



Legislative Bulletin.....July 16, 2008

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

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: At least one

Total Cost of Discretionary Authorizations: \$649 million over one year

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 1

Number of Bills Without Committee Reports: 1

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

H.R. 5959—Intelligence Authorization Act for Fiscal Year 2009
(Reyes, D-TX)

Order of Business: H.R. 5959, the Intelligence Authorization Act for Fiscal Year 2009, is scheduled to be considered on the House floor on Wednesday, July 16, 2008, subject to a structured rule ([H.Res.1343](#)), making in order seven amendments, each debatable for 10 minutes. A summary of each amendment made in order will be distributed in a forthcoming RSC document.

The rule waives all points of order against consideration of the bill, except those regarding PAYGO and earmarks, waives all points of order against the bill itself—except the PAYGO

rule—and allows the Chair to postpone consideration of the legislation at any time during its consideration. The rule allows one motion to recommit with or without instructions.

Background: On December 13, 2007, the House passed the Conference Report to H.R. 2082, the Intelligence Authorization Act for Fiscal Year 2008, by a final vote of [222—199](#). Two days prior, the White House issued a [Statement of Administration Policy](#) (SAP), stating that “If this bill were to pass the House and the Senate and be presented to the President for signature, the President’s senior advisors would recommend that he veto the bill.” On February 13, 2008, the Senate passed the legislation by a vote of [51—45](#) and the bill was presented to the President on February 29, 2008. On Saturday, March 8, 2008, the President vetoed H.R. 2082. On March 11, 2008, the House sustained the President’s veto by a vote of [225-188](#).

The SAP stated a number of reasons for the President’s opposition to the bill. The Administration vehemently opposed a provision in the bill which required that all intelligence agencies use only interrogation techniques authorized by the Army Field Manual. The Administration contended that the provision would make our enemies aware of every interrogation tactic at our disposal and bar intelligence community professionals from utilizing many enhanced interrogation tactics, regardless of the severity of the situation, the value of the detainee, or their geographic location. According to the President, Congress had already passed legislation that authorized acceptable interrogation tactics while protecting against cruel and unusual treatment. According to the SAP, “The Military Commissions Act of 2006, enacted just over one year ago, struck the acceptable balance with respect to collection of intelligence from captured terrorists.”

The Administration also objected to other provisions of the legislation. H.R. 2082 would have established an Inspector General (IG) to conduct oversight across the entire intelligence community, even though each intelligence agency is already under a specific IG. The Administration saw the position of an intelligence community-wide IG as duplicative oversight that could slow intelligence activity, despite the fact that the 9/11 Commission concluded that intelligence officials need to assume and carry out their duties and responsibilities as quickly as possible. The President also objected to the provisions in the bill that required the President to disclose certain intelligence material and the inclusion of classified earmarks in the bill. Because of these and other concerns, the President vetoed the FY 2008 Intelligence authorization. Intelligence operations for FY 2008 were thus funded through each individual intelligence agency’s appropriated funding.

In an effort to report a bill that would be acceptable to the President and signed into law, Permanent Select Committee on Intelligence Chairman Silvestre Reyes (D-TX) made some changes from H.R. 2082. Most notably, H.R. 5959, the FY 2009 Intelligence Authorization, would require the President to ensure that interrogation tactics are in keeping with standards authorized by the Detainee Act of 2005 and the Military Commissions Act of 2006—not the Army Field Manual. The Committee also accepted an amendment to strike all earmarks from the Intelligence Authorization. However, H.R. 5959 still establishes an IG of the intelligence community, and contains a number of disclosure requirements and contractor restrictions that are objectionable to the Administration.

In a [SAP released on July 16, 2008](#), the Administration stated, “If H.R. 5959 were presented to the President, the President’s senior advisors would recommend that he veto the bill.” The SAP indicates that the Administration is concerned with a number of the bill’s provisions, especially:

- Use of Private Contractors for Interrogations of Persons in CIA Custody. H.R. 5959 prohibits private contractors from interrogating suspects detained by the CIA, but allows an exception to this prohibition if the DNI grants a written waiver to the Director of the CIA. According to the Administration, “Even with the waiver authority, this provision would impose a significant impediment to the timely and effective collection of critical intelligence.”
- Inspector General of the Intelligence Community. The legislation creates the position of Inspector General (IG) of the entire intelligence community, within the Office of the Director of National Intelligence (ODNI). The IG would monitor and investigate accusations of unethical or illegal behavior within the intelligence community, as well as waste, fraud, and abuse. Under current law, each intelligence agency is already under a specific IG. The SAP states that “There is no demonstrated need to spend additional taxpayer resources to provide for two inspectors general with competing jurisdiction over the same intelligence elements.”
- Review of Covert Action Programs by the Inspector General of the CIA: The bill calls for the Inspector General of the CIA to conduct an audit of each covert action every three years. According to the SAP, “This provision would interfere with the independent judgment of the CIA Inspector General or Director of the CIA as to what activities should be audited and when the audits should be conducted.”
- Covert Action Funds: H.R. 5959 prohibits the intelligence community from using more than 25% of classified funds for “covert actions” until every Member of the House and Senate Intelligence Committees has been briefed on the specific authorizations for covert actions. The Administration argues that “Such a provision is inconsistent with the statute that expressly authorizes limited notice to Congress in exceptional cases and would undermine the fundamental compact between the Congress and the President on reporting highly sensitive intelligence matters.”

Other provisions of note to conservatives may include the following:

- Global climate change. According to [House Report 110-665](#), the classified portion of H.R. 5959 includes the authorization of funds for the intelligence community, in cooperation with the scientific community, to address national security threats that may arise as a result of global climate change.
- Earmarks. H.R. 5959 prohibits funds authorized under the bill from being used for earmarks.
- Interrogation Techniques. The bill prohibits the intelligence community from using any interrogation tactics that are not authorized by the Detainee Act of 2005, which bars the

use of “cruel, inhuman, or degrading treatment.” President Bush vetoed the FY 2008 Intelligence Authorization Act, citing, among other things, the fact that the bill would have limited interrogation tactics to those specified in the Army Field Manual. At the time, President Bush indicated his position that the Detainee Treatment Act and the Military Commissions Act were sufficient to ensure humane treatment of detainees while allowing the intelligence community to carry out its duties.

- Pay for Performance. The bill would prohibit the DNI from implementing a plan that provides members of the IC pay based on performance until reporting requirements are met.

Note: This Legislative Bulletin addresses only the **un**classified portion of the bill. The language of H.R.5959 provides for the passage of the classified annex, which contains the **vast** majority of the authorizations in this legislation. The classified annex is available to the Committees on Appropriations of the House and Senate, and to the President. The President has to provide for the “suitable” distribution of appropriate portions of the annex within the executive branch.

Summary: The unclassified portion of H.R. 5959 would authorize \$649 million in discretionary FY 2009 appropriations (\$85 million less than House-passed Intelligence Authorization for FY 2008), including \$279 million for Central Intelligence Agency Retirement and Disability System (CIARDS). The following is a summary of the bill’s major provisions.

Title I—Budget and Personnel Authorizations

Authorization of Appropriations: H.R. 5959 authorizes classified appropriations for FY 2009 for intelligence-related activities of the following U.S. government entities:

- 1) The Office of the Director of National Intelligence
- 2) The Central Intelligence Agency
- 3) The Department of Defense
- 4) The Defense Intelligence Agency
- 5) The National Security Agency
- 6) The Department of the Army, the Department of the Navy, and the Department of the Air Force
- 7) The Department of State
- 8) The Department of the Treasury
- 9) The Department of Energy
- 10) The Department of Justice
- 11) The Federal Bureau of Investigation.
- 12) The National Reconnaissance Office
- 13) The National Geospatial-Intelligence Agency
- 14) The Coast Guard
- 15) The Department of Homeland Security
- 16) The Drug Enforcement Administration

The specific schedule of authorizations for intelligence activities of the federal government (including the Office of the Director of National Intelligence, the CIA, the Defense Department, the National Security Agency, the FBI, etc.) is classified. The schedule of authorizations will be made available to the House and Senate Appropriations committees and the President.

Earmarks: H.R. 5959 states that nothing in the classified schedule or conference report shall be construed to authorize expenditures for Member-requested earmarks.

Global Climate Change: According to the House Permanent Select Committee on Intelligence, in [House Report 110-665](#), the classified portion of H.R. 5959 authorizes funds for the intelligence community to cooperate with the scientific community to address potential national security threats related to global climate change. According to the report, “the Committee has authorized additional funds for the purpose of enhancing the Intelligence Community’s collaboration efforts with the scientific community to address these challenges and to build relationships with international and national sources of expertise. The Committee urges the executive branch to use these resources as a catalyst for innovative... efforts to build the capacity of the intelligence community to provide warning and strategic analysis in the context of global climate change.”

Personnel Ceiling Adjustments: The bill authorizes the Director of National Intelligence (DNI), with the approval of the Director of the Office of Management and Budget, to exceed their current (classified) personnel ceilings when necessary to perform “important intelligence functions,” when reported to Congress, and when the increase is no greater than 3 percent of the current level.

Intelligence Community Management Account: The legislation authorizes FY 2009 appropriations of \$648.8 million to the Intelligence Community Management Account (ICMA) to fund 772 (unclassified) full-time personnel for management and administrative requirements.

Covert Action Funds: H.R. 5959 prohibits the intelligence community from using more than 25% of classified funds for “covert actions” until every Member of the House and Senate Intelligence Committees has been briefed on the authorizations for covert actions.

“5 and Out” Prohibition: The bill prohibits funds from being used by the FBI to implement a program that requires FBI supervisors to be reassigned after serving in the same management position for five years.

Title II—Central Intelligence Agency Retirement and Disability System (CIARDS)

Authorization of Appropriations: H.R. 5959 authorizes \$279.2 million in FY 2009 to fund CIARDS. The appropriation for CIARDS is considered mandatory and the authorization in H.R. 5959 is the same amount as the assumed baseline. As such, CBO does not ascribe any additional mandatory spending for CIARDS to the cost of the bill.

Title III—General Intelligence Community Matters

Enhanced Flexibility in Non-reimbursable Details to the Intelligence Community: The legislation increases the amount of time that an agency employee may be detailed to the Office of the Director of National Intelligence (ODNI), on a reimbursable or non-reimbursable basis, from one year to two years. Employees detailed on a non-reimbursable basis are paid by their home agencies.

Multi-level Security Clearances: The bill requires the DNI to issue guidelines to ensure that elements of the intelligence community adopt a multi-level security clearance approach to make more efficient use of the skills of persons with cultural and linguistic expertise that is critical to national security.

Delegation of Authority for Travel on Common Carriers: The measure authorizes the DNI to allow the head of any element of the intelligence community to authorize travel on a common (commercial) carrier when it is consistent with security needs. Under current law, the DNI may only delegate the authority to authorize travel on a common carrier to the Principal Deputy DNI or the Director of the CIA.

Annual Personnel Level Assessment: The bill requires the DNI, in consultation with the head of each applicable agency, to prepare an annual personnel assessment for each element of the intelligence community for the subsequent fiscal year. The assessment would have to include, at a minimum, the budget for personnel costs, the increase over the previous year's costs, the number of positions requested, the best estimate of the cost of contractors, the increase in the number and cost of contractors over the previous year, a written justification for the levels of personnel and contractors, the number of intelligence analysts employed by each intelligence community element, and a list of all contractors that have been investigated by the Inspector General of an element. Each agency would have to obtain a statement from the DNI saying that they will have sufficient internal infrastructure, training, and funding to support the requested level of personnel.

Comprehensive Report on Intelligence Community Contractors: H.R. 5959 would require the DNI to submit a report by November 1, 2008, describing the intelligence community's use of personal service contractors, and present the findings to the House and Senate Committees on Intelligence. The report would have to include information about the regulations, oversight, and guidance used to hire, train, monitor, and provide security clearances to contractors. The report would also have to include information regarding the costs and savings involved with awarding contracts for jobs that are similar to work done by government employees and a comparison of the compensation of contract employees and government employees. Finally, the report would have to include a section identifying the best practices for oversight and accountability that may be applied to contract employees.

Pay for Performance Report: The bill would prohibit the DNI from implementing a plan that provides members of the intelligence community pay based on performance until at least 45 days after the DNI submits a report describing a proposed employee advisory group to oversee the

implementation of a pay-for-performance plan. The report would also have to include a description of an appeals mechanism for employees who wish to appeal a pay decision.

Plan on Increased Diversity: H.R. 5959 requires the DNI to submit a report by November 1, 2008, describing the specific plan of each IC entity, including the ODNI, to increase diversity within that element of the IC.

Security Clearance Determinations: The bill requires the Director of the Office of Management and Budget (OMB) to issue an annual report containing the number of intelligence community security clearance determinations that have taken more than one year to process and explaining the reasons for such delays.

Restrictions on Conduct of Intelligence Activities: The bill states that the authorization of appropriations by H.R. 5959 shall not constitute authority for any intelligence activity which is not otherwise authorized by law.

Protection of Certain National Security Information: The legislation increases the maximum punishment for a person with classified clearance who knowingly discloses information that identifies a covert agent from 10 to 15 years in prison.

Report on Compliance with the Detainee Act of 2005 and the Military Commissions Act of 2006: H.R. 5959 requires the DNI to submit a report by November 1, 2008, on every measure taken by the ODNI, and each element of the intelligence community, to comply with the Detainee Act of 2005 and the applicable provisions of the Military Commissions Act of 2006. The Detainee Treatment Act prohibits any individual in the custody of the U.S.—regardless of their nationality or location—from being subjected to “cruel, inhuman, or degrading treatment.” The Military Commissions Act requires the President to ensure compliance to the treatment standards in the Detainee Treatment Act.

This section differs from provisions in H.R. 2082 (the FY 2008 Intelligence Authorization), which required the DNI to follow the treatment standards described in the Army Field Manual. Those standards specifically prohibited certain practices, such as waterboarding. As a result, the President successfully vetoed the bill, stating that the requirements specified in the Detainee Treatment Act and the Military Commissions Act were sufficient to ensure humane treatment of detainees while allowing the intelligence community to carry out its duties.

Enhancement of Critical Skills Training Program: The measure authorizes the heads of intelligence agencies to establish undergraduate training program for civilian personnel, similar to the program that is currently available to employees of the National Security Agency (NSA).

Comprehensive National Cybersecurity Initiative Advisory Panel: The bill requires the President to submit to Congress by February 1, 2009, a report on the options for creating an advisory panel, comprised of Members of Congress, the Executive Branch, and the private sector to make policy recommendation on the development and implementation of the Comprehensive National Cybersecurity Initiative (CNCI).

Title IV—Matters Relating to Elements of the Intelligence Community

Plan to Implement Recommendations of the Data Center Energy Efficiency Reports: The bill requires the DNI to submit a plan to Congress by November 1, 2008, to implement the recommendations of the Environmental Protection Agency (EPA) regarding the efficiency of community data centers.

Reports on Iran, Syria, and North Korea: H.R. 5959 requires the DNI to report at least twice each year on the nuclear intentions and capabilities of Iran, Syria, and North Korea.

Inspector General of the Intelligence Community: The bill creates the position of Inspector General (IG) of the entire intelligence community, within the ODNI. The IG would monitor and investigate accusations of unethical or illegal behavior within the intelligence community, as well as waste, fraud, and abuse. The IG would be appointed by the President and confirmed by the Senate, but would report directly to the DNI. In order to enhance the independence of the position, the IG could only be removed by the President. The DNI would, however, be given the authority to prohibit the IG from investigating or auditing certain programs if the DNI determines that it is vital to the nation's security interests. The IG would be given the power to issue subpoenas and demand information from any department, agency, or element of the U.S. government. The IG would be required to submit regular reports to the DNI as well as Congress. The bill also requires the IG to immediately report certain violations or discoveries to the DNI and grants protection to whistleblowers who report violations to the IG.

Annual on Foreign Language Proficiency: The bill requires the DNI to submit an annual report to the congressional intelligence committees on the foreign language proficiency of each intelligence agency. The bill also requires the head of each individual element of the intelligence community to annually submit a report to the DNI on the foreign language proficiency of their personnel.

National Intelligence Estimate on Weapons of Mass Destruction in Syria: The measure requires the DNI to submit a National Intelligence Estimate to Congress on the history, status, and projected development of weapons of mass destruction in Syria. The DNI would be required to submit the estimate within 180 days of enactment and it may be submitted in classified form.

Report on Intelligence Resources Dedicated to Iraq and Afghanistan: The bill requires the DNI to submit a report to Congress on the intelligence collection resources that are dedicated to Iraq and Afghanistan during FY 2007 and FY 2008.

Ombudsman for Intelligence Community Security Clearances: The legislation establishes the position of ombudsman for intelligence community security clearances. The ombudsman would be required to assist people within the intelligence community that are experiencing delays in receiving security clearances.

Security Clearance Reciprocity: The bill requires the IG of the intelligence community to conduct a study of the reciprocity of security clearances among elements of the intelligence community. There is a concern that numerous individuals that have been approved for security

clearance in one element of the intelligence community are being forced to wait for the same clearance in another. This could result in security clearance delays that are costly to the intelligence community and to contractors, and could potentially result in gaps in national security intelligence.

Report on International Traffic in Arms: The legislation requires the DNI to report to Congress on the threat of foreign nations' efforts to acquire sensitive equipment technology from the U.S., and U.S. export controls against such efforts. The bill requires the report to be submitted by February 1, 2009.

Report on Nuclear Trafficking: H.R. 5959 requires the DNI to submit a report to Congress on the illicit trade of nuclear and radiological material by February 1, 2009. Specifically, the report would include all known details regarding the illicit sale or transfer of nuclear material in the last three years and an assessment of the countries that represent the greatest risk of nuclear trafficking.

Study of Revoking Pensions of Persons who Disclose Classified Information: The bill stipulates that the DNI shall conduct a study on the feasibility of revoking pension benefits of persons who commit unauthorized disclosures of classified information. The DNI would be required to report the findings to the congressional intelligence committees within 90 days.

Review of Covert Action Programs by the Inspector General of the CIA: The bill calls for the Inspector General of the CIA to conduct an audit of each covert action every three years. The IG of the CIA would be required to submit the report to the congressional intelligence committees within 60 days of each report's completion.

Prohibition on the Use of Private Contractors for Interrogations of Persons in CIA Custody: H.R. 5959 prohibits private contractors from interrogating suspects detained by the CIA. The bill would allow an exception to this prohibition if the DNI granted a written waiver to the Director of the CIA stating the DNI's determination that there is no employee of the federal government capable of, or available to, perform the interrogation.

Integrating the Counterintelligence Field Activity into the Defense Intelligence Agency: The bill requires the Under Secretary of Defense for Intelligence to submit a report to the congressional intelligence and armed services committees by November 1, 2008, outlining a process to integrate the Counterintelligence Field Activity (CIFA) into the Defense Intelligence Agency (DIA). Currently, the CIFA is under civilian management.

Report on the Intelligence Capabilities of the FBI: The legislation calls for the Director of the FBI to submit a report to the congressional intelligence committees describing the FBI Director's long-term plan for transforming the intelligence capabilities of the FBI. The report would be required within 120 days of enactment.

Title V—Other Matters

Extension of the National Commission for Review of R&D Programs of the Intelligence Community: The bill reauthorizes the National Commission for Review of Research and Development of the U.S. Intelligence Community, which was originally authorized in the Intelligence Authorization for FY 2003, but lapsed on September 1, 2004. The bill would also appropriate \$2 million for the program in FY 2009.

Amendments to the National Security Act of 1947: This provision would require the President, while carrying out his duties under the Amendments to the National Security Act of 1947, to provide the congressional intelligence committees all information necessary to assess the lawfulness, effectiveness, cost, benefit, intelligence gain, budgetary authority, and risk of an intelligence activity. The bill also stipulates that the DNI is responsible to report all non-covert intelligence activity to every Member of the congressional intelligence committees.

Report on Financial Intelligence on Terrorist Assets: The legislation changes the reporting requirement for information regarding intelligence on the financial assets of terrorist. Currently, Congress requires the Department of Treasury to submit such a report every six months. Under H.R. 5959, that requirement would become annual.

Notice of Intelligence Regarding North Korea and China: The bill amends the National Security Act of 1947 to clarify that a notification regarding North Korea or China which is sent to the congressional intelligence committees *after* it is transmitted to North Korea or China, does not fulfill the NSA's requirement to keep congressional intelligence committees fully informed of U.S. intelligence activities.

Sense of Congress Regarding Global Climate Change: H.R. 5959 expresses the sense of Congress that resources authorized under this act should not be diverted from human intelligence gathering or other programs designed to combat al Qaeda in order to study global climate change.

Administration Position: According to a [SAP released on July 16, 2008](#), "If H.R. 5959 were presented to the President, the President's senior advisors would recommend that he veto the bill."

Committee Action: H.R. 5959 was introduced on May 5, 2008, and was referred to the Permanent Select Committee on Intelligence. On May 21, 2008, H.R. 5959 was reported, as amended, by voice vote.

Cost to Taxpayers: According to CBO, the unclassified portion of H.R. 5959 would authorize \$649 million in discretionary FY 2009 appropriations (\$85 million less than House-passed Intelligence Authorization for FY 2008), including \$279 million for CIARDS. The specific schedule of authorizations for intelligence activities of the federal government (including the Office of the DNI, the CIA, the Defense Department, the National Security Agency, the FBI, etc.) is classified.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the House Permanent Select Committee on Intelligence, in [House Report 110-665](#), “the bill contains no congressional earmarks, limited tax benefits, or limited tariff benefits.”

Constitutional Authority: The House Permanent Select Committee on Intelligence, in [House Report 110-665](#), cites constitutional authority in Article 1, Section 8, but fails to cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[Emphasis added]*

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