

13 (2) Authority to originally classify information
14 at the level designated as “Top Secret” may be dele-
15 gated only by the President, in the performance of
16 executive duties, the Vice President, or an agency
17 head or official designated pursuant to subsection
18 (a)(2).

19 (3) Authority to originally classify information
20 at the level designated as “Secret” or “Confidential”
21 may be delegated only by the President, in the per-
22 formance of executive duties, the Vice President, or
23 an agency head or official designated pursuant to
24 subsection (a)(2), or the senior agency official de-
25 scribed in section 5.4(d) of Executive Order 13526

1 (50 U.S.C. 3161 note; relating to classified national
2 security information), or successor order, provided
3 that official has been delegated “Top Secret” origi-
4 nal classification authority by the agency head.

5 (4) Each delegation of original classification au-
6 thority shall be in writing and the authority shall
7 not be redelegated except as provided by paragraph
8 (1), (2), and (3). Each delegation shall identify the
9 official by name or position title.

10 (d) TRAINING REQUIRED.—

11 (1) IN GENERAL.—An individual may not be
12 delegated original classification authority under this
13 section unless the individual has first received train-
14 ing described in paragraph (2).

15 (2) TRAINING DESCRIBED.—Training described
16 in this paragraph is training on original classifica-
17 tion that includes instruction on the proper safe-
18 guarding of classified information and of the crimi-
19 nal, civil, and administrative sanctions that may be
20 brought against an individual who fails to protect
21 classified information from unauthorized disclosure.

22 (e) EXCEPTIONAL CASES.—

23 (1) IN GENERAL.—When an employee, Govern-
24 ment contractor, licensee, certificate holder, or
25 grantee of an agency who does not have original

1 classification authority originates information be-
2 lieved by that employee, contractor, licensee, certifi-
3 cate holder, or grantee to require classification, the
4 information shall be protected in a manner con-
5 sistent with Executive Order 13526 (50 U.S.C. 3161
6 note; relating to classified national security informa-
7 tion), or successor order.

8 (2) TRANSMITTAL.—An employee, contractor,
9 licensee, certificate holder, or grantee described in
10 paragraph (1), who originates information described
11 in such paragraph, shall promptly transmit such in-
12 formation to—

13 (A) the agency that has appropriate sub-
14 ject matter interest and classification authority
15 with respect to this information; or

16 (B) if it is not clear which agency has ap-
17 propriate subject matter interest and classifica-
18 tion authority with respect to the information,
19 to the Director of the Information Security
20 Oversight Office.

21 (3) AGENCY DECISIONS.—An agency that re-
22 ceives information pursuant to paragraph (2)(A) or
23 (4) shall decide within 30 days whether to classify
24 this information.

1 (4) INFORMATION SECURITY OVERSIGHT OF-
2 FICE ACTION.—If the Director of the Information
3 Security Oversight Office receives information under
4 paragraph (2)(B), the Director shall determine the
5 agency having appropriate subject matter interest
6 and classification authority and forward the infor-
7 mation, with appropriate recommendations, to that
8 agency for a classification determination.

9 **SEC. 5. PROMOTING EFFICIENT DECLASSIFICATION RE-**
10 **VIEW.**

11 (a) IN GENERAL.—Whenever an agency is processing
12 a request pursuant to section 552 of title 5, United States
13 Code (commonly known as the “Freedom of Information
14 Act”) or the mandatory declassification review provisions
15 of Executive Order 13526 (50 U.S.C. 3161 note; relating
16 to classified national security information), or successor
17 order, and identifies responsive classified records that are
18 more than 25-years-of-age as of December 31 of the year
19 in which the request is received, the head of the agency
20 shall review the record and process the record for declas-
21 sification and release by the National Declassification
22 Center of the National Archives and Records Administra-
23 tion.

24 (b) APPLICATION.—Subsection (a) shall apply—

1 (1) regardless of whether or not the record de-
2 scribed in such subsection is in the legal custody of
3 the National Archives and Records Administration;
4 and

5 (2) without regard for any other provisions of
6 law or existing agreements or practices between
7 agencies.

8 **SEC. 6. TRAINING TO PROMOTE SENSIBLE CLASSIFICA-**
9 **TION.**

10 (a) DEFINITIONS.—In this section:

11 (1) OVER-CLASSIFICATION.—The term “over-
12 classification” means classification at a level that ex-
13 ceeds the minimum level of classification that is suf-
14 ficient to protect the national security of the United
15 States.

16 (2) SENSIBLE CLASSIFICATION.—The term
17 “sensible classification” means classification at a
18 level that is the minimum level of classification that
19 is sufficient to protect the national security of the
20 United States.

21 (b) TRAINING REQUIRED.—Each head of an agency
22 with classification authority shall conduct training for em-
23 ployees of the agency with classification authority to dis-
24 courage over-classification and to promote sensible classi-
25 fication.

1 **SEC. 7. IMPROVEMENTS TO PUBLIC INTEREST DECLASS-**
2 **SIFICATION BOARD.**

3 Section 703 of the Public Interest Declassification
4 Act of 2000 (50 U.S.C. 3355a) is amended—

5 (1) in subsection (c), by adding at the end the
6 following:

7 “(5) A member of the Board whose term has expired
8 may continue to serve until a successor is appointed and
9 sworn in.”; and

10 (2) in subsection (f)—

11 (A) by inserting “(1)” before “Any em-
12 ployee”; and

13 (B) by adding at the end the following:

14 “(2)(A) In addition to any employees detailed to the
15 Board under paragraph (1), the Board may hire not more
16 than 12 staff members.

17 “(B) There are authorized to be appropriated to
18 carry out subparagraph (A) such sums as are necessary
19 for fiscal year 2024 and each fiscal year thereafter.”.

20 **SEC. 8. IMPLEMENTATION OF TECHNOLOGY FOR CLASSI-**
21 **FICATION AND DECLASSIFICATION.**

22 (a) IN GENERAL.—Not later than 1 year after the
23 date of the enactment of this Act, the Administrator of
24 the Office of Electronic Government (in this section re-
25 ferred to as the “Administrator”) shall, in consultation
26 with the Secretary of Defense, the Director of the Central

1 Intelligence Agency, the Director of National Intelligence,
2 the Public Interest Declassification Board, the Director of
3 the Information Security Oversight Office, and the head
4 of the National Declassification Center of the National Ar-
5 chives and Records Administration—

6 (1) research a technology-based solution—

7 (A) utilizing machine learning and artifi-
8 cial intelligence to support efficient and effec-
9 tive systems for classification and declassifica-
10 tion; and

11 (B) to be implemented on an interoperable
12 and federated basis across the Federal Govern-
13 ment; and

14 (2) submit to the President a recommendation
15 regarding a technology-based solution described in
16 paragraph (1) that should be adopted by the Federal
17 Government.

18 (b) STAFF.—The Administrator may hire sufficient
19 staff to carry out subsection (a).

20 (c) REPORT.—Not later than 540 days after the date
21 of the enactment of this Act, the President shall submit
22 to Congress a classified report on the technology-based so-
23 lution recommended by the Administrator under sub-
24 section (a)(2) and the President’s decision regarding its
25 adoption.

1 **SEC. 9. STUDIES AND RECOMMENDATIONS ON NECESSITY**
2 **OF SECURITY CLEARANCES.**

3 (a) AGENCY STUDIES ON NECESSITY OF SECURITY
4 CLEARANCES.—

5 (1) STUDIES REQUIRED.—The head of each
6 agency that grants security clearances to personnel
7 of such agency shall conduct a study on the neces-
8 sity of such clearances.

9 (2) REPORTS REQUIRED.—

10 (A) IN GENERAL.—Not later than 1 year
11 after the date of the enactment of this Act,
12 each head of an agency that conducts a study
13 under paragraph (1) shall submit to Congress
14 a report on the findings of the agency head
15 with respect to such study, which the agency
16 head may classify as appropriate.

17 (B) REQUIRED ELEMENTS.—Each report
18 submitted by the head of an agency under sub-
19 paragraph (A) shall include, for such agency,
20 the following:

21 (i) The number of personnel eligible
22 for access to information up to the Top Se-
23 cret level.

24 (ii) The number of personnel eligible
25 for access to information up to the Secret
26 level.

1 (iii) Information on the any reduction
2 in the number of personnel eligible for ac-
3 cess to classified information based on the
4 study conducted under paragraph (1).

5 (iv) A description of how the agency
6 head will ensure that the number of secu-
7 rity clearances granted by such agency will
8 be kept to the minimum required for the
9 conduct of agency functions, commensurate
10 with the size, needs, and mission of the
11 agency.

12 (3) INDUSTRY.—This subsection shall apply to
13 the Secretary of Defense in the Secretary's capacity
14 as the Executive Agent for the National Industrial
15 Security Program and the Secretary shall treat con-
16 tractors, licensees, and grantees as personnel of the
17 Department of Defense for purposes of the studies
18 and reports required by this subsection.

19 (b) DIRECTOR OF NATIONAL INTELLIGENCE REVIEW
20 OF SENSITIVE COMPARTMENTED INFORMATION.—The
21 Director of National Intelligence shall—

22 (1) review the number of personnel eligible for
23 access to sensitive compartmented information; and

1 (2) submit to Congress a report on how the Di-
2 rector will ensure that the number of such personnel
3 is limited to the minimum required.

4 (c) AGENCY REVIEW OF SPECIAL ACCESS PRO-
5 GRAMS.—Each head of an agency who is authorized to es-
6 tablish a special access program by Executive Order
7 13526 (50 U.S.C. 3161 note; relating to classified na-
8 tional security information), or successor order, shall—

9 (1) review the number of personnel of the agen-
10 cy eligible for access to such special access pro-
11 grams; and

12 (2) submit to Congress a report on how the
13 agency head will ensure that the number of such
14 personnel is limited to the minimum required.

15 (d) SECRETARY OF ENERGY REVIEW OF Q AND L
16 CLEARANCES.—The Secretary of Energy shall—

17 (1) review the number of personnel of the De-
18 partment of Energy granted Q and L access; and

19 (2) submit to Congress a report on how the
20 Secretary will ensure that the number of such per-
21 sonnel is limited to the minimum required.

22 (e) INDEPENDENT REVIEWS.—Not later than 180
23 days after the date on which a study is completed under
24 subsection (a) or a review is completed under subsections
25 (b) through (d), the Director of the Information Security

1 Oversight Office of the National Archives and Records Ad-
2 ministration, the Director of National Intelligence, and the
3 Public Interest Declassification Board shall each review
4 the study or review, as the case may be.

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