

NATIONAL HOMELAND SECURITY AND  
COMBATING TERRORISM ACT OF 2002

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R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

together with

ADDITIONAL VIEWS

TO ACCOMPANY

S. 2452

TO ESTABLISH THE DEPARTMENT OF NATIONAL HOMELAND SE-  
CURITY AND THE NATIONAL OFFICE FOR COMBATING TER-  
RORISM



JUNE 24, 2002.—Ordered to be printed

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NATIONAL HOMELAND SECURITY AND COMBATING  
TERRORISM ACT OF 2002

JUNE 24, 2002.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Governmental Affairs,  
submitted the following

**R E P O R T**

[To accompany S. 2452]

The Committee on Governmental Affairs, to which was referred the bill (S. 2452) to establish the Department of National Homeland Security and the National Office for Combating Terrorism, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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**I. PURPOSE AND SUMMARY**

The terrorist attacks of September 11, 2001 were a horrific wake-up call for the nation. On that beautiful fall day, thousands of citizens lost their lives without warning. Suddenly, U.S. citizens realized that warfare had changed and they were vulnerable as civilians in their home towns, simply going about their daily lives. Almost as quickly, many policy makers recognized that the government had not changed to meet these new threats. The responsibility for protecting the nation's citizens and critical assets on U.S.

soil was spread among dozens of departments and agencies, with no shared strategic vision or effective means of coordination.

On October 8, 2001, President Bush created an Office of Homeland Security within the White House to coordinate federal programs related to terrorist threats to the United States. However, many lawmakers and policy experts immediately questioned whether such a position would have sufficient authority to make a difference on this critical issue, and began to press for stronger alternatives—including a new cabinet-level department encompassing key homeland security agencies and programs. On October 11, 2001, Senators Lieberman and Specter introduced S. 1534, establishing a Department of National Homeland Security. “I am convinced that protecting our homeland requires nothing less than the establishment of a robust, cabinet-level Department, and led by a Secretary who has executive control over his organization’s budget, the ability to deploy personnel and resources, and the capacity to make and implement decisions immediately,” Senator Lieberman said introducing the bill.<sup>1</sup> “The Secretary for Homeland Security would have the rank and power to ensure that the security of our homeland remains high on our national agenda, and that all necessary resources are made available to that end.” Senator Specter said the legislation was a recognition of the new security challenges facing the nation. “The events of September 11th demonstrate that the threats to our security are no longer the same threats as we faced immediately after World War II,” Specter stated. “The need to establish the Department of Homeland Security recognizes this changed threat.”<sup>2</sup>

By June 2002, President Bush had reached the same conclusion. In a televised national address, President Bush stated:

After September 11th, we needed to move quickly, and so I appointed Tom Ridge as my Homeland Security Advisor. As Governor Ridge has worked with all levels of government to prepare a national strategy, and as we have learned more about the plans and capabilities of the terrorist network, we have concluded that our government must be reorganized to deal more effectively with the new threats of the 21st century.<sup>3</sup>

President Bush stated the problems as follows: “Right now, as many as a hundred different government agencies have some responsibilities for homeland security, and no one has final accountability.”<sup>4</sup> But once a new department is created, he said, “[e]mployees of this new agency will come to work every morning knowing their most important job is to protect their fellow citizens.”<sup>5</sup>

S. 2452, The National Homeland Security and Combating Terrorism Act of 2002, is a bipartisan bill to create such a department and, more broadly, create a permanent and effective government

<sup>1</sup> Statement of Senator Joseph I. Lieberman of Connecticut, Congressional Record, October 11, 2001, at S 10647.

<sup>2</sup> Senator Arlen Specter, written statement, Governmental Affairs Committee, October 12, 2001, at 55. (S. Hrg. 107–212)

<sup>3</sup> Remarks by the President in Address to the Nation, June 6, 2002, found at <http://www.whitehouse.gov>. (Hereinafter “Remarks by the President in Address to the Nation.”)

<sup>4</sup> Remarks by the President in Address to the Nation.

<sup>5</sup> Remarks by the President in Address to the Nation.

structure to keep U.S. citizens and assets safe at home. Introduced on May 2, 2002 by Senators Lieberman, Specter and Graham, it combines the earlier, October 2001 proposal by Senator Lieberman and Senator Specter to create a cabinet-level Department of National Homeland Security (S. 1534), and one by Senator Graham to create a White House Office on Combating Terrorism (S. 1449). The new department would consolidate a range of agencies with key homeland security responsibilities for preventing, protecting against, and responding to terrorist and other threats on U.S. soil. Those agencies include the Coast Guard, Customs, the law enforcement programs of the Immigration and Naturalization Service (INS), the Federal Emergency Management Agency (FEMA), the National Domestic Preparedness Office, the National Infrastructure Protection Center, portions of the Animal Plant Health Inspection Service pertaining to quarantine inspections at points of entry, and the Critical Infrastructure Assurance Office at the Commerce Department. However, the department would not include all of the important federal programs concerning homeland security, such as the intelligence agencies, the Department of Defense and others. Therefore, the White House terrorism office would be responsible for coordinating terrorism policy government-wide. The White House terrorism director, working with the Secretary of Homeland Security, would write a national strategy to combat terrorism and the director would review the budgets of all the federal terrorism programs.

## II. BACKGROUND AND NEED FOR LEGISLATION

### *The commissions*

As unimaginable as the September 11 attacks seemed to many, in truth they only confirmed vulnerabilities some experts and policymakers had already identified. Several expert commissions had determined that the United States was at risk for international attacks on domestic soil and that the Federal government was poorly organized to detect, prevent, or counter such attacks. In the aftermath of the September attacks, the work of these commissions provided an invaluable starting point for understanding the weak links in the nation's homeland security and for taking action to strengthen them.

There was an array of studies and analysis prior to September 11, acknowledging the rising threat of international terrorism on U.S. soil. For instance, the National Commission on Terrorism, chaired by Ambassador L. Paul Bremer III, in June 2000 warned that international terrorists were increasingly seeking to inflict mass casualties, both overseas and within the United States.<sup>6</sup> The report called for increased intelligence efforts to head off potential terrorist attacks, as well as heightened preparedness measures at home in the event that a catastrophic terrorist attack did occur. Two other, high-profile commissions produced subsequent reports that proved particularly timely and relevant. One of these was the United States Commission on National Security/21st Century, known as the Hart-Rudman Commission after its two co-chairs,

<sup>6</sup>“Countering the Changing Threat of International Terrorism,” Report of the National Commission on Terrorism, pursuant to Public Law 277, 105th Congress, found at <http://www.fas.org/irp/threat/commission.html>.

former Senators Gary Hart and Warren Rudman. The Hart-Rudman Commission was commissioned by the Department of Defense in September 1999 to conduct a broad assessment of U.S. security threats and preparedness in the new century. The other was the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, known as the Gilmore Commission after its chairman, then-Virginia Gov. James Gilmore III. The Gilmore Commission was created in the Fiscal 1999 Defense Authorization Act and charged with examining domestic response capabilities to weapons of mass destruction.<sup>7</sup> The Hart-Rudman and Gilmore commissions reached certain common conclusions. Both found that asymmetrical force and other dynamics have made conventional warfare against the U.S. prohibitive for many would-be attackers and have given rise to a new array of threats on U.S. soil—such as cyber or biological attacks and attacks on non-military targets. The commissions also agreed that the Federal government needed new strategies to combat these threats, and new governmental structures to effectuate these strategies. It is a measure of the challenge, for instance, that policymakers cannot even agree how many agencies are involved in homeland security or terrorism. One of the more conservative estimates is 40.<sup>8</sup> President Bush has said there are 100 federal agencies with homeland security responsibilities.<sup>9</sup> A White House chart depicting the Federal agencies with key homeland security duties presents a daunting tangle of programs spread across the government. [See Figure 1.]

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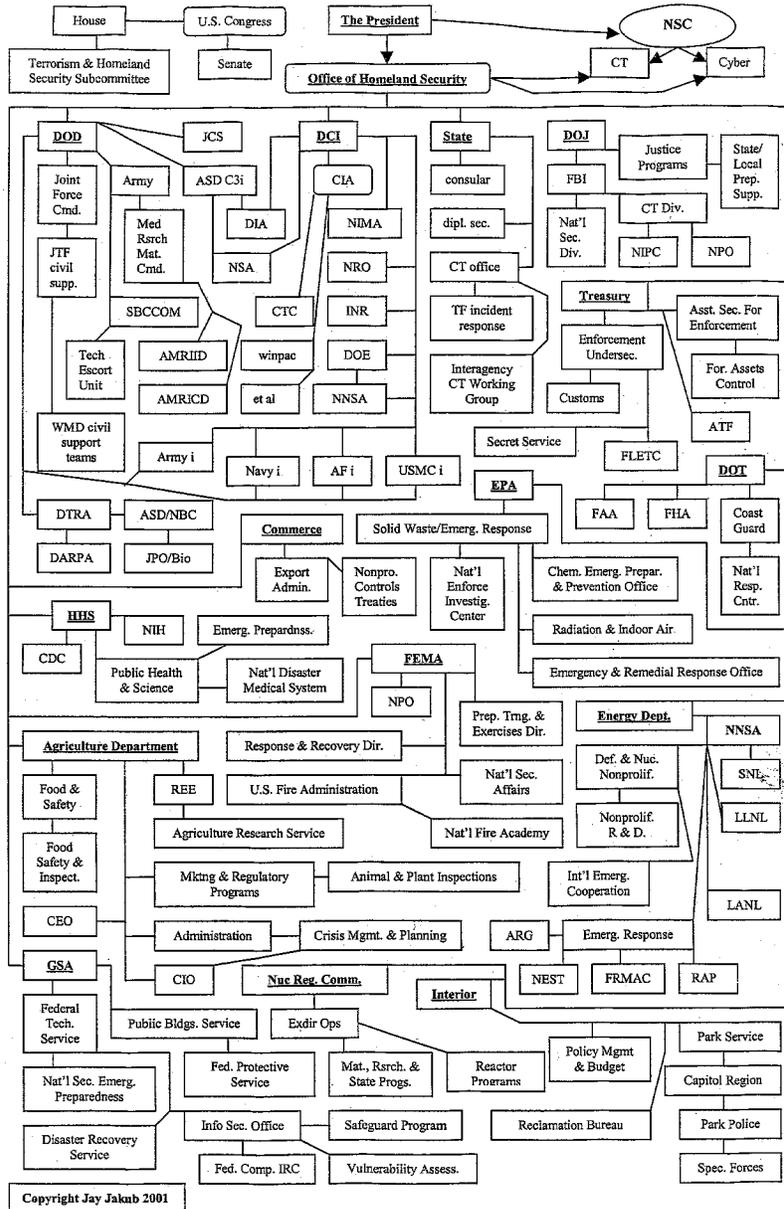
<sup>7</sup>Section 1405 of the National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261 (H.R. 3616, 105th Congress, 2d Session) (October 17, 1998).

<sup>8</sup>“Combating Terrorism: Selected Challenges and Related Recommendations,” GAO-01-822, September 2001, at 23.

<sup>9</sup>Remarks by the President in Address to the Nation.

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Figure 1.



For instance, border security alone involves the work of Coast Guard, Customs, INS, Agriculture Department inspectors and others, to secure 95,000 miles of shoreline, 5,525 miles of border with Canada and 1,989 miles with Mexico.<sup>10</sup> Every day, more than 1.3 million people and \$8.8 billion worth of goods are processed at entry points.<sup>11</sup> Yet, the federal government does not have effective systems to process and monitor this traffic in a credible way. Dr. Stephen Flynn, a former Coast Guard officer and an expert on border security issues, has said that the existing border security programs have no way to filter out the bad traffic from the good: "This nation presently has no credible way to reliably detect and intercept illegal and dangerous people and goods intent on entering this country. Our border management systems are broken."<sup>12</sup> Flynn's assessment is shared by many. A recent Brookings Institution report on homeland security endorsed the effort to consolidate federal border agencies: "There may indeed be some historical logic to the disparate organizational placement of these border agencies. But the current case for the status quo is extraordinarily weak. Not a single one of them is central to the mission of its cabinet-agency home-not the Customs Service, not the INS enforcement arm, not U.S. Department of Agriculture quarantine inspection, not the Coast Guard."<sup>13</sup> Indeed, poor coordination among federal border agencies has been a concern for years, prompting repeated efforts at reform and reorganization.<sup>14</sup>

The Hart-Rudman and Gilmore panels came to somewhat different conclusions about how to address the need for greater governmental coordination on homeland security.

The Hart-Rudman commission, charged with examining national security needs in the new century, took a broad view of the issue.<sup>15</sup> Its most dramatic recommendation was to create an independent National Homeland Security Agency responsible for planning and coordinating an array of federal activities related to homeland security that are currently housed in the Federal Emergency Management Agency (FEMA), the Coast Guard, the Customs Service, and the Border Patrol. The Commission reasoned that these agencies were often neglected and underfunded in their present locations. Commenting on the placement of Coast Guard (in the Department of Transportation), Customs (in the Treasury Department) and Border Patrol (in the Justice Department), the Hart-Rudman Commission concluded, "in each case, the border defense agency is far from the mainstream of its parent department's agenda and consequently receives limited attention from the department's senior officials."<sup>16</sup> Grouped together in a new homeland se-

<sup>10</sup>"The Department of Homeland Security," White House briefing book, June 2002 at 9.

<sup>11</sup>"Road Map for National Security: Imperative for Change," The United States Commission on National Security/21st Century at 16, found at <http://www.nssg.gov>. (Hereinafter "Road Map for National Security: Imperative for Change.")

<sup>12</sup>Dr. Stephen Flynn, testimony, Governmental Affairs Committee hearing, October 12, 2001, at 29. (S. Hrg. 107-212)

<sup>13</sup>"Protecting the American Homeland," Brookings Institution Press at 118.

<sup>14</sup>See "Reorganization Proposals for U.S. Border Management Agencies," Frederick M. Kaiser, Congressional Research Service, 97-974 GOV (updated July 22, 1999).

<sup>15</sup>The Commission has issued three reports. The Phase I report outlines threats to U.S. security in the 21st century, and Phase II outlines the need for a new strategy to combat these threats. The Phase III report, released in March 2001, outlines a series of organizational changes to address the findings of the earlier reports. It is this third report, "Road Map for National Security: Imperative for Change," that urges creation of a new agency for homeland security.

<sup>16</sup>"Road Map for National Security: Imperative for Change" at 15.

curity department, the agencies might receive needed attention and resources for their homeland security responsibilities and other functions: “Their individual capabilities will be molded into a stronger and more effective system, and this realignment will help ensure that sufficient resources are devoted to tasks crucial to both public safety and U.S. trade and economic interests.”<sup>17</sup> The consolidation could also create a more efficient system by highlighting, and eliminating, redundancies among these agencies. As proposed, these agencies would not be restructured so much as reassembled as components of a new agency with a new leadership structure. Specifically, the leadership of the new department would consist of three directorates: Prevention (primarily border security), Critical Infrastructure Protection, and Emergency Preparedness and Response. Beyond the advantages of consolidation for the specific agencies being moved, forging the new department will create a cabinet official focused on homeland security—giving the issue the consistent attention it warrants within the federal government generally.

The Gilmore Commission was convened to look at the somewhat narrower question of domestic response capabilities to weapons of mass destruction.<sup>18</sup> The report concluded that “the federal government has no coherent, functional national strategy for combating terrorism” and urged the president to craft such a strategy within one year. From an organizational standpoint, its key recommendation was to create a “National Office for Combating Terrorism” to formulate and oversee anti-terrorism strategy and serve as a central resource on the issue in the White House. The director of the national office would report directly to the President. As outlined by the report, this office would have at least five major sections: (1) domestic preparedness, (2) intelligence, (3) health and medical programs, (4) research, development, testing, and evaluation for technologies related to combating terrorism, and (5) management and budget. The national office would have authority to review federal agency programs and budgets to ensure that they comply with the priorities of the national strategy, and to weed out duplication. This budget oversight would include a certification process for agencies, with disputes ultimately resolved by the President. While the proposed White House office would have broad policy and budget responsibilities regarding terrorism, it would not have direct operational control over federal programs in this area. Operational control would remain in the federal agencies with existing programs.

The General Accounting Office (“GAO”) affirmed the key message of these two commissions. As directed by the Armed Services Committees in the FY 2001 Defense Authorization bill, the GAO reviewed all federal efforts to combat terrorist attacks on domestic soil. That report was released in September 2001, soon after the attacks.<sup>19</sup> It did not go as far as the Hart-Rudman or Gilmore commissions in recommending specific organizational changes; however, its findings tracked many of the conclusions of those reports.

<sup>17</sup>“Road Map for National Security: Imperative for Change” at 16.

<sup>18</sup>The Gilmore Commission has issued three reports, the most recent in December 2001.

<sup>19</sup>“Combating Terrorism: Selected Challenges and Related Recommendations,” GAO-01-822, September 2001.

Specifically, the report concluded that federal government needs a focal point for leadership and coordination of terrorism policy.

*Executive Order*

Several weeks after the September 11 attacks, President Bush named Pennsylvania Governor Tom Ridge to lead a new White House Office of Homeland Security. The mission of the new office was “to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks.”<sup>20</sup> More specifically, the office was to coordinate executive branch efforts to “detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States.” Governor Ridge, as Director of Homeland Security, would be “the individual primarily responsible” for coordinating federal efforts in the event of an imminent terrorist threat and during and in the immediate aftermath of an attack. The Director was also charged with reviewing the budgets of programs related to homeland security and certifying whether such funding was adequate. Finally, the executive order also created a Homeland Security Council, comprised of the President, Vice President and an array of cabinet officers, to help advise the President on homeland security matters.

While many in Congress and elsewhere cheered the selection of Ridge, many also immediately questioned whether he had been given the necessary powers to succeed in his task. Critics of the new homeland office noted that Ridge’s office had little or no operational powers and apparently would be largely dependent on detailees borrowed from other agencies. Many argued that Ridge would need full budget and operational authority to galvanize federal programs concerning homeland security into a cohesive team. Ensuring accountability to Congress and the public has also been a key concern. Some lawmakers, while not proposing a specific reorganization, called for making Ridge’s job a Senate-confirmed position. The President has maintained that Ridge is his personal advisor and, therefore, it would not be appropriate for him to testify before Congress. On this basis, Ridge declined invitations to appear before Congressional panels. Lawmakers have complained that this is inappropriate, given Ridge’s acknowledged influence over the administration’s requested funding for homeland security initiatives and other key matters. Beyond the issue of testimony, some lawmakers and policy experts contended that only a statutory position—and one subject to Senate confirmation—would carry sufficient political weight and permanence to have a real influence on other cabinet secretaries.

### III. DISCUSSION OF LEGISLATION

S. 2452, The National Homeland Security and Combating Terrorism Act of 2002, would create a National Department of Homeland Security and a White House Office on Combating Terrorism. The new department would provide new leadership on a range of homeland threats, including terrorism, by consolidating a range of federal agencies and programs responsible for border security, critical infrastructure protection, and emergency preparedness and re-

<sup>20</sup> Executive Order 13228, October 8, 2001.

response. The Secretary will also play a critical role as the lead resource for and liaison to State and local authorities, as well as private sector entities, on the front lines for homeland security. The new White House terrorism director would play a government-wide coordinating role on terrorism, focusing in particular on matters outside the purview of the new Homeland Security Secretary such as military and intelligence policy. The bill envisions that these two offices would work closely together on strategy and budget recommendations related to terrorism.

There is a substantial rationale for these two mutually dependent entities. A White House Office never will have a significant staff or budget. Such an office must rely on a connection to the President for its power and authority, which—if the history of White House “czars” provides an example—may ebb and flow from year to year and administration to administration. In contrast, creating a line agency under a cabinet secretary assures that substantial budgeting and staffing will be focused on homeland security on an ongoing basis in a series of areas important to that security, regardless of the strength of the White House advisor’s office. It will help assure a continuing emphasis on this threat area, and ensure a Congressional connection on these problems and Congressional budgeting prioritization for them. On the other hand, a cabinet secretary will not be able to compel co-equal cabinet officers in such areas as defense and intelligence, to emphasize terrorism threats and coordinate with other federal entities. A White House office can be a crucial complement to a line agency to assure coordination of government agencies outside the Homeland Secretary’s direct control. The homeland security threat is so broad that both entities appear critical for an adequate governmental response.

Title I of the bill is an expanded version of Senator Lieberman’s and Senator Specter’s earlier proposal (S. 1534) to establish a cabinet level Department of National Homeland Security, led by a Presidentially appointed, Senate-confirmed Secretary. The Secretary will also be a statutory member of the National Security Council. The legislation, modeled on the recommendations of the Hart-Rudman Commission, combines the Coast Guard, Customs, the law enforcement programs of the Immigration and Naturalization Service (including Border Patrol), FEMA, the National Domestic Preparedness Office and the National Infrastructure Protection Center (both now in the Justice Department), portions of the Animal Plant Health Inspection Service (now in the USDA) pertaining to quarantine inspections at points of entry, and the Critical Infrastructure Assurance Office (now in Commerce). These agencies and programs would be grouped in three directorates: Border and Transportation Protection, Critical Infrastructure Protection, and Emergency Preparedness and Response. These directorates should be leanly staffed, simply providing a means to integrate the activities of the department’s component agencies and programs. The transferred agencies would continue to perform their non-security missions, just as they perform their homeland security functions from their current locations.

The directorate of Border and Transportation Protection would primarily encompass border security, overseeing the combined duties of the Coast Guard, Border Patrol and other INS law enforcement programs, Customs, and the border inspection programs of

the agricultural quarantine service. The reorganization would allow for better coordination and information-sharing between these agencies, and reflect their shared mission as a frontline defense against dangerous people or goods entering the U.S. Currently, Stephen Flynn testified, “the front-line agencies cannot even effectively communicate with each other.”<sup>21</sup> This consolidation is in no way intended to discourage legal immigration or trade across U.S. borders. Immigrants have provided invaluable cultural and economic contributions to the nation, while international trade is a critical component of national, and global, prosperity. Rather, a more cohesive and efficient border system should facilitate legal trade and immigration, while simultaneously increasing the chances of apprehending dangerous entries of people or products. The Coast Guard and Customs would be maintained as distinct entities, however, and all of the transferred programs and agencies would retain and be required to continue their non-security missions. For instance, the Coast Guard’s search and rescue operations would not be diminished. Transferred agencies may also need to maintain close ties to related programs within their former parent agencies. In particular, the law enforcement pieces transferred from INS, for instance, would necessarily need to maintain close coordination with the service programs that would remain in the Justice Department. This division of INS programs into “enforcement” and “service” components tracks an administrative reorganization plan that is already underway.

The Critical Infrastructure Protection directorate would oversee the critical physical assets and information networks of the nation, including efforts to ensure that the government has adequate expertise to ensure cyber security. The office would also coordinate efforts to protect critical infrastructure from electronic or physical attacks. This central office would combine several federal programs that are currently spread among different agencies: the Critical Infrastructure Assurance Office in the Commerce Department; the National Infrastructure Protection Center in the FBI (which gathers information and provides warnings of cyber attacks); and the Information Sharing and Analysis Centers or ISACs, which are government-sponsored committees made up of private sector experts who share plans and procedures on information security in their respective fields amongst themselves and with other ISACs and the government. This consolidation should give the nation a more focused and coordinated effort on critical infrastructure protection. As Frank Cilluffo, a security expert at the Center for Strategic and International Studies, testified: “Critical to the Federal government effort is having at its apex a single individual or group endowed with the requisite powers and responsibilities to make the system work.” Jamie Gorelick, Vice Chair of Fannie Mae and a former Justice Department official involved with critical infrastructure protection efforts, testified that “the many and varied responsibilities of organizations in this area could benefit from clarification to reduce redundancy and turf battles. Responsibility for the identification and the planning for protection of ‘key assets’ resides in the FBI’s NIPC, the Commerce Department’s CIAO and, as the

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<sup>21</sup> Stephen Flynn, testimony, Senate Governmental Affairs Committee, Oct. 12, 2001 at 30. (S. Hrg. 107–212)

Defense Department moves closer to a homeland security role, likely there as well. Those of us who help run key assets need to know with whom to work.”<sup>22</sup> Gorelick said the private sector is willing to do its part in this area, but needs “coherent, cohesive leadership from the government and a clear understanding of who is doing what in the government,” as well as government resources to establish public-private networks to help the private sector work collaboratively on critical infrastructure protection.

The Emergency Preparedness and Response directorate would take the lead on preparations and crisis management operations. FEMA would be the core of this new directorate, but with strengthened capabilities to prepare for as well as respond to natural and man-made disasters. The Department would maintain FEMA’s regional offices and build on its contacts with state and local officials to create an effective national network to address terrorist threats. It would also include the National Domestic Preparedness Office, currently in the Federal Bureau of Investigation within the Justice Department. This domestic preparedness office was created to help State and local jurisdictions prepare for and respond to terrorist attacks involving weapons of mass destruction. Under the bill, this office would be combined with complementary efforts within FEMA under the Emergency Preparedness and Response Directorate. The Secretary is also charged with creating a National Crisis Action Center to serve as the focal point for monitoring emergencies and for coordinating Federal support for state and local governments and the private sector in crises.

The Department would have a coordinating center intended to facilitate ready communication with other Federal departments that have homeland security responsibilities. At the Secretary’s request, each Federal department or agency would have to supply one liaison for the center. The Secretary could request other representatives, as well as designees from state and local government, as needed. The Director of the Coordinating Center would work to ensure that law enforcement, immigration, and intelligence databases containing information relevant to homeland security are compatible.

The Department will also have an Office of Science and Technology to advise the Secretary and to coordinate across the department and other agencies’ research and development efforts related to overall homeland security. Technology must play critical role if this country is to enhance homeland security without prohibitive costs. Whether the issue is screening baggage or shipping containers, creating vaccines for bioterror threats, or detecting and thwarting crippling computer viruses, scientific research and development is a vital component of meeting the challenge of terrorism at home. To ensure the department gets off to a quick start on the research and development (“R&D”) front, the legislation creates an acceleration fund to promote promising R&D related to homeland security, and authorizes \$200 million for the fund in FY 2003. The fund can be used to match and leverage R&D in other agencies and industry to encourage R&D coordination. Two interagency working groups will help the Director of the Office of Science and Tech-

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<sup>22</sup>Gorelick written testimony, Senate Governmental Affairs Committee, Oct. 4, 2001. (S. Hrg. 107-258)

nology set research priorities and administer the fund. The first group will ensure interagency coordination and develop an R&D “roadmap” for developing key technology options. The second will operate at the technologist level and include technology working groups organized around key threat areas, such as bioterror or cybersecurity. The acceleration fund seeks to jumpstart critical technologies related to homeland security that are nearly ready for development and deployment, but might languish without an infusion of money and attention. It is modeled on the approach and authorities used by the Defense Advanced Research Projects Agency (“DARPA”), which was created after the Russian launch of Sputnik to spur U.S. technologies related to national security. Like DARPA, the acceleration fund seeks to create a speedy and flexible vehicle to promote vital new technologies.<sup>23</sup> The Department will not have its own large science bureaucracy, but will house a small, highly-talented science team, like DARPA, and it will need the tools to be able to encourage existing labs and science agencies to address homeland security threats. The fund, the working groups, the interagency R&D coordination function and the technology roadmapping process are those tools, and should enable the Department to play this critical role.

Section 105 of the bill also calls upon the Secretary of Homeland Security to report back to Congress after one year on the need for additional consolidation, such as in the areas of border and transportation security.

Title II tracks previous legislation introduced by Senator Graham (S. 1449). It establishes the National Office for Combating Terrorism (NOCT) in the White House, which will be led by a Presidentially appointed, Senate-confirmed Director, who is an adviser to the National Security Council. The Director will seek to ensure that the many agencies involved with combating terrorism are operating from a common strategy, have sufficient resources to their mission, and are not duplicating or undermining the efforts of other federal agencies. The Director would coordinate the terrorism-related work of federal agencies outside the new Department of Homeland Security, particularly the intelligence agencies and military assets, and help ensure that these agencies interface well with the Department. The Director will direct and review the development of a comprehensive national assessment of terrorist threats; craft, with the Secretary, a comprehensive strategy to combat terrorism; coordinate development of a comprehensive annual budget to implement the strategy; and exercise budget review and decertification authority over programs in the terrorism prevention budget.

Title III of the bill calls for a comprehensive national strategy to combat terrorism, to be developed collaboratively by the new Secretary of Homeland Security and the Director of the White House Office for Combating Terrorism. The Secretary will have the lead role on issues of border security, critical infrastructure protection, emergency preparation and response, and integration with state and local efforts. The Director of the NOCT will have overall responsibility for preparing the strategy, and will take the lead on

<sup>23</sup>The general model for the proposed Office of Science and Technology is discussed in more detail on pp. 43–49 in the Winter 2001–02 issue of “Issues in Science and Technology” published by the National Academy of Sciences, et al.

strategic planning concerning intelligence and military assets, law enforcement, and diplomacy. The Director, working with the Secretary, can ensure the coordination of critical counter-terrorism areas of government outside of the Secretary's direct control. This title establishes an interagency council, to be co-chaired by the Secretary and Director, to assist with preparation and implementation of the strategy. The bill also establishes a non-partisan, 9-member panel of outside experts to provide an assessment of the terrorism strategy (similar to the National Defense Panel that, in 1999, assessed the first Department of Defense Quadrennial Defense Review for military planning). In the area of counterterrorism, complacency is a constant concern, and the panel should help assure an outsider-based, "Red Team" critique of the Strategy on a periodic basis.

Title IV of the bill seeks to encourage emergency preparedness nationwide. The legislation would set up a clearinghouse on emergency preparedness in the Department to provide a one-stop resource for information about grants and other resources on emergency preparedness. It would also create a pilot program to support private sector preparedness initiatives, and establish the week including September 11 each year as National Emergency Preparedness Week, requesting the President to so designate it.

#### IV. LEGISLATIVE HISTORY

S. 2452, the "National Homeland Security and Combating Terrorism Act of 2002," was introduced by Senators Lieberman, Specter and Graham on May 2, 2002 and referred to the Committee. S. 2452 incorporated substantial portions of two other bills: S. 1449, which was introduced by Senator Graham and others on September 21, 2002, and S. 1534, which was introduced by Senators Lieberman and Specter on October 11, 2001. Both of these bills were also referred to the Committee.

In the wake of the September 11, 2001 terrorist attacks, the Committee held 14 hearings on homeland security, including three (September 21, 2001, October 12, 2001, and April 11, 2002) which focused specifically on how government can best be organized to meet the threat of terrorism on our homeland. The other hearings focused on particular homeland security concerns, and included consideration of organizational issues. Those hearings addressed critical infrastructure protection (September 12, 2001, October 4, 2001, and May 8, 2002), airline safety (September 25, 2001, November 14, 2001), bioterrorism (October 17, 2001), mail safety (October 30 and 31, 2001), port security (December 6, 2001), the role of State and local government in homeland security (December 11, 2001), rail safety (December 13, 2001), and public health preparedness (April 18, 2001).

##### *September 21, 2001 hearing*

On September 21, 2001, the committee held a hearing entitled, "Responding to Homeland Threats: Is Our Government Organized for the Challenge?" Witnesses included former Senators Gary Hart and Warren Rudman, co-chairs of the United States Commission on National Security/21st Century (commonly referred to as the Hart-Rudman Commission); then Governor James S. Gilmore, III of Virginia, chairman of the Advisory Panel to Assess Domestic Re-

response Capabilities for Terrorism Involving Weapons of Mass Destruction (commonly referred to as the Gilmore Commission); L. Paul Bremer, III, former Ambassador-at-Large for Counter-Terrorism and a member of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction; and David M. Walker, Comptroller General United States General Accounting Office.

Senators Hart and Rudman testified concerning the findings and recommendations of their commission regarding governmental organization. The Hart-Rudman Commission proposed the establishment of a National Homeland Security Agency, an independent agency whose director would be a member of the President's cabinet. It would be responsible for coordinating an array of federal activities related to homeland security, including the Federal Emergency Management Agency, the Coast Guard, the Customs Service, the Border Patrol, and other entities which would be transferred to the new organization. It would be functionally organized around prevention, protection of critical infrastructure, and emergency preparedness and response.

Senator Rudman testified that the Hart-Rudman Commission, which included seven Democrats and seven Republicans who worked for more than three years, unanimously concluded that the single most important issue facing America was how to deal with domestic terrorism:

We reached consensus that an attack on the domestic homeland was not a question of if, but a question of when. And we reached consensus that the nation was and is largely unprepared to respond here at home to such an attack \* \* \* We proposed and still believe that any solution to this problem must address issues of strategy. It must address issues of federal, state and local organization and cooperation. And it must address issues of capacity and cooperation. In general, we said that the United States must replace a fractured, ad hoc approach to homeland security with a sustained, focused approach, emphasized integration of existing agencies and departments rather than wholesale invention, and recapitalize our existing assets and capabilities rather than try to create redundancy.<sup>24</sup>

Senator Rudman called on the President and Congress to create a new national homeland security agency along the outlines of the recommendations in the Hart-Rudman report. He testified that transferring of Coast Guard, Customs, and other entities into the new agency would be for "common purpose coordination, not bureaucratic consolidation" and "each of these entities would retain their own distinct identities, structures and internal operating procedures."<sup>25</sup>

Senator Gary Hart contrasted the commission's recommendations with the coordinator position created by President Bush and filled by Governor Ridge: "If a White House office has authority to coordinate, the agencies that it has authority to coordinate aren't necessarily accountable to that office. They are accountable to their de-

<sup>24</sup> Senator Warren Rudman, testimony, Governmental Affairs Committee, September 21, 2001, at 7. (S. Hrg. 107-207) (Hereinafter "Rudman testimony.")

<sup>25</sup> Rudman testimony at 7.

partment head, cabinet secretary, or whatever.”<sup>26</sup> Hart said it was unrealistic to think a White House coordinator could effectively manage the “almost hopeless dispersal” of authority on homeland security matters among 40 or 50 different agencies.<sup>27</sup>

Senator Hart further explained the Commission’s rationale for moving specific agencies into the new homeland security agency:

The reason why I stressed, frankly, this problem with bureaucracy is that those agencies had a different mission. I mean, they’re where they are for a different purpose. Border Patrol is in Justice because it’s a law enforcement agency, to try to prevent people from illegally entering the country. Customs is in Treasury because its purpose originally was to collect revenues. The Coast Guard regulates incoming and outgoing seaborne traffic, makes rescues and so on, but it—that historic function was a transportation function. Now these are front line defense organizations. It frankly makes little sense for them to be where they are, given their new responsibility. If we are in fact in war, and I believe we are, in a prolonged war, the nature and function of these agencies has changed. So the reason why they are where they are, frankly, makes little sense any more. And to protect that bureaucratic turf, as I’ve indicated, under these circumstances, is folly.<sup>28</sup>

Governor Gilmore presented his Commission’s proposal to create, by statute, a new national office for combating terrorism. This office, to be located in the White House, would coordinate national terrorism policy and preparedness in the executive branch. Governor Gilmore said it would be impossible to place all of the agencies important to homeland security in one agency, and instead stated that, “the emphasis needs to be on coordination of all agencies as needed, as planned, as part of an overall national strategy.”<sup>29</sup> He also cited the danger that a new agency would be viewed as competing with others and warned of the potential for turf battles.

Ambassador Bremer cited what he called four “necessary attributes” for the new office, whether it took the form of a new cabinet department as recommended by Hart-Rudman, or the White House office established by the President: (1) in order to have political accountability, the head of the office should be appointed by the President and confirmed by the Senate; (2) the office should be at the cabinet level, to ensure the necessary access and visibility; (3) it should have budgetary authority and the ability to design a national strategy and certify that agencies budget requests are in compliance with it; and (4) finally the office should have a degree of autonomy and neutrality, to insulate it from bureaucratic infighting.

The final witness, Comptroller General David Walker, testified that the large number of organizations involved in homeland security need to have clearly articulated roles, responsibilities, and ac-

<sup>26</sup> Senator Gary Hart, testimony, Governmental Affairs Committee, September 21, 2001, at 28. (S. Hrg. 107–207) (Hereinafter “Hart testimony.”)

<sup>27</sup> Hart testimony at 11.

<sup>28</sup> Hart testimony at 22.

<sup>29</sup> Governor James Gilmore, testimony, Governmental Affairs Committee, September 21, 2001 at 29. (S. Hrg. 107–207)

countability mechanisms. Walker stressed the need for coordination not just at the Federal level, but also with State and local government, and with the not-for-profit and private sector, since much of the critical infrastructure at risk is in private hands.

Walker also testified that the recommendations of the two panels are not mutually exclusive. Walker said some agencies have evolved such that they no longer fit well in their home agencies and might benefit from consolidation with other agencies with key homeland security missions. But Walker said such a department would never include all relevant agencies, so that there would still be a need for an overall coordinator.

*October 12, 2001 hearing*

On October 12, 2001, the committee held a second hearing on "Legislative Options to Strengthen Homeland Defense." The hearing focused on two proposals: S. 1534, sponsored by Sen. Lieberman and Sen. Specter, to create a Department of National Homeland Security, and S.1449, sponsored by Sen. Graham, to establish a National Office for Combating Terrorism in the White House.

Eleven witnesses appeared at this hearing, including the major sponsors of bills designed to improve the way government is organized for homeland defense. The bipartisan group of member witnesses included: Senator Bob Graham of Florida, Senator Bob Smith of New Hampshire; Senator Arlen Specter of Pennsylvania, Congressman Wayne T. Gilchrest of Maryland, Congresswoman Jane Harman of California, and Congressman William "Mac" Thornberry of Texas. These member witnesses all agreed that significant change is necessary to overcome endemic turf battles and improve coordination and cooperation across government in the effort to combat terrorism. They also generally agreed that newly appointed Homeland Security Director Tom Ridge did not have sufficient authority to get the job done.

The non-member witnesses were: former U.S. Representative Lee Hamilton, who is now Director of the Woodrow Wilson International Center for Scholars and who served on the Hart-Rudman Commission; General Barry McCaffrey, formerly the head of the Office of National Drug Control Policy; General Charles Boyd of the Council on Foreign Relations and the Executive Director of the Hart-Rudman Commission; Stephen Flynn, Senior Fellow with the Council on Foreign Relations, and Thomas Stanton of the National Academy of Public Administration.

Congressman Hamilton testified that terrorism is the number one threat to the national security of the United States, and this has profound implications for how the government should be organized and how governmental resources should be allocated. Congressman Hamilton expressed concern that Gov. Ridge did not have sufficient authority to succeed. He testified that access to the President would not be enough, and "that position is too important to depend upon a personal relationship with the President."<sup>30</sup>

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<sup>30</sup>Lee Hamilton, testimony, Governmental Affairs Committee, October 12, 2001, at 23. (S. Hrg. 107-212)

General McCaffrey applauded the appointment of Governor Ridge as well. However, he described several shortcomings with the position:

\* \* \* [I]f you skim-read the Presidential order that set up his effort, there is no mention of the Armed Forces. There is no adviser from the Chairman of the Joint Staff or the Armed Forces on this council. It is a coordinating, not a directing, authority. It does not mention missile defense, cyber warfare, counter-drug, economic warfare, information warfare, civil disturbances, national disasters, or any other aspect except a narrow definition of counterterrorism. There is no mention of coordination with Canada and Mexico in hemispheric security arrangements. He lacks budgetary authority. There will be no unity of effort in supporting exercises, training and directing the responsible use of monies in the current bureaucratic format. More importantly \* \* \* what it lacks is the force of law. We do not have power in the Federal government unless you are established by legal statute \* \* \* In sum, I would argue that notwithstanding this man's superb credentials, clear access to the cabinet and to the senior leadership of Congress, within one year, with a small staff of detailees, with no Federal legislation, with no separate budget, no budget certification, he will be relegated to running the Speaker's Bureau on Counterterrorism Operations. I would argue that would not be what either the Congress or the President wants.<sup>31</sup>

General Boyd expressed support for melding the two approaches represented by the Sen. Graham's proposed legislation and the Lieberman-Specter bill. Boyd said a White House office could provide strategic integration that would complement the operational consolidation of the new homeland department.

Dr. Stephen Flynn testified that porous border management has left the U.S. economy tremendously vulnerable to disruption by terrorism. Dr. Flynn testified that at any given time there are thousands of 40 foot, multi-ton containers moving around the country, yet U.S. authorities have no idea what they hold and know little about where they are from or where they are going. A dangerous shipment could shut down a port and disrupt commerce for weeks, he warned. The Canadian border is another example. Flynn said that even though Canadian security and intelligence services believe there may be as many as 50 terrorist groups with a foothold in Canada, the vast land and water border with Canada was patrolled by only 330 Border Patrol agents, supported by one analyst, and equipped with radios cannot communicate with local and State police authorities. Flynn testified that while trade with Canada has climbed fourfold since 1985, the U.S. Customs Service has 700 inspectors assigned to the northern border, 200 fewer than 20 years ago. He added, "routinely one-half of all the primary inspection stations along the northern border, from Washington to Maine, have no

<sup>31</sup>General Barry McCaffrey, testimony, Governmental Affairs Committee, October 12, 2001, at 25. (S. Hrg. 107-212) (Hereinafter "McCaffrey testimony.")

personnel assigned to those stations because of staff shortfalls from INS and from Customs.<sup>32</sup>

Flynn said consolidating the key border agencies would help identify security risks. He cited the example of a ship with potentially dangerous cargo or crew, scheduled to arrive on the same day and in the same port as a tanker with highly volatile fuel: the Coast Guard would have some information about the hazardous cargo arriving, Customs Service would receive some advance notice of cargo manifest information, the INS may or may not know much about the crew, depending upon the kind of visas the sailors hold, and none of these front-line agencies would likely have access to national security intelligence from the FBI or the CIA.<sup>33</sup> Significantly, no single agency would have all of the information simultaneously. Also, none of the agencies will have sufficient manpower and resources to intercept and inspect all of the people, cargo and ships that spark their interest as potential security concerns.

General McCaffrey reinforced Dr. Flynn's assessment of the borders:

We do not have the rule of law and order on the U.S. borders. It is fundamentally broken. If you put your finger on a map anywhere on that border and ask who is in charge of this effort, there is no Federal officer who is charged with integrating infrastructure, intelligence, communication and planning. There is no modality to coordinate across that border. If you ask sector commanders, "who is your Mexican counterpart? What is the fax number? What is the telephone number? When did you see him last? Show me the map that shows the other side of the border, the avenues of approach, none of it exists. It is outrageous."<sup>34</sup>

Thomas H. Stanton, Chair of the Standing Panel on Executive Organization and Management of the National Academy of Public Administration (NAPA), agreed with the other witnesses that the President's appointment of Governor Ridge was a much needed first step, and he indicated his support for legislation along the lines of S. 1449 to strengthen the authority of the director of the office. Stanton cautioned against having a single person serve as both the coordinator and also the head of a cabinet department, saying such a dual role would inevitably give rise to perceptions of favoring their own department at the expense of others. Stanton said that complex issues around creation of a Department need to be carefully assessed before Congress acts—especially the concern that the many non-homeland security functions of these agencies not be diminished. If Congress does reorganize in this area, Stanton said it might be beneficial to use the Reorganization Act, as Senator Thompson suggested, so that the President could make the careful considerations and trade-offs necessary to maximize the benefits of a given reorganization and minimize the costs.

Commander Flynn responded to Stanton's concern about the non-homeland security functions of critical agencies. He contends that

<sup>32</sup>Dr. Stephen Flynn, testimony, Governmental Affairs Committee, October 12, 2001, at 30. (S. Hrg. 107-212) (Hereinafter "Flynn testimony.")

<sup>33</sup>Flynn testimony at 30.

<sup>34</sup>McCaffrey testimony at 37.

these non-security functions are precisely what will enable border management agencies to combat terrorism because as government personnel conduct normal activities, such as the Coast Guard patrolling fishing waters, they can spot “aberrant behavior” that may signal terrorist activity. “They are given the mission that while you are out there doing your job, you are also on the lookout for bad things happening and detecting and intercepting them. You get the best of all worlds in my view. It is not an either/or.”<sup>35</sup>

*April 11, 2002 hearing*

On April 11, 2002, the Governmental Affairs Committee held a hearing on “Legislation to Establish a Department of National Homeland Security and a White House Office to Combat Terrorism.” This hearing focused primarily on a draft proposal by Senators Lieberman, Graham, and Specter, subsequently introduced in the Senate, with some modifications, as S. 2452.

Witnesses included key Senate and House sponsors of the draft legislation: Senator Arlen Specter and Senator Bob Graham, as well as Congresswoman Jane Harman, Congresswoman Ellen Tauscher, and Congressman William “Mac” Thornberry. These members testified that Ridge did not have sufficient authority to be effective, and the draft legislation was necessary to create an effective governmental structure to promote homeland security. Senator Judd Gregg also testified on his legislation (S. 2020) to create a border management agency comprised of Coast Guard, Customs, INS law enforcement, and certain border programs related to drug interdiction and agricultural inspection. Gregg said that because key players in homeland security, such as the FBI, State Department, CIA and Defense, cannot be pulled into a cabinet-level agency for homeland security, he favored taking the lesser step of creating an agency to improve efficiency at the borders. He stated:

Probably no element of this entire exercise has less effective coordination now than the management of our borders in the area of protecting ourselves from terrorist actions. We have seen consistently breakdowns in the INS and the Border Patrol. We have seen overlapping responsibility and ineffectiveness from Customs and INS trying to work together. We know that agencies such as the agricultural quarantine efforts and the Coast Guard, which have huge responsibility in this area, are not being coordinated in a systematic manner with the other agencies, such as Border Patrol.\* \* \* Our management of those borders is inefficient and the lines of authority are overlapping and confusing.<sup>36</sup>

Other witnesses were: Senator Warren Rudman, co-chair of the Hart-Rudman Commission; Comptroller General David M. Walker; Mitchell E. Daniels, Jr., Director of the Office of Management and Budget; Phillip Anderson, Senior Fellow and Director of the Homeland Security Initiative for the Center for Strategic and International Studies (CSIS); I.M. Destler of the Center for International and Security Studies, School of Public Affairs, University

<sup>35</sup> Flynn testimony at 39.

<sup>36</sup> Senator Judd Gregg, testimony, Governmental Affairs Committee, April 11, 2002, at 12. (S. Hrg. 107-472)

of Maryland; Stephen M. Gross, Chair of the Border Trade Alliance; Elaine Kamarck of the John F. Kennedy School of Government at Harvard University; and Paul C. Light, Vice President and Director, Governmental Studies Program, of the Brookings Institute.

Senator Rudman repeated his calls for a new department of homeland security, and cautioned that the nation should not focus on airport security to the exclusion of other border security issues. He noted that while more money is being spent on airport security, he believes that the greater threat to the country now is posed by U.S. ports. He testified that, of the 50,000 containers coming into U.S. ports every day, less than one-percent are inspected, creating the risk that chemical, biological, or nuclear devices could be brought into the country.

Elaine Kamarck of the John F. Kennedy School of Government at Harvard strongly endorsed the proposed new Department. Kamarck recommended adding additional functions to the proposed department: the new Transportation Security Administration and the consular affairs section of the State Department.

I.M. Destler of the Center for International and Security Studies at the University of Maryland, testifying on behalf of himself and Ivo Daalder of the Brookings Institute, also favored reorganizing government for homeland security, though in a more limited fashion than called for in the proposed legislation. First, Destler favored legislation to make the existing Homeland Security Council and Office statutory entities with the Director confirmed by the Senate. He also said that rather than creating a homeland security department, Congress should create a more limited border management agency, including a broad range of entities currently responsible for monitoring people and goods entering the United States.<sup>37</sup>

Paul C. Light, a governmental affairs expert at the Brookings Institute, also testified that Ridge's position required statutory authority, and said there was also a compelling rationale to create a new department for homeland security.

Stephen M. Gross, chair of the Border Trade Alliance, a grassroots organization of individuals, entities and businesses that conduct cross-border business founded in 1986, strongly endorsed some of the consolidation outlined in S. 2452. Gross said that his group has firsthand experience with Federal agencies along the borders, including the Customs Service, INS, and the Border Patrol. He described the problems with these agencies:

Senators, our land border security and trade facilitation is severely lacking. The various Federal inspection service agencies posted along the U.S.-Mexico and U.S.-Canada borders are charged with poorly defined and sometimes conflicting missions. Oftentimes, our ports of entry are home to petty squabbles over turf and resources and fall victim to mismanagement. The land border ports are not home to business best practices. At each port of entry, Customs and INS personnel are operating with different missions, despite the fact that Customs and INS are cross-trained in primary inspection lanes. The INS or Customs employee at the port of entry receives incentives to carry

<sup>37</sup>I.M. Destler, testimony, Governmental Affairs Committee, April 11, 2002. (S. Hrg. 107-472)

out the individual mission of his or her employing agency. There is no incentive to work together or speed legitimate trade and cargo through our ports of entry. Despite recent talks in this post-September 11 environment of improving lines of communication at the highest levels in INS and Customs, we rarely see the same spirit of cooperation employed at the ports of entry themselves, where it is needed most.<sup>38</sup>

Gross said that realignment as envisioned in the Lieberman-Specter draft legislation would put one entity in charge of the borders, remove a layer of bureaucracy between the ports of entry and the coordinator of security efforts, establish accountability for border inspection in a single agency, eliminate overlap and duplication of efforts, prevent the development of redundant support systems, facilitate and streamline the processing of legitimate trade and travel, and improve enforcement of laws at the borders. Gross said his organization's only concern is that increased security not come at the expense of trade facilitation. However, Gross said security and trade could be compatible if the border functions are properly funded. He said, "with the proper resources, our Federal inspection service agencies can quickly weed out those individuals who would seek to do us harm while processing the legitimate trade and travelers with a reduction, or at the very least no increase, in the time the cargo or traveler has to spent waiting at the port of entry."<sup>39</sup> Gross also recommended that all enforcement functions of the INS, not just Border Patrol, be in the new Department in order to end turf battles at the ports of entry and ensure that everyone is committed to the same goal.

Phil Anderson, senior fellow and director of the Homeland Security Initiative at the Center for Strategic and International Studies, testified that if enacted, the proposed legislation would greatly simplify the management processes and unify the efforts of 46 Federal agencies that each have some responsibility for homeland security. He noted that effective communication and coordination among these disparate agencies is extremely complicated and will only get more without organizational reforms. However, Anderson questioned the wisdom of reorganizing before a comprehensive national strategy was developed by the Administration.

#### *Business meeting*

On May 23, 2002, the Committee met to consider S. 2452, the National Homeland Security and Combating Terrorism Act, and for other purposes. The Committee adopted several amendments en bloc, by unanimous consent:

An amendment by Senator Lieberman calling for the Secretary to report to Congress in one year with recommendations for other functions that might need to be incorporated in the Department of National Homeland Security, giving consideration to issues such as border and transportation security;

An amendment by Senator Lieberman that requires, within one year of the effective date of the Act, a report from the Sec-

<sup>38</sup> Stephen Gross, testimony, Governmental Affairs Committee, April 11, 2002, at 45. (S. Hrg. 107-472) (Hereinafter "Gross testimony.")

<sup>39</sup> Gross testimony at 45.

retary outlining proposed steps to consolidate management authority for federal operations at key points of entry into the United States;

An amendment by Senator Akaka that requires the Director of the Office of Management and Budget to provide management guidance for federal agencies to successfully implement and execute a homeland security strategy. The amendment would require the GAO to submit a report to Congress on the management guidance and the federal agency performance in implementing and executing the strategy;

An amendment by Senator Durbin that would create, within the Department, the National Clearinghouse for Emergency Preparedness, which would be a one-stop shopping place for information. The amendment directs the clearinghouse to establish a website, office and staff to provide information on federal grants as well as preparedness and awareness tools. The amendment establishes the Emergency Preparedness Enhancement Pilot Program, which would provide matching funds for private businesses and organizations to design evacuation plans and drills, better secure their facilities, deploy innovative emergency preparedness technologies and educate their employees and facilities users. The amendment also would establish a National Emergency Preparedness Week each year during the week of Sept. 11 and require the development of a public awareness campaign that can be implemented at the national, state and local levels;

An amendment by Senator Levin that requires the Director of the Federal Bureau of Investigation to work with the National Office for Combating Terrorism to ensure it receives “the relevant information from the Federal Bureau of Investigation related to terrorism and to ensure that such information is made available to the appropriate agencies and to state and local law enforcement officials”; and

An amendment by Senator Levin that would require the Secretary and the Director to develop, in consultation with the head of each department or agency affected by this act, definitions of the terms “combating terrorism” and “homeland security.” The definitions would be required to be submitted to Congress within 270 days of the date of enactment.

On that same date, the Committee ordered the bill reported by a vote of 7–3. Senators voting in the affirmative were Lieberman, Levin, Akaka, Durbin, Carper, Carnahan, and Dayton. Senators voting against were Thompson, Cochran and Bennett. Additionally several senators requested that their votes be recorded by proxy: Senators Torricelli and Cleland voting in favor of reporting the bill, Senators Stevens, Voinovich, Bunning and Fitzgerald voting against.

## V. SECTION-BY-SECTION ANALYSIS

*Section 1—Short title; table of contents*

*Section 2—Defines key terms*

## TITLE I—DEPARTMENT OF NATIONAL HOMELAND SECURITY

*Section 101—Establishment of the Department of National Homeland Security*

This section establishes the Department of National Homeland Security. The legislation establishes the Secretary of National Homeland Security as the head of the department, to be appointed by the President with the advice and consent of the Senate. It charges the Secretary with certain responsibilities. The Secretary will:

- Develop policies and plans for the United States to promote homeland security;
- Develop a comprehensive strategy to combat terrorism in accordance with Title III of the act;
- Develop processes to integrate this strategy into the strategies and plans of Federal, State and local departments and agencies;
- Evaluate Federal programs related to homeland security that involve activities of State and local governments;
- Advise the Director of the National Office for Combating Terrorism on the development of an annual federal budget for the strategy to combat terrorism, and have responsibility for portions relating to border security, critical infrastructure protection, emergency preparation and response, and State and local activities;
- Plan, coordinate, and integrate federal activities relating to border security, critical infrastructure protection and emergency preparedness and response, and act as the focal point regarding natural and manmade crises and emergency planning and response;
- Work and coordinate with state and local governments and executive agencies in providing United States homeland security, and communicate with and support state and local officials through the use of regional offices around the nation;
- Provide overall operational planning guidance to executive agencies regarding United States homeland security;
- Conduct exercise and training programs for employees of the department and other involved agencies, and establish effective command and control procedures for the range of potential contingencies regarding United States homeland security, including contingencies that require substantial support of military assets;
- Annually develop a federal response plan for homeland security and emergency preparedness with regard to terrorism and other manmade and natural disasters; and
- Identify and promote technological innovation that will enhance homeland security.

This section also authorizes the Secretary to establish a coordinating center within the department with representatives from other federal departments and agencies with homeland security re-

sponsibilities. Those departments and agencies will be required to provide a representative on a permanent or part-time basis, and the Secretary may request additional federal personnel as well as representatives from State and local government. This center will be run by a director who will ensure that law enforcement, immigration and intelligence databases related to homeland security are compatible, while also complying with relevant Federal law related to privacy and intelligence information.

The Secretary will be a cabinet-level official and a statutory member of the National Security Council. This section also establishes a Deputy Secretary of National Homeland Security and an Inspector General for the department.

*Section 102—Transfer of authorities, functions, personnel and assets to the Department*

This section transfers various authorities, functions, personnel and assets that will be part of the Department: the Federal Emergency Management Agency, retaining its 10 regional offices; the United States Customs Service, which shall be maintained as a distinct entity; the law enforcement components of the Immigration and Naturalization Service relating to Border Patrol, Inspections, Investigations, Intelligence, Detention and Removal, and International Affairs; the United States Coast Guard, which shall be maintained as a distinct entity; the Critical Infrastructure Assurance Office of the Department of Commerce; the National Infrastructure Protection Center and the National Domestic Preparedness Office of the Federal Bureau of Investigation; the portion of the Animal and Plant Health Inspection Service of the Department of Agriculture that administers laws relating to agricultural quarantine inspections at points of entry.

*Section 103—Establishment of directorates and office*

This section establishes three directorates within the Department.

- The Directorate of Border and Transportation Protection will oversee and coordinate United States border security activities, develop border and maritime security policy, and develop and implement international standards for enhanced security in transportation nodes.

- The Directorate of Critical Infrastructure Protection will: (1) act as the Critical Infrastructure Technology, Assurance, and Security Officer of the Department to address the nation's vulnerability to electronic or physical attacks on critical infrastructure such as utilities and transportation nodes; (2) oversee protection of critical infrastructure; (3) ensure there are cybersecurity experts within the Federal government; (4) enhance information-sharing regarding cybersecurity and physical security, propose risk management policies and clarify the respective roles of various government agencies; (5) coordinate cybersecurity policy issues with the Federal Communications Commission; (6) coordinate the activities of Information Sharing and Analysis Centers; (7) assume responsibilities of the Critical Infrastructure Assurance Office; (8) assume the responsibilities of the National Infrastructure Protection Center.

- The Directorate for Emergency Preparedness and Response will: (1) carry out all emergency preparedness and response activi-

ties carried out by the Federal Emergency Management Agency; (2) assume the responsibilities of the National Domestic Preparedness Office; (3) organize and train local authorities to respond to emergencies and provide them with equipment for detection, protection and decontamination in an emergency involving weapons of mass destruction; (4) oversee Federal, State and local emergency preparedness training and exercise programs and provide Federal assistance for any emergency, natural or man-made; (5) create a national Crisis Action Center to serve as the focal point for monitoring emergencies and coordinating Federal support for State and local government and the private sector during crises; (6) establish training and equipment standards, provide resource grants, and encourage intelligence and information sharing among federal agencies, state emergency management officials, and local first responders; (7) coordinate and integrate operational activities of the Department of Defense, the National Guard, and other federal agencies into a federal response plan; (8) coordinate private sector activities with respect to recovery, consequence management, and planning for continuity of services; (9) develop and manage a single response system for national incidents in coordination with the Department of Justice, Federal Bureau of Investigation, Department of Health and Human Services, the Centers for Disease Control, and other appropriate federal departments agencies; (10) maintain federal asset databases and support up-to-date state and local databases.

This section also creates an Office of Science and Technology within the Department to advise the Secretary regarding research and development efforts and priorities for the directorates.

*Section 104—Steering group, coordination committee, and acceleration fund*

This section establishes a fund to leverage existing research and development and accelerate the deployment of technologies that will serve to enhance homeland security; establishes a committee and steering group to help coordinate and advise on issues relating to homeland security research and development and to administer acceleration fund; and establishes the responsibilities of the Director of the Office of Science and Technology relating to homeland security research and development. Specifically:

- **Fund**—The bill establishes acceleration funding for research and development of homeland security technologies to accelerate research, development, testing and evaluation of critical homeland security technologies and support homeland security research and development. It authorizes \$200 million in fiscal year 2003 for the fund.

- **Steering group**—The bill establishes a steering group within the Office of Science and Technology to provide recommendations to the Director and assist the Director in establishing priorities and forwarding recommendations on homeland security technology to the Secretary. The steering group will be composed of senior research and development officials from all appropriate federal departments agencies, as determined by the Director. At the discretion of the Director, the steering group may be composed of subgroups specializing in specific homeland security areas such as information technology infrastructure, critical infrastructure, inter-

operability issues in communications technology, bioterrorism, or chemical, biological, and radiological defense.

- **Coordination committee**—The bill establishes a Homeland Security Science and Technology Coordination Committee within the Office of Science and Technology, to be chaired by the Director. The coordination committee will be a working level group composed of representatives managing relevant agency research and development portfolios. The coordination committee will facilitate effective communication among departments, agencies and other entities of the federal government with respect to research and development related to homeland security. The committee will identify specific technology areas for which the fund will be used to rapidly transition homeland security research and development into deployed technologies. The focus will be research and development projects that address identified homeland security vulnerabilities and which, assuming single year funding, can be accelerated to the stage of prototyping, evaluating, transitioning, or deploying. The committee will administer the fund, including soliciting proposals from governmental entities, industry, and academia; competitively selecting proposals that advance the state of deployed technologies in the areas identified for that year; assigning one or more program managers to oversee, administer and execute a fund project as the agent of the coordination committee; and providing methods of funding administration, including grant, cooperative agreement, or any other transaction.

- **Office of Science and Technology responsibilities**—This subsection outlines key duties of the Director of the Office of Science and Technology. The Director will assist the Secretary and other federal officials: assess and test homeland security vulnerabilities; evaluate and advise on maintaining talent resources in key technology and skill areas necessary for homeland security; develop a system to share key research and technology developments and opportunities among appropriate Federal, State, local and private sector entities; and propose risk management strategies based on technology developments. The Director will also develop and oversee periodic homeland security technology demonstrations to improve contact between technology developers, vendors and acquisition personnel.

#### *Section 105—Reporting requirements*

This section establishes various reporting requirements for the Secretary. Every two years, the Secretary shall submit to Congress a report assessing the resources and requirements regarding border security and emergency preparedness issues, and certifying the preparedness of the United States to respond to various natural and man-made crises. Within one year of the effective date, the Secretary shall submit a report assessing progress in implementing Title I and recommending any conforming changes in law that are necessary.

Also within one year, the Secretary shall report to Congress recommending additional functions or elements that need to be incorporated in the Department, including such areas as border and transportation security. This section also requires the Secretary to submit to Congress, within one year, a report outlining proposals to consolidate management authority for Federal operations at key

points of entry into the United States. Additionally, the Secretary and Director are required to consult with affected departments and agencies to develop definitions for “combating terrorism” and “homeland security” for purposes of this Act, and submit a report to Congress on these definitions within 270 days.

*Section 106—Planning, programming and budgeting process*

This section directs the Secretary to establish sound planning, programming, budgeting and financial activities by the Department.

*Section 107—Environmental protection, safety and health requirements*

This section requires that the Department comply with applicable environmental, safety and health statutes and requirements.

*Section 108—Savings provisions*

This section provides for the continuing effect of legal documents, arrangements and proceedings for functions that are transferred to the department of national homeland security. It provides interim authority for compensation and expenses of any officer or employee under this title until such time as funds for that purpose are otherwise available. The provision also provides for the continuing effect of certain civil service protections under 5 U.S.C. title 71 (federal service labor-management relations statute) for employees or offices transferred to the new department, and specifies that offices of, and employees transferred to, the department may be excluded from these provisions in the interest of national security only in certain instances where primary job duties are directly related to terrorism investigations. This section also specifies that the transfer of authorities, functions, personnel and assets to the new Department shall not be construed to affect the authorities of the Director of Central Intelligence, the Secretary of Defense, or the heads of departments and agencies within the intelligence community where those authorities, functions, personnel or assets are engaged in intelligence activities as defined in the National Security Act of 1947.

TITLE II—NATIONAL OFFICE FOR COMBATING TERRORISM

*Section 201—National Office for Combating Terrorism*

This section establishes a terrorism office within the Executive Office of the President, to be run by a Director who will be appointed by the President with advice and consent of the Senate. The responsibilities of the Director will include:

- (1) develop national objectives and policies for combating terrorism;
- (2) direct and review the development of a comprehensive national assessment of terrorist threats and vulnerabilities to those threats, to be conducted by heads of the relevant Federal agencies;
- (3) develop, with the Secretary of National Homeland Security, a national strategy for combating terrorism under Title III;

(4) coordinate, oversee and evaluate implementation and execution of the Strategy;

(5) coordinate the development of a comprehensive annual budget for programs and activities under the Strategy;

(6) exercise budget certification authority for Federal terrorism prevention response agencies in accordance with section 202;

(7) serve as an adviser to the National Security Council; and

(8) work with the Director of the Federal Bureau of Investigation to ensure that the Director receives relevant information related to terrorism from the FBI, and that such information is made available to appropriate Federal agencies and State and local law enforcement officials.

*Section 202—Funding for strategy programs and activities*

This section establishes a process for the Director to review the proposed budgets for federal programs under the Strategy. The Director will, in consultation with the Director of the Office of Management and Budget and the Secretary of National Homeland Security, identify programs that contribute to the Strategy, and provide advice to the heads of the executive departments and agencies on the amount and use of these programs through budget certification procedures and the development of a consolidated budget for the Strategy.

Specifically, the heads of these departments and agencies must submit their terrorism-related budget to the Director before they are submitted to the Office of Management and Budget. The Director will review each proposed budget and notify the head of the agency if it is adequate to permit implementation of the goals of the Strategy for that year. If the Director finds the proposed budget inadequate, the Director will provide a statement of the funding and any initiatives that would be adequate to achieve the goals of the Strategy. An agency head that receives such notice shall incorporate the proposed funding, and any initiatives, in its submissions to the Office of Management and Budget. The agency head will also submit a summary of modifications pursuant to the Director's certification process and an assessment of the effect of such changes on the agency's capacity to perform its non-terrorism related responsibilities. The Director will review the budget submissions to OMB and may decertify any proposals that do not incorporate the proposed funding or initiatives previously advised by the National Office on Combating Terrorism. The Director will provide Congress with notice of any such decertification.

Each year, the Director will, in consultation with the Secretary of National Homeland Security and the head of each Federal terrorism prevention and response agency, develop a consolidated proposed budget for all programs and activities under the Strategy for that fiscal year.

TITLE III—NATIONAL STRATEGY FOR COMBATING TERRORISM AND THE  
HOMELAND SECURITY RESPONSE

*Section 301—Strategy*

This section directs the Secretary and Director to develop the national strategy for combating terrorism and homeland security re-

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 preparation 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: (1) policies and procedures to maximize the collection, translation, analysis, exploitation and dissemination of information related to combating terrorism and homeland security response throughout the Federal government and with State and local authorities; (2) plans for countering chemical, biological, radiological, nuclear and explosives, and cyber threats; (3) plans for improving the resources of, coordination among, and effectiveness of health and medical sectors for detecting and responding to terrorist attacks on homeland; (4) specific measures to enhance cooperative efforts between the public and private sectors in protecting against terrorist attacks; (5) review of measures needed to enhance transportation security with respect to potential terrorist attacks; and (6) other critical areas.

This section also establishes the National Combating Terrorism and Homeland Security Response Council to 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, which will meet at their direction.

*Section 302—Management guidance for strategy implementation*

This section directs the Office of Management and Budget, in consultation with the Secretary and the Director, to provide management guidance for Federal agencies to successfully implement the Strategy, and to report to Congress on these efforts. It also requires the General Accounting Office to evaluate the management guidance and agency performance in implementing the Strategy.

*Section 303—National Combating Terrorism Strategy Panel*

This section establishes a nonpartisan, independent panel to conduct an assessment of strategy as well as an independent, alternative assessment of measures required to combat terrorism, including homeland security measures. The panel will prepare a preliminary report no later than July 1, 2004, with a final report by December 1, 2004 and every four years thereafter.

TITLE IV—NATIONAL EMERGENCY PREPAREDNESS ENHANCEMENT

*Section 401—Short title*

*Section 402—Preparedness information and education*

This section establishes a National Clearinghouse on Emergency Preparedness within the Department to provide a central resource for information about grants and other resources on emergency preparedness. The clearinghouse would also develop a public awareness campaign on emergency preparedness.

*Section 403—Pilot program*

This section would create a pilot program to support private sector preparedness initiatives, such as developing evacuation plans and drills, improving security measures and preparedness technologies, and educating employees and customers. The bill authorizes \$5 million annually in fiscal years 2003 through 2005 for these cost share grants.

*Section 404—Designation of National Emergency Preparedness Week*

This section establishes each week that includes September 11 as “National Emergency Preparedness Week” and requests the President to designate it as such. In conjunction with this week, Federal agency heads shall coordinate with the Department to conduct educational activities for the private sector and general public about emergency preparedness resources.

## TITLE V—EFFECTIVE DATE

*Section 501—Effective date*

This section specifies that the Act shall take effect 180 days after the date of enactment.

## VI. REGULATORY IMPACT

Paragraph 11(b)(1) of the Standing Rules of the Senate requires that each report accompanying a bill evaluate “the regulatory impact which would be incurred in carrying out this bill.”

The enactment of this legislation will not have significant regulatory impact.

## VII. CBO COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 17, 2002.*

Hon. JOSEPH I. LIEBERMAN,  
*Chairman, Committee on Governmental Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2452, the National Homeland Security and Combating Terrorism Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

*S. 2452—National Homeland Security and Combating Terrorism Act of 2002*

Summary: S. 2452 would establish a new cabinet department, the Department of National Homeland Security, to plan, coordinate, and integrate the government’s activities relating to homeland security, including border security, the protection of critical

infrastructure, and emergency preparedness. The legislation would combine several existing agencies to form the new department. S. 2452 also would establish a National Office for Combating Terrorism within the Executive Office of the President to coordinate threat assessments, to craft and oversee a National Strategy to Combat Terrorism, and to plan and coordinate the budget to combat terrorism. Finally, the legislation would authorize the appropriation of \$200 million for fiscal year 2003 to develop technology to combat terrorism and \$5 million annually over the 2003–2005 period for emergency preparedness pilot programs.

CBO estimates that implementing S. 2452 would cost about \$1.1 billion over the 2003–2007 period, assuming appropriation of the necessary amounts. Enacting S. 2452 would not affect direct spending or receipts, so pay-as-you-go procedures would not apply. S. 2452 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The following table summarizes the estimated budgetary impact of S. 2452. The table shows estimated costs under the bill, as compared to the funding for the affected agencies under current law projected in the CBO baseline—that is, the 2002 appropriation adjusted for anticipated inflation in succeeding years. The legislation would combine several existing agencies to form the new department, including:

- The Federal Emergency Management Agency (FEMA);
- The U.S. Customs Service;
- The U.S. Coast Guard;
- The Department of Commerce’s Critical Infrastructure Assurance Office;
- The Federal Bureau of Investigations’s National Infrastructure Protection Center and National Preparedness Office;
- The Immigration and Naturalization Service’s Border Patrol and other enforcement activities; and
- The border offices of the Department of Agriculture’s Animal, Plant and Health Inspection Service.

The table also shows, as a memorandum item, estimated direct spending by the new agency over the 2002–2007 period, which would not be affected by the bill. The costs of this legislation fall within budget functions 050 (national defense), 350 (agriculture), 370 (commerce and housing credit), 450 (community and regional development), 750 (administration of justice), and 800 (general government).

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION						
Spending by affected agencies under current law:						
Estimated authorization level <sup>1</sup> .....	19,427	20,003	20,534	21,076	21,625	22,200
Estimated outlays .....	16,279	17,163	17,943	19,485	20,671	21,652
Proposed changes:						
New Personnel, offices, and programs:						
Estimated authorization level .....	0	79	204	208	212	216
Estimated outlays .....	0	68	185	207	211	215
Acceleration fund:						
Authorization level .....	0	200	0	0	0	0
Estimated outlays .....	0	120	60	20	0	0

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
Emergency preparedness pilot program:						
Authorization level .....	0	5	5	5	0	0
Estimated outlays .....	0	5	5	5	0	0
Total:						
Estimated authorization level .....	0	284	209	213	212	216
Estimated outlays .....	0	193	250	232	211	215
Spending under S. 2452:						
Estimated authorization level .....	19,427	10,287	20,743	21,289	21,837	22,416
Estimated outlays .....	16,279	17,356	18,193	19,717	20,882	21,867
MEMORANDUM						
Direct spending by affected agencies under current law and under S. 2452 <sup>2</sup>						
Estimated budget authority .....	416	509	1,731	1,878	1,945	2,130
Estimated outlays .....	305	437	1,692	1,800	1,853	1,912

<sup>1</sup> The 2002 level is the amount appropriated for that year for agencies that would be combined to form the Department of National Homeland Security, as well as the National Office for Combating Terrorism. The estimated authorization levels for 2003 through 2007 are CBO baseline estimates that adjust the amounts appropriated for 2002 for anticipated inflation.

<sup>2</sup> CBO estimates that the level of direct spending of agencies that would be combined to form the new department would not be changed by enacting S. 2452.

### *Basis of estimate*

CBO estimates that implementing the legislation would add about \$1.1 billion to the costs of the affected agencies over the 2003–2007 period. For this estimate, CBO assumes that S. 2452 will be enacted by the beginning of fiscal year 2003 and that the necessary funds will be appropriated for each fiscal year.

#### *New personnel, offices, and programs*

S. 2452 would establish a new cabinet agency, the Department of National Homeland Security, and the National Office for Combating Terrorism within the Executive Office of the President. Most of the functions that would be performed by the proposed department are already performed by existing offices within the agencies that would be incorporated into the Department of National Homeland Security. CBO expects that, under S. 2452, most activities would be transferred to the new department without significantly affecting the costs that would be expected under current law.

CBO expects that creating a new cabinet-level department would require additional resources to perform certain administrative functions, including new positions to staff the offices of the Inspector General, general counsel, budget, the Congressional affairs for the new department. Based on the administrative costs the Department of Justice and other departments, CBO estimates that it would cost about \$200 million annually to provide the centralized leadership, coordination, and support services for the Department of National Homeland Security. This represents about 1 percent of the new department's budget. Personnel and budgets to help perform these functions also would be transferred to the new department from FEMA, the Coast Guard, and the Customs Service. We expect the new departmental staff would be hired over the first two years following enactment of the legislation. This estimate assumes that the 6,500 employees currently working in the Washington, D.C. area for the agencies that would be combined to form the new department are not relocated to a central location.

S. 2452 also would authorize committees, councils, and panels to support and advise the President, the Department of National

Homeland Security, and the National Office for Combating Terrorism. The legislation also would authorize the establishment of offices to coordinate and disseminate information related to homeland security. CBO estimates that those functions would require approximately 30 new positions at a cost of about \$4 million annually.

In addition, the bill would establish a National Office for Combating Terrorism within the Executive Office of the President. The new office would be similar, but not identical to the current Office of Homeland Security. For this estimate, CBO assumes the new office would take over the functions of the existing Office of Homeland Security and that the costs of this office would be similar to those that would be incurred under current law. Based on the costs of the current Office of Homeland Security, CBO estimates that the new office would cost approximately \$27 million annually, though that sum is not included as an added cost of S. 2452.

*Acceleration fund*

S. 2452 would authorize the appropriation of \$200 million in fiscal year 2003 to accelerate research, development, and testing of technologies to enhance homeland security. CBO estimates that implementing this provision would cost \$200 million over the 2003–2005 period.

*Pilot program*

S. 2452 would authorize the appropriation of \$5 million annually over the 2003–2005 period for a National Clearinghouse on Emergency Preparedness in the Department for National Homeland Security. The clearinghouse would award grants to private entities to pay for the federal share of the cost of improving emergency preparedness. Grants would be awarded awareness campaigns. CBO estimates that implementing this section would increase discretionary spending by \$5 million annually over the 2003–2005 period, assuming appropriation of the authorized amounts.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Although the legislation would affect programs involving direct spending, such as the Immigration and Naturalization Service's immigration fees, the U.S. Coast Guard's boat safety grants, and the Animal and Plant Health Inspection service's animal quarantine inspection fees, CBO estimates that enacting S. 2452 would have no effect on direct spending or receipts because the legislation would not change any of those programs.

Intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Matthew Pickford and Mark Grabowicz; impact on state, local, and tribal governments: Susan Sieg Tompkins; impact on the private sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

## VIII. ADDITIONAL VIEWS

### ADDITIONAL VIEWS OF SENATORS THOMPSON, VOINOVICH, AND BUNNING

On May 22, 2002, the Committee on Governmental Affairs voted to report S. 2452, as amended. We voted against reporting S. 2452 favorably because we had come to the conclusion, in the absence of any proposal from the President, that a coordinator within the White House was the best framework for organizing our federal government's homeland security efforts. We were concerned that no agency could bring within its purview all the components needed to address successfully all of our homeland security challenges. We also opposed the legislation because President Bush had not had an opportunity to present his proposals for reorganizing the federal government to address the threats to our nation. Since the Committee's vote, however, the President has now offered his own recommendations for reorganizing the federal government to address our homeland security needs.

Recognizing that it had taken a long time for the government to develop along the dysfunctional lines that were revealed on September 11, 2001, we urged that Committee to hold off for a short while to allow the President's views to be considered. We were particularly concerned that during a period of stress and difficulty in responding initially to the scope of the attacks on our nation and in developing our strategic and tactical response, the administration could not focus adequately on a broad government reorganization. It took some time for the administration to begin to examine the structures needed to tackle the threat over the long term.

In the days following September 11, it became clear that the federal government needed to be reorganized in order to effectively protect our country. When President Bush created the Office of Homeland Security last fall, he instructed its director, Governor Tom Ridge, to conduct a comprehensive review of the federal government's efforts to protect the American homeland. Over the last nine months, the President's Office of Homeland Security closely examined every facet of our homeland security effort. It considered numerous homeland security organizational proposals that emerged from outside studies, commissions, and Members of Congress. On several occasions during this period, the President emphasized that the structure for organizing and overseeing homeland security was evolving as its analysis of the threats and the government's ability to address them developed.

Indeed, in testimony before the Governmental Affairs Committee on April 11, 2002, Office of Management and Budget Director Mitchell Daniels implied that the Administration intended to complete its review and offer recommendations for Executive Branch reorganization in a matter of weeks. Director Daniels testified that

all options were being considered, including the creation of a new department combining different agencies.

While the Administration was conducting its review, the Governmental Affairs Committee held more than a dozen hearings on homeland security. We are confident that these hearings contributed a great deal to the debate and the President's consideration of the issues. During these hearings, we expressed support for the Administration's decision to examine closely the issues involved and carefully deliberate on an appropriate course of action. We believed that it was important for us to understand the issues at hand fully before beginning the reorganization process. We also repeatedly expressed our view that Presidential participation and leadership was essential to any Executive Branch reorganization for passage. Even the most modest reorganization plan would require the Administration and the Congress to work together.

The bill reported by the Committee was a good first step. We can, however, be certain that the President's recommendations would have contributed to our deliberations. For example, while there are many elements in common between the President's proposal and S. 2452, the bill approved by the Committee does not sweep into the new agency a number of components that the President's proposal would incorporate into a new Department of Homeland Security; some of these components were not fully considered for inclusion in the new agency before the President's plan was released.

The Committee now has an opportunity to work closely with the Administration to craft legislation that will reorganize the federal government to protect the American people. The President has repeatedly expressed his willingness to work with Congress and the Committee on his reorganization proposal. We are confident the Committee will not move forward and work in a constructive manner with the President and his Administration.

GEORGE V. VOINOVICH.  
JIM BUNNING.  
FRED THOMPSON.

IX. CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2452 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**UNITED STATES CODE**

**TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES**

\* \* \* \* \*

**SEC. 101. Executive Departments**

The Executive Departments are:

\* \* \* \* \*

*The Department of Homeland Security.*

\* \* \* \* \*

**SEC. 5312. Positions at level I**

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

\* \* \* \* \*

*Secretary of National Homeland Security.*  
*Director of the National Office for Combating Terrorism.*

**SEC. 5313. Positions at level II**

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

\* \* \* \* \*

*Deputy Secretary of National Homeland Security.*

\* \* \* \* \*

**TITLE 5—APPENDIX**

**INSPECTOR GENERAL ACT OF 1978**

**SEC. 11. Definitions**

As used in this Act—

(1) the term “head of the establishment: means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, *National Homeland Security*, State, Transportation, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans’ Affairs; the Director of the Federal Emergency Management Agency, or the Office of Personnel Management; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board; the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service; (FOOTNOTE 1) the Administrator of the Community Development Financial Institutions Fund; and (FOOTNOTE 2) the chief executive officer of the Resolution Trust Corporation; and (FOOTNOTE 2) the Chairperson of the Federal Deposit Insurance Corporation; the Commissioner of Social Security, Social Security Administration; or the Board of Directors of the Tennessee Valley Authority; as the case may be;

(FOOTNOTE 1) So in original.

(FOOTNOTE 2) So in original. The word “and” probably should not appear.

(2) the term “establishment” means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, *National Homeland Security*, State, Transportation, or the Treasury; the Agency for International Development, the Community Development Financial Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the Corporation for National and Community Service, or (FOOTNOTE 3) the Veterans’ Administration, the Social Security Administration, or the Tennessee Valley Authority; as the case may be;

(FOOTNOTE 3) So in original. The word “or” probably should not appear.

\* \* \* \* \*

**TITLE 50—WAR AND NATIONAL DEFENSE**

\* \* \* \* \*

**SEC. 402. National Security Council**

(a) Establishment; presiding officer; functions; composition

\* \* \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) \* \* \*

(5) **【the Director for Mutual Security;】** *the Secretary of National Homeland Security; and*

(6) **【the Chairman of the National Security Resources Board; and】** *each Secretary or Under Secretary of such other executive department, or of a military department, as the President shall designate.*

**【(7) the Secretaries and Under Secretaries of other executive departments and of the military departments, the Chairman of the Munitions Board, when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.】**

\* \* \* \* \*

