



H.R. 5959 – Intelligence Authorization Act for Fiscal Year 2009

EXECUTIVE SUMMARY

This legislation was introduced by Representative Silvestre Reyes (D-TX) on May 5, 2008. The House Permanent Select Committee on Intelligence ordered the bill to be reported by voice vote, as amended, on May 21, 2008. H.R. 5959 is expected to be considered on the floor of the House under a structured rule on July 16, 2008.

H.R. 5959 authorizes appropriations for the Intelligence Community activities and programs for fiscal year 2009. This bill does not authorize any earmarks, as a result of an amendment offered by Ranking Member Peter Hoekstra (R-MI) in Committee markup. The Intelligence Committee rejected in a bipartisan vote of 9 to 12 a Democrat amendment to limit Intelligence Community interrogations to the techniques authorized by the U.S. Army Field Manual.

In 2007, Director of National Intelligence Mike McConnell released the total appropriations for the Intelligence Community, as required by the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) - \$43.5 billion for fiscal year 2007. The Intelligence Community is a coalition of 16 Federal agencies which conduct the necessary intelligence activities to protect the national security of the United States, as well as the Office of the Director of National Intelligence. The Senate has not yet passed an authorization bill for fiscal year 2009.

According to House Intelligence Committee Republicans, "Although we have concerns with issues that we believe must continue to be addressed and resolved as the legislative process continues, we are encouraged that this bill avoids many of the contentious items that have recently prevented the enactment of an intelligence authorization bill and that it reflects areas of bipartisan consensus on critical national security issues."

The Congressional Budget Office (CBO) estimates that implementing the non-classified portions of H.R. 5959 "would cost \$325 million in 2009 and \$642 million over the 2009-2013 period, assuming appropriation of the authorized funds."

FLOOR SITUATION

H.R. 5959 is expected to be considered on the floor of the House on July 16, 2008. The bill is being considered on the floor under a structured rule. The rule:

- Provides one hour of general debate equally divided and controlled by the Chairman and Ranking Minority Member of the Permanent Select Committee on Intelligence;
- Waives all points of order against consideration of the bill except for those arising under clause 9 of rule XXI (regarding earmark disclosure);
- Provides that the amendment in the nature of a substitute recommended by the Permanent Select Committee on Intelligence shall be considered as an original bill for the purpose of amendment and shall be considered as read;
- Waives all points of order against the committee amendment. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure);
- Makes in order only those amendments printed in the Rules Committee report accompanying the resolution;
- Provides that the amendments made in order may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the



proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole;

- Waives all points of order against the amendments printed in the report except for those arising under clause 9 (regarding earmark disclosure) or 10 (regarding PAYGO) of rule XXI;
- Provides one motion to recommit with or without instructions;
- Provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

This legislation was introduced by Representative Silvestre Reyes (D-TX) on May 5, 2008. The House Permanent Select Committee on Intelligence ordered the bill to be reported by voice vote, as amended, on May 21, 2008.

BACKGROUND

The House normally passes annual authorization bills for the Intelligence Community, and has done so annually in the last 5 Congresses (and also prior to that). The Senate occasionally acts on the intelligence authorization bills, and did so last year. The President vetoed the Intelligence Authorization bill last year, and the veto was sustained by a vote of 225 – 188 in the House.

The Senate has not yet passed an authorization bill for fiscal year 2009. The vast majority of the itemized authorized spending in these bills remains classified.

In 1997 and 1998, President Clinton released for the first time the total amount of appropriations for the Intelligence Community. In 2007, Director of National Intelligence Mike McConnell released the total appropriations for the Intelligence Community, as required by the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) - \$43.5 billion for fiscal year 2007.

This bill does not limit Intelligence Community interrogations to the techniques authorized in the U.S. Army Field Manual. In full Committee markup, a Democrat amendment to this effect was defeated by a vote of 9-12.

The Intelligence Community is a cooperative coalition of 16 Federal agencies which conduct the intelligence activities necessary to protect the national security of the United States, as well as the Office of the Director of National Intelligence. The Intelligence Community includes the CIA, Defense Intelligence Agency, elements of the FBI and DEA, and the National Security Agency, among others. The National Security Act of 1947 (P.L. 80-235) primarily governs the operations of the Intelligence Community.

[United States Intelligence Community](#)

SUMMARY

Authorization of Appropriations: H.R. 5959 authorizes appropriations for the Intelligence Community for fiscal year 2009. The details of these authorizations are classified, but are available to the Appropriations committees of the House and Senate, and to the President. This bill does not authorize any earmarks, due to an amendment offered by Ranking Member Hoekstra in Committee markup. H.R. 5959 also provides that this authorization of appropriations does not convey authority for intelligence activities not otherwise sanctioned by law.

Availability of Funds: The bill amends the National Security Act of 1947 to allow transfer or reprogramming of funds if this utilization of funding supports an emergent need, improves program effectiveness, or increases efficiency.



CIA Inspector General: H.R. 5959 requires the CIA Inspector General to audit each covert action every three years and to submit a report on the audit results to the Intelligence committees within 60 days of completion.

CIA Retirement and Disability Fund: This bill authorizes appropriations of \$279.2 million for the CIA Retirement and Disability Fund.

Congressional Notification: H.R. 5959 amends the National Security Act of 1947 to require the President to provide to the Intelligence committees all information necessary for assessing the lawfulness, cost, benefit, and risk of intelligence activities. The bill also requires the DNI to keep the entire membership of the Intelligence committees informed of all non-covert intelligence activities, unless this requirement is waived by the Chair and Ranking Member.

Foreign Gifts: The bill provides a limited exemption to the heads of the Intelligence Community agencies from disclosing foreign gifts and decorations, if such disclosure would compromise intelligence sources or relationships.

Increased Criminal Penalties: H.R. 5959 increases from 10 to 15 years the maximum criminal penalty for an individual with access to classified information who intentionally discloses information identifying a covert agent.

Intelligence Community Membership: This bill clarifies that the Coast Guard and the Drug Enforcement Administration are components of the Intelligence Community.

Intelligence Community Management Account: H.R. 5959 authorizes \$648.8 million and 772 full-time personnel for the Intelligence Community Management Account for the fiscal year 2009.

Interrogations: The bill prohibits the use of funds for payment to any contractor to conduct an interrogation of a detainee in CIA custody. At the request of the Director of the CIA, the Director of National Intelligence may waive this prohibition if no Federal employee is capable and available to perform the interrogation and the interrogation is in the national interest of the United States and requires the use of a contractor. Contractors performing interrogations under this waiver authority are governed by the same laws applicable to Federal employee interrogators.

Inspector General of the Intelligence Community: The bill establishes an Intelligence Community Inspector General (IC/IG) with full statutory authorities and independence. The IC/IG will be appointed by the President, with the consent of the Senate, and will report directly to the Director of National Intelligence (DNI). Only the President may remove the IC/IG.

The IC/IG will have subpoena authority. The IC/IG must submit semiannual reports to the DNI describing significant problems regarding the programs and operations of the Intelligence Community, as well as problematic relationships between the Intelligence Community elements. The IC/IG must immediately report serious violations of the law to the DNI.

The IC/IG may accept reports of "urgent concern" from Intelligence Community employees or contractors. The IC/IG must then transmit these reports to the DNI, who must then forward them to the Intelligence committees.

The DNI has the authority to prohibit the IC/IG from investigating or auditing if the DNI determines that such an investigation or audit would compromise vital national security interests.

Note: *According to Intelligence Committee Republicans, "We have significant concerns with Section 408 of the bill, which would create a new Inspector General of the Intelligence"*



Community...we are concerned that this provision...duplicates efforts of Department and Agency inspectors general is unnecessarily complex and unwieldy, and threatens to further grow the size and bureaucracy of the Office of the Director of National Intelligence.” ([Minority Views, House Report 110-665](#))

Limitation on Covert Action Funds: The bill authorizes the expenditure of covert action funds to 25 percent, until each Member of the Intelligence committees has been briefed on all authorizations for covert actions in effect as of April 24, 2008.

National Commission: The bill reauthorizes the National Commission for Review of Research and Development Programs of the U.S. Intelligence Community through December 31, 2009 and authorizes the appropriation of \$2 million for this purpose.

Personnel Ceiling Adjustments: The bill permits the Director of National Intelligence (DNI) to employ civilian personnel at levels in excess of those authorized by Congress, but not to exceed three percent of the limit applicable to each component of the Intelligence Community.

Personnel Level Assessment: H.R. 5959 requires the DNI to prepare annual assessments of personnel and contractor levels within the Intelligence Community for the subsequent fiscal year. These assessments must be submitted to Congress concurrent with the President’s budget request.

Reporting Requirements: This bill requires the Intelligence Community to provide reports to Congress. In addition, each reporting requirement in the classified annex of H.R. 5959 is referenced in the text of the bill, thus giving them the force of law.

H.R. 5959 requires the following reports:

- A report to Congress by the DNI due by November 1, 2008 on the personnel services of contractors within the Intelligence Community and contractor accountability mechanisms.
- A report which details plans for establishing employee advisory groups within the elements of the Intelligence Community. This report must also include plans for ensuring diversity in these groups, among other details. The Intelligence Community may not implement a pay-for-performance compensation reform until 45 days after Congress receives this report from the DNI.
- A report to Congress by the DNI due by November 1, 2008 which details plans to increase diversity within each element of the Intelligence Community.
- A classified report to Congress by the DNI within 45 days on Intelligence Community compliance with the detention and interrogation provisions of the Detainee Treatment Act of 2005 as well as the Military Commissions Act of 2006.
- The DNI is required to develop a plan to implement the recommendations of an EPA report on data center energy efficiency.
- The DNI must submit classified semiannual reports to Congress on the nuclear programs of Iran, Syria, and North Korea.
- The DNI must submit an annual report to Congress on a strategy for the use of technology in the Intelligence Community.
- The DNI is required to report annually to Congress on foreign language proficiency within the Intelligence Community, as well as on foreign language training.
- The DNI must report to Congress annually on the intelligence resources dedicated to Iraq and Afghanistan during the preceding year.
- The DNI must report to Congress regarding the threat to national security posed by foreign efforts to acquire sensitive weapons technology and equipment.
- The DNI is required to submit a detailed report to Congress on the illicit trade of nuclear and radiological material and equipment.



- The Director of the FBI must report to Congress on a long-term vision for transforming the intelligence capabilities of the FBI and the progress of internal reforms towards that goal.
- The President must report to Congress by February 1, 2009 concerning options for creating a Comprehensive National Cybersecurity Initiative advisory panel.
- The DNI must submit to Congress within 180 days a National Intelligence Estimate on any weapons of mass destruction program undertaken by Syria.

Security Clearances: The bill amends the National Security Act of 1947 to require the DNI to adopt a multi-level approach to security clearances and to establish guidelines to implement such a system. The DNI must also appoint an ombudsman for security clearances within the Intelligence Community. The ombudsman must report to Congress annually regarding security clearance application complaints. The bill also requires the IC/IG to report to Congress within 40 days on the reciprocity of security clearances within the Intelligence Community.

AMENDMENTS MADE IN ORDER

- 1) Reps. Silvestre Reyes (D-TX) and Patrick Murphy (D-PA) REVISED: Would add an exception to the alternative fuel procurement requirement, clarifying that the bill does not prohibit an element of the Intelligence Community from entering into a contract to purchase a generally available fuel that is not an alternative or synthetic fuel or predominately produced from a nonconventional petroleum source when certain requirements are met. It also would add an assessment of the feasibility of employing foreign nationals lawfully present in the U.S. who have previously worked as translators for the Armed Forces or another department or agency of the Federal Government in Iraq or Afghanistan to meet the critical language needs of such element. Finally, it would require that the report required in section 412 on intelligence resources dedicated to Iraq and Afghanistan include resources dedicated to intelligence analysis.
- 2) Rep. Roy Blunt (R-MO): Would express the sense of Congress that (1) the defeat of Colombian paramilitary organizations is in the national interest of the United States; (2) the recent rescue of hostages held by the FARC demonstrates the professionalism of Colombian forces; (3) U.S. intelligence and other assistance played a key role in developing and reinforcing Colombian capabilities; and (4) it is critical that U.S. assistance to the Government of Colombia continue.
- 3) Rep. Rush Holt (D-NJ): Would require the Director of National Intelligence to inform all holders of the October 2007 National Intelligence Estimate on Iran's nuclear program of any new intelligence on Iran's nuclear program that has emerged since the publication of the NIE.
- 4) Rep. Peter Hoekstra (R-MI): Would bar the use of funds to prohibit or discourage the use of the phrases "jihadist," "jihad," "Islamofascism," "caliphate," "Islamist," or "Islamic terrorist" within the Intelligence Community or the Federal Government.
- 5) Reps. Jane Harman (D-CA) and Vernon Ehlers (R-MI): Would express the sense of Congress that the Director of National Intelligence should work with other government agencies and the aerospace industry to develop and implement policies to sustain and expand the aerospace industry workforce.
- 6) Rep. Mark Kirk (R-IL): Would require the Director of National Intelligence to submit to Congress a National Intelligence Estimate on the production and sale of narcotics in support of international terrorism, including the support the Taliban and al Qaeda receive from the sale of narcotics and the shift in production from opium to hashish in Afghanistan.
- 7) Rep. Maurice Hinchey (D-NY): Would instruct the Director of the Central Intelligence Agency to submit a report on the activities of the intelligence community with regard to human rights violations of the Argentine military government from the mid-1970's until the mid-1980's. The amendment also instructs the inclusion of a compilation of declassified documents and consents to the inclusion of a classified annex in the report.

ADDITIONAL VIEWS



House Intelligence Committee Republicans: “Although we have concerns with issues that we believe must continue to be addressed and resolved as the legislative process continues, we are encouraged that this bill avoids many of the contentious items that have recently prevented the enactment of an intelligence authorization bill and that it reflects areas of bipartisan consensus on critical national security issues. We also believe that the bill was significantly improved by seven Republican amendments that were adopted on a bipartisan basis to address important issues facing the intelligence community.” ([Minority Views, House Report 110-665](#))

COST

The Congressional Budget Office (CBO) estimates that implementing H.R. 5959 “would cost \$325 million in 2009 and \$642 million over the 2009-2013 period, assuming appropriation of the authorized funds.” [Full CBO Cost Estimate](#)

Note: This estimate addresses only the unclassified portion of the bill.

STAFF CONTACT

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