

Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table.

SA 4680. Mr. LEVIN (for himself, Mr. GRASSLEY, Mr. AKAKA, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4681. Mr. LEVIN (for himself and Mr. MCCONNELL) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4682. Mr. GREGG (for himself, Mr. HOLINGS, Mr. SHELBY, Mr. HARKIN, Mr. STEVENS, Mr. INOUE, Mr. COCHRAN, Mr. HELMS, Mr. JOHNSON, Mr. SESSIONS, Mr. BINGAMAN, Mr. GRASSLEY, Ms. LANDRIEU, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4683. Mr. GREGG (for himself, Mr. HOLINGS, Mr. SHELBY, Mr. HARKIN, Mr. STEVENS, Mr. INOUE, Mr. COCHRAN, Mr. HELMS, Mr. JOHNSON, Mr. SESSIONS, Mr. BINGAMAN, Mr. GRASSLEY, Ms. LANDRIEU, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4684. Mr. GREGG (for himself, Mr. HOLINGS, Mr. SHELBY, Mr. HARKIN, Mr. STEVENS, Mr. INOUE, Mr. COCHRAN, Mr. HELMS, Mr. JOHNSON, Mr. SESSIONS, Mr. BINGAMAN, Mr. GRASSLEY, Ms. LANDRIEU, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4685. Mr. BINGAMAN (for himself and Mr. DASCHLE) submitted an amendment intended to be proposed by him to the bill H.R. 5093, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table.

SA 4686. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table.

SA 4687. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4688. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4689. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4690. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 4619 submitted by Mr. JEFFORDS (for himself, Mr. SMITH of New Hampshire, and Ms. SNOWE) and intended to be proposed to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4691. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 4619 submitted by Mr. JEFFORDS (for himself, Mr. SMITH of New Hampshire, and Ms. SNOWE) and intended to be proposed to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4692. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4693. Mr. HATCH proposed an amendment to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra.

SA 4694. Mr. LIEBERMAN (for himself and Mr. MCCAIN) proposed an amendment to

amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra.

TEXT OF AMENDMENTS

SA 4679. Mr. INOUE (for himself, Mr. FEINGOLD, Ms. COLLINS, and Mr. CARPER) submitted an amendment intended to be proposed to amendment SA 4565 submitted by Mr. FEINGOLD (for himself, Ms. COLLINS, and Mr. CARPER) and intended to be proposed to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 1, line 3, insert “TRIBAL,” after “STATE”.

On page 1, line 6, insert “, Tribal,” after “State”.

On page 1, line 9, insert “, tribal,” after “State”.

On page 2, line 4, strike “State and local government” and insert “State, tribal, and local governments”.

On page 2, line 6, strike “State and local government” and insert “State, tribal, and local governments”.

On page 2, line 8, strike “State and local government” and insert “State, tribal, and local governments”.

On page 2, line 12, strike “State and local government” and insert “State, tribal, and local governments”.

On page 2, line 16, insert “, tribal,” after “State”.

On page 2, line 17, insert “and in each regional office of the Bureau of Indian Affairs” after “States”.

On page 2, line 24, insert “, tribal,” after “State”.

On page 3, line 2, insert “, tribal,” after “State”.

On page 3, line 5, insert “, tribal,” after “State”.

On page 3, strike lines 9 and 10 and insert the following:

of Department priorities—

(i) within each State and Indian tribe;

(ii) between States;

(iii) between Indian tribes; and

(iv) between States and Indian tribes.

On page 3, line 13, insert “and for each regional office of the Bureau of Indian Affairs” after “Columbia”.

On page 3, line 16, insert “, or for Indian tribes covered by that regional office of the Bureau of Indian Affairs, as the case may be” after “District”.

On page 3, line 19, insert “, tribal,” after “State”.

On page 3, line 24, insert “, tribal,” after “State”.

On page 4, line 6, insert “, tribal,” after “State”.

On page 4, line 10, insert “, tribal,” after “State”.

On page 4, line 14, insert “, tribal,” after “State”.

On page 4, line 16, insert “, tribal,” after “State”.

On page 4, line 23, insert “, tribal,” after “State”.

On page 5, line 2, insert “, tribal,” after “State”.

On page 5, line 4, insert “, tribal,” after “State”.

On page 5, line 8, insert “and Indian tribes” after “States”.

On page 5, line 13, insert “, TRIBAL,” after “STATE”.

On page 5, line 17, insert “, Tribal,” after “State”.

On page 5, line 23, insert “, tribal,” after “State”.

On page 6, line 1, insert “, tribal,” after “State”.

On page 6, line 21, insert “, Tribal,” after “State”.

On page 9, line 14, insert “, tribal,” after “State”.

SA 4680. Mr. LEVIN (for himself, Mr. GRASSLEY, Mr. AKAKA, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment insert the following:

TITLE VI—PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES

SEC. 601. PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES.

(a) CLARIFICATION OF DISCLOSURES COVERED.—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking “which the employee or applicant reasonably believes evidences” and inserting “, without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee’s duties, that the employee or applicant reasonably believes is evidence of”; and

(B) in clause (i), by striking “a violation” and inserting “any violation”;

(2) in subparagraph (B)—

(A) by striking “which the employee or applicant reasonably believes evidences” and inserting “, without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee’s duties, to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information that the employee or applicant reasonably believes is evidence of”; and

(B) in clause (i), by striking “a violation” and inserting “any violation (other than a violation of this section)”; and

(3) by adding at the end the following:

“(C) a disclosure that—

“(i) is made by an employee or applicant of information required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs that the employee or applicant reasonably believes is evidence of—

“(I) any violation of any law, rule, or regulation;

“(II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

“(III) a false statement to Congress on an issue of material fact; and

“(ii) is made to—

“(I) a member of a committee of Congress having a primary responsibility for oversight of a department, agency, or element of the Federal Government to which the disclosed information relates and who is authorized to receive information of the type disclosed;

“(II) any other Member of Congress who is authorized to receive information of the type disclosed; or

“(III) an employee of the executive branch or Congress who has the appropriate security

clearance for access to the information disclosed.”.

(b) COVERED DISCLOSURES.—Section 2302(b) of title 5, United States Code, is amended—

(1) in the matter following paragraph (12), by striking “This subsection” and inserting the following:

“This subsection”; and

(2) by adding at the end the following:

“In this subsection, the term ‘disclosure’ means a formal or informal communication or transmission.”.

(c) REBUTTABLE PRESUMPTION.—Section 2302(b) of title 5, United States Code, is amended by adding after the matter following paragraph (12) (as amended by subsection (b) of this section) the following:

“For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence.”.

(d) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS; SECURITY CLEARANCES; AND RETALIATORY INVESTIGATIONS.—

(1) PERSONNEL ACTION.—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(A) in clause (x), by striking “and” after the semicolon; and

(B) by redesignating clause (xi) as clause (xiv) and inserting after clause (x) the following:

“(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement;

“(xii) a suspension, revocation, or determination relating to a security clearance;

“(xiii) an investigation of an employee or applicant for employment because of any activity protected under this section; and”.

(2) PROHIBITED PERSONNEL PRACTICE.—Section 2302(b) of title 5, United States Code, is amended—

(A) in paragraph (11), by striking “or” at the end;

(B) in paragraph (12), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (12) the following:

“(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement:

“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.”; or

“(14) conduct, or cause to be conducted, an investigation of an employee or applicant for employment because of any activity protected under this section.”.

(3) BOARD AND COURT REVIEW OF ACTIONS RELATING TO SECURITY CLEARANCES.—

(A) IN GENERAL.—Chapter 77 of title 5, United States Code, is amended by inserting after section 7702 the following:

“§ 7702a. Actions relating to security clearances

“(a) In any appeal relating to the suspension, revocation, or other determination relating to a security clearance, the Merit Systems Protection Board or a court—

“(1) shall determine whether section 2302 was violated;

“(2) may not order the President to restore a security clearance; and

“(3) subject to paragraph (2), may issue declaratory relief and any other appropriate relief.

“(b)(1) If, in any final judgment, the Board or court declares that any suspension, revocation, or other determination with regards to a security clearance was made in violation of section 2302, the affected agency shall conduct a review of that suspension, revocation, or other determination, giving great weight to the Board or court judgment.

“(2) Not later than 30 days after any Board or court judgment declaring that a security clearance suspension, revocation, or other determination was made in violation of section 2302, the affected agency shall issue an unclassified report to the congressional committees of jurisdiction (with a classified annex if necessary), detailing the circumstances of the agency’s security clearance suspension, revocation, or other determination. A report under this paragraph shall include any proposed agency action with regards to the security clearance.

“(c) An allegation that a security clearance was revoked or suspended in retaliation for a protected disclosure shall receive expedited review by the Office of Special Counsel, the Merit Systems Protection Board, and any reviewing court.”.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 77 of title 5, United States Code, is amended by inserting after the item relating to section 7702 the following:

“7702a. Actions relating to security clearances.”.

(e) EXCLUSION OF AGENCIES BY THE PRESIDENT.—Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

“(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency; and

“(II) as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or”.

(f) ATTORNEY FEES.—Section 1204(m)(1) of title 5, United States Code, is amended by striking “agency involved” and inserting “agency where the prevailing party is employed or has applied for employment”.

(g) COMPENSATORY DAMAGES.—Section 1214(g)(2) of title 5, United States Code, is amended by inserting “compensatory or” after “forseeable”.

(h) DISCIPLINARY ACTION.—Section 1215 of title 5, United States Code, is amended in subsection (a), by striking paragraph (3) and inserting the following:

“(3)(A) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1000.

“(B) In any case in which the Board finds that an employee has committed a prohib-

ited personnel practice under section 2303(b) (8) or (9), the Board shall impose disciplinary action if the Board finds that protected activity was a significant motivating factor in the decision to take, fail to take, or threaten to take or fail to take a personnel action, unless that employee demonstrates, by preponderance of evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.”.

(i) DISCLOSURES TO CONGRESS.—Section 2302 of title 5, United States Code, is amended by adding at the end the following:

“(f) Each agency shall establish a process that provides confidential advice to employees on making a lawful disclosure to Congress of information that is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.”.

(j) AUTHORITY OF SPECIAL COUNSEL RELATING TO CIVIL ACTIONS.—

(1) REPRESENTATION OF SPECIAL COUNSEL.—Section 1212 of title 5, United States Code, is amended by adding at the end the following:

“(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Special Counsel may appear for the Special Counsel and represent the Special Counsel in any civil action brought in connection with section 2302(b)(8) or subchapter III of chapter 73, or as otherwise authorized by law.”.

(2) JUDICIAL REVIEW OF MERIT SYSTEMS PROTECTION BOARD DECISIONS.—Section 7703 of title 5, United States Code, is amended by adding at the end the following:

“(e)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Special Counsel. The Special Counsel may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Special Counsel determines, in the discretion of the Special Counsel, that the Board erred in deciding a case arising under section 2302(b)(8) or subchapter III of chapter 73 and that the Board’s decision will have a substantial impact on the enforcement of section 2302(b)(8) or subchapter III of chapter 73. If the Special Counsel was not a party or did not intervene in a matter before the Board, the Special Counsel may not petition for review of a Board decision under this section unless the Special Counsel first petitions the Board for reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

“(2) During the 5-year period beginning on February 1, 2003, this paragraph shall apply to any review obtained by the Special Counsel. The Special Counsel may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction if the Special Counsel determines, in the discretion of the Special Counsel, that the Board erred in deciding a case arising under section 2302(b)(8) or subchapter III of chapter 73 and that the Board’s decision will have a substantial impact on the enforcement of section 2302(b)(8) or subchapter III of chapter 73. If the Special Counsel was not a party or did not intervene in a matter before the Board, the Special Counsel may not petition for review of a Board decision under this section unless the Special Counsel first petitions the Board for reconsideration of its decision, and such petition

is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the court of appeals.”.

(k) JUDICIAL REVIEW.—

(1) IN GENERAL.—Section 7703(b) of title 5, United States Code, is amended by striking paragraph (1) and inserting the following:

“(b)(1)(A) Except as provided in subparagraph (B) and paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.

“(B) During the 5-year period beginning on February 1, 2003, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit or the United States Court of Appeals for the circuit in which the petitioner resides. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.”.

(2) REVIEW OBTAINED BY OFFICE OF PERSONNEL MANAGEMENT.—Section 7703 of title 5, United States Code, is amended by striking subsection (d) and inserting the following:

“(d)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

“(2) During the 5-year period beginning on February 1, 2003, this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in any appellate court of competent jurisdiction as provided under subsection (b)(2) if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board

for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.”.

(l) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.—

(1) IN GENERAL.—

(A) REQUIREMENT.—Each agreement in Standard Forms 312 and 414 of the Government and any other nondisclosure policy, form, or agreement of the Government shall contain the following statement: “These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.”

(B) ENFORCEABILITY.—Any nondisclosure policy, form, or agreement described under subparagraph (A) that does not contain the statement required under subparagraph (A) may not be implemented or enforced to the extent such policy, form, or agreement is inconsistent with that statement.

(2) PERSONS OTHER THAN FEDERAL EMPLOYEES.—Notwithstanding paragraph (1), a nondisclosure policy, form, or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that such forms do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

SA 4681. Mr. LEVIN (for himself and Mr. McCONNELL) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . PRIVATE SECURITY OFFICERS RECORD REVIEWS.

(a) FINDINGS.—Congress finds that—

(1) employment of private security officers in the United States is growing rapidly;

(2) private security officers function as an adjunct to, but not a replacement for, public

law enforcement by helping to reduce and prevent crime;

(3) such private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others;

(4) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security officers;

(5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions;

(6) the trend in the Nation toward growth in such security services has accelerated rapidly;

(7) such growth makes available more public sector law enforcement officers to combat serious and violent crimes, including terrorism;

(8) the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers; and

(9) private security officers and applicants for private security officer positions should be thoroughly screened and trained.

(b) DEFINITIONS.—In this section:

(1) EMPLOYEE.—The term “employee” includes both a current employee and an applicant for employment as a private security officer.

(2) AUTHORIZED EMPLOYER.—The term “authorized employer” means any person that—

(A) employs private security officers; and

(B) is authorized by regulations promulgated by the Attorney General to request a criminal history record information search of an employee through a State identification bureau pursuant to this section.

(3) PRIVATE SECURITY OFFICER.—The term “private security officer”—

(A) means an individual other than an employee of a Federal, State, or local government, whose primary duty is to perform security services, full- or part-time, for consideration, whether armed or unarmed and in uniform or plain clothes; but

(B) does not include—

(i) employees whose duties are primarily internal audit or credit functions;

(ii) employees of electronic security system companies acting as technicians or monitors; or

(iii) employees whose duties primarily involve the secure movement of prisoners.

(4) SECURITY SERVICES.—The term “security services” means acts to protect people or property as defined by regulations promulgated by the Attorney General.

(5) STATE IDENTIFICATION BUREAU.—The term “State identification bureau” means the State entity designated by the Attorney General for the submission and receipt of criminal history record information.

(c) CRIMINAL HISTORY RECORD INFORMATION SEARCH.—

(1) IN GENERAL.—

(A) SUBMISSION OF FINGERPRINTS.—An authorized employer may submit to the State identification bureau of a participating State, fingerprints or other means of positive identification, as determined by the Attorney General, of an employee of such employer for purposes of a criminal history record information search pursuant to this section.

(B) EMPLOYEE RIGHTS.—

(i) PERMISSION.—An authorized employer shall obtain written consent from an employee to submit to the State identification bureau of a participating State the request to search the criminal history record information of the employee under this section.

(ii) ACCESS.—An authorized employer shall provide to the employee confidential access to any information relating to the employee received by the authorized employer pursuant to this section.

(C) PROVIDING INFORMATION TO THE STATE IDENTIFICATION BUREAU.—Upon receipt of a request for a criminal history record information search from an authorized employer pursuant to this section, submitted through the State identification bureau of a participating State, the Attorney General shall—

(i) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(ii) promptly provide any resulting identification and criminal history record information to the submitting State identification bureau requesting the information.

(D) USE OF INFORMATION.—

(i) IN GENERAL.—Upon receipt of the criminal history record information from the Attorney General by the State identification bureau, the information shall be used only as provided in clause (ii).

(ii) TERMS.—In the case of—

(I) a participating State that has no State standards for qualification to be a private security officer, the State shall notify an authorized employer as to the fact of whether an employee has been convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or

(II) a participating State that has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this section in applying the State standards and shall only notify the employer of the results of the application of the State standards.

(E) FREQUENCY OF REQUESTS.—An authorized employer may request a criminal history record information search for an employee only once every 12 months of continuous employment by that employee unless the authorized employer has good cause to submit additional requests.

(2) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this section, including—

(A) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, and destruction of information and audits, and recordkeeping;

(B) standards for qualification as an authorized employer; and

(C) the imposition of reasonable fees necessary for conducting the background checks.

(3) CRIMINAL PENALTY.—Whoever falsely certifies that he meets the applicable standards for an authorized employer or who knowingly and intentionally uses any information obtained pursuant to this section other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined under title 18, United States Code, or imprisoned for not more than 2 years, or both.

(4) USER FEES.—

(A) IN GENERAL.—The Director of the Federal Bureau of Investigation may—

(i) collect fees pursuant to regulations promulgated under paragraph (2) to process background checks provided for by this section;

(ii) notwithstanding the provisions of section 3302 of title 31, United States Code, retain and use such fees for salaries and other expenses incurred in providing such processing; and

(iii) establish such fees at a level to include an additional amount to remain available until expended to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(B) STATE COSTS.—Nothing in this section shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this section.

(5) STATE OPT OUT.—A State may decline to participate in the background check system authorized by this section by enacting a law or issuing an order by the Governor (if consistent with State law) providing that the State is declining to participate pursuant to this paragraph.

SA 4682. Mr. GREGG (for himself and Mr. HOLLINGS, Mr. SHELBY, Mr. HARKIN, Mr. STEVENS, Mr. INOUE, Mr. COCHRAN, Mr. HELMS, Mr. JOHNSON, Mr. SESSIONS, Mr. BINGAMAN, Mr. GRASSLEY, Ms. LANDRIEU, Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

SEC. ____ DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Emergency Preparedness and Response.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Emergency Preparedness and Response, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Emergency Preparedness and Response shall be responsible for the following:

(1) Carrying out all nonterrorism emergency preparedness activities carried out by the Federal Emergency Management Agency before the effective date of this division.

(2) Carrying out all terrorism and other hazard response activities carried out by the Federal Emergency Management Agency before the effective date of this division.

(3) Creating a National Crisis Action Center to act as the focal point for—

(A) monitoring emergencies;

(B) notifying affected agencies and State and local governments; and

(C) coordinating Federal support for State and local governments and the private sector in crises.

(4) Managing and updating the Federal response plan to ensure the appropriate integration of operational activities of the Department of Defense, the National Guard, and other agencies, to respond to acts of terrorism and other disasters.

(5) Coordinating activities among private sector entities, including entities within the medical community, and animal health and plant disease communities, with respect to recovery, consequence management, and planning for continuity of services.

(6) Developing and managing a single response system for national incidents in coordination with all appropriate agencies.

(7) Coordinating with other agencies necessary to carry out the functions of the Office of Emergency Preparedness.

(8) Collaborating with, and transferring funds to, the Centers for Disease Control and Prevention or other agencies for administration of the Strategic National Stockpile transferred under subsection (c)(6).

(9) Consulting with the Under Secretary for Science and Technology, Secretary of Agriculture, and the Director of the Centers for Disease Control and Prevention in establishing and updating the list of potential threat agents or toxins relating to the functions of the Select Agent Registration Program transferred under subsection (c)(7).

(10) Developing a plan to address the interface of medical informatics and the medical response to terrorism that address—

(A) standards for interoperability;

(B) real-time data collection;

(C) ease of use for health care providers;

(D) epidemiological surveillance of disease outbreaks in human health and agriculture;

(E) integration of telemedicine networks and standards;

(F) patient confidentiality; and

(G) other topics pertinent to the mission of the Department.

(11) Activate and coordinate the operations of the National Disaster Medical System as defined under section 102 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188).

(12) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Federal Emergency Management Agency, the 10 regional offices of which shall be maintained and strengthened by the Department, which shall be maintained as a distinct entity within the Department, except that those elements of the Office of National Preparedness of the Federal Emergency Management Agency that relate to terrorism shall be transferred to the Office of Domestic Preparedness established under this section.

(2) The National Office of Domestic Preparedness of the Federal Bureau of Investigation of the Department of Justice.

(3) The Office of Domestic Preparedness of the Department of Justice.

(4) 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.

(5) The Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services, including—

(A) the Noble Training Center;

(B) the Metropolitan Medical Response System;

(C) the Department of Health and Human Services component of the National Disaster Medical System;

(D) the Disaster Medical Assistance Teams, the Veterinary Medical Assistance Teams, and the Disaster Mortuary Operational Response Teams;

(E) the special events response; and

(F) the citizen preparedness programs.

(6) The Strategic National Stockpile of the Department of Health and Human Services including all functions and assets under sections 121 and 127 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188).

(7) The functions of the Select Agent Registration Program of the Department of Health and Human Services and the United States Department of Agriculture, including all functions of the Secretary of Health and Human Services and the Secretary of Agriculture under sections 201 through 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188).

(d) OFFICE FOR DOMESTIC PREPAREDNESS.—

(1) ESTABLISHMENT.—There is established within the Directorate of Emergency Preparedness and Response the Office for Domestic Preparedness.

(2) 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 Emergency Preparedness and Response.

(3) RESPONSIBILITIES.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

(A) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

(B) in keeping with intelligence estimates, working to ensure adequate strategic and operational planning, equipment, training, and exercise activities at all levels of government;

(C) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

(D) directing and supervising terrorism preparedness grant programs of the Federal Government for all emergency response providers;

(E) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

(F) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

(G) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States; and

(H) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(4) 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.

(5) REPORT.—Not later than the submission of the fiscal year 2005 budget request, the Secretary shall submit to Congress a detailed report containing a comprehensive, independent analysis, and recommendations

addressing whether there should be a single office within the Department responsible for the domestic preparedness of the United States for all hazards, including terrorism and natural disasters. The analysis shall include an examination of the advantages, disadvantages, costs, and benefits of creating a single office for all hazards preparedness within the Department.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Under Secretary for Emergency Preparedness and Response shall submit a report to Congress on the status of a national medical informatics system and an agricultural disease surveillance system, and the capacity of such systems to meet the goals under subsection (b)(12) in responding to a terrorist attack.

(f) PREEMPTED PROVISIONS.—Notwithstanding any other provision of this Act, including any effective date provision, section 134 shall not take effect.

SA 4683. Mr. GREGG (for himself, Mr. HOLLINGS, Mr. SHELBY, Mr. HARKIN, Mr. STEVENS, Mr. INOUE, Mr. COCHRAN, Mr. HELMS, Mr. JOHNSON, Mr. SESSIONS, Mr. BINGAMAN, Mr. GRASSLEY, Ms. LANDRIEU, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted insert the following:

SEC. ____ . DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Emergency Preparedness and Response.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Emergency Preparedness and Response, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Emergency Preparedness and Response shall be responsible for the following:

(1) Carrying out all nonterrorism emergency preparedness activities carried out by the Federal Emergency Management Agency before the effective date of this division.

(2) Carrying out all terrorism and other hazard response activities carried out by the Federal Emergency Management Agency before the effective date of this division.

(3) Creating a National Crisis Action Center to act as the focal point for—

(A) monitoring emergencies;

(B) notifying affected agencies and State and local governments; and

(C) coordinating Federal support for State and local governments and the private sector in crises.

(4) Managing and updating the Federal response plan to ensure the appropriate integration of operational activities of the Department of Defense, the National Guard, and other agencies, to respond to acts of terrorism and other disasters.

(5) Coordinating activities among private sector entities, including entities within the medical community, and animal health and plant disease communities, with respect to recovery, consequence management, and planning for continuity of services.

(6) Developing and managing a single response system for national incidents in coordination with all appropriate agencies.

(7) Coordinating with other agencies necessary to carry out the functions of the Office of Emergency Preparedness.

(8) Collaborating with, and transferring funds to, the Centers for Disease Control and Prevention or other agencies for administration of the Strategic National Stockpile transferred under subsection (c)(6).

(9) Consulting with the Under Secretary for Science and Technology, Secretary of Agriculture, and the Director of the Centers for Disease Control and Prevention in establishing and updating the list of potential threat agents or toxins relating to the functions of the Select Agent Registration Program transferred under subsection (c)(7).

(10) Developing a plan to address the interface of medical informatics and the medical response to terrorism that address—

(A) standards for interoperability;

(B) real-time data collection;

(C) ease of use for health care providers;

(D) epidemiological surveillance of disease outbreaks in human health and agriculture;

(E) integration of telemedicine networks and standards;

(F) patient confidentiality; and

(G) other topics pertinent to the mission of the Department.

(11) Activate and coordinate the operations of the National Disaster Medical System as defined under section 102 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188).

(12) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Federal Emergency Management Agency, the 10 regional offices of which shall be maintained and strengthened by the Department, which shall be maintained as a distinct entity within the Department, except that those elements of the Office of National Preparedness of the Federal Emergency Management Agency that relate to terrorism shall be transferred to the Office of Domestic Preparedness established under this section.

(2) The National Office of Domestic Preparedness of the Federal Bureau of Investigation of the Department of Justice.

(3) The Office of Domestic Preparedness of the Department of Justice.

(4) 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.

(5) The Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services, including—

(A) the Noble Training Center;

(B) the Metropolitan Medical Response System;

(C) the Department of Health and Human Services component of the National Disaster Medical System;

(D) the Disaster Medical Assistance Teams, the Veterinary Medical Assistance Teams, and the Disaster Mortuary Operational Response Teams;

(E) the special events response; and

(F) the citizen preparedness programs.

(6) The Strategic National Stockpile of the Department of Health and Human Services including all functions and assets under sections 121 and 127 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188).

(7) The functions of the Select Agent Registration Program of the Department of Health and Human Services and the United States Department of Agriculture, including

all functions of the Secretary of Health and Human Services and the Secretary of Agriculture under sections 201 through 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188).

(d) OFFICE FOR DOMESTIC PREPAREDNESS.—

(1) ESTABLISHMENT.—There is established within the Directorate of Emergency Preparedness and Response the Office for Domestic Preparedness.

(2) 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 Emergency Preparedness and Response.

(3) RESPONSIBILITIES.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

(A) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

(B) in keeping with intelligence estimates, working to ensure adequate strategic and operational planning, equipment, training, and exercise activities at all levels of government;

(C) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

(D) directing and supervising terrorism preparedness grant programs of the Federal Government for all emergency response providers;

(E) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

(F) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

(G) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States; and

(H) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(4) 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.

(5) REPORT.—Not later than the submission of the fiscal year 2005 budget request, the Secretary shall submit to Congress a detailed report containing a comprehensive, independent analysis, and recommendations addressing whether there should be a single office within the Department responsible for the domestic preparedness of the United States for all hazards, including terrorism

and natural disasters. The analysis shall include an examination of the advantages, disadvantages, costs, and benefits of creating a single office for all hazards preparedness within the Department.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Under Secretary for Emergency Preparedness and Response shall submit a report to Congress on the status of a national medical informatics system and an agricultural disease surveillance system, and the capacity of such systems to meet the goals under subsection (b)(12) in responding to a terrorist attack.

(f) PREEMPTED PROVISIONS.—Notwithstanding any other provision of this Act, including any effective date provision, section 134 shall not take effect.

SA 4684. Mr. GREGG (for himself, Mr. HOLLINGS, Mr. SHELBY, Mr. HARKIN, Mr. STEVENS, Mr. INOUE, Mr. COCHRAN, Mr. HELMS, Mr. JOHNSON, Mr. SESSIONS, Mr. BINGAMAN, Mr. GRASSLEY, Ms. LANDRIEU, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Emergency Preparedness and Response.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Emergency Preparedness and Response, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Emergency Preparedness and Response shall be responsible for the following:

(1) Carrying out all nonterrorism emergency preparedness activities carried out by the Federal Emergency Management Agency before the effective date of this division.

(2) Carrying out all terrorism and other hazard response activities carried out by the Federal Emergency Management Agency before the effective date of this division.

(3) Creating a National Crisis Action Center to act as the focal point for—

(A) monitoring emergencies;

(B) notifying affected agencies and State and local governments; and

(C) coordinating Federal support for State and local governments and the private sector in crises.

(4) Managing and updating the Federal response plan to ensure the appropriate integration of operational activities of the Department of Defense, the National Guard, and other agencies, to respond to acts of terrorism and other disasters.

(5) Coordinating activities among private sector entities, including entities within the medical community, and animal health and plant disease communities, with respect to recovery, consequence management, and planning for continuity of services.

(6) Developing and managing a single response system for national incidents in coordination with all appropriate agencies.

(7) Coordinating with other agencies necessary to carry out the functions of the Office of Emergency Preparedness.

(8) Collaborating with, and transferring funds to, the Centers for Disease Control and Prevention or other agencies for administration of the Strategic National Stockpile transferred under subsection (c)(6).

(9) Consulting with the Under Secretary for Science and Technology, Secretary of Agriculture, and the Director of the Centers for Disease Control and Prevention in establishing and updating the list of potential threat agents or toxins relating to the functions of the Select Agent Registration Program transferred under subsection (c)(7).

(10) Developing a plan to address the interface of medical informatics and the medical response to terrorism that address—

(A) standards for interoperability;

(B) real-time data collection;

(C) ease of use for health care providers;

(D) epidemiological surveillance of disease outbreaks in human health and agriculture;

(E) integration of telemedicine networks and standards;

(F) patient confidentiality; and

(G) other topics pertinent to the mission of the Department.

(11) Activate and coordinate the operations of the National Disaster Medical System as defined under section 102 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188).

(12) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Federal Emergency Management Agency, the 10 regional offices of which shall be maintained and strengthened by the Department, which shall be maintained as a distinct entity within the Department, except that those elements of the Office of National Preparedness of the Federal Emergency Management Agency that relate to terrorism shall be transferred to the Office of Domestic Preparedness established under this section.

(2) The National Office of Domestic Preparedness of the Federal Bureau of Investigation of the Department of Justice.

(3) The Office of Domestic Preparedness of the Department of Justice.

(4) 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.

(5) The Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services, including—

(A) the Noble Training Center;

(B) the Metropolitan Medical Response System;

(C) the Department of Health and Human Services component of the National Disaster Medical System;

(D) the Disaster Medical Assistance Teams, the Veterinary Medical Assistance Teams, and the Disaster Mortuary Operational Response Teams;

(E) the special events response; and

(F) the citizen preparedness programs.

(6) The Strategic National Stockpile of the Department of Health and Human Services including all functions and assets under sections 121 and 127 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188).

(7) The functions of the Select Agent Registration Program of the Department of Health and Human Services and the United States Department of Agriculture, including all functions of the Secretary of Health and Human Services and the Secretary of Agriculture under sections 201 through 221 of the Public Health Security and Bioterrorism

Preparedness and Response Act of 2002 (Public Law 107-188).

(d) OFFICE FOR DOMESTIC PREPAREDNESS.—

(1) ESTABLISHMENT.—There is established within the Directorate of Emergency Preparedness and Response the Office for Domestic Preparedness.

(2) 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 Emergency Preparedness and Response.

(3) RESPONSIBILITIES.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

(A) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

(B) in keeping with intelligence estimates, working to ensure adequate strategic and operational planning, equipment, training, and exercise activities at all levels of government;

(C) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

(D) directing and supervising terrorism preparedness grant programs of the Federal Government for all emergency response providers;

(E) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

(F) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

(G) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States; and

(H) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(4) 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.

(5) REPORT.—Not later than the submission of the fiscal year 2005 budget request, the Secretary shall submit to Congress a detailed report containing a comprehensive, independent analysis, and recommendations addressing whether there should be a single office within the Department responsible for the domestic preparedness of the United States for all hazards, including terrorism and natural disasters. The analysis shall include an examination of the advantages, disadvantages, costs, and benefits of creating a

single office for all hazards preparedness within the Department.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Under Secretary for Emergency Preparedness and Response shall submit a report to Congress on the status of a national medical informatics system and an agricultural disease surveillance system, and the capacity of such systems to meet the goals under subsection (b)(12) in responding to a terrorist attack.

(f) PREEMPTED PROVISIONS.—Notwithstanding any other provision of this Act, including any effective date provision, section 134 shall not take effect.

SA 4685. Mr. BINGAMAN (for himself and Mr. DASCHLE) submitted an amendment intended to be proposed by him to the bill H.R. 5093, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

“SEC.

(a) FINDINGS.—Congress finds that:

(1) In 2002 approximately six and one half million acres of forest lands in the United States have burned, 21 people have lost their lives, and 3,079 structures have been destroyed. The Forest Service and the Bureau of Land Management have spent more than \$1 billion fighting these fires.

(2) 73 million acres of public lands are classified as class 3 fire risks. This includes 23 million acres that are in strategic areas designated by the Forest Service and the Department of the Interior for emergency treatment to withstand catastrophic fire.

(3) The forest management policy of fire suppression has resulted in an accumulation of fuel loads, dead and dying trees, and non-native species that creates fuel ladders which allow fires to reach the crowns of large old trees and cause catastrophic fire.

(4) The Forest Service and the Department of Interior should immediately undertake an emergency forest grooming program to reduce the risk of catastrophic fire.

(b) IN GENERAL.—The Secretary of Agriculture and the Secretary of the Interior shall conduct immediately and to completion projects consistent with the Implementation Plan for the 10-year Comprehensive Strategy for a Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment, dated May 2002, developed pursuant to the Conference Report to the Department of the Interior and Related Agencies Appropriations Act, FY 2001 (H. Rept. 106-646) to reduce hazardous fuels. Any project carried out pursuant to this section shall be consistent with the applicable forest plan, resource management plan, or other applicable agency plans.

(c) PRIORITY.—In implementing projects under this section, the Secretary of Agriculture and the Secretary of the Interior shall give highest priority to—

(1) wildland urban interface areas;

(2) municipal watersheds; or

(3) forested or rangeland areas affected by disease, insect activity, wind throw, or areas subject to catastrophic return

(d) ACREAGE LIMITATION.—In implementing this section, the Secretary of Agriculture and the Secretary of the Interior shall treat an aggregate area of not more than 2.5 million acres of federal land. This amount is in addition to the existing hazardous fueled reduction program that treats approximately 2.5 million acres each year.

(e) PROCESS.—The Secretary of Agriculture and the Secretary of the Interior shall jointly develop a collaborative process with interested parties consistent with the Implementation Plan described in subsection (b) for the selection of projects carried out under this section consistent with subsection (c). Such collaborative process may be the process set forth in title II of the Secure Rural Schools and Community Self-Determination Act, Public Law 106-393.

(f) ADMINISTRATIVE PROCESS.—

(1) REVIEW.—Projects implemented pursuant to subsection (h) shall not be subject to the appeal requirements of the Appeals Reform Act (section 322 of Public Law 102-381) or review by the Department of the Interior Board of Lands Appeals. Nothing in this section affects projects for which scoping has begun prior to enactment of this Act.

(2) REGULATIONS.—The Secretary of Agriculture and the Secretary of the Interior, as appropriate, may promulgate such regulations as are necessary to implement this section.

(g) CONCLUSIVE PRESUMPTION.—Within—

(1) one-half mile of any community; or

(2) key municipal watersheds identified in forest plans in which National Environmental Policy Act documentation and analysis has been completed and no new road construction is allowed, no timber sales are allowed, and no log skidding machines are allowed, unless there are extraordinary circumstances, hazardous fuels reduction actions authorized by subsection (h) are conclusively determined to be categorically excluded from further analysis under the National Environmental Policy Act, and the Secretary of Agriculture or the Secretary of the Interior, as appropriate, need not make any findings as to whether the projects individually or cumulatively have a significant effect on the human environment. This conclusive determination shall apply in any judicial proceeding brought to enforce the National Environmental Policy Act pursuant to this section.

(h) CATEGORICAL EXCLUSIONS.—(1) Subject to paragraph (2), until September 30, 2003, the Secretary of Agriculture and the Secretary of the Interior may categorically exclude a proposed hazardous fuels reduction action, including prescribed fire, from documentation in an environmental impact statement or environmental assessment if the proposed hazardous fuels reduction action is located on lands identified as condition class 3 as determined by the Secretary of Agriculture and the Secretary of the Interior and pursuant to scientific mapping surveys and removes no more than 250,000 board feet of merchantable wood products or removes as salvage 1,000,000 board feet or less of merchantable wood products and assures regeneration of harvested or salvaged areas.

(2) Scoping is required on all actions proposed pursuant to this subsection.

(i) EXTRAORDINARY CIRCUMSTANCES.—For all projects implemented pursuant to this section, if there are extraordinary circumstances, the Secretary of Agriculture and the Secretary of the Interior shall follow agency procedures related to categorical exclusions and extraordinary circumstances.

(j) REDUCE FIRE RISK.—In order to ensure that the agencies are implementing projects that reduce the risk of unnaturally intense wildfires, the Secretary of Agriculture and the Secretary of the Interior—

(1) shall not construct new roads in any inventoried roadless areas part of any project implemented pursuant to this section;

(2) shall, at their discretion, maintain an ecologically sufficient number of old and large trees appropriate for each ecosystem type and shall focus on thinning from below

for all projects implemented pursuant to this section;

(3) for projects involving key municipal watersheds, must protect or enhance water quality or water quantity available in the area; and

(4) must deposit in the Treasury of the United States all revenues and receipts generated from projects implemented pursuant to this section.

(k) **HAZARDOUS FUELS REDUCTION FUNDING FOCUS.**—In order to focus hazardous fuels reduction activities on the highest priority areas where critical issues of human safety and property loss are the most serious and within key municipal watersheds identified in forest plans, the Secretary of Agriculture and the Secretary of the Interior shall expend all of the hazardous fuels operations funds provided in this Act only on projects in areas identified as condition class 3 as defined in subsection (h) and at least seventy percent of the hazardous fuels operations funds provided in this Act only on projects within one-half mile of any community or within key municipal watersheds identified in forest plans. Nothing in this subsection will affect projects for which scoping has begun prior to enactment of this Act.

(l) **COMMUNITIES.**—At least ten percent of the hazardous fuels operations funds provided in this Act shall be spent on projects that benefit small businesses that uses hazardous fuels and are located in small, economically disadvantaged communities.

(m) **MONITORING.**—(1) The Secretary of Agriculture and the Secretary of the Interior shall establish a multiparty monitoring process in order to assess a representative sampling of the projects implemented pursuant to this section.

(2) Funds to implement this subsection shall be derived from hazardous fuels reduction funds.

SA 4686. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ____ . PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) **IN GENERAL.**—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b), or any subsidiary of such entity.

(b) **INVERTED DOMESTIC CORPORATION.**—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity has completed the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

(2) after the acquisition at least 50 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in

the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) **DEFINITIONS AND SPECIAL RULES.**—For purposes of this section—

(1) **RULES FOR APPLICATION OF SUBSECTION (b).**—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) **CERTAIN STOCK DISREGARDED.**—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) **PLAN DEEMED IN CERTAIN CASES.**—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) **CERTAIN TRANSFERS DISREGARDED.**—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) **SPECIAL RULE FOR RELATED PARTNERSHIPS.**—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as 1 partnership.

(E) **TREATMENT OF CERTAIN RIGHTS.**—The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

(ii) to treat stock as not stock.

(2) **EXPANDED AFFILIATED GROUP.**—The term “expanded affiliated group” means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504(a) of such Code shall be applied by substituting “more than 50 percent” for “at least 80 percent” each place it appears.

(3) **FOREIGN INCORPORATED ENTITY.**—The term “foreign incorporated entity” means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) **OTHER DEFINITIONS.**—The terms “person”, “domestic”, and “foreign” have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(d) **WAIVER.**—The President may waive subsection (a) with respect to any specific contract if the President certifies to Congress that the waiver is required in the interest of national security.

SA 4687. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

(c) **INSPECTIONS.**—The Under Secretary for Immigration Affairs shall assign officers with expertise and training in immigration

and nationality law to all high volume ports of entry in the United States to assist in the inspection of applicants for entry to the United States. For other ports of entry, the Under Secretary shall take steps to ensure that such officers participate in the inspections process. Such officers shall ensure that the inspections policies and procedures regarding applicants for entry to the United States are consistent with the immigration and nationality laws of the United States.

(d) **TRAINING FOR BORDER PATROL AND INSPECTORS.**—The Under Secretary for Immigration Affairs, in consultation with the Under Secretary for Border and Transportation Protection, will provide timely and ongoing training in immigration and nationality law to personnel performing the border patrol and inspections functions in the Border and Transportation Protection Directorate.

SA 4688. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike title XIII and insert the following:

TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

SEC. 1301. ESTABLISHMENT.

(a) **IN GENERAL.**—There is within the Department of Justice the Executive Office for Immigration Review.

(b) **STATUTORY CONSTRUCTION.**—Nothing in title XI, or any amendment made by that title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by, the Executive Office for Immigration Review of the Department of Justice, or any officer, employee, or component thereof, immediately prior to the effective date of title XI.

SEC. 1302. DIRECTOR OF THE AGENCY.

(a) **APPOINTMENT.**—There shall be at the head of the Executive Office for Immigration Review a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) **OFFICES.**—The Director shall appoint a Deputy Director, General Counsel, Pro Bono Coordinator, and other offices as may be necessary to carry out this title.

(c) **RESPONSIBILITIES.**—The Director shall—

(1) administer the Executive Office for Immigration Review and be responsible for the promulgation of rules and regulations affecting the agency; and

(2) appoint and fix the compensation of attorneys, clerks, administrative assistants, and other personnel as may be necessary.

SEC. 1303. BOARD OF IMMIGRATION APPEALS.

(a) **IN GENERAL.**—The Board of Immigration Appeals (in this title referred to as the “Board”) shall perform the appellate functions of the Executive Office for Immigration Review. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.

(b) **APPOINTMENT.**—Members of the Board shall be appointed by the Attorney General, in consultation with the Director and the Chair of the Board of Immigration Appeals.

(c) **QUALIFICATIONS.**—The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of pertinent legal expertise.

(d) **JURISDICTION.**—

(1) **IN GENERAL.**—The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).

(2) **DE NOVO REVIEW.**—The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.

(e) **INDEPENDENCE OF BOARD MEMBERS.**—The Members of the Board shall exercise their independent judgment and discretion in the cases coming before the Board.

(f) **REFERRAL OF CASES TO THE ATTORNEY GENERAL.**—

(1) **IN GENERAL.**—The Board shall refer to the Attorney General for review of any case that—

(A) the Attorney General directs the Board to refer to the Attorney General;

(B) the Chairman or a majority of the Board believes should be referred to the Attorney General for review; or

(C) the Under Secretary of Homeland Security for Immigration Affairs requests be referred to the Attorney General for review.

(2) **DECISION OF THE ATTORNEY GENERAL.**—In any case in which the Attorney General reviews the decision of the Board, the decision of the Attorney General shall be stated in writing and shall be transmitted to the Board for transmittal and service as provided by regulations.

SEC. 1304. CHIEF IMMIGRATION JUDGE.

(a) **ESTABLISHMENT OF OFFICE.**—There shall be within the Executive Office for Immigration Review the position of Chief Immigration Judge, who shall administer the immigration courts.

(b) **DUTIES OF THE CHIEF IMMIGRATION JUDGE.**—The Chief Immigration Judge shall be responsible for the general supervision, direction, and procurement of resource and facilities and for the general management of immigration court dockets.

(c) **APPOINTMENT OF IMMIGRATION JUDGES.**—Immigration judges shall be appointed by the Attorney General, in consultation with the Director and the Chief Immigration Judge.

(d) **QUALIFICATIONS.**—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of pertinent legal expertise.

(e) **JURISDICTION AND AUTHORITY OF IMMIGRATION COURTS.**—The immigration courts shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the immigration courts within the Executive Office for Immigration Review of the Department of Justice.

(f) **INDEPENDENCE OF IMMIGRATION JUDGES.**—The immigration judges shall exercise their independent judgment and discretion in the cases coming before the Immigration Court.

SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.

(a) **ESTABLISHMENT OF POSITION.**—There shall be within the Executive Office for Immigration Review the position of Chief Administrative Hearing Officer.

(b) **DUTIES OF THE CHIEF ADMINISTRATIVE HEARING OFFICER.**—The Chief Administrative Hearing Officer shall hear cases brought under sections 274A, 274B, and 274C of the Immigration and Nationality Act.

SEC. 1306. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Executive Office for Immigration Review such sums as may be necessary to carry out this title.

SA 4689. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In section 301, subsection h, by striking “(2) The” and replacing it with “(2) Except as provided in paragraph (3), the” and by adding a new paragraph, following the paragraph numbered (2), to read as follows: “(3) Notwithstanding any other provision of law, the Secretary of the Department of Treasury shall be responsible for all of the activities related to the collection of tax and revenue, promulgation of regulations, and assessment of penalties related to alcohol and tobacco. The authorities, functions, personnel and assets of Department of Treasury employees engaged in the collection of tax and revenue, promulgation of regulations, and assessment of penalties related to alcohol and tobacco at the time of enactment of this legislation shall be retained within the Department of Treasury, but employees engaged in the criminal investigation of violations of laws related to alcohol and tobacco shall be transferred to the Department of Justice in accordance with sections 201 and 301 of this act.”

SA 4690. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 4619 submitted by Mr. JEFFORDS (for himself, Mr. SMITH of New Hampshire, and Ms. SNOWE) and intended to be proposed to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

TITLE —DISASTER RELIEF AND EMERGENCY ASSISTANCE

SEC. 01. SHORT TITLE.

This title may be cited as the “Homeland Security Block Grant Act of 2002”.

SEC. 02. FINDINGS.

Congress makes the following findings:

(1) In the wake of the September 11, 2001, terrorist attacks on our country, communities all across American now find themselves on the front lines in the war against terrorism on United States soil.

(2) We recognize that these communities will be forced to shoulder a significant portion of the burden that goes along with that responsibility. We believe that local governments should not have to bear that responsibility alone.

(3) Our homeland defense will only be as strong as the weakest link at the State and local level. By providing our communities with the resources and tools they need to bolster emergency response efforts and provide for other emergency response initiatives, we will have a better-prepared home front and a stronger America.

SEC. 03. DEFINITIONS.

(a) **DEFINITIONS.**—In this title:

(1) **DIRECTOR.**—The term “Director” means the Director of the Federal Emergency Management Agency (FEMA).

(2) **CITY.**—The term “city” means—

(A) any unit of general local government that is classified as a municipality by the United States Bureau of the Census; or

(B) any other unit of general local government that is a town or township and which, in the determination of the Director—

(i) possesses powers and performs functions comparable to those associated with municipalities;

(ii) is closely settled; and

(iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census that have not entered into cooperation agreements with

such town or township to undertake or to assist in the performance of homeland security objectives.

(3) **FEDERAL GRANT-IN-AID PROGRAM.**—The term “Federal grant-in-aid program” means a program of Federal financial assistance other than loans and other than the assistance provided by this title.

(4) **INDIAN TRIBE.**—The term “Indian tribe” means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) or was considered an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter.

(5) **METROPOLITAN AREA.**—The term “metropolitan area” means a standard metropolitan statistical area as established by the Office of Management and Budget.

(6) METROPOLITAN CITY.—

(A) **IN GENERAL.**—The term “metropolitan city” means—

(i) a city within a metropolitan area that is the central city of such area, as defined and used by the Office of Management and Budget; or

(ii) any other city, within a metropolitan area, which has a population of fifty thousand or more.

(B) **PERIOD OF CLASSIFICATION.**—Any city that was classified as a metropolitan city for at least 2 years pursuant to subparagraph (A) shall remain classified as a metropolitan city. Any unit of general local government that becomes eligible to be classified as a metropolitan city, and was not classified as a metropolitan city in the immediately preceding fiscal year, may, upon submission of written notification to the Director, defer its classification as a metropolitan city for all purposes under this title, if it elects to have its population included in an urban county under subsection (d).

(C) **ELECTION BY A CITY.**—Notwithstanding subparagraph (B), a city may elect not to retain its classification as a metropolitan city. Any unit of general local government that was classified as a metropolitan city in any year, may, upon submission of written notification to the Director, relinquish such classification for all purposes under this title if it elects to have its population included with the population of a county for purposes of qualifying for assistance (for such following fiscal year) under section 05(e) as an urban county.

(7) **NONQUALIFYING COMMUNITY.**—The term “nonqualifying community” means an area that is not a metropolitan city or part of an urban county and does not include Indian tribes.

(8) **POPULATION.**—The term “population” means total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period of time.

(9) **STATE.**—The term “State” means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(10) **UNIT OF GENERAL LOCAL GOVERNMENT.**—The term “unit of general local government” means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; a combination of such political subdivisions is recognized by the Director; and the District of Columbia.

(11) **URBAN COUNTY.**—The term “urban county” means any county within a metropolitan area.

(b) **BASIS AND MODIFICATION OF DEFINITIONS.**—Where appropriate, the definitions in subsection (a) shall be based, with respect to any fiscal year, on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available ninety days prior to the beginning of such fiscal year. The Director may by regulation change or otherwise modify the meaning of the terms defined in subsection (a) in order to reflect any technical change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

(c) **DESIGNATION OF PUBLIC AGENCIES.**—One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State or a unit of general local government to undertake activities assisted under this title.

(d) **LOCAL GOVERNMENTS, INCLUSION IN URBAN COUNTY POPULATION.**—With respect to program years beginning with the program year for which grants are made available from amounts appropriated for fiscal year 2002 under section 04, the population of any unit of general local government which is included in that of an urban county as provided in subsection (a)(11) shall be included in the population of such urban county for three program years beginning with the program year in which its population was first so included and shall not otherwise be eligible for a grant as a separate entity, unless the urban county does not receive a grant for any year during such three-year period.

(e) **URBAN COUNTY.**—Any county seeking qualification as an urban county, including any urban county seeking to continue such qualification, shall notify, as provided in this subsection, each unit of general local government, which is included therein and is eligible to elect to have its population excluded from that of an urban county, of its opportunity to make such an election. Such notification shall, at a time and in a manner prescribed by the Director, be provided so as to provide a reasonable period for response prior to the period for which such qualification is sought. The population of any unit of general local government which is provided such notification and which does not inform, at a time and in a manner prescribed by the Director, the county of its election to exclude its population from that of the county shall, if the county qualifies as an urban county, be included in the population of such urban county as provided in subsection (d).

SEC. 04. GRANTS TO STATES, UNITS OF GENERAL LOCAL GOVERNMENT AND INDIAN TRIBES; AUTHORIZATIONS.

The Director, working in consultation with the Attorney General is authorized to make grants to States, units of general local government, and Indian tribes to carry out activities in accordance with the provisions of this title. For purposes of assistance under section 07, there is authorized to be appropriated \$3,000,000,000 for each of fiscal years 2003 through 2006, and such additional sums as are authorized thereafter. For purposes of assistance under section 08, there is authorized to be appropriated \$500,000,000 in fiscal year 2003, and such sums as are authorized thereafter.

SEC. 05. STATEMENT OF ACTIVITIES AND REVIEW.

(a) **APPLICATION.**—Prior to the receipt in any fiscal year of a grant under section 07(b) by any metropolitan city or urban county, under section 07(d) by any State, or under section 07(d)(2) by any unit of general local government, the grantee shall have indicated its interest in receiving funds by preparing a statement of homeland security objectives and projected use of funds and

shall have provided the Director with the certifications required in subsection (b) and, where appropriate, subsection (c). In the case of metropolitan cities and urban counties receiving grants pursuant to section 07(b) and in the case of units of general local government receiving grants pursuant to section 07(d)(2), the statement of projected use of funds shall consist of proposed homeland security activities. In the case of States receiving grants pursuant to section 07(d), the statement of projected use of funds shall consist of the method by which the States will distribute funds to units of general local government. In preparing the statement, the grantee shall consider any view of appropriate law enforcement, and emergency response authorities and may, if deemed appropriate by the grantee, modify the proposed statement. A copy of the final statement shall be furnished to the Director, the Attorney General, and the Office of Homeland Security together with the certifications required under subsection (b) and, where appropriate, subsection (c). Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same procedures required in this paragraph for the preparation and submission of such statement.

(b) **CERTIFICATION OF ENUMERATED CRITERIA BY GRANTEE TO SECRETARY.**—Any grant under section 07 shall be made only if the grantee certifies to the satisfaction of the Director that—

(1) it has developed a homeland security plan pursuant to section 05 that identifies both short- and long-term homeland security needs that have been developed in accordance with the primary objective and requirements of this title; and

(2) the grantee will comply with the other provisions of this title and with other applicable laws.

(c) **SUBMISSION OF ANNUAL PERFORMANCE REPORTS, AUDITS AND ADJUSTMENTS.**—

(1) **IN GENERAL.**—Each grantee shall submit to the Director, at a time determined by the Director, a performance and evaluation report concerning the use of funds made available under section 07, together with an assessment by the grantee of the relationship of such use to the objectives identified in the grantee's statement under subsection (a). The Director shall encourage and assist national associations of grantees eligible under section 07, national associations of States, and national associations of units of general local government in nonqualifying areas to develop and recommend to the Director, within 1 year after the effective date of this sentence, uniform recordkeeping, performance reporting, evaluation reporting, and auditing requirements for such grantees, States, and units of general local government, respectively. Based on the Director's approval of these recommendations, the Director shall establish such requirements for use by such grantees, States, and units of general local government.

(2) **REVIEWS AND AUDITS.**—The Director shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine—

(A) in the case of grants made under section 07(b), whether the grantee has carried out its activities and, where applicable, whether the grantee has carried out those activities and its certifications in accordance with the requirements and the primary objectives of this title and with other applicable laws, and whether the grantee has a continuing capacity to carry out those activities in a timely manner; and

(B) in the case of grants to States made under section 07(d), whether the State has distributed funds to units of general local government in a timely manner and in

conformance to the method of distribution described in its statement, whether the State has carried out its certifications in compliance with the requirements of this title and other applicable laws, and whether the State has made such reviews and audits of the units of general local government as may be necessary or appropriate to determine whether they have satisfied the applicable performance criteria described in subparagraph (A).

(3) **ADJUSTMENTS.**—The Director may make appropriate adjustments in the amount of the annual grants in accordance with the Director's findings under this subsection. With respect to assistance made available to units of general local government under section 07(d), the Director may adjust, reduce, or withdraw such assistance, or take other action as appropriate in accordance with the Director's reviews and audits under this subsection, except that funds already expended on eligible activities under this title shall not be recaptured or deducted from future assistance to such units of general local government.

(d) **AUDITS.**—Insofar as they relate to funds provided under this title, the financial transactions of recipients of such funds may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(e) **METROPOLITAN CITY AS PART OF URBAN COUNTY.**—In any case in which a metropolitan city is located, in whole or in part, within an urban county, the Director may, upon the joint request of such city and county, approve the inclusion of the metropolitan city as part of the urban county for purposes of submitting a statement under section 05 and carrying out activities under this title.

SEC. 06. ACTIVITIES ELIGIBLE FOR ASSISTANCE.

(a) **IN GENERAL.**—Activities assisted under this title may include only—

(1) funding additional law enforcement, fire, and emergency resources, including covering overtime expenses;

(2) purchasing and refurbishing personal protective equipment for fire, police, and emergency personnel and acquire state-of-the-art technology to improve communication and streamline efforts;

(3) improving cyber and infrastructure security by improving—

(A) security for water treatment plants, distribution systems, and other water infrastructure; nuclear power plants and other power infrastructure;

(B) security for tunnels and bridges;

(C) security for oil and gas pipelines and storage facilities; and

(D) security for chemical plants and transportation of hazardous substances;

(4) assisting Local Emergency Planning Committees so that local public agencies can design, review, and improve disaster response systems;

(5) assisting communities in coordinating their efforts and sharing information with all relevant agencies involved in responding to terrorist attacks;

(6) establishing timely notification systems that enable communities to communicate with each other when a threat emerges;

(7) improving communication systems to provide information to the public in a timely manner about the facts of any threat and the precautions the public should take; and

(8) devising a homeland security plan, including determining long-term goals and short-term objectives, evaluating the progress of the plan, and carrying out the management, coordination, and monitoring of activities necessary for effective planning implementation.

SEC. 07. ALLOCATION AND DISTRIBUTION OF FUNDS.

(a) **ALLOCATION AND DISTRIBUTION OF FUNDS; SET-ASIDE FOR INDIAN TRIBES.**—

(1) **ALLOCATION.**—For each fiscal year, of the amount approved in an appropriation Act under section 04 for grants in a year (excluding the amounts provided for use in accordance with section 06), the Director shall reserve for grants to Indian tribes 1 percent of the amount appropriated under such section. The Director shall provide for distribution of amounts under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts. The criteria shall be contained in a regulation promulgated by the Director after notice and public comment.

(2) **REMAINING ALLOCATION.**—Of the amount remaining after allocations pursuant to paragraph (1), 70 percent shall be allocated by the Director to metropolitan cities and urban counties. Except as otherwise specifically authorized, each metropolitan city and urban county shall be entitled to an annual grant, to the extent authorized beyond fiscal year 2002, from such allocation in an amount not exceeding its basic amount computed pursuant to paragraph (1) or (2) of subsection (b).

(b) **COMPUTATION OF AMOUNT ALLOCATED TO METROPOLITAN CITIES AND URBAN COUNTIES.**—

(1) **IN GENERAL.**—The Director shall determine the amount to be allocated to each metropolitan city based on the population of that metropolitan city.

(2) **URBAN COUNTIES.**—The Director shall determine the amount to be allocated to each urban county based on the population of that urban county.

(3) **EXCLUSIONS.**—In computing amounts or exclusions under this section with respect to any urban county, there shall be excluded units of general local government located in the county the populations that are not counted in determining the eligibility of the urban county to receive a grant under this subsection, except that there shall be included any independent city (as defined by the Bureau of the Census) which—

(A) is not part of any county;

(B) is not eligible for a grant pursuant to subsection (b)(1);

(C) is contiguous to the urban county;

(D) has entered into cooperation agreements with the urban county which provide that the urban county is to undertake or to assist in the undertaking of essential community development and housing assistance activities with respect to such independent city; and

(E) is not included as a part of any other unit of general local government for purposes of this section.

Any independent city that is included in any fiscal year for purposes of computing amounts pursuant to the preceding sentence shall not be eligible to receive assistance under subsection (d) with respect to such fiscal year.

(4) **INCLUSIONS.**—In computing amounts under this section with respect to any urban county, there shall be included all of the area of any unit of local government which is part of, but is not located entirely within the boundaries of, such urban county if the part of such unit of local government which is within the boundaries of such urban coun-

ty would otherwise be included in computing the amount for such urban county under this section, and if the part of such unit of local government that is not within the boundaries of such urban county is not included as a part of any other unit of local government for the purpose of this section. Any amount received by such urban county under this section may be used with respect to the part of such unit of local government that is outside the boundaries of such urban county.

(5) **POPULATION.**—(A) Where data are available, the amount determined under paragraph (1) for a metropolitan city that has been formed by the consolidation of one or more metropolitan cities with an urban county shall be equal to the sum of the amounts that would have been determined under paragraph (1) for the metropolitan city or cities and the balance of the consolidated government, if such consolidation had not occurred. This paragraph shall apply only to any consolidation that—

(i) included all metropolitan cities that received grants under this section for the fiscal year preceding such consolidation and that were located within the urban county;

(ii) included the entire urban county that received a grant under this section for the fiscal year preceding such consolidation; and

(iii) took place on or after January 1, 2002.

(B) The population growth rate of all metropolitan cities referred to in section 03 shall be based on the population of—

(i) metropolitan cities other than consolidated governments the grant for which is determined under this paragraph; and

(ii) cities that were metropolitan cities before their incorporation into consolidated governments. For purposes of calculating the entitlement share for the balance of the consolidated government under this paragraph, the entire balance shall be considered to have been an urban county.

(c) **REALLOCATION.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), any amounts allocated to a metropolitan city or an urban county pursuant to the preceding provisions of this section that are not received by the city or county for a fiscal year because of failure to meet the requirements of subsections (a) and (b) of section 05, or that otherwise became available, shall be reallocated in the succeeding fiscal year to the other metropolitan cities and urban counties in the same metropolitan area that certify to the satisfaction of the Director that they would be adversely affected by the loss of such amounts from the metropolitan area. The amount of the share of funds reallocated under this paragraph for any metropolitan city or urban county shall bear the same ratio to the total of such reallocated funds in the metropolitan area as the amount of funds awarded to the city or county for the fiscal year in which the reallocated funds become available bears to the total amount of funds awarded to all metropolitan cities and urban counties in the same metropolitan area for that fiscal year.

(2) **TRANSFER.**—Notwithstanding the provisions of paragraph (1), the Director may upon request transfer responsibility to any metropolitan city for the administration of any amounts received, but not obligated, by the urban county in which such city is located if—

(A) such city was an included unit of general local government in such county prior to the qualification of such city as a metropolitan city;

(B) such amounts were designated and received by such county for use in such city prior to the qualification of such city as a metropolitan city; and

(C) such city and county agree to such transfer of responsibility for the administration of such amounts.

(d) **ALLOCATION TO STATES ON BEHALF OF NON-QUALIFYING COMMUNITIES.**—

(1) **IN GENERAL.**—Of the amount approved in an appropriation Act under section 04 that remains after allocations pursuant to paragraphs (1) and (2) of subsection (a), 30 percent shall be allocated among the States for use in nonqualifying areas. The allocation for each State shall be based on the population of that State, relative to the populations of all States, excluding the population of qualifying communities. The Director shall, in order to compensate for the discrepancy between the total of the amounts to be allocated under this paragraph and the total of the amounts available under such paragraph, make a pro rata reduction of each amount allocated to the nonqualifying communities in each State under such paragraph so that the nonqualifying communities in each State will receive an amount that represents the same percentage of the total amount available under such paragraph as the percentage which the nonqualifying areas of the same State would have received under such paragraph if the total amount available under such paragraph had equaled the total amount which was allocated under such paragraph.

(2) **DISTRIBUTION.**—(A) Amounts allocated under paragraph (1) shall be distributed to units of general local government located in nonqualifying areas of the State to carry out activities in accordance with the provisions of this title—

(i) by a State that has elected, in such manner and at such time as the Director shall prescribe, to distribute such amounts consistent with the statement submitted under section 05(a); or

(ii) by the Director, in any case described in subparagraph (B), for use by units of general local government in accordance with paragraph (3)(B).

(B) The Director shall distribute amounts allocated under paragraph (1) if the State has not elected to distribute such amounts.

(C) To receive and distribute amounts allocated under paragraph (1), the State must certify that it, with respect to units of general local government in nonqualifying areas—

(i) provides or will provide technical assistance to units of general local government in connection with homeland security initiatives;

(ii) will not refuse to distribute such amounts to any unit of general local government on the basis of the particular eligible activity selected by such unit of general local government to meet its homeland security objectives, except that this clause may not be considered to prevent a State from establishing priorities in distributing such amounts on the basis of the activities selected; and

(iii) has consulted with local elected officials from among units of general local government located in nonqualifying areas of that State in determining the method of distribution of funds required by subparagraph (A).

(D) To receive and distribute amounts allocated under paragraph (1), the State shall certify that each unit of general local government to be distributed funds will be required to identify its homeland security objectives, and the activities to be undertaken to meet such objectives.

(3) **MINIMUM AMOUNT.**—

(A) **IN GENERAL.**—Each State (other than the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) shall receive for each fiscal year a

base amount of \$18,000,000 of the total amount appropriated for each fiscal year for grants made available to States under this section.

(B) DISTRICT OF COLUMBIA AND TERRITORIES.—The District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall each receive for each fiscal year \$3,000,000 of the total amount appropriated for each fiscal year for grants made available to States under this section.

(4) ADMINISTRATION.—(A) If the State receives and distributes such amounts, it shall be responsible for the administration of funds so distributed. The State shall pay from its own resources all administrative expenses incurred by the State in carrying out its responsibilities under this title, except that from the amounts received for distribution in nonqualifying areas, the State may deduct an amount to cover such expenses and its administrative expenses not to exceed the sum of \$150,000 plus 50 percent of any such expenses under this title in excess of \$150,000. Amounts deducted in excess of \$150,000 shall not exceed 2 percent of the amount so received.

(B) If the Director distributes such amounts, the distribution shall be made in accordance with determinations of the Director pursuant to statements submitted and the other requirements of section 05 (other than subsection (c)) and in accordance with regulations and procedures prescribed by the Director.

(C) Any amounts allocated for use in a State under paragraph (1) that are not received by the State for any fiscal year because of failure to meet the requirements of subsection (a) or (b) of section 05 shall be added to amounts allocated to all States under paragraph (1) for the succeeding fiscal year.

(D) Any amounts allocated for use in a State under paragraph (1) that become available as a result of the closeout of a grant made by the Director under this section in nonqualifying areas of the State shall be added to amounts allocated to the State under paragraph (1) for the fiscal year in which the amounts become so available.

(5) SINGLE UNIT.—Any combination of units of general local governments may not be required to obtain recognition by the Director pursuant to section 03(2) to be treated as a single unit of general local government for purposes of this subsection.

(6) DEDUCTION.—From the amounts received under paragraph (1) for distribution in nonqualifying areas, the State may deduct an amount, not to exceed 1 percent of the amount so received, to provide technical assistance to local governments.

(7) APPLICABILITY.—Any activities conducted with amounts received by a unit of general local government under this subsection shall be subject to the applicable provisions of this title and other Federal law in the same manner and to the same extent as activities conducted with amounts received by a unit of general local government under subsection (a).

(e) QUALIFICATIONS AND DETERMINATIONS.—The Director may fix such qualification or submission dates as he determines are necessary to permit the computations and determinations required by this section to be made in a timely manner, and all such computations and determinations shall be final and conclusive.

(f) PRO RATA REDUCTION AND INCREASE.—If the total amount available for distribution in any fiscal year to metropolitan cities and urban counties under this section is insufficient to provide the amounts to which metropolitan cities and urban counties would be

entitled under subsection (b), and funds are not otherwise appropriated to meet the deficiency, the Director shall meet the deficiency through a pro rata reduction of all amounts determined under subsection (b). If the total amount available for distribution in any fiscal year to metropolitan cities and urban counties under this section exceeds the amounts to which metropolitan cities and urban counties would be entitled under subsection (b), the Director shall distribute the excess through a pro rata increase of all amounts determined under subsection (b).

SEC. 08. STATE AND REGIONAL PLANNING; COMMUNICATIONS SYSTEMS.

(a) IN GENERAL.—Pursuant to section 04, \$500,000,000 shall be used for homeland defense planning within the States by the States, for interstate, multistate or regional authorities, and within regions through regional cooperations; the development and maintenance of Statewide training facilities and homeland best-practices clearinghouses; and the development and maintenance of communications systems that can be used between and among first responders, including law enforcement, fire, and emergency medical personnel as follows:

(1) \$325,000,000 to the States, and interstate, multistate or regional authorities; for homeland defense planning, coordination and implementation;

(2) \$50,000,000 to regional cooperations for homeland defense planning and coordination;

(3) \$50,000,000 to the States for the development and maintenance of Statewide training facilities and best-practices clearinghouses; and

(4) \$75,000,000 to the States for the States and for local communities for the development and maintenance of communications systems that can be used between and among first responders at the State and local level, including law enforcement, fire, and emergency personnel.

(b) ALLOCATIONS.—Funds under this section to be awarded to States shall be allocated among the States based upon the population for each State relative to the populations of all States. The "minimum amount" provision set forth in section 07(d)(3) shall apply to funds awarded under this section to States. With respect to subsection (a)(4), at least 30 percent of the funds awarded must be used for the development and maintenance of local communications systems.

(c) REGIONAL COOPERATIONS.—Funds under this section to be awarded to regional cooperations shall be allocated among the regional cooperations based upon the population of the areas covered by the cooperations.

SEC. 09. NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES.

No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any such program or activity.

SEC. 10. REMEDIES FOR NONCOMPLIANCE WITH REQUIREMENTS.

If the Director finds after reasonable notice and opportunity for hearing that a recipient of assistance under this title has failed to comply substantially with any provision of this title, the Director, until he is satisfied that there is no longer any such failure to comply, shall—

(1) terminate payments to the recipient under this title;

(2) reduce payments to the recipient under this title by an amount equal to the amount of such payments which were not expended in accordance with this title; or

(3) limit the availability of payments under this title to programs, projects, or activities not affected by such failure to comply.

SEC. 11. REPORTING REQUIREMENTS.

(a) IN GENERAL.—Not later than 180 days after the close of each fiscal year in which assistance under this title is furnished, the Director shall submit to Congress a report which shall contain—

(1) a description of the progress made in accomplishing the objectives of this title;

(2) a summary of the use of such funds during the preceding fiscal year; and

(3) a description of the activities carried out under section 07.

(b) REPORTS TO THE DIRECTOR.—The Director is authorized to require recipients of assistance under this title to submit to him such reports and other information as may be necessary in order for the Director to make the report required by subsection (a).

SEC. 12. CONSULTATION BY ATTORNEY GENERAL.

In carrying out the provisions of this title including the issuance of regulations, the Director shall consult with the Attorney General especially as to any issues of concern to the law enforcement community, the Office of Homeland Security, and other Federal departments and agencies administering Federal grant-in-aid programs.

SEC. 13. INTERSTATE AGREEMENTS OR COMPACTS; PURPOSES.

The consent of the Congress is hereby given to any two or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative effort and mutual assistance in support of homeland security planning and programs carried out under this title as they pertain to interstate areas and to localities within such States, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreements and compacts effective.

SEC. 14. MATCHING REQUIREMENTS; SUSPENSION OF REQUIREMENTS FOR ECONOMICALLY DISTRESSED AREAS.

(a) REQUIREMENT.—Grant recipients shall contribute from funds, other than those received under this title, 10 percent of the total funds received under this title. Such funds shall be used in accordance with the grantee's statement of homeland security objectives.

(b) ECONOMIC DISTRESS.—Grant recipients that are deemed economically distressed shall be waived from the matching requirement set forth in this section.

SA 4691. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 4619 submitted by Mr. JEFFORDS (for himself, Mr. SMITH of New Hampshire, and Ms. SNOWE) and intended to be proposed to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Amendment intended to be proposed by Mrs. CLINTON to the amendment (No. 4619) proposed by Mr. JEFFORDS strike section 630(c)(2) and insert the following:

SEC. 173. FIRST RESPONDER PERSONNEL COSTS.

Local governments receiving Federal homeland security funding under this Act,

whether directly or as a pass-through from the States, may use up to 20 percent of Federal funds received for first time responder personnel costs, including overtime costs.

SA 4692. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

DIVISION D—FBI REFORMS

SEC. 3001. SHORT TITLE.

This division may be cited as the "Federal Bureau of Investigation Reform Act of 2002".

TITLE XXXI—IMPROVING FBI OVERSIGHT

SEC. 3101. AUTHORITY OF THE DEPARTMENT OF JUSTICE INSPECTOR GENERAL.

Section 8E of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (b), by striking paragraphs (2) and (3) and inserting the following:

"(2) except as specified in subsection (a) and paragraph (3), may investigate allegations of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, or may, in the discretion of the Inspector General, refer such allegations to the Office of Professional Responsibility or the internal affairs office of the appropriate component of the Department of Justice;

"(3) shall refer to the Counsel, Office of Professional Responsibility of the Department of Justice, allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice, except that no such referral shall be made if the attorney is employed in the Office of Professional Responsibility;

"(4) may investigate allegations of criminal wrongdoing or administrative misconduct, including a failure to properly discipline employees, by a person who is the head of any agency or component of the Department of Justice; and

"(5) shall forward the results of any investigation conducted under paragraph (4), along with any appropriate recommendation for disciplinary action, to the Attorney General, who is authorized to take appropriate disciplinary action.";

(2) by adding at the end the following:

"(d) If the Attorney General does not follow any recommendation of the Inspector General made under subsection (b)(5), the Attorney General shall submit a report to the chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives that sets forth the recommendation of the Inspector General and the reasons of the Attorney General for not following that recommendation.

"(e) The Attorney General shall ensure by regulation that any component of the Department of Justice receiving a nonfrivolous allegation of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice shall report that information to the Inspector General."

SEC. 3102. REVIEW OF THE DEPARTMENT OF JUSTICE.

(a) **APPOINTMENT OF OVERSIGHT OFFICIAL WITHIN THE OFFICE OF INSPECTOR GENERAL.**—

(1) **IN GENERAL.**—The Inspector General of the Department of Justice shall direct that 1 official from the office of the Inspector General be responsible for supervising and coordinating independent oversight of programs and operations of the Federal Bureau of Investigation until September 30, 2003.

(2) **CONTINUATION OF OVERSIGHT.**—The Inspector General may continue individual

oversight in accordance with paragraph (1) after September 30, 2003, at the discretion of the Inspector General.

(b) **INSPECTOR GENERAL OVERSIGHT PLAN FOR THE FEDERAL BUREAU OF INVESTIGATION.**—Not later than 30 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives, a plan for oversight of the Federal Bureau of Investigation, which plan may include—

(1) an audit of the financial systems, information technology systems, and computer security systems of the Federal Bureau of Investigation;

(2) an audit and evaluation of programs and processes of the Federal Bureau of Investigation to identify systemic weaknesses or implementation failures and to recommend corrective action;

(3) a review of the activities of internal affairs offices of the Federal Bureau of Investigation, including the Inspections Division and the Office of Professional Responsibility;

(4) an investigation of allegations of serious misconduct by personnel of the Federal Bureau of Investigation;

(5) a review of matters relating to any other program or operation of the Federal Bureau of Investigation that the Inspector General determines requires review; and

(6) an identification of resources needed by the Inspector General to implement a plan for oversight of the Federal Bureau of Investigation.

(c) **REPORT ON INSPECTOR GENERAL FOR FEDERAL BUREAU OF INVESTIGATION.**—Not later than 90 days after the date of enactment of this Act, the Attorney General shall submit a report and recommendation to the Chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives concerning—

(1) whether there should be established, within the Department of Justice, a separate office of the Inspector General for the Federal Bureau of Investigation that shall be responsible for supervising independent oversight of programs and operations of the Federal Bureau of Investigation;

(2) what changes have been or should be made to the rules, regulations, policies, or practices governing the Federal Bureau of Investigation in order to assist the Office of the Inspector General in effectively exercising its authority to investigate the conduct of employees of the Federal Bureau of Investigation;

(3) what differences exist between the methods and practices used by different Department of Justice components in the investigation and adjudication of alleged misconduct by Department of Justice personnel;

(4) what steps should be or are being taken to make the methods and practices described in paragraph (3) uniform throughout the Department of Justice; and

(5) whether a set of recommended guidelines relating to the discipline of Department of Justice personnel for misconduct should be developed, and what factors, such as the nature and seriousness of the misconduct, the prior history of the employee, and the rank and seniority of the employee at the time of the misconduct, should be taken into account in establishing such recommended disciplinary guidelines.

SEC. 3103. AUTHORIZATION OF APPROPRIATIONS.

(a) **DEPARTMENT OF JUSTICE.**—There is authorized to be appropriated \$2,000,000 to the Department of Justice for fiscal year 2003—

(1) for salary, pay, retirement, and other costs associated with increasing the staffing level of the Office of Inspector General by 25

full-time special agents who shall conduct an increased number of audits, inspections, and investigations of alleged misconduct by employees of the Federal Bureau of Investigation;

(2) to fund expanded audit coverage of the grant programs administered by the Office of Justice Programs of the Department of Justice; and

(3) to conduct special reviews of efforts by the Federal Bureau of Investigation to implement recommendations made by the Office of Inspector General in reports on alleged misconduct by the Bureau.

(b) **FEDERAL BUREAU OF INVESTIGATION.**—There is authorized to be appropriated \$1,700,000 to the Federal Bureau of Investigation for fiscal year 2003 for salary, pay, retirement, and other costs associated with increasing the staffing level of the Office of Professional Responsibility by 10 full-time special agents and 4 full-time support employees.

TITLE XXXII—WHISTLEBLOWER PROTECTION

SEC. 3201. INCREASING PROTECTIONS FOR FBI WHISTLEBLOWERS.

Section 2303 of title 5, United States Code, is amended to read as follows:

"§ 2303. Prohibited personnel practices in the Federal Bureau of Investigation

"(a) **DEFINITION.**—In this section, the term 'personnel action' means any action described in clauses (i) through (x) of section 2302(a)(2)(A).

"(b) **PROHIBITED PRACTICES.**—Any employee of the Federal Bureau of Investigation who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau or because of—

"(1) any disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose), a supervisor of the employee, the Inspector General for the Department of Justice, or a Member of Congress that the employee reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

"(2) any disclosure of information by the employee to the Special Counsel of information that the employee reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

"(c) **INDIVIDUAL RIGHT OF ACTION.**—Chapter 12 of this title shall apply to an employee of the Federal Bureau of Investigation who claims that a personnel action has been taken under this section against the employee as a reprisal for any disclosure of information described in subsection (b)(2).

"(d) **REGULATIONS.**—The Attorney General shall prescribe regulations to ensure that a personnel action under this section shall not be taken against an employee of the Federal Bureau of Investigation as a reprisal for any disclosure of information described in subsection (b)(1), and shall provide for the enforcement of such regulations in a manner

consistent with applicable provisions of sections 1214 and 1221, and in accordance with the procedures set forth in sections 554 through 557 and 701 through 706.”

TITLE XXXIII—FBI SECURITY CAREER PROGRAM

SEC. 3301. SECURITY MANAGEMENT POLICIES.

The Attorney General shall establish policies and procedures for the effective management (including accession, education, training, and career development) of persons serving in security positions in the Federal Bureau of Investigation.

SEC. 3302. DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) IN GENERAL.—Subject to the authority, direction, and control of the Attorney General, the Director of the Federal Bureau of Investigation (referred to in this title as the “Director”) shall carry out all powers, functions, and duties of the Attorney General with respect to the security workforce in the Federal Bureau of Investigation.

(b) POLICY IMPLEMENTATION.—The Director shall ensure that the policies of the Attorney General established in accordance with this Act are implemented throughout the Federal Bureau of Investigation at both the headquarters and field office levels.

SEC. 3303. DIRECTOR OF SECURITY.

The Director shall appoint a Director of Security, or such other title as the Director may determine, to assist the Director in the performance of the duties of the Director under this Act.

SEC. 3304. SECURITY CAREER PROGRAM BOARDS.

(a) ESTABLISHMENT.—The Director acting through the Director of Security shall establish a security career program board to advise the Director in managing the hiring, training, education, and career development of personnel in the security workforce of the Federal Bureau of Investigation.

(b) COMPOSITION OF BOARD.—The security career program board shall include—

(1) the Director of Security (or a representative of the Director of Security);

(2) the senior officials, as designated by the Director, with responsibility for personnel management;

(3) the senior officials, as designated by the Director, with responsibility for information management;

(4) the senior officials, as designated by the Director, with responsibility for training and career development in the various security disciplines; and

(5) such other senior officials for the intelligence community as the Director may designate.

(c) CHAIRPERSON.—The Director of Security (or a representative of the Director of Security) shall be the chairperson of the board.

(d) SUBORDINATE BOARDS.—The Director of Security may establish a subordinate board structure to which functions of the security career program board may be delegated.

SEC. 3305. DESIGNATION OF SECURITY POSITIONS.

(a) DESIGNATION.—The Director shall designate, by regulation, those positions in the Federal Bureau of Investigation that are security positions for purposes of this Act.

(b) REQUIRED POSITIONS.—In designating security positions under subsection (a), the Director shall include, at a minimum, all security-related positions in the areas of—

(1) personnel security and access control;

(2) information systems security and information assurance;

(3) physical security and technical surveillance countermeasures;

(4) operational, program, and industrial security; and

(5) information security and classification management.

SEC. 3306. CAREER DEVELOPMENT.

(a) CAREER PATHS.—The Director shall ensure that appropriate career paths for personnel who wish to pursue careers in security are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior security positions and shall make available published information on those career paths.

(b) LIMITATION ON PREFERENCE FOR SPECIAL AGENTS.—

(1) IN GENERAL.—Except as provided in the policy established under paragraph (2), the Attorney General shall ensure that no requirement or preference for a Special Agent of the Federal Bureau of Investigation (referred to in this title as a “Special Agent”) is used in the consideration of persons for security positions.

(2) POLICY.—The Attorney General shall establish a policy that permits a particular security position to be specified as available only to Special Agents, if a determination is made, under criteria specified in the policy, that a Special Agent—

(A) is required for that position by law;

(B) is essential for performance of the duties of the position; or

(C) is necessary for another compelling reason.

(3) REPORT.—Not later than December 15 of each year, the Director shall submit to the Attorney General a report that lists—

(A) each security position that is restricted to Special Agents under the policy established under paragraph (2); and

(B) the recommendation of the Director as to whether each restricted security position should remain restricted.

(c) OPPORTUNITIES TO QUALIFY.—The Attorney General shall ensure that all personnel, including Special Agents, are provided the opportunity to acquire the education, training, and experience necessary to qualify for senior security positions.

(d) BEST QUALIFIED.—The Attorney General shall ensure that the policies established under this Act are designed to provide for the selection of the best qualified individual for a position, consistent with other applicable law.

(e) ASSIGNMENTS POLICY.—The Attorney General shall establish a policy for assigning Special Agents to security positions that provides for a balance between—

(1) the need for personnel to serve in career enhancing positions; and

(2) the need for requiring service in each such position for sufficient time to provide the stability necessary to carry out effectively the duties of the position and to allow for the establishment of responsibility and accountability for actions taken in the position.

(f) LENGTH OF ASSIGNMENT.—In implementing the policy established under subsection (b)(2), the Director shall provide, as appropriate, for longer lengths of assignments to security positions than assignments to other positions.

(g) PERFORMANCE APPRAISALS.—The Director shall provide an opportunity for review and inclusion of any comments on any appraisal of the performance of a person serving in a security position by a person serving in a security position in the same security career field.

(h) BALANCED WORKFORCE POLICY.—In the development of security workforce policies under this Act with respect to any employees or applicants for employment, the Attorney General shall, consistent with the merit system principles set out in paragraphs (1) and (2) of section 2301(b) of title 5, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are

appropriately represented in Government service.

SEC. 3307. GENERAL EDUCATION, TRAINING, AND EXPERIENCE REQUIREMENTS.

(a) IN GENERAL.—The Director shall establish education, training, and experience requirements for each security position, based on the level of complexity of duties carried out in the position.

(b) QUALIFICATION REQUIREMENTS.—Before being assigned to a position as a program manager or deputy program manager of a significant security program, a person—

(1) must have completed a security program management course that is accredited by the Intelligence Community-Department of Defense Joint Security Training Consortium or is determined to be comparable by the Director; and

(2) must have not less than 6 years experience in security, of which not less than 2 years were performed in a similar program office or organization.

SEC. 3308. EDUCATION AND TRAINING PROGRAMS.

(a) IN GENERAL.—The Director, in consultation with the Director of Central Intelligence and the Secretary of Defense, shall establish and implement education and training programs for persons serving in security positions in the Federal Bureau of Investigation.

(b) OTHER PROGRAMS.—The Director shall ensure that programs established under subsection (a) are established and implemented, to the maximum extent practicable, uniformly with the programs of the Intelligence Community and the Department of Defense.

SEC. 3309. OFFICE OF PERSONNEL MANAGEMENT APPROVAL.

(a) IN GENERAL.—The Attorney General shall submit any requirement that is established under section 3307 to the Director of the Office of Personnel Management for approval.

(b) FINAL APPROVAL.—If the Director does not disapprove the requirements established under section 3307 within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director of the Office of Personnel Management.

TITLE XXXIV—FBI COUNTERINTELLIGENCE POLYGRAPH PROGRAM

SEC. 3401. DEFINITIONS.

In this title:

(1) POLYGRAPH PROGRAM.—The term “polygraph program” means the counterintelligence screening polygraph program established under section 3402.

(2) POLYGRAPH REVIEW.—The term “Polygraph Review” means the review of the scientific validity of the polygraph for counterintelligence screening purposes conducted by the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences.

SEC. 3402. ESTABLISHMENT OF PROGRAM.

Not later than 6 months after publication of the results of the Polygraph Review, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation and the Director of Security of the Federal Bureau of Investigation, shall establish a counterintelligence screening polygraph program for the Federal Bureau of Investigation that consists of periodic polygraph examinations of employees, or contractor employees of the Federal Bureau of Investigation who are in positions specified by the Director of the Federal Bureau of Investigation as exceptionally sensitive in order to minimize the potential for unauthorized release or disclosure of exceptionally sensitive information.

SEC. 3403. REGULATIONS.

(a) IN GENERAL.—The Attorney General shall prescribe regulations for the polygraph

program in accordance with subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedures Act).

(b) **CONSIDERATIONS.**—In prescribing regulations under subsection (a), the Attorney General shall—

(1) take into account the results of the Polygraph Review; and

(2) include procedures for—

(A) identifying and addressing false positive results of polygraph examinations;

(B) ensuring that adverse personnel actions are not taken against an individual solely by reason of the physiological reaction of the individual to a question in a polygraph examination, unless—

(i) reasonable efforts are first made independently to determine through alternative means, the veracity of the response of the individual to the question; and

(ii) the Director of the Federal Bureau of Investigation determines personally that the personnel action is justified;

(C) ensuring quality assurance and quality control in accordance with any guidance provided by the Department of Defense Polygraph Institute and the Director of Central Intelligence; and

(D) allowing any employee or contractor who is the subject of a counterintelligence screening polygraph examination under the polygraph program, upon written request, to have prompt access to any unclassified reports regarding an examination that relates to any adverse personnel action taken with respect to the individual.

SEC. 3404. REPORT ON FURTHER ENHANCEMENT OF FBI PERSONNEL SECURITY PROGRAM.

(a) **IN GENERAL.**—Not later than 9 months after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to Congress a report setting forth recommendations for any legislative action that the Director considers appropriate in order to enhance the personnel security program of the Federal Bureau of Investigation.

(b) **POLYGRAPH REVIEW RESULTS.**—Any recommendation under subsection (a) regarding the use of polygraphs shall take into account the results of the Polygraph Review.

SEC. 3405. WEBSTER COMMISSION IMPLEMENTATION REPORT.

(a) **IMPLEMENTATION PLAN.**—Not later than 6 months after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the appropriate Committees of Congress a plan for implementation of the recommendations of the Commission for Review of FBI Security Programs, dated March 31, 2002, including the costs of such implementation.

(b) **ANNUAL REPORTS.**—On the date that is 1 year after the submission of the plan described in subsection (a), and for 2 years thereafter, the Director of the Federal Bureau of Investigation shall submit to the appropriate Committees of Congress a report on the implementation of such plan.

(c) **APPROPRIATE COMMITTEES OF CONGRESS.**—For purposes of this section, the term “appropriate Committees of Congress” means—

(1) the Committees on the Judiciary of the Senate and the House of Representatives;

(2) the Committees on Appropriations of the Senate and the House of Representatives;

(3) the Select Committee on Intelligence of the Senate; and

(4) the Permanent Select Committee on Intelligence of the House of Representatives.

TITLE XXXV—FBI POLICE

SEC. 3501. DEFINITIONS.

In this title:

(1) **DIRECTOR.**—The term “Director” means the Director of the Federal Bureau of Investigation.

(2) **FBI BUILDINGS AND GROUNDS.**—

(A) **IN GENERAL.**—The term “FBI buildings and grounds” means—

(i) the whole or any part of any building or structure which is occupied under a lease or otherwise by the Federal Bureau of Investigation and is subject to supervision and control by the Federal Bureau of Investigation;

(ii) the land upon which there is situated any building or structure which is occupied wholly by the Federal Bureau of Investigation; and

(iii) any enclosed passageway connecting 2 or more buildings or structures occupied in whole or in part by the Federal Bureau of Investigation.

(B) **INCLUSION.**—The term “FBI buildings and grounds” includes adjacent streets and sidewalks not to exceed 500 feet from such property.

(3) **FBI POLICE.**—The term “FBI police” means the permanent police force established under section 3502.

SEC. 3502. ESTABLISHMENT OF FBI POLICE; DUTIES.

(a) **IN GENERAL.**—Subject to the supervision of the Attorney General, the Director may establish a permanent police force, to be known as the FBI police.

(b) **DUTIES.**—The FBI police shall perform such duties as the Director may prescribe in connection with the protection of persons and property within FBI buildings and grounds.

(c) **UNIFORMED REPRESENTATIVE.**—The Director, or designated representative duly authorized by the Attorney General, may appoint uniformed representatives of the Federal Bureau of Investigation as FBI police for duty in connection with the policing of all FBI buildings and grounds.

(d) **AUTHORITY.**—

(1) **IN GENERAL.**—In accordance with regulations prescribed by the Director and approved by the Attorney General, the FBI police may—

(A) police the FBI buildings and grounds for the purpose of protecting persons and property;

(B) in the performance of duties necessary for carrying out subparagraph (A), make arrests and otherwise enforce the laws of the United States, including the laws of the District of Columbia;

(C) carry firearms as may be required for the performance of duties;

(D) prevent breaches of the peace and suppress affrays and unlawful assemblies; and

(E) hold the same powers as sheriffs and constables when policing FBI buildings and grounds.

(2) **EXCEPTION.**—The authority and policing powers of FBI police under this subsection shall not include the service of civil process.

(e) **PAY AND BENEFITS.**—

(1) **IN GENERAL.**—The rates of basic pay, salary schedule, pay provisions, and benefits for members of the FBI police shall be equivalent to the rates of basic pay, salary schedule, pay provisions, and benefits applicable to members of the United States Secret Service Uniformed Division.

(2) **APPLICATION.**—Pay and benefits for the FBI police under paragraph (1)—

(A) shall be established by regulation;

(B) shall apply with respect to pay periods beginning after January 1, 2003; and

(C) shall not result in any decrease in the rates of pay or benefits of any individual.

SEC. 3503. AUTHORITY OF METROPOLITAN POLICE FORCE.

This title does not affect the authority of the Metropolitan Police Force of the District

of Columbia with respect to FBI buildings and grounds.

TITLE XXXVI—REPORTS

SEC. 3601. REPORT ON LEGAL AUTHORITY FOR FBI PROGRAMS AND ACTIVITIES.

(a) **IN GENERAL.**—Not later than 9 months after the date of enactment of this Act, the Attorney General shall submit to Congress a report describing the statutory and other legal authority for all programs and activities of the Federal Bureau of Investigation.

(b) **CONTENTS.**—The report submitted under subsection (a) shall describe—

(1) the titles within the United States Code and the statutes for which the Federal Bureau of Investigation exercises investigative responsibility;

(2) each program or activity of the Federal Bureau of Investigation that has express statutory authority and the statute which provides that authority; and

(3) each program or activity of the Federal Bureau of Investigation that does not have express statutory authority, and the source of the legal authority for that program or activity.

(c) **RECOMMENDATIONS.**—The report submitted under subsection (a) shall recommend whether—

(1) the Federal Bureau of Investigation should continue to have investigative responsibility for each statute for which the Federal Bureau of Investigation currently has investigative responsibility;

(2) the legal authority for any program or activity of the Federal Bureau of Investigation should be modified or repealed;

(3) the Federal Bureau of Investigation should have express statutory authority for any program or activity of the Federal Bureau of Investigation for which the Federal Bureau of Investigation does not currently have express statutory authority; and

(4) the Federal Bureau of Investigation should—

(A) have authority for any new program or activity; and

(B) express statutory authority with respect to any new programs or activities.

SEC. 3602. REPORT ON FBI INFORMATION MANAGEMENT AND TECHNOLOGY.

(a) **IN GENERAL.**—Not later than 9 months after the date of enactment of this Act, the Director of the Federal Bureau of Investigation, with appropriate comments from other components of the Department of Justice, shall submit to Congress a report on the information management and technology programs of the Federal Bureau of Investigation including recommendations for any legislation that may be necessary to enhance the effectiveness of those programs.

(b) **CONTENTS OF REPORT.**—The report submitted under subsection (a) shall provide—

(1) an analysis and evaluation of whether authority for waiver of any provision of procurement law (including any regulation implementing such a law) is necessary to expeditiously and cost-effectively acquire information technology to meet the unique need of the Federal Bureau of Investigation to improve its investigative operations in order to respond better to national law enforcement, intelligence, and counterintelligence requirements;

(2) the results of the studies and audits conducted by the Strategic Management Council and the Inspector General of the Department of Justice to evaluate the information management and technology programs of the Federal Bureau of Investigation, including systems, policies, procedures, practices, and operations; and

(3) a plan for improving the information management and technology programs of the Federal Bureau of Investigation.

(c) RESULTS.—The results provided under subsection (b)(2) shall include an evaluation of—

(1) information technology procedures and practices regarding procurement, training, and systems maintenance;

(2) record keeping policies, procedures, and practices of the Federal Bureau of Investigation, focusing particularly on how information is inputted, stored, managed, utilized, and shared within the Federal Bureau of Investigation;

(3) how information in a given database is related or compared to, or integrated with, information in other technology databases within the Federal Bureau of Investigation;

(4) the effectiveness of the existing information technology infrastructure of the Federal Bureau of Investigation in supporting and accomplishing the overall mission of the Federal Bureau of Investigation;

(5) the management of information technology projects of the Federal Bureau of Investigation, focusing on how the Federal Bureau of Investigation—

(A) selects its information technology projects;

(B) ensures that projects under development deliver benefits; and

(C) ensures that completed projects deliver the expected results; and

(6) the security and access control techniques for classified and sensitive but unclassified information systems in the Federal Bureau of Investigation.

(d) CONTENTS OF PLAN.—The plan provided under subsection (b)(3) shall ensure that—

(1) appropriate key technology management positions in the Federal Bureau of Investigation are filled by personnel with experience in the commercial sector;

(2) access to the most sensitive information is audited in such a manner that suspicious activity is subject to near contemporaneous security review;

(3) critical information systems employ a public key infrastructure to validate both users and recipients of messages or records;

(4) security features are tested by the National Security Agency to meet national information systems security standards;

(5) all employees in the Federal Bureau of Investigation receive annual instruction in records and information management policies and procedures relevant to their positions;

(6) a reserve is established for research and development to guide strategic information management and technology investment decisions;

(7) unnecessary administrative requirements for software purchases under \$2,000,000 are eliminated;

(8) full consideration is given to contacting with an expert technology partner to provide technical support for the information technology procurement for the Federal Bureau of Investigation;

(9) procedures are instituted to procure products and services through contracts of other agencies, as necessary; and

(10) a systems integration and test center, with the participation of field personnel, tests each series of information systems upgrades or application changes before their operational deployment to confirm that they meet proper requirements.

SEC. 3603. GAO REPORT ON CRIME STATISTICS REPORTING.

(a) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the issue of how statistics are reported and used by Federal law enforcement agencies.

(b) CONTENTS.—The report submitted under subsection (a) shall—

(1) identify the current regulations, procedures, internal policies, or other conditions that allow the investigation or arrest of an individual to be claimed or reported by more than 1 Federal or State agency charged with law enforcement responsibility;

(2) identify and examine the conditions that allow the investigation or arrest of an individual to be claimed or reported by the Offices of Inspectors General and any other Federal agency charged with law enforcement responsibility;

(3) examine the statistics reported by Federal law enforcement agencies, and document those instances in which more than 1 agency, bureau, or office claimed or reported the same investigation or arrest during the years 1998 through 2001;

(4) examine the issue of Federal agencies simultaneously claiming arrest credit for custody situations that have already occurred pursuant to a State or local agency arrest situation during the years 1998 through 2001;

(5) examine the issue of how such statistics are used for administrative and management purposes;

(6) set forth a comprehensive definition of the terms “investigation” and “arrest” as those terms apply to Federal agencies charged with law enforcement responsibilities; and

(7) include recommendations, that when implemented, would eliminate unwarranted and duplicative reporting of investigation and arrest statistics by all Federal agencies charged with law enforcement responsibilities.

(c) FEDERAL AGENCY COMPLIANCE.—Federal law enforcement agencies shall comply with requests made by the General Accounting Office for information that is necessary to assist in preparing the report required by this section.

TITLE XXXVII—ENDING THE DOUBLE STANDARD

SEC. 3701. ALLOWING DISCIPLINARY SUSPENSIONS OF MEMBERS OF THE SENIOR EXECUTIVE SERVICE FOR 14 DAYS OR LESS.

Section 7542 of title 5, United States Code, is amended by striking “for more than 14 days”.

SEC. 3702. SUBMITTING OFFICE OF PROFESSIONAL RESPONSIBILITY REPORTS TO CONGRESSIONAL COMMITTEES.

(a) IN GENERAL.—For each of the 5 years following the date of enactment of this Act, the Office of the Inspector General shall submit to the chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives an annual report to be completed by the Federal Bureau of Investigation, Office of Professional Responsibility and provided to the Inspector General, which sets forth—

(1) basic information on each investigation completed by that Office;

(2) the findings and recommendations of that Office for disciplinary action; and

(3) what, if any, action was taken by the Director of the Federal Bureau of Investigation or the designee of the Director based on any such recommendation.

(b) CONTENTS.—In addition to all matters already included in the annual report described in subsection (a), the report shall also include an analysis of—

(1) whether senior Federal Bureau of Investigation employees and lower level Federal Bureau of Investigation personnel are being disciplined and investigated similarly; and

(2) whether any double standard is being employed to more senior employees with respect to allegations of misconduct.

TITLE XXXVIII—ENHANCING SECURITY AT THE DEPARTMENT OF JUSTICE

SEC. 3801. REPORT ON THE PROTECTION OF SECURITY AND INFORMATION AT THE DEPARTMENT OF JUSTICE.

Not later than 9 months after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the manner in which the Security and Emergency Planning Staff, the Office of Intelligence Policy and Review, and the Chief Information Officer of the Department of Justice plan to improve the protection of security and information at the Department of Justice, including a plan to establish secure electronic communications between the Federal Bureau of Investigation and the Office of Intelligence Policy and Review for processing information related to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

SEC. 3802. AUTHORIZATION FOR INCREASED RESOURCES TO PROTECT SECURITY AND INFORMATION.

There are authorized to be appropriated to the Department of Justice for the activities of the Security and Emergency Planning Staff to meet the increased demands to provide personnel, physical, information, technical, and litigation security for the Department of Justice, to prepare for terrorist threats and other emergencies, and to review security compliance by components of the Department of Justice—

(1) \$13,000,000 for fiscal year 2003;

(2) \$17,000,000 for fiscal year 2004; and

(3) \$22,000,000 for fiscal year 2005.

SEC. 3803. AUTHORIZATION FOR INCREASED RESOURCES TO FULFILL NATIONAL SECURITY MISSION OF THE DEPARTMENT OF JUSTICE.

There are authorized to be appropriated to the Department of Justice for the activities of the Office of Intelligence Policy and Review to help meet the increased personnel demands to combat terrorism, process applications to the Foreign Intelligence Surveillance Court, participate effectively in counterespionage investigations, provide policy analysis and oversight on national security matters, and enhance secure computer and telecommunications facilities—

(1) \$7,000,000 for fiscal year 2003;

(2) \$7,500,000 for fiscal year 2004; and

(3) \$8,000,000 for fiscal year 2005.

SA 4693. Mr. HATCH proposed an amendment to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

At the appropriate place, insert the following new title:

TITLE —CYBER SECURITY ENHANCEMENT ACT OF 2002

SEC. —01. SHORT TITLE.

This title may be cited as the “Cyber Security Enhancement Act of 2002”.

Subtitle A—Computer Crime

SEC. —11. AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN COMPUTER CRIMES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in subsection (a), the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(2) consider the following factors and the extent to which the guidelines may or may not account for them—

(A) the potential and actual loss resulting from the offense;

(B) the level of sophistication and planning involved in the offense;

(C) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(D) whether the defendant acted with malicious intent to cause harm in committing the offense;

(E) the extent to which the offense violated the privacy rights of individuals harmed;

(F) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(G) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(H) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

(3) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 12. STUDY AND REPORT ON COMPUTER CRIMES.

Not later than May 1, 2003, the United States Sentencing Commission shall submit a brief report to Congress that explains any actions taken by the Sentencing Commission in response to this title and includes any recommendations the Commission may have regarding statutory penalties for offenses under section 1030 of title 18, United States Code.

SEC. 13. EMERGENCY DISCLOSURE EXCEPTION.

(a) IN GENERAL.—Section 2702(b) of title 18, United States Code, is amended—

(1) by striking “or” at the end of paragraph (5);

(2) by striking subparagraph (C) of paragraph (6);

(3) in paragraph (6), by inserting “or” at the end of subparagraph (A); and

(4) by inserting after paragraph (6) the following:

“(7) to a Federal, State, or local governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.”.

(b) REPORTING OF DISCLOSURES.—A government entity that receives a disclosure under this section shall file, no later than 90 days after such disclosure, a report to the Attorney General stating the subparagraph under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number of customers or subscribers to whom the information disclosed pertained, and the number of communications, if any, that were disclosed. The

Attorney General shall publish all such reports into a single report to be submitted to Congress one year after enactment of the bill.

SEC. 14. GOOD FAITH EXCEPTION.

Section 2520(d)(3) of title 18, United States Code, is amended by inserting “or 2511(2)(i)” after “2511(3)”.

SEC. 15. INTERNET ADVERTISING OF ILLEGAL DEVICES.

Section 2512(1)(c) of title 18, United States Code, is amended—

(1) by inserting “or disseminates by electronic means” after “or other publication”; and

(2) by inserting “knowing the content of the advertisement and” before “knowing or having reason to know”.

SEC. 16. STRENGTHENING PENALTIES.

Section 1030(c) of title 18, United States Code, is amended—

(1) by striking “and” at the end of paragraph (3);

(2) in each of subparagraphs (A) and (C) of paragraph (4), by inserting “except as provided in paragraph (5),” before “a fine under this title”;

(3) by striking the period at the end of paragraph (4)(C) and inserting “; and”; and

(4) by adding at the end the following:

“(5)(A) if the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for not more than 20 years, or both; and

“(B) if the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for any term of years or for life, or both.”.

SEC. 17. PROVIDER ASSISTANCE.

(a) SECTION 2703.—Section 2703(e) of title 18, United States Code, is amended by inserting “, statutory authorization” after “subpoena”.

(b) SECTION 2511.—Section 2511(2)(a)(ii) of title 18, United States Code, is amended by inserting “, statutory authorization,” after “court order” the last place it appears.

SEC. 18. EMERGENCIES.

Section 3125(a)(1) of title 18, United States Code, is amended—

(1) by striking “or” at the end of subparagraph (A);

(2) by striking the comma at the end of subparagraph (B) and inserting a semicolon; and

(3) by adding at the end the following:

“(C) an immediate threat to a national security interest; or

“(D) an ongoing attack on a protected computer (as defined in section 1030) that constitutes a crime punishable by a term of imprisonment greater than one year;”.

SEC. 19. PROTECTING PRIVACY.

(a) SECTION 2511.—Section 2511(4) of title 18, United States Code, is amended—

(1) by striking paragraph (b); and

(2) by redesignating paragraph (c) as paragraph (b).

(b) SECTION 2701.—Section 2701(b) of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting “, or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State” after “commercial gain”;

(2) in paragraph (1)(A), by striking “one year” and inserting “5 years”;

(3) in paragraph (1)(B), by striking “two years” and inserting “10 years”; and

(4) so that paragraph (2) reads as follows:

“(2) in any other case—

“(A) a fine under this title or imprisonment for not more than one year or both, in

the case of a first offense under this paragraph; and

“(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.”.

(c) PRESENCE OF OFFICER AT SERVICE AND EXECUTION OF WARRANTS FOR COMMUNICATIONS AND CUSTOMER RECORDS.—Section 3105 of title 18, United States Code, is amended by adding at the end the following: “The presence of an officer is not required for service or execution of a search warrant directed to a provider of electronic communication service or remote computing service for records or other information pertaining to a subscriber to or customer of such service.”.

Subtitle B—Office of Science and Technology

SEC. 21. ESTABLISHMENT OF OFFICE; DIRECTOR.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is hereby established within the Department of Justice an Office of Science and Technology (hereinafter in this subtitle referred to as the “Office”).

(2) AUTHORITY.—The Office shall be under the general authority of the Assistant Attorney General, Office of Justice Programs, and shall be independent of the National Institute of Justice.

(b) DIRECTOR.—The Office shall be headed by a Director, who shall be an individual appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual.

SEC. 22. MISSION OF OFFICE; DUTIES.

(a) MISSION.—The mission of the Office shall be—

(1) to serve as the national focal point for work on law enforcement technology; and

(2) to carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.

(b) DUTIES.—In carrying out its mission, the Office shall have the following duties:

(1) To provide recommendations and advice to the Attorney General.

(2) To establish and maintain advisory groups (which shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)) to assess the law enforcement technology needs of Federal, State, and local law enforcement agencies.

(3) To establish and maintain performance standards in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104-113) for, and test and evaluate law enforcement technologies that may be used by, Federal, State, and local law enforcement agencies.

(4) To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform to standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104-113). The program may, at the discretion of the Office, allow for supplier's declaration of conformity with such standards.

(5) To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

(6) To carry out research, development, testing, and evaluation in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including, but not limited to—

(A) weapons capable of preventing use by unauthorized persons, including personalized guns;

(B) protective apparel;

(C) bullet-resistant and explosion-resistant glass;

(D) monitoring systems and alarm systems capable of providing precise location information;

(E) wire and wireless interoperable communication technologies;

(F) tools and techniques that facilitate investigative and forensic work, including computer forensics;

(G) equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices;

(H) guides to assist State and local law enforcement agencies;

(I) DNA identification technologies; and

(J) tools and techniques that facilitate investigations of computer crime.

(7) To administer a program of research, development, testing, and demonstration to improve the interoperability of voice and data public safety communications.

(8) To serve on the Technical Support Working Group of the Department of Defense, and on other relevant interagency panels, as requested.

(9) To develop, and disseminate to State and local law enforcement agencies, technical assistance and training materials for law enforcement personnel, including prosecutors.

(10) To operate the regional National Law Enforcement and Corrections Technology Centers and, to the extent necessary, establish additional centers through a competitive process.

(11) To administer a program of acquisition, research, development, and dissemination of advanced investigative analysis and forensic tools to assist State and local law enforcement agencies in combating cybercrime.

(12) To support research fellowships in support of its mission.

(13) To serve as a clearinghouse for information on law enforcement technologies.

(14) To represent the United States and State and local law enforcement agencies, as requested, in international activities concerning law enforcement technology.

(15) To enter into contracts and cooperative agreements and provide grants, which may require in-kind or cash matches from the recipient, as necessary to carry out its mission.

(16) To carry out other duties assigned by the Attorney General to accomplish the mission of the Office.

(c) **COMPETITION REQUIRED.**—Except as otherwise expressly provided by law, all research and development carried out by or through the Office shall be carried out on a competitive basis.

(d) **INFORMATION FROM FEDERAL AGENCIES.**—Federal agencies shall, upon request from the Office and in accordance with Federal law, provide the Office with any data, reports, or other information requested, unless compliance with such request is otherwise prohibited by law.

(e) **PUBLICATIONS.**—Decisions concerning publications issued by the Office shall rest solely with the Director of the Office.

(f) **TRANSFER OF FUNDS.**—The Office may transfer funds to other Federal agencies or provide funding to non-Federal entities through grants, cooperative agreements, or contracts to carry out its duties under this section.

(g) **ANNUAL REPORT.**—The Director of the Office shall include with the budget justification materials submitted to Congress in support of the Department of Justice budget for each fiscal year (as submitted

with the budget of the President under section 1105(a) of title 31, United States Code) a report on the activities of the Office. Each such report shall include the following:

(1) For the period of 5 fiscal years beginning with the fiscal year for which the budget is submitted—

(A) the Director's assessment of the needs of Federal, State, and local law enforcement agencies for assistance with respect to law enforcement technology and other matters consistent with the mission of the Office; and

(B) a strategic plan for meeting such needs of such law enforcement agencies.

(2) For the fiscal year preceding the fiscal year for which such budget is submitted, a description of the activities carried out by the Office and an evaluation of the extent to which those activities successfully meet the needs assessed under paragraph (1)(A) in previous reports.

SEC. 23. DEFINITION OF LAW ENFORCEMENT TECHNOLOGY.

For the purposes of this subtitle, the term "law enforcement technology" includes investigative and forensic technologies, corrections technologies, and technologies that support the judicial process.

SEC. 24. ABOLISHMENT OF OFFICE OF SCIENCE AND TECHNOLOGY OF NATIONAL INSTITUTE OF JUSTICE; TRANSFER OF FUNCTIONS.

(a) **TRANSFERS FROM OFFICE WITHIN NIJ.**—The Office of Science and Technology of the National Institute of Justice is hereby abolished, and all functions and activities performed immediately before the date of the enactment of this Act by the Office of Science and Technology of the National Institute of Justice are hereby transferred to the Office.

(b) **AUTHORITY TO TRANSFER ADDITIONAL FUNCTIONS.**—The Attorney General may transfer to the Office any other program or activity of the Department of Justice that the Attorney General, in consultation with the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, determines to be consistent with the mission of the Office.

(c) **TRANSFER OF FUNDS.**—

(1) **IN GENERAL.**—Any balance of appropriations that the Attorney General determines is available and needed to finance or discharge a function, power, or duty of the Office or a program or activity that is transferred to the Office shall be transferred to the Office and used for any purpose for which those appropriations were originally available. Balances of appropriations so transferred shall—

(A) be credited to any applicable appropriation account of the Office; or

(B) be credited to a new account that may be established on the books of the Department of the Treasury;

and shall be merged with the funds already credited to that account and accounted for as one fund.

(2) **LIMITATIONS.**—Balances of appropriations credited to an account under paragraph (1)(A) are subject only to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under paragraph (1)(B) are subject only to such limitations as are applicable to the appropriations from which they are transferred.

(d) **TRANSFER OF PERSONNEL AND ASSETS.**—With respect to any function, power, or duty, or any program or activity, that is transferred to the Office, those employees and assets of the element of the Department of Justice from which the transfer is made that the Attorney General determines are needed to perform that function, power, or duty, or

for that program or activity, as the case may be, shall be transferred to the Office.

(e) **REPORT ON IMPLEMENTATION.**—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this subtitle. The report shall—

(1) identify each transfer carried out pursuant to subsection (b);

(2) provide an accounting of the amounts and sources of funding available to the Office to carry out its mission under existing authorizations and appropriations, and set forth the future funding needs of the Office;

(3) include such other information and recommendations as the Attorney General considers appropriate.

SEC. 25. NATIONAL LAW ENFORCEMENT AND CORRECTIONS TECHNOLOGY CENTERS.

(a) **IN GENERAL.**—The Director of the Office shall operate and support National Law Enforcement and Corrections Technology Centers (hereinafter in this section referred to as "Centers") and, to the extent necessary, establish new centers through a merit-based, competitive process.

(b) **PURPOSE OF CENTERS.**—The purpose of the Centers shall be to—

(1) support research and development of law enforcement technology;

(2) support the transfer and implementation of technology;

(3) assist in the development and dissemination of guidelines and technological standards; and

(4) provide technology assistance, information, and support for law enforcement, corrections, and criminal justice purposes.

(c) **ANNUAL MEETING.**—Each year, the Director shall convene a meeting of the Centers in order to foster collaboration and communication between Center participants.

(d) **REPORT.**—Not later than 12 months after the date of the enactment of this Act, the Director shall transmit to the Congress a report assessing the effectiveness of the existing system of Centers and identify the number of Centers necessary to meet the technology needs of Federal, State, and local law enforcement in the United States.

SEC. 26. COORDINATION WITH OTHER ENTITIES WITHIN DEPARTMENT OF JUSTICE.

Section 102 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712) is amended in subsection (a)(5) by inserting "coordinate and" before "provide".

SA 4694. Mr. LIEBERMAN (for himself and Mr. McCain) proposed an amendment to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

On page 211, insert between lines 9 and 10 the following:

TITLE VI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

SEC. 601. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the "Commission").

SEC. 602. PURPOSES.

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001;

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and

(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

SEC. 603. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 3 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) CHAIRPERSON; VICE CHAIRPERSON.—

(1) IN GENERAL.—Subject to paragraph (2), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(2) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson shall not be from the same political party.

(c) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.

(4) INITIAL MEETING.—If 60 days after the date of enactment of this Act, 6 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairperson or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 604. FUNCTIONS OF THE COMMISSION.

The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the terrorist attacks

of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and

(B) may include relevant facts and circumstances relating to—

(i) intelligence agencies;

(ii) law enforcement agencies;

(iii) diplomacy;

(iv) immigration, nonimmigrant visas, and border control;

(v) the flow of assets to terrorist organizations;

(vi) commercial aviation; and

(vii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

SEC. 605. POWERS OF THE COMMISSION.

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under paragraph (1)(B) may be issued under the signature of the chairperson of the Commission, the Vice Chairperson of the Commission, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the chairperson, subcommittee chairperson, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CLOSED MEETINGS.—

(1) IN GENERAL.—Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(2) ADDITIONAL AUTHORITY.—In addition to the authority under paragraph (1), section 10(a)(1) and (3) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.

(c) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(g) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 606. STAFF OF THE COMMISSION.

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 607. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 608. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

SEC. 609. REPORTS OF THE COMMISSION; TERMINATION.

(a) INITIAL REPORT.—Not later than 6 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) ADDITIONAL REPORTS.—Not later than 1 year after the submission of the initial report of the Commission, the Commission shall submit to the President and Congress a second report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the second report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

SEC. 610. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission to carry out this title \$3,000,000, to remain available until expended.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the Session of the Senate on Thursday, September 19, 2002, at 2:30 p.m., in both open and closed session to receive testimony on U.S. policy on Iraq.

The PRESIDING OFFICER. Without objection, it so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, September 19, 2002, at 10 a.m., to conduct an oversight hearing on "Financial Privacy and Consumer Protection."

The PRESIDING OFFICER. Without objection, it so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, September 19, 2002, at 10 a.m. on pending committee business.

Agenda

1. S. 2949, Aviation Security Improvement Act (Sam Whitehorn/Gael Sullivan, Rob Chamberlin/Michael Reynolds).

2. S. 2946, Federal Trade Commission Reauthorization Act of 2002 (David Strickland/Kim Vandecar, Carlos Fierro/Ken Nahigian).

3. S. 2817, National Science Foundation Doubling Act (Jean Toal Eisen/Chan Lieu, Floyd DesChamps/Ken LaSala).

4. S. 2950, National Transportation Safety Board Reauthorization Act of 2002 (Sam Whitehorn/Gael Sullivan/Carl Bentzel, Rob Chamberlin/Michael Reynolds/Rob Freeman/Mary Phillips).

5. S. 2951, Federal Aviation Administration Research, Engineering, and Development Act of 2002 (Gael Sullivan/Sam Whitehorn, Rob Chamberlin/Michael Reynolds).

6. S. 2550, Professional Boxing Amendments Act of 2002 (David Strickland/Matthew Morrissey, Carlos Fierro/Ken Nahigian).

7. S. 2608, Coastal and Estuarine Land Protection Act (Margaret Spring/Peter Fippinger, Drew Minkiewicz).

8. H.R. 1989, Fisheries Conservation Act of 2002 (Margaret Spring/Cindy Smith, Drew Minkiewicz).

9. H.R. 2486, Inland Flood Forecasting and Warning System Act of 2002 (Margaret Spring/Cindy Smith, Floyd DesChamps/Ken LaSala).

10. S. 2862, Firefighting Research and Coordination Act (Jean Toal Eisen/Chan Lieu, Floyd DesChamps/Ken LaSala).

11. S. 2945, the 21st Century Nanotechnology Research and Develop-

ment Act (Jean Toal Eisen/Chan Lieu, Floyd DesChamps/Ken LaSala).

12. H.R. 2733, Enterprise Integration Act of 2002 (Jean Toal Eisen/Chan Lieu, Floyd DesChamps/Ken LaSala).

13. S.J. Res. 42, a joint resolution commending Sail Boston for the continuing advancement of the maritime heritage of nations, its commemoration of the nautical history of the United States, and its promotion, encouragement, and support of young cadets through training (Carl Bentzel/Marvin Nixon, Rob Freeman).

14. Nomination of David McQueen Laney (PN 1731), of Texas, to be a Member of the Reform Board (Amtrak) (Carl Bentzel/David Matsuda/Vanessa Jones, Rob Freeman/Mary Phillips/Virginia Pounds).

15. Nomination of Rebecca Dye (PN 1870), of North Carolina, to be a Federal Maritime Commissioner (Carl Bentzel/Marvin Nixon/Vanessa Jones, Rob Freeman/Virginia Pounds).

16. Nomination of Roger Nober (PN 1979), of Maryland, to be a Member of the Surface Transportation Board (Carl Bentzel/David Matsuda/Vanessa Jones, Rob Freeman/Mary Phillips/Virginia Pounds).

17. Nominations for Promotion in the United States Coast Guard (PNs 2146, 2160, 2161, 2162) (Vanessa Jones, Virginia Pounds).

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Thursday, September 19, 2002, at 9:30 a.m., to conduct a hearing entitled, "Project Delivery and Environmental Stewardship" to examine progress on environmental streamlining under the Transportation Equity Act for the 21st century, TEA-21. The hearing will be held in SD-406.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, September 19, 2002, at 11 a.m., to hold a hearing on law enforcement treaties.

Agenda

Treaties

1. Treaty Doc. 107-13; Treaty Between the Government of the United States of America and the Government of Belize on Mutual Legal Assistance in Criminal Matters.

2. Treaty Doc. 107-12; Treaty Between the Government of the United States of America and the Government of the Kingdom of Sweden on Mutual Legal Assistance in Criminal Matters.

3. Treaty Doc. 107-9; Treaty Between the Government of the United States of America and the Government of Ireland on Mutual Legal Assistance in Criminal Matters.