



**CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE**

September 25, 2006

H.R. 5825

Electronic Surveillance Modernization Act

*As ordered reported by the House Permanent Select Committee on Intelligence
on September 20, 2006*

SUMMARY

H.R. 5825 would modify the rules and procedures the government must follow to use electronic surveillance programs in the investigation of international terrorism. The bill would amend the definition of electronic surveillance under the Foreign Intelligence Surveillance Act (FISA) to remove the current distinction between treatment of wire and radio communications, and to focus FISA protections on domestic communications.

The bill also would expand the ability of the government to conduct electronic surveillance without warrant when:

- The target of the surveillance is an agent of a foreign power;
- There has been an armed attack against the territory of the United States;
- There has been a terrorist attack against the United States; or
- There exists an imminent threat of attack likely to cause death, serious injury, or substantial economic damage to the United States.

H.R. 5825 would also authorize the Attorney General, after obtaining the certification required under the bill, to require any U.S. citizen, legal alien, or organization with access to electronic communications to provide the government with all assistance necessary to conduct electronic surveillance and to acquire foreign intelligence information. Under current law, the Attorney General may direct a "common carrier" to provide such assistance with electronic surveillance. Thus, implementing H.R. 5825 could expand the number of entities that may be required to provide assistance to the government when it conducts electronic surveillance.

The bill would also make a number of changes that could reduce the volume of material required for a FISA application, including minimizing the detailed descriptions of both the nature of the foreign intelligence information sought and the intended method of collection.

CBO has no basis for predicting how the volume or type of surveillance would be changed if H.R. 5825 were enacted. Furthermore, information regarding surveillance techniques and their associated costs is classified. For these reasons, CBO cannot estimate the impact on the federal budget of implementing H.R. 5825.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of that act any legislative provisions that are necessary for national security. CBO has determined that section 9 of this bill, which would authorize certain electronic surveillance without a warrant due to an imminent threat of attack, falls under that exclusion; we have not reviewed it for intergovernmental or private-sector mandates.

One of the other provisions of H.R. 5825 contains an intergovernmental mandate, but CBO estimates that costs to state and local governments would fall well below the annual threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation).

H.R. 5825 contains a private-sector mandate, as defined in UMRA, because it would require certain entities to assist the government with electronic surveillance. Because CBO has no information about the prevalence of electronic surveillance and the cost of compliance for entities assisting the government with electronic surveillance, CBO has no basis for estimating the costs of the mandate or whether those costs would exceed the annual threshold established by UMRA for private-sector mandates (\$128 million in 2006, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO cannot estimate the budgetary impact of implementing H.R. 5825 because we cannot predict how the volume or type of surveillance would change under this legislation. Moreover, information regarding surveillance technologies and their associated costs are classified.

Any changes in federal spending under the bill would be subject to the appropriation of the necessary funds. Enacting H.R. 5825 would not affect direct spending or revenues.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

Section 4 of UMRA excludes from the application of that act any legislative provisions that are necessary for national security. CBO has determined that section 9 of the bill, which authorizes certain electronic surveillance without a warrant due to an imminent threat of attack, falls under that exclusion; we have not reviewed it for intergovernmental mandates.

One of the other provisions of the bill contains an intergovernmental mandate, as defined in UMRA, because it would allow federal law enforcement officers to direct public institutions such as libraries to provide information. Because data about the number of public entities currently complying with similar requests and the costs of that compliance are classified, CBO cannot estimate the total costs state and local governments would incur to comply with this mandate. Based on information from a recent survey of public libraries, however, CBO estimates that the number of requests would probably be small and that the total costs to those entities would be well below the annual threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

Section 4 of UMRA excludes from the application of that act any legislative provisions that are necessary for national security. CBO has determined that section 9 of the bill, which authorizes certain electronic surveillance without a warrant due to imminent threat of attack, falls under that exclusion and has not reviewed it for private-sector mandates.

H.R. 5825 contains a private-sector mandate, as defined in UMRA, because it would require certain entities to assist the government with electronic surveillance. CBO has no basis for estimating the costs of the mandate or whether those costs would exceed the annual threshold established by UMRA for private-sector mandates (\$128 million in 2006, adjusted annually for inflation).

H.R. 5825 would authorize the Attorney General, after obtaining the certification required under the bill, to direct a person to immediately provide the government with all information, facilities, and assistance necessary to conduct electronic surveillance and to acquire foreign intelligence. Under current law, the Attorney General may direct a "common carrier" to provide such assistance with electronic surveillance. This bill would expand the scope of entities that must comply with the government's orders in such cases. Because CBO has no information about how often such entities would be directed to provide assistance or the costs associated with providing assistance, CBO has no basis for estimating the costs of this mandate. The bill also would authorize the government to compensate, at the prevailing rate, a person for providing such information, facilities, or assistance.

PREVIOUS CBO ESTIMATE

On September 25, 2006, CBO transmitted a cost estimate for H.R. 5825, as ordered reported by the House Committee on the Judiciary on September 20, 2006. The language of the two versions of the bill is similar. CBO cannot estimate the federal budgetary impact of implementing either version of H.R. 5825 because we cannot predict how the volume or type of surveillance would change under either version.

The House Judiciary version includes an intergovernmental and private-sector mandate that is not included in the Intelligence Committee's bill. That provision would provide protection from a cause of action for any person providing information, facilities, or assistance as well as conducting physical searches in accordance with a directive from the Attorney General under the bill.

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