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INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2006

OCTOBER 27, 2005.—Ordered to be printed

Mr. WARNER, from the Committee on Armed Services,
submitted the following

R E P O R T

[To accompany S. 1803]

The Committee on Armed Services, to which was referred the bill (S. 1803) to authorize appropriations for fiscal year 2006 for intelligence and intelligence-related activities of the United States Government, the Community Management Account of the Director of Central Intelligence, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

PURPOSE OF THE BILL

S. 1803 would authorize appropriations and other matters for fiscal year 2006 for intelligence activities of the United States, including certain Department of Defense intelligence-related activities within the jurisdiction of the Committee on Armed Services.

The Senate Select Committee on Intelligence reported the bill on September 29, 2005, and it was referred to the Committee on Armed Services on September 30, 2005, in accordance with section 3(b) of Senate Resolution 400, 94th Congress, as amended by S. Res. 445, 108th Congress, for a period not to exceed 10 days of session. The referral was later extended for an additional five days of session in accordance with S. Res. 400, as amended.

SCOPE OF THE COMMITTEE REVIEW

The committee has carefully reviewed the Intelligence Authorization Act for Fiscal Year 2006 and the Senate report accompanying S. 1803 (S. Rept. 109-142). The total amount within the jurisdic-

tion of the Committee on Armed Services recommended for the National Intelligence Program will be incorporated into the budget tables pending the passage of the National Defense Authorization Act for Fiscal Year 2006.

The following explains the committee's proposed amendments to the bill, as reported by the Senate Select Committee on Intelligence, as well as the committee's clarification to the report issued by the Senate Select Committee on Intelligence.

Classified and sensitive annex to the committee report

The committee has prepared a classified annex to this report that describes other recommendations and concerns that are classified and sensitive in nature.

Pilot program on disclosure of records under the Privacy Act relating to certain intelligence activities

Section 307 of S. 1803 would establish a four-year pilot program to provide all elements of the intelligence community with access to certain Privacy Act records maintained by the Department of Defense or other elements of the intelligence community, or departments or agencies of the Federal Government containing elements of the Intelligence Community. The committee recommends an amendment that would cut the length of the pilot program to two years.

Authority of the Director of National Intelligence to manage access to human intelligence information

Section 403 of S. 1803 would authorize the Director of National Intelligence to have access to all information concerning the human intelligence operations of any element of the Intelligence Community. It would further authorize the Director to ensure maximum access to such information, and to set up a mechanism for appropriate Intelligence Community personnel to gain access. The committee understands that this provision is intended to cover the national intelligence as opposed to tactical battlefield intelligence, and is not intended to authorize the Director to task commanders in the field or to avoid the military chain of command in seeking access to human intelligence at the tactical level.

The committee agrees with the need for the Director to manage such access, but urges the conferees to make it clear that the intent of the provision is for the Director to manage access to human intelligence that contributes to national intelligence products, not for managing access to human intelligence information supporting tactical military operations.

Inspector General of the Intelligence Community

Section 408 of S. 1803 would authorize an Inspector General of the Intelligence Community. This provision would replace the Inspector General of the Office of the Director of National Intelligence as authorized by section 1078 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) with an Inspector General of the Intelligence Community. Enactment of section 408 would insert the Director of National Intelligence and the proposed Inspector General of the Intelligence Community into the management of all elements of the Intelligence Community,

and the departments and agencies of which they are a part, in a way that would be contrary to the careful balance struck by Congress in enacting the Intelligence Reform and Terrorism Prevention Act of 2004. Section 1078 states that the Act is to be implemented in a manner that respects and does not abrogate the statutory responsibilities of the heads of the departments of the United States Government. In particular, the Act left undisturbed the functions and responsibilities of the Inspector General of the Department of Defense and those of the military departments.

The committee recommends several amendments that would: (1) strike language giving the proposed Inspector General the final decision in any situation in which that official and another Inspector General may have jurisdiction over a particular matter; (2) insert language exempting Inspectors General within the Department of Defense from the proposed Inspector General's authority to conduct a separate investigation if that official deems one done by another Inspector General to be deficient; and (3) strike language requiring all other Intelligence Community Inspectors General to comply fully with any request from the proposed Inspector General.

The committee amendment would establish an appropriate balance between the Department of Defense Inspector General and the Inspector General of the Intelligence Community by deleting provisions that would allow the proposed Inspector General to intrude in the management of the Department.

This amendment would ensure compliance with the statutory requirement that the Secretary of Defense has authority, direction, and control over all activities of the Department of Defense as required by section 113 of title 10, United States Code.

Modification of exclusion of military officer serving as Associate Director of the Central Intelligence Agency for Military Support from officer strength and distribution-in-grade limitations

Section 426 of S. 1803 would authorize the exclusion of the military officer serving as Associate Director of the Central Intelligence Agency for Military Support from officer strength and distribution-in-grade limitations. The committee recommends an amendment striking this provision. This issue, which is within the jurisdiction of the committee, will be addressed in S. 1042, the National Defense Authorization Act for Fiscal Year 2006.

Protection of operational files of the Defense Intelligence Agency

Section 434 of S. 1803 would authorize the protection of certain operational files of the Defense Intelligence Agency from disclosure under the Freedom of Information Act (5 U.S.C. 552). This issue is also addressed in S. 1042, the National Defense Authorization Act for Fiscal Year 2006. The committee recommends a provision that would strike the existing language and insert the text of section 922 of S. 1042.

Confirmation of appointment of heads of certain components of the intelligence community

Section 436 of S. 1803 would require that the Directors of the National Security Agency (NSA), the National Geospatial-Intelligence Agency (NGA), and the National Reconnaissance Office (NRO) be appointed by the President with the advice and consent

of the Senate. Currently, the Secretary designates the NSA Director, subject to the approval of the President; the President appoints the NGA Director; and the Secretary appoints the NRO Director. Pursuant to section 1014(b) of the Intelligence Reform and Terrorism Prevention Act of 2004, the Secretary must obtain the concurrence of the Director of National Intelligence before appointing an NRO Director or recommending that the President approve the designation of an NSA Director or appoint an NGA Director. None of these appointments currently requires confirmation by the Senate unless a military officer is promoted or transferred into a three-star position.

The committee recommends an amendment to section 436 that would clarify that the three positions in question could be filled by serving military officers.

Sense of Congress on funding of the COBRA JUDY Replacement Program

S. 1803 is silent on the subject of the COBRA JUDY Replacement Program.

The committee believes that the COBRA JUDY Replacement Program is important for ensuring our nation's ability to acquire necessary intelligence on foreign ballistic missile programs and their capabilities. Therefore, the committee recommends a new provision (section 437) that would express the sense of the Senate that it strongly supports development and integration of this sophisticated solid-state phased array radar technology and ship as a prudent investment in intelligence collection that monitors foreign threats and supports the acquisition of our ballistic missile defensive systems. The COBRA JUDY Replacement Program will replace the USNS Observation Island, which is due to leave service in 2012, and will satisfy vital intelligence requirements necessary for the acquisition of defensive systems designed to defend the nation from ballistic missile attack. The committee further urges the continued funding in the future-years defense program of the COBRA JUDY Replacement Program by the Secretary and the Director of National Intelligence in order to support national defense requirements.

COMMITTEE ACTION

In accordance with the Legislative Reorganization Act of 1946, as amended by the Legislative Reorganization Act of 1970, there is set forth below the committee vote to report the Intelligence Authorization Act for Fiscal Year 2006.

Vote: Adopted by a rollcall vote of 16–0.

FISCAL DATA

The committee will publish in the Congressional Record information on 5-year cost projections when such information is received from the Congressional Budget Office.

REGULATORY IMPACT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that a report on the regulatory impact of a bill be included in the report on the bill. The committee finds that there is

no regulatory impact in the cost of S. 1803, the Intelligence Authorization Act for Fiscal Year 2006.

CHANGES IN EXISTING LAW

Pursuant to the provisions of paragraph 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by certain portions of the bill have not been shown in this section of the report because, in the opinion of the committee, it is necessary to dispense with showing such changes in order to expedite the business of the Senate and reduce the expenditure of funds.

