

Calendar No. 16

110TH CONGRESS }
1st Session }

SENATE

{ REPORT
110-3

AMENDMENT OF SENATE RESOLUTION 400 (94TH CONGRESS)

JANUARY 30, 2007.—Ordered to be printed

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

R E P O R T

[To accompany S. Res. 50]

The Select Committee on Intelligence, having considered an original resolution (S. Res. 50) amending Senate Resolution 400 (94th Congress), to make amendments arising from the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004, and to make other amendments, reports favorably thereon and recommends that the resolution be agreed to.

PURPOSE OF RESOLUTION

Senate Resolution 400 of the 94th Congress (S. Res. 400) is the basic jurisdictional and procedural charter of the Select Committee on Intelligence. Since its adoption by the Senate in 1976, there have been organizational changes in the Intelligence Community that should be reflected in S. Res. 400. Principal among them, as a result of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, is the replacement of the position of Director of Central Intelligence (DCI) with that of the Director of National Intelligence (DNI) and the Director of the Central Intelligence Agency. The resolution that the Committee is now reporting also provides for technical changes to conform S. Res. 400 to several matters internal to the Senate that have been changed since 1976 by other Senate resolutions.

SECTION-BY-SECTION ANALYSIS AND EXPLANATION

Section 1. Amendments arising from enactment of the Intelligence Reform Act

Section 3(a)(1) of S. Res. 400 provides for the jurisdiction of the Select Committee on Intelligence over listed elements of the Intelligence Community. Section 3(a)(4) of S. Res. 400 grants the Committee jurisdiction over authorizations for those elements. Section 12 of S. Res. 400 implements that grant of jurisdiction by barring appropriations for the activities of the listed elements of the Intelligence Community unless there has been an authorization. Heading these lists has been “The Central Intelligence Agency and the Director of Central Intelligence,” or in the case of Section 12 “The activities of the Central Intelligence Agency and the Director of Central Intelligence.”

The Intelligence Reform Act of 2004 assigns to the DNI two functions that had previously been assigned to the DCI, namely, serving as head of the Intelligence Community and being the principal adviser to the President for intelligence matters relating to national security. The Act assigns to the CIA Director the third principal function of the former DCI: serving as head of the CIA. It provides for an Office of the Director of National Intelligence to assist the DNI in carrying out his or her responsibilities.

To align the grant of committee jurisdiction in S. Res. 400 with the present organization of the Intelligence Community that has resulted from Intelligence Reform Act of 2004, section 1 of the resolution that the Committee is now reporting will replace the outdated references in S. Res. 400 to the Director of Central Intelligence. By virtue of paragraphs (1)(A)(ii) and (iii) of Section 1 of the amendments now being reported, S. Res. 400 will provide explicitly for Intelligence Committee jurisdiction over:

“(A) The Office of the Director of National Intelligence and the Director of National Intelligence.

“(B) The Central Intelligence Agency and the Director of the Central Intelligence Agency.”

Section 1(4)(B) of the amendments makes a corresponding change to section 12 of S. Res. 400. In fact, since enactment of the 2004 Reform Act, the Senate has recognized that Intelligence Committee jurisdiction covers all parts of the former DCI’s jurisdiction, with matters concerning the DNI being referred to the Intelligence Committee, including nominations to that position. The amendments ratify that working assumption.

The general Senate practice on the sequential referral to a second committee of legislation that has been reported by a committee is that the sequential referral may be ordered by unanimous consent or under Rule XVII of the Standing Rules of the Senate on a motion by the Majority and Minority Leaders or their designees. To address the circumstances in which another committee has jurisdiction over a department that contains an Intelligence Community element, the Senate in Section 3(b) of S. Res. 400 established a special procedure for the sequential referral of matters in which the Intelligence Committee shares jurisdiction with another committee of the Senate.

Under that procedure, if the Intelligence Committee reports a matter that is also within the jurisdiction of another committee, or

another committee reports a matter that is also within the jurisdiction of the Intelligence Committee, the chairman of the committee that also has jurisdiction may obtain a sequential referral to his or her committee simply by requesting it. The sequential referral shall be for ten days that the Senate is in session and is extendable for five additional days of session at the request of the Majority or Minority Leader.

However, since the adoption of S. Res. 400 in 1976, section 3(b) of S. Res. 400 has specifically excepted from this special sequential referral rule legislation involving the CIA and the DCI. Section 1(1)(B) of the amendments that the Committee is now reporting applies that exception to legislation involving both successors of the DCI: the DNI as head of the Intelligence Community and the CIA Director as head of the CIA, as well as to the entity that supports each, the ODNI and the CIA. But, as section 3(c) of S. Res. 400 (which will not be changed by these amendments) also makes clear, nothing in S. Res. 400 shall be construed as restricting the authority of any committee to study or review an intelligence activity that directly affects a matter otherwise within that committee's jurisdiction. Further, Rule XVII, the general Senate rule on sequential referrals, will continue to allow for sequential referrals on the motion of the Majority and Minority Leaders or their designees. Nor will the amendments change the application of the special sequential procedure to the Intelligence Committee's annual authorization bill as that bill regularly contains authorization matters beyond the Office of the Director of National Intelligence and the CIA that render the bill subject to sequential referral.

In addition to the changes described above, the amendments included in section 1 of the resolution now being reported insert the DNI or replace outdated references to the DCI in other parts of S. Res. 400, as appropriate, such as with regard to the requirement in section 4 of S. Res. 400 for obtaining an annual report from the DNI as well as the CIA Director.

Section 2. Technical amendments relating to the current name of the Ethics Committee

Two sections of S. Res. 400 provide for the responsibilities of the Senate committee that has jurisdiction over ethics matters.

Section 6 of S. Res. 400 requires that no employee or contractor of the Intelligence Committee shall be given access to classified information unless agreeing in writing and under oath to be bound by the rules of the Senate including the jurisdiction of the Senate committee with jurisdiction over ethics. Section 8 of S. Res. 400 provides for the duty of that committee to investigate and report to the Senate any unauthorized disclosure of intelligence information by any Member, officer, or employee of the Senate.

At the time of the adoption of S. Res. 400 in 1976, the name of the Senate committee with jurisdiction over ethics matters was the Select Committee on Standards and Conduct. In 1977, the Senate changed the name of that committee to the Select Committee on Ethics. The resolution that accomplished that, S. Res. 4, also provided that any resolution, rule, or order of the Senate that referred to the Select Committee on Standards and Conduct shall thereafter be considered as referring to the Select Committee on Ethics.

Section 2 of the resolution that our Committee is now reporting amends Sections 6 and 8 of S. Res. 400 to replace the outdated references to the Select Committee on Standards and Conduct with references to the Select Committee on Ethics.

3. Technical amendments relating to outdated references to an intelligence Division of the FBI

In two places in S. Res. 400—sections 3 and 12, in describing the Committee’s jurisdiction over intelligence matters at the Federal Bureau of Investigation, the Senate in 1976 described that jurisdiction as “the intelligence activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.” The FBI no longer has a unit named “the Intelligence Division.” The intelligence functions of the FBI are now located in a National Security Branch. Section 3 of the amendments now being reported by the Committee will strike the outdated references to the Intelligence Division. As amended, sections 3 and 12 will cover “the intelligence activities of the Federal Bureau of Investigation” under whatever name may be used within the FBI.

4. Technical amendments relating to references to Senate Rules

The technical amendments in Section 4 of the resolution that the Committee is now reporting replace with current references to the Standing Rules of the Senate three out-of-date references in S. Res. 400 to Senate rules, including rules that in 1976 had been located in the Legislative Reorganization Act of 1946. One of the references is in Section 2(b) of S. Res. 400 which bars the Chairman and Vice Chairman of the Intelligence Committee from serving as the chairman or ranking minority member of other standing, select, or joint committees. The other two are in Section 8(b)(5) of S. Res. 400. They relate to the authority of the Majority and Minority Leaders to agree to a time for the full Senate to consider a vote by the Intelligence Committee to disclose information.

The amendments do not change the substance of the referenced rules or the operation of S. Res. 400, but only show where the applicable rules may be currently found. The Committee, in fact, has been printing the correct location of the referenced rules in its periodic reprinting of S. Res. 400 and the rules of the Committee, but no record has been found that shows that the Senate (whose action is needed to amend S. Res. 400) has made these technical changes to S. Res. 400.

5. Technical amendments to correct inadvertent word error resulting from S. 445 of the 108th Congress

Section 201 of S. Res. 445, agreed to October 9, 2004 (108th Congress), reorganized and amended Section 3(b) of S. Res. 400. The 2004 amendments to S. Res. 400 included an inadvertent word error. In Section 3(b)(3) of S. Res. 400 (as amended by S. Res. 445)—a provision on the computation of time for sequential referrals—the term “the session” should be “in session.” Section 5 of the resolution that the Committee is now reporting makes that correction.

COMMITTEE ACTION

Motion to report resolution favorably

On January 30, 2007, on the motion of Senator Bond and a quorum for reporting being present, by a vote of 15 ayes and 0 noes the Committee voted to report the resolution favorably. The votes in person or by proxy were as follows: Chairman Rockefeller—aye; Senator Feinstein—aye; Senator Wyden—aye; Senator Bayh—aye; Senator Mikulski—aye; Senator Feingold—aye; Senator Nelson—aye; Senator Whitehouse—aye; Vice Chairman Bond—aye; Senator Warner—aye; Senator Hagel—aye; Senator Chambliss—aye; Senator Hatch—aye; Senator Snowe—aye; Senator Burr—aye.

