



Legislative Bulletin February 16, 2011

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Motion to Concur in the Senate Amendment to H.R. 514—To extend expiring provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and Intelligence Reform of Terrorism Prevention Act of 2004 relating to access to business records, individual terrorists as agents of foreign powers and roving wiretaps until December 8, 2011.

Motion to Concur in the Senate Amendment to H.R.514— To extend expiring provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and Intelligence Reform of Terrorism Prevention Act of 2004 relating to access to business records, individual terrorists as agents of foreign powers and roving wiretaps until December 8, 2011 (Sensenbrenner, R-WI)

Order of Business: A Resolution on the floor today ([H.Res. 93](#)) provides for the consideration of the Senate amendment to H.R. 514, to extend expiring provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and Intelligence Reform and Terrorism Prevention Act of 2004 relating to access to business records, individual terrorists as agents of foreign powers, and roving wiretaps until December 8, 2011. The resolution provides for one hour of debate on the motion with 40 minutes equally divided and controlled by the chair and ranking minority member of the Committee on the Judiciary and 20 minutes equally divided and controlled by the chair and ranking minority member of the Permanent Select Committee on Intelligence.

Summary: The Senate Amendment (S. Amdt 90) to H.R. 514 extends by **90 days** to May 27, 2011 two provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and one provision of the Intelligence Reform and Terrorism Prevention Act of 2004 scheduled to expire on February 28, 2011. The three provisions are: Foreign Intelligence Service Act (FISA) roving wiretaps provision (Section 206), FISA business records provision (Section 215), and the “lone-wolf” provision (Section 6001 of the Intelligence Reform and Terrorism Prevention Act).

Additional Background: On February 8, 2011, H.R. 514 [failed](#) to receive the required two-thirds majority vote for passage under suspension of the rules. On Monday, February 14, 2011, this bill to extend the three expiring provisions to December 8, 2011 was brought up again under a [closed rule](#) and passed by a vote of [275-144](#). Last night, the Senate amended H.R. 514 by unanimous consent by shortening the extension for these three expiring provisions from December 8, 2011 to May 27, 2011.

Section 206 permits roving FISA surveillance orders (roving wiretaps). Orders do not need to specifically identify or name individuals when targets take actions to thwart surveillance. Thus, a roving wiretap may cover multiple locations, establishments, or neighborhoods because the target is being evasive and intentionally using multiple telephones for communication (rather than a single cell phone that could be more easily wiretapped). This provision is widely referred to as a “John Doe wiretap” since it allows for a surveillance order without authorities having to name a specific person under surveillance.

Section 215 permits access to “tangible items” under FISA, including business records for hotels, motels, automobile rentals, storage facilities, library activities, internet service provider records, and other tangible items, regardless of the individual holding the item. This provision is widely referred to as the “Library” provision since library records are included in the type of “tangible items” available under a FISA order. Section 215 does not allow the federal government to monitor the library and bookstore activities of ordinary, law-abiding citizens—the federal government must first demonstrate to a court that the business records are sought in connection with international terrorism or clandestine intelligence activities.

Section 6001 amends the definition of an “agent of a foreign power” to include a foreign national who is preparing for or engaging in international terrorism. The modification precluded the need to show an illegal activity is being conducted on behalf of a foreign power (as long as the target is not a U.S. citizen or permanent resident). For more information on the PATRIOT Act and these provisions, see the RSC bulletin on the PATRIOT Act from 2005 here http://rsc.jordan.house.gov/UploadedFiles/LB_121405_PATRIOTmeth.pdf

Committee Action: H.R. 514 was introduced by Rep. James F. Sensenbrenner (WI-05) on January 26, 2011 and referred to the Committee on the Judiciary and House Permanent Select Committee on Intelligence. No further Committee action has been taken. According to the House Committee on the Judiciary, the Majority staff intends to arrange for hearings on the full reauthorization of the provisions at a future date.

Administration Position: The Administration released a Statement of Administrative Policy on February 8, 2011 which “strongly supports extension of three critical authorities that our Nation's intelligence and law enforcement agencies need to protect our national security.” The White House is in favor of a longer extension into 2013, which has been proposed by Democratic Senators Barbara Feinstein and Judiciary Chairman Patrick Leahy.

Cost to Taxpayers: No CBO score was available at press time.

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?: A Committee Report [here](#) citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits does not mention the resolutions compliance with the House Rules regarding Earmarks/Limited Tax Benefit/Limited Tarriff Benefits.

Constitutional Authority: Rep. Sensenbrenner’s Constitutional Authority Statement for H.R. submitted into the Congressional Record upon introduction on January 26, 2011 states: “Congress has the power to enact this legislation pursuant to the following: The authority to enact this bill is derived from, but may not be limited to, Article I, Section 8, Clause 1 of the United States Constitution.”

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