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INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2008

JUNE 26, 2007.—Ordered to be printed

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

R E P O R T

[To accompany S. 1538]

The Committee on Armed Services, to which was referred the bill (S. 1538) to authorize appropriations for fiscal year 2008 for the intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, 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. 1538 would authorize appropriations and other matters for fiscal year 2008 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 May 31, 2007, and it was referred to the Committee on Armed Services on June 4, 2007, 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. On June 15, 2007, the referral was 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 2008 and the Senate report accompanying S. 1538 (S. Rept. 110-75). The total amount within the jurisdiction

of the Committee on Armed Services recommended for the National Intelligence Program by the Senate Select Committee on Intelligence in S. 1538, as referred to the Committee on Armed Services, has been incorporated into the budget tables of the National Defense Authorization Act for Fiscal Year 2008, as reported by the Committee on Armed Services (S. 1547). Amendments to the funding levels for programs and activities within the National Intelligence Program recommended by the Committee on Armed Services, if approved by the Senate, will be reflected in the tables pending conference on the National Defense Authorization Act for Fiscal Year 2008.

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.

Section 102. Classified schedule of authorizations

Section 102 of S. 1538 would incorporate by reference the classified schedule of authorizations in the classified annex to the Intelligence Committee report (S. Rept. 110-75) for funding of national intelligence programs and activities. The Committee on Armed Services recommends minor funding adjustments to the classified annex to the Intelligence Committee report. Explanations of the committee's recommended changes are contained in the classified annex accompanying this report.

Section 310. Director of National Intelligence report on compliance with the Detainee Treatment Act of 2005 and related provisions of the Military Commissions Act of 2006

Section 310 of S. 1538 would require the Director of National Intelligence (DNI) to submit a comprehensive report on all measures taken by the Office of the DNI, and by all components of the intelligence community, to comply with the provisions of the Detainee Treatment Act of 2005 and related provisions of the Military Commissions Act of 2006.

Section 310 would direct that this report be submitted only to the congressional intelligence committees. The Committee on Armed Services believes that this report should be submitted to all appropriate committees of the Congress, and recommends an amendment to effect this change.

Section 403. Modification of limitation on delegation by the Director of National Intelligence of the protection of intelligence sources and methods

Section 403 of S. 1538 would undo a significant limitation imposed by the Intelligence Reform and Terrorist Prevention Act (IRTPA) of 2004. Congress, in IRTPA, intended to force the DNI to control the classification of information and to prevent the delegation of that control back to the heads of the intelligence agencies and components. Congress was intent on this reform to eliminate

a major impediment to information sharing. All of the components of the intelligence community, but especially the collection agencies, tend to hoard the information in their possession, and have used the authority to protect “sources and methods” as a primary means to control the distribution of, and access to, intelligence information. IRTPA recognized this, and so limited the DNI’s ability to delegate the authority to protect sources and methods and to classify information to the Principal Deputy DNI.

The DNI’s office for some time apparently has sought a relaxation of this limitation. Just a year ago, however, the Senate Select Committee on Intelligence, in the Intelligence Authorization Act for Fiscal Year 2007, S. 372, proposed only to allow delegation to the Deputy Directors of National Intelligence and the Chief Information Officer. This proposed delegation at least remained consistent with the concept of keeping the protection of sources and methods out of the hands of the operating components of the community and within the Office of the DNI.

The Committee on Armed Services fears that section 403 of S. 1538, as reported, would be a step backward, and could cause substantial harm to the DNI’s efforts to improve information sharing and access. The committee recommends an amendment to section 403 that would limit delegation to the Deputy Directors of National Intelligence and the Chief Information Officer.

Section 410. Inspector General of the Intelligence Community

Section 410 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.

The committee recommends several amendments that would: (1) ensure that the Secretary of Defense and the Director of National Intelligence stand on equal footing in resolving any disputes between the new Inspector General of the Intelligence Community and a DOD Inspector General; and (2) ensure that reports of the Inspector General of the Intelligence Community regarding elements of the intelligence community within the Department of Defense are provided both to the Director of National Intelligence and the Secretary of Defense, and that portions of reports involving components of the Department of Defense are reported to both the congressional intelligence committees and Armed Services Committees.

The committee amendment would establish an appropriate balance between the Department of Defense Inspector General and the Inspector General of the Intelligence Community and 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.

ASSIGNMENT OF SENIOR EXECUTIVE SERVICE OFFICER OR GENERAL OR
FLAG OFFICER TO THE ARMED FORCES MEDICAL INTELLIGENCE CEN-
TER

The Committee notes that S. Rept. 110–75 accompanying S. 1538 requests that the Under Secretary of Defense for Intelligence, the Director of the Defense Intelligence Agency, and the Director of National Intelligence develop a plan for installing a senior executive service officer or a military officer of flag rank to lead the Armed Forces Medical Intelligence Center and report to the congressional oversight committees by September 1, 2007.

However, before such a plan is developed, the Committee on Armed Services directs the Secretary of Defense to conduct an analysis to determine whether the scope of responsibilities and functions of this position support assignment of a senior executive or general or flag officer and to submit a report on this analysis to the congressional oversight committees no later than August 15, 2007.

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 2008.

Vote: Adopted by a voice vote.

ESTIMATE OF COSTS

Pursuant to paragraph 11(a)(3) of rule XXVI of the Standing Rules of the Senate, the committee deems it impractical to include an estimate of the costs incurred in carrying out the provisions of this report due to the classified nature of the operations conducted pursuant to this legislation. The committee will publish in the Congressional Record information on 5-year cost projections when such information is received from the Congressional Budget Office.

EVALUATION OF 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. 1538, the Intelligence Authorization Act for Fiscal Year 2008.

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.