

Summary of Legislation to Establish a Department of Homeland Security and the National Office for Combating Terrorism

Before the Senate
September 2002

The proposed legislation calls for formation of a Department of Homeland Security, at cabinet level, to plan, coordinate, and integrate U.S. government activities relating to homeland security, including border security, critical infrastructure protection, emergency preparedness and response, intelligence, and science and technology. The legislation also creates a White House Office for Combating Terrorism to craft and oversee a National Strategy to Combat Terrorism and exercise budget certification authority over spending to combat terrorism. The act shall take effect 30 days after the date of enactment, or January 1, 2003, whichever comes first.

Department of Homeland Security

Secretary of Homeland Security shall be appointed by the President and confirmed by the Senate and shall be a member of the National Security Council. The Secretary is responsible for developing policies, priorities and plans for homeland security, including the development of a national strategy with the Director of the National Office for Combating Terrorism, and advising the Director on the development of a comprehensive budget for programs under the strategy. The Secretary is also responsible for including, as appropriate, state and local governments and other entities into the full range of homeland security activities and consulting with the Secretary of Defense on Defense Department support.

Directorate of Border and Transportation Protection shall be headed by an Under Secretary appointed by the President and confirmed by the Senate. The Directorate shall be responsible for securing borders, territorial waters, ports, waterways, air, land, and sea transportation systems, including coordinating governmental activities at ports of entry; and administering the duties of the entities transferred to the Directorate. Those entities are the Customs Service, which shall be maintained as a distinct entity; that portion of the Animal Plant and Health Inspection Service that governs agricultural quarantine inspections at points of entry; the Federal Law Enforcement Training Center of the Department of the Treasury; and the Transportation Security Administration.

The Coast Guard will be transferred as a distinct entity, reporting directly to the Secretary.

Directorate of Intelligence shall be headed by an Under Secretary appointed by the President and confirmed by the Senate. The Directorate shall serve as a national-level focal point for the analysis of information available to the United States Government for the purpose of preventing, protecting against, preparing for, and responding to threats of terrorism and other threats. Unless the President directs otherwise, the Directorate shall be responsible for receiving and analyzing law enforcement, intelligence (including unevaluated intelligence), assessments, analyses and other information to detect and identify specific threats of terrorism against the United States. The Directorate shall be staffed in part by analysts via reimbursable detail from agencies of the intelligence community. The Counterterrorism Center of the CIA shall have primary responsibility for the analysis of foreign intelligence relating to international terrorism and providing that analysis to the Directorate of Intelligence. The Directorate may also conduct supplemental analysis of foreign intelligence.

Directorate of Critical Infrastructure Protection shall be headed by an Under Secretary appointed by the President and confirmed by the Senate. The Directorate shall be responsible for receiving information from the Directorate of Intelligence, law enforcement and other information to assess the vulnerabilities of key resources and critical infrastructure; developing a comprehensive national plan for securing key resources and critical infrastructure; enhancing and sharing information regarding cyber-security and physical security, developing security standards, tracking vulnerabilities, and delineating the roles of various governmental agencies in preventing, defending, and recovering from attacks.

The following offices are transferred to the Department: the Critical Infrastructure Assurance Office of the Department of Commerce; the National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section); the National Communications System of the Department of Defense; the Computer Security Division of the National Institute of Standards and Technology of the Department of Commerce; the National Infrastructure Simulation and Analysis Center of the Department of Energy; the Federal Computer Incident Response Center of the General Service Administration; the Energy Security and Assurance Program of the Department of Energy; and the Federal Protective Service of the General Services Administration.

Directorate of Emergency Preparedness and Response shall be headed by an Under Secretary appointed by the President and confirmed by the Senate. The Directorate shall be responsible for carrying out federal emergency preparedness and response activities; providing state and local authorities with equipment for detection, protection, and decontamination in an emergency involving weapons of mass destruction; overseeing federal, state and local emergency preparedness training and exercise programs; and providing assistance for any emergency, including emergencies caused by natural disasters or disease.

The Director of FEMA may award three-year grants to local communities to hire additional fire-fighters. This program would fund 75% of a firefighter's salary and benefits over three years. Communities applying for grants under the program would be required to present a plan for how they will fund the position at the conclusion of the third year. The three-year cost is capped at \$100,000 per firefighter.

The following offices are transferred to the Department: The Federal Emergency Management Agency, which shall be maintained as a distinct entity; the National Office of Domestic Preparedness of the FBI of the Department of Justice; the Office of Domestic Preparedness of the Department of Justice; the Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services; the Strategic National Stockpile of the Department of Health and Human Services; the functions of the Select Agent Registration Program (HHS and the USDA).

Directorate of Immigration Affairs shall be headed by an Under Secretary who will be appointed by the President and confirmed by the Senate. The Under Secretary will be the principal advisor to the Secretary for developing and implementing U.S. immigration policy. The Immigration and Naturalization Service would be terminated, and two divisions would be created in its place: a Bureau of Enforcement and Border Affairs with responsibility for visa petitions, applications for adjustment of status and change of status, naturalization applications, asylum and refugee applications, and determinations regarding the custody and parole of asylum seekers; and a Bureau of Immigration Services with responsibility for border patrol, detention, removal, intelligence, and investigations.

An Office of Children's Services will be created within HHS to recognize the special needs and circumstances of unaccompanied alien children. An Agency for Immigration Hearings and Appeals is

created within the Department of Justice, headed by a Director appointed by the Senate and confirmed by the Senate. This agency - consisting of the immigration courts and the board of appeals - replaces the Executive Office of Immigration Review.

Directorate of Science and Technology shall be headed by an Under Secretary appointed by the President and confirmed by the Senate. The Directorate shall be responsible for managing and supporting research, development, testing, and evaluation activities to meet national homeland security needs; articulating national research and development goals, priorities, and strategies; coordinating with internal and external entities to advance the Department's R&D agenda; advising the Secretary on scientific and technical matters; and facilitating the transfer and deployment of technologies to serve homeland security goals.

A number of federal laboratory programs are transferred to the Department and will provide the Under Secretary with a core science and technology capability. Other mechanisms for promoting and supporting critical R&D include: a Security Advanced Research Projects Agency (SARPA) administering a \$200 million Acceleration Fund; initiating and supporting innovative R&D by leveraging funds with other R&D agencies, universities, and the private sector; an interagency Science and Technology Council to coordinate R&D efforts across government agencies and assist in developing a homeland security technology roadmap; an Office for Technology Evaluation and Transition to serve as a clearinghouse and point-of-contact for companies that possess technologies for promoting homeland security; and an Office of Risk Analysis and Assessment, using in-house expertise or drawing on federally funded research and development centers, to support the Department's analytical functions, including threat assessment, risk analysis, and red teaming.

The Secretary shall be able to utilize any of the Department of Energy national laboratories or sites through joint research sponsorship agreements; will have a role in setting priorities for certain bioterrorism research programs within the Department of Health and Human Services; and shall also develop a strategy and plan for encouraging biotechnology firms, pharmaceutical companies, and other entities to develop countermeasures against biological and chemical weapons.

Office for State and Local Government Coordination is established within the Office of the Secretary to oversee and coordinate programs for and relationships with State and local governments.

United States Secret Service, which shall be maintained as a distinct entity, is transferred to the Department.

Civil Service Protections are maintained for Federal employees. The administration is denied requested authority for an unprecedented and unchecked waiver of any and all civil service protections. Under current law, the President and Secretary can reward excellence, remove poorly performing employees, offer recruitment bonuses, and use many other performance-oriented management tools. To provide additional flexibility, the legislation adopts significant, government-wide civil service reforms, contained in provisions proposed by Senators Voinovich and Akaka. The legislation also provides the Secretary with additional authority to procure new technology. Taken together, these changes will give the Secretary the ability to: speed up staffing of new employees; recruit and retain top science and technology talent; procure temporary services outside the civil service system when there is a critical need; reshape the workforce; reform old competitive-hiring practices; provide more effective bonuses for exemplary performance; promote procurement flexibility in research, development, the prototyping of new technologies, and other procurement; and make additional valuable changes to help the new Department

attract, maintain, and motivate the best talent. These reforms represent a major modernization of the way federal agencies are managed.

National Office for Combating Terrorism

The National Office for Combating Terrorism is established, headed by a Director appointed by the President and confirmed by the Senate. The Director's responsibilities include: developing national objectives and policies for combating terrorism; directing the development of a national assessment of terrorist threats and vulnerabilities; developing, with the Secretary of Homeland Security, a national strategy for combating terrorism; coordinating, overseeing, and evaluating the strategy; coordinating an annual budget for programs and activities under the strategy, including the budgets of the military departments and agencies with the National Foreign Intelligence Program relating to international terrorism, but excluding military programs, projects, or activities relating to force protection; and serving as an adviser to the National Security Council.

National Strategy for Combating Terrorism and the Homeland Security Response

The Secretary and Director shall develop the National Strategy for Combating Terrorism and Homeland Security Response for the detection, prevention, protection, response and recovery necessary to counter terrorist threats. The Secretary has responsibility for portions of the strategy addressing border security, critical infrastructure protection, emergency preparedness and response, and integrating state and local efforts with activities of the federal government. The Director has overall responsibility for the development of the strategy, and particularly for those portions addressing intelligence, military assets, law enforcement and diplomacy. The strategy will include: policies to maximize the collection, translation, analysis, exploitation and dissemination of information related to combating terrorism throughout the federal government and with state and local authorities; plans for countering chemical, biological, radiological, and nuclear and explosives, and cyber threats; plans for improving the resources of, coordination among, and effectiveness of health and medical sectors for detecting and responding to terrorist attacks; specific measures to enhance cooperative efforts between the public and private sectors in protecting against terrorist attacks; and a review of measures needed to enhance transportation security with respect to potential terrorist attacks.

The National Combating Terrorism and Homeland Security Response Council will assist with preparation and implementation of the strategy. Members of the Council will be the heads of federal terrorism prevention and response agencies or their designees. The Secretary and Director will co-chair the Council.