

**Side-by-Side Comparison Chart
of FISA Legislation**

This CDT chart compares bills that would replace the Protect America Act, P.L. 110-55.

Issue	Senate Bill, S. 2248	House Bill, H.R. 3773
Does a court authorize surveillance programs of non-U.S. persons abroad who may communicate with people in the U.S.?	No. Surveillance is authorized by the Attorney General (AG) and Director of National Intelligence (DNI).	Yes. The Foreign Intelligence Surveillance Court (“FISC”) issues a basket order authorizing surveillance program.
Can the surveillance begin without prior judicial approval of targeting and minimization procedures?	Yes. Procedures must be submitted to FISC w/in 5 days after adoption or amendment.	No. If FISC disapproves procedures, surveillance can not commence unless court authorizes it during appeal. Permits AG/DNI authorization in emergency.
Is full FISC order required to continue surveillance when person in the U.S. of intelligence interest is on the line?	No meaningful protection to U.S. person. Bars targeting intentionally a person abroad for the purpose of targeting a person in U.S.	Yes. Full FISC order based on probable cause required when a “significant purpose” is surveillance of a U.S. person in the U.S.
Can FISC stop surveillance that is illegal because it does not comply with targeting or minimization procedures?	Unclear. If FISC rejects procedures, gov’t has option to cease surveillance or continue it while revising the procedures. FISC can review compliance under its “inherent authority,” which is of uncertain scope.	Yes. If FISC disapproves procedures, surveillance cannot commence, except with court permission pending appeal. At least quarterly, the FISC reviews compliance with targeting & minimization procedures.
Can FISC stop surveillance that violates the 4th Amendment?	Yes. Is expressly provided for in bill, and may be part of court’s inherent power.	Yes. Not provided for in the bill, but is part of court’s inherent power.
Is individualized FISC order required for targeting U.S. persons abroad?	Yes. Must be based on probable cause that U.S. person abroad is an agent of a foreign power (AFP).	No. An executive order permits such surveillance upon AG certification that the U.S. person is an AFP.
Is an audit of post 9-11 warrantless surveillance required?	No.	Yes. Dept. of Justice Inspector General conducts an audit.
Does sunset prompt timely congressional review?	No. Sunsets in six years, on 12/31/13.	Yes. Sunsets in two years, on 12/31/09.
Does bill confusingly redefine “electronic surveillance” in FISA?	Yes. Result: illegal surveillance of targets abroad not penalized.	No.
Does bill grant retroactive telecom immunity?	Yes. Invites assistance with future illegal surveillance.	No.