make sure that we do not lose sight of these basic bread-and-butter economic issues so important to families and so important to people's lives.

We have a lot of work to do. I hope we will do it.

I say to my colleague from Connecticut, the reason I came over is that I am ready to offer an amendment. I think we need to do the work. I want to wait to see what my colleague has to say. I congratulate him on his superb work.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Madam President, I thank my friend and colleague from Minnesota. In a moment, I will call up an amendment, which is the Senate Governmental Affairs Committee substitute amendment on homeland security, the substitute for the House bill that was sent over here. I will speak on the substitute amendment.

It had been my thought that, in the normal course, Senator THOMPSON, as ranking member on the committee, would introduce the first amendment. I have some reason to believe he may not be prepared to do that right away. But we are prepared to go forward.

I want to indicate—and perhaps my friend from Minnesota will want to talk to the leader about this—that I understand that Senator DASCHLE and Senator LOTT are prepared to move to table any amendments that they consider to be non-relevant to homeland security. Although, as the Senator from Minnesota knows, I share his anger about tax traders—if I may use that term—or tax evaders and support what he wants to do.

Mr. WELLSTONE. I say to my colleague, in the strict text, I have drafted it as a relevant amendment.

Mr. LIEBERMAN. I look forward to reasoning with the Senator and the leadership on that very question.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Madam President, is the bill going to be reported now?

The PRESIDING OFFICER. It is.

Mr. REID. I thank the Chair.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 5005, which the clerk will state.

The senior assistant bill clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the Senator from Connecticut is recognized to call up amendment No. 4471.

Mr. REID. Madam President, will the Senator from Connecticut yield to let me say a word or two?

Mr. LIEBERMAN. I will.

Mr. REID. Madam President, I have been a part of some conversations. I think the two leaders are going to have Senator LIEBERMAN and Senator THOMPSON, the managers, determine what is relevant. I don't think they are going to do that. They will follow your lead on that.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

AMENDMENT NO. 4471

Mr. LIEBERMAN. Madam President, I call up amendment No. 4471 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The senior assistant bill clerk read as follows:

The Senator from Connecticut [Mr. LIEBERMAN] proposes an amendment numbered 4471.

The PRESIDING OFFICER. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in the RECORD of Tuesday, September 3, 2002, under ''Text of Amendments.'')

Mr. LIEBERMAN. Madam President, this legislation is a result of the bipartisan work of the committee, and the occupant of the chair, the Senator from Missouri, has been a contributing member of it. It was endorsed by our committee on July 25 by a 12-to-5 vote. I believe very strongly that this deserves passage by the full Senate.

The substitute I am offering was modified in two respects after the committee held its business meetings in July. First, we added an offset to certain direct spending in the bill related, in fact, to civil service reform. Second, we have clarified earlier language about the conduct of risk and threat assessment by the new Department. Both changes were made after canvassing members of our committee and with the approval of the majority of the committee. I will describe them in more detail in a few moments.

This amendment, almost a year in the making, would create a focused and accountable Department of Homeland Security to enable our domestic defenses to rise to the unprecedented challenge of defeating terrorism on our home soil. Our defenses are either disorganized or organized for another day that is past.

This bill aims to reorganize our homeland defenses to meet the unprecedented threats from terrorism that are sadly part of the 21st century. This amendment would also create a White House office to ensure coordination across the many offices involved in the fight against terrorism, including intelligence, diplomatic and law enforcement agencies, foreign policy agencies, and economic assistance agencies that will remain outside the Department.

We recognize that the threat of terrorism on American soil will painfully be with us for some time. Therefore, the American people deserve and demand a Government equipped to meet and beat that threat. This committee-endorsed bill is presented in three divisions. Division A establishes a Department of Homeland Security, a White House office, and a national strategy for combating terrorism. Division B incorporates the provisions of the bipartisan Kennedy-Brownback reform of the Immigration and Naturalization Service.

We are going to hear a lot during the debate, I am confident, about the need for further reorganization of the constituent agencies we have brought together in this bill. But the committee-endorsed bill actually does undertake a massive reorganization of the one agency that just about everyone agrees is in desperate need of reform, and that is the INS. Division C incorporates consensus civil service reforms, themselves the product of intensive collaboration and discussion over a period of time—months and perhaps years—that were added as an amendment by the bipartisan team of Senators VOINOVICH and AKAKA.

I expect we will hear people saying that our legislation hasn't given the President all the management flexibility he has asked for. Of course, that is literally true because we believe the administration's request simply went too far, usurping not only the fundamental responsibility of Congress to adopt civil service laws, but to undermine important protections that guard the workplace and Federal workers against favoritism and also that create some limits on the executive, some sense of accountability that is placed on those who have sway over those who have chosen to serve the public as Federal employees.

I urge my fellow Senators on both sides of the aisle to look carefully at the reforms we have incorporated and the new flexibilities that we do provide, which are sensible and significant indeed and, I believe, if passed, would give the Secretary of Homeland Security more management flexibility than any Secretary operating under current law has ever had.

I know this promises to be a controversial discussion, a serious discussion, and sometimes a passionate discussion. I look forward to airing our differences, resolving them, and getting a good bill to conference and then to the President's desk, certainly by the end of this session.

We in the Congress have accomplished great and seemingly daunting tasks in the past; but, honestly, I can think of few in my time in the Senate, which is now 14 years, that have been more critical to our common future and cry out to us to work across party lines, to raise America's guard against the savage, inhumane, cunning threat

of international terrorism. In fact, that is what happened on our committee.

The legislation I offer today was, as I have said, endorsed in July. It was endorsed in a bipartisan vote of the Governmental Affairs Committee. That marked the end of one of many stages in the bill's development in our committee. All told, we have been at this for almost a year now—more than 11 months. We have worked with colleagues on both sides of the aisle. We have worked with experts in the field in various aspects of counterterrorism and homeland security. We have worked very closely since June 6—when President Bush endorsed the idea of a Department of Homeland Security—with the President and his staff at the White House.

We gleaned insight and learned a lot from 18 hearings of the Governmental Affairs Committee that were held after September 11 on this subject and dozens of hearings held by other committees of the Congress.

I must say that I am proud for our committee of the product of these labors. This legislation puts forth a creative, constructive, and comprehensive solution to the core homeland security challenges we now face.

Our legislation differs in some respects, including some important ones from the House-passed bill and also from the President's proposal. We are going to hear people dwell on those differences for much of the debate. That is understandable. In some ways, it would be surprising if legislation as significant and this large were passed without dissent. In some ways, it would be not only surprising but unhealthy. The spirit of debate and controversy is here, and I hope out of it we will emerge with a very strong bill. In the case of each significant difference, I believe in the path we have taken, and I look forward to explaining why.

Let me say again we cannot allow the differences to overshadow the vast common ground on which we stand. Mahatma Gandhi said: ''Honest disagreement is often a good sign of progress.'' He had a point. With a bill this big, as I said, I would be uneasy if the Senate began the process in total unison.

Let's realize the underlying reality and not lose sight of it. Just about everyone in this Chamber, on both sides of the aisle, understands the urgent necessity of reordering and reorganizing our capabilities to detect danger, protect Americans from attack, and respond in the event of an incident. That consensus should guide us and should ultimately dominate here. In fact, it is hard to find a Member of the Senate or the other body who will say they are against the creation of a Department of Homeland Security. People have different ideas about how one or another piece of it might look, but there is no one I have heard who is really against the creation of this Department.

In the end, that is because I think people understand that the current state of disorganization in the Federal Government's apparatus for responding to homeland security threats is dangerous. The consensus, therefore, for responding to that disorganization is by organizing the Federal Government better to meet those threats, to protect our people, to protect our infrastructure, to see the threats before they emerge through good intelligence and law enforcement, to invest in science and technology, to make protection of the American people at home easier and more effective. In the end, I am confident that we will pass a bill creating a Department of Homeland Security, and the sooner the better.

The American people understand why the creation of a strong accountable Homeland Security Department is the best way forward. They know that the formation of such a Department will not of itself win our war against terrorism. Obviously, we need to continue to encourage and support our military that is on the front lines of offense against the al-Qaida forces that struck us on September 11 and clearly remain out there in the shadows scheming, arming, readying themselves to strike us again.

The disadvantage we now have in defending ourselves because of our disorganization can no longer be afforded. Today, as former Assistant Secretary of Defense Ashton Carter told our committee on June 26:

''Homeland security remains institutionally homeless.''

It is well stated, ''Homeland security remains institutionally homeless.'' Everyone is in charge, therefore, no one is in charge. Our legislation would give this vital mission a home under a single roof and a firm foundation with someone, the Secretary, clearly in charge with the responsible authority and accountability and hopefully the resources to get results.

For the first time, we would require in statute close and ongoing White House coordination of the many other pieces of the fight against this 21st century threat—terrorism—and those pieces could not be included in the Homeland Security Department. They include defense, diplomacy, finance, law enforcement, and others.

For the first time, we, through this legislation, would require a comprehensive assessment of threats and vulnerability so that we understand the worst threats and the best ways to respond. We need a blueprint today. We do not have it. For the first time, we would create a new intelligence division focused on the threats to our homeland, equipped to truly connect the intelligence and law enforcement dots from Federal, State, and local agencies, from human and signal intelligence, from closed and open sources, from law enforcement and foreign sources, including particularly the Counterterrorism Center at the CIA.

These dots were not connected before September 11. We lived to experience the disastrous consequences of that failure.

For the first time, we would bolster emergency preparedness and response efforts to ensure that all layers and levels of Government are working together to anticipate and prepare for the worst. Today, coordination is the exception, not the rule, and that is no longer acceptable.

For the first time, we would build strong bonds between Federal, State, and local governments to target terrorism. State and local officials are clearly on the front lines as first responders and, as I like to say, first preventers in the fight against terrorism.

Today, local communities are already expending funds to better protect their people and their assets post-September 11. They are waiting for help. They need better training, new tools, and a coordinated prevention and protection strategy. That absence of coordination and failure of adequate support for State and local first responders and first preventers is no longer justifiable.

For the first time, we would bring key border and national entry agencies together to ensure that dangerous people and goods and containers are kept out of our country without restricting the flow of legal immigration and commerce that nourishes the Nation.

Today, threats to America may be slipping through the cracks because of our disorganization, and that is indefensible. For the first time, we would promote dramatic new research and technology development opportunities in homeland defense. This war has no traditional battlefield, as I have said. One of the nontraditional battlefields where we must emerge is the laboratory with science and technology. This bill would leverage Government and academic research capabilities and focus private sector innovation on the challenge. Today these efforts are blurred and dispersed, and that is unwise.

For the first time under this proposal, we would facilitate close and comprehensive coordination between the public and private sectors to protect critical infrastructure. Fully 85 percent of our critical infrastructure is owned and operated by the private sector, but our Government is not now working systematically with those companies to identify and close vulnerabilities in, for example, communications networks, electric grids or food distribution systems. That is unbearable.

Finally, our legislation would adopt consensus civil service reforms to give Government new tools to manage it. These bipartisan reforms, introduced by Senators VOINOVICH and AKAKA, would provide significant new management flexibility in hiring employees and shaping the workforce, while assuring that the basic public accountability of the civil service system is not summarily dissolved.

Under our bill, new flexibilities will increase accountability, strengthen the chain of command, and give the Secretary and agencies throughout our

Government the ability to put the right people in the right place at the right time to defend the security of the American people.

As the writer H.G. Wells once said, ''Adapt or perish—now as ever—is nature's inexorable imperative.''

That is our choice today. Adapt and get stronger, or grow weaker; adapt, or give the American people reason to live in fear; adapt, or live at the mercy of our cruel and cunning terrorist enemies rather than being in control of our own destiny, as a great people should be.

So that we have an understanding of why this legislation takes the form it does, let me tell you briefly how it has evolved. It has been a very careful and collaborative process, nearly a year in the making. Last October, Senator SPECTER and I introduced legislation to create a Department of Homeland Security. That was S. 1534. That legislation drew heavily on the recommendation of the Hart-Rudman Commission on National Security in the 21st Century, which was chartered by the Secretary of Defense and supported by both the President and Congress, with the mission of providing the most comprehensive Government-sponsored review of our national security in more than 50 years.

The Commission released three reports in 1999, 2000, 2001, respectively. Its third report, phase 3, entitled ''Roadmap for National Security: Imperative for Change,'' warned that we would soon face asymmetrical and terrorist threats and would need a focused Cabinet-level homeland security agency with adequate budget authority and direct accountability to the President to detect and counter those threats.

The Commission's conclusion, headed by our former colleagues Gary Hart and Warren Rudman, was issued on January 31, 2001, more than a half year before the day of darkness, September 11, 2001. Their conclusion included this statement: ''The United States is today very poorly organized to design and implement any comprehensive strategy to protect the homeland.''

Senators Hart and Rudman, and the other distinguished members of the Commission, made their case effectively and, I might say, eloquently. But the attacks of September 11 tragically drove the message home as no words could or, unfortunately, did. We were suddenly and clearly aware that we were more susceptible than we ever expected to the brutality of terrorism directed against innocent Americans for one reason only: Because they were Americans.

No matter their origin, in terms of ethnicity, religion, race, gender, age, place in life, new American or born American, but just because they were Americans in America, they were targets. We realized we were susceptible to that kind of violent extremism and we did not have the organizational capabilities to leverage our strengths and protect ourselves to the best of our ability.

So the bill I was privileged to introduce with my colleague from Pennsylvania, Senator ARLEN SPECTER, making it obviously bipartisan, last October, hewed closely to the model proposed by the Hart-Rudman Commission and also drew on recommendations made by the Gilmore Commission and others. We called for a new Department made up of the Coast Guard, Customs, Border Patrol, and FEMA, as well as some smaller offices on critical infrastructure protection and emergency preparedness.

The compelling need for such a Department was reinforced in those 18 hearings before the Governmental Affairs Committee during which 85 different witnesses testified on various aspects of homeland security. We learned a great deal also from dozens of other hearings by other committees on both sides of the Hill. So for those who may worry or suggest that we are moving more rapidly than we should, this is the record: Painstaking, deliberative, extensive consultation, investigation, education by experts, and an openness to ideas wherever they came from because of the critical necessity to do something to protect our security.

As chairman of the committee, I have been guided by a maxim that was used about foreign and defense policy, which is that partisanship stops at our Nation's coasts. In the same way, since this new enemy, the terrorists, has brought warfare within the United States of America, I say when we are discussing matters of homeland security, partisanship also must stop. That is the spirit in which our committee has gone forward.

We discovered, whether the subject was anthrax in the mail or port security or critical infrastructure protection, that the Federal Government is now lacking an approach to our problems that is either strong enough or coordinated enough to meet what we now know, post-September 11, is the reality of the challenge to us. In other words, we are dividing our strengths at a time when we should be multiplying them.

Again and again, the same message emerged from the witnesses who came before us, in big bold letters one might say: We still are not adequately prepared for terrorism at home, and a strong Cabinet-level Department, encompassing the key programs related to homeland security, is the necessary first step to addressing those deficiencies and closing those vulnerabilities.

The need for such a Department was further underscored by our experience with the Office of Homeland Security that was established last October by Executive Order of the President. The President appointed Gov. Tom Ridge to fill that position. Governor Ridge is an able, hard-working public servant. He has had the President's confidence and his ear from the very start. But we saw then, and the President would later acknowledge, that the office simply lacked the budgetary and organizational authority to reshape the Federal bureaucracy to define priorities and to get results. Only a Cabinet-level Secretary in charge of the Cabinet-level Department could accomplish that task.

In the debate that has already begun and clearly will go on in consideration of this bill, the President and the administration and their allies in this Chamber are saying we have not given the Executive enough management flexibility. The fact is that flexibility must come with power. It was our bill almost a year ago, in contrast to the President's position, that wanted to give the Executive the authority to be able to carry out the necessary changes in the Federal bureaucracy.

So to portray somehow that this bill is protective of the Federal bureaucracy is not right. In fact, the President's original position that this task could be carried out by an Office of Homeland Security did not give that office the power. It had no management flexibility because the constituent agencies exercised the authority they had under law which was superior to the director of the office. Therefore, in that sense, as well as all the specific senses in which we give management flexibility to the Executive, we are proposing a Department with a strong Secretary. That is the way to get the job done: blend the employees together, encourage them to work together, and set standards for them achieving homeland security. That can only be done by a strong Secretary.

At the same time, however, it became apparent that no single Department could address all of the Federal programs or coordinate all the programs of all the Federal agencies engaged in homeland security or in the war on terrorism. Therefore, last May, Senator SPECTER and I combined our proposal with legislation introduced by our colleague from Florida, Senator BOB GRAHAM, chairman of the Intelligence Committee, calling for the creation of a National Office for Combating Terrorism within the White House to coordinate Federal antiterrorism efforts government-wide.

In contrast to the position created for Governor Ridge by Executive Order, this office would be a Senate confirmed-position, with full accountability and authority as well as statutory power to review Federal budgets related to terrorism.

The combined legislation that we have before the Senate in the form of this substitute amendment which I have introduced this afternoon, resulted from, as I said, Senator SPECTER and I joining with Senator GRAHAM. Obviously, there is more added by the committee. That legislation originally was introduced on May 2, and considered by the Senate Governmental Affairs Committee on May 22 of this year, and reported out on a 9-to-7 vote—a vote exactly split along party lines.

On June 6, we got a surprise, a welcome surprise. We gained another supporter, a most important supporter. That was, of course, President George

Bush. This, I believe, was a recognition by the President—he said so in his own words—that the Office of Homeland Security, as it was created by Executive Order, was just too weak to get the job done. That is what we had been arguing for months. That announcement was followed by a legislative proposal from the administration. We were pleased to see the administration's bill encompass almost all the S. 2452 provisions regarding a Department of Homeland Security.

It went further, however, and also proposed that additional programs and agencies be transferred to the new Department—and there were some good ideas there—to ensure the new administration proposals were properly considered and necessary adjustments made to our legislation.

As chairman of the Governmental Affairs Committee, I held four additional hearings on aspects of the President's proposal. Incorporating the insight from those hearings, as well as input from extensive discussion with colleagues, including committee chairmen and ranking members, we prepared an expanded version of S. 2452. The expanded version went a considerable way toward incorporating the proposals the President and the administration made that had not been made part of our original bill. It was further amended during two very thoughtful, constructive days of committee deliberation and was ultimately endorsed by our Senate Governmental Affairs Committee by a bipartisan vote of 12 to 5. That is what I offered as a substitute amendment to H.R. 5005. The amendment I now offer is the product of this lengthy and healthy process of consultation and deliberation. I thank my colleagues in the Senate for indulging me in this brief history expedition, and I want to say why I take the time to discuss the time it took; and that is to demonstrate that we have gone a great distance to hone this bill, to be open to input from anyone, to reach consensus, to modify, and amplify different sections.

The Department we have designed would for the first time combine, under a single chain of command and under the leadership of a single Secretary who is accountable to the President and the people, dozens of agencies and offices responsible for homeland security.

The Department's overarching mission, as stated in Section 101 of this amendment, is twofold: To promote homeland security, particularly with regard to terrorism; and to carry out the other functions and promote the other missions of entities transferred to the Department as provided by law. That is a very important statement.

As much attention as the first part of the mission, homeland security, will get in this debate, the second half cannot be forgotten because even though this Department's very reason for being created is to intelligently organize our Government's homeland security efforts, many of its constituent agencies perform vital, non-homeland security duties, as well. They cannot and will not stop doing that work.

Our bill, in clear and unequivocal language, requires the Department to uphold these other missions and functions.

The extent to which the constituent agencies and programs that are brought into this Department can both protect homeland security and continue to carry out the other responsibilities will depend on the extent to which we in Congress, through the appropriations process, are prepared to support this new Department.

The Secretary will be responsible for running the Department and for developing policies and plans for the promotion of homeland security. The legislation also charges the Secretary with including State and local governments, tribes, and other entities who, again, are first responders and first preventers of the fight against terrorism in every State and city and county and town in our country. The Secretary must consult them, with the Secretary of Defense and also State officers, regarding possible integration of the U.S. military, including the National Guard, into all aspects of the homeland security strategy and its implementation. The Guard is a mighty force, with an historic mission which was originally, of course, to protect homeland security. It has tremendous potential in this new 21st century, in responding to this 21st century threat to our security without making it by any stretch, kind of a Federal constabulary. But the Guard has extraordinary skill and equipment sophistication and can play a very constructive role here.

We also have charged the Secretary with the responsibility of developing a comprehensive information technology blueprint for the Department. The Senator from Illinois, Mr. DURBIN, talked quite eloquently and effectively about one aspect of that yesterday. In addition, the Secretary is responsible for administering the homeland security advisory system, and for annually reviewing and updating the Federal Response Plan for homeland security and emergency preparedness.

This is a big job. The size should make it clear how much we need the new Department. No one in Government is performing these duties adequately today. If they are doing the duties, they are not doing them systematically, certainly not synergistically. There are a lot of gears turning. Some are touching each other, some are not. Some are spinning in isolation. We want the gears to turn together, generating torque, producing energy, and getting results. That means more security for the American people at home.

No one can claim that the creation of a new Department is a guarantee or panacea for all our problems. I agree with Charles Boyd, distinguished American, great public servant and Executive Director of the Hart-Rudman Commission:

''There is no perfect organizational design, no flawless managerial mix. The reason is that organizations are made up of people, and people invariably devise informal means of dealing with one another in accord with the accidents of personality and temperament.'' Even excellent organizational structure cannot make impetuous or mistaken leaders patient or wise, but poor organizational design can make good leaders less effective.

That, in one sense, is what this is all about. Poor organizational design makes good leaders less effective with unnecessary gaps, overlaps, and bureaucratic barriers—by spreading authority and resources too thin, by diminishing accountability, by tolerating overlap and inefficiency—while good organizational design will empower good leaders, hold people accountable, and enable their talent and hard work to make a difference.

In other words, 10 gallons of gas poured into a well-designed, efficient engine can get you long distances at high speeds, but 10 gallons poured into an old, less efficient engine won't get you very far in a very efficient way.

That leads me to a second caution about the legislation, which is the blueprint that we need to build a Homeland Security Department that America needs. In a number of areas likely to be the most controversial, I strongly believe we have chosen the right path. But it would be arrogant of me or anyone to suggest that this legislation is perfect. It is not. That is why we have specifically built into it room for adjustment and refinement as the administration actually begins moving the pieces together. And we have given them a year from the effective date to, in fact, do that.

We require the administration to report back to Congress 6 months after the effective date or earlier during the reorganization process, and every 6 months thereafter, and require recommendations for changes to law at these junctures and throughout the process.

So even the passage of this bill will be not the end of the process, but its start; as Churchill once said in a very different context, ''not the beginning of the end, but the end of the beginning.''

But the fact that we cannot guarantee perfection is no argument against this legislation. Obviously, even our country's Constitution, which Senator BYRD and Senator THOMPSON and others quite eloquently and correctly honored and celebrated in yesterday's debate, the very foundation of our democracy, a democracy created with as much foresight and wisdom as any other in the history of government, was not perfect. It has been amended 27 times. At the time, the Founders understood it had to be built to change over time. Indeed, during the ratification debate, Alexander Hamilton urged those who criticized the

Constitution not to fail to approve it in what he called ''the chimerical pursuit of a perfect plan.'' In a more homely translation that we constantly—at least regularly—use here: Don't let the perfect be the enemy of the good.

Similarly, we must not fail to create this Department in pursuit of a perfect Department. History has dropped at our feet an urgent and necessary challenge, to reshape our Government, to protect the lives and affirm the values of our people, for surely our terrorist enemies are as intent on striking and destroying our humanistic, tolerant, inclusive, free values as they are of destroying our people. We can either meet the moment by staying focused on that goal or we can let it pass by bickering over petty and sometimes partisan or ideological particulars.

Let the debate go forward, but let us, as we go forward in debating and amending this substitute amendment that I have laid down, remember the urgent challenge the terrorists have given us and the broad ground we all seem to occupy about most of how we should respond to that challenge, by creating this Department.

Let's have some debates and disagreements. But when it is all over, let's remember, not only in this bill but more generally in our values, there is so much more that unites us, and that ultimately is our greatest strength against our enemies, past, present, and future. We must be certain to preserve that when this debate is done and a new Department of Homeland Security is created.

Mr. President, I ask unanimous consent to have printed in the RECORD an addendum statement, a section-by-section analysis, and a letter dated August 28, 2002.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Mr. President, I want to share with the Senate my views on the meaning and intent of the provisions we added to this legislation since the Governmental Affairs Committee first considered the bill in May and filed the accompanying report to S. 2452. This legislation has been almost a year in the making, and reflects the thoughtful contributions of an array of distinguished legislators and policy experts.

Last October, I introduced legislation with Senator Specter to create a Department of Homeland Security (S. 1534). That legislation drew heavily on the recommendations of the United States Commission on National Security/21st Century, also known as the Hart-Rudman Commission. It called for a new department made up of the Coast Guard, Customs, Border Patrol, and FEMA, as well as some smaller offices that specialize in critical infrastructure protection and emergency preparedness. The compelling need for such a department was quickly underscored in a series of hearings before the Governmental Affairs Committee examining aspects of homeland security. Whether the subject was anthrax in the mail, port security, or critical infrastructure protection, the Federal government generally did not have a strong, coordinated approach to address the range of threats. A strong, Cabinet-level department encompassing key programs related to homeland security would be a vital first step to addressing this deficiency. At the same time, however, it became apparent that no single department could address all of the Federal programs engaged in the war on terrorism. Therefore, I combined forces with Sen. Graham, who had proposed legislation to create a White House terrorism office to coordinate federal efforts to combat terrorism government-wide. In contrast to the position created by executive order for Gov. Ridge, this office would be a Senate-confirmed position with full accountability and authority, as well as statutory power to review federal budgets relating to terrorism. The combined legislation, the ''National Homeland Security and Combating Terrorism Act of 2002,'' was introduced on May 2, 2002. It was considered by the Governmental Affairs Committee on May 22, 2002 and reported out on a 7–3 vote. A full account of the background and history of that legislation is included in its accompanying report, No. 107–175.

Before the full Senate had a chance to consider that bill, however, the President announced his support for a Department of Homeland Security. That announcement was followed, on June 18, with a legislative proposal from the administration. The administration's bill encompassed almost all of S. 2452's organizational elements regarding a Department of Homeland Security. It went further, however, and proposed that additional programs and agencies be transferred to the new department. To ensure that these new administration proposals were properly considered, the Governmental Affairs Committee held four additional hearings. Then, working with other committee chairmen and ranking members, I prepared an amendment to S. 2452 that was considered at a July 24–25 business meeting of the Governmental Affairs Committee. That expanded version of S. 2452 went a considerable way to incorporate Administration proposals that had not been part of the original bill. It was further amended during two days of Committee deliberation, and ultimately endorsed by a bipartisan Committee vote of 12 to 5.

What follows is a description of some of the key changes to the legislation since the May 22, 2002 markup of S. 2452. It should be considered in concert with Report 107–175, which describes the core of the legislation—most of which is unchanged. A complete section-by-section analysis is also included.

As reported out of the Governmental Affairs Committee (GAC) on May 22nd, S. 2452 created a Department of Homeland Security with three directorates: Border and Transportation Protection, Critical Infrastructure Protection, and Emergency Preparedness and Response. The GAC-endorsed legislation now includes additional programs and agencies that will be organized into six directorates: the original three, plus directorates for Intelligence, Immigration and Science and Technology, an expanded version of a Science and Technology Office in the original bill. The key changes are summarized below:

The GAC-endorsed legislation adds the Transportation Security Administration (TSA) to the agencies incorporated into the Directorate for Border and Transportation Protection. TSA was created through the Aviation and Transportation Security Act, Pub. L. 107–71, which was signed into law on November 19, 2001. The agency's mission is to protect the country's transportation systems, including rail, highways, and maritime, although currently its main focus is to improve aviation safety. TSA's responsibilities include meeting a series of deadlines to upgrade aviation security, including the hiring of more than 30,000 airport security personnel, deploying explosive detection systems and other security equipment, facilitating airport passenger and baggage inspection, and implementing other measures to heighten the safety of air travel.

The inclusion of TSA in the Department will permit better coordination of transportation security operations with other agencies that are responsible for security at the borders. These agencies, which include the Customs Service, Coast Guard, Border Patrol, INS, and border inspection agents from the Animal Plant and Health Inspection Service, are responsible for conducting inspections of travelers and goods entering the United States and for securing the international boundaries the United States shares with Mexico and Canada. TSA's mission to secure our transportation infrastructure is closely tied to maintaining the security of the ports of entry where these border agencies are stationed. For example, cargo containers that pass through our ports are conveyed to other parts of the country through our transportation system, either on rail or the highways, and could cause significant harm and disruption to our transportation infrastructure if they contained explosives or were used in a terrorist attack. It is essential for these agencies to coordinate their efforts so that security measures are linked and more seamlessly implemented. This process will be easier with TSA and the key border agencies in the same chain of command.

Our transportation system must also be able to move people and goods quickly and efficiently from the borders throughout the country. To ensure the security of this system, TSA needs access to key information regarding vulnerabilities and threats. The Department's Directorate of Intelligence, which I will describe shortly, will have the intelligence architecture to help provide this critical information to TSA and other agencies within the Department. By being closely tied to that intelligence directorate, and to the other border agencies in the Department that will be collecting vital information, TSA will be in a better position to prevent future attacks using the transportation system.

Finally, as a new agency TSA may be able to take advantage of some economies of scale offered by the new Department. Specifically, it may not need to create certain capabilities—administrative or otherwise—that will already exist in other components of the Department.

In S. 2452, the Customs Service was transferred intact to the Department. This remains the case in the GAC-endorsed legislation, which also provides that Customs will be preserved as a distinct entity.

At the request of the Senate Finance Committee Chairman and Ranking Member, the legislation incorporates an amendment, adopted by the Committee and agreed to by both the White House and the Finance Committee Chairman and Ranking Member, which will preserve the ability of the Treasury Secretary—with the concurrence of the Secretary—to issue regulations on customs revenue functions that involve economic judgments within the expertise of the Treasury Department, and which can have a major impact on our economy and relationships with foreign countries. These customs revenue functions include: assessing, collecting, and refunding duties, taxes, and fees on imported goods; administering import quotas and labeling requirements; collecting import data needed to compile international trade statistics; and administering reciprocal trade agreements and trade preference legislation. The Customs Service, reporting to the Secretary, is responsible for administering and enforcing these laws, and indeed

for all the Custom Service's traditional border and revenue operations; the Commissioner of Customs is also authorized to develop and support the issuance of regulations by the Treasury Secretary regarding customs revenue functions. After further review, Congress may consider legislation to determine the appropriate allocation of these regulatory authorities between the Secretary of Homeland Security and the Treasury Secretary.

The legislation transfers the Federal Law Enforcement Training Center (FLETC) from the Department of the Treasury to the Directorate for Border and Transportation Protection. FLETC provides basic and advanced agency-specific training for law enforcement officers and analysts at over 70 Federal agencies. This training allows for greater standardization of law enforcement training that is also more cost-effective and is taught by professional instructors using modern facilities. Many of its key customer agencies are being transferred to the new Department, including the Secret Service, INS, Border Patrol, Customs Service, Coast Guard, and Federal Protective Service. Given these relationships, the Department will benefit from the inclusion of FLETC.

FLETC also provides training to State and local entities and to foreign law enforcement personnel, programs generally not otherwise available to these agencies. The programs also enhance networking and cooperation throughout the law enforcement community, domestically as well as world-wide. Therefore, these programs will support and complement the Department's efforts to work more closely with State and local agencies as well as foreign governments to detect and prevent acts of terrorism.

The legislation transfers the Coast Guard to the new Department, and specifies that it be maintained as a distinct entity. At the July 24–25 business meeting, the Committee adopted language intended to maintain the structural and operational integrity of the Coast Guard and the authority of the Commandant, ensure continuation of the non-homeland security missions of the Coast Guard and the Service's capabilities to carry out these missions as it is transferred to the new Department, and ensure that the Commandant reports to the Secretary.

The language, offered as an amendment by Senators Stevens and Collins, states that the Secretary may not make any significant change to any of the non-homeland security missions and capabilities of the Coast Guard without the prior approval of the Congress in a subsequent statute. The President may waive this restriction for no more than 90 days upon his declaration and certification to the Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver.

The language further directs that the Coast Guard's organizational structure, units, personnel, and non-homeland security missions shall be maintained intact and without reduction after the transfer unless Congress specifies otherwise in subsequent Acts. The language also states that Coast Guard personnel, ships, aircraft, helicopters, and vehicles may not be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary and not through any other official of the Department.

The Inspector General of the Department shall annually assess the Coast Guard's performance of all its missions with a particular emphasis on examining the non-homeland security missions.

None of the conditions in the approved language shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

The legislation creates a separate directorate for intelligence (DI) to serve as a national level focal point for information available to the government relating to the plans, intentions, and capabilities of terrorists and terrorist organizations. To emphasize its importance to all aspects of Homeland Security, the DI is an independent directorate within the Department, and is headed by an Under Secretary who reports to the Secretary.

This directorate is a new addition to the legislation since the May 22 markup. It stems from the Administration's proposal to create an intelligence analysis unit within the Department. However, the President's concept has been altered and strengthened in response to testimony before the Committee and input from key senators. Specifically, this proposal reflects important input from Senators Levin and Akaka, both in negotiations and amendments offered at the business meeting. In addition, Intelligence Chairman Senator GRAHAM, Intelligence Vice Chairman Senator SHELBY, former Intelligence Chairman Senator SPECTER and Senator DURBIN contributed key ideas.

As an independent directorate—without the operational responsibilities of other directorates—the DI will focus on providing intelligence analysis to all of the other directorates in the Department, to State and local government, and to law enforcement, for the purpose of preventing terrorist attacks, enhancing border security, protecting critical infrastructure, enhancing emergency preparedness and response, and better informing our research and development activities.

It is important to note that the new Department, through its component organizations, will be one of the largest generators in the government of information relevant to terrorism. The data it obtains about persons and goods entering the country must be better organized and coordinated with threat data from other agencies if the new Department is going to be able to do its job. The DI, therefore, will be responsible for receiving and analyzing law enforcement information from agencies of the United States government, State and local government agencies (including law enforcement agencies), and the private sector, and fusing such information and analysis with analytical products, assessments, and warnings concerning foreign intelligence from the CIA's Counterterrorist Center in order to detect and identify threats of terrorism and other threats to homeland security. The Counterterrorist Center shall have primary responsibility for the analysis of foreign intelligence relating to international terrorism. However, the DI may also conduct its own supplemental analysis of foreign intelligence relating to threats of terrorism against the United States and other threats to homeland security.

The DI's mission is critical to all the Department's activities, as well as to the homeland security mission of the intelligence community, law enforcement community, and State and local governments. For this reason, unless the President directs otherwise, the Secretary is provided with broad, routine access to reports, assessments, analytical information, and other information—including unevaluated intelligence—from the intelligence community and other United States government agencies. The Secretary will also receive information from State and local government agencies, and the private sector. As the President may further provide, the Secretary is also authorized to request additional information—either information that an agency already has in its possession, or new information that could require further investigation. The Secretary will work with the Director of Central Intelligence and the Attorney General to ensure that all material received by the Department is protected against unauthorized disclosure and that sources and methods are protected.

The provision also reflects an amendment by Senator AKAKA that makes the Department a full participant in the process, managed by the Director of Central Intelligence, whereby the intelligence community establishes overall requirements and priorities for the collection of national intelligence. Similarly, the Akaka amendment also makes the Directorate responsible for consulting with the Attorney General and other officials to establish overall collection priorities and strategies for information, including law enforcement information, relating to domestic threats.

The intelligence proposal reflected in the GAC-endorsed legislation was developed after examining the Administration's proposal and hearing from expert witnesses on the critical need for a national level focal point for the analysis of all information available to the United States to combat terrorism. On June 26 and 27, the Committee held hearings on how to shape the intelligence functions of the proposed Department—to determine how, in light of the failure of our government to bring all of the information available to various agencies together prior to September 11 the government should receive information from the field, both foreign and domestic, and convert it, through analysis, into actionable information that better protects our security.

The Committee heard testimony from former directors of the Defense Intelligence Agency and National Security Agency, from FBI Director Mueller and Director of Central Intelligence Tenet, and from William Webster—who headed both the FBI and CIA. It also heard from the Chairman and Vice-Chairman of the Intelligence Committee, Senators Bob Graham and Richard Shelby, whose investigation into the failures of September 11 is expected to yield recommendations for broader reforms that address long-standing and systemic problems within the intelligence community.

Senator Graham's written testimony stated that the Intelligence Committee's hearings thus far have uncovered several factors that contributed to the failures of September 11—one of which is ''the absence of a single set of eyes to analyze all the bits and pieces of relevant intelligence information, including open source material.'' Senator SHELBY'S written testimony stated that ''most Americans would probably be surprised to know that even nine months after the terrorist attacks, there is today no federal official, not a single one, to whom the President can turn to ask the simple question, what do we know about current terrorist threats against our homeland? No one person or entity has meaningful access to all such information the government possesses. No one really knows what we know, and no one is even in a position to go to find out.'' General Patrick Hughes, former director of the Defense Intelligence Agency, echoed these points. His testimony stated that, ''in our intelligence community, we currently have an inadequate capability to process, analyze, prepare in contextual and technical forms that make sense and deliver cogent intelligence to users as soon as possible so that the time dependent operational demands for intelligence are met.''

The Administration's approach falls short of what we need. A key concern is the mission and position of the intelligence unit

within the new Department. By making intelligence its own directorate, our legislation recognizes that the work it does will be instrumental to every other directorate in the organization and to state and local authorities—not just to federal infrastructure protection efforts. The Administration's proposal imbeds the intelligence division within a directorate responsible for critical infrastructure protection. The Administration's proposal is to create an ''information analysis and critical infrastructure protection division''—whose most important role, as CIA Director Tenet testified before the Committee on June 27, would be ''to translate assessments about evolving terrorist targeting strategies, training, and doctrine overseas into a system of protection for the infrastructure of the United States.'' But that is not enough. Intelligence will be crucial not only to infrastructure protection, but to everything this Department will do. It is not hard to imagine many threats to American lives that do not involve infrastructure at all: a plot to detonate a bomb in a shopping mall, for instance, or to unleash a biological agent on a city from above.

To be most effective, the entity responsible for producing all-sources intelligence analysis should not be charged with implementing operational responsibilities. The danger in the Administration's approach is that the intelligence analysis function will be consumed by the operational needs of critical infrastructure protection, and not focus enough on other aspects of the homeland security fight.

There is also a practical reason why these two functions should be under different Under Secretaries. Both are very complex functions that have never before been performed in our government. These are very demanding jobs and the GAC endorsed amendment places them under different Under Secretaries so that, like border and transportation security, science and technology, immigration, and emergency preparedness and response, they will receive the focused leadership and attention necessary to succeed. Just protecting our cyber assets—which is only one aspect of critical infrastructure—is a daunting challenge that grows more each year.

The Under Secretary for Intelligence, who will have to establish and operate a robust Directorate of Intelligence to systematically analyze the threats to our country will be fully consumed with that function. The Under Secretary for Critical Infrastructure Protection, whose role will be to map the threat information to the vulnerabilities in our critical infrastructure, and work closely with other agencies, and the private sector to ensure adequate protective measures are put in place, will also have a huge challenge. However, by making the same official responsible for establishing a robust intelligence division and protecting critical infrastructure, the Administration's proposal underestimates the challenges that we face in both areas.

Secondly, the President's proposal does not allow the DI sufficient, routine access to information produced by other parts of the Intelligence Community and other agencies. The GAC-endorsed legislation provides the Secretary with broad, routine access to reports, assessments, analytical information, and other information—including unevaluated intelligence—relating to the capabilities, intentions, and activities of terrorists and terrorist organizations, unless otherwise directed by the President. ''Unevaluated intelligence'' refers to the substance of intelligence reports, absent any information about sources and methods. We use this term based on the recommendation of the Chairman of the Senate Intelligence Committee—precisely to make it clear that information about sources and methods, which is generally included in ''raw intelligence'', will be protected. In contrast, the Administration's proposal would curtail the Secretary's access to unanalyzed information. The Secretary would have routine access to reports, assessments, and analytical information. But, except for information concerning vulnerabilities to critical infrastructure, the Secretary would receive access to unanalyzed information only as the President may further provide.

At the Committee's hearing on June 27, Senator Shelby, the Vice Chairman of the Intelligence Committee, objected to the limitations on information access in the President's proposal. He stated that ''unlike information relating to infrastructure or other vulnerabilities to terrorist attack—all of which the Secretary would be given access to 'whether or not such information has been analyzed'—information on terrorist threats themselves would be available to the Department only in the form of what is known as 'finished' intelligence.'' He testified that, under Sec. 203 of the President's proposal, the Secretary may obtain the underlying information only 'by request' or when the President specifically provides for its transmission to the new Department. Senator Shelby called these limitations in the President's bill ''unacceptable''. Clearly, the Administration's proposal would reinforce tendencies not to share information among agencies that have historically been reluctant to share. Our purpose is to remove obstacles to information sharing—obstacles that clearly contributed to the tragedy of September 11—not to reinforce them.

The GAC-endorsed amendment establishes a proactive DI. In addition to helping set intelligence priorities and receiving analysis from all other agencies in government, it would have routine access to the unevaluated intelligence, the information behind the reports that DHS will receive, unless the President directs otherwise. The Secretary will also be able to request and receive additional information (as the President further provides) that might require agencies to conduct separate investigations or redeploy resources. We anticipate that the cases would be rare where an agency is unwilling or unable to comply with the Secretary's request; however, the President will ultimately determine how conflicts, if any, will be resolved.

During the July 24–25 business meeting, Senator Thompson offered an amendment reflecting the President's approach on intelligence; however that amendment was defeated.

S. 2452 included a Directorate for Critical Infrastructure Protection (CIP). The GAC endorsed amendment continues to include that directorate, and expands it to incorporate significant additions as proposed by the President. The Directorate will be headed by an Under Secretary who is appointed by the President with the advice and consent of the Senate.

The CIP will combine the key entities, currently scattered across the Federal government, that are charged with working with the private sector and other agencies to protect various sectors of our nation's critical infrastructure. The authorities, functions, personnel, and assets of several offices are transferred to the Department. These include the Critical Infrastructure Assurance Office of the Department of Commerce (established by Presidential Decision Directive 63 in 1998 to coordinate federal initiatives on critical infrastructure); and the National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section, which the Administration requested remain in the FBI to ensure that it continues to have a capability to pursue computer crimes). To these we have added several important entities from the President's proposal: (1) the National Communications System of the Department of Defense (established by Executive Order in 1984 to assist the President and others in: (a) the exercise of telecommunications functions and (b) coordinating the planning for and provision of national security and emergency preparedness communications); (2) the Computer Security Division of the National Institute of Standards and Technology (NIST) of the Department of Commerce (which is tasked with improving information systems security); (3) The National Infrastructure Simulation and Analysis Center of the Department of Energy (established to serve as a source of national competence to address critical infrastructure protection and continuity through support for activities related to counterterrorism, threat assessment, and risk mitigation); (4) The Federal Computer Incident Response Center of the General Service Administration (a partnership of computer incident response, security, and law enforcement personnel to share information and handle computer security incidents); and (5) The Energy Security and Assurance Program of the Department of Energy, a national security program to help reduce America's energy supply vulnerability from severe disruptions due to natural or malevolent causes.

Finally, the GAC endorsed legislation transfers the Federal Protective Service of the General Services Administration (GSA) to the CIP. The President proposed that FPS be transferred to the Border and Transportation Protection Directorate. The Federal Protective Service oversees security at Federal property managed by GSA. Its expertise and mission is to provide physical security for some of our nation's key resources, making it more appropriate that it be combined with the other entities responsible for physical security and cyber security in this Directorate.

The GAC endorsed legislation establishes specialized research and analysis units in the CIP to process intelligence and identify vulnerabilities in key areas, including: (a) Public health, (b) food and water storage, production, and distribution; (c) commerce systems, including banking and finance; (d) energy systems, including electric power and oil and gas production and storage; (e) transportation systems, including pipelines; (f) information and communication systems; (g) continuity of government services; and (h) other systems or facilities the destruction of which would cause substantial hard to health, safety, property, or the environment.

Among its other duties, the CIP shall be responsible for receiving relevant information from the Directorate of Intelligence, law enforcement, and other information to assess the vulnerabilities of the key resources and critical infrastructures; identifying priorities and supporting protective measures by the Department and other entities; developing a comprehensive national plan for securing key resources and critical infrastructure; enhancing and sharing of information regarding cyber-security and physical security; developing security standards, tracking vulnerabilities, proposing improved risk management policies; and delineating the roles of various governmental agencies in preventing, defending, and recovering from attacks.

The Directorate will also be responsible for establishing the necessary organizational structure to provide leadership and focus on both cyber-security and physical security, and ensuring the maintenance of a nucleus of

cyber and physical security experts in the United States Government. Both cyber and physical security are critical to the adequate protection of those systems on which our nation's economy and culture depend. The CIP will be responsible for utilizing the best modeling, simulation, and analytic tools to prioritize the effort.

The creation of this Directorate indicates broad consensus on the need for a single entity to coordinate a national effort to secure America's critical infrastructure. This is a shared responsibility of Federal, State, and local governments along with a private sector which owns 85% of our nation's critical infrastructure. However, unlike the President's proposal, which combines information analysis and infrastructure protection under one Under Secretary, the GAC amendment places Critical Infrastructure Protection in its own directorate where it will work closely with the Intelligence Directorate. This was done both to elevate and stress the centrality of intelligence analysis to all of the Department's missions, but also because critical infrastructure protection is a sufficiently complex and daunting challenge that it will require the focused leadership and attention of an Under Secretary.

As reported out of the Committee in May, S. 2452 would have transferred the law enforcement programs of the Immigration and Naturalization Service to the new Department, while leaving its service functions at the Department of Justice. However, key senators and immigration experts argued that this course could undermine the critical task of reforming the INS. The GAC-endorsed legislation now transfers all immigration functions to the new Department, but specifies that the INS be disbanded and reorganized along the lines of a major, bipartisan reform bill, S. 2444, sponsored by Senators Kennedy and Brownback. These senators are the chairman and ranking member, respectively, of the immigration subcommittee of the Senate Judiciary Committee, and have assembled an impressive bipartisan majority of that committee in support of their legislation. Rather than try to characterize their handiwork for them, I am attaching a letter from Senators Kennedy and Brownback describing the substance of the immigration reforms now incorporated in this legislation.

Because the work of reforming INS is very demanding, the immigration programs will be in their own directorate, with direct accountability to the Secretary, rather than included as part of the Border and Transportation Protection directorate. However, to ensure adequate coordination between immigration programs and other agencies that operate at the border, the legislation creates a Border Security Working Group. This Working Group will consist primarily of the Secretary, or his designee, and the Under Secretaries for Immigration and Border and Transportation Protection. It will meet at least four times a year, and coordinate matters including budget requests, staffing requirements, and use of equipment. This working group can also bring in other federal agencies with border operations (such as the Drug Enforcement Administration or the Food and Drug Administration) that are not part of the Department, offering a critical mechanism for government-wide coordination along the border and at ports of entry.

The legislation also gives the Secretary regulatory authority over the visa application process. Consular employees at the Department of State would continue to process visa applications. However, the Secretary would have authority to issue regulations concerning the application process. This would include the required procedures for considering an application, such as whether all applicants must be interviewed in person or what kind of identification documents would be required. In addition, the Secretary would have authority to station Departmental employees oversees to consult with State Department employees on the visa process and specific threats.

The homeland security mission will face profound technological needs and requirements, and the challenges are substantial. The first challenge derives from the fact that most research and development of new technologies relevant to homeland security will occur outside the new Department—in other agencies, academia, and the private sector. Therefore, the Department will require powerful tools and mechanisms to elicit cooperation from entities external to the Department, and to coordinate R&D efforts across a range of disparate groups, each with their own missions and priorities, in service to homeland security goals. The legislation attempts to provide the Directorate of Science and Technology with the mechanisms it needs to resolve this fundamental coordination problem. The legislation establishes a Security Advanced Research Projects Agency (SARPA), which is inspired by the highly successful Defense Advanced Research Projects Agency (DARPA) of the Department of Defense (DOD). Following the DARPA model, SARPA will have funding, in the form of an Acceleration Fund, to support key homeland security R&D both within and outside of the federal government, and to leverage collaboration on R&D between entities, particularly among the agencies. A second mechanism provided under the legislation is a Science and Technology Council consisting of senior R&D officials from the agencies and other appropriate entities. The Council will assist the Under Secretary in coordinating interagency efforts to execute the science and technology agenda of the Department, primarily through supporting the development of a comprehensive technology roadmap for establishing common priorities and allocating individual responsibilities. Another important mechanism is the ability to directly engage any of the Department of Energy (DOE) national laboratory and sites through joint sponsorship agreements in carrying out R&D activities for homeland security purposes. With respect to bioterrorism research, the Secretary will be able to ensure that the best researchers are focused on developing necessary countermeasures against biothreats by establishing general priorities for biothreat research programs conducted at the National Institutes of Health.

A second R&D challenge is to assure that the Directorate will have expedient access to broad, deep, and ongoing support for critical analysis and decision-making regarding scientific or technical issues. To address this issue, the legislation provides authority for the Directorate to contract with or establish Federally Funded Research and Development Centers (FFRDCs) to obtain independent analytical, scientific, and technical expertise and support, including support for risk analysis and risk management functions. In addition, an Office of Risk Analysis and Assessment is created within the Directorate to ensure that such risk analysis functions are given institutional priority and conducted internally or through outsourcing to FFRDCs.

A third challenge is for the Department to develop and effectively manage a critical mass of internal homeland security R&D capabilities. The legislation transfers a number of entities from the Department of Energy, and one to be created in the Department of Defense, that will constitute a core scientific base upon which the Department will conduct in-house R&D efforts central to its mission. Fundamental to developing this in-house expertise is the ability to procure a strong talent base and to engage them in innovative projects quickly. In view of this, the legislation affords the Secretary with flexible management tools to hire and retain top flight scientific and technical personnel, as well as to accelerate R&D and prototype projects to advance the homeland security mission.

Intelligent and coordinated deployment of technology within the Department is a fourth challenge that must be overcome. Too often, government agencies are hampered and distracted from their fundamental missions as a result of unstructured and technically unsophisticated approaches to technology acquisition and deployment that lead to interoperability problems downstream. The legislation establishes an Office for Technology Evaluation and Transition to assist the Under Secretary in his responsibilities as the chief technology officer and to assure his central role in testing, evaluating, and approving new homeland security technologies being considered by the Department for acquisition.

Lastly, the Committee recognizes that a sea of scientific and technological expertise and resources resides outside the walls of the Federal government, and has therefore included several provisions to engage the private sector in maintaining our national security. Transition of technology is emphasized throughout the section. An Advisory Panel consisting of experts from the private sector and academia may be convened by the Secretary to advise the Under Secretary and Council and promote communication with non-federal entities. The Office of Technology Evaluation and Transition described earlier will provide a gateway and clearinghouse for companies with innovative technologies relating to homeland security. This Office will also have particular responsibility for facilitating the transition of technologies into fielded systems for use by the Department, other agencies, or private sector entities. Another provision requires the Secretary to articulate a strategy and plan for encouraging biotechnology firms, pharmaceutical companies, and other entities to develop countermeasures against biological and chemical weapons, with a view towards commercial production. A fourth provision directs the Under Secretary to establish a National Emergency Technology Guard composed of teams of volunteer experts in science and technology to assist local communities in responding to and recovering from disasters requiring specialized scientific or technical skills.

Taken in combination, the mechanisms granted by the legislation provide the Department with an array of tools with which to forcefully tackle the set of R&D challenges confronting it. The legislative history and specific details regarding the legislation are discussed in greater detail below.

S. 2452, as reported out of the Committee on May 22, contained a provision establishing an Office of Science and Technology within the new Department of Homeland Security. The underlying intent of this provision was to create an R&D entity similar in organization and function to the Defense Advanced Research Projects Agency, which was selected as an appropriate model for the Department's R&D component in light of the fact that the Department, as originally contemplated, would have had limited capability to conduct R&D internally. Consequently, it was determined that the Department could most effectively initiate and promote R&D in support of its mission through a DARPA-like entity with a lean, flexible organizational structure joined with funding to leverage external interagency collaboration. Since the release of the President's proposal for the Department, and in

response to that and additional input received by the Committee from a broad range of contributors, including other Member offices and experts from the scientific research and technology communities, the scope and responsibilities of the Office have been broadened.

The legislation redesignates the Office of Science and Technology as the ''Directorate of Science and Technology'' (''Directorate''), and elevates the head of the Directorate to the rank of a Senate-confirmed Under Secretary. This follows the consensus view of the National Academy of Sciences that the Directorate's chief science and technology (S&T) official requires sufficient stature to influence and coordinate S&T policies and activities outside the Department. The Under Secretary will be responsible for executing the Directorate's mission of managing and supporting R&D activities to meet national homeland security needs and objectives; articulating national R&D goals, priorities, and strategies pursuant to the mission of the Department; coordinating with entities within and outside government to advance the R&D agenda of the Department; advising the Secretary of the Department on all scientific and technical matters; facilitating the transfer and deployment of technologies critical to homeland security needs; and generally serving as the Department's chief technology officer.

The legislation provides a number of key components to assist the Directorate in meeting its mission. First among these is SARPA, the new R&D agency modeled after DARPA that was established in the original version of the legislation and is retained in the amended legislation. DARPA was created in 1958 in response to the launch of Sputnik. It is an organization that recruits outstanding scientific and technical talent and funds high-risk, high-payoff projects that offer the potential for revolutionary advances. DARPA's nimble, aggressive and creative approach has consistently produced impressive and effective war-fighting technologies. Moreover, in the course of fulfilling its central mission, DARPA has developed technologies with broad commercial and societal application, such as the Internet. Of particular significance to the Committee in selecting DARPA as a model for the S&T apparatus in the Department is DARPA's use of its funding to leverage R&D investments in other parts of DOD, effectively generating a multiplier effect that maximizes DARPA's contribution to national defense in disproportion to its actual funding level. Over five decades, DARPA has been recognized as one of the most productive engines of technological innovation in the U.S. government.

While DARPA concentrates primarily on the development of revolutionary technologies, SARPA will have a broader focus consistent with its larger mission. Since there are many technologies relevant to homeland security in various stages of development and deployment, SARPA will promote a wide range of technology development, transition, and deployment efforts, as well as research for revolutionary new technologies. Nevertheless, the Committee anticipates that with an Acceleration Fund authorized at $200 million for FY03, SARPA will have the foundation for replicating or exceeding DARPA's success in catalyzing critical new technologies by initiating and leveraging R&D among public, private, or university innovators. Under an amendment offered by Senator Stevens, ten percent of the Acceleration Fund is to be allocated to Coast Guard homeland security R&D missions for FY'04 and FY'05 through a joint agreement with the Commandant of the Coast Guard.

While Congress should restrain itself in directing particular management strategies, it is the Committee's expectation that SARPA will take full advantage of evolving modern management strategies in the R&D field, particularly in assuring effective technology transition. For example, the Committee would expect SARPA to engage in a careful ''needs identification'' effort which involves eventual technology ''users'' in its R&D roadmapping and planning exercises. The Committee also expects that it operate not simply as a traditional research organization but that it explore methods to involve venture participants, incubate new technologies, encourage the startup process, facilitate prototyping, and promote strategic government and private sector supporters and investors. SARPA will also need to actively encourage connections with technology first-adopters in and out of government, and establish interactive feedback systems for technology development and deployment to ensure sustained interaction between front-line researchers and with users.

To support the Directorate and its functions, an interagency Science and Technology Council, which is the successor to the Science and Technology Steering Council contained in the original version of the legislation, will advise the Under Secretary on priorities and strategies for homeland security R&D. This Council will consist of senior R&D officials from across the government and will serve to facilitate interagency coordination on R&D activities pertinent to homeland security. One of the chief responsibilities of the Council will be to assist the Under Secretary in developing overarching technology roadmap that will enable a coherent national homeland security R&D program to be coordinated among the many federal agencies.

The Administration's proposal contemplated the designation of one of the DOE national laboratories to serve as the primary research and development center for the Department. However, in recognition of the extensive scope and nature of homeland security R&D, as well as the different research and technology-related capabilities possessed by each of the DOE laboratories and sites, the GAC-endorsed legislation establishes in the Directorate an Office for National Laboratories to coordinate and utilize such entities in creating a networked laboratory system to support the missions of the Department. Through joint sponsorship agreements with the DOE, the legislation allows the Department to easily access and benefit from the combined expertise of all of the DOE laboratories and sites.

The Department will have extraordinary analytical needs cutting across of all of its Directorates, especially with regard to the assessment, analysis, and management of threats, vulnerabilities, and risks. Although the Administration's bill did not specifically address this need, the President's Strategic Plan released in mid-July suggests that risk analysis is a fundamental issue that needs to be addressed in planning for our nation's security. Although the legislation vests ultimate responsibility for risk analysis and risk management by the Department with the Secretary, all the Directorates will be required to assist the Secretary in coordination with each other and consistent with their own missions. The Directorate of Science and Technology has a contributing role to play in this framework by providing the Secretary and the other Directorates with scientific and technical support for such functions. To ensure that the Directorate has access to the requisite resources and expertise to fulfill its risk analysis responsibilities and other research-related functions, the legislation gives the Department the power to contract with or establish FFRDCs-independent, non-profit institutions that conduct analysis and provide support integral to the mission and operation of the sponsoring agency. Thirty-six FFRDCs across the nation have proven indispensable in enabling the government to undertake research with a creativity and flexibility not always available within the confines of a federal agency. The importance of FFRDCs is underscored by a prominent study on homeland security conducted by the National Academy of Sciences, which recommended the establishment of an FFRDC to furnish capabilities related to risk analysis, scenario-based threat assessments, red teaming, and other functions. Moreover, an Office of Risk Analysis and Assessment is created within the Directorate to ensure that these functions are given institutional priority and carried out—whether internally or through outsourcing to FFRDCs—in a coordinated manner in accordance with the Secretary's requirements and overall management. This Office will assume operational responsibility within the Directorate and on behalf of the Under Secretary for supporting the risk analysis and risk management needs of the Secretary and the other Directorates, as well as help ensure that R&D activities are aligned with risks and threats.

The President's proposal included language that would grant the Department control over funds appropriated to the National Institute of Health (NIH) for bioterrorism research. Although the provision clearly contemplated that these funds would remain committed to the NIH for application in accordance with the Department's guidelines, the Committee was concerned that the provision technically allowed for such funds to be transferred to other agencies, thereby depriving the NIH of funding necessary to conduct its critical research in this area. With the collaboration of staff from the Administration and Senator Thompson's office, a final provision was negotiated under which NIH funds would not be transferred out of the HHS. Instead, through joint strategic agreements, the Secretary of the Department would set general research priorities for the funds, while the HHS would establish the specific scientific research agenda as well as award and manage all grants. This modified language will protect our strategic commitment to biodefense research, while leaving the means and methods for this research to the scientists at the NIH.

The President's proposal targeted a number of R&D entities and programs in other agencies for transfer into the Department. While the Committee does not agree with all of the Administration's transfers, it recognizes the value of providing the Department with a critical base of in-house R&D capabilities. Therefore, most of the programs targeted by the Administration have been moved, including the chemical, biological, and nuclear threat assessment and detection programs within the Department of Energy (DOE) relevant to homeland security, and the National Bio-Weapons Defense Analysis Center to be created within the Department of Defense. The transferred programs will be collectively supervised by a new Office of Laboratory Research. Together, these transferred entities will confer a basic in-house research capability with the resident scientific expertise to help the Directorate better coordinate the broader government-wide homeland R&D portfolio.

Given that the Federal government represents only one of several sectors in our nation with R&D resources and expertise, the Department will require mechanisms to engage and benefit from private sector and academic efforts regarding homeland security. Toward this end, the legislation allows for the establishment of an Advisory Panel consisting of experts from the private sector,

academia, State, and local entities to advise and support the Under Secretary and the Science and Technology Council. The Panel will ensure that a diversity of perspectives are taken into consideration in the establishment of priorities, and that the contributions to be made from the private sector are properly addressed and incorporated into the national homeland security effort.

The Directorate will also include an Office for Technology Evaluation and Transition, which will serve as a clearinghouse and national point-of-contact for companies and other entities that possess technologies relevant to homeland security. The Office will evaluate these technologies and, if appropriate, assist in developing and transitioning them into Department entities or other agencies possessing matching needs. The Technical Support Working Group (TSWG) provides an applicable model for this function, and the legislation requires the Office to coordinate with or work through TSWG, or use TSWG as a model, in performing this technology solicitation and transition role. It is also intended that this Office serve as the Department's internal center for testing and evaluating new technologies being considered for acquisition or deployment by the Department or its entities. The new Department will be a large one, and very dependent on technology in carrying out its homeland mission. As a result, it is vital that new technologies deployed in the Department's component Directorates and other entities be compatible and interoperable to ensure efficiency and expanded capability. The Office, by performing the Department's testing and evaluation function, will support the Under Secretary in carrying out his duties as the Department's chief technology officer. In addition to conducting testing and evaluation activities for the Department, the Office will also coordinate with the Department's Chief Information Officer and with other agencies in promoting government-wide compatibility and interoperability with regard to homeland security technologies and systems.

Rapidly developing medicines and antidotes to counter chemical and biological weapons is an enormous challenge and one that government-supported R&D cannot accomplish on its own. The legislation directs the Secretary to implement a strategy to engage the biotechnology and pharmaceutical industries in the critical research and product development that will produce antidotes and vaccines to the chemical and biological weapons that terrorists may employ against our nation. This strategy should explore and suggest ways to provide incentives and facilitate ''bench-to-bedside'' transition for these products.

Recognizing that technological prowess in this country is in communities, as well as colleges and companies, the Department must tap the boundless expertise and energy of ordinary citizens. Drawing on legislation developed in the Senate Commerce Committee, the legislation endorsed by the Committee creates a National Emergency Technology Guard of volunteers with expertise in science and technology to assist local communities in responding to and recovering from emergencies requiring scientific or technical expertise.

As reported on May 22, S. 2452 included a Directorate of Emergency Preparedness and Response, with FEMA as its core. The new GAC-endorsed legislation retains this directorate and expands it to include some of the programs the Administration proposed moving to the new department. This amendment also provides that the President may appoint the same person to serve as both the Director of FEMA and the Under Secretary for this directorate.

This directorate's responsibilities include organizing and training local entities to respond to emergencies and providing State and local authorities with equipment for detection, protection, and decontamination in an emergency involving weapons of mass destruction; overseeing Federal, State, and local emergency preparedness training and exercise programs; assembling a single Federal disaster plan to help orchestrate Federal assistance for any emergency; coordinating among private sector entities, including the health community, in emergency planning and response activities; and developing a comprehensive plan to address the interface of medical informatics and the medical response to terrorism. (Medical informatics is the scientific field that addresses the storage, retrieval, sharing, and optimal use of biomedical information, data, and knowledge for problem-solving and decision-making.) This directorate also creates a National Crisis Action Center to coordinate federal support for State and local governments and the private sector during a crisis; additionally, the directorate is responsible for ensuring the appropriate integration of operational activities of the Department of Defense, the National Guard, and other federal agencies in the Federal Response Plan in order to respond to acts of terrorism and other disasters.

In addition to FEMA, the Emergency Preparedness and Response directorate transfers the National Office of Domestic Preparedness, within the FBI. This entity was created by the Attorney General in 1998 and coordinates federal efforts to assist state and local emergency responders with training and materials necessary to respond to an event involving weapons of mass destruction. The Office of Domestic Preparedness (ODP) within the Department of Justice is also transferred. ODP was developed to help train State and local law enforcement agencies to respond to terrorist incidents.

The Administration proposed transferring the Select Agent Registration Enforcement Program from the Centers for Disease Control within the Department of Health and Human Services, to the Department. The Select Agent Registration Enforcement Program was developed to identify all biological agents and toxins that may threaten public health and safety, regulate the transfer of such agents and toxins, and establish a registration scheme regulating their possession, use, and transfer. The GAC-endorsed legislation transfers this program to the Emergency Preparedness and Response directorate because it is a program critical to preparing for and responding to a public health emergency. The Under Secretary for Science and Technology, the Secretary of Agriculture, and the Director of the Centers for Disease Control and Prevention will work together to establish and update the list of toxins to be monitored.

Like the Administration's proposal, the GAC-endorsed legislation transfers the Strategic National Stockpile to the new department. The Strategic National Stockpile is a stockpile of drugs and vaccines that may be used in the event of a terrorist attack or other emergencies. However, because of CDC's experience and expertise, the legislation allows for the Stockpile to be managed on a day-to-day basis for the Department by CDC through a new Bioterrorism Preparedness and Response Division, which is created in this legislation pursuant to an amendment from Senator Cleland. However, the Department would remain in charge of the overall strategic planning concerning the Stockpile. The Public Health Emergency and Bioterrorism Preparedness and Response Act of 2002 authorized funds for both the Stockpile and the acquisition of smallpox vaccine doses and potassium iodide. Consequently, the GAC-endorsed legislation transfers responsibility for the acquisition of smallpox doses and potassium iodide to this directorate as well.

Finally, the Administration also proposed transferring the Office of the Assistant Secretary for Public Health Preparedness (OPHP) from the Department of Health and Human Services to the Emergency Preparedness and Response directorate. This office has three primary components: (1) the awarding and administration of state and local grants for public health preparedness; (2) the Principal Science Advisor, who advises the Secretary on the global R&D strategy for HHS; and, (3) the Office of Emergency Preparedness, which manages rapid-response emergency health and first-responder personnel. From this Office of the Assistant Secretary for Public Health Preparedness, the GAC-endorsed legislation transfers the Office of Emergency Preparedness.

The other two components of the OPHP each play a role in emergency response, but also a very extensive role in general public health. Because they perform a dual-use function, and because of their extensive interaction with other parts of HHS, it does not seem appropriate to transfer them to the new department. Additionally, experts in the public health and biomedical communities expressed concern that the Administration's proposal would not operate effectively. The OPHP was established to address the problems of intra-agency communication and coordination, and it could reverse the gains achieved by this office to remove it from the department with which it is primarily engaged. Indeed, HHS would be probably be forced to re-create this capacity internally if OPHP were transferred to the Department.

At the same time, it is important the Department have in-house capability to address biological, chemical, and nuclear weapons. Consequently, the Department would include those public health and biomedical programs—the OEP, the Select Agent Registration Enforcement Programs, and the Strategic National Stockpile—which focus primarily on terrorism and emergency response.

SECRET SERVICE

The legislation adopts the Administration's proposal to include the United States Secret Service as a distinct entity reporting directly to the Secretary. The Service has a dual mission of protection and investigation, with a central focus on preventing attacks and other missions now very relevant to terrorist threats. The Service was originally created to safeguard the country's currency and financial payment systems, and it remains the sole agency charged with enforcing the counterfeiting statutes. Its responsibility for protecting the country's financial infrastructure has led to an expansion of the Service's investigative mission, which now includes crimes involving identity theft, credit card fraud, false identification documents, computer fraud, and financial institution fraud. In addition, the Secret Service is well-known for its mission to protect the nation's highest elected leaders and their families, as well as visiting heads of state. In recent years, the Secret Service has assumed responsibility for planning, coordinating, and implementing security operations at National Special Security Events, as designated by the President. It also has created the National Threat Assessment Center, which provides advice and training to law enforcement and other organizations with responsibilities to investigate or prevent targeted violence.

The missions of the Secret Service have a clear connection to the fundamental mission of the new Department. Its protective mission is central to safeguarding the country's

leadership. Many of the crimes it is charged with investigating involve activities in which terrorists often engage. And it is an agency that is uniquely focused on assessing vulnerabilities and designing ways to reduce them in advance of an attack, an expertise that will benefit the new Department. The responsibilities and experience of the Secret Service support its transfer as a separate office reporting directly to the Secretary rather than its inclusion in one of the Directorates. This structure will allow the Service to draw on the expertise and resources of the Directorates to support its protective mission, as well as to provide its own expertise and experience to the rest of the Department.

STATE AND LOCAL GOVERNMENT COORDINATION

Homeland security is clearly a joint responsibility among the Federal, State, and local governments. There are many ways in which the bill recognizes the importance of these relationships and places a high priority on ensuring that the Department works closely with, and provides significant assistance to, State and local agencies. To coordinate this effort, the Department will have an office devoted to facilitating effective communications and partnerships with State and local government. The Office for State and Local Government Coordination will be established within the office of the Secretary to ensure that the needs and role of State and local governments are considered throughout the work of each of the Department's directorates. In addition to coordinating the activities of the Department relating to State and local governments, the Office will be responsible for assessing and advocating for the resources needed by State and local government to implement the national strategy for combating terrorism. This advocacy function is necessary so that budget decisions to implement the national strategy are made with the full understanding of the role that State and local governments will play in implementing the strategy, as well as the resources necessary at all levels of government for success.

The Secretary, in conjunction with the Director of the National Office for Combating Terrorism, is responsible for working with State and local governments to develop a national strategy for combating terrorism—not simply a Federal strategy. Thus, the Office for State and Local Government Coordination will develop a process for receiving meaningful input from State and local government to assist in the development of the strategy for homeland security and other homeland activities. The Office will also provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland.

The GAC-endorsed legislation incorporates an amendment, offered by Senators Collins and Carper, which creates the position of Chief Homeland Security Liaison Officer, who is charged with coordinating the efforts of homeland security liaison officers in each state. These liaison officers will work with State and local first responders to make sure that these organizations receive the training and resources they need. A Federal Interagency Committee on First Responders will bring together the federal agencies that work most closely with State and local first responders and will be counseled by an Advisory Council, including representatives of first responders and urban and rural communities.

To further encourage communication and coordination between the Department and State and local agencies, the GAC-endorsed legislation authorizes the Secretary to establish an employee exchange program. This program—which was suggested by Senator Voinovich—would allow employees of the Department and State and local agencies with homeland security responsibilities to work together, to share their specialized expertise, and to enhance their ability to assess threats against the country, develop appropriate responses, and inform the public. Employees who participate in the program must have appropriate training or experience to perform the work required by the assignment, and assignments must be structured to appropriately safeguard classified and other sensitive information.

OFFICE OF INTERNATIONAL AFFAIRS

The legislation includes an amendment offered by Senator Thompson that creates an Office of International Affairs within the office of the Secretary. The Director of the Office will be responsible for promoting the exchange of information with foreign nations to encourage sharing of best practices and technologies relating to homeland security. This information exchange will include joint research and development on countermeasures, joint training exercises for first responders, exchange programs, and international conferences. The Director will manage the activities under this provision in consultation with the Department of State and other relevant Federal officials. These programs will be developed first with countries that are already highly focused on homeland security issues and that have previously engaged in fruitful cooperation with the United States in the area of counterterrorism.

MANAGEMENT AND TRANSITION ISSUES

Management structure

The Administration's proposed legislation calls for the appointment of a number of management officials to support the Secretary in carrying out the mission of the Department. The Committee-endorsed legislation includes much, though not all, of the management structure proposed by the Administration.

Secretary—First and foremost, the Committee-endorsed legislation calls for a strong Secretary, vested with effective, centralized management authority over what will be a large new organization. Although responsibilities under this legislation are allocated among the various Directorates, it is intended that all powers provided under this bill be subject to the full control and direction of the Secretary. Also, while the bill establishes the basic organizational framework for the new Department and establishes its principal components, carrying out this organizational task is only part of the role that the new Secretary must play. While a number of more subjective management factors cannot be defined in statutory language, we anticipate that the new Secretary will need to spend a great deal of time on key management tasks that cannot be embodied in a formal organizational structure. These tasks include: creating a sense of shared values across the new Department and its disparate components; ensuring that core skills and competencies are both developed and shared across the Department; developing an effective common departmental strategy for achieving the agency's missions with buy-in among component agencies; deciding on the key systems and management processes apart from the organizational structure that will manage and bind together the new Department; assuring that the success of those systems and processes are measured and evaluated frequently to test their performance; ensuring that departmental personnel gain experience in a variety of agency components to encourage cross-agency thinking, capability, and solutions so that the synergy of a new Department can be realized, and establishing a leadership style that will create a strong organizational culture based on the values and attitudes the new Department must have to effectively perform its mission. The bill aims to create a structure that will enable the new Secretary to carry out these critical management efforts.

The Department will be headed by a Presidentially appointed, Senate-confirmed Secretary. The Secretary's duties include developing policies and plans for the promotion of homeland security, carrying out and promoting the other established missions of entities transferred to the Department, and developing a comprehensive strategy for combating terrorism and the homeland security response in conjunction with the Director of the National Office for Combating Terrorism.

The Secretary is charged with consulting with the Secretary of Defense and the nation's governors to integrate the National Guard into the nation's strategy to combat terrorism. The Secretary must also consult and coordinate with the Secretary of Defense regarding military organization, equipment, and assets that are critical to fighting terrorism, as well as the training of personnel to respond to terrorist attacks involving chemical or biological agents.

Section 102 details numerous other duties of the Secretary.

Deputy Secretary—Section 103 provides for appointment of a Deputy Secretary, subject to Senate confirmation, responsible for assisting the Secretary.

Under Secretary for Management—The Administration proposal calls for the appointment of an Under Secretary for Management with broad responsibilities for management and administration of the Department. Section 104 of the Committee-endorsed bill establishes this position with substantially the same responsibilities as in the Administration bill. These include budget and other financial matters, procurement, human resources and personnel, information technology and communications, facilities and other material resources, security for the Department, and managing performance measures for the Department.

Assistant Secretaries—The Administration requested authority for the President to appoint not more than six Senate-confirmed Assistant Secretaries, without specifying in statute what the responsibilities of these officers would be. Following generally the Administration's approach, section 105 of the legislation authorizes the President to appoint up to five such Assistant Secretaries (these do not include the two additional, Senate-confirmed Assistant Secretary positions, with immigration-related functions, established in division B of the legislation.) The President must describe the general responsibilities when submitting a nominee for confirmation. The authority of the President to assign functions to up to five Assistant Secretaries should provide important flexibility in designing the management structure for the Department.

Inspector General—The Department will include an office of Inspector General under the Inspector General Act of 1978, thereby applying the authorities and independence provided under that Act. The legislation would define a narrow set of circumstances under which the Secretary could prohibit the Inspector General from carrying out an investigation or performing other duties if necessary in the interest of national security or other compelling circumstances specified in the legislation. This language is modeled closely on provisions that apply to the Inspectors General at the Departments of Justice, Defense, and Treasury, the United States Postal Service, and the Central Intelligence Agency. Also modeled closely on provisions applicable at Treasury, is a provision

granting the Homeland Security IG oversight over internal investigations performed by any other investigatory offices where they exist in the Department's sub-agencies. The Inspector General must designate an official to collect and review information about alleged abuses of civil rights and civil liberties by Department officers and employees, and report to Congress on such abuses.

Chief Financial Officer—The legislation would establish a Chief Financial Officer (CFO) and a Chief Information Officer (CIO) at the new Department. Section 107 would define the Department as an agency under the CFO Act, thereby making applicable the requirements of the CFO Act of 1994, regarding, for example, the qualifications and responsibilities of the CFO and annual financial reporting. Under the CFO Act, the CFO at the Department must be either appointed by the President subject to Senate confirmation, or designated by the President, in consultation with the Secretary, from among Senate-confirmed officials at the Department.

Chief Information Officer—Section 108 of the legislation would establish a Chief Information Officer (CIO) at the new Department. Furthermore, the provisions of law defining the responsibilities of the CIO, including the Paperwork Reduction Act and Clinger-Cohen, would apply by their own terms to the new Department. Under applicable law, the CIO need not be Senate-confirmed.

Chief Human Capital Officer—The Secretary must appoint or designate a Chief Human Capital Officer to advise and assist the Department in workforce skills, training, recruitment, retention, and other issues necessary to attract and retain a highly qualified workforce.

Civil Rights Office—Section 110 of the bill establishes a Civil Rights Office, whose head will be appointed by the President and confirmed by the Senate. The Office will have two important functions. First, the Civil Rights Office will have responsibility for coordinating the administration of and ensuring compliance with laws prohibiting discrimination against Department employees and beneficiaries of Department programs (see, e.g., 42 U.S.C. §§2000d, 2000e–16).

Second, it will advise the Secretary, as well as the Department's directorates and offices, on the constitutional and statutory framework that governs the Department's interactions with the citizenry at large and help develop and implement policies that ensure that consideration of this group's civil rights are appropriately incorporated and implemented in Department programs and activities. It also will oversee the Department's compliance with requirements related to the civil rights of individuals affected by the Department's programs and activities. Authority to investigate specific complaints by the citizenry at large of civil rights or civil liberties violations, however, will reside in the Office of the Inspector General, to which the Civil Rights Office will refer any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

Privacy Officer—A Chief Privacy Officer will oversee the Department's compliance with privacy laws and help ensure that personal information is appropriately safeguarded. Several federal agencies that deal with sensitive personal information, such as the Internal Revenue Service and the U.S. Postal Service, currently have similar privacy advocates to aid in the development of policies and provide assistance to agency officials. The Chief Privacy Officer's mandate extends beyond overseeing compliance with existing privacy laws, such as the Privacy Act, and includes assisting in the development of policies that incorporate privacy safeguards and minimize the risk of inappropriate disclosure or use of personal information. The Privacy Officer may also assist in the development of privacy impact assessments, when required by law or considered appropriate by the Secretary, which are documents that explain how an agency takes into account privacy considerations when initiating information collections and developing information systems.

The Constitution clearly assigns to Congress what is called the ''power of the purse''—the power to appropriate funds and to prescribe the conditions governing the use of those funds. The Framers thus made Congress responsible to the people for how the people's money gets spent. The legislation contains provisions reaffirming that appropriated funds may be used only for the purposes stated by Congress. To provide for initial funding of the Department, the legislation requires the Administration to submit a transition plan and proposed budget by September 15, 2002, so that Congress can appropriate timely start-up funds based on that proposal.

By contrast, the Administration has requested that the new Department be excepted from the traditional arrangements regarding the use of appropriated funds. For initial funding for the Department, the Administration proposed to take funds (up to 5%) from each agency slated for transfer to the Department and use these funds for any purpose under the legislation. This could total roughly $2 billion. To adjust funding priorities without having to go back to Congress, the Administration requested permanent power to take funds (up to 5%) from each appropriations account in the Department and use those funds for any other purpose in the Department.

Senator Byrd and Senator Stevens, the Chairman and Ranking Member of the Appropriations Committee, respectively, wrote to me expressing their strong legal objection to the appropriation transfer provisions requested by the Administration:

''The proposal by the President provides the new Secretary with extraordinary powers, powers that could potentially tip the delicate balance of constitutional powers between the Legislative and Executive branches of government. These are powers that the Secretary of Defense and the Secretary of State do not currently have, nor should they have. The Framers carefully crafted that balance, and it has served the nation well for more than 200 years.''

Senators Byrd and Stevens also requested that the legislation include provisions to sustain existing law and practice governing the use of appropriated funds, and language that they agreed to is included in the legislation. These provisions are designed to provide for establishment of the Department, while preserving the customary and Constitutional role of Congress in appropriating funds and in ensuring that such funds are used effectively and efficiently and according to the will of the people, as expressed through their elected Senators and Representatives.

Under the legislation, initial funding for the Department will be provided through appropriations Acts, not through transfer of funds appropriated for other purposes. To provide this initial funding in a timely fashion, the legislation requires the President to submit a transition plan by September 15, 2002, including a proposal for financing the initial operations of the Department. The financing proposal might consist of any combination of specific appropriations transfers, specific reprogrammings, or specific new appropriations. By putting the Administration on notice, even before the legislation is enacted, this provision has given the Administration ample time to submit their plan while Congress still has time to act on the Administration's proposal.

To further clarify that initial funding will be provided by appropriations acts, the legislation states that transferred funds may only be used for their original purposes unless Congress approves in advance a reallocation of such funds. This provision does not limit the ability of an agency transferred to the Department to use transferred funds for a new position previously authorized in law, but does reinforce that transferred funds may not be used to fund a new position established under this legislation itself.

Looking beyond the transition period, the Administration sought to justify its request for power to transfer appropriations by stating, in the analysis accompanying the Administration's proposed legislation: ''Appropriations transfer provisions are enacted annually in a number of appropriations acts.'' While declining now to grant the broad, permanent transfer power requested by the Administration, this Committee-endorsed legislation does not address whether any power to transfer funds should subsequently be included in annual appropriations acts for the Department. In fact, annual appropriations bills often build in such flexibility, but more often in smaller amounts under close oversight by Congress. The proper way for the Administration to seek this authority is to request it as part of their annual appropriations, not as permanent authority in the enabling legislation.

The Committee concluded that the Congress and the Executive Branch must fully understand the annual and multi-year funding requirements for the Department to ascertain the most appropriate funding levels to protect the American people from homeland security threats.

Accordingly, the GAC-endorsed legislation requires the new Department, beginning with the fiscal year 2005 budget request, to submit annually a Future Years Homeland Security Program to accompany the annual departmental budget request and the National Terrorism Prevention and Response Program Budget mandated elsewhere in the Committee-approved legislation. The language requires that Future Years Homeland Security Program be structured, and include the same type of information and level of detail, as the Future Years Defense Program required by statute to be submitted to the Congress by the Department of Defense.

S. 2452, as reported on May 22, set an effective date of 180 days after enactment for the transfer of personnel and assets to the new Department, and included ''savings provisions'' to generally preserve the status quo with respect to the ongoing missions of the agencies being transferred. The Administration's subsequent proposed legislation requested greater flexibility with respect to the timing of the transition by giving the President discretion to move agencies at any time over a one-year transition period. It also requested further flexibilities to enable the Administration to make certain incidental transfers and to allocate transferred assets and personnel.

The GAC-approved legislation now includes, in subtitle B of title XI, transition provisions based on the corresponding provisions of the Administration's proposed legislation. These provisions include most of the transition-related flexibilities requested by the Administration. The principal exceptions are that, under the GAC-endorsed legislation, the Administration would not have the flexibility to use funds, appropriated by Congress for one purpose, for a different purpose (discussed above), or in the area of withdrawing collective bargaining rights from personnel transferred or employed in the new Department.

Following the Administration's approach, the Committee-approved legislation adopts from the Administration bill an effective date and a ''transition period''—the effective date is generally 30 days after enactment (unless enacted less than 30 days before January 1, 2003, in which case that is the effective date), and the ''transition period'' is the one year period following the effective date. The President is then authorized to direct the transfer of any asset to the Department at any time the President directs, up to the end of the transition period. This should allow agencies to be transferred to the Department in an orderly progression, leaving the Administration free to determine which are in a position to be transferred first.

This legislation, by bringing numerous agencies responsible for homeland security together for the first time under a single chain-of-command responsible for policy and funding, represents one of the most significant reorganizations of the Federal government. However, once these agencies are consolidated into one Department, further reorganization of offices and functions at the departmental level may be needed to integrate incoming offices and to gain additional coordination, efficiency, and effectiveness. The legislation provides for departmental reorganization, by: (1) authorizing the Secretary to reorganize unilaterally to the extent consistent with applicable law; and (2) instructing the Secretary to recommend legislation enabling specific further reorganization involving organizational structures established in law.

The Administration has not offered a proposal for departmental reorganization for consideration by Congress, but, instead, requested that the Secretary be granted the power generally to conduct such reorganizations unilaterally. Under the Administration's proposal, the only limits on this reorganization power would be that the Secretary could not abolish the Secret Service or the Coast Guard, and the Secretary would have to give Congress 90 days notice before overriding a statute.

Many of the statutes establishing entities and assigning functions reflect important policy judgments of Congress and ongoing critical missions required by law, however, and it would be inappropriate for Congress to cede to the executive the power to override these statutes unilaterally, without opportunity for Congress to evaluate, debate, and decide. This view was also expressed by a Senator Byrd and Senator Stevens, the leaders of the Senate Appropriations Committee, in a letter stating their objection to a provision in the President's proposal:

''Congress should not authorize the Executive Branch to establish, consolidate, alter, or discontinue agencies of government that are established in statute. This is Congress' responsibility.''

The legislation establishes reorganization authorities and procedures designed to enable the Secretary to achieve an efficient and effective structure for the Department, while maintaining the appropriate role of Congress in deciding whether statutory law should be changed. Under section 191 of the bill, the Secretary can proceed, without further congressional approval, with any reorganization that does not change organizational structure established by law. The Secretary can perform substantial reorganization and consolidation under this authority. For example, agency units responsible for human resources, information technology or other management functions are typically not established in law, so the Secretary could conduct substantial reorganization and consolidation of such functions to make them more efficient and effective.

Furthermore, as the Secretary identifies specific entities established in law that he or she believes should be reorganized, the legislation instructs the Secretary to submit recommendations to Congress on an ongoing basis for legislation providing for such reorganization. Specifically, section 185(d)(1)(B) of the legislation requires the Secretary to recommend any legislation that the Secretary determines necessary to ''reorganize agencies, executive positions, and the assignment of functions within the Department.'' Anticipating that the Secretary may develop reorganization proposals over the one-year transition period, the bill does not require the Secretary to submit these recommendations as a single reorganization plan, but rather requires submission of these recommendations as they become available, the first no later than 6 months after enactment of the Act and any subsequent recommendations at least every 6 months thereafter until 6 months after the transition is completed.

The legislation specifies that several of the agencies transferred to Department—i.e., the United States Customs Service, the United States Coast Guard, the Federal Emergency Management Agency, and the United States Secret Service—each ''shall be maintained as a distinct entity within the Department.'' This requirement does not impose precise constraints on the Secretary's authority to reorganize with respect to these agencies, since each of these agencies is established by law and this legislation prohibits the Secretary from reorganizing in contravention of such law. Instead, the ''distinct entity'' requirements serves as an instruction to the President and Secretary that Congress intends that the unique identity of each of these four agencies should be preserved.

Under current law, the President and Secretary can reward excellence, remove poorly performing employees, offer recruitment bonuses, and use many other performance-oriented management tools. In an effort to give the Department and other agencies additional flexibility in the management of personnel, our legislation adopts significant, government-wide civil service reforms, contained in provisions proposed by Senators Voinovich and Akaka. To support research and development, we also provided the Secretary of Homeland Security authority to use innovative techniques to hire talent and fund projects. Taken together, this package will give the Secretary the ability to: speed up staffing of new employees; recruit and retain top science and technology talent; procure temporary services outside the civil service system when there is a critical need; reshape the workforce; reform old competitive-hiring practices; provide more effective bonuses for exemplary performance; promote procurement flexibility in research, development, the prototyping of new technologies, and other procurement; and make additional valuable changes to help the new Department attract, maintain, and motivate the best talent. These reforms represent a major modernization of the way federal agencies are managed.

SEN. VOINOVICH'S AND SEN. AKAKA'S AMENDMENT

Division C of the legislation contains important provisions to strengthen significantly the management of the federal workforce government-wide that were offered at the Committee's business meeting by Senators Voinovich and Akaka, and were agreed to by the Committee by voice vote.

The Voinovich-Akaka amendment establishes a chief human capital officer (CHCO) at each major agency (i.e., at the agencies required to have Chief Financial Officers under the CFO Act). The primary responsibility is to advise and assist their respective directors in selecting, developing, training, and managing a high-quality workforce. The creation of a CHCO is intended to help identify and prioritize the recruitment, retention, and workforce management needs across the government. The CHCO will have added importance in the new Department, because consolidation of the different agencies into the Department will pose unique recruitment, retention, training, and workforce management challenges. The CHCO will heighten awareness of workforce issues and provide leadership in resolving these issues.

Another section of the Voinovich-Akaka provision, Section 2202 in the GAC-endorsed legislation, allows agencies to hire candidates directly and bypass the current civil-service hiring requirements once the Office of Personnel Management has determined that there is a severe shortage of candidates for the position. This provision also allows agencies to streamline its staffing procedures by authorizing more flexible merit assessment tools. This will make the government more competitive with the private sector by improving the federal hiring process.

The Voinovich-Akaka provisions include government-wide authority for Voluntary Separation Incentive Payments and Voluntary Early Retirement Authority, two programs currently allowed only in limited situations. The expansion of this authority would give agencies the flexibility required to reorganize the workforce should an agency need to undergo substantial consolidation, transfer of functions, or other substantial workforce reshaping. The provision would allow agencies to reduce high-grade, managerial, or supervisory positions, correct skill imbalances, and reduce operating costs without being forced to reduce overall staff levels.

The Voinovich-Akaka proposal increases the cap on the total annual compensation of senior executives, Administrative Law Judges, officers of the court, and other senior level positions to allow career executives to receive performance awards and other authorized payments within the cap in a single year. This will enable agencies to better reward excellence in the ranks of the most senior and experienced parts of the workforce. It also includes measures to help federal employees earn academic degrees, a step that will help enable agencies to build a highly trained workforce and retain valuable employees who wish to continue their education. To fill the serious gap in foreign language skills across the federal government, which is a particular homeland security problem, Section 2402 eases the restrictions on placement of National Security Education Program (NSEP) fellows who are proficient in languages critical to our national security. The provision would allow NSEP fellows to work in a non-national security position in the federal government, including a homeland security position, if a national security position is not available.

These authorities complement the flexible authority in Section 135 enabling the Science and Technology Directorate to attract outstanding scientists and technologists.

All these detailed and carefully considered personnel provisions provide the Administration with a major management opportunity and flexibility.

It is our responsibility to ensure that Federal agencies with a role in homeland security can purchase—quickly and efficiently—the most high-tech and sophisticated products and services to support antiterrorism efforts and to defend against biological, chemical, nuclear, or radiological attacks. Last year's National Defense Authorization Act provided the Department of Defense with many of these authorities. Title V of this bill

provides to other Federal agencies—including the new Department—emergency contracting authority which is already in place for the Department of Defense. This measure also provides certain new contracting flexibility to these agencies, including raising the threshold amount for contracts carried out in the United States to $250,000 and raising the threshold amount for contracts outside the United States to $500,000. Title V also raises the micro-purchase (purchase card) threshold to $10,000.

Title V would give Federal agencies new procurement flexibility in fighting terrorism. It would streamline procurement procedures for contingency operations or peacekeeping and humanitarian operations; permit agencies to use more ''commercial-style'' contracting procedures for technologies or products which are cutting-edge; and require agencies to do ongoing market research to identify new companies, including small businesses, with new capabilities to help agencies in the fight against terrorism.

Title V also requires that the Comptroller General complete a review of the extent to which procurements and services have been made in accordance with this subtitle and submit a report on the results of the review.

There is a one year sunset for these provisions.

This authority complements the flexible procurement authority in Section 135 concerning R&D and technology prototyping.

The Committee-approved legislation authorizes the Secretary to hire experts and consultants, in accordance with existing law, for periods of up to one year and subject to a pay cap equivalent to the GS–15 level. However, the amendment provides additional hiring flexibility to the Secretary by expanding his authority under current law if necessary to meet urgent homeland security needs. In such cases, the Secretary may obtain personal services, including those of experts or consultants, for periods not to exceed one year without a ceiling on the amount of compensation that may be paid to those individuals. These provisions will allow the Secretary to meet critical needs of the Department by securing the services of individuals with specialized experience and expertise.

During the Cold War, Presidents acquired the power to take away—by executive order—the collective bargaining rights of particular agencies or subdivisions when he determines that national security is at stake. Agency managers may also remove from collective bargaining individual employees engaged in certain kinds of work directly affecting national security, subject to review by the independent Federal Labor Relations Authority (FLRA).

Most of the tens of thousands of employees that will make up the new Department will be transferred from existing federal agencies, and the Congressional Research Service estimates that about 43,000 (mostly in the Customs Service, the INS, the Coast Guard and FEMA) are now represented by unions. Thus far, no President—including President Bush—has tried to deny collective bargaining rights to these workers. Nevertheless, these existing employees are fearful they will lose their collective bargaining rights simply by virtue of being transferred to a department organized around a mission of homeland security—even if their duties remain substantially the same.

The Committee-approved legislation seeks to provide these employees some reassurance. It provides that, for offices and employees transferred into the Department with pre-existing rights to unionize, those rights may not be withdrawn on an office-wide basis by executive order. However, the legislation still provides the Administration ample authority to remove collective bargaining rights if national security is at issue. These rights can be withdrawn from individual employees if their primary job duty materially changes and consists of intelligence, counterintelligence, or investigative duties related to terrorism investigation and their membership in a collective-bargaining unit would adversely affect national security. If so, following existing procedures, Department managers may remove employees from collective bargaining immediately upon determining that such action is warranted, subject to review by the FLRA. Thus, for the employees of offices transferred to the Department with existing rights to form a union, the Committee-endorsed legislation allows the Administration to immediately take employees out of collective bargaining to protect national security, but requires the Administration to state clear reasons for doing so and allows for due process review.

Furthermore, with respect to newly created offices at the Department, the legislation retains the President's authority to remove collective bargaining rights from an entire office by executive order, if the primary function of the office is intelligence, counterintelligence, or investigative duties directly related to terrorism investigation, and if collective bargaining rights cannot be applied consistent with national security.

It is important to remember that bargaining rights of Federal employees are very limited compared to the private sector. Federal employees have no right to strike. Most have their salary and benefits set in statute. And they may not bargain over, or agree to, anything that would affect managers' statutory prerogatives, which include hiring, firing, assigning personnel and work, as well as taking any necessary action during an emergency.

The Committee-approved legislation provides that any construction work financed by assistance under this legislation will be subject to the Davis-Bacon Act, which requires the payment of prevailing wages. The prevailing wage under Davis-Bacon means the local average wage, as determined by the Secretary of Labor.

The Davis-Bacon Act itself applies to federal construction contracts, and, in addition, Davis-Bacon requirements have been incorporated into more than 50 program statutes that provide assistance to non-federal parties for construction. For example, federal assistance programs that apply Davis-Bacon requirements include: a variety of transportation construction grant programs (including interstate highways, mass transportation, airport improvement); FEMA emergency preparedness grants; various environmental programs (including drinking and waste water treatment, and Superfund cleanup).

Like these other statutes, the Committee-endorsed legislation would require the payment of prevailing wages in any construction supported by assistance under this legislation. For example, under the Emergency Preparedness Enhancement Pilot Program under section 153, the Department may award grants for the deployment of innovative emergency preparedness technologies. If such a grant is used for construction, the contractor would have to pay the prevailing wage. Section 194 would not affect grant programs that are not under this legislation, even if administered by the Department, however. For example, under the Stafford Act, Davis-Bacon applies to FEMA grants for emergency preparedness, but not to FEMA's grants for disaster relief. Thus, disaster relief under the Stafford Act will remain exempt from Davis-Bacon even after FEMA and its disaster-relief functions are transferred to the new Department.

At the request of Senator Thompson, the legislation incorporates the text of S. 2530, granting some law enforcement authorities to certain Inspectors General. That bill was reported out of the Governmental Affairs Committee on June 25, 2002. Briefly, the proposal amends the Inspector General Act to authorize certain IG officers to carry a firearm or make an arrest in certain instances while engaged in official duties as authorized by this Act or other statute, or by a request from the Attorney General, and to seek and execute warrants under the authority of the United States upon probable cause that a violation has been committed. A full description of the proposal and its legislative history can be found in the accompanying Committee report, No. 107–176.

The GAC-endorsed legislation will ensure that information systems are effectively deployed in the new Department and government-wide. Improved management of information resources is a vital aspect of enhanced homeland security. Federal agencies have deployed information systems in stovepipes, with little thought given to interoperability with the systems of other agencies. Interoperable information systems would allow for efficient sharing of data and better communications between agencies responsible for intelligence gathering, border security, crisis response, and other homeland security missions. Agencies vital to homeland security are also plagued by poor information security and outdated technologies. These management challenges need to be addressed both within the new Department and government-wide.

The legislation contains several new provisions that impose general mandates and establish accountability mechanisms with respect to information systems within the Department. The Secretary is required to direct the acquisition and management of the Departments information resources, including the information systems of agencies being transferred into the Department. In ensuring proper Department-wide management, the Secretary will be assisted by the Chief Information Officer. The Secretary is responsible for making the Department's information systems effective, efficient, secure, and interoperable, and will report to Congress on the implementation of an enterprise architecture for the Department. The CIO will work closely with the Under Secretary for Science and Technology on the development, testing, and deployment of new IT technologies.

The need for more effective cooperation between agencies such as the FBI, CIA, Department of State, and INS has become obvious, yet poorly developed information systems are getting in the way when technology should be enhancing agencies' effectiveness. The federal government has barely addressed the inability of agencies to link up their information systems. Pursuant to language proposed by Sen. Durbin, the legislation requires the OMB Director to develop a comprehensive enterprise architecture for information systems of agencies related to homeland security, and to make sure agencies implement the plan. The architecture and resulting systems must be designed so that they can achieve interoperability between federal agencies responsible for homeland defense, that they are capable of being deployed quickly and upgraded with improved technologies, and that effective information security is maintained. The OMB Director and the Secretary will also facilitate improved interoperability between information systems of Federal, State and local agencies responsible for homeland defense.

Enterprise architectures require systematically thinking through the relationship

between operations and underlying information technologies. Used increasingly by industry and some governments, they can reduce redundancies, modernize operations, and improve program performance.

The Committee-approved legislation includes a key compromise on the public disclosure of certain sensitive information that may be submitted to the Department—one that thoughtfully balances the public's right to know and the legitimate security concerns of private entities that may share information with the Department. Specifically, the legislation provides that records pertaining to the vulnerability of—and threats to—critical infrastructure that are voluntarily furnished to the Department and that are not customarily made public by the provider, are not subject to public disclosure under the Freedom of Information Act. Furthermore, the provision would not limit the disclosure of a record used to satisfy a legal obligation or to obtain a permit or other government approval, or received by another Federal, State, or local agency independently of the Department.

Senators Bennett and Levin offered this provision at the business meeting. The language of the provision had also been developed in conjunction with the Chairman of the Judiciary Committee, Senator Leahy. Senator Bennett explained to the Committee that the amendment addresses the concerns of three groups—the federal government, which wants to receive information from the private sector in order to better understand and address vulnerabilities and threats to critical infrastructure; the private sector, which has said it would like to help the government, but not if it would be disadvantaged by disclosure of sensitive information; and the public-access and environmental communities, which did not want public access diminished to information that is of importance to the public. Senators Bennett and Levin told the Committee that all three of these interested groups found the amendment acceptable. Senator Bennett further reported that the Administration had examined the provision and supported it as well.

To safeguard against the erosion of non-security programs within the transferred entities, the revised legislation establishes a reporting requirement designed to monitor the performance of non-homeland security missions by entities transferred to the Department—pursuant to an amendment by Senators Akaka and Carper. For each of the first five years after a program or agency is transferred to the Department, the relevant Under Secretary must report to the Secretary, the Comptroller General, and Congress regarding the performance of that entity, with particular emphasis on non-homeland security missions. These reports shall seek to inventory non-homeland security capabilities, including the personnel, budgets, and flexibilities used to carry out those functions. The reports shall include information regarding whether any changes are required to enable the transferred entities to continue to carry out non-homeland security missions without diminishment. Under another provision, the Comptroller General is also required to submit reports to Congress that include an evaluation of how successfully the Department is meeting homeland security and other missions.

FIREFIGHTERS

The legislation includes an amendment by Senators Carnahan and Collins to provide federal assistance to local communities to hire additional firefighters, who clearly play a critical first responder role for terrorist threats. The amendment amends the Federal Fire Prevention and Control Act of 1974 to authorize the Director of FEMA to award 3–year grants to local communities to hire additional firefighters. It would fund 75% of a firefighter's salary and benefits over three years. Communities applying for grants under the program would be required to present a plan for how they will fund the position at the conclusion of the third year. The three-year cost is capped at $100,000 per fire fighter. The amendment authorizes $1 billion for FY 2003 and FY 2004 for this program. If fully appropriated, the amendment would provide funding for as many as 10,000 new firefighters each year, able to play a vital role in terrorism response.

The amendment addresses a critical and urgent need. Federal programs currently exist to fund training and equipment for firefighters and other first responders, and more funding for these needs has been proposed in response to the events of September 11. However, no Federal funds have been made available to fund personnel even though the staffing shortage in the nation's fire departments has reached crisis proportions. Two-thirds of all fire departments do not have adequate staffing, falling below the accepted industry consensus standards developed by the National Fire Protection Association. According to the International Association of Firefighters, most fire departments are not able to comply with OSHA's ''two-in/two-out'' standard for safe fire ground operations. These standards require that if two firefighters enter a dangerous environment, there must be at least two firefighters stationed outside to perform a rescue operation if needed.

The International Association of Fire Chiefs estimates that 75,000 additional fire fighters are needed to bring fire department staffing up to minimally acceptable levels for safety and effective response. In addition, investigations into firefighter fatalities conducted by the National Institute for Occupational Safety and Health (NIOSH) over the past decade have consistently identified inadequate staffing as either the primary cause or a significant contributing factor to the death of the firefighter. Clearly, without additional assistance, our firefighters' lives are being jeopardized.

The Carnahan/Collins amendment reflects broad consensus that in order to protect the public against acts of terrorism and other dangers, the nation's fire departments must have adequate personnel, training, and equipment. One of the major purposes of the Department will be to assess and advocate for the resource needs of State and local governments. The need for more firefighters has already been well documented and thus it is appropriate that this issue be addressed now.

The amendment includes an amendment offered by Senators Carper and Torricelli that authorizes funding for Amtrak to finance system-wide safety and security, make life safety improvements to critical rail tunnels, and help ensure Amtrak has adequate fleet capacity in the event of a national security emergency. This funding is authorized to be appropriated to the Department over two years for Amtrak and will remain available until obligated.

Pursuant to an amendment by Sen. Durbin, the GAC-endorsed legislation would require the Secretary to enter into an agreement with and provide funding to the National Academy of Sciences to conduct a detailed and comprehensive review of Federal statutes and regulations affecting the safety and security of the food supply and to review the efficiency and effectiveness of the organizational structure of Federal food safety oversight. It requires the Academy to report its findings, conclusions, and recommendations, to Congress not later than 1 year after enactment of this Act and spells out the issues that must be addressed in the report. The Secretary must provide Congress and the President with a response to the recommendations.

Pursuant to amendment offered by Senator Akaka, for himself and Senator Levin, the legislation would extend whistleblower protections to airport security screeners. For baggage screeners who are federal employees, the legislation would extend the same whistleblower protections as apply generally to federal employees. They are protected against retaliation for coming forward with information about a violation of law, rule, or regulation; mismanagement; waste; abuse; or a danger to health or safety. For airport screening personnel who are not federal employees, the bill provides the same whistleblower protections as apply to air carrier personnel. They are protected against retaliation for coming forward with information about a violation relating to air carrier safety.

Mr. President, I ask unanimous consent to have printed in the RECORD a section-by-section analysis and a letter dated August 28, 2002.

LEGISLATION TO ESTABLISH A DEPARTMENT OF HOMELAND SECURITY AND THE NATIONAL OFFICE FOR COMBATING TERRORISM AS SUPPORTED BY BIPARTISAN VOTE OF THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE

Sec. 1. Short Title. This Act may be cited as the ''National Homeland Security and Combating Terrorism Act of 2002.''

Sec. 2. Outlines the organization of the Act into 3 divisions: (A) National Homeland Security and Combating Terrorism, (B) Immigration Reform, Accountability, and Security Enhancement Act of 2002, and (C) Federal Workforce Improvement.

DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING TERRORISM

Sec. 100. Definitions. Defines terms used in Division A.

Title I. Department of Homeland Security

Subtitle A—Establishment of the Department of Homeland Security

Sec. 101. Establishment of the Department of Homeland Security. Establishes the Department of Homeland Security whose mission is (1) to promote homeland security, particularly with regard to terrorism; and (2) carry out the other functions, and promote the other missions, of entities transferred to the Department as provided by law. The homeland security mission includes preventing terrorist attacks or other homeland threats within the United States; reducing the vulnerability of the United States; and minimizing the damage, and assisting in the recovery, from terrorist attacks or other natural or man-made crises within the United States.

Sec. 102. Secretary of Homeland Security. States that the Secretary of Homeland Security shall be appointed by the President and confirmed by the Senate. This section outlines the Secretary's broad responsibilities for developing policies, goals, objectives, priorities and plans for the promotion of homeland security, which include: developing a national strategy with the Director of the National Office for Combating Terrorism (established in Titles II and III), and advising the Director on the development of a comprehensive budget for programs under the strategy. The Secretary is also responsible for including State and local governments and other entities into the full range of homeland security activities; consulting with the Secretary of Defense and State governors regarding integration of the United States military, including the National Guard, into all aspects of the strategy and

its implementation, including detection, prevention, protection, response and recovery, as well as training of personnel to respond to terrorist attacks involving chemical or biological agents; and developing an enterprise architecture for Department-wide information technology. In addition, the Secretary is responsible for administering the Homeland Security Advisory System and for annually reviewing and updating the Federal Response Plan for homeland security and emergency preparedness.

Sec. 102—subsection (c). Visa Issuance. Vests in the Secretary authority to issue regulations with respect to visas and other immigration and nationality laws implemented by consular officers. The Secretary is also authorized to assign employees of the Department to diplomatic and consular posts to advise consular officers regarding specific security threats relating to the adjudication of visa applications, review applications, and investigate matters under the jurisdiction of the Secretary. The Secretary of State may direct a consular officer to refuse a visa in the foreign policy or security interests of the United States.

Sec. 102—subsection (d). Amends the National Security Act to include the Secretary as a member of the National Security Council.

Sec 103. Deputy Secretary. Establishes a Deputy Secretary for Homeland Security, appointed subject to Senate confirmation, responsible for assisting the Secretary in the administration and operations of the Department.

Sec. 104. Under Secretary for Management. Establishes an Under Secretary for Management, appointed subject to Senate confirmation, who will be responsible for the management and administration of the Department, including the budget and appropriations, procurement, human resources and personnel, information technology, facilities and property, and other functions.

Sec. 105. Assistant Secretaries. Establishes not more than 5 Assistant Secretaries, appointed subject to Senate confirmation. When submitting the name of an individual to the Senate for confirmation, the President shall describe the general responsibilities that the appointee will exercise and, subject to that, the Secretary shall assign each Assistant Secretary such functions as the Secretary considers appropriate.

Sec. 106. Inspector General. Provides that there shall be an Inspector General (IG) in the Department subject to the Inspector General Act of 1978 (5 U.S.C. App), who, under the Inspector General Act, will be appointed subject to Senate confirmation. The Secretary may prohibit the IG from carrying out audits or performing other duties if the Secretary determines it necessary to prevent the disclosure of certain sensitive information, preserve national security, or prevent significant impairment to the national interest. The IG must notify Congress when the Secretary exercises these powers. The IG also shall have oversight over internal investigations performed by any other investigatory offices where they exist in the Department's subagencies. The Inspector General shall also designate one official to review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department; publicize information on the responsibilities and functions of the official; and submit semi-annual reports to Congress describing the implementation of this section. (The civil rights language parallels a USA Patriot Act provision requiring the designation of a similar official in the Justice Department's IG office.)

Sec. 107. Chief Financial Officer. Establishes a Chief Financial Officer (CFO), appointed subject to Senate confirmation.

Sec. 108. Chief Information Officer. Establishes a Chief Information Officer (CIO) to assist the Secretary with Department-wide information resources management.

Sec. 109. General Counsel. Establishes a General Counsel, appointed subject to Senate confirmation, to serve as the chief legal officer of the Department.

Sec. 110. Civil Rights Officer. Establishes a Civil Rights Officer, appointed by the President and confirmed by the Senate, who shall be responsible for, among other duties, ensuring compliance with all civil rights laws and regulations applicable to Department employees and participants in Department programs and overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the Department's programs and activities.

Sec. 111. Privacy Officer. Establishes a Privacy Officer, appointed by the Secretary, who will oversee compliance with the Privacy Act and other applicable laws relating to the privacy of personal information. The Privacy Officer will assist the Department with the development and implementation of policies and procedures to ensure that privacy considerations and safeguards are incorporated and implemented in programs and activities; and that information is handled in a manner that minimizes the risks of harm to individuals from inappropriate disclosure.

Sec. 112. Chief Human Capital Officer. States that the Secretary shall appoint or designate a Chief Human Capital Officer to advise and assist the Department on workforce skills, training, recruitment, retention, and other issues necessary to attract and retain a highly qualified workforce.

Sec. 113. Office of International Affairs. Creates Office of International Affairs within the Office of the Secretary, headed by a Director, who shall be responsible for: promoting information and education exchange with foreign nations, including joint research and development on countermeasures, joint training exercises of first responders, and exchange of expertise on terrorism prevention, response and crisis management; planning international conferences, exchange programs and training activities; and managing international activities within the Department in consultation with the Department of State and other relevant Federal officials. The Director shall initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and have been cooperative with the United States in the area of counterterrorism.

Sec. 114. Executive Schedule Positions. Establishes the Executive Schedule levels for the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, and other senior officers.

Subtitle B—Establishment of Directorates and Offices

Sec. 131. Directorate of Border and Transportation Protection. Establishes a Directorate of Border and Transportation Protection which shall be headed by an Under Secretary who is appointed by the President with the advice and consent of the Senate. The Directorate shall be responsible for securing borders, territorial waters, ports, waterways, air, land, and sea transportation systems, including coordinating governmental activities at ports of entry. It shall also be responsible for using intelligence to establish inspection priorities for agricultural products and livestock from locations suspected of terrorist activities, harboring terrorists, or of having unusual human health or agriculture disease outbreaks. In addition, it shall provide agency-specific training for agents and analysts from within the Department, other agencies, State and local agencies and international entities that have partnerships with the Federal Law Enforcement Training Center. Authorities, functions, personnel, and assets are transferred from the Customs Service, which shall be maintained as a distinct entity; the Coast Guard, which shall also be maintained as a distinct entity and shall report directly to the Secretary; that portion of the Animal Plant and Health Inspection Service of the Department of Agriculture which administers laws relating to agricultural quarantine inspections at points of entry; the Transportation Security Administration of the Department of Transportation; and the Federal Law Enforcement Training Center of the Department of Treasury (a center which provides training to law enforcement officers of 70 Federal partner agencies).

Sec. 131 subsection (d)—Exercise of Customs Revenue Functions. Notwithstanding the transfer of authorities, functions, personnel, and assets from the Customs Service, the Secretary of the Treasury shall retain authority to issue regulations governing customs revenue functions, with the concurrence of the Secretary and with the assistance of the Customs Service. The Customs Service is responsible for administering and enforcing the laws regarding customs revenue functions, which include: assessing, collecting and refunding duties, taxes and fees on imported goods; administering import quotas and labeling requirements; collecting import data needed to compile international trade statistics; and administering reciprocal trade agreements and trade preference legislation. These regulations will be administered by the Secretary. Within 60 days, the Secretary of the Treasury will submit recommendations to Congress regarding the appropriate allocation of legal authorities relating to these functions.

Sec. 131 subsection (e)—Preserving Coast Guard Mission Performance. Preserves the structural and operational integrity of the Coast Guard, the authority of the Commandant, the non-homeland security missions of the Coast Guard and the Coast Guard's capabilities to carry out these missions even as it is transferred to the new Department. The Coast Guard must be maintained intact and without reduction after transfer to the Department unless Congress legislates otherwise. No missions, functions, personnel or assets may be controlled by, or diverted to the principal and continuing use of any other part of the Department. The Secretary may not make a substantial change to the Coast Guard's non-security missions or capabilities without prior Congressional approval by statute. However, the President may waive this restriction for up to 90 days if he certifies to Congress that there is a clear, compelling and immediate state of national emergency. None of these conditions shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

The Coast Guard will report directly to the Secretary. The Inspector General of the Department will conduct an annual review to assess the Coast Guard's performance, particularly with respect to non-security missions.

Sec. 132. Directorate of Intelligence. Establishes a Directorate of Intelligence, headed by an Under Secretary appointed by the President by and with the advice and consent of the Senate. The Directorate shall serve as a national-level focal point for the analysis of information available to the United States Government relating to the plans, intentions, and capabilities of terrorists and terrorist organizations for the purpose of supporting the mission of the Department. The Directorate shall communicate,

coordinate, and cooperate with the intelligence community and other agencies as determined by the Secretary. The Director of Central Intelligence's Counterterrorist Center shall have primary responsibility for the analysis of foreign intelligence relating to international terrorism. The Directorate of Intelligence may conduct supplemental analysis of foreign intelligence relating to threats of terrorism against the United States.

In general, the Directorate shall be responsible for receiving and analyzing law enforcement information, intelligence and other information to detect and identify specific threats of terrorism; working with the Director of Central Intelligence and the intelligence community to establish overall intelligence priorities; requesting additional information; disseminating information to other entities, including state and local law enforcement, to assist in deterring, preventing and responding to terrorism and other threats; establishing, in conjunction with other appropriate officials, secure communications and information technology infrastructure, and advanced analytical tools; and ensuring that all material received by the Department is protected against unauthorized disclosure and handled consistent with the authority of the Director of Central Intelligence to protect sources and methods, and similar authorities of the Attorney General concerning sensitive law enforcement information. The Directorate is also responsible for providing training and other support to providers of information to the Department or consumers of information from the Department; and making recommendations to the Secretary for improving policies and procedures governing sharing of law enforcement, intelligence, and other information within the Federal government and between the Federal government and state and local governments and law enforcement agencies. The Directorate shall be staffed, in part, by analysts via reimbursable detail from agencies of the intelligence community.

Sec. 132 subsection (c)—Access to Information. Provides that, unless otherwise directed by the President, the Secretary shall have access to, and agencies shall provide, all reports, assessments, analytical information, and information, including unevaluated intelligence, relating to the plans, intentions, capabilities, and activities of terrorist organizations and to other areas of responsibility that may be collected, possessed, or prepared by any other United States government agency. As the President may further provide, the Secretary shall receive additional information requested by the Secretary. The Secretary may enter into cooperative agreements with agencies, and regardless of whether the Secretary has entered into any such cooperative agreement, all agencies shall promptly provide information to the Secretary.

Sec. 132 subsection (e)—Additional Responsibilities. The Under Secretary for Intelligence is also responsible for developing analyses concerning the means terrorists might employ to exploit vulnerabilities in homeland security infrastructure; developing and conducting experiments, tests and inspections to test weaknesses in homeland defenses; developing and practicing countersurveillance techniques to prevent attacks; conducting risk assessments to determine the risk posed by specific kinds of terrorist attacks; and working with the Directorate of Critical Infrastructure Protection, other agencies, State and local governments, the private sector and local law enforcement and intelligence agencies to address vulnerabilities.

Sec. 133. Directorate of Critical Infrastructure Protection. Establishes a Directorate of Critical Infrastructure Protection which shall be headed by an Under Secretary who is appointed by the President with the advice and consent of the Senate. Among other duties, the Directorate shall be responsible for: receiving relevant intelligence from the Directorate of Intelligence, law enforcement information and other information to comprehensively assess the vulnerabilities of key resources and critical infrastructures; identifying priorities and supporting protective measures by the Department and other entities; developing a comprehensive national plan for securing key resources and critical infrastructure (as part of the National Strategy described in Title III); establishing specialized research and analysis units to identify vulnerabilities and protective measures in key areas of critical infrastructure, as well as other systems or facilities whose destruction or disruption could cause substantial harm to health, safety, property, or the environment; enhancing and sharing of information regarding cyber-security and physical security, developing security standards, tracking vulnerabilities, proposing improved risk management policies, and delineating the roles of various governmental agencies in preventing, defending, and recovering from attacks; and working with the Department of State and other appropriate agencies to help establish cyber security policy, standards and enforcement mechanisms. The Directorate will also be responsible for establishing the necessary organizational structure to provide leadership and focus on both cyber-security and physical security, and ensuring the maintenance of a nucleus of cyber and physical security experts in the United States Government.

The authorities, functions, personnel and assets of the following offices are transferred to the Department: (1) the Critical Infrastructure Assurance Office of the Department of Commerce, (established by Presidential Decision Directive 63 in 1998 to coordinate federal initiatives on critical infrastructure); (2) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section); (3) the National Communications System of the Department of Defense (established by Executive Order in 1984 to assist the President and others in (a) the exercise of telecommunications functions and (b) coordinating the planning for and provision of national security and emergency preparedness communications); (4) the Computer Security Division of the National Institute of Standards and Technology (NIST) of the Department of Commerce (the NIST division that is tasked with improving information systems security); (5) The National Infrastructure Simulation and Analysis Center of the Department of Energy (established to serve as a source of national competence to address critical infrastructure protection and continuity through support for activities related to counterterrorism, threat assessment, and risk mitigation); (6) The Federal Computer Incident Response Center of the General Service Administration (a partnership of computer incident response, security, and law enforcement personnel to share information on and handle computer security incidents); (7) The Energy Security and Assurance Program of the Department of Energy (a national security program to help reduce America's energy supply vulnerability from severe disruptions due to natural or malevolent causes); and (8) The Federal Protective Service of the General Services Administration (GSA) (which oversees security at Federal property managed by GSA).

Sec. 134. Directorate of Emergency Preparedness and Response. Establishes a Directorate of Emergency Preparedness and Response which shall be headed by an Under Secretary appointed by the President and confirmed by the Senate. Among other duties, the Directorate shall be responsible for carrying out Federal emergency preparedness and response activities; providing State and local authorities with equipment for detection, protection, and decontamination in an emergency involving weapons of mass destruction; overseeing Federal, State and local emergency preparedness training and exercise programs; developing and managing a single response system for national incidents; managing and updating a Federal disaster response plan; using the resources of both human and animal health communities in emergency planning and response activities; creating a National Crisis Action Center to coordinate Federal support for State and local governments and the private sector in a crisis; coordinating and integrating operational activities of the Department of Defense, the National Guard, and other Federal agencies into the Federal response plan; managing, in consultation with the Under Secretary of Science and Technology and the Centers for Disease Control, the Select Agent Registration Program; overseeing the Centers for Disease Control's management of the Strategic National Stockpile of drugs, biologics, and devices, which is transferred to the Department; and developing a comprehensive plan to address the interface of medical informatics and the medical response to terrorism.

The authorities, functions, personnel and assets of the following entities are transferred: the Federal Emergency Management Agency; the National Office of Domestic Preparedness of the Federal Bureau of Investigation of the Department of Justice (created by the Attorney General in 1998 to coordinate and facilitate federal efforts to assist state and local emergency responders with training and materials necessary to respond to an event involving weapons of mass destruction); the Office of Domestic Preparedness of the Department of Justice (developed to assist in the training of state and local law enforcement agencies to respond to terrorist incidents); the Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services (HHS) (responsible for coordinating HHS efforts to plan and prepare for a national response to medical emergencies arising from the use of weapons of mass destruction); the Strategic National Stockpile of the Department of Health and Human Services; and the functions of the Select Agent Registration Program (HHS) and the United States Department of Agriculture (USDA) (a program designed to identify all biological agents and toxins that have the potential to pose severe threats to public health and safety, regulate the transfer of such agents and toxins, and establish a registration scheme regulating their possession, use and transfer).

Sec. 135. Directorate of Science and Technology. Establishes a Directorate of Science and Technology which shall be headed by an Under Secretary appointed by the President with the advice and consent of the Senate. The Directorate will support the mission of the Department by (1) managing and supporting research and development activities to meet national homeland security needs and objectives; (2) articulating national research and development goals, priorities, and strategies pursuant to the mission of the Department; (3) coordinating with entities within and outside the Department to advance the research and development agenda of the Department; (4) advising the Secretary of the Department on all scientific and technical matters; and, (5) facilitating

the transfer and deployment of technologies crucial to homeland security needs. To fulfill the mission of the Directorate, the Under Secretary will be responsible for, among other things, developing a technology roadmap biannually for achieving technological goals relevant to homeland security; instituting mechanisms to promote, facilitate, and expedite the transfer and deployment of technologies relevant to homeland security needs, including dual-use capabilities; establishing mechanisms for sharing research and technology developments and opportunities with appropriate Federal, State, local, and private sector entities; and, establishing in coordination with the appropriate Under Secretaries, a National Emergency Technology Guard (NET Guard) comprised of volunteers with expertise in science and technology to assist local communities in responding to and recovering from emergency contingencies.

This section authorizes the Secretary to exercise certain transactional and hiring authorities relating to research and development and the Secretary shall have the authority to transfer funds to agencies. Additionally, DHS will help direct the use of bioterrorism-related funds, appropriated to NIH, through joint strategic agreements between the Secretary of HHS and the Secretary of DHS. Under such agreements, the Secretary of DHS will have the authority to determine the broad, general research priorities, while the Secretary of HHS will have the authority to set the specific, scientific research agenda. NIH will continue to manage and award all funds. The Secretary is also able to contract with existing Federally Funded Research and Development Centers (FFRDCs), or establish such centers. This section also establishes an Acceleration Fund, to be administered by the Security Advanced Research Projects Agency (SARPA), to stimulate research and development projects; the Fund is authorized to receive an appropriation of $200,000,000 for fiscal year 2003 and such sums as are necessary in subsequent fiscal years. Through a joint agreement with the Coast Guard, ten percent of the Acceleration Fund is to be allocated to Coast Guard homeland security missions for FY'04 and FY'05.

The Directorate also establishes several mechanisms to promote research and development activities. These include: (1) a Science and Technology Council composed of senior research and development officials to, among other things, provide the Under Secretary with recommendations on priorities and strategies, and facilitate coordination among agencies, the private sector, and academia; (2) the Security Advanced Research Projects Agency (SARPA) to undertake and stimulate basic and applied research, leverage existing research and development, and accelerate the transition and deployment of technologies; (3) an Office of Risk Analysis and Assessment to, among other duties, conduct and commission studies of threat assessment and risk analysis to help guide the research priorities of the Department; (4) an Office of Technology Evaluation and Transition to serve as the principal clearinghouse for receiving and evaluating proposals for innovative technologies; (5) an Office for National Laboratories, which shall enter, on behalf of the Department, into joint sponsorship agreements with the Department of Energy (DOE) to coordinate and utilize the resources and expertise of DOE national laboratories and sites; and, (6) an Office of Laboratory Research, which shall incorporate personnel, functions, and assets from several programs and activities transferred from DOE that are related to chemical and biological security, nuclear smuggling, and nuclear assessment, as well as the National Bio-Weapons Defense Analysis Center which is transferred from the Department of Defense. The Office shall also administer the disbursement and undertake oversight of research and development funds transferred to HHS and other agencies outside the Department, and shall have a Science Advisor for bioterrorism. This section also requires the Secretary to develop a comprehensive long-term strategy and plan for engaging for-profit and other non-Federal entities in research, development, and production of homeland security countermeasures for biological, chemical, and radiological weapons.

Sec. 136. Directorate of Immigration Affairs. Establishes a Directorate of Immigration Affairs to carry out all functions of that Directorate in accordance with Division B of the Act.

Sec. 137. Office for State and Local Government Coordination. Establishes within the Office of the Secretary an office to oversee and coordinate programs for and relationships with State and local governments; assess, and advocate for, the resources needed by State and local governments to implement the National Strategy for combating terrorism; provide State and local governments with regular information, research and technical support; and develop a process for receiving meaningful input from State and local governments to assist in the development of the National Strategy and other homeland security activities. The Secretary shall appoint a Chief Homeland Security Liaison Officer, who shall coordinate the activities of homeland security liaison officers in each state. The officers shall coordinate between the Department and State and local first responders, provide training for State and local entities, identify homeland security functions in which the Federal role duplicates the State or local role and recommend ways to reduce inefficiencies, and assist State and local entities in priority setting based on discovered needs of first responder organizations. Establishes the Interagency Committee on First Responders, composed of the Chief Homeland Security Liaison Officer and representatives from Federal agencies including HHS, CDC, FEMA, Coast Guard, DoD, FBI and others, who will ensure coordination among the Federal agencies involved with State and local first responders, identify community-based first responder needs, recommend new or expanded grant programs to improve local first responder services, and find ways to streamline support by Federal agencies for local first responders. Also establishes the Advisory Council for the Interagency Committee, which shall be composed of no more than 13 members representing community-based first responders from both urban and rural communities.

Sec. 138. United States Secret Service. Transfers the authorities, functions, personnel and assets of the United States Secret Service, which shall be maintained as a distinct entity reporting directly to the Secretary.

Sec. 139. Border Coordination Working Group. Requires the Secretary to establish a border security working group with the Under Secretaries for Border and Transportation Security and for Immigration Affairs. The Working Group would, with respect to all border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication and in other areas; coordinate joint and cross-training programs for personnel; monitor, evaluate and make improvements in the coverage and geographic distribution of border security programs and personnel; develop and implement policies and technologies to ensure the speedy, orderly and efficient flow of lawful traffic, travel and commerce, and enhanced scrutiny for high risk traffic, travel and commerce; and identify systemic problems in coordination with border security agencies and propose changes to mitigate such problems. The Secretary shall consult with and may include representatives of such agencies in Working Group deliberations as appropriate.

Sec. 140. Executive Schedule Positions. Adds the appropriate Under Secretaries within the Department to the Executive Schedule.

Subtitle C—National Emergency Preparedness Enhancement—The National Emergency Preparedness Enhancement Act of 2002

Sec. 151. Short Title.

Sec. 152. Preparedness Information and Education. Establishes a Clearinghouse on Emergency Preparedness, headed by a director, who will consult with Federal agencies, task forces and others to collect information on emergency preparedness, including information relevant to the Strategy. The Clearinghouse will ensure efficient dissemination of emergency preparedness information; establish a one-stop shop for emergency preparedness information, including a web site; develop an ongoing public awareness campaign, including a theme to be implemented annually during National Emergency Preparedness Week; and compile and disseminate information on best practices for emergency preparedness.

Sec. 153. Pilot Program. Authorizes the Department to award grants to private entities to pay the Federal share of the cost of improving emergency preparedness and of educating employees and others using the entities' facilities about emergency preparedness. The Federal share of the cost shall be 50 percent, up to a maximum of $250,000 per grant recipient. There are authorized to be appropriated $5,000,000 for each of fiscal years FY 2003 through 2005 for such grants.

Sec. 154. Designation of National Emergency Preparedness Week. Designates each week that includes September 11 as ''National Emergency Preparedness Week'' and requests that the President issue a proclamation each year to observe the week with appropriate programs and activities. In conjunction with the week, the head of each Federal agency, as appropriate, shall coordinate with the Department to inform and educate the private sector and the general public about emergency preparedness activities, and tools, giving a high priority to efforts designed to address terrorist attacks.

Subtitle D—Miscellaneous Provisions

Sec. 161. National Biological and Chemical Weapons Defense Analysis Center. Establishes within the Department of Defense a National Biological and Chemical Weapons Defense Analysis Center to develop countermeasures to potential attacks by terrorists using biological or chemical weapons that are weapons of mass destruction, and designates it for transfer to the Department.

Sec. 162. Review of Food Safety. Requires the Secretary to enter into an agreement with and provide funding to the National Academy of Sciences to conduct a detailed and comprehensive review of Federal statutes and regulations affecting the safety and security of the food supply and to review the efficiency and effectiveness of the organizational structure of Federal food safety oversight. Requires the Academy to report its findings and conclusions, and recommendations, to Congress not later than 1 year after enactment of this Act and prescribes the issues which shall be addressed in the report. The Secretary is further required to provide Congress and the President a response to the recommendations.

Sec. 163. Exchange of Employees between agencies and State and Local governments.

Authorizes the Secretary to establish an employee exchange program under existing provisions of Title 5, United States Code to improve the coordination of antiterrorism programs and activities between the Department and State and local governments. An employee of the Department may be detailed to a State or local government, and State and local government employees may be detailed to the Department under this program. The section requires that employees assigned under this program have appropriate training and experience and that the program be implemented in a manner that appropriately safeguards classified and other sensitive information.

Sec. 164. Whistleblower Protection for Federal Employees Who are Airport Security Screeners. Extends to federal employees who are baggage screeners for the Transportation Security Agency the same whistleblower protections as apply generally to federal employees. They are protected against retaliation for coming forward with information about a violation, mismanagement, waste, abuse, or a danger to health or safety.

Sec. 165. Whistleblower Protection for Certain Airport Employees. Extends to airport screening personnel who are not federal employees the same whistleblower protections as apply to air carrier personnel. They are protected against retaliation for coming forward with information about a violation relating to air carrier safety.

Sec. 166. Bioterrorism Preparedness and Response Division. This section establishes a Bioterrorism Preparedness and Response Division within the Centers for Disease Control and Prevention. This new division will lead and coordinate the counter-bioterrorism efforts of the CDC, as well as serve as the focal point for coordination and communication between the CDC and both the public health community and the Department of Homeland Security. Additionally, this division will train public health personnel in responses to bioterrorism.

Sec. 167. Coordination with the Department of Health and Human Services under the Public Health Service Act. This section ensures that the Federal Response Plan is consistent with Section 319 of the Public Health Service Act, which grants the Secretary of Health and Human Services authority to act in the event of a public health emergency.

Sec. 168. Rail Security Enhancements. Authorizes grants over a 2-year period for the benefit of Amtrak, including $375 million for the cost of enhancements to security and safety of Amtrak rail passenger service; $778 million for life safety improvements to Amtrak tunnels between New York and Washington built between 1872 and 1910; and $55 million for emergency repair and return to service of Amtrak passenger cars and locomotives. This money will remain available until expended.

Sec. 169. Grants for Firefighting Personnel. This section amends the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229), as amended, to provide grants to hire employees engaged in fire protection. Grants shall be awarded for a 3-year period. The total amount shall not exceed $100,000 per firefighter, indexed for inflation, over the 3-year grant period. The Federal grant shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired. The Director may waive the 25 percent non-Federal match for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship. Grants may only be used for additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources. $1,000,000,000 is authorized for each of fiscal years 2003 and 2004 for grants under this subsection.

Sec. 170. Review of Transportation Security Enhancements. Requires the Comptroller General to prepare and submit a report to Congress within one year that reviews all available intelligence on terrorist threats against aviation, seaport, rail and transit facilities; reviews all available information on the vulnerabilities of such facilities; and reviews the steps taken by agencies since September 11 to improve security at such facilities to determine the effectiveness of those measures at protecting passengers and transportation infrastructure from terrorist attack. The report shall also include proposed steps to reduce deficiencies found in aviation, seaport, rail and transit security, and the costs of implementing those steps. Within 90 days after the report is submitted to the Secretary, the Secretary shall provide to Congress and the President the Department's response to the report and its recommendations to further protect passengers and infrastructure from terrorist attack.

Sec. 171. Interoperability of Information Systems. Requires the Director of the Office of Management and Budget, in consultation with the Secretary, to develop an enterprise architecture to achieve interoperability among information systems of federal agencies with responsibility for homeland security, and to establish timetables for implementation. The Director will ensure the implementation of the architecture by federal agencies, and report to Congress on progress achieved. The architecture must be designed so that information systems can be deployed rapidly and upgraded with new technologies, and must be highly secure. The section also requires the Director, in consultation with the Secretary, to develop a plan to achieve interoperability among the information systems of federal, state, and local agencies with responsibility for homeland security, and to report to Congress on progress achieved.

Sec. 172. Extension of Customs User Fees. Extends customs user fees by six months to March 31, 2004. The two fees covered include the merchandise processing fee and a fee on passengers and conveyances.

Subtitle E—Transition Provisions

Sec. 181. Definitions. Defines the term ''agency,'' for purposes of subtitle E, to include any entity, organizational unit, or function transferred or to be transferred under this title. Defines the term ''transition period'' to mean the 12-month period beginning with the effective date of Division A.

Sec. 182. Transfer of Agencies. Provides that the transfer of an agency to the Department shall occur when the President directs, but in no event later than the end of the transition period.

Sec. 183. Transitional Authorities. Provides that until an agency is transferred, existing officials shall provide the Secretary such assistance as he may request in preparing for the integration of the agency into the Department and may detail personnel to assist with the transition on a reimbursable basis. During the transition period the President may designate any officer who has been confirmed by the Senate, and who continues as such an officer, to act until the office is filled, subject to the time limits in the Vacancies Act. A Senate-confirmed officer of an agency transferred to the Department may be appointed to a Departmental office with equivalent authorities and responsibilities without being again confirmed by the Senate for the new position.

Sec. 184. Incidental Transfers and Transfer of Related Functions. The Director of OMB, in consultation with the Secretary, may make additional incidental transfers of personnel and assets. Also, at any time an agency is transferred to the Department, the President may transfer any agency established to carry out or support adjudicatory or review functions in relation to the transferred agency. However, the President would not be authorized to transfer the Executive Office of Immigration Review in the Justice Department under this section. The transfer of an agency that is part of a department will include the transfer of related secretarial functions to the new Secretary of Homeland Security.

Sec. 185. Implementation Progress Reports and Legislative Recommendations. Provides that the Secretary shall prepare and submit to Congress a series of Implementation Progress Reports. The initial report is due not later than 6 months after the date of enactment. Additional reports are due every six months until the final report which will be due not later than 6 months after the transfer is completed.

Sec. 185 subsection (c)—Contents. This subsection specifies the information to be provided. Reports will describe the steps needed to transfer and incorporate agencies into the Department, a timetable, and a progress report on meeting the schedule. Reports will also include information workforce planning, information technology matters, and other matters necessary for the successful implementation of the transition.

Sec. 185 subsection (d)—Legislative Recommendations. Calls upon the Secretary to submit recommendations for legislation that the Secretary determines necessary as part of each semi-annual implementation progress report. If the legislative recommendations are ready sooner, the bill specifically invites the Secretary to submit them in advance of the balance of the report. The Secretary is to provide recommended legislation that would, among other things, facilitate the integration of transferred entities into the Department; reorganize within the Department, or provide the Secretary additional authority to do so; address inequities in pay or other terms and conditions of employment; enable the Secretary to engage in essential procurement; and otherwise help further the mission of the Department.

Sec. 186. Transfer and Allocation. Provides that, except where otherwise provided in this title, personnel employed in connection with, and the assets, liabilities, contracts, property records, and any unexpended balance on appropriations, authorizations, allocations and other funds related to the functions and entities transferred, shall be transferred to the Secretary as appropriate, subject to the approval of the Director of the Office of Management and Budget and subject to applicable laws on the transfer of appropriated funds. Unexpended funds transferred pursuant to this section shall be used only for purposes for which the funds were originally authorized and appropriated.

Sec. 187. Savings Provisions. In general, this section provides that all orders, determinations, rules, regulations, permits, agreements, contracts, recognitions of labor organizations, collective bargaining agreements and other administrative actions in effect at the time this Division takes effect shall continue in effect according to their terms until modified or revoked. Certain proceedings, such as notices of proposed rulemaking or applications for licenses, permits, or financial assistance pending at the time this title takes effect shall also continue. Suits and other proceedings commenced before the effective date of this Act are also not affected. Administrative actions by an agency relating to a function transferred under this title may be continued by the Department.

Sec. 187 subsection (f)(1). Employee Rights. This subsection is intended to assure employees in agencies transferred to the new

Department that they can keep their collective bargaining rights unless their job changes and there is an actual national security basis for taking those rights away. For agencies transferred to the Department subject to pre-existing rights to form a union, the President may not terminate those rights agency-wide by executive order. However, such rights may be withdrawn from individual employees at the Department if their primary job duties materially change and consist of intelligence, counterintelligence, or investigative duties directly related to terrorism investigation and if it is demonstrated that collective bargaining would adversely affect national security. Applying this standard under existing procedures, managers at the Department may act immediately to remove individual employees from collective bargaining upon deciding that the conditions for removal are met. Either the union or management may ask the Federal Labor Relations Authority (FLRA) to review this action. For new offices established at the Department under this bill, the President may remove collective bargaining rights from an entire office by executive order, if the primary function is intelligence, counterintelligence, or investigative duties related to terrorism investigation, and if application of those rights would adversely affect national security. Furthermore, employees hired to serve in new offices at the Department, like employees transferred to the Department, may be removed individually from collective bargaining for national security reasons.

Sec. 187 subsections (f)(2)—(4). Other personnel matters. The transfer of an employee to the Department will not alter the terms and conditions of employment, including compensation. Any conditions for appointment, including the requirement of Senate confirmation, would continue to apply. Any employee transferred with pre-existing whistleblower protection rights may not be deprived of those rights based on a determination of necessity for good administration.

Sec. 187 subsection (g). No effect on intelligence authorities. The transfer of authorities under this title shall not be construed as affecting the authorities of the Director of Central Intelligence, the Secretary of Defense, or the heads of departments and agencies within the intelligence community.

Sec. 188. Transition Plan. By September 15, 2002, the President is required to submit to Congress a transition plan, including a detailed plan for transition to the Department and implementation of relevant portions of the Act, and including a proposal for financing the new operations of the Department for which appropriations are not available.

Sec. 189. Use of Appropriated Funds. This section sets forth a number of conditions on the use of funds by the Department, the Office, and the National Combating Terrorism Strategy Panel. Balances of appropriations and other funds transferred under the Act may be used only for the purposes for which they were originally available and subject to the conditions provided by the law originally appropriating or otherwise making available the amount. The President shall notify Congress not less than 15 days before transferring funds or assets under this Act. Additional conditions under this section apply to disposal of property, receipt and use of gifts, and other matters. The President shall submit a detailed budget request for the Department for FY 2004.

Subtitle F—Administrative Provisions

Sec. 191. Reorganizations and Delegations. Provides that the Secretary may, as appropriate, reorganize within the Department, except where specific organizational structure is established by law. The Secretary may delegate any of the functions of the Secretary and authorize successive redelegations to other officers or employees of the Department. However, any function vested by law, or assigned by this title, to an organizational unit of the Department or to the head of an organizational unit may not be delegated outside of that unit.

Sec. 192. Reporting Requirements. Requires the Comptroller General of the United States to submit to Congress a report not later than 15 months after the effective date of this division and each year for the succeeding five years containing an evaluation of the progress reports submitted under section 185 and the findings, conclusions and recommendations of the Comptroller General concerning how successfully the Department is meeting the homeland security missions of the Department and the other missions of the Department.

This section also outlines additional reports to be submitted by the Secretary. These include: (1) biennial reports relating to (a) border security and emergency preparedness, and (b) certifying preparedness to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction; (2) a report outlining proposed steps to consolidate management authority for Federal operations at key points of entry into the United States; (3) a report with definitions of the terms ''combating terrorism'' and ''homeland security,'' and (4) a strategic plan and annual performance plan, along with annual performance reports, required by existing statutes.

Sec. 193. Environmental Protection, Safety, and Health Requirements. Provides that the Secretary shall ensure that the Department complies with all applicable environmental, safety and health statutes and requirements, and develops procedures for meeting such requirements.

Sec. 194. Labor Standards. All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et. seq.).

Sec. 195. Procurement of Temporary and Intermittent Services. In addition to the authority to hire experts or consultants on a temporary or intermittent basis in accordance with section 3109(b) of title 5, United States Code, the Secretary may procure personal services, whenever necessary due to an urgent homeland security need, for periods of not more than a year without regard to the pay limitations of section 3109.

Sec. 196. Preserving Non-Homeland Security Mission Performance. Establishes a reporting requirement designed to monitor the performance of non-homeland security missions by entities transferred to the Department. For each of the first five years after a program or agency is transferred to the Department, the relevant Under Secretary must report to the Secretary, the Comptroller General and Congress regarding the performance of that entity, with particular emphasis on non-homeland security missions. These reports shall seek to inventory non-homeland security capabilities, including the personnel, budgets and flexibilities used to carry out those functions. The reports shall include information regarding whether any changes are required to enable the transferred entities to continue to carry out non-homeland security missions without diminishment.

Sec. 197. Future Years Homeland Security Program. Beginning with the FY 2005 budget request, each budget request shall be accompanied by a Future Years Homeland Security Program, reflecting the estimated expenditures and proposed appropriations included in that budget covering the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

Sec. 198. Protection of Voluntarily Furnished Confidential Information. Records pertaining to the vulnerability of, and threats to, critical infrastructure that are voluntarily furnished to the Department and that are not customarily made public by the provider are not subject to public disclosure under the Freedom of Information Act. This provision would not cover records submitted to satisfy legal requirements or to obtain permits or other approvals, and would not cover information that another Federal, State or local agency receives independently of the Department.

Sec. 199. Authorization of Appropriations. Authorizes such sums as may be necessary to enable the Secretary to administer and manage the Department and to carry out the Department's functions created by the Act.

Title II—National Office for Combating Terrorism

Sec. 201. National Office for Combating Terrorism. This section establishes a terrorism office within the Executive Office of the President, to be run by a Director who will be appointed by the President with advice and consent of the Senate. The responsibilities of the Director will include: (1) to develop national objectives and policies for combating terrorism; (2) to direct and review the development of a comprehensive national assessment of terrorist threats and vulnerabilities to those threats, to be conducted by heads of the relevant Federal agencies; (3) to develop, with the Secretary of Homeland Security, a National Strategy for combating terrorism under Title III; (4) to coordinate, oversee and evaluate implementation and execution of the Strategy; (5) to coordinate the development of a comprehensive annual budget for programs and activities under the Strategy, including the budgets of the military departments and agencies with the National Foreign Intelligence Program relating to international terrorism, but excluding military programs, projects, or activities relating to force protection; (6) to have lead responsibility for budget recommendations relating to military, intelligence, law enforcement and diplomatic assets in support of the Strategy; (7) to exercise funding authority for Federal terrorism prevention and response agencies; (8) to serve as an adviser to the National Security Council; and (9) work with the Director of the Federal Bureau of Investigation to ensure that the Director receives relevant information related to terrorism from the FBI, and that such information is made available to appropriate Federal agencies and State and local law enforcement officials. The President, in consultation with the Director, shall assign resources as appropriate to the Office. The establishment of the Office within the Executive Office of the President shall not be construed as affecting access by Congress to information or personnel of the Office.

Sec. 202. Funding for Strategy Programs and Activities. This section establishes a process for the Director to review the proposed budgets for federal programs under the Strategy. The Director will, in consultation with the Director of the Office of Management and Budget and the Secretary of Homeland Security, identify programs that contribute to the Strategy, and provide advice to the heads of the executive departments and agencies on the amount and use of these programs through budget certification procedures and the development of a consolidated budget for the Strategy. The Director

will review agencies' budget submissions to OMB and may decertify any proposals that do not incorporate the proposed funding or initiatives previously advised by the National Office on Combating Terrorism. The Director will provide Congress with notice of any such decertification. Each year, the Director will, in consultation with the Secretary of Homeland Security and the head of each Federal terrorism prevention and response agency, develop a consolidated proposed budget for all programs and activities under the Strategy for that fiscal year.

Title III—National Strategy for Combating Terrorism and the Homeland Security Response

Sec. 301. Strategy. This section directs the Secretary and Director to develop the National Strategy for combating terrorism and homeland security response for the detection, prevention, protection, response and recovery necessary to counter terrorist threats. The Secretary has responsibility for portions of the Strategy addressing border security, critical infrastructure protection, emergency preparation and response, and integrating state and local efforts with activities of the Federal government. The Director has overall responsibility for the development of the Strategy, and particularly for those portions addressing intelligence, military assets, law enforcement and diplomacy. The Strategy will include: (1) policies and procedures to maximize the collection, translation, analysis, exploitation and dissemination of information related to combating terrorism and homeland security response throughout the Federal government and with State and local authorities; (2) plans for countering chemical, biological, radiological, nuclear, explosives, and cyber threats; (3) plans for improving the resources of, coordination among, and effectiveness of health and medical sectors for detecting and responding to terrorist attacks on homeland; (4) specific measures to enhance cooperative efforts between the public and private sectors in protecting against terrorist attacks; (5) a review of measures needed to enhance transportation security with respect to potential terrorist attacks; and (6) other critical areas. This section also establishes the National Combating Terrorism and Homeland Security Response Council to assist with preparation and implementation of the Strategy. Members of the Council will be the heads of federal terrorism prevention and response agencies or their designees. The Secretary and Director will co-chair the Council, which will meet at their direction.

Sec. 302. Management Guidance for Strategy Implementation. This section directs the Office of Management and Budget, in consultation with the Secretary and the Director, to provide management guidance for Federal agencies to successfully implement the Strategy, and to report to Congress on these efforts. It also requires the General Accounting Office to evaluate the management guidance and agency performance in implementing the Strategy.

Sec. 303. National Combating Terrorism Strategy Panel. This section establishes a nonpartisan, independent panel to conduct an assessment of the Strategy as well as an independent, alternative assessment of measures required to combat terrorism, including homeland security measures. The panel will prepare a preliminary report no later than July 1, 2004, with a final report by December 1, 2004 and every four years thereafter.

Title IV—Law Enforcement Powers of Inspector General Agents

Sec. 401. Law Enforcement Powers of Inspector General Agents. This section amends the Inspector General Act to authorize certain IG officers to carry a firearm or make an arrest in certain instances while engaged in official duties as authorized by this Act or other statute, or by the Attorney General; and to seek and execute warrants under the authority of the United States upon probable cause that a violation has been committed. This section also describes the conditions under which the Attorney General may authorize exercise of powers under this section, and it lists those offices of Inspector General which are exempt from this requirement. This section further describes the circumstances under which the Attorney General may also rescind or suspend powers authorized for an Office of Inspector General, and provides that determinations by the Attorney General in this section shall not be reviewable in or by any court. The section also requires the Offices of Inspector General to enter into memoranda of understanding to establish an external review process for ensuring that adequate safeguards and management procedures continue to exist within each Office.

Title V—Federal Emergency Procurement Flexibility

Subtitle A—Temporary Flexibility for Certain Procurements

Sec. 501. Defines the term ''executive agency.''

Sec. 502. Procurements for Defense Against or Recovery from Terrorism or Nuclear, Biological, Chemical, or Radiological Attack. States that the authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical or radiological attack for one year after the date of enactment.

Sec. 503. Increased Simplified Acquisition Threshold for Procurements in Support of Humanitarian or Peacekeeping Operations or Contingency Operations. Raises the threshold amounts to $250,000 for contracts carried out in the United States and to $500,000 for contracts outside the United States pursuant to section 502. Raises the Small Business reserve to $250,000 for contracts inside the United States and $500,000 for contracts outside the United States for procurements carried out pursuant to section 502.

Sec. 504. Increased Micro-Purchase Threshold for Certain Procurements. Raises the micro-purchase threshold with respect to procurements referred to in section 502 to $10,000.

Sec. 505. Application of Certain Commercial Items Authorities to Certain Procurements. Applies commercial items procedures to non-commercial items for emergency purposes. Requires the Director of OMB to issue guidance and procedures for use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000. Provides continuation of authority for simplified purchase procedures.

Sec. 506. Use of Streamlined Procedures. Lists streamlined acquisition procedures which may be used. The head of an executive agency shall use, when appropriate, streamlined acquisition authorities and procedures provided by law including use of procedures other than competitive procedures and task and delivery order contracts. This provision removes the thresholds ($5 million for manufacturing and $3 million for all other contracts) for contracts with limited competition under the small business ''8(A)'' and HUB Zone programs. Waiving the threshold means that small disadvantaged businesses within the ''8(A)'' program and qualified HUB Zone small business concerns can compete for contracts using limited competition (or sole source competition) regardless of the value of the contract.

Sec. 507. Review and Report by Comptroller General. Requires that not later than March 31, 2004, the Comptroller General complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle, and submit a report on the results of the review to the Senate Governmental Affairs Committee and House Government Reform Committee. The report shall assess the extent to which property and services procured in accordance with this subtitle have contributed to the capacity of Federal employees to carry out the missions of the agencies, and the extent to which Federal employees have been trained on the use of technology. The report shall include any recommendations of the Comptroller General resulting from the assessment. The Comptroller General shall consult with the Committee on Governmental Affairs and the Committee on Governmental Reform on the specific issues and topics to be reviewed, including areas such as technology integration, employee training, and human capital management, and the data requirements of the study.

Subtitle B—Other Matters

Sec. 511. Identification of New Entrants Into the Federal Marketplace. Requires agencies to do ongoing market research to identify new companies with new capabilities, including small businesses, to help agencies facilitate defense against or recovery from terrorism or nuclear, biological, chemical or radiological attack.

Title VI—Effective Date

Sec. 601. Provides that the Division shall take effect 30 days after the date of enactment, or if enacted within 30 days before January 1, 2003, on January 1, 2003.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

Sec. 1001. Short Title. This Division may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002.''

Sec. 1002. Definitions. Defines key terms, including Under Secretary, Enforcement Bureau, and Service Bureau.

Title XI—Directorate of Immigration Affairs

Subtitle A—Organization

Sec. 1101. Abolition of INS. This section abolishes the Immigration and Naturalization Service (''INS'').

Sec. 1102. Establishment of Directorate of Immigration Affairs. This section establishes a Directorate of Immigration Affairs (''Directorate'') within the Department of Homeland Security (''DHS''). The Directorate is divided into three parts: the Under Secretary for Immigration Affairs, the Assistant Secretary for Immigration Services (the ''Service Bureau''), and the Assistant Secretary for Enforcement and Border Affairs (the ''Enforcement Bureau''). The functions of the Directorate are also tripartite: (1) immigration policy, administration, and inspection functions; (2) immigration service and adjudication functions; and (3) immigration enforcement functions. This section also authorizes funds to the DHS as necessary to carry out the functions of the Directorate and defines what is meant by U.S. immigration laws.

Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs. This section establishes that the Directorate will be headed by the Under Secretary of Homeland Security for Immigration Affairs (''Under Secretary''). Charged with all responsibilities and authority in the administration of the Directorate, the Under Secretary is responsible for: (1) administration and enforcement

of U.S. immigration laws; (2) administration of the Directorate, including supervision and coordination of the two Bureaus; (3) inspection of individuals arriving at ports of entry; (4) management of resources, personnel, and other support; (5) management of information resources, including maintenance and coordination of records, databases, and other information within the Directorate; and (6) coordination of response to civil rights violations. A General Counsel serves as the chief legal officer for the Directorate. The General Counsel's responsibilities include: providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director with regard to legal matters affecting the Directorate and its components. A Chief Financial Officer (''CFO'') will direct, supervise, and coordinate all budget formulas and execution for the Directorate. A Chief of Policy and Strategy is created to establish national immigration policy and priorities, perform policy research and analysis on immigration issues under U.S. immigration laws, and coordinate immigration policy between the Directorate, the Service Bureau, and the Enforcement Bureau. A Chief of Congressional, Intergovernmental, and Public Affairs is established to provide Congress with information relating to immigration issues, serve as a liaison with other Federal agencies on immigration issues, and respond to inquiries from, and provide information to the media on immigration issues arising under U.S. immigration laws.

Sec. 1104. Bureau of Immigration Services. This section establishes the Bureau of Immigration Services (''Service Bureau''), headed by the Assistant Secretary of Homeland Security for Immigration Services. The Assistant Secretary shall be appointed by the Secretary of Homeland Security in consultation with the Under Secretary and shall report directly to the Under Secretary. The Assistant Secretary shall administer the immigration service and adjudication functions of the Directorate which include: (1) adjudication of petitions for classification of non-immigrant and immigrant status; (2) adjudication of applications for adjustment of status and change of status; (3) adjudication of naturalization applications; (4) adjudication of asylum and refugee applications; (5) adjudications at Service Centers; (6) determinations of custody and parole of asylum seekers; and (7) all other adjudications under U.S. immigration laws. A Chief Budget Officer, under the authority of the CFO, shall be responsible for monitoring and supervising all financial activities of the Service Bureau. An Office of Quality Assurance is established to develop procedures and conduct audits to ensure the Directorate's policies with regard to services and adjudications are properly implemented, and to ensure sound records management and efficient and accurate service. An Office of Professional Responsibility is established to ensure the professionalism of the Service Bureau, and receive and investigate charges of misconduct or ill treatment made by the public. The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall determine the training of Service Bureau personnel.

Sec. 1105. Bureau of Enforcement and Border Affairs. This section establishes the Bureau of Enforcement and Border Affairs (''Enforcement Bureau''), headed by the Assistant Secretary of Homeland Security for Enforcement and Border Affairs. The Enforcement Bureau Assistant Secretary shall be appointed by the Secretary for Homeland Security, in consultation with the Under Secretary, and shall report directly to the Under Secretary of the Directorate. The Enforcement Bureau Assistant Secretary shall administer the immigration enforcement functions of the Directorate which include the following functions: (1) border patrol; (2) detention; (3) removal; (4) intelligence; and (5) investigations. A Chief Budget Officer, under the authority of the CFO, shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau. An Office of Professional Responsibility shall ensure the professionalism of the Enforcement Bureau, and receive and investigate charges of misconduct or ill treatment made by the public. An Office of Quality Assurance shall develop procedures and conduct audits to ensure the Directorate's policies with regard to enforcement are correctly implemented; and that the Enforcement Bureau's policies and practices result in sound records management and efficient and accurate record-keeping. The Enforcement Bureau Assistant Secretary, in consultation with the Under Secretary, shall determine the training of Enforcement Bureau personnel.

Sec. 1106. Office of the Ombudsman within the Directorate. This section establishes an Office of the Ombudsman within the Directorate of Immigration Affairs. The Ombudsman shall be appointed by the Secretary of Homeland Security and report directly to the Secretary of Homeland Security. The Office of Ombudsman will: (1) assist individuals in resolving problems with the Directorate or any component thereof; (2) identify systemic problems encountered by the public in dealings with the Directorate or any component thereof; (3) propose changes in the administrative practices or regulations of the Directorate or any component thereof to mitigate these problems; (4) identify potential legislative changes that may be appropriate to mitigate such problems; and (5) monitor the coverage and geographic distribution of local offices of the Directorate. The Ombudsman shall have the responsibility and authority to appoint local or regional representatives as may be necessary to address and rectify problems. The Ombudsman shall submit an annual report to the House and Senate Judiciary Committees on the activities of the Ombudsman during the fiscal year, providing a full analysis identifying actions taken by the Ombudsman's Office, including initiatives to improve the responsiveness of the Directorate; a summary of serious or systemic problems encountered by the public; an accounting of those items that have been addressed, are being addressed, and have not been addressed with reasons for and results of such action; recommendations to resolve problems encountered by the public; recommendations for action as may be appropriate to resolve problems encountered by the public; recommendations to resolve problems caused by inadequate funding or staffing; and other information as the Ombudsman deems advisable. Appropriations are authorized as necessary to carry out this section.

Sec. 1107. Office of Immigration Statistics within the Directorate. This section establishes the Office of Immigration Statistics within the Directorate, headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics involving the functions of the Directorate and the Executive Office of Immigration Review (EOIR) (or successor entity). The Director shall be responsible for: (1) maintaining immigration statistical information of the Directorate ; and (2) establishing standards of reliability and validity for immigration statistics collected by the Service Bureau, the Enforcement Bureau, and the EOIR. The Directorate and the EOIR shall provide statistical information from their respective operational data systems to the Office of Immigration Statistics. The Director, under the direction of the Under Secretary shall ensure the interoperability of the databases of the Directorate, the Service Bureau, the Enforcement Bureau, and the EOIR to permit the Director of the Office to perform the duties of the office. The functions performed by the Statistics Branch of the INS Office of Policy and Planning are transferred to the Office of Immigration Statistics.

Sec. 1108. Clerical amendments. This section includes clerical amendments.

Subtitle B—Transition Provisions

Sec. 1111. Transfer of Functions. All functions under U.S. immigration laws vested by statute in, or exercised by, the Attorney General are transferred to the Secretary of Homeland Security. The functions of the Commissioner of the INS are transferred to the Directorate. The Under Secretary may, for purposes of performing any function transferred to the Directorate, exercise all authorities under any other provision of law that were available with respect to the performance of the function.

Sec. 1112. Transfer of Personnel and other Resources. There are transferred to the Under Secretary for appropriate allocation: (1) the personnel of the DOJ employed in connection with the functions transferred pursuant to this title; and (2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the INS in connection with the functions transferred pursuant to this title.

Sec. 1113. Determinations with Respect to Functions and Resources. The Under Secretary shall determine: (1) which of the functions transferred under section 111 are immigration policy, administration and inspection functions; immigration service and adjudication functions; and immigration enforcement functions; and (2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions immediately prior to the title's effective date.

Sec. 1114. Delegation and Reservation of Functions. The Under Secretary shall delegate immigration service and adjudication functions to the Assistant Secretary for Immigration Services, and immigration enforcement functions to the Assistant Secretary for Enforcement and Border Affairs. Immigration policy, administration and inspection functions are reserved for the Under Secretary. Some delegations may be made on a nonexclusive basis. The Under Secretary may make delegations to such officers and employees of the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau, respectively, as the Director may designate, and may authorize successive re-delegations of such functions as may be necessary or appropriate.

Sec. 1115. Allocation of Personnel and other Resources. The Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions. Unexpended funds transferred by section 112 shall be used only for allocated purposes. The Attorney General, in consultation with the Secretary of Homeland Security, shall provide for the termination of affairs of the INS. The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources

involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, the Enforcement Bureau. The Under Secretary shall maintain control and oversight over shared computer databases and systems and records management.

Sec. 1116. Savings Provisions. All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, privileges, any proceedings or any application for any benefit, service, as well as the continuance of lawsuits and other matters are transferred to the new entities and shall continue until modified or terminated.

Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization. The INS Commissioner serving on the day before the effective date of this title may serve as the Under Secretary until one is appointed.

Sec. 1118. Executive Office for Immigration Review Authorities not Affected. Nothing in the legislation may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by the EOIR (or its successor entity) or any officer, employee, or component thereof immediately prior to the effective date of this title.

Sec. 1119. Other Authorities not Affected. Nothing in this legislation may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by the Secretary of State, the Secretary of Labor or their special agents, or under the U.S. immigration laws.

Sec. 1120. Transition Funding. Funds are authorized to the Department of Homeland Security as necessary to abolish the INS, establish the Directorate and its components, transfer the functions required under this Act, and carry out any other duty made necessary by this division. These funds will be deposited into a separate account established in the general fund of the U.S. Treasury. Not later than 90 days after the date of enactment of this Act, and at the end of each fiscal year in which appropriations are made, the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs.

Subtitle C—Miscellaneous Provisions

Sec. 1121. Funding Adjudication and Naturalization Services. This section requires that all fees collected for the provision of adjudication or naturalization services be used only to fund adjudication or naturalization services, or subject to the availability of funds, similar services provided without charge to asylum and refugee applicants. In addition to funds already appropriated for this purpose, funds are authorized as necessary to carry out sections of the Immigration and Nationality Act dealing with asylum and refugee processing. Separate accounts are established in the U.S. Treasury for appropriated funds and other deposits available to the Service Bureau and the Enforcement Bureau. Fees may not be transferred between these accounts. Funds are also authorized as necessary to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (Title II of P.L. 106–313).

Sec. 1122. Application of Internet-based Technologies. Not later than two year after enactment, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will allow an immigrant, non-immigrant, employer, or other person who files any application, petition, or other request for benefit under the U.S. immigration laws with the Directorate to access case status information on-line. In establishing the database, the Under Secretary shall consider all applicable privacy issues and no personally identifying information shall be accessible to unauthorized persons. Fees will not be charged to anyone using the database to access information about him/herself. The Under Secretary, in consultation with the Technology Advisory Committee is required to conduct a study on the feasibility of an on-line filing system and report to the House and Senate Judiciary Committee on the results within one year of enactment. To assist in carrying out this section, the Under Secretary is required to establish a Technology Advisory Committee.

Sec. 1123. Alternatives to Detention of Asylum Seekers. This section authorizes the Under Secretary to assign asylum officers to major ports of entry to assist in the inspection of asylum seekers. For other ports, the under Secretary shall take steps to ensure that asylum officers are able to participate in the inspection process. This section also promote alternatives to detention of asylum seekers who do not have prior nonpolitical criminal records and establish conditions for detention of asylum seekers that ensure a safe and humane environment. The Under Secretary is required to consider the following specific alternatives to detention: parole; parole with appearance assistance provided by private nonprofit voluntary agencies; non-secure shelter care or group homes operated by private nonprofit voluntary agencies; and noninstitutional settings for minors, such as foster care or group homes operated by private nonprofit voluntary agencies.

Subtitle D—Effective Date

Sec. 1131. Effective Date. This title shall take effect one year after the effective date of division A of this Act.

Title XII—Unaccompanied Alien Children Protection

Sec. 1201. Short Title. This title may be cited as ''The Unaccompanied Alien Child Protection Act of 2002.''

Sec. 1202. Definitions. Key terms, including unaccompanied alien child, are defined.

Subtitle A—Structural Changes

Sec. 1211. Responsibilities of the Office of Refugee Resettlement with Respect to Unaccompanied Alien Children. The Office of Refugee Resettlement (''Office'') shall be responsible for coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status and ensuring minimum standards of detention for all unaccompanied alien children. The Director of the Office (''Director'') shall be responsible for: (1) ensuring that the best interests of the child are considered in the care and placement of unaccompanied alien children; (2) making placement, release, and detention determinations; (3) implementing determinations; (4) convening the Interagency Task Force on Unaccompanied Alien Children (in the absence of the Assistant Secretary); (5) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children; (6) overseeing persons, entities and facilities; (7) compiling and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide services; (8) maintaining statistical information and other data on unaccompanied alien children in the Office's custody and care; (9) collecting and compiling statistical information from the INS (or successor entity); and 10) conducting investigations and inspections of facilities and other entities where unaccompanied alien children reside. The Director is also encouraged to utilize the refugee children foster care system. The Director shall have the power to contract with service providers and compel compliance with the terms and conditions of section 1323. Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and National Act from the authority of any official of the Service (or its successor entity), the EOIR (or its successor entity) or the Department of State.

Sec. 1212. Establishment of Interagency Task Force on Unaccompanied Alien Children. An Interagency Task Force on Unaccompanied Alien Children is established consisting of various key agencies and departments of the federal government.

Sec. 1213. Transition Provisions. All functions with respect to the care and custody of unaccompanied alien children under the immigration laws, vested in, or exercised by, the Commissioner or his employees is transferred to the Office.

Sec. 1214. Effective Date. This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle B—Custody, Release, Family Reunification, and Detention

Sec. 1221. Procedures when Encountering Unaccompanied Alien Children. This section establishes procedures to be followed when encountering unaccompanied alien children. At the border, or at ports of entry, an unaccompanied alien child may be removed from the United States if deemed inadmissible under the Immigration and Nationality Act, unless the child is a national of a country contiguous to the U.S. and who fears persecution or would be harmed if returned to that country. Custody of all unaccompanied alien children found in the interior of the United States shall be under the jurisdiction of the Office, with exceptions of children who have committed crimes and or threaten national security. An unaccompanied alien child shall be transferred to the Office within 72 hours of apprehension.

Sec. 1222. Family Reunification for Unaccompanied Alien Children with Relatives in the United States. Unaccompanied alien children in the custody of the Office shall be promptly placed with one of the following in order of preference: (1) a parent; (2) a legal guardian; (3) an adult relative; (4) an entity designated by the parent or legal guardian; (5) a state-licensed juvenile shelter or group home; or (6) other qualified adults or entities.

Sec. 1223. Appropriate Conditions for Detention of Unaccompanied Alien Children. Unaccompanied children shall not be placed in adult detention facilities, but children who exhibit violent or criminal behavior can be detained in appropriate facilities for delinquent children. The Office shall establish appropriate standards and conditions for the detention of unaccompanied alien children, providing appropriate educational services, medical care, mental health care, access to telephones, access to legal services, access to interpreters, supervision by professionals trained in the care of children, recreational programs and activities, spiritual and religious needs, and dietary needs. The Director and the Secretary of Homeland Security shall develop procedures which prohibit shackling, handcuffing, or other restraints; solitary confinement; or pat or strip searches.

Sec. 1224. Repatriated Unaccompanied Alien Children. Consistent with international agreements to which the United States is a party and to the extent practicable, the United States shall undertake efforts to ensure that it does not repatriate children in its custody into settings that

would threaten the life and safety of the child. The Director shall submit a report to Congress providing information on efforts to repatriate unaccompanied children.

Sec. 1225. Establishing the Age of an Unaccompanied Alien Child. To address problems created by reliance on inaccurate methods for establishing the age of a child, the Director shall establish procedures for determining age.

Sec. 1226. Effective Date. This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

Sec. 1231. Right of unaccompanied alien children to guardians ad litem. No later than 72 hours after the Office assumes custody of an unaccompanied alien child, the Director shall appoint a guardian ad litem to look after the child's best interests. The qualifications, duties, and powers of the guardian ad litem are set forth.

Sec. 1232. Right of unaccompanied alien children to counsel. The Director shall ensure that all unaccompanied alien children have competent counsel appointed to represent them in immigration proceedings. Where possible, the Director shall utilize pro bono attorneys. Otherwise, the Director shall appoint government-funded counsel. Requirements for representation are set forth, including duties and access to children.

Sec. 1233. Effective date; applicability. This subtitle shall take effect one year after the effective date of division A of this Act and shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

Sec. 1241. Special Immigrant Juvenile Visa. This section strengthens the Special Immigrant Juvenile Visa to make it a useful and flexible means of providing permanent protection to a small number of abused, neglected and abandoned youths.

Sec. 1242. Training for officials and certain private parties who come into contact with unaccompanied alien children. This section provides training to officials involved in dependency proceedings, social service providers, as well INS personnel who come into contact with unaccompanied alien children. The Secretary of Homeland Security, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children.

Sec. 1243. Effective Date. The amendments of section 1341 shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this Act.

Subtitle E—Children Refugee and Asylum Seekers

Sec. 1251. Guidelines for children's asylum claims. The section expresses the sense of Congress commending the INS for the issuance of its Guidelines for Children's Asylum Claims and requires the Secretary of Homeland Security to provide training to asylum officers, immigration judges, members of the Board of Immigration Appeals and immigration officers on these guidelines.

Sec. 1252. Unaccompanied Refugee Children. This section requires an analysis of the situation faced by unaccompanied refugee children around the world and requires training on the needs of these refugee children.

Subtitle F—Authorization of Appropriations

Sec. 1261. Authorization of Appropriations. This section authorizes such sums as may be necessary to carry out the provisions of this title.

Title XIII—Agency for Immigration Hearings and Appeals

Subtitle A—Structure and Function

Sec. 1301. Establishment. This section abolishes the Executive Office for Immigration Review (EOIR) and creates the Agency for Immigration Hearings and Appeals (AIHA).

Sec. 1302. Director of the Agency. This section provides that the agency shall have a Director, who shall be appointed by the President and confirmed by the Senate. The Director runs the agency, appoints the Chair and members of the appellate body (Board of Immigration Appeals) and the Chief Immigration Judge. Also provides that the agency shall have a Deputy Director, General Counsel, Pro Bono Coordinator, and other offices as deemed necessary.

Sec. 1303. Board of Immigration Appeals. This section establishes the Board of Immigration Appeals to perform the appellate functions of the agency, and shall consist of a Chair and at least 14 Board Members (who are appointed by the Director in consultation with the Chair). Provides that the Chair and Board Members must be an attorney in good standing and have a minimum of 7 years professional legal expertise in immigration and nationality law. Also provides that the Board retains the jurisdiction it holds under EOIR and Board Members are compelled to exercise their independent judgment.

Sec. 1304. Chief Immigration Judge. This section establishes the Office of the Chief Immigration Judge to administer the immigration courts, headed by a Chief Immigration Judge. Provides that the Chief Immigration Judge and each immigration judge must be an attorney in good standing and have a minimum of 7 years professional legal expertise in immigration and nationality law. Also provides that the immigration courts retain the jurisdiction they hold under EOIR and immigration judges are compelled to exercise their independent judgment.

Sec. 1305. Chief Administrative Hearing Officer. This section establishes the position of Chief Administrative Hearing Officer to hear cases involving unfair immigration-related employment practices and penalties for document fraud.

Sec. 1306. Removal of Judges. This section provides that the Director, in consultation with the appropriate component head, may remove Board Members or immigration judges for good cause, which shall include neglect of duty and malfeasance.

Sec. 1307. Authorization of Appropriations. This section authorizes the appropriation of funds necessary to execute this title. [Note: Since these entities already exist, the execution of this title should be budget neutral.]

Subtitle B—Transfer of Functions and Savings Provisions

Sec. 1311. Transition Provisions. This section provides for the transfer of functions from EOIR to the new agency.

Subtitle C—Effective Date

Sec. 1321. Effective Date. This section provides that this title takes effect one year after the effective date of division A of this Act.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

Title XXI—Chief Human Capital Officers

Sec. 2101. Short Title. This title may be cited as the "Chief Human Capital Officers Act of 2002."

Sec. 2102. Agency Chief Human Capital Officers. Creates a chief human capital officer in major agencies (i.e., agencies that are required, under the Chief Financial Officers Act of 1990, to have Chief Financial Officers), who will advise and assist in carrying out the responsibilities of selecting, developing, and managing a high-quality workforce.

Sec. 2103. Chief Human Capital Officers Council. Creates a Chief Human Capital Officers Council that will advise and coordinate the human capital functions of each agency and meet with union representatives at least annually.

Sec. 2104. Strategic Human Capital Management. Requires the Office of Personnel Management to design a set of systems, including metrics, for assessing human capital management by agencies.

Sec. 2105. Effective Date. Title XXI is effective 180 days after enactment.

Title XXII—Reforms Relating to Human Capital Management

Sec. 2201. Inclusion of Agency Human Capital Strategic Planning in Performance Plans and Program Performance Reports. Amends the Government Performance and Results Act of 1993 to specify how human capital management is to be included in performance plans.

Sec. 2202. Reform of the Competitive Service Hiring Process. Allows agencies to use alternative method for selecting new employees instead of the traditional "rule of 3." The agency may divide applicants into two or more quality categories, with disabled veterans moving to the top of the highest category. Also, allows for direct appointment of candidates to positions that have been noticed, when OPM determines there is a severe shortage of candidates and a critical hiring need.

Sec. 2203. Permanent Extension, Revision, and Expansion of Authorities for Use Of Voluntary Separation Incentive Pay and Voluntary Early Retirement. Provides government-wide authority for offering Voluntary Separation Incentive Payments and Voluntary Early Retirement, and states that it is the sense of Congress that these provisions are not intended to downsize the federal workforce.

Sec. 2204. Student Volunteer Transit Subsidy. Provides a transit subsidy for student volunteers with the federal government.

Title XXIII—Reforms Relating to the Senior Executive Service

Sec. 2301. Repeal of Recertification Requirements of Senior Executives. Repeals recertification requirements for senior executives.

Sec. 2302. Adjustment of Limitation on Total Annual Compensation. Increases the cap on the total annual compensation of senior executives, Administrative Law Judges, officers of the courts, and certain other highly paid officers, thereby enabling performance bonuses to be paid within the cap in a single year.

Title XXIV—Academic Training

Sec. 2401. Academic Training. Reduces restrictions on providing academic degree training to federal employees.

Sec. 2402. Modifications to National Security Education Program. Modifies the National Security Education Program (NSEP) to allow NSEP fellows to work in a non-national security position with the federal government if a national security position is not available.

Sec. 2403. Compensatory Time off for Travel. Grants to federal employees compensatory time off for time spent in travel status away from duty station to the extent not otherwise compensable.

AUGUST 28, 2002.

Hon. JOSEPH I. LIEBERMAN,
Hon. FRED THOMPSON,
Senate Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN LIEBERMAN AND RANKING MEMBER THOMPSON: We commend your leadership and dedication to the creation of a

new Department of Homeland Security. We thank you for the opportunity to contribute to this historic legislation.

As division B of your legislation currently includes immigration provisions drawn in large part from legislation that we introduced earlier this year—S. 2444, the Immigration Reform, Accountability, and Security Enhancement Act of 2002, we here provide you with an explanation of the intent behind this language.

Purpose and Summary. For years, the Immigration and Naturalization Service (INS) has been plagued by myriad problems, including mission-overload, mismanagement, and insufficient resources. For too long, INS has been unable to meet its dual responsibility of enforcing our immigration and nationality laws and providing services to newcomers, refugees, and aspiring citizens.

A critical component of homeland security is an agency that effectively polices our borders, enforces our laws, and provides timely immigration services. To responsibly create an Office of Homeland Security, we must address the inadequacies of the INS.

Accordingly, Division B abolishes the INS and replaces it with a Directorate of Immigration Affairs (Directorate) placed squarely within the Department of Homeland Security.

Legislative History. The Judiciary Committee has earnestly debated how best to reform the INS. Since 1998, the Judiciary Committee has held five hearings on this topic, and Senate bills to reform INS have been introduced in each of the last three Congresses. In each hearing, governmental and private sector experts critiqued the workings of INS and offered substantive, insightful recommendations on how to revamp that agency. From those hearings, certain principles have emerged: the need for a separation of functions, the need for greater coordination between functions, and the need for a strong, central authority to ensure consistent policy and implementation.

In the 106th Congress, Senator Abraham and Senator Kennedy, chair and ranking member of the Immigration Subcommittee, introduced S. 1563, the ''INS Reform and Border Security Act of 1999,'' a bipartisan attempt to split enforcement and services into separate bureaus and to elevate the profile of the immigration agency within the Department of Justice. This legislation served as the basis for legislation in the 107th Congress: S. 2444, the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002,'' another bipartisan bill, introduced by Senator Kennedy and Senator Brownback, chair and ranking member of the current immigration subcommittee. S. 2444, like its predecessor, splits enforcement and services into separate bureaus and seeks to elevate the profile of immigration in the Department of Justice. Cosponsors of S. 2444 include Senators Hatch, Feinstein, DeWine, Durbin, Helms, Edwards, Hagel, Daschle, Dodd, Graham, and Clinton.

Need for INS Reform. Experts both inside and outside government have reached the same conclusions regarding the most critical problems with the INS. In a report from the early 1990s, the General Accounting Office observed that the INS' problems stem from a lack of clearly defined goals and priorities, inconsistent leadership and weak management systems, and overlapping and inconsistent programs. In the years since, these observations have been echoed in witness testimony, academic publications, and reports issued by various commissions. The criticisms of INS have remained consistent over the past decade.

With the criticisms have come various recommendations on how to rehabilitate the agency. Three guiding principles can be distilled from those recommendations:

Separation of functions. Immigration law and policy can roughly be divided into two components—enforcement and services. Currently, the enforcement and service functions are commingled in a way that creates conflicting priorities and troubling inefficiencies. There must be a clearer separation of the enforcement and services functions to achieve great clarity of mission and thereby greater efficiency in the respective functions.

Coordination. At the same time, the two functions cannot exist independent of each other. Almost every immigration-related action involves both an adjudicatory and enforcement component. Law enforcers must be cognizant of immigration benefits and relief; adjudicators must be mindful of immigration fraud and transgressions. Accordingly, effective coordination between the two functions must exist for either function to work well.

Strong, Central Authority. Given the dynamic of having separate but coordinated functions, it is essential to establish a strong, central authority to ensure uniform immigration policy, efficient interaction between components, and fiscal responsibility. There must be a focal point for managerial accountability for all immigration-related actions, as well as a central decision-maker to guarantee that all aspects of immigration policy and implementation get appropriate attention.

Division B satisfies all three of these principles. First, it abolishes INS and creates a Directorate of Immigration Affairs (Directorate) within the new Department of Homeland Security. The Directorate consists of three offices: the Office of the Under Secretary of Immigration Affairs, the Bureau of Enforcement and Border Affairs, and the Bureau of Services.

Under Secretary of Immigration Affairs. The Directorate is headed by an Under Secretary of Immigration Affairs (Under Secretary). Under the authority of the Secretary of Homeland Security, the Under Secretary is responsible for administering the Directorate, including the direction, supervision, and coordination of both bureaus.

The Under Secretary develops and implements U.S. immigration policy and ensures that immigration policy is coordinated and applied consistently through: (1) administration and enforcement of U.S. immigration laws; (2) administration of the Directorate; (3) inspection of individuals arriving at ports of entry; (4) management of resources, personnel, and other support; and (5) management of information resources, including maintenance and coordination of records, databases and other information within the Directorate.

Reporting to the Under Secretary is a General Counsel who serves as chief legal officer for the Directorate. A Chief Financial Officer is responsible for directing, supervising, and coordinating the Directorate's budget. Also in the Office of the Under Secretary is a Chief of Policy and Strategy, and a Chief of Congressional, Intergovernmental, and Public Affairs.

Bureau of Immigration Services. The Bureau of Immigration Services, headed by its Assistant Secretary, administers the service functions of the Directorate, including: (1) visa petitions; (2) applications for adjustment of status and change of status; (3) naturalization applications; (4) asylum and refugee applications; (5) determinations regarding the custody and parole of asylum seekers; and (6) Service Center adjudications.

Bureau of Enforcement and Border Affairs. The Bureau of Enforcement and Border Affairs, headed by its Assistant Secretary, administers the immigration enforcement functions of the Directorate, including: (1) border patrol; (2) detention; (3) removal; (4) intelligence; and (5) investigations.

Offices Within Each Bureau. Each bureau has its own Chief Budget Officer (under the direction of the Directorate's Chief Financial Officer). Each bureau also has an Office of Quality Assurance (which develops procedures and conducts audits to ensure that the Director's policies are properly implemented) and an Office of Professional Responsibility (which ensures professional conduct by bureau personnel).

Office of the Ombudsman. Reporting to the Under Secretary, is the Office of the Ombudsman, which assists the public in resolving individual cases, identifying systemic problems encountered by the public, and proposing solutions to those problems. The Office of the Ombudsman will report to Congress annually.

Office of Immigration Statistics. The Directorate also contains an Office of Immigration Statistics, which is responsible for collecting and analyzing statistical information for both the Directorate and the immigration court system.

Raised Profile of Immigration. After September 11th, it is clear that strengthening our immigration system is an indispensable part of the nation's efforts to prevent future terrorist attacks. Remedying INS' administrative woes is critical, but will do little to improve our security if the agency that administers our immigration laws and policies is not given the priority and attention it deserves.

Immigration law and policy is extremely complex and dynamic. Immigration officers are charged with a wide variety of duties. INS guards the borders, admitting more than 500 million citizens, permanent residents, and lawful visitors, students, and temporary workers each year. INS also adjudicates hundreds of thousands of applications for citizenship, permanent residence, changes of status, and work authorization annually. Further, INS is responsible for apprehending unlawful entrants, investigating fraud, enforcing employment sanctions, and removing criminal aliens. At the same time, INS entertains family-based and employment-based visa petitions, while also hearing asylum in the United States and refugee claims around the world.

Given the array of responsibilities and the sheer volume of people involved, immigration functions merit special attention. The immigration functions must not be diluted in with a host of other border functions. They deserve a separate directorate wherein the various missions of INS, which standing alone are diverse enough, can be properly attended. Elevation of the INS within its own directorate also achieves the necessary balance between enhancing our security, securing our borders, and ensuring the effective, efficient, and fair implementation of our immigration laws.

Need to Keep Enforcement and Services Together. Almost every immigration-related action involves both enforcement and service components. Coordination of these key functions is critical to ensure consistent interpretation and implementation of the law, clarity of mission, and in turn, more efficient adjudications and more effective enforcement. Coordination of immigration functions cannot be achieved merely by creating a shared database or some commonality of management far up the administrative ladder. Moreover, coordination is certainly impossible when enforcement and services are housed in different departments. Inconsistent policies and interpretations of the law, the lack of a common culture, and—most importantly—the absence of a single, integrated authority who can resolve differences result in a disjointed immigration

policy and undermines the efficacy of both enforcement and services.

September 11th brought to light serious problems with immigration enforcement, but there are equally serious problems with immigration services. If services are divorced from enforcement, particularly in a department dedicated to security, services will continue to struggle and will inevitably, and understandably, be devalued and assigned lesser priority. To ensure that services are not 'left behind' in a security culture, it is essential that they be recognized as the other half of the immigration equation.

Coordination with Other Border Functions. Coordinating the border security functions within the Department of Homeland Security is critical, whatever the agency's configuration. That coordination is achieved by creating a Border Coordination Working Group, composed of the Secretary, the Under Secretary for Border and Transportation Security, and the Under Secretary for Immigration Affairs. The Working Group is responsible for coordinating functions necessary to secure the borders, territorial waters, ports, terminal, waterways, and air, land, and sea transportation systems of the United States.

The responsibilities of this office include:

Coordinating budget requests and allocation of appropriations, staffing requirements, communication, use of equipment, transportation, facilities and other infrastructure;

Developing and implementing policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel, and commerce and enhanced scrutiny for high risk travelers and cargo;

Monitoring, evaluating, and making improvements in the coverage and geographic distribution of border security programs and personnel;

Coordinating joint and cross-training programs for personnel performing border security functions; and

Identifying systemic problems in coordination encountered by border security agencies and programs and proposing administrative, regulatory, or statutory changes to mitigate such problems.

The Working Group also consults with representatives of other agencies or departments to enhance coordination and cooperation, curtail overlapping and duplicative functions, and reduce interagency rivalries. At the same time, experts in each of these agencies retain their authority and ability to perform their jobs at this critical time.

Treatment of Unaccompanied Minors. Unaccompanied minors deserve special treatment under our immigration laws and policies. Many of these children have been abandoned, are fleeing persecution, or are escaping abusive situations at home. These children are either sent here by adults or forced by their circumstances, and the decision to come to our country is seldom their own.

Currently, INS has responsibility for the care and custody of these children. It would not be appropriate to transfer this responsibility to a Department of Homeland Security.

Office of Refugee Resettlement. This legislation transfers responsibility for the care and custody of unaccompanied alien children who are in Federal custody (by reason of their immigration status) from INS to the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS). ORR has decades of experience working with foreign-born children, and ORR administers a specialized resettlement program for unaccompanied refugee children.

HHS coordinates comprehensive services to address the special needs of newcomer children, including placement in foster or group home settings, medical and mental health care, skills training, education, family tracing, and legal assistance. Such services are tailored to address the cultural, linguistic, legal, and developmental needs of newcomer children and the individual needs of the child. ORR can easily integrate the care of unaccompanied alien children into its existing functions.

Responsibilities. Minimum standards for the care and custody are set forth in the legislation, as are ensuring that unaccompanied children are housed in appropriate shelters or with foster families who are able to care for them.

Specifically, ORR will be responsible for: (1) ensuring that the best interests of the child are considered in the care and placement of unaccompanied alien children; (2) making placement, release, and detention determinations; (3) implementing determinations; (4) convening the Interagency Task Force on Unaccompanied Alien Children; (5) identifying qualified persons, entities, and facilities to house unaccompanied alien children; (6) overseeing persons, entities and facilities; (7) compiling and publishing a State-by-State list of professionals or other entities qualified to contract with the Office to provide services; (8) maintaining statistical information and other data on unaccompanied alien children in the Office's custody and care; (9) collecting and compiling statistical information from the INS (or successor entity); and (10) conducting investigations and inspections of facilities and other entities where unaccompanied alien children reside. The legislation also provides children with access to appointed counsel and guardians ad litem.

Responsibility for adjudicating immigration benefits will not transfer over to HHS but will remain with the INS (or its successor) and the immigration court system.

Immigration Court System. The current immigration court system—the Executive Office for Immigration Review (EOIR), which contains the immigration courts and the Board of Immigration Appeals—is a component of the Department of Justice. The immigration court system exists not in statute, but only in regulation.

The evolution of the immigration courts reflects the importance of impartiality. Originally, the court system was entirely contained within the INS. In response to criticisms that judge and ''prosecutor'' should not be housed together, the immigration courts were moved to a separate component within the Justice Department—the EOIR—in 1983. Even parsed out into separate components, however, concerns remain that the immigration courts are still too closely aligned with the immigration enforcers.

Concerns about the impartiality of a court system located in a law enforcement agency are certain to be exacerbated if the court system is relocated to a security agency. If INS moves, then it is best to leave the immigration court system where it is—in the Justice Department—and thereby keep judge and enforcer well separated.

The immigration court system is critical both to law enforcement and to humanitarian protections. The immigration courts daily make decisions that could remove a criminal alien from our country, provide safe haven to an asylum-seeker fleeing torture or execution, and keep together or break up families. The immigration courts make potentially life-or-death decisions every day and are therefore too important to exist only in regulation.

We look forward to working with you on this legislation and making additional recommendations as it is considered by the full Senate.

Sincerely,

EDWARD M. KENNEDY,
Chair, Subcommittee on Immigration, Committee on the Judiciary.

SAM BROWNBACK,
Ranking Member, Subcommittee on Immigration, Committee on the Judiciary.

ORDER FOR RECESS

Mr. REID. Madam President, I ask unanimous consent that the Senate stand in recess from 2:30 p.m. to 3:30 p.m. today for a briefing by Secretary Rumsfeld.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Tennessee.

Mr. THOMPSON. Madam President, I thank the Senator from Connecticut for the statement he has made today and for his leadership, once again, on this issue, and for his contribution toward our being here today. He speaks eloquently as to our need to do things differently with regard to this Government and with regard to the reorganization of a very important part of our Government. His analogy of gasoline and engines I think is right on point. It doesn't matter how much gasoline you put into a faulty engine, it is still a faulty engine.

We need to do better than that. There is no reason that at end of the day we can't pass a bill that is going to make this country safer than it was before, and that is our common goal.

Few need to be reminded why we are here. While September 11 was not the opening salvo, it was the event that forced us to confront the scope of the threats to our country and to recognize the need to do something significant and meaningful to address those threats.

Prior to the 1980s, most terrorist groups were regionally focused and lacked the means and the connections to operate on a global scale. They relied upon state sponsors for financial support and often fought for ideological reasons. The few exceptions were those who fought to destroy the Israeli state. During the 1980s, this trend began to change. With the increase in militant Islamic attacks against Israel, the rise of revolutionary Iran, and the formation of Mujahedin in Afghanistan, terrorism began to take a more extremist tone. Then, in 1983, a small group in Lebanon, now known as Hizballah, began using a devastating new tactic to target Western troops: suicide bombings. The United States was the first to experience the destructiveness of this form of attack. In April 1983, a suicide bomber drove a 2,000 pound truck bomb into the U.S. embassy in Beirut, killing 63. The full impact of suicide bombings, however, was not felt until 6 months later. On October 23, 1983, a lone suicide bomber drove a truck laden with explosives into the U.S. Marine Corps barracks in Beirut, killing 241 American servicemen and injuring dozens more.