

COMPARISON OF THE RESTORE ACT, THE SENATE BILL, AND THE REVISED HOUSE BILL

Title I: Surveillance Authority

	RESTORE ACT	Senate Bill	REVISED HOUSE BILL
Role of FISA Court in Approving Surveillance	Court must approve surveillance procedures <u>prior</u> to the start of surveillance.	DNI and AG authorize surveillance and submit procedures to FISA Court 5 days <u>after</u> surveillance begins. Court has no firm deadline for approving the procedures.	Court must approve surveillance procedures <u>prior</u> to the start of surveillance.
Emergency Surveillance	In an emergency, allows for surveillance to go forward for 45 days before Court approval.	No provision.	If immediate action is required before Court can approve procedures, then surveillance may go forward. The government must file with the Court within 7 days, and Court has 30 days to rule on legality of surveillance. Court may extend the 30-day time for good cause. <i>No surveillance will be lost.</i>
Exclusivity	FISA is the exclusive means to conduct domestic surveillance for foreign intelligence purposes – unless a specific statutory authorization is enacted.	FISA and Title III are the exclusive means to conduct domestic surveillance.	FISA and Title III are the exclusive means to conduct domestic surveillance – unless a specific statutory authorization for surveillance is enacted.
Inspector General Review of Warrantless Surveillance	Provides for review by the Justice Department Inspector General.	No provision for any review.	Provides for a Senate-confirmed Inspector General to conduct a review.
“Reverse Targeting” Guidelines	FISA Court must approve guidelines for determining whether the “significant purpose” of surveillance is to acquire communications of a specific U.S. person.	General prohibition against reverse targeting without any guidelines.	Requires submission to Congress and the FISA Court of reverse targeting guidelines that determine whether the “significant purpose” of the surveillance is to acquire communications of a specific U.S. person.
Sunset	2 years (December 2009).	6 years (December 2013).	2 years (December 2009).

	RESTORE ACT	Senate Bill	REVISED HOUSE BILL
Definition of Electronic Surveillance	No change to the definition of electronic surveillance.	Redefines Electronic Surveillance to carve out targeting of persons outside the United States.	Eliminates Senate provision redefining electronic surveillance.
Compliance Reviews by FISA Court	Requires the FISA Court to assess compliance on a quarterly basis.	Provision declaring that nothing shall prohibit the FISA Court from having inherent power to assess compliance.	States affirmatively that FISA Court has the power to assess compliance with minimization procedures. Also declares that nothing shall prohibit the FISA Court from having inherent power to assess compliance.
Statute of Limitations for Prosecuting Violations of FISA	Increases from 5 years to 10 years.	No provision.	Increases from 5 years to 10 years.
Prospective Liability Protection for Telecommunications Carriers	Provides prospective liability protection for telecom companies that assist with lawful surveillance activities.	Provides prospective liability protection for telecom companies that assist with lawful surveillance activities.	Provides prospective liability protection for telecom companies that assist with lawful surveillance activities. Also, ensures that companies complying with the PAA have liability protection for lawful surveillance that occurred after expiration of PAA.
Individual FISA Order Required for Americans Abroad	No provision.	Requires individual FISA Court order.	Requires individual FISA Court order.
Scope of Authorizations	Allows for collection of intelligence related to terrorism, espionage, and threats to national security.	Allows for collection of all foreign intelligence information.	Allows for collection of all foreign intelligence information.
Provision for WMD Proliferation	No provision.	Includes WMD proliferators in the definition of agent of a foreign power.	Includes WMD proliferators in the definition of agent of a foreign power.

Title II: Telecom Liability Litigation Procedures

	RESTORE ACT	Senate Bill	REVISED HOUSE BILL
Retroactive immunity	No retroactive immunity.	<p>Full immunity for any telecom company where the AG certifies that assistance was requested as part of the President’s warrantless surveillance program.</p> <p>Limits the court to reviewing such certifications only for abuse of discretion.</p>	<p>No retroactive immunity.</p> <p>Provides a process to allow the district court to review classified evidence <i>in camera</i> and <i>ex parte</i> (in front of the judge without the plaintiff present). This allows the telecommunications companies to assert defenses <u>that already exist under FISA and other statutes</u>. This process simply creates a pathway for companies to assert such defenses.</p> <p>Executive Branch cannot block the companies from asserting their defenses under the doctrine of “state secrets.”</p> <p>This provision permits the companies to defend themselves but does not create any new defense or immunity and does not excuse any conduct that may have been unlawful.</p>

Title III: National Commission on Warrantless Surveillance

	RESTORE ACT	Senate Bill	REVISED HOUSE BILL
Commission on Warrantless Surveillance	No provision.	No provision.	<p>Establishes a bipartisan National Commission, appointed by Congress, to investigate and report to Congress and the public about the Administration’s warrantless surveillance activities.</p> <ul style="list-style-type: none"> • Final report would issue one year after the first meeting of the Commission. • The Commission would have access to classified information. • The Commission would have subpoena power.