

## Legislative Bulletin.....September 29, 2010

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**Motion to Concur to Senate Amendments to H.R. 2701**— Intelligence Authorization Act for Fiscal Year 2010

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## **Motion to Concur to the Senate Amendment to H.R. 2701—the Intelligence Authorization Act for Fiscal Year 2010 (*Reyes, D-TX*)**

### **Key Conservative Concerns**

#### *Key Take Away Points*

- ***Does Not Address Guantanamo Bay Issue:*** The bill does not address the issue of releasing sensitive legal memoranda on the actions of the CIA regarding the President's policy to close Guantanamo Bay and relocate terrorists on American soil. Additionally, the bill does nothing to prevent the release of prisoners currently housed in GITMO. The laws that prohibit bringing Guantanamo detainees into the United States expire tomorrow.
- ***Miranda Rights For Terrorists:*** The bill remains silent on issuing *Miranda* rights to foreign terrorist suspects in foreign countries. The original House bill contained a bipartisan amendment to prohibit reading *Miranda* right to suspects.
- ***Lack of Transparency:*** The bill does not make unclassified materials on congressional briefings on enhanced interrogation available to the public, undermining the ability for the American public to know whether the CIA informed the Speaker of the House of certain activities.
- ***Prosecute Our Own:*** Creates the potential for the Justice Department to take legal action against intelligence professionals who are following orders from the White House or Congress.
- ***USA PATRIOT Act & FISA:*** H.R. 2701 remains silent on provisions of the PATRIOT Act that have sunsetted.
- ***Recent Attacks:*** Because the underlying bill was finalized last summer, H.R. 2701 does nothing to address the intelligence failures that led to the recent terrorist attack at Fort Hood or the attempted bombing of a Delta flight into Detroit.

- **Earmarks:** The bill removes a Republican Amendment prohibiting earmarks and authorizes previously appropriated earmarks.

**Order of Business:** The motion is scheduled to be considered on Wednesday, September 29, 2010 under a closed rule ([H.Res.1674](#)).

**Summary & Background:** Originally, H.R. 2701 was scheduled to be considered on July, 9, 2009. However, it was pulled from consideration on the House Floor after President Obama issued a veto threat over changes to the congressional briefing process, and Speaker Pelosi [accused](#) the Central Intelligence Agency of essentially lying to Congress over the disclosure of certain classified materials. The bill was finally considered by the House on February 26, 2010. It passed the House by a vote of [235-168](#). For the RSC summary of the original House bill, [click here](#). These concerns over the briefing process remains between Speaker Pelosi and the White House. Yesterday, Speaker Pelosi and Senate Intelligence Committee Chairwoman *Dianne Feinstein (D-CA)* [reached a deal](#) on an intelligence authorization bill that would establish new rules for informing Congress of issues surrounding the intelligence community.

Specifically, the “compromise” requires the White House to notify the full membership of both congressional intelligence committees (22 Members in the House and 15 Members in the Senate) of presidential directives to conduct covert action. Currently, the administration is required to notify the chairmen and ranking members of each committee and the party leadership in both chambers (commonly referred to as “gang of eight”). The compromise allows the Administration a 180-day window in which to provide notification to the committee members and requires the Director of National Intelligence issue a directive on future access of auditing covert agencies and programs in consultation with the Government Accountability Office

The Senate Amendment to H.R. 2701 is “similar” to S. 3611 according to Senator Bond (R-MO), which passed the Senate by unanimous consent on August 6, 2010.

**Additional Conservative Concerns:** Some conservatives have voiced concern over the bill because it fails to address many of the recent Obama policy initiatives that have caused much controversy - including his decision to release sensitive information concerning the legal activities of the Central Intelligence Agency, the decision to close the detention facility at Guantanamo, and decisions to relocate detainees on U.S. soil.

The legislation also makes significant changes to how the House Intelligence Committee receives and disseminates intelligence reports from the Administration. Some conservatives may believe the notification requirements prescribed in the bill do not fulfill the statutory duty to keep each member of the Committee fully and currently informed with respect to certain intelligence matters.

The legislation also contains a number of provisions that will ultimately increase bureaucracy and decrease efficiency in the intelligence community. One provision will force additional Senate confirmations for a number of intelligence positions previously filled internally by career intelligence professionals. Some conservatives worry this might politicize the process and do not see how it will enhance our ability to respond to catastrophic terrorist attacks.

Additionally, some conservatives and *the Obama Administration have expressed concerns* over the high number of *reporting requirements* mandated in the bill because they would remove the flexibility that Congress and the Executive Branch would have to modify and adapt to policy

changes. Some conservatives believe Congress should be much more judicious in the reports it requires and that it should demand high quality responses to those requests.

Finally, some conservatives have also expressed reservations that the bill makes *several education and scholarship programs permanent* that have not been fully vetted or have not demonstrated their effectiveness or value to the intelligence community.

**Committee Action:** None.

**Administration Position:** A Statement of Administrative Policy is unavailable, but it has been reported the President will not veto this compromise.

**Cost to Taxpayers:** A CBO cost estimate for the Senate Amendments to H.R. 2701 is not available at press time.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill would create a new diversity workforce program and expand the scope the intelligence programs.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?** Yes.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** No. A committee reports regarding compliance for house rules no earmarks is not available. However, the bill no longer contains a Republican Amendment prohibiting earmarks.

**Constitutional Authority:** A committee report for the Senate Amendments to H.R. 2701 is unavailable.

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