To authorize the Secretary of Homeland Security to make grants to first responders, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2005

Mr. FRELINGHUYSEN (for himself, Mr. SMITH of New Jersey, Mr. SAXTON, Mr. LOBIONDO, Mr. FERGUSON, Mr. GARRETT of New Jersey, Mr. PAYNE, Mr. PALLONE, Mr. ANDREWS, Mr. ROTHMAN, Mr. PASCRELL, and Mr. MENENDEZ) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committees on Transportation and Infrastructure, the Judiciary, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To authorize the Secretary of Homeland Security to make grants to first responders, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Smarter Funding for All of America’s Homeland Security Act of 2005”.

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SEC. 2. PRESERVATION OF PRE-9/11 GRANT PROGRAMS FOR TRADITIONAL FIRST RESPONDER MISSIONS.

(a) In General.—This Act does not affect any authority to make grants under any Federal grant program in existence immediately prior to September 11, 2001, that enhance traditional missions of State and local law enforcement, firefighters, ports, emergency medical services, or public health missions.

(b) Included Programs.—The programs referred to in subsection (a) include the following:


(3) Department of Justice Law Enforcement Grant Programs.—The Local Law Enforce-
ment Block Grant program of the Department of Justice.

(4) **BYRNE MEMORIAL FORMULA GRANTS.**—The Edward Byrne Memorial State and Local Law Enforcement Assistance Programs authorized by part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(5) **COPS.**—The Public Safety and Community Policing ("COPS ON THE BEAT") grant program authorized by part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.).

(6) **HEALTH AND HUMAN SERVICES GRANT PROGRAMS.**—Grant programs under the Public Health Service Act regarding preparedness for bioterrorism and other public health emergencies (including grants under sections 319C–1, 319C–2, and 319F), and the emergency response assistance program authorized by section 1412 of the National Defense Authorization Act for Fiscal Year 1997 (50 U.S.C. 2312).

**SEC. 3. FASTER AND SMARTER FUNDING FOR FIRST RESPONDERS.**

(a) **IN GENERAL.**—Subtitle A of title VIII of the Homeland Security Act of 2002 (Public Law 107–296; 6
U.S.C. 361 et seq.) is amended by adding at the end the following:

“SEC. 802. FASTER AND SMARTER FUNDING FOR FIRST RESPONDERS.

“(a) SHORT TITLE.—This section may be cited as the ‘Faster and Smarter Funding for First Responders Act’.

“(b) FIRST RESPONDER GRANTS AUTHORIZED.—

“(1) IN GENERAL.—The Secretary shall establish a State and Regional First Responder Grant Program, under which the Secretary may make grants in accordance with this section to States and eligible regional entities.

“(2) APPLICATION TO OTHER GRANTS.—All grants by the Secretary with amounts made available after the date of the enactment of this Act for first responders shall be awarded under the program, and shall be made to either States or eligible regional cooperatives in accordance with this section.

“(3) ADMINISTRATION.—The Secretary shall administer the program through the Office for State and Local Government Coordination.

“(c) GRANT CRITERIA AND ELIGIBILITY.—

“(1) GRANT CRITERIA.—The Secretary shall make grants under this section on the basis of the threat to a State or region’s population and critical
infrastructure, as determined by the Under Secretary for Information Analysis and Infrastructure Protection based on its analysis under subsection (e) of threat-related information from all sources pursuant to its authority under section 202 of the Homeland Security Act of 2002.

“(2) GRANT ELIGIBILITY.—To be eligible for a grant under this section an applicant must be—

“(A) a State; or

“(B) a region.

“(3) CONSISTENCY.—Any grant awarded under this section shall be used to supplement and support, in a consistent and coordinated manner, activities described under subsection (f) in accordance with a homeland security plan specified in the application for the grant.

“(d) APPLICATION FOR GRANT.—

“(1) IN GENERAL.—Any State or eligible regional entity may apply for a grant under this section by submitting to the Secretary an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

“(2) POINT OF CONTACT.—The Office for State and Local Government Coordination shall be the sole
point-of-contact between the Department and applicants for grants under this section.

“(3) CONTENTS OF APPLICATION.—Each application for a grant under this section must include the following:

“(A) Details of the purpose for which grant funds are sought and the reasons why the applicant needs the grant, including specification of what the applicant expects to purchase or accomplish with the grant funds.

“(B) Identification of the entity that will expend the grant funds.

“(C) A detailed capital budget showing how the grant funds will be allocated and spent.

“(D) A statement of whether a mutual aid agreement applies to the use of the grant funds.

“(E) A description of the source of the threat to which the proposed grant relates, including the type of attack for which the applicant is preparing for in seeking the grant funding.

“(F) A statement of why the proposed use of funds is not a traditional first responder mission.
“(G) A description of how the applicant intends to meet the matching requirement under subsection (g)(2), and a statement of whether the applicant will commit to provide more matching funds than the amount required under that subsection.

“(e) Threat-Based Evaluation of Grant Applications.—

“(1) In general.—The Secretary, acting through the Under Secretary, shall evaluate and prioritize applications for grants under this section based on an objective determination and exhaustive assessment of the threat to the population or assets covered by the application.

“(2) Categories of threats to be considered.—In evaluating and prioritizing applications for grants under this section, the Under Secretary for Information Analysis and Infrastructure Protection’s risk analysis shall include consideration of whether and the degree to which threats within the following categories are applicable at that time to the State or region for which the application is made:
“(A) Threats to the population of the State or region, including military and tourist populations.

“(B) Threats to specific economic sectors or private sector facilities.

“(C) Threats to major communications nodes, including cyber and telephonic nodes.

“(D) Threats to specific elements of the Nation’s food supply.

“(E) Threats to the water supply.

“(F) Threats to the energy supply, including to electrical, petroleum, and nuclear sources.

“(G) Threats to civic infrastructure and emergency response capabilities, including threats that would—

“(i) substantially eliminate the government of the State or region;

“(ii) materially degrade the ability of first responders serving the State or region to communicate or to provide assistance during and in the aftermath of an act of terrorism, including a chemical, biological, radiological, or nuclear attack; and
“(iii) curtail the availability or effectiveness of emergency medical services, including hospital-based services, needed to serve the population of the State or region during such a terrorist-induced mass-medical emergency.

“(H) Threats to specific national monuments or structures of symbolic national importance, particularly those that routinely attract large numbers of tourist visitors.

“(I) Threats to significant concentrations of natural resources on which major economic sectors or population centers depend.

“(J) Threats to major transportation systems or nodes.

“(3) SPECIFIC THREATS.—In addition to the categories of threats under paragraph (2), the Under Secretary shall consider any other specific threat to a critical vulnerability that the Department’s Directorate of Information Analysis and Infrastructure Protection has determined exists within the applicant State or region.

“(4) IDENTIFICATION OF THREAT REQUIRED.—The Secretary may not make a grant to an applicant under this section unless the Under Secretary identi-
fies a specific vulnerability that is subject to a present or analytically projected threat of an act of terrorism.

“(5) PRIORITIZATION.—The Under Secretary shall prioritize applications according to the most current analysis by the Department’s Directorate of Information Analysis and Infrastructure Protection of the terrorist threat.

“(A) The Under Secretary shall prioritize threats listed under paragraph (2) according, first, to their specificity and tactical immediacy.

“(B) The Under Secretary shall, next, prioritize threats according to—

“(i) first, whether they pose a risk of significant loss of human life;

“(ii) second, whether they pose a risk of large-scale denial of the means of human subsistence, including food or water supply; and

“(iii) third, whether they pose a risk of massive disruption to one or more sectors of the economy of the United States.

“(f) USE OF FUNDS.—

“(1) IN GENERAL.—Grants under this section may be used for—
“(A) the purchase or upgrading of equipment;

“(B) exercises to strengthen emergency response;

“(C) training in the use of equipment; and

“(D) training for prevention (including detection) of, preparedness for, or response to attacks involving weapons of mass destruction, regardless of their perpetrators or sponsorship, including exercises to strengthen emergency preparedness of State, regional, and local first responders.

“(2) PROHIBITED USES.—Grant funds under this section may not be used to supplant State or local funds that would, in the absence of Federal aid, be available for homeland security or other first responder related projects.

“(A) CONSTRUCTION.—Grants awarded under this section may not be used to construct buildings or other physical facilities, except those described in section 611 of the Disaster Relief Act of 1974 (42 U.S.C. 5196), or to acquire land.

“(B) COST SHARING.—Grant funds provided under this section shall not be used for
any State or local government cost sharing contribution request under this section.

“(3) FLEXIBILITY IN UNSPENT HOMELAND SECURITY GRANT FUNDS.—Upon request by a grantee under this section, the Secretary may authorize the grantee to transfer all or part of funds provided as a grant under this section, from uses specified in the grant to other uses authorized under this Act, if the Secretary determines that such transfer is in the interests of homeland security.

“(g) STATE AND REGIONAL RESPONSIBILITIES.—

“(1) PASS-THROUGH.—The Secretary shall require a recipient of a grant under this section that is a State or multi-State entity to provide to local governments, first responders, and other local groups, consistent with homeland security plans specified in the application for the grant, not less than 80 percent of the grant funds, resources purchased with the grant funds having a value equal to at least 80 percent of the amount of the grant, or a combination thereof, by not later than the end of the 45-day period beginning on the date the grant recipient receives the grant funds.

“(2) COST SHARING.—
“(A) IN GENERAL.—The Federal share of the costs of an activity carried out with a grant to a State or region under this section shall not exceed 75 percent.

“(B) EFFECTIVE DATE.—The matching requirement under subparagraph (A) shall take effect 2 years after the date of enactment of this Act.

“(3) REPORT ON HOMELAND SECURITY SPENDING.—Each recipient of a grant under this section shall annually submit a report to the Secretary that contains the following information:

“(A) The amount and the dates of receipt of all grant funds received.

“(B) The amount and the dates of disbursements of all funds expended in compliance with subsection (g)(1) or pursuant to mutual aid agreements or other sharing arrangements that apply within a region.

“(C) How the funds were utilized by each ultimate recipient or beneficiary.

“(h) INCENTIVES TO EFFICIENT ADMINISTRATION OF HOMELAND SECURITY GRANTS.—

“(1) PENALTIES FOR FAILURE TO PROVIDE LOCAL SHARE.—If a grant recipient under this sec-
tion that is a State or multi-State entity fails to pro-
vide to local governments, first responders, and
other local groups funds or resources as required by
subsection (g)(1) within 45 days after receiving
grant funds under this section, the Secretary may—

“(A) reduce grant payments to the grant
recipient from the portion of grant funds that
is not required to be provided under subsection
(g)(1);

“(B) terminate payment of grant funds
under this section to the recipient, and transfer
the appropriate portion of those funds directly
to local first responders that were intended to
receive funding under that grant; or

“(C) impose additional restrictions or bur-
dens on the recipient’s use of grant funds under
this section, which may include—

“(i) prohibiting use of such funds to
pay the grant recipient’s grant-related
overtime or other expenses;

“(ii) requiring the grant recipient to
distribute to local government beneficiaries
all or a portion of grant funds that are not
required to be provided under subsection
(g)(1); or
“(iii) for each day that the grant recipient fails to provide funds or resources in accordance with subsection (g)(1), reducing grant payments to the grant recipient from the portion of grant funds that is not required to be provided under subsection (g)(1), except that the total amount of such reduction may not exceed 20 percent of the total amount of the grant.

“(2) Provision of non-local share to local government.—(A) The Secretary, acting through the Office for State and Local Government Coordination, may upon request by a local government pay to the local government a portion of the amount of a grant to a State or multi-State entity in the jurisdiction of which the local government is located, if—

“(i) the local government will use the amount paid to expedite planned enhancements to its homeland security-related readiness; and

“(ii) the State or multi-State entity has failed to provide funds or resources in accordance with subsection (g)(1).

“(B) To receive a payment under this paragraph, a local government must demonstrate that—
“(i) it is identified explicitly as an ultimate recipient or intended beneficiary in the approved grant application submitted by the grantee;

“(ii) it was intended by the grantee to receive a severable portion of the overall grant for a specific purpose that is identified in the grant application;

“(iii) it petitioned the grantee for the funds or resources after expiration of the period within which the funds or resources were required to be provided under subsection (g)(1); and

“(iv) it did not receive the portion of the overall grant that was earmarked or designated for its use or benefit.

“(C) To obtain a payment under this paragraph, a local government must provide a copy of the original application.

“(D) Payment of grant funds to a local government under this paragraph—

“(i) shall not affect any payment to another local government under this paragraph; and
“(ii) shall not prejudice consideration of a request for payment under this paragraph that is submitted by another local government.

“(E) The Office for State and Local Government Coordination shall approve or disapprove each request for payment under this paragraph by not later than 15 days after the date the request is received by the Office.

“(i) REPORTS REGARDING DISTRIBUTION OF GRANT FUNDS TO LOCAL GOVERNMENTS.—The recipient of a grant under this section shall report to the Secretary, by not later than 30 days after the expiration of the period described in subsection (g)(1) with respect to the grant, regarding the speed of distribution of grant funds and resources to local governments, first responders, and other local groups pursuant to subsection (g)(1).

“(j) REPORTS TO CONGRESS.—The Secretary shall submit an annual report to the Select Committee on Homeland Security of the House of Representatives and the Committee on Governmental Affairs of the Senate—

“(1) describing in detail the amount of Federal funds provided as grants under this section that were directed to each State and region; and

“(2) containing information on the use of such grant funds by grantees.
“(k) DEFINITIONS.—For purposes of this section:

“(1) FIRST RESPONDER.—The term ‘first responder’ means—

“(A) fire, emergency medical service, and law enforcement personnel; and

“(B) such other personnel as are identified by the Secretary.

“(2) HOMELAND SECURITY PLAN.—The term ‘homeland security plan’ means a 3-year plan developed by a State to—

“(A) assess a State’s risks, threats, and vulnerabilities to acts of terrorism;

“(B) determine a State’s capabilities to respond to acts of terrorism; and

“(C) set priorities for the allocation of grant funds received under this section.

“(3) UNDER SECRETARY.—The term ‘Under Secretary’ means the Under Secretary for Information Analysis and Infrastructure Protection.

“(4) REGION.—The term ‘region’ means a multi-State or intra-State entity, established by law or by agreement of two or more governments or governmental agencies in a mutual aid agreement.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6
U.S.C. 101 et seq.) is amended by inserting at the end of the items relating to subtitle A of title VIII the following:

"Sec. 802. Faster and smarter funding for first responders."

SEC. 4. ADVISORY COUNCIL ON FIRST RESPONDERS.

(a) In general.—Subtitle A of title VIII of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 361 et seq.) is further amended by adding at the end the following:

"Sec. 803. Advisory Council on First Responders.

(a) Establishment.—The Secretary shall establish the Advisory Council on First Responders, which shall report to the Secretary through the head of the Office of State and Local Government Coordination (in this section referred to as the ‘Advisory Council’).

(b) Functions.—The Advisory Council shall—

(1) advise the Secretary as to whether there is a need for a Federal standard with respect to any particular first responder equipment or training; and

(2) have such additional responsibilities as the Secretary may assign in furtherance of the Department’s homeland security mission with respect to enhancing the capabilities of State and local first responders.

(c) Membership.—
“(1) IN GENERAL.—The Advisory Council shall consist of members appointed by the Secretary and shall—

“(A) represent a cross section of first responder disciplines; and

“(B) include both State and local representatives within each discipline.

“(2) SELECTION OF MEMBERS.—The Secretary—

“(A) shall include in the membership of the Advisory Council—

“(i) members selected from traditional first responder fields, including firefighters, police, and emergency management personnel; and

“(ii) experts representing hospitals (including emergency and inpatient medical service providers), the public health profession, and public works; and

“(B) may include in the membership of the Advisory Council, at the Secretary’s discretion, elected State and local officials with demonstrable expertise in homeland security-related matters.
“(d) MEETINGS.—The Advisory Council shall meet not less than quarterly.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is further amended by inserting at the end of the items relating to subtitle A of title VIII the following:

“Sec. 803. Advisory Council on First Responders.”.

SEC. 5. MODIFICATION OF HOMELAND SECURITY ADVISORY SYSTEM.

(a) IN GENERAL.—Subtitle A of title II of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 121 et seq.) is amended by adding at the end the following:

“SEC. 203. HOMELAND SECURITY ADVISORY SYSTEM.

“(a) IN GENERAL.—The Secretary shall revise the Homeland Security Advisory System referred to in section 201(d)(7) to require that any designation of a threat level or other warning shall be accompanied by a designation of the geographic regions and economic sectors to which the designation applies.

“(b) REPORTS.—The Secretary shall report annually to the Congress regarding the geographic region-specific and economic sector-specific warnings issued in the preceding year under the Homeland Security Advisory System referred to in section 201(d)(7), and the bases for
such warnings. This report shall be submitted in unclassified form and may, as necessary, include a classified annex.”.

(b) Clerical Amendment.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting at the end of the items relating to subtitle A of title II the following:

“Sec. 203. Homeland Security Advisory System.”.

SEC. 6. INFORMATION SHARING WITH STATE AND LOCAL GOVERNMENTS.

(a) In General.—Subtitle I of title VIII of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 361 et seq.) is further amended by adding at the end the following:

“SEC. 893. REPORTS ON INFORMATION SHARING WITH STATE AND LOCAL GOVERNMENTS.

“(a) In General.—The Secretary shall report to the Congress annually on the following:

“(1) The number and level of security clearances granted by Federal agencies to State and local government officials.

“(2) The number of State and local government officials who have sought to be cleared by Federal agencies for such access.

“(3) The number of instances in which State and local government officials were granted by Fed-
eral agencies situational access to classified information based only on signing a Federal non-disclosure form.

“(4) The fastest, slowest, and average times it took to make security clearance determinations for State and local government officials.

“(5) Any instance in which access to classified information was denied to State or local government officials whose employing governments had sought such access for them and the reasons therefor.

“(6) All entities that conduct clearance processing for the Department, including private contractors.”.

(b) FIRST REPORT.—The Secretary of Homeland Security shall submit the first report under the amendment made by subsection (a) by not later than 6 months after the date of the enactment of this Act.

(c) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is further amended by inserting at the end of the items relating to subtitle A of title VIII the following:

“Sec. 893. Reports on information sharing with State and local governments.”.
SEC. 7. SPECTRUM FOR FIRST RESPONDER COMMUNICATIONS.

(a) IN GENERAL.—The Under Secretary for Science and Technology of the Department of Homeland Security shall conduct a study of whether there is a need to assign additional bands of frequencies of electromagnetic spectrum to assist and enable State and local first responders in meeting their needs associated with a catastrophic regional or national emergency.

(b) REPORT.—The Under Secretary shall submit a report on the findings of the study to the Congress by not later than 180 days after the date of the enactment of this Act.

SEC. 8. PROTECTION OF UASI FUNDING; CAP ON ELIGIBLE ENTITIES.