

HR 5825

Electronic Surveillance Modernization Act

Congress: 109 (2005–2007, Ended)

Chamber: House

Policy Area: Armed Forces and National Security

Introduced: Jul 18, 2006

Current Status: Read twice and referred to the Committee on the Judiciary.

Latest Action: Read twice and referred to the Committee on the Judiciary. (Nov 13, 2006)

Official Text: <https://www.congress.gov/bill/109th-congress/house-bill/5825>

Sponsor

Name: Rep. Wilson, Heather [R-NM-1]

Party: Republican • State: NM • Chamber: House

Cosponsors (13 total)

| Cosponsor                                  | Party / State | Role | Date Joined  |
|--|---------------|------|--------------|
| Rep. Everett, Terry [R-AL-2]               | R · AL        |      | Jul 18, 2006 |
| Rep. Gallegly, Elton [R-CA-24]             | R · CA        |      | Jul 18, 2006 |
| Rep. Hoekstra, Peter [R-MI-2]              | R · MI        |      | Jul 18, 2006 |
| Rep. Issa, Darrell E. [R-CA-49]            | R · CA        |      | Jul 18, 2006 |
| Rep. Johnson, Nancy L. [R-CT-5]            | R · CT        |      | Jul 18, 2006 |
| Rep. Renzi, Rick [R-AZ-1]                  | R · AZ        |      | Jul 18, 2006 |
| Rep. Rogers, Mike J. [R-MI-8]              | R · MI        |      | Jul 18, 2006 |
| Rep. Sensenbrenner, F. James, Jr. [R-WI-5] | R · WI        |      | Jul 18, 2006 |
| Rep. Thornberry, Mac [R-TX-13]             | R · TX        |      | Jul 18, 2006 |
| Rep. Ramstad, Jim [R-MN-3]                 | R · MN        |      | Jul 20, 2006 |
| Rep. Miller, Jeff [R-FL-1]                 | R · FL        |      | Jul 27, 2006 |
| Rep. Myrick, Sue Wilkins [R-NC-9]          | R · NC        |      | Jul 27, 2006 |
| Rep. Schwarz, John J.H. "Joe" [R-MI-7]     | R · MI        |      | Jul 27, 2006 |

Committee Activity

| Committee                                 | Chamber | Activity                   | Date         |
|---|---------|----------------------------|--------------|
| Intelligence (Permanent Select) Committee | House   | Reported By                | Sep 26, 2006 |
| Judiciary Committee                       | House   | Hearings By (subcommittee) | Sep 12, 2006 |
| Judiciary Committee                       | Senate  | Referred To                | Nov 13, 2006 |

Subjects & Policy Tags

Policy Area:

Armed Forces and National Security

Related Bills

| Bill          | Relationship         | Last Action  |
|---------------|----------------------|--|
| 109 HRES 1052 | Procedurally related | <b>Sep 28, 2006:</b> Motion to reconsider laid on the table Agreed to without objection. |

Electronic Surveillance Modernization Act - (Sec. 2) Amends the Foreign Intelligence Surveillance Act of 1978 (FISA) to include as an "agent of a foreign power" under FISA a person who is reasonably expected to possess, control, transmit, or receive foreign intelligence information while in the United States, provided that the official making the certification deems such information significant. Redefines "electronic surveillance" and "minimization procedures." Replaces the definition of "wire communication" with "surveillance device" and defines such as a device that allows surveillance by the federal government, but excludes any device that extracts or analyzes information from data that has already been acquired by the federal government by lawful means.

(Sec. 3) Revises provisions allowing the President, through the Attorney General, to authorize electronic surveillance without a court order to acquire foreign intelligence information for up to one year to allow such surveillance if the Attorney General (AG) certifies that: (1) the surveillance is directed at the acquisition of either communications of foreign powers or an agent thereof or technical intelligence from property or premises under the control of a foreign power; and (2) proposed minimization procedures (procedures to ensure the minimization of service disruption and the confidentiality of information received) with respect to such surveillance meet FISA requirements.

Allows the President to authorize the acquisition of foreign intelligence information concerning a person reasonably believed to be outside the United States if the AG certifies that: (1) the acquisition does not constitute electronic surveillance; (2) the acquisition involves obtaining information from a wire or electronic communications service provider either as the information is transmitted or while it is stored; (3) a significant purpose of the acquisition is to obtain foreign intelligence information; and (4) the proposed minimization procedures meet FISA requirements. Outlines legal procedures with respect to directives issued to communications service providers to provide necessary assistance to accomplish the acquisition of such information, including failure to comply, directive challenges, standard of review, and appeals. Allows information obtained from such a surveillance to be used and disclosed without the consent of the U.S. person only in accordance with the established minimization procedures.

Allows a person against whom acquired information is intended to be disclosed at a trial to move to suppress the evidence obtained on the grounds that: (1) the information was unlawfully acquired; or (2) the surveillance or acquisition was not made in accordance with its authorization. Outlines procedures with respect to the review and determination of such motions.

(Sec. 4) Authorizes approving applications for a court order for electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information if the President has, by written authorization, empowered the AG to approve applications to the court having jurisdiction and a judge to whom an application is made,

notwithstanding any other law, grants such order.

(Sec. 5) Revises provisions concerning applications for court orders to, among other things: (1) remove provisions requiring a detailed description of the information sought; (2) repeal provisions excusing certain application information when the target is a foreign power; and (3) add the Director of the Central Intelligence Agency (CIA) to the list of those officials authorized to request the AG to personally review an application for electronic surveillance of an agent of a foreign power.

(Sec. 6) Revises provisions concerning the issuance of an order to: (1) require the application to be approved when made by a federal officer approved by the AG (currently, when made by the AG upon the President's authorization); (2) repeal provisions excusing certain application information when the target is a foreign power; and (3) allow extensions of an order against a foreign power for up to one year without the current requirement of a judge finding probable cause for the extension. Authorizes the AG to authorize the emergency employment of electronic surveillance without a court order if, among other things: (1) there is factual basis for issuance of an order; (2) an application for an order for such surveillance is made to such judge as soon as practicable, but no more than 168 hours after the surveillance is authorized; and (3) minimization procedures for the issuance of the order are followed. Requires that, in the absence of a judicial order approving the emergency employment of electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or 168 hours (currently, 72 hours) after the time of authorization, whichever is earliest.

Requires that, in any case in which the government makes an application to a judge to conduct electronic surveillance involving communications and the judge grants the application, the judge shall also authorize the installation of pen registers and trap and trace devices to acquire dialing, routing, addressing, and signaling information. Exempts such dialing, routing, addressing, and signaling information from minimization procedures.

(Sec. 7) Requires the destruction of all types of unintentionally acquired communications (currently, only radio communications), unless the AG determines that the contents contain significant foreign intelligence information (or, as in current law, indicate a threat of death or serious bodily harm to any person).

(Sec. 8) Requires semiannual reports from the AG to the intelligence committees under FISA to include information on electronic surveillance conducted without a court order.

Amends the National Security Act of 1947 to allow the Chair of each intelligence committee to notify members and essential staff of such committees of a reports submitted concerning intelligence activities (including, illegal intelligence activities), intelligence activities other than covert actions, and presidential approval of covert actions.

(Sec. 9) States that an order for electronic surveillance or physical search shall remain in force during the authorized period of surveillance notwithstanding the absence of the target from the United States, unless the government files a motion to extinguish the order and the motion is granted.

(Sec. 10) Prohibits any action from being maintained in any court, and any penalty, sanction, or other remedy or relief from being imposed by any court or other body, against any person for an activity arising from or relating to the provision to an element of the intelligence community of any information, facilities, or assistance during the period of time beginning on September 11, 2001, and ending on the date that is 60 days after the date of the enactment, in connection with any alleged communications intelligence program that the AG certifies is, was, or would be intended to protect the United States from a terrorist attack. Makes this section applicable to all actions, claims, or proceedings pending on or after the effective date of this Act.

(Sec. 11) Requires reports through 2009, from the Director of the National Security Agency (NSA) to the intelligence committees, on the effectiveness and use of minimization procedures applied to information concerning U.S. persons acquired during the course of a communications activity conducted by the National Security Agency.

(Sec. 12) Authorizes electronic surveillance and physical searches under FISA for up to 90 days following an armed attack against the United States if the President notifies the congressional intelligence committees. (Current law permits such surveillance and searches for up to 15 days following a declaration of war by Congress.)

(Sec. 13) Allows the President to authorize electronic surveillance to acquire foreign intelligence information without a court order for up to 90 days following a terrorist attack against the United States if the President submits a notification to the intelligence committees and a judge having jurisdiction that: (1) the United States has been the subject of a terrorist attack; and (2) identifies the terrorist organization or affiliates believed to be responsible. Requires recertification for each subsequent 90-day period. Permits surveillance for more than 60 days of a U.S. person only if the President submits a certification to the intelligence committees that: (1) the continued surveillance is vital to national security; (2) describes the circumstances that have prevented the AG from obtaining a court order for continued surveillance; (3) describes the reason for believing the U.S. person is affiliated with the terrorist organization believed to be responsible for the attack; and (4) describes the foreign intelligence information derived from the surveillance conducted. Requires a report from the President to the intelligence committees within 14 days of a notification and every 30 days thereafter with respect to any intelligence conducted under this section.

(Sec. 14) Allows the President to authorize electronic surveillance without a court order to acquire foreign intelligence information for up to 90 days if the President submits to the congressional leadership, the intelligence committees, and the Foreign Intelligence Surveillance Court a notification that the President has determined that there exists an imminent threat of attack likely to cause death, serious injury, or substantial economic damage to the United States. Requires such notification within five days after the President authorizes such surveillance. Requires recertification for each subsequent 90-day period. Prohibits the President from authorizing electronic surveillance of a U.S. person under this section without a court order for more than 60 days unless the President submits to the intelligence committees the same four-part certification described in section 13, above.

## Actions Timeline

---

- **Nov 13, 2006:** Read twice and referred to the Committee on the Judiciary.
- **Sep 29, 2006:** Received in the Senate.
- **Sep 28, 2006:** Rules Committee Resolution H. Res. 1052 Reported to House. Rule provides for consideration of H.R. 5825 with 1 hour and 30 minutes of general debate. Previous question shall be considered as ordered without intervening motions except motion to recommit with or without instructions. Measure will be considered read. Bill is closed to amendments. In lieu of the amendments recommended by the Committee on the Judiciary and the Permanent Select Committee on Intelligence now printed in the bill, the amendment in the nature of a substitute printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted.
- **Sep 28, 2006:** Rule H. Res. 1052 passed House.
- **Sep 28, 2006:** Considered under the provisions of rule H. Res. 1052. (consideration: CR H7853-7876)
- **Sep 28, 2006:** Rule provides for consideration of H.R. 5825 with 1 hour and 30 minutes of general debate. Previous question shall be considered as ordered without intervening motions except motion to recommit with or without instructions. Measure will be considered read. Bill is closed to amendments. In lieu of the amendments recommended by the Committee on the Judiciary and the Permanent Select Committee on Intelligence now printed in the bill, the amendment in the nature of a substitute printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted.
- **Sep 28, 2006:** DEBATE - The House proceeded with 90 minutes of debate on H.R. 5825.
- **Sep 28, 2006:** DEBATE - The House resumed debate on H.R. 5825.
- **Sep 28, 2006:** The previous question was ordered pursuant to the rule. (consideration: CR H7872)
- **Sep 28, 2006:** Mr. Schiff moved to recommit with instructions to Judiciary. (consideration: CR H7872-7875; text: CR H7872-7873)
- **Sep 28, 2006:** DEBATE - The House proceeded with 10 minutes of debate on the Schiff motion to recommit with instructions. The instructions contained in the motion seek to require the bill to be reported back to the House with an amendment which inserts a complete new text entitled "NSA Oversight Act".
- **Sep 28, 2006:** The previous question on the motion to recommit with instructions was ordered without objection. (consideration: CR H7875)
- **Sep 28, 2006:** On motion to recommit with instructions Failed by the Yeas and Nays: 202 - 221 (Roll no. 501).
- **Sep 28, 2006:** Passed/agreed to in House: On passage Passed by the Yeas and Nays: 232 - 191 (Roll No. 502).(text: CR H7853-7857)
- **Sep 28, 2006:** On passage Passed by the Yeas and Nays: 232 - 191 (Roll No. 502). (text: CR H7853-7857)
- **Sep 28, 2006:** Motion to reconsider laid on the table Agreed to without objection.
- **Sep 28, 2006:** The Clerk was authorized to correct section numbers, punctuation, and cross references, and to make other necessary technical and conforming corrections in the engrossment of H.R. 5825.
- **Sep 25, 2006:** Reported (Amended) by the Committee on Intelligence (Permanent). H. Rept. 109-680, Part I.
- **Sep 25, 2006:** Reported (Amended) by the Committee on Intelligence (Permanent). H. Rept. 109-680, Part I.
- **Sep 25, 2006:** Reported (Amended) by the Committee on Judiciary. H. Rept. 109-680, Part II.
- **Sep 25, 2006:** Reported (Amended) by the Committee on Judiciary. H. Rept. 109-680, Part II.
- **Sep 25, 2006:** Placed on the Union Calendar, Calendar No. 410.
- **Sep 20, 2006:** Committee Consideration and Mark-up Session Held.
- **Sep 20, 2006:** Ordered to be Reported (Amended) by the Yeas and Nays: 20 - 16.
- **Sep 12, 2006:** Subcommittee Hearings Held.
- **Sep 6, 2006:** Subcommittee Hearings Held.
- **Sep 1, 2006:** Referred to the Subcommittee on Crime, Terrorism, and Homeland Security.
- **Jul 18, 2006:** Introduced in House
- **Jul 18, 2006:** Introduced in House
- **Jul 18, 2006:** Referred to the Committee on the Judiciary, and in addition to the Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
- **Jul 18, 2006:** Referred to the Committee on the Judiciary, and in addition to the Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
- **Jul 18, 2006:** Referred to the Committee on the Judiciary, and in addition to the Committee on Intelligence (Permanent

Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.