



**Legislative Bulletin.....July 24, 2002**

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**H.R. 4628—Intelligence Authorization Act for Fiscal Year 2003 (Goss)**

**Order of Business:** The bill is scheduled to be considered on Wednesday, July 24<sup>th</sup>, subject to a modified open rule. No amendment shall be in order except pro-forma amendments for the purpose of debate and those printed in the *Congressional Record*. See “Amendments” section below for summaries of the pre-printed amendments.

**Note:** This Legislative Bulletin addresses only the unclassified portion of the bill. The language of H.R. 4628 provides for the passage of the classified annex. The classified annex is available to the Committees on Appropriations of the House and Senate and to the President. The President shall provide for suitable distribution of appropriate portions of the annex within the executive branch.

**Summary:** H.R. 4628 would authorize **\$186.2 million** in discretionary FY2003 appropriations and **\$351.3 million** in mandatory spending for intelligence activities of the federal government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System (CIARDS). The specific schedule of authorizations for intelligence activities of the federal government (including the CIA, Defense Department, National Security Agency, FBI, etc.) is classified.

**Personnel Ceilings.** Authorizes the Director of Central Intelligence, with the approval of the Director of the Office of Management and Budget, to exceed by no more than 2% the (classified) FY2003 civilian personnel ceilings, when necessary to perform important intelligence functions and when reported to Congress.

**Intelligence Community Management Account.** Authorizes FY2003 appropriations of \$176.2 million (up from \$152.8 million in last year’s House bill) to the Intelligence Community Management Account (CMA) to fund 350 full-time personnel (up from 313 in last year’s House bill) and other administrative requirements.

**National Drug Intelligence Center.** Of the funds authorized for the CMA, \$34.1 million (up from \$27.0 million in last year’s House bill) is authorized for the National Drug Intelligence Center in Johnstown, Pennsylvania.

Emergency Appropriations. Authorizes emergency appropriations for intelligence activities contained in past and future FY2002 emergency supplemental appropriations bills.

CIARDS. Authorizes mandatory spending of \$351.3 million for CIARDS (up from \$212.0 million in last year's House bill and \$128.3 million above the CBO baseline—see “Cost to Taxpayers” section below).

Increase in Employee Compensation. Authorizes such appropriations increases “as may be necessary” for employee salaries, pay, retirement, and other benefits.

Intelligence Restrictions. Emphasizes that this legislation should not be deemed to constitute authority for the conduct of any intelligence activity that is not otherwise authorized by the Constitution or the laws of the United States.

Made in America. Expresses a sense of Congress that the Director of Central Intelligence should procure products that have been made in the United States (wherever possible) fiscally sound, and consistent with national security interests.

Semiannual Report of Financial Intelligence on Terrorist Assets. Directs the Secretary of the Treasury (acting through the head of the Office of Intelligence Support) to submit a report on a semiannual basis to Congress regarding operations against terrorist financial networks.

Extension of Voluntary Leave Transfer Authority. Expands the Voluntary Leave Transfer Program (in which an employee may transfer his accrued leave to another employee for a variety of personal reasons) to the CIA, the Defense Intelligence Agency, the National Security Agency, the National Imagery and Mapping Agency, the FBI, and other agencies engaged in intelligence activities as determined by the President. Currently, employees of such agencies can only transfer leave to an employee with a medical emergency.

Delay of Reorganization of the Diplomatic Telecommunications Service Program Office. Delays for one additional year the reorganization of the Diplomatic Telecommunications Service Program.

Requests from Foreign Governments. Prohibits intelligence agencies from complying with requests for public information from foreign governments.

National Flagship Language Initiative. Expands grant program authority under the National Security Education Program to establish a National Flagship Language Initiative, in which institutions of higher learning would be funded to establish, operate, or improve activities designed to train students to achieve advanced levels of proficiency in those foreign languages identified by the Secretary of Defense as most critical to the national security interests of the United States. Authorizes \$10 million a year to fund the Initiative.

Overdue Reports. Cuts by one-third the authorizations for the Office of the Director of Central Intelligence and the Office of Community Management Staff if overdue reports are not submitted to Congress within 180 days of enactment of this legislation.

Extension of Central Intelligence Agency Voluntary Separation Pay. Extends from September 30, 2003, to September 30, 2005, the expiration of the CIA Voluntary Separation Pay program, in which pay incentives are offered for early separation from CIA employment.

Prohibition on Compensation Reform. Prohibits the CIA Director or the head of any agency with intelligence functions from revising the compensation plans of any intelligence employee unless such plan has been specifically authorized by statute.

Colombian Counterterrorism. Authorizes funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counter-drug activities for fiscal years 2002 and 2003 (and any unobligated funds from a prior fiscal year) to be available for supporting a unified campaign against narcotics trafficking and against activities by organizations designated as terrorist organizations (such as the Revolutionary Armed Forces of Colombia, the National Liberation Army, and the United Self-Defense Forces of Colombia).

Exemption from Public Review for Certain Files. Allows the Director of the National Reconnaissance Office to exempt from public review rules files that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

### **Amendments.**

#1--Roemer: Authorizes \$300,000 for the Secretary of Defense to prepare a report on the feasibility of establishing a Civilian Linguist Reserve Corps comprised of U.S. citizens with advanced levels of proficiency in foreign languages who would be available upon a call of the President.

#2--Roemer: Authorizes \$3 million for the establishment of a National Commission on Terrorist Attacks Upon the United States to investigate (with subpoena power) and report on the facts and causes relating to the terrorist attacks of September 11, 2001.

#3--Chambliss: Expresses a sense of Congress that federal, state, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on sharing with hard-to-reach urban and rural communities. Directs the President to establish and direct the appropriate agencies to implement such homeland security information-sharing procedures, in accordance with certain guidelines detailed in the amendment. Authorizes "such sums as may be necessary" and directs the President to report on the progress of information sharing within one year of this legislation's enactment. Authorizes the sharing (amongst federal intelligence officials and appropriate state and local law enforcement personnel) of grand jury information; electronic, wire, and oral interception information; information acquired from electronic surveillance or a physical search; and

foreign intelligence information in certain circumstances when necessary to prevent or respond to a bona fide terrorist threat.

#4--Engel: Prohibits assistance in the form of lethal military equipment from being provided, either directly or indirectly, by any element of the intelligence community to the security services of the Palestinian Authority (PA), or to any officials, employees, or members thereof. Restricts other intelligence-community assistance to the PA's security services to that which is designed to reduce the number of PA security services to no more than two and to reform such security services so that its officials, employees, and members respect the rule of law and human rights, no longer fall under the command of, or report to, Yasir Arafat, and are not compromised by, and will not support, terrorism. Requires a report to Congress from the CIA on all forms of assistance that have been provided to the PA security services since 1993 and quarterly updates on assistance provided to the PA security services.

#5--Goss: Clarifies that the amounts requested for the Defense Emergency Response Fund that are designated for the incremental costs of intelligence and intelligence-related activities for the war on terrorism may only be obligated or expended for the anti-terrorist activities specified by the Deputy Director for Central Intelligence. Under the amendment, these funds could not be obligated or expended to correct programmatic or fiscal deficiencies in major acquisition programs.

#6--Hastings of Florida: Expresses a sense of Congress that:

- “the Director of the Federal Bureau of Investigation (with respect to the intelligence and intelligence-related activities of the Bureau), the Director of Central Intelligence, the Director of the National Security Agency, and the Director of the Defense Intelligence Agency should make the creation of a more diverse workforce a priority in hiring decisions; and
- “the Director of Central Intelligence, the Director of National Security Agency, the Director of Defense Intelligence Agency, and the Director of National Imagery and Mapping Agency should increase their minority recruitment efforts through the undergraduate training program provided for under law.”

#7--Hastings of Florida: Directs the CIA Director to submit an annual report to Congress on the hiring and retention of minority employees in the intelligence community. Minority employees include “racial and ethnic minorities,” women, and individuals with disabilities.

#8--Pelosi: Conditions the authorization of funding for counternarcotics and counterterrorism activities in Colombia upon a commitment from the newly elected President of Colombia that he will:

- “establish comprehensive policies to combat illicit drug cultivation, manufacturing, and trafficking (particularly with respect to providing economic opportunities that offer viable alternatives to illicit crops) and to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations;

- “implement significant budgetary and personnel reforms of the Colombian Armed Forces; and
- “support substantial additional Colombian financial and other resources to implement such policies and reforms, particularly to meet the country's previous commitments under ‘Plan Colombia.’”

#9--Roemer: Authorizes \$3 million for the establishment of a National Commission on Terrorist Attacks Upon the United States to review and make recommendations regarding the implementation by the intelligence community of the findings, conclusions, and recommendations of the Joint Inquiry of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence regarding the September 11<sup>th</sup> attacks. The Commission could also review other executive branch, congressional, or independent commission investigations into the terrorist attacks. *[Note: Amendment #2 authorizes the Commission to actually investigate September 11<sup>th</sup>; Amendment #9 authorizes the Commission to review the investigations of others.]*

**Cost to Taxpayers**: CBO estimates that the unclassified portion of the base text for H.R. 4628 would authorize **\$186.2 million** in discretionary FY2003 appropriations. No cost estimate is available for the classified annex to the bill.

This bill would also authorize **\$351.3 million** in mandatory spending for CIARDS to cover retirement costs attributable to military service and various unfunded liabilities. The CBO budget baseline currently includes only \$223 million for these payments. However, according to CBO, the additional \$128 million authorized in this bill would be used to implement a Bush Administration proposal that federal agencies pay the full cost of benefits for their employees as such benefits accrue. That change would depend on the enactment of other legislation. The additional \$128 million would be an intergovernmental transfer and would have no net effect on the budget.

**Does the Bill Create New Federal Programs or Rules?**: The unclassified portion of the bill would create a new grant program authorized at \$10 million a year. Otherwise, the bill would extend and/or increase current programs and authorities.

**Constitutional Authority**: The House Select Committee on Intelligence (in House Report 107-592) cites constitutional authority in the following clauses of Article 1, Section 8: Clause 1 (“provide for the common Defence and general Welfare of the United States”); Clause 12 (“to raise and support Armies”); Clause 13 (“to provide and maintain a Navy”); and Clause 18 (“to make all Laws which shall be necessary and proper...”).

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## **HR 4965—Partial-Birth Abortion Ban Act of 2002 (Chabot)**

**Order of Business:** The bill is scheduled to be considered on Wednesday, July 24, 2002, under a closed rule, with one motion to recommit. The Rule allows for one hour of debate on the Rule, two hours of debate on the bill and 10 minutes on the motion to recommit.

**Summary:** The Partial-Birth Abortion Ban Act (H.R. 4965) makes it illegal in the United States for a physician to perform a partial-birth abortion. Partial-birth abortion is a procedure where a pregnant woman's cervix is forcibly dilated over a three-day time period. On the third day her child is pulled feet first through the birth canal until his or her entire body, except for the head, is outside the womb. The head is held inside the womb by the woman's cervix. While the fetus is stuck in this position, dangling partly out of the woman's body, and just a few inches from a completed birth, the abortionist inserts scissors into the base of the baby's skull and the scissors are opened, creating a hole in the baby's head. The skull is either then crushed with instruments or a suction catheter is inserted into the hole, and the baby's brain is suctioned out. Since the head is now small enough to slip through the mother's cervix, the now-lifeless body is pulled the rest of the way out of its mother and the baby's corpse is discarded, usually as medical waste.

Two years ago in *Stenberg v. Carhart*, the United States Supreme Court struck down Nebraska's partial-birth abortion ban, which was similar, but not identical, to the previous bans passed by Congress. To address *Stenberg*, the Partial-Birth Abortion Ban Act of 2002 differs from the previous legislation in two ways:

### **REFUTING THE SUPREME COURT'S CLAIM THAT THE LAW WAS VAGUE:**

The five-justice majority in *Stenberg* thought that Nebraska's definition of partial-birth abortion was vague and potentially outlawed a common abortion procedure where an unborn child is pulled apart limb by limb through dismemberment (dilation and evacuation (D&E)) and sometimes the limbs enter into the birth canal. In a D&E, the justices ruling in the majority explained,

“ During a pregnancy's second trimester (12 to 24 weeks), the most common abortion procedure is “dilation and evacuation” (D&E), which involves dilation of the cervix, removal of at least some fetal tissue using nonvacuum surgical instruments, and (after the 15th week) the potential need for instrumental dismemberment of the fetus or the collapse of fetal parts to facilitate evacuation from the uterus. **When such dismemberment is necessary, it typically occurs as the doctor pulls a portion of the fetus through the cervix into the birth canal**” (emphasis added).

<http://supct.law.cornell.edu/supct/html/99-830.ZS.html>

To address the Court's concerns that the definition of partial-birth abortion was vague, H.R. 4965 contains a new, more precise, definition of the prohibited procedure:

**Definition of Partial-Birth Abortion in H.R. 4965:**

“The person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus.”

**Life of the Mother Exception** (virtually identical to previously-passed bans):

“This subsection does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.”

**REFUTING THE COURT’S CLAIM THAT LAW NEEDS A “HEALTH” EXCEPTION:**

The Court ruled that the Nebraska ban placed an “undue burden” on women seeking abortions because it failed to include an exception to preserve the “health” of the mother. The Court based its conclusion on the trial court’s factual findings regarding the relative health and safety benefits of partial-birth abortions—findings that were highly disputed. The *Stenberg* Court, however, was required to accept these questionable trial court findings because of the highly deferential “clearly erroneous” standard that is applied to lower court factual findings.

According to the Judiciary Committee, those factual findings are inconsistent with the overwhelming weight of authority on the issue—including evidence received during extensive legislative hearings—which indicates that a partial-birth abortion is never medically necessary to preserve the health of a woman, poses serious risks to a woman’s health, and lies outside the standard of medical care. This is supported by the American Medical Association which has said the procedure is “not good medicine” and is “not medically indicated” in any situation.

Although the Supreme Court in *Stenberg* was obligated to accept the district court’s findings, Congress possesses an independent constitutional authority to reach findings of fact. Under well-settled Supreme Court jurisprudence, these congressional findings will be entitled to great deference by the federal judiciary in ruling on the constitutionality of a federal partial-birth abortion ban. Thus, the first section of H.R. 4965 contains Congress’s 14 factual findings that, based upon extensive medical evidence compiled during congressional hearings, a partial-birth abortion is never necessary to preserve the health of a woman.

## **In a “health” emergency, why wait three days?**

Some proponents of partial-birth abortion claim the bill needs an exception for the “health” of the mother. In a paper he presented at a September 1992 meeting of the National Abortion Federation, Ohio abortionist Martin Haskell, M.D. described the partial-birth abortion procedure, which he is credited with inventing. The procedure, he said, takes up to three days. If a woman’s health is in danger, why wait three days?

The procedure, he describes, takes three days:

### “Day 1—Dilation

... Five, six, or seven large Dilapan hydroscopic dilators are placed in the cervix. The patient goes home or to a motel overnight.”

### “Day 2—More Dilation

The patient returns to the operating room where the previous day’s Dilapan are removed. The cervix is scrubbed and anesthetized. Between 15 and 25 Dilapan are placed in the cervical canal. The patient returns home or to a motel overnight.

### “Day 3—The Operation

The patient returns to the operating room where the previous day’s Dilapan are removed.”  
[The procedure is then described in vivid detail]

—Source: Martin Haskell, M.D., "Dilation and Extraction for Late Second Trimester Abortion," in "Second Trimester Abortion: From Every Angle," Fall Risk Management Seminar, September 13-14, 1992, Dallas, Texas, National Abortion Federation.

## **Additional Information:**

### **104<sup>th</sup> Congress:**

## **Legislative History:**

**On November 1, 1995**, the House first considered the Partial-Birth Abortion Ban Act (H.R. 1833), which passed 288-139 (Roll Call No. 756 <http://clerkweb.house.gov/cgi-bin/vote.exe?year=1995&rollnumber=756>)

On December 7, 1995, the ban passed the Senate 54-44, with a few minor modifications. ([http://www.senate.gov/legislative/vote1041/vote\\_00596.html](http://www.senate.gov/legislative/vote1041/vote_00596.html))

**On March 27, 1996**, the House agreed to the Senate modifications, 286-129, 1 voting present (Roll Call No. 94 <http://clerkweb.house.gov/cgi-bin/vote.exe?year=1996&rollnumber=94>)

On April 10, 1996, the Partial-Birth Abortion Ban Act was vetoed by President Bill Clinton.

**On September 19, 1996**, the House overrode the veto, 285-137 (Roll No. 422)  
<http://clerkweb.house.gov/cgi-bin/vote.exe?year=1996&rollnumber=422>

On September 26, 1996, the Senate failed by to override the veto 58-40  
[http://www.senate.gov/legislative/vote1042/vote\\_00301.html](http://www.senate.gov/legislative/vote1042/vote_00301.html)

### **105<sup>th</sup> Congress:**

**On March 20, 1997**, the House considered the Partial-Birth Abortion Ban Act (H.R.1122). After defeating a motion to recommit the bill with instructions (that would have gutted the ban) 149 - 282 (Roll no. 64) <http://clerkweb.house.gov/cgi-bin/vote.exe?year=1997&rollnumber=64> the House passed the ban 295-136 (Roll Call No.65 <http://clerkweb.house.gov/cgi-bin/vote.exe?year=1997&rollnumber=65>)

On May 20, 1997, the ban passed the Senate with amendments 64-36  
[http://www.senate.gov/legislative/vote1051/vote\\_00071.html](http://www.senate.gov/legislative/vote1051/vote_00071.html)

**On October 8, 1997** the House agreed to the Senate amendments and passed the ban 296-132 (Roll no. 500 <http://clerkweb.house.gov/cgi-bin/vote.exe?year=1997&rollnumber=500>)

On October 10, 1997, the Partial-Birth Abortion Ban Act was vetoed by President Bill Clinton for the second time.

**On July 23, 1998** the House overrode the President's veto 296-132 (Roll No. 325)  
<http://clerkweb.house.gov/cgi-bin/vote.exe?year=1998&rollnumber=325>

On September 18, 1998, the Senate failed by to override the veto 64-36  
[http://www.senate.gov/legislative/vote1052/vote\\_00277.html](http://www.senate.gov/legislative/vote1052/vote_00277.html)

### **106<sup>th</sup> Congress:**

**On April 5, 2000**, the House considered the Partial-Birth Abortion Ban Act (H.R.3660). After defeating a motion to recommit the bill with instructions (that would have gutted the ban) 140-289 (Roll no. 103) <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2000&rollnumber=103> the House passed the ban 287-141 (Roll Call No.104 <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2000&rollnumber=104>)

On October 21, 1999, the Senate considered the Partial-Birth Abortion Ban Act (S. 1692) and approved it with amendments 63-34 [http://www.senate.gov/legislative/vote1061/vote\\_00340.html](http://www.senate.gov/legislative/vote1061/vote_00340.html)

**On May 25, 2000**, the House took up S. 1692 as amended, struck the entire text, inserted the House-passed text of H.R. 3660, passed the bill and requested a conference with the Senate. This passed by voice vote.

The Senate refused to go to conference with the House on the Partial-Birth Abortion Ban act, and the bill died at the end of the 106<sup>th</sup> Congress.

**Other Resources:** drawings of partial-birth abortion procedure:  
<http://www.nrlc.org/abortion/pba/diagram.html>

Background and talking points on partial-birth abortion: <http://www.nrlc.org/abortion/pba/index.html>

Why delivering a child in a breech (feet-first) position and puncturing the skull is not recommended medical practice for the “health” of the mother:

<http://www.nrlc.org/abortion/pba/pbafact11.html> &  
<http://www.nrlc.org/abortion/pba/pbafact12.html>

Resources from physicians against partial-birth abortion . PHysicians'Ad-hoc Coalition for Truth  
<http://www.geocities.com/CapitolHill/9707/>

### **Possible Motion to Instruct: A Phony Ban:**

It is possible that Rep. Tammy Baldwin (D-WI) will offer a motion to recommit similar to a bill that Reps. Steny Hoyer (D-MD) and Jim Greenwood (R-PA.) introduced (H.R. 2702). The Hoyer/Greenwood proposal would apply no restrictions to partial-birth abortions until after a baby is provably “viable” — which abortionists generally claim is in the *seventh month* or even later — even though the majority of partial-birth abortions are performed in the *fifth and sixth months* of pregnancy. The Hoyer/Greenwood proposal would also allow the killing of provably “viable” babies in the seventh, eighth, and ninth months to enhance the “mental health” of the mother, as the sponsors explicitly confirmed in a “Dear Colleague” dated March 16, 2000, posted at [www.nrlc.org/abortion/pba/Phony%20ban%20on%20late-term.pdf](http://www.nrlc.org/abortion/pba/Phony%20ban%20on%20late-term.pdf)

**Cost to Taxpayers:** CBO estimates that implementing H.R. 4965 would not result in any significant cost to the federal government. Because the bill would establish a new federal crime, there could be an increase in law enforcement, court proceedings, or prison operations costs, but CBO does not estimate a significant cost due to the low number of cases expected. Any fines collected from prosecutions would be deposited into the Crime Victims Fund.

**Does the Bill Create New Federal Programs or Rules?:** H.R. 4965 would create a new federal crime under Title 18 of the U.S. Code for a physician to perform a partial-birth abortion (except to save the life of the mother), punishable by a fine and/or imprisonment for up to two years.

**Constitutional Authority:** The Judiciary Committee (in Report No. 107-604) finds authority in Article I, Section 8, Clause 3 of the Constitution (commerce clause).

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