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108th Congress *2d Session*	SENATE	REPORT 108–225

HOMELAND SECURITY GRANT ENHANCEMENT ACT OF 2003

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1245

TO PROVIDE FOR HOMELAND SECURITY GRANT COORDINATION AND SIMPLIFICATION, AND FOR OTHER PURPOSES

together with

ADDITIONAL VIEWS

FEBRUARY 10, 2004.—Ordered to be printed

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HOMELAND SECURITY GRANT ENHANCEMENT ACT OF 2003

FEBRUARY 10, 2004.—Ordered to be printed

Ms. COLLINS, from the Committee on Governmental Affairs, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1245]

The Committee on Governmental Affairs, to which was referred the bill (S. 1245) to provide for homeland security grant coordination and simplification, and for other purposes, having considered the same reports favorably thereon with amendments and recommends that the bill do pass.

I. PURPOSE AND SUMMARY

The Senate Governmental Affairs Committee (the Committee) approved S. 1245, the Homeland Security Grant Enhancement Act of 2003 on June 17, 2003. This bill seeks to create a stronger, streamlined program of federal financial assistance to State and local governments and first responders responsible for protecting our homeland.

On March first, our homeland security structure began to move into place, as Secretary Ridge incorporated nearly two-dozen agencies into the Department of Homeland Security. While the Senate spent more than three months debating the Homeland Security Act, the law contains virtually no guidance on how the Department is to assist those at the State and local level with their homeland security needs. Congress wrote a 187-page law creating the Department, yet included but a single paragraph on grant programs for

first responders. As a result, the Department has been left with little guidance from Congress as to how State and local grant decisions should be made.

As with so many other issues, much of the front-line responsibility for homeland security has fallen squarely on the shoulders of our State and local officials and more than 9 million first responders. Communities across America have risen to this challenge and developed scores of innovative homeland security strategies.

Instead of encouraging these new ideas, however, the tangled web of federal homeland security grant programs has the potential to stifle the Department's ability to foster State and local innovation. Instead of providing a foundation on which States and localities can build homeland security strategies tailored to specific risks, federal programs present States and communities with a mountain of paperwork. Instead of giving communities the flexibility they need, State and local officials face an inflexible grant structure.

This legislation would provide State and local governments and communities with the resources they need to protect their communities by providing a long term steady stream of funding to each and every State; making it easier to apply for grants; promoting flexibility in the use of homeland security funding; and protecting programs that work, such as the FIRE Act.

Departmental organization

S. 1245 would reorganize the administrative process for obtaining selected first responder grant programs within the Department of Homeland Security (DHS). The legislation would move two DHS entities into the Office of State and Local Government Coordination (OSLGC): The Office for Domestic Preparedness (ODP), which is currently located in the Border and Transportation Security Directorate; and the Assistance to Firefighters Program. The bill requires that the Firefighters Grant Program remain a distinct program within the new organizational structure.

In addition, S. 1245 establishes a Homeland Security Information Clearinghouse within the OSLGC, which would be maintained by the Office for Domestic Preparedness. The clearinghouse would be charged with providing States and localities with information on grant programs and the use of Federal funds. The clearinghouse would gather and publish information on best practices in homeland security and voluntary standards for training programs, equipment, and exercises.

S. 1245 also creates an Interagency Committee to Coordinate and Streamline Homeland Security Grant Programs within DHS. Among its duties, the committee would identify all duplicative application, planning, and reporting requirements among the Federal assistance programs; assess State and local needs and capabilities; and advise DHS Secretary on implementing appropriate performance measures for grant recipients. In addition, the committee would provide recommendations to Federal agencies on the coordination of homeland security grant programs; specifically, recommendations on streamlining and standardizing application, reporting, and planning requirements.

Homeland security grants

S. 1245 authorizes formula based and discretionary homeland security grants to States and localities for first responder preparation activities, such as emergency planning, risk assessments, mutual aid agreements, equipment, training, and exercises. Funding would be provided for overtime expenses incurred during periods of heightened alerts and, in limited amounts, for training activities. To be eligible for a homeland security grant, States would be required to complete a State Homeland Security Plan that addresses matters such as interoperable communications, training, incident command systems, regional coordination, response planning, and training exercises. The plan must also include a three-year strategy for allocating funding to localities based on risk, capability, and need, as well as an assessment of the shortfall between existing and needed response capabilities. The bill provides basic guidelines for States to use in developing their plans, including mandatory input from local officials, first responders, and the private sector.

S. 1245 establishes three sets of criteria for State Homeland Security Grants. First, 10% of the SHSG funds would be allocated through direct discretionary grants to local governments in high threat areas, using criteria based upon an area's population, population density, the presence of threats, risks and vulnerabilities involving critical infrastructure or national assets, the need to guard international borders or coastlines, and other threat factors to be specified by the DHS Secretary. Second, each State would receive a base amount of 0.75 percent of the remaining appropriated funds each fiscal year. The bill treats the District of Columbia and Puerto Rico as States. The U.S. territories of Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Marianas would receive a base amount of 0.25 percent. Altogether, the formula grants providing minimum funding levels for States would utilize about 40 percent of the remaining SHSG funds. The remaining 60 percent of the funds would be distributed among the States on a risk-based formula to be developed by DHS Secretary, using variables such as State population (including military and tourist populations); population density; the threat, risk and vulnerability of critical infrastructure or key national assets; international borders or coastlines; and other factors to be identified by DHS Secretary.

Of the funds sent to the States, States would be required to distribute at least 80 percent of the funds to local governments within 45 days of receipt. Recipients would be required to match 25 percent of the grant funds with non-Federal contributions, although the match would not apply during first two years of the program and could be waived for recipients experiencing economic distress. The bill also includes a maintenance-of-effort provision, which prohibits recipients from using grant funds to supplant their own funds allocated to on-going homeland security expenses or general protective measures.

National performance standards

S. 1245 directs DHS Secretary to develop National Performance Standards based on the goals and objectives addressed in State Homeland Security Plans. These standards would define the expected level of capabilities in homeland security functions, includ-

ing emergency response, communications interoperability, and prevention. Each State would be required to report annually on its progress in meeting these standards. DHS would be required to report annually to Congress on the status of meeting these goals and objectives, State and local adherence to performance standards, the total amount of resources provided to State and local governments, and how the funds were used. Until such standards are developed, DHS would assist States and localities in developing Interim Performance Measures.

In addition to these overall performance standards, Congress has long recognized the importance of establishing, maintaining, and adopting certifiable uniform national training standards for first responders to strengthen basic and advanced preparedness and response capabilities. Current law establishes federal national training centers such as the Federal Law Enforcement Training Center and the National Fire Academy that promote effective basic core competencies and national standards for first responders.

Congress has also provided resources for specialized training to State and local emergency responders through the National Domestic Preparedness Consortium. While the Consortium is an important part of a broad national domestic preparedness training infrastructure, a number of independent studies have identified a need for federal level national training centers to develop standardized training requirements and help train first responders to prepare for and respond to the consequences of terrorists' use of weapons of mass destruction.

The Committee agrees with these assessments and directs that the Office for Domestic Preparedness designate a lead federal level national domestic preparedness training center, and consider designating additional regional federal level national domestic preparedness training centers. The lead center, along with the additionally designated regional federal level national domestic preparedness training centers designated by the Office for Domestic Preparedness, shall assist in developing, maintaining, and adopting certifiable training standards to help first responders prepare for and respond to the consequences of terrorists' use of weapons of mass destruction. The federal national training centers will possess recognized training expertise, staff, and facilities to assist the Secretary in creating training guidelines, conducting exercises, developing equipment, and identifying emerging training opportunities, such as distance learning, virtual and live training and mobile training teams. These training centers must work closely with the Department of Homeland Security's grant making office to maximize State and local training, equipment and exercise programs.

State and local flexibility

The needs of our States, localities, and first responders vary widely across the nation. This legislation would ensure that federal homeland security assistance is sufficiently flexible to meet these diverse needs.

Prior to the Emergency Wartime Supplemental Appropriations Act of 2003, the Office for Domestic Preparedness allocated the same percentage of each State's funds for training, equipment, exercises, and planning, thus leaving no room to accommodate different States' priorities. In each and every State, 70 percent of the

federal funds were required to be spent for equipment, 18 percent for exercises, 7 percent for planning, and 5 percent for training. In allocating funds this way, the federal government effectively said that Maine must spend exactly the same portion of its homeland security dollars on training as Ohio and Hawaii. Moreover, States cannot transfer surplus funds from one category to another to meet their needs.

The inflexible structure of past homeland security funding, along with shifting federal requirements and increasing amounts of paperwork, poses a number of challenges to State and local governments as they attempt to provide these funds to first responders. These challenges may have contributed to the fact that a substantial amount of homeland security funds that have been appropriated still remain either unallocated by the federal government or unspent by State and local governments.

The bill would give State and local governments greater flexibility with previously appropriated ODP grant funds by allowing grant recipients to request and the Secretary to approve funding transfers among different activities, including equipment, training, exercises, and planning. For new funding, State and local governments have even more flexibility in funding, provided that such spending is consistent with the State homeland security plan.

Smuggling weapons of mass destruction

The bill would impede the smuggling of weapons of mass destruction into the United States using vehicles that carry municipal solid waste. About 180 municipal trash trucks from Canada cross the U.S. border every day, for example, to deposit cargo in Michigan landfills. Because the dense and variable cargo in these vehicles, sometimes including sludge, resists analysis using the mechanical inspection devices typically at U.S. border crossings, and because discovery last year of illegal drugs on one such Canadian vehicle confirmed the trucks' use in smuggling, serious questions have arisen about the effectiveness of current border screening procedures for detecting chemical, nuclear, biological or radiological materials that could be concealed on these vehicles.

The bill would bar further entry of these vehicles into the United States unless and until the Secretary certifies to Congress that the methods and technologies being used to screen these vehicles for such weapons are as effective as the methods and technologies being used to screen for such weapons in other items of commerce entering the United States via other commercial vehicle transport. This provision is intended to prompt a thorough re-evaluation of the screening procedures now being used for vehicles carrying municipal solid waste, and to strengthen U.S. border protections against efforts to use these vehicles to secretly transport chemical, nuclear, biological or radiological materials into the country.

II. BACKGROUND

At present, State and local governments receive assistance for homeland security activities from a range of Federal departments and agencies as well as DHS. Despite the origin of funding, these Federal programs share a similar goal: To assist State and local governments in their efforts to enhance the capabilities of first re-

sponders to prepare for and respond to terrorist attacks, particularly attacks involving weapons of mass destruction.

The vast majority of these activities fall into the categories of emergency planning, training, equipment, and exercises. Congress has also provided limited funding for personnel compensation and overtime expenses incurred during times of heightened alert through these entities and programs. Most of this Federal assistance originates from the following three sources within the Department of Homeland Security:

The Office for Domestic Preparedness (ODP);

The Assistance to Firefighters Program (FIRE grants); and

The Emergency Management Planning and Assistance Account (EMPA).

Federal assistance is also available from programs that are not specifically oriented to first responders or terrorism preparedness. State and local governments may seek emergency preparedness assistance in the form of block grants and categorical grants from programs administered by the Departments of Health and Human Services (HHS), Justice (DOJ), and Transportation (DOT), and the Environmental Protection Agency (EPA).

Since the terrorist attacks of September 2001, both Congress and the President have given increased attention to the role of first responders in the nation's homeland security efforts. This attention is evident in the funding Congress provided in regular and supplemental appropriations in fiscal year 2003, which totaled $3.23 billion for ODP; $750 million for the FIRE grants; and $443.1 million for EMPA. The Administration and Congress have made numerous proposals to restructure existing first responder assistance programs. Thus far, none has been enacted into law.

A wide range of policy concerns led to the development of S. 1245. These concerns are not limited to first responder preparedness programs. Rather, they are pertinent to the broader debate over Federal assistance for State and local homeland security efforts. Each policy concern is discussed briefly below.

Complexity of grant applications and planning requirements

At present, State and local governments seeking Federal assistance for their homeland security efforts, and emergency preparedness in general, may apply to DOJ, DOT, EPA, and HHS, as well as to entities within DHS, such as ODP and the Federal Emergency Management Agency (FEMA). This multitude of programs presents a complex array of application requirements. Nearly all applications contain planning requirements that are intended to promote the effective use of funds, but they also create an overwhelming amount of paperwork for State and local officials. The various application and planning requirements are often duplicative, calling for similar assessments, analyses, and spending plans. State and local officials have told the Committee that each program requires numerous administrative steps. For example, to receive funds from ODP's State Homeland Security Grant Program, States must go through as many as 12 steps in order to obtain approval.

S. 1245 would address this problem in two ways. First, the bill creates an Interagency Committee to identify duplicative application and planning requirements in emergency preparedness programs and make recommendations on streamlining those require-

ments. Second, the bill sets up a single, clear set of goals for ODP's State Homeland Security Grant Program, which has, in the past, subjected State and local governments to annual changes in planning and application requirements.

Coordination of emergency preparedness programs

Federal programs provide much needed support to ensure a basic level of equipment and training among first responders. However, these programs lack the very coordination expected of State and local governments.

In testimony before the Committee, DHS Secretary Tom Ridge emphasized the importance of integrating all preparedness programs into a single DHS office. He suggested that existing programs such as the Assistance to Firefighters Program could be moved within the Department, without decreasing the program's effectiveness. The Committee shares this view, but strongly believes the Department should administer the Assistance to Firefighters program in its current fashion, with grants peer reviewed by the firefighting community and with grants made directly to fire departments. The Department also should consider utilizing existing US Fire Administration staff that have successfully managed the Assistance to Firefighters Program.

S. 1245 seeks to integrate these programs administered by DHS into a single office to create one-stop shopping within DHS for first responders, and for State and local governments to obtain grants, information, and other government wide homeland security assistance. S. 1245 would integrate selected programs into a single DHS entity—the Office for State and Local Government Coordination (OSLGC). ODP, in its entirety, would become part of OSLGC.

The Assistance to Firefighters Program would be transferred to OSLGC, but it would be maintained as a distinct and separate program. Administering the Assistance to Firefighters Program in its current fashion is paramount to continuing the program's successes. Since its inception in 2001, the FIRE Act has made more than $1.2 billion dollars in federal funds available to local fire departments. As fire departments across the country grapple with increasing demands and responsibilities and decreasing local budgets, the Assistance to Firefighters Program is the most successful federal grant program that has provided funding directly to local fire departments.

The bill also authorizes a formula grant program to States that would be administered by ODP, which would replace the existing State Homeland Security Grant Program.

The Committee also supports coordination of programs and information within DHS. The Committee directs the Office for Domestic Preparedness to work with the Science and Technology Directorate and the Information Analysis and Infrastructure Protection Directorate to ensure State and local governments and first responders receive information regarding threat, vulnerability assessments, and mitigation technologies for high risk areas such as manufacturing facilities using chemicals and hazardous shipments.

Distribution of funds

Organizations representing State and local governments and first responders all support proposals to increase Federal funding. There

is disagreement, however, among these organizations, and some policymakers, as to whether a new formula program should distribute funds initially to States or directly to local entities.

A number of State and local organizations, including the National Conference of State Legislatures, the National Governors Association, the National League of Cities, the National Association of Counties, the Council of State Governments, and the International City/County Management Association have supported State coordination of the first responder grant program, with 80 percent of the resources being distributed by the States to units of local government. The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, established in accordance with Section 1405 of the National Defense Authorization Act for Fiscal Year 1999, Public Law 105–261, agreed with this approach. In its fourth annual report to Congress, the Advisory Panel, also known as the Gilmore Commission, concluded that States must have discretion over the use of grant funds to ensure the allocation of resources on the basis of assessed needs.

In testimony before the Committee during the May 1, 2003 hearing entitled, "Investing in Homeland Security: Streamlining and Enhancing Homeland Security Grant Programs," Secretary Ridge supported the State-level approach, suggesting that distributing funds directly to localities might inhibit consistency with statewide homeland security and emergency preparedness plans. Ridge stated, "we shouldn't distribute a dollar, a security dollar, unless it is consistent with a [homeland security] plan, an overarching plan brought to us by the States."

In testimony before the Committee during the April 9, 2003 hearing entitled, "Investing in Homeland Security, Challenges on the Front Line," Edward P. Plaugher, Fire Chief and September 11 Incident Commander at the Pentagon, Arlington County Fire Department, Virginia, also expressed his support for State coordination. He stated that, "* * * the State coordination effort [that] is absolutely critical in homeland security."

The Committee agrees that state-wide coordination in homeland security planning is needed, but also wants to ensure that funding reaches the local level in a timely manner. Section 4 of S. 1245 would require 10 percent of funds to be allocated directly to local governments in a timely manner. It would further require States, consistent with their State Homeland Security Plan, to provide 80 percent of the remaining grant funds to local governments. This approach would allow States to coordinate their Homeland Security Plans with local entities while ensuring that the majority of homeland security funding is provided to localities. Furthermore, States would be required to distribute funds to localities within 45 days of receipt.

The Committee recognizes that there is a category of private, not-for-profit institutions, as described in section 501(c)(3) of the Internal Revenue Code of 1986, which provides services that are at high risk of being the target of terrorist attacks. The Committee recommends that in preparing their 3-year State homeland security plans, States should specifically consider the threat to such institutions as part of their vulnerability and threat assessments. The Committee urges the Secretary to instruct States that they may

utilize such grant funds to undertake measures to enhance security against terrorist attacks directed at such at-risk institutions.

The Committee recognizes that Indian tribes, authorized tribal organizations, and Alaska Native villages play an important role in protecting our communities from terrorist incidents, and that the government to government relationship with the federal government must be preserved and respected. Accordingly, the Secretary and the States should include Indian tribes, authorized tribal organizations, and Alaska Native villages in statewide planning.

In addition, the Committee intends that Indian tribes, authorized tribal organizations, and Alaska Native villages be eligible for discretionary grants if they otherwise meet the criteria set forth for high threat areas. The Committee further recognizes that because S. 1245 does not allocate any of the remaining homeland security grant funds to Indian tribes, authorized tribal organizations, or Alaska Native villages, States are responsible for ensuring that tribal communities are prepared for a terrorist incident and for allocating federal resources to those sovereign entities accordingly. As a result, Indian tribes, authorized tribal organizations, and Alaska Native villages will be eligible for funding directly from the States, rather than through any local government and shall enjoy the same opportunity to participate in statewide planning and receive funding as any other jurisdiction or other unit of government designated by the State to conduct needs assessments and allocate funding.

In general, funds should be allocated based on the State Homeland Security Plan approved by the Secretary. The Committee believes, however, that State and local officials and first responders should be given some amount of discretionary authority to address security needs, such as those required to protect large public events, not foreseen during the development of the homeland security plan. The Secretary should ensure that State and local governments and first responders have sufficient flexibility to meet these immediate security needs, should they arise.

The Committee recognizes that State and local governments face numerous challenges in developing their State Homeland Security Plan and seeking out homeland security best practices. In numerous cases, State and local governments have received unsolicited proposals, or sought assistance from, for-profit and non-profit firms to develop threat and vulnerability assessments. However, they often lack the expertise to adequately evaluate products from these firms. The Committee supports ODP's efforts to work on a national and regional basis to provide assistance to State and local governments and first responders. As part of this effort, the Committee directs ODP to assist State and local governments in identifying whether such firms have the necessary capacity to provide information, independent analysis, evaluation assistance and provide other management tools related to homeland security. The Committee also urges ODP to provide information to State and local governments and first responders regarding best practices for protecting the basic needs of the public, including, but not limited to, individual safety in public buildings and protection of air, water, food sources and infrastructure such as transportation, power, and communications.

The bill requires the Secretary to set aside ten percent of the appropriated grant program funds for distribution directly to local governments in high-threat urban areas. This discretionary grant program builds upon the High Threat Urban Area grant program that has been earmarked for funds in DHS appropriations committee reports, but is not yet described explicitly in a statutory provision. The Secretary is directed to identify eligible high threat areas based upon specified criteria, consisting of an area's population, population density, the presence of significant threats, risks and vulnerabilities involving critical infrastructure or key national assets, the need to guard international borders or coastlines, and other threat factors to be specified in writing by the Secretary.

The Secretary would also be required to issue grants that encourage neighboring local governments and mutual aid partners to coordinate their homeland security efforts, and should take into consideration core cities, contiguous jurisdictions, and development of a regional metropolitan approach to address threats. The bill language and the Committee favor grants with a regional metropolitan approach to address the unique equipment, training, planning, exercise, and operational needs of large urban areas, and assist these areas in building an enhanced and sustainable capacity to prevent, respond to, and recover from threats or acts of terrorism. Providing funding directly to local governments in the high-threat area is a shift in policy from the current Urban Area Security Initiative (UASI), under which the Secretary requires States to pass through 80 percent of the funding to the local level. The Committee believes that states need not serve as intermediaries for high-threat funding, provided that local governments commit to spending the funds in accordance and consistent with state plans.

States, therefore, will continue to play a vital role in this program. The Committee directs the Secretary to ensure that the funding provided for high threat areas is coordinated with the State homeland security plan. The Committee also expects that the Department of Homeland Security will not provide funds under the high threat program without input from first responders in the high threat region.

Distribution formula

At present, the largest grant program for emergency preparedness is ODP's State Homeland Security Grant Program. Funds are distributed to States with each State receiving a base amount of 0.75 percent of the total appropriation. ODP points to Sec. 1014 of the USA PATRIOT Act as the authorization for this base amount. Sec. 1014, however, gives little statutory guidance on the structure of assistance programs. After base amounts are determined, the remaining funds are distributed to States on the basis of per capita population.

In testimony before the Committee during the May 1, 2003 hearing, Secretary Ridge supported a formula that provides a base level of funding to each State. In response to a question posed by the Chairman, Secretary Ridge stated, "* * * I do start with the notion that every State needs a minimum level of funding * * *."

The Committee agrees that each State needs a baseline level of funding in order to undertake heightened homeland security efforts. S. 1245 would preserve the 0.75 percent base amount, as cur-

rently applied by ODP in its State Homeland Security Grant Program. This base amount should ensure that every State would be able to achieve a minimum baseline of capability. Every State has homeland security needs and vulnerabilities. After all, each State must protect its critical infrastructure and address its vulnerabilities.

Some have contended that the current formula is unfair because less populous States like Wyoming receive more per capita than densely populated areas like the District of Columbia. Others note that the Department of Homeland Security provides monetary assistance to larger, more populous States through a number of grant programs for high threat urban area security, transportation security, and port security. In 2003, for example, New York received an additional $211 million beyond its State allocation through urban area and port security grants.

The Committee has attempted to strike a balance between those who support the current formula and those who would like less populous states to receive fewer homeland security dollars. To ensure that States with high risks and vulnerabilities receive sufficient homeland security funding, the Secretary would provide a baseline level of homeland security dollars to each State, but then distribute the remaining 60 percent of funding based on threat, risk, and vulnerability. High threat areas would receive a substantial amount of this funding since States must pass through 80 percent to the local level. S. 1245 would also direct the DHS Secretary to reserve 10 percent of all funds for Section 4 grants to assist high threat urban areas.

Hence, the Committee believes that the terrorism preparedness formula program should distribute a significant portion of the funds available on the basis of risk rather than population. On May 1, 2003, Secretary Ridge agreed with this view in his testimony before the Committee. In response to written questions submitted during the May 1, 2003 Committee hearing, Secretary Ridge wrote, "Starting in FY04, the Department will seek to make changes in how it distributes funding to the States. Each State and territory will continue to receive a base amount, but the balance of funds will utilize a multi-faceted formula, taking into account factors including threat and risk assessments, critical infrastructure of national importance, and population density."

Using a risk-based formula would reflect the threats and vulnerabilities in different regions of the country. Although population data are readily available for use in distribution formulas, the Committee believes that DHS must develop a risk-based formula to direct additional Federal assistance to States and localities that face the highest threat and have the greatest vulnerability.

Accordingly, S. 1245 would direct DHS to administer a risk-based formula program. The Committee believes it is necessary to give DHS flexibility in designing the distribution formula within certain guidelines. The bill would provide DHS Secretary with guidance on factors to consider, but it would give the Secretary discretion in determining the relative weights of the factors. This approach would allow the Department to interpret legislative guidelines to fit changing risk conditions, reflect the latest intelligence information, and adapt to changing risk assessments.

Allocations of first responder funding provided by the Secretary of Homeland Security should fully address all military and tourist populations residing in a State. DHS should work with the states and other organizations to accurately measure tourist populations. Currently, first responder grant funding is based on a State's population as defined by the U.S. Census Bureau, which does not include military and tourist populations. As a result, States with military and tourist populations are shortchanged because they receive federal funding to protect fewer people than those who are present at a given time in the State. In States with large military and tourist populations, the current system results in significant funding shortfalls for first responders. The bill corrects this inconsistency by ensuring that first responder funding addresses the entire State population, including military and tourist populations.

Flexibility of Homeland Security grant funds

At present, terrorism preparedness programs generally fund four broad categories of assistance: planning, training, equipment, and exercises. In some instances, funding may also be used for personnel compensation, overtime, and construction. Prior to the Emergency Wartime Supplemental Appropriations Act of 2003, ODP's formula program, which is the largest grant for terrorism preparedness, gave recipients separate allocations for planning, training, equipment, and exercises, but did not give them discretion to transfer funds among these activities.

Many State and local officials have told the Committee that the range of eligible activities should be expanded to give State and local recipients broad discretion in the use of funds. Specifically, they have asked for the flexibility to transfer past funds among different activities (i.e., planning, training, equipment, and exercises) and for overtime expenses incurred during times of heightened alert.

During the May 1st Committee hearing, Secretary Ridge addressed the issues of funding for hiring and overtime costs, and the transfer of funds within the four categories of the ODP's State Homeland Security Grant Program. The Secretary said that Federal, State, and local governments should share responsibility for increasing preparedness levels, and that Federal funding for hiring and salaries would not be an appropriate activity. However, the Secretary stated that overtime costs, especially during times of heightened alerts, are a legitimate expense that merits Federal assistance. He also testified that allowing States, with DHS approval, to transfer funds from one grant program category to another to meet State homeland security needs is consistent with how he feels the country should address homeland security issues.

The Committee agrees with this opinion. S. 1245 would give State and local governments greater discretion over the use of terrorism preparedness grant funds. Section 4 would allow grants to be used to fund overtime expenses relating to training activities and increased security during times of heightened alert status, as determined by the Secretary. Unless waived by the Secretary, recipients would not be permitted to use more than 5 percent of funds for overtime for training purposes. Section 5 would allow States, with DHS approval, to transfer funds from one State Homeland Security Grant Program category to another. The ability to

use funds for different activities better ensures that grant funding will match the States' homeland security needs. This transfer authority does not supersede the requirement that states pass through 80% of the funds under this section to local jurisdictions.

The Committee also recognizes that certain areas or geographic regions often face higher overtime costs associated with a specific threat or vulnerability. As the Secretary considers requests to waive the limitation on overtime expense, the Secretary should link waivers to specific threats as well as to national alerts. Where there has been a specific threat in a geographic area or where the threat level under the nationwide threat warning system currently being reviewed by the Secretary has been raised, the Secretary should give serious consideration to granting requests to waive the limitation on overtime expenses in selected areas.

The Committee is concerned by testimony that local jurisdictions have been unable to take advantage of WMD training for first responders due to the cost of "backfilling" positions of employees assigned to training. The Committee directs ODP to allow the use of formula grant funds for overtime costs that are directly attributable to participation in ODP-funded first responder training.

Timely distribution of funds

State and local officials have emphasized that a timely distribution of funds must be a priority in all preparedness assistance programs. The House and Senate Appropriations Committees addressed this issue in their reports accompanying the Fiscal Year 2003 Emergency Wartime Supplemental Appropriations Act (P.L. 108–11). The Appropriations Committees recommended deadlines both for ODP to distribute funds to States, and for States to distribute funds to localities. The 2003 Supplemental Appropriations Act required ODP to open the grant application process to States within 15 days of enactment. States were required to complete and submit their applications 30 days following enactment, and ODP was instructed to act on each application 15 days following the receipt of the State's application. Following a grant award, each State was required to provide the funds to local entities within 45 days of receipt.

Section 4 of S. 1245 addresses the issue by requiring States to distribute funds or resources purchased with grant funds to local governments within 45 days of receipt of DHS grant funds. The bill also gives the Secretary authority to enforce these deadlines, to ensure that local governments receive homeland security grants as expeditiously as possible, by terminating, reducing or limiting the use of grant funds to the State and by permitting local governments to petition to receive such grant funds directly where a State has failed to provide the funds in a timely fashion.

The Committee has listened to some concerns that new regional homeland security entities have caused certain law enforcement agencies to receive little homeland security funding. In many cases, these agencies are charged with protecting high risk areas. Because of these concerns, the Committee directs the Secretary to ensure that the creation of new regional homeland security entities does not cause inequitable distribution of homeland security dollars by utilizing allocation methods that do not take into account the relative responsibilities of local first responders and core jurisdictions

within regions. To make sure those at the local level are able to express any concerns, S.1245 requires the Secretary to consider dissenting views of the homeland security advisory committee, and also requires both urban and rural representation on the homeland security advisory committee.

Soft match requirement

The Committee believes that State and local governments should partner with the federal government by contributing non-Federal resources to emergency preparedness efforts. This belief is shared by the Administration, which, in its fiscal year 2004 budget request, proposed that ODP formula grants be accompanied by a 25 percent matching requirement.

The former U.S. Advisory Commission on Intergovernmental Relations (ACIR) published a number of reports on Federal grants-in-aid, many of which included observations on the potential benefits of matching requirements.

The Committee recognizes these potential benefits, but does not believe states or localities should be required to commit a hard match, or cash spent for project-related costs. Accordingly, S. 1245 requires all recipients of grant funds under the Act to match 25 percent of the grant amount with non-Federal in kind contributions. While S. 1245 presents a new financial requirement for States and localities, the match does not need to be a cash match, and may include, but is not limited to, the valuation of in-kind services. The Committee also recognizes that some recipients may have difficulty satisfying the match obligation. Hence, the bill gives DHS Secretary flexibility to waive the requirement for recipients experiencing economic distress. The requirement for matching funds would not take effect until two years after enactment of the Act.

III. Legislative History

S. 1245, the Homeland Security Grant Enhancement Act, was introduced on June 12, 2003 by Senator Susan M. Collins of Maine, Senator Thomas R. Carper of Delaware, Senator John D. Rockefeller IV of West Virginia, Senator George Voinovich of Ohio, Senator Russell D. Feingold of Wisconsin, Senator Mark Pryor of Arkansas, Senator Norm Coleman of Minnesota, Senator John Sununu of New Hampshire, Senator Daniel K. Akaka of Hawaii, and Senator Wayne Allard of Colorado.

Prior to the consideration of S. 1245, the Committee held a series of three hearings to examine how the federal government can more efficiently and effectively provide first responders with the federal assistance they need. The Committee's April 9, 2003 hearing focused on the challenges of those on the front lines, our first responders. Secretary of Homeland Security Tom Ridge testified on the Department's efforts to better secure our communities at the second hearing, held on May 1, 2003. At the May 15, 2003 hearing, State and local elected officials discussed the challenges to developing effective homeland security strategies.

The Senate Governmental Affairs Committee met on June 17, 2003, to consider S. 1245. A manager's amendment was adopted by voice vote. The manager's amendment, offered by Chairman Collins and cosponsored by Ranking Member Joseph Lieberman of Con-

necticut, Senator Akaka, Senator Richard Shelby of Alabama, and Senator Carl Levin of Michigan, allows grants to be used to fund overtime expenses relating to increased security during times of heightened alert status and to training; provides the Secretary with the authority to waive the limitation on eligible overtime expenses; increases local participation in the homeland security planning process; requires the Secretary to consider dissenting views of the homeland security advisory committee; allows the Secretary to waive the State and local match for economically distressed communities; allows communities to apply directly to the Secretary if a State fails to comply with this legislation; clarifies the allocation of 10% of all DHS state grant funds for grants to high threat areas; clarifies the definition of high threat areas; and creates an office to coordinate training activities within ODP.

The Committee also adopted by voice vote an amendment offered by Senator Levin to increase border protections against the smuggling of weapons of mass destruction into the United States on vehicles carrying municipal solid waste. The amendment would bar entry of these vehicles into the United States unless and until the Secretary certifies to Congress that the methods and technologies being used to screen these vehicles for such weapons are as effective as the methods and technologies being used to screen for such weapons in other items of commerce entering the United States via other commercial vehicle transport.

The Committee opposed, in a 9–8 rollcall [Vote 1], an amendment sponsored by Senator Lieberman to set a specific $10 billion authorizing level for the first year of the grant program created by Section 4 of the legislation and for such sums as are necessary for each fiscal year thereafter. The Committee then ordered the bill reported on a 9–0 rollcall [Vote 2] and sent it to the Senate.

IV. SECTION-BY-SECTION

SECTION 1. SHORT TITLE

Section 1 sets the short title of S. 1245 as the "Homeland Security Grant Enhancement Act of 2003."

SECTION 2. INTERAGENCY COMMITTEE TO COORDINATE AND STREAMLINE HOMELAND SECURITY GRANT PROGRAMS

At present, there are several grant programs in DHS and other departments including DOJ, HHS, DOT, and EPA. While all these programs are meant to enhance homeland security, they are not sufficiently coordinated among the different executive departments. According to congressional witnesses this proliferation of programs has led to duplication of administrative requirements and development of multiple State and local plans. These administrative difficulties cause confusion among State and local officials attempting to adapt Federal grant programs to State and local homeland security needs.

The Interagency Committee to Coordinate and Streamline Homeland Security Grant Programs would ensure coordination of separate Federal department or agency grant programs. The Interagency Committee would also ensure coordination among all DHS grant programs for State and local preparedness.

Subsection (a) would amend the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) by inserting a new section 802 following section 801.

Interagency Committee

Subsection (a) of the new Section 802 would establish an Interagency Committee to Coordinate and Streamline Homeland Security Grant Programs. This Interagency Committee would report all findings to the information clearinghouse established under section 801 (c), and consult with State and local governments and emergency response providers regarding their homeland security needs and capabilities. This Interagency Committee would also advise DHS Secretary on the development of performance measures for homeland security grant programs, and the national strategy for homeland security. These performance measures would be the basis for measuring State accountability, which are based on the goals and objectives addressed in the State Homeland Security Plans (as established in Section 4).

Paragraph (4) would, in subparagraph (A), require the interagency committee to, not later than 60 days after the enactment of this Act, compile a list of homeland security assistance programs and their reporting requirements. This list would include programs administered by such DHS entities as ODP, FEMA, and TSA, as well as other Federal departments, including DOJ, HHS, DOT, EPA, and any other related Federal assistance programs.

Subparagraph (B) would require the Interagency Committee to identify all homeland security planning requirements of emergency preparedness, and public safety programs administered by Federal agencies to streamline and standardize planning requirements to eliminate duplication and promote coordination. Congressional witnesses testified before the Senate Governmental Affairs Committee that the multiple planning requirements in homeland security grants duplicate one another, draining State and local resources, personnel, and time. These witnesses also testified that these planning requirements were not coordinated and often duplicated requests for information. The plans the Interagency Committee would study include, but are not limited to, terrorism preparedness, all-hazard emergency preparedness, and any other plans required by homeland security grant programs.

Paragraph (5) would require the Interagency Committee to report to Congress on the studies carried out under paragraph (4). The report would be due not later than 120 days after enactment of the Act.

Paragraph (6) would instruct the Interagency Committee to provide, not later than 150 days after enactment of the Act, recommendations to the agencies identified in paragraphs (4)(A) and (4)(B). With regard to homeland security grants with planning, reporting, and application components, the Interagency Committee would make recommendations on streamlining, standardizing, reducing duplicative administrative requirements, and promoting coordination.

Paragraph (7) would instruct the Interagency Committee, not later than 250 days after the enactment of this Act, to report to Congress on all actions taken under this subsection.

Subsection (b) would establish the membership of the Interagency Committee. The Interagency Committee would be composed of representatives of departments and agencies with homeland security assistance programs. Specifically identified departments and agencies are DHS, HHS, DOT, DOJ, EPA, and any other department or agency determined necessary by the President.

Subsections (c), (d) and (e) would require DHS to provide administrative support to the Interagency Committee, designate a chairperson, and establish the frequency of meetings.

Interagency Committee reports

Subsection (b) of Section 2 amends the table of contents of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) to reflect the inclusion of section 802. It also requires the Interagency Committee, not later than 120 days after the effective date of this Act, to review all applications, reporting and other administrative requirements contained in grant programs in ODP, FEMA, TSA, DOJ, HHS, and EPA and report all redundant and duplicative requirements to the appropriate committees of Congress and the agencies represented in the committee. The Interagency Committee would be required to review all homeland security planning and other administrative requirements required by such DHS entities as ODP, FEMA, and TSA, and other Federal departments, including DOJ, HHS, and EPA. The Interagency Committee would report all redundant and duplicate requirements to the appropriate committees of Congress and the agencies represented in the committee.

Not later than 150 days after the effective date of this Act, the Interagency Committee would provide recommendations to the relevant Federal departments to streamline and standardize application, reporting, and administrative requirements. These recommendations would seek to eliminate duplication and promote coordination of homeland security planning grants.

SECTION 3. STREAMLINING FEDERAL HOMELAND SECURITY GRANTS

Section 3 amends section 801 of the Homeland Security Act of 2002 (6 U.S.C. 361 et seq.) by enhancing the role of DHS' Office of State and Local Government Coordination (OSLGC). This section would incorporate into the OSLGC the Assistance to Firefighters Program, but maintain it as a distinct grant program. The need to keep this program distinct was reinforced when congressional witnesses testified to the effective way the Assistance to Firefighters Program is administered. Section 3 would also transfer ODP, in its entirety, out of the Directorate of Border and Transportation Security and into OSLGC. These two transfers would assist in making the OSLGC a one-stop shop for State and local officials seeking Federal assistance for first responders. This one-stop shop would reduce the cumbersome need for State and local governments to contact numerous agencies and departments, thus reducing the time, effort, and resources that State and local governments expend in coordinating their homeland security needs.

Section 3 would also establish a Homeland Security Information Clearinghouse that would provide information on homeland security grants, technical assistance, best practices, and use of Federal funds to State and local governments. This clearinghouse would build on existing capacities such as ODP's existing resource center.

This clearinghouse would further increase the coordination of Federal assistance for homeland security within DHS and establish a one-stop shop for information on homeland security and emergency preparedness grants and best practices.

Office for State and Local Government Coordination

Subsection (a) of Section 3 would amend section 801 of the Homeland Security Act, to provide that the Office for State and Local Government Coordination (OSLGC) will be headed by a Director who is to be appointed by the President with the advice and consent of the Senate.

Assistance to Firefighters Program

Paragraph (5) (also within Section 3(a)) would amend section 801 to place administering authority of the Assistance to Firefighters Program in OSLGC. Subparagraph (A) instructs OSLGC to coordinate the Firefighters program with emergency preparedness grants made under section 4 of this Act, and grants made under other Federal programs to enhance emergency preparedness. This transfer of administering authority is intended to not affect the process by which the program is administered and to ensure it is retained as a distinct program. This transfer would also further establish OSLGC as a "one-stop shop" for State and local governments, ensuring that a single office within DHS coordinates all homeland security assistance programs.

Subparagraph (B) would instruct OSLGC to award grants on a competitive basis directly to fire departments of a State, in consultation with the chief executive of the State (governor), to protect the health and safety of the public and firefighting personnel against fire and fire related hazards. This consultation would ensure that grants are coordinated with State level homeland security and emergency preparedness plans.

Subparagraph (C) would instruct OSLGC to retain the current administrative requirements for the Firefighters program set forth in the United States Code (15 U.S.C. 2229) and Code of Federal Regulations (44 CFR 152).

Subparagraph (D) instructs OSLGC to ensure that all equipment purchased with grant funds meet existing voluntary consensus standards.

Paragraph (3) would amend section 801 of the Homeland Security Act by having all references to "Director" in section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) refer to the Director of the OSLGC.

Office for Domestic Preparedness

Subsection (b) of section 3 of this Act amends the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) by placing the Office for Domestic Preparedness (ODP) in OSLGC and having the ODP Director report directly to the OSLGC Director. ODP would manage the Homeland Security Information Clearinghouse established under section 801(c).

Subsection (b) would also create within ODP an internal office to support all national domestic preparedness, training, education, and exercises within the OSLGC. The ODP Director would be in-

structed to appoint an office head with recognized expertise in first responder training and exercises.

Subsection (c) of section 3 amends the table of contents of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) by striking the reference of ODP in section 430 and inserting section 803, ODP, following the new section 802 of this Act.

Homeland Security Information Clearinghouse

Subsection (d) of section 3 would amend section 801 of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) by establishing a Homeland Security Information Clearinghouse. Paragraph (2) would have the clearinghouse assist State and local governments, and first responders by creating and maintaining a web site, a toll-free number, and a single publication containing information on homeland security grant programs.

Paragraph (3) would have the clearinghouse, consulting with the interagency committee, coordinate any Federal agency's technical assistance to State and local governments to conduct threat and vulnerability assessments. It would also have the clearinghouse establish templates for conducting threat analyses and vulnerability assessments.

Paragraph (4) would instruct the clearinghouse to work with State and local governments, first responders, the National Domestic Preparedness Consortium, and private organizations to gather and validate best practices in State and local homeland security. Under paragraph (5), information on equipment, training, and other services acquired with Federal funds under the homeland security grant programs would be gathered by the clearinghouse and made available to State and local governments, and first responders. Information regarding voluntary standards of training, equipment, and exercises would also be provided to State and local governments and first responders.

Paragraph (6) instructs the clearinghouse to provide States, localities, and first responders with any other information the Secretary determines necessary.

SECTION 4. HOMELAND SECURITY GRANT PROGRAM

Section 4 would authorize a Homeland Security Grant Program. This section provides precise statutory authority for DHS to make grants to States and localities for emergency preparedness activities in general, and, specifically, for terrorism preparedness activities. This section would also provide legislative guidance for DHS to follow in designing the structure of emergency preparedness assistance programs.

Definition

Subsection (a) would give the term "State" the same meaning given in section 2 of the Homeland Security Act of 2002. That Homeland Security Act (P.L. 107–296) defines State as "any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States." The Committee intends that the term "local government" also be construed to have the same meaning as that given it in the Homeland Security Act.

General authority to award grants

Subsection (b) would provide general authority to the Secretary to award grants to States for homeland security. The remaining subsections in section 4 provide guidance to the Secretary on the structure of homeland security grant programs authorized under this Act.

General guidance

Subsection (c) would provide the Department of Homeland Security with basic guidance in how recipients should use grant funds. In general, State and local governments may use the funds to address emergency preparedness needs, including building response capacity, related to acts of terrorism. Recipients may not use funds to supplant ongoing first responder expenses or general protective measures. With some exceptions, Federal funds under this program are not intended to cover operating expenses.

Use of funds

Paragraph 2 of Subsection (c) lists the allowable uses of State Homeland Security Grant Program funds.

Subparagraph (A) permits funds to be used for the development of State plans or risk assessments, including State Homeland Security Plans that are required as part of the assistance program. The approach taken in developing plans funded through this program should be coordinated with the planning guidance set forth in section 201 of the Robert T. Stafford Disaster Relief Act (42 U.S.C. 5131). Planning and risk assessment activities should address all hazards emergency planning, including response to terrorist attacks, and should ensure that State plans are adequately coordinated with Federal, State, and local governments, first responders, and State and local health agencies. The Committee intends that these funds may be used to develop plans for the recovery from terrorist attacks or other emergencies, such as the restoration of essential services. The development of a State plan is intentionally listed first, since all preparedness activities should flow from well-formulated plans.

Subparagraph (B) would allow funds to be used to develop State, regional, or local mutual aid agreements. Mutual aid agreements have been identified by many observers as an important aspect of emergency preparedness. Such agreements facilitate the sharing of resources and improved coordination of response.

Subparagraph (C) would permit the purchase or upgrading of equipment. State and local acquisition of equipment should be based on the needs identified in the State Homeland Security Plan.

Subparagraph (D) would allow recipients to use funds for exercises. Such exercises would include the emergency responders identified in the State Homeland Security Plan, including law enforcement, firefighters, and emergency medical service personnel. Exercises are critically important to emergency preparedness as they allow State and local governments to test and evaluate their response plans, training, incident command systems, and other elements of preparedness.

Subparagraph (E) would allow funds to be used for overtime expenses under two conditions: (i) training activities consistent with the goals outlined in the State Homeland Security Plan, or (ii) as

determined by the Secretary, activities relating to increased threat levels under the Homeland Security Advisory System. This paragraph is consistent with the current application of grant monies for overtime expenses related to training. At present, States and localities may use funds from ODP's State Homeland Security Grant Program for overtime during training activities. In FY2003, Congress also made funds available for overtime expenses through the High Threat Urban Area program and for critical infrastructure security grants (P.L. 108–7, P.L. 108–11). Through its administrative discretion, ODP is allowing recipients to use funds from these two programs for overtime expenses incurred during times of heightened alert.

Subparagraph (F) allows funds to be used for homeland security training. Such training includes the use of equipment (including detection, monitoring, decontamination, and personal protective equipment) and for emergency response to a threatened use of a weapon of mass destruction. At present, grant recipients under the ODP State Homeland Security Grant Program may use funding for training.

Prohibited use of funds

Paragraph (3) of Subsection (c) places some prohibitions on the use of funds. Subparagraph (A) prohibits the use of grants under subsection (b) to construct buildings or other physical facilities, except for those described in section 611 of the Disaster Relief Act of 1974 (42 U.S.C. 5196), or to acquire land. The Committee understands that section 611 would cover construction to alter or remodel existing buildings for the purpose of making them secure against terrorist attack or able to withstand or protect against chemical, radiological or biological attack, such as by altering HVAC systems or providing secure testing and treatment facilities in public health laboratories or in hospitals; and grants under subsection (b) of this bill could therefore be used for such construction. Of course, when grants under this bill are used to construct buildings or facilities as described in section 611, all of the terms of section 611 will be applicable and the Committee expects them to be fully complied with.

Subparagraph (B) would limit to 5 percent the amount of funds that can be used for overtime expenses for training. The Secretary would have discretion, however, to waive this limitation if the Secretary determines that such funds are necessary to provide effective training or adequate protection in the event of an increase in the threat level under the Homeland Security Advisory System.

The Committee recognizes that States and localities face a significant financial burden when they increase the level of security during times of heightened alert. The Committee also recognizes that the traditional purpose of Federal grants-in-aid is to assist States and localities with long-term (or capital) improvements, not with operational expenses. During FY2003, selected amounts of ODP grants could be used for overtime expenses relating to an increase in the threat level under the Homeland Security Advisory System. This subparagraph seeks a compromise on this issue by allowing recipients to use a portion of grant funds for overtime expenses, while focusing funds on preparedness enhancements.

Subparagraph (C) would not allow recipients to use grant funds to satisfy the Federal cost-share (or matching requirement) in another Federal grant program.

Application

Subsection (d) would establish legislative guidance for grant applications. Paragraph (1) would require States to apply for grants by submitting an application to the DHS Secretary. The Secretary would have discretion to establish the application timeframe and required information. Paragraph (2) would allow States to revise their homeland security plans, authorized in subsection (e), at the time applications are submitted. Paragraph (3) would instruct the DHS Secretary not to award a grant unless the State application includes a homeland security plan meeting the requirements of subsection (e). Paragraph (4) instructs the DHS Secretary to release grant funds to States with approved plans and approved applications.

Homeland Security Plan

Subsection (e) would establish guidance for the State-level Homeland Security Plans required under the grant program. Such guidance addresses plan contents, development process, intergovernmental coordination, scope, approval, and other attributes. State and local officials have observed that there are too many application steps and much duplication in the planning requirements of various Federal assistance programs. This subsection of the bill would address this problem by establishing legislative guidelines for DHS' programs for State and local preparedness.

Paragraph (1) of Subsection (e) generally requires State applications to include a certification that the State has prepared a three-year State Homeland Security Plan that has been approved by the Secretary.

Paragraph (2) establishes the contents of the State Homeland Security Plans. The plans would contain measurable goals and objectives that:

Establish a three-year strategy for allocating funding to political subdivisions based on risk, capabilities, and needs (specific guidance on these attributes is addressed in paragraph (3)(C));

Provide for interoperable communications;

Provide for local coordination of response and recovery efforts, including effective incident command procedures that conform with the National Incident Management System mandated in the Homeland Security Act (P.L. 107–296, sec. 502);

Ensure that first responders and other emergency personnel have adequate training and equipment for the threats that may occur;

Provide for improved coordination and collaboration among first responder disciplines, including police, fire, and public health authorities at the State and local levels;

Coordinate emergency response and public health plans;

Mitigate risks to critical infrastructure that may be vulnerable to terrorist attacks;

Promote regional coordination among contiguous local governments;

Identify necessary protective measures by private owners of critical infrastructure;

Promote orderly evacuation procedures when necessary;

Ensure support from the public health community for measures needed to prevent, detect, and treat biological, radiological, and chemical incidents;

Increase the number of local jurisdictions participating in local and statewide exercises;

Meet preparedness goals as determined by the DHS Secretary (preparedness goals are further addressed in subsection (h)); and

Include a report from the advisory committee (established in paragraph (3)(D) of this subsection) that documents the areas of support, disagreement, or recommended changes to the plan before its submission to the DHS Secretary.

Paragraph (3) establishes guidance and criteria for the process States would use in developing State Homeland Security Plans.

Subparagraph (A) would provide broad guidance, requiring each State to: (i) provide for the consideration of all homeland security needs; (ii) follow a process that is continuing, inclusive, cooperative, and comprehensive; and (iii) coordinate the development of the plan with the homeland security planning activities of local governments.

Subparagraph (B) would require States to allow input from local stakeholders, including local officials, State legislators, first responders and emergency response providers, and private sector companies. Local government representation would include officials from rural, high-population, and high-threat jurisdictions. This better ensures that States will accept ideas and suggestions from local government officials and first responders who will be the recipients of 80 percent of the State formula grants.

Subparagraph (C) would establish guidance and criteria for the scope of State Homeland Security Plans. Each State would be required to complete a comprehensive risk assessment that will include a vulnerability assessment, threat assessment, and public health assessment (in coordination with the State bioterrorism plan). Risk analysis, which is advocated in the Administration's National Strategy for Homeland Security, assists decision makers by providing quantitative and qualitative estimates of the chance, and possible consequences of, an adverse event. This paragraph seeks to integrate risk analysis procedures that are currently required in grant programs administered by DHS and the Department of Health and Human Services.

Subparagraph (C) also provides for an assessment of capabilities and needs, including the following three components:

An evaluation of current preparedness, mitigation, and response capabilities (using an assessment mechanism determined by the DHS Secretary);

An evaluation of the capabilities needed to address the State's risks; and

An assessment of the shortfall between the State's current capabilities and capability needs.

Subparagraph (D) would require each State preparing a plan to establish an advisory committee to receive comments from the public and local stakeholders. The advisory committee would include

State legislators, local officials, local first responders, and emergency response providers that are representative of the counties and municipalities of all sizes within the State. Local government representation would include officials from rural, high-population, and high-threat jurisdictions. This paragraph further emphasizes the role of local input in developing the State Homeland Security Plans, and builds on the input requirements established in subparagraph (B).

Paragraph (4) of Subsection (e) would provide the DHS Secretary with basic guidance in approving State plans. The Secretary shall approve a plan upon finding that the plan meets the requirements set forth in paragraphs (2) and (3) of subsection (e). Approved plans must also meet the accountability requirements established in subsection (h), as well as any other criteria determined necessary by the Secretary.

Paragraph (5) would require the Secretary to review the recommendations made by the advisory committee report incorporated into a plan, including any dissenting views of advisory commission members, to ensure cooperation and coordination between local and State jurisdictions in planning the use of grant funds under this section. This paragraph strengthens the role of the advisory committee in developing the State Homeland Security Plans.

Discretionary grant program

Subsection (f) would create a discretionary grant program to provide funding directly to local governments in high threat areas. The bill requires the Secretary to set aside ten percent of all appropriated funds for homeland security state grants for these discretionary grants. The Secretary is directed to identify eligible high threat areas based upon specified criteria, consisting of an area's population, population density, the presence of significant threats, risks and vulnerabilities involving critical infrastructure or key national assets, the need to guard international borders or coastlines, and other threat factors to be specified in writing by the Secretary.

The Secretary would also be required to ensure that the grants encourage neighboring local governments and mutual aid partners to coordinate their homeland security efforts, and should take into consideration core cities, contiguous jurisdictions, and development of a regional metropolitan approach to address threats. The bill language and the Committee favor grants with a regional metropolitan approach to address the unique equipment, training, planning, exercise, and operational needs of large urban areas, and assist them in building an enhanced and sustainable capacity to prevent, respond to, and recover from threats or acts of terrorism. Providing funding directly to local governments in the high-threat area is a shift in policy from the current Urban Area Security Initiative (UASI), under which the Secretary requires States to pass through 80 percent of the funding to the local level. The Committee believes that states need not serve as intermediaries for high-threat funding, provided that local governments commit to spending the funds in accordance and consistent with state plans.

States, therefore, will continue to play a vital role in this program. The Committee directs the Secretary to ensure that the funding provided for high threat areas is coordinated with the State homeland security plan. The Committee also expects that the

Department of Homeland Security will not provide funds under the high threat program without input from first responders in the high threat region.

Paragraph (1) instructs the DHS Secretary to use 10 percent of the funds appropriated under this section for grants to local governments for use in high threat areas.

Paragraph (2) establishes the criteria to be used in awarding discretionary grants. Discretionary grants awarded under subsection (f) shall go to localities that:

Have a large population and high population density;

Have a high degree of threat, risk, and vulnerability related to critical infrastructure or key national assets, as identified in the State Homeland Security Plan;

Have an international border with Canada or Mexico, or coastline bordering international waters of Canada, Mexico, the Atlantic Ocean, or the Pacific Ocean; and

Are subject to other threat factors specified in writing by the DHS Secretary.

Paragraph (2) gives the Secretary basic criteria to use in awarding grants, but would give the Secretary discretion in how the listed factors are applied, and flexibility to use other criteria if necessary. Secretary Ridge testified before the committee on May 1, 2003 that DHS used the factors of population density, location of critical infrastructure, and threat and vulnerability assessments to determine FY2003 grants under the High Threat Urban Area program. This approach allows Congress to rely upon the expertise of DHS in designing specific aspects of the formula, without giving up oversight over how funds are distributed. It also gives DHS a degree of discretion to change formula factors depending on risk conditions and threat assessments.

Paragraph (3) would require grant funds awarded under subsection (f) to supplement and support, in a consistent and coordinated manner, those activities and objectives described in State Homeland Security Plans.

Paragraph (4) requires the DHS Secretary to ensure that all discretionary grant awards made under subsection (f) encourage multiple contiguous units of local government and mutual aid partners to coordinate any homeland security activities.

Formula grants

Subsection (g) lays out the method for distributing the 90 percent of funds remaining after 10 percent is set aside for discretionary grants under subsection (f). This section is intended to provide superceding statutory authority for the formula grant program now administered by ODP under section 1014 of the USA Patriot Act. The formula grant laid out in subsection (g) is similar to the existing ODP formula program, but with a revision to specify more risk factors than population in awarding some of the funds. Subsection (g) would distribute funds to states under two formulas, one providing a per-state minimum and the other using a formula that specifies various risk factors rather than the population-based formula currently used by ODP.

Paragraph (2) would provide a base amount of funding for all the States and territories. Each State with an approved application, including the District of Columbia and Puerto Rico, would receive a

base amount of 0.75 percent of the appropriated funds in any fiscal year. The United States territories of American Samoa, Commonwealth of Northern Mariana Islands, Guam, and the U.S. Virgin Islands would receive a base amount of 0.25 percent of appropriated funds. This approach to providing States with a base amount is the one currently taken in ODP's State Homeland Security Grant Program. The primary purpose of the base amount is to allow each State to maintain a baseline level of capability. Approximately, forty percent of formula funds under subsection (g) would be distributed through the base amounts.

Paragraph (3) would direct the Secretary to distribute all remaining funds on the basis of specified risk factors, including a state's population, population density, the presence of significant threats, risks or vulnerabilities involving critical infrastructure or key national assets, the need to guard international borders or coastlines, and other factors designated by the Secretary. The specified criteria that the Secretary should use to distribute formula funds to States are as follows:

Population, including tourist and military populations, and population density;

Threat, risk, and vulnerability related to critical infrastructure or key national assets, as identified in the State Homeland Security Plan;

International borders with Canada or Mexico, or coastline bordering international waters of Canada, Mexico, the Atlantic Ocean, or the Pacific Ocean; and

Other factors specified in writing by the DHS Secretary.

This approach to the formula establishes basic criteria, but would give the Secretary discretion to determine the weighting of the factors or to add other factors.

Paragraph (4) would require State recipients to distribute not less than 80 percent of formula funds (or resources purchased with such grant funds) to local governments, first responders, and other local groups, consistent with the State Homeland Security Plan. States would be required to distribute funds to the local level within 45 days after receiving formula grant funds.

Paragraph (5) would require all recipients of grant funds under Section 4 to match 25 percent of the grant amount with non-Federal contributions. State and local governments may count in-kind contributions as part of their cost share. The match, however, would not take effect until two years after enactment of the act. In addition, the matching requirement would not apply to any grant recipient deemed economically distressed.

With this language, the committee requires States and localities to contribute non-Federal resources, including in kind contributions, to preparedness efforts. This would be a departure from current practice, as the ODP State Homeland Security Grant Program, the largest grant program for first responder preparedness, does not have a matching requirement. While this provision represents a new requirement for States and localities, the committee agrees that grant recipients would be obligated to commit non-Federal resources to homeland security activities.

The committee also recognizes that some recipients may have difficulty meeting this requirement, thus, the bill's language gives DHS flexibility in applying the matching requirement—the Sec-

retary would have discretion in determining the criteria for economic distress.

Paragraph (6) would require all grant recipients to report annually on the distribution and use of funds. Specifically, States and localities would report: the amount of State and local funds spent on homeland security activities under the applicable State Homeland Security Plan; and, information regarding the use of grant funds by units of local government as required by the Secretary. DHS, as well as Congress, would find such information useful in assessing both State and local contributions to homeland security and their use of Federal grant funds.

Paragraph (7) would prohibit recipients from using grants under this section to supplant other State and local public funds dedicated to homeland security purposes. This provision, typically called a maintenance-of-effort provision, ensures that Federal funds would be used to supplement State and local funds and lead to preparedness enhancements, rather than just maintenance of the status quo.

It is the intent of the Committee that grant funds shall not be used to replace previously obligated State or local funds. It is not the intent of the Committee to require that State or local government maintain the same overall level of expenditure from year to year, which they may not be able to do because of fiscal constraints. Many State and local governments have increased expenditures in anticipation of promised Federal assistance and the Committee does not want to penalize them. In addition, the Committee intends that the funds under the bill would be available to assist in announced plans, such as for training, as long as the funds for those plans have not been obligated.

Accountability

Subsection (h) would create mechanisms for achieving accountability in the grants awarded under this section.

Paragraph (1) would instruct the Secretary to assist States in establishing Interim Performance Measures based on the goals and objectives set in State Homeland Security Plans and any other factors determined by the Secretary. These interim measures are intended to serve as temporary indicators of State and local performance until the Secretary establishes the National Performance Standards under paragraph (2) in this subsection. Each State with an approved plan shall submit to the Secretary a report detailing the State's progress meeting the interim performance measures.

Paragraph (2) would require the Secretary to establish National Performance Standards based in part on the goals and objectives in State Homeland Security Plans and any other factors the secretary determines relevant. Once established, the Secretary shall also ensure that State plans are in conformance with these standards. States with approved plans shall annually report to the Secretary on their progress in meeting such standards.

Several observers, including Administration officials, State and local emergency managers, and scholars, have noted the importance of establishing standards for emergency preparedness. Among other potential benefits, such standards would provide a gauge for measuring the level of preparedness of particular localities, States, and the nation as a whole.

Paragraph (3) would require all grant recipients, as well as DHS, to make available to the U.S. General Accounting Office (GAO) all information regarding the activities carried out under this section. This strengthens the ability of GAO to evaluate the grant program's effectiveness and efficiency.

Paragraph (4) would require all grant recipients that expend $300,000 or more in Federal funds during any fiscal year to submit to the Secretary an organization wide financial and compliance audit report. This provision meets the financial reporting requirements established in chapter 75 of title 31 of the United States Code and OMB circular A–133.

Remedies for non-compliance

Subsection (i) would provide the DHS Secretary with authority to enforce the various requirements established in this grant program. Paragraph (1) gives the Secretary options for remedies if, after reasonable notice and an opportunity for a hearing, the Secretary finds that a recipient has failed to substantially comply with any provision in this section. Remedies may include the following: termination of payment of grant funds; reduction in the amount of grant funds by an amount equal to the amount of grant funds not expended by the recipient in accordance with this section; or, limitation of the use of grant funds to programs, projects, or activities not affected by the failure to comply. Paragraph (2) would instruct the Secretary to apply an appropriate penalty under paragraph (1) until such time as the Secretary determines that the grant recipient is in full compliance with this section.

Paragraph (3) would permit local governments to petition the Secretary for funds or resources to be provided directly to the local government. This could be done if a State fails to substantially comply with any provision of this section, including failing to distribute grant funds in a timely fashion.

Reports to Congress

Subsection (j) would direct the Secretary to report annually to Congress on the grant program established in this Act. Specifically the report would include:

Findings related to the performance standards established under subsection (h);

The status of preparedness goals and objectives;

An evaluation of how States and local governments are meeting preparedness goals and objectives;

The total amount of resources provided to the States;

The total amount of resources provided to units of local government; and,

A list of how these resources were expended.

Congress needs this information to accurately evaluate the effectiveness of the grant program authorized under this Act, as well as national homeland security efforts in general.

Authorization of appropriations

Subsection (k) would authorize to be appropriated such sums as are necessary to carry out this section.

SECTION 5. FLEXIBILITY IN UNSPENT HOMELAND SECURITY FUNDS

Guidelines for ODP's formula grant in past appropriations did not allow internal transfer of funds from its funding tracks (equipment acquisition, exercise planning, planning support, and training assistance). This inability to move appropriations within the ODP forced States to fund activities and programs that may not necessarily match their homeland security needs or plans.

Subsection (a) would allow States to request reallocation of State Homeland Security Grant Program to meet their homeland security needs. This reallocation would be among the four categories of equipment, training, exercises, and planning.

Subsection (b) would allow the Director ODP to approve this request by States for reallocation of State Homeland Security Grant Program funds. This approval would be in accordance to State plans and any other relevant factors that the DHS Secretary deems necessary.

Subsection (c) would ensure the requirement of 80 percent of funds for homeland security needs pass through to localities.

SECTION 6. CERTIFICATION RELATIVE TO THE SCREENING OF MUNICIPAL SOLID WASTE TRANSPORTED INTO THE UNITED STATES

This section is intended to strengthen border protections against the smuggling of weapons of mass destruction into the United States on vehicles carrying municipal solid waste. This section would require the Secretary to deny entry into the United States any commercial motor vehicle (as defined in 49 U.S.C. 31101(1)) carrying municipal solid waste unless and until the Secretary certifies to Congress that the methods and technology being used to inspect such vehicles for the presence of chemical, nuclear, biological, and radiological weapons are as effective as the methods and technology being used to inspect for such weapons in other items of commerce entering the United States by commercial vehicle transport. In this section, the term "municipal solid waste" includes sludge (as defined at 42 U.S.C. 6903). This provision is intended to prompt a thorough evaluation of the screening procedures now being used for these vehicles and to strengthen U.S. border security against efforts to smuggle chemical, nuclear, biological or radiological materials into the country.

V. Evaluation of Regulatory Impact

Paragraph 11(b)(1) of rule XXVI 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." Carrying out S. 1245 would have no regulatory impact.

VI. CBO COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 16, 2003.

Hon. SUSAN M. COLLINS,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1245, the Homeland Security Grant Enhancement Act of 2003.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1245—Homeland Security Grant Enhancement Act of 2003

Summary: S. 1245 would authorize the Department of Homeland Security (DHS) to make administrative changes in order to improve the coordination of homeland security grants across the federal government and would establish an interagency committee to coordinate and streamline homeland security grants and an information clearinghouse for homeland security assistance. In addition, this bill would establish a homeland security grant program within DHS and would authorize the appropriation of such sums as are necessary for that program.

Assuming appropriation of the necessary sums, CBO estimates that implementing the bill would cost about $1.5 billion over the 2004–2008 period. Enacting S. 1245 would not affect direct spending or revenues.

S. 1245 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would provide several benefits to state, local, and tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1245 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law:						
Estimated Authorization Level [1]	3,230	3,287	3,310	3,405	3,506	0
Estimated Outlays	1,357	2,253	2,859	3,206	3,413	1,989
Proposed changes:						
Estimated Authorization Level	0	*	*	*	*	3,600
Estimated Outlays	0	*	*	*	*	1,512
Spending under S. 1245:						
Estimated Authorization Level [1]	3,230	3,287	3,310	3,405	3,506	3,600
Estimated Outlays	1,357	2,253	2,859	3,206	3,413	3,501

[1] The 2003 level is the amount appropriated for that year; the 2004–2007 levels assume the grants program continues at the 2003 level, adjusted for anticipated inflation.

Notes.—* = Costs of less than $500,000 for administrative changes that would be made by the bill.

Basis of estimate: For this estimate, CBO assumes that S. 1245 will be enacted near the start of fiscal year 2004 and that the necessary funds will be appropriated for each year. CBO estimates that implementing S. 1245 would cost about $1.5 billion over the 2004–2008 period.

S. 1245 would authorize a homeland security grant program that is almost identical to the grant program that the Office of Domestic Preparedness (ODP) within the Department of Homeland Security is implementing under current law. The ODP derives its primary authority to distribute grants to states and localities to prepare and respond to terrorism from the USA Patriot Act (P.L. 107–56). The agency also cites the Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104–132) and the Defense Authorization Act of 1997 (P.L. 104–201) as additional sources of its authority to distribute such grants. The grant programs authorized by the USA Patriot Act will expire in 2007. Therefore, CBO assumes that the authority to provide homeland security grants that would be provided by this bill would not affect spending until 2008. The estimated 2008 authorization level—$3.6 billion—is the amount provided in 2003 for grants, adjusted for anticipated inflation.

CBO estimates that implementing the administrative provisions in this bill, including establishing a committee to coordinate and streamline homeland security grants and an information clearinghouse for homeland security assistance, would cost less than $500,000 in each year.

Intergovernmental and private-sector impact: S. 1245 contains no intergovernmental or private-sector mandates as defined in UMRA. Section 6 of the bill would deny entry of commercial motor vehicles carrying municipal solid waste into the United States unless the methodologies and technologies to screen for weapons are certified to the Congress to be as effective as the screening of other commerce materials entering the United States by commercial motor vehicle transport. Based on information from the Bureau of Customs and Border Protection of the Department of Homeland Security indicating that such certification would likely be forthcoming, CBO has determined that this requirement would not be a mandate.

Several provisions in the bill would benefit state and local governments by reorganizing offices within the Department of Homeland Security to coordinate and simplify security grant programs. For example, the bill would create an information clearinghouse for grant assistance and planning requirements. It also would create an interagency committee to recommend ways to streamline grant processes and make resources more readily available to state and local governments. Further, the bill would create the Homeland Security Grant Program. These grants would provide funding for states to strengthen their capacity to respond to homeland security threats. States would have to meet several requirements in order to be eligible for these grants, and they would have to provide a 25 percent state or local match of federal funds. Any costs would result from complying with conditions of aid.

Estimate prepared by: Federal Costs: Julie Middleton. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Paige Piper/Bach.

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

VII. ADDITIONAL VIEWS

ADDITIONAL VIEWS OF SENATOR LIEBERMAN

S. 1245 includes many constructive provisions to improve the homeland security grant process, which I support. I commend Chairman Collins for her hard work on this legislation, which will provide states and local governments more flexibility in the use of homeland security grants, better coordination of homeland security plans, and a one-stop shopping process for information about grants. S. 1245 also will embed into law the principle that more funds should be distributed based on real threats and actual vulnerabilities faced by states and localities. I am pleased that Chairman Collins joined me in a series of amendments, accepted by the Committee,which will significantly strengthen the role of local governments in many aspects of the grant process and expand the categories of eligible funding. These changes, which were achieved with the invaluable assistance of the conference of Mayors and the National League of Cities, will help local governments across the country better prepare to protect their citizens.

Unfortunately, despite these important improvements, S. 1245 still misses the mark in some critical areas. First, it does not authorize a specific amount of funding to meet the dire needs of our states, localities, and first responders and preventers for sufficient resources, which the Bush Administration has failed to provide. I offered an amendment to authorize $10 billion in the first year to fund the initiatives of the bill—a relatively modest amount still well below what experts believe is needed—but it was rejected along party lines. Second, only 10 percent of the funding provided for in the bill goes directly to where the most need exists: the local governments in high threat areas that train, employ, and recruit our nation's first responders. The Committee did not have an opportunity to consider may amendment to resolve this deficiency. Accordingly, I hope that this bill will be appropriately amended on the floor.

During the markup, Senator Levin indicated that he had concerns that the bill's funding formula, whereby each state receives a base amount of .75% of funding, results in less homeland security funding going to those areas facing the gravest threats, either because of their populations and population density or other vulnerabilities. Senator Levin said he would be offering floor amendments on this issue, and I would expect this topic will be the subject of a thorough debate. There are legitimate issues raised on all sides that must be reviewed. Unfortunately, as I have noted, the Committee rejected my amendment to approve funding levels well above the President's budget proposals—which would result in

more appropriate levels of funding for all states and thus mitigate some of the concerns about the effect of the bill's formula.

Adequate funding

One of the federal government's primary responsibilities under the Constitution is to provide for a common defense. Today, in the face of the terrorist threat, that means more than building a mighty, well-equipped, and well-trained Army, Navy, Air Force, Marines, and Coast Guard. It means strengthening the shared of our fifty states and their cities and towns, as well as our territories. Today, the readiness of our firefighters and police officers and public health professionals is every bit as important to our national security as the readiness of our soldiers, sailors, and airmen.

Homeland security is expensive. Because the war against terrorism is a national fight and a substantial portion of the responsibility falls to the federal government, we must invest in the people and technologies that can prevent or help respond to terrorism. We must employ, train, and equip top-flight first responders just as robustly as we have our soldiers, sailors and airmen for combat overseas. We must hire more border personnel, install information sharing networks, and develop biological and chemical testing and treatment capabilities. Securing the nation's ports as well as our chemical and nuclear plants must become a top priority. In transportation, we must improve aviation security and also secure mass transit, highways, rails, air cargo, pipelines, tunnels, and bridges. These tough jobs and countless others cannot be accomplished by placing an unfair share of the burden on state and local governments who are already facing the worst fiscal crises in decades. Even before we established the Department of Homeland Security ("DHS"), many of us were asking this Administration to provide adequate resources, to provide them quickly, and to target them ore effectively. But unfortunately, that hasn't happened.

Across the country, states and localities are being spread thinner than ever at the moment they can least afford it. Only our firefighters can respond to attacks with chemical weapons or rescue families trapped in buildings. But in some cities and states around the country today, our first preventers and responders are actually being laid off because of budget cutbacks. That's like reducing your troop force in a time of warfare. It doesn't make sense and it must stop, and money from Washington is needed to make it stop. Yet, this Administration has failed to provide sufficient money to support the men and women who are our first line of defense in the war against terrorism.

In February 2003, I proposed spending an additional $16 billion on homeland security above the President's Fiscal Year 2004 budget—$7.5 billion of which was for first responders. I argued that we must approach homeland security with the same urgency, and resources, that we would deploy against terrorists overseas.

A recent report by an Independent Task Force sponsored by the Council on Foreign Relations—composed of distinguished former government officials, including a director of the CIA and the FBI, our former colleague Senator Warren Rudman, a White House terrorism adviser, and a former chairman of the Joint Chiefs of Staff—corroborates the conclusions I and others reached months

ago. The report, entitled "Drastically Underfunded, Dangerously Unprepared," (the "Task Force report") determined that "the United States has not reached a sufficient national level of emergency preparedness and remains dangerously unprepared to handle a catastrophic attack on American soil," [1] and warned "If the nation does not take immediate steps to better identify and address the urgent needs of emergency responders, the next terrorist incident could have an even more devastating impact than the September 11th attacks." [2] Indeed, the Task Force report found that the U.S. is on track to fall nearly $100 billion short of meeting critical emergency responder needs over the next five years.[3] In order to meet this need, which was echoed by a number of state and local government witnesses in hearings before our Committee,[4] the federal government would have to quintuple its expenditures for emergency responders from the current level of $5.4 billion per year to an annual expenditure of $25 billion.[5] This estimate does not even include some known needs—such as detection or protection gear for police—because the Independent Task Force could not obtain reliable estimates for those areas.

S. 1245 does not authorize any specific amount of funding, only "such sums as are necessary." Given this Administration's inadequate commitment to providing enough resources to meet the homeland security needs of this nation, I believe the Committee should have approved the funding amount in my amendment.

The Task Force report listed a number of urgent needs left unmet due to lack of funding. Among them: to obtain interoperable communications for all emergency responder groups across the country so that those on the front lines can communicate with one another while on the scene of an attack; to enhance urban search and rescue capabilities of major cities; to extend the emergency 911 system nationally; to provide protective gear and weapons of mass destruction remediation equipment to first responders; and to increase public health preparedness and develop surge capacity on the nation's hospitals.[6] The report's findings are sobering. For example, the report noted, "On average, fire departments across the country have only enough radios to equip half the firefighters on a shift, and breathing apparatus for only one third. Only 10 per-

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[1] Warren Rudman, Richard Clark, Jaime Metzl, et al., "Drastically Underfunded, Dangerously Unprepared: Report of an Independent Task Force Sponsored by the Council on Foreign Relations," Council on Foreign Relations (2003), available at *http://www.cfr.org/pdf/Responders__TF.pdf*, at 7.

[2] Id. at 2.

[3] Id. at 13.

[4] For example, at the Committee hearing on April 9, 2003, Captain Chauncey Bowers of the Prince George's County, Maryland, Fire Department testified on behalf of the International Association of Fire Fighters that, "in the current environment, fire departments are facing the dual pressures of homeland security and reduced resources caused by local budget deficits. This is a receipe for disaster. We need a national commitment to homeland security preparedness. We must work to ensure that every fire department in America has the resources to protect our citizens." Investing in Homeland Security, Challenges on the Front Line, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–82 (April 9, 2003), at 15.

[5] This assumes that the Federal government would provide all of the additional funding identified by the Task Force, which includes funds to improve public health preparedness, support first responders, and meet other needs.

[6] Warren Rudman, Richard Clarke, Jaime Metzl, et al., "Drastically Underfunded, Dangerously Unprepared: Report of an Independent Task Force Sponsored by the Council on Foreign Relations," Council on Foreign Relations (2003), available at *http://www.cfr.org/pdf/Responders__TF.pdf*, at 14.

cent of fire departments in the United States have the personnel and equipment to respond to a building collapse." [7]

The Task Force report found cities without the means to determine whether terrorists had struck with dangerous chemicals or pathogens, and public health labs incapable of responding to a chemical or biological attack. For example, the report notes that even though cyanide is found both naturally and commercially in 41 states, only two states have the technology to test for the deadly compound. In fact, 75 percent of state laboratories reported being overwhelmed by too many testing requests.[8]

Local fire and police officials at our hearings also told us that they do not have the resources to pay for training or equipment that they need to prepare for a possible attack.[9] First responders need equipment such as personal protective clothing, respirators, and devices for detection of chemical, biological, and radiological hazards, and they need training in using such equipment, and training in how in general to respond to an attack. Most emergency workers, however, still do not have the training or the equipment they require. The December 2002 needs assessment of the U.S. Fire Service, conducted by the Federal Emergency Management Agency (FEMA) in conjunction with the National Fire Protection Association, found that about one-third of firefighters per shift are not equipped with self-contained breathing apparatus, and nearly half of all fire departments have no map coordiante system.[10] And with respect to training, the assessment found that 27 percent of fire department personnel involved in providing emergency medical services lacked any formal training even in those duties, and 73 percent of fire departments failed to meet regulations for hazardous materials response training.[11]

The Administration's own budget documents estimate that only about 80,000 first responders were trained and equipped in 2002 with funding at the federal level of $750 million.[12] Unless this Administration provides significantly more funding, it will take us decades to train our first responders to cope with weapons of mass destruction.

Even if we could supply training and equipment to all of our first responders, there are simply not enough of them. A survey by the Democratic Leadership Council of 44 of the largest police departments found that 27 of them—nearly two-thirds—are experiencing personnel shortfalls as a result of inadequate budgets and problems

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[7] Id. at 8.

[8] Id.

[9] Captain Bowers told the Committee that approximately 57,000 firefighters lack personal protective clothing and many fire departments do not have enough portable radios to equip more than half of the firefighters on shift. He recommended full funding for the Fire Act, which provides funds directly to local fire departments for basic needs, and first responder programs. Investing in Homeland Security, Challenges on the Front Line, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–82 (April 9, 2003), at 16.

[10] "A Needs Assessment of the U.S. Fire Service: A Cooperative Study Authorized by U.S. Public Law 106–398," Federal Emergency Management Agency and National Fire Protection Association, December 2002, available at http://www.usfa.fema.gov/downloads/pdf/publications/fa-240.pdf, at vii.

[11] Id. at v, 24; see also Investing in Homeland Security, Challenges on the Front Line, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–82 (April 9, 2003), at 16 (Testimony of Chauncey Bowers, Captain, Prince George's County, Maryland Fire Department).

[12] Department of Homeland Security, Budget of the United States for Fiscal Year 2004, Office of Management and Budget, GPO, Washington, D.C. 2003, at 150.

attracting new recruits.[13] A report on the survey results concludes that, with the nation under unprecedented threat of attack and our police increasingly engaged in a two-front war on terrorism and crime, "many big city departments are actually losing officers faster than they can replace them."[14] For example, the report notes that Los Angeles, with its police department more than 1,000 police officers short of its authorized strength, suffers from one of the worst cop crunches in the country. According to the report, "After growing more than 12 percent during the 1990s, the LAPD shrank 6 percent between 2000 and 2002, and the number of officers leaving the department outpaced new recruits by an average of 189 each year.[15] Other cities are facing similar crunches: the survey found that St. Louis had reduced its force by over 10% from 2000–2002 and that the size of New Orleans' police force had declined by almost 5% during the same period.[16] This report is deeply disturbing at a time when we should be enhancing our first line of defense. It highlights the need to provide adequate funding to hire additional police officers and firefighters and makes clear the need for adequate funding for overtime related to training and elevated threat levels.

Indeed, according to the Conference of Mayors, cities across America spent $70 million per week when the homeland security alert was raised to orange—much of it for overtime expenses.[17] Most recently, when the terror alert level was raised to orange between December 21, 2003 and January 9, 2004, the city of Los Angeles reported spending some $2 million per week during the alerts, at a time when the city already faces a multimillion-dollar budget deficit. Since September 11, 2001, the city has spent between $15 million and $20 million in costs directly related to alert level increases, but has only received promises of $4.5 million from the federal government.[18]

Finally, even if local police and fire departments had sufficient personnel, they lack the ability to communicate effectively in a time of emergency. In most areas of the U.S., police, firefighters, and emergency technicians in the same jurisdiction have no way to communicate in the field because their equipment is not compatible. Lack of interoperability in communications systems has been cited as contributing to the deaths of 343 firefighters in New York City on September 11, 2001, because police could not reach them prior to the collapse of the World Trade Center towers.[19] A number of local officials told the Committee that solving this problem should be a priority.[20]

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[13] See José Cerda III. "Special Report: Cop Crunch," Blueprint: Ideas for a New Century, March/April 2003 at 8.

[14] Id. at 7.

[15] Id. at 8.

[16] Id.

[17] U.S. Conference of Mayors, "Survey on Cities' Direct Homeland Security Cost Increases Related to War/High Threat Alert," March 27, 2003, at 1.

[18] Jack Weiss, Op-Ed, "Orange Crunch," New York Times, January 14, 2004, at A19.

[19] National Task Force on Interoperability, "Why Can't We Talk? Working Together to Bridge the Communications Gap to Save Lives: A Guide for Public Officials," February 2003, available at http://www.agileprogram.org/ntfi/ntfiguide_pdf, at 4.

[20] Captain Bowers of the Prince George's County, Maryland Fire Department testified that even though he was sitting next to Chief Plaugher from nearby Arlington County, Virginia, "if we had to go to the Pentagon today, we do not necessarily have a reliable way of communicating with his agency. We have to institute patchwork measures to try to get that to occur, so that

Continued

Achieving this goal, however, will be expensive, and the Administration's funding commitment is simply insufficient. The Public Safety Wireless Network, a joint Treasury and Justice Department policy group, has estimated it could cost up to $18 billion.[21] According to the National Task Force on Interoperability, at the state level, replacing basic radio systems for a single public safety agency can cost between $100 million and $300 million.[22] Meanwhile, Secretary Ridge testified before the Committee on May 1, 2003, that $40 million had been appropriated to run "some demonstration projects with regard to interoperability of communications."[23]

In December 2003, Project SAFECOM, (Wireless Public SAFEty Interoperable COMmunications), the umbrella initiative now run out of DHS to coordinate all federal, state, local, and tribal users to achieve national wireless communications interoperability, issued a report on interoperability efforts. The report notes that due to budget constraints at all levels of government many agencies plan based on only their own needs with little concern for multi-jurisdictional or multi-disciplinary interoperability requirements.[24] The report also states that there are almost no "life-cycle funding strategies at any level of government" to solve the interoperability problem quickly.[25] This is an inadequate response to a long-standing and expensive problem, and will leave our first line of defense without the basic equipment they need for many years to come.

Because they lack sufficient funds, first responders find themselves both hampered in their homeland security work and struggling to keep up with the other day-to-day critical services they provide to their communities. One police chief told the Committee that he had to eliminate or cut back community police, drug enforcement, traffic enforcement, and programs in schools in order to station most of his force at the airport.[26] These concerns were echoed by other police chiefs in testimony before the Committee.[27]

[interoperability] is absolutely a key factor that needs to be addressed, not only in this area but across the country." Chief Horvath of Delaware testified that, because of the state's small size, they have installed an 800-megahertz system that would allow police and firefighters to communicate. However, he said the concern is that in the event of an attack with weapons of mass destruction, the system will likely be knocked out, and "there is no high-band backup to it any more."Investing in Homeland Security, Challenges on the Front Line, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–82 (April 9, 2003), at 30.

[21] Public Safety Wireless Network, "LMR Replacement Cost Study Report," June 1998, at 5.

[22] National Task Force on Interoperability, "Why can't We Talk? Working Together to Bridge the Communications Gap to Save Lives; A Guide for Public Officials," February 2003, available at http://www.agileprogram.org/ntfi/ntfiguide__ pdf., at 25.

[23] Investing in Homeland Security: Streamlining and Enhancing Homeland Security Grant Programs, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–84 (May 1, 2003), at 24–25.

[24] A Report Submitted to the U.S. House of Representatives Appropriations Committee for the Department of Homeland Security On the Current State of the Government's Response to Federal, State and Local Interoperable Efforts, Including the Current Total Estimated Cost, Scope and Schedule of the SAFECOM Program and to outline the Necessary Steps to Improve Response and Coordination. Department of Homeland Security, December 15, 2003, at 3.

[25] Id. at 4.

[26] Investing in Homeland Security, Challenges on the Front Line, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–82 (April 9, 2003), at 26 (Testimony of Michael J. Chitwood, Chief of Police, Portland, Maine, Police Department).

[27] Jeffrey Horvath, Dover, Delaware, Chief of Police told a similar story, saying his force is taking away from normal police duties to cover homeland security issues. Investing in Homeland Security, Challenges on the Front Line, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–82 (April 9, 2003), at 27. Edward P. Plaugher, Fire Chief, Arlington County, Virginia, Fire Department said that the stress of protecting the homeland without adequate resources is also affecting the morale of first responders. He said, "They see their chief out doing national efforts to make resources available, but they are seeing nothing coming

In light of the Administration's failure to provide for adequate resources to state and local governments, authorizing an initial $10 billion to meet the basic needs of our first preventers and responders is particularly important. As they labor under tight budgets due to the poor economy, states and localities desperately need financial help to support the critical missions of their first preventers and first responders and other homeland security needs.

Direct funding

Ensuring that the money goes where it is most needed is just as essential as ensuring there is enough of it. S. 1245 provides for 10 percent of the amounts allocated pursuant to the bill to go directly to local governments in high threat areas, and requires 80 percent of the remaining amount, which is set to go to the states, to be provided to localities within 45 days. I believe that is not enough. While the Committee adopted my amendment to speed up the pass-through process to get the money to local governments more quickly, the Committee did not have an opportunity to consider my other amendment, which would have increased the amount going directly to local governments in high threat areas.

The simple fact is that funds to protect the American people are not getting to the front lines with sufficient dispatch. This fact was underscored most recently in a January 2004 report by the U.S. Conference of Mayors which found that 76 percent of cities are still "left empty-handed and have not received any money from the largest homeland security program designed to assist first responders, such as police, fire, and other local officials."[28] The report was based on responses from 215 cities, representing all 50 states and Puerto Rico. Forty-five percent of cities had neither received funds nor been notified that they would. In addition, in 59 percent of the cities, officials said they had not been given an adequate opportunity to influence their states regarding how funds could be used in their cities. A prior survey, released in September, found that 90 percent of the 168 cities surveyed had not received any funding. The most recent survey found that five months after the release of the first one, some cities had received FY 2003 funding through some of the programs, but most had not.[29]

In releasing the report, Mayor Martin O'Malley of Baltimore, Maryland, pointed out that cities are on the frontline of homeland security, but "in the back of the line for funding." He added, "The Administration and Congress should act now to direct appropriate homeland security funds to cities and eliminate the bureaucracy of

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out the end of the stream, and so the frustrations just continue to mount, from their perspective, and again I am at the highest injury level ever in the history of my department, and that is an enormous cost to my community. So it is eroding other basic services." Investing in Homeland Security, Challenges on the Front Line, Hearing Before the Senate Governmental Affairs Committee, 108th Cong. S. Hrg. 108–82 (April 9, 2003), at 28.

[28] "Mayors Release New Homeland Security Survey at 72nd Winter Meeting of the U.S. Conference of Mayors," United States Conference of Mayors, Press Release, January 22, 2004; see also United States Conference of Mayors Homeland Security Monitoring Center, "Second Mayors' Report to the Nation: Tracking Federal Homeland Security Funds Sent to the 50 State Governments, A 215-city/50-state Survey," January 2004, at 2.

[29] "Mayors Release New Homeland Security Survey at 72nd Winter Meeting of the U.S. Conference of Mayors," United States Conference of Mayors, Press Release, January 22, 2004; see also United States Conference of Mayors Homeland Security Monitoring Center, "Second Mayors' Report to the Nation: Tracking Federal Homeland Security Funds Sent to the 50 State Governments, A 215-city/50-state Survey," January 2004, at Foreword and 1–2.

a middle man."[30] Sugar Land, Texas Mayor David Wallace said the analysis "clearly shows that cities of all sizes—small, medium, and large—are not getting the money they need to prepare their first responders and protect residents."[31] Gary, Indiana Mayor Scott King said, "Not only are we last in line for funding, we are last in line to be consulted about what it takes to protect our residents. More than half of the cities say they have not been at the table to influence decisions and coordinate response efforts. Cities know their needs best."[32] Hempstead, New York Mayor James A. Garner, President of the Conference of Mayors, said "Today's survey shows that there are still too many cities that have not received funds. As leaders of cities which must be prepared to move at any time to higher terrorism threat levels—just as we did one month ago—this is completely unacceptable."[33] We should listen to what the mayors, police chiefs, and fire chiefs of our major localities have been telling us for months.

The United States Conference of Mayors also registered its concern on this subject in a letter, dated June 13, 2003, to Chairman Collins regarding S. 1245, in which the mayors "strongly reaffirm" their call for direct funding to local governments and their first responder groups: "Simply stated, mayors are extremely concerned that simply sending funding to the states with no sub-allocation formula or guidance will result in major population centers, high-risk communities, and cities with critical infrastructure not receiving adequate or timely assistance."[34] Indeed, witnesses from local police and fire departments told the Committee that they were getting "very little, if any, monies" at the local level from federal homeland security funding, and that the amounts they were getting were substantially delayed due to bureaucratic hurdles.[35]

The way to deal with bureaucratic obstacles is to eliminate them where possible. We should take a page from the success story of the COPS program, which Portland, Maine Police Chief Michael Chitwood described in his testimony before the Committee as "one of the best things for law enforcement that I have ever seen in my 38 years" because it allowed "local police departments to articulate a particular need directly to the federal government."[36] We would give local governments the same opportunity to obtain assistance with their homeland security needs.

In many cases, direct funding is the most efficient method of distributing homeland security funds. Unless states distribute these

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[30] "Mayors Release New Homeland Security Survey at 72nd Winter Meeting of the U.S. Conference of Mayors," United States Conference of Mayors, Press Release, January 22, 2004.

[31] Id.

[32] Id.

[33] Id.

[34] Letter dated June 13, 2003 to the Honorable Susan Collins from the United States Conference of Mayors, signed by the Honorable James Garner (Mayor of Hempstead, New York, President of U.S. Conference of Mayors), the Honorable Martin O'Malley (Mayor of Baltimore, Maryland, Chair, Homeland Security Task Force), the Honorable J. Christian Bollwage (Mayor of Elizabeth, New Jersey, Chair, Criminal and Social Justice Committee), and J. Thomas Cochran (Executive Director, U.S. Conference of Mayors).

[35] Investing in Homeland Security, Challenges on the Front Line, Hearing before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–82 (April 9, 2003), at 18 (Testimony of Edward P. Plaugher, Fire Chief, Arlington County, Virginia, Fire Department). See also id. at 19 (Testimony of Chauncey Bowers, Captain, Prince George's County, Maryland, Fire Department and Testimony of Jeffrey Horvath, Chief of Police, Dover, Delaware).

[36] Id. at 20 (Testimony of Michael J. Chitwood, Chief of Police, Portland, Maine, Police Department).

funds based on the level of threats communities face, some particularly vulnerable areas may be left without sufficient financial help. In fact, the nation's mayors have expressed concern that factors other than threats and vulnerabilities can guide decisions by states on how homeland security funds are distributed. For example, Mayor Kwame Kilpatrick of Detroit, testifying on behalf of the Conference of Mayors, told the Committee that homeland security funding often becomes "political and partisan" in state capitals around the country and urged the Congress to provide funding in a manner which allows for consideration of unique issues in localities around the country.[37]

According to Mayor Dick Murphy of San Diego, California, large cities, in particular, may receive much less from the state than they would if permitted to apply directly to the federal government.[38] A large city—despite its comprising a good chunk of the region's population—is but one of many jurisdictions within a county or a state, all of which will have some claim on the state's homeland security funding. Mayor Murphy told the Committee in written testimony that the city of San Diego received only 24 percent of the region's share of funding, despite the fact that it represents 43 percent of the population and has unique responsibilities for the entire region, such as providing hazardous material response actions.[39] Mayor Murphy noted that with respect to a city as large as San Diego—which has a population larger than Rhode Island or New Hampshire and has a large city government—the extra layer of bureaucracy involved in going through the state can mean significant delays.[40]

These concerns have been echoed by mayors across the country and reflect the political reality that governors as well as mayors face. We should listen to these concerns. Congress must acknowledge that, just like Members of Congress, governors also face competing pressures when distributing federal homeland security dollars to multiple jurisdictions. Providing adequate funding directly to local governments in high threat areas will alleviate the mayors' legitimate concerns and make sure that funding flows faster to where it is needed most.

Nor is this to say that the states do not have an important role in the funding process and that some funding should not be distributed through the states. States clearly have a key role in the planning, coordination, and cooperation that we all want to promote. For this reason, I am pleased that the legislation includes adequate incentives for local governments to coordinate and work cooperatively with surrounding jurisdictions and state governments. The bill makes clear that local governments that receive direct funding will still be a critical part of the state's overall homeland security plan. Localities must use their direct funding under the bill only to "supplement and support, in a consistent and coordinated manner with, those activities and objectives" of their states' homeland security plans (Section (4)(f)(3)).

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[37] Investing in Homeland Security: Challenges Facing State and Local Governments, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–83 (May 15, 2003), at 15.

[38] Id. at 104 (Written Testimony of the Honorable Dick Murphy, Mayor, Dan Diego, California.

[39] Id.

[40] Id.

For their part, the nation's mayors are also keenly aware of the benefits of coordinating with surrounding jurisdictions and state governments. For example, at the Committee hearing on May 15, 2003, Mayor Kilpatrick testified that he wholeheartedly agrees that cities need to sit at the table with their state governments to figure out how to best coordinate homeland security funding. He pointed out that Detroit has already begun to work on interoperable communications systems, and told the Committee that "we do not believe that should be done in a vacuum * * *. We believe now more than ever that efforts need to be coordinated so all of us are able to talk to one another in the event of an emergency."[41] Mayor Kilpatrick testified that the city of Detroit is working cooperatively with surrounding jurisdictions and, for example, as "brought all of [the] hospital systems in the entire southeastern Michigan region together."[42] But mayors also know that when an emergency happens, the local police officers and local firefighters will be the first in and the last to leave.

We must offer faster and fuller funding to the front lines of our domestic war on terror so that our nation's first responders will be prepared in the face of another major attack. The American people expect and believe that we are doing our utmost to ensure that sufficient funds are provided, but in too many communities the reality is unlikely to meet the expectations. The Administration simply has not provided sufficient homeland security funds to those who need it most: the local firefighters, police officers, emergency technicians, and public health workers who protect and serve us every day.

Despite the lack of authorized funding and the failure to provide sufficient direct grants to high threat localities, S. 1245 represents steps forward for the nation's security in a number of ways that I mentioned earlier. The six amendments I advocated, which were accepted by the Committee as part of a package of amendments introduced with the Chairman, further strengthened the bill by expanding the uses for federal homeland security funding, enhancing the role of local officials in the state planning process, and protecting and expediting the funds for local governments and first responders.

The first amendment addressed the critical need for funding to help pay overtime expenses for first responders. In hearings before the Committee last year, state and local leaders expressed their concern about the costs of overtime for firefighters and police due to the additional vigilance required for homeland security.[43] Sec-

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[41] Investing in Homeland Security: Challenges Facing State and Local Governments, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–83 (May 15, 2003), at 14.

[42] Id. at 29.

[43] Jeffrey Horvath, Chief of Police of Dover, Delaware, emphasized to the Committee in a hearing on April 9, 2003, that federal resources "cannot be used to hire new police, they cannot be used to pay overtime expenses that we incur each and every time Secretary Ridge changes the threat level." Investing in Homeland Security, Challenges on the Front Line, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–82 (April 9, 2003), at 12. Moreover, according to Massachusetts Governor Mitt Romney, the federal government provided funding to support the Salt Lake City Olympics not only for officers who were directly involved in the effort, but also for those who had to work overtime to cover local needs because so many local officers were diverted to secure the games. He noted, "[I]n this circumstance, I think, we have an unusual setting, and that is that the homeland security challenge has been unanticipated and unplanned. And cities and towns and the states have not put in place a structure for being able to deal financially with this sudden post-9/11 financial crisis. And therefore,

retary Ridge testified before the Committee on May 1, 2003, that the overtime expense incurred by state and local governments during heightened threat levels "is a legitimate cost that we should help them absorb."[44] Thus I proposed an amendment, which is now part of the bill, to ensure that funding will be available to states and local governments for overtime expenses related to an increase in the threat level under the Homeland Security Advisory System.

Similarly, Prince George's County, Maryland Fire Department Captain Chauncey Bowers, on behalf of the International Association of Fire Fighters, testified before the Committee on April 9, 2003, that overtime costs related to training, one of the most significant training expenses for local governments and first responders, can be prohibitive for many fire departments.[45] Thus I proposed an amendment, also now part of S. 1245, that would allow the Secretary of DHS to waive the five percent cap on the amount of funds that can be used for overtime related to training. Although it is my belief that the cap is unwise and should be eliminated entirely, this is a step in the right direction.

Due to another amendment I proposed, the bill now takes the important step of strengthening the role of local officials in the planning process. The legislation originally provided that the states would "allow" input from local stakeholders in developing state homeland security plans. The amendment I proposed requires states to seek and include this input and expands the definition of local stakeholders to include rural as well as high-population and high-threat jurisdictions, areas whose residents are most likely to be at risk. It also gives local officials the opportunity to be heard about their state's homeland security plans by allowing them to provide dissenting views directly to the Secretary of DHS, who will be required to review their concerns.[46]

At the April 9, 2003 Committee hearing, Dover, Delaware Police Chief Jeffrey Horvath said that one of his top concerns is that "we are not receiving funds in a timely fashion," despite being expected to do so much more since September 11, 2001.[47] To address this fundamental problem, I proposed an amendment, accepted by the Committee, to require states to pass through funds to local communities within 45 days, which is the time frame adopted by current regulations promulgated by the Office of Domestic Preparedness ("ODP") and required by the FY 2003 Supplemental Appropriations

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the prospect of receiving support or reimbursement for not only equipment but also personnel I think is appropriate in these kinds of unplanned, unanticipated emergencies." Investing in Homeland Security: Challenges Facing State and Local Governments, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–83 (May 15, 2003), at 28–29.

[44] Investing in Homeland Security: Streamlining and Enhancing Homeland Security Grant Programs, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–84 (May 1, 2003), at 23.

[45] Investing in Homeland Security, Challenges on the Front Line, Hearing Before the State Governmental Affairs Committee, 108th Cong., S. Hrg. 108–82 (April 9, 2003), at 16.

[46] The importance of this was made clear by Chief Edward Plaugher of the Arlington County, Virginia Fire Department, who testified before the Committee on April 9, 2003 that Virginia, in a pre-9/11 assessment program at the Justice Department, gave the Pentagon an inappropriately low rating on the list of target hazards in the state. Officials in Arlington County, where the Pentagon is located, did not agree, but were given no opportunity to influence funding decisions at the federal level. Investing in Homeland Security, Challenges on the Front Line, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–82 (April 9, 2003), at 19.

[47] Investing in Homeland Security, Challenges on the Front Line, Hearing Before the Senate Governmental Affairs Committee, 108th Cong., S. Hrg. 108–82 (April 9, 2003), at 12.

bill. The bill as drafted would have lengthened that time frame to 60 days.

Another amendment I proposed, which is also now part of S. 1245, ensures that if a state fails to comply with the requirements of the bill, local governments within that state may petition the federal government directly for homeland security funds. As initially drafted, the bill would have allowed the Secretary simply to reduce, restrict, or terminate the funding to a state that failed to comply; such penalties might unfairly diminish the amounts available to localities, which had no part in the non-compliance and employ the first responders on the front lines protecting the American people.

Another amendment I proposed that was accepted would allow the Secretary to waive the 25 percent matching requirement in the bill, which goes into effect two years following enactment, in order to protect funding for economically distressed local governments. Already, some local communities and first responder organizations do not even apply for homeland security funding because of burdensome matching requirements. The amendment ensures that those who cannot afford the match will not be left out in the cold.

Our police officers, firefighters, emergency management officials, and public health officals—those we call first responders and first preventers in the fight against terrorism—are struggling to protect us from unprecedented dangers. They need more information, better training, more personnel, better technology, and more guidance and leadership in providing effective security in these dangerous times. S. 1245 will make some much-needed improvements in the grants process. But administrative changes in the grants process will not have the necessary impact if the funds do not go where they are needed, or if there are not enough funds to meet critical needs. Those funds must come from Washington because this is a national fight, and budgets are tight and getting tighter in state and local governments across our nation. Unfortunately, most of my pleas and those of my colleagues—along with those of independent, bipartisan experts and state and local governments—have not succeeded in persuading this Administration.

Training

Finally, the report accompanying S. 1245 "directs" ODP to designate a lead federal level national domestic preparedness training center, and consider designating additional regional federal level national domestic preparedness training centers. According to the report, the lead center, along with the additionally designated regional federal level national domestic preparedness training centers designated by ODP, "shall assist in developing, maintaining, and adopting certifiable training standards to help first responders prepare for and respond to the consequences of terrorists' use of weapons of mass destruction."

Despite the language in the Committee report, I must note that S. 1245 does not include language "directing" ODP to establish a lead domestic preparedness training center, nor was this issue debated during the mark up of the legislation. I believe that the issue of training, and training centers, deserves the full attention of the Committee. I also believe that training and education for first re-

sponders must be made part of a broader framework developed by DHS to educate and train its personnel, its partners and counterparts in state and local government and the private sector, as well as first responders. Consequently, I do not think it wise to essentially legislate on this important issue through language in the Committee report before this issue has been adequately considered by the full Committee.

ADDITIONAL VIEWS OF SENATOR SPECTER

The Homeland Security Grant Enhancement Act, S. 1245, proposes many useful improvements to the Department of Homeland Security (DHS) grant process for states, localities and first responders/first preventers. For example, this legislation provides a mechanism for streamlining and providing flexibility to homeland security grant programs. It is vital in high threat states like Pennsylvania that first responder/first preventer funding gets to intended recipients as quickly and efficiently as possible. Therefore, I support your efforts to streamline the pass-through of funds by states to localities. This is especially important as we move toward a more dynamic, threat-based approach to funding.

However, as I stated prior to the Government Affairs Committee mark-up of this legislation, I believe that setting aside only 10 percent of total funds for a "high threat, high density" program would undermine needed efforts to increase funding for the Urban Area Security Initiative (UASI). I fear that S. 1245 will divert homeland security funding away from UASI, which deviates from my position and that of Secretary Ridge and the Administration.

Also, limitation of reimbursable overtime expenses related to training to not more than 5 percent of Homeland Security Grant Program funds would likely dramatically impact on Pennsylvania's ability to offset the overtime and backfill costs associated with training. It is my understanding that the DHS Office of Domestic Preparedness (ODP) does not cap overtime costs in this fashion.

Finally, Pennsylvania's Governor Edward Rendell has raised a continuing objection to the minimum state funding formula contained in S. 1245. The minimum state funding formula provides each state with a base amount of 0.75 percent of the appropriated state and local grant funds allocated through ODP each fiscal year. Approximately 40 percent of those funds are distributed pursuant to this formula under S. 1245. Because Governor Rendell informs me that this "inequitable" distribution of homeland security funds is "unfair" to Pennsylvania, and that this may in turn unduly impact upon funding to other high threat areas of Pennsylvania, I abide by his request for a modification reducing the state funding minimum levels contained in S. 1245. This position appears to find support in the Administration Budget for Fiscal Year 2005.

ADDITIONAL VIEWS OF SENATOR LEVIN AND SENATOR LAUTENBERG

Maintaining an adequate level of funding for first responders and streamlining the first responder grant process at the Department of Homeland Security (DHS) are critical to protecting our country from terrorist attack. The Homeland Security Grant Enhancement Act, S. 1245, proposes many useful improvements to the DHS grant process for states, localities and first responders. For example, this legislation begins the process of streamlining and providing flexibility to homeland security grant programs so that our first responders begin to get the funding they need. The legislation also directs the Secretary of the Department of Homeland Security to develop National Performance Standards. Further, this legislation directs the Office of Domestic Preparedness to consider designating additional regional federal level domestic preparedness centers, which will help coordinate state and local officials as they work to coordinate homeland security efforts with the DHS. It remains vitally important that DES proceed with its efforts to create a plan for the location of its regional centers.

However, S. 1245 is seriously flawed. It imposes a minimum state funding formula ("small state provision") which requires a disproportionately large portion of the grant funds to go to small states, regardless of need. The small state formula arbitrarily benefits approximately 30 so-called small population states and uses a state minimum that was nearly unprecedented when first established in the USA Patriot Act two years ago.

Other federal grant programs provide a minimum state funding level to ensure funds reach all areas of the country. These small state guarantees have in many instances resulted in some real distortion and unfairness. For instance, in the highway bill, for 50 years states with small populations and small size have benefited from a skewed formula. The remaining 20 states are known as donor states and have historically sent more money to the Highway Trust Fund than were returned in transportation infrastructure funding. It is one thing to say that all states should receive a minimum amount of funding to support their homeland security goals, but the issue is how to balance per state funding with grants that will protect all Americans by targeting funds to address the greatest terrorist threats. S. 1245 fails to strike the right balance.

S. 1245 establishes three types of homeland security grants for states and localities. First, it allocates 10 percent of all funding for direct grants to local governments in high threat urban areas. Second, it establishes a minimum state funding formula grant which provides each state with a base amount of 0.75 percent of the remaining appropriated funds each fiscal year. This formula uses up about 40 percent of those funds. Third, the bill distributes remaining funds to states using a risk-based formula to be developed by

DHS, using variables such as state population and population density, threats to critical infrastructure or key national assets, the need to guard international borders or coastlines, and other threat factors.

The 0.75 percent minimum state funding formula is taken from the USA Patriot Act of 2001. Because this statute was enacted quickly, in the aftermath of the 9–11 tragedy, Congress did not have adequate time to debate this unusually high minimum, which significantly exceeds the normal state minimum of 0.25 to 0.50 percent. A leading organization that analyzes federal grants, the Federal Funds for Information for States (FFIS) has stated: "The structure of the 0.75% minimum as a base represents a departure from traditional small state minimums, which are typically 0.50% or less." A search of other federal grant programs found that the 0.75 percent formula was nearly unprecedented for a state minimum when enacted in 2001. With the help of the Congressional Research Service, my staff identified only one other program with a minimum of 0.75 whereas all other federal grant programs (more than 50 in all) contain a state minimum funding level of 0.50 percent or less.

The consequence of the 0.75 percent formula is that states with smaller populations receive far more, per capita, than more populated states. For example, using the 0.75 percent base for Office of Domestic Preparedness grants in FY 2004, Texas will receive $4.04 per capita, whereas Wyoming will receive $28.72 per capita. The result is that while Texas has 42 times the population of Wyoming, it receives approximately one seventh of what Wyoming receives per capita. Allocating scarce federal dollars disproportionally to states with the fewest persons, and often less risk, is not an effective or fair use of federal homeland security grant programs.

In a 2003 report titled *Emergency Responders: Drastically Underfunded, Dangerously Unprepared,* the Council on Foreign Relations writes that "Congress should work to establish a system for distributing funds based less on politics and more on threat." Homeland Secretary Tom Ridge testified before the Senate Commerce Committee last year that "[T]he Office of Domestic Preparedness * * * had a formula that we don't believe * * * provides the appropriate distribution for counter terrorism, anti-terrorism, prevention dollars * * * [W]e hope to achieve some bipartisan support and get it done * * * so we make a permanent change so that distribution reflects the reality of the needs of communities to combat terrorism."

In addition to policy experts and the Administration, the Governors of some of our most populous states, with significant vulnerabilities, oppose the formula in S. 1245. Governor Jennifer Granholm of Michigan, Governor James E. McGreevey of New Jersey, Governor Rick Perry of Texas, Governor Edward Rendell of Pennsylvania, Governor Bob Taft of Ohio, and Governor Mark R. Warner of Virginia have written letters opposing the 0.75 percent formula in S. 1245. According to Texas Governor Perry, "Because basic formula grants awarded by the Office of Domestic Preparedness are currently distributed disproportionately to states with small populations, full consideration is not given to key risk factors within our state." According to Ohio's Governor Taft, "Reducing the

minimum funding percentage from 0.75% to a level more commonly used is appropriate. While all levels of government have major work to accomplish, assigning higher percentages of assistance to areas believed to have lower threat levels is not justified."

The basic problem is that by setting the per state minimum so high, S. 1245 makes less funds available for programs needed to counter the highest priority terrorist threats. The bill attempts to address this problem in two ways: by devoting 10 percent of all state, local and first responder funds to a discretionary grant program for high threat urban areas, and by distributing other funds according to a risk-based formula to be developed by DHS. While helpful, these risk-based grant programs do not make up for the fact that the S. 1245 seeks to set aside a disproportionately large percentage of all homeland securities funds for use by small population states, regardless of need.

While there is a disagreement over this unusual formula, we want to express our appreciation for the Committee's acceptance of several clarifying amendments to S. 1245, and an amendment Senator Levin offered during markup to strengthen U.S. border protections against attempts to smuggle weapons of mass destruction on vehicles carrying municipal solid waste into the United States.

This bill represents significant progress in many areas and hopefully there can be an equitable solution found to its arbitrary and excessive allocation of funds to small states.

VIII. CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws made by S. 1245 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, an existing law in which no changes is proposed is shown in roman):

UNITED STATES CODE

TITLE 6—DOMESTIC SECURITY

CHAPTER 1. HOMELAND SECURITY ORGANIZATION

Subchapter IV—Directorate of Border and Transportation Security

PART C—MISCELLANEOUS PROVISIONS

Sec.
[238. Office for Domestic Preparedness.]

* * * * * * *

Subchapter VIII—Coordination with Non-Federal Entities; Inspector General; United States Secret Service; Coast Guard; General Provisions

PART A—COORDINATION WITH NON-FEDERAL ENTITIES

SEC. 361. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(2) Director.—The Office established under paragraph (1) shall be headed by the Director of State and Local Government Coordination, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Office established under subsection (a) of this section shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; [and]

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities[.]; *and*

(5) administering the firefighter assistance grant program established under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) by—

(A) coordinating grant making activities with—

(i) emergency preparedness and response personnel;

(ii) grants made under section 4 of the Homeland Security Grant Enhancement Act of 2003; and

(iii) grants made under other Federal programs to enhance emergency preparedness.

(B) awarding grants on a competitive basis directly to fire departments of a State, in consultation with the chief executive of the State, for the purpose of protecting the health and safety of the public and firefighting personnel against fire and fire-related hazards: and

(C) complying with the administrative requirements set forth in section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) and retaining the administrative requirements set forth under part 152 of title 44, Code of Federal Regulations; and

(D) ensuring that all equipment purchased with grant funds for which there are voluntary consensus standards meet such standards; and

(c) REFERENCE.—All references to "Director" in section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) shall be deemed to refer to the Director for State and Local Government Coordination.

(d) HOMELAND SECURITY INFORMATION CLEARINGHOUSE.—

(1) ESTABLISHMENT.—There is established within the Office for State and Local Government Coordination a Homeland Security Information Clearinghouse (referred to in this section as the "Clearinghouse"), which shall assist States, local governments, and first responders in accordance with paragraphs (2) and (5).

(2) HOMELAND SECURITY GRANT INFORMATION.—The Clearinghouse shall create and maintain a web site, a toll-free number, and a single publication containing information regarding the homeland security grant programs identified under section 802(a)(4)(A).

(3) TECHNICAL ASSISTANCE.—The Clearinghouse, in consultation with the Interagency Committee established under section 802, shall—

(A) coordinate technical assistance provided by any Federal agency to States and local governments to conduct threat analyses and vulnerability assessments; and

(B) establish templates for conducting threat analyses and vulnerability assessments.

(4) BEST PRACTICES.—The Clearinghouse shall work with States, local governments, emergency response providers and the National Domestic Preparedness Consortium, and private organizations to gather, validate, and disseminate information regarding successful State and local homeland security programs and practices.

(5) USE OF FEDERAL FUNDS.—The Clearinghouse shall compile information regarding equipment, training, and other services purchased with Federal funds provided under the homeland security grant programs identified under section 802(a)(4)(A), and make such information, and information regarding voluntary standards of training, equipment, and exercises, available to States, local governments, and first responders.

(6) OTHER INFORMATION.—The Clearinghouse shall provide States, local governments, and first responders with any other information that the Secretary determines necessary.

HOMELAND SECURITY ACT OF 2002

Public Law 107–296

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

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Subtitle C—Miscellaneous Provisions

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[Sec. 430. Office for Domestic Preparedness.]

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TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination With Non-Federal Entities

Sec. 801. * * *

Sec. 802. Interagency Committee To Coordinate and Streamline Homeland Security Grant Programs.

Sec. 803. Office for Domestic Preparedness.

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SECTION 4. EFFECTIVE DATE. * * *

TITLE I—DEPARTMENT OF HOMELAND SECURITY

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TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

SEC. 801. * * *

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SEC. 802. INTERAGENCY COMMITTEE TO COORDINATE AND STREAMLINE HOMELAND SECURITY GRANT PROGRAMS.

(a) ESTABLISHMENT.—There is established an Interagency Committee to Coordinate and Streamline Homeland Security Grant Programs (in this subtitle referred to as the "Interagency Committee"), which shall—

(1) report all findings to the Information Clearinghouse established under section 801(c);

(2) consult with State and local governments and emergency response providers regarding their homeland security needs and capabilities;

(3) advise the Secretary on the development of performance measures for homeland security grant programs and the national strategy for homeland security;

(4) not later than 60 days after the effective date of the Homeland Security Grant Enhancement Act of 2003—

(A) compile a list of homeland security assistance programs and their reporting requirements, including—

(i) those administered by the Office for Domestic Preparedness, such as—

(I) the State Homeland Security Grant Program;
(II) high threat urban area grants;
(III) critical infrastructure security grants;
(IV) research and development grant programs;
(V) training and technical assistance grants; and
(VI) other discretionary or and assistance grant programs;

(ii) Federal Emergency Management Agency assistance programs, such as—

(I) the Assistance to Firefighters Grant Program;
(II) Citizen Corps;
(III) grants for emergency operations centers;
(IV) interoperable communications grants;
(V) Urban Search and Rescue task forces; and
(VI) other Federal Emergency Management Agency assistance programs, except those grants intended to reimburse States, localities, and other applicants for costs resulting from disasters or emergencies declared under to the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.);

(iii) Transportation Security Administration assistance programs, such as port security grants;

(iv) Department of Justice assistance programs, such as—

(I) the Local Law Enforcement Block Grant;

(II) the Byrne Memorial Formula Grant Program; and

(III) the Community Oriented Policing Services program;

(v) Department of Health and Human Services assistance programs, such as—

(I) the Public Health Bioterrorism Preparedness program, administered by the Centers for Disease Control and Prevention; and

(II) the Hospital Bioterrorism Program, administered by the Health Resources and Services Administration;

(vi) related Federal assistance programs, such as—

(I) the Hazardous Materials Emergency Preparedness Program of the Department of Transportation; and

(II) the water security assistance programs administered by the Environmental Protection Agency; and

(vii) any related grant or assistance program, as determined by the Interagency Committee; and

(B) identify all homeland security planning requirements contained in homeland security emergency preparedness, and public safety programs administered by Federal agencies, including—

(i) terrorism preparedness plans, such as those required by the Office for Domestic Preparedness and other entities within the Department;

(ii) all hazards emergency preparedness plans, such as those required in the Emergency Management Performance Grants administered by the Federal Emergency Management Agency;

(iii) bioterrorism response plans, such as those required in bioterrorism preparedness programs administered by the Department of Health and Human Services;

(iv) hazardous materials response plans, such as those required by the Environmental Protection Agency and the Department of Transportation;

(v) critical infrastructure security plans, such as those required by—

(I) the Transportation Security Administration;

(II) the Environmental Protection Agency;

(III) the Department of Transportation; and

(IV) the Nuclear Regulatory Commission;

(vi) law enforcement and public safety plans administered by the Department of Justice, such as those required by—

(I) the Local Law Enforcement Block Grant;

(II) the Byrne Memorial Formula Grant Program; and

(III) the Community Oriented Policing Services program; and

(vii) any other planning requirement identified by the Interagency Committee;

(5) not later than 120 days after the effective date of the Homeland Security Grant Enhancement Act of 2003, review—

(A) all application, reporting, and other administrative requirements contained in grant programs under paragraph (4)(A) and report all redundant and duplicative requirements to the appropriate committees of Congress and the agencies represented in the Interagency Committee; and

(B) all homeland security planning and other administrative requirements under paragraph (4)(B) and report all redundant and duplicative requirements to the appropriate committees of Congress and the agencies represented in the Interagency Committee;

(6) not later than 150 days after the effective date of the Homeland Security Grant Enhancement Act of 2003, provide recommendations to—

(A) the agencies with the requirements identified under paragraph (4)(A) to streamline and standardize application, reporting, and administrative requirements to eliminate duplication and promote coordination of homeland security planning grants; and

(B) the agencies involved with the grant programs under paragraph (4)(B) to streamline and standardize planning requirements to eliminate duplication and promote coordination; and

(7) not later than 250 days after the effective date of the Homeland Security Grant Enhancement Act of 2003, issue a report to Congress regarding its actions under this subsection.

(b) MEMBERSHIP.—The Interagency Committee shall be composed of a representative of—

(1) the Department of Homeland Security;

(2) the Department of Health and Human Services;

(3) the Department of Transportation;

(4) the Department of Justice;

(5) the Environmental Protection Agency; and

(6) any other department or agency determined to be necessary by the President.

(c) ADMINISTRATION.—The Department shall provide administrative support to the Interagency Committee, which shall include—

(1) scheduling meetings;

(2) preparing agenda;

(3) maintaining minutes and records; and

(4) producing reports.

(d) CHAIRPERSON.—The Secretary shall designate a chairperson of the Interagency Committee.

(e) MEETINGS.—The Interagency Committee shall meet—

(1) at the call of the Secretary; or

(2) not less frequently than once every 1 month.

[SEC. 430] *SEC. 803.* OFFICE FOR DOMESTIC PREPAREDNESS.

(a) IN GENERAL.—The Office for Domestic Preparedness shall be within [the Directorate of Border and Transportation Security] *the Office for State and Local Government Coordination.*

(b) DIRECTOR.—There shall be a Director of the Office for Domestic Preparedness, [who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Border and Transportation Security.] *who shall report directly to the Director of State and Local Government Coordination.*

(c) RESPONSIBILITIES.—* * *

(1) * * *

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(7) assisting and supporting the Secretary, in coordination with [other] *the* Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities of State, local, and tribal governments [consistent with the mission and functions of the Directorate]; [and]

(8) *carrying out* those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism, which shall be consolidated within the Department in the Office for Domestic Preparedness established under this section[.]; *and*

(9) managing the Homeland Security Information Clearinghouse established under section 801(c).

(d) Training and Exercises Office Within the Office for Domestic Preparedness.—

(1) IN GENERAL.—The Secretary shall create within the office for Domestic Preparedness an internal office that shall be the proponent for all national domestic preparedness, training, education, and exercises within the Office for State and Local Government Coordination.

(2) OFFICE HEAD.—The Secretary shall select an individual with recognized expertise in first-responder training and exercises to head the office, and such person shall report directly to the Director of the Office for Domestic Preparedness.

[d]*(e)* FISCAL YEARS 2003 AND 2004.—During fiscal year 2003 and fiscal year 2004, the Director of the Office for Domestic Preparedness established under this section shall manage and carry out those functions of the Office for Domestic Preparedness of the Department of Justice (transferred under this section) before September 11, 2001, under the same terms, conditions, policies, and authorities, and with the required level of personnel, assets and budget before September 11, 2001.

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