

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2082) TO AUTHORIZE APPROPRIATIONS FOR FISCAL YEAR 2008 FOR INTELLIGENCE AND INTELLIGENCE-RELATED ACTIVITIES OF THE UNITED STATES GOVERNMENT, THE COMMUNITY MANAGEMENT ACCOUNT, AND THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM, AND FOR OTHER PURPOSES

MAY 9, 2007.—Referred to the House Calendar and ordered to be printed

Mr. HASTINGS, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 388]

The Committee on Rules, having had under consideration House Resolution 388, by a vote of 8 to 3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 2082 to authorize appropriations for fiscal year 2008 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes. The resolution provides for one hour of general debate equally divided and controlled by the Chairman and Ranking Minority Member of the Permanent Select Committee on Intelligence.

The resolution waives all points of order against consideration of the bill except those arising under clause 9 of rule XXI. The resolution considers as an original bill for the purpose of further amendment the amendment in the nature of a substitute recommended by the Permanent Select Committee on Intelligence. The committee amendment shall be considered as read. The resolution waives all points of order against the committee amendment except those arising under clause 9 of rule XXI.

The resolution makes in order those amendments printed in this report and waives all points of order against such amendments except those arising under clause 9 or 10 of rule XXI. The resolution provides one motion to recommit with or without instructions. Finally, the resolution permits the Chair, during consideration of the

bill in the House, to postpone further consideration until a time designated by the Speaker.

EXPLANATION OF WAIVERS

The waiver of points of order against consideration of the bill (except those arising under clause 9 of rule XXI) includes waivers of clause 4(a)(1) of rule XIII (3-day layover), clause 3(c)(1) of rule XIII (oversight findings), clause 3(c)(4) of rule XIII (statement of performance goals), and clause 3(d)(1) of rule XIII (constitutional authority). In addition, the waiver of all points of order against consideration of the bill except those arising under clause 9 of rule XXI includes a prophylactic waiver of section 302(f) of the Congressional Budget Act (prohibiting consideration of legislation providing new budget authority in excess of a subcommittee's 302(b) allocation of such authority) because the total budget authority authorized in the bill is classified and therefore unavailable. Finally, the waiver of all points of order against consideration of the bill except those arising under clause 9 of rule XXI includes a prophylactic waiver of clause 10 of rule XXI (regarding measures affecting direct spending or revenues) because the classified annex of the bill is unavailable for review; however, the Committee is not aware of any measures in the unclassified portion of the bill violating clause 10 of rule XXI.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 182

Date: May 9, 2007.

Measure: H.R. 2082.

Motion by: Mr. Dreier.

Summary of motion: To grant an open rule.

Results: Defeated 3 to 8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 183

Date: May 9, 2007.

Measure: H.R. 2082.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide the appropriate waivers for an amendment by Rep. Wilson, Heather (NM), #10, to amend definitions in FISA regarding the categories of persons and communications that could be subject to FISA surveillance. It also creates a new definition for "surveillance device;" amends various application procedures; imposes additional reporting requirements; provides that no action may be maintained in court regarding certain intelligence activities; and provides surveillance authority in cases of imminent threats of attack.

Results: Defeated 3 to 8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 184

Date: May 9, 2007.

Measure: H.R. 2082.

Motion by: Mr. McGovern.

Summary of motion: To report the rule.

Results: Adopted 8 to 3.

Vote by Members: McGovern—Yea; Hastings (FL)—Yea; Matsui—Yea; Cardoza—Yea; Welch—Yea; Arcuri—Yea; Sutton—Yea; Dreier—Nay; Diaz-Balart—Nay; Sessions—Nay; Slaughter—Yea.

SUMMARY OF AMENDMENTS MADE IN ORDER

(Summaries derived from information provided by sponsors.)

1. Flake (AZ): The amendment would strike subsection (b) of section 308, which places a restriction on community management funds until a strategic plan to increase diversity is submitted to the Intelligence Committees. (10 minutes)

2. Hoekstra (MI): The amendment would strike section 407, which requires that a National Intelligence Estimate on global climate change be submitted to Congress. (10 minutes)

3. Holt (NJ): The amendment would amend the reporting requirement in the Intelligence Identities Protection Act (codified in Sec. 603 of the National Security Act) to include a requirement that the President, based on information from the Director of National Intelligence, provide Congress with an assessment of the need for any modification to existing law to improve legal protection for covert agents. (10 minutes)

4. Thompson, Mike (CA): The amendment requires that the Office of the Director of National Intelligence submit a report to the Congressional Intelligence committees, no later than 120 days after enactment, that provides: (1) the number of collectors and analysts, by agency, and (2) a plan to maximize the number of collectors and decrease the number of personnel authorized to the Office of the Director of National Intelligence. (10 minutes)

5. Rogers, Mike (MI)/Hastings (FL): The amendment would place a limit on the number of personnel in the Office of the Director of National Intelligence (ODNI). ODNI would only be authorized the number of personnel as were serving in the office on May 1, 2007. (10 minutes)

6. Fossella (NY): The amendment authorizes \$5 million for a study conducted by DHS and the Director of National Intelligence to identify the best practices for sharing terrorist-threat information between the Federal, State, and local levels of government. It also authorizes \$10 million to establish centers of best practices based on the study with \$3 million authorized for the following five years to cover operational expenses of the centers. (10 minutes)

7. Lee (CA): The amendment requires a report to House and Senate Intelligence committees describing any authorization granted during the past 10 years to engage in intelligence activities related to the overthrow of a democratically elected government. (10 minutes)

8. Price, David (NC): The amendment would require the Director of National Intelligence to submit a report on the uses of contractors for personal services activities. The report would examine the functions currently performed by contractors, regulations regarding training and vetting standards, costs savings achieved by the use of contractors, and activities that are appropriate or inappropriate for performance by contractors. (10 minutes)

9. Berkley (NV): The amendment requires the Director of National Intelligence to submit to Congress a report on the advisability of providing Federal retirement benefits to employees of Air America. (10 minutes)

10. Schiff (CA)/Flake (AZ): The amendment states that the Foreign Intelligence Surveillance Act of 1978 (FISA) shall be the exclusive means by which domestic electronic surveillance for the purpose of gathering foreign intelligence information may be conducted, and makes clear that this applies until specific statutory authorization for electronic surveillance, other than as an amendment to FISA, is enacted. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER UNDER THE RULE

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FLAKE OF ARIZONA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 16, line 6, strike “(a) STRATEGIC PLAN REQUIRED.—”.

Strike subsection (b) of section 308 (page 16, lines 19 through 25).

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HOEKSTRA OF MICHIGAN, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 407 (page 24, line 17 through page 26, line 8).

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HOLT OF NEW JERSEY, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title III (page 16, after line 25), add the following new section:

SEC. 309. MODIFICATIONS TO ANNUAL REPORT ON PROTECTION OF INTELLIGENCE IDENTITIES.

The first sentence of section 603(a) of the National Security Act of 1947 (50 U.S.C. 423(a)) is amended by inserting “, including an assessment of the need for any modification of this title for the purpose of improving legal protections for covert agents” after “measures to protect the identities of covert agents”.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE THOMPSON OF CALIFORNIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of subtitle A of title IV (page 39, after line 16), add the following new section:

SEC. 414. REPORT ON PERSONNEL OF THE INTELLIGENCE COMMUNITY.

(a) **IN GENERAL.**—Not later than 120 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees a report containing—

(1) the number of intelligence collectors and analysts employed or contracted by each element of the intelligence community; and

(2) a plan to maximize the number of intelligence collectors employed or contracted by the intelligence community.

(b) **LIMITATION ON PERSONNEL.**—

(1) **LIMITATION.**—Subject to paragraph (2), but notwithstanding any other provision of this Act (including the classified Schedule of Authorizations referred to in section 102(a)), the Office of the Director of National Intelligence is authorized not more than—

(A) the number of personnel employed or contracted by such Office as of May 9, 2007; and

(B) an additional 15 percent of such number of personnel employed or contracted by such Office as of May 9, 2007.

(2) **TERMINATION OF LIMITATION.**—The limitation on the number of personnel authorized for the Office of the Director of National Intelligence under paragraph (1) shall no longer apply on or after the date on which the report required under subsection (a) is submitted.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ROGERS OF MICHIGAN, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 5, line 19, strike “The amounts” and insert “Subject to section 106, the amounts”.

Page 6, line 9, strike “With the approval” and insert “Subject to section 106, with the approval”.

Page 7, line 11, strike “The elements” and insert “Subject to section 106, the elements”.

Page 8, line 5, strike “In addition” and insert “Subject to section 106, in addition”.

At the end of title I (page 10, after line 2), add the following new section:

SEC. 106. LIMITATION ON NUMBER OF PERSONNEL OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

Notwithstanding any other provision of this Act, the Office of the Director of National Intelligence is authorized only the number of personnel as were serving in such Office on May 1, 2007.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FOSSELLA OF NEW YORK, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following new title:

TITLE VI—COMMUNICATION OF INFORMATION CONCERNING TERRORIST THREATS

SEC. 601. IDENTIFICATION OF BEST PRACTICES.

(a) **STUDY.**—The Secretary of Homeland Security and the Director of National Intelligence shall conduct jointly, or contract with an entity to conduct, a study of the operations of Federal, State, and local government entities to identify best practices for the communication of information concerning a terrorist threat.

(b) **CONTENTS.**—

(1) **IDENTIFICATION OF BEST PRACTICES.**—The study conducted under this section shall be focused on an analysis and identification of the best practices of the information sharing processes of the following government entities:

(A) Joint Terrorism Task Forces, which are operated by the Federal Bureau of Investigations with the participation of local law enforcement agencies.

(B) State Homeland Security Fusion Centers, which are established by a State and share information with Federal departments.

(C) The Homeland Security Operations Center, which is operated by the Department of Homeland Security for the purposes of coordinating information.

(D) State and local law enforcement agencies that collect, utilize, and disseminate information on potential terrorist attacks.

(E) The appropriate elements of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) involved in the sharing of counter-terrorism information.

(F) The Interagency Threat Assessment Coordination Group at the National Counterterrorism Center.

(2) **COORDINATION OF GOVERNMENT ENTITIES.**—The study conducted under this section shall include an examination of methods for coordinating the activities of Federal, State, and local entities in responding to a terrorist threat, and specifically the communication to the general public of information concerning the threat. The study shall not include an examination of the sources and methods used in the collection of the information.

(c) **OBTAINING OFFICIAL DATA.**—In conducting the study, the Secretary, in conjunction with the Director, with due regard for the protection of classified information, may secure directly from any department or agency of the United States information necessary to enable the Secretary to carry out this section. Classified information shall be handled through established methods for controlling such information.

(d) **TEMPORARY DUTY OF FEDERAL PERSONNEL.**—The Secretary, in conjunction with the Director, may request the head of any department or agency of the United States to detail to temporary duty personnel within the administrative jurisdiction of the head of the department or agency that the Secretary may need to carry out

this section, each detail to be without loss of seniority, pay, or other employee status.

(e) REPORT.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary, in conjunction with the Director, shall submit to Congress a report that contains—

(A) a detailed statement of the findings and conclusions of the study, including identification of the best practices for the processing, analysis, and dissemination of information between the government entities referred to in subsection (b)(1); and

(B) recommendations for a formalized process of consultation, communication, and confidentiality between Federal, State, and local governments, incorporating the best practices of the various entities studied, to facilitate communication and help prevent the unauthorized dissemination of information and criticism of decisions concerning terrorist threats.

(2) CLASSIFIED INFORMATION.—To the extent determined appropriate by the Secretary, in conjunction with the Director, the Secretary may submit a portion of the report in classified form.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$5,000,000 for fiscal year 2008.

SEC. 602. CENTERS OF BEST PRACTICES.

(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Director of National Intelligence, shall make grants for the establishment and operation of 3 centers to implement the best practices, identified by the study conducted under section 601, for the processing, analysis, and dissemination of information concerning a terrorist threat (in this section, each referred to as a “Center”).

(b) LOCATION OF CENTERS.—In carrying out subsection (a), the Secretary, in consultation with the Director, shall make grants to—

(1) the State of New York for the establishment of a Center to be located in New York City;

(2) the State of Michigan for the establishment of a Center to be located in Detroit; and

(3) the State of California for the establishment of a Center to be located in Los Angeles.

(c) PURPOSE OF CENTERS.—Each Center shall—

(1) implement the best practices, identified by the study conducted under section 601, for information sharing concerning a terrorist threat;

(2) coordinate the communication of these best practices with other metropolitan areas;

(3) coordinate with the Secretary and the Director to develop a training curriculum to implement these best practices;

(4) provide funding and technical assistance to other metropolitan areas to assist the metropolitan areas in the implementation of the curriculum developed under paragraph (3); and

(5) coordinate with the Secretary and the Director to establish a method to advertise and disseminate these best practices.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for making grants under this section—

(1) \$10,000,000 for fiscal year 2008 for the establishment of the Centers; and

(2) \$3,000,000 for each of fiscal years 2009 through 2013 for the operation of the Centers.

(e) REPORT TO CONGRESS.—Not later than March 31, 2010, the Secretary, in consultation with the Director, shall submit to Congress a report evaluating the operations of the Centers and making recommendations for future funding.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LEE OF CALIFORNIA, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of subtitle A of title V (page 48, after line 5), add the following new section:

SEC. 503. REPORT ON AUTHORIZATION TO OVERTHROW DEMOCRATICALLY ELECTED GOVERNMENTS.

Not later than 120 days after the date of the enactment of this Act, the President shall submit to the congressional intelligence committees a report describing any authorization granted during the 10-year period ending on the date of the enactment of this Act to engage in intelligence activities related to the overthrow of a democratically elected government.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PRICE OF NORTH CAROLINA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 33, after line 13 insert the following new subsections:

(d) USE OF CONTRACTORS FOR INTELLIGENCE ACTIVITIES.—

(1) REPORT.—Not later than April 1, 2008, the Director of National Intelligence shall submit to the congressional intelligence committees a report on personal services activities performed by contractors under the National Intelligence Program and, at the discretion of the Director of National Intelligence, the Military Intelligence Program. Such report shall include—

(A) an inventory of the types of functions and activities performed by contractors in fulfillment of contracts for each element of the intelligence community;

(B) a description of any relevant regulations or guidance issued by the Director of National Intelligence or the head of an element of the intelligence community relating to minimum standards required regarding the hiring, training, security clearance, and assignment of contract personnel;

(C) an assessment of costs incurred or savings achieved by awarding contracts for the performance of such functions referred to in subparagraph (A) instead of using full-time employees of the elements of the intelligence community to perform such functions;

(D) a description of the types of functions or activities that the Director of National Intelligence considers appropriate to be carried out by contractors;

(E) a description of the types of functions or activities that the Director of National Intelligence considers inappropriate to be carried out by contractors;

(F) an assessment of the appropriateness of using contractors to perform the activities described in paragraph (2); and

(G) an estimate of the number of contracts, and the number of personnel working under such contracts, related to the performance of activities described in paragraph (2).

(2) **ACTIVITIES.**—Activities described in this paragraph are the following:

(A) Intelligence collection.

(B) Intelligence analysis.

(C) Covert actions.

(D) Interrogation of a person detained, imprisoned, or otherwise held in the custody or under the control of the United States Government.

(E) Support for the detention, imprisonment, or holding of a person under the custody or control of the United States Government, including activities relating to the detention, transfer, or transportation of such person across international borders.

(F) Conduct of electronic or physical surveillance or monitoring of United States citizens in the United States.

(3) **FORM.**—The report required under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BERKLEY OF NEVADA, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of subtitle A of title IV (page 39, after line 16), add the following new section:

SEC. 414. DIRECTOR OF NATIONAL INTELLIGENCE REPORT ON RETIREMENT BENEFITS FOR FORMER EMPLOYEES OF AIR AMERICA.

(a) **IN GENERAL.**—Not later than 120 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to Congress a report on the advisability of providing Federal retirement benefits to United States citizens for the service of such citizens before 1977 as employees of Air America or an associated company while such company was owned or controlled by the United States Government and operated or managed by the Central Intelligence Agency.

(b) **REPORT ELEMENTS.**—

(1) **IN GENERAL.**—The report required by subsection (a) shall include the following:

(A) The history of Air America and associated companies before 1977, including a description of—

(i) the relationship between such companies and the Central Intelligence Agency and other elements of the United States Government;

(ii) the workforce of such companies;

(iii) the missions performed by such companies and their employees for the United States; and

(iv) the casualties suffered by employees of such companies in the course of their employment with such companies.

(B) A description of the retirement benefits contracted for or promised to the employees of such companies before 1977, the contributions made by such employees for such benefits, the retirement benefits actually paid such employees, the entitlement of such employees to the payment of future retirement benefits, and the likelihood that former employees of such companies will receive any future retirement benefits.

(C) An assessment of the difference between—

(i) the retirement benefits that former employees of such companies have received or will receive by virtue of their employment with such companies; and

(ii) the retirement benefits that such employees would have received and in the future receive if such employees had been, or would now be, treated as employees of the United States whose services while in the employ of such companies had been or would now be credited as Federal service for the purpose of Federal retirement benefits.

(D) The recommendations of the Director regarding the advisability of legislative action to treat employment at such companies as Federal service for the purpose of Federal retirement benefits in light of the relationship between such companies and the United States Government and the services and sacrifices of such employees to and for the United States, and if legislative action is considered advisable, a proposal for such action and an assessment of its costs.

(2) VIEWS OF DCIA.—The Director of National Intelligence shall include in the report any views of the Director of the Central Intelligence Agency on the matters covered by the report that the Director of the Central Intelligence Agency considers appropriate.

(c) ASSISTANCE OF COMPTROLLER GENERAL.—The Comptroller General shall, upon the request of the Director of National Intelligence and in a manner consistent with the protection of classified information, assist the Director in the preparation of the report required by subsection (a).

(d) FORM.—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(e) DEFINITIONS.—In this section:

(1) AIR AMERICA.—The term “Air America” means Air America, Incorporated.

(2) ASSOCIATED COMPANY.—The term “associated company” means any company associated with or subsidiary to Air America, including Air Asia Company Limited and the Pacific Division of Southern Air Transport, Incorporated.

10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCHIFF OF CALIFORNIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of subtitle A of title V (page 48, after line 5), add the following new section:

SEC. 503. REITERATION OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 AS THE EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE MAY BE CONDUCTED FOR GATHERING FOREIGN INTELLIGENCE INFORMATION.

(a) **EXCLUSIVE MEANS.**—Notwithstanding any other provision of law, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which electronic surveillance may be conducted for the purpose of gathering foreign intelligence information.

(b) **SPECIFIC AUTHORIZATION REQUIRED FOR EXCEPTION.**—Subsection (a) shall apply until specific statutory authorization for electronic surveillance, other than as an amendment to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), is enacted. Such specific statutory authorization shall be the only exception to subsection (a).

(c) **DEFINITIONS.**—In this section:

(1) **ELECTRONIC SURVEILLANCE.**—The term “electronic surveillance” has the meaning given the term in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)).

(2) **FOREIGN INTELLIGENCE INFORMATION.**—The term “foreign intelligence information” has the meaning given the term in section 101(e) of such Act (50 U.S.C. 1801(e)).