



H.R. 1 (Implementing the 9/11 Commission Recommendations Act of 2007) and S. 4 (Improving America's Security Act of 2007): A Comparative Analysis

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Summary

This comparative analysis of H.R. 1 (Implementing the 9/11 Commission Recommendations Act of 2007) and S. 4 (Improving America's Security Act of 2007) is an assessment of major similarities and differences between the two bills as passed by the House (January 9, 2007) and Senate (March 13, 2007) and under conference consideration.

References to the two bills are to engrossed versions. The presentation is organized to follow the basic construct of the House bill because its coverage remained more stable through the legislative process and as the analyses began. Titles unique to S. 4 follow the Titles of H.R. 1.

CRS experts are available to follow up on any additional needs, including clarification of content or of legislative references. Each section of this analysis includes contact information for the analyst or attorney who prepared it.

CRS also provides online access to research products that directly address a number of issues that are the focus of or are raised by H.R. 1 and S. 4. These products are available under the CRS home page Current Legislative Issues heading "Terrorism and Homeland Security" (see <http://www.crs.gov>).

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Introduction

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References to the two bills are to engrossed versions. The presentation is organized to follow the basic construct of the House bill because its coverage remained more stable through the legislative process and as the analyses began. Titles unique to S. 4 follow the Titles of H.R. 1.

CRS experts are available to follow up on any additional needs, including clarification of content or of legislative references. Each section of this analysis includes contact information for the analyst or attorney who prepared it.

The two bills analyzed herein represent a resolve by many Members of the 110th Congress to address 9/11 Commission recommendations that may not have been completely resolved through legislative actions of the 109th Congress or Executive actions. For an assessment of what Commission recommendations were addressed through previously enacted legislation and Executive actions, see CRS Report RL33742, *9/11 Commission Recommendations: Implementation Status*, by (name redacted). CRS also provides online access to research products that directly address a number of issues that are the focus of or are raised by H.R. 1 and S. 4. These products are available under the CRS home page Current Legislative Issues heading "Terrorism and Homeland Security" (see <http://www.crs.gov>).

Title I: Risk-Based Allocation of Homeland Security Grants

Homeland Security and Emergency Management Grant Funding

Prepared by (name redacted), Analyst in American National Government, CRS Government and Finance Division, 7-.....

Overview

The 9/11 Commission recommended in its 2004 report that state and local homeland security assistance should be "based strictly on an assessment of risks and vulnerabilities." The Commission went on to state that federal homeland security assistance "should supplement state and local resources based on risks and vulnerabilities that merit additional support." (*The 9/11 Commission Report*, p. 396.) H.R. 1 and S. 4 propose to change the current formula used to distribute federal assistance for state and local homeland security. Both bills would include risk assessment requirements in the distribution of federal homeland security assistance.

House Provisions

H.R. 1 (Title I, Section 101 “Title XX, Section 2002-2005” of the Homeland Security Act of 2002, P.L. 107-296) covers the State Homeland Security Grant Program (SHSGP), the Law Enforcement Terrorism Prevention Program (LETPP), and the Urban Area Security Initiative (UASI). The bill would authorize the DHS Secretary to award grants to eligible applicants. Additionally, the Department of Homeland Security (DHS) Secretary would be required to evaluate and annually prioritize applications based on risk and vulnerability assessments—including assessments of national critical infrastructure sectors.

H.R. 1 would guarantee that states without an international border, the District of Columbia (DC), and Puerto Rico receive a minimum of 0.25% of total appropriations for the covered grants. States with an international border would be deemed high risk and guaranteed a minimum of 0.45%, and U.S. insular areas and eligible tribes would be guaranteed a minimum of 0.08%. Finally, H.R. 1 details eligible activities and accountability requirements.

Senate Provisions

S. 4 (Title II, Section 202, “Title XX, Section 2002-2009” of the Homeland Security Act of 2002, P.L. 107-296) would authorize the DHS Secretary, through the Federal Emergency Management Agency (FEMA) Administrator, to award federal homeland security assistance to states, DC, Puerto Rico, and U.S. insular areas. The FEMA Administrator would be required to distribute federal homeland security assistance based on risk and threat assessments. The bill would establish UASI to help high-risk metropolitan areas prepare for, prevent, protect against, respond to, and recover from terrorist attacks, and would authorize \$1.28 billion for fiscal years 2008 through 2010. The bill also would establish SHSGP for states, DC, Puerto Rico, and U.S. insular areas. States, DC, and Puerto Rico would be guaranteed a minimum of 0.45% of total SHSGP appropriations; U.S. insular areas, 0.08%. S. 4 would authorize \$913 million for fiscal years 2008 through 2010, and thereafter such sums as necessary.

The bill would require the FEMA Administrator to designate not less than 25% of UASI and SHSGP allocations for law enforcement terrorism prevention activities, and would establish an Office for the Prevention of Terrorism within DHS to coordinate policy, serve as a liaison for grant recipients, and coordinate with DHS’s Office of Intelligence and Analysis. Finally, S. 4’s Title II would identify restrictions on the use of grant awards; the bill, however, would not prohibit grant recipients from using grant award funding for all-hazard preparedness if they also enhance terrorism preparedness. S. 4 would authorize the DHS Inspector General to conduct audits of grant recipient uses of SHSGP, UASI, and Emergency Management Performance Grant (EMPG) program funding.

Additionally, S. 4 (Title IV, Section 401) would amend Section 622 of the Post Katrina Act (Title VI, P.L. 109-295) by codifying the distribution method for EMPG awards. Each state, DC, and Puerto Rico would be guaranteed to receive 0.75% of total appropriations; U.S. insular areas, 0.25%. The amount remaining of total appropriations would be allocated on the state’s percentage of the national population. The bill would also ensure that the federal cost share would not exceed 50% of allocations to each state. The bill would authorize grant recipients to use EMPG funding for the Emergency Operations Center Improvement Program; the federal cost share for this program would not exceed 75%. Finally, S. 4 would authorize \$913 million for fiscal years 2008 through 2010, and such sums as necessary thereafter.

Comments

Neither H.R. 1 nor S. 4 proposes to fund state and local homeland security assistance strictly on risk and threat. Both bills propose a guaranteed minimum to states, DC, Puerto Rico, and U.S. insular areas, though both bills do propose to provide the majority of federal homeland security assistance based on risk. H.R. 1, unlike S. 4, does not authorize specific amounts of appropriations for any homeland security or emergency management program, nor does it address EMPG allocations. Additionally, H.R. 1 does not identify the FEMA Administrator as the DHS official responsible for administering the allocation of federal homeland security and emergency management grants.

Title II: Ensuring Communications Interoperability for First Responders

Improve Communications for Emergency Response Grant Program

Prepared by (name redacted), Analyst in Telecommunications and Technology Policy, CRS Resources, Science, and Industry Division, 7-.....

Overview

Congress has passed legislation addressing communications among first responders focused on interoperability—the capability of different systems to connect—in several laws, starting with provisions in the Homeland Security Act (P.L. 107-296). The Intelligence Reform and Terrorism Prevention Act (P.L. 108-458) provided more comprehensive language that included requirements for developing a national approach to achieving interoperability. In a section of the Department of Homeland Security Appropriations Act, 2007 (P.L. 109-295), Congress revisited the needs of an effective communications capacity—operability—for first responders and other emergency personnel and expanded the emergency communications provisions of P.L. 108-458. Title VI of P.L. 109-295—the Post-Katrina Emergency Management Reform Act of 2006—reorganized the Federal Emergency Management Agency (FEMA). Subtitle D—the 21st Century Emergency Communications Act of 2006—provided communications functionality to interface with the new FEMA, among other functions. It created an Office of Emergency Communications and the position of Director. The Director is required to take numerous steps to coordinate emergency communications planning, preparedness, and response, particularly at the state and regional level. Although a number of programs are required by Title D, the law does not authorize funding.

House Provisions

The provisions of H.R. 1, Title II would amend Title V of the Homeland Security Act (6 U.S.C. 311 et seq.). In response to the 9/11 Commission recommendation for public safety communications and interoperability, Title II would provide funding to assist in meeting the goals set for the Office of Emergency Communications by the 21st Century Emergency Communications Act of 2006 (P.L. 109-295). The bill would require the Secretary of Homeland Security to establish an Improve Communications for Emergency Response Grant Program through the Office of Grants and Training in cooperation with the Office of Emergency

Communications. “Such sums as are necessary” would be made available in the first fiscal year that DHS meets three goals set in P.L. 109-295: completion of a National Emergency Communications Plan; baseline assessment of interoperability; and progress report to Congress affirming “substantial progress” in developing standards. The grant program would make grants at the state and regional level to carry out initiatives at the state, regional, national, and international level. Uses of the funds would include planning, systems design and engineering, equipment procurement, technical assistance, and exercises, modeling, simulation, and other training activities. No other grant guidance is provided. The Congressional Budget Office, in providing an estimate for H.R. 1, placed the cumulative cost of funding interoperable communications at nearly \$3.2 billion for fiscal years 2009 through 2012.¹

Senate Provisions

The provisions of S. 4, Title III, Section 301 would amend Title X of the Homeland Security Act (6 U.S.C. 571 et seq.), as amended by P.L. 109-295. As regards emergency communications, the bill adds substantially to requirements provided in the 21st Century Emergency Communications Act of 2006 of (P.L. 109-295). The bill provides detailed instructions to the Administrator of the Federal Emergency Management Agency on grants programs for communications, consistent with planning requirements set out in P.L. 109-295. Uses of the funds would include planning, systems design and engineering, equipment procurement, technical assistance, and exercises, modeling, simulation, and other training activities. Authorization of appropriations for the grants are \$400 million in FY2008, \$500 million for FY2009, \$600 million for FY2010, \$800 million for FY2011, \$1,000 million for FY2012, and such sums as are necessary for subsequent years.

Among specific requirements for administering grants are: minimum contents of grant applications such as identifying “critical aspects of the communications life cycle,” describing how the proposed use of funds would meet various goals, demonstrating consistency with already mandated Statewide Interoperable Communications Plan, and including a capital budget and timeline; specific considerations to be taken into account when approving applications and awarding grants; establishment of a review panel; minimum amounts for grants; availability of funds; state responsibilities; certifications; and reports on spending.

Requirements for interoperable communications plans established in the Intelligence Reform and Terrorism Prevention Act (6 U.S.C. 194) are amended to include additional requirements.

Requirements for a National Emergency Communications Plan established in Title VI Subtitle D of P.L. 109-295 are amended to mandate the establishment of a date by which interoperable communications will be achieved.

Border Interoperability Demonstration Project

House Provisions

No comparable provision.

¹ Congressional Budget Office Cost Estimate for H.R. 1, Feb. 2, 2007, p. 4; and H.R. 1, Title II.

Senate provisions

To help resolve problems in coordinating wireless communications along the Canadian and Mexican borders, S. 4, Title III, Section 302 would establish a demonstration project. The project would address interoperable communications needs such as radio frequency spectrum coordination and standards, and would foster cross-border cooperation between U.S., federal, state, local, and tribal authorities and their Canadian and Mexican counterparts. Requirements for the program, funding, and reporting are provided.

Other Provisions Regarding Communications and Interoperability

House Provisions

No comparable provision.

Senate Provisions

Title XIV, Subtitle C contains additional provisions regarding interoperable communications. In particular, the Deficit Reduction Act (P.L. 109-171) would be amended as regards funding for interoperable communications as provided in Section 3006 (47 U.S.C. 309). This provision would redirect a \$ 1 billion grant program away from specific requirements for interoperable systems at 700 MHz and would place more general requirements on the types of equipment eligible for grants. Specific grant guidance regarding eligibility is required. Some portion of the funds would go for strategic technology reserve grants, to support the procurement, in advance, of resources needed in an emergency.

The Federal Communications Commission (FCC) would be required to prepare a study on the technical feasibility of creating a back-up emergency communications system and to report to Congress on its findings.

A joint advisory committee on the communications capabilities of emergency care medical facilities would be established jointly by the Assistant Secretary of Commerce for Communications and Information and the Chairman of the FCC, with the participation of the Secretaries of Homeland Security and Health and Human Services. The committee would assess communications capabilities, needs and options and report its findings to Congress. Up to 10 geographically dispersed pilot projects would be funded with no more than \$2 million each.

Progress and status reports on cross-border interoperability negotiations and treaties governing radio use would be required.

Other provisions not pertaining to communications are listed in the section on Title XIV, Subtitle C.

Title III: Strengthening Use of a Unified Incident Command During Emergencies

Prepared by (name redacted), Analyst in American National Government, CRS Government and Finance Division, 7-.....

Overview

The 9/11 Commission recommended “aggressive and realistic training in accordance with ICS (Incident Command Systems) and unified command procedures.” Part of the incident command approach involves personnel credentialing and resource typing. Credentialing is a process that authenticates and verifies the qualifications of personnel. Typing is a process that evaluates resources to identify the use and capabilities of an asset or resource. The Commission also recommended development of a regional focus in the emergency responder community that would promote mutual assistance compacts and provide training in accordance with existing compacts. (*The 9/11 Commission Report* (2004), p. 397).

House Provisions

H.R. 1 (Title III, Section 301-302) would amend the Post-Katrina Emergency Management Reform Act of 2006 (Title VI, Subtitle C, Section 648) by requiring that FEMA’s training and exercise component include enhancement of an operational understanding of the Incident Command System and relevant mutual aid agreements within the emergency responder community. The bill would also require that the FEMA Administrator build an exercise program that considers special needs populations, after-action reports, plans to incorporate lessons learned into future operations, and model exercise programs. H.R. 1 (Title III, Section 303) also would amend the Homeland Security Act of 2002 (6 U.S.C. 317) to extend the responsibilities of the FEMA Regional Administrator to include helping state, local, or tribal governments identify suitable sites for a unified command system.

Senate Provisions

S. 4 (Title X, Section 1001) would amend the Post-Katrina Emergency Management Reform Act (Title VI, Subtitle A, Section 611) by extending the responsibilities of the FEMA Regional Administrator to include helping state, local, or tribal governments to identify suitable locations for a unified command system. S. 4 (Title X, Section 1002) also would enhance the credentialing and typing language within the Post-Katrina Emergency Management Reform Act of 2006 with more detailed language to provide for the establishment of national standards for credentialing personnel who perform a function under the ICS model and the integration of the national standards into the National Response Plan. Such credentialing would include the establishment of a database of all federal personnel credentialed to respond to natural disasters, acts of terrorism, or other man-made disasters. Additionally, the bill would expand the responsibilities of the FEMA Administrator to include creating detailed written guidance to state, local, and tribal governments for credentialing of emergency response providers. S. 4 also would require typing of resources, including the identification of minimal capabilities of an asset or resource. The bill also would require a national standard for typing resources and integration of this standard into the National Response Plan.

Comments

H.R. 1 would enhance the design and implementation of a national exercise to test NIMS, the NRP, and mutual assistance compacts. S. 4 does not refer to exercise design or implementation but addresses individual-level training and credentialing of functions within the ICS model. Both H.R. 1 and S. 4 would expand the responsibilities of the FEMA Regional Administrator to assist state, local, and tribal governments in identifying locations for a unified incident command system. S. 4 would replace language in the Post-Katrina Emergency Reform Act of 2006 pertaining to credentialing and typing with more specific language that addresses the implementation of standards. H.R. 1 does not refer to credentialing or typing under Title III.

Title IV: Strengthening Aviation Security

Prepared by (name redacted), Specialist in Aviation Safety, Security, and Technology, CRS Resources, Science, and Industry Division, 7-.....

Overview

Both the House and the Senate bills include several provisions intended to strengthen or improve aviation security. In addition to reauthorizing such sums as may be necessary for the TSA to carry out aviation security functions, provisions in both the House and Senate bills: address air cargo security, with specific emphasis on cargo placed on passenger aircraft; propose continued investment for in-line baggage screening equipment; address the detection of explosives at passenger screening checkpoints; propose changes to implementing the advanced passenger prescreening system and modifications to passenger appeal and redress procedures; and seek to modify the TSA's personnel management system in a manner that would extend collective bargaining and other rights to federal airport screeners. In addition to above mentioned issues addressed in both the House and the Senate bills, the Senate bill contains several additional provisions addressing: TSA screener staffing levels, training, and retention; airport exit lane staffing; general aviation security; repair station security; credentialing of airline crews and law enforcement personnel; and expansion of the national explosives detection canine team program. Specific provisions of the House and Senate bills are discussed in further detail below.

House Provisions

The House bill contains specific provisions addressing the reauthorization of appropriations for aviation security activities; baggage screening; passenger checkpoint screening; air cargo security; airline passenger prescreening; and TSA personnel management.

Reauthorization of Appropriations

The House bill seeks to extend the authorization of such sums as may be necessary for core TSA aviation security functions through FY2011 (see Section 405). This authorization expired at the end of FY2006.

Baggage Screening

The bill seeks to extend authorization of the Aviation Security Capital Fund, set to expire at the end of FY2007, through FY2011 (see Section 402). The Aviation Security Capital Fund serves as a vehicle for funding airport capital improvements to accommodate and install explosives detection equipment (EDS), particularly in-line baggage screening systems that are integrated into baggage handling conveyors. Additionally, Section 401 of the bill would require the DHS to submit a report to the congressional homeland security oversight committees within 30 days describing the study on cost sharing formulas and innovative financing for funding in-line EDS installation that was called for as part of the FY2006 budget process in the Intelligence Reform and Terrorism Prevention Act (P.L. 108-458).

Passenger Checkpoint Screening

The House bill contains two specific provisions addressing passenger checkpoint screening. Section 403 of the bill would establish a “Checkpoint Screening Security Fund” modeled after the Aviation Security Capital Fund. The provision would require that, in FY2008, after the initial \$250 million in passenger fees is deposited into the Aviation Security Capital Fund, the next \$250 million collected would be deposited into the newly established Checkpoint Screening Security Fund. Those amounts deposited into the fund would be available for research, development, deployment, and installation of equipment to improve the detection of explosives at passenger checkpoints. Further, Section 404 of the bill would require the TSA to submit the strategic plan for deployment and use of explosive detection equipment at airport screening checkpoints, that was required by March 2005 under a provision in the Intelligence Reform and Terrorism Prevention Act (P.L. 108-458), within seven days of enactment.

Air Cargo Security

The House bill contains language (see Section 406) that would phase in a requirement to physically inspect 100% of cargo placed on passenger airliners by the end of FY2009. The language would require the screening of 35% of such cargo by the end of FY2007, and 65% by the end of FY2008, and that all such cargo be screened by the end of FY2009. The provision further allows for an interim final rule to be adopted—without regard to the provisions of the Administrative Procedure Act (APA)²—for up to one year to implement cargo screening. After one year, TSA must issue, in accordance with the statutory requirements of the APA, a superceding final rule. The provision would require the TSA to submit a report to Congress within one year of enactment describing the system developed to meet this mandate. The bill would also require the DHS to submit to the homeland security oversight committees, and also to the GAO, a report identifying and assessing any exemptions to these cargo inspection requirements detailing: the rationale for each exemption; the percentage of cargo not screened as a result of the exemption; the impact on aviation security; the projected impact on air commerce if the exemption was not granted or was eliminated; and any plans and rationale for maintaining, changing, or eliminating each exemption. Within 120 days after receiving this report, the GAO

² Presumably, though it is not specifically stated in the bill, the interim rule could be issued without public participation (“notice and comment”) or other procedural protections and guideline required of administrative agencies pursuant to the APA.

would be required to review and report to Congress assessing the DHS methodology for handling exemptions. See CRS Report RL32022, *Air Cargo Security*, by (name redacted).

Airline Passenger Prescreening

Section 409 of the bill would require the DHS to submit a strategic plan to Congress within 90 days of enactment describing the system to be deployed that would enable the DHS to assume the function of checking passenger data to the automatic selectee and no fly lists, utilizing records contained in the consolidated and integrated terrorist watchlist maintained by the Federal Government. The report would be required to include a projected timeline for testing and implementing the system; an explanation of how the system would be integrated with the passenger prescreening system in place for international flights; and a description of how the system complies with statutes pertaining to records maintained on individuals detailed in the Privacy Act (5 U.S.C. Section 552a). Further, Section 407 of the bill seeks to establish a timely and fair appeal and redress process for individuals who perceive that they were wrongly identified by the prescreening process resulting in delayed or denied boarding. The provision would establish a DHS Office of Appeals and Redress and would authorize this office to maintain records of misidentified individuals. The bill would require the office to use these records to: authenticate the identity of such individuals; and provide this information to the TSA, CBP, and any other appropriate DHS entities for the purpose of improving passenger prescreening and reducing false positives. See CRS Report RL33645, *Terrorist Watchlist Checks and Air Passenger Prescreening*, by (name redacted) and (name redacted).

TSA Personnel Management

Section 408 of the House bill would repeal authority granted to the TSA Administrator to establish a screener personnel system for employing, appointing, disciplining, terminating, and fixing the compensation, terms, and conditions of employment for screener personnel (also known as Transportation Security Officers or TSOs). The bill would instead require the TSA to implement a uniform personnel system that would “... provide for the uniform treatment of all TSA employees ...” The bill would require the TSA to implement this new personnel management system within 90 days of enactment. Further, the bill would require the TSA to provide a report to the congressional homeland security oversight committees and to the GAO detailing changes made to the TSA pay system. The provision specifies that the uniform personnel system for all TSA employees, including screeners, must conform to the structure of either the existing TSA personnel system for non-screener personnel or the DHS human resources management system established under Chapter 97 of Title 5 of the United States Code.³

Senate Provisions

The Senate bill includes alternative language to the House bill regarding reauthorization of appropriations, baggage screening, and air cargo screening. The Senate bill parallels language in the House regarding passenger checkpoint screening, airline passenger prescreening, and TSA

³ At present, the TSA non-screener personnel are covered under a personnel or human resources management system that is separate from the DHS personnel management system established under 5 U.S.C. §9701. As prescribed in Section 114(n) of Title 49 U.S.C., TSA non-screener personnel are covered under the Federal Aviation Administration (FAA) personnel system described in 49 U.S.C. §40122.

personnel management reform. Additionally, the Senate bill includes numerous miscellaneous provisions related to aviation security for which there is no comparable language in the House bill.

Reauthorization of Appropriations

Whereas the House bill would extend authorization of the TSA's aviation security functions through FY2011, the Senate bill would authorize these functions through FY2009. The Senate bill would also extend authorization of \$50 million annually through FY2009 to accelerate research and development efforts, and broaden the scope to include technologies that may enhance transportation security, not just aviation security. The House bill contains no comparable provision.

Baggage Screening

The Senate bill would re-authorize the Aviation Security Capital Fund at a level of \$250 million annually through FY2028 (see Section 1466). The Senate bill would change the funding allocation to provide \$200 million of these funds to airports with letters of intent, and the remaining \$50 million in discretionary grants, with priority given to small hub and non-hub airports. The Senate bill would also extend authorization of the discretionary appropriations for airport security improvements for baggage screening through 2009, and increase the authorized funding level from \$250 million to \$450 million in FY2008 and FY2009 (see Section 1465).

Passenger Checkpoint Screening

Like the House bill, the Senate bill contains a provision (Section 1470) that would require the DHS to submit the strategic plan for passenger checkpoint explosives detection, but would allow 90 days after enactment, instead of seven days, for the plan to be submitted. Further, the Senate bill (see Section 1479) would require the TSA to conduct a pilot program to identify technology solutions capable of reducing the number of TSA employees deployed to monitor airport exit lanes. Within one year after implementation of the pilot program, the TSA is to submit a final report to appropriate congressional committees describing the security measures deployed, the projected costs savings, and the efficacy of the program and its applicability to other airports.

Air Cargo Security

In contrast to the House bill, which would mandate 100% physical inspections of cargo placed on passenger airliners by end of FY2009, the Senate bill offers an alternative that would require the TSA to establish a system to screen⁴ all cargo transported on passenger airliners within three years (see Section 1462). The provision would require a minimum set of standards for cargo screening technologies, equipment, and personnel to provide a level of security comparable to the level of security in effect for passenger checked baggage. Like the House bill, the Senate bill allows for the promulgation of an interim rule, which may be issued without compliance with the APA, for up to one year. The bill also requires that a superceding final rule, issued in compliance

⁴ The term "screen" or "screening" with regard to air cargo placed on passenger aircraft has generally been interpreted by the TSA and the air cargo industry to include risk-based assessment processes, such as the known shipper program, and does not necessarily require physical inspection (see 49 U.S.C. §44901(a)).

with the APA, be promulgated after one year. The Senate bill also contains language regarding assessment of exemptions to these requirements that is identical to the language in the House bill. The Senate also includes a provision (Section 1463) with no comparable language in the House bill that would require the TSA to evaluate the results of the ongoing blast-resistant container pilot program by January 1, 2008, and based on that evaluation, begin acquisition of blast-resistant containers to meet the needs specified in the TSA's cargo security program. The TSA would also be required to implement a program to make such containers available to passenger airliners and provide for their storage, maintenance, and distribution. Further, the Senate includes language (Section 1464) authorizing such sums as may be necessary for FY2008, to remain available until expended, for technology research and development and pilot projects "that can disrupt or prevent an explosive device from being introduced onto a passenger plane or from damaging a passenger plane...." While this scope is broadly defined, the provision specifically identifies blast-resistant cargo containers as a candidate technology that shall be included in research, development, and pilot projects. The language further calls for testing of technologies to expedite the analysis and determination of aircraft accident causes, such as deployable flight data and voice recorders, and remote location recording devices. The House bill contains no comparable provision.

Airline Passenger Prescreening

The Senate bill contains language (see Section 1471) establishing an appeal and redress process for airline passengers wrongly delayed or denied boarding that is identical to the provision in the House bill (Section 407). Also the Senate bill contains language (Section 1472) similar to the House provision that would require the DHS to submit a strategic plan to test and implement advanced passenger prescreening. The Senate provision would, however, allow for 180 days after enactment for receipt of the plan, compared to the House language which calls for the plan to be submitted within 90 days. The Senate bill also contains additional language not included in the House bill that would require a GAO assessment of: the TSA's progress in implementing the Secure Flight program, the current appeals process for aggrieved passengers; the TSA's plan to protect passenger information, and its progress in integrating domestic passenger prescreening with international passenger prescreening carried out by CBP; a realistic time frame for system completion; and any other relevant observations and recommendations.

TSA Personnel Management

Section 903 of the Senate bill contains language similar to the House Provisions on TSA personnel management reform. Like the House provision, the Senate bill would eliminate the TSA Administrators authority to establish a separate personnel management system for screeners and place all TSA employees under the same personnel management system. Like the House bill, the Senate bill would require the uniform personnel management system for all TSA employees to conform to either the existing personnel management system for non-screeners, or the DHS personnel management system. The Senate bill includes implementation time frames and reporting requirements for implementation of the uniform personnel management system for TSA employees that are identical to those in the House bill. Section 904 of the Senate bill would grant to screener personnel the right to appeal adverse actions, would require TSA to provide a collaborative employee engagement system, including collective bargaining (subject to certain limits relating to emergencies and other matters), and would extend whistleblower protections to screener personnel.

The Senate bill also contains a provision (see Section 1468) that would eliminate any statutory cap on the number of TSA employees, such as the 45,000 FTE screener cap found in appropriations language, after FY2007. The bill would require the TSA to recruit and hire personnel to provide appropriate levels of aviation security and achieve average passenger checkpoint wait times of less than 10 minutes. The House bill contains no comparable provision. Also, the Senate bill contains language requiring the TSA to provide screeners with advanced training on specialized skills such as behavioral observation techniques, explosives detection, and document inspection, to enhance layered security measures (see Section 1469). The House bill contained no comparable provision.

Miscellaneous Provisions Not in the House Bill

The Senate bill includes several aviation security-related provisions for which there are no comparable provisions in the House bill, addressing foreign repair stations, general aviation security, airline crew and law enforcement credentials, and canine explosives detection team training.

Foreign Aviation Repair Station Security

Section 1473 of the Senate bill would require the FAA to suspend further certification of foreign aircraft repair stations if security regulations for domestic and foreign repair stations, that were required to be issued in early 2004 under a provision in Vision 100—the Century of Aviation Reauthorization Act (P.L. 108-176), are not issued by the TSA within 90 days of enactment.

General Aviation Security

Section 1474 of the Senate bill would require the TSA to develop and implement a standardized threat and vulnerability assessment program for general aviation airports within one year of enactment. The provision would also direct the TSA to assess the feasibility of creating a grant program to provide grants to general aviation airports to upgrade security based on a risk managed approach. The language directs the TSA to establish such a grant program if it is deemed feasible and authorizes such sums as may be necessary for this purpose. Further, the provision would require all foreign-registered general aviation aircraft to submit passenger information to CBP prior to entering United States airspace for vetting against appropriate databases maintained by the TSA. See CRS Report RL33194, *Securing General Aviation*, by (name redacted).

Airline Crew and Law Enforcement Credentials

Section 1475 of the Senate bill would require the TSA to produce a report detailing its efforts to implement a sterile area access system or other methods to expedite processing of airline flight and cabin crew members through airport screening checkpoints. Based on the findings of the report, the TSA shall implement such a program within one year of transmitting the report to Congress. Also, Section 1477 of the Senate bill would amend current statutes regarding implementation of a biometric credential system for law enforcement personnel seeking access to aircraft and secured areas of airports. The provision calls for establishing a national registered armed law enforcement program for law enforcement officers (LEOs) required to be armed while traveling on commercial flights. The provision stipulates that the credential program incorporate

biometric and other applicable technologies, provide flexibility for LEOs who must travel armed either on a regular or temporary basis; be coordinated with other uniform credentialing initiatives and directives; be applicable to all federal, state, local, tribal and territorial law enforcement agencies; and include a process for discreetly verifying the identity of LEOs traveling using biometric technology. In establishing the program, the DHS is to ensure that only those LEOs required to travel armed are issued credentials; that the anonymity of armed LEOs is preserved; that procedures are established to address failures to enroll, false positives, and false negatives; and that procedures are established to invalidate credentials that are lost, stolen, or no longer authorized for use.

Canine Explosives Detection Team Training

Section 1476 of the Senate bill would require the DHS to increase the capacity of the DHS National Explosives Detection Canine Team Program at Lackland Air Force Base, Texas to a level of 200 canine teams annually by the end of FY2008. The provision directs the DHS to further expand the facility so that, by the end of CY2009, it can train an adequate number of canine teams to meet the homeland security mission, as determined by the Secretary on an annual basis. The bill also directs the DHS to explore alternate training sites, considering options to establish a standardized TSA-approved canine program for private training vendors and options to establish two additional national canine training centers modeled after the Lackland AFB Center of Excellence.

Comments

The similar provisions in the House and Senate bills regarding TSA personnel management are highly controversial and opposed by the administration. The White House OMB has issued statements of administration policy on both bills, indicating that if the bill presented to the President includes such provisions, the President's senior advisors would recommend that he veto the bill. The administration argues that elimination of the TSA Administrator's flexibility in personnel management could hinder the TSA's ability to quickly and effectively respond to rapidly changing security threats. Collective bargaining processes in particular, they argue, could significantly slow the TSA's ability to change security posture in response to threats, including the rapid reassignment of personnel and other actions that may be subject to review under collective bargaining agreements if the current personnel system were eliminated.

The Administration also opposes the House provisions that would require 100% screening of all cargo placed on passenger aircraft, cautioning that such a measure would likely result in a reduction of shipping cargo via passenger aircraft. The Administration urged the House to adopt an alternative, risk-based approach. Such an approach is reflected in the Senate language, which the Administration and the air cargo industry favor over the House language.⁵ Air cargo industry stakeholders, however, remain concerned about the ability to meet the three-year time frame for implementation of a cargo screening system specified in the Senate bill. They also caution that requiring such a system meet the minimum standard specified in the Senate bill—requiring the proposed cargo screening system to provide comparable security to existing checked baggage

⁵ See Airforwarders Association position statement at <http://www.airforwarders.org/airmails/020707.html> and industry letter to Senator Inouye dated Feb. 9, 2007, at http://www.aeanet.org/GovernmentAffairs/gakm_CoalitionSenateBillLetterInouyeFeb07.asp.

screening—fails to adequately consider the differences between cargo and baggage and the unique operational challenges of air cargo handling and supply chain logistics.⁶ Also, the Administration and industry groups do not support the Senate provision calling for deployment of blast-resistant cargo containers for use on passenger airliners, arguing that this would impose significant costs on the TSA; that many aircraft are not currently configured to support these containers; and that utilizing such containers is contradictory to current security measures to keep elevated risk cargo off of passenger aircraft.

The Administration also opposes reauthorization of the Aviation Security Capital Fund and the proposed establishment of a separate \$250 million Checkpoint Screening Security Fund as called for in the House bill. While the Administration supports the security enhancements anticipated by these initiatives, its concerns over use of these specific funds center on the lack of fungibility of monies paid into these funds, which it claims may strain TSA operating budgets and limit flexibility in the budget process. Also, in the case of the Aviation Security Capital Fund, the Administration has raised concerns over the federal share of airport security construction costs and would like to see a greater proportion of this cost shifted to airport operators.

Title V: Strengthening the Security of Cargo Containers

Prepared by (name redacted), Analyst in Domestic Security, CRS Domestic Social Policy Division, 7-.....

Overview

Both H.R. 1 and S. 4 contain provisions that pertain to maritime cargo container security. Congress enacted the SAFE Port Act (P.L. 109-347), on October 13, 2006, which contained several related provisions. Section 204. of P.L. 109-347 requires the Secretary of the Department of Homeland Security (DHS) to: initiate a rulemaking within 90 days of enactment; issue an interim final rule within 180 days of enactment, establishing minimum standards for securing containers in transit to the United States; and to enforce those standards for all U.S.-bound containers within two years of the final rulemaking; regularly review and enhance the standards. Section 204 also requires the DHS Secretary to ensure that these standards are consistent with standards published by international organizations.

Section 231(c) of P.L. 109-347 requires the DHS Secretary to implement a fully operational integrated scanning system (ISS) pilot program at three overseas ports within one year of enactment. Section 231(d) of P.L. 109-347 also requires the DHS Secretary to submit a report, within 180 days of achieving a full scale implementation of the pilot, evaluating the pilot program and analyzing the feasibility of expanding the ISS to other ports. Section 232(a) of P.L. 109-347 requires the DHS Secretary to implement 100% screening of containers and 100% scanning of all high-risk containers (before they leave the United States seaport). P.L. 109-347 defines a screen as the visual or automated review of manifest or entry documentation accompanying a shipment to determine the presence of misdeclared, restricted, or prohibited items, and to assess the level of

⁶ *Ibid.*

threat posed by such cargo. P.L. 109-347 defines a scan as utilizing non-intrusive imaging equipment, radiation detection equipment, or both, to capture data, including images of a container. Section 232(b) requires the DHS Secretary, in coordination with the Secretary of Energy and foreign partners, to fully deploy the ISS (non-intrusive image and radiation scan) as soon as possible once specific operational criteria are met, to scan all U.S.-bound containers before they reach the U.S. Section 232(c) of P.L. 109-347 requires the DHS Secretary to submit a report, within six months of submitting the initial evaluation of the ISS pilot program required by Section 231, and every six months thereafter, detailing the status of the full-scale deployment of the integrated scanning system and the costs of deploying the system at each foreign port where it is deployed.

House Provisions

Section 501(a) of H.R. 1 would amend 46 U.S.C. 70116 to require the Secretary to establish standards for scanning equipment and seals to be used on containers entering the United States and would require all U.S.-bound containers to be scanned and sealed according to those standards before the container is loaded on a U.S.-bound ship. H.R. 1 would require the standards ensure that the best-available technology be used, as soon as it is available, to identify when a container is breached, notify the Secretary of the breach, and track the time and location of the container while en route to the United States. H.R. 1 would require the Secretary to review and revise these standards at least once every two years. Section 501(b) of H.R. 1 would authorize such appropriations as necessary for FY2008-FY2013.

Section 501(c)(1)(A) of H.R. 1 would require the Secretary to issue an interim final rule temporarily implementing Section 501(a) (consistent with the lessons learned from the ISS pilot program) within 180 days after the date of the submission of the report required by Section 231(d) of P.L. 109-347 that evaluates the integrated scanning system pilot program. Section 501(c)(1)(B) of H.R. 1 would require the Secretary to publish a final rule within one year of the submission of the evaluation report required by Section 231(d) of P.L. 109-347.

Section 501(c)(2)(A) of H.R. 1 would require the scanning and sealing requirements of Section 501(a) of H.R. 1 to apply to any container entering the U.S. beginning three years after enactment for U.S.-bound containers loaded on a vessel at a foreign port in a country from which more than 75,000 twenty-foot equivalent units of U.S.-bound containers were loaded in 2005; and beginning five years after enactment for U.S.-bound containers loaded in all other countries. Section 501(c)(2)(B) would permit the DHS Secretary to extend these deadlines by up to one year if the required scanning equipment is not available and the Secretary notifies Congress within at least 60 days of his decision.

Senate Provisions

Section 905 of S. 4 would amend the reporting requirements set forth in Section 232(c) of the SAFE Port Act (P.L. 109-347), to include a plan for 100% scanning of cargo containers. The provision would require the plan to include (1) specific benchmarks for the percentage of U.S.-bound cargo containers scanned at a foreign port; (2) annual increases in these benchmarks until 100% of U.S.-bound cargo containers are scanned before arriving in the United States, unless the DHS Secretary explains in writing to Congress that the criteria set out in Section 232(b) of P.L. 109-347 have not been met; (3) an analysis of how existing programs such as the Container Security Initiative and the Customs-Trade Partnership Against Terrorism could be used to achieve

the benchmarks; and (4) an analysis of the scanning equipment, personnel, and technology needed to reach the 100% scanning goal. Section 905 would also require each subsequent report (to be submitted every six months after the initial report) to include an assessment of progress made towards implementing 100% scanning.

Comment

To summarize, both H.R. 1 and S. 4 would require the DHS Secretary to take steps that could eventually lead to the application of some security standards and/or procedures being applied to 100% of U.S.-bound maritime containers. H.R. 1 would accomplish this by requiring *all* U.S.-bound containers to be scanned and sealed with equipment meeting standards to be specified by the DHS Secretary after the completion of the integrated scanning system (ISS) pilot established by the SAFE Port Act. S. 4 would amend the ISS pilot reporting requirements specified by the SAFE Port Act to include a plan to eventually scan 100% of U.S.-bound cargo.

The provisions in both bills refer to the ISS pilot that is currently being undertaken by DHS as the first iteration of the Secure Freight Initiative (SFI). SFI is being operated by U.S. Customs and Border Protection (CBP) in six foreign ports. SFI at Port Qasim, Pakistan; Puerto Cortes, Honduras; and at Southampton in the United Kingdom will be fully operational, scanning *all* U.S.-bound containers from these ports. SFI will gradually be deployed in more limited capacities at Port Salalah, Oman; the Port of Singapore; and at the Port of Busan, South Korea. Five of the foreign ports selected for the SFI pilot are currently Container Security Initiative (CSI) ports (all except Port Qasim, Pakistan). CSI is a program by which CBP stations CBP officers in foreign ports to target high-risk containers for inspection before they are loaded on U.S.-bound ships. CSI is operational in 50 ports as of October 2006, and container traffic through these 50 ports accounted for nearly 82% of all U.S.-bound containers.⁷

Subjecting *all* U.S.-bound containers to an integrated scan (an image and a radiation scan) prior to loading would represent a significant departure from the current strategy of scanning or inspecting only those *targeted* containers identified as high-risk. Currently, under the CSI program, only those containers that are identified through screening as high-risk are subject to scanning or inspection prior to loading. U.S.-bound containers loaded at non-CSI ports are screened, but are not scanned or searched until they reach the U.S. port. CBP officers stationed at CSI ports do not have authority to conduct inspections, and so the host-country government is responsible for conducting the inspection. The host country government is also responsible for providing the equipment and space required to conduct the scans and inspections; and the host country determines who pays for the equipment. It is currently unclear what impact the shift from scanning none or some containers at particular overseas ports to scanning all containers would have on CBP and host country resources. The execution of the ISS pilot under the SFI will likely provide some concrete idea of how increased levels of scanning and inspection would affect the deployment of resources and the flow of trade through the selected ports.

Container carriers and importers claim that requiring 100% scanning will severely bottleneck port operations. Other opponents of 100% scanning contend that the process could be easily circumvented by terrorists and would absorb security resources away from other maritime threats. Advocates of 100% scanning assert that the information and intelligence that CBP reviews to

⁷ Department of Homeland Security, *U.S. Customs, and Border Protection FY2008 Overview Congressional Budget Justification*, p. CBP-26.

screen and target specific containers for scanning and inspection is simply not adequate, thus requiring that every container be scanned.

Title VI: Strengthening Efforts to Prevent Terrorist Travel (H.R. 1)

Overview

Title VI of H.R. 1 and Title V of S. 4 deal with programs within the Department of Homeland Security (DHS) that relate to the movement of terrorists.

Strengthening the Capabilities of the Human Smuggling and Trafficking Center

Prepared by (name redacted), Specialist in Immigration Legislation, CRS Domestic Social Policy Division, 7-.....

Overview

Established by Congress in the Intelligence Reform and Terrorist Prevention Act of 2004 (P.L. 108-458, Section 7202), the Human Smuggling and Trafficking Center (HSTC) is an interagency group—including the Departments of Justice, State, and Homeland Security—which provides information to counter migrant smuggling, trafficking of persons, and clandestine terrorist travel. The center's three primary objectives are (1) prevention and deterrence of smuggling and related trafficking activities, (2) investigation and prosecution of the criminals involved in such activity, and (3) protection of and assistance for victims as provided in applicable law and policy. The center's efforts consist primarily of facilitating the dissemination of intelligence; preparing strategic assessments; identifying issues that would benefit from enhanced interagency coordination; and coordinating or otherwise supporting agency or interagency efforts.

During its two year existence, the HSTC has had issues with cooperation between the different agencies and departments, relating to funding, staffing, and information sharing.⁸

House Provisions

Section 601 would require the Secretary of DHS, acting through DHS' Immigration and Customs Enforcement (ICE), to provide administrative support and funding for the Human Smuggling and Trafficking Center (HSTC). H.R. 1 would also allow DHS to seek reimbursement from the Departments of State and Justice in such amounts as are appropriate to their participation in the HSTC. In addition, H.R. 1 would mandate the hiring of not less than 30 full-time equivalent staff

⁸ U.S. Congress, House Committee on Homeland Security, Subcommittee on Management, Integration, and Oversight, *9/11 Reform Act: Examining the Implementation of the Human Smuggling and Trafficking Center*, hearings, 109th Cong., 2nd sess., Mar. 8, 2006.

for the HSTC, and would specify the type of staff to be hired (e.g., a director, 15 intelligence analysts or special agents), and that the staff must have at least three years of experience related to human trafficking or smuggling. H.R. 1 would require the intelligence analysts or special agents to be detailed to the HSTC for not less than two years. H.R. 1 would also require the Secretary of DHS to develop a plan for HSTC and execute a Memorandum of Understanding (MOU) with the Attorney General clarifying the cooperation and coordination between the Federal Bureau of Investigation and the Department of Homeland Security's (DHS) Immigration and Customs Enforcement regarding issues related to human smuggling and trafficking. Lastly, H.R. 1 would require that DHS' Office of Intelligence and Analysis, in coordination with the HSTC, submit to federal, state, local, tribal law enforcement, and other relevant agencies periodic reports regarding terrorist threats related to human smuggling and trafficking, and terrorist travel.

Senate Provisions

Section 502 would also require that the DHS provide administrative support and funding for the HSTC, but unlike the House bill, S. 4 would require the Secretary of DHS, to the extent that such funds are made available, to reimburse each department or agency that provides a detailee to the HSTC for the cost of the detailee. In addition, S. 4 would mandate the hiring of not less than 40 full-time equivalent staff for the HSTC, and would specify the agencies and departments from which the personnel should be detailed (e.g., Transportation and Security Administration, United States Coast Guard, ICE, Central Intelligence Agency), and their areas of expertise (e.g., consular affairs, counterterrorism). S. 4 would also require the President to submit a report to Congress within 180 days of enactment on the operations and activities of the HSTC. The report would include among other items information on the roles and responsibilities of each agency and department participating in the HSTC, staffing levels, and information sharing mechanisms. S. 4 would authorize appropriations of \$20 million for the HSTC in FY2008.

Modernization of the Visa Waiver Program

Prepared by (name redacted), Specialist in Immigration Legislation, CRS Domestic Social Policy Division, 7-.....

Overview

The Visa Waiver Program (VWP) allows nationals from countries that meet certain criteria to enter the United States as temporary visitors (nonimmigrants) for business or pleasure without first obtaining a visa from a U.S. consulate abroad. To qualify for the VWP, the Immigration and Nationality Act specifies that a country must: offer reciprocal privileges to U.S. citizens; have had a nonimmigrant refusal rate of less than 3% for the previous year or an average of no more than 2% over the past two fiscal years with neither year going above 2.5%; issue its nationals machine-readable passports that incorporate biometric identifiers; certify that it is developing a program to issue tamper-resistant, machine-readable visa documents that incorporate biometric identifiers which are verifiable at the country's port of entry; and not compromise the law enforcement or security interests of the United States by its inclusion in the program. Countries

can be terminated from the VWP if an emergency occurs that threatens United States' security interests.⁹

House Provisions

No comparable provision.

Senate Provisions

Section 501 would allow the Secretary of DHS, in consultation with the Secretary of the Department of State (DOS), to waive the nonimmigrant refusal rate requirement for admission to the VWP on the date on which the Secretary of DHS certifies to Congress that an air exit system is in place that can verify the departure of not less than 97% of foreign nationals that exit through U.S. airports. In order for the Secretary of DHS to waive the nonimmigrant refusal rate requirement for admission to the VWP, the country would have to meet other specified criteria.

S. 4 would also make several changes to the criteria to qualify as a VWP country, including authorizing the development and implementation of an electronic travel authorization system, through which each alien traveling under the VWP would electronically provide, in advance of travel, biographical information necessary to determine whether the alien is eligible to travel to the United States. S. 4 would also require the Secretary of DHS, no later than one year after enactment, to establish an exit system that records the departure of every alien who entered under the VWP and left the United States by air. Furthermore, under S. 4, to participate in the VWP, countries would be required to enter into agreements with the United States to: (1) report or make available through Interpol information about the theft or loss of passports; and (2) share information regarding whether a national of that country traveling to the United States represents a threat to U.S. security or welfare.

Comment

Under this provision, in order for the Secretary of DHS to be able to waive the nonimmigrant refusal rate requirement and the provision to take effect, an air exit system must be in place that can verify the departure of not less than 97% of foreign nationals that exit through U.S. airports. To date, DHS has piloted the exit component of the biometric entry and exit system, commonly known as the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program, at 12 airports. However, GAO has reported that these pilot programs concluded in May of 2005, and that while they established the technical feasibility of the biometric exit component, they also “identified issues that limited the operational effectiveness of the solution, such as the lack of traveler compliance with the processes.”¹⁰ In its FY2008 budget submission, DHS requested a decrease in funding for pilot programs for the exit component of the system, instead requesting an increase in funding for the deployment of 10 fingerprint enrollment program at entry.¹¹

⁹ For more information on the VWP and the VWP provision in S. 4, see CRS Report RL32221, *Visa Waiver Program*, by (name redacted).

¹⁰ Testimony of Richard Stana, Government Accountability Office, *US-VISIT Program Faces Operational, Technological, and Management Challenges*, before the Committee on Homeland Security, 110th Cong., 1st sess., Mar. 20, 2007, pp. 12-13.

¹¹ U.S. Department of Homeland Security, *DHS FY2008 Congressional Budget Justification*, p. US-VISIT 3.

Enhancing Terrorist Travel Programs

Prepared by (name redacted), Analyst in Domestic Security, CRS Domestic Social Policy Division, 7-.....

Overview

Currently, the Intelligence Reform and Terrorism Prevention Act (P.L. 108-458 Section 7215) directs DHS to establish, in consultation with the Director of the National Counterterrorism Center, a program to oversee the implementation of terrorist travel initiatives at DHS. This program should also provide for the analysis, coordination, and dissemination of terrorist intelligence and operational information within DHS and between DHS and other federal agencies.

House Provisions

Section 611 would require DHS, in conjunction with the Director of National Intelligence and the heads of other appropriate federal agencies, to submit a report outlining the efforts that the United States government has undertaken to collaborate with international partners to increase border security, enhance document security, and exchange information concerning terrorists. The report would be due within 270 days of H.R. 1's enactment, and would include a summation of all the existing government programs and strategies concerning these efforts and the progress made in achieving their stated goals.

Senate Provisions

Section 503 would direct DHS to designate an individual to head the terrorism travel center established by P.L. 108-458 Section 7215. This individual would report directly to the Secretary of DHS and would be charged with developing and reviewing the strategies and policies put in place within DHS to prevent terrorists from entering or remaining undetected in the United States. The head of the program would also be charged with coordinating policies, programs, planning, operations, and the dissemination of intelligence among the various entities within DHS and with external stakeholders. Additionally, this individual will serve as the Secretary's primary point of contact with the National Counterterrorism Center. Lastly, DHS would be required to report on its implementation of this section within 180 days of enactment.

Comments

H.R. 1 would not make changes to DHS' terrorist travel program; instead, it would require a report on how DHS and other federal agencies are cooperating with foreign partners on the issue of terrorist travel. S. 4 would modify the existing program by designating an individual within DHS to coordinate the program established by P.L. 108-458 Section 7215.

Biometric Entry and Exit System

Prepared by (name redacted), Analyst in Domestic Security, CRS Domestic Social Policy Division, 7-.....

Overview

The biometric entry and exit system is commonly known as the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program. Congress first mandated that the former Immigration and Naturalization Service (INS) implement an automated entry and exit data system that would track the arrival and departure of every alien in Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208). The objective for an automated entry and exit data system was, in part, to develop a mechanism that would be able to track nonimmigrants who overstayed their visas as part of a broader emphasis on immigration control. Following the September 11, 2001 terrorist attacks there was a marked shift in priority for implementing an automated entry and exit data system. While the tracking of nonimmigrants who overstayed their visas remained an important goal of the system, border security has become the paramount concern with respect to implementing the system.

House Provisions

Section 621 would require DHS to submit the plan previously developed by the Department regarding the biometric entry and exit system's deployment. This report would be due within seven days of enactment.

Senate Provisions

No comparable provisions.

Comments

The report in question was due in June of 2005 but has yet to be delivered to Congress. In February, 2007, GAO reported that the US-VISIT strategic plan was apparently formulated in March of 2005 but had yet to be approved by DHS.¹² In recent testimony before Congress, Bob Mocny, Acting Director of the US-VISIT program, stated that this report would be made available to Congress soon but declined to set a firm date for its submission.¹³

Enhanced Driver's License/Western Hemisphere Travel Initiative

Prepared by (name redacted), Analyst in Domestic Security, CRS Domestic Social Policy Division, 7-.....

¹² Testimony of Randolph Hite and Richard Stana, Government Accountability Office, *US-VISIT Has not Fully Met Expectations and Longstanding Management Challenges Need to be Addressed*, before the Committee on Appropriations, Subcommittee on Homeland Security, 110th Cong., 1st sess., Feb. 16, 2007, p. 19. Hereafter referred to as *GAO Testimony, Feb. 2007*.

¹³ U.S. Congress, House Committee on Appropriations, Subcommittee on Homeland Security, *Hearing on the US-VISIT Program*, 110th Cong., 1st sess., Feb. 16, 2007.

Overview

The Western Hemisphere Travel Initiative (WHTI) will require U.S. citizens, and Canadian, Mexican, and some island nation nationals to present a passport, or some other document or combination of documents deemed sufficient to denote identity and citizenship status by the Secretary of Homeland Security, as per P.L. 108-458 Section 7209. DHS announced that it is requiring all U.S. citizens entering the country at airports of entry (POE) to present passports as of January 23, 2007. The current legislative mandate for expanding the program to *all* POE is the *earlier* of the following two dates: June 1, 2009, or three months after the Secretaries of Homeland Security and State certify that a number of implementation requirements have been met.¹⁴ DHS and the Department of State are currently working on the type of document, known as a PASS-Card, that will be used for this program.

House Provisions

No comparable provision.

Senate Provisions

Section 504 would require DHS to enter into a memorandum of agreement with at least one state to pilot the use of enhanced driver's licenses that would be valid for a U.S. citizen's admission into the United States from Canada (but not otherwise valid for certification of citizenship). It would also require DHS to submit a report within 180 days of enactment that would, among other things: analyze this pilot program's impact on national security, make recommendations on how to expand the pilot program to other states, and plan for scanning participants against terrorist watch lists.

Section 505 would require DHS to complete a cost-benefit analysis of the WHTI and a study of mechanisms for reducing the fees associated with PASS-cards prior to publishing a final rule on the program.

Comments

Both of these provisions in S. 4 seem to address concerns by some in Congress that DHS and the Department of State have not made enough progress towards developing the PASS-Card and disseminating information to the public about the WHTI requirements. Section 505 would require DHS to study how it could reduce the costs associated with getting a PASS-Card, while Section 504 might circumvent the need for some PASS-Cards by allowing the driver's licences used in the pilot program to be used to enter the country from Canada as per the WHTI requirements.

Model Ports of Entry

Prepared by (name redacted), Analyst in Do mestic Security, CRS Domestic Social Policy Division, 7-.....

¹⁴ P.L. 109-295 Section 546.

House Provision

No comparable provision.

Senate Provisions

Section 506 would require DHS to establish a “model ports of entry” program aimed at streamlining the current arrival process for incoming travelers, facilitating business and tourist travel, and improving security. The program would be implemented at the 20 busiest international airports, and would include enhanced queue management prior to primary inspection, assistance for foreign travelers after their admission into the United States, and instructional videos explaining the inspection process. Lastly, S. 4 would direct DHS to hire at least 200 additional CBP officers to address staff shortages at the 20 busiest international airports.

Title VII: Improving Intelligence and Information Sharing with Local Law Enforcement and First Responders

Prepared by (name redacted), Specialist in Domestic Intelligence and Counterterrorism, CRS Domestic Social Policy Division, 7-.....

Overview

The two companion bills have two common subtitles (one each for the Homeland Security Information Sharing Environment and Homeland Security Information Sharing Partnerships) and a number of unique subtitles. Each of the common subtitles do not necessarily contain identical language. Three subtitles unique to H.R. 1 are: (1) the Fusion and Law Enforcement Education and Teaming (FLEET) Grant Program, (2) the Border Intelligence Fusion Center Program, and (3) the Homeland Security Intelligence Offices Reorganization. One subtitle, the Interagency Threat Assessment Coordination Group, is unique to S. 4. A summary of the common and unique subtitles follows:

- Fusion and Law Enforcement Education and Teaming (FLEET) Grant Program (Unique to H.R. 1)
- Border Intelligence Fusion Center Program (Unique to H.R. 1)
- Homeland Security Information Sharing Environment (ISE)
- Homeland Security Information Sharing Partnerships
- Homeland Security Intelligence Offices Reorganization (Unique to H.R. 1)
- Interagency Threat Assessment Coordination Group (Unique to S. 4)

Fusion and Law Enforcement Education and Teaming (FLEET) Grant Program

House Provisions

Under this subtitle a provision is included which would establish a grant program "... under which the Secretary of Homeland Security, in consultation with the Attorney General, shall make grants to local and tribal law enforcement agencies...." The proposed purposes for which these grants would be used include (1) to hire (state or local) personnel or pay existing personnel, to perform the duties of eligible personnel who are detailed to a fusion center,¹⁵ (2) to provide appropriate training for eligible law enforcement personnel who are detailed to a fusion center, and (3) to establish communications connectivity between eligible law enforcement personnel who are detailed to a fusion center and the home agency or department from which they are detailed.

Senate Provisions

No comparable provisions.

Comment

While the existence of fusion centers precedes the terrorist attacks of September 11, 2001, it was not until the post attack period that the potential counterterrorism utility of such centers was recognized. In general, these centers have been established as initiatives of state and local governments, sometimes in regional cooperative configurations. Historically, the centers have been financed by participating state and local governments. Recently, the federal government has provided support for these centers through: (1) provision of *Fusion Center Guidelines: Developing and Sharing Information and Intelligence in a New Era* (August 2006), and (2) the detailing of intelligence analysts and intelligence liaison personnel from the Department of Homeland Security (DHS) and the Federal Bureau of Investigation (FBI) to these centers.¹⁶ According to DHS, it has provided "... over \$380 million in support ..." of these centers.¹⁷ In Fiscal Year 2007, for the first time, "hiring new staff and/or contractors to serve as intelligence analysts to support information/intelligence fusion capabilities...." is allowable under certain conditions.¹⁸

¹⁵ According to the proposed legislation, "The terms State, local, or regional fusion center mean a State intelligence center, or a regional intelligence center that is the product of a collaborative effort of at least two qualifying agencies that provide resources, expertise, or information to such center with the goals of maximizing the ability of such intelligence center and the qualifying agencies participating in such intelligence center to provide and produce homeland security information to detect, prevent, apprehend, and respond to terrorist and criminal activity." There are approximately 43 such fusion centers in operation around the country according to the National Criminal Intelligence Resource Center.

¹⁶ According to information provided at the first annual National Fusion Center Conference, held March 5-8, 2007, DHS currently has intelligence personnel deployed to 12 state, local, and regional fusion centers and the FBI has deployed 192 personnel stationed at various fusion centers.

¹⁷ See DHS Fact Sheet, *Select Homeland Security Accomplishments for 2006*, Dec. 29, 2006. Available at http://www.dhs.gov/xnews/releases/pr_1167404984182.shtm and accessed on Mar. 26, 2007.

¹⁸ These costs are allowable under both the Urban Area Security Initiative (UASI) and the Law Enforcement Terrorism Prevention Program (LETPP) grant programs. In order to be hired as an intelligence analyst, individuals must meet (continued...)

Border Intelligence Fusion Center Program

House Provisions

Under this subtitle a Border Intelligence Fusion Center Program would be established “... for the purpose of stationing Bureau of Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) officers or intelligence analysts in the fusion centers of participating border States.”¹⁹ Furthermore, such personnel would assist state, local and tribal law enforcement in jurisdictions along the northern and southern borders to “... overlay threat and suspicious activity with Federal homeland security information in order to develop a more comprehensive and accurate threat picture.” Funding proposed for this measure would be “available to hire new CBP and ICE officers or intelligence analysts to replace CBP and ICE officers and intelligence analysts who are stationed at border State fusion centers....”

Senate Provisions

No comparable provisions.

Homeland Security Information Sharing Environment

Overview

Both bills include a subtitle on the homeland security information sharing environment, although the provisions are not identical. Much of the responsibility for the initiatives under the bills would be implemented either by the Secretary of Homeland Security, or by the DHS Chief Intelligence Officer. As will be explained below, H.R. 1 recommends that the existing position of Assistant Secretary for Intelligence and Analysis be changed to an Under Secretary for Intelligence and Analysis. S. 4 makes no such change and, therefore, refers to either the Secretary of DHS and/or the Chief Intelligence Officer, sometimes in consultation with other governmental officials, as being responsible for implementing the initiatives.

At the most aggregate level, the bills would require the Secretary of DHS to “integrate and standardize the information of the intelligence components of the Department into a Department information sharing environment....”²⁰ Such an integration would be administered by the Under Secretary for Intelligence and Analysis (H.R. 1) or the Chief Intelligence Officer (S. 4). The two bills define a DHS intelligence component similarly as “... any directorate, agency, or element of

(...continued)

certain training and/or experience criteria. In terms of sustainment costs, the DHS *FY 2007 Homeland Security Grant Program: Program Guidance and Application Kit* states that “Costs associated with hiring new intelligence analysts are allowable only for **two years**, after which the States and Urban Areas shall be responsible for supporting the sustainment costs for those intelligence analysts.” See *FY 2007 Homeland Security Grant Program: Program Guidance and Application Kit*, p. 26.

¹⁹ A Border State Fusion Center is defined as “... a fusion center located in the State of Washington, Idaho, Montana, North Dakota, Minnesota, Wisconsin, Michigan, Ohio, Pennsylvania, New York, Vermont, New Hampshire, Maine, California, Arizona, New Mexico, or Texas.”

²⁰ S. 4 excepts from this integration and standardization “... any internal protocols of such intelligence components.”

the Department that gathers, receives, analyzes, produces, or disseminates homeland security information....”

Furthermore, each of the bills would require the:

- Secretary (S. 4) or the Under Secretary for Intelligence and Analysis (H.R. 1) to implement a Homeland Security Advisory System which shall, among other functions, provide in each warning or alert specific information and advice on “...appropriate protective measures and countermeasures that may be taken in response” to the threat or risk. Furthermore, the responsible DHS official shall, “...whenever possible, limit the scope” of each advisory or warning “to a specific region, locality, or economic sector believed to be at risk.” Unique to H.R. 1 is a proposal which would stipulate that the Under Secretary for Intelligence and Analysis “...shall not, in issuing any advisory or alert, use color designations as the exclusive means of specifying homeland security threat conditions.”
- Department to designate information sharing and knowledge management officers for each intelligence component with respect to “... coordinating the different systems used in the Department to gather and disseminate homeland security information.”
- Secretary to establish business processes to review and analyze information gathered from state, local, and tribal government officials and private sector sources. The Department would be required to develop mechanisms to provide feedback on the utility of such information to state, local, tribal and private sector officials.
- Training and evaluation of DHS employees to understand the definition of homeland security information, how information available to them as part of their duties might qualify as homeland security information, and how such information available to them might be relevant to the Department’s Office of Intelligence and Analysis (H.R. 1) or intelligence components of the Department (S. 4).

Unique House Provisions

One proposal unique to H.R. 1 is the requirement that the Secretary, acting through the Chief Intelligence Officer, establish a comprehensive information technology network architecture for the Office of Intelligence and Analysis. The bill would provide that “... to the extent possible (the architecture) incorporate the approaches, features, and functions of the network proposed by the Markle Foundation ... known as the System-wide Homeland Security Analysis and Resource Exchange (SHARE) Network.”

Unique Senate Provisions

S. 4 proposes adding a category of information that will be shared by DHS—weapons of mass destruction (WMD) information. The bill defines WMD information as that “... which could reasonably be expected to assist in the development, proliferation, or use of weapons of mass destruction ... that could be used by a terrorist ... against the United States.” Moreover, the bill proposes eliminating the existing two-year tenure for the ISE’s Program Manager by making it permanent. S. 4’s proposed language would amend Section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) to read “The individual designated as the

program manager shall serve as the program manager until removed from service and replaced by the President....” S. 4 would also authorize \$30 million for each of fiscal years 2008 and 2009 for the ISE Program Manager to hire “not more than 40 full-time employees to assist the program manager” in numerous information sharing functions. In two other unique measures, S. 4 would require the Secretary and Chief Intelligence Officer to (1) develop intelligence training curriculum for State, local, and tribal officials, and (2) develop financial and other incentives for employees to share information.

Comment: DHS Advisory System

With respect to the Homeland Security Advisory System, the bills would provide greater congressional direction to the Secretary in the administration of this program by responding to often-heard criticisms directed at the system and the Department by first responders, State and local law enforcement, and some private sector entities. The sections of the bills would require the Department to provide advice regarding protective measures and countermeasures. Some might question whether the Department has, in each situation, a sufficient understanding of the “ground truth” or current risk profile in order to recommend such measures. State and local authorities may be more familiar with the resources they have at their disposal to take protective actions against any potential threat. With regard to the geographic scope of warnings, the measures outlined in the bills appear to be consistent with ongoing efforts between the FBI and DHS to provide such targeted warnings to conserve first responder resources.²¹

Comment: Definition of DHS Intelligence Component

With respect to the definition of what constitutes a DHS intelligence element, the proposed definition codifies activities as intelligence related in a manner that appears to go beyond how the Department has defined its Intelligence Enterprise. According to the *DHS Intelligence Enterprise Strategic Plan* (January 2006), the DHS Intelligence Enterprise includes “... all those component organizations within the Department that have activities *producing* raw information, intelligence-related information, and/or finished intelligence.” Such an extension beyond production may expand the universe of entities within the Department that are considered part of the intelligence enterprise.

Comment: Integration and Standardization of DHS Intelligence

It would appear that, given the current state of homeland security intelligence within the Department, these measures are intended to facilitate a more corporate approach to intelligence at DHS. Currently, the Chief Intelligence Officer does not have: (1) formal budget formulation and execution authority over the DHS intelligence elements outside of the largely headquarters-based Office of Intelligence and Analysis, (2) an established and integrated management information system into which all DHS-collected intelligence and information is entered, and (3) the ultimate authority to recruit and select the leaders of the DHS intelligence components. In the absence of these three tools, some may argue that developing a sense of “what the Department knows” collectively, and perhaps more importantly, “what it doesn’t know,” could be problematic.

²¹ See CRS Report RL32897, *Post-9/11 National Threat Notification Efforts: Issues, Actions, and Options for Congress*, by John Rollins and (name redacted). See also CRS Report RL32023, *Homeland Security Advisory System: Possible Issues for Congressional Oversight*, by (name redacted).

Moreover, with respect to risk assessment and how such assessments flow through the Homeland Security Grant Program, State and local threat information does not appear to be considered in a meaningful and systematic manner.²²

Comment: Program Manager ISE Term, Functions, and Additional Resources

Uncertainty of the permanence of this position might be construed to hinder the development of institutional knowledge and the building of broad-based relationships to implement the ISE's Implementation Plan (published in November 2006). It also appears that S. 4 would provide the ISE Program Manager with additional powers to "... identify and resolve information sharing disputes between Federal departments, agencies and components...." How this would be implemented in practice may be an issue. Program Manager's authorities commensurate with the position's responsibilities?

Homeland Security Information Sharing Partnerships

Overview

Each of the bills would require the Secretary (in consultation with the ISE Program Manager, the Attorney General and others according to S. 4 provisions) to establish a State, Local, and Regional Fusion Center Initiative to "establish partnerships with State, local and regional fusion centers." Through this DHS initiative, the Secretary would carry out 13 functions, to include (1) coordinating with the principal official of each fusion center, and the official designated as the State Homeland Security Advisor, (2) providing DHS operational and intelligence advice and assistance to these centers, (3) conducting table-top and live training exercises to regularly assess the capability of individual and regional networks, (4) provide analytic and reporting advice and assistance to the centers, and (5) review homeland security information gathered by State, local, and regional fusion centers and incorporate relevant information with homeland security information of the Department. Both bills would require the Secretary to draft a "Concept of Operations Report" to be submitted by the Secretary to the House and Senate Homeland Security Committees. Such a report would include a review, among other factors, of privacy and civil liberties implications of such an initiative. Each of the bills would also establish a Homeland Security Information Sharing Fellows Program for the purpose of "detailing State, local and tribal law enforcement officers and intelligence analysts *to the Department* (emphasis added) to participate in the work of the Office of Intelligence and Analysis...."

Unique House Provisions

With respect to the aforementioned Homeland Security Information Sharing Fellows Program, H.R. 1 conditions participation in the program on the agreement of the state, local or tribal entity to "... continue to pay the individual's salary and benefits during the period for which the individual is detailed." However, it also provides for a "... stipend to cover the individual's reasonable living expenses ..." during the period for which they are detailed to the Office of Intelligence and Analysis, subject to the availability of appropriations.

²² See CRS Report RL33858, *The Department of Homeland Security's Risk Assessment Methodology: Evolution, Issues, and Options for Congress*, by (name redacted), John Rollins, and Siobhan O'Neil.

Unique Senate Provisions

S. 4 provides that the Chief Intelligence Officer “may, to the extent practicable, assign officers and intelligence analysts from...” DHS intelligence elements to state, local and regional fusion centers. S. 4 also proposes a requirement that before being assigned to a fusion center, DHS intelligence analysts must undergo analysis, privacy and civil liberties training. Moreover, S. 4 outlines the responsibilities of DHS intelligence analysts detailed to State, local and regional fusion centers, and would require that these individuals have access to “all Federal databases and information systems ... for the implementation and management of that environment.” S. 4 would authorize to be appropriated \$10 million for each of fiscal years 2008 through 2012 for the fusion center initiative, “for hiring officers and intelligence analysts to replace officers and intelligence analysts who are assigned to fusion centers...” Finally, S. 4 proposes the creation of the Rural Policing Institute, which would “develop expert training programs designed to address the needs of rural law enforcement agencies regarding combating methamphetamine, addiction and distribution, domestic violence, law enforcement responses related to school shootings and other topics....”

Comment

To some extent these legislative initiatives would codify nascent, yet ongoing activities in the Department. Currently, there exists within DHS a State and Local Fusion Center Program Office which performs some of the missions outlined in these bills. For example, the office is responsible for recruiting from both within DHS and externally intelligence analysts and intelligence liaison officers to be detailed to State, local and regional fusion centers. DHS currently has 12 such intelligence personnel assigned to fusion centers. According to Charles Allen, DHS Chief Intelligence Officer, by the end of Fiscal Year 2008, DHS plans to embed intelligence officers in over 35 fusion centers.²³ Codification of this initiative may provide a sense of greater congressional support for and direction to such a program.

Homeland Security Intelligence Offices Reorganization

House Provisions

H.R. 1 would amend the Homeland Security Act of 2002 (6 U.S.C. 121) by replacing the “Directorate of Information Analysis and Infrastructure Protection” with a proposed “Office of Intelligence and Analysis.” Moreover, the “Under Secretary for Information Analysis and Infrastructure Protection” would be replaced with an “Under Secretary for Intelligence and Analysis.” The responsibilities of the Under Secretary for Intelligence and Analysis would be adjusted, with new statutory responsibilities including (1) coordinating and enhancing integration among intelligence components of the Department, (2) establishing structure and process to support the mission and goals of the Department, and (3) ensuring that unclassified reports based on open source information “are produced and disseminated contemporaneously with reports or analytic products concerning the same or similar information that the Under Secretary for Intelligence and Analysis produces and disseminates in a classified format.” The bill also proposes the Under Secretary for Intelligence and Analysis establish an Internal Continuity of

²³ See testimony of Charles Allen, DHS Chief Intelligence Officer, Before the Senate Select Committee on Intelligence, Jan. 25, 2007.

Operations Plan. The bill would also codify, for the first time, the responsibilities of the intelligence components of the Department, including, “to ensure that duties related to the acquisition, analysis, and dissemination of homeland security information are carried out effectively and efficiently in support of the Under Secretary for Intelligence and Analysis.” Finally, the bill would also codify an Office of Infrastructure Protection, which would be headed by an Assistant Secretary for Infrastructure Protection, and enumerate the proposed responsibilities of the Assistant Secretary.

Senate Provisions

No comparable provisions.

Comment

To a certain extent, these measures would codify existing practices and positions within the Department. Secretary Chertoff’s Second Stage Review of the Department made numerous changes in the DHS intelligence structure. For example, the erstwhile Directorate of Information Analysis and Infrastructure Protection was disbanded and replaced with an Under Secretary for Preparedness. The Office of Information Analysis (renamed the Office of Intelligence and Analysis) and Office on Infrastructure Protection were separated. The Assistant Secretary for Intelligence Analysis was also provided the Title of the Department’s Chief Intelligence Officer.²⁴ With respect to the responsibilities of the DHS intelligence components, those proposed in H.R. 1 are largely consistent with those outlined in DHS Management Directive 8110 *Intelligence Integration and Management* (January 2006). Under existing law and internal DHS regulation, it appears that the DHS Chief Intelligence Officer continues to have tenuous budget execution authority with respect to the DHS intelligence components. Under the aforementioned DHS management directive, the Chief Intelligence Officer provides written performance objectives to the heads of the DHS intelligence components, and subsequently provides input and feedback to the component rating official for the component’s accomplishment of those objectives. Moreover, the Chief Intelligence Officer analyzes “... workforce requirements for intelligence functional personnel to establish recommended staffing and resource level parameters and guidelines for each Component to consider.” In short, the Chief Intelligence Officer, while responsible for intelligence integration across the Department, has direct budgetary control over only the largely headquarters-based Office of Intelligence and Analysis.

Interagency Threat Assessment Coordination Group

Overview

S. 4 refers to the Interagency Threat Assessment Coordination Group; according to DHS, the group is now called the “Federal Coordination Group” (FCG).²⁵ Section 1016 of the Intelligence Reform and Terrorism Prevention Act (P.L. 108-458) established the Information Sharing Environment, to be led by a Program Manager. Part of the ISE Program Manager’s statutory

²⁴ See DHS Management Directive 8110, *Intelligence Integration and Management*, Jan. 30, 2006.

²⁵ See testimony of Charles Allen, DHS Chief Intelligence Officer, Before the House Committee on Homeland Security, Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, Mar. 14, 2007.

responsibility is to provide and facilitate “... the means for sharing terrorism information among all appropriate Federal, State, local and tribal entities.” In November 2006, the Program Manager’s Office published the *Information Sharing Environment Implementation Plan*. The report recommended the establishment of an Interagency Threat Assessment Coordination Group (ITACG)—to be located at the National Counterterrorism Center (NCTC), and managed by a senior level official from DHS. According to the November 2006 ISE report, “A primary purpose of the ITACG will be to ensure that classified and unclassified intelligence produced by Federal organizations within the intelligence, law enforcement, and homeland security communities is fused, validated, de-conflicted, and approved for dissemination in a concise and, where possible, unclassified format.”²⁶

House Provisions

No comparable provisions.

Senate Provisions

S. 4 would codify the existence of an ITACG, which would “facilitate the production of federally coordinated products derived from information within the scope of the information sharing environment ... and intended for distribution to State, local and tribal government officials and the private sector.” The Secretary of Homeland Security would designate a senior official who would “manage and direct the administration of the ITACG.” The Secretary of DHS, in consultation with the Attorney General, Director of National Intelligence, and the Program Manager for the ISE would “establish standards for the admission of law enforcement and intelligence officials *from a State, local or tribal government into the ITACG*. (emphasis added)

Comment

There has been some reported controversy over the extent to which DHS has supported the detailing of state, local and tribal government officials to the FCG.²⁷ Moreover, at a recent national fusion center conference hosted, in part, by the Departments of Justice and Homeland Security, as well as the Office of the Director of National Intelligence, it was stated that the name of the center had been changed to the “Federal Coordinating Group,” possibly in reference to the fact that the group will likely not be conducting formal threat analysis. It appears that the measures outlined in the ISE Program Manager’s November 2006 report and those in S. 4 pertaining to the potential codification of such a body are largely consistent. According to Charles Allen, DHS Chief Intelligence Officer, “we are working to include additional people in the State and local governments.... In fact, in the initial standup staff, I envision two or three officers ... and I want to ensure you that there’s going to be growth in the State and local government representation.”²⁸

²⁶ See *Information Sharing Environment: Implementation Plan*, November 2006, p. 29.

²⁷ See Siobhan Gorman, “Out of the Loop on Terror Threats: Homeland Security Excludes, State, Local Officials from Group that Shares Data,” *Baltimore Sun*, Feb. 2, 2007. See also Siobhan Gorman, “State, Local Officials to Get Security Data,” *Baltimore Sun*, Feb. 15, 2007.

²⁸ See testimony of Charles Allen, DHS Chief Intelligence Officer, Before the House Committee on Homeland Security, Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, Mar. 14, 2007.

Title VIII: Protecting Privacy and Civil Liberties While Effectively Fighting Terrorism

Reconstituting the Privacy and Civil Liberties Oversight Board

Prepared by (name redacted), Specialist in American National Government, CRS Government and Finance Division, 7-.....

Overview

The 9/11 Commission recommended that “there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties.” (*The 9/11 Commission Report*, p. 395.) The Intelligence Reform and Terrorism Prevention Act of 2004 responded to this recommendation by mandating, in Section 1061, the Privacy and Civil Liberties Oversight Board. Located within the Executive Office of the President, the board consists of a chair, vice chair, and three additional members, all appointed by, and serving at the pleasure of, the President. Nominees for the chair and vice chair are subject to Senate approval. Not vested with subpoena power, the board is authorized to request the assistance of the Attorney General in obtaining desired information from sources other than federal departments and agencies. (118 Stat. 3684) The board soon came under criticism for, among other perceived shortcomings, not having adequate independent status or authority to carry out its responsibilities properly and effectively. Both bills would reconstitute the board.

House Provisions

H.R. 1 (Title VIII, Subtitle A, Section 803-806) would reconstitute the board as an independent agency within the executive branch. It would be composed of a chairman and four additional members, all appointed by the President and subject to Senate approval. Board members would be selected on the basis of relevant experience; could not also be an elected official, officer, or employee of the federal government; and would serve staggered six-year terms. No more than three members of the board would be from the same political party. The board would be vested with subpoena authority enforceable in federal district court. The board would be required to review reports from privacy and civil liberties officers located within federal departments and agencies (see below), and to submit periodic reports to specified committees of the House and Senate, and, consistent with applicable law, to provide its reports to the public.

Senate Provisions

S. 4 (Title VI, Section 601) would reconstitute the board as an agency within the Executive Office of the President. New functions for the board would include reviewing proposed legislation, regulations, and policies; reviewing the implementation of existing legislation, regulations, and policies; and advising the President and the departments and agencies of the executive branch. Board members would be selected on the basis of relevant experience; could not also be an elected official, officer, or employee of the federal government, and would serve staggered six-year terms. The board would be authorized to request the Attorney General to issue a subpoena on its behalf, and would require the Attorney General, if such a request were modified or denied, to

report such action to the House and Senate Committees on the Judiciary. The board would be required to review reports from privacy and civil liberties officers located within federal departments and agencies (see below); and to submit periodic reports to specified committees of the House and Senate, to the President, and, consistent with applicable law, to the public. Other provisions provide for the compensation of the chair and board members, travel expenses, staff, consultant services, security clearances, and the authorization of appropriations.

Comments

The most significant differences between the House and Senate bills concern the organizational status of the board—*independent agency vis-a-vis Executive Office agency*—and the exercise of subpoena power. Independent agencies have varying degrees of insularity from presidential control, while entities within the Executive Office of the President closely assist and serve the President at his direction. Also, some general management laws that are applicable to independent agencies are not applicable to Executive Office of the President entities. For its version of the reconstituted board, the House bill retains the housekeeping provisions specified for the existing board in the Intelligence Reform and Terrorism Prevention Act, while the Senate bill restates such provisions.

Privacy Officers

Prepared by (name redacted), Specialist in American National Government, CRS Government and Finance Division, 7-.....

Overview

Although the 9/11 Commission did not explicitly recommend the establishment of Privacy and Civil Liberties Officers within the federal departments and agencies, such officials were seen by some as useful extensions of, or auxiliaries to, the board (see above) recommended by the commission. An Officer for Civil Rights and Civil Liberties and a Privacy Officer were authorized for the Department of Homeland Security by the Homeland Security Act of 2002. (116 Stat. 2155, 2219) Legislative antecedents of the Intelligence Reform and Terrorism Prevention Act of 2004 also would have created Privacy and Civil Liberties Officers for departments and agencies centrally involved in combating terrorism, but the enacted statute, while establishing a Civil Liberties Protection Officer within the office of the new Director of National Intelligence, only expressed “the sense of Congress that each executive department or agency with law enforcement or antiterrorism functions should designate a privacy and civil liberties officer.” (118 Stat. 3658, 3688) Elsewhere, the Senate version of the Transportation, Treasury, and General Government Appropriations Bill, 2005 was reported with a provision directing federal departments and agencies to designate one of their senior officials as Chief Privacy Officer. The bill, with this requirement, was included in the subsequently enacted Consolidated Appropriations Act, 2005. (118 Stat. 2809) Both H.R. 1 and S. 4 direct the designation of not less than one senior officer as Privacy and Civil Liberties Officers.

House Provisions

H.R. 1 (Title VIII, SubTitle A, Section 806) would direct the Attorney General, the Secretaries of Defense, State, the Treasury, Health and Human Services, and Homeland Security, the National

Intelligence Director, the Director of Central Intelligence, as well as other entities within the intelligence community, and the heads of departments and agencies so designated by the Privacy and Civil Liberties Oversight Board (see above) to designate not less than one senior officer to assist the department or agency head and other officials in appropriately considering privacy and civil liberties concerns when such officials are proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to efforts to protect the nation against terrorism. Such designated Privacy and Civil Liberties Officers would also periodically investigate and review department or agency actions, policies, procedures, guidelines, and related laws and their implementation; ensure that adequate procedures exist to receive, investigate, respond to, and redress complaints from individuals alleging violations of their privacy or civil liberties; and provide advice on proposals to retain or enhance a particular government power relative to privacy and civil liberties. Provision is made for entities having a statutorily created Privacy Officer or Civil Liberties Officer to perform the functions specified for officials designated Privacy and Civil Liberties Officers. The official performing the functions specified for the Privacy and Civil Liberties Officer would report directly to the head of the department or agency and would coordinate his or her activities with the Inspector General of the department or agency. In turn, the department or agency head would ensure that the Privacy and Civil Liberties Officer(s) has adequate resources, is informed of proposed policy changes, is consulted by decision makers, and is given adequate access to material and personnel to carry out his or her responsibilities. Reprisals against individuals making a privacy or civil liberties complaint would be forbidden. Privacy and Civil Liberties Officers would make periodic reports to specified congressional committees, their department or agency heads, the Privacy and Civil Liberties Oversight Board, and, consistent with applicable law, to the public. H.R. 1 contains a unique provision specifying that the Secretary of Homeland Security shall ensure that the Department of Homeland Security complies with regulations providing protections for human research subjects.

Senate Provisions

S. 4 (Title VI, Section 602) is identical to Section 806 of H.R. 1, with the exception of the unique provision (see above) concerning Department of Homeland Security compliance with regulations providing protections for human research subjects.

Enhancement of Department of Homeland Security Privacy Officer's Authorities

Prepared by (name redacted), Specialist in American National Government, CRS Government and Finance Division, 7-.....

Overview

During the 109th Congress, concerns arose that the Privacy Officer at the Department of Homeland Security did not have adequate authority to conduct investigations. Remedial legislation was offered by Representative Bennie Thompson (H.R. 3041) and Senator Daniel Akaka (S. 2827), but received no action during the 109th Congress. Senator Akaka has introduced the measure (S. 332) in the 110th Congress. H.R. 1 contains a version of this legislation, known as the Privacy Officer With Enhanced Rights Act or POWER Act.

House Provisions

H.R. 1 (Title VIII, Subtitle B, Section 811-812) would enhance the authority of the Privacy Officer at the Department of Homeland Security by specifying that this official is specifically authorized to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to the department that relate to programs and operations with respect to the Privacy Officer's responsibilities. It would also authorize the Privacy Officer to make such investigations and reports relating to the administration of the programs and operations of the department as are, in his or her judgment, necessary or desirable. The Privacy Officer would be vested with subpoena power, authorized to administer to or take from any person an oath, affirmation, or affidavit, and to take any other action that may be taken by the Inspector General of the department to require employees to produce documents and answer questions relevant to the Privacy Officer's responsibilities. Reports would be submitted by the Privacy Officer directly to Congress regarding the performance of his or her responsibilities without any prior comment or amendment by department leaders.

Senate Provision

S. 4 (Title VI, Section 603) differs from Sections 811-812 of H.R. 1 in that it would authorize Privacy Officer, subject to the approval of the Secretary of Homeland Security, to exercise subpoena power; does not specify where the Privacy Officer's subpoenas would be enforced; does not set a term of appointment for the Privacy Officer; and would require notification of specified congressional committees when the Secretary of Homeland Security disapproves the issuances of a subpoena by the Privacy Officer.

Federal Agency Data Mining Reporting Act of 2007

Prepared by (name redacted), Specialist in Information Science and Technology Policy, CRS Resources, Science, and Industry Division, 7-.....

Overview

Data mining has become a major feature of many homeland security initiatives. Often used as a means for detecting fraud, assessing risk, and product retailing, data mining involves the use of data analysis tools to discover previously unknown, valid patterns and relationships in large data sets. In the context of homeland security, proponents assert that data mining can be a potential means to identify terrorist activities, such as money transfers and communications, and to identify and track individual terrorists themselves, such as through travel and immigration records.

Industries such as banking, insurance, medicine, and retailing commonly use data mining to reduce costs, enhance research, and increase sales. In the public sector, data mining applications initially were used as a means to detect fraud and waste, but have grown to also be used for purposes such as measuring and improving program performance. However, some of the homeland security data mining applications represent a significant expansion in the quantity and scope of data to be analyzed. Some efforts that have attracted a higher level of congressional interest include the Terrorism Information Awareness (TIA) project (now-discontinued) and the Computer-Assisted Passenger Prescreening System II (CAPPS II) project (now-canceled and replaced by Secure Flight). Other initiatives that have been the subject of congressional interest

include the Multi-State Anti-Terrorism Information Exchange (MATRIX), the Automated Targeting System (ATS), and the Analysis, Dissemination, Visualization, Insight, and Semantic Enhancement (ADVISE) tool.

There currently is no centralized accounting of data mining initiatives across the federal government. Concerns about the scope of some data mining initiatives and implications for privacy have grown as the existence and details about previously undisclosed initiatives have come to light. Section 604 of S. 4 would require departments and agencies to send annual reports to Congress regarding their data mining activities. Related legislation has been introduced during the 108th, 109th, and 110th Congresses.²⁹

House Provisions

No comparable provision.

Senate Provisions

Section 604 of S. 4 would require any department or agency engaged in data mining to submit a public report to Congress regarding these activities. These reports would be required to include a variety of details about the data mining project, including a description of the technology and data to be used, a discussion of the plans and goals for using the technology when it will be deployed, an assessment of the expected efficacy of the data mining project, a privacy impact assessment, an analysis of the relevant laws and regulations that would govern the project, and a discussion of procedures for informing individuals that their personal information will be used and allowing them to opt out, or an explanation of why such procedures are not in place. Each report would also include a classified annex containing classified information, law enforcement sensitive information, proprietary business information, and trade secrets. The annex would not be made available to the public. The reports would be produced in coordination with the privacy officer of that department or agency. Initial reports would be due within 180 days of enactment of the bill, with annual updates required thereafter.

Comments

The data mining provision in S. 4 is sometimes compared to Section 126 of P.L. 109-177 the USA PATRIOT Improvement and Reauthorization Act of 2005.³⁰ Section 126 requires the Attorney General to submit a report to Congress “on any initiative of the Department of Justice that uses or is intended to develop pattern-based data mining technology.”³¹ Some critics suggest that the data mining provision in S. 4 is duplicative of Section 126 of P.L. 109-177.³² Although there are some similarities, there are also some key differences. Among these differences, the data mining reporting requirements in S. 4:

²⁹ See CRS Report RL31798, *Data Mining and Homeland Security: An Overview*, by (name redacted).

³⁰ For a legal analysis of P.L. 109-177, see CRS Report RL33332, *USA PATRIOT Improvement and Reauthorization Act of 2005: A Legal Analysis*, by (name redacted) and (name redacted).

³¹ §126, P.L. 109-177, 120 STAT. 227 (2006).

³² Ellen Nakashima, “Senate Bill Would Mandate Disclosure of Data Mining,” *Washington Post*, Mar. 21, 2007, D3.

- apply to all departments and agencies (whereas P.L. 109-177 only applies to the Department of Justice);
- exclude data mining initiatives that are solely for “the detection of fraud, waste, or abuse in a government agency or program; or the security of a government computer system” (whereas P.L. 109-177 does not have such an exclusion);
- create an annual reporting requirement (whereas P.L. 109-177 requires a single report with no annual follow-up reports).

The report called for in Section 126 of P.L. 109-177 was due to Congress on March 9, 2007. According to a March 21, 2007 *Washington Post* article, the report had not yet been delivered to Congress as of that time.³³

Title IX: Improving Critical Infrastructure Security

Prepared by (name redacted), Specialist in Science & Technology, CRS Resources, Science, and Industry Division, 7-.....

Overview

The 9/11 Commission’s report stated that the Department of Homeland Security should identify those elements of the nation’s critical infrastructure sectors that need to be protected, develop plans to protect them, and exercise the mechanisms to enhance preparedness. The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) addressed this topic in Section 7306, calling for a report on the Department’s progress in completing vulnerability and risk assessments of the nation’s critical infrastructure, the adequacy of the government’s plans to protect them, and the readiness of the government to respond to threats. The provisions discussed below can be thought of as a refinement and continuation of this reporting requirement, as well as providing guidance and additional requirements on on-going Department activities.

The two bills call for actions that appear very similar: an assessment of the vulnerabilities and/or risks associated with critical infrastructure assets and a prioritized list of critical assets that are most at risk or could cause catastrophic national or regional impacts. Both bills require reports to Congress summarizing both the assessments and the prioritized list of assets, including classified annexes for both if necessary. Both bills require the reports relating to the assessments to include the Secretary’s recommendations for mitigating risks. Both bills require the reports on the prioritized lists to include the name, location, and sector of the assets. Within these similarities, however, are some subtle differences discussed in the Comment sections below.

The White House’s Office of Management and Budget’s Statements of Administration Policy on both H.R. 1 and S. 4 were silent on these provisions.

³³ Ibid.

Vulnerability Assessment and Report on Critical Infrastructure Information

House Provisions

Section 901 of the House bill amends the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B of the Homeland Security Act, P.L. 107-296). It requires the Secretary for Homeland Security to prepare vulnerability assessments for each sector of the economy identified in Homeland Security Presidential Directive Number 7 (HSPD-7) as possessing critical infrastructure assets (except where a vulnerability assessment is required under another provision of law). It requires the Secretary to submit an annual report containing a summary and review of the vulnerability assessments. The report also is to include the changes in vulnerability for each sector over the time period covered by the report (current and the preceding two fiscal years); explanations or comments by the Secretary regarding the greatest risks to each sector; and the Secretary's recommendations for mitigating those risks. The report may contain a classified annex.

Senate Provisions

Section 1102 of the Senate bill requires the Secretary, pursuant to responsibilities outlined in Section 202 of the Homeland Security Act, to prepare a risk assessment of the nation's critical infrastructure. The risk assessment is to be organized by sector, including those listed in HSPD-7 (and, pursuant to Section 1101 (b), including levees), and shall include any actions or countermeasures proposed, recommended, or directed by the Secretary to address security concerns covered in the assessment. The Section also requires the Secretary to submit a report containing a summary and review of the risk assessment, organized by sector, and including recommendations of the Secretary for mitigating risks identified by the assessment. As in the House bill, the report may include a classified annex and the classification shall be binding on those receiving the information.

Comment

The House bill places the vulnerability assessment requirement, and the subsequent public report to Congress, in a section of the Homeland Security Act devoted primarily to preventing the public disclosure of critical infrastructure information voluntarily submitted to DHS (Title II, subtitle B). The Senate bill uses existing authorities under Title II, Subtitle A of the Homeland Security Act to require the risk assessment. There is also a slight difference between a vulnerability assessment and a risk assessment. Vulnerability assessments typically assess the vulnerability of a given asset to specific threats. Risk assessments combine assessments of threat, vulnerability, and consequences. Risk assessments, therefore, could be considered more comprehensive by including the assessment of consequences. While the House bill calls specifically for vulnerability assessments, it does allude to the assessment of risks. In addition, the Senate bill goes beyond the House language in reference to countermeasures that the Secretary may propose or recommend, to address security concerns covered in the assessment, by also including those he may direct.

National Asset Database and National At-Risk Database

House Provisions

Section 902 of the House bill amends Title II, Subtitle A of the Homeland Security Act. It requires the Secretary to establish and maintain a “National Asset Database.” Within this database, the Secretary is required to establish a second database listing the infrastructure [assets] the Secretary determines to be most at risk. This secondary list is to be called the “National At-Risk Database.” In regard to maintaining these databases, the Secretary is to annually determine the correctness of the information describing each listed asset and to determine whether each asset meets the guidelines used by the Secretary for populating one or the other database. The Secretary shall remove from the databases those assets for which information is not verifiable and which do not meet the relevant guidelines. The Secretary is instructed to meet with the States annually to clarify the guidelines to ensure consistency and uniformity in the submissions of information from the states, and to review with the states a list of those assets subject to removal before finalizing decisions. The databases are to be used in plans and programs aimed at identifying and prioritizing critical infrastructure assets in accord with HSPD-7 and in cooperation with all levels of government and the private sector, and in supporting grant programs assisting in preventing, reducing, mitigating, or responding to terrorist attacks. The Secretary is to identify key milestones for establishing and issuing the guidelines by which the states can submit critical infrastructure information, for integrating private sector assets into the databases, and identifying tasks needed to eventually allocate homeland security grants.

Furthermore, Section 902 establishes the National Asset Database Consortium. The Consortium is to consist of at least two and no more than four national laboratories, and the heads of other federal agencies as deemed appropriate by the Secretary. The Consortium shall advise the Secretary on the best way to identify, generate, organize, and maintain the databases discussed above. In addition, the Secretary is instructed to solicit and receive comments from the Consortium on the appropriateness of the protection and risk methodologies associated with the National Infrastructure Protection Plan and on alternative means to define risk and identify specific criteria for prioritizing the most at-risk assets.

Finally, Section 902 requires the Secretary to submit an annual report on those infrastructures in the National Asset Database that are most at-risk. The report shall include the name, location, and sector of the asset; any changes made in the database regarding the definition or identification of critical assets; any changes in compiling the database; and, the extent to which the database has been used to allocate funds to prevent, reduce, mitigate, or respond to terrorist attacks. The Secretary is required to provide a classified briefing and a classified annex for information that cannot be made public.

Senate Provisions

Section 1101 of the Senate bill requires the Secretary to establish a risk-based prioritized list of those assets or systems that, if destroyed or disrupted, would cause catastrophic national or regional impacts, including significant loss of life, severe economic harm, mass evacuations, or the loss of a city, region, or sector as a result of contamination, destruction, or disruption of vital public services. The Secretary also is required to submit an annual report to the Senate Homeland Security and Governmental Affairs Committee and the House Homeland Security Committee summarizing: the criteria used to develop each list, the methodology used to solicit and verify

information; the name, location and sector of assets in each list; how each list will be used by the Secretary in program, activities, and grant making; and, a description of any other lists or databases the Department has developed to prioritize critical infrastructures on the basis of risk. The Secretary is to submit a classified annex to the report containing information that cannot be made public. The classification and level of classification shall be binding on those receiving the information.

The Senate bill has no comparable provisions for establishing a National Asset Database Consortium.

Comment

The House bill makes specific reference to the National Asset Database, and many of the Secretary's specified responsibilities for maintaining this database (offering consistent guidance to states on what to submit, consultation with states, and the removing of assets for which information is not verifiable or that do not meet the guidelines) appear to be in response to recommendations made by the Department of Homeland Security's Office of the Inspector General.³⁴ The Senate bill makes no reference to the National Asset Database, nor makes direct reference to working with States. It does require the report in this section to identify criteria used to develop the list and the methodology by which information is solicited and verified. The Senate bill is more specific about the types of consequences that merit attention when deciding which assets to include on the prioritized lists (e.g., significant loss of life, mass evacuations). The House bill gives the Secretary full discretion in determining the guidelines governing what assets get placed on the list.

While both bills require that the reports on these prioritized lists include the name, location, and sector of the assets on the list, it is doubtful the Department would include this information for the highest priority assets in an unclassified document. The Assistant Secretary for Infrastructure Protection reportedly has stated that the Department has a list of roughly 600 high priority assets, information on which is classified.³⁵

The House bill refers primarily to terrorist attacks as the basis for concern in this section. The Senate bill refers to terrorist attacks or natural catastrophes.

Priorities and Allocations

House Provisions

No comparable provision.

³⁴ For a discussion of the Department's Inspector General's report and other issues associated with the National Asset Database, see CRS Report RL33648, *Critical Infrastructure: The National Asset Database*, by (name redacted).

³⁵ *USA Today*, "Database Is Just the 1st Step," by Robert Stephan. July 21, 2006. p. 8A.

Senate Provisions

Section 1104 of the Senate bill requires the Secretary, in cooperation with the Secretary of Commerce, Secretary of Transportation, the Secretary of Defense, and the Secretary of Energy, to submit a report that details the actions taken by the federal government to ensure, in accordance with subsections (a) and (c) of Section 101 of the Defense Production Act (50 U.S.C. App. 2071), the preparedness of industry to reduce interruptions of critical infrastructure operations during, and to minimize the impact of, a terrorist attack, natural catastrophe, or other similar national emergency.

Senate Provisions Comment

Sections (a) and (c) of Section 101 of the Defense Production Act give the President authority to prioritize, and require the acceptance of, contracts or orders to allocate materials, equipment, services, or facilities to promote the national defense or to maximize domestic energy supplies. By virtue for the Defense Production Act Reauthorization of 2003 (P.L. 108-195, Section 5), the definition of national defense includes emergency preparedness activities conducted pursuant to critical infrastructure protection and restoration. This authority has been delegated to specified Department heads for specific circumstances.

Title X: Transportation Security Planning and Information Sharing

Prepared by (name redacted), Analyst in Transportation, CRS Resources, Science, and Industry Division, 7-.....

House Provisions

The House bill (sections 1001 and 1002) would amend the statutory requirement that DHS prepare transportation security plans, including plans for each mode, to require that the plans be based on vulnerability assessments conducted by DHS. DHS is to distribute the plans to stakeholders in an unclassified form. The bill also requires DHS to develop a plan for sharing transportation security information with public and private stakeholders, and to conduct an annual survey of recipients of this information concerning their satisfaction with the information sharing arrangement.

Senate Provisions

The Senate bill's provisions (in Title IX, sections 901 and 902) are similar to those in the House bill, with some additions: the Senate bill also would require DHS to provide Congress a short- and long-term budget recommendation for federal transportation security programs; and DHS would be required to consult with stakeholders in the development of the information sharing plan, to provide a single point of contact in DHS for each transportation mode, and to survey recipients of transportation security information every two years instead of annually.

Title XI: Private Sector Preparedness

Participation of the Private Sector in Preparedness Activities

Prepared by (name redacted), Analyst in American National Government, CRS Government and Finance Division, 7-.....

Overview

The 9/11 Commission recommended “establishing a common set of criteria and terminology for preparedness, disaster management, emergency management, and business continuity programs” to assist the private sector in ensuring preparedness. (The 9/11 Commission Report (2004), p. 397). This recommendation encouraged the Department of Homeland Security to work closely with the private sector to develop a “National Standard of Preparedness.”

House Provisions

H.R. 1 (Title XI, Section 1101) would amend the Homeland Security Act of 2002 (6 U.S.C. 318) by requiring the Secretary to develop and implement a program that enhances private sector preparedness. This program would include voluntary consensus standards and the development of a best practices guidance to help the private sector identify hazards, mitigate disasters, manage emergency response resources, and develop mutual aid agreements and response plans.

Senate Provisions

S. 4 contains provisions for private sector preparedness in both Title VIII and Title X. S. 4 also would create a program through which companies could choose to be accredited and certified as prepared once the voluntary national standards are developed. Title VIII (Section 801-804) would amend the Homeland Security Act of 2002 (6 U.S.C.) to provide for the adoption of voluntary national preparedness standards. It also would authorize the Private Sector Advisory Council to advise the Secretary on methods for promoting voluntary national standards and encouraging adoption of the standards by the private sector. S. 4 also would amend the Homeland Security Act of 2002 to provide guidelines for an accreditation and certification program as part of the voluntary national standards. Title VIII would establish guidelines for a demonstration project of private sector preparedness security management systems. Title X (Section 1001) would expand the role of the FEMA Regional Administrator to include coordination with the private sector on preparedness matters. Title X (Section 1002) would require that the FEMA Administrator create model standards for private sector critical infrastructure owners to permit access to restricted areas under incident command systems during disasters.

Comments

Both H.R. 1 and S. 4 would provide for voluntary national preparedness standards for private sector preparedness. S. 4 would expand the role of the Private Sector Advisory Council and aspects of the voluntary national preparedness standards in more detail than would H.R. 1. S. 4 would also expand the role of the FEMA Regional Director and the Administrator in coordinating preparedness activities with the private sector.

Title XII: Preventing Weapons of Mass Destruction Proliferation and Terrorism

Overview

This Title of H.R. 1 seeks to implement three recommendations of the 9/11 Commission—to strengthen counterproliferation efforts, expand the Proliferation Security Initiative, and support the Cooperative Threat Reduction program. There is no similar Title in S. 4. Subtitle A covers repeal of existing restrictions on the use of Cooperative Threat Reduction funds; Subtitle B covers expansion of Proliferation Security Initiative authorities; and, Subtitle C provides general authorization for acceleration of nonproliferation assistance programs, including those in the Departments of Defense, State, and Energy. Subtitle D establishes a U.S. Coordinator for Preventing WMD Proliferation and Terrorism; and, Subtitle E establishes a Commission on the same topic.

Repeal and Modification of Limitations on Nonproliferation Assistance

Prepared by (name redacted), Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division, 7-.....

Congress first passed legislation authorizing the use of U.S. funds to provide assistance to the former Soviet Union in securing and containing its nuclear weapons and weapons-useable materials in late 1991. These programs have grown from an initial amount of \$400 million per year to over \$1 billion per year. Although the vast majority of the money funds programs in Russia and the other former Soviet states, funding has been applied to programs in other nations, assisting in growing efforts to stem the possible proliferation of WMD materials and knowledge around the world. The legislation authorizing these programs, however, contains numerous exclusions, certifications, and limitations on the use of this funding.

House Provisions

Subtitle A of Title XII of H.R. 1 would repeal many provisions in existing law that limit the use of funds for threat reduction and nonproliferation programs. The Subtitle would repeal several provisions in existing law that outline certification requirements for provision of the assistance. These link U.S. assistance to the recipients' policies and activities in a number of related areas. The Subtitle also modifies two provisions that allow the United States to use some of these funds in nations outside the former Soviet Union by substituting the Secretary of Defense for the President as the authority who can determine the need for such funding.

Senate Provisions

No comparable provisions.

Comments

Although the Senate did not include similar provisions in this piece of legislation, the Senate has passed similar legislation during the past few years. The Senate versions of the FY2006 Defense Authorization Bill (H.R. 1815, Section 1306) and FY2007 Defense Authorization Bill (H.R. 5122, Section 1304) would have repealed the certification requirements that affect the Department of Defense Cooperative Threat Reduction Program. The House did not include these provisions, and the Conference Committee did not accept the Senate version. Further, in the 110th Congress, Senator Lugar has introduced legislation (S. 198) that would achieve the same objective of eliminating the CTR certification requirements.

Expanding Proliferation Security Initiative

Prepared by (name redacted), Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division, 7-.....

The Proliferation Security Initiative is an effort announced by President Bush in May 2003 to coordinate interdiction of weapons of mass destruction-related equipment and technology transfers (see CRS Report RS21881, *Proliferation Security Initiative (PSI)*, by (name redacted)). PSI's long-term objective is to "create a web of counterproliferation partnerships through which proliferators will have difficulty carrying out their trade in WMD and missile-related technology." The Bush Administration has often noted that PSI is an activity, not a program, but the 109th Congress nevertheless introduced a variety of legislation regarding PSI, some of which attempted to put more structure into the activity.

House Provisions

Subtitle B of Title XII of H.R. 1 addresses provisions to expand the Proliferation Security Initiative, consistent with the recommendation of the 9/11 Commission. Section 1221 expresses the sense of Congress that the President should define a budget for PSI, work with the UN Security Council to develop a resolution that would authorize PSI activities, increase PSI cooperation with non-NATO partners, implement recommendations in the GAO report that would help measure program results and establish clear lines of authority, and expand and formalize PSI into a multilateral regime. Additionally, Section 1221 requires the President and Secretary of Defense to submit a budget for PSI for FY2009 and requires both an executive branch implementation report and a GAO annual report on the program.

Section 1222 authorizes the President to provide assistance to countries that cooperate with the United States and its allies to prevent transfers of proliferation concern. Such assistance would be limited to three fiscal years and would be provided to enhance the capability of the country to do PSI-related activities.

Senate provisions

No comparable provisions.

Comments

Several bills were introduced in the 109th Congress supporting PSI in various ways. Four bills, S.Con.Res. 36, S.Con.Res. 40, S. 3456 and S. 2566 expressed support for PSI and S. 3456 sought to authorize \$50 M for training exercises under PSI. The FY2006 Foreign Operations, Export Financing, and Related Programs Appropriations Act (P.L. 109-102) authorized the use of Nonproliferation Antiterrorism Demining and Related Programs funds for PSI activities.

Assistance to Accelerate Programs to Prevent Weapons of Mass Destruction Proliferation and Terrorism

Prepared by (name redacted), Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division, 7-.....

The United States, through its threat reduction and nonproliferation programs at the Department of Defense, Department of Energy, and Department of State, provides just over \$1 billion in assistance to other nations each year in an effort to stem the proliferation of weapons of mass destruction and related technologies. Some have suggested that, by providing additional funds for these programs, the United States might accelerate its efforts to secure weapons and materials in the former Soviet Union, while expanding and accelerating similar efforts in other nations.

House Provisions

Subtitle C of Title XII of H.R. 1 would authorize additional expenditures so that the United States could accelerate its programs that seek to stem the proliferation of WMD. Section 1231 contains findings that note that these programs have often encountered obstacles that have slowed expenditures and left unobligated funds and uncosted balances. It notes that it should be the policy of the United States to eliminate these obstacles. Sections 1232 and 1233 authorize the appropriation of additional funds, as needed, to accelerate these programs. Section 1232 applies to the Cooperative Threat Reduction program funded through DOD, and includes the sense of Congress that in future years, the President should not only accelerate and expand funding for these programs, but also encourage further commitments by Russia and other recipient nations, as recommended by the 9/11 Commission. Section 1233 applies to several nonproliferation programs funded through the Department of Energy's National Nuclear Security Administration.

Senate provisions

No comparable provisions.

Comments

Many analysts assert that, with bureaucratic obstacles slowing the expenditure of existing funds, added funds may not be very effective in accelerating the implementation of these programs. Others argue that added funds would allow the United States to expand its efforts in those areas where funding has been limited in the past and where the recipient nations are able to identify additional programs that would require assistance.

Establishing a Coordinator and Commission on Preventing Weapons of Mass Destruction Proliferation and Terrorism

Prepared by (name redacted), Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division, 7-.....

House Provisions

Subtitle D of Title XII of H.R. 1 establishes the Office of the United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism. Section 1241 states that the office shall have a Coordinator and Deputy, both of whom shall be appointed by the President, with the advice and consent of the Senate. The Section also states that this Coordinator shall serve as the advisor to the President on all matters relating to the prevention of WMD proliferation and terrorism and shall formulate a comprehensive and well-coordinated strategy and policies for preventing WMD proliferation and terrorism. The Section indicates that the Coordinator will also develop plans to coordinate the activities, initiatives, and programs of the various Departments and Agencies that play a role in this effort. Further, Section 1242 expresses the sense of Congress that the President should request that Russia designate a similar Coordinator for these activities.

Subtitle E of Title XII of H.R. 1 establishes a Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism. Section 1252 states that this Commission is to assess current activities, initiatives, and programs and to provide a clear and comprehensive strategy and concrete recommendations for such activities, initiatives, and programs. It is to focus, particularly, on initiatives and activities that seek to secure weapons-usable nuclear materials around the world and to accelerate or strengthen efforts to stop the spread of nuclear weapons capabilities. Section 1253 outlines the composition of the Commission; Section 1254 indicates that it should also address the roles, missions, and structures of relevant government departments and it should address questions of interagency coordination. Section 1257 states that the Commission should submit a report to the President.

Senate Provisions

No comparable provisions.

Comments

The Department of Defense, Department of Energy, and Department of State each fund programs that provide nonproliferation assistance to nations around the world. At the present time, these agencies develop their budgets and structure their programs independently of each other. Many analysts believe that this structure inhibits the coordination of priorities or budgets. Proposals for both a Coordinator and a Commission are designed to remedy this situation by providing a central point of contact for both planning and implementing U.S. policy in this area.

Title XIII: Nuclear Black Market Counter-Terrorism Act

Prepared by (name redacted), Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division, 7-.....

Overview

The Nuclear Black Market Counter-Terrorism Act creates two new kinds of sanctions for proliferation-related activities, both with waiver options for the President. In the first case, the President would be authorized to impose sanctions on a foreign person involved in the transfer of nuclear enrichment or reprocessing equipment, materials, or technology to a non-nuclear weapon state that does not possess functioning enrichment or reprocessing plants by January 2004, that did not have an Additional Protocol in place (a type of improved nuclear safeguards agreement) or is developing, manufacturing, or acquiring a nuclear explosive device. The second kind of sanction is aimed at countries that are hosts to proliferation networks, and includes a cutoff in arms licenses and deliveries.

House Provisions

Title XIII of H.R. 1, the Nuclear Black Market Counter-Terrorism Act, provides for new sanctions on foreign persons for transfers of uranium enrichment and spent fuel reprocessing-related materials, technology and equipment (Section 1311), makes nonproliferation to terrorists a condition for receiving U.S. foreign assistance (Section 1331), and requires a report on identifying nuclear proliferation network host countries (Section 1332). For those countries identified as hosts to proliferation networks, Section 1333 requires the suspension of arms sales licenses and deliveries, unless the President certifies to relevant committees that the country is investigating the activities, taking steps to halt those activities, is cooperating with the United States and has enacted laws or regulations designed to prevent any such future activities. In addition, the President may waive the certification on the basis of national security, but only after five days have elapsed.

Senate Provisions

No comparable provision.

Comments

Title XIII of H.R. 1 is very similar to Title VIII (Nuclear Black Market Elimination Act of 2005) of the Foreign Relations Authorization Act for Fiscal Years 2006 and 2007 (H.R. 2601), with minor changes. U.S. law currently contains provisions for the imposition of sanctions on countries that transfer enrichment and reprocessing-related technology, material, or equipment (the so-called Glenn and Symington amendments to the Foreign Assistance Act) to states that do not have comprehensive safeguards agreements. Section 1311 of Title XIII would create more stringent standards (states would not only have to have comprehensive safeguards agreements, but also already have enrichment and reprocessing and have an Additional Protocol in force) for

enrichment and reprocessing transfers, and also expand the conditions for imposing sanctions to activities by foreign persons not just nation-states.

Title XIV: 9/11 Commission International Implementation

Prepared by (name redacted), Specialist in Foreign Policy and Trade, CRS Foreign Affairs, Defense, and Trade Division, 7-.....

Overview

Since the September 11th terrorist attacks, many experts have stated that terrorism cannot be defeated by military force alone. The 9/11 Commission Report noted that the United States must use its full range of policy tools to fight terrorism and prevent the continued recruitment and growth of terrorism around the world. The Commission called on the United States to be an example of moral leadership in the world, providing a role model of abiding by the rule of law, treating people humanely, assisting Arab and Muslim populations in providing education systems that do not teach hate, offering hope for economic opportunity, and using public diplomacy to help change attitudes about America. H.R. 1, Title XIV (9/11 Commission International Implementation) and S. 4, Title XIX (Advancement of Democratic Values) address many of the education assistance, democracy promotion, and public diplomacy policy recommendations that were proposed by the 9/11 Commission.

Subtitle A: Quality Educational Opportunities in Arab and Predominantly Muslim Countries

Although the Intelligence Reform and Terrorism Prevention Act of 2004 authorized an International Youth Opportunity Fund to provide financial assistance for the improvement of public education in Arab and Muslim populations and authorized a pilot program offering grants for scholarships, it did not provide new funds.

House Provisions

Section 1412, Title XIV, H.R. 1 amends Section 7114 of the 9/11 Implementation Act of 2004 (Title VII of the Intelligence Reform and Terrorism Prevention Act of 2004; P.L. 108-458). It would authorize the President to establish an International Arab and Muslim Youth Educational Fund to assist Muslim and Arab countries that commit to educational reform and would authorize appropriations “for such sums as may be necessary for FY2008, FY2009, and FY2010 which shall remain available until expended.” The Fund would help establish vocational training in trades that would provide economic development and opportunity in the countries and would also provide translation of foreign books and newspapers into local languages. In addition, the House bill would require a report within 180 days after enactment, and annually thereafter, to relevant congressional committees on the progress made toward establishing the International Arab and Muslim Youth Opportunity Fund. Section 1413 would require the Secretary of State to report to Congress by June 1st each year on the efforts of the Arab and predominantly Muslim countries to improve educational opportunities and eliminate educational institutions that promote religious

extremism. Section 1414 would amend Section 7113 of the 9/11 Implementation Act of 2004 (Title VII of the Intelligence Reform and Terrorism Prevention Act of 2004; P.L. 108-458) to provide grants to American-sponsored schools in Arab and predominantly Muslim countries to provide scholarships to lower-income young people to learn English and be exposed to a more modern education.

Senate Provisions

No comparable provisions.

Subtitle B: Democracy and Development in Arab and Muslim Countries

House Provisions

Section 1421 states that it would be U.S. policy to promote short-term and long-term democracy efforts in countries of the Middle East, Central Asia, South Asia, and Southeast Asia. Also, the United States would provide assistance and resources to individuals and organizations that are committed to promoting democracy in those countries. The section also would require the Secretary of State to report to appropriate congressional committees within 180 days after enactment with a country-by-country five-year U.S. strategy for promoting democracy. The report must also contain an estimate of funding requirements to implement the stated strategies.

Section 1422 would authorize the Secretary of State to designate a private, nonprofit organization called the Middle East Foundation. The Secretary of State would be authorized to provide funding for the organization through State Department's Middle East Partnership Initiative (MEPI), an economic assistance program to promote democracy and reform in the Arab and Muslim world authorized by Section 7115 of the 9/11 Implementation Act of 2004 (Title VII of the Intelligence Reform and Terrorism Prevention Act of 2004; P.L. 108-458). The Foundation would use funds to provide grants to individuals or entities either located in the Middle East or working with partners in the Middle East to support education and democracy reforms. The Foundation activities would be audited annually, and recipients of grants from the Foundation shall permit audits, according to the measure. Additionally, the Foundation would report annually to the appropriate congressional committees on the operations, activities, grants, and financial condition of the Foundation.

Senate Provisions

No comparable provisions.

Subtitle C: Advancing United States Interests Through Public Diplomacy

House Provision

Section 1431 notes that Arab and Muslim audiences rely on satellite television and radio, and that U.S. efforts in these areas with an Arab population, in Iran, and in Afghanistan are reaching large

audiences. It states that a significant expansion of U.S. international broadcasting would provide cost-effective means of improving communication with Muslim and Arab populations and would authorize the President to direct any department, agency, or other governmental entity to assist the Broadcasting Board of Governors (BBG) with financial and technical resources, or “surge capacity,” during a crisis abroad. This section would authorize appropriations of up to \$25 million for such purposes and such sums as may be necessary to carry out U.S. international broadcasting activities, in general. The BBG would be required to provide an annual report to the President and Congress on surge capacity activities.

Senate Provision

No comparable provision.

House Provision

Section 1432 would require the Secretary of State, within 30 days of enactment and every 180 days thereafter, to report to the appropriate congressional committees on the recommendations of the National Commission on Terrorist Attacks Upon the United States and on the policy goals of Section 7112 of the 9/11 Implementation Act of 2004 (Title VII of the Intelligence Reform and Terrorism Prevention Act of 2004; P.L. 108-458) about expanding U.S. scholarship, exchange, and library programs in Arab and predominantly Muslim countries, certifying the recommendations have been implemented and policy goals achieved.

Senate Provision

No comparable provision.

House Provision

Section 1433 notes that the 9/11 Commission urged the United States to work with its allies on detention policies and humane treatment of captured suspected terrorists. This section would require the Secretary of State, in consultation with the Attorney General and the Secretary of Defense, to report to relevant congressional committees within 90 days of enactment of this act and every 180 days thereafter, certifying that the 9/11 Commission recommendations have been implemented and such policy goals have been achieved.

Senate Provision

No comparable provision.

Subtitle D: Strategy for the United States Relationship with Afghanistan, Pakistan, and Saudi Arabia

House Provisions

Sections 1441 states that the United States shall vigorously support the government of Afghanistan. It strongly urges that the Afghanistan Freedom Support Act of 2002 be reauthorized. It would require the President to dramatically increase police trainers and police personnel to Afghanistan and submit a report to certain congressional committees within 180 days after enactment of this act on meeting these requirements. This section would authorize “such sums as may be necessary” to be appropriated for each of FY2008 and FY2009.

Section 1442 notes that Pakistan has been important in helping the United States deal with the Taliban regime in Afghanistan and terrorism. It states that the United States shall work with the Government of Pakistan to combat international terrorism, establish a long-term relationship with the Government of Pakistan, increase U.S. foreign aid to Pakistan under certain conditions, and work with the international community to help resolve the dispute between the Government of Pakistan and the Government of India over Kashmir. This section would require the President to report to certain congressional committees within 90 days after enactment on America’s long-term strategy with the Government of Pakistan. This section would provide certain limitations on U.S. assistance, but would also include the possibility of a presidential waiver of the limitations. A sunset provision on the assistance limitations would require the President to certify to certain congressional committees that the Taliban or any related group has ceased to exist as an entity capable of military, insurgent, or terrorist activities in Afghanistan. The section also would designate certain foreign assistance accounts that may be authorized to have appropriated “such sums as may be necessary” for FY2008 and designates other general funds to be available for FY2007 and FY2008.

Section 1443 notes that Saudi Arabia has had an uneven record in the fight against terrorism. It provides a sense of Congress that Saudi Arabia must undertake political and economic reforms and asserts that it is the policy of the United States to cooperate with Saudi Arabia to combat terrorism to engage and support Saudi Arabia to make reforms. The section would require the President to report to certain congressional committees within 90 days after enactment on the strategic dialogue between the United States and Saudi Arabia to facilitate reforms and combat terrorism.

Senate Provisions

No comparable provisions.

Senate Provisions Not in H.R. 1

Title VII: Enhanced Defenses Against Weapons of Mass Destruction

National Biosurveillance Integration Center

Prepared by (name redacted), Specialist in Public Health and Epidemiology, CRS Domestic Social Policy Division, 7-.....

House Provision

No comparable provision.

Senate Provision

Section 701 would amend Title III of the Homeland Security Act of 2002, adding a new Section 316, which would require the Secretary of DHS to establish, operate, and maintain a National Biosurveillance Integration Center (NBIC), and would codify the National Biosurveillance Integration System (NBIS).³⁶ Subject to appropriations, the NBIC shall be headed by a directing officer to oversee development and operation of NBIS. The primary mission of the NBIC would be to identify and monitor important biological events by integrating and analyzing data from human health, animal, plant, food, and environmental monitoring (surveillance) systems; and to communicate information to other federal agencies and to state, local, and tribal governments, to enhance national response capability. NBIS should: incorporate, when possible, data from federal, state and local agencies, foreign governments, and private sources, both foreign and domestic; use the best available technology to identify and characterize biological events in as close to real-time as is practicable; consider patient confidentiality and privacy at all stages of development and apprise the DHS Privacy Officer of such efforts; and alert relevant parties, including public health agencies of state, local, and tribal governments, regarding any incident that could develop into a biological event of national significance. The Secretary shall ensure that the NBIC is fully operational not later than September 30, 2008, and shall, not later than 180 days after enactment, report to the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Homeland Security, on NBIC operations.

The Directing Officer of the NBIC shall: oversee all operations and assessments related to the NBIS; establish a method of real-time communication with the National Operations Center (the principal operations center for DHS); establish a Joint Biosurveillance Leadership Council to facilitate interagency cooperation; share NBIS incident information with member agencies and other affected parties, and in a manner consistent with the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004

³⁶ Operation of the National Biosurveillance Integration System (NBIS), developed in the DHS Preparedness Directorate, is slated for transfer to the DHS Office of Health Affairs in March 2007, as part of a department-wide reorganization.

(6 U.S.C. 485); and coordinate with the Office of the Director of National Intelligence, the Under Secretary for Intelligence and Analysis, and other federal agencies, as appropriate. The bill also would establish information sharing requirements for NBIC member agencies.

Biosurveillance Efforts

Prepared by (name redacted), Specialist in Public Health and Epidemiology, CRS Domestic Social Policy Division, 7-.....

House Provision

No comparable provision.

Senate Provision

Section 702 would require the Comptroller General to submit a report to Congress describing: the state of federal, state, local, and tribal government biosurveillance efforts as of the date of such report; any duplication of effort at the federal, state, local, or tribal government level to create biosurveillance systems; and the integration of biosurveillance systems to allow the maximizing of biosurveillance resources and the expertise of federal, state, local, and tribal governments to benefit public health.

Interagency Coordination to Enhance Defenses Against Nuclear and Radiological Weapons of Mass Destruction

Prepared by (name redacted), Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division, 7-.....

House Provisions

No comparable provisions

Senate Provisions

Directs the Secretary of Homeland Security, the Attorney-General, the Director of National Intelligence, and the Secretaries of Defense, State, and Energy to ensure interagency coordination in the creation of a global nuclear detection architecture through detailed annual reviews and an annual report to be submitted to the President and the Committees on Homeland Security, Appropriations, and Armed Services in each chamber.

Comment

In April 2005, National Security Presidential Directive NSPD-43 established the Domestic Nuclear Detection Office (DNDO) within the Department of Homeland Security. Among its missions, the DNDO was directed to develop an “enhanced global nuclear detection architecture.” NSPD-43 requires an annual report to the President on implementation of this program, but has

no congressional reporting requirement. This provision of S. 4 establishes a congressional reporting requirement and specifies the report's form and content.

Title XII: Congressional Oversight of Intelligence

Prepared by (name redacted), Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division, 7-.....

Availability to Public of Certain Intelligence Funding Information

House Provision

No comparable provision.

Senate Provision

Section 1201 states that the President shall disclose the aggregate amount requested for each fiscal year for the National Intelligence Program; Congress shall disclose amounts authorized and appropriated for each fiscal year. The Director of National Intelligence (DNI) is to conduct a study to determine advisability of disclosing further budgetary detail to the public.

Comment

The question of making intelligence budgets public has been discussed for many years; proponents argue that it is essential for there to be an open accounting of intelligence spending; opponents argue the need to maintain secrecy of sensitive matters; see CRS Report 94-261, *Intelligence Spending: Public Disclosure Issues*, by (name redacted) and (name redacted). A complicating factor may be the complexity of intelligence spending outside of, but closely linked to, the National Intelligence Program.

Response of Intelligence Community to Requests from Congress

House Provision

No comparable provision.

Senate Provision

Section 1202 amends 50 U.S.C. 413. Heads of intelligence agencies and national intelligence centers shall within 15 days of a request from one of the congressional intelligence committees or another committee with jurisdiction, make available to such committee any requested intelligence assessment, report, estimate, legal opinion, or other intelligence information. Agencies shall also respond similarly to requests from the chairman or vice chairman of the Senate Select Committee on Intelligence or the chairman or ranking member of the House Permanent Select Committee on Intelligence. The chairmen or vice chairman/ranking member shall notify their counterparts of

such requests. Information requested shall be provided unless the President asserts a privilege pursuant to the Constitution.

Section 1202 further provides that no agency head or equivalent in the Executive branch shall have authority to require intelligence officials to receive permission to testify before Congress. Heads of departments, agencies or elements may submit to Congress recommendations, testimony, or comments without prior approval, if such submissions include a statement indicating that the views are those of the agency official and do not necessarily represent the views of the Administration.

Section 1202 also provides that intelligence officials or employees of contractors working for intelligence agencies may disclose to Congress “covered information,” defined as information that the official reasonably believes provides direct and specific evidence of a false or inaccurate statement made to Congress or contained in intelligence assessment, report or estimate, without reporting such information to the appropriate Inspector General. The information may be disclosed to Members of Congress “authorized to receive information of the type disclosed” and to House and Senate employees authorized to receive information of the type disclosed and who have appropriate security clearances. Members and staff shall be presumed to have a “need to know.” Covered information excludes information the disclosure of which is prohibited by rule 6(e) of the Federal Rules of Criminal Procedure.

Comment

The provision regarding dissemination of products would place in statute a requirement for dissemination of intelligence products and legal opinions to congressional committees with oversight. Current law provides that the intelligence committees be kept “fully and currently informed” (50 U.S.C. 413) of intelligence activities, but does not specifically include assessments, reports, and legal opinions. The provision on independent testimony of intelligence officials would facilitate oversight of intelligence activities, but questions might be raised regarding whether it could complicate maintaining administrative efficiency within the Executive Branch.

This provision regarding “covered information” would authorize officials in intelligence agencies to report false or inaccurate statements in congressional testimony or in intelligence products to Members of Congress authorized to receive such information and to staff who have the appropriate security clearance and are authorized to receive such information. The information could be reported without first notifying the appropriate Inspector General as is now required pursuant to the provisions of the Intelligence Authorization Act for FY1999 (P.L. 105-272). It may be argued that this provision could make it difficult to maintain the security of highly sensitive intelligence activities. Also, some may question whether the formulation, officials “authorized to receive information of the type disclosed,” is sufficiently precise to provide clear guidance to officials seeking to disclose covered information.

Public Interest Declassification Board

House Provision

No comparable provision.

Senate Provision

Section 1203 states that a Public Interest Declassification Board (PIDB) may undertake reviews in response to congressional requests. Resulting recommendations shall be submitted to the chairman and ranking member of the requesting congressional committee.

Comment

At present, 50 U.S.C. 704(e) provides that the Public Interest Declassification Board shall respond to a Presidential request to review documents, the declassification of which has been requested by a congressional committee of jurisdiction; this change would permit the Board to review documents in response to a congressional request.

Sense of the Senate Regarding a Report on the 9/11 Commission Recommendations with Respect to Intelligence Reform and Congressional Intelligence Oversight Reform

House Provision

No comparable provision.

Senate Provision

Section 1204 expresses the sense of the Senate, based on recommendations of the 9/11 Commission, that the Committee on Homeland Security and the Select Committee on Intelligence each, or jointly, should undertake a review of recommendations by the 9/11 Commission with regard to intelligence reform and congressional intelligence oversight reform, and other recommendations and submit a report to the Senate by December 21, 2007 with recommendations, if any, for carrying out such reforms.

Comment

The 9/11 Commission concluded that congressional oversight is dysfunctional; some changes in oversight have been made in response, but this provision reflects concern that the changes made thus far have not been fully responsive to issues raised by the 9/11 Commission.

Availability of Funds for the Public Interest Declassification Board

House Provision

No comparable provision.

Senate Provision

Section 1205 authorizes the National Archives and Records Administration (NARA) to obligate monies necessary to carry out the activities of the Public Interest Declassification Board.

Comment

This provision provides authority for the NARA to obligate monies to carry out the activities of the PIDB.

Availability of the Executive Summary of the Report on Central Intelligence Agency Accountability Regarding the Terrorist Attacks of September 11, 2001

House Provision

No comparable provision.

Senate Provision

Section 1206 requires the CIA Director to make public a version of the Executive Summary of a June 2005 report entitled the “Office of Inspector General Report on Central Intelligence Agency Accountability Regarding Findings and Conclusions of the Joint Inquiry into Intelligence Activities Before and After the Terrorist Attacks of September 11, 2001.” The CIA Director is also to submit to Congress a classified annex to this report explaining why any redacted material was withheld from the public.

Comment

Then-Director of Central Intelligence Porter Goss issued a statement in October 2005 indicating opposition to the release of the Inspector General’s report, arguing that it “goes to the inner workings of this Agency and our sources and methods.” Furthermore, Goss argued that publicizing individual CIA officials named in the IG report would “send the wrong message to our junior officers about taking risks—whether it be an operation in the field or being assigned to a hot topic at headquarters.” On the other hand, making a version of the IG Report public might address concerns of 9/11 families and other commentators about the performance of the CIA prior to 9/11.

Title XIII: International Cooperation on Antiterrorism Technologies

Prepared by John Rollins, Specialist in Terrorism and International Crime, CRS Foreign Affairs, Defense, and Trade Division, 7-.....

House Provisions

No comparable provisions.

Senate Provision

In Section 1301(a) of S. 4, Promoting Antiterrorism Capabilities Through International Cooperation, Congress finds the following:

- (1) The development and implementation of technology are critical to combating terrorism and other high consequence events and implementing a comprehensive homeland security strategy.
- (2) The United States and its allies in the global war on terrorism share a common interest in facilitating research, development, testing, and evaluation of equipment, capabilities, technologies, and services that will aid in detecting, preventing, responding to, recovering from, and mitigating against acts of terrorism.
- (3) Certain United States allies in the global war on terrorism, including Israel, the United Kingdom, Canada, Australia, and Singapore have extensive experience with, and technological expertise in, homeland security.
- (4) The United States and certain of its allies in the global war on terrorism have a history of successful collaboration in developing mutually beneficial equipment, capabilities, technologies, and services in the areas of defense, agriculture, and telecommunications.
- (5) The United States and its allies in the global war on terrorism will mutually benefit from the sharing of technological expertise to combat domestic and international terrorism.
- (6) The establishment of an office to facilitate and support cooperative endeavors between and among government agencies, for-profit business entities, academic institutions, and nonprofit entities of the United States and its allies will safeguard lives and property worldwide against acts of terrorism and other high consequence events.

Section 1301(b) of S. 4 includes a technical and conforming amendment that inserts the following provisions after Section 316 of H.R. 5005, Homeland Security Act of 2002 (P.L. 107-296):

Section 317, Promoting Antiterrorism Through International Cooperation Program. For the purposes of this section international cooperative activity includes coordinating research projects, conducting joint technical demonstrations, combining seminars and training efforts, establishing scientific exchange programs, sharing antiterrorism technology, and allowing the joint use of laboratory facilities. As amended, P.L. 107-296 establishes a Science and Technology Homeland Security International Cooperative Programs Office. The responsibilities of this office would be to coordinate with other federal government agencies to develop the legal framework to support international cooperative activities, assist with the development of international science and technology efforts within the federal government, and facilitate the planning, development, and implementation of antiterrorism research efforts with foreign governments, private entities, and universities. Section 317(c) provides that the Secretary should ensure funding and resources expended toward international cooperative activities are equitably contributed by all partnering entities. Section 317 further provides that the foreign partners in this program “*may* include Israel,

the United Kingdom, Canada, Australia, Singapore and other U.S. allies in the global war on terrorism.”

Transparency of Funds

House Provision

No comparable provision.

Senate Provision

Section 1302 of S. 4, Transparency of Funds, provides that, for each Federal award under this Title or an amendment made by this Title, the Director of the Office of Management and Budget will ensure full and timely compliance with the requirements of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101).

Title XIV: Transportation and Interoperable Communication Capabilities

Subtitle A Part I: Improved Rail Security

Rail Transportation Security Risk Assessment

Prepared by (name redacted), Analyst in Transportation, CRS Resources, Science, and Industry Division, 7-.....

House Provisions

No comparable provision.

Senate Provisions

Section 1421 of the Senate bill directs DHS to establish a task force, composed of DHS, DOT, and other appropriate federal agencies, to conduct a risk assessment of freight and passenger rail transportation. This assessment is to include a description of the methodology used; identification of critical assets and infrastructure and the risks they face, including the risks specific to transporting hazardous materials by rail; an assessment of stakeholder plans to resume operations after a security incident; and an account of actions taken by stakeholders to address the identified risks. DHS is then to develop prioritized recommendations for improving rail security, including a plan developed in consultation with the industry and state and local governments “for the federal government to provide adequate security support at high or severe threat levels of alert.” DHS is also to develop plans for coordinating rail security initiatives undertaken by the public and private sectors, and a contingency plan for the continued operation of the rail network in the event of an attack. DHS is to submit a report including these plans to Congress within one year of the signing

of the bill; this report shall include an estimate of the cost to implement the prioritized recommendations for improving rail security developed by DHS.

Rail Transportation Security Grant Programs

Prepared by (name redacted), Analyst in Transportation, CRS Resources, Science, and Industry Division, 7-.....

House Provisions

No comparable provision.

Senate Provisions

Section 1424 of the Senate bill authorizes \$300 million over three years (FY2008-FY2010) for a rail security grant program under DHS for full or partial reimbursement of the costs of preventing or responding to risks identified in DHS' rail transportation security risk assessment. Eligible recipients include freight railroads, Amtrak, the Alaska Railroad, hazardous materials offerers, owners of rail cars used for transporting hazardous materials, universities, and state and local governments (for rail passenger facilities not owned by Amtrak). Eligible expenses include securing hazardous material transportation by rail, securing passenger rail stations, trains, and infrastructure, employee security training, accommodating cargo or passenger screening equipment at the borders with Canada and Mexico or other ports of entry, and hiring additional security personnel. Grants shall be allocated based on risk; limits are placed on the cumulative amount that can be allocated to Amtrak (\$45 million) and for hazardous material transportation (\$80 million). No match is required by recipients, though DHS shall encourage non-federal matches for the grants; DHS shall report to Congress within eight months of enactment of the bill on the feasibility and appropriateness of requiring non-federal matches for the grants. Grants to Amtrak, though awarded by DHS, shall be disbursed by DOT.

Amtrak Provisions

Prepared by (name redacted), Analyst in Transportation, CRS Resources, Science, and Industry Division, 7-.....

House Provisions

No comparable provision.

Senate Provisions

The Senate bill includes several provisions affecting Amtrak. Section 1422 would create a security grant program in DHS specifically for Amtrak. Eligible expenses for this grant program would include protection for high-risk assets identified through risk assessments, counter-terrorism training, and emergency preparedness exercises; specific projects include securing tunnels along the Northeast Corridor, securing trains and stations, and adding additional security personnel. Although the grant program would be under DHS, the funds would be disbursed by

DOT; projects funded with the grants must be part of a security plan approved by DHS. The bill would authorize a total of \$123.5 million over three years (FY2008-FY2010) for this program. Section 1423 would authorize funding for safety improvements to Amtrak tunnels along the Northeast Corridor. The grants would be disbursed by DOT, in consultation with DHS; the bill would authorize \$400 million for New York-New Jersey tunnels, \$40 million for Baltimore tunnels, and \$32 million for tunnels under Union Station in Washington, D.C. Funds would be available over four years, FY2008-FY2011, subject to approval of project management plans by DOT. DOT is also directed to obtain financial contributions for the projects from other rail carriers reflecting their use of the tunnels, "if feasible." Section 1427 directs Amtrak to develop a plan to address the needs of families of passengers involved in rail passenger accidents.

Section 1438 provides that District of Columbia laws shall govern Amtrak contracts with Maryland. According to Amtrak, this would restore the situation that prevailed until passage of the Amtrak Reform and Accountability Act of 1997 (P.L. 105-178), which eliminated the governance of District of Columbia law over Amtrak contracts. This created a conflict between Amtrak's practice and the dispute resolution clause in Maryland procurement law.

Northern Border Rail Passenger Report

Prepared by (name redacted), Analyst in Transportation, CRS Resources, Science, and Industry Division, 7-.....

House Provisions

No comparable provision.

Senate Provisions

Section 1428 of the Senate bill requires DHS to report to Congress, within one year of the signing of the bill, on the progress of efforts to provide preclearance of passengers on trains operating between the United States and Canada, along with an assessment of the current programs for preclearing air passengers and freight cargo moving between the United States and Canada. Currently, Amtrak trains transporting passengers from Canada to the United States must stop at the border while passengers and baggage are screened.

Freight Rail Specific Provisions

Prepared by (name redacted), Specialist in Transportation, CRS Resources, Science, and Industry Division, 7-.....

House Provisions

No comparable provision.

Senate Provisions

Part I of Title XIV of the Senate bill defines “high hazard materials” as a subset of hazardous materials that includes inhalation hazardous materials and seeks to enhance the security of the rail transport of these materials. The bill would require DHS, in consultation with the DOT, to direct the railroads to develop a specific plan for transporting these materials when DHS raises the threat level to high or severe or obtains intelligence of a probable or imminent threat. This plan may include rerouting or temporarily suspending the rail transportation of these materials through potentially “high consequence targets.” The bill requires DHS, in consultation with the DOT, to develop a program to encourage railroads to equip their railcars carrying these materials with tracking devices indicating their location and condition. The bill would allow certified or commissioned police officers employed by one railroad to be temporarily assigned to another railroad and would create a security training program for “front-line” railroad workers. The bill also seeks whistleblower protection for railroad employees providing information relating to a reasonably perceived security threat or refusing to violate any security-related regulation.

Unified Carrier Registration System Plan Agreement

Prepared by (name redacted), Analyst in Transportation, CRS Resources, Science, and Industry Division, 7-.....

House Provisions

No comparable provision.

Senate Provisions

Section 1436 of the Senate bill would restore the Single State Registration System for commercial motor vehicles, which was repealed on January 1, 2007, until such time as the Unified Carrier Registration System, which is intended to replace it, has been fully implemented.

Authorization of Appropriations

Prepared by (name redacted), Analyst in Transportation, CRS Resources, Science, and Industry Division, 7-.....

House Provisions

No comparable provision.

Senate Provisions

Section 1437 of the Senate bill would authorize a total of \$537 million to DHS over three years (FY2008-FY2010) and \$475 million to DOT over four years (FY2008-FY2011) to carry out the provisions of this Title (Title XIV).

Comment

The Administration has issued a statement of administration policy making several objections to provisions in this Title: that it would create grant programs OMB sees as duplicating existing grant programs; that rail operators are responsible for protecting their passengers and assets, so having the federal government cover their security costs is inappropriate and sets a precedent for other industries to seek similar assistance; that security-related grants to Amtrak should be administered by DHS; and that the authorized funding levels may divert resources needed for higher priority requirements in other areas. The Administration has also stated that in many places in this Title the division of responsibilities between DHS and DOT is not clear, potentially leading to confusion.

Freight trains carrying toxic-by-inhalation hazardous materials through cities continues to be a difficult problem in transportation security.³⁷ During Senate floor debate of S. 4, an amendment was defeated (S.Amdt. 306) that would have required, except under specific circumstances, the rerouting of trains carrying high hazard materials through high threat corridors. On December 26, 2006, DOT issued a notice of proposed rulemaking that would require railroads to analyze the safety and security of certain hazardous material routes and investigate whether an alternative route is safer and more secure.³⁸ On the same day, DHS issued a notice of proposed rulemaking that would require railroads to ensure that carloads of these materials are not left unattended while awaiting transfer among railroads, that railroads reduce the amount of standstill time for these carloads, and that railroads track and locate these carloads upon request from DHS.³⁹ Railroads contend that their trains move on irregular schedules making it difficult for terrorists to execute an attack.⁴⁰ They also contend that rerouting these materials could increase the risk of accidental release because rerouting would likely lengthen total transit time, involve additional yard switching, or use alternative track that is not as well maintained because it is used for other types of cargo. Proponents of rerouting assert that the security risk to certain high population centers is just too great not to ban these rail shipments from these areas. Other options that could mitigate the risks, such as shippers substituting less dangerous products or sourcing these products closer to the end user, are feasible only in limited situations.

Subtitle A Part II: Improved Motor Carrier, Bus, and Hazardous Material Security

Motor Carrier and Hazardous Material Security

Prepared by (name redacted), Specialist in Transportation, CRS Resources, Science, and Industry Division, 7-.....

³⁷ For legal aspects of this issue, see CRS Report RS22041, *Legal Issues Concerning State and Local Authority to Restrict the Transportation of Hazardous Materials by Rail*, by (name redacted).

³⁸ See *Federal Register*, vol. 71, no. 245, p. 76834.

³⁹ See *Federal Register*, vol. 71, no. 245, pp. 76852-76888.

⁴⁰ “Dangerous Rail Cargo Raises Concern in Cities But Local Efforts to Regulate Traffic Have Been Thwarted by Federal Court Challenges,” *The Atlanta Journal-Constitution*, Mar. 25, 2006, p. 3F.

House Provisions

No comparable provision.

Senate Provisions

Part II of Title XIV of the Senate bill contains a number of provisions regarding truck, pipeline, hazardous material, and port worker security. Regarding the trucking of hazardous materials (hazmat), the bill requires DOT, in consultation with DHS, to review existing hazmat routes and develop criteria based on safety and security concerns to assist states in designating routes for hazmat transportation. The bill requires DOT to assess whether route plans currently required for trucks carrying radioactive or explosive materials should also be required for trucks carrying other types of hazmat. The bill requires DHS, in consultation with DOT, to develop a program to evaluate the costs, benefits, and capabilities of technology for tracking high hazard material shipments. It also requires DHS, in conjunction with DOT, to consider the development of a national response system utilizing the information obtained from hazmat tracking technology. The bill requires DHS, in consultation with DOT, to review the security plans of hazmat shippers and carriers that are currently required by the Pipelines and Hazardous Materials Safety Administration (PHMSA, a DOT agency) and in doing so, not to subject these hazmat shippers and carriers to unnecessarily duplicative reviews by both DHS and DOT.

Apart from the security of hazmat trucking, the bill requires DHS, in consultation with DOT, to develop protocols for providing increased security of pipelines during severe security threat levels and protocols for responding to a pipeline security incident.⁴¹ The bill requires DHS to conduct a study of the need for and feasibility of creating a user fee in the maritime and surface modes for funding transportation security improvements. The bill calls on the DHS IG to audit the Trucking Security Grant program for fiscal years 2004 and 2005. Regarding port workers, the bill would codify the list of disqualifying offenses that DHS recently promulgated⁴² as disqualifying a worker from obtaining a transportation security card. However, the bill includes two sections that appear to be contradictory to one another regarding the list of disqualifying offenses. Section 1454 would allow DHS, by rulemaking, to “add or modify” the list of disqualifying offenses while section 1455 would allow DHS only to add to the list of offenses.

Comment

Hazmat transportation security raises the issue of the respective roles of DHS and DOT towards that effort. While the TSA, the Coast Guard, and CBP—all housed within DHS—have primary responsibility for hazmat security, PHMSA, FRA, and FMCSA—all housed within DOT—have primary responsibility for hazmat safety.⁴³ Many of the safety regulations that DOT modal administrations enforce also enhance security, such as emergency response training requirements or railcar construction requirements. The reverse is also true with respect to DHS security regulations. Although the hazmat security provisions in S. 4 frequently require DHS and DOT to

⁴¹ For further information on pipeline security, see CRS Report RL33347, *Pipeline Safety and Security: Federal Programs*, by (name redacted).

⁴² See *Federal Register*, vol. 72, no. 16, Jan. 25, 2007, p. 3492.

⁴³ With regard to waterborne hazmat, the Coast Guard, which used to be housed in the DOT prior to the creation of the DHS, has primary responsibility for both its safety and security.

consult with one another, or in other instances, requires them to add an annex to their existing Memorandum of Agreement, avoiding confusion about who is in charge of hazmat security may still be an issue. Even prior to the creation of TSA, hazmat carriers and shippers often noted the complexity of hazmat safety regulations stemming from the various DOT administrations.⁴⁴ The Administration has raised this as an issue in its statement of administration policy on S. 4, stating it “is concerned that the assignment of various tasks pertaining to security to DHS and DOT is not clear in several provisions of the bill, raising potential questions about which department has lead authority and responsibility for transportation security. In addition, some of the authorities granted by the bill may lead to stakeholder confusion as to the lead agency implementing Federal transportation security policy.”⁴⁵

Over-the-Road Bus Security Assistance

Prepared by (name redacted), Analyst in Transportation, CRS Resources, Science, and Industry Division, 7-.....

House Provisions

No comparable provision.

Senate Provisions

Section 1447 of the Senate bill would authorize \$62 million over three years (FY2008-FY2010) for a security grants program under DHS for over-the-road buses and bus terminals (over-the-road buses are defined as buses with a baggage compartments underneath the passenger compartment). Eligible expenses would include security modifications to terminals, buses, and related facilities, employee training, hiring security personnel, installing surveillance equipment on buses and at terminals and related facilities, emergency communication systems, and passenger screening programs. Grants shall be prioritized according to risk. Grant recipients must have a security plan approved by DHS. DHS shall also provide Congress with an assessment of the program and of additional needs for securing over-the-road bus transportation. This would represent a significant increase over the \$10 million Congress appropriated in FY2007 for the existing over-the-road bus grant program in DHS.

Subtitle B: See Title 4, H.R. 1

Subtitle C: Interoperable Emergency Communications

Interoperable Emergency Communications

Prepared by (name redacted), Analyst in Telecommunications and Technology Policy, CRS Resources, Science, and Industry Division, 7-.....

⁴⁴ See for instance, *Journal of Commerce*, “Special Report - Hazardous Materials,” August 29, 2005, pp. 24-26.

⁴⁵ OMB, *Statement of Administration Policy- S. 4*, February 28, 2007, p. 8.

House Provisions

See discussion of Title II, H.R. 1.

Senate Provisions

The summary of provisions in this title that are related to communications are included in the discussion under Title II, H.R. 1.

Extension of Short Quorum

Prepared by (name redacted), Legislative Attorney, CRS American Law Division, 7-.....

House Provisions

No comparable provision.

Senate Provisions

This provision would make clear that notwithstanding the short quorum requirements set out in section 4(d) of the Consumer Product Safety Act (15 U.S.C. § 2053(d)), two members of the Consumer Product Safety Commission shall constitute a quorum for the six month period beginning on the date of enactment, if the members are not affiliated with the same party. The provision effectively extends the period in which the current two member Commission may meet to transact business beyond that set out in current law, which expired in January 2007—the end of the “six month period beginning on the date of the vacancy which caused the number of Commission members to decline to two.”

Requiring Reports to be Submitted to Certain Committees

House Provisions

No comparable provision.

Senate Provisions

This provision specifies committees that are to receive required reports, as listed in the section.

Title XV: Public Transportation Terrorism Prevention

Prepared by (name redacted), Analyst in Transportation, CRS Resources, Science, and Industry Division, 7-.....

Overview

Title XV of the Senate bill, the Public Transportation Terrorism Prevention Act of 2007, would have DHS set security improvement priorities for public transit agencies, prescribe employee training requirements for transit agencies, and would authorize a sharp increase in federal grants to transit agencies for security improvements, from \$175 million in FY2007 to approximately \$1.1 billion annually. The bill would also require transit agencies to provide training for all their employees within one year of getting their training programs approved by DHS. Specific provisions of the bill are discussed in further detail below.

House Provisions

No comparable provision.

Security Assessments

Section 1503 of the Senate bill directs DHS to use public transportation security assessments that have been completed for individual transit agencies as the basis for allocating transit security grants. The bill also directs DHS to establish security improvement priorities for the use of federal transit security grant funds, in consultation with the transit agencies for which security assessments have been completed. DHS is to update the existing security assessments annually, and to conduct security assessments “appropriate to the size and nature of each system” for local bus-only systems and rural transit systems. These provisions would appear to require DHS to conduct a security assessment of all the transit agencies in the nation.

Security Grants

Section 1504 of the Senate bill would create grant programs for security-related capital expenses (e.g., tunnel and perimeter protection, communication equipment, surveillance equipment, and chemical, biological, radiation and explosives screening equipment) and operating expenses (e.g., employee training, canine patrols, overtime costs during heightened alerts). The act authorizes an average of \$1.13 billion annually; no match is required from the grant recipient. The grants would go directly to transit agencies.

Security Training Program

Section 1505 of the Senate bill would require DHS to issue regulations prescribing training requirements for public transportation workers. These training requirements would include live situational training exercises. Transit agencies would be required to develop training plans for their employees, which would have to be reviewed and approved by DHS. Within one year of having their training plans approved, transit agencies would have to provide training to all their employees.

Intelligence Sharing

Section 1506 of the Senate bill would require DHS to fund the public transportation information sharing and analysis center (ISAC). This ISAC promotes the sharing of security information between federal agencies and transit agencies on a full-time, round-the-clock basis. DHS is to

require the participation of transit agencies it considers to be at “significant” risk of terrorist attack, and to encourage the participation of all other transit agencies. No fee is to be charged to transit agencies for their participation in the ISAC.

Research, Development, and Demonstration Grants and Contracts

Section 1507 of the Senate bill directs DHS, in consultation with FTA, to awards grants or contracts to public or private entities for research into, development of, and demonstration of technologies and methods to reduce the threat of terrorist attack and to mitigate the consequences of such attacks.

Authorization of Appropriations

Section 1509 of the bill authorizes a total of \$3.5 billion over three years, FY2008-FY2010: \$2.4 billion for the capital security grant program, \$1.0 billion for the operational security grant program, and \$130 million for a research, development and deployment grant program.

Sunset Provisions

Section 1510 of the Senate bill provides that the authority to make grants under this Title will expire on October 1, 2011.

Comment

The Administration has several objections to the security grant program in this bill, in a statement of administration policy: that it duplicates the existing transit security grant program in DHS, that transit agencies are responsible for the security of their customers and assets, so having the federal government pick up their security costs is inappropriate and sets a precedent for other industries to request similar assistance; and that the authorized level of funding may divert resources needed for higher-priority requirements in other areas of federal responsibility.

For FY2007 Congress appropriated \$175 million for security grants for public transportation, intercity passenger rail and freight rail organizations; DHS allocated \$149 million to 8 Tier I metropolitan area transit agencies, \$14 million to 29 Tier II metropolitan area transit agencies, and \$7 million to 14 ferry systems (\$8 million was allocated to Amtrak). DHS provides the grants to state homeland security agencies, who then distribute the funds to the transit agencies; in part this is to ensure that the security activities of transit agencies are consistent with the state’s security plan. The Senate bill, which would direct DHS to grant the money directly to the transit agencies, would make DHS responsible for ensuring that the security improvement priorities it sets for transit agencies, and the grants it provides to those agencies, are consistent with the relevant state homeland security plans.

Transit agencies have described employee training as their second priority, though TSA regards employee training as the single most effective security activity that transit agencies can implement. Training issues include how many employees are receiving training, how useful is the training being provided, and the cost of providing training. The Federal Transit Administration testified in the fall of 2006 that 80,000 transit employees had received security training, around 20% of the approximately 400,000 employees in the industry. Employee groups note that transit

employees are likely to be the first responders in the event of a security incident, and contend that the training employees have received is not thorough enough to give them confidence that they know what to do in security situations. Live situational training exercises, in coordination with first responder organizations, are considered the most effective form of training, but are expensive, since the transit agencies must continue to provide service while employees are receiving training.

Title XVI: Miscellaneous Provisions

Management challenges at the Department of Homeland Security have been identified in numerous congressional hearings, as well as studies by the Government Accountability Office and others. Some have expressed the view that the existing position of under secretary for management at the department lacks the authority and tenure to initiate and carry out department-wide management integration and transformation. Legislation with similar language to that used in this provision (S. 1712) was introduced by Senator George V. Voinovich during the 109th Congress, but it was not acted upon. Senator Voinovich introduced similar legislation (S. 547) at the beginning of the 110th Congress.

Deputy Secretary of Homeland Security for Management

Prepared by (name redacted), Analyst in American Government, CRS Government and Finance Division, 7-.....

Overview

House Provisions

No comparable provision.

Senate Provisions

Section 1601 of S. 4 would establish the position of deputy secretary of homeland security for management (DSM), to be compensated at Level II of the Executive Schedule. The DSM would exercise the duties of the deputy secretary of homeland security in the event of a vacancy in that office, or the absence or disability of the incumbent. The DSM would exercise the duties of the secretary of homeland security in the event of a simultaneous vacancy in the positions of secretary and deputy secretary, or the simultaneous absence or disability of the incumbents of these offices. The secretary would be empowered to further designate the order of succession to his or her office. Section 1601 would reassign to the DSM all responsibilities currently assigned to the under secretary for management, but would not abolish this position. The DSM would be identified as the “Chief Management Officer and principal advisor to the Secretary” on related matters. Additional statutory DSM responsibilities beyond those presently assigned to the under secretary for management would include strategic planning, annual performance planning, and the “integration and transformation process, to ensure an efficient and orderly consolidation of functions and personnel to the Department, including the development of a management integration strategy for the department.” Appointments to the position of DSM would be made by the President with the advice and consent of the Senate from among individuals meeting specified

qualifications. The incumbent would serve for a five-year term, and he or she could be removed by the President for unsatisfactory performance after the communication to Congress of his reasons. The DSM and secretary would enter into an annual performance agreement, and the DSM would be subject to annual performance evaluations by the Secretary. An incumbent DSM with satisfactory performance could be reappointed. The current under secretary for management could perform the DSM's duties until the first DSM's appointment.

Comment

Section 1601 establishes a position with fixed tenure. Some similar provisions of law permit an appointee to continue holding the position past the end of his or her term for a fixed period of time or until a potential successor has reached a specified point in the appointment process. For example, a special counsel has a fixed term of five years, but "may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Special Counsel may not continue to serve for more than one year after the date on which the term of the Special Counsel would otherwise expire under this subsection" (5 U.S.C. Section 1211(b)). Other similar statutes include no such holdover provision. The statute that establishes the comptroller of the currency, for example, specifies a five-year term but includes no holdover provision (12 U.S.C. Section 2).

Sense of the Senate Regarding Oversight of Homeland Security

Prepared by (name redacted), Analyst in American National Government-Congress, CRS
Government and Finance Division, 7-.....

Overview

The 9/11 Commission recommended that "Congress should create a single, principal point of oversight and review for homeland security," and expressed its belief that there should be "one [committee] in the House and one in the Senate, and that this committee should be a permanent standing committee with a nonpartisan staff." (*The 9/11 Commission Report*, p. 421.)

Both chambers have made structural and jurisdictional changes in its committees in response to the recommendations of the 9/11 Commission.

The House created an Appropriations Subcommittee on Homeland Security when the committee organized for the 108th Congress in February 2003. The Senate Appropriations Committee made a similar change when it organized in March 2003.⁴⁶ Both subcommittees were reestablished in the 109th and 110th Congresses. In addition, in the 110th Congress, the House created a Select Intelligence Oversight Panel in the House Appropriations Committee with the adoption of H.Res. 35 on January 9, 2007. In the 108th Congress, with the adoption of S.Res. 445, the Senate directed its Appropriations Committee to establish a Subcommittee on Intelligence. As of this writing, however, the committee has not done so.

⁴⁶ CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2007*, by (name redacted).

On August 25, 2004, then-Senate Majority Leader Bill Frist and then-Minority Leader Tom Daschle announced the appointment of a bipartisan working group of 22 Senators, headed by Senators Mitch McConnell and Harry Reid, to examine how best to implement the 9/11 Commission's recommendations that dealt with reform of the Senate's oversight of intelligence and homeland security. Early in October, 2004, the group unveiled a series of recommended reforms in Senate committee operation and jurisdiction with regard to homeland security and intelligence. On October 9, 2004, the Senate adopted S.Res. 445, a resolution that implemented a number of the working group's suggestions regarding Senate committee reorganization. The provisions of the resolution took effect upon the convening of the 109th Congress on January 4, 2005.

S.Res. 445 renamed the Senate Committee on Governmental Affairs as the Senate Committee on Homeland Security and Governmental Affairs, and transferred to the new panel jurisdiction over matters relating to the Department of Homeland Security, with certain limitations. S.Res. 445 exempted certain units within the Department of Homeland Security, such as the Coast Guard, from transfer to the Homeland Security and Governmental Affairs Committee. Additional exemptions, such as the Secret Service, were also added by floor amendment to the working group proposal. Excluded from the jurisdiction of the Homeland Security and Governmental Affairs Committee under S.Res. 445, as amended, are the following:

- Transportation Security Administration (retained in the Commerce Committee);
- Federal Law Enforcement Training Center (retained in the Judiciary Committee);
- revenue and commercial functions of the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement, including matters relating to trade facilitation and trade regulation (retained in the Finance Committee);
- matters relating to "... the United States Citizenship and Immigration Service; or ... the immigration functions of the United States Customs and Border Protection or the United States Immigration and Custom Enforcement or the Directorate of Border and Transportation Security" (retained in the Judiciary Committee);
- Coast Guard (retained in the Commerce Committee);
- Secret Service (retained in the Judiciary Committee); and
- National Flood Insurance Act of 1968, (retained in the Banking Committee) including the functions of the Federal Emergency Management Agency (FEMA) relating to that program (the rest of FEMA had previously been in the Environment and Public Works Committee).

On January 4, 2005, the House of Representatives adopted H.Res. 5, the rules package for the 109th Congress. Section 2 of H.Res. 5 amended House Rule X (related to the jurisdiction of standing committees) to create a standing Committee on Homeland Security with legislative and oversight jurisdiction. As amended, Rule X grants the panel jurisdiction over:

... (1) overall homeland security policy; (2) organization and administration of the Department of Homeland Security; (3) functions of the Department of Homeland Security related to the following: (A) border and port security (except immigration policy and non-border enforcement); (B) customs (except customs revenue); (C) integration, analysis, and

dissemination of homeland security information; (D) domestic preparedness for and collective response to terrorism; (E) research and development; (F) transportation security.⁴⁷

An insert entitled “Legislative History to Accompany Changes to Rule X, Rule X and the Committee on Homeland Security, Legislative History,” placed in the Congressional Record on January 4, 2005, by then Rules Committee Chair David Dreier, elucidated several exceptions and clarifications to the jurisdiction of the Homeland Security Committee.⁴⁸ The Committee was reestablished at the beginning of the 110th Congress.

House Provisions

No comparable provision.

Senate Provisions

Identical language was included in Section 1303 of the amendment in the nature of a substitute to S. 4, which was reported by the Senate Committee on Homeland Security and Governmental Affairs on February 27, 2007, and was incorporated verbatim in SA 275, the leadership substitute to S. 4 offered by Majority Leader Harry Reid on February 28, 2007.

After noting that the Department of Homeland Security testified in hundreds of hearings before dozens of congressional committees and subcommittees in recent years, the provision concludes that “the Senate has been unwilling to reform itself in accordance with the recommendation of the Commission to provide better and more streamlined oversight of the Department.” Therefore, it states that it is “the sense of the Senate that the Senate should implement the recommendation of the Commission to ‘create a single, principal point of oversight and review for homeland security.’”

Report Regarding Border Security

Prepared by (name redacted), Analyst in Domestic Security, CRS Domestic Social Policy Division, 7-.....

House Provisions

No comparable provision.

Senate Provisions

Section 1604 would direct DHS to submit a report to Congress, within 180 days of enactment, concerning efforts made to secure the northern border. The report would cover the vulnerabilities along the northern border and provide recommendations on how to address those vulnerabilities, including what resources are required to secure the northern border. Would also require the Government Accountability Office to review DHS’ report and submit comments and

⁴⁷ H.Res. 5, 109th Cong., 1st sess.

⁴⁸ *Congressional Record*, daily edition, vol. 151, Jan. 4, 2005, p. H25.

recommendations regarding any additional actions that should be taken to secure the northern border within 270 days of the report's submission.

Law Enforcement Assistance Force

Prepared by (name redacted), Analyst in Domestic Security, CRS Domestic Social Policy Division, 7-.....

House Provisions

No comparable provision.

Senate Provisions

Section 1605 would direct DHS to establish a Law Enforcement Assistance Force (LEAF) in order to facilitate DHS' ability to deploy retired law enforcement officers and agents to provide assistance during major disasters, as defined by 42 U.S.C. §5122. Individuals eligible to participate in LEAF would include individuals who left public law enforcement agencies in good standing, hold current certifications for firearms and first aid, and meet any other qualifications the Secretary deems necessary. LEAF participants would be detailed to federal, state, or local law enforcement agencies and would be directly supervised by an officer or agent from that agency. Individuals called to serve during a major disaster would be eligible for reimbursement of travel expenses and a per diem in lieu of subsistence at rates authorized by 5 U.S.C. §5701-5710. Their reimbursement would be paid from funds appropriated to the Federal Emergency Management Agency.

Quadrennial Homeland Security Review

Prepared by (name redacted), Analyst in American National Government, CRS Government and Finance Division, 7-.....

Overview

Although the 9/11 Commission made many recommendations about the *contents* of a global strategy to protect the United States from terrorism and the *structure* of a reorganized Intelligence Community, it did not make formal recommendations regarding a specific *process* for creating and revising an all-hazards strategy for securing the homeland. However, the Commission did emphasize that it is "crucial to find a way of routinizing, even bureaucratizing, the exercise of imagination"—a concept the commission called "institutionalizing imagination" (*The 9/11 Commission Report*, p. 344). The commission also recommended that the Department of Homeland Security and its congressional oversight committees "regularly assess the types of threats the country faces" to determine the "adequacy of the government's plans" to protect the country's critical infrastructure, "progress against those plans," and the "readiness of the government to respond to threats that the United States might face" (p. 428). Separately, the Homeland Security Act of 2002 (P.L. 107-296, Section 874) requires a Future Years Homeland Security Program, setting forth the department's "homeland security strategy," to be submitted to Congress annually along with the new department's budget submission (amended and codified at

6 U.S.C. Section 454). President George W. Bush also issued Homeland Security Presidential Directive/HSPD-5 in February 2003, requiring, among other things, the Secretary of Homeland Security to develop a National Response Plan (NRP) to “integrate Federal Government domestic prevention, preparedness, response, and recovery plans into one all-discipline, all-hazards plan.” Finally, the Government Performance and Results Act of 1993 (GPRA) requires most executive branch agencies to develop a strategic plan for program activities. The GPRA-mandated strategic plan is required to cover five future years (and to be updated at least every three years), cover the major functions and operations of the agency, and include, among other things, a mission statement, goals and objectives, a description of how goals are to be achieved, and a description of program evaluations used to establish or revise goals and objectives (P.L. 103-62, codified and amended at 5 U.S.C. Section 306). GPRA also requires more specific annual performance plans. The Department of Defense is authorized to update the document it uses to fulfill the strategic plan requirements of GPRA (the Quadrennial Defense Review (QDR), as required by 10 U.S.C. Section 118) every four years instead of every three years (5 U.S.C. Section 306(b)).

House Provisions

No comparable provision.

Senate Provisions

S. 4 (Title XVI, Section 1606) would direct the Secretary of Homeland Security to establish a “national homeland security strategy” by the end of FY2008 and, four years after the establishment of the strategy (and every four years thereafter), would direct the Secretary to conduct a comprehensive examination and possible revision of the strategy. This establishment or review of the strategy would be called the quadrennial homeland security review (QHSR) and would have a broad scope—including interagency cooperation, preparedness of federal response assets, infrastructure, budget plan, and other elements of the homeland security program and policies of the United States—with the purpose of determining the homeland security strategy and program of the United States for the following 20 years. The QHSR would be required to be conducted in consultation with the Attorney General and the Secretaries of State, Defense, Health and Human Services, and the Treasury. The Director of National Intelligence would be required to conduct the risk assessment upon which the budget plan would be based. The homeland security strategy would be required to be consistent with the NRP. The Secretary would be required to submit a report regarding each QHSR to Congress and make the report available on the Internet. The report would be required to include the results of the review, the threats that were examined and scenarios that were developed, the status of cooperation in specified areas among federal agencies and between the federal government and state governments, and other areas the Secretary considered appropriate. For the initial QHSR, the Secretary would be required to provide to Congress and post on the Internet a resource plan specifying the estimated budget and number of staff required for preparation of the review.

Comments

The Senate provision appears to be modeled in some respects on the QDR required to be conducted by the Department of Defense, which was first conducted in 1997. GPRA was subsequently amended to allow the Department of Defense to update its GPRA-mandated strategic plan every four years, in alignment with the QDR, instead of every three years.

Overview

Integration of Detection Equipment and Technologies

Prepared by (name redacted), Analyst in Domestic Security, CRS Domestic Social Policy Division, 7-.....

House Provisions

No comparable provision.

Senate Provisions

Section 1607 would give the Secretary of DHS responsibility for ensuring that chemical, biological, radiological, and nuclear detection equipment and technologies are integrated with the appropriate border security systems. It would also require DHS to submit a report within six months of enactment that outlines a plan for developing a DHS-wide technology assessment process that would certify the technology readiness level of detection technologies prior to their deployment within the United States.

Title XVII: 911 Modernization

Prepared by (name redacted), Analyst in Telecommunications Policy, CRS Resources, Science, and Industry Division, 7-.....

Overview

The ENHANCE 911 Act of 2004 (P.L. 108-494) created an E-911 Implementation Coordination Office within the federal government “to improve coordination and communication with respect to the implementation of E-911 services.” Among the responsibilities of the Office is the management of a grant program for “the implementation and operation of Phase II E-911 services.” Phase II E-911 refers to the capability to recognize the origin of a wireless call to a call center, known as a public safety answering point. Funds for the grant program were authorized by the act but never appropriated. Some financial support for the Phase II E-911 grants program is to come from the Digital Transition and Public Safety Fund, created by the Deficit Reduction Act (P.L. 109-171). The Digital Transition and Public Safety Fund was established to receive and then distribute the proceeds of spectrum auctions, revenues from which were to be paid to the fund no later than June 30, 2008. Congress has specified pay-out dates or authorized borrowing in advance of the June 30, 2008 deadline for some of the programs designated to share in the auction proceeds. The amount of \$43.5 million was designated for the ENHANCE 911 Act, with funds available in due course in 2008.

House Provisions

No comparable provision.

Senate Provisions

Section 1702 of the 911 Modernization Act authorizes the borrowing of funds as necessary, up to the amount of \$43.5 million, upon enactment. Section 1703 amends the existing criteria for the Phase II E-911 grant program [47 U.S.C. 942 (b) (4)] to require that priority for grants be given to public safety answering points that are not able to receive 911 calls. It is estimated that there are about 225 locations in the United States where emergency calls are handled without the benefit of 911 technology.

Title XVIII: Modernization of the American National Red Cross

Prepared by (name redacted), Analyst in American National Government, CRS Government and Finance Division, 7-.....

Altering the Governance of the American National Red Cross

Overview

The 9/11 Commission made no recommendations regarding the American National Red Cross (ANRC); however, observers both within and outside the ANRC have criticized its governance structure. They have argued that its board of governors is too large, has too many members who lack the skills and experience to serve adequately, and frequently interferes in the operations of the corporation. Congressional interest in the activities of the ANRC was heightened by the major role it played in providing relief to persons affected by Hurricanes Katrina and Rita.⁴⁹ While there were many positive accounts regarding the ANRC's relief work, there also were reports of shortcomings in its performance.

House Provisions

No comparable provision.

Senate Provisions

Title XVIII was added to S. 4 by amendment (S.Amdt. 293) on March 13, 2007. Title XVIII would amend the ANRC's charter to: (1) permit the ANRC to conduct business as the "American Red Cross"; (2) reduce the board of governors from 50 members to between 12 and 25 members by March 31, 2009, and to between 12 and 20 members by March 31, 2012; (3) reduce presidential appointees to the board of governors from eight to one, with the President appointing the chairman of the board; (4) abolish local chapter selection of 30 board members and board selection of 12 members; (5) require each board member, except the presidential appointee, to be elected by delegates at the ANRC's annual convention; (6) establish a presidentially appointed

⁴⁹ See CRS Report RL33910, *The Charter of the American National Red Cross: Current Issues and Proposed Changes*, by (name redacted).

ANRC advisory board of eight to 10 members, who would be officers of executive departments that work with the ANRC; (7) eliminate the requirement that the number of trustees overseeing the ANRC's endowment be fixed at nine; (8) authorize the Comptroller General "to review the corporation's involvement in any Federal program or activity that the Government carries out by law"; and (9) require the ANRC to establish an office of the ombudsman, which would report annually to Congress.

Comments

Title XVIII is identical to S. 655, which the Senate passed with unanimous consent on March 15, 2007. S. 655 was referred to the House Committee on Foreign Affairs, which held a hearing on the subject of the ANRC's governance on March 14, 2007.⁵⁰ The ANRC has supported the changes to its charter proposed by S. 655.⁵¹ It is unclear, however, whether these proposed governance changes will improve the ANRC's disaster relief performance.⁵² Any consideration of legislation to change the ANRC might raise the question of which changes to make through the ANRC's charter and which through its bylaws. The ANRC is a private organization; as such, it might be argued that it should have the same discretionary authority that a private corporation has to structure its governance and operating procedures through its bylaws. On the other hand, the ANRC is a federal instrumentality chartered by Congress "to carry out a system of national and international relief in time of peace, and to apply that system in mitigating the suffering caused by pestilence, famine, fire, floods, and other great national calamities, and to devise and carry out measures for preventing those calamities" (36 U.S.C. 300102(4)). As such, it might be argued that the Congress should enact by law any provisions that it believes would help the organization achieve its public purposes.

Title XIX: Advancement of Democratic Values

Prepared by (name redacted), Specialist in Foreign Policy and Trade, CRS Foreign Affairs, Defense, and Trade Division, 7-.....

House Provisions

There are provisions relating to democracy promotion among Arab and Muslim populations, in contrast to general democracy promotion as U.S. policy in the Senate bill. (See Title XIV, H.R. 1 above.)

⁵⁰ At the time of the composition of this memorandum, the transcript of the hearing had not been published. U.S. Congress, House Committee on Foreign Affairs, *The American Red Cross Governance Reform*, 110th Cong., 1st sess., Mar. 14, 2007.

⁵¹ See CRS Report RL33910, *The Charter of the American National Red Cross: Current Issues and Proposed Changes*, by (name redacted).

⁵² Jack Maguire, the interim president and CEO of the ANRC, told a reporter, "The [Red Cross's] issues with Katrina were really based on the size and scope of what we had to deal with in Katrina and were not related to governance." Stephanie Strom, "Red Cross to Streamline Board's Management Role," *New York Times*, Oct. 31, 2006, at <http://www.nytimes.com/2006/10/31/us/31redcross.html>.

Senate Provisions

Although the Senate bill did not have democracy promotion measures specifically designated for Arab and Muslim populations, it did address democracy promotion as a U.S. policy. Title XIX—Advancement of Democratic Values—states, among other things, that it should be the policy of the United States to promote freedom and democracy, provide support to nongovernmental organizations and to foreign countries working to promote democracy, and commit to the long-term challenge of promoting universal democracy. Section 1911 would require the Secretary of State to create and fill “Democracy Liaison Officer positions” under the supervision of the Assistant Secretary. Each liaison would provide expertise, input on strategies and responsibility for implementing policies on democracy promotion.

Section 1912 would require the Secretary of State to establish a Democracy Fellowship Program to allow State Department officials to work on congressional committees to gain new perspective on democracy promotion.

Section 1913 would require that the Broadcasting Board of Governors transcribe all original broadcasting into English and post English transcripts on a publicly available website within 30 days of the original broadcast to assist in oversight and ensure promotion of human rights and democracy in their broadcasts.

Section 1921 would amend the Foreign Relations Authorization Act, FY2003 (P.L. 107-228) on Title and timing of the Advancing Freedom and Democracy Report.

Section 1922 states a sense of Congress that the Secretary of State should continue to ensure and expand the timely translation of Human Rights and International Religious Freedom reports and the Annual Report on Advancing Freedom and Democracy into as many languages as possible.

Section 1932 states a sense of Congress that the Secretary of State should continue to expand efforts to inform foreign populations on democracy and human rights via the Internet.

Section 1941 states a sense of Congress that the Secretary of State should continue to enhance and expand training of Foreign Service Officers and Civil Service employees on how to promote democracy and human rights.

Section 1942 states a sense of Congress that the Secretary of State should further strengthen the capacity of the State Department to conduct results-based democracy promotion efforts through awards and incentives.

Section 1943 states that promotions of Foreign Service Officers should include consideration of a candidate’s experience or service in advancing human rights and democracy.

Section 1944 states a sense of Congress that each Chief of Mission should intensify democracy and human rights promotion activities.

Section 1951 would authorize and recommend that the Secretary of State establish an Office of the Community of Democracies to strengthen the institutional structure of the Community of Democracies and enhance coordination with other regional and multilateral bodies that have jurisdiction over democracy issues.

Section 1961 states a sense of Congress that the United States should work with other countries to enhance the work of the United Nations Democracy Fund.

Section 1962 states that the purpose of the Human Rights and Democracy Fund should be to support innovative programming, media, and materials to help uphold democratic principles and promote civil societies around the world.

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