

117TH CONGRESS
1ST SESSION

S. _____

To ensure that sales, exports, or transfers of F-35 aircraft do not compromise the qualitative military edge of the United States or Israel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MENENDEZ (for himself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To ensure that sales, exports, or transfers of F-35 aircraft do not compromise the qualitative military edge of the United States or Israel, 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 “Israel and United
5 States Security Enhancement for F-35 Exports Act of
6 2021” or the “SECURE F-35 Exports Act of 2021”.

1 **SEC. 2. ASSESSMENT OF ISRAEL'S QUANTITATIVE MILI-**
2 **TARY DISADVANTAGE.**

3 (a) IN GENERAL.—Section 201(a) of the Naval Ves-
4 sel Transfer Act of 2008 (Public Law 110–429; 22 U.S.C.
5 2776 note) is amended—

6 (1) by inserting “, and does not suffer a quan-
7 titative military disadvantage from,” after “quali-
8 tative military edge over”; and

9 (2) by adding at the end the following new sub-
10 section:

11 “(f) PUBLIC DISCLOSURE.—The report required
12 under subsection (c) shall be unclassified, without
13 redactions, and public to the maximum extent possible,
14 but may also include a classified annex without
15 redactions.”.

16 (b) ASSESSMENTS.—

17 (1) INITIAL ASSESSMENT AND REPORT.—Not
18 later than 60 days after the date of the enactment
19 of this Act, the President shall submit to the appro-
20 priate congressional committees a report with an as-
21 sessment of whether Israel suffers from a quan-
22 titative military disadvantage as described in section
23 201(a) of the Naval Vessel Transfer Act of 2008
24 (Public Law 110–429; 22 U.S.C. 2776 note), as
25 amended by subsection (a). The report shall be un-
26 classified, without redactions and public to the max-

1 imum extent possible, but may also include a classi-
2 fied annex without redactions.

3 (2) SUBSEQUENT ASSESSMENTS AND RE-
4 PORTS.—The President shall direct subsequent as-
5 sessments on Israel’s quantitative military disadvan-
6 tage be performed every four years, to coincide with
7 and be included in the quadrennial assessment and
8 report required under section 201 of the Naval Ves-
9 sel Transfer Act of 2008 (Public Law 110–429; 22
10 U.S.C. 2776 note).

11 (c) PUBLIC DISCLOSURE OF CERTIFICATION ON
12 SALE OF F–35 TO UAE.—The President shall publicly
13 disclose, to the maximum extent possible, the certification
14 required under section 36(h) of the Arms Export Control
15 Act (22 U.S.C. 2776(h)) relating to any sale, export, or
16 transfer of F–35 aircraft and associated defense articles
17 and defense services to the United Arab Emirates.

18 **SEC. 3. ASSESSMENT OF THREAT AGAINST UNITED STATES**
19 **QUALITATIVE MILITARY EDGE INHERENT IN**
20 **EXPORT OF F–35 AND SUCCESSOR COMBAT**
21 **AIRCRAFT.**

22 (a) REQUIREMENT FOR REPORT AND ASSESS-
23 MENT.—

24 (1) IN GENERAL.—Not later than 15 days be-
25 fore a proposed sale, export, or transfer to a foreign

1 country (other than a member state of the North At-
2 lantic Treaty Organization, Australia, Israel, Japan,
3 Republic of Korea, or New Zealand) of F-35 air-
4 craft (including any variant or successor combat air-
5 craft) is submitted to Congress pursuant to the re-
6 quirements of section 36 of the Arms Export Con-
7 trol Act (22 U.S.C. 2776), the President shall sub-
8 mit to the appropriate congressional committees a
9 report with an assessment of the risks presented by
10 such sale, export, or transfer to the security of the
11 United States, including the critical military and
12 technological military advantage such aircraft pro-
13 vide to the United States Armed Forces.

14 (2) ELEMENTS.—The assessment required
15 under paragraph (1) shall include—

16 (A) a comprehensive overview of the poten-
17 tial compromise of United States military tech-
18 nology used in F-35 aircraft by potential for-
19 eign intelligence activities, including—

20 (i) the presence in the country of for-
21 eign intelligence personnel from countries
22 hostile to the United States, or which the
23 President considers to be a risk to the se-
24 curity of the United States, and their ac-
25 tivities; and

1 (ii) the willingness and capability of
2 the country to disrupt and constrain those
3 activities, with particular consideration to
4 their potential effectiveness in preventing
5 the compromise of sensitive information of
6 F-35 aircraft;

7 (B) a description of the protective meas-
8 ures that will be taken to safeguard against
9 such compromise; and

10 (C) a description of the counter-measures
11 that could be taken should such compromise
12 occur.

13 (b) CERTIFICATION.—Not later than 15 days before
14 a proposed sale, export, or transfer described under sub-
15 section (a)(1), the President shall submit to the Com-
16 mittee on Foreign Relations of the Senate and the Com-
17 mittee on Foreign Affairs of the House of Representatives
18 a certification that such sale, export, or transfer does not
19 present a significant danger of compromising the critical
20 military and technological military advantage such aircraft
21 provide to the United States Armed Forces.

22 (c) FORM.—The assessment and certification re-
23 quired under this section shall be unclassified, without
24 redactions and public to the maximum extent possible, but
25 may also include a classified annex without redactions.

1 **SEC. 4. CERTIFICATIONS RELATED TO SALE OF F-35 AIR-**
2 **CRAFT TO COUNTRIES IN THE MIDDLE EAST.**

3 (a) CERTIFICATIONS BEFORE SALE.—Not later than
4 30 days before concluding a Letter of Offer and Accept-
5 ance (or corresponding agreement or contract) for the sale
6 of, or concluding a contract for the manufacture of, F-
7 35 aircraft to be transferred to any country in the Middle
8 East other than Israel, the President shall submit to the
9 Committee on Foreign Relations of the Senate and the
10 Committee on Foreign Affairs of the House of Representa-
11 tives a certification, together with a report providing a de-
12 tailed justification therefor, that—

13 (1) the transfer of F-35 aircraft to the recipi-
14 ent country will not compromise or undermine
15 Israel's qualitative military edge, as defined in sec-
16 tion 36(h) of the Arms Export Control Act (22
17 U.S.C. 2776(h));

18 (2) the recipient country has provided specific,
19 reliable, and verifiable assurances to the United
20 States that it will not use these aircraft in activities
21 or operations inimical to the security of Israel, or to
22 the foreign policy and national security interests of
23 the United States, including that the recipient coun-
24 try will—

25 (A) not utilize them against allies and
26 partners of the United States;

1 (B) not transfer or share any component
2 technology of the F-35 aircraft to any third
3 party or third country; and

4 (C) ensure sufficient security against hos-
5 tile technical collection efforts against the air-
6 craft that could compromise militarily-signifi-
7 cant or otherwise sensitive information;

8 (3) the recipient country has provided specific,
9 reliable, and verifiable assurances to the United
10 States that it will not use these aircraft to commit,
11 or enable the commission of, a violation of inter-
12 national humanitarian law or internationally recog-
13 nized human rights;

14 (4) if the recipient country violates such assur-
15 ances, the United States will have the means to ad-
16 dress and ameliorate these violations to reduce the
17 impact on the security of Israel or on the foreign
18 policy and national security interests of the United
19 States, including a listing of such means; and

20 (5) the United States will require technology se-
21 curity measures on the delivery, operation, storage,
22 and servicing of such aircraft sufficient to signifi-
23 cantly reduce the danger of compromise of the mili-
24 tary technology.

1 (b) CERTIFICATIONS BEFORE DELIVERY.—No deliv-
2 ery of any F-35 aircraft to any country in the Middle East
3 other than Israel shall occur until 45 days after the Presi-
4 dent has submitted to the Committee on Foreign Relations
5 of the Senate and the Committee on Foreign Affairs of
6 the House of Representatives a certification, together with
7 a report providing a detailed justification therefor, that—

8 (1) the transfer of F-35 aircraft will not com-
9 promise or undermine Israel's qualitative military
10 edge, as defined in section 36(2) of the Arms Export
11 Control Act;

12 (2) the United States has instituted technology
13 security measures on the delivery, operation, storage,
14 and servicing of such aircraft sufficient to signifi-
15 cantly reduce the danger of compromise of the mili-
16 tary;

17 (3) such country has not, since the Letter of
18 Offer and Acceptance (or corresponding agreement
19 or contract) for such aircraft was concluded, en-
20 gaged in military, paramilitary, or intelligence oper-
21 ations inimical to the security of Israel or to the for-
22 eign policy and national security interests of the
23 United States, including—

24 (A) transferring any United States-origin
25 equipment, directly or indirectly, to a United

1 States-designated terrorist organization or to
2 adversaries of Israel or the United States;

3 (B) providing weapons, directly or indi-
4 rectly, from any source country, including
5 China, to armed militias fighting against part-
6 ners and allies of the United States;

7 (C) conducting surveillance on any private
8 United States citizen; or

9 (D) committing, or enabling the commis-
10 sion of, a violation of international humani-
11 tarian law or internationally recognized human
12 rights; and

13 (4) the recipient country has not purchased or
14 otherwise acquired foreign technology, equipment, or
15 defense articles or services, including from the Rus-
16 sian Federation or the People's Republic of China,
17 and has provided written assurances that it will not
18 purchase or otherwise acquire foreign technology
19 equipment, defense articles, or defense services that
20 could be used to compromise the technology of such
21 aircraft and put United States troops or military
22 strategies at risk, unless such technology is also sub-
23 ject to monitoring by United States personnel.

24 (c) SUBSEQUENT CERTIFICATIONS.—The President
25 shall, not later than 180 days after the date on which the

1 first F-35 combat aircraft transferred to a country in the
2 Middle East other than Israel arrives in its territory, and
3 annually thereafter for 10 years, certify to the appropriate
4 committees of Congress that—

5 (1) the transfer of F-35 aircraft to such coun-
6 try has not compromised or undermined Israel's
7 qualitative military edge, as defined in section
8 36(h)(3) of the Arms Export Control Act (22 U.S.C.
9 2776(h)(3));

10 (2) the United States continues to institute
11 technology security measures on the delivery, oper-
12 ation, storage, and servicing of such aircraft suffi-
13 cient to significantly reduce the danger of com-
14 promise of the military technology of such aircraft;

15 (3) such country has not engaged in military,
16 paramilitary, or intelligence operations inimical to
17 the security of Israel or to the foreign policy and na-
18 tional security interests of the United States within
19 the prior year as outlined in subparagraphs (A)
20 through (C) of subsection (b)(3); and

21 (4) such country has not committed, or enabled
22 the commission of, a violation of international hu-
23 manitarian law or internationally recognized human
24 rights.

1 (d) FORM.—The certifications and justifications sub-
2 mitted under this section shall be unclassified, without
3 redactions and public to the maximum extent possible, but
4 may also include a classified annex without redactions.

5 **SEC. 5. APPROPRIATE CONGRESSIONAL COMMITTEES DE-**
6 **FINED.**

7 In this Act, the term “appropriate congressional com-
8 mittees” means—

9 (1) the Committee on Foreign Relations, the
10 Committee on Armed Services, and the Committee
11 on Appropriations of the Senate; and

12 (2) the Committee on Foreign Affairs, the
13 Committee on Armed Services, and the Committee
14 on Appropriations of the House of Representatives.