



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 28, 2004
(Senate)

STATEMENT OF ADMINISTRATION POLICY

S. 2845 – National Intelligence Reform Act of 2004

(Sen. Collins (R) Maine and Sen. Lieberman (D) Connecticut)

The Administration supports Senate passage of S. 2845, commends the Committee for its expeditious attention to these important intelligence reform issues, appreciates the Committee's efforts to include important provisions proposed by the Administration, including specific and detailed budget authorities for the National Intelligence Director (NID), and looks forward to working with the Congress to address the Administration's concerns outlined below. This measure will build upon actions already taken by the Administration, including in the President's recently issued Executive Orders, as well as upon the recommendations of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission).

The Administration supports, in particular, the establishment of a NID with full, effective, and meaningful budget authorities and other authorities to manage the Intelligence Community including statutory authority for the newly created National Counterterrorism Center. The Administration will oppose any amendments that would weaken the full budget authority or any other authorities that the President has requested for the NID. The Administration will work in the legislative process to continue to strengthen and streamline intelligence reform legislation and to make adjustments to ensure that the President continues to have flexibility in combating terrorism and conducting intelligence activities.

The Administration is concerned about the excessive and unnecessary detail in the structure of the Office of the NID. In particular, provisions of S. 2845 would, in the aggregate, construct a cumbersome new bureaucracy in the Office of the NID and in the Executive Office of the President with overlapping authorities. Legislatively mandated bureaucracy will hinder, not help, in the effort to strengthen U.S. intelligence capabilities and to preserve our constitutional rights. The Administration urges the Senate to delete or significantly revise these problematic provisions.

The Administration opposes the Committee's attempt to define in statute the programs that should be included in the National Intelligence Program; the Administration believes that further review is required. The Administration also believes that the Committee bill's provision relating to the NID's role in acquisition in major systems needs further study to ensure that the requirements of major consumers are met.

The Administration supports the strong information-sharing authorities granted to the NID in the bill. The Administration is concerned that the extensive authorities and responsibilities granted to the Office of Management and Budget (OMB) to implement an information sharing network are both outside of OMB's usual responsibilities and are inconsistent with the goal of ensuring a NID with effective authority to manage the Intelligence Community. These responsibilities should be granted to the NID in such a way as to remain

consistent with section 892 of the Homeland Security Act of 2002. The Administration also believes that the detail in which the legislation prescribes the network is excessive; the network would be more likely to accomplish its beneficial goal if the bill simply provided the authority necessary for its establishment while leaving the details to be worked out and altered as circumstances require.

The Administration is also very concerned about the provisions that would purport to reorganize the President's internal policy staff by merging the National Security Council and the Homeland Security Council. Based on the constitutional doctrine of separation of powers, the Congress should not legislate and make permanent the internal organization of the President's own Executive offices or otherwise limit the flexibility needed to respond quickly to threats or attacks.

The Administration is also concerned that the Committee bill mandates disclosure of sensitive information about the intelligence budget. The legislation should not compel disclosure, including to the Nation's enemies in war, of the amounts requested by the President, and provided by the Congress, for the conduct of the Nation's intelligence activities.

The Administration opposes the provision in the Committee bill purporting to require the President to select a single department or agency to conduct all security clearance investigations. Although the Administration supports improvements to the security clearance process, this provision would impermissibly interfere with the President's need for flexibility in conducting security clearance investigations and does not recognize the special needs of individual intelligence agencies.

The 9/11 Commission found that the creation of a NID and National Counterterrorism Center, "will not work if congressional oversight does not change too." The Administration notes that the bill does not address this vital reform component or the parallel recommendation to consolidate oversight for the Department of Homeland Security. The Administration believes the legislation should also address the Commission's recommendation to ensure rapid consideration by the Senate of national security appointments.

The Administration notes that the Committee bill did not include Section 6 ("Preservation of Authority and Accountability") of the Administration's proposal; the Administration supports inclusion of this provision in the Senate bill. The legislation should also recognize that its provisions would be executed to the extent consistent with the constitutional authority of the President: to conduct the foreign affairs of the United States; to withhold information the disclosure of which could impair the foreign relations, the national security, deliberative processes of the Executive, or the performance of the Executive's constitutional duties; to recommend for congressional consideration such measures as the President may judge necessary or expedient; and to supervise the unitary executive.

* * *