

OCA FILE
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Leg.

OCA 86-3968
2 December 1986

MEMORANDUM FOR: (See Addressees)

FROM: Deputy Director for Legislation
Office of Congressional Affairs

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SUBJECT: First Draft - FY '88 Intelligence Authorization
Bill: Request for Comments by 12/21/86

1. Attached for your review and comment please find a copy of the first draft of the Intelligence Authorization bill for Fiscal Year 1988. We ask for your comments by 21 December, 1986. Thereafter, unless substantive revisions are required and necessitate a recirculation, the bill will be forwarded to the Director of Central Intelligence for his review and approval. It will then be sent to the Office of Management and Budget (OMB) for Administration clearance before it is transmitted to the Congress.

2. We are making an extra effort this year to obtain Administration clearance sufficiently early to allow the DCI to transmit the bill to the 100th Congress when it convenes in January 1987. Accordingly, we intend to adhere closely to all comment deadlines.

3. Title I, II, III and IX of the bill are routine and similar to comparable provisions contained in the Fiscal Year 1987 Intelligence Authorization Act (P.L. 99-569). Your attention is directed to the following provisions.

Title IV

4. Foreign Agents Registration Act Amendments. Section 401 is a proposal to amend the Foreign Agents Registration Act to mandate that a failure to register by one otherwise required to do so could not be cured by a subsequent registration, i.e., the individual failing to register would still be liable to prosecution for the failure despite subsequent registration. It also increases the criminal penalties for violations of the Act.

5. FBI CI Access to Tax Records. Section 402, a proposal originated by the Federal Bureau of Investigation (FBI), is likely to receive support in the Congress if it is included in the final version of the Authorization bill. However, the Internal Revenue Service (IRS) has thus far refused to concur in this provision. It is important that a resolution be reached fairly soon on whether the FBI will be permitted access to tax records without a court order in counterintelligence investigations. The proposal did receive Community support last year.

6. Army Amendment to Intelligence Identities Act. Section 403 is an Army proposal to amend the Intelligence Identities Protection Act of 1982 so as to add two new categories of human intelligence sources to those already protected by that Act. To date, some sentiment has been expressed not to "reopen" the identities legislation at this time. In addition, with particular regard to the amendments made by subsection (b), it should be noted that the conferees on the original identities legislation apparently considered but rejected inclusion of a similar category of sources within the Act's protections (House Report No. 97-580, p. 11). It should also be noted that as drafted this category could include sources not only of the Army intelligence but also of the Central Intelligence Agency (as well as perhaps other agencies in the Community).

Title V - DoD Proprietaries

7. Title V is the version of the Department of Defense (DoD) "proprietary" legislation which at the request of DoD has been included in the previous years' versions of the draft bill. To date, the oversight committees have not included this legislation in their versions of the bill. It should be noted, however, that the almost identical authority was recently granted by the omnibus, anti-drug bill (P.L. 99-570) to the Customs Service in order to combat drug smuggling.

Title VI - DoD Personnel Improvements

8. Contained in Title VI are various proposals to extend/improve personnel benefits of employees of the Defense Intelligence Agency and the National Security Agency (NSA). Also included are proposals to make permanent authorities granted in FY '87 on a one-year basis: permanent termination authority for Secretary of Defense over DIA employees; similar authority for Secretary of Defense of military intelligence personnel; and, permanent authority for military personnel to accept DCI awards.

Section 608 is a proposal to exempt DIA from any statutory requirement to disclose organizational, functional or personnel information. It is similar in nature to the exemptions currently enjoyed by CIA and NSA in this area.

Title VII - NSA Proposals

9. Included in this title are various provisions relating to NSA including an extension of so-called "Squillacote" back pay awards to members of the NSA Senior Cryptological Service and a proposal to place controls on foreign cryptography. As of this date, not all supporting analytical sections for these provisions had been received. We expect their receipt within the next few days and will forward them, as appropriate, when received. In the meantime, however, in view of the time constraints in the comment process, the provisions are being circulated with the missing sections noted.

Title VIII - General DoD Proposals

10. Title VIII contains proposals submitted by DIA which would exempt the National Foreign Intelligence Program (NFIP) programs of the DoD from various budgetary cuts and personnel ceilings imposed generally on the Department of Defense as well as giving special contract authority for personal services to the heads of intelligence components of DoD. It has been preliminarily suggested that it may be more appropriate to address these issues in the context of the DoD authorization/appropriations process. In addition, a question has been raised as to whether DoD already has sufficient authority to accomplish personal service contracting and whether this authority should be extended further.

11. We look forward to your prompt response.



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