



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 8, 2009
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 2701 – Intelligence Authorization Act for Fiscal Year 2010

(Rep. Reyes, D-Texas)

The Administration supports House passage of an Intelligence Authorization Act for FY 2010 that would support the Intelligence Community (IC) and the Community's mission to conduct intelligence activities to protect the Nation. The Administration appreciates the House Permanent Select Committee on Intelligence's inclusion in H.R. 2701 of many provisions submitted by the Administration.

Although the Administration is pleased with the many favorable provisions in the bill, the Administration has serious concerns with a number of provisions that would impede the smooth and efficient functioning of the IC and that would raise a number of policy, management, legal, and constitutional concerns. The Administration looks forward to working with the Congress to address these concerns, some of which are outlined below, in order to enhance the effectiveness and capabilities of the IC on behalf of the Nation.

While the Administration appreciates the funding authorized for critical intelligence programs as described in the classified schedule, it has serious concerns with certain funding reductions and other matters in the classified schedule that will be addressed separately by the Administration.

Report on Covert Actions (Section 321). The Administration strongly objects to section 321, which would replace the current "Gang of 8" notification procedures on covert activities. There is a long tradition spanning decades of comity between the branches regarding intelligence matters, and the Administration has emphasized the importance of providing timely and complete congressional notification, and using "Gang of 8" limitations only to meet extraordinary circumstances affecting the vital interests of the United States. Unfortunately, section 321 undermines this fundamental compact between the Congress and the President as embodied in Title V of the National Security Act regarding the reporting of sensitive intelligence matters – an arrangement that for decades has balanced congressional oversight responsibilities with the President's responsibility to protect sensitive national security information. Section 321 would run afoul of tradition by restricting an important established means by which the President protects the most sensitive intelligence activities that are carried out in the Nation's vital national security interests. In addition, the section raises serious constitutional concerns by amending sections 501-503 of the National Security Act of 1947 in ways that would raise significant executive privilege concerns by purporting to require the disclosure of internal Executive branch legal advice and deliberations. Administrations of both political parties have long recognized the importance of protecting the confidentiality of the Executive Branch's legal advice and deliberations. If the final bill presented to the President contains this provision, the President's senior advisors would recommend a veto.

Increased Presidentially Appointed and Senate Confirmed (PAS) positions (Sections 424, 426, and 427). H.R. 2701 creates five new PAS positions. Consistent with the 9/11 Commission's recommendations, the Administration believes that if these provisions were to become law, critical national security positions would remain unfilled for significant periods of time and create disruption across the IC. Further while the Administration agrees in concept to the establishment of Inspectors General, the Administration would want to work closely with the Congress to harmonize any new roles and responsibilities of a new Inspector General of the National Security Agency with those of the Inspector General of the Department of Defense.

Prohibiting the Implementation of the Defense Civilian Intelligence Personnel System (DCIPS) (Section 304). The Administration is concerned that section 304 will prevent the IC from transforming itself into a single enterprise that can recruit and retain a competitive workforce to meet national security needs. The DCIPS is consistent with a broader, long-standing pay-for-performance effort. In addition, the substantial reduction in funds provided for the IC in transition to pay-for-performance will severely undermine the Administration's efforts to build an intelligence workforce for the 21st century.

Personnel Ceiling Adjustments (Section 103). The Administration objects to section 103. Congressionally imposed personnel ceilings on IC civilian employment are inflexible, force the use of often more expensive contractors, and severely hinder the IC's civilian joint duty, student employment, and National Intelligence Reserve Corps (NIRC) programs.

Inspector General for the Intelligence Community (Section 406). The Administration supports the important work undertaken by Inspectors General in serving as watchdogs for transparency, accountability, and efficiency, and would like to work with the Congress on the optimal approach and authorities for carrying out the important functions of Inspectors General in the context of the IC. Although the Administration supports section 406's expansion of the protections and limitations of the Intelligence Community Whistleblower Protection Act, the Administration is concerned that the bill as drafted could be understood to constrain the President's constitutional authority to review and, if appropriate, control disclosure of certain classified information. Administration officials are working closely with Senate and House staff to craft appropriate whistleblower enhancement protections for intelligence community whistleblowers through separate legislative vehicles, H.R. 1507 and S. 372, and urge that the whistleblower enhancement provision in this bill account for Administration proposals offered in those contexts to address constitutional and other concerns with the current formulation.

GAO Review of Intelligence Community Matters (Section 335). Section 335 would fundamentally shift the long-standing relationship and information flow between the IC and intelligence committee members and staff. The Administration has committed to be forthcoming with the committees and to provide access to the information they need to conduct their oversight. The Administration would welcome the opportunity to more fully address this matter before fundamental changes to the oversight process are legislated.

Reporting Requirements (various sections). The Administration objects to a number of reporting requirements contained in the bill, such as sections 332, 345, 354, and 366, as well as purportedly in the classified annex. Section 356 would incorporate by reference all reporting requirements in the classified annex into the act, thereby making them a requirement in law. The Administration objects to the passage of such substantive secret provisions of law. Further, such a provision would remove the flexibility that Congress and the Executive branch

would otherwise have to modify and adapt provisions in the classified annex to meet changing conditions and requirements without seeking a statutory change from the full Congress.

Prohibition on use of funds to provide Miranda warnings to certain persons outside of the United States (Section 504). The Administration strongly objects to section 504, prohibiting *Miranda* warnings abroad, which may take the prosecution option off the table in the United States Government's fight against *al Qaeda* and its affiliates and deny the government an important tool used by the previous Administration to preserve legal options. Indeed, the practice in the previous Administration had been to provide *Miranda* warnings to persons outside of the United States, recognizing the value of preserving the option to prosecute terrorists in our system of justice. The Nation needs at its disposal every tool in the national security toolbox, including the ability to bring terrorist prosecutions.

National Security Information (Section 502). The Administration objects to this section, which would move the Program Manager for the Information Sharing Environment (PM-ISE) into the Executive Office of the President. The Administration is still reviewing how to make the PM-ISE most effective and believes such legislation is premature and could create undue administrative and managerial burdens by creating a completely new category of information for agencies to manage. The Administration would like to work with Congress to meet its goals through non-legislative means.

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