



H.R. 3356 - FISA Bill

Floor Situation

The FISA bill is expected to be considered under suspension of the rules on August 3, 2007.

Summary

Electronic Surveillance of Persons Outside the United States: The bill states that a court order is not required for collection of communications between foreign persons, even if it passes through the U.S.

Note: It does not provide the authority for the intelligence community to collect this information.

Additional Procedure for Authorizing Certain Electronic Surveillance: The bill provides for issuance of court orders to authorize programs of surveillance. Identification of individual targets is not required. However, in order to attain a court order for foreign surveillance, the Attorney General must provide 1) a statement that the surveillance is directed at persons outside the U.S. as well as a comprehensive description of the methods and audit procedures to be used to verify this belief; 2) a description of the information sought as well as the manner in which it will be done.

Assistance from Communications Providers: The bill requires communications providers to supply information and assistance in a manner that protects the secrecy of the electronic surveillance.

Congressional Reporting and Auditing Requirements: The bill requires the Attorney General notify the appropriate Congressional Committees for each order approved by the FISA court. It also requires an audit every 60 days by the Justice Department Inspector General.

Liability Prohibition: The bill provides liability protection for communications providers that provide assistance under this bill.

Sunset: The authorities provided in the bill sunset in 120 days.

Background

The Foreign Intelligence Surveillance Act (FISA) of 1978 created the framework for foreign intelligence gathering using electronic surveillance. The FISA law established

two courts, the U.S. Foreign Intelligence Surveillance Court (FISC) and the U.S. Foreign Intelligence Surveillance Court of Review, to authorize these foreign intelligence gathering activities.

Technology, however, has progressed by leaps and bounds in the six years since the Sept. 11 attacks, let alone in the three decades since the FISA laws were crafted. The outdated FISA laws restrict our intelligence community from utilizing a key tool in fighting the war on terror and protecting our national security.

In 1978, almost all international calls, or long-haul communications, were made over the air and bounced off satellites wirelessly. Those communications did not require a warrant under the FISA statute.

To protect the civil liberties of Americans, FISA required warrants for any signals that went through a wire, which is how most short-haul communications were conducted at the time the law was enacted.

Today, the situation is reversed. Wholly international communications transmitted over a wire require a FISA warrant.

It is difficult to compile enough information in a short period of time on a foreign person of interest to satisfy the FISA statute, and this is where the gap arises.

According to the Director of National Intelligence, Michael McConnell, “We are significantly burdened in capturing overseas communications of foreign terrorists planning to conduct attacks inside the United States. We must make the requested changes to protect our citizens and the nation. In today's threat environment, the FISA legislation is not agile enough to handle the community's and the country's intelligence needs.” ([Testimony to Senate Intelligence Committee, 5/1/07](#))

Rep. Heather Wilson (R-NM) has proposed narrowly-tailored legislation to close this loophole by allowing surveillance targeting foreign communications without a warrant.

During the 109th Congress, the House passed H.R. 5825, The Electronic Surveillance Modernization Act, which fundamentally modernized and enhanced FISA. The bill, however, never passed the Senate.

Additional Views

The Director of National Intelligence, Michael McConnell:

“I have reviewed the proposal that the House of Representatives is expected to vote on this afternoon to modify the Foreign Intelligence Surveillance Act. The House proposal is unacceptable, and I strongly oppose it.

The House proposal would not allow me to carry out my responsibility to provide warning and to protect the Nation, especially in our heightened threat environment.

I urge Members of Congress to support the legislation I provided last evening to modify FISA and to equip our Intelligence Community with the tools we need to protect our Nation.”