



May 18, 2005
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 1817 – Department of Homeland Security Authorization Act

(Rep. Cox (R) California)

The Administration supports House passage of H.R. 1817. However, the Administration has a number of serious concerns regarding provisions in H.R. 1817 that would conflict with the President's Budget, interfere with the Department of Homeland Security (DHS) Secretary's management authorities, and hinder the Department's ability to implement its various missions. The Administration looks forward to working with the Congress to address these and other concerns before any final action on this legislation.

Appropriations Authorizations

While the aggregate level of appropriations authorizations in H.R. 1817 is closely aligned with the President's Budget, the bill includes several program-specific authorization levels that are not consistent with the Budget. Discrepancies of particular concern include insufficient funding for the Domestic Nuclear Detection Office and for Targeted Infrastructure Protection grants. The Administration urges that authorization of funding for these programs be consistent with the President's Budget.

Planning, Personnel, and Organizational Issues

The Administration opposes the provision in the bill that would impede the ability of the National Communications System (NCS) to coordinate the planning for and provision of national security and emergency preparedness communications for the Federal government under all circumstances, including crisis or emergency, attack, recovery, and reconstitution, or alter or restrict the President's prerogatives or the Secretary's prerogatives with respect to assigning roles and responsibilities relating to the NCS.

The Administration believes that the bill's grant of authority to the DHS Directorate for Information Analysis and Infrastructure Protection (IAIP) to pay recruitment bonuses is unnecessary. The need for this authority has been met by the provisions of the Federal Workforce Flexibility Act, which provided greater options in the recruitment bonus arena. The Administration notes that the bill does include a potentially useful waiver of salary offset for current civil service annuitants recruited to work for IAIP. However, such a proposal should be made available DHS-wide. Moreover, waiving salary offset should not be automatic, but rather a discretionary authority of the Secretary to be used on a case-by-case basis, due to exceptional difficulty in recruiting or retaining a qualified employee. Not all annuitants want waivers, nor are they necessary or appropriate in all cases.

The Administration is concerned with the bill's requirement that Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) track financial expenditures by customs and

immigration functions. Such a requirement would only perpetuate a stove-piped approach to protecting the Nation's borders and enforcing trade and immigration laws, based on the old organizational structure that existed prior to the creation of DHS.

The Administration opposes the legislation's requirement to hold the next TOPOFF exercise one year earlier than currently planned, as this would disrupt current schedules and add unbudgeted costs for FY 2006.

Operational Issues

The Administration strongly opposes requirements in the bill relating to the Container Security Initiative (CSI), which would restrict basic CSI operations and its expansion to new ports. The Administration is committed to screening all shipments bound for the United States for risk, and ensuring that all high risk containers are inspected. The Department's focus is on the risk presented by individual shipments, even where they transit relatively well-secured ports. The bill would limit the use of strategic analysis by the National Targeting Center, hinder enforcement of non-security missions, overemphasize port-specific risks, and delay further expansion of the program. In addition, the bill would hamper coordination with host countries to identify appropriate staffing needs by statutorily requiring the deployment of personnel to CSI ports. The Administration is committed to ensuring that cargo security matters requiring collaboration with foreign governments are done in coordination with the Secretary of State so as to ensure coordination of U.S. foreign policy.

The Administration would support language authorizing the DHS Secretary to: (1) lend or otherwise assist in the deployment of non-intrusive inspection equipment and hand-held radiation-detection equipment for cargo containers at each CSI port under such terms and conditions as the Secretary determines; and (2) provide training for foreign personnel involved in the CSI program.

The Administration strongly opposes provisions in the bill regarding denial of transportation security cards. In particular, the Administration objects to the proposed requirement that the appeals process include a hearing before an administrative law judge. This provision would curtail the Secretary's flexibility in maintaining due process requirements of notice and opportunity to be heard and could lead to long delays in reviewing cases. In addition, the Administration opposes the bill's provision that would preclude denying a card to individuals on the basis of an older felony conviction unrelated to terrorism. The Secretary should not be prevented from denying access in sensitive transportation areas to individuals who pose security risks based on their criminal history.

The Administration has a number of concerns with the bill's provision establishing a consolidated background check process. The language is not broad enough to serve as an authorization for all of the responsibilities of the Department's Screening Coordination Office as proposed in the FY 2006 Budget. Moreover, the provision would create implementation problems for background checks and approval procedures already required by the various credentialing and expedited travel programs within DHS.

The Administration also objects to a requirement in the bill to move the "Shadow Wolves" to ICE. Such a congressionally-mandated reorganization would be contrary to the current assignment of missions between ICE and CBP and undercut the Secretary's ability to effectively direct DHS activities.

The Administration believes that the provision in the bill, which sets a 60-day deadline for implementation of the requirement in the Vision 100--Century of Aviation Authorization Act that DHS develop and implement a security plan to permit general aviation aircraft to land and take off at Ronald Reagan Washington National Airport, is inappropriate and unnecessary. The Department is in the final stages of reviewing a prudent plan under this congressional mandate to reopen Reagan National to charter and general aviation operations on an expanded basis while maintaining aviation security.

Intelligence Issues

The Administration opposes the bill's delineating responsibilities of the Joint Intelligence Community Council (JICC), which is a Director of National Intelligence (DNI) advisory board. The role of the JICC is sufficiently defined in the Intelligence Reform and Terrorism Prevention Act of 2004. The Administration also opposes the bill's attempt to delineate by statute required membership on a DNI-established board.

In addition, the Administration has strong concerns regarding the provision in the bill prohibiting the dissemination of homeland security threat analysis without the coordination of the DHS Secretary. This provision does not adequately address the appropriate role of the DNI in the coordination of this information. In addition, the exception in this provision to permit the sharing of such information for assisting in any aspect of a criminal investigation or proceeding could inappropriately expose elements of national security investigations involving international terrorism.

Constitutional Concerns

Section 306 of the bill should be revised to make clear that international agreements shall be sought "subject to the direction of the President," to make the provision consistent with the President's constitutional authority to conduct the Nation's foreign affairs, including the initiation and conduct of negotiations with foreign countries and international organizations.

Possible Amendments to H.R. 1817

The Administration is aware of possible amendments to H.R. 1817 that would significantly expand the scope of DHS homeland security grants. The Administration generally opposes such changes, as they would lead to the diversion of limited grant funds away from areas where they are most critically needed.

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