

CRS Report for Congress

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Department of Homeland Security: Options for House and Senate Committee Organization

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Summary

With the passage of H.R. 5710, to create a new Department of Homeland Security, Congress has begun discussions regarding the appropriate congressional structure to conduct oversight and fund the new department. Section 1503 of the legislation states the sense of Congress that each chamber should review its committee structure in light of the reorganization of the executive branch.

Each chamber can decide to retain its current structure, make minor alterations to its current jurisdictional alignment, make extensive jurisdictional changes, or create new select or standing committees. Changes can also be made in the structure of the Appropriations Committees. This report addresses some of the options currently being discussed and provides information on legislation in the 107th Congress that attempts to alter the current committee system. The report will be updated as events warrant.

Introduction. With the passage of H.R. 5710, Congress might need to address the issue of which House and Senate committees will have legislative, appropriations, and oversight authority over the activities and funding of the new department. Specifically, section 1503 of the measure says, “It is the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch by the establishment of the Department.”

Numerous Members have already spoken about possible changes to their chamber’s committee system. A number of proposals have been offered in the House and Senate to establish a new select or standing committee on homeland security, to reorganize the Appropriations Committees to reflect the new department, or to make other changes in congressional structures dealing with homeland security issues. A senior House leader has observed that creation of the new department “probably will require at least a reorganization of the current committees.” A Senator active in crafting the final compromise stated “It is hard to see how Congress could do a decent job of authorizing and overseeing what the new department does without a new Committee of Homeland

Security.” On the other hand, a number of Members have publicly opposed any alteration of House or Senate committee structures, while others have endorsed or opposed such action at different times.¹ From the perspective of the executive branch, a reduction in committee jurisdiction fragmentation limits the number of panels to which officials of the new agency will be answerable. This report examines various options for the House and Senate individually or jointly to consider in reorganizing its structures dealing with homeland security and discusses possible advantages and disadvantages of each.

Options for Congressional Organization

Retain Current Structure. Congress could decide that the current system is sufficient to monitor the work of the new department. No changes would be made in either jurisdiction or referral procedures. Some may argue that it is too soon to know how much legislative workload the new department will cause House and Senate committees. In the immediate aftermath of the 2001 terrorist attacks, all congressional committees sought involvement in terrorism matters. If the legislative focus on the issue subsides, fewer committees might actively seek such involvement.

However, claims to jurisdiction over the new department are already being made. A senior member of the Armed Services Committee has been reported to say that the Armed Services Committee could exercise responsibility for the new department.² The programs, activities, and units of the Department of Energy, for example, are currently within the jurisdiction of more than one committee in each chamber. Retaining the current committee structure in either or both chambers could create jurisdictional struggles among committees claiming to be the “primary” (House) or “predominant” (Senate) committee, the terms of art in the two chambers signifying a principal or exclusive role over the department.

Historically, there has been no necessary connection between an executive reorganization and congressional committee reorganization. Several House and Senate committees were combined to create the new Armed Services Committees in 1947, at about the same time that the Department of Defense was created. The Armed Services Committees promptly created subcommittees that closely matched the former standing committees that had been merged in the committee reorganization. On the other hand, the Department of Energy was created after the Senate had consolidated energy jurisdiction in its committees, but before the House completed a realignment of its energy jurisdictions in 1980. The creation of the Department of Health, Education, and Welfare (now Health and Human Services) was not accompanied by any change in House or Senate committee jurisdictions.

¹ For a broader review of reported Member views on reorganization options, see David Nather and Karen Foerstel, “Proposal Presages Turf War,” *CQ Weekly*, June 8, 2002, p. 1505; David Nather and Karen Foerstel, “Committee Chairmen Express Concerns about Major Shift in Jurisdiction,” *CQ Weekly*, June 15, 2002, p. 1584; James Kitfield, “The Experiment Begins,” *National Journal*, June 15, 2002, p. 1776; and Derek Willis, “Turf Battles Could Lie Ahead in Fight to Oversee Homeland Security Department,” *CQ Weekly*, Nov. 16, 2002, p. 3006.

² *Ibid.*, Nov. 6, 2002, p. 3006-8.

Reorganize Entire System. Either chamber or both chambers, either acting separately or jointly, could undertake an extensive reorganization of the committee system. A substantial House committee reorganization took place in 1995, but it has been a quarter century since the Senate comprehensively reorganized its committees. The Joint Committee on the Organization of Congress in the 103rd Congress considered numerous options for such reorganization, but did not directly address the issue of terrorism or anti-terrorism jurisdiction.³ A comprehensive reorganization could allow both chambers to address other jurisdiction issues which have emerged in recent years.⁴ Nevertheless, a comprehensive reorganization is normally controversial and rarely contemplated under very short deadlines.

Realign Committee Jurisdiction. Within the existing system, either or both chambers could choose to realign their committee jurisdictions within the existing structure. That would entail changing chamber rules. Past experience indicates that Members generally have been loathe to overhaul the committee system, especially during a Congress. Rules changes are traditionally adopted at the beginning of a new Congress. In the House, such changes could be drafted after the adjournment of the 107th Congress and included in the package of rules changes voted on by the House at the convening of the 108th Congress. In the Senate, because there is no need to readopt Senate rules at the beginning of a new Congress, a committee reorganization would have to be considered separately.

In either chamber, it would be possible to add jurisdictional aspects of certain homeland security topics to the jurisdiction of specific committees, without altering the existing subject jurisdictions of committees over other topics. For example, jurisdiction over “national energy policy generally” was assigned to the House Energy and Commerce Committee in 1980 without significant alteration to other committees’ jurisdictions.

Change Referral System. Both chambers generally refer measures to a single committee, by determining primary jurisdiction in the House and predominant jurisdiction in the Senate. In the House, most multiple referrals are sequential, although joint referrals were permitted until 1995. Changing the referral system could enable all interested committees to maintain legislative and oversight jurisdiction. For example, the Speaker of the House (who has the discretionary authority to impose time limits on referrals) could be required to impose them on all committees involved in a multiple referral of a homeland security-related bill. In addition, for legislation on homeland security, the House could allow joint referrals.

³ Joint Committee on the Organization of Congress, *Background Materials: Supplemental Information Provided to Members of the Joint Committee on the Organization of Congress*. 103rd Cong., 1st sess. (Washington: GPO, 1993) pp, 608-788.

⁴ Such restructuring would enable the chambers to also address other committee jurisdiction and organization issues. For example, press reports have indicated the possibility of re-creating a House Committee on Merchant Marine and Fisheries. See, Ben Pershing, “Cubin Joins Chase for Resources,” *Roll Call*, April 25, 2002, p. 1. In addition, because of the shifting majority in the Senate, most Senators now hold more committee and subcommittee assignments than the rules permit.

In the Senate, which generally requires unanimous consent for multiple referrals, party leaders could invoke their little-used authority to recommend referrals to several committees by debate-limited motion. However, major changes in House or Senate bill referral rules could complicate action on homeland security matters in the short term and could be nearly as controversial as a jurisdictional realignment.

Create New Standing Committee over Homeland Security. A new standing committee could be created in either or both chambers. Such a panel could have legislative responsibility over all aspects of a new Department of Homeland Security. In the House, Representative Jim Ryun (R-KS) introduced H.Res. 481 which would create a standing committee on homeland security, and a new appropriations subcommittee dealing with homeland security. Representative Curt Weldon (R-PA) testified before the House Rules Committee during its hearing on potential rules changes for the 108th Congress about the need for a new standing committee on homeland security. Questions regarding whether the new committee would absorb jurisdiction from existing panels or overlap with them would need to be decided. Would special oversight authority be granted to a new committee? Creating a new standing committee would require a change in chamber rules. Such changes are traditionally included in opening day House rules change packages. In the Senate, no proposal has been introduced to create a new standing committee on homeland security.

Create Select Committee over Homeland Security. Members in both the House and Senate have introduced resolutions to create select committees. In the House, Representative J.C. Watts (R-OK) introduced H.Res. 52, which states that Congress “should establish a panel to examine the adequacy of its committee structure to deal with issues related to domestic terrorism and to consider the creation of more effective structures, including a Select Committee on Domestic Terrorism.” Senator Pat Roberts (R-KS) introduced S. Res. 165 to create a Select Committee on Homeland Security and Terrorism, with the panel having “primary and preeminent” jurisdiction over homeland security and terrorism. The Center for Strategic and International Studies has recommended, as have other groups, the creation of select committees in each chamber to conduct oversight over a new Department of Homeland Security.⁵

Select committees generally are not granted legislative jurisdiction. If such a new panel were created, would it have legislative authority (for example, in the same manner as do the current intelligence committees)? If so, would other committees receive sequential referrals of their legislative product, and could the select committee demand sequential referrals of relevant measures reported from the standing committees? If such a select committee were created without legislative jurisdiction, its findings and recommendations would need to be transferred to one or more standing committees.

Create Leadership Committee. Similar to the current Select Committee on Homeland Security, either or both chambers could create a leadership panel to consider legislation and conduct oversight on the department. Such a panel could be the first to act on legislative proposals, with other panels claiming legislative authority acting

⁵ Center for Strategic and International Studies, *Meeting the Challenges of Establishing a New Department of Homeland Security: A CSIS White Paper* (Washington: CSIS, 2002). [<http://www.csis.org/features/hamrefinalpaper.pdf>]

sequentially. Alternatively, such a panel could act after the relevant panels considered issues within their jurisdiction, but prior to any legislation being considered on the floor. A further alternative would be to reconstitute the House Select Committee on Homeland Security to monitor the agency's development while decisions are made on more extensive jurisdictional changes among committees.⁶

The membership of such panels is typically comprised of the elected party leaders, or their designees, as is the case with the current House Select Committee on Homeland Security. Alternatively, the chairs and ranking members of the committees that would retain jurisdiction over the issues transferred to the new department (as was the case with the Ad Hoc Committee on Energy in 1977), or some combination thereof, could also be named to a leadership committee. Similarly, the Senate has relied on the so-called Senate Caucus on International Narcotics Control (whose members are named by the party leaders) to monitor executive branch activities in this matter. Although named a "caucus," the panel essentially functions as a non-legislative select committee.

Use less Formal Means to Coordinate Policy. In both the House and Senate, many committees claiming responsibility for specific policy areas have entered into "memoranda of understanding," or agreements among the concerned committees, reflecting each panel's appropriate jurisdiction over a disputed policy area. These memoranda serve as guidance to the parliamentarians' offices in making bill referrals and may obviate the immediate need for a formal revision in committee jurisdictions.

The Senate also makes use of "temporary standing orders," unanimous consent agreements typically in force for the current Congress only, that modify the standing rules of the Senate. One or more temporary standing orders could be used to allocate jurisdiction among Senate committees over homeland security issues. These orders could be set to expire at the end of the 108th Congress, unless the Senate of the 109th Congress agreed to retain them. If successful, the temporary orders could be converted into more permanent changes in Senate procedure; if not, other realignments could be attempted.

Realign Appropriations Committees' Subcommittees. The only panels in Congress with closely parallel structures are the House and Senate Appropriations Committees. Each chamber could create a fourteenth subcommittee on homeland security, which would have responsibility over the funding for the new department and the entities transferred to it. Some within the House Appropriations Committee have suggested the creation of a fourteenth subcommittee, but there is no consensus. Representative Jim Ryun (R-KS) introduced H.Res. 481 which calls for the creation of a new standing committee on homeland security and a new appropriations subcommittee on homeland security. In the Senate, there is also some support for the creation of a separate appropriations subcommittee.⁷

Alternatively, duties could be redistributed among the existing 13 subcommittees. Any reorganization of Appropriations subcommittees would not be dependent upon

⁶ Such action is not unprecedented. The House decided in 1977 to extend the life of the Ad Hoc Committee on the Outer Continental Shelf for an additional period to allow it to monitor the implementation of the law, the consideration of which had caused its initial creation.

⁷ Nather and Foerstel, *CQ Weekly*, June 8, 2002, p. 1506.

changes in the legislative or oversight jurisdictions of other committees. Traditionally, the House and Senate Appropriations Committees have had identical subcommittee structures, but such parallel organization is not required. The House Appropriations Committee has historically taken the lead on such organizational questions, with the Senate committee following in the same or a later Congress.

Furthermore, the organization of the subcommittees could remain unchanged while the committee considered new procedures to assemble an appropriations bill for the Homeland Security Department. Supplemental appropriations bills are assembled at the full committee from recommendations put forward by individual subcommittees. A bill funding the Homeland Security Department could be assembled from recommendations put forward by each appropriations subcommittee for homeland security activities within its jurisdiction. The separate recommendations could then be consolidated into a free-standing bill considered only at the full committee.

Create a Joint Committee on Homeland Security. The House and Senate could create a joint committee to oversee the work of a new department. However, only one joint committee in the last half-century has been granted legislative jurisdiction. If such a joint panel were created, the question of sequential referrals to existing standing committees could still be raised. The House and Senate acted separately in the 107th Congress to permit the two intelligence committees to hold an inquiry into intelligence failures prior to the terrorist attacks. Nothing in House or Senate rules would preclude existing House or Senate committees from holding joint hearings in the interests of greater efficiency. Some view joint committees as a means to permit more efficient congressional review of policy areas, while others believe that separate committees help preserve chamber autonomy and encourage independent committee initiatives.