



Legislative Bulletin.....September 12, 2012

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H.R. 5949 – FISA Amendments Act Reauthorization of 2012

H.R. 5949 —FISA Amendments Act Reauthorization of 2012 (Smith, R-TX)

Order of Business: Consideration of the bill is scheduled to begin on Wednesday, September 12, 2012, under a closed rule ([H.Res. 773](#)) providing for one hour of general debate with 40 minutes equally divided and controlled by the Chair and Ranking Member of the Committee on the Judiciary and 20 minutes equally divided and controlled by the Chair and Ranking Member of the Permanent Select Committee on Intelligence. It also provides for one motion to recommit.

Summary: H.R. 5949 amends Section 403 of the FISA Amendments Act of 2008 (P.L. 110-261) by reauthorizing intelligence authorities set to expire on December 31, 2012, by five years until December 31, 2017. Other than extending the authorities by five years, H.R. 5949 makes no modifications to [current law](#), which previously passed the House in 2008 by a vote of [293-129](#) and the Senate by a vote of [69-28](#).

This RSC Legislative [Bulletin](#) provides a summary of the major provisions of law that H.R. 5949 extends.

Additional Background: According to the Attorney General and the Director of National Intelligence, the bill is the top legislative priority of the Intelligence Community.¹ Additionally, the House Permanent Select Committee on Intelligence report states:

“If Congress does not reauthorize the authorities proposed to be extended by H.R. 5949, the risk of potential catastrophic results is real and significant. The Committee has conducted substantial, ongoing, detailed oversight and the record supports extension for—at a minimum—the proposed five-year period. The Committee therefore unanimously reports H.R. 5949 favorably and urges the House to approve it expeditiously in the interest of our national security.”²

¹ House Report [#112-645](#), page 2.

² *Ibid*, page 5.

Still, the bill presents some concerns by civil liberty advocates³ about the protection of privacy rights of Americans through intelligence activities authorized under the bill. In a June 2012 letter to a group of bipartisan Senators, the Inspector General of the Intelligence Community deferred to a previous National Security Agency assessment that “it is not reasonably possible to identify the number of people located in the United States whose communications may have been reviewed under the authority of the FAA.”

Supporters of this extension of intelligence authorities maintain the collection of foreign intelligence under the FISA Amendments Act of 2008 is “critically important to maintaining our national security” while asserting that proper deference to the privacy of Americans has been consistent throughout the implementation of the law.⁴ They point to the law’s Executive classified oversight requirements for:

1. the Attorney General and Director of National Intelligence to report to congressional intelligence committees a semi-annual compliance assessment with targeting and minimization procedures;
2. the Inspector Generals of the Department of Justice and certain elements of the Intelligence Community to conduct reviews of the implementation of certain FISA authorities for congressional intelligence committees;
3. the Attorney General providing Congress a semi-annual report including a description of all compliance incidents; and
4. the Attorney General providing Congress a semi-annual report of significant legal interpretations of FISA made by the FISA Court of the FISA Court of Review that include significant construction or interpretation of FISA.

Also, Members have been extended an offer for classified briefings by the House Permanent Select Committee on Intelligence regarding the information collected under FISA prior to consideration of this bill.

Committee Action: Judiciary Committee Chairman Lamar Smith (R-TX) introduced H.R. 5949 on June 15, 2012. On June 19, 2012, the Judiciary Committee marked up and reported the bill out favorably by a [23-11](#) vote. On June 28, 2012, the House Permanent Select Committee on Intelligence marked up the bill and reported it out favorably by a unanimous [17-0 vote](#) in addition to holding two hearings and multiple classified briefings this Congress on the implementation and performance of authorities in this bill.

This Congress, the Senate Judiciary and Select Committee on Intelligence both reported out similar reauthorizations of these intelligence authorities (S. 3276) with earlier sunset dates (June 1, 2015 and June 1, 2017, respectively).

³ Page 13 of the Dissenting Views of House Report [#112-645](#) lists groups opposing the bill based on civil liberty concerns.

⁴ House Report [#112-645](#), page 3, furthering that the “information collected under this authority is often unique, unavailable from any other source, and regularly provides critically important insights and operationally actionable intelligence on terrorists and foreign intelligence targets around the world.”

Administration Position: The Obama Administration released Statement of Administration Policy (SAP) strongly supporting the bill.

Cost to Taxpayers: The Congressional Budget Office (CBO) released cost estimates on [July 2](#) and [July 19](#), 2012 stating that implementing the unclassified portions of the bill would provide no significant costs to the federal government.

Does the Bill Expand the Size and Scope of the Federal Government?: The bill maintains current authorities to collect foreign intelligence information.

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

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: The Constitutional Authority Statements accompanying each introduced bill 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, Clauses 1 and 3 of the United States Constitution.”

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