



**CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE**

October 17, 2007

**S. 2035**

**Free Flow of Information Act of 2007**

*As ordered reported by the Senate Committee on the Judiciary on October 4, 2007*

CBO estimates that implementing S. 2035 would have no significant effect on the federal budget. S. 2035 would exempt journalists from being compelled to produce documents, provide testimony, or identify confidential informants unless a court finds that one of the following exceptions applies:

- The party seeking information has exhausted all reasonable alternative sources;
- In criminal investigations or prosecutions, there are reasonable grounds to believe a crime has occurred, and the testimony or document sought is critical to the investigation, prosecution, or defense;
- In criminal investigations or prosecutions of the unauthorized disclosure of properly classified information by a person with authorized access to such information, such disclosure has caused or will cause significant and articulable harm to national security;
- In all other matters, the information sought is critical to the completion of the matter;
- The public interest in compelling disclosure of the information or document involved outweighs the public interest in gathering or disseminating news information.

Under the bill, journalists would be compelled to provide testimony, documents, or the identity of a source if the information: is reasonably necessary to prevent an act of terrorism, death, kidnapping, or substantial bodily harm, or other significant harm to national security that would outweigh the public interest in newsgathering; or was obtained through eyewitness observations of alleged criminal conduct or alleged criminal or tortuous conduct by a journalist.

The bill also would limit the content of subpoenaed testimony or documents. Additionally, under the bill, providers of communication services (i.e., telecommunications carriers and Internet service providers) could not be compelled to provide testimony or documents relating to a reporter's phone, email, and computer use unless one of the above exceptions applies.

Under current law, requests to subpoena journalists on matters related to federal cases typically originate within the Department of Justice (DOJ). Federal prosecutors can request a subpoena of a journalist from a court after an internal review by DOJ. Information from DOJ indicates that very few subpoena requests seeking confidential-source information are approved each year and that the bill would not substantially change the number of such requests. The bill might increase federal attorneys' litigation duties, but CBO estimates that any increase in federal spending would be insignificant. In addition, based on information from the Administrative Office of the United States Courts, CBO expects that the bill would not appreciably increase the courts' workloads. Therefore, CBO estimates that implementing S. 2035 would have no significant budgetary impact.

S. 2035 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On September 5, 2007, CBO transmitted a cost estimate for H.R. 2102, the Free Flow of Information Act of 2007, as ordered reported by the House Committee on the Judiciary on August 2, 2007. The bills are similar, and CBO's estimates of costs are identical.

The CBO staff contact for this estimate is Leigh Angres. The estimate was approved by Theresa Gullo, Deputy Assistant Director, Budget Analysis Division.