United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, FRIDAY, JULY 26, 2002 No. 104

House of Representatives

The House met at 9 a.m. and was called to order by the Speaker pro tempore (Mr. SIMPSON).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
July 26, 2002.

I hereby appoint the Honorable MICHAEL K. SIMPSON to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Created in Your image and likeness, Lord God, we are endowed with noble rights and held to certain responsibilities. As this 107th Congress engages in decision-making, which will affect this Nation and the world internationally, help all Members reflect Your image and respect Your likeness in others.

Today we pray for all Americans with disabilities. Bless them with peace and strength. May their efforts to create independent lives for themselves be rewarded as they find their rightful place in the mainstream of American life.

As their brothers and sisters, may all Americans prove to be helpful citizens to those with disabilities and seize every opportunity to protect their rights to access and enjoy their fullest potential in places of worship, of work and learning, as well as on the streets and the public places of this Nation.

We are Yours, one people. We are Your people now and forever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Georgia (Mr. NORWOOD) come forward and lead the House in the Pledge of Allegiance.

Mr. NORWOOD led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

HOMELAND SECURITY ACT OF 2002

The SPEAKER pro tempore. Pursuant to House Resolution 502 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 5005.

□ 0905

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes, with Mr. LINDER (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose on the legislative day of Thursday, July 25, 2002, amendment No. 16 printed in House Report 107–615 offered by the gentleman from Connecticut (Mr. SHAYS) had been disposed of.

Pursuant to section 4 of House Resolution 502 and the order of the House of that date, it is now in order to consider amendment No. 3 printed in House Report 107–615.

AMENDMENT NO. 3 OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. WAXMAN:

At the end of the bill add the following new title:

TITLE XI—OFFICE OF HOMELAND SECURITY

SEC. 1101. ESTABLISHMENT.

(a) IN GENERAL.—There is established in the Executive Office of the President an Office of Homeland Security

(b) DIRECTOR.—The head of the Office shall be the Director of Homeland Security, who shall be appointed by the President and advice and consent of the Senate.

SEC. 1102. MISSION.

As provided in Executive Order 13228, the mission of the Office of Homeland Security is to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks.

SEC. 1103. FUNCTIONS.

As provided in Executive Order 13228, the functions of the Office of Homeland Security shall be to coordinate the executive branch's efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States. Such functions shall include—

(1) working with executive departments and agencies, State and local governments, and private entities to ensure the adequacy of the national strategy for detecting, preparing for, preventing, protecting against, responding to, and recovering from terrorist threats or attacks within the United States and periodically reviewing and coordinating revisions to that strategy as necessary;

(2) identifying priorities and coordinating efforts for collection and analysis of information regarding threats of terrorism against the United States, including ensuring that all executive departments and agencies that have intelligence collection responsibilities have sufficient technological capabilities and resources and that, to the extent permitted by law, all appropriate and necessary intelligence and law enforcement information relating to homeland security is disseminated to and exchanged among appropriate executive departments and agencies;

(3) coordinating national efforts to prepare for and mitigate the consequences of terrorist threats or attacks within the United

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States, including coordinating Federal assistance to State and local authorities and nongovernmental organizations to prepare for and respond to terrorist threats or attacks and ensuring the readiness and coordinated deployment of Federal response teams to respond to terrorist threats or attacks;

(4) coordinating efforts to prevent terrorist attacks within the United States;

(5) coordinating efforts to protect the United States and its critical infrastructure from the consequences of terrorist attacks;

(6) coordinating efforts to respond to and promote recovery from terrorist threats or attacks within the United States;

(7) coordinating the domestic response efforts of all departments and agencies in the event of an imminent terrorist threat and during and in the immediate aftermath of a terrorist attacks within the United States and acting as the principal point of contact for and to the President with respect to coordination of such efforts;

(8) in coordination with the Assistant to the President for National Security Affairs, reviewing plans and preparations for ensuring the continuity of the Federal Government in the event of a terrorist attacks that threatens the safety and security of the United States Government or its leadership;

(9) coordinating the strategy of the executive branch for communicating with the public in the event of a terrorist threats or attacks within the United States and coordinating the development of programs for educating the public about the nature of terrorist threats and appropriate precautions and responses; and

(10) encouraging and inviting the participation of State and local governments and private entities, as appropriate, in carrying out the Offices's functions.

SEC. 1104. ACCESS TO INFORMATION.

As provided in Executive Order 13228, executive agencies, shall, to the extent permitted by law, make available to the Office of Homeland Security all information relating to terrorist threats and activities within the United States.

SEC. 1105. BUDGET APPROVAL.

(a) AUTHORITY.—The Director of the Office of Homeland Security shall—

(1) review the budget requests submitted to the President by all executive agencies with homeland security responsibilities; and

(2) if a budget request fails to conform to the objectives set forth in the national strategy described in section 1102, may disapprove such budget request.

(b) EFFECT OF DISAPPROVAL.—In any case in which a budget request is disapproved under subsection (a)—

(1) the Director shall notify the appropriate Committees of Congress; and

(2) the President may not include such budget request in the annual budget submission to Congress unless the President makes an express determination that including such request is in the national interest.

SEC. 1106. ADMINISTRATION.

As provided in Executive Order 13228, the Office of Administration within the Executive Office of the President shall provide the Office of Homeland Security with such personnel, funding, and administrative support, to the extent permitted by law and subject to the availability of appropriations, as necessary to carry out the provisions of this title.

SEC. 1107. DETAIL AND ASSIGNMENT.

As provided in Executive Order 13228, the heads of executive agencies are authorized, to the extent permitted by law, to detail or assign personnel of such agencies to the Office of Homeland Security upon request of the Director of Homeland Security.

SEC. 1108. OVERSIGHT BY CONGRESS.

The establishment of the Office of Homeland Security within the Executive Office of the President shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, or study in the possession of, or conducted by or at the direction of, the Director; or

(2) personnel of the Office.

The CHAIRMAN pro tempore. Pursuant to the previous order of the House, the gentleman from California (Mr. WAXMAN) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment would do three things. First, it would codify the Office of Homeland Security in statute and subject it to congressional oversight.

Second, it would require that the director of this office be confirmed by the Senate.

Third, it would provide the director of the office with authority to review the budgets of all agencies involved in homeland security to ensure that they conform to the objectives of the national strategy. If they don't, the director could decertify these budgets. This would prohibit the OMB director from submitting them to Congress unless the President made an express finding that they served the national interest. Decertification would also trigger a requirement to report the deficiencies to relevant committees in the House and Senate.

Mr. Chairman, creating a new department is fine, but the most critical challenge is and will continue to be coordinating the efforts of the entire Federal Government as part of a comprehensive national strategy.

This chart to my right shows the current situation. There are 153 different agencies involved in homeland security.

The chart next to it, to my right, shows what this bill will do. There will be even more agencies involved. In fact, according to the Congressional Budget Office, this new department is so complex it will cost over $4 billion just to organize and manage the department.

As the chart shows, and I am talking about the chart to the far right, the chart shows that many agencies integral to homeland security will remain outside the new department, including the FBI, the CIA, the Defense Department, the National Guard, and many others.

What is urgently needed is an office at the White House level with the mandate and authority to develop a national strategy and unite the government behind it. That is what my amendment would do.

The starting point for this coordination should be the executive order that established the Office of Homeland Security within the White House, which President Bush issued last October. This order appropriately created a White House-level office charged with coordinating intelligence-gathering, preparedness, prevention, protection of critical infrastructure, and response and recovery across the entire country.

The main shortcoming of the executive order, however, is that it did not give the director of the office sufficient authority to implement these functions.

This amendment tracks the executive order, but it also provides additional authority to give the Nation what it needs most: a single office in the White House with the mission and authority needed to develop and implement a comprehensive national strategy for homeland security.

This amendment would do more to protect our national security, I believe, than the rest of the bill combined, and it is a whole lot simpler and less expensive.

I urge Members to vote yes on this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. ARMEY. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman from Texas (Mr. ARMEY) is recognized for 10 minutes.

Mr. ARMEY. Mr. Chairman, I yield 4 minutes to the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. Mr. Chairman, I thank the gentleman for yielding time to me, and I thank him for his leadership on this bill.

Mr. Chairman, I say to my colleagues that I thank them for their leadership and their participation in this important effort to secure the homeland.

Mr. Chairman, I rise to address the context in which we consider this amendment. Coming late to this debate, my colleague, the gentleman from California, may not know the issue's history.

His amendment is similar to a bill that I and a bipartisan group introduced last October at a time when we believed the administration would not support a large Department of Homeland Security. We felt, and still do, that there needs to be one integrating strategy across the Federal Government. One person needs to be accountable for budget and coordination. One person needs to be a Cabinet-level official confirmed by the Senate.

The difference between now and last October is that, under H.R. 5005, that person is the Secretary of Homeland Security, who presides over the critical homeland security functions and a large workforce.

Under H.R. 5005, a statutory Homeland Security Council in the White House will coordinate government functions not contained in the new department, just as the National Security Council coordinates defense, foreign policy, and other national security functions.

If the sponsor of this amendment believes that the National Security Advisor lacks the authority to coordinate national security, I am unaware of it.

Mr. Chairman, a long history got us to this concept. As I mentioned, last

October I introduced the Office of Homeland Security Act with the gentleman from Nevada (Mr. GIBBONS) and 34 bipartisan cosponsors. The sponsor of this pending amendment was not one of them.

The organizing principle of that bill was included in legislation introduced by the gentleman from New Jersey (Mr. MENENDEZ) and 117 members of the Democratic Caucus. The language was modified to accommodate concerns of our colleagues on the Committee on the Budget and the Committee on Armed Services.

The sponsor of this pending amendment did not participate in these negotiations and did not cosponsor the task force bill. Further, his amendment, the one we are considering today, disregards the careful budget process that our colleagues, the gentleman from South Carolina (Mr. SPRATT), the gentleman from Missouri (Mr. SKELTON), and the gentleman from Texas (Mr. TURNER) helped construct.

When a bipartisan, bicameral group developed and introduced H.R. 4660, which combined the White House coordination and Department of Homeland Security functions, and which is the precursor of the bill we are considering today, the principal sponsor of this amendment did not participate.

On May 21, the minority leader supported this bill, our bill, H.R. 4660, at a press conference, where we were joined by the ranking member of the Committee on Appropriations, the gentleman from Wisconsin (Mr. OBEY).

This issue has been my principal focus for this term in Congress. My position has adapted as the context has changed, and I believe that careful consideration will show that the gentleman's amendment would hurt rather than help coordination.

Finally, I urge our colleagues to note that this amendment would cut OMB completely out of the budget process for homeland security. The Director of Homeland Security in this amendment is given the power to reject unilaterally homeland security budgets from any department, tying even the hands of the President.

Mr. Chairman, there is a better concept than this amendment, and it is in the base bill. The bipartisan process that developed that language should be respected.

I urge our colleagues to consider the context in which this amendment arises and to reject it.

Mr. WAXMAN. Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Ms. PELOSI).

Ms. PELOSI. Mr. Chairman, I thank the gentleman for yielding time to me; and I thank him for his leadership as a ranking member on the Committee on Government Reform and for his thorough understanding of the challenge that we have before us today.

I also want to commend the gentlewoman from California (Ms. HARMAN) for her leadership over the past year on this issue of homeland security. I want to take my lead from her when she said we must consider the context within which this amendment will be judged, because I believe the context within which this amendment will be judged is the context of a very big bill to establish a department, which we all agree we need, but the size of which and the approach to which harkens back to the 1950s, rather than into the future.

It is not a department for this new century. It is old and fashioned in a very old-fashioned way. It does not utilize to the maximum extent the technologies, and instead depends on locating 170,000 people. That is the low estimate. GAO says it could be as many as 200,000 people.

Mr. Chairman, there are 85,000 jurisdictions in our country, cities, towns, governments, of one kind or another, that this homeland security initiative must communicate with. Of that 85,000, only about 120 are larger than this proposed department. Cities like Salt Lake City; Providence, Rhode Island; Portsmouth, Maine; Reno, Nevada; and the list goes on and on, have fewer people than this Department of Homeland Security will have. The CBO says it will cost $4.5 billion to set this up, it is so large.

We will pay any price to protect our people, but that money might be better spent protecting our people than to go down this path of big government, a bureaucratic approach. We want that secretary of a lean department to be able to use his or her thinking about how to protect the American people, rather than spend time managing a department larger than most cities and towns in our country.

But the main point that I want to make is that the GAO, the Government Accounting Office, has said that it will take 5 to 10 years to have a Department of this size up and running. We simply cannot wait that long. Nothing less than the safety and security of the American people depend on us being, from day one, ready to protect them in the strongest possible way.

I have supported the amendment of the gentlewoman from California (Ms. HARMAN) to codify the Office of Homeland Security in the White House. I think that is a good idea. I think it is a better idea to make that department stronger, at least for the time that it takes to set up this department.

That is why I support the gentleman's amendment. I commend him for tracking the President's executive order, and I hope that he will be open to some compromise so that we can get this part of the bill moving and to have it signed.

I urge our colleagues to support the Waxman amendment. I support him, and I commend the gentlewoman from California (Ms. HARMAN) for her leadership.

Mr. ARMEY. Mr. Chairman, I yield 4½ minutes to the gentleman from Ohio (Mr. PORTMAN).

Mr. PORTMAN. Mr. Chairman, I thank the Chair of the Select Committee on Homeland Security for yielding time to me.

Mr. Chairman, I am very eager to talk on this proposal this morning.

First of all, I would like to say to the gentleman from California (Mr. WAXMAN) that I know he is well-intended, I know that his proposal is sincere, and I know we share the same goal, but I strongly believe that the structure he has laid out will fail.

I also strongly believe that he does not understand the design and the purpose of this new department. I want to start by talking a bit about that.

The chart we had up here earlier looked a little like the health care plan we saw a few years ago, and it does look very complicated. It is very bureaucratic, when we look at all the different agencies and departments now involved in combatting terrorism.

That is the point. We do have over 100 different agencies. We have everyone in charge and no one in charge. We need to bring accountability to this. We need to align authority with responsibility, with very aggressive congressional oversight.

The gentleman has been very good at that over the years, and I would hope that, through Democrat and Republican administrations alike, this Congress and this gentleman, as long as he is here, will provide that oversight so we have real accountability. That is what this is about. It is not about creating a 1950s-size organization. It is about streamlining and consolidation.

The chart the gentleman held up showed a lot of different boxes and agencies and departments. This is the new Department of Homeland Security. This is the proposal the President sent us. This is the proposal that got through the various select committees. This is the proposal of the standing committees and now the select committee.

It has only four areas. One, the vast majority, almost all of the employees, will be in border and transportation security. The whole notion here is to streamline and consolidate; and to get the synergies out of that consolidation and streamlining in one new department, where we have real accountability, where somebody is in charge, that is the only way we are going to protect the homeland.

He has talked a lot about the CBO study, as has my friend, the gentlewoman from California (Ms. PELOSI). I hope they read it. I hope all my colleagues will read this CBO study. At least look at the summary of it.

They say this will cost $4.5 billion, and $2.2 billion is in existing departments in the Department of Defense. I don't know where they come up with that $2.2 billion. The remaining part of this for administrative costs for start-up is less than 1 percent of the budget of this department.

Finally, they take absolutely no account of any savings. They have no offsets at all for the consolidation and streamlining.

Again, with all due respect, the Congressional Budget Office is a 20th century budget-scoring organization trying to score a 21st century idea. This merger will create synergies and will create, over time, I am convinced, cost savings if we do it right and if the Congress provides the needed oversight.

I think there will be some start-up costs, but they will be minor. The more important thing is in the mid-term and long term there will be substantial efficiencies, and we will now have accountability and be able to protect our kids and grandkids from the threat of terrorism that faces us in this new century, the most important thing.

One of the ironies in this debate to me is that the very people who are saying, gee, this is going to be a big, new, 20th-century bureaucracy, 1950s bureaucracy, are the same people who say we cannot give the President and this new department the kind of flexibilities they need to manage this new agency.

Managerial, budget, and personnel flexibilities are absolutely critical to make this work. I agree that we need to provide those.

Today we will have an opportunity to discuss that further as a number of amendments will be offered to try to take the select committee product, which is a streamlined, consolidated, 21st century agency, and try to take it back to the 1950s. We need to reject that.

Finally, the President's proposal does include a coordinating council. He has already done that. He has set up a Homeland Security Council by executive order.

In the select committee, on a bipartisan basis, in fact, all four Democrats and three of us Republicans decided to support the gentlewoman from California (Ms. HARMAN) and her proposal she has worked on, not just for weeks or months but for years, to establish a coordinating council in the White House by statute.

Why is that important? Because this administration has shown that it is going to prioritize fighting terrorism by executive order. We want to ensure in Congress that future administrations will do the same. We do need to have this coordinating council.

Mr. Chairman, this is the right way to go for 3 quick reasons.

One, this allows the President to have an actual advisor. Otherwise, if you have Mr. WAXMAN's proposal, this advisor has to come up and testify before Congress, has to be confirmed by the Senate, the President will not rely on that person for candid advice, period.

Number two, it has no teeth. Look at the Council on Environmental Quality, if you are interested in the environment as the gentleman from California (Mr. WAXMAN) is, and tell me whether the CEQ has been effective in telling agencies how to prioritize budgets. Tell me if the drug czar has been effective. That is the other model. These are not the right models.

Third, the right model is there. It is the National Security Council. That is the one the gentlewoman from California (Ms. HARMAN) proposes. It has teeth. Let us reject the toothless alternative. Let us go with the real thing.

Mr. WAXMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we might have some difference about how this office ought to function in the White House. The proposal that I am offering is not something that I alone am supporting. It is, by the way, the proposal that has reached bipartisan support in the Senate. Senator LIEBERMAN's committee has supported this concept. The Brookings Institution, this is the core idea of their recommendation.

The General Accounting Office said that we need a stronger director in the White House with the tools to be able to do the job of coordinating these activities.

Evidently, none of the three of them talked to my colleague, the gentlewoman from California (Ms. HARMAN), but they came to a different conclusion, as have I, than her recommendation.

I must say that I do not think that what we are proposing is inconsistent with what the gentleman from Ohio (Mr. PORTMAN) offered to create this Homeland Security Council to advise the President of homeland security matters and work in consultation with OMB on a homeland security budget.

The difference we have is the Council would have much weaker powers than the Director of Homeland Security under the current amendment. For example, the Council would not be permitted to decertify an agency's budget submission. It would not prohibit the Office of Management and Budget Director from submitting the decertified budgets to the Congress without the President's review and approval, and it would not be required to report deficiencies to the Congress.

In other words, the Director of Homeland Security would have far fewer tools to coordinate the dozens and dozens of agencies that remain outside the new department. Passing this amendment in addition to the Portman language would not be inconsistent. Both could be included in the final bill.

Mr. Chairman, we are all trying to make this whole business work of trying to protect our country, and we are talking on a bipartisan basis about a department and strengthening the coordination at the White House.

I would submit that my amendment, which is the amendment that has been recommended by think tanks that have been involved in these organizational questions for many years, is a sound way for us to proceed. It gives the President the flexibility and the tools to have someone in the White House be able to do the job. I fear that with all the rearranging of the bureaucracy, if that is all we do, we will not have done enough.

We may have differences on this matter, and I respect the fact that people can have differences, but let us recognize that all of us are trying to do what we can in the national interest.

Mr. Chairman, I reserve the balance of my time.

Mr. ARMEY. Mr. Chairman, I yield such time as he may consume to the gentleman from Nevada (Mr. GIBBONS).

(Mr. GIBBONS asked and was given permission to revise and extend his remarks.)

Mr. GIBBONS. Mr. Chairman, I rise in opposition to the Waxman amendment.

Mr. Chairman, I have been privileged to work closely with the White House, the House Select Committee on Homeland Security and several of my colleagues on both sides of the aisle on this legislation.

This amendment gives the head of the Office of Homeland Security too much power. It creates the possibility of a turf war between the Director of the Office of Homeland Security and the new Secretary of Homeland Security. I believe it is more appropriate at this time to create in statue the Homeland Security Council that is in the legislation that the Select Committee on Homeland Security reported out.

This council will coordinate with the over 80 government agencies that play a role in Homeland Security that will not be part of the new Department. The council enables key organizations outside the new Department to meet and talk about Homeland Security with the President.

At the center of this council is an advisor, whose role will be similar to that of National Security Advisor Condoleezza Rice. The advisor will coordinate homeland security efforts among federal departments and agencies, update national strategy, and be available to advise and perform other duties that the President may direct.

The establishment of this council is vital to ensure all information is shared with all agencies and not just kept within the new Department. While not a Senate confirmable position, it establishes the position that Governor Ridge currently holds in statue.

Mr. Chairman, as you know, the White House is against this amendment, the House Select Committee on Homeland Security is against this amendment, even the gentleman's own party leadership is against this amendment.

I urge my colleagues to vote against this amendment.

Mr. WAXMAN. Mr. Chairman, I yield my remaining 30 seconds to my colleague, the gentlewoman from California (Ms. PELOSI), the ranking member on the Select Committee on Homeland Security.

Ms. PELOSI. Mr. Chairman, I thank the gentleman for yielding time to me.

Again, I acknowledge the fine work of the gentlewoman from California (Ms. HARMAN) and the fine work of our ranking member on the Committee on Government Reform, the gentleman from California (Mr. WAXMAN).

I just want to make this final point: I talked earlier about the size of this department and the number of localities in this country that are larger. There are not that many that have more people than this department will have.

The main point about what we do here is about localities, localities, localities, is it not, I ask the leader, and how we communicate with them; how we do it immediately to protect from day one the American people? Those localities need a place to coordinate with that is strong and effective from day one, and not wait 5 to 10 years for the department to be established.

I urge my colleagues to support the amendment.

Mr. ARMEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, absent this legislation that we are considering today, the proposition proposed by the gentleman from California (Mr. WAXMAN) might have been a good idea. I think there was a time it was.

But as soon as we turned ourselves in the direction of establishing a Department of Homeland Security with a Secretary of Homeland Security, this proposition was just simply out of place.

What we are doing with this legislation before us is establishing a Department of Homeland Security with a Secretary of Homeland Security. The Secretary will himself be confirmed by advice and consent in the other body, as will several other deputy under secretaries that relate to that department.

Mr. Chairman, I would submit that the other body will have all the opportunity to advise and consent on the question of homeland security that they can handle, perhaps even more.

The other thing about this that bothers me is it is an imposition against the separation of powers. We in the Congress jealously guard our powers. We would not accept the idea that anyone from the executive branch should tell us how to staff the United States Congress, nor should we try to impose on the White House how it should staff itself.

The President of the United States is perfectly capable, as we have seen in the case of Governor Ridge, to make a decision about what is needed in his White House staff, select the person that can perform the duties that would be assigned to that person, and carry out those, or watch oversight of those duties being carried out.

This amendment is out of step, out of place, and I believe out of line. We ought to vote it down.

Mrs. CHRISTENSEN. Mr. Chairman, I rise in support of the Waxman Amendment to codify and strengthen the White House Office of Homeland Security.

This is the right approach. It is supported by independent research and expert opinion. This amendment is the only way to create the kind of Office of Homeland Defense that can be effective and provide the protection we need, and the people of the United States deserve.

We should not be creating a large unwieldy bureaucracy that undermines the mission of many important agencies as H.R. 5005 would do. The base bill and the agency it creates, passed, will undermine our health, our safety and response to natural disasters, our safety on the seas, and countless other protections that Americans have always counted on to be there.

The approach contained in this amendment is the correct approach, and the only one that would provide homeland security.

The CHAIRMAN pro tempore. All time for debate has expired.

The question is on the amendment offered by the gentleman from California (Mr. WAXMAN).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. WAXMAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN pro tempore. Following this 15-minute vote on the Waxman amendment, pursuant to clause 6 of rule XVIII, proceedings will resume on those amendments on which further proceedings were postponed last night in the following order: Amendment No. 1 offered by the gentleman from Minnesota (Mr. OBERSTAR), amendment No. 8 offered by the gentleman from Maryland (Mr. CARDIN), and amendment No. 14 offered by the gentleman from Kentucky (Mr. ROGERS).

This is a 15-minute vote, and the following three votes will be 5-minute vote.

The vote was taken by electronic device, and there were—ayes 175, noes 248, not voting 11, as follows:

[Roll No. 352]

AYES—175

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Clayton
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Solis
Strickland
Stupak
Tanner
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—248

Aderholt
Akin
Armey
Bachus
Baird
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Boehlert
Boehner
Bonilla
Bono
Boozman
Boyd
Brady (TX)
Brown (FL)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Castle
Chabot
Chambliss
Clement
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
Delahunt
DeLay
DeMint
Diaz-Balart
Dooley
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
Kind (WI)
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Maloney (CT)
Manzullo
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moore
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pascrell
Paul
Pence
Peterson (PA)
Petri
Phelps
Pitts
Platts
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schiff
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (WA)
Snyder
Souder
Spratt
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

NOT VOTING—11

Blunt	Meehan	Stark
Clay	Pickering	Waters
Condit	Pombo	Young (AK)
Doolittle	Smith (TX)	

□ 0955

Mrs. TAUSCHER, Mrs. NORTHUP, and Messrs. BARTON of Texas, HASTINGS of Florida, BAIRD, CROWLEY, HEFLEY, BARR of Georgia, MANZULLO, PAUL, and BERRY changed their vote from ''aye'' to ''no.''

Messrs. CUMMINGS, WATT of North Carolina, and SKELTON changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. PICKERING. Mr. Chairman, on rollcall No. 352, I was detained due to traffic. Had I been present, I would have voted "no."

(Ms. PELOSI asked and was given permission to speak out of order.)

CONGRATULATIONS TO CONGRESSMAN MEEHAN AND HIS WIFE, ELLEN, ON THE BIRTH OF DANIEL MARTIN MEEHAN

Ms. PELOSI. Mr. Chairman, as we debate matters of great seriousness today, there is some good news to report, and I think a good omen, and that is that last night MARTY MEEHAN and his wife, Ellen, received God's blessing of Daniel Martin Meehan, 9 pounds, 10 ounces, 22 inches long, in Lawrence, Massachusetts.

I know we all want to congratulate MARTY and Ellen Meehan.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore. Pursuant to clause 6, rule XVIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time during which a vote by electronic device will be taken on each amendment on which the Chair has postponed further proceedings.

AMENDMENT NO. 1 OFFERED BY MR. OBERSTAR

The CHAIRMAN pro tempore. The unfinished business is the demand for a recorded vote on amendment No. 1 offered by the gentleman from Minnesota (Mr. OBERSTAR) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. OBERSTAR:

Strike section 402(5) of the bill (and redesignate subsequent paragraphs accordingly).

In section 501(1) of the bill, strike '', major disasters, and other emergencies''.

In the matter preceding subparagraph (A) of section 501(3) of the bill, strike ''and major disasters''.

In section 501(3)(D) of the bill, strike ''or major disaster''.

In section 501(4) of the bill—

(1) strike ''and major disasters'';

(2) strike ''or major disasters''; and

(3) strike ''or disasters''.

In section 501(5) of the bill, strike ''and disasters''.

Strike section 501(6) of the bill and insert the following:

(6) In consultation with the Director of the Federal Emergency Management Agency, consolidating existing Federal Government emergency response plans for terrorist attacks into the Federal Response Plan referred to in section 506(b).

In section 502(1) of the bill, strike the text after ''(1)'' and preceding ''Integrated'' and insert ''The''.

At the end of title V of the bill, insert the following (and conform the table of contents of the bill accordingly):

SEC. 506. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include, but are not limited to, the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of preparedness, by building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard by planning, training, and exercising;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to preparedness and response activities to maximize efficiencies.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

(3) MEMORANDUM OF UNDERSTANDING.—Not later than 60 days after the date of enactment of this Act, the Secretary and the Director of the Federal Emergency Management Agency shall adopt a memorandum of understanding to address the roles and responsibilities of their respective agencies under this title.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 165, noes 261, not voting 8, as follows:

[Roll No. 353]

AYES—165

Ackerman	Baird	Barcia
Allen	Baldacci	Barrett
Baca	Baldwin	Becerra
Berkley	Hinojosa	Owens
Berman	Honda	Pallone
Berry	Hooley	Pastor
Bishop	Hostettler	Paul
Blagojevich	Inslee	Payne
Blumenauer	Isakson	Pelosi
Boozman	Istook	Peterson (MN)
Borski	Jackson (IL)	Petri
Boswell	Jefferson	Price (NC)
Boucher	Jones (OH)	Rahall
Brown (FL)	Kanjorski	Rangel
Brown (OH)	Kaptur	Reyes
Capps	Kennedy (RI)	Rivers
Capuano	Kilpatrick	Rodriguez
Cardin	Kind (WI)	Roemer
Carson (IN)	Kleczka	Ross
Carson (OK)	Kucinich	Roybal-Allard
Clay	LaFalce	Rush
Clayton	Lampson	Sabo
Clement	Lantos	Sanchez
Clyburn	Larsen (WA)	Sanders
Conyers	LaTourette	Sandlin
Costello	Lee	Sawyer
Coyne	Lewis (GA)	Schakowsky
Crowley	Lipinski	Scott
Cummings	Lowey	Serrano
Davis (CA)	Lynch	Sherman
Davis (FL)	Maloney (NY)	Shows
Davis (IL)	Markey	Skelton
Davis, Jo Ann	Mascara	Slaughter
DeFazio	Matheson	Snyder
DeLauro	Matsui	Solis
Dicks	McCarthy (MO)	Spratt
Dingell	McCarthy (NY)	Strickland
Doyle	McCollum	Stupak
Duncan	McDermott	Thompson (MS)
Engel	McIntyre	Thurman
Eshoo	McKinney	Tierney
Etheridge	McNulty	Towns
Evans	Meek (FL)	Udall (CO)
Farr	Meeks (NY)	Udall (NM)
Fattah	Mica	Velazquez
Filner	Miller, George	Visclosky
Frank	Mink	Waters
Frost	Moore	Watson (CA)
Gephardt	Nadler	Watt (NC)
Gonzalez	Napolitano	Waxman
Gordon	Neal	Weiner
Gutierrez	Oberstar	Wexler
Hall (OH)	Obey	Woolsey
Hilliard	Olver	Wu
Hinchey	Ortiz	Wynn

NOES—261

Abercrombie	Crenshaw	Greenwood
Aderholt	Cubin	Grucci
Akin	Culberson	Gutknecht
Andrews	Cunningham	Hall (TX)
Armey	Davis, Tom	Hansen
Bachus	Deal	Harman
Baker	DeGette	Hart
Ballenger	Delahunt	Hastert
Barr	DeLay	Hastings (FL)
Bartlett	DeMint	Hastings (WA)
Barton	Deutsch	Hayes
Bass	Diaz-Balart	Hayworth
Bentsen	Doggett	Hefley
Bereuter	Dooley	Herger
Biggert	Dreier	Hill
Bilirakis	Dunn	Hilleary
Boehlert	Edwards	Hobson
Boehner	Ehlers	Hoeffel
Bonilla	Ehrlich	Hoekstra
Bonior	Emerson	Holden
Bono	English	Holt
Boyd	Everett	Horn
Brady (PA)	Ferguson	Houghton
Brady (TX)	Flake	Hoyer
Brown (SC)	Fletcher	Hulshof
Bryant	Foley	Hunter
Burr	Forbes	Hyde
Burton	Ford	Israel
Buyer	Fossella	Issa
Callahan	Frelinghuysen	Jackson-Lee (TX)
Calvert	Gallegly	Jenkins
Camp	Ganske	John
Cannon	Gekas	Johnson (CT)
Cantor	Gibbons	Johnson (IL)
Capito	Gilchrest	Johnson, E. B.
Castle	Gillmor	Johnson, Sam
Chabot	Gilman	Jones (NC)
Chambliss	Goode	Keller
Coble	Goodlatte	Kelly
Collins	Goss	Kennedy (MN)
Combest	Graham	Kerns
Cooksey	Granger	Kildee
Cox	Graves	King (NY)
Cramer	Green (TX)	Kingston
Crane	Green (WI)	

Kirk
Knollenberg
Kolbe
LaHood
Langevin
Larson (CT)
Latham
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Manzullo
McCrery
McGovern
McHugh
McInnis
McKeon
Menendez
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, Jeff
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pascrell
Pence
Peterson (PA)
Phelps
Pickering
Pitts
Platts
Pomeroy
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schiff
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (WA)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Turner
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

NOT VOTING—8

Blunt
Condit
Doolittle
Meehan
Pombo
Smith (TX)
Stark
Young (AK)

□ 1006

Mr. FORD and Mr. DEUTSCH changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 8 OFFERED BY MR. CARDIN

The CHAIRMAN pro tempore. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Maryland (Mr. CARDIN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. CARDIN:

In section 401(1), add the following at the end: ''The functions, personnel, assets, and obligations of the Customs Service so transferred shall be maintained as a distinct entity within the Department.''.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 177, noes 245, not voting 11, as follows:

[Roll No. 354]

AYES—177

Abercrombie
Ackerman
Allen
Baca
Baird
Baldacci
Baldwin
Barcia
Becerra
Bentsen
Berkley
Berman
Bishop
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Houghton
Hoyer
Inslee
Israel
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCollum
McDermott
McGovern
McHugh
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Paul
Payne
Pelosi
Petri
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Woolsey
Wu
Wynn

NOES—245

Aderholt
Akin
Andrews
Armey
Bachus
Baker
Ballenger
Barr
Barrett
Bartlett
Barton
Bass
Bereuter
Berry
Biggert
Bilirakis
Blagojevich
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Clay
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Deal
DeLay
DeMint
Deutsch
Diaz-Balart
Dooley
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
Kind (WI)
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaFalce
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Manzullo
McCarthy (NY)
McCrery
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pascrell
Pence
Peterson (MN)
Peterson (PA)
Phelps
Pickering
Pitts
Platts
Portman
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Roukema
Royce
Ryan (WI)
Ryun (KS)
Sanchez
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Udall (NM)
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

NOT VOTING—11

Blunt
Condit
Doolittle
Fletcher
Meehan
Morella
Pombo
Pryce (OH)
Smith (TX)
Weldon (FL)
Young (AK)

□ 1014

Mr. BLAGOJEVICH changed his vote from ''aye'' to ''no.''

Mr. FRANK changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Ms. PRYCE of Ohio. Mr. Chairman, on roll-call No. 354, I was inadvertently detained. Had I been present, I would have voted ''no.''

□ 1015

AMENDMENT NO. 14 OFFERED BY MR. ROGERS OF KENTUCKY

The CHAIRMAN pro tempore (Mr. LATHAM). The unfinished business is the demand for a recorded vote on amendment No. 14 offered by the gentleman from Kentucky (Mr. ROGERS) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

At the appropriate place in the bill, add the following new section:

SEC. . JOINT INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) STRUCTURE.—It is the sense of Congress that the Secretary should model the Joint

Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 240, noes 188, not voting 5, as follows:

[Roll No. 355]

AYES—240

Aderholt
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bonior
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Chabot
Chambliss
Clement
Coble
Collins
Combest
Cooksey
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dicks
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Gordon
Goss
Graham
Graves
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Hastings (WA)
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Hyde
Isakson
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Issa
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Jenkins
John
Johnson (CT)
Johnson (IL)
Keller
Kelly
Kennedy (MN)
Kerns
Kind (WI)
King (NY)
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Kirk
Knollenberg
Kolbe
LaFalce
LaHood
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Latham
LaTourette
Leach
Lewis (CA)
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Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Maloney (NY)
Manzullo
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Mollohan
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
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Pence
Peterson (MN)
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Platts
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Pryce (OH)
Putnam
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Radanovich
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Regula
Rehberg
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Rogers (KY)
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Ros-Lehtinen
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Royce
Ryun (KS)
Saxton
Schaffer
Schrock
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Sessions
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Sherman
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Shimkus
Shuster
Simmons
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Skeen
Smith (MI)
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Souder
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Sununu
Sweeney
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Tiberi
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Upton
Vitter
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Walsh
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Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Young (FL)

NOES—188

Abercrombie
Ackerman
Akin
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Clay
Clayton
Clyburn
Condit
Conyers
Coyne
Crowley
Cummings
Davis (CA)
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DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Dooley
Doyle
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Flake
Ford
Frank
Frost
Gonzalez
Granger
Green (TX)
Gutierrez
Hall (OH)
Hall (TX)
Harman
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Hooley
Hostettler
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Kucinich
Lampson
Langevin
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Maloney (CT)
Markey
Mascara
Matheson
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McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Ryan (WI)
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Shows
Skelton
Slaughter
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Taylor (MS)
Taylor (NC)
Thompson (CA)
Thompson (MS)
Thornberry
Thurman
Tierney
Towns
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wynn

NOT VOTING—5

Blunt
Doolittle
Meehan
Smith (TX)
Young (AK)

□ 1024

Mr. WATT of North Carolina and Mr. LUTHER changed their vote from ''aye'' to ''no''.

Mr. McINTYRE changed his vote from ''no'' to ''aye''.

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated against:

Mr. BONIOR. Mr. Chairman, on rollcall No. 355, the Rogers amendment to H.R. 5005, I mistakenly cast an ''aye'' vote. I intended to vote no.

(By unanimous consent, Mr. SHAYS was allowed to speak out of order.)

MOMENT OF SILENCE FOR MINERS TRAPPED IN SOMERSET, PENNSYLVANIA

Mr. SHAYS. Mr. Chairman, in consultation with the gentleman from Pennsylvania (Mr. MURTHA) and the gentleman from Pennsylvania (Mr. GEKAS), I ask for a moment of silence for the 9 miners in Somerset, Pennsylvania, trapped 240 feet underground. They have been trapped there for over 48 hours under very extreme conditions.

Mr. Chairman, this is in the district of the gentleman from Pennsylvania (Mr. MURTHA), and he and others in this Chamber request the prayers of the Members of this Chamber for those miners, for their families, and for the heroic work of our rescue workers.

I ask for a moment of silence.

The CHAIRMAN pro tempore. Would all Members please stand.

It is now in order to consider amendment No 17 printed in House Report 107–615.

AMENDMENT NO. 17 OFFERED BY MR. SHAYS

Mr. SHAYS. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 17 offered by Mr. SHAYS:

Page 189, after line 7, insert the following (and redesignate succeeding sections and references thereto accordingly):

SEC. 762. LABOR-MANAGEMENT RELATIONS.

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance

with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) HOMELAND SECURITY.—Subsections (a), (b), and (d) of this section shall not apply in circumstances where the President determines in writing that such application would have a substantial adverse impact on the Department's ability to protect homeland security.

(d) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from Connecticut (Mr. SHAYS) and the gentleman from California (Mr. WAXMAN) each will control 10 minutes.

The Chair recognizes the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is a matter of absolute national security. In creating the Department of Homeland Security, it would be dangerous to leave the President with less authority to act in the interest of national security than he has under current law.

Management powers afforded every President since Jimmy Carter must be available to this President and to future Presidents to preserve the safety and defend the security of this great Nation.

Mr. Chairman, this amendment addresses the heartfelt concerns of the gentlewoman from Maryland (Mrs. MORELLA), our colleague, and others who feel current authority to exclude Federal employees from coverage under the labor laws could be used overbroadly in a department with so broad a security mission.

So we have included the Morella amendment adopted by the Committee on Government Reform, but with a safety valve. The Morella amendment would limit use of current exclusions that might otherwise apply to some Homeland Security Department employees. Existing exclusions could not be used unless the mission and the responsibilities of the affected agency or unit have changed materially and a majority of employees have as their primary duty intelligence, counterintelligence or investigative work directly related to terrorism investigation.

But our amendment also provides an essential safety valve. And safety is the reason we are creating the new Department. Subsection C would allow the President to apply existing exclusion authority in those special circumstances where he determines in writing that labor law coverage of the agency in question would have, quote, ''a substantial adverse impact,'' end of quote, on homeland security.

This puts a new tough new standard on the top of already rigorous tests the President must meet under title 5, chapter 71. To exercise his national security authority under this provision, the President must pass through three gates. First, he must determine that the Department's ability to protect homeland security will be significantly and adversely affected. Then, the current law tests must be met: Employee's primary function is in intelligence, counterintelligence, investigative or national security work; and, there is an incompatibility between labor law coverage and national security in the particular agency.

We believe this approach represents a sensible and workable compromise between permanently diminishing Presidential national security authority, as the Morella amendment alone would do, and providing no new standards for exercise of that authority in the new Department.

This amendment preserves the President's ability to act in the interest of national security while acknowledging the unique circumstance of employees being transferred into this new Department.

Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, at the outset, I want to comment on the process under which we are considering this and the Morella amendment. The Republican leadership has rigged the process regarding the Shays and the Morella amendments by denying the gentlewoman from Maryland (Mrs. MORELLA) a clean vote on her amendment.

The Shays and Morella amendments are identical to each other, except that the Shays amendment includes a final paragraph that undoes the rest of the amendment. As a result, if both pass, the Morella amendment will be meaningless. It will do nothing.

The gentlewoman asked for a chance to modify her amendment so that it could strike the offending provision in the Shays amendment, but she was denied the opportunity to do that by her own leadership.

The result is a rigged process. So even if the Morella amendment prevails, she loses if the Shays amendment is also adopted.

Mr. Chairman, I would urge my colleagues who want to support the Morella amendment to vote for the Morella amendment and vote against the Shays amendment. This issue deals with labor management relations. The amendment takes the Morella amendment, which passed out of the Committee on Government Reform on a bipartisan basis, and renders it useless.

Let me explain the situation. Under existing law, the President can strip an agency's employees of collective bargaining rights if he determines that the agency or subdivision's primary function is counterintelligence, investigative or national security work. The amendment offered by the gentlewoman from Maryland provides a very limited exception to this authority. It says that the collective bargaining rights of employees who are currently in unions cannot be eliminated unless their functions change after they are transferred to the new Department.

The Shays amendment states that the Morella amendment would apply, except if the President does not want it to apply. Well, that means the Morella amendment has no meaning to it. Basically, it allows the President to do exactly what the gentlewoman's amendment was seeking to prohibit.

Mr. Chairman, the Morella amendment is carefully crafted. It gives the President broad flexibility to restrict collective bargaining rights when the duties of employees change. Moreover, it does not apply to over two-thirds of the employees in the Department because these employees are not currently in collective bargaining units. And it will not apply to the new units with sensitive responsibilities such as the new intelligence analysis office.

The Morella amendment would not be needed if the President and the administration had a track record of respecting employees' legitimate rights to organize and bargain collectively. Unfortunately, the administration has not respected these rights. Earlier this year, the President striped union rights away from clerical workers in the offices of U.S. Attorneys. Many of these employees had been in unions and they were union members for over 20 years.

So if we do not pass the Morella amendment, the same thing that happened at the offices of the U.S. Attorneys will happen in the new Department. That is why she offered the amendment in committee and why it was adopted.

So I would urge my colleagues to vote against the Shays amendment and then, when the Morella amendment is offered, to support it.

Mr. Chairman, I reserve the balance of my time.

Mr. SHAYS. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. WELDON.)

(Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. WELDON of Pennsylvania. Mr. Chairman, I rise in a difficult position, but very supportive of the Shays amendment, and let me explain why.

First of all, as most of my colleagues certainly on this side know, I am a strong supporter of the labor movement in this country and I make no bones about it. I coauthored family medical leave with the gentleman from Tennessee (Mr. GORDON) as a compromise many sessions ago and still support that legislation. I opposed

NAFTA. I was one of the few Republicans that opposed my President on trade promotion authority. I supported Davis-Bacon so that our building trades have the kind of support that they need. Pension reform, minimum wage, I have been there and that is because I come from a blue collar background.

Mr. Chairman, I am the youngest of nine kids. My father worked in a factory and was a member of the Textile Workers Union. My job is to try to strike a balance between what is best for business and what is best for the worker.

In this case I have to come down not just on the side of the worker and the right to organize, but in support of our President to deal with the difficult issue of homeland security.

I have looked at this amendment. I have the highest regard for the gentlewoman from Maryland (Mrs. MORELLA), I might add, and she is an absolutely tireless worker for the rights of workers and I have the highest respect for her. But in this case the Shays amendment changes the Morella amendment by one particular issue. It calls for three levels of the process of a President before he can take adverse action, but he must certify that the effect on homeland security must be substantial and adverse. This just cannot be by whim that is put forth by someone in the White House or agency who was opposed to labor rights or the union representation of the workers. It must require our President to take decisive action, go beyond the fact that it is merely incompatible with national security, and must actually determine that the effect is substantial and adverse.

So for these reasons, Mr. Chairman, I think the Shays amendment is a good amendment because it does in fact continue to protect workers, but it also gives the President that important capability that I think he deserves in the new Office of Homeland Security.

Mr. WAXMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Maryland (Mrs. MORELLA), the author of the amendment on this whole subject.

Mrs. MORELLA. Mr. Chairman, I thank the gentleman from California (Mr. WAXMAN) for yielding me this time. I want to recognize the fact that the gentleman from Connecticut (Mr. SHAYS) is my friend. And while I appreciate the fact that the gentleman's amendment mirrors mine almost exactly, unfortunately he has chosen to include one extra sentence which I see as the escape clause which negates the point of my amendment.

In the amendment that I will offer, I allow the union rights of existing employees transferred to the new Department of Homeland Security who have the same duties to remain in place. It kind of grandfathers them in. The Shays amendment has a loophole in that it would allow the union rights to be stripped for ambiguous reasons.

Presently, two sections of title 5 provide for administrative actions to disallow union membership for certain classes of Federal employees. Section 7103 allows the President to issue an executive order taking away title 5 labor management rights, including the right to be in a union for agency or subdivisions for national security reasons.

Section 7112 of title 5 makes the bargaining unit inappropriate for numerous reasons, including the performance of national security duties. Now, because the new homeland security agency's mission could easily all be defined automatically as national security, I am concerned that potentially tens of thousands of employees could be prevented from being members of a union, even though their work and responsibilities have not changed.

This concern is really not groundless because in January, 500 Department of Justice employees had their union rights stripped for national security work even though their responsibilities had not changed. Many of them had belonged to the union for 20 years and many of them had clerical responsibilities.

So my amendment seeks to set a slightly higher standard for the President so that the transferred employees who have the same responsibilities who already are in the union, not new ones, do not see their union rights stripped for the same capricious reasons as those DOJ employees.

Unfortunately, as I reiterate, the amendment offered by the gentleman from Connecticut, though well intentioned, has that escape clause and that renders it unacceptably weak and I urge defeat of the Shays amendment.

Mr. SHAYS. Mr. Chairman, I yield myself 15 seconds, to just point out that what we want is for the President to have the same powers and collective bargaining issues when national security is involved that past presidents from President Carter have had, and yet we are taking the gentlewoman's amendment and adding an additional test so we are making it a little more difficult for this President.

Mr. Chairman, I yield 2½ minutes to the gentleman from New York (Mr. MCHUGH).

Mr. MCHUGH. Mr. Chairman, I would like to engage the distinguished Speaker of the House in a colloquy regarding subsection (c).

Mr. Speaker, clearly this subsection of Mr. SHAYS' amendment adds an additional requirement on the President over and above what currently appears in section 7103 of title 5 before this or any other President would be enabled to exempt an agency or subdivision from the provisions of the Federal Labor Management Relations Act, a very important right, very important protection.

However, and added to the original Morella amendment as the Shays amendment proposed, this could create a methodology by which a President might circumvent the limitations on that section 7103 authority that the original Morella amendment, and I commend the gentlewoman, that would have put in place under the Department.

Accordingly, I believe that subsection (c) authority should, if it ever becomes law, be limited. I believe that it should be crafted in a fashion that each time that the President should invoke authority under subsection (c) of the pending amendment, that the exclusion would only be effective for a period of no more than 24 months. Further, I believe that written notification of substantial adverse impact must be conveyed to both Houses of Congress no less than 30 days prior to the invoking of that subsection (c).

Thereafter, upon any subsequent finding of substantial adverse impact on homeland security, the President could only again, upon written determination, convey to both Houses of Congress no less than 30 days prior to the expiration of that original term of exclusion, extend such a waiver for additional periods not to exceed 24 months each, with written determination and congressional notification for each exclusion as previously described.

And lastly, Mr. Speaker, upon such time as the war is won, conditions even out and waivers are no longer extended, each bargain unit previously recognized should be reinstated with all of its rights as they existed the day before the original waiver. And I would ask would the distinguished Speaker agree with me that we should provide for congressional notification allowing us to consider those issues, make those determinations, not as under current law, but for a determined period, and when the war on terrorism is leveled out or is over and won, the workers and their union organizations should fully return to their previous status and relationship?

Mr. HASTERT. Mr. Chairman, will the gentleman yield?

Mr. MCHUGH. I yield to the gentleman from Illinois.

Mr. HASTERT. Mr. Chairman, I think the gentleman makes a good point. This proposal is certainly reasonable. He has my assurance that the bill works its way through the conference with the other body, that I will do my best to make sure that the gentleman's proposal is not only considered carefully by the Congress and both sides but we will take very, very extraordinary methods and work to make sure that this type of concept is incorporated in the bill.

It could form the basis, I think, for an excellent conference agreement.

Mr. MCHUGH. Mr. Chairman, I thank the Speaker for his assurance and I commend him, the gentlewoman from Maryland (Mrs. MORELLA), and the gentleman from Connecticut (Mr. SHAYS), and all the people who have worked so hard on this for their leadership.

Mr. WAXMAN. Mr. Chairman, I yield 1 minute to the gentleman from Texas

(Mr. REYES), who has personal experience on this subject that I think Members ought to know about.

Mr. REYES. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I want to offer my personal experience. Back in 1969 when I first joined the Border Patrol as a young officer freshly out of the military after spending 13 months in Vietnam, I went to a station where I was only one of three Latinos. And had it not been for the fact that I was able to join the Border Patrol Union, I would have not had a career in the Border Patrol for 26½ years.

Union protection is vital and important, specifically for minorities, but for all employees. To somehow draw the conclusion that to be able to have bargaining rights would be contrary to this Nation's national security is wrong.

Mr. Chairman, I intend to oppose the Shays amendment and I intend to oppose anything that would put in jeopardy the kinds of rights that gave me the opportunity to serve this country proudly in the United States Border Patrol, both as an agent ultimately retiring as the Chief. So I have been on both sides.

I would rather have our employees have the protection and have to deal with a problem employee as a responsibility of a chief than to subject employees to no protections.

Mr. SHAYS. Mr. Chairman, I yield myself 15 seconds to just respond to the gentleman. We are not trying to do anything with collective bargaining that does not exist in present law. In fact, we are even restricting in some ways the power of the President. Collective bargaining still exists. But like with Jimmy Carter all the way down, if there is a national security issue, the President has the right to take action.

Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, may I inquire how much time there is on each side?

The CHAIRMAN pro tempore. The gentleman from California (Mr. WAXMAN) has 4 minutes remaining, and the gentleman from Connecticut (Mr. SHAYS) has 2½ minutes remaining.

Mr. WAXMAN. Mr. Chairman, I inquire through the Chair of the gentleman from Connecticut whether he has another speaker other than himself.

Mr. SHAYS. Mr. Chairman, I will have the gentleman from Ohio (Mr. PORTMAN) to close, and I might make a comment after the next speaker. But between me and the gentleman from Ohio, that is it.

Mr. WAXMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Chairman, if this were campaign finance reform, the gentleman from Connecticut would have a sheet in our hands saying this amendment is a poison pill designed to undermine the Morella amendment.

Mr. Chairman, this amendment is a wolf in sheep's clothing. It tries to send a reassuring message to Federal employees that their rights will be protected and their collective bargaining rights retained. I want to tell our Federal employees: Do not believe it. This language provides the President with a trap door to deny union representation to anyone in this Department if he determines that it would have a substantial adverse effect on the Department's ability to protect homeland security.

In general, that is the law. Why add this? To provide the trap door to the Morella amendment. When the President removed collective bargaining rights of some 500 Department of Justice employees earlier this year, he said it was in the interest of national security. Yet most of those employees work in clerical jobs and have been union members for over 20 years.

Last month I had the opportunity to question the deputy director of the Office of Personnel Management and I asked him in the last 20 years, in the last 50 years, could he cite me one or two or three instances where union membership ever in any instance at any time adversely affected national security? I got back a two-page letter with 11 pages of attachments. It does not cite one single incident where union membership had any adverse effect on collective bargaining.

Mr. Chairman, this is a windmill that the Republicans are tilting at because they do not believe in collective bargaining. That is their right, but do not be fooled. This amendment undermines and is designed to undermine, I tell my friend from Connecticut, like a poison pill, the effect of the Morella amendment. Do not tell my Federal employees, do not tell the gentlewoman from Maryland (Mrs. MORELLA) that this is some benign offering simply to make it a little better and to give the President a little more flexibility.

Mr. Chairman, I say to my colleagues, read the law. The President has that ability now, and the OPM sent me 11 pages of attachments citing instances where every President, admittedly in small instances, because this is not a problem, made such exemption.

Mr. Chairman, I say to my friends and my friends on the Republican side of the aisle, give the gentlewoman a fair shot. Do not play legislative games with her. Vote the Shays amendment down and then vote for the Morella amendment.

Mr. SHAYS. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, this is not campaign finance reform, it is national security. And we want the President of the United States to have the same power previous Presidents have had for national security. This is national security. What the Morella amendment, in my judgment, is is a poison pill to his ability to govern this country under national security, unless we have the safety valve that we have put in there.

Mr. WAXMAN. Mr. Chairman, I yield 30 seconds to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Chairman, as I told my colleagues, I have an 11-page attachment here from the Office of Personnel Management where Presidents under existing authority, that is not adversely affected, have that ability. No one in this House wants to adversely affect national security.

The point that I am making is that the Office of Personnel Management in direct response to my question cannot cite a single incident. Not one in the history of this country, or at least since we have had collective bargaining for Federal employees where national security was adversely affected.

Mr. SHAYS. Mr. Chairman, I yield myself 15 seconds to point out that before 9/11, we could not cite certain instance of terrorist activity. The bottom line is the Morella amendment restricts the President's ability under national security to take action. We are qualifying her restriction.

Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, if Mr. SHAYS and some Republicans do not like the Morella amendment, they should just vote against it. They should not engage in this kind of trick to put in what appears to be the Morella amendment, but then to negate it. If they were being honest about the matter, they would simply oppose the Morella amendment as the gentleman from Connecticut (Mr. SHAYS) did in the Committee on Government Reform.

Mr. Chairman, a majority in that committee supported the Morella amendment. I would urge the House to adopt the Morella amendment and to defeat the Shays amendment, because what it does is negate the Morella amendment.

Mr. SHAYS. Mr. Chairman, I yield the balance of our time to the gentleman from Ohio (Mr. PORTMAN).

Mr. PORTMAN. Mr. Chairman, I thank the gentleman from Connecticut, my friend, for yielding me this time.

Mr. Chairman, the gentlewoman from Maryland (Mrs. MORELLA) cares as deeply about national security as any Member of this Chamber, and it has been a pleasure to work with her on this. We were not able to come together, but we tried.

The Shays amendment is identical to the Morella amendment. And by the way, the gentlewoman from Maryland will have an opportunity to offer her amendment. It is specified under the rule. It is a special rule offered in the rule and I am glad she has that right. But the Shays amendment has one additional feature, an extremely important and limited safety valve which would allow the President to use the provisions of existing law to exempt an agency or subdivision from collective bargaining when he determines in writing that it has an adverse and significant impact on homeland security.

Mr. Chairman, it is a tougher standard on top of the already existing standard than any other agency of government. The employees of this Department will have more protections than the employees of any other department of the Federal government. Here at a time when we are trying to address this threat of terrorism, would it not be ironic if we took away existing national security protection that the President can employ through his waiver for the new Department of Homeland Security?

In this amendment, I believe that we have struck a sensible compromise between doing nothing and adopting the amendment of the gentlewoman from Maryland. It makes it harder for the President to exempt anything that existing law would permit. But it has an important safety valve. To make sure that it can deal with homeland security emergencies and critical situations if necessary and that protection of bargaining rights for workers will not imperil the protection of the physical safety and security of all of us as Americans.

Mr. Chairman, I urge a ''yes'' vote on the Shays amendment. I think it is a responsible and a correct compromise. I urge a ''no'' vote on the Morella amendment.

The CHAIRMAN pro tempore. All time has expired. The question is on the amendment offered by the gentleman from Connecticut (Mr. SHAYS).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. WAXMAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 229, noes 201, not voting 3, as follows:

[Roll No. 356]

AYES—229

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schiff
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sununu
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—201

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Hunter
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—3

Blunt
Meehan
Stump

□ 1118

Messrs. PALLONE, HUNTER, and PETERSON of Minnesota changed their vote from ''aye'' to ''no.''

Messrs. BONILLA, ADERHOLT, BACHUS, and HALL of Texas changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mr. LATHAM). It is now in order to consider amendment No. 18 printed in House Report 107–615.

AMENDMENT NO. 18 OFFERED BY MRS. MORELLA

Mrs. MORELLA. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 18 offered by Mrs. MORELLA:

In subtitle G of title VII of the bill, insert after section 761 the following (and redesignate succeeding sections and references thereto accordingly):

SEC. 762. LABOR-MANAGEMENT RELATIONS.

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentlewoman from Maryland (Mrs. MORELLA) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentlewoman from Maryland (Mrs. MORELLA).

Mrs. MORELLA. Mr. Chairman, I yield myself such time as I may consume.

I am going to offer this amendment despite the fact that the Shays amendment did pass because I believe the integrity of the Committee on Government Reform is important enough so that what they voted on in the full committee should be what is sent over to the conferees and what ultimately will become law.

The amendment that I am offering today is with the gentleman from Illinois (Mr. DAVIS), who is the ranking member of the Subcommittee on Civil Service, Census and Agency Organization, and very much a supporter of Federal employees. What the amendment does is it simply aims to protect the union rights of existing employees transferred to the new Department of Homeland Security who have the same duties.

I want to point out at the onset that the language of my amendment is similar to language that was included in the gentleman from Texas's (Mr. THORNBERRY) original Homeland Security bill and the language that was agreed to on a bipartisan basis by the Senate Committee on Governmental Affairs.

Let me just say one big agency, 22 other agencies become part of Homeland Security; therefore, everything under it is called security. Therefore, it offers an opportunity for arbitrarily saying that some union rights will be taken away from some people. One hundred seventy thousand employees would be part of it. Only 50,000 employees who already belong to unions whose duties have not changed would be able to continue with the functions of their unions and collective bargaining rights. That is all. It is grandfathering those people in.

Why do we need it? Already it has been mentioned, as we discussed the Shays amendment, the fact that in January, 500 employees of the Department of Justice lost their collective bargaining rights. They lost their rights even though many of them were clerical and that even had been part of a union for over 20 years. I do want to say that this House really should reflect, at a time when we have Local Commission No. 2, when we have Partnership for Public Service, when 51 percent of our work force are eligible to retire in 5 years, when 71 percent of the Executive Service are eligible to retire in 5 years and we are trying to recruit and retain, the fact that trust is so very important.

So I ask this body, despite the fact that the Shays amendment passed, that they pass the Morella amendment so we can also send on the intent of the Committee on Government Reform as well as this Congress.

Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. DAVIS).

Mr. DAVIS of Illinois. Mr. Chairman, I am pleased to join with the gentlewoman from Maryland (Mrs. MORELLA) in cosponsoring this amendment and rise in strong support.

The Morella amendment provides that employees who have elected unions to represent them in collective bargaining, before being transferred into the Department of Homeland Security, should not lose their representation rights. Essentially the Morella amendment is a grandfather clause. All it really does is protect those individuals who have collective bargaining rights and are currently union members.

There are some people who suggest that this is going to undercut the President's authority. Absolutely not. It only deals with those individuals who are currently union members, and it also provides enough flexibility that if individuals' work assignments change significantly, then the President could, in fact, move them around.

We also know that the President issued an executive order barring union representation in U.S. Attorney's offices. Individuals who were doing clerical work were denied the opportunity to be unionized and to have the representation. As a matter of fact, we believe in a strong Presidency. We believe that the flexibility ought to be there. But we also believe that these are hard-won rights that people have struggled to achieve for years and years and years. They should not be diminished. They should not be taken away.

And so I simply urge my colleagues to stand with the American people who believe in Civil Service protection, who believe in the rights of the individuals that work. Stand and support the Morella amendment.

Mr. WAXMAN. Mr. Chairman, I ask unanimous consent as the ranking Democrat on the Committee on Government Reform to manage the time on this Morella amendment.

Mr. PORTMAN. Mr. Chairman, I object.

The CHAIRMAN pro tempore. Is the gentleman from Ohio seeking time in opposition?

Mr. PORTMAN. Exactly, Mr. Chairman. I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman from Ohio is recognized to control the time in opposition as a member of the select committee.

Mr. PORTMAN. Mr. Chairman, I yield myself such time as I may consume.

First of all, we have already had a good debate on this issue in the context of the Shays amendment, and I appreciate the fact that the gentlewoman from Maryland comes at this in good faith. As I said earlier, nobody in this Chamber cares more about national security. We do differ on this issue. The gentlewoman from Maryland talked a lot about the Committee on Government Reform and what the Committee on Government Reform thinks about this.

I think it is only appropriate, Mr. Chairman, to yield 2½ minutes to the gentleman from Indiana (Mr. BURTON), chairman of the Committee on Government Reform.

Mr. BURTON of Indiana. Mr. Chairman, I thank the gentleman for yielding time.

First of all, let me just say that I have very high regard for the gentlewoman from Maryland. She is a very fine member of our committee. As a matter of fact, I admire her so much, we made her a subcommittee chairman. But we have a strong disagreement on this issue. We are at war, and we are talking about national security, and there is really no evidence that we have a problem. In fact, this very issue has been used very sparingly by past Presidents, both Republican and Democrat, and they have never abused the privilege.

Second, as I said, we are in a war, and the Homeland Security Department is a very, very important part of the President's strategy of dealing with that war. This amendment would give the President less authority over the defense of America, the new Homeland Security Department, less authority than he has over any other department of government. Why would we do that? Why would we give the President less authority over the security of America, the Homeland Security Department, than he has over any other department? It makes no sense.

Regarding this vote, this was one of the most controversial votes we had before our committee. It came right down to the last vote. It passed by one vote. When it went to the select committee, the leadership committee, that issue was reversed by one vote. So this

is a very, very difficult issue for us to deal with. That is why we supported the Shays amendment, because the Shays amendment is an amendment we think that deals with the subject very well.

Finally, let me just say, President Bush is not an antiunion President. He cares about organized labor, and he will work with organized labor. So let us not give the President less authority than he already has over every other agency in dealing with the security of this Nation. It makes absolutely no sense.

I hope Members will all vote against the Morella amendment, not because she is not a lovely lady, but because it is the wrong thing to do.

Mrs. MORELLA. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. WAXMAN), who is the ranking member of the full Committee on Government Reform.

□ 1130

Mr. WAXMAN. Mr. Chairman, I thank the gentlewoman for yielding me time.

At the close of the last amendment by Mr. SHAYS, the gentleman from Ohio (Mr. PORTMAN) said that the gentlewoman from Maryland (Mrs. MORELLA) was being treated fairly because she could offer her amendment.

Now, that is absolutely wrong. She is a senior Member of Congress. She is the author of an amendment that passed in the committee on a bipartisan basis, and she is being demeaned by that previous amendment that makes the vote on this amendment completely meaningless.

I support the Morella amendment. You can vote for it, you can vote against it, but it does not make any difference, because even if it passed, the previous amendment negates it. I just think that is an incredible way to treat somebody in your own party. After all, she gave the Republicans the votes to organize the House. What do they do? They turn around and deny her a fair opportunity to offer her amendment and to try to convince Members to support it and to make it the House position.

Now, if we adopt the Morella amendment it will be the House position, but we have already adopted another amendment that says the Morella amendment is not going to be the House position.

I think that this is a wrong way on the process to treat this matter, and I think it is an unfair way to treat the gentlewoman from Maryland (Mrs. MORELLA). I am going to support the Morella amendment. I asked for the time so we could control it, but we were not even given that courtesy.

This is partisanship in the sneakiest, meanest, narrowest way; and not to me, but to one of their own Members. I commend the gentlewoman from Maryland (Mrs. MORELLA). She offered the amendment in committee, she argued for it, her arguments prevailed and she won on a bipartisan basis. I am going to vote for her amendment. I urge other Members to vote for it. But we all know it is meaningless.

Mr. PORTMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I wholeheartedly agree with the endorsement of the gentlewoman from Maryland (Mrs. MORELLA) by my friend from California and appreciate it. She is a fine Member, and, as I said earlier, no one cares more about national security than her.

I would just make the point very clearly that notwithstanding the fact she would not be able to offer the same amendment to the same section of the bill, this rule was drafted in a way to permit that. I think it is appropriate, and she does have the right to offer her amendment today, and I am glad she does.

Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. TOM DAVIS), a member of the Committee on Government Reform.

Mr. TOM DAVIS of Virginia. Mr. Chairman, let me just add, this is not the end of the legislation. This bill goes to conference. The House vote on this is important in terms of the message it says to conferees, and I think to dispel it is not appropriate.

I also commend my colleague for her work and her courage in standing up to leadership on this particular issue, as she has done so many times during her career. Like her, I have a number of Federal employees and union members in my Congressional district, and I believe strongly that the traditional Federal workforce protections need to be applied and extended to Federal employees as they are transitioned into the new Department of Homeland Security.

But I differ with her on this amendment for this reason: The underlying legislation gives the employees the traditional rights they would enjoy in being able to transfer from one agency to this new agency. The amendment offered by the gentlewoman from Maryland (Mrs. MORELLA) gives them additional rights that they currently do not enjoy under Federal law, and it gives them additional rights at a time when we are at war with global terrorists, where the President has come to us saying this is the organization he needs to be able to win the war on global terrorism, and we are taking away the President's flexibility to deploy people that he enjoys in the Department of Defense, in the FBI, in the CIA and every other Federal agency.

So they are treated under this the same way as they are in those other agencies that help us fight wars, and if this amendment passes, it basically creates a two-tier system and a lot of potential for inequities. For example, at a time of crisis, the President would not be able to treat Department of Justice, CIA, in the same manner as he treats employees at the Department of Homeland Security. That does not make any sense.

Mr. Chairman, section 7103(b) of title IV represents a finely crafted balance between the rights of employees and the duty of the President to act in exceptional times, in exceptional times. Rarely used, in exceptional times with exceptional action. We are at war now, and certainly these are exceptional times.

In my view, we should enact the legislation and give our Commmander-in-Chief the tools he needs to enact the war on terrorism.

Mrs. MORELLA. Mr. Chairman, I yield myself such time as I may consume.

I just want to make a brief statement. I want to thank the gentleman from California (Mr. WAXMAN) for what he had said, but I wants to disagree with him on one issue, because this is not meaningless. If we pass this amendment, this also indicates the intent of the House, the intent of the committee. And the battle has just begun. I will not relent until we do what is best for our Federal employees.

Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, Congress enacted civil service protections and collective bargaining rights so the U.S. Government could attract the very best to government service. As we stand together to fight terrorism, we should also stand together for the rights and well-being of those people who are on the front lines of that fight.

It is no secret that one of the Federal Government's biggest challenges is recruiting and retaining highly qualified workers. Within 3 short years, the Federal Government will face a mass retirement of Federal employees. Given the composition of the workforce, this is a given.

I support the Morella amendment because it will ensure that Federal employees at the new Department of Homeland Security will retain their rights to belong to unions. This provision would guarantee that the 50,000 employees, only about 25 percent of those expected to be transferred to the new department, who are currently under collective bargaining agreements, retain their union representation.

Let us be clear this amendment would apply only to those who currently have collective bargaining rights and would in no way affect those employees who are not currently members of unions. The need to establish this new department should not be used as a veiled attempt to strip Federal servants of the fundamental protections and collective bargaining rights they enjoy today.

Mr. PORTMAN. Mr. Chairman, I yield 1¼ minutes to the gentleman from Florida (Mr. WELDON), the distinguished chairman of the Subcommittee on Civil Service of the Committee on Government Reform.

Mr. WELDON of Pennsylvania. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I rise in opposition to the gentlewoman's amendment. I think it is going to be very, very important as we move through the process of consolidating all these agencies together into one unified Homeland Security Department that the President of the United States has the ability to deal with the conflicting union agreements that he is going to have to try to bring together.

I know the President of the United States is going to do everything he can to protect the rights of the workers.

This amendment I think is extremely strange, because it basically is saying that we are going to take the right that the President of the United States has to suspend collective bargaining agreements for national security purposes and deny it to the President of the United States within the Department of Homeland Security.

If this amendment passes, the President of the United States for national security reasons, and this is an authority that Democratic and Republican presidents have exercised authority rarely, and, when they have, they have done it appropriately. To deny it within the Department of Homeland Security to me does not make any sense.

Mr. PORTMAN. Mr. Chairman, I yield 30 seconds to the gentleman from Texas (Mr. THORNBERRY), another distinguished colleague who has been at the forefront of this issue over the last several years, not just weeks or months.

Mr. THORNBERRY. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, earlier this year a bipartisan group of House and Senate Members, a bipartisan group of Members from both bodies, introduced identical bills, and basically we said that this issue of collective bargaining ought to be the same.

That, in my view, is the same as it is now. That, in my view, is what the Shays amendment was. It was unimaginable to us then and it is unimaginable to me now that we would reduce the ability of the President to act in a national security situation. That is why I believe this amendment should be rejected.

Mr. PORTMAN. Mr. Chairman, I yield 30 seconds to my friend, the gentlewoman from Maryland (Mrs. MORELLA). We have more time than she does, and she would like some additional time.

The CHAIRMAN pro tempore (Mr. LATHAM). Without objection, 30 seconds will be yielded to the gentlewoman from Maryland (Mrs. MORELLA).

There was no objection.

The CHAIRMAN pro tempore. The gentlewoman from Maryland (Mrs. MORELLA) has 2 minutes remaining.

Mrs. MORELLA. Mr. Chairman, I yield such time as she may consume to the gentlewoman from New York (Mrs. MALONEY).

(Mrs. MALONEY of New York asked and was given permission to revise and extend her remarks.)

Mrs. MALONEY of New York. Mr. Chairman, I rise in strong support of the Morella amendment. We do not make our homeland more secure by undermining job security.

Mr. Chairman, I rise in support of the Morella-Danny Davis amendment to protect federal workers.

As a New Yorker, I care deeply about homeland security.

Even since, Sept. 11th, we have had several security alerts issued by the government.

Everyone wants a strong homeland, but it shouldn't be achieved on the backs of the dedicated and talented men and women of the federal workforce. We should not erode the rights of federal workers.

In the event of a homeland security crisis, do you really believe that anyone would abandon their posts when the clock strikes five?

The Morella amendment is a fair amendment.

It is clear that the government employees who transfer into the new department can keep the rights they already have.

It applies only to those who currently have collective bargaining rights and would in NO WAY affect those employees who do not currently have these rights.

Some of the papers are using the example of a ''druken Border Patrol agent'' as a reason of why they want to take away workers' rights. This is a silly anecdote. I can tell you in New York right now, if this were to happen with one of our officers in the City, such a person would be removed immediately from their post, but due process would still be protected.

We don't make our homeland secure by undermining job security.

Mrs. MORELLA. Mr. Chairman, I yield 30 seconds to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Chairman, the Japanese attacked us at Pearl Harbor and we fought World War II. We went into Korea, we went into Vietnam, we went into Bosnia, we went into the Persian Gulf. We did not do this. We saw no need to do it, because we saw no threat from collective bargaining.

My colleagues, support the Morella amendment. I agree with her, it does mean something. It says to our employees, we understand that your collective bargaining rights do not in any way, at any time, undermine our national security, for which we all will fight and for which we will all support legislation to protect it.

I rise in favor of the Morella amendment.

Mr. Chairman, we must ensure that ''flexibility'' does not become a code word for favoritism.

Furthermore, we must ensure that ''flexibility'' does not become a euphemism for gutting federal civil servants' rights.

The federal civil service was created for a reason: to prevent arbitrary and capricious employment decisions based on politics and patronage rather than competence and professionalism.

All this amendment does is tell the employees who will be working in the new department, ''If you will be performing the same job as you do now, you will be able to retain the right to collective bargaining rights.''

There is no doubt that certain reforms to our civil service are necessary, but stripping the rights of federal employees behind the curtain of homeland security is not the right approach.

We have an opportunity to turn national tragedy into national triumph by demonstrating to the American people, particularly the generation just entering the workforce, that employment in the Federal Government is not only honorable and patriotic, but also rewarding.

There is absolutely no doubt in my mind that employees currently covered by the full force and affect of title 5 will have no adverse affect on our homeland security as it pertains to employment in this department. I support this amendment and urge my colleagues to vote in favor of it.

Mrs. MORELLA. Mr. Chairman, I yield 30 seconds to my colleague, the gentleman from Maryland (Mr. WYNN).

Mr. WYNN. Mr. Chairman, I thank the gentlewoman for yielding me time.

Mr. Chairman, I rise in strong support of the Morella amendment. I represent 72,000 Federal employees. I think this so-called ''flexibility'' is a great mistake. It abrogates employee rights and ultimately it undermines their moral.

Our greatest asset is our human capital. We cannot expect our fellow employees to protect homeland security if we undermine their employment security. The Morella amendment provides a compromise. It allows the President to say if they are engaged in investigative work relating to counterterrorism, relating to the war on terrorism, they can abrogate those rights. If they do not, if they are performing administrative or clerical functions not relating to investigations, they retain their bargaining rights.

Support the Morella amendment.

Mr. PORTMAN. Mr. Chairman, it is my understanding we have the right to close, is that correct?

The CHAIRMAN pro tempore. The gentleman from Ohio has the right to close.

Mr. PORTMAN. Mr. Chairman, I would like to give the gentlewoman from Maryland (Mrs. MORELLA) the right to close.

Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, again, we have had a good debate here today in the context of the Shays amendment and now the Morella amendment. The bottom line is we have a good compromise. It is the Shays amendment. It gives workers in this new department more protection than any workers in any department in government, and yet it retains in the president this extremely important national security authority. It would be ironic if during this time of addressing this new threat of terrorism we were to take away that authority altogether.

I think the compromise makes sense. I strongly urge a no vote on the Morella amendment, which would, according to the President, be the basis for a veto of this legislation.

Mr. Chairman, I yield the balance of my time to the gentleman from Connecticut (Mr. SHAYS).

The CHAIRMAN pro tempore. The gentleman from Connecticut is recognized for 2 minutes.

Mr. SHAYS. Mr. Chairman, in the 3½ years my Subcommittee on National Security has been looking at homeland security, one thing is very clear: We need to know what the threat is, we need to develop a strategy, and we need to do what we are doing today, which is to reorganize our government to meet the terrorist threat.

When the President implements the reorganization of our Federal Government under this law that we will provide him, he needs the same flexibility President Carter had, the same flexibility President Reagan had, the same flexibility President Bush had, the same flexibility President Clinton had. He needs that same flexibility.

It is interesting to note that my colleagues have not sought to limit past presidents in their ability to have this flexibility to deal with national security. You must vote no on the Morella amendment. It is in conflict with the amendment that has passed before. We included all aspects of the Morella amendment, but we had a safety valve.

When you hear of the 500 clerical employees that were impacted, they were under the National Drug Intelligence Center, the U.S. National Central Bureau of Interpol, the Office of Intelligence, Policy and Review, the Criminal Justice Division of DOJ. They were clericals under the professionals. But the law does not give the President the ability to leave the clericals in place, and that is what the Morella amendment should have done. We need to give the President the ability to utilize his power in a way that enables him to impact only the employees we need to.

□ 1145

Our primary concern must be national security; it would be absolutely unbelievable if we would give the President less power to fight terrorism when terrorism is a greater threat. It is not a question of if, but when, where, and what magnitude we will face the potential of chemical, biological, or nuclear attack.

We had people testify before our committee that pointed out a small group of scientists could alter a biological agent and wipe out humanity as we know it. We are talking about a threat to our national security. How can we think that Federal employees are not willing to step up to the plate and live under the same law that has existed under previous presidents? I believe they want this law and the President to have the power that previous presidents have had.

Mrs. MORELLA. Mr. Chairman, I yield myself the remaining time.

I do not see how being in a union would disallow any of those employees from performing their responsibilities.

I think, Mr. Chairman, the crux of this debate comes down to trust. It is for this reason that I simply refuse to buy the argument that we have to matter-of-factly give the administration or any administration as much flexibility as possible. I am a friend of the President, I think he has done a wonderful job guiding the country through this crisis, but on the Federal employee issues, his record is not as laudable as I would like it to be.

So my amendment speaks to those concerns. It speaks to the lack of trust that has been engendered if we have policies that are anti-Federal employee rights, and that is why I feel it is necessary to create a slightly higher standard for this department.

The fact is, I simply cannot take the chance on being wrong on this issue. The President's executive order authority under chapter 7103 has never been overturned, and there are simply too many Federal employees who could lose their rights for the same questionable reason that those 500 DOJ employees did.

I have 78,000 Federal employees living in my district. This issue is important to them, and it is important to the country. I ask my colleagues to vote for the amendment.

Mr. DAVIS of Illinois. Mr. Chairman, as a member of the House Committee on Government Reform, and as the Ranking Member of its Subcommittee on Civil Service, Census, and Agency Organization, I am proud to join my colleague, the gentlewoman from Maryland, Representative MORELLA, in co-sponsoring this amendment to H.R. 5005.

We certainly have come a long way from the days, back in the 1800's, when it would not have been uncommon to find an ad in a Washington newspaper saying: ''WANTED—A GOVERNMENT CLERKSHIP at a salary of not less than $1,000 per annum. Will give $100 to any one securing me such a position.''

We now have a merit-based Federal civilian workforce that is unsurpassed by none. Our civil servants have responded with professionalism to the threats against our borders and assaults against our values. Those 170,000 employees who are identified to become the first employees of our new Department of Homeland Security will coalesce together to ''prevent terrorist attacks within the United States, reduce the vulnerability of the United States to terrorism; and minimize the damage, and assist in the recovery, from terrorist attacks that do occur.'' We are charging much to them—and they are up to the task.

However, just as we are expecting much from these Federal civil servants, they should expect much from a grateful nation. We should safeguard their employment rights to the extent that doing so does not interfere with national security. This amendment that Mrs. MORELLA and I have introduced strikes this delicate balance.

The President and the Federal Labor Relations Authority can presently exempt employees from union membership for ''national security work.'' The President used this authority last year to take away the collective bargaining rights for approximately 500 Justice Department workers, most of whom were clerical employees who had been unionized for twenty years. Their duties had not changed—what had changed was their rights to union membership.

Simply stated, our amendment protects the rights of Federal employees. Those who currently have the right of union membership will retain this right in the new Department of Homeland Security—so long as they are doing the same work. This is no more than what is commonly referred to as a ''grandfather'' clause. Of the approximately 170,000 employees that will be transferred to the new Department, only 50,000 are represented by unions—less than one-third. These are the employees who would be protected under our amendment. We cannot take the risk that thousands of employees could lose their labor rights for ambiguous reasons. If they are doing the same work, they should have the same protections.

This amendment would not change the standard for new employees hired to the Department of Homeland Security or those employees transferred who were not previously allowed union membership. Also, any employee transferred to the new Department, who was previously allowed union membership, but whose responsibilities change significantly, would no longer retain this right.

We have a big challenge ahead of us in shoring up this new Department. Let's protect those who will be protecting us. I urge my colleagues to support Federal employee rights and to pass this amendment.

Thank you, Mr. Speaker.

Mrs. MALONEY of New York. Mr. Chairman, I rise in support of the Morella-Danny Davis amendment to protect federal workers.

As a New Yorker, I care deeply about homeland security.

On September 11th, we should remember that the first responders who rushed to the World Trade Center were civil servants—wonderful, selfless civil servants.

More than 10 months after September 11, the pain from that day has not begun to fade for my constituents in New York. While we have cleaned up the site and begun to focus on rebuilding, no New Yorker can walk past a firehouse or see a police car race across the city without being reminded of the incredible herorism displayed by the 343 firefighters, 37 Port Authority Police and 23 New York City Police who gave their lives to save others that day.

In my own district 25 different fire stations lost people in the terror attacks. One firehouse in my district—the Roosevelt Island based Special—Operations unit lost 10 men. The loss was so great from this facility because a duty change was in progress. Men who were finishing their shift grabbed their equipment and headed to the scene. As a result, twice as many perished as would have otherwise.

These men and women didn't hesitate to respond.

So I ask you, in the event of a future homeland security crisis, do we really believe that any federal worker at the new Department of Homeland Security would abandon their posts when the clock strikes five?

Everyone wants a strong homeland, but it shouldn't be achieved on the backs of the dedicated and talented men and women of the federal workforce.

We should not *erode* the rights of federal workers.

The Morella amendment is a fair amendment.

It is clear that the government employees who transfer into the new department can keep the rights they already have.

The amendment applies only to those who currently have collective bargaining rights and would in NO WAY affect those employees who do not currently have these rights.

Some of the papers are using the example of a ''drunken Border Patrol agent'' as a reason of why they want to take away workers' rights. This is a silly anecdote. I can tell you in New York right now, if this were to happen with one of our officers in the City, such a person would be removed immediately from their post, but due process would still be protected.

We don't make our homeland secure by undermining job security.

Vote for the Morella amendment.

The CHAIRMAN pro tempore (Mr. SUNUNU). The question is on the amendment offered by the gentlewoman from Maryland (Mrs. MORELLA).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mrs. MORELLA. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 208, noes 222, not voting 3, as follows:

[Roll No. 357]

AYES—208

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Hunter
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Petri
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Simmons
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—222

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Castle
Chabot
Chambliss
Coble
Combest
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—3

Blunt
Collins
Meehan

□ 1207

Mr. CONDIT changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mr. SUNUNU). It is now in order to consider amendment No. 19 printed in House Report 107–615.

AMENDMENT NO. 19 OFFERED BY MR. QUINN

Mr. QUINN. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 19 offered by Mr. QUINN:

In section 761(a) of the bill, redesignate paragraphs (1) and (2) as paragraphs (2) and (3), respectively, and insert after the heading for subsection (a) the following:

(1) SENSE OF CONGRESS.—It is the sense of the Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

In paragraph (4) of section 9701(b) of title 5, United States Code (as proposed to be added by section 761(a) of the bill), strike all that follows ''by law'' and insert ''; and''.

In section 9701 of title 5, United States Code (as proposed to be added by section 761(a) of the bill), redesignate subsection (e) as subsection (g) and insert after subsection (d) the following:

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the direct participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments under this section, the Secretary of Homeland Security and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL, ETC.—The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representative under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PRE-IMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each employee representative details of the decision to implement the proposal, together with the information upon which the decision was based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendations full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of this subsection; and

''(C) the selection of representatives in a manner consistent with the relative numbers of employees represented by the organizations or other representatives involved.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

''(1) SENSE OF CONGRESS.—It is the sense of the Congress that—

''(A) employees of the Department of Homeland Security are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary of Homeland Security and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board; and

''(B) shall ensure the availability of procedures which shall—

''(i) be consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department of Homeland Security.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from New York (Mr. QUINN) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from New York (Mr. QUINN).

Mr. QUINN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the President called on the Congress to create the Department of Homeland Security in an effort to condense the numerous government agencies performing these functions into a single more manageable unit and department.

This massive realignment of people and resources is developed to enhance the protections of our Nation, without eliminating the basic rights of our employees that comprise the Department.

The President needs the flexibility we talked about earlier today to have the right people in the right place at the right time to address rapidly evolving terrorist threats.

His vision is of a performance-based system that rewards employees who provide exemplary service and removes those who are not performing their duties adequately. With the security of our Nation at stake, it is our duty to provide this and future Presidents with that ability.

Mr. Chairman, it is an opportunity for me to also congratulate and thank the gentlewoman from Maryland (Mrs. MORELLA) for her work on this issue, to thank the administration and the President's personal involvement these pass few weeks to get us to this point this morning, to thank my good friend from New York (Mr. MCHUGH), the Speaker, and the gentleman from Ohio (Mr. PORTMAN).

Once we have this system in place, however, it is important we do not compromise the basic employee protections of the workers who perform these functions. Therefore, Mr. Chairman, it is imperative that the House approve the amendment that I offer.

The Quinn amendment as it is outlined is a part of the overall picture that puts this Department in place. We improve the personnel flexibility provisions in the underlying text by expanding and broadening worker protections in the following three ways:

First of all, it ensures the direct participation of employee representatives in the planning, the development, and the implementation of any human resources management system. It accomplishes this goal by requiring that the Secretary of this new Homeland Security and the Director of Personnel Management provide each and every employee, number one, with a written description of the proposed amendments; secondly, 60 days to review the proposal; and, thirdly, a full and fair consideration of those employees' recommendations.

In other words, Mr. Chairman, what this does is it gives the labor unions, the employees a seat at the table from the beginning to the end of the process.

Secondly, with this amendment this morning, it preserves the current appeals rights of employees, emphasizes due process, expedites resolutions, and requires consultation with the merit systems protection board which is already in place.

And, thirdly, it places a sense of Congress language directly into the underlying statute that clearly protects the employee's right to appeal and that due process.

Mr. Chairman, this amendment allows the President to use provisions in current law to exempt an agency from collective bargaining only when he determines in writing that a substantial, adverse impact on the homeland security exists.

This standard is actually more restrictive now than current law. I believe that these protections are absolutely critical to the employees of the new Department. Mr. Chairman, it is an opportunity to point out that these employees of our Federal Government, particularly the example of 9–11, none of them asked when their shift change occurred. None of them asked if they were going to be paid overtime. Nobody said it is my time to return in a time of war, in a time when the President has to have all the tools necessary to fight terrorism and this war.

We know that these employees will respond the way they have always responded. We are proud of their work. We are proud of them as employees. We want to make certain now that the Morella-Shays issue has been settled, that we are able to talk about making certain that this President or any President does not take advantage of these workers, these Federal workers that we are so proud of.

Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from California (Mr. WAXMAN) for 10 minutes.

Mr. WAXMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. DAVIS).

Mr. DAVIS of Illinois. Mr. Chairman, I rise in opposition to this amendment, and I do so because it is actually a step backwards. This is a step backwards by taking away worker rights and protections that Americans have come to cherish.

When you take away chapter 5, you talk about fighting terror, you create terror and strike terror and fear in the hearts of workers because now you are saying to them that they may not be able to get annual cost-of-living increases in their wages. That is no longer automatic. You say to those individuals who work in high-market areas that they may not get adequate compensation if they have to work in places like New York, Chicago, Washington, D.C., places where the cost of living is much greater and much higher than in other places.

□ 1215

It means that we do not have to give employees the right to grieve and to have the protections that every American in the workplace so rightly deserves. So I cannot imagine why it would be necessary to take these protections away under the guise of fighting terror because I can guarantee my colleagues that the people I have been speaking with are terrorized with fear that the rights they have earned will be taken away.

Mr. QUINN. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. SWEENEY), a fellow New Yorker who worked on this package these last couple of weeks, a leader in labor issues, not only in our State of New York but the country.

Mr. SWEENEY. Mr. Chairman, I thank the gentleman for yielding me time, and, Mr. Chairman, I rise in strong support of the gentleman from New York's (Mr. QUINN) amendment that I believe will provide personnel flexibility broadening worker protections.

Mr. Chairman, we have had great discussions this morning and for the last several weeks about the challenges that we face in forming a new Homeland Security Department and providing for the protection of the American people. It seems in the course of those discussions we have needed to find a balance between the needs to provide those protections against terrorist attacks and worker rights, and I submit to my colleagues as the former State labor commissioner of New York State, probably the largest unionized State in the Nation, that that conflict ought not to occur, and I am very proud today that we seem to be moving in a very positive direction, a very positive direction in passing the Shays amendment.

I will note the colloquy that my colleague, the gentleman from New York (Mr. MCHUGH), had with the Speaker of the House and the conversations that we had with the President of the United States in which they made commitments to the basic precepts of collective bargaining and the rights of workers and ensuring that workers' rights would not be abrogated in this process, and, indeed, with this amendment from the gentleman from New York (Mr. QUINN), Mr. Chairman, it is important that we reaffirm those commitments and those rights.

As the gentleman from New York (Mr. QUINN) pointed out on September 11, a shift change had occurred at 8:45 a.m. and two planes flew into the World Trade Center. Unionized firefighters and unionized police officers did not ask whether their shift was beginning or ending, simply charged into those buildings to do their jobs as they have always done their jobs and save American lives.

That is why it is important that this amendment pass. That is why it is important that we keep those commitments first and foremost and forward as we decide and deliberate how to best secure America's borders.

On a personal note, I would like to speak in terms of my commitments to collective bargaining, workers' rights, because my dad, Mr. Chairman, was a labor leader. He fought all his life for collective bargaining issues. I sat at the kitchen table discussing those issues and know, indeed, I would not have been here today representing the people of the 22nd Congressional District in New York had he not won those fights.

This is not about an abrogation of those rights. This is about ensuring that the President of the United States has the flexibility to protect American lives and American people. He has given his commitment that he will do that job and as well will ensure that the workers who fulfill those duties, who we know will fulfill those duties will as well be protected.

I fully, strongly support this amendment and all of the efforts on the part of my colleagues to ensure those rights are protected and that the American public is protected from the terrorist attacks that we face.

Mr. WAXMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland (Mr. CUMMINGS).

Mr. CUMMINGS. Mr. Chairman, I want to thank the gentleman for yielding me the time.

Mr. Chairman, I rise today to ask my colleagues to vote against the Quinn amendment. This amendment does not fix the problems in the civil service provisions of the bill. In fact, the Quinn amendment is actually a step backward from the current law.

In the underlying bill, the new Department does not have to comply with essential parts of title V. In fact, the reported bill does not guarantee the Federal employees will receive protections against unfair labor practices, get cost-of-living increases or even locality pay.

Mr. Chairman, as former ranking member of the Committee on Government Reform, Subcommittee on Civil Service, Census and Agency Organization, I firmly believe that it is critical that Federal employees transferred to this new Department retain their civil service protections. Federal employees whose responsibilities are the same today as they were a week ago or even a year ago could lose civil service protections just because the government's organizational chart will change. This is an unfair result that I know my colleagues want to avoid.

Again, I ask my colleagues to vote against the Quinn amendment and support the Waxman-Frost amendment. Civil service protections should not be altered merely because employees are moved to the new Department. The Federal employees in the new mega agency should have the same rights as employees in other agencies.

Mr. QUINN. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio (Mr. PORTMAN). This discussion these last few weeks has been including a lot of people. The gentleman from Ohio (Mr. PORTMAN), of course, with his expertise and involvement in the House was very, very helpful.

Mr. PORTMAN. Mr. Chairman, I want to say to my friend from Maryland, and he is my friend, that this is a good amendment because it does actually enhance the worker protections in the underlying bill. I understand his concerns with the underlying bill, but this amendment expands them. It does it in a few very specific ways.

I want to commend the gentleman from New York (Mr. QUINN) because he listened. He listened to the 25 percent of the employees who are coming into this new Department who are currently represented by unions, and he listened to the 75 percent of employees coming into this new Department who are not members of the union.

What he did is very simple. He got the unions a place at the table so that when we go through these new flexibilities we are going to talk about in the next amendment, the unions have a voice, and they wanted that.

He makes sure that the Secretary of this new Department could not use a waiver authority to pull union members out of collective bargaining for national security purposes, which is in the underlying bill. He removes that authority, again listening to the concerns of union members and their representatives.

He also preserves the appeal rights for all workers in this new Department to make sure that due process is followed to clarify the underlying language and be sure that the Merit Systems Protection Board is used in the case of appeal, should there be a firing.

He also puts very important language in the amendment to clarify the intent of this entire bill which is exactly what I have heard on the other side of the aisle today by the gentleman from Maryland (Mr. WYNN) and others, to be sure that we prioritize human capital. It is the key. Good morale, working as a team, is the only way this is going to work, and the Federal workers are going be the heroes in this case. They are going to be the ones responding as the first responders. They are going to be the ones protecting our kids and grandkids over time. We need to be sure that this morale and this team effort is taken.

I have heard a lot of comments here today about the underlying draft in the McHugh amendment and that somehow it does not protect worker protections under title V. That is wrong. It does. We have heard, for instance, that the merit system principles are optional. They are not. They are guaranteed in this bill and in the amendment.

The whistleblower protections are guaranteed. Political cronyism is not allowed. In fact, all the language prohibiting political coercion is absolutely in this legislation, explicitly. Veterans' preferences are not eliminated. They are guaranteed. Annual leave, sick leave is totally guaranteed and protected. Diversity hiring is guaranteed. Nepotism prohibition, I have heard that is not in the bill. It is. It is in the bill. It is guaranteed. Arbitrary dismissals are not permitted. It is guaranteed that there is protection against arbitrary dismissals, and finally, health insurance and other retirement benefits are absolutely guaranteed in this legislation.

Mr. Chairman, the Quinn amendment improves, perfects an underlying piece of legislation which gives the President the flexibility he will need to adequately protect our homeland. I strongly support the underlying bill. I support the gentleman from New York's (Mr. QUINN) amendment, and I hope my colleagues will support it as well on a bipartisan basis.

Mr. WAXMAN. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, let me tell my colleagues what this does not do. The gentleman from Ohio (Mr. PORTMAN) tried to make us think that civil servants were going to be protected. Well, if an annual cost-of-living is going to other employees, there is no guarantee that employees working in this Department will get it. Nor would they be guaranteed the locality pay increases to offset the higher cost of living. The employee is also not protected against the Department if it engaged in unfair labor practices, such as coercing employees or discriminating against employees who assert their collective bargaining right. Rights are not restored. They are not protected anymore.

The employees are at the mercy of the Department, and, in fact, if an agency wanted to take an adverse action against an employee, it does not even have to give them, as existing law, 30 days notice and 7 days to respond, and then if there is an adverse action taken against the employees, there is no provision to give them the right to appeal.

These are current rights that are being taken away, and the gentleman from Ohio (Mr. PORTMAN) does not restore those rights.

Mr. QUINN. Mr. Chairman, could I inquire as to the amount of time remaining.

The CHAIRMAN pro tempore (Mr. SUNUNU). The gentleman from New York (Mr. QUINN) has 30 seconds remaining and the right to close. The gentleman from California (Mr. WAXMAN) has 5½ minutes remaining.

Mr. QUINN. Mr. Chairman, I reserve my time.

Mr. WAXMAN. Mr. Chairman, I yield 1 minute to the gentleman from Maine (Mr. ALLEN).

Mr. ALLEN. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise in strong opposition to the Quinn amendment which weakens the already weak civil service provisions of the underlying bill. Federal employees want more than the right to consult with their employers. They want to be partners with the government in the effort to defend our Nation. Workplace rights for employees will not undermine homeland security. After all, if the first responders, the heroes of September 11, can belong to unions and enjoy workplace protections, surely the staff of the Department of Homeland Security can do the same.

Flexibility and consultation rights, with these words, the Republican majority puts lipstick on their attack on existing civil service and collective bargaining rights of Federal employees. If this new Department is to succeed, Federal employees will make it work. We should treat these professionals with the respect they deserve. Defeat the Quinn amendment and support the Waxman-Frost amendment.

Mr. WAXMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentleman for yielding me the time.

Let me offer to say to the gentleman from New York (Mr. QUINN), a good friend, I appreciate the good faith and the good intentions that may be behind the offering of this amendment, but let me, Mr. Chairman, suggest what we are actually seeing here in contrast to what we are supposed to be doing in a bipartisan effort to pass homeland security, and that is, that on this floor today over the last hour, we have seen a change in the method or either the focus of this legislation.

We are supposed to be fighting terrorism, Mr. Chairman. We are now fighting workers, and the reason why I say that is because we are offering legislation contrary to the Frost-Waxman amendment that really implodes longstanding commitments and obligations and responsibilities to the working people of America.

This bill impacts negatively our Federal firefighters, our Federal law enforcement, our military personnel. Is that what we want to say to those first responders, that we do not care about their working rights? That is what this consultation amendment does because it does not allow negotiation.

The reason why I know this House bill poses difficulty for me is because in the morning's presentation that the administration had that many of us did not secure an invitation to—even though we have responsibilities dealing with homeland security, the administration said pointedly that they did not like the other body's bill, why—because the other body had a bill that was fair, that recognized that the thrust of homeland security should be fighting terrorism and not American workers.

I do not believe that disallowing the rights that workers have makes us more secure. I am insulted for this bill to suggest that Americans, when challenged by foreign terroristic acts or domestic terroristic acts, will not come together, will not give up rights and stand united with this administration.

Why are we destroying workers' rights, Mr. Chairman? This is what this amendment does. I would ask my colleagues to defeat it and vote for Frost-Waxman.

Mr. WAXMAN. Mr. Chairman, we have no other requests for time, and we will yield back the balance of our time.

Mr. QUINN. Mr. Chairman, I yield myself the remaining time.

Simply in closing, I would say this. I have spent a career here in the Congress, 10 years now fighting for workers' rights, fighting for labor unions and working families across the country, and I would not be here this morning offering the amendment if I did not think it helped the working families of this country and it helps our President protecting the country, those same workers, not exclusive of each other, but the same people all at the same time, and I would urge, on those merits and the help of a lot of friends in the House, passage.

Mr. QUINN. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from New York (Mr. QUINN).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. QUINN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 227, noes 202, not voting 4, as follows:

[Roll No. 358]

AYES—227

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stump

Sullivan
Sununu
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—202

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—4

Blunt
Kaptur
Meehan
Radanovich

□ 1250

Messrs. CUMMINGS, BLAGOJEVICH, JOHN, and JEFFERSON and Ms. ROYBAL-ALLARD changed their vote from ''aye'' to ''no.''

Mr. TOM DAVIS of Virginia changed his vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mr. SUNUNU). It is now in order to consider amendment No. 20 printed in House Report 107–615.

AMENDMENT NO. 20 OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 20 offered by Mr. WAXMAN: Strike section 761 and insert the following:

SEC. 761. HUMAN RESOURCES MANAGEMENT.

(a) AUTHORITY TO ADJUST PAY SCHEDULES.—

(1) IN GENERAL.—Notwithstanding any provision of title 5, United States Code, the Secretary may, under regulations prescribed jointly with the Director of the Office of Personnel Management, provide for such adjustments in rates of basic pay as may be necessary to address inequitable pay disparities among employees within the Department performing similar work in similar circumstances.

(2) APPLICABILITY.—No authority under paragraph (1) may be exercised with respect to any employee who serves in—

(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5.

(3) LIMITATIONS.—Nothing in this subsection shall constitute authority—

(A) to fix pay at a rate greater than the maximum amount of cash compensation allowable under section 5307 of title 5, United States Code, in a year; or

(B) to exempt any employee from the application of such section 5307.

(4) SUNSET PROVISION.—Effective 5 years after the effective date of this Act, all authority to issue regulations under this subsection (including regulations which would modify, supersede, or terminate any regulations previously issued under this subsection) shall cease to be available.

(b) SUSPENSION AND REMOVAL OF EMPLOYEES IN THE INTERESTS OF NATIONAL SECURITY.—The Secretary shall establish procedures consistent with section 7532 of title 5, United States Code, to provide for the suspension and removal of employees of the Department when necessary in the interests of national security or homeland security. Such regulations shall provide for written notice, hearings, and review similar to that provided by such section 7532.

(c) DEMONSTRATION PROJECT.—

(1) IN GENERAL.—Not later than 5 years after the effective date of this Act, the Secretary shall submit to Congress a proposal for a demonstration project, the purpose of which shall be to help attain a human resources management system which in the judgment of the Secretary is necessary in order to enable the Department best to carry out its mission.

(2) REQUIREMENTS.—The proposal shall—

(A) ensure that veterans' preference and whistleblower protection rights are retained;

(B) ensure that existing collective bargaining agreements and rights under chapter 71 of title 5, United States Code, remain unaffected;

(C) ensure the availability of such measures as may be necessary in order to allow the Department to recruit and retain the best persons possible to carry out its mission;

(D) include one or more performance appraisal systems which shall—

(i) provide for periodic appraisals of the performance of covered employees;

(ii) provide for meaningful participation of covered employees in the establishment of employee performance plans; and

(iii) use the results of performance appraisals as a basis for rewarding, reducing in grade, retaining, and removing covered employees; and

(E) contain recommendations for such legislation or other actions by Congress as the Secretary considers necessary.

(3) DEFINITION OF A COVERED EMPLOYEE.—For purposes of paragraph (2)(D), the term ''covered employee'' means a supervisor or management official (as defined in paragraphs (10) and (11) of section 7103(a) of title 5, United States Code, respectively) who occupies a position within the Department which is in the General Schedule.

(d) MERIT SYSTEM PRINCIPLES.—All authorities under subsections (a) and (b) shall be exercised in a manner, and all personnel management flexibilities or authorities proposed under subsection (c) shall be, consistent with merit system principles under section 2301 of title 5, United States Code.

(e) REMEDIES FOR RETALIATION AGAINST WHISTLEBLOWERS.—

Section 7211 of title 5, United States Code, is amended—

(1) by inserting ''(a)'' before ''The right''; and

(2) by adding at the end the following:

''(b) Any employee aggrieved by a violation of subsection (a) may bring a civil action in the appropriate United States district court, within 3 years after the date on which such violation occurs, against any agency, organization, or other person responsible for the violation, for lost wages and benefits, reinstatement, costs and attorney fees, compensatory damages, and equitable, injunctive, or any other relief that the court considers appropriate. Any such action shall, upon request of the party bringing the action, be tried by the court with a jury.

''(c) The same legal burdens of proof in proceedings under subsection (b) shall apply as under sections 1214(b)(4)(B) and 1221(e) in the case of an alleged prohibited personnel practice described in section 2302(b)(8).

''(d) For purposes of this section, the term 'employee' means an employee (as defined by section 2105) and any individual performing services under a personal services contract with the Government (including as an employee of an organization).''.

(f) NONREDUCTION IN PAY.—Nothing in this section shall, with respect to any employee who is transferred to the Department pursuant to this Act, constitute authority to reduce the rate of basic pay (including any comparability pay) payable to such employee below the rate last payable to such employee before the date on which such employee is so transferred.

In section 812(e)(1), strike ''Act; and'' and insert the following: ''Act, except that the rules, procedures, terms, and conditions relating to employment in the Transportation Security Administration before the effective date of this Act may be applied only to the personnel employed by or carrying out the functions of the Transportation Security Administration.''.

In section 812(e)(2), strike ''except'' and insert ''Except''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from California (Mr. WAXMAN) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Chairman, I yield myself 3 minutes and 30 seconds.

I rise in support of the Waxman-Frost amendment on Civil Service. This amendment strikes the flawed section 761 which was reported out of the Select Committee regarding civil service and replaces it with the civil service language reported by the Committee on Government Reform with unanimous bipartisan support.

Our Nation has the most honest, most professional civil service in the world, and the reason is our civil service laws. These civil service laws prevent abuses such as patronage, they guarantee important rights such as appeals to the Merit Systems Protection Board, and they provide for collective bargaining rights.

The President's proposal eliminated these essential protections, but the Committee on Government Reform and the gentleman from Indiana (Chairman BURTON) crafted an amendment that restored the protections of title V to employees of this new Department. His amendment received unanimous bipartisan support from the Members of the committee, and we had other civil service amendments offered by the gentlewoman from the District of Columbia (Ms. NORTON) on preserving pay, the gentleman from Massachusetts (Mr. TIERNEY) for ensuring that TSA procedures do not apply agency-wide, the gentleman from Ohio (Mr. KUCINICH) offered an amendment to protect whistleblowers, and these were all adopted by unanimous bipartisan support.

The amendment I am offering right now is simply the amendment of the gentleman from Indiana (Mr. BURTON) as amplified by the other amendments, adopted without dissent in our committee.

As currently drafted in the bill before us, section 761 does not guarantee Federal employees basic civil service protections. The section preserves some rights. It is an improvement over the President's proposal, but it specifically allows the secretary to waive any of the provisions of chapters 43, 51, 53, 71, 75 and 77 of title V. This is wrong. Civil servants whose responsibilities will be the same today if they are transferred into this new department as they were before the transfer should not lose their civil service protections just because that organizational chart may change.

In essence, the bill before us makes the employees of the new department second-class employees. Degrading the rights of Federal workers in the new Department makes no sense. We want the new department to succeed, but this will not happen if the employees of the new department are stripped of their basic rights.

The Waxman-Frost amendment corrects these problems. It ensures that the basic title V protections apply to the new department, and it does so in exactly the same way that the Committee on Government Reform recommended unanimously. The Committee on Government Reform is the committee of jurisdiction on civil service and public employees' issues.

Mr. Chairman, I am asking, and it is quite rare that I would do this, for the Members of this House to support the amendment of the gentleman from Indiana (Mr. BURTON) that we all supported in committee.

Mr. Chairman, I reserve the balance of my time.

Mr. PORTMAN. Mr. Chairman, I rise in opposition to the Waxman amendment.

The CHAIRMAN. The gentleman from Ohio (Mr. PORTMAN) is recognized for 10 minutes.

Mr. PORTMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from California (Mr. WAXMAN) called this the amendment of the gentleman from Indiana (Mr. BURTON), and I think it is only appropriate that the gentleman from Indiana (Mr. BURTON) can explain his position on this amendment and the underlying bill.

Just to make one point, though, what we are talking about here is an underlying draft that does protect title V. It does provide all of the protections that the gentleman referenced, including patronage protections, whistleblower protections, and the other collective bargaining rights that are guarantee in the underlying bill.

Mr. Chairman, I yield 2½ minutes to the gentleman from Indiana (Mr. BURTON), the chairman of the Committee on Government Reform.

Mr. BURTON of Indiana. Mr. Chairman, first let me say that my good friend, the gentleman from California (Mr. WAXMAN), and I did work very closely along with the Democrats on the committee to come up with a product that we can all be proud of, and it did pass by a vote of 30–1.

While I do have some pride of authorship, I believe that the Portman amendment goes a little further and does a little better job than I did in the manager's amendment.

First, in the committee bill we maintained whistleblower protections, veterans' preferences, and we retained collective bargaining rights, not that we thought the administration would in some way violate those things, but we thought they should be in the bill. We wanted to reassure the Federal workforce.

But the Portman language goes even further. It provides against political retaliation regarding the Hatch Act. It retains protections against racial discrimination and gender discrimination. It protects health care benefits, retirement benefits, and it protects workers compensation. Those are things that ought to be in the bill that are not.

Now, putting this department together is a monumental undertaking. We are talking about taking parts of 22 different departments and bringing them together to protect this Nation. It is not an easy job, and the administration is going to have a difficult time getting all of this accomplished, and they have to have flexibility wherever possible in order to make this whole thing work.

One of the things that concerned me was protections against those who may be set aside because there is a possibility there is a national security concern about these people and their jobs and what they may or may not be doing. For that reason, I supported the Quinn amendment that provides due process for those individuals. That was not in the manager's mark or the original bill, but it is now.

I know that Federal employees are very nervous and I know that change is hard and it causes anxiety. But I believe the administration is going to be fair. I believe we are putting as many protections as possible in this legislation, and we are still providing the flexibility that the President needs.

□ 1300

We are talking about protecting every single American, and the President is going to have to have flexibility. I believe that the bill that we passed in the committee, much of which has been talked about here on the floor, does that; and I believe the Portman amendment even improves upon that. I would just like to say that I support the Portman amendment. I did before the Committee on Rules, and for that reason I hope we will defeat this amendment that would take that out.

Mr. WAXMAN. Mr. Chairman, I yield myself such time as I may consume.

The improvements in the bill are improvements not from the language of the Committee on Government Reform but from the original bill introduced by the President. What we need to do is restore all of the provisions that were adopted by the Committee on Government Reform.

Mr. Chairman, I yield 3½ minutes to the gentleman from Texas (Mr. FROST), the cosponsor of this amendment.

(Mr. FROST asked and was given permission to revise and extend his remarks.)

Mr. FROST. I thank the gentleman for yielding me this time.

Mr. Chairman, the Waxman-Frost amendment preserves the national security flexibility the President needs without sacrificing the current civil service protections for the new Department. It strikes from the bill a needlessly partisan attack on the civil service system and replaces it with the bipartisan compromise adopted unanimously by the House Committee on Government Reform, the committee with original jurisdiction and expertise on civil service.

The Waxman-Frost amendment is essential because the underlying bill and the Quinn amendment just agreed to contain language that actually turns back the clock on important civil service protections. That may be crucial to the ideology of some on the other side of the aisle, but it will harm the effectiveness of the new Department.

Throughout this process, Mr. Chairman, some Republican leaders have thrown around attacks on worker protections in current law. The truth is the civil service system protects Americans against a ''spoils'' system that would allow politicians to reward their friends and supporters with important government jobs. And it is crucial that the Department of Homeland Security be staffed by professionals, not by the cronies of whichever party happens to hold the White House.

Mr. Chairman, Democrats and Republicans on the Committee on Government Reform recognized this fact, so they voted unanimously to protect the fundamental title V protections of employees in the new Department.

Mr. Chairman, much has been said about flexibility. I want to assure the House that the Waxman-Frost amendment ensures that the Department of Homeland Security has the flexibility to effectively and efficiently carry out its mission to protect the American people.

Mr. Chairman, our Federal employees are our most valuable asset in the Department of Homeland Security. They are our first line of defense. We are entrusting our safety to them because we know they will rise to the challenge and serve the Nation well. So it is critical that the new Department hires and retains the best and the brightest employees to protect our Nation from terrorism. The question is, do we treat these people with the respect and professionalism they deserve? Or do we undermine the morale of these employees, and risk compromising the mission of the new Department, by gutting their most fundamental workplace rights?

I urge Republicans to join Democrats in supporting worker protections and the professionalism of the Department of Homeland Security. Support the Waxman-Frost amendment.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Oklahoma (Mr. WATTS), a member of the Select Committee on Homeland Security who has been a leader on protecting the homeland actually long before September 11 and has added considerable value to the work of the select committee and to the debate today.

Mr. WATTS of Oklahoma. I thank my friend from Ohio for yielding me this time.

Mr. Chairman, it is interesting that a terrorist can attack us in a matter of 5 minutes, and then we have got these antiquated systems that it could take us 5 months in order to respond. What the President is asking is for Congress in this new agency to give him the latitude and flexibility to defend our homeland and to do the necessary things in order to respond to these terrorist attacks.

Friends, we are in a new day. I have heard all these things, and I know the gentleman from Ohio (Mr. PORTMAN) talked about this a little earlier, but I think this is worth repeating to just kind of denounce some of the myths and some of the accusations that have been thrown around.

They say the merit system principles, in the new bill that they are optional. The merit system principles are guaranteed.

Whistleblower protections. They say they are eliminated. They are guaranteed in the new bill.

Political cronyism is allowed, they say. There is a prohibition on political coercion and favoritism in our bill. We have got guarantees there.

Veterans preference, they say it is eliminated. They are guaranteed in the legislation.

Sick and annual leave. Unprotected, they say. Sick and annual leave, guaranteed.

Diversity hiring, they say it is optional in this bill. Not true. Minority recruitment and reporting under title V is guaranteed.

Nepotism prohibition is guaranteed. Protection against arbitrary dismissal, guaranteed in this legislation. Health insurance, FEHBP, guaranteed in this legislation.

The President is saying, give me the flexibility and latitude to defend our homeland, and we can still guarantee all these things. Employees will not lose any of these benefits. They are still in place. But give the President the latitude and the flexibility to defend our kids and our grandkids, our families.

Friends, we are in a new world. We need to think outside of the box without thinking outside of the Constitution. This is the right thing to do. Vote down the Waxman-Frost amendment and support the legislation.

Mr. WAXMAN. Mr. Chairman, I yield 1 minute to the gentleman from Illinois (Mr. DAVIS).

(Mr. DAVIS of Illinois asked and was given permission to revise and extend his remarks.)

Mr. DAVIS of Illinois. Mr. Chairman, I believe that preserving democracy is as important as fighting terrorism. In a democracy, one set of rights ends where the next set begins. We are hearing this business that there is not enough flexibility, that the Secretary cannot deal with individuals who are not prepared to do their job. Absolutely false. Section 7532 of title V provides: ''Notwithstanding other statutes, the head of an agency may suspend without pay an employee of his agency when he considers that action necessary in the interests of national security.'' You cannot be much clearer than that in terms of the ability of the Secretary to function.

The real deal is that we are suspending individual rights and protections. The Waxman-Frost amendment restores those protections. And if we want the agency to function, vote for the amendment.

Mr. PORTMAN. Mr. Chairman, I yield 1½ minutes to the gentleman from Kansas (Mr. RYUN), who has been at the forefront of these issues.

Mr. RYUN of Kansas. Mr. Chairman, the new Department of Homeland Security will be on the front lines in the war on terrorism. The people who will fulfill the Department's mission must be highly qualified, motivated, and effective. In attracting and keeping this team, we will be competing against the private sector. Recognizing these challenges, the President asked the Congress to give him the maximum flexibility in putting together and managing the Department's workforce.

The legislation crafted by the select committee gives the President the flexibility he requested while at the same time preserving a number of important employment protections. This approach represents what is best for both the Nation's security and those who will serve in this new Department.

First of all, the bill allows the Secretary to develop a performance management program that effectively links employee performance with the Department's objectives and mission. Secondly, the Secretary will have the freedom to use a broad approach in making job classifications and will not be bound by our current system that confines Federal workers to 15 artificial grades. Additionally, the Secretary will not be restricted by the current rigid pay system. Rather, the Secretary will be able to meaningfully reward performance.

We are engaged in a different kind of war. We face a new enemy. We must adapt to meet this new threat. This bill ensures that we will adapt to overcome these new threats. I urge my colleagues to support the select committee's bill and vote against Frost-Waxman.

Mr. WAXMAN. Mr. Chairman, I yield 1 minute to the gentleman from Ohio (Mr. KUCINICH), a very important member of our committee.

Mr. KUCINICH. Mr. Chairman, whistleblower rights are workers' rights. No worker should lose his or her job for exposing waste, cover-up or lies of their supervisors. It is ironic that in a bill designed to fight terrorism, we have a provision designed to terrorize workers. Congress must be able to receive the insights of security guards, border patrol agents, policemen, military and others who may need to expose security weaknesses to Congress. Therefore, the Waxman-Frost amendment improves the law, protecting whistleblowers to ensure the security of our Nation.

It would apply remedies, the right to a civil action in U.S. district court. Remedies available would include lost wages and benefits, reinstatement, costs and attorney fees, compensatory damages and equitable, injunctive or any other relief that the court considers appropriate.

If we really want our Nation to be secure, then let us make sure that the workers who are a part of homeland security are going to be protected when they do the right thing.

Mr. PORTMAN. Mr. Chairman, we have one more speaker to close. Who has the right to close?

The CHAIRMAN pro tempore (Mr. BONILLA). The gentleman from Ohio (Mr. PORTMAN) has the right to close.

PARLIAMENTARY INQUIRY

Mr. WAXMAN. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman will state it.

Mr. WAXMAN. How is it that whenever the amendment is offered on the other side, they get the right to close, and when an amendment is offered on our side, they still get the right to close? When they propose it they close, and when they oppose it they close. Is it a rule or does it just simply go to the majority party?

The CHAIRMAN pro tempore. The manager of the bill in opposition to the amendment has the right to close.

Mr. WAXMAN. Mr. Chairman, that has not been the way that the House has proceeded up to now, because I have been managing opposition to a number of amendments, and I have been told the other side has the right to close on those amendments because they are offering the amendment.

The CHAIRMAN pro tempore. The Member of the committee, the select committee in this case as the only reporting committee opposing ane amendment always has the right to close.

Mr. WAXMAN. I see. I thank the Chair for the clarification.

The CHAIRMAN pro tempore. It is consistent.

Mr. WAXMAN. Mr. Chairman, I yield 30 seconds to the gentleman from Massachusetts (Mr. TIERNEY), who played a very important role in the development of this bill in our committee.

Mr. TIERNEY. I thank the gentleman for yielding me this time.

Mr. Chairman, our colleague from Oklahoma spoke a few moments ago about civil service laws meaning it would take 5 months for a response. It did not take the first responders in New York and Pennsylvania and Virginia 5 months to respond on September 11. It took minutes to respond. It has taken this administration 5 months, or more than 5 months to fulfill its promises to close up the cockpits of airplanes securely and to screen luggage and baggage for passengers.

Civil service protections are not the issue in this homeland security bill. We need to encourage good employees, not treat them as second-class employees. We need to give people an understanding that they are important. This administration and the majority, we should have great concern that they choose a homeland security bill to take on an ideological effort against employees.

Mr. WAXMAN. Mr. Chairman, I yield 30 seconds to the gentlewoman from Maryland (Mrs. MORELLA).

Mrs. MORELLA. Mr. Chairman, I rise today in strong support of the Waxman-Frost amendment. It is the exact language that the Committee on Government Reform unanimously adopted. It makes crystal clear that all Federal employees transferred to the new Department will continue to have full title V civil service rights and protections.

While I appreciate that the gentleman from Ohio (Mr. PORTMAN) offered better language in the select committee than what the administration had previously proposed, his language would still allow the new Secretary and the Director of OPM to waive numerous sections of title V. We need to create a new Department that demonstrates the value we place in civil servants and not one that insinuates our distrust of them.

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Mr. WAXMAN. Mr. Chairman, I yield the balance of my time to the gentlewoman from California (Ms. PELOSI), the very distinguished whip.

Ms. PELOSI. Mr. Chairman, I thank the gentleman for yielding me time and for his outstanding leadership on protecting the civil service. We have a civil service for a reason. It has served our country, indeed, it serves democracy well. We are an example to the world. As we go forward to reduce risk and to protect the American people, we should not do so at the expense of a democratic institution like civil service.

One of the previous speakers said that we are competing with the private sector so we need this flexibility. We are competing with the private sector, and that is precisely why we need to respect our workers and give them the civil service protection that President Bush did in the mark that the President sent to this body.

Support the President's bill. Support the Waxman amendment.

The CHAIRMAN pro tempore (Mr. BONILLA). All time has expired for the gentleman from California (Mr. WAXMAN).

Mr. PORTMAN. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, we face an unpredictable and unprecedented agile and deadly threat. It is not the Cold War any more, it is not about which side has the most muscle mass, it is not about what the biggest department might be. It is about agility. It is about being able to meet the enemy's agility with our own agility.

As any athlete will tell you, including the gentleman from Kansas (Mr. RYUN) who just spoke, you cannot be agile without being flexible first. The President, and Presidents after him, need this flexibility to be sure that this Department works. We simply cannot work with the 1950s era bureaucratic personnel practices that would otherwise be available to him, and, again, to future Presidents and future Secretaries.

The Waxman-Frost amendment protects the antiquated civil service system in a way that blunts this Department's ability to modernize, to consolidate, to streamline, to bring together 22 different personnel systems into one team.

For instance, the amendment prohibits the Secretary from using innovative compensation plans like incentive pay. There is nothing more important than having a work force with high morale that is focused on a team effort to combat terrorism. This is all about human capital and the workforce. If you cannot provide the kind of incentive pay that the President and the Secretary want to provide to people who are performing, you are not going to have that kind of morale.

It keeps the new agency stuck in the mud of over 100 pay grades, arcane job classifications that make no sense whatsoever, and performance appraisals that are indifferent to the mission of this agency. You want to align the performance with the mission.

On hiring, let me raise a specific example, because it was mentioned earlier that it took 5 seconds for a terrorist to commit an act, or 5 minutes, and 5 months to respond. Here is a specific example of that.

It takes 5 months, conceivably, to hire a bioterrorism expert under current civil service rules, whereas it only takes 5 minutes or 5 seconds to commit that bioterrorist act. Why? Developing the written job description, personnel office, classification, conducting job analysis, developing recruiting strategy, announcing the position, rate application, rank-qualified applications, refer the top three qualified to the interviews, conduct interviews, and so on. Five months. That is a specific example of where this Department otherwise would not have the agility to respond.

Also the Secretary could have a bureaucratic nightmare trying to decide who is a security risk and who is not. If you want to fire somebody under the current rules, it can take, yes, weeks and months. Red tape comes first; homeland security comes second.

The Quinn amendment guaranteed that in the appeals process, that due process will be protected and the Merit System Protection Board would be used. The Quinn amendment made sure people would have that appeal. But matters of national security concern, where there needs to be a severance, must be disposed of immediately when national security is at risk.

It also does not allow the Secretary to rationalize all these different departments coming. Again, 22 different personnel systems. There needs to be one unified, flexible system. Not only does the Waxman-Frost language not provide any needed flexibility, it actually does not provide the ability of the Secretary to develop a human resources system at all. All it says is, unbelievably, that the new Department has to propose to Congress a new personnel system and then Congress has to work its will on it. How long would that take? I do not know. It would go through the committees, it would go through the House, it would go through the Senate. Other agencies and departments do not even have to go through

that process. All it does, this amendment, is allow the Department to propose a system, not even to develop a system.

We want this Department set up and ready to go immediately, and not when we finally get around to it here in Congress.

Finally, while the Waxman-Frost amendment does not offer the flexibility that is absolutely needed, it also does not provide the same civil service protections that the underlying bill provides. Yes, it mentions whistleblowers and veterans, but others it does not mention, including racial discrimination, thrift savings, and so on.

Mr. Chairman, I ask my colleagues to give the President the flexibility he needs to protect the workers' rights at the same time. Support the underlying bill and vote no on the Waxman-Frost amendment.

Mr. RODRIGUEZ. Mr. Chairman, I rise today in strong support of workers' rights. As we meet today to engage in the important work of enacting legislation which would guide the creation of the new Department of Homeland Security (DHS), H.R. 5005, it is disconcerting that we are also put in a position to introduce an amendment to protect the rights of workers who will engage in the important work of protecting our country from terrorists attacks. The Waxman-Frost amendment will ensure that workers are provided full civil service protections as they engage in the important work of securing our homeland.

As we move to reorganize and consolidate our efforts to ensure a strong and efficient DHS it is imperative that we not place in jeopardy the rights of its workers. H.R. 5005, as amended within the Select Committee on Homeland Security, would allow the DHS Secretary to have complete control over pay and classification systems, including whether or not to provide DHS workers with an annual Congressionally-passed pay raise, whether to remove workers from the locality pay system established in 1990, and how to establish the initial pay rate for a particular occupation.

Essentially, we would be asking federal workers, already involuntarily transferred to a new agency, to be completely left at the mercy of an agency head who would not be bound by the pay system under which the employees had previously worked. This places in danger DHS's ability to retain its workforce and to provide for the adequate worker protections available to all civil service employees. This is wrong and dangerous especially given the great need for DHS to be successful. If in the purpose of DHS is to ensure the physical security of America, then included in its charge should also be the economic security of its workforce. Stripping the workforce of their civil service protections, would put in danger the success of this department and ultimately the security of our country.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from California (Mr. WAXMAN).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. WAXMAN. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California (Mr. WAXMAN) will be postponed.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 21 printed in House Report 107–615.

AMENDMENT NO. 21 EN BLOC OFFERED BY MR. ARMEY

Mr. ARMEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 21 offered by Mr. ARMEY:

Page 13, line 20, strike ''The Secretary'' and insert ''With respect to homeland security, the Secretary''.

Page 22, line 13, strike ''Under the direction of the Secretary, developing'' and insert ''Developing''.

Page 24, lines 10 to 11, strike ''and to other areas of responsibility described in section 101(b)''.

Page 25, lines 9 to 10, strike ''and to other areas of responsibility described in section 101(b)''.

Page 24, line 12, strike ''concerning infrastructure or other vulnerabilities'' and insert ''concerning infrastructure vulnerabilities or other vulnerabilities''.

Page 25, lines 11 to 12, strike ''concerning infrastructure or other vulnerabilities'' and insert ''concerning infrastructure vulnerabilities or other vulnerabilities''.

Page 28, line 14, strike ''(1) and (2)'' and insert ''(2) and (3)''.

Page 19, line 16, strike ''Director of Homeland Security'' and insert ''President''.

Page 43, line 11, strike ''the Congress'' and insert ''the appropriate congressional committees''.

Page 142, line 2, insert ''including'' before ''interventions''.

Page 142, line 4, insert a comma after ''asters''.

In section 811(f)(1)—

(1) insert ''or'' before ''Harbor''; and

(2) strike ''or Oil Spill Liability Trust Fund''.

In section 205(1), strike ''information'' the first place it appears.

In section 205(3) insert ''and regulatory'' after ''legislative''.

In section 302, strike paragraph (1) and redesignate the subsequent paragraphs in order as paragraphs (1) and (2).

In section 305(d), strike ''section 302(2)(D)'' and insert ''302(1)(D)''.

Strike section 906, and redesignate sections 907 through 913 as sections 906 through 912, respectively.

In section 301—

(1) in paragraph (8), strike ''homeland security, including'' and all that follows and insert ''homeland security; and'';

(2) strike paragraph (9); and

(3) redesignate paragraph (10) as paragraph (9).

In title III, add at the end the following section:

SEC. 309. TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE AND SUPPORT INNOVATIVE SOLUTIONS TO ENHANCE HOMELAND SECURITY.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish and promote a program to encourage technological innovation in facilitating the mission of the Department (as described in section 101).

(b) ELEMENTS OF PROGRAM.—The program described in subsection (a) shall include the following components:

(1) The establishment of a centralized Federal clearinghouse for information relating to technologies that would further the mission of the Department for dissemination, as appropriate, to Federal, State, and local government and private sector entities for additional review, purchase, or use.

(2) The issuance of announcements seeking unique and innovative technologies to advance the mission of the Department.

(3) The establishment of a technical assistance team to assist in screening, as appropriate, proposals submitted to the Secretary (except as provided in subsection (c)(2)) to assess the feasibility, scientific and technical merits, and estimated cost of such proposals, as appropriate.

(4) The provision of guidance, recommendations, and technical assistance, as appropriate, to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in paragraph (1) or (2).

(5) The provision of information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would enhance homeland security, including information relating to Federal funding, regulation, or acquisition.

(c) MISCELLANEOUS PROVISIONS.—

(1) IN GENERAL.—Nothing in this section shall be construed as authorizing the Secretary or the technical assistance team established under subsection (b)(3) to set standards for technology to be used by the Department, any other executive agency, any State or local government entity, or any private sector entity.

(2) CERTAIN PROPOSALS.—The technical assistance team established under subsection (b)(3) shall not consider or evaluate proposals submitted in response to a solicitation for offers for a pending procurement or for a specific agency requirement.

(3) COORDINATION.—In carrying out this section, the Secretary shall coordinate with the Technical Support Working Group (organized under the April 1982 National Security Decision Directive Numbered 30).

In title II, at the end of subtitle A add the following:

SEC. . ENHANCEMENT OF NON-FEDERAL CYBERSECURITY.

In carrying out the responsibilities under section 201, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) as appropriate, provide to State and local government entities, and upon request to private entitites that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

At the end of title II add the following:

SEC. . NET GUARD.

The Under Secretary for Information Analysis and Infrastructure Protection may establish a national technology guard, to be known as ''NET Guard'', comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

Strike section 814.

In section 761—

(1) in the proposed section 9701(b)(3)(D) strike ''title'' and insert ''part''; and

(2) in the proposed section 9701(c), strike ''title'' and insert ''part''.

At the end of title VII, insert the following new section:

SEC. 774. SENSE OF CONGRESS REAFFIRMING THE CONTINUED IMPORTANCE AND APPLICABILITY OF THE POSSE COMITATUS ACT.

(a) FINDINGS.—The Congress finds the following:

(1) Section 1385 of title 18, United States Code (commonly known as the ''Posse Comitatus Act''), prohibits the use of the Armed Forces as a posse comitatus to execute the laws except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.

(2) Enacted in 1878, the Posse Comitatus Act was expressly intended to prevent United States Marshals, on their own initiative, from calling on the Army for assistance in enforcing Federal law.

(3) The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law.

(4) Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed Forces is required to fulfill the President's obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

(5) Existing laws, including chapter 15 of title 10, United States Code (commonly known as the ''Insurrection Act''), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

(b) SENSE OF CONGRESS.—The Congress reaffirms the continued importance of section 1385 of title 18, United States Code, and it is the sense of the Congress that nothing in this Act should be construed to alter the applicability of such section to any use of the Armed Forces as a posse comitatus to execute the laws.

Amend the heading for section 766 to read as follows:

SEC. 766. REGULATORY AUTHORITY AND PREEMPTION.

In section 766—

(1) before the first sentence insert the following: ''(a) ''REGULATORY AUTHORITY.—''; and

(2) at the end of the section add the following:

(b) PREEMPTION OF STATE OR LOCAL LAW.—Except as otherwise provided in this Act, this Act preempts no State or local law, except that any authority to preempt State or local law vested in any Federal agency or official transferred to the Department pursuant to this Act shall be transferred to the Department effective on the date of the transfer to the Department of that Federal agency or official.

Page 31, after line 5, insert the following:

SEC. 207. INFORMATION SECURITY.

In carrying out the responsibilities under section 201, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) as appropriate, provide to State and local government entities, and, upon request, to private entities that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and with other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

At the end of the bill add the following new title:

TITLE XI—INFORMATION SECURITY

SEC. 1101. INFORMATION SECURITY.

(a) SHORT TITLE.—The amendments made by this title may be cited as the ''Federal Information Security Management Act of 2002''.

(b) INFORMATION SECURITY.—

(1) IN GENERAL.—Subchapter II of chapter 35 of title 44, United States Code, is amended to read as follows:

''SUBCHAPTER II—INFORMATION SECURITY

''§ 3531. Purposes

''The purposes of this subchapter are to—

''(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

''(2) recognize the highly networked nature of the current Federal computing environment and provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;

''(3) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

''(4) provide a mechanism for improved oversight of Federal agency information security programs;

''(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

''(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.''.

''§ 3532. Definitions

''(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

''(b) ADDITIONAL DEFINITIONS.—As used in this subchapter—

''(1) the term 'information security' means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

''(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

''(B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

''(C) availability, which means ensuring timely and reliable access to and use of information; and

''(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access;

''(2) the term 'national security system' means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, the function, operation, or use of which—

''(A) involves intelligence activities;

''(B) involves cryptologic activities related to national security;

''(C) involves command and control of military forces;

''(D) involves equipment that is an integral part of a weapon or weapons system; or

''(E) is critical to the direct fulfillment of military or intelligence missions provided that this definition does not apply to a system that is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications);

''(3) the term 'information technology' has the meaning given that term in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401); and

''(4) the term 'information system' means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, and includes—

''(A) computers and computer networks;

''(B) ancillary equipment;

''(C) software, firmware, and related procedures;

''(D) services, including support services; and

''(E) related resources.''.

''§ 3533. Authority and functions of the Director

''(a) The Director shall oversee agency information security policies and practices, by—

''(1) promulgating information security standards under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

''(2) overseeing the implementation of policies, principles, standards, and guidelines on information security;

''(3) requiring agencies, consistent with the standards promulgated under such section 5131 and the requirements of this subchapter, to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—

''(A) information collected or maintained by or on behalf of an agency; or

''(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

''(4) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

''(5) overseeing agency compliance with the requirements of this subchapter, including through any authorized action under section 5113(b)(5) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1413(b)(5)) to enforce accountability for compliance with such requirements;

''(6) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b);

''(7) coordinating information security policies and procedures with related information resources management policies and procedures; and

''(8) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter, including—

''(A) a summary of the findings of evaluations required by section 3535;

''(B) significant deficiencies in agency information security practices;

''(C) planned remedial action to address such deficiencies; and

''(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(e)(7) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).''.

''(b) Except for the authorities described in paragraphs (4) and (7) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.

''§ 3534. Federal agency responsibilities

''(a) The head of each agency shall—

''(1) be responsible for—

''(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

''(i) information collected or maintained by or on behalf of the agency; and

''(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

''(B) complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines, including—

''(i) information security standards promulgated by the Director under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441); and

''(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

''(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;

''(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—

''(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

''(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441) for information security classifications and related requirements;

''(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and

''(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;

''(3) delegate to the agency Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance with the requirements imposed on the agency under this subchapter, including—

''(A) designating a senior agency information security officer who shall—

''(i) carry out the Chief Information Officer's responsibilities under this section;

''(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;

''(iii) have information security duties as that official's primary duty; and

''(iv) head an office with the mission and resources to assist in ensuring agency compliance with this section;

''(B) developing and maintaining an agencywide information security program as required by subsection (b);

''(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3533 of this title, and section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

''(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

''(E) assisting senior agency officials concerning their responsibilities under subparagraph (2);

''(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines; and

''(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions.

''(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3533(a)(5), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—

''(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

''(2) policies and procedures that—

''(A) are based on the risk assessments required by subparagraph (1);

''(B) cost-effectively reduce information security risks to an acceptable level;

''(C) ensure that information security is addressed throughout the life cycle of each agency information system; and

''(D) ensure compliance with—

''(i) the requirements of this subchapter;

''(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

''(iii) minimally acceptable system configuration requirements, as determined by the agency; and

''(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

''(3) subordinate plans for providing adequate information security for networks, facilities, and systems or groups of information systems, as appropriate;

''(4) security awareness training to inform personnel, including contractors and other users of information systems that support the operations and assets of the agency, of—

''(A) information security risks associated with their activities; and

''(B) their responsibilities in complying with agency policies and procedures designed to reduce these risks;

''(5) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

''(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under section 3505(c); and

''(B) may include testing relied on in a evaluation under section 3535;

''(6) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

''(7) procedures for detecting, reporting, and responding to security incidents, including—

''(A) mitigating risks associated with such incidents before substantial damage is done; and

''(B) notifying and consulting with, as appropriate—

''(i) law enforcement agencies and relevant Offices of Inspector General;

''(ii) an office designated by the President for any incident involving a national security system; and

''(iii) any other agency or office, in accordance with law or as directed by the President; and

''(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

''(c) Each agency shall—

''(1) report annually to the Director, the Committees on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate authorization and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this subchapter, including compliance with each requirement of subsection (b);

''(2) address the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—

''(A) annual agency budgets;

''(B) information resources management under subchapter 1 of this chapter;

''(C) information technology management under the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.);

''(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

''(E) financial management under chapter 9 of title 31, and the Chief Financial Officers Act of 1990 (31 U.S.C. 501 note; Public Law 101–576) (and the amendments made by that Act);

''(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and

''(G) internal accounting and administrative controls under section 3512 of title 31, United States Code, (known as the 'Federal Managers Financial Integrity Act'); and

''(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—

''(A) as a material weakness in reporting under section 3512 of title 31, United States Code; and

''(B) if relating to financial management systems, as an instance of a lack of substantial compliance under the Federal Financial

Management Improvement Act (31 U.S.C. 3512 note).

''(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, shall include as part of the performance plan required under section 1115 of title 31 a description of—

''(A) the time periods, and

''(B) the resources, including budget, staffing, and training,

that are necessary to implement the program required under subsection (b).

''(2) The description under paragraph (1) shall be based on the risk assessments required under subsection (b)(2)(1).

''(e) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

''§ 3535. Annual independent evaluation

''(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such program and practices.

''(2) Each evaluation by an agency under this section shall include—

''(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

''(B) an assessment (made on the basis of the results of the testing) of compliance with—

''(i) the requirements of this subchapter; and

''(ii) related information security policies, procedures, standards, and guidelines; and

''(C) separate presentations, as appropriate, regarding information security relating to national security systems.

''(b) Subject to subsection (c)—

''(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

''(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

''(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

''(1) only by an entity designated by the agency head; and

''(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

''(d) The evaluation required by this section—

''(1) shall be performed in accordance with generally accepted government auditing standards; and

''(2) may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

''(e) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

''(f) Agencies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

''(g)(1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3533(a)(8).

''(2) The Director's report to Congress under this subsection shall summarize information regarding information security relating to national security systems in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

''(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central Intelligence or of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

''(h) The Comptroller General shall periodically evaluate and report to Congress on—

''(1) the adequacy and effectiveness of agency information security policies and practices; and

''(2) implementation of the requirements of this subchapter.

''§ 3536. National security systems

''The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency—

''(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

''(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

''(3) complies with the requirements of this subchapter.

''§ 3537. Authorization of appropriations

''There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

''§ 3538. Effect on existing law

''Nothing in this subchapter, section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), or section 20 of the National Standards and Technology Act (15 U.S.C. 278g–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to the Congress or the Comptroller General of the United States.''.

(2) CLERICAL AMENDMENT.—The items in the table of sections at the beginning of such chapter 35 under the heading ''SUBCHAPTER II'' are amended to read as follows:

''3531. Purposes.
''3532. Definitions.
''3533. Authority and functions of the Director.
''3534. Federal agency responsibilities.
''3535. Annual independent evaluation.
''3536. National security systems.
''3537. Authorization of appropriations.
''3538. Effect on existing law.''.

(c) INFORMATION SECURITY RESPONSIBILITIES OF CERTAIN AGENCIES.—

(1) NATIONAL SECURITY RESPONSIBILITIES.—(A) Nothing in this Act (including any amendment made by this Act) shall supersede any authority of the Secretary of Defense, the Director of Central Intelligence, or other agency head, as authorized by law and as directed by the President, with regard to the operation, control, or management of national security systems, as defined by section 3532(3) of title 44, United States Code.

(B) Section 2224 of title 10, United States Code, is amended—

(i) in subsection 2224(b), by striking ''(b) OBJECTIVES AND MINIMUM REQUIREMENTS.—(1)'' and inserting ''(b) OBJECTIVES OF THE PROGRAM.—'';

(ii) in subsection 2224(b), by striking ''(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code.''; and

(iii) in subsection 2224(c), by inserting '', including through compliance with subtitle II of chapter 35 of title 44'' after ''infrastructure''.

(2) ATOMIC ENERGY ACT OF 1954.—Nothing in this Act shall supersede any requirement made by or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Restricted Data or Formerly Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

SEC. 1102. MANAGEMENT OF INFORMATION TECHNOLOGY.

Section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441) is amended to read as follows:

''SEC. 5131. RESPONSIBILITIES FOR FEDERAL INFORMATION SYSTEMS STANDARDS.

''(a)(1)(A) Except as provided under paragraph (2), the Director of the Office of Management and Budget shall, on the basis of proposed standards developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)) and in consultation with the Secretary of Homeland Security, promulgate information security standards pertaining to Federal information systems.

''(B) Standards promulgated under subparagraph (A) shall include—

''(i) standards that provide minimum information security requirements as determined under section 20(b) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(b)); and

''(ii) such standards that are otherwise necessary to improve the efficiency of operation or security of Federal information systems.

''(C) Information security standards described under subparagraph (B) shall be compulsory and binding.

''(2) Standards and guidelines for national security systems, as defined under section 3532(3) of title 44, United States Code, shall be developed, promulgated, enforced, and overseen as otherwise authorized by law and as directed by the President.

''(b) The head of an agency may employ standards for the cost-effective information security for all operations and assets within or under the supervision of that agency that are more stringent than the standards promulgated by the Director under this section, if such standards—

''(1) contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Director; and

''(2) are otherwise consistent with policies and guidelines issued under section 3533 of title 44, United States Code.

''(c)(1) The decision regarding the promulgation of any standard by the Director under subsection (a) shall occur not later than 6 months after the submission of the proposed standard to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

''(2) A decision by the Director to significantly modify, or not promulgate, a proposed standard submitted to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), shall be made after the public is given an opportunity to comment on the Director's proposed decision.''.

''(d) In this section, the term 'information security' has the meaning given that term in section 3532(b)(1) of title 44, United States Code.''.

SEC. 1103. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), is amended by striking the text and inserting the following:

''(a) The Institute shall—

''(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

''(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3532(b)(2) of title 44, United States Code);

''(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems; and

''(4) carry out the responsibilities described in paragraph (3) through the Computer Security Division.

''(b) The standards and guidelines required by subsection (a) shall include, at a minimum—

''(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

''(B) guidelines recommending the types of information and information systems to be included in each such category; and

''(C) minimum information security requirements for information and information systems in each such category;

''(2) a definition of and guidelines concerning detection and handling of information security incidents; and

''(3) guidelines developed in coordination with the National Security Agency for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President.

''(c) In developing standards and guidelines required by subsections (a) and (b), the Institute shall—

''(1) consult with other agencies and offices (including, but not limited to, the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, and the Secretary of Homeland Security) to assure—

''(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

''(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

''(2) provide the public with an opportunity to comment on proposed standards and guidelines;

''(3) submit to the Director of the Office of Management and Budget for promulgation under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441)—

''(A) standards, as required under subsection (b)(1)(A), no later than 12 months after the date of the enactment of this section; and

''(B) minimum information security requirements for each category, as required under subsection (b)(1)(C), no later than 36 months after the date of the enactment of this section;

''(4) issue guidelines as required under subsection (b)(1)(B), no later than 18 months after the date of the enactment of this Act;

''(5) ensure that such standards and guidelines do not require specific technological solutions or products, including any specific hardware or software security solutions;

''(6) ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

''(7) use flexible, performance-based standards and guidelines that, to the greatest extent possible, permit the use of off-the-shelf commercially developed information security products.''

''(d) The Institute shall—

''(1) submit standards developed pursuant to subsection (a), along with recommendations as to the extent to which these should be made compulsory and binding, to the Director of the Office of Management and Budget for promulgation under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

''(2) provide assistance to agencies regarding—

''(A) compliance with the standards and guidelines developed under subsection (a);

''(B) detecting and handling information security incidents; and

''(C) information security policies, procedures, and practices;

''(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

''(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

''(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

''(6) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

''(7) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

''(8) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 21, regarding standards and guidelines developed under subsection (a) and submit such recommendations to the Director of the Office of Management and Budget with such standards submitted to the Director; and

''(9) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

''(e) As used in this section—

''(1) the term 'agency' has the same meaning as provided in section 3502(1) of title 44, United States Code;

''(2) the term 'information security' has the same meaning as provided in section 3532(1) of such title;

''(3) the term 'information system' has the same meaning as provided in section 3502(8) of such title;

''(4) the term 'information technology' has the same meaning as provided in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401); and

''(5) the term 'national security system' has the same meaning as provided in section 3532(b)(2) of such title.''.

SEC. 1104. INFORMATION SECURITY AND PRIVACY ADVISORY BOARD.

Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4), is amended—

(1) in subsection (a), by striking ''Computer System Security and Privacy Advisory Board'' and inserting ''Information Security and Privacy Advisory Board'';

(2) in subsection (a)(1), by striking ''computer or telecommunications'' and inserting ''information technology'';

(3) in subsection (a)(2)—

(A) by striking ''computer or telecommunications technology'' and inserting ''information technology''; and

(B) by striking ''computer or telecommunications equipment'' and inserting ''information technology'';

(4) in subsection (a)(3)—

(A) by striking ''computer systems'' and inserting ''information system''; and

(B) by striking ''computer systems security'' and inserting ''information security'';

(5) in subsection (b)(1) by striking ''computer systems security'' and inserting ''information security'';

(6) in subsection (b) by striking paragraph (2) and inserting the following:

''(2) to advise the Institute and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 20; and'';

(7) in subsection (b)(3) by inserting ''annually'' after ''report'';

(8) by inserting after subsection (e) the following new subsection:

''(f) The Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.'';

(9) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(10) by striking subsection (h), as redesignated by paragraph (9), and inserting the following:

''(h) As used in this section, the terms ''information system'' and ''information technology'' have the meanings given in section 20.''.

SEC. 1105. TECHNICAL AND CONFORMING AMENDMENTS.

(a) COMPUTER SECURITY ACT.—Sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 1441 note) are repealed.

(b) FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001.—The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) is amended by striking subtitle G of title X.

(c) PAPERWORK REDUCTION ACT.—(1) Section 3504(g) of title 44, United States Code, is amended—

(A) by adding ''and'' at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking ''sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note)'' and inserting ''subchapter II of this title''; and

(ii) by striking the semicolon and inserting a period; and

(C) by striking paragraph (3).

(2) Section 3505 of such title is amended by adding at the end—

''(c)(1) The head of each agency shall develop and maintain an inventory of the information systems (including national security systems) operated by or under the control of such agency;

''(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency;

''(3) Such inventory shall be—

''(A) updated at least annually;

''(B) made available to the Comptroller General; and

''(C) used to support information resources management, including—

''(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4);

''(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), the Clinger-Cohen Act of 1996, and related laws and guidance;

''(iii) monitoring, testing, and evaluation of information security controls under subchapter II;

''(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

''(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33.

''(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.''.

(3) Section 3506(g) of such title is amended—

(A) by adding ''and'' at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking ''the Computer Security Act of 1987 (40 U.S.C. 759 note)'' and inserting ''subchapter II of this title''; and

(ii) by striking the semicolon and inserting a period; and

(C) by striking paragraph (3).

SEC. 1106. CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, affects the authority of the National Institute of Standards and Technology or the Department of Commerce relating to the development and promulgation of standards or guidelines under paragraphs (1) and (2) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)).

In section 752(b)(1), strike ''and extensive''.

In section 752(b)(1), strike ''and'' and insert ''or''.

In section 752(b)(6), strike ''evaluation'' and insert ''Evaluation''.

At the end of section 752(b), insert:

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism.

In section 753(d)(1), insert ''or other'' after ''liability''.

In section 753(d)(3), strike ''those products'' and insert ''anti-terrorism technology''.

In section 753(d)(3), strike ''product'' and insert ''anti-terrorism technology''.

In section 754(a)(1), strike, ''to non-federal'' and insert ''to Federal and non-Federal''.

In section 754(a)(1), insert ''and certified by the Secretary'' after ''section''.

In section 755(1), strike ''device, or technology designed, developed, or modified'' and insert ''equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured''.

Page 182, line 2, strike ''and'' and insert ''or''.

At the end of subtitle G of title VII of the bill, add the following (and conform the table of contents of the bill accordingly):

SEC. 774. AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT AMENDMENTS.

The Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in section 408 by striking the last sentence of subsection (c); and

(2) in section 402 by striking paragraph (1) and inserting the following:

''(1) AIR CARRIER.—The term 'air carrier' means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation and includes employees and agents (including persons engaged in the business of providing air transportation security and their affiliates) of such citizen. For purposes of the preceding sentence, the term 'agent', as applied to persons engaged in the business of providing air transportation security, shall only include persons that have contracted directly with the Federal Aviation Administration on or after February 17, 2002, to provide such security, or are not debarred.''.

Page 12, line 5, strike ''and''.

Page 12, line 9, strike the period and insert ''; and''.

Page 12, after line 9, insert the following:

(G) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

Page 195, line 16, after ''terrorism.'' insert: ''Such official shall—

(1) ensure the adequacy of resources within the Department for illicit drug interdiction; and

(2) serve as the United States Interdiction Coordinator for the Director of National Drug Control Policy.''.

In section 307(b)(1)—

(1) strike ''and'' at the end of subparagraph (A);

(2) redesignate subparagraph (B) as subparagraph (C); and

(3) after subparagraph (A), insert the following new subparagraph:

(B) ensure that the research funded is of high quality, as determined through merit review processes developed under section 301(10); and

In section 766 of the bill, insert ''sections 305(c) and 752(c) of'' after ''provided in''.

Add at the end of title V of the bill the following section:

SEC. 506. SENSE OF CONGRESS REGARDING FUNDING OF TRAUMA SYSTEMS.

It is the sense of the Congress that States should give particular emphasis to developing and implementing the trauma care and burn center care components of the State plans for the provision of emergency medical services using funds authorized through Public Law 107–188 for grants to improve State, local, and hospital preparedness for and response to bioterrorism and other public health emergencies.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from Texas (Mr. ARMEY), and a Member opposed each will control 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. ARMEY).

Mr. ARMEY. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, this is the manager's amendment for the bill. The amendment includes the following: Technical amendments requested by the Committee on Energy and Commerce;

Technical amendments requested by the Committee on Science;

Technical correction regarding Oil Spill Liability Trust Fund requested by Committee on Transportation and Infrastructure;

Technical amendments related to DHS privacy officer;

Technical correction related to the biological agent registration function requested by Committee on Agriculture;

Amendment to create a program to encourage and support innovative solutions to enhance homeland security requested by the gentleman from Virginia (Mr. TOM DAVIS) and the gentlewoman from California (Ms. HARMAN);

Amendment to enforce non-Federal cybersecurity activities of Under Secretary for Information Analysis and Infrastructure Protection requested by the Committee on Science;

An amendment to establish the NET Guard program to promote voluntary activities in support of information technology protection activities requested by the Committee on Science;

An amendment striking Section 814 related to incidental transfers by Director of OMB requested by Committee on Appropriations;

Technical correction to section 761 to insert proper cross references;

Amendment inserting a sense of Congress provision reaffirming our support for the Posse Comitatus Act;

An amendment clarifying that this act preempts no State or local law except that any preemption authority vested in the agencies or officials transferred to DHS shall be transferred to DHS;

Amendment inserting the text of Federal Information Security Management Act of 2002 recommended by Committee on Government Reform at the request of the gentleman from Virginia (Mr. TOM DAVIS). The amendment will achieve several objectives vital to Federal information security. Specifically it will, one, remove the Government Information Security Reform Act's GISRA sunset clause and permanently require a Federal agency-wide, risk-based approach to information security management, with annual independent evaluations of agency and information security practices; two, require that all agencies implement a risk-based management approach to developing and implementing information security measures for all information and information systems; three, streamline and make technical corrections to GISRA to clarify and simplify its requirements; four, strengthen the role of NIST in the standards-setting process; and, five, require OMB to implement

minimum and mandatory standards for Federal information and information systems, and to consult with the Department of Homeland Security regarding the promulgation of these standards.

The amendment to subtitle F of title VII relating to liability management intended to clarify ability of liability protections afforded by this title;

An amendment asserting a new section to reinstate liability cap for aviation screening companies that are under contract with the Transportation Security Administration are not debarred.

Mr. Chairman, let me be very clear about this amendment. It does not reinstate a cap for any company that has been debarred; that is, Argenbright.

Mr. Chairman, I must suggest that we will all be labored to death with fulminations against Argenbright. So let me relate again that this amendment does not reinstate a cap for any company that has been debarred. That is, in particular, Argenbright. We would like that to be considered a fact.

Mr. Chairman, amendments clarifying responsibilities of DHS and the DHS counternarcotics officer with regard to narcotics interdiction requested by the gentleman from Illinois (Mr. HASTERT);

Amendments clarifying eligibility criteria for participation in certain extramural research programs of the Department requested by the gentleman from California (Mr. DREIER);

Technical amendment to section 766 regarding regulatory authority requested by the Committee on Energy and Commerce;

Amendment adding a new section expressing the sense of Congress regarding funding of trauma systems consisting of language originally offered by the gentlewoman from California (Ms. HARMAN).

Mr. Chairman, you can see that the manager's amendment is a final, full, comprehensive and respectful regard to our colleagues in their standing committees of jurisdiction and as Members of this body who wish consideration in this bill.

Mr. Chairman, I reserve the balance of my time.

Ms. PELOSI. Mr. Chairman, I rise in opposition to the en bloc amendment and request the time in opposition.

The CHAIRMAN pro tempore. The gentlewoman from California is recognized for 20 minutes.

Ms. PELOSI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, throughout the course of all of this we have striven to find our areas of agreement, and we have made some successes in that regard. Every now and then something will come along that just really takes your breath away. That happened last week when we had the markup of the bill when the majority tried to give an indefinite extension for the installation of detection devices for explosives in baggage and when the distinguished leader put into his mark a total immunity, a total immunity, for those who were guilty of wrongdoing and jeopardizing the safety of the American people.

So here we now have today an en bloc amendment, the en bloc amendment of the chairman, which we would all love to support. The chairman has worked hard on this bill and he has some technicalities he would like to correct, and we would like to support him. Except, once again, out of the blue, comes an amendment that fatally flaws this en bloc amendment. Let us dissect that.

This amendment is fatally flawed. That means it has a flaw that kills it. It is fundamentally flawed. It is flawed in a way that undermines any reason why anyone should vote for it.

The Armey amendment takes a bad provision, which gives immunity to corporate wrongdoers, and makes it even worse. I am going to have more to say on this subject as we go along.

Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Michigan (Mr. CONYERS), the distinguished ranking member on the Committee on the Judiciary.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, we have got a bit of a dilemma here. According to the General Services Administration, excluded parties listing system, page 5, Argenbright Security, Incorporated. They will be excluded. Term date, 14 October 2002.

So I say to the distinguished majority leader, if that is what you call debarment, that is what I call somebody getting rolled in the House this afternoon. They are debarred for exactly 2 months, and they are back in business.

□ 1330

So I rise in support of the gentlewoman's objection to this en bloc manager's amendment, because notwithstanding all of the concern about corporate accountability that has been raised to the roof here on both sides of the Capitol, the last thing we need to do is to pass a special interest law which protects negligent airport screening companies at the expense of victims of the September 11 tragedy.

Do we know what we are doing here? Two of these screening companies have been criminally convicted for falsely certifying that they made criminal background checks of their employees when they did not. Two of these companies have been convicted for knowingly hiring convicted felons, and last November when we passed the Aviation Security Act, we expressly decided that private screening companies should not be relieved of liability.

That is because we evaluated airline security in the wake of September 11, and it was obvious on both sides of the aisle that the private companies conducting airline screening, in general, had done a woefully inadequate job.

So now, I should be shocked that the Republican leadership would use an en bloc manager's amendment to the homeland security bill as a vehicle to further harm the victims of the September 11 terrorist attack. Yet, that is precisely what this amendment does.

It not only protects Argenbright, but it protects their parent company as well, totally shielding them from liability for letting terrorist and terrorist weapons through checkpoints on September 11. So those responsible for providing staff at, for example, Logan Airport in Boston, would receive liability protection. Even the notorious screening company that I have already named, which provided security at Dulles and Newark Airports and has been cited for more security violations than any other company, would benefit from the Army language.

Mr. Chairman, I urge my colleagues to reject this en bloc manager's amendment that is before us now.

EXCLUDED PARTIES LISTING SYSTEM

NO. OF DEBAR TRANSACTIONS: 3

Name: Argenbright Holdings, Limited
Class: Firm
Record Type: Primary
Exclusion Type: Reciprocal
DUNS:
Address: 3465 North Desert, Atlanta, GA, 30344
Description:
CT Actions—
1. Action Date: 20–MAR–2001
Term Date: Indef.
CT Code: A1
Agency: GSA
2. Action Data: 20–MAR–2001
Term Date: Indef.
CT Code: J1
Agency: GSA
Cr. Ref. Names:
1: AHL Services, Inc.
2: Fields, Helen
3: Lawrence, Sandra H.
4: Suller, Steven E.

Name: Argenbright, Security, Inc.
Class: Firm
Record Type: Primary
Exclusion Type: Reciprocial
DUNS:
Address: 3465 North Desert Dr., Atlanta, GA 30344
Description:
CT Action—
Action Date: 18–MAR–2002
Term Date: 14–OCT–2002
CT Code: A
Agency: STATE
Cr. Ref. Name: Argenbright, Frank A., Jr.

Name: Argenbright, Frank Jr..
Class: Individual
Record Type: Cross-Reference
Exclusion Type: Reciprocial
DUNS:
Address: 3553 Peachtree Rd., NE, Suite 1120, Atlanta, GA 30326
Description:
CT Action—
Action Date: 18–MAR–2002
Term Date: 14–OCT–2002
CT Code: A
Agency: STATE
Primary Name: Argenbright Security, Inc.

Mr. ARMEY. Mr. Chairman, I yield myself such time as I may consume.

Let me first observe that the officials at Argenbright would be much comforted by the gentleman's speech since they called my office viciously angry and upset, disappointed that they are

not included in this amendment. So obviously, they clearly understand themselves to be not included in this coverage, and whether or not they take comfort from the remarks we just heard I do not know.

Mr. Chairman, that being as it is, I yield 3 minutes to the distinguished gentleman from North Carolina (Mr. COBLE), my classmate and a subcommittee chairman of the Committee on the Judiciary.

Mr. COBLE. Mr. Chairman, I thank the leader for yielding me this time.

The manager's amendment as just presented by the gentleman from Texas (Mr. ARMEY) is technical for the most part, so I am going to direct my attention generally to the bill before us.

Mr. Chairman, I traditionally oppose the capping or prohibition of damages. It is my belief that generally speaking, the matter of awarding damages should be an exclusive assignment to be discharged by the jury. When first the State legislature, then the Congress, then this third party or that third party began inserting their oars into the jury's waters regarding damages, potential problems rear their respective, troublesome heads. Invasions of the jury's province should be pursued very delicately, very deliberately, and very infrequently.

The homeland security legislation directs our attention to plaguing, unrelenting threats imposed by terrorism, and that is the hook on which I hang my departure from long-held views in opposing capping or restricting damages.

This bill proposes the elimination of damages in certain instances, and given the 9–11 attack by those wicked messengers of evil, I believe this justifies capping or prohibiting damages. Terrorism, my friends, is not our traditional adversary. Terrorists punish the innocent. Terrorists recklessly and needlessly destroy property. Terrorists are wicked and evil people and, given this set of circumstances, I believe our addressing damages is, therefore, justified.

I do not believe I am compromising my beliefs. I hold to my strongly-held belief that the province of the jury is close to sacred ground but, in this instance, I believe the proposals presented in the homeland security legislation justify my support of this bill, including the matter of damages.

Mr. Chairman, there will be a subsequent amendment that will involve near universal indemnification. We can ill-afford to authorize the negotiation of blank checks. After 9–11, I believe, Mr. Chairman, that this House proved that we will not leave helpless victims behind, but we must generously lace our proposals with prudence in lieu of fiscal recklessness.

Finally, I say to the distinguished gentleman from Texas, our majority leader, I think he has done a good job in crafting a responsible piece of legislation, and I urge its support.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2 minutes to the distinguished gentleman from California (Mr. WAXMAN), ranking member of the Committee on Government Reform.

Mr. WAXMAN. Mr. Chairman, I really cannot believe this. Yesterday, the Republicans were forced, kicking and screaming, to vote for legislation on corporate responsibility and today, they are proposing legislation that would give a green light to corporate irresponsibility.

Now, do you remember when they passed under the Contract for America the Private Securities Litigation Reform Act? It said to accountants, they did not have to be responsible anymore, they could not be sued. So what happened? We got Enron. We got all of these scandals.

This bill exempts from liability a company that would make a defective smallpox vaccine. It would exempt from liability a seller of what was supposed to be antiterrorism technology that did not work. They would allow people who are supposed to be doing the work of protecting the people and who are negligent in doing it not to even be held responsible. Even worse, if somebody was grossly negligent and acted intentionally, they would still not be held liable.

Let me give another example. A company that is supposed to screen for our protection at an airport can hire a known felon and maybe someone that if they had checked and used reasonable due care could have found out that person was a terrorist, and they would hire them and a terrible tragedy could occur, but the company would not be responsible. They are not held to legal liability because they are given this exemption from any legal liability under the Armey proposal.

This is a green light to corporations to cut corners, to not have the incentive to do the job right because they are going to be second-guessed and held accountable in the courts if they do it wrong. The biggest problem they might have is they might not have their contract renewed. But do you know what? If they violate their contract, they cannot even be sued to do their part of the agreement because they are exempt from liability even under contract law.

Mr. Chairman, this is the most irresponsible provision I can imagine, and if anything, we have to wonder, how could they do this? It must be a payoff to corporations to get a lot of campaign money. How else could anybody come up with something so irresponsible in light of what this country has gone through in the last few years and all that our economy is suffering from.

Mr. ARMEY. Mr. Chairman, I would like to believe the gentleman from California could rise above the kind of sophomorish allegation that there are payoffs in the legislative process. I have been many times disappointed by the gentleman from California, but this is the first time I have been embarrassed for him.

Mr. Chairman, I yield 3 minutes to the gentlewoman from Ohio (Ms. PRYCE), a jurist and member of the committee.

Ms. PRYCE of Ohio. Mr. Chairman, I thank the gentleman for yielding, and I compliment him once again on the job he has done with putting this together.

Mr. Chairman, the claims arising out of the deployment of qualified antiterrorism technologies would be covered by litigation management provisions that simply provide for this; once again, very simply. A consolidation of claims in Federal court. That makes perfect sense.

The requirement that any noneconomic damages be awarded only in the proportion to a party's percentage of fault. That makes perfect sense.

A ban on punitive damages. A ban on punitive damages that so often are disproportionate to any real claim or harm done. A ban on punitive damages. Once again, perfect sense.

Offsets of awards based on receipt of collateral source benefits. We can only get paid once, not twice or 3 times.

A reasonable, very reasonable limit on attorneys' fees, once again, perfect sense.

Mr. Chairman, the Safety Act provisions of this en bloc manager's amendment are vital to ensuring that the American people are protected by the most reliable and up-to-date antiterrorism technology available. Unfortunately, the flaws in our current tort system keep that from happening right now. We need the life-saving and life-protecting technologies that are out there close to being developed.

But one company, for instance, based in my home State of Ohio, produces a state of the art technology that is vital to decontamination following an anthrax attack. Yet, they are prevented from using this technology to assist in the cleanup of any infected areas or buildings by the daunting and limitless liability that they could face if their patriotic efforts failed for some reason.

The Safety Act provisions certainly do not provide immunity in any way from any lawsuit; they simply place reasonable and sensible limits on lawsuits so that America's leading technology innovators will be able to deploy solutions to thwart terrorist attacks.

The alternative solution of indemnification is no solution at all. It is fiscally irresponsible; it will attempt to put the Treasury and, through it, the U.S. taxpayers and their deep pockets at risk by those, the very people that exploit the technology producers who join in the fight against terrorism.

Mr. Chairman, this is common sense. The time is right for it to happen. The threat of liability has a chilling effect, both on technological advances and the implementation of any new technology. I think it is a perfect place for it in the en bloc amendment; it is reasonable, it makes sense. The time is right for it. We need it now.

Ms. PELOSI. Mr. Chairman, it is my privilege to yield 4 minutes to the distinguished gentleman from Minnesota

(Mr. OBERSTAR), the ranking member of the Committee on Transportation and Infrastructure.

Mr. OBERSTAR. Mr. Chairman, I thank the gentlewoman for yielding me this time, and I compliment her on her management of the time on our side and on this whole process, and for her splendid work on the Select Committee on Homeland Security.

For whatever valid reasons there may be to extend liability to other functions, as have already been discussed and debated and without entering into those merits, I cannot, for the life of me, imagine a reason, a valid reason for extending liability to the screener companies.

□ 1345

We debated this issue at length last October and November in consideration of the Aviation and Transportation Security Act that is now law. We discussed it in the Committee on Transportation and Infrastructure. We debated it in the House Senate Conference Committee. We discussed it at great length and rejected any suggestion, and there were suggestions, any proposals for extension of liability limitation and immunization for the airport screening companies. It is their possible negligence that may have contributed to the September 11 attack. Why would you want to excuse them?

In the amendment offered by the gentleman, buried in this amendment is what I might call mirage language. Whether by design or by inadvertence, Mr. Chairman, I do know and I do not want to ascribe motives, it is just that here it is. The language intends to on its face exclude any screening company that is debarred under Federal contracts. However, the infamous Argenbright Company's debarment is over in October, 2002. It then becomes eligible for liability protection under the gentleman's en bloc amendment. Furthermore, the parent company of Argenbright, Securicor, is not debarred from any Federal contracts. So they are now covered by this immunization protection. And look at Argenbright. Someone last fall in the debate, and I think it was a Member on the Republican side, said Argenbright is the poster child for why we need to have a Federalized screener program.

They were in October of 2000 put on a 36-month probation, ordered to pay $1,600,000 fine for failure to conduct background checks on their employees and hiring convicted felons to staff security screening checkpoints at the Philadelphia Airport between 1995 and 1999. A month after September 11, Argenbright's probation was extended by 2 years because they continued to hire convicted felons and improperly train workers in violation of their probation terms. In the 5 years before September 11, FAA prosecuted 1,776 cases for screening violations with $8.1 million in civil penalties.

The en bloc vote furthermore extends liability protections, put Argenbright aside, to other airport security firms. Globe Aviation Services and Huntleigh USA Corporation, the security companies responsible for checkpoint security at Logan Airport on September 11 and which continue to hold a contract with the Transportation Security Administration, why would you want to exclude them? These are the same groups whose lobbyists argued last October against the Federal screener program. It does not make sense to now exempt them.

In May of this year, Huntleigh Security Screeners were fired for allowing a man to go through a security checkpoint with two loaded semiautomatic pistols. In February of this year, a Globe security screener fell asleep at a checkpoint. The whole terminal had to be evacuated at Louisville because of that failure. Why in heaven's name do you want to exclude them? This defies imagination. It is the wrong policy. If we could move to strike this provision, I would; but in lieu of that, we ought to defeat the entire en bloc amendment.

Mr. ARMEY. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, the confusion about Argenbright has nothing to do with my amendment. Argenbright is today debarred. My amendment does not provide coverage to firms that are debarred. If GSA sometime in the future should remove that debarment, the gentleman from Minnesota (Mr. OBERSTAR) would have an argument with GSA, but he has no argument in respect to Argenbright with my amendment. If I were the gentleman from Minnesota, I would take up his case with GSA and plead with them to not lift the debarment on Argenbright, and this gentleman would join the gentleman from Minnesota (Mr. OBERSTAR).

Ms. PELOSI. Mr. Chairman, I yield 30 seconds to the gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Chairman, I just want to reaffirm for the distinguished gentleman from Texas (Mr. ARMEY), majority leader, that Argenbright's debarment expires in October of this year. Why would you not extend a prohibition on coverage?

Mr. ARMEY. Mr. Chairman, I yield myself 30 seconds to respond to the proposition that the gentleman from Minnesota (Mr. OBERSTAR) and I differ in our understanding of the facts.

Ms. PELOSI. Mr. Chairman, I yield 2½ minutes to the gentleman from Oregon (Mr. BLUMENAUER), a distinguished member of the Committee on Transportation and Infrastructure.

Mr. BLUMENAUER. Mr. Chairman, I appreciate the gentlewoman's courtesy in permitting me to speak and for her hard work on this issue. It is a tough one, but the manager's amendment that is brought before us this afternoon captures my concerns about the legislation, why I am against the amendment and frankly I do not think I will be able to vote for it in its final form.

This is legislation that has been candidly rushed forward. We have an artificial deadline, perhaps to beat the anniversary of September 11, but it is not because this is the best time frame to protect the security of America.

It includes elements that are not necessary and some which may actually hinder both the discharge of the overall concept of the legislation and have critical functions for the American public that suffer. And we have had lots of discussions on this floor about the potential problems for FEMA, for the Coast Guard; indeed, almost all our colleagues on all of the substantive committees of jurisdiction reject the all-encompassing approach that has been suggested here, the people who know something about these functions. And this, frankly, Mr. Chairman, is an area that is where the approach that is being taken is contrary to my experience.

Now, I have not had the range of experience in Congress that some of these people have who have been here for not just years, but decades; and I defer to them. But I have actually done work in government reorganization on the State level and on the local level, city and county. And without exception, reorganization costs money. It is not cost-neutral, let alone with something with tens of thousands of employees. It takes time and there can be short-term dislocations as a result of these functions.

And finally, it is critical when you are dealing with people who are going to be moving in to new structures to be able to have a certainty of working conditions. And some of the proposals that we have had advanced as a part of this are going to produce uncertainty of working conditions, apprehension for tens of thousands of dedicated public employees; and that is going to hurt. It is not going to help.

Finally, the manager's amendment is an example of my underlying concern. Adding the exemption that has been argued by my good friend from Minnesota (Mr. OBERSTAR), not asked for by the President, not asked for by any committees where there are legitimate questions about the logic behind it, it all sums up giving me a bad feeling. I am afraid that serious problems are going to result from the manager's amendment from the underlying bill. I hope I am wrong, but I fear I am right.

Mr. ARMEY. Mr. Chairman, I reserve the balance of my time.

Ms. PELOSI. Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from New York (Mr. HINCHEY).

Mr. HINCHEY. Mr. Chairman, this presents us with a very interesting situation. First, we are told that the employees of the Homeland Security Department cannot have civil service protection. They cannot be unionized. We want to be flexible with them. If they make any mistakes, we want to throw them out. Yet, at the same time, what do we do with regard to corporate entities that work for the Homeland Security Department? If the Secretary approves any design for any material or

product that they sell to homeland security, so long as the Secretary approves it, that corporation is exempt from any product-liability suits.

The manager's amendment, however, goes even further. It protects corporate wrongdoers from any kind of action whatsoever. If the product does not work, if the product does not work because the corporation was fraudulent in its submission, if the product does not work because they willfully or maliciously made it so that it would not work effectively, nevertheless, they are exempt from any kind of lawsuits.

This situation that we are presented with and asked to vote for is totally absurd. You want to have a circumstance whereby people are going to feel protected and will be protected. And if they are going to be protected, you have to have the ability to have confidence in the corporate entities, the private sector people who are supplying the new homeland security office. Under the provision of this bill and particularly under the amendment, all of that confidence goes out the window.

Why should we have any ounce of confidence if people can produce bad product and not have to be responsible for the product they produce? This is a bad piece of legislation.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, I rise to thank the Members on both sides of the aisle for the basic decorum that has existed during the past 2 days. I am beginning to feel that tempers are getting a little short, but we do not have much further to go.

I, for one, have been the focus of the majority leader's disappointment sometimes, but I have never ever questioned his sincerity, his fairness, or his motives. They are beyond reproach. And I just would say to the Members there is a danger, obviously, when you have a manager's amendment that has 19 parts. There is going to be something that somebody does not like. That is the risk. Everyone can find some part of a comprehensive amendment they do not like. They can find a reason to vote against it.

There are just too many important parts of this amendment to cause its defeat. We need this manager's amendment.

Having said this I now would like to take the time to express my disappointment that I did not make the manager's amendment, that I did not have an amendment I want called to order. I would like Members to listen to what this was.

My amendment said the ''Director of Central Intelligence shall, to the maximum extent practical, in accordance with the law, render full assistance and support to the Department and the Secretary.''

I am told this was not included because the Permanent Select Committee on Intelligence had a problem with this. That, to me, is the very reason why it should have been included. What is amazing to me is that this very language is the identical language that can be found in the establishment of the Office on the National Drug Control Policy. Implicit in our bill is, obviously, support by the head of the CIA; but nowhere does it state it. I am very, very concerned this is lacking in our legislation.

I am trying to get it in the Senate bill, and I am using this opportunity to lobby the most distinguished gentlewoman from California (Ms. PELOSI) and the most distinguished gentleman from Texas (Mr. ARMEY). I am lobbying them up front and in this Chamber to please include this language when we have the Conference Report and final passage. It is needed. It is the very problem I encountered in my committee on national security. When we wanted the CIA to come and testify about the relationship they had with the FBI, they got a permission slip from the Permanent Select Committee on Intelligence saying they did not have to attend. Months later we had 9–11.

I believe we need to have very explicit language stating that the Director of the Central Intelligence Agency will cooperate with the Department of Homeland Security. I thank the leader for what he and the gentlewoman from California (Ms. PELOSI) have done to shepherd this bill through Congress. I think we are close to passage. It is an extraordinarily fine piece of legislation. I think it will be made better by the manager's amendment.

□ 1400

The CHAIRMAN pro tempore (Mr. BONILLA). At this time, the Chair would inform the managers on both sides that the gentleman from Texas (Mr. ARMEY) has 4 minutes remaining and the gentlewoman from California (Ms. PELOSI) has 4 minutes remaining, and the gentlewoman from California (Ms. PELOSI) does have the right to close.

Mr. ARMEY. Mr. Chairman, I might ask the gentlewoman then how many more speakers she has?

Ms. PELOSI. Mr. Chairman, we will be looking forward to the distinguished leader's remarks, and then I will close.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Virginia (Mr. TOM DAVIS), one of the hardest working and quite frankly most able legislators we have in this body, a good friend and Member that has important provisions in this manager's amendment.

(Mr. TOM DAVIS of Virginia asked and was given permission to revise and extend his remarks.)

Mr. TOM DAVIS of Virginia. Mr. Chairman, I thank the gentleman for yielding me the time.

First of all, just to correct a couple of things I keep hearing from the other side about a government contractor not being able to be sued if something goes wrong, nothing could be further from the truth. We do change traditional tort law in that punitive damages are capped and that we have comparative negligence and these kind of items. The reason we do this, of course, in the amendment is to try to hold down the liability and get contractors to be able to share some of their innovations with the government.

Also, on the Argenbright debarment issue, debarment is traditionally done by professionals in the procurement offices in Federal agencies, not by the Congress. Whether it extends or not, I am certain that that will be extended at that level.

I rise today in strong support of this language and the technical innovations language that is included in the gentleman from Texas' (Mr. ARMEY) en bloc amendment. This title is going to strengthen information security management for the Federal Government, and this is critical in the war against terrorism because if we are vulnerable anywhere it is in our critical infrastructures. This language goes a long way towards strengthening that, which seems to me would be a prime target for terrorists.

Poor information security management has persisted in both the public and private sectors long before information technology became ubiquitous engine driving governmental, business and even home activities. As our reliance on technology and our desire for interconnectivity have grown over the past decade, intensifying with the advent of the Internet, our vulnerabilities to attack on Federal information systems has grown exponentially. The high degree of dependence between information systems, both internally and externally, exposes the Federal Government's computer networks to benign and destructive disruptions.

Therefore, the Federal Information Security Management Act of 2002, which I introduced with the gentleman from California (Mr. HORN) is included in this manager's amendment. This requires the agencies utilize information security best practices that could help ensure the integrity, confidentiality and availability of Federal information services and doing a lot of other things as well.

I also want to thank the gentleman from New York (Mr. BOEHLERT), the Committee on Science chairman and the gentleman from Louisiana (Mr. TAUZIN), the Committee on Energy and Commerce chairman, for working on this language. In addition to this, we have technical innovation language in this legislation that will allow the most up-to-date innovations in technology to come forward quickly and be processed by the homeland security agency where they can start looking as they set their requirements and find out what are the latest innovations that we have in technology in this country that we can use to help fight terrorism.

In February, we held a hearing on this, the challenges facing us, and one theme that was expressed unanimously by industry was the need for an organized, cohesive and comprehensive process within the government so we could evaluate private sector solutions to homeland security problems. We have a lot of contractors with great ideas running around, but there is no place to really take them at this point.

This manager's amendment now has a central clearinghouse for these. They are part of the solution. With the creation of the homeland security in the bill before us today the gentleman from Texas (Mr. ARMEY) has included language in this legislation that closes the loop and provides a vehicle to get these solutions into the government and to the front lines in the war against terrorism as soon as possible.

I urge adoption of the manager's amendment.

In ordinary times, primarily because of recent acquisition reforms, the current acquisition system will enable the new Department of Homeland Security to buy what it needs with reasonable efficiency. While we all hope that it will never be needed, we also know that in an emergency the new Department may have to quickly and efficiently acquire the high tech and sophisticated products and services needed for its critical mission. The carefully limited authorities contained in the Homeland Security Act on the floor today are based on the Davis/Turner amendment, which was accepted and incorporated into the Government Reform Committee's version of the Homeland Security bill. The bi-partisan provisions would permit the Department to quickly acquire the emergency goods and services it needs while maintaining safeguards against wasteful spending.

The amendment builds on contracting authorities currently in place, in fact, the procedures appear in Part 13 of the Federal Acquisition Regulation—and provides for an extension of these authorities only upon a determination of the Secretary of Homeland Security or one of his Senatorially confirmed officials that the terror fighting mission of the new Department would be seriously impaired without their use. The new authorities would sunset at the end of fiscal year 2007. The GAO would be required to report to the Committee on Government Reform assessing the extend to which the authorities contributed to the mission of the Department, the extent to which the prices paid reflect best value, and the effectiveness of the safeguards put in place to monitor the use of the new authorities. The current government-wide procurement laws will govern the Department's ''normal'' purchases.

Specifically, the provisions would raise the current micro-purchase threshold from $2,500 to $5,000. It would raise the current $100,000 threshold to $175,000, and permit the application of the current streamlined commercial acquisition procedures and statutory waivers to non-commercial goods and services and increase the current $5,000,000 ceiling on the use of streamlined commercial procedures to $7,500,000 for these goods and services.

How could these new authorities be used?

Well, for example, the increase in the micro-purchase threshold could be used in the event of a terror attack, to permit a Department of Homeland Security official at the scene to rent several floors of a nearby hotel to house rescue workers by simply presenting his Government credit card.

The increase in the simplified acquisition threshold would permit a Department official to quickly enter into a $175,000 contract for specialized medical services for rescue workers responding to a terror attack.

The application of streamlined commercial acquisition procedures would permit the Department to conduct a limited competition among high technology firms for a specialized advisory and assistance services contract valued at $7,500,000 to fight a cyber-attack.

Mr. Chairman, I also rise in strong support of Title XI information security language and the technical innovations language included in Chairman Armey's en bloc amendment. This Title will strengthen the information security management infrastructure of the Federal Government.

The events of September 11th and the ensuing war on terrorism have raised an unprecedented awareness of the vulnerabilities we face. This has naturally focused more attention on security issues, particularly with respect to information security. From my work in the Government Reform Committee, it is clear that the state of federal information security suffers from a lack of coordinated, uniform management. Federal information systems continue to be woefully unprotected from both malevolent attacks and benign interruptions.

Poor information security management has persisted in both the public and private sectors long before IT became the ubiquitous engine driving governmental, business, and even home activities. As our reliance on technology and our desire for interconnectivity have grown over the past decade, intensifying with the advent of the Internet, our vulnerability to attacks on Federal information systems has grown exponentially. The high degree of interdependence between information systems, both internally and externally, exposes the Federal government's computer networks to benign and destructive disruptions.

Therefore, I introduced the Federal Information Security Management Act of 2002 (FISMA) with Congressman Stephen Horn, Chairman of the Government Efficiency, Financial Management and Intergovernmental Relations Subcommittee. FISMA is the basis for Title XI in the Homeland Security bill we are considering today.

FISMA will require that agencies utilize information security best practices that will ensure the integrity, confidentiality, and availability of Federal information systems. It builds on the foundation laid by the Government Information Security Reform Act (GISRA), which requires every Federal agency to develop and implement security policies that include risk assessment, risk-based policies, security awareness training, and periodic reviews. Our Subcommittees held joint legislative hearings on FISMA, and I worked closely with Chairman Horn, industry, and agencies to develop a bill that is satisfactory to all parties.

FISMA will achieve several objectives vital to Federal information security. Specifically, it will:

1. Remove GISRA's sunset clause and permanently require a Federal agency-wide risk-based approach to information security management with annual independent evaluations of agency information security practices;

2. Require that all agencies implement a risk-based management approach to developing and implementing information security measures for all information and information systems;

3. Streamline and make technical corrections to GISRA to clarify and simplify its requirements;

4. Strengthen the role of NIST in the standards-setting process; and

5. Require OMB to implement minimum and mandatory standards for Federal information and information systems, and to consult with the Department of Homeland Security regarding the promulgation of these standards.

At a time when uncertainty threatens confidence in our nation's preparedness, the Federal government must make information security a priority. We demand that in our networked era, where technology is the driver, every Federal information system must be managed in a way that minimizes both the risk that a breach or disruption will occur and the harm that would result should such a disruption take place. Title XI is vitally important to accomplishing our objective. Chairman ARMEY understands this and has shown tremendous leadership by this including this critical language in his en bloc amendment.

I would like to take a moment to thank Science Committee Chairman SHERWOOD BOEHLERT and Energy and Commerce Chairman BILLY TAUZIN for working with the Committee on Government Reform to reach a substantive agreement on Title XI. And I would also like to thank Congresswoman CONNIE MORELLA, Congressman LAMAR SMITH, and Congressman ADAM SMITH for their strong support and invaluable efforts to promote Title XI.

Also, the En Bloc amendment includes language that I developed to allow for reaching out to new technology companies that may not being doing business with the government. We all know that the Federal, State and local governments will spend billions and billions of dollars to fight the war against terror. Contentious floor debates aside, we all support these efforts. But to me, the question isn't simply how much we spend, but how well we spend it.

Since the tragic events of 9/11 the Government, in general, and the Office of Homeland Security, in particular has been overwhelmed by a flood of industry proposals offering various solutions to our homeland security challenges. Because of a lack of staffing expertise, many of these proposals have been sitting unevaluated, perhaps denying the government breakthrough technology.

In February, I held a hearing in my Subcommittee on Technology and Procurement Policy on homeland security challenges facing the government. One theme that was expressed unanimously by industry was the need for an organized, cohesive, comprehensive process within the Government to evaluate private-sector solutions to homeland security problems. Now we have part of the solution, with the creation of the new Department of Homeland Security in the bill on the floor today. Chairman ARMEY at my request included language in a new Section 309 which is based on H.R. 4629, legislation I introduced in May. This language will close the loop and provide a vehicle to get these solutions into government and to the front lines in the war against terror.

Chairman Armey's Manager's amendment included a new section 309 in the Homeland Security Act to the establishment within the Department a program to meet the current challenge faced by the Federal government, as well as by state and local entities, in leveraging private sector innovation in the fight against terror. The amendment would establish a focused effort by:

Creating a centralized Federal clearinghouse in the new Department for information relating to terror-fighting technologies for dissemination to Federal, State, local and private sector entities and to issue announcements to industry seeking unique and innovative anti-terror solutions.

Establishing a technical assistance team to assist in screening proposals for terror-fighting technology to assess their feasibility, scientific and technical merit and cost.

Providing for the new Department to offer guidance, recommendations and technical assistance to Federal, State, local and private efforts to evaluate and use anti-terror technologies and provide information relating to Federal funding, regulation, or acquisition regarding these technologies.

Since September 11, we have all been struggling to understand what changes will occur in our daily lives, in our economy, and within the Government. We now will establish a new Department of Homeland Security to focus and coordinate the war against terror. The new section 309 in this landmark legislation will give the new Department the framework it needs to examine and act on the best innovations the private sector has to offer.

I would also like to offer my thanks to the staff of the Science and Energy and Commerce Committees who collaborated with my staff in crafting this consensus amendment.

And finally, Mr. Chairman, I would also like to thank the Chairman for including my bipartisan legislation that I developed with Congressman JIM MORAN that will promote voluntary information sharing about our nation's critical infrastructure assets. As many of you know, over ninety percent of our nation's critical infrastructure as owned and operated. In Presidential Decision Directive 63 issued by the previous Administration, concerns about the Freedom of Information Act, antitrust, and liability were identified as primary barriers to facilitating information sharing with the private sector.

The critical infrastructure of the United States is largely owned and operated by the private sector. Critical infrastructures are those systems that are essential to the minimum operations of the economy and government. Traditionally, these sectors operated largely independently of one another and coordinated with government to protect themselves against threats posed by traditional warfare. Today, these sectors must learn how to protect themselves against unconventional threats such as terrorist attacks, and cyber intrusions.

We must, as a nation, prepare both our public and private sectors to protect ourselves against such efforts. As we discovered when we went to the caves in Afghanistan, the Al Qaeda groups had copies of GAO reports and other government information obtained through FOIA. While we work to protect our nation's assets in this war against terrorism, we also need to ensure that we are not arming terrorists.

Today, the private sector has established many information sharing organizations (ISOs) for the different sectors of our nation's critical infrastructure. Information regarding potential physical or cyber vulnerabilities is now shared within some industries but it is not shared with the government and it is not shared across industries. The private sector stands ready to expand this model but have also expressed concerns about voluntarily sharing information with the government and the unintended consequences they could face for acting in good faith.

Specifically, there has been concern that industry could potentially face antitrust violations for sharing information with other industry partners, have their shared information be subject to the Freedom of Information Act, or face potential liability concerns for information shared in good faith. My language included in H.R. 5005 will address all three of these concerns. Additionally, consumers and operators will have the confidence they need to know that information will be handled accurately, confidentially, and reliably.

The Critical Infrastructure Information Act procedures are closely modeled after the successful Year 2000 Information and Readiness Disclosure Act by providing a limited FOIA exemption, civil litigation protection for shared information, and a new process for resolving potential antitrust concerns for information shared among private sector companies for the purpose of correcting, avoiding, communicating or disclosing information about a critical infrastructure threat or vulnerability.

This legislation will enable the private sector, including ISOs, to move forward without fear from government so that government and industry may enjoy a mutually cooperative partnership. This will also allow us to get a timely and accurate assessment of the vulnerabilities of each sector to physical and cyber attacks and allow for the formulation of proposals to eliminate these vulnerabilities without increasing government regulation, or expanding unfunded federal mandates on the private sector.

I am disappointed that the final language contained in the bill is different than the Government Reform Committee mark that passed the Committee 30 to 1. My FOIA language passed the Committee by voice vote. However, the language included in the Manager's Amendment only extends the protections to the Department of Homeland Security. My original language gave the Secretary the authority to designate other covered federal agencies to receive and share the information. While the Department would have remained the central repository for this information, it allowed other Departments and agencies involved in fighting the war on terrorism to also receive this voluntarily provided information. I will be offering an amendment later today that will make a technical correction to H.R. 5005 and allow the Secretary to again designate covered federal agencies.

The amendment that I am offering today is supported by every critical infrastructure sector. It is also supported by the Business Roundtable, the U.S. Chamber of Commerce, the Information Technology Association of America, the Financial Services Roundtale, the National Association of Manufacturers, the Edison Electric Institute, and the American Chemical Council. Industry wants to fulfill its' responsibility to the American people, we need to give them the necessary tools to do so.

Mr. ARMEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, this manager's amendment exists in 19 parts. Eight of the 19 parts are included in the amendment at the request of the various committees of the House. The remainder are included at the request of different Members of the body from both sides of the aisle.

We have had the opposition to the manager's amendment focused on one of the 19 provisions, a provision that provides liability coverage to providers of services to homeland defense and a provision that has been passed by this House before. It is not something new. The only thing that is different about this provision now, as opposed to the time in which it was passed earlier in this session, is that we now have an identifiable pair of providers within that population who are debarred from providing and would not benefit. They have been identified under it.

The overall manager's amendment conformed to the practices of a select committee and to the commitment of this chairman in that it gave first priority, first preference, first respect to the standing committees and to the Members of this body and their shared commitment to making this Nation safe from terrorism, and I urge its passage.

Mr. Chairman, I yield back the balance of my time.

Ms. PELOSI. Mr. Chairman, I yield myself the remainder of my time.

Mr. Chairman, in his closing remarks, our distinguished leader explained how many elements there were to this en bloc amendment and said that we were finding fault with a small part of it. The fact is that we would like to find no fault with an en bloc amendment. There are many provisions in it. I dare say most of us have not the faintest idea what they are, but we trust the Chairman on those technicalities and recommendations from the committee.

This is usually a noncontroversial measure that most Members would expect to support. That is why it is so disappointing that this en bloc amendment is being used to put a very controversial amendment in. To use the engine of an en bloc on technicalities for a substantive change in the bill that is controversial is unusual, and that is why we oppose it, because of the substance of the provisions.

It has been said that this is about protecting the American people. Let us keep our standard before us. How do we protect the American people best? In the bill, and another amendment will come up later, the Turner amendment to strike it, but in the bill, under section 753 of the bill, corporations can submit designs for antiterrorism products to the Homeland Security Department if those designs are approved by the Secretary. Those corporations get total immunity from product liability lawsuits under the government contractor defense of any kind, even if there is wrongdoing, including willful and malicious corporate misconduct.

Imagine that this bill to protect the American people has that provision in it the day after we pass the corporate accountability bill, but this amendment, this en bloc amendment, even does that one worse. This amendment goes further to protect corporate wrongdoers. It extends total immunity to all kinds of lawsuits. Even if a product does not work, they cannot sue for breach of contract, et cetera, but this would give it immunity for willful wrongdoing to corporations that provide services and software.

I have heard people say that this is important so that we can get people to bid. The Turner amendment addresses that next with a wise amendment that addresses the concerns of the private sector in a responsible way.

In this bill, the Armey amendment immunizes airport screening companies whose negligence may have contributed to the September 11 attacks, and I have heard people say here, of course, a person can sue under this bill. Let me just read from the en bloc amendment.

It talks about the presumption and it says, The presumption shall only be overcome, in other words the presumption of innocence, that this presumption shall only be overcome by evidence showing that the seller acted fraudulently or with willful misconduct in submitting information to the Secretary. Only in submitting information to the Secretary. Not in how the person manufactured the product or spelled out how it should be used.

So this, the standard that is set in this bill, is how a person makes their case to the Secretary. Not about how they deliver on the promise to protect the American people.

We all know that in a time leading up to September 11, there were many causes for the tragedy coming our way, and one of them was the fact that the airport screening companies played Russian Roulette with the safety of the American people. Sooner or later there was going to be a tragedy because of their lax approach to safety in the security and the screening process.

This bill that we have before us, on a day when we are discussing how to make the country safer in the best possible way, says that we will make matters worse by passing this en bloc amendment.

I would urge my colleagues to do the responsible thing and reject this en bloc amendment.

Mr. RODRIGUEZ. Mr. Chairman: the debate today should be on improving our homeland defense. We should be focused on finding ways to encourage the responsible development, testing and deployment of new technologies and products that will enhance the protection of the American people.

Mr. Chairman, we hear so much about responsibility in this House. Yet when it comes to corporate responsibility, the Majority seems to run and hide.

The bill crafted by the House majority, and the amendment offered by the Majority Leader, represent a wholesale attack on our long-standing system of justice. They rob the American people of their ability to receive compensation for irresponsible or even grossly negligent conduct. In the name of homeland defense, they conduct a brash assault on our ability to hold corporate wrongdoers accountable for their misconduct or simply their failure to make a product that works.

That's right. The product could fail completely, but the manufacturer would have no liability. The product could backfire, misfire, or not fire at all, yet the company that made it could simply walk away with not even a slap on the wrist.

It is an outrage.

It undermines our security.

One of the foundations of our democracy is the system of checks and balances. Within the world of product development and the provision of services, our legal system is the check on substandard conduct.

Without that check, without the threat of being held accountable, we will seen an increase in poor product design and faulty service delivery. It is simply human nature.

Corporations won't need to worry about making sure their products are safe and effective. They won't have to worry about the potential harm they cause. They won't have incentives to improve their safety. They will simply have blanket immunity. Forever.

Those injured in the process—whether it's our soldiers, police officers, firefighters, homeland defense volunteers, or victims of product failure—will be left out in the cold. With no legal recourse, they and their families will suffer, they will not receive the care they need, they will receive no compensation for the harm caused to them.

This is nothing short of the legalization of corporate irresponsibility.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Texas (Mr. ARMEY).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Ms. PELOSI. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Texas (Mr. ARMEY) will be postponed.

It is now in order to consider Amendment No. 22 printed in House Report 107–615.

AMENDMENT NO. 22 OFFERED BY MR. TURNER

Mr. TURNER. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 22 offered by Mr. TURNER:

Strike subtitle F of title VII and insert the following:

Subtitle F—Risk Sharing and Indemnification

SEC. 751. RISK SHARING AND INDEMNIFICATION.

(a) DEFINITIONS.—Section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) is amended by adding at the end the following new paragraphs:

''(16) The term 'anti-terrorism technology and services' means any product, equipment, service or device, including information technology, system integration and any other kind of services (including support services) related to technology, designed, developed, modified or procured for the purpose of preventing, detecting, identifying, or otherwise deterring acts of terrorism.

''(17) The term 'act of terrorism,' means the calculated attack or threat of attack against persons, property or infrastructure to inculcate fear, intimidate or coerce a government, the civilian population, or any segment thereof, in the pursuit of political, religious or ideological grounds.

''(18) The term 'insurance carrier' means any corporation, association, society, order, firm, company, mutual, partnership, individual, aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

''(19) The term 'liability insurance' means insurance for legal liabilities incurred by the insured resulting from—

''(A) loss of or damage to property of others;

''(B) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

''(C) bodily injury (including death) to persons other than the insured or its employees; or

''(D) loss resulting from debt or default of another.

''(20) The term 'homeland security procurement' means any procurement of anti-terrorism technology and services, as determined by the head of the agency, procured for the purpose of preventing, detecting, or otherwise deterring acts of terrorism.

''(21) The term 'information technology'—

''(A) means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information;

''(B) includes computers, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources; and

''(C) does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract.''.

(b) FEDERAL RISK SHARING AND INDEMNIFICATION.—The Office of Federal Procurement Policy Act is further amended by adding at the end the following new sections:

''SEC. 40. FEDERAL RISK SHARING AND INDEMNIFICATION.

''(a) When conducting a homeland security procurement the head of an agency may include in a contract an indemnification provision specified in subsection (e) if the head of the agency determines in writing that it is in the best interest of the Government to do so and determines that—

''(1) the anti-terrorism technology and services are needed to protect critical infrastructure services or facilities;

''(2) the anti-terrorism technology and services would be effective in facilitating the defense against acts of terrorism; and

''(3) the supplier of the anti-terrorism technology is unable to secure insurance coverage adequate to make the anti-terrorism technology and services available to the Government.

''(b) The head of the agency may exercise the authority in this section only if authorized by the Director of the Office of Management and Budget to do so.

''(c) In order to be eligible for an indemnification provision specified in this section, any entity that provides anti-terrorism technology and services to an agency identified in this Act shall obtain liability insurance of

such types and in such amounts, to the maximum extent practicable as determined by the agency, to satisfy otherwise compensable third party claims resulting from an act of terrorism when anti-terrorism technologies and services have been deployed in defense against acts of terrorism.

''(d) An indemnification provision included in a contract under the authority of this section shall be without regard to other provisions of law relating to the making, performance, amendment or modification of contracts.

''(e)(1) The indemnification provision to be included in a contract under the authority of this section shall indemnify, in whole or in part, the contractor for liability, including reasonable expenses of litigation and settlement, that is not covered by the insurance required under subsection (c), for:

''(A) Claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property, or economic losses resulting from an act of terrorism;

''(B) Loss of, damage to, or loss of use of property of the Government; and

''(C) Claims arising (i) from indemnification agreements between the contractor and a subcontractor or subcontractors, or (ii) from such arrangements and further indemnification arrangements between subcontractors at any tier, provided that all such arrangements were entered into pursuant to the terms of this section.

''(2) Liabilities arising out of the contractor's willful misconduct or lack of good faith shall not be entitled to indemnification under the authority of this section.

''(f) An indemnification provision included in a contract under the authority of this section shall be negotiated and signed by the agency contracting officer and an authorized representative of the contractor and approved by the head of the agency prior to the commencement of performance of the contract.

''(g) The authority conferred by this section shall be limited to the following agencies:

''(1) The Department of Homeland Security;

''(2) The Department of Agriculture;

''(3) The Department of Commerce;

''(4) The Department of Defense;

''(5) The Department of Energy;

''(6) The Department of Health and Human Services;

''(7) The Department of the Interior;

''(8) The Department of Justice;

''(9) The Department of State;

''(10) The Department of the Treasury;

''(11) The Department of Transportation;

''(12) The Federal Emergency Management Agency;

''(13) The Federal Reserve System;

''(14) The General Services Administration;

''(15) The National Aeronautics and Space Administration;

''(16) The Tennessee Valley Authority;

''(17) The U.S. Postal Service;

''(18) The Central Intelligence Agency;

''(19) The Architect of the Capitol; and

''(20) Any other agency designated by the Secretary of Homeland Security that engages in homeland security contracting activities.

''(h) If any suit or action is filed or any claim is made against the contractor for any losses to third parties arising out of an act of terrorism when its anti-terrorism technologies and services have been deployed such that the cost and expense of the losses may be indemnified by the United States under this section, the contractor shall—

''(1) immediately notify the Secretary and promptly furnish copies of all pertinent papers received;

''(2) authorize United States Government representatives to collaborate with counsel for the contractor's insurance carrier in settling or defending the claim when the amount of the liability claimed may exceed the amount of insurance coverage; and

''(3) authorize United States Government representatives to settle or defend the claim and to represent the contractor in or to take charge of any litigation, if required by the United States Government, when the liability is not insured.

The contractor may, at its own expense, be associated with the United States Government representatives in any such claim or litigation.''.

(c) STATE AND LOCAL RISK SHARING AND INDEMNIFICATION.—(1) The Secretary may, upon the application of a State or local government, provide for indemnification of contractors who provide anti-terrorism technologies and services to State or local governments if the Secretary determines in writing that—

(A) it is in the best interest of the Government to do so;

(B) the State or local government is unable to provide the required indemnification; and

(C) the anti-terrorism technology and services are needed to protect critical infrastructure services or facilities, would be effective in facilitating the defense against acts of terrorism, and would not be reasonably available absent indemnification.

(2) The Secretary may exercise the authority in this subsection only if authorized by the Director of the Office of Management and Budget to do so.

(3) In order to be eligible for indemnification, any entity that provides anti-terrorism technology and services to a State or local government shall obtain liability insurance of such types and in such amounts to the maximum extent practicable, as determined by the Secretary, to satisfy otherwise compensable third party claims resulting from an act of terrorism when anti-terrorism technologies and services have been deployed in defense against acts of terrorism.

(4) The indemnification provided under the authority of this subsection shall indemnify, in whole or in part, the contractor for liability, including reasonable expenses of litigation and settlement, that is not covered by the insurance required under paragraph (3) for—

(A) claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property, or economic losses resulting from an act of terrorism;

(B) loss of, damage to, or loss of use of property of the Government; and

(C) claims arising—

(i) from indemnification agreements between the contractor and a subcontractor or subcontractors; or

(ii) from such arrangements and further indemnification arrangements between subcontractors at any tier, provided that all such arrangements were entered into pursuant to the terms of this subsection.

Liabilities arising out of the contractor's willful misconduct or lack of good faith shall not be entitled to indemnification under the authority of this subsection.

(5) If any suit or action is filed or any claim is made against the contractor for any losses to third parties arising out of an act of terrorism when its anti-terrorism technologies and services have been deployed such that the cost and expense of the losses may be indemnified by the United States under this subsection, the contractor shall—

(A) immediately notify the Secretary and promptly furnish copies of all pertinent papers received;

(B) authorize United States Government representatives to collaborate with counsel for the contractor's insurance carrier in settling or defending the claim when the amount of the liability claimed may exceed the amount of insurance coverage; and

(C) authorize United States Government representatives to settle or defend the claim and to represent the contractor in or to take charge of any litigation, if required by the United States Government, when the liability is not insured.

The contractor may, at its own expense, be associated with the United States Government representatives in any such claim or litigation.

(6) In this subsection, the definitions in paragraphs (16) through (21) of section 4 of the Office of Federal Procurement Policy Act shall apply.

(c) IMPLEMENTING REGULATIONS.—Not later than 120 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be amended to ensure consistency between the Federal Acquisition Regulation and this section.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from Texas (Mr. TURNER) and a Member opposed each will control 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. TURNER).

Mr. TURNER. Mr. Chairman, I yield myself 2½ minutes.

Mr. Chairman, the amendment that we are offering here on the floor today is the language that was approved by the Committee on Government Reform that was sent to the special panel. In the Committee on Government Reform it was adopted without opposition, with bipartisan support.

The amendment is very important because it allows the timely deployment of advanced technology in the fight against terrorism, while at the same time preserving the legal rights and remedies that are available to the victims of any terrorist incident.

The amendment extends to the Department of Homeland Security and other agencies that purchase anti-terrorism technologies a common practice of indemnity that has been around for a long, long time at the Department of Defense. In fact, this authority has existed since 1958 when President Eisenhower issued an executive order under law which allowed indemnity to be granted by the Secretary of Defense to certain of our defense contractors.

The concept of indemnity is not only one that has been with us for a while, but has been used most recently by President Bush when he granted the Secretary of Health and Human Services the authority to give indemnity to the manufacturers of Cipro after the anthrax scare.

The language that we offer today came to the attention of the gentleman from Virginia (Mr. TOM DAVIS) as the Chairman of the Subcommittee on Technology and Procurement Policy of the Committee on Government Reform and to me as the ranking member. It was brought to our attention by Federal contractors, a coalition including Lockheed Martin, Northrop Grumman and the Information Technology Association of America.

Our language, which was adopted by the committee, allows discretion in the

Secretary of Homeland Security to grant in whole or in part indemnity against potential liabilities.

□ 1415

It requires that the companies carry insurance up to the amount that they reasonably can.

This legislation is modeled, as I said, after existing law and practice; and as they say, ''If it ain't broke, don't fix it.'' So we are again offering today our language, which we believe is fiscally responsible, which is understandable, and which is supported in a bipartisan way. The language that we have in our amendment protects the Federal Treasury.

It has been suggested by those who support the alternative language that is in the bill that somehow we open the doors of the Treasury if we grant indemnity. Our language makes it very clear that the indemnity offered by the Secretary can be limited, limited in amount, limited in scope. And once the Secretary makes the decision to grant indemnity, it must be approved by the Office of Management and Budget.

We believe this is a much superior way to get technology deployed in a rapid manner, which is what this amendment is all about. The alternative language in the bill is going to slow down the process. It requires an FDA-type approval procedure that would allow the director of Homeland Security to examine the equipment and then certify it. We think that is the wrong approach, and we will urge adoption of our amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. ARMEY. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore (Mr. BONILLA). The gentleman from Texas (Mr. ARMEY) is recognized for 20 minutes.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentleman from Iowa (Mr. NUSSLE), the distinguished chairman of the Committee on the Budget.

Mr. NUSSLE. Mr. Chairman, I want to thank the distinguished majority leader for his fine work on this piece of legislation and congratulate him on it.

We have a good bill here, my colleagues; and we are about to just blow a hole so wide in the budget we have not seen nothing. In fact, we asked CBO, the Congressional Budget Office, to score this amendment because we wanted to at least be able to nail down a ballpark figure of what this would cost. And even CBO, who has been known from time to time to guess and predict, and sometimes guess incorrectly even, will not even hazard a guess of what this bill costs. In fact, what they tell us in the letter is that they know it is going to cost something, but they have no idea how much.

And why is that? Because none of us can predict the future. But we can predict one thing, and that is that Congress will respond. To just fully indemnify and throw in this blanket blank check into this bill, without recognizing the perspective and the understanding of where we have been this year, would be, I believe, irresponsible.

Let us just review this year. Even before passing the supplemental, we increased homeland security funding this year, already almost by 45 percent in 2001 and 65 percent in 2002. Forty billion dollars, my colleagues, we, in a bipartisan way, spent in response in two supplementals for reconstruction and for the war; $8.4 billion in economic assistance to the aviation industry; almost $200 million in immediate assistance to victims of terrorism; and our 2003 budget included a $35 billion increase for defense to fully fund the President's request.

Just this week, we passed an additional bill for $10 billion in addition to that $35 billion. Just yesterday, we sent to the President a second supplemental where we provided $28.9 billion in emergency funding, $13 billion of which went to defense and $11 billion went to the other agencies. In addition, we provided roughly $75 billion of economic stimulus to help recover from the shock.

Indemnification? I do not know what my colleagues are worried about here. We will respond. But to give a blank check and to put the taxpayers on the hook with absolutely no check from the House of Representatives, with no oversight, with no accountability, and with no understanding of what this will do to the budget, is the wrong thing to do to this very responsible bill.

This bill fits within our budget. Do not pass this amendment or it busts every budget anyone has ever contemplated.

Mr. TURNER. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. WELDON), a distinguished member of the Committee on Armed Services.

(Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. WELDON of Pennsylvania. Mr. Chairman, I rise in support of this amendment. Why do I rise in support of the amendment? Well, first of all, before coming to Congress, I worked for the insurance industry at the home office of the INA Cigna Corporation. I spent 18 years working on issues involving reinsurance and liability concerns for the American people.

I understand where we do not have enough market capability where the government has to come in, and we in fact are doing that. This legislation that the gentleman from Texas (Mr. TURNER) offers is modeled after indemnification laws for the nuclear power industry and the commercial space launch industry, and they have operated successfully for decades. This is modeled after that.

The second reason I come to the floor on this issue, and by the way the letter we sent out was signed by 23 Republican colleagues on this very issue not more than several weeks ago, was I worked very closely with this group. This is the NBC Working Group. This group is made up of all the companies in America that produce cutting-edge chemical, nuclear and biological technologies. In fact, I have hosted them twice on Capitol Hill in the Rayburn Building, where Members have had a chance to see technology associated with detection systems, with systems that are being designed on the cutting edge to assist us in the war on terrorism.

They have a major concern, Mr. Chairman. They have a major concern relative to the ability of these kinds of companies to still continue to do the cutting-edge research necessary to give us the products that we need to have. This legislation that the gentleman from Texas (Mr. TURNER) offers, I think, is a fair compromise. It gives us an ability to protect them while still protecting the taxpayer. In fact, I think there is in fact a cap in here that can be set by the administration. So the administration has the final determination.

As the chairman of the Subcommittee on Military Procurement for defense, my job is to work with our defense industrial base to make sure we are being given the cutting-edge technology to fight the war on terrorism. Working closely with these industry groups, working closely with the NBC Working Group, I am convinced that we need to have this kind of a modern approach. And so I rise in support of this legislation and encourage my colleagues to vote ''yes'' on the Turner amendment.

Mr. ARMEY. Mr. Chairman, it is my pleasure to yield 3 minutes to the gentleman from Texas (Mr. DELAY), the distinguished majority whip.

Mr. DELAY. Let me first, Mr. Chairman, say that those that are on the cutting edge of technology and wanting to provide it are protected in the base text of the bill by limiting their liability and banning punitive damages, just like we have done in the Transportation Safety Administration and other instances.

But, Mr. Chairman, there is an unacceptable demand that America needs to know about right now. Some of the largest and most profitable corporations in the country are attempting to pass off legal liability for their products onto average Americans. These defense contractors are trying to feed the taxpaying public to the crocodiles of the plaintiff's bar.

American taxpayers should not be asked to absorb the devastating financial consequences that would flow from creating an enormous new unfunded liability. Taxpayers should not be footing the bill for a gigantic new windfall for trial lawyers. Even now, the plaintiff's bar is eagerly anticipating new ways to exploit the new terrorist attack through litigation against the companies that are developing terror-fighting tools.

What is even more outrageous is that multibillion dollar defense contractors

have the nerve to come to Congress, hat in hand, to demand that taxpayers foot this bill. If these defense contractors bear the responsibility for the failure of their technology, then they should be held responsible. And if these contractors are being unfairly sued and being penalized only because they contributed to the anti-terrorism effort in this country, then these lawsuits need to be stopped. And that is exactly what our base text ensures. We defang frivolous lawsuits that do nothing but line the pockets of trial lawyers.

What we need is broad-base litigation reform. What we do not need are multibillion dollar defense contractors making American taxpayers responsible for the quality of their technology. This would truly be a case of corporate welfare. It is ironic that Members of the minority, who routinely malign Republicans as the party of corporate America, are so willing to subject taxpayers to a bottomless pit of unfunded liability to protect these corporations.

Clearly, supporters of this amendment place a far greater weight on the wishes of their trial lawyer friends than they do to the dangers created for fiscal discipline and the American taxpayers. I ask that my colleagues vote ''no'' on the Turner amendment.

Mr. TURNER. Mr. Chairman, I yield 2½ minutes to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Chairman, I thank the gentleman from Texas for yielding me this time, and I rise in support of the Turner amendment.

This amendment provides a reasonable balance between the protections needed by the liability insurance market and the access to compensation needed by the public and certain industries, such as the airlines. The Turner amendment uses language which has received strong support from both sides of the aisle, language that was contained in the bill reported by the Committee on Government Reform. It provides a sensible alternative to the bill, and particularly to the Army amendment we just debated.

H.R. 5005, the Homeland Security Act, only requires sellers to carry liability insurance to the extent that it is reasonably available from private sources at prices and terms that will not unreasonably distort the sales prices of sellers' antiterrorism technologies. That simply means that if a company cannot obtain insurance that is reasonably priced, it does not need to have any insurance whatsoever and victims cannot recover one penny for their injuries.

Amazingly, the Army amendment is even worse. It would give total immunity from lawsuits for any kind of wrongdoing, including willful and malicious corporate misconduct. This is true so long as the designs for the antiterrorism products and services have been approved by the Homeland Security Department. The only exception is if the seller acted fraudulently or with willful misconduct prior to that approval. The seller is free to deceive the public or continue to market a product subsequently determined to be dangerous or defective.

Even worse, the Army amendment protects corporate wrongdoers against all other kinds of lawsuits, so a buyer cannot sue the corporation for breach of warranty, breach of contract, public nuisance, or anything else. In other words, the corporation's protection allows it to make products that do not even work. The Army amendment protects the corporation against lawsuits by the injured victims and against lawsuits by the airlines or other groups who purchase the product.

We do not need to be giving blanket immunity to all corporations. Too many companies are acting in ways that are contrary to the public interest, and too many of our constituents are suffering as a result. We should not pass such a Draconian amendment. What we should do is support the Turner amendment. This amendment maintains a cap on the liability of corporations, recognizing the importance of doing so in order to stabilize the liability insurance market. That stability makes it easier for corporations to obtain capital to develop technologies.

The Turner amendment also includes an indemnity clause, such as the one used by the Department of Defense. This will enable victims to receive compensation from the government for costs that exceed the corporate liability cap. This is a good, balanced approach to the real problems we are facing as a Nation. Let us protect companies and compensate victims. Support the Turner amendment.

Mr. ARMEY. Mr. Chairman, I am proud to yield 3 minutes to the gentleman from Oklahoma (Mr. WATTS), the distinguished conference chairman and a member of the Select Committee on Homeland Security.

Mr. WATTS of Oklahoma. Mr. Chairman, I thank the chairman for yielding me this time.

Mr. Chairman, the Turner amendment is fiscally irresponsible because it hands over the keys of the United States Treasury to trial lawyers. It would have the American taxpayer, not corporations, but American taxpayers pay nearly infinite damages caused by terrorists. We need the safety act provisions to ensure that Americans get the protections they deserve against future terrorists.

□ 1430

The fatally flawed tort system in America and the unbounded threat of liability are blocking the deployment of anti-terrorism technologies that can protect the American people. I want to give one illustration of where this really comes into play and give Members some idea of the lack of common sense that the Turner amendment would tear down.

The insidious dynamic that prevails under current law works as follows: A company might produce a smallpox detection device and deploy 100 of them. Terrorists strike, and 99 of the devices might work saving millions of lives. One device may not work and several thousand people might die. Lawsuits will follow. The potentially infinite liability to which the lawsuits currently expose the company will prevent the company from being able to deploy any of the 100 smallpox detection devices in the first place. The 99 that worked will be pulled off the market which, if that happens, would put millions of Americans at risk. It would expose them. That is the tragic consequence the SAFETY Act is designed to protect.

The SAFETY Act provisions place reasonable and sensible limits on lawsuits so America's leading technology companies will be able to deploy solutions to defeat terrorists.

What the Turner amendment does, it actually takes the liability away or takes the safety features away from the people that go to the malls, that go to the stadiums, the water treatment facilities, they will not be able to have access to these technologies that protect us, that protect our families, that protects this Nation. It just makes no sense.

It is time for Congress to stand up to the trial lawyers yet again and say no, especially now that we are at war against terrorists who will stop at nothing to harm innocent Americans. We saw it on September 11. We saw it on April 19, 1995, in Oklahoma City. This is about protecting American life, it is not about limitless lawsuits. Vote ''no'' on the Turner amendment.

Mr. TURNER. Mr. Chairman, I yield 1½ minutes to the gentleman from South Carolina (Mr. SPRATT), a distinguished member of the Committee on Armed Services.

(Mr. SPRATT asked and was given permission to revise and extend his remarks.)

Mr. SPRATT. Mr. Chairman, this amendment is very basic. What it does is it takes blanket immunity which is added to this bill and replaces it with selective indemnity. The bill as it stands would exonerate contractors who provide all kinds of equipment, gear and protective devices, undertaking the most serious sort of responsibility from any liability whatsoever for the products they provide. Any. Just across the board, blanket immunity.

Instead it would say let us go back to the model of an old law called Public Law 85–804 and allow on a case-by-case basis, not a priori, but case-by-case indemnification to be provided to these contractors so they would have protection if they were sued in certain cases under certain circumstances. It makes far more sense than to try and sit here in judgment on all kinds of liability situations which we cannot even begin to foresee, much less render final judgment on.

85–804 has been on the books for as long as anyone around here can remember. Lockheed Aircraft Corporation almost went bankrupt in 1971. It

was the authority of 85–804, the extraordinary authority of that law that had been carried forward for at least 60 years that allowed us to put Lockheed back on its feet. It is the largest contractor today.

That is basically what we are saying here today. Let us use the extraordinary authority given agency heads which has been used sparingly, to negotiate these agreements selectively case by case as opposed to doing this across the board. What we are doing here with this amendment is replacing something that is novel and new, untried and vast, with something that has proven to work. It is that basic, that simple, and that is why we should adopt this amendment.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentlewoman from Ohio (Ms. PRYCE), a member of the Committee on Rules.

Ms. PRYCE of Ohio. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, we keep hearing reference to the word responsibility. We must have responsibility, and the SAFETY Act, the provision included in the en bloc amendment, the manager's amendment, makes the wrong-doers responsible. This indemnification amendment makes the taxpayers responsible. Responsibility is very important, but we cannot make the taxpayers of this country responsible for everything that goes wrong. We do not even know how much this will cost. Proponents did not even ask for a cost estimate. All we know is that the Congressional Budget Office tells us that it will cost a lot over a period of 5 years. We should find out how much this will cost before we proceed by adopting this amendment.

Mr. Chairman, the SAFETY Act does not provide immunity from lawsuits, it simply provides that products approved by the Federal Government for use in homeland security, and deployed in cooperation with customers other than the Federal Government in order to save lives, should be allowed the benefit of the existing government contractor defense. We already know that this works. It is already in law.

Under these provisions, any person or entity who engages in criminal or terrorist acts, including corporate crimes such as consumer fraud and government contract fraud, they are denied the protections. They do not get them.

The Democrats cannot have it both ways. The SAFETY Act that is in the manager's amendment is the fastest and the most efficient way to deploy anti-terrorism technologies, much-needed technologies that will save lives, and it does it without extending any immunity and it does it without leaving the American taxpayers holding the bag.

The Turner provision will do just that. It will leave the American taxpayers holding the bag. We get that assignment all too often, Mr. Chairman. Allow the reasonable insurance coverage to kick in, provide for very limited tort reform, and we have the answer. We can go forward.

Mr. TURNER. Mr. Chairman, I yield 1¾ minutes to the gentleman from Georgia (Mr. BISHOP).

Mr. BISHOP. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in strong support of the Turner amendment, which is a reasoned, bipartisan alternative to an irresponsible liability provision in the bill. There currently exists a myriad of new and undeployed technologies which are needed now to protect America from the threat of nuclear, biological, chemical and other terrorist threats.

However, under current law, many of the technologies may never be deployed because they cannot be insured under our current legal liability structure. Section 753 of the bill addresses this problem, but it is extremely misguided and irresponsible. Under the bill, victims who are injured cannot sue for personal injuries because the corporate wrong-doer enjoys total immunity from lawsuits by any kind of wrongdoing, including willful and malicious corporate misconduct under the so-called government contractor defense.

Mr. Chairman, this is wrong. It is un-American. It is overkill. It is throwing the baby out with the bath water. The Turner amendment is narrowly tailored to address this issue. It allows the new Department of Homeland Security and other agencies that are responsible for homeland security the discretion to indemnify providers of anti-terrorist technology from liability above and beyond the coverage that they are able to obtain in the private marketplace. This approach is modeled after successful indemnification laws which are targeted and fiscally responsible.

Mr. Chairman, the Turner amendment gives America the technologies that we need to remain secure while guaranteeing the victims' rights that they deserve and are entitled to under the law. It is the right thing to do, and I strongly urge Members to support it.

Mr. ARMEY. Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. TOM DAVIS).

(Mr. TOM DAVIS of Virginia asked and was given permission to revise and extend his remarks.)

Mr. TOM DAVIS of Virginia. Mr. Chairman, the concept of contractor indemnification, which is core to the term, is not a new plan. It has been around since the 1950s under Public Law 85–804. And so Members understand, less than $100 million has been paid out over the course of 45 years because the discretion that the agencies have in exercising that, and also because under this, it would also be subject to OMB approval.

In order to get protection under either the Turner plan or the Armey plan, the contractor has to acquire insurance to fully protect to the extent the risk is not covered by insurance. And if supplier technology engages in willful misconduct or displays a lack of good faith, neither plan saves it. The solutions proposed differ, but I think each represents a viable solution to the dilemma faced by the Nation.

Our committee liked the indemnification plan because it was written into current law. The Armey plan, though, has been the policy of the House as we have moved legislation forward. I thank the gentleman from Texas (Mr. TURNER) for working with us on this language in the committee. I appreciate what the gentleman has done on this.

Mr. TURNER. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I just wanted to express my sympathies for my distinguished friend, the gentleman from Virginia (Mr. TOM DAVIS), whose amendment this was when we were in committee and in rules. Now all of a sudden, something happened on the way to the floor. I just express to the gentleman, maybe I can find out in the cloakroom what happened that caused this sudden change of heart and the support of the Turner amendment.

Here we go again. We have unprecedented corporate immunity in subtitle F of the homeland security bill. I am going to tell the other side of the aisle they were going to lose votes on final passage by continuing to immunize these corporations against liability.

First it was the airport security group, and some of the lousiest contractors in the business are now going to get immunized. Here we are going to give companies corporate immunity that will not be able to be penalized by injuries.

Mr. Chairman, what is this? This is not a tort liability bill. This is a homeland security department that we are trying to create. All of this foolishness is not doing the other side of the aisle any good. Extending this product liability immunity to anti-terrorist products is a bad idea, and I hope that we will reject this amendment; and, if necessary, reject the whole bill.

□ 1445

Mr. ARMEY. Mr. Chairman, I reserve the balance of my time.

Mr. TURNER. Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY of New York. Mr. Chairman, I rise in support of the Turner amendment.

The Turner amendment is narrowly targeted and fiscally responsible. The Republican majority's immunity provisions in the bill are the ultimate anti-corporate responsibility provisions and living proof that the leadership is not serious about increasing corporate accountability.

The Turner amendment addresses one of the challenges that we have experienced in New York after September 11 where one of the biggest problems we have is the lack of available insurance. It is stifling our economy. Commerce cannot go forward without insurance, and I hope Congress will act quickly on antiterrorism insurance.

Similarly, we have very talented private sector industries developing cutting-edge technologies to make our homeland secure. But without sufficient insurance coverage and liability, these technologies simply will not be offered. And without a safety net for catastrophe, businesses simply will not do antiterrorism business.

What this amendment does is that it indemnifies providers of antiterrorism technology, which we desperately need, only after they have obtained all the insurance that they can from the private market and above that insurance they are indemnified for additional liability.

I might say that they must also get the approval of the Secretary of Homeland Security and of OMB. So I urge my colleagues to support the Turner amendment. It merely gives companies that will do business with the new Department of Homeland Security the same protections, the same indemnity protections to companies that work with other agencies like the Department of Defense.

I urge my colleagues to vote in favor of the Turner amendment.

Mr. ARMEY. Mr. Chairman, it is my pleasure to yield 3 minutes to the distinguished attorney and Member of this body, the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Chairman, I thank the leader for yielding me this time, and I commend him for his very strong work in creating the legislation that will allow homeland security to be consolidated in one department of our government and also on his work to make sure that we can effectively make sure that our country is indeed secure.

Mr. Chairman, I strongly oppose the amendment offered by the gentleman from Texas. Advanced technology companies are developing technologies that can help detect and prevent acts of terrorism. However, these companies are effectively prohibited from making these technologies widely available because they would be subjected to unlimited liability and uninsurable risks.

As we sadly learned from the tragic events of September 11, our terrorist enemies will not limit their attacks to government targets. In choosing their targets, terrorists make no distinction between military personnel and civilian men, women and children. Therefore, it is imperative that our local shopping malls, ball fields, schools and office buildings be protected from terrorist attack. One way to do that is to untie the hands of technology companies and allow them to provide the best technologies available to the private sector without fear that they will be put out of business for doing so.

The provisions in the bill help ensure that effective antiterrorism technologies that meet very stringent safety and effectiveness requirements are deployed and requires that companies selling such devices obtain the maximum amount of liability insurance possible. It also ensures that victims are compensated for demonstrable injuries as equitably as possible.

Opponents argue that the bill provisions provide for immunity to corporations who willfully sell defective products. But they are simply wrong. Nothing in these provisions provide immunity from lawsuits. Further, any person or company who engages in criminal or terrorist acts, including corporate crime such as consumer fraud and government contract fraud, is denied the protections of the act. In addition, under the act, if a company engages in any fraud or willful misconduct in submitting information on product safety to the Secretary of Homeland Security, it will be denied the opportunity to even assert the government contractor defense.

I urge my colleagues to join me in supporting the current provisions of the bill so that Americans may be protected by the best technologies available without sticking American taxpayers with the bill in the case of catastrophe caused by terrorists.

Oppose this amendment and support the legislation.

Mr. TURNER. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Texas (Mr. DOGGETT), a distinguished member of the Committee on Ways and Means.

Mr. DOGGETT. How very disappointing this afternoon that the leadership has chosen to reject a successful bipartisan initiative by the gentleman from Texas (Mr. TURNER) and the gentleman from Pennsylvania (Mr. WELDON) that has already been endorsed by a number of major corporations. It seems to me that public safety should be the first, the last, and the only goal of this Homeland Security bill. Yet with this last-minute legal loophole that has been tacked onto the bill, the goal is clearly to rid corporations of responsibility for the harm their products cause.

If the wrongdoer does not bear the responsibility, then who will bear the responsibility? Well, the decision the gentleman from Texas (Mr. ARMEY) has made is to place all of the responsibility for wrongdoing on the victim. This is basically a ''blame the victim,'' ''let-the-victim-bear-the-full-cost-of-the-wrongdoer'' approach. And the timing is so strange not only the last-minute way in which it was slipped in after the Committee on Government Reform approved the bipartisan, moderate approach, but strange timing that in a year when so many retirees, so many workers, so many investors are paying the very painful cost of corporate irresponsibility, that this Congress would say, ''let us have a little more unaccountability.''

The Reserve Officers Association, certainly no group that has been involved in any of these high-profile debates over tort issues, has stated its unqualified opposition to the special exemption that this legislation provides, noting that even unscrupulous government contractors guilty of willful misconduct will be let off the hook when they provide anti-terrorism technology to our American troops.

This is not a debate about liability limits. It is a debate about corporate accountability limits, a debate about corporate responsibility limits. And I do not think we ought to limit that responsibility, particularly at this time in American history. Clearly, there are no limits to the willingness of this leadership to provide backdoor favors to their friends. Protecting Americans working at home and fighting abroad means holding corporations responsible for their misdeeds. That is what we need to do, instead of blaming the victim, instead of saying that it will be the soldiers, the fathers, the mothers, the children and other innocents, all the victims, that must pay the price for corporate misconduct. We need to make a firm statement in favor of a reasonable, bipartisan approach that the gentleman from Texas (Mr. TURNER) advances.

Mr. TURNER. Mr. Chairman, I yield 1¼ minutes to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Mr. Chairman, I rise in support of this amendment. Today, our Nation faces a new threat and a new enemy. And while the terrorists we fight have new ways of attack, we have much greater new abilities to defend this great Nation.

America has always been the arsenal of democracy, and we remain so. And the new tools we possess are the technologies that spring from the ingenuity of the American mind. We have seen those technologies deployed in the Gulf War, in Afghanistan, and now those new technologies help protect us here at home.

In order to encourage the private sector to use its ingenuity to develop these defensive capabilities, they must have the ability to protect themselves from excessive exposure and liability. There is a mechanism in existing law that provides indemnity on a case-by-case basis for those under contract with the Department of Defense. And as demonstrated by the extraordinary work of the Department of Defense, this targeted immunity works.

The Turner amendment, based on a bipartisan agreement attested to by those who have contracted with the Department of Defense, restores this targeted indemnity. The opposition says that what has worked for the Department of Defense is not enough. They want blanket indemnity. They want an indemnity so broad it threatens to remove some of the vital and powerful incentives for technology

makers to make sure they get it right. This goes too far.

We want to incentivize the development of new technologies that work, that meet their promise, that live up to their expectation, that protect this country and all who serve it. The Turner amendment will do this. Nothing more and nothing less.

Mr. TURNER. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise to support the Turner amendment, and I ask a question today on this very important debate: Are we fighting terrorism, or are we fighting the American people? Nothing in the Turner amendment will thwart the intent of the Department of Homeland Security to save lives and to prevent terrorism.

The Turner amendment will, in effect, encourage innovative devices and technology to be presented to the government. It will not, on the other hand, provide the corporate escape that the manager's amendment gives to this particular bill by inserting immunity provisions in the bill for Corporations that have technology that might harm us if it fails. What the Turner amendment does is say use your innovative devices, use your innovative technology and we will indentify you, with restrictions. Those restrictions will be the Secretary of the Department of Homeland Security and the OMB Director. What more can you ask for? Are we here to save lives? Are we here to help the American people? Are we here to fight terrorism? Or are we here to stuff money into corporate America's pocketbook?

Support the Turner amendment.

Mr. TURNER. Mr. Chairman, I yield myself the balance of my time.

I want to thank, first, the gentleman from Virginia (Mr. TOM DAVIS) for his efforts with me in crafting this language. We both worked with Lockheed Martin, Northrop Grumman, and the Information Technology Association to come forward with this language that we reported out of the Committee on Government Reform unanimously without opposition. The gentleman from Virginia and I brought the amendment to the attention of the Committee on Rules. And I am very grateful we had the opportunity, Mr. Leader, to offer the amendment.

I must say that it is somewhat surprising to hear the criticism from the other side today of what is existing law. The Department of Defense grants indemnity to companies that launch missiles because of the concern of those corporations about business risk. I was quite surprised to hear the provision criticized, because it has been in the law since 1958 and was first implemented by President Eisenhower and most recently used by President Bush when he authorized the Department of Health and Human Services to indemnify the manufacturers of Cipro who would not provide that to our government unless we did so.

Our amendment follows existing law, existing practice and, most importantly, does not take anyone's legal rights away from them. I would urge the House to join with us in supporting this bipartisan amendment. Twenty Democrats and 21 Republicans wrote a letter to the special panel asking them to include our language in the bill. We enjoy bipartisan support. We believe it is the right way to deal with a very serious problem. And we will be able, under our amendment, to get the technology out there and in place much quicker than the approach that is in the bill which requires an FDA-type review process for every piece of equipment and will take years to implement the technology we need to fight terrorism.

Mr. ARMEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, we have heard a great deal about the bipartisan support of this amendment. Irony of ironies, where there is bipartisan support there can be bipartisan rejection.

Let me say, Mr. Chairman, this amendment had an interesting experience in the committee of jurisdiction, one of the 12 standing committees that worked on this bill. When it was proposed on the eve of the night markup of this bill in that committee, it was opposed by the ranking Democrat on the committee, the gentleman from California (Mr. WAXMAN), who said, and I quote, ''It really is opening up the Treasury of the United States to a lot of companies that might have exercised due care. And, more importantly, when companies are indemnified, even if they are negligent, there is not the incentive to avoid being negligent.''

□ 1500

This approach to the problem was contemplated in the other body and, indeed, in this case the ranking minority member, a Republican member in the other body, intended to offer this amendment in the other body's markup just yesterday and was dissuaded from doing so by the majority members, the Democrats of the committee, who thought it imposed too big a burden on the Treasury of the United States.

Mr. Chairman, I am not a lawyer, so I have to rely on other legal experts like, for example, the Supreme Court. In this debate it has been argued that when a government contractor has a defense, it is an immunity. I only point out to the minority that the Supreme Court has said a defense is not an immunity. Always going back to the legal questions that baffle us so such as what the meaning of the word ''is'' is, but in this case the meaning of the word ''defense'' is not immunity.

Let me say, Mr. Chairman, that what we are trying to do was well described by several people. We are trying to encourage that practical American genius to bring its product to the defense of America. What this base language that would be set aside by this amendment does do is provide a consolidation of claims in Federal court to stop venue-shopping. It has a requirement that noneconomic damages be awarded only in proportion to a party's percentage of fault. It has a ban on punitive damage. It takes a sort of simple practical American notion that if someone is a victim, they should not be treated as if they were a perpetrator. A rather novel idea, I am sure, in some circles but quite well understood by most Americans.

The underlying language says offsets are awarded based on receipt of collateral source benefits providing compensation for the same injuries; no double-dipping. This is something that I have in other contexts referred to as the Daschle provision, having been enacted in law pursuant to the innovation of the distinguished Democrat majority leader in the other body. The underlying language has a defense modeled on government's contractor defense that applies following sales of qualified antiterrorism technologies in the private sector, and it caps liability and insurance.

This has been enacted in this body before. This is not some Johnny-come-lately notion new to this body. It was part of the Aviation Security Act. It was part of the Air Stabilization Act. It was part of the Terrorism Risk Insurance bill, and it part of the Class Action Reform bill passed in this body in this year.

What we do not do in the underlying language that would be set aside by this amendment is put a cap on attorneys' fees, provide any immunity for anybody anywhere at any time, or exempt criminals from coverage.

Mr. Chairman, I do not ask much, but I do ask for accuracy in debate. There has been far too little of it. I ask the body to reject this amendment and uphold the underlying language.

Mr. RODRIGUEZ. Mr. Chairman, I fully support the amendment offered by the Gentleman from Texas [Mr. TURNER]. This amendment balances the need to encourage responsible development of new homeland defense technologies and products with the need to maintain a system that holds wrongdoers responsible for their misconduct.

His amendment would allow under appropriate circumstances the Secretary of Homeland Security to provide indemnification to the manufacturers of anti-terrorism products, much like the Secretary of Defense today can provide indemnification to companies making products critical to our national defense.

Under this approach, any victims of product failure would still be able to receive full compensation. They would not be left to suffer alone.

Companies do not get a free ride: they must take out the maximum level of insurance possible, and they can get the indemnity coverage only after they convince the Department of Homeland Security and the White House's Office of Management and Budget that they qualify for indemnification.

At the same time, the many companies which make the products and develop the technologies we need also won't be asked to take inordinate risks. The Turner Amendment would provide them the incentives to invest aggressively in homeland defense technologies without upsetting the entire system of checks and balances within our civil justice system.

Just earlier this week, we celebrated the passage of legislation to hold corporate executives accountable for misconduct. Shockingly, the majority now tries to exempt those same companies from any responsibility for the products they make.

Mrs. MEEK of Florida. Mr. Chairman, I rise in strong support of the Turner Amendment that seeks to add back the indemnification provisions that the Government Reform Committee had recommended for inclusion in the bill. The Turner Amendment does not require any indemnification by the Federal government. It simply permits such indemnification when the head of a Federal agency and the head of the new Office of Homeland Security deem it in the public interest to do so.

The blanket corporate immunity in Subtitle F of the bill is not in the public interest. Our goal is to achieve homeland security, not reflexively broaden corporate protection from negligence.

The Turner Amendment is a very responsible, narrow and targeted means to deal with this problem. It would allow Federal agencies to indemnity contractors for anti-terrorist technology after they've purchased as much private insurance as they can get. The Secretary of Homeland Security could also indemnify contractors on behalf of state and local governments on the same terms.

There are high-tech companies across the country that are developing cutting-edge technology to help prevent terrorist attacks. But in some cases, they can't sell them because they can't get enough insurance. The risks of liability from a major terrorist attack are so great that insurance companies can't afford to insure these products. So let's help high-tech companies by offering them indemnification where the private insurance market is unable or unwilling to insure them in those limited, special circumstances where the head of a federal agency deems it in the best interests of the government to provide such indemnification.

Support the Turner Amendment.

The CHAIRMAN pro tempore (Mr. HASTINGS of Washington). The question is on the amendment offered by the gentleman from Texas (Mr. TURNER).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. TURNER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, following this 15-minute vote, the Chair will reduce to 5 minutes the time for the vote, if ordered, on: Amendment No. 20 by the gentleman from California (Mr. WAXMAN), and amendment No. 21 by the gentleman from Texas (Mr. ARMEY).

This will be a 15-minute vote followed by two 5-minute votes.

The vote was taken by electronic device, and there were—ayes 214, noes 215, not voting 5, as follows:

[Roll No. 359]

AYES—214

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gilman
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Horn
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Weldon (PA)
Wexler
Woolsey
Wu
Wynn

NOES—215

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—5

Blunt
Combest
Cunningham
Gilchrest
Meehan

□ 1537

Messrs. GALLEGLY, HERGER, TOOMEY, HEFLEY, PETERSON of Pennsylvania, GUTKNECHT, HUNTER, ROHRABACHER, EHRLICH, and GRAHAM, Mrs. BONO, and Mrs. JO ANN DAVIS of Virginia changed their vote from ''aye'' to ''no.''

Messrs. BERRY, DINGELL, and DELAHUNT changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. HASTINGS of Washington). Pursuant to clause 6 of rule XVIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on each amendment on which the Chair has postponed further proceedings.

SEQUENTIAL VOTES POSTPONED IN THE COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: amendment No. 20 offered by the gentleman from California (Mr. WAXMAN); amendment No. 21 offered by

the gentleman from Texas (Mr. ARMEY).

The Chair will reduce to 5 minutes the time for any remaining vote in this series.

AMENDMENT NO. 20 OFFERED BY MR. WAXMAN

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. WAXMAN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 208, noes 220, not voting 5, as follows:

[Roll No. 360]

AYES—208

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—220

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—5

Blunt
Combest
Cunningham
Gilchrest
Meehan

□ 1549

Mr. CANNON changed his vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 21 OFFERED BY MR. ARMEY

The CHAIRMAN pro tempore (Mr. HASTINGS of Washington). The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Texas (Mr. ARMEY) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 222, noes 204, not voting 7, as follows:

[Roll No. 361]

AYES—222

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Honda
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pastor
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas

Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—204

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—7

Blunt
Combest
Frelinghuysen
Gilchrest
Istook
Meehan
Wicker

□ 1558

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 23 printed in House Report 107–615.

AMENDMENT NO. 23 OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 23 offered by Mr. OBERSTAR:

Strike section 409 of the bill.

Redesignate section 410 of the bill as section 409.

Conform the table of contents of the bill accordingly.

The CHAIRMAN pro tempore. Pursuant to House Resolution 502, the gentleman from Minnesota (Mr. OBERSTAR) and a Member opposed each will control 22½ minutes.

The Chair recognizes the gentleman from Minnesota (Mr. OBERSTAR).

□ 1600

Mr. OBERSTAR. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, all of the amendments we debated last night and so far today have had important consequences for the future of the country, for the operation of the Department of Homeland Security, for various aspects of our domestic life.

The one I propose at this point is quite possibly the only life or death vote we will consider in this legislation. Because whether or not explosive detection systems are installed at airports and whether or not complete screening of checked luggage is accomplished at the Nation's domestic airports will determine whether a terrorist can get a bomb aboard an aircraft and blow it out of the sky, as happened with Pan Am 103 over Lockerbee, Scotland. Make no mistake about it, there are serious consequences, life or death consequences for what we do in this piece of the legislation.

Previously, on the en bloc amendment of the majority leader, I said I cannot understand why anyone would want to protect the security company providers from liability. In this amendment, in this the provision of the committee bill, I can understand why Members are confused and why there was an attempt to extend the deadline for compliance with the law that we enacted a year ago, 8 months ago in this body, 410 to 9.

I understand that airport authorities have badgered Members of this body. Airlines have lobbied many Members of this body to extend the time for compliance with that law. They are wrong.

The law provides alternative means if we cannot get explosive detection systems in place by December 31. The law specifically provides for alternative means of screening checked luggage. There is no excuse for removing the pressure upon the Transportation Security Administration to comply with that law that virtually everyone in this body, everyone seated on this floor voted for. Why would we vote for airline security, tough airline stick measures and then turn around and undo it? Do not do it.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore (Mr. HASTINGS of Washington). For what purpose does the gentleman from Ohio (Mr. PORTMAN) rise?

Mr. PORTMAN. Mr. Chairman, I rise to claim the time in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman from Ohio (Mr. PORTMAN) is recognized for 22½ minutes.

Mr. PORTMAN. Mr. Chairman, I yield 2½ minutes to the gentleman from Texas (Mr. BARTON).

(Mr. BARTON of Texas asked and was given permission to revise and extend his remarks.)

Mr. BARTON of Texas. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, let us set one thing straight. Nobody that opposes the amendment to strike the language that is before us at this point in time is trying to take the pressure off of any airport to not implement tough baggage screening processes. The point of the fact is the major hub airports simply cannot meet it.

I have Dallas/Ft. Worth Airport in my congressional district. Over 100,000 people go through that airport every day. Fifty-five thousand bags are checked every day. DFW and their management team have been working with TSA since the law was passed. TSA has yet to give them a definite answer on their solution. There is a backlog of equipment that cannot be put in place. If we have to meet the deadline, do my colleagues know what DFW is going to do, they are going to have to hire 1,500 temporary employees. They are going to have to put up folding tables. They are going to have check by hand almost every bag that comes in to be checked.

That is going to be long lines. It is going to cost $142 million just at DFW, and they are still going to have to come in with a permanent solution within the next year that is going to cost another $150- to $170 million.

Why not give them a little extra time? They still have to be working on the solution. They still have to try to get it done, but if they do not, there are not going to be any penalties imposed. There are not enough equipment manufacturers to meet the sophisticated equipment for the larger hub airports that have to be in place if we literally tried to get it all done by December 31.

Let me give my colleagues an example. As of today, of the 429 airports that are subject to the existing law, only 24, one out of five, 5 percent have had a complete TSA inspection and had the sign-off on the plan. There are another 129 airports that have had some negotiations, some contacts with TSA. That means that 64 percent of the Nation's airports that TSA has not even come to the airport yet, and we want them to meet this arbitrary deadline by December 31? It is physically impossible and philosophically unnecessary.

Vote against the Oberstar amendment.

Mr. OBERSTAR. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from New Jersey (Mr.

MENENDEZ), a member of our committee.

Mr. MENENDEZ. Mr. Chairman, I represent Newark International Airport where United Airlines Flight 93 departed before crashing in Pennsylvania on September 11. I also represent the families of over a hundred victims who lost their lives in the attack on the World Trade Center. I have consoled enough families who were the victims of terrorist attacks, and I do not want there to be a reason to console anymore.

I ask my colleagues, if God forbid, a plane is blown up by a device that could have been prevented by the deployment of these bomb detection devices, explosive detection devices, had TSA met its requirements or had we kept TSA's feet to the fire, who among us wants to go and console those families? Who among us wants to go and tell them that we delayed? Who among us wants to say that in expectation of some new technology that has not been approved yet, that we waited? I do not and I do not know anybody here who does, and that is why in the first round in our Select Committee on Homeland Security, my amendment was approved striking this language.

The Congress charged the Transportation Security Administration with the responsibility, not the airports, TSA, to determine whether or not an extension is needed. It is the responsibility of TSA, and neither the TSA nor the administration nor the Secretary of Transportation nor the Committee on Transportation and Infrastructure has asked for such an extension. As a matter of fact, the Committee on Transportation and Infrastructure in a unanimous, bipartisan vote said this should not be in the bill.

The December 31 deadline that we imposed was in the Act that passed this House 410 to 9, and the deadline was necessary to ensure the security of our aviation system. As a matter of fact, Members on both sides of the aisle got up on this floor and criticized the other body's bill because it did not have the deadlines, and now, there are those who would seek to erase that.

Look, if an airport like mine, one of the largest in the Nation, cannot meet the deadline, there are alternatives under the existing law, and for those airlines who say that those alternatives will cause delay, I will have them know that the Republican bill, the text bill, still insists on those alternatives even if they get the year extension. So they get the year extension for the explosive detection devices, they still have to implement alternatives, the alternatives that the airline and the industry are saying are going to cause them delays. Nothing changes. Nothing changes.

What do we say to the traveling public and to those who would wish us ill? We are going to give them another year, and I would venture to say that it is not only another year. If we look at what section 409 says, it extends in my mind the deadline indefinitely because it says they must develop a plan for the modifications, and the deadline for executing the plan for that modification is a year from this December, but nowhere in the bill, nowhere in the bill does it set a deadline for deployment of the explosive detection systems. That is a travesty, and it does not ensure the traveling public, and it certainly does not belong in this bill.

That is why my colleagues should vote for the Oberstar amendment.

Mr. PORTMAN. Mr. Chairman, I yield 2¼ minutes to the distinguished gentleman from Arizona (Mr. PASTOR).

(Mr. PASTOR asked and was given permission to revise and extend his remarks.)

Mr. PASTOR. Mr. Chairman, I find myself in a very awkward situation, because I think this is the only time that I have been in opposition to my two friends from the Democratic Caucus. The gentleman from New Jersey (Mr. MENENDEZ) and I are good friends, and I have always followed the lead of the gentleman from Minnesota (Mr. OBERSTAR), but do I want people to be less secure as they get on a plane? The answer is no. I fly twice a week so obviously there is a self-interest to make sure that the baggage is examined and it is safe.

Did I vote for this bill? Yes, I did. At the time I thought it was needed and the deadline was there. I am a member of the Committee on Appropriations Subcommittee on Transportation, and since I voted for this bill and to date, I have been involved in a number of briefings, and also three hearings that involve the TSA, and I have to tell my colleagues that after listening to the testimony and reading the evidence presented to me, that I have come to the conclusion that the airports need an extension, not because they have pressured me, but because I think it is the right thing to do.

If we talk about the equipment, and there is a various mix of equipment, but if we talk about the detector, it is about as big as an SUV, and it costs about $1 million, and I have been told at least in the evidence I have seen that probably it works for one out of three baggage. So at 30 percent, it is effective. I feel that if there is the case, then possibly this technology may not be the proper one, but then if my colleagues persuade me, say ED, you know we need it and we cannot delay, let us order more of these machines, well, then, I would tell my colleagues that at least the evidence I have seen and testimony I have heard, the machines are going to take a long time to put in operation. In fact, the operator is not going to have enough equipment to install, and so in installing this equipment, it is going to take hundreds of millions of dollars for the airports to install them.

I would say let us take three deep breaths and let us make a decision that would allow the airports to take reasonable time to make sure that they are safe and secure with our luggage.

Mr. OBERSTAR. Mr. Chairman, I yield myself 5 seconds to point out to the gentleman from Arizona, whom I have great respect and affection, that the explosive detection system is certified to detect explosives in all checked luggage. The question is the throughput rate. If we have a high throughput rate, we may have a higher number of false positives but it works. It is certified by the FAA and the TSA.

Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey (Mr. PASCRELL), a distinguished member of our committee.

Mr. PASCRELL. Mr. Chairman, I rise in strong support of the Oberstar-Menendez amendment to strike the extension for airline baggage screening.

□ 1615

It is no secret that there have been serious problems at the Transportation Security Administration with fund shortfalls and organizational issues causing troubles. However, extending the deadlines in this manner is not the way to go about securing our homeland. No Federal agency has asked for delay. The administration has not asked for delay. Do not allow the hope of newer yet nonexistent technologies into the work of the TSA. We cannot and we should not allow the TSA to slow their efforts toward implementing a program of 100 percent explosive screening at all commercial airports by year's end.

The DOT Inspector General, who is always brutally honest when reporting to Congress, told the Subcommittee on Aviation just this past Tuesday that "we will be in a much better position in a month to judge what is or is not feasible to accomplish by the deadlines." One month to 45 days to be exact, according to the IG. Now is not the appropriate time to delay. The Congress should not be undermining a law that the House passed 410 to 9.

This is important for the security of everybody in this room here on the floor and up in the gallery. Tell them, tell America what is going on here. The airlines are suffering economic damage, and yet we do not want to help people get back on the airlines so that they feel more secure. It does not make sense. There is not one Federal agency that supports a delay. All we are doing is bailing out an organization and organizations that for 20 years have been told they had better secure the baggage.

Until I came to the Congress, Mr. Chairman, I thought every piece of baggage was checked. Boy, was I sadly wrong. We should not go backwards. We need to go forwards so we put our actions where our mouth is.

Mr. PORTMAN. Mr. Chairman, I yield 4 minutes to the gentlewoman from Texas (Ms. GRANGER), a member of the Committee on Appropriations, Subcommittee on Transportation.

Ms. GRANGER. Mr. Chairman, this Congress set December 31 as the deadline for screening checked baggage for

explosives, and 75 percent of our airports will make that deadline, but for the other 25 percent, we have a train wreck coming. It is a crisis and it is a crisis of our own making because the deadline cannot be met. And let us understand why.

First of all, let us talk about equipment, the baggage screening systems that will be used. As of this month, only 488 machines are being used at 59 airports nationwide. That leaves 6,600 machines that have to be bought, installed, and tested for accuracy by December 31.

Can that be done? How well have we done so far? The Transportation Security Administration has been buying, installing, and testing one machine every 48 hours, and perhaps that is okay except TSA will have to go from one every 48 hours to one every 35 minutes to meet the December 31 deadline. That is assuming the machines can even be manufactured and ready, 6,600 in the next 5 months.

And let us now go to personnel. We had a big debate over Federal baggage screeners, and upon our instructions TSA began hiring. Thus far, TSA has hired 166 Federal baggage screeners at the rate of one every other day. To meet the requirement and demand for a December deadline, TSA has to recruit, hire, and train another 21,434 baggage screeners in the next 159 days. That means not one every other day but one every 11 minutes.

But it gets worse because if you add the 30,525 passenger screeners still needed to be hired, TSA will have to speed up to one new screener every 4½ seconds.

Equipment, personnel, but I think you are seeing the problem. Let us talk about one other problem that would be out there if we could recruit and train those people and hire them every 4½ seconds and install the equipment every 35 minutes. All airports are not alike and you know it and I know it. In fact, they are greatly different in design and configuration. But we set very specific instructions as to how each airport would accommodate those SUV-sized machines if they were alike. So if it were possible to get them and man them in the next 5 months, we would have to reconfigure one out of every four of our major airports in the country. I am talking about moving walls, reconfiguring floors, major renovations. In one airport alone we are talking $200 million in construction in 5 months, construction completed. It just cannot be done.

And last but not least, there is the work of the Transportation Security Administration that has to approve every plan, visit every airport, and report to Congress on what we have demanded. How is this working? I will tell my colleagues, the airport I fly in and out of, they submitted their plan in March telling TSA exactly what they had to do to meet the December deadline, March, and it has not been approved to this day. Others have not even started because TSA has not told them what kind or how many machines are even needed.

Is there a solution? Yes, there is a solution, a solution that gives TSA a deadline, gives a deadline to airports, demands reporting to Congress, and also it is, by the way, our original date. What if we do not do this? What if we do not fix it today? We will spend millions of dollars unnecessarily, we will allow airlines to use a less than ideal solution, we will hire thousands of people who will be dismissed when their interim machines are scrapped, and we will force 3 and 4-hour waits at every major airport in this Nation at one of the most heavily-used times in the year, December. And that is a security problem that I do not want to face. That is not what I want to be a part of.

So let us do the right thing today. Let us quit posturing. Let us do something that is reasonable and responsible.

And, by the way, in the time we have debated this, we have missed by four people and one machine.

Mr. OBERSTAR. Mr. Chairman, I yield myself 10 seconds.

If this is war, as the President has repeatedly said, then I am astonished by the repetition of the cannot-do attitude that I have been hearing so far. At the outset of World War II, we took on a million men in one year.

Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Oregon (Mr. DEFAZIO), fearless champion of aviation security.

Mr. DEFAZIO. Mr. Chairman, I thank the gentleman for yielding me this time.

Fourteen years ago, Pan Am 103 was blown from the ski over Scotland. In response the British Government screened every piece of baggage. And we are told we cannot do it here. Guess where they bought the technology? Right here in the United States of America. Every machine that I observed over there was manufactured in this country, but we cannot do it in the United States. Why not? Because special interests are holding us back and because of the incompetence of this administration.

Ten years ago, Ramsi Youssef developed a plan to blow 12 747s simultaneously from the sky, U.S. planes, over the Pacific. He was only discovered and thwarted by accident. They will return to these patterns. This is a known threat.

How quickly we have forgotten September 11 in this body. How quickly we bow to the powerful special interests and campaign contributors. We can meet this deadline.

Now, last week the Bush administration fired the head of the Transportation Security Administration for incompetence. Thank God he is gone. He was doing a horrible job. Now we have a man in charge who knows how to get things done, Admiral Loy. Let him come to us with a plan in September. I know he can get this job done. We have someone in charge.

Then they say, well, there is not enough money. Guess what? The night before the money was voted on, the Office of Management and Budget, the head of whom is appointed by the President of the United States, and works, I think, pretty closely with the President and the White House, recommended cutting $219 million from this program to detect explosives to make Americans safe, and now the Republicans say there is not enough money.

Does the right hand of the administration know what the left hand is doing? Until a week ago, there was not one person in the administration that said they could not meet these deadlines. Then they fired the incompetent head of the agency, and we have a competent head now. What changed in a week? Politics changed. Special interests changed.

Shame on you. If you do not support this amendment when a plane goes down, I will expect you to talk to the grieving families.

Mr. PORTMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as a member of the Select Committee, I heard a lot of this discussion, and I just wanted to make a comment on some of the comments we have had on the floor. Not referring to the gentleman from Minnesota (Mr. OBERSTAR), but a lot of raising of voices and yelling is not going to get the job done.

We all share the same goal, and that is that the flying public be safer. My own airport, the Greater Cincinnati Airport, says they cannot meet the deadline, even though they are pushing hard.

Mr. DEFAZIO. Will the gentleman yield?

Mr. PORTMAN. No, I will not.

Mr. DEFAZIO. Well, since the gentleman referred to me, will the gentleman yield?

Mr. PORTMAN. Mr. Chairman?

The CHAIRMAN. The gentleman from Ohio controls the time.

Mr. DEFAZIO. The gentleman will not yield, clearly.

Mr. PORTMAN. Mr. Chairman, more raising of voices and more yelling is not going to solve this problem. What is going to solve the problem is putting together a plan to get it done.

Mr. DEFAZIO. Will the gentleman yield on that?

The CHAIRMAN. The gentleman from Ohio controls the time.

Mr. DEFAZIO. So he does not want to discuss the issue, he just wants to cast aspersions.

The CHAIRMAN. The gentleman from Ohio controls the time.

Mr. PORTMAN. As has been stated earlier in the debate, three-quarters of our airports can probably meet the deadline. They will push hard and they will make it. For those who cannot make it, the question is will the flying public be safer if we force this deadline or will the flying public be safer if we

give them a plan where they have to meet the deadline over a specified period, which is 1 year.

Incidentally, it is the same date that passed this House by an overwhelming bipartisan vote, December 31, 2002. I do not know how the gentleman voted who is now walking off the floor, but that was the vote in this House.

The DOT Inspector General Ken Mead has recently told us, and this is a quote from him, and this is the Department of Transportation Inspector General, ''The challenge facing TSA in meeting the December 31 deadline of this year is unprecedented. An effort of this magnitude has never been executed in any single country or group of countries.''

That is what we have heard from the gentlewoman from Texas (Ms. GRANGER) and others. Most of the airports are going to meet it, but those who cannot, we need to be sure they have a plan to meet it so that the flying public is safer.

Now, if we force machines into these airports that do not work as well as machines that would be able to be in place within this plan, within the 1-year extension, is the flying public safer? I do not think so. More important is that we get it right than do it in haste.

Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. ISAKSON), who has spent a lot of time on this issue.

Mr. ISAKSON. Mr. Chairman, I thank the gentleman for yielding me this time, and I certainly thank the gentlewoman from Texas (Ms. GRANGER) for her leadership.

I have great respect for the gentleman from Minnesota (Mr. OBERSTAR), and I accept the fact that he is confused. We do confusing things sometimes. But facts are stubborn things. Two hundred eighty-six of us voted in favor when TSA left this House of a 2003 deadline. Because at that time, as it came out of our committee, we made the judgment that we thought that was the right date. Now, 139 did not vote for it, but the fact is that was originally the House position.

Fact number two. We created TSA and the deadline on the same day when we finally finished the conference report. We created an agency with a deadline before the due diligence had been done to see what we could do. It is only reasonable to assume that once the due diligence is done, and facts are learned, then maybe some adjustments are made.

Now, the third fact, and this refers to a statement made by the gentleman from Oregon, I take every vote I take very seriously. It did not miss me, the inference the gentleman made with regard to the responsibilities of this vote. If I thought our vote would cost a single American their life, of course, I would never vote that way, and neither would anybody else in this House.

This is about us doing the right thing. This is not about us being irresponsible. This is about the most important thing the U.S. economy could have: Our aviation industry. I visited my airport. I serve on the Subcommittee on Aviation. I have done my due diligence. If TSA needs the opportunity to adjust that timetable to allow the right installation to be done on a timely basis, they should have that authority.

Facts are stubborn things. We are all responsible for our votes. We are all responsible for what we do. On November 1 we responsibly thought 2003 was the right date. Due diligence has told us that probably is correct. But we do not just accept it, we say if it cannot be met, then we will use reasonable judgment to give the time for the right installation to be implemented. I think that is fair and I think that is right.

Mr. OBERSTAR. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. STRICKLAND).

Mr. STRICKLAND. Mr. Chairman, I would like to ask my friends on this side of the aisle: If you knew for sure that an airplane was going to be blown out of the sky on March 15 of next year, would you dare, would you dare not support this amendment?

How ironic, how ironic that in a bill that is supposed to create a new Department of Homeland Security we are taking an action that will make the traveling American public less secure.

□ 1630

Mr. Chairman, I am raising my voice because I think this is a serious matter. How would Members feel if they vote against this amendment and in February, March, April, or May of next year, an American passenger plane is blown out of the sky? How will Members feel?

The American people are watching us today, but the terrorists are also watching us today. We must not give them an easy way to kill additional Americans. Do not push the wishes of the special interests above the safety of the American people.

Mr. PORTMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Florida (Mr. MICA), the chairman of the Subcommittee on Aviation.

Mr. MICA. Mr. Chairman, this is not a time to come before the House of Representatives or the American people and make charges that are not correct. Every Member in this body wants to make certain that their family is secure, that every American is secure as they travel our airways.

I have had the great honor and privilege of working with the ranking member of the full committee, the gentleman from Minnesota (Mr. OBERSTAR), and the ranking member of the subcommittee, the gentleman from Illinois (Mr. LIPINSKI). We set goals that are very difficult to meet, and I do not think that we should back off from those obligations, but we know that the math does not add up. To accomplish the task that we set forth in the law November 19, the math does not add up. Here is the appropriations that we passed and voted for, and we approved 45,000 employees.

Here is a report by the inspector general, the facts. We need 67,000 employees to complete the task. The gentleman from Minnesota (Mr. OBERSTAR) and I heard testimony that in fact they can only produce 800 machines because we have missed the deadline by the delay in the appropriations measure, in passing the supplemental appropriations measure.

What we have is the potential, if we pass this, of leaving a state of chaos and disorder for the December deadline. We do not need chaos and disorder; we need the plan that has been put together first by the gentlewoman from Texas (Ms. GRANGER), and then modified so it requires that when we do not meet the technical or personnel requirements that we put in place a plan. Do we want chaos or order? This requires order. The amendment does not.

Are we to build bureaucracy in the name of security? I say no. But we have a responsibility. I just met with the President of the United States downstairs, and he talked about homeland security. That is what this bill and this measure is about, acting responsibly, putting the facts together and doing the best job we can as representatives of the people to secure for us the best security possible.

Mr. MENENDEZ. Mr. Chairman, will the gentleman yield?

Mr. MICA. I yield to the gentleman from New Jersey.

Mr. MENENDEZ. Did the President ask this House for an extension?

Mr. MICA. No; but we need to act responsibly.

Mr. OBERSTAR. Mr. Chairman, I yield 30 seconds to the gentleman from Minnesota (Mr. SABO).

Mr. SABO. Mr. Chairman, I thank the gentleman for yielding me this time.

Let us be clear. We have appropriated every dollar asked for for equipment. We have appropriated more dollars than asked for for installation. We have approved thousands of employees for this agency, very few who have been hired. They clearly have the ability to manage the personnel to put them where they are needed. There may or may not be a reason for this amendment, but the reason there is delay does not relate to money. It relates to management.

Mr. OBERSTAR. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise to support the Oberstar-Menendez amendment that deletes the deadline extension for airports to install explosive detection equipment.

Since September 11, Congress and the administration have been consumed with fighting the war on terrorism. Congress has responded to all of the administration's requests, developed its

own initiatives, and bent over backwards to protect the American people from further terrorist attacks.

Today we are completely considering of H.R. 5005, the Homeland Security Act, a massive and complex piece of legislation, to create a new Department of Homeland Security. Members of Congress have been working hard on this legislation. Eleven standing committees of the House of Representatives have made individual recommendations on various aspects of the legislation in order to improve our Nation's ability to anticipate and prevent every conceivable type of potential terrorist attack.

Now at the 11th hour, we are being asked to undo a critical provision of anti-terrorism legislation that we passed last year. We are being asked to extend for a whole year the December 31, 2002, deadline for airports to install explosive detection equipment. This equipment would allow commercial airlines to screen the baggage that is checked at the gate and loaded into the bellies of the airplanes.

The deadline extension was not recommended by the committee of jurisdiction or the administration. Even if some airports are unable to meet the deadline, last year's law gives the Department of Transportation Administration the flexibility to have baggage screened by other means while the installation is being completed. These alternatives include positive bag matches, manual searches, and bomb-sniffing dogs. We must maintain the deadline in last year's law. We want every airport to make every effort to install explosive detection equipment as quickly as possible.

Mr. PORTMAN. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. DOOLEY).

Mr. DOOLEY of California. Mr. Chairman, I rise in opposition to this amendment. I think all of us in this Chamber understand that our objective is to enhance the safety of passengers on the airlines. There is nothing in this legislation that is circumventing that objective.

When we recognized after the events of September 11 that we had to do more to enhance safety, we set some arbitrary deadlines to establish goals when we could have equipment in place that could make a difference, that could ensure greater safety. But with a lot of goals and objectives that are established, it sometimes becomes apparent that we do not have the resources nor the time in order to achieve them. What we are doing today is not saying that we are backing away from our commitment to provide safety, it is a recognition that we need to set up a process that recognizes that there are some airports in this country that unfortunately cannot meet this deadline.

In order to meet the needs of those airports as well as the passengers they serve, we need to have some prescriptions and some guidelines that are going to ensure that they are on a track towards the earliest possible moment to implement those systems that can make a difference in ensuring that our air travel is safe.

Mr. OBERSTAR. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Mr. Chairman, I rise in support of the Oberstar amendment. We must not delay. We must accept no excuse for any delay in the immediate improvement of the security at our airports. Congress should speak unambiguously, find a way to get the job done now. Can it be done by the end of the year? Yes. The Secretary, the administration and the agency charged with this responsibility all say it can be done. Will it be difficult? Yes.

Is the challenge any greater than the technological challenges we faced immediately after Pearl Harbor in gearing up our industrial capacity, of course not. This task is infinitely simpler. Will it cause some delays in some airports in flights, yes, in all likelihood. Will it cause the adoption and deployment of technologies that will need to be replaced in the future, it just might. After all, technologies, all technologies, eventually become obsolete.

But what is the cost of delaying our efforts to secure our airports and our airplanes, the cost is potentially catastrophic. Imagine the devastation to the families if a plane is blown out of the air, imagine the devastation to our economy and the loss of confidence in our Nation's ability to defend itself in the very department that we establish today.

On September 11, terrorists turned our planes into jet-fuel-powered bombs. That was the last attack. Some would argue since we are now better prepared against that eventuality, we can delay our preparedness against other attacks.

Mr. Chairman, we must be prepared to fight terrorists in whatever form. Terrorists do not need to hijack planes to devastate this country. Placing a bomb in the cargo hold of a plane is all that it would take. We must defend against this massive vulnerability, and we must do it now. We cannot delay. I urge support of this amendment to make this country safe today.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Oklahoma (Mr. WATTS), one of the House leaders on this issue.

Mr. WATTS of Oklahoma. Mr. Chairman, as I have served the last 8 years in the United States House of Representatives, I have often said we made a real mistake 40 years ago by not creating a Federal Department of unintended consequences, because we often do things and after we have done it, we look back and say oops, we made a mistake.

Let me tell Members, there are 25 percent of the Nation's airports that cannot comply with this deadline on December 31, 2002. It is unrealistic. The Transportation Safety Administration, these airports, many of these airports, they have submitted plans to comply that they need to have certified by TSA. They have not gotten the certification.

In order for all airports to meet the deadline, TSA must purchase and install an EDS or EDT machine every 35 minutes between now and December 31. In order for all airports to have the security staff needed to operate the new machinery, TSA will need to hire and train and make operational a new screener every 4.5 minutes between today and December 31, 2002.

We are saying that these people will be able to comply? If Members vote to strip the December 31, 2002 deadline, they are voting for 3- or 4-hour airport lines that are inviting targets for terrorists. I think we are making a huge mistake by not extending the deadlines. Get the bureaucracy off their duff, and have them certify the airport plans and then move forward.

In the end, I think it is a shame that we would come and talk about these things and all the rhetoric that I have heard, we are literally telling the terrorists what is going on. We need to extend this deadline, get those plans certified by TSA, get the people hired, get a director that was fired over a week ago. Vote ''no'' on this amendment.

Mr. OBERSTAR. Mr. Chairman, I yield 1 minute to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Chairman, in 1961, President Kennedy sat right there and said America is a country that can do the moon. Now we have people around here saying America is a country that cannot even check baggage.

Why would Members want to take a bill called the homeland security bill and change it into the home air insecurity bill. Members are darn right that there are some challenges in getting this done, but it does not help that this administration has demonstrated rank incompetence for months and months doing nothing on this issue.

□ 1645

It took them 7 months to order the first machine after September 11. I will not allow or vote for this administration's rank ineptness to endanger my flying public for the next year.

If you cannot get this job done, turn the administration over to us and we will do it because we know if you want some horses to go, you put the spurs to them and this administration needs it.

Mr. PORTMAN. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas (Mr. SAM JOHNSON).

(Mr. SAM JOHNSON of Texas asked and was given permission to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Mr. Chairman, let us set the record straight. The Secretary, based on current facts, says that they are unable to make these deadlines without us giving

them a billion dollars more. I know the contract is with Boeing-Siemens. I have talked to those people. They can do it by the end of the year, but only to have the machines by the end of the year. That does not mean they are in the airports.

I am concerned that, worst-case scenario, the Transportation Security Agency is going to be unable to train personnel and install necessary equipment to meet this deadline. Under the best-case scenario, I am concerned that TSA will meet the deadline but only by implementing an ineffective and outrageously expensive temporary solution. Either way, the safety of our air travelers and the security of our system will benefit from giving TSA flexibility to focus on a long-term, permanent solution and not a quick fix.

Unfortunately, only 75 percent of our airports are going to be able to make that December 31 deadline. These are the smaller airports that are going to rely on the ETD for their long-term solution. They are going to be using primarily small machines. It is no longer feasible to meet the December 31 deadline for larger airports, especially like my hometown DFW. Since they submitted their plan in March, they still have yet to hear back from the TSA to find out if they have been approved and are on the right track. For larger airports like DFW, it is impossible for them to be ready by the end of the year.

Have we not provided enough bureaucracy? It is ridiculous that opponents to this commonsense measure would rather have airports miss the deadline altogether. This is not a one-size-fits-all solution.

Mr. OBERSTAR. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New Jersey (Mr. MENENDEZ), a member of the select committee.

Mr. MENENDEZ. Mr. Chairman, we heard about facts.

Fact: the House voted 410–9 for these deadlines.

Fact: neither the President, the Secretary of Transportation, TSA nor the Committee on Transportation and Infrastructure has asked for an extension.

Fact: the bill extends the execution of a plan for another year, but it has no deadline for deployment of explosive detection devices.

Fact: technology to detect bombs exists now and is certified. No other technology is certified.

Fact: alternatives exist under the law if the deadlines cannot be met, and they are the same as the bill before us.

Fact: Congress delayed in a similar case in the '80s on technology to avoid collisions midair, and we had three midair collisions. Who went to those families and said, We're sorry we delayed; we waited for better technology''?

Ask your constituents if after the events of September 11, would they rather save a few minutes or save lives? The answer would be, save lives. That is what this Oberstar-Menendez amendment does, and that is why you should be voting for it.

Mr. OBERSTAR. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN pro tempore (Mr. HASTINGS of Washington.) The gentleman from Minnesota is recognized for 3½ minutes.

(Mr. OBERSTAR asked and was given permission to revise and extend his remarks.)

Mr. OBERSTAR. Mr. Chairman, we have all come to this issue with good will and those who advocate the extension of the deadline have come genuinely inspired by their airports or airlines out of a concern, as repeated speakers have said, We can't meet the deadline. I have always thought of America as a can-do Nation, not a can't-do Nation.

In World War II, we put a million men under arms in 1 year. In World War II, we produced an average of 60,000 war planes a year, starting from zero. Why can we not do this now? We can do it, is the point.

I have heard the argument about long lines. The question you have to ask yourself is which do you fear more, long lines or a bomb aboard an airplane?

I also read the language proposed very carefully. Many are not aware that the language of the amendment proposes to give the airport the decision on whether to demand a delay, not the Transportation Security Administration who is paying the cost, and also vests with airports the authority to develop a plan to the maximum extent practicable to do certain things. This is a change in the fundamental way the program is operating. I was not aware of that until late last night, early this morning, reading this language more carefully. That should not be done.

We have provided authority in the basic law that was enacted 410–9 for alternative means to check luggage, to screen luggage checked aboard aircraft if you cannot meet the December 31 deadline for explosive detection systems. It includes authority for the TSA to certify, or to verify the use of explosive trace detection systems if they cannot deploy the explosive detection systems. There is ample authority to use other means. We are all human beings. That is why the leadership here keeps us till late at night, because we work against deadlines. The distinguished whip knows that.

But I come for another purpose. Twelve years ago, as a member of the Pan Am 103 commission, I stood at Lockerbie, Scotland, at the abyss of Pan Am 103 where a trench 14 feet deep, 40 feet wide, and 120 feet long was dug by that airplane, and 259 lives aboard that plane and 11 on the ground were incinerated because a bomb was aboard that airplane in a piece of luggage that did not have a passenger accompanying it. And we members of that commission, two of us from the House, John Paul Hammerschmidt, a distinguished Member from Arkansas, and I, looked in the abyss and said, ''Never again will we allow this to happen. We are going to pass tough legislation to make aviation security the best in the world.'' And we passed it.

Now we stand on the abyss again. Never again do I want to confront families and say, We didn't do enough. Please, do not let that happen. Do not extend that deadline.

Mr. PORTMAN. Mr. Chairman, I yield the balance of my time to the gentleman from Texas (Mr. DELAY), the distinguished majority whip and a member of the Select Committee on Homeland Security.

The CHAIRMAN pro tempore. The gentleman from Texas is recognized for 2½ minutes.

Mr. DELAY. Mr. Chairman, that almost brought a tear to my eye; but I have got to tell you, after Lockerbie, England went for this technology that the gentleman wants to install. It took them 8 years to install it. Eight years. That was 12 years ago. That same technology is what he wants to buy, 20-year-old technology that does not work, or is not as good as other technology that is being suggested.

Let me just clear the air here a little bit. First of all, I think it is irresponsible to try to scare the American people away from flying. The rhetoric on this floor is irresponsible in doing that. Let me just say that 100 percent, 100 percent of your bags today are being checked before they go on the plane. What this argument is about is buying a machine, a bomb detection machine to try to make it more efficient to check your bags. They want you to buy a 20-year-old technology that is wrong 30 percent of the time.

Let us get how this works. Thirty percent of the time it is wrong; so when it is wrong, you have to take it off the machine and check it by hand, adding to the time of that plane taking off. What we want is technology that is ready, it just needs to be certified, that has less than a 5 percent error rate. Technology is coming on line. And besides, these deadlines that they are so interested in, this House voted 286–139 for the deadline that is in this bill. The deadlines that were put in there, and I will not argue the deadlines, but what is really interesting about this is that the deadlines that they are so adamant to have and have all this wonderful rhetoric, and a little demagoguery added to it, is that the deadlines have no penalties. Their deadlines have no sanctions. So it does not matter. If they cannot meet the deadlines, they cannot meet the deadlines. You are stringent, we are going to meet these deadlines, and you cannot make them do anything.

So what we have done is realized that there is a problem here, that we can put good technology in as quickly as possible; but we need a good, solid process by which to implement this and we are suggesting that process. There is a process that we go through.

This makes sense. It makes common sense. It faces reality. Vote down the Oberstar amendment.

PARLIAMENTARY INQUIRY

Mr. DEFAZIO. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman will state it.

Mr. DEFAZIO. Mr. Chairman, is it required that one use accurate facts during debate on the floor of the House?

The CHAIRMAN pro tempore. The purpose of debate is to discuss issues as Members see them.

Mr. DEFAZIO. Does it require the use of accurate facts or is fabrication allowed?

The CHAIRMAN pro tempore. Accuracy in debate is for each Member to ascertain in his own mind.

Mr. DEFAZIO. I thank the gentleman. We just heard fabrication.

Mrs. LOWEY. Mr. Chairman, I rise in strong support of the Oberstar Amendment.

My colleagues, the first obligation of our government is to protect our citizens.

While I strongly believe we are united in our determination to win the war on terrorism and committed to reorganizing the federal government to better serve our country during these times, I continue to be puzzled by the actions of some of my colleagues.

In the fall, the Leadership took only three days to start bailing out the airline industry, but dodged the issue of aviation security for months.

Democrats fought hard, constantly reminding our colleagues that in order to assure the public that our skies are safe we had to require that the federal government to assume passenger screening responsibilities, expand its air marshal program, and screen all checked baggage for explosives.

Although our efforts were successful, some of my colleagues have been working bit by bit to unravel the commitment we made to Americans.

When the TSA asked for $4.4 billion, Republicans shortchanged them by $1 billion.

Now, they are using the bill designed to set up a department to ensure homeland security to postpone the deadline for installing bomb-detecting equipment at our airports. The Administration says it cannot meet the deadline of December 2002 due to the delay in passing the emergency supplemental and the lack of necessary funding—the fault of the House Republicans.

To that I say, I am truly disappointed that any of us would backtrack in the face of a self-imposed deadline. We should hunker down and work together to tackle this deadline because compromised security in our skies and airports is a clear and present danger.

My colleagues, we cannot break our promise. When we passed the transportation security act last year, we acknowledged the immediate need to make aviation security a matter of national security. We must vote to reinstate the baggage screening deadline, and stand by our promise to have every bag screened, on every flight, every day by the new year.

Our homeland won't be secure until our skies are secure. I urge you to carefully consider the risks we would take by postponing this deadline.

Vote for the Oberstar amendment.

EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, with some reluctance, I rise in opposition to the Oberstar-Menendez amendment regarding the deadline for installation of explosive detection systems at the nation's airports.

Let me first say that I would have much preferred that this issue not have been highlighted so prominently. If airports continue to be vulnerable, we do not need to be announcing that for all the world to see.

I understand the concerns of airports and their desire to extend the deadline. Many of them, particularly large airports like DFW in my district, have made a compelling case that the existing deadlines cannot be met.

The Transportation and Infrastructure Committee, on which I serve, has been looking at this issue carefully. Earlier this week, it held a hearing on TSA's implementation of the Aviation and Transportation Security Act, featuring Secretary Mineta and the DOT Inspector General's office.

Secretary Mineta indicated concern that the TSA might not be able to meet the deadline for EDS deployment because of insufficient funding in the FY2002 supplemental for TSA. In part because of his testimony, I voted against the supplemental.

The IG's office testified that it would be premature to extend the deadlines at this time because they were still conducting their airport-by-airport assessments.

I will quote from the IG's written testimony: ''Because airport assessment for the deployment of explosives detection equipment are scheduled to be completed at the largest airports by the end of August, and because of the current ramp-up in hiring passenger screeners, we will be in a much better position in a month to judge what is or is not feasible to accomplish by the deadlines.''

Mr. Speaker, the language to extend the deadline by one year is far from perfect. Most likely, the deadlines cannot be met, but would it not be prudent to wait until the IG's office completes their assessment and issues a recommendation for a new deadline?

However, I also recognize the anxiety that airports are experiencing and their desire to move this language on ''must-pass'' legislation.

I will therefore support the one-year extension at this time and vote against the Oberstar-Menendez amendment so that we can move forward on this issue and ensure that this gets resolved in conference.

However, I will also be monitoring the IG's recommendations and insist that the conference adjust the language if it conflicts with the IG's findings. Explosive detection systems must be deployed as quickly as possible, and if the IG indicates that compliance before December 31, 2003 is feasible, the conferees must adjust the language accordingly.

Mr. BEREUTER. Mr. Chairman, this Member rises in opposition to the amendment offered by the distinguished gentleman from Minnesota (Mr. OBERSTAR) which would strike the bill's deadline extension for airports to screen all checked baggage.

This Member would like to begin by stating his view that the safety and security of the traveling public must remain the primary objective when addressing aviation matters. However, it appears that the current arbitrary deadline for screening all checked baggage actually is unlikely to enhance security. Instead, it surely will result in larger expenditures, longer lines and greater frustration.

It is now clear that airports in Nebraska and throughout the nation will have difficulty meeting the logistical requirements of the current deadline of December 31, 2002. Instead of emphasizing safety and efficiency, airports would be forced simply to put something in place.

Nebraska airport managers are very concerned that they will not be able to meet the current deadline due to two major issues: checked bag screening and the Federalization of security for passenger and baggage screening. For example, there is concern regarding the effectiveness and expense of the new required baggage screening equipment, with the possibility that the equipment required for installation may be less effective in reaching desirable screening than other smaller and less expensive alternative equipment now in production and with the likelihood that some of the new equipment now to be required would need to be replaced within a few years.

The deadline extension included in H.R. 5005 offers realistic, cost-effective and efficient flexibility. The provision makes it clear that airports will still be required to install equipment to detect weapons and bombs. However, the installation will be done in a manner that takes into account not only safety, but also cost, efficiency, and reliability.

Mr. Chairman, rather than taking ineffective interim steps, every effort must be made to get it right the first time. Therefore, this Member urges his colleagues to oppose the Oberstar Amendment.

Ms. DELAURO. Mr. Chairman, I rise in strong support of this amendment. We may have disagreements regarding some of the specifics of this legislation, but its goal—ensuring Americans' safety—is something we all support.

So why then was a provision slipped into this legislation to extend the deadline by which the Transportation Security Administration must screen all baggage for explosives? Why are we risking the safety of the American people when we already have the certified technology necessary to ensure that every bag can be screened?

Some suggest that we must extend the deadline because we are awaiting the development of better technology down the road, as there always is, Mr. Chairman. I am not willing to risk another year of randomly screening a few bags when we have the technology to screen all of them now while we wait for a superior technology a year from now. By then, it might very well be too late.

If we must revisit this issue in a year and begin upgrading the equipment, so be it. No price is too high when it comes to ensuring the safety of the American people. But without this amendment, we put American lives needlessly at risk.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in support of the Oberstar/Menendez Amendment, to strike the provision extending the date for screening airline baggage for explosives.

Mr. Chairman, I am bewildered that we are even arguing about this. We are here to find ways to increase the Security of our Homeland. Last year, in an intelligent step in the right direction, we passed the Aviation and Transportation Security Act, in overwhelmingly bipartisan fashion by a vote of 410 to 9. That Act gave the Transportation Security Administration and our nation's airports over a year to

get into place systems that would prevent terrorists from stowing bombs in baggage being loaded onto airplanes. That seems to make good sense.

We have equipment that has already been certified to be able to detect explosives that could destroy an airplane in flight. Just last week, Transportation Secretary Norm Mineta came before the Select Committee, and gave testimony that yes indeed, the TSA would meet the December 31, 2002 deadline to get that equipment installed. Again, everything seemed to be on track.

But now, all of a sudden, because the job is hard and it may be challenging to get the job done exactly on time, we are going to double the amount of time given to get the job done. We are going from one year to two years. At a time when we have been warned that terrorists may still be walking our land, and on a day that we are trying to make history by securing our nation, we are going to say, ''Don't worry about the deadline. Let's leave the window open to terrorists for another year.'' As a former lawyer in the Pan Am 103 air crash case, where I represented the family of a deceased flight attendant, I cannot take the chance that a suitcase bomb could explode on a passenger-full airplane. To change the deadline is a profoundly bad idea.

The argument for leaving the window open is that if we wait, we can maybe use better technology, or install the equipment more efficiently. The problem with that argument is that we are vulnerable now. The American people deserve protection now. It is like if you had cancer. There are always better drugs coming out each year. So if you get cancer, do you wait a year until the next generation of drugs comes out, or do you work with what you've got? Of course you work with what you've got. And that is the position we are in today. Terrorism is like a cancer that has the potential to destroy us. We have to take the medicine now.

But we don't even need to look beyond the aviation industry for such analogies. We have paid the price of ''waiting for the next best thing'' before. In the 1980s we had an opportunity to have collision avoidance equipment, called TCAS II, installed in all of our airplanes. TCAS II worked pretty well, but it only gave vertical directions for evasive actions to the plane. So, the FAA waited. While they waited for TCAS III, three tragic midair collisions occurred—three deadly crashes that could have been avoided if the FAA had moved when it had the chance. After the third crash, legislation was finally passed that required the installation of TCAS II even though it was not perfect and would eventually be replaced.

Let us not waste hundreds of lives again.

Keeping the TSA and our nation's airports on track to get a baggage screening system into place by the end of this year is not a rash action. If extenuating circumstances present at a few airports, the Aviation and Transportation Security Act already authorizes alternatives to keep those airports up to code. They can employ positive bag match, manual search, search by dogs, or any other technology approved by the TSA. Even if they do not, there are no established penalties or punishments for non-compliance. There is no reason to risk taking an extra year to complete this critical task.

Since September 11th we have been marching forward on the path toward homeland security. Let us not take a step backward today.

I encourage my colleagues to support the Oberstar/Menendez Amendment, and keep our nation in the spirit of progress, and our airports moving in the right direction.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. OBERSTAR. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR) will be postponed.

The Committee will rise informally.

The Speaker pro tempore (Mr. SIMPSON) assumed the chair.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed without amendment concurrent resolutions of the House of the following titles:

H. Con. Res. 448. Concurrent resolution providing for a special meeting of the Congress in New York, New York, on Friday, September 6, 2002, in remembrance of the victims and heroes of September 11, 2001, in recognition of the courage and spirit of the City of New York, and for other purposes.

H. Con. Res. 449. Concurrent resolution providing for representation by Congress at a special meeting in New York, New York, on Friday, September 6, 2002.

The message also announced that the Senate has passed a bill and a concurrent resolution of the following titles in which the concurrence of the House is requested:

S. 2771. An act to amend the John F. Kennedy Center Act to authorize the Secretary of Transportation to carry out a project for construction of a plaza adjacent to the John F. Kennedy Center for the Performing Arts, and for other purposes.

S. Con. Res. 132. Concurrent resolution providing for a conditional adjournment or recess of the Senate and a conditional adjournment of the House of Representatives.

The message also announced that the Senate insist upon its amendment to the bill (H.R. 4546) ''An Act to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes,'' requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. LEVIN, Mr. KENNEDY, Mr. BYRD, Mr. LIEBERMAN, Mr. CLELAND, Ms. LANDRIEU, Mr. REED, Mr. AKAKA, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mrs. CARNAHAN, Mr. DAYTON, Mr. BINGAMAN, Mr. WARNER, Mr. THURMOND, Mr. MCCAIN, Mr. SMITH of New Hampshire, Mr. INHOFE, Mr. SANTORUM, Mr. ROBERTS, Mr. ALLARD, Mr. HUTCHINSON, Mr. SESSIONS, Ms. COLLINS, and Mr. BUNNING, to be the conferees on the part of the Senate.

The message also announced that pursuant to Public Law 103–227, the Chair, on behalf of the President pro tempore, appoints the following individual to the National Skill Standards Board for a term of four years:

Upon the recommendation of the Republican Leader:

Betty W. DeVinney of Tennessee, Representative of Business.

The message also announced that pursuant to Public Law 107–171, the Chair, on behalf of the Republican Leader, announces the appointment of Mr. Robert H. Forney, of Indiana, to serve as a member of the Board of Trustees of the Congressional Hunger Fellows Program.

The SPEAKER pro tempore. The Committee will resume its sitting.

HOMELAND SECURITY ACT OF 2002

The Committee resumed its sitting.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 24 printed in House Report 107–615.

□ 1700

AMENDMENT NO. 24 OFFERED BY MS. SCHAKOWSKY

Ms. SCHAKOWSKY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 24 offered by Ms. SCHAKOWSKY

Strike subtitle C of title VII.

Strike section 762 and insert the following:

SEC. 762. REMEDIES FOR RETALIATION AGAINST WHISTLEBLOWERS.

Section 7211 of title 5, United States Code, is amended—

(1) by inserting ''(a)'' before ''The right''; and

(2) by adding at the end the following:

''(b) Any employee aggrieved by a violation of subsection (a) may bring a civil action in the appropriate United States district court, within 3 years after the date on which such violation occurs, against any agency, organization, or other person responsible for the violation, for lost wages and benefits, reinstatement, costs and attorney fees, compensatory damages, and equitable, injunctive, or any other relief that the court considers appropriate. Any such action shall, upon request of the party bringing the action, be tried by the court with a jury.

''(c) The same legal burdens of proof in proceedings under subsection (b) shall apply as under sections 1214(b)(4)(B) and 1221(e) in the case of an alleged prohibited personnel practice described in section 2302(b)(8).

''(d) For purposes of this section, the term 'employee' means an employee (as defined by section 2105) and any individual performing services under a personal services contract with the Government (including as an employee of an organization).''.

The CHAIRMAN pro tempore (Mr. SWEENEY). Pursuant to House Resolution 502, the gentlewoman from Illinois (Ms. SCHAKOWSKY) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentlewoman from Illinois.