

# Issue Brief for Congress

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## **Executive Branch Reorganization and Management Initiatives**

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## Executive Branch Reorganization and Management Initiatives

### SUMMARY

When President George W. Bush came into office in January 2001, he arrived from a campaign in which he had emphasized efficiency in government, particularly through the use of information technology, but had not revealed any plans for reorganizing the executive branch.

The departing Clinton Administration had conducted, during most of its eight-year tenure, an active effort at “reinventing government,” spearheaded by a National Performance Review (NPR). Announced shortly after the 1993 inauguration, the NPR sought to find ways to make the federal government more efficient, economical, and effective. The result was a series of reports proposing various organizational and operational reforms.

Several major NPR recommendations were awaiting implementation when the November 1994 congressional elections resulted in Republican majority party control of both houses of the 104<sup>th</sup> Congress. Republican congressional leaders had unveiled a Contract With America reform plan in late September 1994. Its core principles regarded the federal government as being too big, spending too much, being unresponsive to the citizenry, and perpetrating burdensome regulations. Consequently, at least two distinct agendas for reforming and restructuring the federal government were before the 104<sup>th</sup> Congress. At its conclusion, both the President and Republican congressional leaders could claim some victories in downsizing government. However, no department was eliminated, and only a few small agencies were abolished.

Administration and congressional reinvention efforts resulted in mostly modest accomplishments during the 105<sup>th</sup> Congress. Major exceptions were the overhaul of the structure and operations of the Internal Revenue Service and the consolidation of the foreign policy agencies, both of which were realized as a result of cooperation between the Clinton Administration and Republican congressional leaders. During the 106<sup>th</sup> Congress, executive reorganization and reinvention were neither major nor high-priority items.

Shortly after his 2001 inauguration, President Bush announced plans to address a number of management problems in the federal government, offering specific solutions to address them. Then, in the aftermath of the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, the organization of the federal government for maintaining homeland security and combating terrorism became an important consideration for both the President and the 107<sup>th</sup> Congress. Establishment of the Office of Homeland Security in October 2001 as a coordinating entity was an important first step, followed by the President’s June 6, 2002, call for the creation of a Department of Homeland Security.

This issue brief views reorganization and management as involving the alteration of the program administrative structure and operations of the executive branch for reasons of efficiency, economy, and direction. The underlying issue is who reorganizes or sets management policy—Congress or the President—and by what authority and, also, for what purpose? Some electronic government developments are tracked as well.

## MOST RECENT DEVELOPMENTS

*Senate debate on legislation (H.R. 5005) to establish a Department of Homeland Security became stalled at the end of September over personnel flexibilities sought by the President and the continuation of civil service protections and collective bargaining rights in the substitute proposal (S.Amdt. 4471) offered by Senator Joseph Lieberman. Compromise proposals were offered by Senator Phil Gramm (S.Amdt. 4738) and Senator Ben Nelson (S.Amdt. 4740). Consideration of the legislation began on September 3. Due to the deadlock and failed attempts to reach cloture, the Senate turned to other urgent business in October—providing continuing funding for the federal government and authorizing the use of military force against Iraq having high priority—before recessing prior to the November election. Expectations currently are that the Senate will return to the Department of Homeland Security proposals just before recessing. Arrangements for possible post-election meetings of the 107<sup>th</sup> Congress are under discussion.*

## BACKGROUND AND ANALYSIS

For well over a century, the structure and program responsibilities of the federal executive branch, including all of the departments and agencies, were determined by Congress. In the aftermath of World War I, however, with the rise of the new public administration profession and growing sentiment for attaining efficiency and economy in government, came efforts to strengthen the President's management ability. In 1932, the Chief Executive was statutorily authorized to issue executive orders proposing reorganization within the executive branch for purposes of reducing expenditures and increasing efficiency in government. A reorganization order became effective after 60 days unless either House of Congress adopted a resolution of disapproval. When President Herbert Hoover submitted 11 different reorganization orders, all were disapproved by the House of Representatives on the grounds that his newly elected successor, Franklin D. Roosevelt, might have different reorganization ideas.

President Roosevelt did submit a number of reorganization orders pursuant to a revised and extended version of the 1932 statute, which expired automatically in 1935. Some major actions taken in these orders included creating procurement and disbursement divisions in the Treasury Department, establishing an enlarged National Park Service in the Interior Department, and making the Farm Credit Administration an independent agency.

Congress subsequently mandated a similar arrangement in a 1939 statute. Once again, the objective was to achieve efficiency and economy in administration. A presidential reorganization plan, submitted to Congress, became effective after 60 days unless both houses of Congress adopted a concurrent resolution of disapproval. In his initial reorganization plan, President Franklin D. Roosevelt created the Executive Office of the President.

Such reorganization authority, renewed periodically a dozen times between 1945 and 1984, with slight variation, remained available to the President for nearly half a century. At different junctures, qualifications were placed upon its exercise. For example, reorganization plans could not abolish or create an entire department, or deal with more than one logically

consistent subject matter. Also, the President was prohibited from submitting more than one plan within a 30-day period and was required to include a clear statement on the projected economic savings expected to result from a reorganization.

Modification of the President's reorganization plan authority was made necessary in 1983 when the Supreme Court, in the *Chadha* case (462 U.S. 919), effectively invalidated continued congressional reliance upon a concurrent resolution to disapprove a proposed plan. Under the Reorganization Act Amendments of 1984, which were signed by President Ronald Reagan on November 8, several significant changes were made in the reorganization plan law. Any time during the period of 60 calendar days of continuous session of Congress following the submission of a reorganization plan, the President might make amendments or modifications to it. Within 90 calendar days of continuous session of Congress following the submission of a reorganization plan, both houses must adopt a joint resolution (which, unlike a concurrent resolution, becomes law with the President's signature — a central issue in the *Chadha* case) for a plan to be approved. This amendment, however, continued the President's reorganization plan authority only to the end of 1984, when it automatically expired (see 5 U.S.C. 901-912 (1988)). Neither President Reagan nor President George H. W. Bush requested its reauthorization. President William Clinton did not seek its renewal, although his National Performance Review (see below) recommended this course of action in September 1993. Likewise, President George W. Bush has not sought such authority. The National Strategy for Homeland Security, released by President Bush on July 16, recommends the restoration of reorganization plan authority to allow reconfiguring portions of the executive branch to better combat terrorism and maintain homeland security.

Currently, in the absence of reorganization plan authority, the President may propose executive branch reorganizations to be realized through the normal legislative process. The Departments of Energy, Education, and Veterans Affairs were established in this manner. This approach, however, is devoid of the action time frame and required final vote of the reorganization plan arrangement that expedites reorganization. The President might attempt a minor reorganization, such as establishing a small, temporary entity within the Executive Office of the President, by issuing a directive, such as an executive order. Attempting more ambitious reorganizations through a presidential directive may, if not ultimately found to be illegal, incur congressional displeasure and subsequent legislative and fiscal reaction. As a result of the absence of reorganization plan authority, more recent reform efforts to improve the efficiency and economy of government operations have emphasized management improvements of both a governmentwide and specific program variety, including applications of information technology that have resulted in so-called electronic government.

## **Reinventing Government**

An ambitious effort at realizing executive branch reorganization and management reform was launched by President Clinton at the outset of his administration when, on March 3, 1993, he initiated a National Performance Review (NPR) to be conducted under the leadership of Vice President Albert Gore, Jr. Six months later, on September 7, the initial NPR report, *From Red Tape to Results: Creating a Government That Works Better & Costs Less*, was delivered to the President. Various accompanying supplemental reports on both specific agencies and functional areas of government were subsequently published during 1994. The bulk of the report's almost 380 major recommendations (broken into over 1,230

action items) were directed to management reforms; several proposals addressed executive reorganization, including one for congressional restoration of presidential reorganization plan authority.

During the 12 months after the NPR report was issued, its recommendations were implemented by 22 presidential directives, several enacted bills, and various agency actions. Anniversary reports, marking progress in implementing NPR recommendations, were issued in September of 1994, 1995, and 1996. The last of these indicated that 43% of the NPR's initial 833 agency action items were completed and 42% were in progress, and that 38% of its initial 430 management systems action items were completed and 49% were in progress. Of an additional 187 agency recommendations, 19% were completed and 62% were in progress. As of January 1996, the executive workforce had been reduced by nearly 240,000. In addition, almost 2,000 obsolete field offices had been closed and approximately 200 programs and agencies—such as the Tea-Tasters Board, Bureau of Mines, and wool and mohair subsidies—had been eliminated. As of September 1996, said the report, “savings of about \$97.4 billion have been ensured through legislative or administrative action.” Of the original \$108 billion in savings projected in 1993, about \$73.4 billion had been realized.

The Clinton Administration renewed its reinventing government effort in mid-January 1995 with Phase 2 of the NPR, which was detailed in the President's FY1996 budget. Shortly thereafter, in late February, the President announced new regulatory reform proposals, including page-by-page review of federal regulations to determine those that were obsolete, replaceable by private sector alternatives, or better administered by state and local government. He also proposed to abolish the Interstate Commerce Commission (ICC) and reconstitute the Federal Aviation Administration's air traffic control services as a wholly owned government corporation. The elimination of the ICC was subsequently realized in December 1995. Certain functions of the Commission were transferred to the Surface Transportation Board, newly established within the Department of Transportation by the termination statute (109 Stat. 803).

With the convening of the 105th Congress, the reinvention effort entered yet another new phase, emphasizing improved service delivery; use of partnerships and community-based strategies to solve problems, not big government; and techniques for improving performance in a time of diminishing resources, including the use of performance-based organizations (PBOs). As a reflection of this third revamping, the NPR, known heretofore as the National Performance Review, became the National Partnership for Reinventing Government in January 1998.

Support for the performance of selected governmental functions through PBOs was reiterated in the President's FY1998 budget. The PBO innovation involved rechartering certain federal executive agencies to permit them to negotiate alternative approaches to procurement and personnel rules and to increase their accountability for financial and program results. The anticipated increased efficiency would allow the agencies to downsize their workforce or use their cost savings to improve services. Legislation to convert the Patent and Trademark Office (PTO) of the Department of Commerce into a PBO was proposed by the Clinton Administration in 1995, but it received little attention during the 104th Congress; similar legislation remained on the Senate legislative calendar when the 105<sup>th</sup> Congress adjourned. When the agency was restructured by the American Inventors

Protection Act of 1999 (113 Stat. 1537-564), the reconstituted PTO insisted it was a PBO, but that characterization was doubtful in the view of many analysts.

Overhauling the structure and operations of the Internal Revenue Service (IRS) was a major accomplishment of the 105<sup>th</sup> Congress. Although some competition developed between the White House and congressional leaders to seize the IRS reform initiative, the Clinton Administration subsequently abandoned its opposition to a congressional plan for a wide-ranging overhaul of the IRS. President Clinton signed the reform bill into law (112 Stat. 685) on July 22, 1998.

In early 1997, the Clinton Administration revisited the long-discussed and contentious matter of the reconfiguration and consolidation of the foreign policy agencies. Prolonged and heated debate over such a reorganization during the 104th Congress had resulted in a presidential veto. In mid-April, the President approved a broad reorganization proposal calling for the folding of two independent agencies—the Arms Control and Disarmament Agency and the United States Information Agency—into the Department of State. In addition, the U.S. Agency for International Development remained a separate entity, but its director would report to the Secretary of State rather than to the President, as current law prescribed. The plan eventually was included in the provisions of the State Department authorization bills, but conferees on the legislation later deadlocked on a House provision barring aid for family planning groups that use their own money to finance overseas abortions. The Clinton Administration revived the conference discussions early in 1998. Subsequently, the reorganization proposal, without the objectionable abortion restriction rider, was included in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, signed into law by President Clinton on October 21 (112 Stat. 2681-761).

In the aftermath of the May 25, 1999, release of the final report of the House Select (Cox) Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China, discussing security lapses that had apparently allowed the Chinese to acquire U.S. nuclear weapons and related technology, a special investigative (Rudman) panel of the President's Foreign Intelligence Advisory Board (PFIAB) released a June 15 report concerning these and other Department of Energy (DOE) managerial failures and called for "radical" restructuring of DOE. Although Secretary of Energy Bill Richardson opposed creating an independent nuclear security agency, he later accepted the idea of a semiautonomous agency within DOE to manage the national labs. Conferees on the National Defense Authorization Act for FY2000 provided for the establishment of a new National Nuclear Security Administration (NNSA) as a semiautonomous entity within the department and a related under secretary position. Although Secretary Richardson expressed reservations about the NNSA, both chambers approved the conference committee report in September.

Signing the legislation into law on October 5 (113 Stat. 512), President Clinton, in a surprise move, indicated his displeasure with provisions creating the NNSA, and announced that he would withhold appointing the new under secretary for information security until Congress addressed certain "deficiencies" in the organizational arrangements. Secretary Richardson was directed by the President to perform the duties of the new under secretary and to assign department officers and employees to a concurrent office within the NNSA as deemed necessary. The President's action stunned many legislators closely associated with

the NNSA structuring. After seeking to assure Members of Congress that the administration was in agreement with the spirit of the legislation, but felt that the NNSA provisions constituted “a serious problem,” Richardson developed and, on January 7, transmitted the NNSA implementation plan. The new agency began operations on March 1. President Clinton later nominated General John A. Gordon, who was serving as the deputy director of the Central Intelligence Agency, to be the DOE’s new under secretary for nuclear security and the director of the NNSA. He was subsequently confirmed by the Senate on June 14, 2000, as the head of NNSA.

Testifying at a May 4, 2000, hearing conducted by a subcommittee of the Senate Committee on Governmental Affairs, Donald F. Kettl, a University of Wisconsin professor who had conducted extensive research on the NPR reforms, gave the effort an overall grade of “B,” saying there was “room for improvement.” Brookings Institution scholar Paul C. Light added that the NPR program had created “unnecessary politicization of government reform.” Two other analysts were also critical of the NPR effort. A few months later, in September, a GAO report (GAO/GGD-00-145) concluded that the NPR reinvention effort had been largely successful, with more than 90% of key Clinton Administration recommendations having been fully or partly implemented. The report was based upon a review of 72 NPR recommendations by 10 federal agencies, which found that 33 of them were fully implemented and another 30 were partly implemented.

## **A New Administration**

During his campaign for the presidency, Texas Governor George W. Bush emphasized efficiency in government, particularly through the use of information technology, but revealed no plans for reorganizing the executive branch. The terrorist attacks of September 11, 2001, however, would prompt various structural modifications. Of chief concern was the prospect of restructuring the government for more efficient, economical, and effective homeland security. Reinstatement of the President’s reorganization plan authority was proposed to allow the Chief Executive to create the structure he deems appropriate, and legislation creating a Department of Homeland Security was introduced (S. 1534) and later upgraded (S. 2452 and H.R. 4660). On February 14, 2002, the leadership of the House and Senate intelligence committees announced a bipartisan investigation of the operations and activities of the intelligence community pertaining to the September 11 attacks, which may result in legislation reorganizing the intelligence agencies. Press revelations that perpetrators of the terrorist attacks had been cleared by the Immigration and Naturalization Service (INS) to stay in the United States have prompted renewed calls for the overhaul of the INS, including its division into separate administrative and enforcement entities. On March 21, leaders of the House Committee on the Judiciary reached agreement on a bipartisan proposal to split the existing INS and provide each component its own budget. In a surprise move, the White House, on April 24, gave qualified support to the proposal. The endorsement came on the eve of the bill (H.R. 3231) being considered on the House floor for final action. Introduced on November 6, 2001, by Representative James F. Sensenbrenner, Jr., the measure garnered 46 cosponsors. Revised in a April 10 markup, the legislation was ordered to be reported from committee on a 32-2 vote. A report on the bill (H.Rept. 107-413) was filed on April 19, and the measure was adopted by the House on a 405-9 vote on April 25. (See CRS Report RL30257 and CRS Report RS20279.)



Another long-standing reorganization matter concerns border security administration. For many years prior to the September 11 terrorist attacks, proposals have been made from time to time to consolidate various aspects of border security within a single entity or minimum number of federal agencies. (See CRS Report 97-974.) Such proposals have attracted greater interest since the attacks as part of counterterrorism efforts to more efficiently and effectively secure the nation's northern and southern borders. In late December, Office of Homeland Security staff reportedly produced a tempest within the Bush Administration when they unveiled a broad proposal to create an agency that would consolidate border security management. Opponents represented a wide range of agencies, including five Cabinet departments.

This proposal, however, was used by presidential assistants to formulate the Department of Homeland Security plan unveiled by President Bush on June 6. His surprise announcement was viewed not only as an attempt to regain the initiative in the nation's efforts at combating terrorism, but also to move beyond the coordination efforts of the Office of Homeland Security to a strong administrative structure for managing consolidated programs concerned with border security and effective response to domestic terrorism incidents. On June 18, the President transmitted to the House of Representatives proposed legislation to establish a Department of Homeland Security. This legislation was subsequently introduced by request (H.R. 5005) on June 24. According to a legislative strategy announced by Speaker Dennis Hastert and Minority Leader Richard Gephardt, standing committees of jurisdiction began reviewing the proposal and, as the second week of July drew to a close, provided recommendations for modifying the legislation. A few panels urged maintaining some agencies—e.g., the Coast Guard, the Federal Emergency Management Agency, and the Secret Service—in their current status and not transferring them to the new department. On July 15, the House Select Committee on Homeland Security began its consideration of the bill. That same day, the Brookings Institution released the first comprehensive critique of the President's proposal, suggesting, among other considerations, that it "merges too many different activities into a single department," should leave science and technology research and development responsibilities for later deliberation, and begs a rethinking of congressional committee arrangements. The following day, the President released the National Strategy for Homeland Security, which offered a definition of homeland security of potential usefulness for determining the program composition of the new department. On July 19, the House select committee marked up and order reported (H.Rept. 107-609) the House version of the Department of Homeland Security legislation. Meeting during July 24-25, the Senate Committee on Governmental Affairs authorized Chairman Joseph Lieberman to withdraw the version of his Department of National Homeland Security bill (S. 2452) that had been amended and ordered favorably reported on May 22, modified his offered amendment in the nature of a substitute to the text of the bill, and approved the amendment as modified. Floor action on the measure, however, was postponed until the Senate returns in early September from an August recess. During July 25-26, the House of Representatives began floor debate and amendment of its counterpart department bill (H.R. 5005) and then approved the legislation, as amended, on a 295-132 vote. The resulting House and Senate bills will be reconciled in conference.

Senate consideration of the House-passed bill began on September 3, 2002, when Senator Lieberman submitted an amendment (No. 4471) containing the language of his modified department bill as a substitute for the text of the House-passed legislation. Initial amendments to the Lieberman substitute, adopted on September 5, prohibited the Secretary

of Homeland Security from contracting with any corporate expatriate and improved flight and cabin security on passenger aircraft. On September 17, after extended debate, a third amendment was adopted, striking Title II of the Lieberman substitute, which would have established a National Office for Combating Terrorism, and Title III, which would have mandated a National Strategy for Combating Terrorism.

Amendments approved the following day created an Office of National Capital Region Coordination within the new department; clarified the transfer of certain agricultural inspection functions of the Department of Agriculture; enhanced the management and promotion of electronic government services and processes by establishing an Office of Electronic Government within the Office of Management and Budget, along with a broad framework of measures that require using Internet-based information technology to enhance citizen access to government information and services; identified certain sites as key resources for protection by the Directorate of Critical Infrastructure Protection; amended various laws administered by the Secretary of Veterans Affairs to take into account the assumption by the Secretary of Homeland Security of jurisdiction of the Coast Guard; and improved the protection of Department of Defense storage depots for lethal chemical agents and munitions through strengthened temporary flight restrictions. An amendment approved on September 19 strengthened criminal laws and provided greater flexibilities to prevent and protect against cyber attacks.

Amendments adopted on September 24 mandated the National Commission on Terrorist Attacks Upon the United States to conduct a comprehensive investigation of the events of September 11, and established an Office for State and Local Government Coordination within the office of the Secretary for Homeland Security. An amendment (S.Amdt. 4644) offered by Senator Robert Byrd defining “homeland security” and otherwise establishing an incremental arrangement for determining the composition of the new department was defeated on a 28-70 vote.

The following day, Senator Phil Gramm submitted an amendment (S.Amdt. 4738) structuring the department and creating management arrangements very similar to the President’s original proposal, but otherwise containing many other portions identical to those of the Lieberman substitute. Another amendment (S.Amdt. 4740), offered by Senator Ben Nelson, sought to modify certain personnel provisions to effect a compromise between the flexibilities in human resources management sought by the President and the continued civil service protections and collective bargaining rights contained in the Lieberman substitute. By this time, the President, in his September 21 radio address to the nation and in September 23 remarks at an Army National Guard aviation support facility in Trenton, NJ, was demanding Senate approval of his position on human resources management. He indicated that he could accept the Gramm-Miller proposal, adding that “anything less than that is a bill I cannot accept.”

On September 27, attempts to invoke cloture on further Senate debate on homeland security legislation failed for the third and fourth times, leaving the outcome on the matter in doubt. Due to the deadlock and failed attempts to reach cloture, the Senate turned to other urgent business in October—providing continuing funding for the federal government and authorizing the use of military force against Iraq having high priority—before recessing prior to the November election. Expectations currently are that the Senate will return to the

Department of Homeland Security proposals just before recessing. Arrangements for possible post-election meetings of the 107<sup>th</sup> Congress are under discussion.

While the primary issue for Congress and the President is determining the program composition and administrative organization of the new department, various issue subsets have emerged as the House and the Senate have developed their separate proposals. At present, the House-passed bill and the Lieberman substitute exhibit some basic similarities. The Lieberman substitute, for example, would move largely the same agencies and programs to the new department as would be transferred by the House-adopted bill. Exceptions are the inclusion of the Computer Security Division of the National Institute of Standards and Technology and the National Bioweapons Defense Analysis Center of the Department of Defense, which the House bill did not include. By contrast, the House bill would transfer the Environmental Measurements Laboratory of the Department of Energy, portions of the Advanced Scientific Computing Research Program of the Lawrence Livermore National Laboratory, portions of the Chemical Biological Defense Program of the Department of Defense, the Plum Island Animal Disease Center of the Department of Agriculture, and the Domestic Emergency Support Teams of the Department of Justice, which the Lieberman substitute does not include in the Department of Homeland Security. Also, the House bill would transfer the Federal Law Enforcement Training Center of the Department of the Treasury to the Attorney General, while the Lieberman substitute would place it in the new department.

The House-adopted bill would establish four major directorates within the new department, while the Lieberman substitute would create six major directorates. Most of the transferred agencies and programs would be located in these directorates. The two proposals would also mandate the same types of senior officials, such as a Chief Financial Officer, Chief Information Officer, General Counsel, and Privacy Officer. The House-adopted bill, however, would create twice the number of Assistant Secretary positions as would the Lieberman substitute, with upwards of eight of them being appointed by the President without Senate confirmation. Under the bill adopted by the House, the Secretary of Homeland Security may have as many as 15 senior officials of the department reporting directly to him or her (or more if the Assistant Secretaries have this relationship). Under the Lieberman substitute, the Secretary may have as many as 17 senior officials reporting directly to him or her.

Neither the House-passed bill nor the Lieberman substitute contains a definition of the concept of “homeland security,” which has resulted in the new department having no standard for determining which agencies, functions, and programs might be appropriately transferred to it. Consequently, some critics have suggested that adequate consideration was not given to the prospect of transferring or restructuring Federal Bureau of Investigation and federal intelligence community counterterrorism responsibilities. Others have questioned why such entities as the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, and the Nuclear Regulatory Commission were not transferred to the new department. The Lieberman substitute gives the Secretary of Homeland Security and the director of a new National Office for Combating Terrorism, in consultation with affected department and agency heads, upwards of 270 days after the enactment of the Department of Homeland Security legislation to develop definitions of “combating terrorism” and “homeland security” and “shall consider such definitions in determining the mission of the Department and Office.”

Also, some have observed that the transfer of whole agencies to the new department results in it being responsible for the administration of programs having nothing to do with homeland security, which, consequently, might not receive adequate resources for their execution. These include the marine safety responsibilities of the Coast Guard, the drug and child pornography interdiction efforts of the U.S. Customs Service, the counterfeiting detection and investigation program of the Secret Service and the research and non-native plant and pest eradication efforts of the Animal and Plant Health Inspection Service. Sorting out these programs for continued administration by their parent departments would have been made easier by having a definition of “homeland security,” but may have resulted in greater expense for the reorganization effort as administrative structures and operating expenses are adjusted. The House-approved bill largely transfers whole agencies to the new department with little sorting out of non-homeland security programs. The Lieberman substitute also largely transfers whole agencies to the new department, but requires an annual report, for the five years following the transfer, to the Secretary, the Comptroller General, and appropriate committees of Congress concerning mission performance, with particular emphasis on the continued level of performance of non-homeland security missions.

Among the most contentious issues surrounding the Department of Homeland Security legislation are those concerning civil service protections and collective bargaining rights, intelligence analysis, and replacement of the Office of Homeland Security. Regarding the first of these, the President’s original proposal for the new department called for authorizing the Secretary of Homeland Security, in regulations prescribed jointly with the director of the Office of Personnel Management, to establish and, from time to time, adjust a human resources management system for some or all of the organizational units of the department, “which shall be flexible, contemporary, and grounded in public employment principles of merit and fitness.” This arrangement is prescribed in the House-adopted bill. In addition to placing union rights in question, it has raised various issues concerning staffing requirements, such as adequate numbers of personnel and planning for the replacement of retiring staff; hiring, particularly direct hiring which would not be merit-based and free of political influence and otherwise devoid of preference for veterans; and pay, particularly pay parity or equity for employees who are performing similar jobs. The Lieberman substitute preserves the civil service protections and collective bargaining rights of workers transferred to the new department.

Finally, the Lieberman substitute would have established a new National Office for Combating Terrorism within the Executive Office of the President, which would seemingly replace the Office of Homeland Security created by the President with E.O. 13228 of October 8, 2001. The new office would have been headed by a director appointed by the President with Senate confirmation, who would, among other duties, share responsibility with the Secretary of Homeland Security for developing, maintaining, and implementing the National Strategy for Homeland Security, and for coordinating the development of a comprehensive annual budget for the programs and activities under the Strategy. Amendments to the Lieberman substitute striking titles mandating the National Office and the Strategy were adopted on September 17. This modification of the Lieberman substitute seemingly would allow the continued operation of the Office of Homeland Security and the dual director-presidential adviser role of the head of that entity.

## CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

- U.S. Congress. House. Select Committee on Homeland Security. *Homeland Security Act of 2002*. H.Rept. 107-609, Part 1, 107<sup>th</sup> Congress, 2<sup>nd</sup> session. Washington: U.S. Govt. Print. Off., 2002. 225 p.
- U.S. Congress. Senate. Committee on Governmental Affairs. *Government at the Brink*. Committee print, 107th Congress, 1st session. Washington, U.S. Govt. Print. Off., 2001. 2 v.
- *Has Government Been “Reinvented”?*. Hearing, 106<sup>th</sup> Congress, 2nd session, May 4, 2000. Washington: U.S. Govt. Print. Off., 2000. 83 p.
- *National Homeland Security and Combating Terrorism Act of 2002*. S.Rept. 107-175, 107<sup>th</sup> Congress, 2<sup>nd</sup> session. Washington, U.S. Govt. Print. Off., 2002. 38 p.
- *President Bush’s Proposal to Create a Department of Homeland Security*. Hearing, 107<sup>th</sup> Congress, 2<sup>nd</sup> session, June 20, 2002. Washington: U.S. Govt. Print. Off., 2002. 218 p.
- *Report of Senator Fred Thompson on Major Management Challenges Facing Federal Departments and Agencies*. Committee print, 106th Congress, 2nd session. Washington, U.S. Govt. Print. Off., 2000. 55 p.
- *Report of Senator Fred Thompson on Management Challenges Facing the New Administration*. Committee print, 106th Congress, 2nd session. Washington, U.S. Govt. Print. Off., 2000. 51 p.

## CHRONOLOGY

- 07/26/02** — The House approved, on a 295-132 vote, legislation (H.R. 5005), as amended, establishing a Department of Homeland Security.
- 06/06/02** — President George W. Bush called for the creation of a Department of Homeland Security by Congress and provided a plan for the structure and programs of the new entity.
- 08/25/01** — President George W. Bush, in his radio address to the nation, announced the release of *The President’s Management Agenda*, a report identifying 14 management problems in the federal government and offering specific solutions to address them.
- 07/18/01** — OMB Director Mitchell E. Daniels, Jr., on behalf of President Bush, apprised executive department and agency heads of administration efforts to develop an electronic government action plan using an interagency task force to be headed by OMB Associate Director for Information Technology and E-Government Mark Forman.

- 01/01/98** — The National Performance Review became the National Partnership for Reinventing Government.
- 01/11/97** — At a Blair House meeting of the new Cabinet, Vice President Gore presented a brief set of papers, which he dubbed “reinvention marching orders,” emphasizing three themes: improved service delivery; use of partnerships and community-based strategies to solve problems, not big government; and techniques for improving performance in a time of diminishing resources, including the use of performance-based organizations. The issuance of the Blair House papers marked the beginning of a new stage of the NPR.
- 09/09/96** — The National Performance Review marked its third-year anniversary, reporting that 43% of its initial 833 agency action items were completed and 42% were in progress, and 49% of its initial 430 management systems action items were completed and 49% were in progress; of an additional 187 recommendations, 19% were completed and 62% were in progress; “savings of about \$97.4 billion have been ensured through legislative or administrative action” and an “additional \$5.2 billion in savings is contained in legislation pending before Congress;” and, as of January 1996, an executive workforce reduction of nearly 240,000 employees had been realized.
- 09/11/95** — The National Performance Review marked its second year anniversary, reporting that 32% of its initial agency action items were completed and 61% were in progress, and 27% of its initial 417 management systems action items were completed and 63% were in progress; more than 180 additional recommendations had been made; and “about \$57.7 billion of [approximately \$108 billion] projected savings have been achieved” and an “additional \$4.3 billion in savings are currently pending before Congress.”
- 01/12/95** — Vice President Gore, OMB Director Alice Rivlin, and other officials formally launch Phase 2 of the National Performance Review.
- 09/27/94** — Republican leaders of the House of Representatives unveiled a “Contract With America” reform plan with core principles that regard the federal government as being too big, spending too much, unresponsive to the citizenry, and the perpetrator of burdensome regulations.
- 09/14/94** — The National Performance Review marked its one-year anniversary, reporting that over 90% of its recommendations “are under way,” implementation occurring through 22 presidential directives, several enacted bills, and a variety of agency actions, with the result that “\$46.9 billion of NPR’s \$108 billion in proposed savings are already enacted” and another “\$16 billion in savings is pending before Congress.”
- 09/07/93** — The National Performance Review provided its first report to President Clinton, offering some 380 major recommendations for government reform. The bulk of these proposals concerned management improvement, but several were directed at agency reorganization, consolidation, and field structure overhaul.

**03/03/93** — President Clinton announced he was initiating a National Performance Review, to be headed by Vice President Gore, to evaluate the efficiency, economy, and effectiveness of every federal program and service, and make recommendations for “reinventing government,” including proposals for executive branch reorganization.

## LEGISLATION

### **H.R. 1158 (Thornberry)**

National Homeland Security Agency Act. Establishes a National Homeland Security Agency as an independent agency with a director appointed by the President and subject to Senate confirmation. Introduced Mar. 21, 2001, and referred to the Committee on Government Reform; referred to the Subcommittee on National Security Apr. 23; subcommittee hearing held Apr. 29.

### **H.R. 5005 (Armey) (by request)**

Homeland Security Act of 2002. Establishes a Department of Homeland Security. Introduced June 24, 2002, and referred to the Select Committee on Homeland Security, and, in addition, to the Committees on Agriculture, Appropriations, Armed Services, Energy and Commerce, Financial Services, Government Reform, Intelligence, International Relations, the Judiciary, Science, Transportation and Infrastructure, and Ways and Means. Recommendations of the standing committees provided to the select committee, which began consideration of the bill on July 15; marked up and ordered reported (H.Rept. 107-609), as amended, by the select committee on July 19; House floor debate and amendment begun July 25; House floor debate and amendment completed and bill, as amended, adopted on a 295-132 vote on July 26. Senate floor debate begun September 3.

### **S. 1149 (Graham)**

Establishes a National Office for Combating Terrorism within the Executive Office of the President, with a director appointed by the President and subject to Senate confirmation. Introduced Sept. 21, 2001, and referred to the Committee on Governmental Affairs; hearing held Oct. 12.

### **S. 1534 (Lieberman)**

Establishes a Department of National Homeland Security. Introduced Oct. 12, 2001, and referred to the Committee on Governmental Affairs; hearing held Oct. 12.

### **S. 2452 (Lieberman)/H.R. 4660 (Thornberry)**

Establishes a Department of National Homeland Security and a National Office for Combating Terrorism within the Executive Office of the President. Introduced May 2, 2002, and referred in the Senate to the Committee on Governmental Affairs, and in the House to the Committee on Government Reform. Ordered to be reported (S.Rept. 107-175) on a 7-3

vote in the Senate on May 22; reconsidered and markup of an amendment in the nature of a substitute begun on July 24; markup completed and modified amendment approved on July 25. Text of modified bill submitted as an amendment (S.Amdt. 4471) to H.R. 5005 on September 3.

## FOR ADDITIONAL READING

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## **CRS Reports**

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CRS Report RL31520, *Collective Bargaining and Homeland Security*, by Jon O. Shimabukuro.

CRS Report RL31497, *Creation of Executive Departments: Highlights from the Legislative History of Modern Precedents*, by Thomas P. Carr.

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CRS Report RL31514, *Department of Homeland Security: Appropriations Transfer Authority*, by Robert Keith.

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CRS Report RS21295, *Homeland Security and the Davis-Bacon Act*, by Jon O. Shimabukuro.

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