



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

September 25, 2006

H.R. 5825

Electronic Surveillance Modernization Act

As ordered reported by the House Committee on the Judiciary 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 a warrant in certain cases where the target of the surveillance is an agent of a foreign power.

H.R. 5825 would authorize the President, under certain conditions, to acquire foreign intelligence information concerning a person believed to be outside of the United States. To this end, the bill would authorize the Attorney General to direct any person or organization with access to such information to provide the United States government with all assistance necessary to acquire such intelligence. The bill directs that such persons shall be compensated at the prevailing rate for such assistance.

In addition, H.R. 5825 also makes 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 are classified. For these reasons, CBO cannot estimate the impact on the federal budget of implementing H.R. 5825.

H.R. 5825 contains intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (UMRA), 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).

The bill also contains private-sector mandates as defined in UMRA, but CBO has no basis for estimating the costs of those mandates or whether the costs would exceed the annual threshold established in UMRA (\$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

H.R. 5825 contains an intergovernmental mandate as defined in UMRA because it would exempt from liability individuals that comply with certain federal requests for information. That exemption would preempt some state and local liability laws. CBO estimates that such preemption would impose only minimal costs on those governments.

The bill also contains a mandate 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 is 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 likely would 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

H.R. 5825 contains private-sector mandates as defined in UMRA by requiring certain entities to assist the government with electronic surveillance and providing liability protections for those entities. CBO has no basis for estimating the costs of the mandates or whether the

costs would exceed the annual threshold established in UMRA for private-sector mandates (\$128 million in 2006, adjusted annually for inflation).

The bill 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 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.

H.R. 5825 also 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. Because the bill would eliminate existing rights to seek compensation for injury caused by certain acts, it would impose a private-sector mandate. The cost of the mandate would be the forgone net value of awards and settlements that could be received under current law. Because of the lack of information about both the value of awards in such cases and the number of claims that would be filed in the absence of this legislation, CBO cannot estimate the cost of this mandate.

ESTIMATE PREPARED BY:

Federal Costs: Jason Wheelock
Impact on State, Local, and Tribal Governments: Melissa Merrell
Impact on the Private Sector: Victoria Liu

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis