



**CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE**

July 13, 1998

**S. 712
Government Secrecy and Reform Act of 1998**

*As ordered reported by the Senate Committee on Governmental Affairs
on June 17, 1998*

SUMMARY

S. 712, the Government Secrecy and Reform Act of 1998, would establish new rules and organizations related to classifying and declassifying information. CBO estimates that the annual costs of S. 712 would range from about \$10 million to about \$130 million, depending on how the bill would be interpreted and assuming appropriation of the necessary amounts. The bill would not affect direct spending or receipts; thus pay-as-you-go procedures would not apply.

The Unfunded Mandates Reform Act (UMRA) excludes from application of the act legislative provisions that are necessary for the national security. CBO has determined that all of the provisions of this bill fit within that exclusion.

DESCRIPTION OF THE BILL

The rules governing information classification and declassification are currently established by executive order. S. 712 would provide a statutory foundation for the classification process established in Executive Order 12958. It could also change current practices in at least two respects. First, S. 712 would preclude the original classification of a document unless the agency first determines that national security concerns outweigh the public benefit of keeping information unclassified. S. 712 would establish specific criteria for making this determination, including whether disclosure of information would better enable individuals to hold government officials accountable for their actions and whether disclosure would increase public awareness or understanding of government activities.

Second, S. 712 might affect the protection of certain information under existing laws. As under E.O. 12958, S. 712 would set a 10-year maximum for the initial period of classification and would authorize extensions beyond 10 years if declassifying the information would harm national security. Also, like the current executive order, S. 712 would limit most classification periods to 25 years. However, unlike E.O. 12958, S. 712 would not specifically exclude information protected under the Atomic Energy Act of 1954 or the National Security Act of 1947 from operation of its provisions. This aspect of the bill could nullify exemptions that some agencies are permitted. Thus, the possible repeal of current exemptions could dramatically increase the number of documents that agencies must review to comply with mandatory classification periods.

The bill would also establish two organizations--the Office of National Classification and Declassification Oversight (ONCDO) and the Classification and Declassification Review Board. ONCDO would standardize the policies and procedures used by all federal agencies for classifying and declassifying information. The Classification and Declassification Review Board would decide appeals by agencies over the classification decisions of ONCDO and appeals lodged by individuals over agencies' decisions.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates that the annual costs of S. 712 would range from about \$10 million to about \$130 million, depending on how the bill would be interpreted and assuming appropriation of the necessary amounts. The budgetary impact of S. 712 over the 1999-2003 period would depend primarily on if and how fast agencies would be required to review certain documents, including a backlog from several years. If the bill were interpreted so as to deny the exemptions from review that are currently granted, costs could total about \$130 million annually. If the current exemptions were continued, the costs of the bill would total about \$10 million a year due to the costs of establishing the two new organizations and handling a slight increase in requests for information under the Freedom of Information Act (FOIA).

Mandatory Classification Periods

Based on the report of the Commission on Protecting and Reducing Government Secrecy, about 300 million pages of classified information are exempt from mandatory review under current law. Other data suggest that the cost to review each page amounts to \$2 for most agencies, \$3 for the Central Intelligence Agency (CIA), and about \$4 for the National Security Agency. Thus, if the bill would repeal current exemptions, the number of documents that agencies must review and the costs they would incur would increase significantly.

Assuming that S. 712 would effectively nullify current exemptions and that agencies would have between 10 and 15 years to work off the current backlog of documents, CBO estimates that discretionary costs would rise by about \$75 million a year. Reviewing the documents that would come up for review each year would add another estimated \$45 million to agencies' annual costs.

Legal Challenges to Classification Decisions

Enacting S. 712 could raise administrative and legal costs for various agencies in response to additional requests for information under FOIA and challenges to classification decisions under the new test. The new requests could stem from heightened awareness of the test an agency would be required to apply, and the challenges could arise over disagreements on how public benefits and national security concerns were measured and balanced.

The most recent statistics show that in 1992 agencies received 575,000 FOIA requests and spent \$100 million to implement FOIA. The costs to implement FOIA include both administrative expenses—the cost of employees and office equipment used to process FOIA requests—and legal expenses, which may include attorney fees and other litigation costs incurred in defending challenges to the denial of a FOIA request. Assuming agency costs to implement FOIA have remained relatively constant except for inflation, CBO estimates that agencies now spend around \$120 million annually to respond to FOIA requests. CBO estimates that S. 712 would increase FOIA requests by around 5 percent and consequently raise discretionary spending by \$6 million a year, assuming appropriation of the necessary amounts.

Courts have shown deference to agency decisions concerning the classification of information. CBO has no reason to believe that challenges under S.712 would be more successful than those under existing law. If courts would continue to defer to agency classification decisions, the number of legal challenges would rise initially but then diminish.

New Organizations

CBO assumes that ONCDO would grow out of the Information Security Oversight Office, which performs many of the functions that ONCDO would perform. CBO estimates that the additional costs of the new organization would total \$3 million a year.

Under the bill, the Classification and Declassification Review Board would consist of a chairman and four other members from the private sector who are distinguished historians or archivists and experts in national security matters. The chairman would have the authority to hire an executive secretary and other staff. CBO estimates that the Board would cost about \$1 million a year.

PAY-AS-YOU-GO CONSIDERATIONS: None.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

Section 4 of UMRA excludes from application of the act legislative provisions that are necessary for the national security. CBO has determined that all of the provisions of this bill fit within that exclusion.

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