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House Departs Without Vote to Extend Expired F.B.I. Spy Tools

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WASHINGTON — House Democrats left the capital on Friday after passing the \$2 trillion coronavirus relief legislation without taking up a Senate bill to temporarily revive three expired F.B.I. surveillance tools for terrorism and espionage investigations, ensuring that the laws will remain lapsed at least until the Senate returns from vacation next month.

The series of laws, which includes two provisions created by the Patriot Act after the Sept. 11, 2001, attacks, expired on March 15. They give investigators the power to get court orders for business records deemed relevant to a national security investigation, and to swiftly follow around a wiretap target who changes phone lines in an attempt to evade monitoring.

A spokeswoman for Speaker Nancy Pelosi did not explain why she did not bring up the legislation while House members were briefly back in Washington to vote on the stimulus package.

Kerri Kupec, a Justice Department spokeswoman, promoted changes that the F.B.I. has already made to tighten its use of the Foreign Intelligence Surveillance Act, or FISA, and said the department still wanted the House to pass the Senate bill.

“We urge the House to approve the Senate-passed temporary extension,” she said, “as soon as possible to avoid any further gap in our national security capabilities over the next several weeks and look forward to working with the Senate when it takes up the House’s bipartisan package of reforms.”

Still, the lapse of several more weeks may not have a significant operational effect on the F.B.I., said Julian Sanchez, a specialist in surveillance legal policy at the Cato Institute.

That is because of the way the law is written. A so-called savings clause permits the laws to remain in effect for investigations that already existed on March 15, or for new investigations into events that occurred before then.

“The authorities remain available for either investigations open at the time of expiration or investigations predicated on underlying conduct that predates the sunset date,” Mr. Sanchez said.

The F.B.I. has open-ended investigations into long-term organizational threats, including major terrorist groups like Al Qaeda and the Islamic State and the espionage agencies of foreign adversaries like Russia and China. Thus, the FISA court that has oversight of national security

surveillance can still issue orders giving investigators the power to target a newly identified suspect linked to one of those entities.

The third expired provision permits eavesdropping on a so-called lone wolf terrorist who is not part of an established foreign terrorist group. That provision could be invoked now only if the F.B.I. can show that a newly identified target's suspicious conduct included actions before March 15.

But that theoretical risk may not matter operationally either, Mr. Sanchez said, noting that as far as has been disclosed, the F.B.I. has never used the lone wolf provision.

A majority of lawmakers in both chambers support extending the expired provisions, but they have been caught up in a larger argument over whether and how strictly to impose new restrictions on the F.B.I.'s FISA powers after an inspector general's damning report found numerous factual errors and omissions in applications to target the former Trump adviser Carter Page during the Russia investigation.

The House passed a bill, negotiated by Ms. Pelosi and Representative Kevin McCarthy of California, the House Republican leader, this month before the provisions expired that would extend the expiring provisions while making changes to FISA.

The House bill, for example, would push the FISA court to appoint an outsider to critique the government's arguments when a wiretap application raised serious issues about First Amendment activity, which could include political campaigns.

It would also make clear that the government cannot use a FISA business records order to collect information — like cellphone location data, which in a criminal investigation requires a search warrant — that has a higher legal standard.

But amid objections from libertarian-leaning senators of both parties that the House bill fell short in curtailing surveillance powers, the Senate did not take it up.

Instead, the Senate voted to temporarily reinstate the three tools unchanged until June — giving itself more time to negotiate its own surveillance overhaul package. But the House did not cooperate.