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AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1997 FOR MILITARY ACTIVITIES OF THE DEPARTMENT OF DEFENSE, FOR MILITARY CONSTRUCTION, AND FOR DEFENSE ACTIVITIES OF THE DEPARTMENT OF ENERGY, TO PRESCRIBE PERSONNEL STRENGTHS FOR SUCH FISCAL YEAR FOR THE ARMED FORCES, AND FOR OTHER PURPOSES

JUNE 11, 1996.—Ordered to be printed

Mr. SPECTER, from the Select Committee on Intelligence,
submitted the following

REPORT

[To accompany S. 1745]

The Select Committee on Intelligence, to which was referred the bill (S. 1745), having considered the same, favorably reports the bill with amendments.

PURPOSE OF THE BILL

S. 1745 would authorize appropriations for fiscal year 1997 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

The Senate Armed Services Committee (SASC) reported the bill on May 13, 1996 and it was referred to the Select Committee on Intelligence in accordance with Section 3(b) of Senate Resolution 400, 94th Congress.

SCOPE OF COMMITTEE REVIEW

The Committee requested an opportunity to consider S. 1745 because it contained provisions authorizing a major reorganization of the intelligence community through the creation of a new agency, the National Imagery and Mapping Agency, as well as a number of provisions directly conflicting with the Committee's efforts this year to make substantial improvements in the management and operation of U.S. intelligence activities. After careful review, in-

cluding extensive discussions and negotiations at the staff and member level with the Armed Services Committee and with the Director of Central Intelligence, the Deputy Secretary of Defense, and the Vice Chairman of the Joint Chiefs of Staff, the Committee voted to report the bill with amendments on June 11—well before the expiration of the thirty days of session allotted in Senate Resolution 400 for consideration upon referral.

Prior committee action

These amendments to the National Defense Authorization Act, along with the Intelligence Authorization Act for Fiscal Year 1997, S. 1718, reflect the conclusions this Committee has reached after six years of focused examination aimed at making the U.S. Intelligence Community operate more effectively, more efficiently, and with greater accountability in light of the significant changes in the world over the last decade. In 1994, this effort led Congress, at the urging of Senator Warner, Senator Graham, and others, to establish a Commission on the Roles and Capabilities of the U.S. Intelligence Community (the “Aspin-Brown Commission”) to conduct a “credible, independent, and objective review” of U.S. intelligence. The Commission was given a deadline of March 1, 1996, with the expectation that its report would inform a legislative debate resulting in enactment of needed changes during this Congress.

Armed with the Commission’s report and enlightened by the Committee’s own examination, including numerous hearings, briefings, and interviews, the Select Committee on Intelligence voted on April 24, 1996, to report S. 1718, the Intelligence Authorization Act for Fiscal Year 1997, containing a number of measures to improve policy guidance to the Intelligence Community, strengthen the DCI’s ability to manage the Community on behalf of all intelligence consumers, and enhance the ability of the Congress and the American public to ensure that the secrecy necessary for the conduct of intelligence does not prevent the vigilance and oversight necessary for an effective democracy. The Armed Services Committee took the Intelligence Authorization bill on a 30-day sequential referral as they have done every year since the establishment of the Select Committee on Intelligence.

The Armed Services Committee staff was briefed on S. 1718 in the weeks leading up to the April 24 vote to report the bill and the Chairman and Vice Chairman testified extensively on the Committee’s legislation in a hearing before the Armed Services Committee following that vote. During this same time frame, the Armed Services Committee was considering the National Defense Authorization Act for Fiscal Year 1997, which it reported to the Senate on May 13. Despite expressing in a letter to the Select Committee on Intelligence dated April 15, 1996, initial concerns about passage of intelligence reform legislation in this compressed legislative year, the Armed Services Committee included in the National Defense Authorization Act for Fiscal Year 1997 a number of provisions for intelligence reorganization, including the creation of a new national imagery agency and a new structure for military intelligence under a Director of Military Intelligence (DMI). They also included a number of other provisions that directly conflicted with the reform attempts of the Intelligence Committee contained in S. 1718. The

Intelligence Committee requested referral of the bill to consider these intelligence provisions, pursuant to section 3(b) of Senate Resolution 400, which provides for referral to the Committee of any legislation containing provisions within its jurisdiction for up to thirty days, not counting days on which the Senate is not in session.

Discussions with Armed Services Committee

During the weeks of negotiations that followed, the Intelligence Committee agreed to a number of changes in S. 1718 to address concerns raised by the Armed Services Committee about protecting the equities of the Secretary of Defense and the Joint Chiefs of Staff. Notwithstanding that the objective of the reform provisions in S. 1718 was to improve the quality of intelligence provided to all consumers, including the Department of Defense, the Armed Services Committee did not want any changes that might diminish the current authority of the Secretary of Defense, who now controls about 85 percent of the intelligence community budget. The Intelligence Committee is concerned that the current arrangement, under which the Director of Central Intelligence is responsible for ensuring the nation's intelligence needs are met effectively and efficiently while having direct authority over only the CIA—which represents only a small portion of the intelligence budget—has led to problems like those reflected in the recent revelation that several billion dollars at the National Reconnaissance Office (NRO) in funds were never expended and were carried forward year after year.

As the current DCI John Deutch, who was formerly Deputy Secretary of Defense, testified on April 24, “[t]he Deputy Secretary of Defense has got a tremendous set of issues covering a much larger range of resources—10 times—managing ten times the resources . . . of the whole intelligence community. So to say that you are going to go to the deputy—and I am not talking about personalities—and say to the Deputy Secretary of Defense, why didn’t you catch this, he’s going to say, well, I count on the DCI to keep track of this and to let the Secretary of Defense know. So in some sense, if we are going to say that the Director of Central Intelligence does not view himself or herself as being responsible for the NRO, fundamentally nobody will be.”

The Director of Central Intelligence is in a unique position to balance the cost and effectiveness of intelligence programs throughout the government. It makes sense to hold this person responsible for ensuring that the various elements of the intelligence community are more responsive to this national objective than to parochial, turf-driven goals that too often typify bureaucracies. Yet he lacks the authority needed to accomplish this objective, particularly with regard to the intelligence elements within the Department of Defense. The DCI can be given enhanced authority without removing the elements of the intelligence community from the various agencies in which they reside or interfering with the ability of those agency heads to manage their departments, i.e., without creating a “Department of Intelligence.” The reform provisions in the Intelligence Authorization Act for Fiscal Year 1997 were designed to accomplish this goal.

This fundamental difference of opinion over the need to strengthen the authority of the DCI made reaching consensus with the Armed Services Committee over its provisions in the DOD bill and the provisions in the Intelligence bill difficult. However, both sides made accommodations and ultimately resolved all but a few issues, agreeing to changes in both bills. On June 6, the Armed Services reported S. 1718 with amendments that reflected the consensus and the two remaining areas of disagreement.

Remaining areas of disagreement

The first area of disagreement was on the national mission of the National Imagery and Mapping Agency. The creation of this agency, provided for in the Defense and Intelligence bills, eliminates the DCI's independent photographic interpretation center and transfers to the Department of Defense authority for processing and disseminating satellite imagery. While the Intelligence Committee supports this consolidation, believing it can be justified by the benefits of the synergy it will bring to imagery analysis, it has worked to ensure that national customers outside of DOD will continue to receive the imagery support they need. Specifically, the Committees disagreed on the appropriate role of the DCI in representing these national customers, including the President and the National Security Council, as well as the Secretary of State and other Cabinet officials and key decisionmakers. Given the Administration's decision to establish NIMA as an agency within the Department of Defense, with its budget controlled by the Secretary of Defense, and to designate it as a combat support agency subject to review by the Joint Chiefs of Staff, the Department of Defense clearly will be able to ensure appropriate consideration of DOD's imagery needs, both tactical and national. The issue debated by the Committees was whether the Secretary of Defense should be able to effectively block adjustments in the programs and policies of NIMA that might be needed to address deficiencies in the imagery agency's ability to meet the needs of other national customers such as the Departments of State, Justice, Treasury, Commerce, and Energy, as well as the Office of the U.S. Trade Representative and the U.S. Representative to the United Nations. The Committee was concerned that the proposals of the Armed Services Committee would allow the Secretary of Defense to effectively veto changes needed to meet these other national needs.

The second issue that remained unresolved was the ability of the DCI to make adjustments in the allocation of funds within the National Foreign Intelligence Program (NFIP) during the fiscal year to meet unexpected intelligence needs. Director Deutch, along with all former DCIs who testified before the Committee, publicly supported this enhanced authority as important to effective management of the national intelligence community. The DCI has the authority today to make the initial allocations within the NFIP in formulating the budget. However, when unforeseen requirements arise during the fiscal year and funds are available from a lower priority intelligence activity, the DCI does not have the authority to transfer those funds unless the affected agency head does not object. S. 1718 contained a provision to enhance the DCI's authority by shifting the burden to the affected agency to convince the Presi-

dent or his designee that the transfer is unwarranted. The Armed Services Committee objected to giving the DCI this authority and amended S. 1718 to delete the provision.

With the exception of these two issues, the Committee believes the consensus reached by the two Committees preserves significant elements of the reform effort and significantly enhances the ability of the DCI to manage intelligence activities. In addition, the Committee is more comfortable that, with the changes agreed upon, the DCI will have the ability to ensure that a new National Imagery and Mapping Agency will be responsive to the needs of all national customers.

RECOMMENDED AMENDMENTS TO S. 1745

Defense HUMINT Service

Section 905 of the bill, as reported by the SASC, would have made the Secretary of Defense the sole executive official responsible for oversight of the clandestine human intelligence activities of the Department of Defense and prohibited the Secretary of Defense from delegating this authority to anyone other than the Deputy Secretary of Defense. The provision would have severely hampered the ability of the Director of the Defense Intelligence Agency to manage the Defense HUMINT activities within his agency today and would have effectively prohibited the consolidation of the clandestine activities of the Defense HUMINT Service into the Directorate of Operations of the CIA, under the direction of the Director of Central Intelligence. This consolidation had been recommended by the Aspin-Brown Commission, and the Committee had included a provision to effect it in S. 1718.

The two Committees have agreed to the deletion of this provision and the provision in the SSCI bill that would require consolidation and to require instead that the DCI and Secretary of Defense submit a report on efforts to achieve greater cooperation and consolidation.

Director of Military Intelligence

Section 906 of the bill would have designated the Director of the DIA as the Director of Military Intelligence (DMI) and would have created a Military Intelligence Board (MIB) inside the Department of Defense.

This Committee has previously opposed the creation of a single Director of Military Intelligence inside the Department of Defense because military intelligence functions are appropriately shared among the Director, DIA; the J-2 of the JCS; and the Assistant Secretary of Defense for Command, Control, Communication, and Intelligence. For this reason, the Aspin-Brown Commission also recommended against creation of a DMI.

The Committee also notes that the Deputy Secretary of Defense has also testified against legislation creating a DMI and a MIB.

The Committee recommends that Section 906, as reported by SASC, be deleted from the bill.

DCI role in appointment and evaluation of national agency heads

The Committee recommends that a new Section 906 be added to S. 1745 that would amend Section 201 of Title 10, U.S. Code, to require the Secretary of Defense to obtain the concurrence of the DCI, or note the non-concurrence of the DCI, when recommending to the President an individual to be Director of NSA or NRO. (A separate new provision in Title 10, USC, would require the Secretary of Defense to obtain similar concurrence of the DCI with respect to appointment of the Director of NIMA.) This would parallel an amendment to Section 106 of the National Security Act that would be made by S. 1718 as amended by the Armed Services Committee. Section 201 would also be amended to require the DCI to provide to the Secretary of Defense an annual performance evaluation of the Directors of NSA, NRO, and NIMA.

Restriction on obligation of DOD funds

Section 1007 of the bill, as reported by the SASC, would have added a new Section 2215 to Title 10, U.S. Code, prohibiting the obligation or expenditure of funds appropriated to the Department of Defense for intelligence activities of the Department by any individual who is not an officer or employee of the Department of Defense.

This provision, the intent of which is unclear, would have far-reaching implications for the conduct of U.S. intelligence activities, the funds for which are largely appropriated to the Department of Defense. The Administration is still studying the full effect of this provision if it were enacted, but it is clear, at minimum, that it would significantly interfere with the obligation and expenditure of funds by the NRO, many of whose officers and employees are not DOD employees. The provision would also likely interfere with transfers of funds under the Economy Act.

The Committee recommends that Section 1007 be deleted from the bill.

The National Imagery and Mapping Agency

Title IX, Subtitle B of S. 1745, would consolidate the Defense Mapping Agency, the Central Imagery Office, the National Photographic Interpretation Center and the imagery-related functions of a number of other agencies into a single National Imagery and Mapping Agency (NIMA).

The creation of NIMA would constitute a major reorganization of U.S. intelligence activities, and accordingly the Committee has focused considerable attention on the provisions of Subtitle B. The Committee believes that Subtitle B, as reported by SASC, must be amended in several key respects.

Most important, the Committee believes that the DCI must have clear authority to set imagery collection requirements and priorities, and to resolve conflicts among priorities. The DCI has such authority under existing executive orders and presidential decisions, but, in light of the establishment of NIMA as an agency of the Department of Defense, the Committee believes the DCI's authorities should be restated in statute. The Committee recommends that these authorities be specified both in Title 10, U.S. Code (together with other provisions establishing NIMA) and in the Na-

tional Security Act of 1947 in Title 50 (which specifies the DCI's authorities as director of the Intelligence Community).

In addition, as noted above, the Committee paid particularly close attention to the provisions of Section 921 of Subtitle B that would define the national mission of NIMA. As reported by SASC, these provisions would have been included in a new Section 442(b) of Title 10. The Committee has not recommended changes in the wording of the provisions but believes that, like the DCI's tasking authorities, they should be included as part of the National Security Act in Title 50, rather than in Title 10. In addition, while the Committee has not changed the requirement that the DCI and the Secretary of Defense jointly determine whether and what corrective action is necessary to address deficiencies in NIMA's performance of its national mission, the Committee expects that neither the DCI nor the Secretary of Defense will use the requirement of a joint determination to block corrective action sought by the other. The Committee expects that the DCI and the Secretary of Defense will work together cooperatively to ensure that NIMA provides adequate support to non-DOD customers.

The Committee is also concerned that, as reported by the SASC, Section 921 of Subtitle B would have stated that NIMA is established "as a combat support agency of the Department of Defense." The Committee recognizes that the largest component of the new NIMA is the Defense Mapping Agency, which is currently designated in statute (10 U.S.C. 193) as a combat support agency, and that NIMA will continue to have significant combat support functions. But unlike the Defense Mapping Agency, NIMA will also have important responsibilities to provide imagery to non-military customers. Accordingly, the Committee believes it would be a mistake to establish NIMA "as a combat support agency," even if other statutory provisions specifically state that NIMA also has national missions. The implication would be left that NIMA's primary purpose is to provide combat support.

In this regard, the Committee notes that when Congress enacted Section 193 of Title 10, which specified the combat support agencies of the Department of Defense, Congress specifically declined to list the National Security Agency as a combat support agency because NSA serves customers outside the Department of Defense. Congress, nevertheless, subjected NSA to the same JCS review procedures as other combat support agencies but only with respect to its combat support functions. The Committee believes that it would be most appropriate to treat NIMA like NSA, i.e., not list NIMA as a combat support agency but subject it to JCS review with respect to its combat support functions. The Department of Defense and the SASC, however, have insisted that NIMA be listed as a combat support agency. Given that the Defense Mapping Agency will comprise the largest activity within NIMA, the Committee is willing to agree to have NIMA listed as a combat support agency in 10 U.S.C. 193 for purposes of JCS review of its combat support functions but recommends that Section 921 be amended so that NIMA is not established specifically "as a combat support agency."

The Committee also disagrees with provisions in Section 921 of the SASC bill relating to the appointment and status of the Director of NIMA. The legislative package drafted by the Administration

to create NIMA provided that (1) the Director of NIMA could be either a civilian or a military officer; and (2) the Secretary of Defense must obtain the concurrence of the DCI, or note the non-concurrence of the DCI, when recommending an individual to the President for appointment as Director of NIMA. As proposed by the SASC, new Section 441(b) of Title 10 would have required that the Director of NIMA be a military officer and that the Secretary of Defense simply consult the DCI before recommending a nominee from appointing a civilian Director of NIMA (thus implying that NIMA performs exclusively military functions) and would have given the DCI only a minor voice in the appointment of the head of a critical national intelligence agency. The SASC formulation was opposed by the DCI and by the Secretary of Defense. Accordingly, the Committee has amended proposed Section 441(b) to revert to the Administration's proposal.

Finally, pursuant to agreement with the Armed Service Committee, the Committee has deleted proposed Section 445 of Title 10. This section would have prohibited the Inspector General of the Central Intelligence Agency from conducting any inspection, investigation, or audit of NIMA without the written consent of DOD Inspector General.

COMMITTEE ACTION

On June 11, 1996, the Select Committee on Intelligence voted to report S. 1745 with amendments. Because the provisions considered by the Committee constituted a relatively small portion of the entire National Defense Authorization Act for Fiscal Year 1997, the Committee did not make a recommendation to the Senate on the overall bill. However, the Committee supports the provisions related to intelligence as amended.

REGULATORY IMPACT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that a report on the regulatory impact of a bill be included in the report on the bill. The Committee finds that there is no change in the regulatory impact of S. 1745 as a result of these amendments.

ESTIMATE OF COSTS

The Committee finds no changes in the estimate of costs as a result of these amendments.

CHANGES IN EXISTING LAW

Pursuant to the provisions of paragraph 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by certain portions of the bill have not been shown in this section of the report because, in the opinion of the Committee, it is necessary to dispense with showing such changes in order to expedite the business of the Senate and reduce the expenditure of funds.