



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

September 29, 1997

H.R. 695

Security and Freedom Through Encryption (SAFE) Act

As ordered reported by the House Committee on Commerce on September 24, 1997

SUMMARY

H.R. 695 would allow individuals in the United States to use and sell any form of encryption and would prohibit states or the federal government from requiring individuals to relinquish the key to encryption products. The bill also would prevent the Bureau of Export Administration (BXA) in the Department of Commerce (DOC) from restricting the export of most nonmilitary encryption products. H.R. 695 would establish a National Electronic Technologies (NET) Center in the Department of Justice (DOJ) to provide assistance and information on encryption products to law enforcement officials and would require the Attorney General to maintain data on the instances in which encryption impedes or obstructs the ability of DOJ to enforce criminal laws. Finally, the bill would establish criminal penalties and fines for the use of encryption technologies to conceal incriminating information related to a felony.

Assuming the appropriation of the necessary amounts, CBO estimates that enacting this bill would result in additional discretionary spending by DOC and DOJ of at least \$28 million over the 1998-2002 period. Spending by DOC and DOJ for activities required by H.R. 695 would total at least \$33 million over the next five years. By comparison, CBO estimates that—under current policies—spending by BXA for reviewing the export of nonmilitary encryption products would total about \$4.5 million over the same period. (Spending related to encryption exports by DOJ is negligible under current law.)

Enacting H.R. 695 also would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply. CBO estimates, however, that the amounts of additional direct spending or receipts would not be significant.

H.R. 695 contains no private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA). The bill contains intergovernmental mandates on state governments. CBO estimates, however, that states would not incur any costs to comply with the mandates.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Spending Subject to Appropriation

Under current policy, BXA would likely spend about \$900,000 a year reviewing exports of encryption products. Assuming appropriation of the necessary amounts, CBO estimates that enacting H.R. 695 would lower BXA's encryption-related costs to about \$500,000 a year. In November 1996, the Administration issued an executive order and memorandum that authorized BXA to control the export of all nonmilitary encryption products. If H.R. 695 were enacted, BXA would still be required to review requests to export most computer hardware with encryption capabilities but would not be required to review most requests to export computer software with encryption capabilities. Thus, enacting H.R. 695 would reduce the costs to BXA to control the exports of nonmilitary encryption products.

H.R. 695 would require the Secretary of Commerce to conduct a number of studies on electronic commerce and domestic and foreign impediments to trade in encryption products. Based on information from the Department of Commerce, CBO estimates that completing the required studies would cost about \$1 million in fiscal year 1998, assuming appropriation of the necessary amount.

H.R. 695 would establish within DOJ the NET Center, which generally would assist federal, state, and local law enforcement agencies with issues involving encryption and information security. The bill would assign the NET Center a broad range of duties, including providing information and assistance, serving as an information clearinghouse, and conducting research. The costs to establish and operate the NET Center could depend on the extent to which service would be provided to the law enforcement community nationwide. Based on information from DOJ, we estimate that the minimum costs to fulfill the bill's requirements would be roughly \$5 million annually, but the costs could be much greater. Any spending relating to the NET Center would be subject to the availability of appropriations.

DOJ would also be required to collect and maintain data on the instances in which encryption impedes or obstructs the ability of the agency to enforce criminal laws. CBO projects that collecting and maintaining the data would cost DOJ between \$500,000 and \$1 million a year, assuming appropriation of the necessary amounts.

Direct Spending and Revenues

Enacting H.R. 695 would affect direct spending and receipts by imposing criminal fines for encrypting incriminating information related to a felony. CBO estimates that collections

from such fines are likely to be negligible, however, because the federal government would probably not pursue many cases under the bill. Any such collections would be recorded in the budget as governmental receipts, or revenues. They would be deposited in the Crime Victims Fund and spent the following year. Because the increase in direct spending would be the same as the amount of fines collected with a one-year lag, the additional direct spending also would be negligible.

Direct spending and revenues also could result from the provision that would allow the NET Center to accept donations to further the work of the office. CBO expects that any contributions (recorded in the budget as revenues) would be used in the same year as they were received. Therefore, we estimate that the net budgetary impact of the gift authority granted to the NET Center would be negligible for all years.

The costs of this legislation fall within budget function 370 (commerce and housing credit) and 750 (administration of justice).

PAY-AS-YOU-GO CONSIDERATIONS

Section 252 of the Balanced Budget and Emergency Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. H.R. 695 would affect direct spending and receipts by imposing criminal fines and by allowing the new NET Center to accept donations. CBO estimates that the amounts of additional direct spending and receipts would not be significant.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 695 would prohibit states from requiring anyone in lawful possession of an encryption key to make that key available to another person or entity. The bill would also prohibit states from conditioning the issuance of certificates of authenticity or certificates of authority for encryption products on the sharing of encryption keys. Finally, the bill would prohibit states from establishing licensing, labeling, or other regulatory schemes for encryption products that would require the sharing of encryption keys. These prohibitions would be intergovernmental mandates as defined in UMRA. However, states would bear no costs as a result of these mandates, because none currently have laws that would violate these provisions of the bill.

H.R. 695 would also establish a center in the Justice Department that would provide information and assistance regarding decryption techniques to federal, state, and local law enforcement authorities.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

The bill would impose no new private-sector mandates as defined in UMRA.

PREVIOUS CBO ESTIMATES

CBO provided cost estimates for H.R. 695 as ordered reported by the House Committee on the Judiciary on May 14, 1997, by the House Committee on International Relations on July 22, 1997, by the House Committee on National Security on September 9, 1997, and by the House Committee on Intelligence on September 11, 1997. Assuming appropriation of the necessary amounts, CBO estimates that costs over the 1998-2002 period would total between \$5 million and \$7 million for the Judiciary Committee's version, about \$2.2 million for the International Relations Committee's version, about \$4.5 million for the National Security Committee's version, and between \$9 million and \$11.6 million for the Intelligence Committee's version. In comparison, CBO estimates that enacting this version of the bill would cost at least \$33 million over the 1998-2002 period and that spending under current policies would total \$4.5 million over the same period.

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