

PROVIDING FOR FURTHER CONSIDERATION OF THE BILL (H.R. 3773) TO
AMEND THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 TO
ESTABLISH A PROCEDURE FOR AUTHORIZING CERTAIN ACQUISITIONS
OF FOREIGN INTELLIGENCE, AND FOR OTHER PURPOSES

NOVEMBER 14, 2007.—Referred to the House Calendar and ordered to be printed

Mr. HASTINGS of Florida, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 824]

The Committee on Rules, having had under consideration House Resolution 824, by a record vote of 7 to 2, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for further consideration of H.R. 3773, the “RESTORE Act of 2007,” under a closed rule. The rule provides for further consideration of the bill pursuant to House Resolution 746. House Resolution 746 waived all points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI. House Resolution 746 waived all points of order against provisions of the bill, as amended. This waiver did not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).

The rule provides that time for debate on the bill pursuant to House Resolution 746 shall be considered as expired. The bill, as amended, shall be debatable for one hour, with 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence. The rule provides that the further amendment printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted. Pursuant to House Resolution 746, the rule provides one motion to recommit with or without instructions. Finally, pursuant to House Resolution 746, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 397

Date: November 14, 2007.

Measure: H.R. 3773.

Motion by: Mr. Diaz-Balart.

Summary of motion: To grant an open rule.

Results: Defeated 2–7.

Vote by Members: Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Diaz-Balart—Yea; Hastings (WA)—Yea; Slaughter—Nay.

Rules Committee record vote No. 398

Date: November 14, 2007.

Measure: H.R. 3773.

Motion by: Mr. Hastings (WA).

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Forbes (VA), #10, which addresses sections 3, 5, and 6 of the Administration's proposal, relating to the Attorney General's authorization for electronic surveillance.

Results: Defeated 2–7.

Vote by Members: Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Diaz-Balart—Yea; Hastings (WA)—Yea; Slaughter—Nay.

Rules Committee record vote No. 399

Date: November 14, 2007.

Measure: H.R. 3773.

Motion by: Mr. Hastings (WA).

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Lungren (CA), #7, which would strike the language requiring the Foreign Intelligence Surveillance Court (FISC), on a quarterly basis, to assess the Intelligence Community's compliance with minimization procedures.

Results: Defeated 2–7.

Vote by Members: Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Diaz-Balart—Yea; Hastings (WA)—Yea; Slaughter—Nay.

Rules Committee record vote No. 400

Date: November 14, 2007.

Measure: H.R. 3773.

Motion by: Mr. Hastings (FL).

Summary of motion: To grant the rule.

Results: Adopted 7–2.

Vote by Members: Hastings (FL)—Yea; Matsui—Yea; Cardoza—Yea; Welch—Yea; Castor—Yea; Arcuri—Yea; Diaz-Balart—Nay; Hastings (WA)—Nay; Slaughter—Yea.

SUMMARY OF AMENDMENT TO BE CONSIDERED AS ADOPTED

Clarifies that nothing in the Act or the amendments to the Act shall be construed to prohibit lawful surveillance necessary to: prevent Osama Bin Laden, al Qaeda, or any other terrorist organization from attacking the U.S., any U.S. person, or any ally of the U.S.; ensure the safety and security of our Armed Forces or other national security or intelligence personnel; protect the U.S., any U.S. person, or any U.S. ally from the threat of WMD or any other threats to national security. Clarifies that the RESTORE Act shall not be construed to prohibit surveillance of, or grant any rights to, undocumented aliens. NSA and other agencies can only disseminate U.S. person identifying information (e.g., the name, address, phone number of a U.S. person) to other government agencies if a Senior Executive determines that such dissemination is necessary to understand the value of the intelligence and to protect national security. Establishes criteria for the FISA Court to determine whether the “reverse targeting” guidelines sufficiently protect U.S. person communications intercepted by the NSA.

TEXT OF AMENDMENT TO BE CONSIDERED AS ADOPTED

At the appropriate place in the bill insert the following new section:

SEC. ____ . SURVEILLANCE TO PROTECT THE UNITED STATES.

This Act and the amendments made by this Act shall not be construed to prohibit the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) from conducting lawful surveillance that is necessary to—

- (1) prevent Osama Bin Laden, al Qaeda, or any other terrorist or terrorist organization from attacking the United States, any United States person, or any ally of the United States;
- (2) ensure the safety and security of members of the United States Armed Forces or any other officer or employee of the Federal Government involved in protecting the national security of the United States; or
- (3) protect the United States, any United States person, or any ally of the United States from threats posed by weapons of mass destruction or other threats to national security.

In section 105B(b)(2) of the Foreign Intelligence Surveillance Act of 1978, as proposed to be amended by section 3 of the bill, amend subparagraph (D) to read as follows:

“(D)(i) the guidelines that will be used to ensure that an application is filed under section 104, if otherwise required by this Act, when a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States; and

“(ii) the criteria for determining if such a significant purpose exists, which shall require consideration of whether—

“(I) the department or agency of the Federal Government conducting the acquisition has made an inquiry to another department or agency of the Federal Government to gather information on the specific United States person;

“(II) the department or agency of the Federal Government conducting the acquisition has provided information that identifies the specific United States person to another department or agency of the Federal Government;

“(III) the department or agency of the Federal Government conducting the acquisition determines that the specific United States person has been the subject of ongoing interest or repeated investigation by a department or agency of the Federal Government; and

“(IV) the specific United States person is a natural person.”.

In section 105B(d)(2) of the Foreign Intelligence Surveillance Act of 1978, as proposed to be amended by section 3 of the bill, amend subparagraph (C) to read as follows:

“(C)(i) the guidelines referred to in subsection (b)(2)(D) are reasonably designed to ensure that an application is filed under section 104, if otherwise required by this Act, when a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States; and

“(ii) the criteria for determining if such a significant purpose exists require consideration of whether—

“(I) the department or agency of the Federal Government conducting the acquisition has made an inquiry to another department or agency of the Federal Government to gather information on the specific United States person;

“(II) the department or agency of the Federal Government conducting the acquisition has provided information that identifies the specific United States person to another department or agency of the Federal Government;

“(III) the department or agency of the Federal Government conducting the acquisition determines that the specific United States person has been the subject of ongoing interest or repeated investigation by a department or agency of the Federal Government; and

“(IV) the specific United States person is a natural person.”.

In section 105B(e)(1)(D)(3) of the Foreign Intelligence Surveillance Act of 1978, as proposed to be amended by section 3 of the bill, insert “provide” before “a certification”.

In section 105C(b)(1) of the Foreign Intelligence Surveillance Act of 1978, as proposed to be amended by section 4 of the bill, amend subparagraph (H) to read as follows:

“(H)(i) there are guidelines that will be used to ensure that an application is filed under section 104, if otherwise required by this Act, when a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States; and

“(ii) the criteria for determining if such a significant purpose exists require consideration of whether—

“(I) the department or agency of the Federal Government conducting the acquisition has made an inquiry to another department or agency of the Federal Government to gather information on the specific United States person;

“(II) the department or agency of the Federal Government conducting the acquisition has provided information that identifies the specific United States person to another department or agency of the Federal Government;

“(III) the department or agency of the Federal Government conducting the acquisition determines that the specific United States person has been the subject of ongoing interest or repeated investigation by a department or agency of the Federal Government; and

“(IV) the specific United States person is a natural person.”.

After section 5, insert the following new section:

SEC. 6. DISSEMINATION OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after section 105D (as added by section 5) the following new section:

“DISSEMINATION OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES

“SEC. 105E. The contents of communications collected under section 105B or section 105C, and intelligence reports based on such contents, shall not be disclosed or disseminated with information that identifies a United States person unless an officer or employee of the Federal Government whose rate of basic pay is not less than the minimum rate payable under section 5382 of title 5, United States Code (relating to rates of pay for the Senior Executive Service) determines that the identity of the United States person is necessary to—

“(1) understand the foreign intelligence collected under section 105B or 105C or assess the importance of such intelligence; and

“(2) protect the national security of the United States, the citizens, employees, or officers of the United States, or the members of the United States Armed Forces.”.

In section 12(a) in the matter preceding paragraph (1), strike “the Department of Justice, for the activities of the Office of the Inspector General, the appropriate elements of the National Security Division, and the National Security Agency” and insert “to the Department of Justice, for the activities of the Office of the Inspector General and the appropriate elements of the National Security Division, and to the National Security Agency”.

Strike section 18 and insert the following:

SEC. 18. NO RIGHTS UNDER THE RESTORE ACT FOR UNDOCUMENTED ALIENS.

This Act and the amendments made by this Act shall not be construed to prohibit surveillance of, or grant any rights to, an alien not permitted to be in or remain in the United States.

In the table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978, as proposed to be amended by section 19(a) of the bill, after the item relating to section 105D insert the following new item:

“Sec. 105E. Dissemination of communications of non-United States persons located outside of the United States who may be communicating with persons inside the United States.”.

