



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 25, 2002
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 5005 – Homeland Security Act of 2002

(Rep. Arney (R) Texas and 118 cosponsors)

The Administration strongly supports House passage of H.R. 5005 as reported by the House Select Committee on Homeland Security. This bill reflects the President's proposal. The President commends the House and the bipartisan leadership for the speed with which this bill has been moved to the floor.

H.R. 5005 establishes the four main pillars of the President's proposal:

- Information Analysis and Infrastructure Protection. Under the bill, the Department of Homeland Security will be able to comprehensively assess the Nation's vulnerabilities to terrorism, analyze information regarding threats to the homeland, and map the threat information against the Nation's vulnerabilities.
- Science and Technology. The bill supports the President's proposal to establish a network of national laboratories focused on homeland security science and technology and transfers most of the requested Department of Energy programs to the new Department.
- Border and Transportation Security. The bill transfers the principal border-security agencies – the Coast Guard, the Customs Service, and the Immigration and Naturalization Service's (INS) law enforcement and border management functions (including border inspectors and the Border Patrol) – to the new Department, allowing the Secretary to establish seamless border security operations.
- Emergency Preparedness and Response. Under the bill, the Department of Homeland Security, building on the strong foundation laid by the Federal Emergency Management Agency (FEMA), will coordinate all major Federal response entities as proposed by the President, allowing for a more direct line of authority during incidents of national significance. However, the President strongly believes that FEMA needs to be part of the Department and would resist any effort not to include FEMA in the Department or any effort to break FEMA into separate parts.

H.R. 5005 establishes a strong framework for working closely with state and local governments, the private sector, and citizens, to ensure that public and private resources are properly aligned to secure the homeland.

In addition, the bill provides the new Secretary with invaluable managerial flexibility. It provides budgetary flexibility that will enable the Department to stand up rapidly and to respond quickly to the threat posed by an agile, adaptive enemy. The bill permits the Secretary to reorganize the Department to improve security and reduce redundancy and inefficiency. The bill will also speed the procurement of new technologies vital to securing the homeland.

Most importantly, the bill provides the Secretary a prudent degree of flexibility in the area of personnel management while protecting vital employee rights, including protection from discrimination, veterans' preferences, whistleblower protections, and collective bargaining. This flexibility will allow the Secretary to ensure that every employee of the new Department is able to realize his or her full potential in the noble mission of securing the homeland.

The Administration is pleased that the Select Committee preserved the President's long-standing authority to exempt from the operation of the Federal Labor Relations Management Act particular agencies involved in important intelligence, investigative, or national security work, when necessary to protect national security. The Administration would strongly oppose any amendments that would impair or limit in any way these vital authorities, which have been used with care and restraint by every President beginning with Jimmy Carter. Any such limitation or impairment would be unwise and anomalous in an Act establishing a Department whose primary mission is to protect the homeland against terrorist attack. Moreover, no sound reason exists to provide rights beyond those enjoyed by other federal employees. Therefore, the President's senior advisors would recommend a veto if the final legislation included such a limitation.

The Administration strongly opposes an amendment which would provide indemnification for companies that sell counterterrorism technology to the Federal government, as well as state and local governments. Such an amendment is fiscally irresponsible due to the potential for excessive costs that can be neither reasonably estimated nor controlled.

The Administration is also pleased with the bipartisan agreement on the appropriate method for reassigning the authority to issue and deny visas to the Department of Homeland Security, which closely tracks the President's proposal.

The Administration believes that the Department of Homeland Security should be the lead agency for all homeland security threats -- including biological terrorism, potentially the gravest homeland security threat of the 21st century. It is important that the Secretary have the responsibility to set priorities to prepare for and respond to bioterrorism. While the Administration would have preferred that the Secretary have both the responsibility and authority at the Department of Homeland Security, the Administration appreciates the bill language enhancing the coordination between the Department of Homeland Security and the Department of Health and Human Services.

While the Administration strongly supports the bill as a whole, the Administration does not support certain significant features that will make the new Department less effective in fulfilling its missions.

Immigration

The Administration appreciates that the Committee transferred INS enforcement functions to the new Department, but is deeply concerned that the bill retains INS' services functions in the Department of Justice. The services and enforcement functions of the INS are mutually supportive, are governed by the same provisions of immigration law, and rely for their effective operations on the same information systems. Therefore, both the service and enforcement elements of the INS should be moved to the new Department. The Administration also believes that it is important that the Executive Office of Immigration Review and associated adjudicatory functions be moved to the new Department, in order to maintain consistent and uniform control, interpretation, and application of immigration law and policy. Finally, the Administration is concerned with provisions of the bill relating to internal review of documents, qualifications for nominations, and legislative recommendations that are inconsistent with the President's constitutional authority to supervise the unitary executive branch and with his authority under the Appointments Clause and the Recommendations Clause of the Constitution.

Customs Service

The Administration commends the responsible committees for moving the entire Customs Service into the new Department of Homeland Security. However, the Administration is concerned that the reported bill inappropriately restricts the Secretary's operational flexibility with respect to certain defined functions of the Customs Service in ways that could have adverse unintended consequences for both security and trade facilitation. The Administration is also concerned that the bill generally leaves legal authority with the Secretary of the Treasury, even though all operational responsibility to enforce these authorities will rest with the Secretary of Homeland Security, and with the Customs Service. Although the Administration appreciates provisions to ensure that the legal authority retained by the Secretary of the Treasury would be delegable by him to the Secretary of Homeland Security, the Administration believes that legal authority and operational responsibility should be permanently aligned in a single Cabinet Department, with a single Cabinet official accountable for the border security and trade facilitation missions.

Intelligence

The Administration opposes the portion of the bill that separates the intelligence components of the Coast Guard, INS, the Transportation Security Administration (TSA), Customs, and the Federal Protective Service from their parent entities. These intelligence units are tightly integrated with the day-to-day operations of their parent entities, and their separation will undermine the effectiveness of these organizations. The Administration believes that the Secretary should be given the discretion to determine when and how to reallocate the intelligence units of the various components of the new Department, consistent with operational needs.

Cyber Security

The bill does not include the Computer Security Division of the National Institute of Standards and Technology (NIST), as requested in the President's proposal. The Administration believes inclusion of

this function would strengthen the cyber security abilities of the new Department.

Transportation Security

The Administration waited four months for Congress to act on its emergency supplemental request. The emergency supplemental package agreed to by Congress is \$1 billion short of what the Administration said it needed to implement a rational plan to meet current law deadlines, and additional resources will not be available for months, if they come at all. And Congress has imposed additional mandates in the supplemental that are stricter and more inflexible than the original law. Based on these facts, the TSA's ability to meet current law deadlines without major disruption to passengers, airports, airlines, and the overall economy has been severely undermined.

Managerial Flexibility

The new Secretary of Homeland Security must have the freedom and the flexibility to manage the new Department. The new Secretary must be able to move money and resources quickly in order to respond to real threats to the Nation's security. The new Secretary will require considerable flexibility in procurement, integration of information technology systems, and personnel issues, while maintaining critical civil service protections. The Administration opposes any further reduction to the managerial flexibility that is now provided in H.R. 5005, and the President's senior advisors would recommend he veto any bill that substantially diminishes the Secretary's flexibility to effectively manage the Department.

Statutory White House Office

The Administration accepts the Select Committee's action in establishing a statutory Homeland Security Council to coordinate Executive Branch homeland security policymaking. This Council is modeled on the National Security Council, which has served the Nation well and represents an appropriate balance between the need for statutory recognition and the need to preserve the President's authority, flexibility, and confidential relationship with Executive Office of the President staff and White House advisors. The Administration would strongly oppose more intrusive encroachments on the President's relationship with and authority over White House staff; such encroachments would impair his effectiveness in carrying out his constitutional responsibilities and protecting the homeland. The President's senior advisors would recommend a veto of any legislation that would establish a statutory Office of Homeland Security within the White House headed by an official subject to the advice and consent of the Senate, or which would erode the President's confidential relationship with his White House Homeland Security Advisor, or his ability to exercise proper control over the operations and functions of the Executive Office of the President including the preparation of the President's budget.

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