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# H.R. 10 (9/11 Recommendations Implementation Act) and S. 2845 (National Intelligence Reform Act of 2004): A Comparative Analysis

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# Summary

This comparative analysis of H.R. 10 (9/11 Recommendations Implementation Act) and S. 2845 (National Intelligence Reform Act of 2004) is an assessment of major similarities and differences between the two bills as passed by the House (October 8, 2004) and Senate (October 6, 2004) and under conference consideration.

References to the two bills are to engrossed versions. The presentation is organized to follow the basic construct of the House bill, because its coverage remained more stable through the legislative process to date. For purposes of clarity, we refer to the House-passed bill as H.R. 10.

This assessment was prepared under a stringent time-frame. Analysis of this complex and far-reaching legislation was complicated by the absence of clean final bills as passed by either chamber during much of the preparation of this product. This report now reflects the substance and the structure of the engrossed bills.

CRS experts are available to congressional clients upon request to follow up on any additional needs, including clarification of content or of legislative references; each section of the analysis includes the name of the CRS analyst or attorney who prepared it.

CRS also provides online access to research products that directly address a number of issues that are the focus of or are raised by H.R. 10 and S. 2845. These products are available by searching "Terrorism & the 9/11 Commission" (see https://crsreports.congress.gov/).

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# Introduction

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CRS also provides online access to research products that directly address a number of issues that are the focus of or are raised by H.R. 10 and S. 2845. These products are available by searching "Terrorism & the 9/11 Commission" (see https://crsreports.congress.gov/).

# Title I: Reform of the Intelligence Community

## Overview

Provisions under Subtitle A, H.R. 10: establish the position of National Intelligence Director to serve as the head of the Intelligence Community and the principal intelligence advisor to the President. Also redefines national intelligence to include all intelligence, regardless of source, to include information gathered within and outside the United States that involves threats to the United States, the development, proliferation, and use of weapons of mass destruction, and any matter bearing on U.S. national and homeland security. Provisions under Subtitle A also establish the requirement for the Department of Defense and the Central Intelligence Agency to develop coordination procedures for use in the conduct of operations. Also defines the role that the National Intelligence Director plays in appointing certain intelligence-related officials. This provision also permits the President to appoint the serving Director of Central Intelligence initially to the position of National Intelligence Director upon enactment of the Act.

## Establishment of a National Intelligence Director—Authority

Prepared by Elizabeth B. Bazan, Legislative Attorney, CRS American Law Division

### House Provisions

Section 1011 of the House bill as passed (S. 2845 EAH/H.R. 10) creates a new Section 102A to the National Security Act of 1947, setting out the responsibilities of a newly created National Intelligence Director (NID). Under Section 1011(a) of the House passed bill, new Section 102A(f)(7) of the National Security Act would provide that "nothing in this title shall be construed as affecting the role of the Department of Justice or the Attorney General with respect to applications under [FISA]." There is no parallel provision in the Senate passed S. 2845.

### Senate Provisions

Under Section 112(a)(7) of S. 2845 as it passed the Senate, the newly created National Intelligence Director (NID) would be given responsibility to establish requirements and priorities for foreign intelligence information to be collected under FISA, and to provide assistance to the Attorney General to ensure that information derived from electronic surveillance or physical searches under FISA is disseminated so that it may be used efficiently and effectively for foreign intelligence purposes. Section 112(a)(7) further provides that the NID would have no authority to direct, manage, or undertake electronic surveillance or physical search operations under FISA unless otherwise authorized under statute or executive order.

## Establishment of National Intelligence Director—Management and Budget

Prepared by Alfred Cumming, Specialist in Intelligence and National Security, CRS Foreign Affairs, Defense, and Trade Division

Both H.R. 10 and S. 2845 would replace the current position of Director of Central Intelligence with a National Intelligence Director (NID) who would oversee national intelligence centers on specific subjects of interest—including a National Counterterrorism Center (NCTC)—across the United States government; manage the national intelligence program; oversee the agencies that

contribute to it; and have some degree of hiring, firing, and budgetary authority over the Intelligence Community's 15 agencies.

The principal difference between the two bills is the amount of budget authority each accords the NID, with the Senate's version seemingly providing more authority according to some observers. Under S. 2845, the NID would determine the annual budget for intelligence and intelligence-related activities by providing budget guidance to heads of IC agencies containing one or more NIP-funded programs, projects or activities. It also provides that the NID develop and present to the President the annual NIP budget after consulting with IC heads, overseeing NIP-funded programs, and provide budget guidance to those IC elements not containing NIP-funded programs.

Under H.R. 10, on the other hand, the NID would merely develop and present to the President the annual budget for intelligence and intelligence-related activities, and in doing so, provide budget guidance to heads of IC agencies containing NIP-funded programs.

The Senate bill also authorizes the NID to manage and oversee NIP budget execution, reprogramming, and funds and personnel transfers, whereas the House's version calls on the NID to ensure the effective execution of the annual NIP budget.

## Establishment of the NID and General NID Responsibilities

H.R. 10, Section 1011, establishes within the Executive Branch (but not located within the Executive Office of the President) a Presidentially-appointed, Senate-confirmed NID who shall serve as head of the IC; the President's principal intelligence advisor; and, through the heads of the departments containing elements of the IC, and the Central Intelligence Agency (CIA), manage and oversee the execution of the National Intelligence Program (NIP) and direct the NIP. The individual serving as the NID is prohibited from serving as the CIA director or as the head of any other IC element (Section 1011(a)).

S. 2845 establishes within the Executive Branch a presidentially appointed, Senate-confirmed NID who shall serve as head of the IC; the President's principal intelligence advisor; head of the National Intelligence Authority; and direct and oversee the National Intelligence Program. The individual serving as the NID is prohibited from serving in any capacity in other IC element, except to do so in an acting capacity (Section 102).

## NID Budget Responsibilities

According to H.R. 10, Section 1011, the NID shall develop and present to the President the annual budget for intelligence and intelligence-related activities. In doing so, the NID shall provide budget guidance to heads of IC agencies containing NIP-funded programs. The NID shall participate in the development by the Secretary of Defense of the annual budgets for the Joint Military Intelligence Program and Tactical Intelligence and Related Activities. The NID shall provide budget guidance to those IC elements not containing NIP-funded programs.

According to S. 2845, Section 112, the NID shall determine the annual budget for intelligence and intelligence-related activities by providing budget guidance to heads of IC agencies containing one or more NIP-funded programs, projects, or activities. The NID also shall develop and present to the President the annual NIP budget after consulting with IC heads overseeing NIP-funded programs. The NID shall provide budget guidance to those IC elements not containing NIP-funded programs. The NID shall participate in the development by the Secretary of Defense of non-NIP annual military program budgets.

## Budget Execution

Accord to H.R. 10, Section 1011, the NID shall ensure the effective execution of the annual budget for intelligence and intelligence-related activities and shall facilitate the management and execution of NIP funds.

According to S. 2845, Section 112(a)(2), the NID shall manage and oversee NIP budget execution, reprogramming, and funds and personnel transfers.

## NID Budget Authorities

According to H.R. 10, Section 1011, the NID shall provide budget guidance to IC elements comprising the NIP; participate in the development by the Secretary of Defense of the annual Joint Military Intelligence Program (JMIP) and Tactical Intelligence and Related Activities (TIARA) budgets; and provide budget guidance to non-NIP, IC elements.

According to S. 2845, Section 113, the NID shall coordinate, prepare, and present to the President the annual NIP budget. In doing so, the NID shall approve, prior to submission to the President, any portion of a NIP budget prepared outside the NID's office. The NID shall approve any budget of an IC agency or element containing a portion of NIP funding prior to submission to the President. The NID shall provide budget guidance to non-NIP IC elements.

## Budget Reprogramming

According to H.R. 10, Section 1011, NIP funds may not be reprogrammed or transferred without the NID's prior approval, except in accordance with NID-issued procedures. The Secretary of Defense shall consult with the NID before transferring or reprogramming JMIP funds.

According to S. 2845, Section 113(f), NIP funds may not be reprogrammed or transferred without the NID's prior approval, except in accordance with NID-issued procedures. The NID, before reprogramming NIP funds, shall consult with the agency head having jurisdiction over the NIP-funded element.

## Funds and Personnel Transfers

According to H.R. 10, Section 1011, the NID, with OMB approval, may transfer NIP funds within the NIP, subject to the provisions of annual appropriations acts; may transfer IC personnel for up to a year, in accordance with procedures developed with affected department heads. Fund and personnel transfers may be made only if activity to which transfer is being made is of a higher intelligence priority; the need is based upon unforeseen requirements; the transfer does not involve a transfer of funds to the CIA's Reserve for Contingencies; in the case of funds transfer, is less than $1 million, and less than 5% of amounts available to the affected agency under the NIP, and the transfer does not terminate a program.

According to S. 2845, Section 113(g), the NID, with OMB approval, may transfer or reprogram NIP funds between NIP programs; approve or disapprove the transfer or reprogramming of non-NIP funds to the NIP; transfer NIP-funded personnel from one IC element to another, in accordance with NID-developed procedures; transfer non NIP-funded personnel from one IC element to another IC element, in accordance with mutually agreed upon procedures between the NID and affected agency heads. Fund and personnel transfers may be made only if activity to which the transfer is being made is of higher intelligence priority; does not involve transfer of funds to the Reserve for Contingencies; does not involve transferring uniformed services

personnel for periods exceeding three years; and does not exceed applicable ceilings established in law for such transfers.

## Agency Head Objection to Fund and Personnel Transfers

According to H.R. 10, Section 1011, funds transfer may be made without regard to the $1 million and 5 percent limitations provided NID gains agency head concurrence.

S. 2845 has no comparable provision.

## Personnel Transfer Procedures

According to H.R. 10, Section 1011, the NID is required to develop, with affected agency heads, personnel transfer procedures that would govern IC personnel transfers.

According to S. 2845, Section 113(g), the NID would develop personnel transfer procedures for transfers taking place within NIP-funded programs; the NID and affected agency heads would develop personnel transfer procedures for personnel transfers involving non-NIP funded programs.

## FBI Funds and Personnel Transfers

According to H.R. 10, Section 1011, the NID is authorized to transfer funds/personnel to and from the FBI's Office of Intelligence.

According to S. 2845, Section 113(g), the NID is authorized to transfer funds/personnel to and from the FBI's Office of Intelligence.

## Direct Appropriation

According to H.R. 10, Section 1011, the Office of Management and Budget shall apportion all NIP funding to the NID.

According to S. 2845, Section 113(d), NIP funds shall be appropriated to the National Intelligence Authority and be under the NID's direct jurisdiction.

## Hire and Fire Authority

*CIA Director*: According to H.R. 10, Section 1014, the NID shall recommend to the President, individuals for nomination to serve as Deputy NID and CIA Director.

According to S. 2845, Section 118(a), the NID shall recommend to the President an individual for nomination to serve as Director of the Central Intelligence Agency, in the event of a vacancy.

*Presidential Appointments (i.e., Directors of the National Security Agency (NSA), National Reconnaissance Office (NRO), and National Geospatial-Intelligence Agency (NGA)) and Other Appointments*: According to H.R. 10, Section 1011, the Secretary of Defense shall obtain NID concurrence in appointing or recommending nominees for the director of NSA, NRO and NGA. If the NID does not concur, the vacancy may not be filled or recommendation made to the President regarding a Presidential appointment (as the case may be).

Department heads with jurisdiction over other IC intelligence positions (i.e., the Director of the Defense Intelligence Agency; the Assistant Secretary of State for Intelligence and Research; the Director of the Office of Counterintelligence of the Department of Energy; the Assistant Secretary for Intelligence and Analysis of the Department of Energy; the Executive Assistant Director for

Intelligence of the Federal Bureau of Investigation; the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection; and the Deputy Assistant Commandant of the Coast Guard for Intelligence) shall consult with the NID before making such appointments.

According to S. 2845, Section 117(a), if the appointment to such position (to include NSA, NRO and NGA Directors) is made by the President, any recommendation to nominate or appoint an individual to such position shall be accompanied by a NID recommendation. If the appointment to such position is made by the department head containing such agency, organization, or element, the CIA Director, or a subordinate official of such department of the CIA, no individual may be appointed to such position without the NID's concurrence.

## NID Analysis and Tasking

According to H.R. 10, Section 1011, the NID shall manage and direct the tasking of collection, analysis, production and disseminations of national intelligence.

According to S. 2845, Section 112(a)(4), the NID shall issue and manage collection and analysis tasking.

## Limitation on the NID's Authority Regarding FISA

H.R. 10, Section 1011, states that nothing in the title "shall be construed as affecting the role of the Department of Justice or the Attorney General with respect to applications under the Foreign Intelligence Surveillance Act of 1978."

S. 2845 contains no comparable provision.

## NID Acquisition Authority

H.R. 10, Section 1011, states that the NID may exercise the acquisition authorities conferred to the Director of Central Intelligence under the Central Intelligence Agency of 1949.

S. 2845, Section 162, states that the NID shall require the development and implementation of a program management plan that includes cost, schedule, and performance goals and program milestone criteria, and that the NID will serve as exclusive milestone authority, except with respect to Department of the Defense programs, where he shall serve as milestone decision authority jointly with the Secretary of Defense or the Secretary's designee.

## Establishment of National Intelligence Director—Joint Procedures

Prepared by Andrew Feickert, Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division

### *H.R. 10, Section 1013*

Joint procedures for operational coordination between Department of Defense and Central Intelligence Agency.

### *House Provisions*

Section 1013: This provision requires the National Intelligence Director, the Secretary of Defense, and the Director of the Central Intelligence Agency to develop joint procedures to improve the coordination and deconfliction in the planning, execution, and sustainment of operations involving both DOD and the CIA. Requires information exchange at the initiation of

planning such operations between the Secretary of Defense and Director, CIA so that senior operational officials have knowledge of the existence of all ongoing operations. Requires, when appropriate, mutual agreement on tactical and strategic objectives when the DOD and the CIA are conducting operations in the same geographical region. No later than 180 days after the enactment of the act, the National Intelligence Director will submit to congressional defense and intelligence committees, a report describing the procedures established and the status of their implementation.

### *Senate Provisions*

No comparable provisions.

### *Comments*

S. 2845 has no comparable provisions. H.R. 10 Section 1013 is related to 9/11 Commission Recommendation, 32 which calls for shifting the responsibility for directing and executing paramilitary operations from the CIA to DOD. H.R. 10, Section 1013 does not assign lead responsibility for paramilitary operations to DOD or the CIA.

## The National Counterterrorism Center—Establishment

Prepared by Todd Masse, Specialist in Domestic Intelligence and Counterterrorism, CRS Domestic Social Policy Division

### Overview

H.R. 10 (Title I, subtitle B, section 1021), the "9/11 Recommendations Implementation Act" and S. 2845 (Title I, Subtitle D, section 143), the "National Intelligence Reform Act of 2004," would establish a National Counterterrorism Center (NCTC). These legislative proposals, the 9/11 Commission's recommendation with respect to an NCTC, and Executive Order 13354—*National Counterterrorism Center*, signed August 27, 2004, are compared in CRS Report RL32558, *The 9/11 Commission and a National Counterterrorism Center: Issues and Options for Congress*, by Todd Masse, updated October 6, 2004. The bills compared in CRS Report RL32558, *The 9/11 Commission and a National Counterterrorism Center: Issues and Options for Congress*, by Todd Masse, are, however, as introduced. This product updates CRS Report RL32558, *The 9/11 Commission and a National Counterterrorism Center: Issues and Options for Congress*, by Todd Masse, to include the accepted amendments to H.R. 10 and S. 2845 with respect to the National Counterterrorism Center.

### Establishment of a Center

Both H.R. 10 and S. 2845 establish an NCTC. Section 1021 of the House bill places an NCTC within the Office of the National Intelligence Director (NID). Section 143 of the Senate bill places an NCTC within the National Intelligence Authority. The primary difference between these two is the location of the function.

### Structure—Directorates

*Intelligence*: From a structural standpoint, H.R. 10, section 1021, establishes two directorates—one each for Intelligence and Strategic Planning. S. 2845, Section 143, also establishes two directorates -one each for Intelligence and Planning. Both bills call for the Directorate of Intelligence to have primary responsibility for analysis of terrorism and terrorist organizations

from all sources of intelligence. Both bills transfer authority over the existing Terrorist Threat Integration Center (TTIC) to the Directorate of Intelligence to accomplish this analytical mission.

One difference between these two bills with respect to the Directorate of Intelligence is that S. 2845, Section 143, proposes that the Directorate also conduct "net assessments," a comparison of terrorist intentions and capabilities with assessed national vulnerabilities and countermeasures. H.R. 10, Section 1021 does not have a similar provision.

*Planning*: H.R. 10 establishes a Directorate of Strategic Planning to provide "... strategic guidance and plans for counterterrorism operations conducted by the U.S. Government." S. 2845, Section 143, establishes a Directorate of Planning which, among other functions, would "... monitor the implementation ..." of counterterrorism operations assigned to departments and agencies.

One difference between these two bills with respect to the planning is that S. 2845, Section 143, appears to provide more authority to the Directorate of Planning with respect to assigning responsibilities for counterterrorism operations to departments and agencies, as well as monitoring the implementation of these assignments.

## Director of National Counterterrorism Center

Under H.R. 10, Section 1021, the NCTC Director is appointed by and reports to the NID. The Director of the NCTC serves as principal adviser to the NID on intelligence operations relating to counterterrorism, provides strategic guidance regarding the integration of counterterrorism intelligence and operations across agency boundaries, and advises the NID on the extent to which counterterrorism program recommendations and budget proposals of departments and agencies conform with priorities established by the President. Under S. 2845, Section 143, the NCTC Director is appointed by the President by and with the advice and consent of the Senate. The NCTC Director serves as the principal adviser to the President and NID on joint counterterrorism operations; provides unified strategic direction for civilian and military counterterrorism efforts; concurs in, or advises the President on selections of personnel to head the following intelligence entities: (1) Director of Central Intelligence's (DCI) Counterterrorism Center, (2) Assistant Director, FBI Counterterrorism Division, (3) Department of State's Coordinator for Counterterrorism, and (4) other operating entities. Under S. 2845, Section 143, the NCTC Director reports to the NID on budget and programs of NCTC and activities of the NCTC's Directorate of Intelligence. The NCTC Director reports to NID and the President with respect to planning and progress of joint counterterrorism options.

The differences here are: (1) confirmation of the NCTC Director, (2) personnel authorities of the NCTC Director, and (3) reporting relationships with respect to certain NCTC Director functions.

## Primary Missions

Under H.R. 10, Section 1021, the NCTC has primary responsibility for analysis and integration of all United States government intelligence pertaining to terrorism and counterterrorism, "... excepting intelligence pertaining to exclusively domestic counterterrorism." The proposed NCTC "... supports operational responsibilities assigned to other agencies by ensuring they have access to intelligence they need." It also conducts strategic operational planning. Under S. 2845, Section 143, the primary mission of the NCTC is to develop and unify strategy for civilian and military counterterrorism efforts; integrate counterterrorism intelligence, inside and outside United States; develop interagency (more than one department) counterterrorism plans; ensure that collection of counterterrorism intelligence and conduct of counterterrorism operations is informed by analysis of all—source intelligence.

One difference appears to be that the mission under H.R. 10, Section 1021, does not allow the NCTC to assign operational responsibilities to other departments and agencies. It also does not appear that S. 2845, Section 143, has any prohibition of intelligence relating to domestic counterterrorism being provided to the NCTC's Directorate of Intelligence for analysis.

## Duties and Responsibilities of Director

Under H.R. 10, Section 1021, the duties and responsibilities of the NCTC Director involve serving as principal advisor to the National Intelligence Director on "intelligence operations relating to counterterrorism ..., providing strategic guidance and plans for civilian and military counterterrorism efforts," and advising the NID on budget proposals of the departments and agencies. Under S. 2845, Section 143, the NCTC Director serves as principal adviser to the "... President and the National Intelligence Director on interagency counterterrorism planning and activities," and has certain personnel authorities insofar as the incumbent would "... concur in, or advise the President on..." selection of certain counterterrorism officials in the Intelligence Community.

The differences here are: (1) reporting relationships, and (2) personnel authorities of the Director NCTC.

## Limitation

Under H.R. 10, Section 1021, the NCTC "... may not direct the execution of counterterrorism operations...." S. 2845, Section 143, also stipulates that the Directorate of Planning "... may not direct the execution of operations assigned under paragraph (3)."

There are no differences on this limitation.

## Independence of the National Counterterrorism Center

Title II, subtitle C, Section 223, of S. 2845 (engrossed) requires that "... no officer, department, agency or element of the executive branch shall have any authority to require the Director of the National Counterterrorism Center to: (1) receive permission to testify before Congress, or (2) submit testimony, legislative recommendations, or comments to any officer or agency of the United States for approval, comments, or review prior to submission of such recommendations ... to Congress, if such recommendations, testimony, or comments include a statement indicating that the views expressed therein are those of the agency submitting them and do not necessarily represent the views of the Administration...."

There is no corresponding measure on this matter in H.R. 10 (engrossed).

## Resolution of Disputes

Under H.R. 10, Section 1021, the NID resolves disagreements between the Director of NCTC and agency heads with respect to counterterrorism assignments, plans, or responsibilities. Agency heads may appeal the NID's decision to the President. Under S. 2845, Section 143, disputes with respect to counterterrorism plans and operations are brought to NID who may either accede or notify the President of the necessity to resolve any disagreement.

One difference with respect to this issue appears to be the option of the agency heads under H.R. 10, Section 1021, to appeal an NID decision to the President. This provision was not specified in S. 2845, Section 143.

### Reports Required

Under H.R. 10, Section 1021, there do not appear to be any reporting requirements with respect to the NCTC. Under S. 2845, Section 143, a report is required. S. 2845, as amended, stipulates: "Not later than one year after the date of the establishment of the National Counterterrorism Center ... the National Intelligence Director shall submit to Congress a report evaluating the effectiveness of the Center in achieving its primary missions...."

## The National Counterterrorism Center and Civil Liberties Protections

Prepared by Harold Relyea, Specialist in American National Government, CRS Government and Finance Division

### Overview

The final report of the 9/11 Commission recommended that "there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties."[1] This recommendation is the third and final one made in a section of the report captioned "The Protection of Civil Liberties." In the other two, the commission recommended that (1) the President, in the course of determining the guidelines for information sharing among government agencies and by them with the private sector, "should safeguard the privacy of individuals about whom information is shared"; and (2) the "burden of proof for retaining a particular governmental power should be on the executive, to explain (a) that the power actually materially enhances security and (b) that there is adequate supervision of the executive's use of the powers to ensure protection of civil liberties. If the power is granted," the report added, "there must be adequate guidelines and oversight to properly confine its use."[2] Read together, these recommendations call for a board to oversee adherence to presidential guidelines on information sharing that safeguard the privacy of individuals about whom information is shared, and adherence to guidelines on the executive's continued use of powers that materially enhance security. The report offered no additional commentary on the composition, structure, or operations of the recommended board. Such a board, however, had been proposed in December 2003 in the fifth and final report of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, chaired by former Virginia Governor James S. Gilmore III.[3]

### House Provisions

Section 1022 of H.R. 10 establishes, within the office of the NID, a Civil Liberties Protection Officer, who is appointed by the NID, and, among other duties, is responsible for (1) ensuring that civil liberties and privacy protection are appropriately incorporated in the policies and procedures developed for, and implemented by, the office of the NID and the elements of the intelligence community within the National Intelligence Program; (2) overseeing compliance by the office of the NID with constitutional, statutory, regulatory, administrative, and other requirements relating

[1] U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington: GPO, 2004), p. 395.

[2] Ibid., pp. 394-395.

[3] U.S. Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *V. Forging America's New Normalcy: Securing Our Homeland, Preserving Our Liberty* (Arlington, VA: Rand Corporation, 2003), pp. 22-23.

to civil liberties and privacy; and (3) investigating complaints and possible abuses of civil liberties and privacy by the office of the NID. Section 5092 of the bill also establishes within each federal agency with law enforcement or anti-terrorism functions a chief privacy officer, who is designated by the head of the agency, and, among other duties, is responsible for ensuring that technologies applications sustain, and do not erode, privacy protections for personal information; ensuring compliance with Privacy Act fair information use practices; conducting privacy impact assessments of proposed rules of the agency; and preparing and submitting an annual report to Congress on activities of the agency that affect privacy. Concerning privacy impact assessments, Section 5091 of the bill requires that agency rulemaking involving internal revenue laws of the United States and pertaining to the collection, maintenance, use, or disclosure of personally identifiable information for 10 or more individuals take into consideration impacts on individual privacy through the preparation and provision for public comment of an initial, and subsequent final, privacy impact assessment. Agencies are also required to conduct, in accordance with an annual plan, a periodic review of their rules having a significant privacy impact on individuals, and must annually publish a list of such rules to be so reviewed. For any rule for which a privacy impact assessment is required, an individual who is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with impact assessment provisions.

## Senate Provisions

Section 211 of the Senate bill establishes, within the Executive Office of the President, a Privacy and Civil Liberties Oversight Board, composed of a chair and four additional members, who are appointed by the President with Senate approval and serve six-year terms. The board, among other duties, is responsible for reviewing proposed legislation, regulations, and policies related to efforts to protect against terrorism; reviewing the implementation of such legislation, regulations, and policies; advising the President and other executive branch officials to ensure that privacy and civil liberties interests are appropriately considered in the development and implementation of such legislation, regulations, and policies; and continually reviewing the regulations, policies, and procedures of the departments and agencies, and their implementation, to ensure that privacy and civil liberties are protected. Section 212 of the bill requires the Attorney General, Secretaries of Defense, Health and Human Services, Homeland Security, State, and the Treasury, NID, Director of the Central Intelligence Agency, and the head of any other executive department, agency, or element of the executive branch so specified by the Privacy and Civil Liberties Oversight Board to designate not less than one senior officer as a Privacy and Civil Liberties Officer (unless such official already exists). Such officers, among other duties, are responsible for raising privacy and civil liberties interests when agency leaders are proposing or implementing laws, regulations, policies, or guidelines related to efforts to protect against terrorism; periodically investigating and reviewing agency actions, policies, procedures, guidelines, and related laws and their implementation to ensure adequate consideration of privacy and civil liberties; ensuring that adequate procedures exist to receive, investigate, respond to, and redress complaints alleging privacy or civil liberties violations; and considering, when providing advice on proposals to retain or enhance a particular governmental power, whether it has been explained that the power actually materially enhances security, its use is adequately supervised to ensure protection of privacy and civil liberties, and its use is properly confined by adequate guidelines and oversight.

Among the responsibilities specified for the NID in Section 112 is ensuring compliance by elements of the intelligence community with the Constitution and all laws, regulations, executive orders, and implementing guidelines of the United States applicable to intelligence and intelligence related activities of the federal government, including the provisions of the

Constitution and all laws, regulations, executive orders, and implementing guidelines of the United States applicable to the protection of the privacy and civil liberties of U.S. persons. In Section 206(c), when directing the President to establish a trusted information network and secure information sharing environment, the bill specifies that the President shall do so in a manner consistent with national security and the protection of privacy and civil liberties; use policy guidelines and technologies that, among other considerations, support incorporating protections for individuals' privacy and civil liberties; and, in consultation with the Privacy and Civil Liberties Oversight Board, issue guidelines that protect privacy and civil liberties in the development and use of the environment.

### Comments

Among the major differences between the House and Senate bills are the former's reliance upon a Civil Liberties Protection Officer and the latter's reliance upon a Privacy and Civil Liberties Oversight Board as primary advisory and oversight instruments for privacy and civil liberties concerns. The House bill would establish privacy officers within federal agencies having law enforcement or anti-terrorism functions; the Senate bill would do the same, but such officials would have responsibilities concerning both privacy and civil liberties interests. The privacy officers mandated by the House bill would assist with agency compliance with the bill's requirement for privacy impact assessments; the Senate bill makes no provision for such assessments. The Senate bill assigns to the NID and the President particular responsibilities for privacy and civil liberties interests which are not found in the House bill.

## Joint Intelligence Community Council

Prepared by Richard Best, Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division

H.R. 10 (Section 1031) would establish a Joint Intelligence Community Council (JICC) to "provide advice to the National Intelligence Director as appropriate." The JICC would consist of the NID, the Secretaries of State, Treasury, Defense, Energy, Homeland Security, the Attorney General, and other officials of the Executive Branch as the President may designate. H.R. 10 provides that the JICC shall provide advice to the NID "as appropriate," but requires that the NID "shall consult with" the JICC in developing guidance for the development of the annual intelligence budget.

S. 2845 (Section 202) also provides for the establishment of a JICC with the same membership as proposed by the House version. The Senate version, however, provides in somewhat greater detail that the JICC shall assist the NID in "developing and implementing a joint, unified national intelligence effort: by advising the NID on establishing budgets, financial management, and on ensuring the timely execution of programs, policies, and directives established or developed" by the NID. S. 2845 requires that the NID convene regular meetings of the JICC and includes provisions for JICC members to submit separate views to the President and to Congress.

## Improvement of Human Intelligence (HUMINT)

Prepared by Richard Best, Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division

H.R. 10, Section 1041, expresses the sense of Congress that human intelligence (humint) officers have performed "admirably and honorably in the face of great personal dangers," that U.S. humint capabilities have not received "the necessary and commensurate priorities," that humint is

increasingly important, that an increased emphasis on, and resources applied to humint must be among the top priorities of the NID. The House version calls for a report from the NID to Congress on humint improvement within six months of enactment with a plan to implement changes to increase the capacity of humint across the intelligence community.

S. 2845 includes Section 301 which assigns responsibilities to the Director of the CIA including a requirement for a report to Congress within 180 days, and annually thereafter, describing a strategy for improving CIA's humint capabilities and addressing recruitment, training, equipping, and deployment of humint personnel; achieving a proper balance between unilateral operations and liaison operations, developing language capabilities; and the sound financial management of CIA's Directorate of Operations. The numbers and types of personnel to implement the developed strategy are to be identified and a plan for recruiting, training, equipping, and deploying such personnel, along with cost estimates is to be included.

## Improvement of Education for the Intelligence Community

Prepared by Jeffrey J. Kuenzi, Analyst in Social Legislation, CRS Domestic Social Policy Division

### Overview

As part of the war on terrorism, it is widely recognized that the U.S. government has a substantial and growing need for personnel with knowledge of foreign languages and especially languages that may be spoken in limited and remote areas of the world. In 2002, the federal government employed about a thousand translators and interpreters in four agencies responsible for security-related functions. In addition, these agencies employ nearly 20,000 staff in positions that require some foreign language proficiency. Yet there is a widespread consensus that requirements for foreign language qualified personnel are not currently being met. The 9/11 Commission report makes several references to this deficiency and suggests corrective action to address it. Title I, Subtitle E of H.R. 10, entitled "Improvement of Education for the Intelligence Community," includes provisions to (1) modify the service requirement of the National Security Education Program (NSEP); increase funding and award recipients for the NSEP's National Flagship Language Initiative; (2) initiate three new programs—a scholarship program for heritage community residents, a Foreign Language Program to create partnerships between agencies in the intelligence community and Institutions of Higher Education, and a Civilian Linguist Reserve Corps made up of U.S. citizens with advanced language proficiency; (3) codify the National Virtual Translation Center; and (4) charges the Secretary of Defense with investigating methods to improve the recruitment and retention of qualified foreign language instructors. S. 2845 has no similarly detailed provisions but would charge the Director of the FBI with carrying out a program to enhance the Bureau's capacity to recruit and retain individuals with language skills and would charge the Director of the CIA with developing and maintaining an effective language program within the agency.

### National Security Education Program Service Requirements

H.R. 10 contains a provision to modify the obligated service requirements under NSEP. S. 2845 does not include such provisions.

### *House Provisions*

H.R. 10, Title I, Subtitle E, Section 1051 replaces most of the current language on the service requirement of the NSEP (Subsection (b)(2)) with a new Subsection (j) of Section 802 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902). Subsection (j) provides a new definition for a "specified national security position" to refer to "a position of a department or agency of the United States that the Secretary [of Defense] certifies is appropriate." Current language in subsection (b)(2) requires that the Secretary consult with the NSEP Board of Directors and also report to Congress the list of qualifying positions and agencies. Current language also includes provisions which allow recipients to fulfill the service requirement through "work in the field of higher education in a discipline relating to the foreign country, foreign language, area study, counterproliferation study, or international field of study for which the scholarship or was awarded" if the recipient could demonstrate to the Secretary that no national security position was available. Section 1051 also specifies that fulfillment of the service requirement must begin no later than two years after participation in the NSEP. Finally, this section charges the Secretary with writing regulations which "establish standards that recipients of scholarship and fellowship assistance under the [NSEP] ... are required to demonstrate in order to satisfy the requirement of a good faith effort to gain employment" in a specified national security position.

### *Senate Provisions*

Does not contain provisions similar to those described above.

## National Flagship Language Initiative

H.R. 10 contains a provision to increase funding for the National Flagship Language Initiative and increase the number of Institutions of Higher Education participating in the program. S. 2845 does not include such provisions.

### *House Provisions*

For fiscal years 2003 and 2004, H.R. 10 Title I, Subtitle E, Section 1052 would authorize $10 million for the NSEP National Flagship Language Initiative and would authorize $12 million for fiscal year 2005 and each subsequent fiscal year. Additional language would require federal employees who participate in Flagship training programs to remain in service during the period of their training and continue service after training for a period equal to two years for every year of participation. This provision also states that, "The head of an element of the intelligence community may release an employee, in whole or in part, from the obligation to reimburse the United States" for a scholarship or fellowship granted under the Flagship Initiative. Finally, Section 1052 charges the Secretary of Defense with increasing the number of Institutions of Higher Education that receive Flagship grants and allows grantees to "support students who pursue total immersion foreign language studies overseas."

### *Senate Provisions*

Does not contain provisions similar to those described above.

## Scholarship Program for Language Heritage Community Residents

H.R. 10 contains provisions that would establish a scholarship program for English language studies for heritage community citizens of the United States within the NSEP. S. 2845 does not include such provisions.

### *House Provisions*

H.R. 10, Title I, Subtitle E, Section 1053 would create a new program under the NSEP to provide college scholarships to U.S. citizens who "are native speakers (commonly referred to as heritage community residents) of a foreign language that is critical to the national security interests of the United States ... and are not proficient at a professional level in the English language with respect to reading, writing, and interpersonal skills." Participating students would use these scholarships to pursue English language studies at a U.S. Institution of Higher Education, and would be required to fulfill the same service requirement as other NSEP participants. Beginning in fiscal year 2005 and each subsequent fiscal year, $4 million would be authorized for this scholarship program.

### *Senate Provisions*

Does not contain provisions similar to those described above.

## Sense of Congress

H.R. 10 would express the sense of Congress that a senior official should assist the National Director of Intelligence in improving language and education for the intelligence community. S. 2845 would charge the Director of the FBI with carrying out a program to enhance the Bureau's capacity to recruit and retain individuals with language skills, and would charge the Director of the CIA with developing and maintaining an effective language program within the agency.

### *House Provisions*

H.R. 10, Title I, Subtitle E, Section 1054 asserts that "there should be within the Office of the National Intelligence Director a senior official responsible to assist the National Intelligence Director in carrying out the Director's responsibilities for establishing policies and procedure for foreign language education and training of the intelligence community." This official would identify languages critical to U.S. intelligence; establish policy, standards, and priorities for language training; oversee and coordinate such training; and monitor the allocation of resources for such training. Finally, section 1054 would require the Director to submit three reports to Congress no later than one year after enactment—the first would identify effective pedagogy for language learning; the second would identify language heritage communities in the U.S.; and the third would identify the cost and effectiveness of establishing a student loan repayment program for recruiting and retaining employees in the intelligence community.

### *Senate Provisions*

S. 2845, Section 203(c)(5) would charge the Director of the FBI with carrying out a program to enhance the Bureau's capacity to recruit and retain individuals with language skills, and Section 301(b)(2) would charge the Director of the CIA with developing and maintaining an effective language program within the agency.

## Foreign Language Program

H.R. 10 contains provisions that would create a new program for the advancement of foreign languages critical to the intelligence community. S. 2845 does not include such provisions.

### *House Provisions*

H.R. 10, Title I, Subtitle E, Section 1055 would establish a new Foreign Language Program involving partnerships between departments or agencies in the intelligence community and U.S. Institutions of Higher Education. Under this program the head of an element of the intelligence community may provide the following assistance to an Institution of Higher Education: loan of equipment and instructional materials, transfer of surplus property, provision of personnel, involvement of faculty and students of the Institution of Higher Education in research projects, provision of academic credit for such involvement, provision of academic and career advice, and provision of cash awards and other "appropriate" "items." The head of an element of the intelligence community may also accept the volunteer service of any "dedicated personnel (as defined in section 1015(3))" in support of the Foreign Language Program. The section further addresses issues related to the requirements, limitations, recruitment, training, status, and reimbursement of these volunteers.

### *Senate Provisions*

Does not contain provisions similar to those described above.

## Civilian Linguist Reserve Corps

H.R. 10 contains provisions to explore the feasibility of establishing a Corps of individuals with advanced language skills. S. 2845 does not include such provisions.

### *House Provisions*

H.R. 10, Title I, Subtitle E, Section 1056 would charge the Director of Intelligence to conduct a three-year pilot project to establish a Civilian Linguist Reserve Corps composed of U.S. citizens with advanced language proficiency. The Director is to put out a call for a study to identify the languages critical to national security and identify U.S. citizens with advanced language skills who could be recruited to the Corps. The Director would be required to report the findings of the project to Congress no later than six months after its completion and authorized to spend such sums as necessary on the project.

### *Senate Provisions*

Does not contain provisions similar to those described above.

## National Virtual Translation Center

H.R. 10 contains provisions that would codify the National Virtual Translation Center. S. 2845 does not include such provisions.

### *House Provisions*

H.R. 10, Title I, Subtitle E, Section 1057 amends the National Security Act of 1947 to add a new Section 120 that would codify a current "element of the intelligence community that is known as the National Virtual Translation Center."

### *Senate Provisions*

Does not contain provisions similar to those described above.

### Recruitment and Retention of Defense Language Institute (DLI) Instructors

H.R. 10 contains provisions that would require the Secretary of Defense to study the recruitment and retention of DLI instructors and report the findings to appropriate congressional committees. S. 2845 does not include such provisions.

### *House Provisions*

H.R. 10, Title I, Subtitle E, Section 1058 charges the Secretary of Defense with conducting "a study on methods to improve the recruitment and retention of qualified foreign language instructors at the Foreign Language Center of the Defense Language Institute." The Secretary is to submit a report on this study no later than one year after enactment to the Select Committee on Intelligence, the Committee on Armed Services of the Senate, the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

### *Senate Provisions*

Does not contain provisions similar to those described above.

## Additional Improvements of Intelligence Activities

Prepared by Richard Best, Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division

H.R. 10, Section 1061, provides permanent authority for separation pay to be offered to encourage voluntary separation of CIA employees by retirement or resignation. Authority to offer separation pay has been authorized in legislation since FY1993 to encourage separations due to downsizing, reorganization, transfer of function, or other actions but only for specified periods; this legislation would provide permanent authority.

S. 2845 has no similar provision.

H.R. 10, Section 1062, would establish an Emerging Technologies Panel at the National Security Agency (NSA); it would be a standing panel appointed by and reporting directly to the NSA Director. The panel would be responsible for studying, assessing, and advising the NSA Director on research, development and application of existing science and technology advances, especially encryption. The Federal Advisory Committee Act would not apply to this panel.

S. 2845 has no similar provision.

H.R. 10, Section 1063, provides that the NID, in cooperation with the Secretaries of Defense and Energy should seek to ensure that each Defense Department service laboratory and each Energy Department national laboratory assist the NID in all aspects of technical intelligence and make

available to the Intelligence Community their capabilities to improve the technological capabilities of the intelligence agencies.

S. 2845 has no similar provision.

H.R. 10, Section 1064, provides that the NID shall establish guidelines to ensure that all suspected terrorist communications are translated and delivered in a manner consistent with timelines contained in FBI regulations. The NID is also to ensure that terrorist communications are not deleted or discarded before they are translated.

S. 2845 has no similar provision.

H.R. 10, Section 1065, states the sense of Congress that the NID should establish an intelligence center to coordinate the collection, analysis, production, and dissemination of open source intelligence. The NID is asked to report to Congress by June 30, 2005 whether such a center has been established and, if not, a description of how the Intelligence Community will use and effectively integrate open source intelligence.

S. 2845, Section 112, requires the NID to establish and maintain within the Intelligence Community an effective and efficient open source information collection capability.

## Conforming and Other Amendments—Titles

Prepared by Elizabeth B. Bazan, Legislative Attorney, CRS American Law Division

Section 1071(e) of the House bill as passed would replace "Director of Central Intelligence" with "National Intelligence Director" in each place where it appears in Foreign Intelligence Surveillance Act, giving the new NID all of the responsibilities and authorities under Foreign Intelligence Surveillance Act currently held by the DCI. Sec. 302(e) of the Senate-passed S. 2845 is a parallel provision.

## Conforming and Other Amendments—Responsibilities

Prepared by Richard Best, Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division

H.R. 10, Section 1071, is a series of conforming amendments to replace the Director of Central Intelligence with the National Intelligence Director particularly in sections where reference is made to responsibilities extending throughout the Intelligence Community.

S. 2845, Section 302, contains similar provisions.

H.R. 10, Section 1072, is a series of other amendments that adjust various, chiefly administrative, statutes to reflect the roles of the NID and the separate Director of the CIA as established in this legislation.

S. 2845, Section 303, contains similar provisions.

H.R. 10, Section 1073, amends the definition of the Intelligence Community as set forth in 50 USC 401a to include the Office of the NID.

S. 2845, Section 305, contains similar provisions.

H.R. 10, Section 1074, redesignates the National Foreign Intelligence Program as the National Intelligence Program.

S. 2845, Section 306, contains similar provisions, but also deletes the current statutory definition of the National Foreign Intelligence Program (50 USC 401a(6)).

H.R. 10, Section 1075, repeals current provisions regarding appointments of agency heads and collection tasking authority that are superseded by other provisions in this legislation relating to the NID's responsibilities.

S. 2845, Section 308, contains similar provisions.

H.R. 10, Section 1076, makes clerical amendments to the National Security Act of 147 to reflect changes made by this Act.

S. 2845, Section 311, contains similar provisions.

H.R. 10, Section 1077, contains conforming amendments to the prohibition of dual service of the Director of the CIA included earlier in Section 1011.

S. 2845, Section 102(c), includes similar provisions.

H.R. 10, Section 1078, extends the authorities of the CIA Inspector General to the Office of the NID.

S. 2845 has no similar provision.

H.R. 10, Section 1079, provides that any reference to the Director of Central Intelligence (DCI) or the Director of the CIA in the Director's capacity as head of the Intelligence Community in law, regulation, document, paper or other record "shall be deemed" to be a reference to the National Intelligence Director. Any reference to the DCI or CIA Director in the Director's capacity as head of the CIA "shall be deemed" to be a reference to the Director of the CIA. Any reference to the Community Management Staff "shall be deemed" to be a reference to the staff of the Office of the NID.

S. 2845, Section 339, contains similar provisions.

H.R. 10, Section 1080, includes provisions precluding the service of personnel in the Office of the NID in political campaigns and authorizes deletion of information about foreign gifts when publication could affect U.S. intelligence interests. It also includes the Office of the NID among agencies not having to file public reports in accordance with the Ethics in Government Act.

S. 2845, Section 164, contains similar provisions.

## Transfer, Termination, Transition and Other Provisions

Prepared by Richard Best, Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division

H.R. 10, Section 1091, transfers the Community Management Staff to the Office of the NID on the date of enactment.

S. 2845, Section 321, contains similar provisions.

H.R. 10, Section 1092, transfers the Terrorist Threat Integration Center (TTIC) to the National Counterterrorism Center on the date of enactment.

S. 2845, Section 323, contains similar provisions.

H.R. 10, Section 1093, terminates three positions—the Assistant Directors of Central Intelligence for Collection, Analysis and Production, and Administration.

S. 2845, Section 324, terminates the three positions as well as the position of Deputy Director of Central Intelligence for Community Management. (H.R. 10, Section 1015, provides that any

reference to the Deputy Director of Central Intelligence for Community Management "shall be deemed" a reference to the Deputy NID for Community Management.)

H.R. 10, Section 1094, requires the President to submit a plan to Congress for implementing provisions of this title and expresses the sense of Congress that the Office of the NID should be at a location other than the George Bush Center for Intelligence in Langley, Virginia. (Section 1096 provides that the report shall be submitted not later than 180 days after enactment.)

S. 2845, Section 334, contains provisions requiring the NID to submit a report to Congress on progress made in the implementation of the Act within one year. S. 2845 contains no provision regarding the locations of the Office of the NID.

H.R. 10, Section 1095, permits any executive agency to provide services or detail personnel to the NID on a reimbursable basis.

S. 2845 contains no similar provisions.

H.R. 10, Section 1096, provides that this title and amendments made by this title shall take effect on the date of enactment; not later than 60 days after enactment, the NID shall first appoint individuals to positions within the Office of the NID. Not later than 180 days after enactment, the President shall transmit the implementation plan required by Section 1094; within a year the NID shall prescribe regulations, policies, and procedures required by this legislation.

S. 2845, Section 341, provides that the Act and amendments made different dates under certain circumstances earlier date if Congress is notified and notice is published in the Federal Register.

## Other Matters

Prepared by Richard Best, Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division

H.R. 10, Section 1101, directs the Secretary of Defense to undertake a study of the promotion selection rates and selection rates for attendance at professional military education schools for intelligence officers of the Armed Forces and make recommendations to Congress for changes necessary to ensure equitable treatment of military intelligence officers no later than April 1, 2005.

S. 2845 has no similar provisions.

# Title II: Terrorism Prevention and Prosecution

## Individual Terrorists as Agents of Foreign Powers

Prepared by Elizabeth B. Bazan, Legislative Attorney, CRS American Law Division

### Overview

Under current law, terrorists who do not have a connection to an international terrorist group, foreign nation, or foreign group do not fit within the Foreign Intelligence Surveillance Act (FISA) definition of either "foreign power" or "agent of a foreign power." As a result, the U.S. government could not gather foreign intelligence information about such terrorists through the use of electronic surveillance, physical searches, or pen registers or trap and trace devices as part of a FISA investigation. Nor could FISA be used to assist in a criminal investigation of such "lone wolf" terrorists where a significant foreign intelligence purpose for the investigation also existed.

### House Bill

Section 2001 of the House bill as passed would amend the definition of "agent of a foreign power" under Section 101(b)(1) of FISA, 50 U.S.C. §1801(b)(1), so that any non-United States person who "engages in international terrorism or activities in preparation therefor" would be considered an agent of a foreign power, without requiring the Government to demonstrate a connection to an international terrorist organization, foreign nation or foreign group. This change would be subject to the sunset provisions in Section 224 of the USA PATRIOT Act, P.L. 107-56; it would sunset on December 31, 2005, except with respect to any foreign intelligence investigation begun before that date or any criminal offense or potential offense that began or occurred before that date.

### Senate Bill

The Senate-passed version of S. 2845 contains no such provision, although the Senate has passed a similar provision in S. 113; in S. 2386; and in H.R. 4548, the Intelligence Authorization Act for FY2005, as amended by the Senate to incorporate the language of S. 2386.

## Terrorist and Military Hoaxes

Prepared by Charles Doyle, Senior Specialist, CRS American Law Division

### Overview

The 9/11 Commission's final report made no recommendation concerning hoaxes, and the Senate bill contains no counterpart. The House Judiciary Committee has reported similar provisions, separately, H.Rept. 108-505.

### House Provisions

H.R. 10, §§2021-2024. H.R. 10 establishes criminal and civil liability for various false statements concerning the pending commission of certain violent crimes. Offenders are subject to imprisonment for not more than five years in most instances, to imprisonment for not more than 25 years if serious injury results, and to death or imprisonment for life if death results. In cases of international or domestic terrorism, the bill raises the penalty for false statements to federal

authorities and for obstructing administrative or congressional proceedings to imprisonment for not more than 10 years.

### Comments

Existing law already proscribes the misconduct addressed in the bill; its purpose is to increase punishment when the response results in injuries or death or when terrorism-related proceedings are frustrated. The triggering phrase "international or domestic terrorism" has proven controversial in the USA PATRIOT Act context.

## Material Support to Terrorism Prohibition Enactment Act

Prepared by Charles Doyle, Senior Specialist, CRS American Law Division

The 9/11 Commission's final report recommended "vigorous efforts to track terrorist financing." H.R. 10, which has no counterpart in the Senate bill, speaks to financial as well as other forms of terrorist assistance.

### House Provisions

H.R. 10, §§2041-2044. H.R. 10 amends current criminal provisions relating to material support of terrorism and terrorist organizations to enlarge the jurisdictional circumstances under which the support is outlawed, to outlaw support for international or domestic terrorism (in addition to specific predicate crimes now listed), and to explicitly prohibit military training received from or for the benefit of terrorists.

### Comments

The bill addresses the vagueness problems that have sometimes complicated material support prosecutions. It also authorizes U.S. prosecution of material support to a designated terrorist organization regardless of where or by whom the support was provided as long as the U.S. is able to bring the offender to this country.

## Weapons of Mass Destruction Prohibition Improvement Act

Prepared by Charles Doyle, Senior Specialist in American Public Law, CRS American Law Division

The 9/11 Commission's final report noted al Qaeda's efforts to acquire weapons of mass destruction and recommended strengthening counterproliferation efforts in the international arena. The House bill expands the proscription against efforts to acquire or produce weapons of mass destruction. There are no comparable provisions in the Senate bill.

### House Provisions

H.R. 10, §§2051-2053. The House expands the jurisdictional foundations of the generic "weapons of mass destruction" prohibition to more closely proximate the jurisdictional footings in the individual criminal laws relating to biological weapons, chemical weapons, nuclear materials and explosives. It condemns participation in the development of weapons of mass destruction and the use or possession of radiological weapons. It also adds the biological, chemical and nuclear proscriptions to the racketeering predicate offense list.

### Comments

The dual purpose of the provisions seems to be to criminalize assistance in the development of weapons of mass destruction by those on the periphery and to emphasize the significance of existing prohibitions by duplication. The relationship of these provisions to those of Subtitle K (prevention of terrorist access to destructive weapons) is unclear.

## Money Laundering and Terrorist Financing

Prepared by Martin A. Weiss, Analyst in International Trade and Finance, CRS Foreign Affairs, Defense, and Trade Division

### Overview

The 9/11 Commission recommends a shift in the U.S. strategy to combat terrorist financing from one focused on freezing assets to one of exploiting terrorist financing networks for intelligence. The Commission also emphasizes terrorist organizations' increasing shift to informal methods of money transfer such as *hawala* or *hundi*. Provisions included in both the House and Senate legislation address these recommendations and observations, as well as other issues related to terrorist financing.

### House Provisions

H.R. 10 makes technical corrections to Title III of the USA PATRIOT Act (Section 2112) and includes provisions that would require the Treasury Department to develop a national money laundering strategy (Section 2102); grants the Securities and Exchange Commission (SEC) emergency authority to respond to extraordinary market disturbances; boost the authority of the Financial Crimes Enforcement Network (FinCEN) (Section 2101), the U.S. Government's financial intelligence unit; and equates the possession of counterfeiting tools with the intent to use them with the actual act of counterfeiting. The Treasury Department would also be authorized to print the currency, postage stamps, and other security documents of other nations (Section 2121). This provision was proposed earlier this year as part of H.R. 3786.

The House Financial Services Committee also added a provision to crack down on illegal internet gambling by barring financial institutions from processing certain internet gambling transactions that occur via credit cards, wire transfers, or other bank instruments (H.R. 2143). Earlier this year, the Federal Bureau of Investigation testified that Internet gambling is vulnerable for use in terrorist financing schemes. The Committee also sought to increase the authority of FinCEN and the Securities and Exchange Commission (SEC). FinCEN would be authorized an additional $35.5 million to improve technology and the SEC would be given emergency authority for up to 90 days to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as provided for in a 2003 House-passed bill (H.R. 657).

### Senate Provisions

S.Amdt. 3867 added provisions relating to terrorist financing to S. 2845 that were contained in the proposed McCain/Lieberman 9/11 legislation (S. 2774). This amendment would require the President to submit to Congress within 180 days a report evaluating and making recommendations on: (1) the effectiveness of efforts and methods to track terrorist financing; (2) ways to improve governmental cooperation; (3) ways to improve the performance of financial institutions; (4) the adequacy of agency coordination and ways to improve that coordination; and

(5) recommendations for changes in law and additional resources required to improve this effort (Section 1115). The Administration would be required to submit an annual report on the allocation of funding within the Treasury's Office of Foreign Asset Control (OFAC) (S.Amdt. 3768). S. 2845 would also implement post-employment restrictions for certain bank and thrift examiners.

## Criminal History Background Checks

Prepared by Charles Doyle, Senior Specialist in American Public Law, CRS American Law Division

The 9/11 Commission's final report made no recommendation concerning criminal history background checks, although as the Senate amendment points out it did say that "private sector preparedness is not a luxury; it is a cost of doing business in the post-9/11 world. It is ignored at a tremendous potential cost in lives, money and national security."

### House Provisions

H.R. 10, §§2141-2146. H.R. 10 instructs the Attorney General to establish a pilot program under which employers will be able secure criminal history background checks on prospective employees, and to report the results to Congress with recommendations. It also establishes a procedure under which private security guard employers may request criminal history background checks on their employees through state officials. States may opt out legislatively or in some instances through executive action, which may minimize constitutional concerns. The bill also directs the Attorney General to assemble a task force to study the creation of a national clearinghouse to process requests for background checks on private security guards.

### Senate Provisions

S. 2845, Section 1116. The Senate provisions are substantively identical to those of section 2144 in H.R. 10. S. 2845 appears to have no other provisions comparable to those of portions of Subtitle IIF in H.R. 10.

### Comments

Existing law authorizes the Attorney General, with the assistance of the states, to maintain a system of criminal identification and criminal history records, which Congress has made available for criminal background checks for applicants for employment in nursing homes and home health care agencies, and on a pilot basis for volunteers who work with children.

## Protection of United States Aviation System

Prepared by Bart Elias, Specialist in Aviation Security, Safety, and Technology Policy, CRS Resources, Science, and Industry Division

### Overview

The House and Senate bills contain numerous provisions designed to enhance aviation security. In both bills there are specific provisions that address the aviation security-related provisions of the 9/11 Commission. The House bill directly addresses the 9/11 Commission recommendation regarding enhancing passenger prescreening and making it a government-run function that exploits the integrated and consolidated terrorist watch lists. The Senate bill does not address this

recommendation directly, but contains several provisions that would allow air charter and aircraft rental companies to prescreen certain customers. Both the House and the Senate bills contain provisions that directly address the 9/11 Commission recommendation regarding detection of explosives on airline passengers. While the Senate bill contains language addressing the 9/11 Commission recommendation to expedite deployment of in-line baggage screening systems, the House bill does not. While an earlier House bill (H.R. 5121) from which the aviation security provisions in H.R. 10 were derived did contain language to increase funding for in-line baggage screening, this language was not included in H.R. 10. Both the House and the Senate bills contain provisions addressing the 9/11 Commission recommendation calling for the Transportation Security Administration (TSA) to intensify its efforts to identify, screen, and track air cargo shipments and both bills contain provisions to study the feasibility of the 9/11 Commission recommendation to deploy hardened cargo containers on passenger aircraft. The House bill specifically addresses the 9/11 Commission recommendation regarding strategic planning for transportation security, whereas the Senate bill does not. The House and Senate bills each contain numerous additional provisions for enhancing aviation security that were not addressed by the 9/11 Commission. The specific aviation-security related provisions of both bills are discussed in further detail below.

## House Provisions

The House bill contains numerous provisions that address all 9/11 Commission recommendations regarding aviation security, except for the recommendation for the TSA to expedite deployment of in-line baggage screening systems. The House bill also contains numerous miscellaneous provisions to enhance aviation security that were not addressed by the 9/11 Commission.

The House bill (Section 2171) would direct TSA to issue guidance for the use of biometrics in airport access control systems and to establish a uniform travel credential for law enforcement officers that incorporates biometrics. The 9/11 Commission report mentioned biometrics technology in the context of secure travel documents but not specifically with respect to aviation security.

The House bill contains a provision (Section 2172) that would require the Department of Homeland Security (DHS) to prepare and update a transportation security plan and specific security plans for each transportation mode including aviation. The House bill specifies that the modal security plan for aviation should, at a minimum: set risk-based priorities; select the most practical and cost-effective methods for protecting aviation assets; assessing roles and missions to federal, state, regional, and local authorities, and aviation stakeholders; establish a mitigation and recovery plan in the event of a terrorist attack; and establish a threat matrix identifying specific security layers implemented to protect against each identified threat. This directly addresses the recommendation of the 9/11 Commission to establish risk-based priorities for protecting transportation assets and based on this prioritization, select the most practical and cost effective plans and budgets for implementing means to defend transportation assets. The Commission further recommended that these plans should assign appropriate roles to federal, state, and local authorities, as well as to transportation industry stakeholders.

The House bill would require the TSA to begin testing of the next generation passenger prescreening system, referred to by the Administration as Secure Flight, by November 1, 2004 (see Section 2173). The bill further requires that the system be fully deployed, giving TSA direct responsibility for comparing passenger name records with lists of individuals that are to receive secondary screening or those that are to be denied boarding, within 180 days after the completion of system testing. The bill requires that the prescreening system ultimately rely on data contained within the larger integrated and consolidated terrorist watch list. This provision addresses the 9/11

Commission recommendation that the TSA expeditiously assume responsibility for passenger prescreening using the larger set of watch lists maintained by the federal government. The bill also requires airlines to begin providing passenger data for system implementation within 60 days of the completion of system testing. Implementation of passenger prescreening has been stymied by airlines' legal concerns regarding the provision of data, which led the 9/11 Commission to recommend that airlines be required to supply the information needed to test and implement passenger prescreening.

The House bill also incorporates a floor amendment, offered by Representative Mica, that would require prescreening of passengers on international flights to and from the United States against the consolidated and integrated terrorist watch list within 60 days after enactment. Administration plans are for the Bureau of Customs and Border Protection (CBP) to retain responsibility for comparing passenger names against terrorist watch lists on international flights, while the TSA will conduct prescreening on domestic flights. At present, passenger data on international flights to the United States is often not received by CBP until the flight has already departed.

The House bill contains a provision that would require the TSA to carry out a pilot program to evaluate the use of blast-resistant containers for carrying baggage and cargo on passenger airliners. The measure would authorize $2 million to carry out the pilot program and provides financial assistance to cover increased costs to air carriers as incentives to volunteer for the pilot program. The House bill would require the TSA to submit a report detailing the results of this pilot program within one year of enactment. This measure addresses the 9/11 Commission recommendation to deploy at least one hardened cargo container on every passenger aircraft that also hauls cargo to carry any suspicious cargo, but does not mandate such action beyond the pilot program evaluation of this recommendation.

The House bill contains a provision (Section 2176) that would require the TSA to develop technology to better identify, track, and screen air cargo. The 9/11 Commission noted that major vulnerabilities continue to exist in air cargo and recommended that the TSA intensify efforts to identify, track, and appropriately screen potentially dangerous cargo in both aviation and maritime transportation modes.

The 9/11 Commission recommended that the TSA and the Congress give priority to improving the ability of screening checkpoints to detect explosives on passengers. The 9/11 Commission recommended that, as a start, each individual selected for special screening should be screened for explosives. The House bill (Section 2174) would direct TSA to develop and deploy technology that can detect explosives and nonmetallic weapons on airline passengers or in their carry-on baggage. An existing TSA pilot program is evaluating portals and other technology for passenger explosives detection in several airports, but the technologies currently being evaluated do not detect either nonmetallic weapons or biological and radiological material. The House bill (Section 2174) also requires TSA to give Congress a strategic plan for deploying and using explosives detection equipment at airport screening checkpoints. Section 2177 of the House bill would establish a new "Checkpoint Screening Security Fund" that would be funded by aviation security fees at a level of $30 million per year in FY2005 and FY2006.

Section 2173 of the House bill would require the TSA to initiate a pilot program to test, integrate, and deploy next generation checkpoint screening technology at five or more airports. The provision also would require that human factors studies be conducted to improve screener performance as part of this program. This section addresses the 9/11 Commission recommendation that the TSA and Congress give priority to improving the ability to screen passengers for explosives and the recommendation that TSA conduct a human factors study to understand problems in screener performance and establish performance objectives for screeners and screening checkpoints.

The House bill also contains a provision (Section 2179) that would establish a civil penalty of up to $25,000 for each violation of requirements to keep the cockpit door secured during operation of a passenger aircraft. This provision also makes technical changes to enforcement of security-related civil offenses to place the authority for imposing fines and penalties for cockpit door violations and attempts to carry concealed dangerous weapons on board aircraft with the DHS instead of with the Department of Transportation (DOT).

A provision in the House bill (Section 2181) would require continued development and implementation of procedures to protect the identity of Federal Air Marshals by November 1, 2004. This provision was not recommended by the 9/11 Commission. However, media reports have indicated that air marshal identity may be compromised due to check-in procedures that take place in public view as well as dress code requirements that may be counter to maintaining a covert, undercover presence among airline passengers.

A provision of the House bill (Section 2181) would provide for training on in-flight counterterrorism procedures and tactics to be made available to federal law enforcement officers who fly while on duty. These officers are permitted to carry firearms in the aircraft cabin and could be a security asset in a hijacking or other security situation. However, these officers currently receive no formal specialized training on in-flight security and law enforcement. This measure is separate from ongoing efforts to cross-train customs and immigration officers to be federal air marshals thus providing a "surge" capacity to deploy additional air marshals during periods of heightened threat against aviation assets.

Section 2182 of the House bill would require TSA to implement a pilot program allowing Federal Flight Deck Officer (FFDO) program participants—deputized armed pilots—to carry their firearms on their persons when transiting to and from their cockpit assignments. Current procedures require armed pilots to keep their firearms secured in a locked box when outside of the cockpit and prohibit carriage of the weapon in the aircraft cabin when the pilot is being transported to or from his/her flight assignment.

Section 2183 of the House bill would require the TSA to expedite implementation of the registered traveler program, which is currently being tested in cooperation with airlines using volunteer frequent fliers at five major airports. The program allows passengers to voluntarily provide background information and biometric data so that their identity can be validated and vetted against terrorist watch lists. Program participants can then be exempted from additional screening requirements beyond the initial physical screening conducted at checkpoints. It is hoped that widespread implementation of this program can assist the TSA in allocating its limited resources by focusing secondary screening efforts more specifically on passengers who are of high risk or unknown risk, by more readily identifying passengers who are considered a low risk to aviation security.

Section 2814 of the House bill would require the TSA, in coordination with the Federal Aviation Administration (FAA), to study the viability of providing wireless technologies or other methods of discrete communications between the aircraft cabin and the cockpit for use in cases of security or safety concerns in the cabin. Despite language in the Homeland Security Act of 2002 (P.L. 107-296) that amended the Aviation and Transportation Security Act (ATSA; P.L. 107-71) to require that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilots, such technologies have not yet been deployed for this purpose. This provision specifically directs the TSA to consider readily available technologies in the study and to report on their findings within 180 days of enactment.

A provision (Section 2185) of the House bill would require the TSA to submit a report within six months of enactment regarding the costs and benefits and its recommendations regarding the use

of secondary flight deck barriers. While secondary flight deck barriers are not currently required, United Airlines has received TSA and FAA approval to begin installing a secondary barrier on some of its aircraft. The purpose of such a barrier is to provide a cockpit security during times when the hardened cockpit door is opened, such as for flight crew meal service or flight crew access to the aircraft lavatory.

Section 2186 of the House bill would extend authorization for appropriations of such sums as may be necessary for aviation security for one year, expiring at the end of FY2006. Under ATSA, authorization for aviation security-related activities is set to expire at the end of FY2005.

Finally, Section 2187 of the House bill would require the TSA to submit a report to Congress on airport perimeter security within 180 days of enactment. The report is to examine the feasibility of access control technologies and procedures, including the use of biometrics or other identification methods, best practices for perimeter access control techniques, and an assessment of the feasibility of screening all individuals entering airport secured areas and strengthening background checks for secured access areas.

## Senate Provisions

Like the House bill, the Senate bill considers many of the 9/11 Commission recommendations. However, the Senate bill contains no provisions addressing the 9/11 Commission recommendation pertaining to the deployment of hardened cargo containers on passenger aircraft. The Senate bill (S. 2845, Section 612) would authorize funding for the TSA to conduct research and development on applications of biometrics to aviation security.

The Senate bill contains provisions (Sections 602-604) that would require the DHS to establish procedures within one year of enactment under which charter operators or companies that rent aircraft weighing more than 12,500 pounds may provide the names of customers to the TSA for comparison against a comprehensive, consolidated database of known or suspected terrorists and their associates. After one year of experience with this system, the DHS is to provide a report detailing the feasibility, costs, and benefits of expanding this program to include customers who charter or rent aircraft weighing less than 12,500 pounds. These measures do not specifically address the 9/11 Commission recommendation regarding implementation of a new passenger prescreening system, because that recommendation specifically targeted the prescreening of airline passengers and did not consider or recommend expanding such a program to other aviation activities. However, the Senate bill contains separate provisions (Section 401(c) and Section 1120(b)) that address the airline passenger prescreening recommendation by requiring the DHS to report on the criteria for and standards for the accuracy in adding names to the consolidated terrorist watch lists and implement procedures for removing names erroneously placed on lists that are used to deny passengers boarding or subject them to additional screening measures.

Regarding the 9/11 Commission recommendation to improve measures to detect explosives on passengers, the Senate bill (Sections 608 and 1034) directs DHS to improve the capability of passenger screening checkpoints to detect explosives; requires that until all passengers can be screened for explosives, any individuals selected for additional screening shall be screened for explosives; authorizes funding for R&D on technology for detecting explosives and biological and radiological material; and directs TSA to establish a pilot program to evaluate portal screening systems and similar equipment at up to 10 airports. The Senate bill also requires DHS to give Congress a status report and assessment of additional needs regarding checkpoint explosives detection (Section 617) and a report on how it will achieve the objective of screening all passengers for explosives (Section 1034). Also, the Senate bill (Section 612) authorizes an

additional $20 million for research and development of biometric technology applications for aviation security and authorizes $1 million to establish centers of excellence in biometrics.

With regard to the 9/11 Commission recommendation to expedite in-line baggage screening systems at airports, a recommendation on which the House bill was silent, the Senate bill would authorize $150 million each year in fiscal years 2005-2007 to fund airport security projects that have received letters of intent (LOIs) and allow LOI reimbursements to span over a period not to exceed 10 years. LOIs are vehicles to commit future federal funding to airports for projects related to integrating baggage screening equipment into baggage handling systems. The Senate bill also contains provisions (Section 608) that would: require the DHS to establish a schedule to replace explosive trace detection systems with in-line explosive detection system equipment as soon as practicable where appropriate; authorizes an additional $100 million for research and development of next-generation Explosive Detection System (EDS) equipment; and require the DHS to develop a plan and guidelines for implementing improved EDS equipment.

The Senate bill contains extensive provisions (Title V) addressing the 9/11 Commission recommendation for the TSA to intensify efforts to identify, screen, and track air cargo. Specifically, the Senate bill would require the screening, inspection, or implementation of other means to ensure the security of cargo transported in passenger and all-cargo aircraft. It would also require the DHS to develop a strategic plan for air cargo security. The Senate bill also mandates a pilot program for evaluating cargo screening measures. Under these provisions, the Senate bill requires implementation of a system for regular inspections of air cargo shipping facilities and allows the DHS to increase the number of inspectors to carry out these inspections. The Senate bill would require the creation of an industry-wide known-shipper database pilot program and would require the DHS to conduct random audits and inspections of security at freight forwarder (indirect air carrier) facilities and ensure compliance with security standards. The measure would also require the DHS to implement a security program for all-cargo operators covering: security of the cargo operations and acceptance areas; access to aircraft; and security of cargo shipments. Under this program, background checks would be required for all employees accessing the air operations area, and flight crews and persons carried aboard all-cargo aircraft would be screened.

Another provision of the Senate bill (Section 606) would authorize an additional $200 million each year in fiscal years 2005-2007 for improving cargo security on passenger and all-cargo aircraft, establish a grant program for next-generation air cargo security technology and authorize $100 million each year in fiscal years 2005-2007 for this purpose. The Senate bill (Section 607) would also require the DHS, in consultation with the DOT, to develop and implement a plan for cargo security for passenger and all-cargo operations based on the recommendations of the Cargo Security Working Group of the Aviation Security Advisory Committee, a stakeholder advisory group to TSA. This measure would also require the TSA to promulgate regulations to evaluate freight forwarders (indirect air carriers) and ground handling agents, including background checks and terrorist watch list checks of employees of these organizations. The provisions would require the TSA to evaluate the increased use of canine teams to inspect air cargo including targeted inspections of high risk items, and double the amount of air cargo screened or inspected within 1 year of enactment as compared to levels at the end of FY2004. This section would also require the TSA, in coordination with the FAA, to require all-cargo aircraft to use a barrier, such as a hardened cockpit door, to prevent unauthorized access to the flight deck from a cargo compartment and would mandate the physical screening of all persons and their effects transported on all-cargo aircraft within one year of enactment. Finally, this section would require searches of all-cargo aircraft at the beginning of each day and that all-cargo aircraft be secured or sealed or access stairs removed when unattended.

The Senate bill also contains provisions designed to enhance the identification of flight crews and passengers. First, Section 601 would permit the DHS to implement a program using identification verification technologies, such as biometric scanners, for screening passengers. Second, Section 601 would require the FAA to develop tamper-resistant pilot credentials with photographs and other unique identifiers, such as biometrics, to validate the authenticity of the credential. The bill authorizes $50 million in FY2005 for creating the licensing system and authorizes the use of designees to carry out the task of issuing these new pilots licenses to aviators.

The Senate bill contains a provision (Section 605) that would require the DHS to develop standards for screener staffing addressing security needs and minimizing passenger delays at airports. The Senate bill contains numerous miscellaneous provisions that would:

- Require the DHS to report on the potential for cross-training of individuals who serve as air marshals and any need for contingency funding of air marshal operations and authorizes an additional $83 million in FY2005-FY2007 for air marshal deployment (Section 609);
- Require the DHS, in consultation with the DOT to report on the system to address claims related to baggage loss, damage, or theft attributable to baggage security measures and make recommendations to improve airline involvement in the baggage screening and handling process (Section 610);
- Require the DHS to report on its efforts to implement recommendations in GAO Report GAO-03-760 on homeland security information sharing. (Section 611)
- Authorize $100 million for airport perimeter security measures (Section 613);
- Require air carriers to offer bereavement fares to the public that, to the greatest extent possible, should be provided at the lowest fare offered by a carrier for a requested flight (Section 614);
- Require the TSA to review and revise its list of prohibited items and explicitly prohibits butane lighters to be carried by airline passengers (Section 615);
- Require the DHS to provide a classified report on the number and composition of the Federal Air Marshal Service (FAMS), the percentage of flights covered by FAMS, and attrition rate for FAMS (Section 618);
- Require the DHS to designate individuals whom air marshals should be required to identify themselves to and prohibit any procedures, rules, regulations, or guidelines from exposing the identity of an air marshal to anyone other than those designated (Section 619);
- Require funding assistance, subject to the availability of funds, for installing security cameras to deter theft from checked baggage that occurs in areas not open to public view and authorize appropriations of such sums as may be necessary for this purpose (Section 620); and
- Require the DHS to report on current telecommunications and information technology equipment and capabilities at TSA sites and provide an assessment of current and future telecommunications and information technology needs at these sites (Section 1110).

## Comments

Both the House and the Senate bills contain numerous provisions, many of which directly address 9/11 Commission recommendations and others which address other aviation security concerns not addressed in the 9/11 Commission report. The two bills are similar in regard to the manner in

which they address some 9/11 Commission recommendations. In particular, with regard to detecting explosives on passengers, the two bills contain many similar provisions. On other issues, the two bills differ significantly in their emphasis. For example, the House provisions on passenger prescreening lay out specific provisions to address the 9/11 Commissions concerns, whereas the focus of the Senate bill is to expand prescreening into other areas of aviation, like charter operations, which was not considered by the 9/11 Commission. On the other hand, with regard to air cargo security, the provisions in Senate bill are significantly more prescriptive and more focused on procedures to secure air cargo as compared to the House provision, which focuses very broadly on the development of technology to meet the 9/11 Commission recommendation of improving air cargo identification, tracking and screening. While the House bill contains specific provisions to address the 9/11 Commission recommendation to establish a strategic plan for aviation and transportation security, the Senate bill does not address this issue. The Senate bill also does not specifically address human factors issues at screening checkpoints, an issue of concern for the 9/11 Commission. However the House bill does contain a provision addressing this recommendation by including studies of human factors to improve screener performance in its provision for assessing next generation checkpoint screening equipment.

Both the House and the Senate bills contain numerous provisions addressing aviation security issues that were not addressed in 9/11 Commission recommendations. Both bills contain provisions to mitigate the threat of shoulder-fired missiles (MANPADS). However, while the House bill focuses more on international efforts to control the proliferation of these weapons, the Senate bill focuses more on the assessment of ongoing efforts to secure airports and evaluate the feasibility of using aircraft-based anti-missile systems. Both bills discuss methods to better conceal the identity of air marshals, but the Senate bill focuses more on means to enhance the presence of air marshals on U.S. flights, while the House bill focuses on provisions to train foreign air marshals for deployment on foreign airliners operating to and from the United States. In sum, the two bills differ significantly with regard to their aviation security provisions, however, these differing provisions appear to be largely complementary rather than competing or in conflict in their language.

## Other Matters

Prepared by Charles Doyle, Senior Specialist in American Public Law, CRS American Law Division

### Mechanisms for Improved Terrorist-Related Information Sharing

The 9/11 Commission's final report stressed the importance of mechanisms for improved terrorist-related information sharing within the Government. Congress has already expanded access to such information unearthed in the context of federal grand jury investigations. The Senate bill has no provisions similar to the House bill's grand jury expanded access section.

#### *House Provisions*

H.R. 10, §2191. H.R. 10 amends the grand jury secrecy rule to permit disclosure of grand jury material to foreign officials under circumstances comparable to those under which it is now available to state, local and tribal officials.

### *Comment*

It remains to be seen how the courts will respond to the use of the grand jury as an intelligence gathering device for foreign officials.

## Interoperable Law Enforcement and Intelligence Data System (Chimera)

Prepared by William Krouse, Analyst in Social Legislation, CRS Domestic Social Policy Division

### *Summary*

The 9/11 Commission recommended establishing a procedures for the Intelligence Community that would provide incentives for information sharing and restoring a better balance between security and shared knowledge. The Commission also called upon the President to lead a government-wide effort to overcome legal, policy, and technical issues to create a "trusted information network" to share vital intelligence among agencies charged with domestic security.

### *House Provisions*

Section 2192 of H.R. 10 would amend the Enhanced Border Security and Visa Reform Act of 2002 (P.L. 107-173; 116 Stat. 548) to establish new deadlines for an interoperable law enforcement and intelligence data system—also known as the "Chimera system—that would permit automated data exchange, by connecting the data systems operated independently by the intelligence community and the proposed National Counterterrorism Center. This provision would require the National Intelligence Director to establish an interim system within one year of enactment, and a fully functional system that incorporates the best available biometric identification and linguistic capabilities by September 11, 2007 within the National Counterterrorism Center. The purpose of this system would be to provide intelligence officers, federal law enforcement officers, counterterrorism officials, and consular officers with the best available information to identify terrorists, and organizations and individuals that support terrorism.

### *Senate Provisions*

In regard to interoperable data systems, S.Amdt. 3807 to S. 2845 offered by Senators McCain and Lieberman includes language that would also amend P.L. 107-173. This language—included under the section dealing with a "Biometric Entry and Exit Data System"—would require the Secretary of Homeland Security to implement an interoperable electronic data system within 2 years of enactment that would provide federal law enforcement agencies and the intelligence community with the relevant information to determine whether an alien is (1) eligible for a visa, (2) admissible to the United States, or (3) deportable from the United States.

### *Comments*

There is significant divergence in the House and Senate provisions. The House provision envisions an interoperable computer-based system that could be considered a "trusted information network," as recommended by the 9/11 Commission; while the Senate provision envisions a biometric entry/exit control system that would be integrated with other immigration computer systems and databases that include data pertinent to determining an alien's legal status.

## Improvement of FBI's Intelligence Capabilities

Prepared by Todd Masse, Specialist in Domestic Intelligence and Counterterrorism, CRS Domestic Social Policy Division

The major provisions of this title, in both H.R. 10, section 2193, and S. 2845, section 203-205, relate to the establishment within the Federal Bureau of Investigation (FBI) of an Intelligence Directorate and a professional intelligence workforce. Like the 9/11 Commission's finding that the FBI develop "...an institutional culture imbued with a deep expertise in intelligence and national security," both bills recommend that the FBI institutionalize its ability to prevent, pre-empt and disrupt terrorist threats.

## Structure—Establishment of an Intelligence Directorate

H.R. 10, Section 2193, would codify within the FBI the existence of an "Intelligence Directorate" which would be responsible for: (1) the oversight of FBI field intelligence operations, (2) FBI human source development, (3) FBI collection against nationally-determined intelligence requirements, (4) language services, (5) strategic analysis, (6) intelligence program and budget management, and (7) the intelligence workforce. S. 2845, section 205, as amended, also would codify a Directorate of Intelligence within the FBI. Under this proposal, the existing Office of Intelligence at the FBI would be re-designated as the Directorate of Intelligence. The Directorate of Intelligence would be responsible for: (1) supervising all the national intelligence programs at the FBI, (2) oversight of the FBI's field intelligence operations, (3) coordinating human source development and intelligence collection by the FBI against nationally determined intelligence requirements, (4) strategic analysis, (5) the intelligence workforce, and (6) intelligence budget and program management.

The differences between these two provisions are: (1) degree of specificity, e.g., S. 2845, section 206, specifies that the existing Office of Intelligence is re-designated as the Directorate of Intelligence, while H.R. 10, section 2193, does not.

## National Security Workforce

H.R. 10, Section 2193, provides for the establishment of a "...specialized, integrated intelligence cadre composed of Special Agents, analysts, linguists, and surveillance specialists in a manner which creates and sustains within the FBI a workforce with substantial expertise in, and commitment to, the intelligence mission of the FBI." S. 2845, section 203, recommends the FBI continue efforts to develop and maintain within the Bureau a national security workforce. Under the Senate bill, the workforce should consist of agents, analysts, linguists, and surveillance specialists—recruited, trained, and rewarded in a manner which ensures the existence within the FBI of an institutional culture with substantial expertise in the intelligence and national security missions of the FBI. These proposals are fairly consistent.

In regards to *personnel recruitment*, H.R. 10, section 2193, provides that the FBI enhance its ability to recruit individuals with educational and professional backgrounds in intelligence, international relations, language, technology, and other skills relevant to the intelligence mission of the FBI. S. 2845, section 203, provides that the FBI recruit and retain individuals with backgrounds in intelligence, international relations, language, technology, and other skills relevant to the intelligence and national security missions of the FBI. These are essentially identical proposals.

With respect to *intelligence training and intelligence officer certification*, H.R. 10, section 2193, requires: (1) establishing intelligence cadre requirements for training; career development and

certification; recruitment, hiring and selection practices that attract highly qualified individuals; integrating field intelligence teams; and senior level field management; (2) all Special Agents and analysts employed by the FBI receive "...basic training in both criminal justice matters and intelligence matters...."; (3) establishing intelligence officer certification requirements; and (4) "...requirements for training courses and assignments to other intelligence, national security, or homeland security components...." in order to advance to senior operational management positions in the FBI. S. 2845, section 203, provides: (1) each agent employed by the FBI receive basic training in both criminal justice matters and national security matters, and (2) each senior manager of the FBI shall be a certified intelligence officer.

In regards to intelligence *career paths*, H.R. 10, section 2193, recommends that: (1) early in their career all Special Agents be given an opportunity to have "meaningful assignments" in criminal justice and intelligence matters; (2) Special Agents who specialize in intelligence matters be "...afforded the opportunity to work on intelligence matters over the remainder of their career with the FBI...;" (3) FBI analysts be afforded with "...training and career opportunities commensurate with the training and career opportunities afforded analysts in other departments of the intelligence community." S. 2845, section 205, has very similar, if not identical, language with respect to this issue. One unique element of S. 2845, section 205, is the proposed establishment of an FBI "Intelligence Career Service." This would allow the FBI, in consultation with the Office of Personnel Management, to "...establish positions for intelligence analysts without regard to chapter 51 of title 5, United States Code.

There is a high degree of consistency between H.R. 10, section 2193, and S. 2845, section 205, with respect to the establishment within the FBI of a national security workforce. However, while title V (sections 5051 -5054) of H.R. 10 addresses certain personnel and pay issues associated with the FBI, it does not specifically include relief from the pay provisions of title 5, U.S. Code for FBI intelligence analysts (GS-132 series). With respect to intelligence officer certification, S. 2845, section 204, defines the senior FBI operational officials who would be required to be certified as "...each Operational Manager at the Section Chief and Assistant Special Agent in Charge (ASAC) level and above...." H.R. 10, section 2193, proposes that intelligence officer certification be required for advancement to "...senior operational management positions within the FBI...."

## Intelligence Program Performance Measurements

H.R. 10 requires the production of intelligence that is responsive to national intelligence requirements and priorities, *including measures of the degree to which FBI headquarters and each FBI field component is collecting and providing such intelligence* (emphasis added). S. 2845, Section 203, does not include similar language.

## Budget Issues

H.R. 10, section 2193, and S. 2845, section 203, have nearly identical language requiring that the FBI modify the structure of its budget to reflect the FBI's four main programs—Intelligence, Counterterrorism and Counterintelligence, Criminal enterprise/Federal crimes, and Criminal justice services.

## Field Issues

H.R. 10 provides that each FBI field office have an official at the level of Assistant Special Agent in Charge or higher with responsibility for the FBI field intelligence component, and calls for the expansion of special compartmented information facilities (secure space) in FBI field offices, as

necessary. Both bills call for the integration of analysts, agents, linguists, and surveillance personnel in the field.

## Police Badges

Prepared by Charles Doyle, Senior Specialist in American Public Law, CRS American Law Division

The 9/11 Commission's final report recommended that "secure identification should begin in the United States." The Senate bill is silent on the question of police badges.

### House Provisions

H.R. 10, §§2201-2202. Existing federal law outlaws unauthorized possession of police badges or counterfeit badges that have been transported in commerce. The House bill eliminates the decorative and general recreational exceptions to the federal prohibition.

### Comment

Exceptions for theatrical and collection purposes would remain in place.

## Railroad Carriers and Mass Transportation Protection Act

Prepared by Charles Doyle, Senior Specialist in American Public Law, CRS American Law Division

Neither the 9/11 Commission's final report nor the Senate bill appear to have addressed this matter.

### House Provisions

H.R. 10, §§2301-2302. H.R. 10 merges the section which outlaws wrecking trains with that which outlaws terrorist attacks on mass transit.

### Comment

The bill adopts uniformly the more generous jurisdiction and more serious penalties from whichever section now features them.

## Weapons of Mass Destruction—Terrorist Access Prevention

Prepared by Charles Doyle, Senior Specialist in American Public Law, CRS American Law Division

The 9/11 Commission's final report noted al Qaeda's efforts to acquire weapons of mass destruction and recommended strengthening counterproliferation efforts in the international arena. The House bill expands the proscription against effort to acquire or produce weapons of mass destruction. There are no comparable provisions in the Senate bill.

### House Provisions

H.R. 10, §§2401-2411. Subtitle K consists of eight substantive sections. Four new crimes that increase the penalties and jurisdictional reach of existing bans relating to the production, traffic

in, and use as weapons of anti-aircraft missiles, atomic weapons, radiological dispersal devices, and smallpox virus. All four crimes are punishable by death or life imprisonment if death results from the commission of the offense; by imprisonment for life if the offense involves the use, attempted use, conspiracy to use, or threat to use such weapons; and by imprisonment for not less than 30 years in all other cases. For all four crimes, there is federal jurisdiction over the offense when it occurs in or affects interstate or foreign commerce, when it is committed by or against an American overseas, or when it is committed against federal property no matter where the property is located. The subtitle then adds each of these four new crimes to the wiretapping and money laundering predicate offense list, to the list of federal crimes of terrorism, and to the export license screening list.

### Comment

Existing law criminalizes much of the same conduct, but in many instances punishes it more leniently. The impact of inclusion of the new crimes on the various predicate and screening lists is confined to the relatively limited instances where the misconduct is not already a crime. The relationship between subtitle K and subtitle D (weapons of mass destruction prohibition improvement) is not clear.

## Terrorist Penalties Enhancement Act

Prepared by Charles Doyle, Senior Specialist in American Public Law, CRS American Law Division

Neither the 9/11 Commission's final report nor the Senate bill mention capital punishment. Similar provisions have been reported by the House Judiciary Committee, H.Rept. 108-588 (2004).

### House Provisions

H.R. 10, §§2501-2503. The House bill provides capital punishment as a sanction for those existing death-causing terrorist offenses that do not already carry the death penalty. It also denies convicted terrorists the benefits of certain federal programs and makes commission of a terrorist offense an aggravating factor for capital punishment purposes. Finally, it makes the 1994 capital punishment procedures retroactively available to cases of air piracy committed after establishment of earlier, now-repealed air piracy capital punishment procedures.

## Pretrial Detention and Postrelease Supervision of Terrorists

Prepared by Charles Doyle, Senior Specialist in American Public Law, CRS American Law Division

Neither the 9/11 Commission's final report nor the Senate bill speak of preventive detention or supervision of terrorists following imprisonment.

### House Provisions

H.R. 10, §§2601-2603. H.R. 10 adds federal crimes of terrorism to the list of federal crimes that may warrant pretrial detention and authorizes the life-long supervision of convicted terrorists following their release from prison regardless of whether their crime involved a risk injury (as is now required for life-long supervision).

# Title III: Border Security and Terrorist Travel

## Immigration Reform

Prepared by Michael John Garcia, Legislative Attorney, CRS American Law Division and Ruth Ellen Wasem, Specialist in Social Legislation, CRS Domestic Social Policy Division

### Overview

The 9/11 Commission's immigration-related recommendations focused primarily on targeting terrorist travel through an intelligence and security strategy based on reliable identification systems and effective, integrated information-sharing. As Congress has considered these recommendations, however, possible legislative responses have broadened to include changes in the substantive law governing immigration and how that law is enforced, both at the border and in the interior of the United States. Subtitle A, Title III of H.R. 10, entitled "Immigration Reform in the National Interest," includes provisions on a variety of immigration-related subjects, ranging from making certain immigration and travel-related document requirements more stringent, to increasing the allocation of personnel devoted to enforcing immigration laws at the border and inside the United States, to expanding the scope of terror-related activity making an alien inadmissible or deportable. S. 2845 generally lacks such provisions. [For additional background, see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion and Removal of Aliens*, by Michael John Garcia and Ruth Ellen Wasem; CRS Report RL32276, *The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens*, by Michael John Garcia; and CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.]

### Document Requirements Relating to International Travel and Immigration Identification

H.R. 10 and S. 2845 contain a number of provisions relating to improving the security of identification documents. H.R. 10 also includes certain measures in the context of "immigration reform" that would make certain document requirements relating to international travel and immigration identification more stringent, especially as it pertains to documentary requirements currently waived in § 214(d)(4) of INA. S. 2845 does not have identical provisions, but does address similar concerns.

#### *House Bill*

H.R. 10 would make certain documentary requirements relating to the entry and exit of persons from the United States more stringent. One provision would limit the President's ability to waive general statutory requirements requiring U.S. citizens traveling abroad or attempting to enter the United States to bear a valid U.S. passport, so that such a waiver could only be exercised with respect to U.S. citizens traveling to or from foreign contiguous territories who were also bearing identification documents designated by DHS as (1) reliable proof of U.S. citizenship, and (2) of a type that may not be issued to an unlawfully present alien within the United States [H.R. 10, § 3001]. Another provision would limit the authority to waive identification document requirements of foreign nationals entering from foreign contiguous territories or adjacent islands, so that such waivers could be issued on the basis of reciprocity and only to those aliens who were carrying identification documents deemed to be secure by the Secretary of Homeland Security [H.R. 10, § 3002].

Additionally, H.R. 10 would require that for purposes of establishing his or her identity to any federal employee, an alien present in the United States may only present either (1) any document issued by the Attorney General or Secretary of Homeland Security under the authority of an immigration law, or (2) an unexpired, lawfully issued foreign passport [H.R. 10, § 3006].

### *Senate Bill*

S. 2845 would require the Secretary of State, in consultation with DHS, expeditiously to develop and implement a plan for the use of biometric passports. This plan would require U.S. citizens and foreign nationals from contiguous territories or adjacent islands (i.e., aliens currently waived in § 214(d)(4) of INA) to present biometric passports, or some other type of secure biometric travel document, for travel into the United States. [S. 2845, Section 1024]

## Additional Allocation of Personnel Enforcing Immigration Laws at or Within the U.S. Border and Detention Space

H.R. 10 and S. 2845 both provide for the additional allocation of resources to ensure the enforcement of immigration laws. Both bills include provisions to increase the number of personnel enforcing immigration laws at or within the U.S. border, and H.R. 10 also provides for an increase in bed space at immigration detention centers.

### *House Bill*

H.R. 10 would also require the Secretary of Homeland Security to increase the number of personnel enforcing immigration laws at or within the U.S. border. H.R. 10 would require the Secretary of Homeland Security to increase the number of full-time active-duty border patrol agents by not less than 2,000 above the number of positions for which funds were allotted for the preceding fiscal year, for each year FY2006-FY2010 H.R. 10, § 3003]. H.R. 10 would also require an increase in the number of positions for full-time active-duty investigators of immigration law violations by not less than 800 above the number of positions for which funds were allotted for the preceding fiscal year, for each year FY2006-FY2010 [H.R. 10 would also direct the Secretary of Homeland Security to increase Detention and Removal Operations (DRO) bed space for FY2006 and FY2007 by 2,500 beds each year [H.R. 10, § 3005].

### *Senate Bill*

S. 2845 would require the Secretary of Homeland Security to increase the number of full-time active-duty border patrol agents by not less than 1,000 above the number of positions for which funds were allotted for the preceding fiscal year, for each year FY2006-FY2010 [S. 2845, Section 702]. It further specifies that at least 20 percent of such agents must be assigned to the northern border of the United States. Like H.R. 10, S. 2845 would require an increase in the number of positions for full-time active-duty investigators of immigration law violations by not less than 800 above the number of positions for which funds were allotted for the preceding fiscal year, for each year FY2006-FY2010 [S. 2845, Section 703]. S. 2845 does not include a provision for an increase in DRO detention bed space.

## Expanding Grounds for Alien Exclusion and Removal, and Limiting Relief from Removal

A primary area of difference between H.R. 10 and S. 2845 concerns grounds for alien exclusion, removal, and relief from removal, as only H.R. 10 deals extensively with these areas.

### *House Bill*

H.R. 10 would expand the grounds for alien exclusion and removal, particularly as such grounds relate to terrorist activity. It would expand the terror-related grounds for inadmissibility and deportability to include additional activities, such as receiving military-type training by or on behalf of a terrorist organization [H.R. 10, §§ 3034-35]. It would also deny such aliens relief from removal to a particular country on account of a well-founded fear of persecution [H.R. 10, § 3031], though such aliens could still have their removal withheld or deferred if they were more likely than not to face torture if removed, pursuant to regulations implementing the U.N. Convention Against Torture. H.R. 10 would also establish more stringent standards for asylum applicants accused by their home countries of being involved in terrorist or guerrilla-related activities (applicants who may not necessarily be inadmissible or deportable on terror-related grounds), by requiring such applicants to demonstrate that their race, religion, nationality, membership in a particular social group, or political opinion was or will be *a central reason* for their persecution if removed [H.R. 10, § 3008].

H.R. 10 would also affect the ability of certain other classes of aliens to enter or remain in the United States. Aliens who have committed, ordered, assisted, incited, or otherwise participated in genocide, acts of torture or extrajudicial killings abroad, as well as aliens who have committed particularly severe violations of religious freedom while serving as foreign government officials, would be designated as inadmissible and deportable [H.R. 10, §§ 3121-22]. Further, H.R. 10 would significantly expand the class of aliens arriving in the United States subject to expedited removal without further hearing or review, by increasing from two years to five years the prior continuous U.S. physical presence required for exemption from such removal (such aliens could still seek asylum, however) [H.R. 10, § 3007].

H.R. 10 would amend the INA to add revocation of visas to the grounds of deportation, making the alien subject to the visa revocation immediately removable. It would clarify that the Secretary of Homeland Security, not the Attorney General, also has authority to revoke approval of visa petitions [H.R. 10, § 3009].

H.R. 10 would also eliminate habeas review and other non-direct judicial review for certain removal or visa revocation decisions, and clarify that in all immigration provisions restricting judicial review, such restrictions include habeas and other non-direct review, but that such restrictions do not preclude federal appellate court consideration of constitutional claims or other purely legal issues raised in accordance with current statutory procedures [H.R. 10, §§ 3009-10].

H.R. 10 would also provide the Secretary of Homeland Security with increased discretion as to the detention and removal of certain aliens. H.R. 10 provides that an alien may be removed to his country of citizenship, residence, or birth, unless (1) the country physically prevents the alien from entering the country, or (2) the alien's removal to the country would be prejudicial to the United States [H.R. 10, § 3033]. If an alien's removal to a particular country would be prejudicial, the Secretary of Homeland Security is given broad discretion as to where to transfer an alien [H.R. 10, § 3033]. The Secretary of Homeland Security is also provided with the authority to indefinitely detain aliens ordered removed (pending removal) who are deemed to be a danger to the community or national security of the United States, subject to review every six months by the Secretary [H.R. 10, § 3032].

### *Senate Bill*

S. 2845 does not contain any similar provisions relating to the exclusion and removal of aliens.

### Preventing Alien Smuggling

H.R. 10 would amend section 274 of the Immigration and Nationality Act (INA), which criminalizes conduct relating to the smuggling of aliens. S. 2845 does not contain a similar provision.

#### *House Bill*

H.R. 10 would raise the criminal penalty for acts prohibited by INA section 274 if (1) the offense was part of an ongoing commercial organization or enterprise; (2) the aliens were transported in groups of 10 or more; (3) the aliens were transported in a manner that endangered their lives; or (4) the aliens presented a life-threatening health risk to people in the United States [H.R. 10, § 3041].

#### *Senate Bill*

S. 2845 does not contain a similar provision.

## Identity Management Security

Prepared by Todd Tatelman, Legislative Attorney, CRS American Law Division

### Improved Security for Drivers' Licenses and Personal Identification Cards

The 9/11 Commission's final report recommended that "the federal government should set standards for the issuance of birth certificates, and sources of identification, such as drivers' licenses." Specifically noting the rising problem of identification fraud, the Commission concluded that "sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists."

#### *House Provisions, H.R. 10 §§3051-3060*

The House language establishes minimum document requirements, verification and issuance standards for acceptance by a federal agency. The House bill includes a requirement that drivers' licenses or identification cards contain specific information, features designed to prevent tampering, and have common machine-readable technology. States would be required to verify with the issuing agency the issuance, validity and completeness of any presented documents, as well as verify an individual's legal presence in the United States. In addition, to have these documents accepted by federal agencies states would be required to adopt procedures and practices to ensure that they meet the requirements of this section. The House bill also authorizes that grant funding be made available to the states. To be eligible for these grants, however, the state must agree to participate in an interstate compact regarding the electronic sharing of driver license data.

#### *Senate Provisions, S. 2845 Section 1027*

The Senate language would require the Secretary of Transportation, in consultation with the Secretary of Homeland Security, to establish minimum documentation, verification, processing and security standards for drivers' licenses or personal identification cards for acceptance by federal agencies. In addition, the regulations are to require states to confiscate a driver's license or personal identification card if any component or security feature is compromised. Finally, the

regulations are required to contain procedures designed to protect the privacy and civil rights of applicants for drivers' licenses and identification cards.

### *Comments*

While both versions of the bill attempt to address the problem of identification fraud identified by the 9/11 Commission, it appears that the House of Representatives has opted to legislate specific requirements leaving little room for agency discretion. The Senate, on the other hand, has chosen to mandate regulation, but has provided federal agencies broader discretionary authority to address the various concerns identified in the statutory language.

## Improved Security for Birth Certificates

### *House Provisions, H.R. 10 §§3061-3067*

Similar to the drivers' license provisions, the House bill establishes minimum document, issuance, and verification standards for federal recognition. In addition, the House bill will also require states to establish minimum building security standards for both state and local vital records offices, implement other security and privacy protection measures, and create a common database and exchange protocol for electronic birth and death registration systems. The House bill also authorizes that grant funding be made available to the states.

### *Senate Provisions, S. 2845, Section 1026*

The Senate has chosen to direct the Secretary of Health and Human Services to issue regulations establishing minimum standards for birth certificates to be accepted by federal agencies for official purposes. The regulations are to include features designed to prevent tampering, counterfeiting, or other unauthorized duplications for fraudulent purposes. In addition, the regulations are required to establish requirements for both proof and verification of identity, and may not require that a single national design be utilized.

### *Comments*

Similar to the drivers' license provisions, the House has opted to legislate specific requirements leaving little room for agency discretion, while the Senate has mandated regulation, but has provided federal agencies with broader discretionary authority.

## Measures to Enhance Privacy and Integrity of Social Security Account Numbers

### *House Provisions, H.R. 10 §§3071-3076*

The House bill essentially addresses this issue in three ways. First, the bill specifically prohibits the states or their political subdivisions from displaying, electronically or otherwise, a social security number, (or any derivative of such number) on any driver's license or motor vehicle registration, or on any other document issued by states to an individual for identification. Second, the bill requires the Commissioner of Social Security to promulgate a number of regulations with respect to the system for issuing social security numbers. Finally, the bill contains a number of provisions requiring the submission to Congress of reports and recommendations.

### *Senate Provisions, S. 2845, Section 1028*

Like the House bill, the Senate bill requires the Commissioner of Social Security to issue regulations restricting the issuance of multiple replacement cards to minimize fraud and requiring independent verification of all records provided by applicants for social security numbers other than enumeration at birth. However, unlike the House bill, the Senate requires the Commissioner to add death, fraud, and work authorization indicators to the social security number verification system, and provides for the establishment of an interagency task force to further improve the security of social security cards and numbers. In addition, the Senate bill does not appear to contain any of the reporting or recommendations provisions included in the House bill.

## Targeting Terrorist Travel—Border Controls

Prepared by Blas Nuñez-Neto, Analyst in Social Legislation, CRS Domestic Social Policy Division, Ruth Ellen Wasem, Specialist in Social Legislation, CRS Domestic Social Policy Division, Stephen Vina, Legislative Attorney, CRS American Law Division, and Lisa M. Seghetti, Analyst in Social Legislation, Domestic Social Policy Division

### Overview

Actions to identify and intercept terrorists who are attempting to enter or leave the United States are a key component of the 9/11 Commission's recommendations. In 1996, Congress required the development of an automated entry and exit data system to track the arrival and departure of aliens, but such a system has yet to be fully implemented. Following the 9/11 terrorist attacks, Congress enacted additional measures, including the USA PATRIOT Act (P.L. 107-56) and the Enhanced Border Security and Visa Reform Act of 2002 (P.L. 107-173), to encourage the more expeditious development of an automated entry and exit data system, and to further require that biometric identifiers be used in passports, visas, and other travel documents to improve their security. The 9/11 Commission report called for expeditious implementation of the US-VISIT program and recommended consolidating border screening systems, including frequent traveler programs, with the US-VISIT system. At the same time (1996) Congress enacted provisions for an automated entry and exit data system, it also required the implementation of a pre-inspection program at selected locations overseas under which immigration officers inspect aliens before their final departure to the United States, and authorized assistance to air carriers at selected foreign airports to help in the detection of fraudulent documents. A number of proposals have been made to improve the accurate monitoring of persons entering and exiting the United States. [For further discussion of these topics, see CRS Report RL32399, *Border Security: Inspections Practices, Policies, and Issues*, by Ruth Ellen Wasem et al.; CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program*, by Lisa M. Seghetti and Stephen R. Vina; and CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.]

### Visa Processing and Issuances

Both bills would increase the number of consular officers by 150 over the preceding year, annually FY2006 through FY2009. Both bills also have provisions aimed at improving the security of the visa issuance process by providing consular officers and immigration inspectors greater training in detecting terrorist indicators, terrorist travel patterns and fraudulent documents [H.R. 10, Section 3084, S. 2845, Section 701].

### *House Bill*

H.R. 10 would clarify that all nonimmigrant visa applications are reviewed and adjudicated by a consular officer [H.R. 10, § 3084] and would establish an Office of Visa and Passport Security within the State Department to develop a strategic plan to disrupt the operations of individuals and organizations engaged in travel document fraud, and would station anti-fraud specialists at consular posts overseas. This strategic plan would emphasize individuals and organizations that may have links to domestic terrorist organizations or foreign terrorist organizations as defined by INA. This office also would analyze methods used by terrorists to travel internationally, particularly the use of false or altered travel documents to illegally enter foreign countries and the United States, and advise the Bureau of Consular Affairs on changes to the visa issuance process that could combat such methods, including the introduction of new technologies. [H.R. 10, § 3092].

### *Senate Bill*

S. 2845 (Section 1024) would require the Secretary of State to suspend the "transit without visa" program until the Secretary, in consultation with DHS, ensures that a security plan for the transit passage areas are completely implemented . S. 2845 would narrow the authority to waive the personal interview for nonimmigrant visas to children under age 12, persons 65 years or older, diplomats and representatives of international organizations, aliens who are renewing a visa they obtained within the prior 12 months, and individual cases for whom a waiver is warranted for national interest or unusual circumstances (as determined by the Secretary of State) [S. 2845, Section 801]. S. 2845 would require that each Visa Waiver Program (VWP) country, as a condition of being in the VWP, have a program to issue tamper-resident, machine readable visa documents that incorporate biometric identifiers which are compatible with the biometric identifiers used in the US-VISIT program [S. 2845, Section 1117].

## Inspections at Foreign Airports

A difference between the House and Senate bills concerns the expansion of the pre-inspections program and the Immigration Security Initiative at foreign airports.

### *House Bill*

H.R. 10 would direct the Secretary of DHS, in consultation with the Secretary of State, to expand the preinspection program at foreign airports from five airports to at least 15 and up to 25 airports by January 1, 2008, and submit a report on the progress of the expansion by June 30, 2006. The bill would also change the language regarding the criteria on where pre-inspections stations should be located by adding "*number of inadmissible aliens, especially aliens who are potential terrorists*." It would also authorize appropriations to implement this subsection. [H.R. 10, § 3082]

H.R. 10 would direct the Secretary of DHS to expand the Immigration Security Initiative (ISI), which places Bureau of Customs and Border Protection (CBP) agents at foreign airports to prevent people identified as national security threats from entering the country. The act calls for at least 50 airports to participate in program by December 31, 2006 and authorizes appropriations. [H.R. 10, § 3083]

### *Senate Bill*

S. 2845 would similarly direct the Secretary of DHS, in consultation with the Secretary of State, to expand the pre-inspection program at foreign airports to at least 25 airports by January 1, 2008.

The bill would require the additional preinspections site to be in addition to those established prior to September 30, 1996. [S. 2845, Section 1025]

S. 2845 does not include a provision relating to the Immigration Security Initiative.

## Criminalizing False Claim to Citizenship

Criminalizing of false claims to United States Citizenship is another difference between the House and Senate bills.

### *House Bill*

H.R. 10 would criminalize false claim to citizenship in order to enter or remain in the United States by modifying the United States Code to make false claims liable to a fine and a maximum prison sentence of five years [H.R. 10, § 3086].

### *Senate Bill*

S. 2845 includes no provisions relating to criminalizing false claims to citizenship.

## Biometric Entry/Exit Data System

H.R. 10 appears to provide significantly more detail on training requirements; information accessibility, accuracy, and standardization; and corrective actions for erroneous information: S. 2845 calls on the Secretary to establish guidelines on assuring accurate information and to create an appeals process regarding data contained in covered databases. S. 2845 appears to place additional requirements on the Secretary's report to Congress and the Secretary's review of the registered traveler program. S. 2845 requires that both the Secretary of DHS and the heads of agencies that have databases linked to the entry and exit system establish guidelines for collecting and removing data, instead of having the Secretary of DHS establish all guidelines, as H.R. 10 would. S. 2845 also requires the collection of biometric exit data for all individuals required to provide biometric information at entry, regardless of the port of entry used. H.R. 10 does not appear to have a similar provision.

### *House Bill*

H.R. 10 would require the Secretary of DHS to develop a plan to accelerate the full implementation of an automated biometric entry and exit data system (US-VISIT) and to submit a report to Congress on the plan. The bill would require the Secretary to integrate the system with databases maintained by the U.S. Citizenship and Immigration Service and certain other immigration benefits information maintained by other federal agencies. The bill also would require the Secretary to establish rules and guidelines for collecting and removing data in system and databases linked to it. H.R. 10 contains further provisions on the use, standardization, and accuracy of, and access to, information in the system. Other provisions address training officers who are to use the system and establishing a community outreach program. H.R. 10 would require DHS to create a centralized process through which the public can correct erroneous system information. H.R. 10 would require the Secretary to develop and implement a plan to expedite the processing of registered travelers through a single registered traveler program that can be integrated into the broader automated biometric entry and exit data system. [H.R. 10 § 3090]

### *Senate Bill*

Through Senate Amendment 3807, S. 2845 would require the Secretary of DHS to implement a plan for an automated biometric entry and exit data system, and report to Congress, in substantially the same fashion as H.R. 10 would, but there are certain differences, some of which are noted below. S. 2845 would require the Secretary to fully integrate all databases of selected DHS, DOJ, and DOS agencies that process information on aliens. S. 2845 also would require the creation of a registered traveler program much like the one in H.R. 10 and, like H.R. 10, require that it be integrated into the automated biometric entry and exit system. The Senate bill, however, sets explicit criteria so as to include as many participants as practicable in the registered traveler program. [S. 2845, Section 1022-1023]

## Analysis, Studies, Plans, and Agreements

Analysis and studies of terrorist travel as well as technologies useful in tracking terrorists are features of the both bills. In addition, they have planning requirements for technologies and documentary requirements aimed at terrorist travel.

### *House Bill*

H.R. 10 also would require the Comptroller General, the Secretary of State, and the Secretary of Homeland Security (each no later than May 31, 2005) to submit two studies. The studies shall examine the feasibility, cost, potential benefits, and relative importance to tracking and apprehending terrorists of: (1) requiring all foreign nationals to present machine-readable, tamper resistant passports that incorporate biometric and document authentication identifiers; and (2) creating a database containing information on the lifetime travel history of each foreign national or U.S. citizen who seeks to enter the United States, so that border and consular officers may determine a person's travel history by means other than a passport. The studies should also make recommendations on incentives that could be offered to foreign nations to participate in the initiatives. [H.R. 10 § 3081]

H.R. 10 would call on the President to lead efforts to track terrorists by supporting the drafting, adoption and implementation of international agreements to track and stop international travel by terrorists and criminals who use lost, stolen, or falsified documents. These agreements should include a system to share information on lost, stolen, and fraudulent passports, a real-time verification system to validate passports and travel documents with the issuing authorities, and the criminalization by countries of travel document fraud. The section also authorizes the United States to provide technical assistance to other nations to help them meet their obligations under this agreement. [H.R. 10 § 3088]

H.R. 10 would require the Secretary to submit a series of reports to Congress, including a report that details activities undertaken to develop the biometric entry and exit data system; a joint report with the Secretary of State on matters such as current infrastructure and staff at the relevant sites, the plan for enhanced database review at entry, and the number of suspected terrorists and criminal intercepted utilizing the biometric entry and exit data system, among other things; a report on the status of implementing the integrated databases and data systems as defined under current law; and an individual and joint (with other relevant agency heads) status report on compliance with this section [H.R. 10 § 3090].

H.R. 10 includes a sense of Congress that the United States should seek to enter into an international agreement to modernize and improve the standards for the translation of names into the Roman alphabet. [H.R. 10 § 3089]

### *Senate Bill*

S. 2845 would require the Secretary of DHS, in consultation with the Secretary of State, to submit a plan within 180 days on front line counter-terrorist travel technology and training for use by all border, immigration and consular officials. The plan is required to include the feasibility of using authentication technologies to screen every passport or entry document, a timetable need to acquire and deploy the authentication technologies, and a training program (developed with State) for border, immigration, and consular officials. [S. 2845, Section 1021]

## Terrorist Travel

Prepared by Blas Nuñez-Neto, Analyst in Social Legislation, CRS Domestic Social Policy Division and Ruth Ellen Wasem, Specialist in Social Legislation, CRS Domestic Social Policy

The coordination and dissemination of terrorist travel intelligence and operational information between the various federal agencies to better detect and interdict terrorists attempting to enter into the United States is an important theme of this legislative effort to implement the 9/11 Commission recommendations. Both bills include provisions concerning the collection and dissemination of information, the deployment of document authentication technology, and the training of front-line staff on terrorist travel techniques. While the Senate and House versions are relatively similar, the Senate bill goes into more detail about the processes and agencies involved in detecting terrorist travel, including placing emphasis on the interagency Human Smuggling and Trafficking Center, and granting security clearances to consular and immigration officials.

### House Bill

H.R. 10 would establish a terrorist travel program in the Department of Homeland Security (DHS) to analyze and utilize information and intelligence regarding terrorist travel tactics, patterns, trends, and practices; and disseminate that information to all front-line DHS personnel who are at ports of entry or between ports of entry, to immigration benefits offices, and, in coordination with the Secretary of State, to appropriate individuals at United States embassies and consulates. [H.R. 10, § 3101] DHS would also be directed to formulate a plan within 180 days of enactment to ensure that technologies that facilitate document authentication are deployed to all POE, consulates, and immigration benefit offices. All technologies acquired and deployed for this purpose should be interoperable with the systems currently in place. [H.R. 10, § 3104] The House-passed bill also would require the Secretary of DHS to review and evaluate the training currently provided to DHS personnel and, in consultation with the Secretary of State, relevant DOS personnel with respect to travel and identity documents, and techniques, patterns, and trends associated with terrorist travel. [H.R. 10, § 3102] The Secretary of DHS is also required to develop and implement a revised training program for border, immigration, and consular officials in order to teach such officials how to effectively detect, intercept, and disrupt terrorist travel. [H.R. 10, § 3103]

### Senate Bill

S. 2845 would require DHS to submit a strategy for combining terrorist travel intelligence, operations, and law enforcement into a cohesive effort to detect and intercept terrorists. The bill would require that strategy be developed in coordination with all federal agencies involved and address the collection, analysis, and dissemination of terrorist travel information as well as the operational and training requirements. The bill would require that the new procedures be integrated with all current efforts underway at POE, consular offices, and related law enforcement

activities. The amendment would also provide more resources for the interagency Human Smuggling and Trafficking Center, would provide each consular, POE, and immigrations benefit office with a counter-terrorist travel expert, and would grant security clearances to the appropriate consular and immigration officers. [S. 2845, Section 1021]

## Maritime Security Requirements

Prepared by John Frittelli, Specialist in Transportation, CRS Resources, Science, and Industry Division

### Overview

Under "Strategies for Aviation and Transportation Security" the 9/11 Commission recommended that the federal government identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing so, and then develop a plan, budget, and funding to implement the effort. The Commission recommended that the plan assign roles and missions to the relevant authorities (federal, state, regional, and local) and to private stakeholders. The Commission further noted that perfection is unattainable but that terrorists should perceive that potential targets are defended in order to deter them with a significant chance of failure. The Commission recommended that Congress set specific dates for the completion of these plans. The 9/11 Commission's recommendation for improving transportation security is essentially consistent with Sections 70102 and 70103 of the Maritime Transportation Security Act of 2002 (MTSA, P.L. 105-295), which was passed by Congress on November 25, 2002. However, these two sections of MTSA did not impose deadlines on DHS in carrying out the prescribed security planning activities.

### House Provisions

Section 3111 of H.R. 10 would impose a deadline of December 31, 2004 for DHS to carry out the security planning activities called for in sections 70102 and 70103 of MTSA. Specifically, it would require DHS to prepare a national maritime transportation security plan to deter and respond to a transportation security incident and for DHS to conduct a detailed vulnerability assessment of the port facilities and vessels that may pose a high risk of being involved in a transportation security incident. Section 3111 of H.R. 10 would impose the same deadline for DHS to prescribe regulations to prevent an individual from entering a secure area of a seaport or a vessel unless that individual held a transportation worker security card or was accompanied by someone who did hold a card. The development of a transportation worker security card was called for in section 70105 of MTSA.

### Senate Provisions

Like H.R. 10, S. 2845 would impose deadlines on DHS to complete certain maritime security activities. Section 1032 of S. 2845 would implement the 9/11 Commission's recommendation for all modes of transportation, including maritime transportation and would require the DHS, in consultation with DOT, to develop and implement a national strategy for transportation security by April 1, 2005. The strategy would identify assets that need protection, set risk-based priorities and realistic deadlines for protecting those assets, identify the most practical and cost-effective means of defending those assets, assign security roles to federal, state, and local governments, and establish mechanisms to encourage private sector cooperation and participation. Section 1114 of S. 2845 would impose additional deadlines on DHS for implementing various provisions in MTSA. It would impose a 90 day deadline after enactment of S. 2845 for a status report on the

National Maritime Transportation Security Plan, a deployment plan for the national transportation security card, a status report on negotiations to establish international standards for seafarer identification, a status report on developing performance standards for security seals and locks on shipping containers, a status report on a program to evaluate and certify secure systems of international intermodal transportation, as well as other status reports on other security plans and reports required by MTSA. Finally, Section 401 would establish a "watch list" for passengers and crews on cruise ships and S.Amdt. 3813 would add liquefied natural gas marine terminals to DHS's list of energy facilities requiring risk assessments and protective measures.

### Comments

Both H.R. 10 and S. 2845 impose an urgency on DHS's efforts in strengthening maritime security and thus impose deadlines on the agency in planning and carrying out certain maritime security activities that were called for in MTSA. In addition to the difference in deadline dates, the bills differ in that H.R. 10 is specific to maritime transportation whereas Section 1032 of S. 2845 refers to all modes of transportation in developing a national strategy. Also, with regard to imposing deadlines for the DHS on certain maritime security activities that were called for in MTSA, the deadline imposed in H.R. 10 is for completing those activities while the deadlines imposed in Section 11114 of S. 2845 are largely for a status report by DHS on those activities. Most of the deadlines in H.R. 10 and S. 2845 are for the DHS to submit a report or plan. The Under Secretary for Border and Transportation Security, Asa Hutchinson, in prepared testimony for a hearing by the Senate Committee on Commerce on August 16, 2004 stated that a national transportation security plan as called for by the 9/11 Commission was well underway and would be completed by TSA before the end of 2004. A more difficult deadline for DHS may be the December 31, 2004 House deadline for TSA to prescribe regulations for implementing the Transportation Worker Identification Card (TWIC). These cards are intended to limit access to sensitive areas within transportation facilities. TSA is currently testing a prototype of the card at several freight facilities. An unresolved issue is what might disqualify a transportation worker from acquiring a card. In reviewing background checks, section 70105 of MTSA gives the Secretary of DHS a certain amount of leeway in evaluating whether a worker is a terrorism security risk.

## Treatment of Aliens Who Commit Acts of Torture, Extrajudicial Killings, or Other Atrocities Abroad

Prepared by Michael John Garcia, Legislative Attorney, CRS American Law Division

### Overview

Subtitle F, Title III of H.R. 10, entitled "Treatment of Aliens Who Commit Acts of Torture, Extrajudicial Killings, or Other Atrocities Abroad" concerns the exclusion and removal of certain aliens involved in certain crimes prohibited under international humanitarian law. S. 2845 does not address this subject.

### House Bill

H.R. 10 would amend the grounds for alien inadmissibility and deportability to include (1) the ordering, incitement, assistance, or participation in conduct outside the United States that would, if committed in the United States or by a U.S. national, constitute genocide as defined by U.S. law and (2) the commission, ordering, incitement, assistance, or participation in acts of torture or

extrajudicial killings as defined by U.S. law. These amendments would apply to offenses committed before, on, or after the enactment of H.R. 10. However, aliens who have participated in torture or extrajudicial killings who are applying for temporary admission to the United States pursuant to a nonimmigrant visa could have their inadmissibility waived by the discretion of the Attorney General. Additionally, foreign government officials who have at any time committed particularly severe violations of religious freedom, as defined by 22 U.S.C. § 2402, would also be designated as inadmissible and deportable.

H.R. 10 would also make participation in genocide, assistance in Nazi persecution, or participation in torture or extrajudicial killings automatic grounds precluding the offending alien from being found to possess good moral character—a necessary requirement for naturalization. Aliens who, while serving as a foreign government official, committed particularly severe violations of religious freedom would also be precluded from being found to possess good moral character.

H.R. 10 would also require the Attorney General to establish within the Department of Justice an Office of Special Investigations with authority to investigate and prosecute any alien who participated in genocide, Nazi-related persecution, torture, or extrajudicial killings.

### Senate Bill

S. 2845 does not contain provisions similar to those described above.

## Security Barriers

Prepared by Blas Nuñez-Neto, Analyst in Social Legislation, CRS Domestic Social Policy Division

This section expands a fence that runs along the Southwest border with Mexico in California and waives certain environmental and cultural regulations.

### House Bill

The House bill extends by 14 miles a portion of fence along the Southwest border with Mexico in California in a region popularly known as Smuggler's Gulch. The bill provides the exact measurements for the fence, and makes its construction exempt from a wide range of Federal environmental, conservation, and cultural requirements including the Native American Graves Protection and Repatriation Act.

### Senate Bill

There is no comparable section in the Senate bill.

# Title IV: International Cooperation and Coordination

## Attack Terrorists and their Organizations

Prepared by Raphael Perl, Specialist in International Affairs, CRS Foreign Affairs, Defense, and Trade Division

### Overview

Attacking terrorists, terrorist sanctuaries, and terrorist organizations is a core recommendation of the 9/11 Commission.

### House Provisions

Title IV, Subtitle A of H.R. 10 contains three sections which address the issue of terrorist sanctuaries. They are:

Section 4001 which requires (1) identification and prioritization of countries that are terrorist sanctuaries; (2) assessment of resources provided these countries; (3) development of a coordinated strategy to respond to such sanctuary use; and, (4) both bilateral and multilateral response efforts.

Section 4002 which requires a report to Congress on the implementation of the measures contained in Section 4001.

Section 4003 which extends the sanctions provisions of Section 6 (j) of the Export Administration Act (primarily dealing with sales of military and dual technology) to countries with territory being used as terrorist sanctuaries. This puts into effect a certification process to exempt from sanctions countries that are cooperating to deal with the sanctuary problem.

### Senate Provisions

Sections 4001 and 4002 of H.R. 10 are mirrored in Sections 4001 and 4002 of S. 2845. Section 4003 of H.R. 10 does not appear in S. 2845.

### Comments

Section 4003 of H.R. 10 puts countries on notice that they must cooperate or face sanctions. It does not contain a “national interests” waiver. Such a waiver would address the issue of allies who may not be adequately cooperating with the United States, but whose support, nevertheless, may be perceived as necessary for overall U.S. security interests. Neither bill places any textual qualification on the standard of “cooperating,” such as “fully, reasonably, adequately, or in light of other legitimate national security concerns of the government in question.”

## Other Provisions (WMD Nonproliferation)

Steve Bowman, Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division

### Overview

These provisions are related to the recommendation of the 9/11 Commission to strengthen nonproliferation efforts regarding weapons of mass destruction.

### House Provisions

Title IV, Subtitle A, Chapter 2, Sec. 4011-12 direct the Arms Control and Nonproliferation Advisory Board vacancies be filled in consultation with the House International Relations Committee and the Senate Foreign Relations Committee. It further requires the Board to review current WMD nonproliferation and strategic arms control policies, and existing reporting requirements.

### Senate Provisions

S. 2845 contains no similar provision.

### Comments

Neither bill specifically addresses the two programs which the 9/11 Commission Report recommended strengthening: the Proliferation Security Initiative and the Cooperative Threat Reduction program.

## Prevent the Continued Growth of Terrorism

Prepared by Susan Epstein, Specialist in Foreign Policy and Trade, CRS Foreign Affairs, Defense, and Trade Division

### Overview

The 9/11 Commission Report expresses deep concerns about the United States government's lack of dialogue with the Arab and Muslim populations of the world. The report states that "The United States has to help defeat an ideology, not just a group of people...." Therefore the report recommends expanding and targeting dialogue with Muslim populations, clearly communicating America's optimism, values, and opportunities as a way to dissuade terrorists faster than the madrassas and radical clerics can recruit them. Exchanges, broadcasting, education reforms and multilateral approaches are some of measures included in the House and Senate legislation.

### House Provisions

Subtitle B of H.R. 10 expands U.S. government bilateral and multilateral activities that may help in the struggle of ideas, dampening the anger and deterring terrorist recruitment in the long run. Section 4021 requires the Secretary of State no later than March 15 of every year to submit to Congress an assessment, worldwide and by region, of the impact of public diplomacy on target audiences. In addition, the Secretary is required to submit, in coordination with the budget, a plan identifying necessary resources for achieving the stated public diplomacy goals.

Bilateral activities in the House bill have largely to do with public diplomacy. For example, Section 4022 states that the State Department should recruit and train U.S. Foreign Service Officers in public diplomacy. Section 4023 states the sense of Congress that the United States should significantly increase exchanges with Muslim countries. And, Section 4024 requires that,

effective January 1, 2009, in order for a member of the Senior Foreign Service to be promoted, he/she must have served in at least one position related to public diplomacy.

Multilateral provisions in H.R. 10 require the President to expand the work of the Democracy Caucus within the U.N. and establish a rotational leadership to provide member countries the opportunity to serve as the designated president of the Caucus. Section 4033, among other things, requires the President of the United States, where appropriate, to use the influence of the United States to reform the criteria in U.N. bodies and other multilateral organizations to exclude countries that violate principles of the specific organization. This section also requires a report to Congress from the Secretary within 15 days after a country is selected for membership or leadership in an international organization. Section 4034 requires the Secretary of State to train Foreign Service Officers on multilateral diplomacy for participation in international organizations and multilateral negotiations and provides additional training for certain civil service employees. Finally, Section 4035 authorizes the Secretary of State to establish an Office on Multilateral Negotiations, headed by an appointed "Special Representative."

Other measures in the House bill include a pilot program to provide grants to American-sponsored schools for scholarships in predominately Muslim countries (Section 4041), enhancing free and independent media worldwide through government grants to the National Endowment for Democracy (NED) (Section 4042), combating biased or false media coverage of the United States (Section 4043), reporting on what strategy is used for broadcast outreach (Section 4044), and strengthening the Community for Democracies for Muslim countries through such programs as the Middle East Partnership Initiative (MEPI) and the Broader Middle East and North Africa Initiative (Section 4046).

## Senate Provisions

In the Senate bill—S. 2845, Section 1006 expresses a sense of Congress that the United States should offer moral leadership in the world and cooperate with Islamic countries to foster respect for human dignity as well as work to defeat terrorism. The Senate bill, as amended, authorizes funds for international broadcasting to promote American values (Section 1008), authorizes expansion of educational and cultural exchanges with Arab and Muslim countries (Section 1009), and establishes an International Youth Opportunity Fund to provide financial assistance for improving public education in the Middle East (Section 1010).

Other measures to prevent the continued growth of terrorism are in the Senate bill, but do not involve public diplomacy, such as Section 1011 using economic policies to combat terrorism, Section 1013, establishing an international coalition strategy for fighting terrorism, and Section 1014, policy reporting requirements, and training on the treatment of prisoners.

## Comments

Five Senate provisions are somewhat related to measures in the House bill. For example, like the House bill the Senate bill has a reporting requirement for public diplomacy goals and strategies. However, the Senate bill Section 1017 (5) requires the President, rather than the Secretary of State, to submit to Congress a one-time report (180 days after enactment of this Act, rather than every March 15$^{th}$) that, like the House measure, would describe specific goals and strategies, recommendations and financial estimates related to the struggle of ideas within the Islamic world.

A second Senate measure that is similar to the House has to do with expansion of exchange programs with Muslim countries. Whereas the House measure is a "Sense of Congress," the Senate provision, Section 1009 authorizes the President to substantially expand exchanges,

scholarships, and library programs in Arab and Muslim populations and authorizes such sums as may be necessary for this expansion for FY2005 through FY2009.

The third similarity of the Senate bill to H.R. 10 has to do with education reform in Muslim countries. However, while H.R. 10, Section 4041 authorizes the Secretary of State to implement a pilot program to provide scholarships to elementary and secondary school children to attend American-sponsored schools, Section 1010 requires the President to establish and fund an International Youth Opportunity Fund to provide financial assistance to improve public education in the Middle East. The Senate measure provides such sums as may be necessary from FY2005 through FY2009; no funds are authorized in the House version.

Fourth, Section 1008 (comparable to H.R. 10, Section 4043) expresses a sense of Congress that the United States must do more to defend and promote its values through international broadcasting, particularly in the Muslim world. The Senate measure, unlike the House version, authorizes appropriations for FY2005 through FY2009 for carrying out the increased broadcasting activities.

Finally, whereas the House bill provides a sense of Congress and a report on MEPI, among other things in Section 4046, the Senate provision, Section 1012 authorizes appropriations for the Middle East Partnership Initiative for FY2005 through FY2009.

## Reform of Designation of Foreign Terrorist Organizations (FTOs)

Prepared by Raphael Perl, Specialist in International Affairs, CRS Foreign Affairs, Defense, and Trade Division

### Overview

Overall, the 9/11 Commission's report speaks in terms of the need to identify the enemy. Heading 12.2 of the Commission's recommendations is entitled Attack Terrorists and their Organizations.

### House Provisions

Title IV, Subtitle C of H.R. 10 contains two sections which address the issue of terrorist organizations. They are:

Section 4051 which makes changes to procedures for responding to challenges of designation of foreign terrorist organizations (FTO's) by the Secretary of State; requires also that the status of an organization on the list be reviewed at least every six years, and that the results of the review be published in the Federal Register.

Section 4052 which requires that the State Department's annual Patterns of Global Terrorism report include information on terrorist groups developing—or that have tried to develop—weapons of mass destruction during the past five years and that the report provide information on states providing WMD material or support to terrorist groups.

Senate Provisions. Section 4051 of H.R. 10 is mirrored in Section 4051 of S. 2845. Section 4052 of H.R. 10 is mirrored in Section 4052 of S. 2845.

### Comments

Section 4051. To the degree that the enemy utilizes identifiable organizational structures, knowing which structures these are and subjecting them to sanctions is consistent with the strategy set forth. To the extent that the United States and its allies agree which organizations

support or engage in terrorism, the FTO process is related to the 9/11 Commission recommendation which argues for developing a common coalition approach. A potential problem of a strategy that places major emphasis on identifying formal organizational structures is that, increasingly, terrorist organizations become "ad hoc" in nature, change, and "morph."

Section 4051 clarifies procedures for designating FTO's—and for challenging such designations—to reflect a number of Federal Court decisions in which such issues were raised.

## Afghanistan Freedom Support

Prepared by Christopher Blanchard, Analyst in Middle Eastern Affairs, CRS Foreign Affairs, Defense, and Trade Division

### Overview

The 9/11 Commission recommends that the United States and the international community make a long-term commitment to a secure and stable Afghanistan, in order to give the government of Afghanistan (GOA) a reasonable opportunity to improve the life of the Afghan people and to prevent Afghanistan from again becoming a sanctuary for international crime and terrorism. The Commission also recommends that the United States and the international community help the GOA extend its authority over the country, with a strategy and nation-by-nation commitments to achieve their objectives. The 9/11 Commission's final report calls for an international effort to restore the rule of law and contain rampant crime and narcotics trafficking in Afghanistan. Both H.R. 10 and S. 2845 seek to implement these recommendations in different ways.

### House Provisions

H.R. 10, Subtitle D (Sec. 4061-4070, the "Afghanistan Freedom Support Act Amendments of 2004"), amends the Afghanistan Freedom Support Act of 2002 (P.L. 107-327, AFSA) and specifically addresses counternarcotics efforts in Afghanistan. The amendments define specific elements of U.S. policy, require the President and executive agencies to create specific positions and take specific actions, and create a number of reporting requirements.

- Section 4066, prioritizes "immediate steps" to actively support the disarmament, demobilization, and reintegration of armed soldiers, particularly child soldiers, into Afghan society and to support the expansion of international peacekeeping and security operations across the country. The bill also amends and expands authorization for rule of law and cultural preservation assistance (Sec. 4064). H.R. 10, Sec. 4070 further repeals section 620(d) of the Foreign Assistance Act of 1961 which prohibits the provision of assistance to Afghanistan without Presidential certification.
- Section 4067, requires the President to encourage and enable other countries to actively participate in expanded international peacekeeping and security operations in Afghanistan, especially through the provision of military personnel for extended periods of time. The bill also requires the President to designate a State Department coordinator for U.S. policy toward Afghanistan with the rank and status of ambassador (Section 4062(b)).
- H.R. 10 also creates a number of reporting requirements for the President and specific executive agencies, including a five-year strategy for Afghanistan that includes specific and measurable goals, timeframes, resource needs, implementation plans, defined responsibilities, and descriptions of challenging

factors (Section 4063(c)). Reports are also required that address prior and future U.S. assistance to Afghanistan, obligations and expenditures, progress on the implementation of U.S. disarmament policy, counternarcotics programs, and efforts to solicit greater international financial and military involvement in Afghanistan (Sec. 4063(c-d), Sec. 4065, 4066(a), and Sec. 4067).

On counternarcotics, Section 4068, states the sense of Congress that the President should make substantial reduction of drug production and trafficking in Afghanistan a priority in the global war on terrorism and the U.S. should undertake additional efforts to reduce illegal drug trafficking and related activities that provide support for terrorist organizations. H.R. 10 authorizes and encourages the President to implement specific initiatives to assist in the eradication of poppy cultivation and the disruption of heroin production in Afghanistan, including promoting alternatives to poppy cultivation, enhancing the ability of farmers to market legitimate agricultural goods, providing assistance and payments for special counternarcotics police and support units, training the Afghan National Army in counternarcotics activities, and creating infrastructure for narcotics prosecutions.

### Senate Provisions

Like H.R. 10, S. 2845 defines specific elements of U.S. policy toward Afghanistan; however, S. 2845 and H.R. 10 differ in specificity and required action in some cases. Whereas H.R. 10 amends the AFSA of 2002, for example, S. 2845 expresses the sense of Congress that Congress should, in consultation with the President, update and revise the AFSA in the future, as appropriate (Section 1004(b)(2)). Unlike H.R. 10, S. 2845 authorizes such sums as deemed necessary for eight specific assistance programs in FY2005-FY2009, including counternarcotics (Section 1004(c)(1)). H.R. 10 does not authorize specific amounts of assistance. Like H.R. 10, S. 2845 requires the President to submit a 5-year Afghan strategy report to Congress 180 days after the bill's enactment (Section 1017(3)(A)). As a component of a broader required report, S. 2845 requires a specific section on Afghanistan to describe the amounts of aid devoted to a set of ten specific strategic and assistance objectives, progress made toward those objectives, and projections of future resources necessary to meet any shortfalls (Section 1017(3)(A-B)).

S. 2845 expresses the sense of Congress that the United States should work with other nations, including through the use of its voice and vote in international organizations, to obtain long-term security, political, and financial commitments and fulfillment of pledges to the GOA to accomplish the objectives of the AFSA of 2002 (Section 1004(b)(1)(A-B)). S. 2845 also calls for increases in the staffing and assistance provision levels of Department of State and the United States Agency for International Development programs in Afghanistan (Section 1004(b)(1)(C)).

## Relations with Saudi Arabia and Pakistan

### Saudi Arabia

Prepared by Alfred Prados, Specialist in Middle Eastern Affairs, CRS Foreign Affairs, Defense, and Trade Division

#### *Overview*

In its final report, the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) described Saudi Arabia as having been a "problematical ally in combating Islamic extremism." The report takes note of long-standing cooperative relations between the U.S. and

Saudi governments, growing misunderstandings at the popular level in recent years, and U.S. criticisms in the aftermath of 9/11 that Saudi officials could do more to fight terrorism. The report acknowledges increased efforts in that regard since mid-2003 and noted that Saudi Arabia is now locked in conflict with Al-Qaeda. One of the key recommendations in the 9/11 report addresses the U.S.-Saudi relationship:

> The problems in the U.S.-Saudi relationship must be confronted, openly. The United States and Saudi Arabia must determine if they can build a relationship that political leaders on both sides are prepared to publicly defend—a relationship about more than oil. It should include a shared commitment to political and economic reform, as Saudis make common cause with the outside world.

Both the House and Senate bills draw on various parts of the Commission's report in their statements expressing the sense of Congress and in their recommendations regarding Saudi Arabia.

### *House Provisions*

Section 4081 of the House-passed bill (H.R. 10) is entitled "New United States Strategy for Relationship with Saudi Arabia." It sets an initial policy framework by expressing the sense of Congress that the U.S.-Saudi relationship should include a more robust dialogue between the people and governments of the two countries to provide for reevaluation of and improvements to the bilateral relationship. It contains a reporting provision, under which the President is required to submit to two specified congressional committees within one year a strategy for collaboration with the people and government of Saudi Arabia on subjects of mutual interest. According to H.R. 10, Section 4081(b), the strategy is to include a framework for security cooperation against terrorism with emphasis on combating terrorist financing; a framework for political and economic reform in Saudi Arabia; an examination of steps to reverse the trend toward extremism in Saudi Arabia; and a framework for promoting greater tolerance and respect for cultural and religious diversity. The last three components of the required strategy report apply to both Saudi Arabia and the Middle East as a whole. This report may contain a classified annex.

### *Senate Provisions*

Provisions of the Senate passed bill, S. 2845, relating to Saudi Arabia are similar in many ways to the House passed bill; however, unlike the House passed bill, the Senate passed bill contains a separate sub-paragraph dealing with findings and a longer statement of the sense of Congress (Section 1005). Findings are specifically described as "Consistent with the report of the National Commission on Terrorist Attacks Upon the United States" (the 9/11 Report) and summarize the course of the U.S.-Saudi relationship including both positive and negative aspects. The sub-paragraph dealing with the sense of Congress includes key recommendations from the 9/11 Report dealing with the U.S.-Saudi relationship and a commitment to fight violent extremists.

Like the House passed bill, the Senate passed bill contains a reporting requirement (Section 1017(b)(4)). As part of a broader report dealing with terrorism in the Middle East and south Asia and various aspects of diplomacy, the President is required to submit to Congress a description of a U.S. strategy for expanding collaboration with Saudi Arabia. Unlike the House passed bill, the Senate passed bill does not identify specific committees to whom the report is to be submitted, and sets a deadline of 180 days rather than one year for submission of the report; moreover, the Senate passed bill does not provide for a classified annex. Unlike the House passed bill, the strategy called for in the Senate passed bill includes ways and means of advancing Saudi Arabia's contribution to the Middle East peace process. The strategy called for in the Senate passed bill does not directly mention terrorist financing, as does the House passed bill; however, the strategy

called for in the Senate passed bill is to include ways to help the Saudi Government prevent its nationals from funding and supporting extremist groups. Also unlike the House passed bill, the strategy under the Senate passed bill calls on the President to consider undertaking a periodic, formal, and visible dialogue between U.S. Government officials and their Saudi counterparts to address challenges to their relationship and identify areas for cooperation (Section 1017(b)(4)). Both bills include a discussion of political and economic reform in Saudi Arabia and the broader Middle East in their respective strategies.

## Pakistan

Prepared by Alan Kronstadt, Analyst in Asian Affairs, CRS Foreign Affairs, Defense, and Trade Division

### *Overview*

The 9/11 Commission Report contains a specific recommendation for U.S. policy toward Pakistan, calling for a long-term U.S. commitment to provide comprehensive support for Islamabad so long as Pakistan's government remains committed to combating terrorism and to a policy of "enlightened moderation." Both the House and Senate bills included provisions on Pakistan that support this goal.

### *House Provisions*

In H.R. 10, Title IV, Subtitle E, Sec. 4082 ("United States Commitment to the Future of Pakistan"), the House calls for a long-term commitment "to ensure a promising, stable, and secure future for Pakistan." It calls for U.S. assistance to Pakistan to concentrate on democratization, economic modernization, nonproliferation, and, especially, education reform, and would require the President to transmit to Congress within 180 days of enactment a "detailed proposed strategy" for long-term engagement with that country. Sec. 4083 of the act ("Extension of Pakistan Waivers") would extend the President's waiver authority on coup-related sanctions on Pakistan through FY2006.

### *Senate Provisions*

In S. 2845, Title X, Subtitle A, Section 1003 ("Role of Pakistan in Countering Terrorism"), the Senate calls for a long-term U.S. commitment to "fostering a stable and secure future in Pakistan," to include U.S. assistance sustained at a minimum of FY2005 levels requested by the President. Particular areas of emphasis are education reform and democracy promotion in Pakistan. Section 1017(2) ("Report to Congress") would require the President to transmit to Congress within 180 days of enactment a description of U.S. efforts to support Pakistan and encourage moderation there, including examinations of and recommendations for funding levels for educational, military, and financial support, as well as an examination of the desirability of establishing a Pakistan Education Fund.

### *Comments*

Both the House and the Senate approved legislation that would commit the United States to long-term and comprehensive support for the government of Pakistan in an effort to ensure a "stable and secure future" for that country. Both place particular stress on support for education reform in Pakistan. However, the Senate bill includes a reporting requirement on education reform and also sets a FY2005 baseline for amounts of U.S. assistance to Pakistan. The House version requires

the President to provide a "detailed proposed strategy" for U.S. engagement with Pakistan, while the Senate would only require a descriptive report. Finally, the Senate version contains no language on waiver extension.

## Oversight Provisions

Prepared by Marjorie Ann Browne, Specialist in International Relations, CRS Foreign Affairs, Defense, and Trade Division

### Overview

The Case-Zablocki Act, 1 U.S.C. 112b, enacted in 1972, requires the Secretary of State to transmit to Congress copies of all U.S. international agreements other than treaties within 60 days after entry into force. This Act was amended in 1977 and 1978, to ensure its full implementation. The initial section, 1 U.S.C. 112a, originated in 1950 in its current form and requires publication of all treaties and international agreements in force for the United States. Congress amended it in 1994 to identify categories of agreements that would not be published.

### House Provisions

Section 4091 of Title IV amends both 1 U.S.C. 112a and 112b. Section 112a is amended to require the Secretary of State to publish in slip form or otherwise make publicly available through the State Department Internet website each treaty or agreement proposed to be published no later than 180 days after the date when the treaty or agreement "enters into force." The House amended Section 112b to require the Secretary of State to submit to Congress annually a report containing an index of all international agreements the United States has signed or otherwise executed during the preceding calendar year, including all agreements that have not been published or will not be published. This annual report may be submitted in classified form. These amendments also specify that international arrangements shall be considered international agreements for the purposes of this Act, that shall be effective 60 days after enactment and shall apply during FY2005, 2006, and 2007.

### Senate Provisions

Contains no comparable language.

### Comments

The amendment to Section 112a responds to persistent and long-time delays in the publication of in force treaties and international agreements. The State Department has during the past year started to list, with links to the texts, on its Freedom of Information Act website, U.S. international agreements that have entered into force since March 1998. The section 112b amendments respond to the continued need in Congress for full and up-to-date information on the international agreements concluded by the executive branch, including those that will not be published.

## Additional Protections of United States Aviation System from Terrorist Attacks

Prepared by Bart Elias, Specialist in Aviation Security, Safety, and Technology Policy, CRS Resources, Science, and Industry Division

## Overview

Several additional provisions regarding aviation security rely upon international cooperation and coordination. International cooperation and coordination on aviation security matters was not addressed in the 9/11 Commission recommendations. The House bill contains three provisions addressing international efforts to mitigate terrorist attacks against aviation assets. These provisions include measures that would urge the President to enter into international agreements permitting armed pilots on foreign flights and pursue international agreements to limit the proliferation of shoulder-fired missiles that pose a threat to civil aircraft. The House bill also contains a provision that would establish a program for training foreign air marshals at U.S. DHS facilities. The Senate bill contains a provision not included in the House bill that would require DHS to report on procedures to mitigate risks in foreign air cargo bound for the United States.

## House Provisions

The House bill contains three specific sections regarding international efforts to improve aviation security.

First, a provision of the House bill (Sec. 4101) encourages the President to aggressively pursue international agreements allowing armed pilots on flights to international destinations. Foreign laws and regulations may prevent armed pilots from carrying their weapons on flights to certain international destinations and this provision encourages the administration to enter international agreements that would expand the number for foreign destinations where federal flight deck officers are permitted to fly.

A second provision of the House bill (Sec. 4102) would allow the Bureau of Immigration and Customs Enforcement, after consultation with the Department of State, to provide air marshal training to law enforcement personnel of foreign countries. Under this provision, foreign officers sent to the United States for air marshal training must be vetted against the consolidated and integrated terrorist watch lists and may be charged reasonable fees to offset the costs of their training. An emergency amendment to aviation security regulations, issued in December 2003, requires that foreign air carriers place armed, trained, government law enforcement officers on designated flights to and from the United States when directed to do so by DHS. In light of this requirement, the qualifications and training of foreign officers assigned to such duties has raised concerns among some that a poorly trained armed officer may in fact pose a security risk rather than acting as a deterrent against terrorist attacks.

Finally, Section 4103 of the House bill contains language intended to mitigate the threat of terrorist attacks using shoulder-fired missiles—referred to as Man-Portable Air Defense Systems (MANPADS)—against aviation assets. A core element of this language would require the President and the administration to urgently pursue and enter into international agreements to limit the availability, transfer, and proliferation of MANPADS through export controls and destruction of excess, obsolete, and illicit stockpiles of these weapons. These provisions are in line with Administration participation in ongoing international efforts to control MANPADS. MANPADS controls were incorporated into the Wassenaar Arrangement on export controls for conventional weapons and dual-use technologies in 2003. The United States is a signatory to this arrangement. Also, the United States has led a G-8 initiative to accelerate destruction of excess and obsolete MANPADS; strengthen controls on the transfer of MANPADS productions technology; and develop a methodology for assessing airport vulnerability and effective countermeasures to mitigate the threat posed by MANPADS.

The provisions in Section 4103 of the House bill also require the Federal Aviation Administration (FAA) to establish a process for expeditiously certifying the airworthiness and safety of counter-

MANPADS systems for installation on passenger aircraft that are currently being developed and evaluated under a DHS program. A provision in this section also requires the DHS to report on its plans to secure airports and protect arriving and departing aircraft from MANPADS attacks. The report is to include: the status of airport vulnerability assessments; intelligence data sharing efforts on MANPADS threats; plans for responding to intelligence suggesting a high threat level of MANPADS attack within the United States; and the feasibility and effectiveness of implementing public education and neighborhood watch programs.

### Senate Provisions

The provisions of the Senate bill (Section 616) regarding protection of aircraft from MANPADS does not specifically address international agreements, and in this regard the Senate provision on this issue differs significantly from the House bill. However, similar to the House bill, the Senate bill requires the DHS to submit a report on the MANPADS threat detailing: terrorist access to MANPADS; efforts to protect commercial aircraft from MANPADS; and an assessment of the feasibility of equipping commercial airliners with counter-MANPADS systems.

The Senate bill contains no provisions regarding international agreements permitting armed pilots or the training of foreign armed air marshals at U.S. facilities. However, the Senate bill does include a provision not considered in the House bill that would require the DHS, in consultation with the FAA and the Department of Defense, to report on current procedures to address explosive, incendiary, chemical, biological, or nuclear threats on all-cargo aircraft in-bound to the United States. The report, which is due within 180 days after enactment, is to include an analysis of the potential for establishing secure facilities along established international air routes for diverting and securing suspect all-cargo aircraft (Section 1108).

### Comments

Both the House and the Senate bill contain limited language dealing with international cooperation and coordination to protect aviation against terrorist threats. The House bill focuses on international agreements to train foreign air marshals and deploy armed pilots on U.S. carriers aircraft that fly overseas as well as international efforts to control the proliferation of shoulder-fired missiles. The Senate bill provision instead focuses on examining procedures to safeguard international cargo shipments on both passenger and all-cargo flights.

## Additional Protections of United States Aviation System from Terrorist Attacks—Man-Portable Air Defense Systems (MANPADS)

Prepared by Christopher Bolkcom, Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division and Andrew Feickert, Specialist in Missile Proliferation, CRS Foreign Affairs, Defense, and Trade Division

### *Overview*

The House provision calls for efforts to limit the availability and transfer of Man-Portable Air Defense Systems (MANPADS) and the destruction of excess, obsolete or illicit MANPADS worldwide. In addition, this provision calls for the expeditious certification of missile defense systems for commercial aircraft and the conduct of a MANPADS Vulnerability Assessment by the Department of Homeland Security (DHS).

### *House Provisions*

Section 4103: This provision calls for the pursuit of further diplomatic and cooperative efforts (including bilateral and multilateral treaties) to limit availability, transfer, and proliferation of MANPADS. Section 4103 calls for a continuation of current efforts to assure the destruction of excess, obsolete, and illicit stocks of MANPADS worldwide. Section 4103 also calls for the establishment of agreements with foreign countries requiring MANPADS export licenses and prohibiting re-export or retransfer of MANPADS and associated components to a third party, organization, or foreign government without written consent of the government that approved the original transfer. The provision requires DHS to establish a process for conducting airworthiness and safety certification of missile defense systems used on commercial aircraft no later than the completion of Phase II of DHS's Counter-MANPADS Development and Demonstration Program. It also requires the Federal Aviation Administration (FAA) annually to report to specified congressional committees on each airworthiness certification issued by DHS. Section 4103 requires DHS to report to specified congressional committees on DHS plans to secure airports and arriving and departing aircraft from MANPADS attacks.

### *Senate Provisions*

S. 2845 has no comparable provisions.

### *Comments*

H.R. 10 Section 4103 is related to 9/11 Commission Recommendation 19, which calls for the U.S. government to identify and evaluate the transportation assets that need to be protected and select the most practical and cost effective ways of defending them. H.R. 10 Section 4103 mirrors H.R. 4056, "Commercial Aviation MANPADS Defense Act of 2004," which was introduced by Aviation Subcommittee Chairman John Mica, Aviation Subcommittee Ranking Member Peter DeFazio, and Representative Steve Israel on March 30, 2004. Section 4103 calls for the continuation of ongoing U.S. State Department efforts to reduce the number of MANPADS that could conceivably fall into the hands of terrorists. The State Department, operating through the Small Arms and Light Weapons Destruction Program is working with countries where there is a combination of excess MANPADS, poor control, and a risk of proliferation to terrorist groups or other undesirable groups, to destroy excess stocks and develop security and accountability measures. As of September 30, 2004, the State Department reported almost 8,000 MANPADS destroyed in nine countries in Africa and Eastern Europe and commitments from other countries to destroy another 2,500 missiles.

H.R. 10, Subtitle J: Prevention of Terrorist Access to Destructive Weapons Act of 2004, Section 2213, Missile Systems Designed to Destroy Aircraft, criminalizes the production, construction, acquisition, transfer, import, export, and use of missile systems designed to destroy aircraft by individuals. The act establishes stiff criminal penalties for those who violate it, including life imprisonment or the death penalty if the violation results in the death of another person.

## Improving International Standards and Cooperation to Target Terrorist Financing

Prepared by Martin A. Weiss, Analyst in International Trade and Finance, CRS Foreign Affairs, Defense, and Trade Division

## Overview

Effectively combating terrorist financing requires effective coordination of many different elements of national power including intelligence gathering, financial regulation, law enforcement, and building international coalitions. The Financial Action Task Force (FATF) has been the primary international organization for improving international standards and promoting cooperation among countries.

## House Provisions

H.R. 10 states the Sense of Congress that the Secretary of the Treasury should direct U.S. Executive Directors at the international financial institutions and other multilateral financial policymaking bodies to use the full voice and vote of the United States to urge the institutions and bodies to fund the implementation of FATF financial standards and promote economic development in the Middle East (Sec. 4111). In addition, H.R. 10 would require the Secretary of the Treasury to establish and convene an inter-agency council, the International Terrorist Finance Coordinating Council (Sec. 4113). H.R. 10 would expand reporting requirements for the Secretary of the Treasury to include an assessment of the progress made by the International Terrorist Finance Coordinating Council; the progress made by the United States in negotiations with the international financial institutions and other multilateral policymaking bodies in setting international anti-terrorist financing standards and the extent to which the institutions and bodies are contributing to the fight against the financing of terrorist activities (Sec. 4112).

## Senate Provisions

S. 2845, Section 1115, requires a report on U.S. effectiveness at combating terrorist financing that would include a discussion of ways to improve multilateral and international government cooperation, and describe the adequacy of U.S. agency coordination related to participating in international cooperative efforts.

# Title V: Government Restructuring

## Improving Funding for First Responders

Prepared by Shawn Reese, Analyst in American National Government and Emergency Management Authorities, CRS Government and Finance Division

### Overview

The 9/11 Commission recommends that state and local homeland security assistance should be "based strictly on an assessment of risks and vulnerabilities." The Commission went on to say that homeland security assistance "should supplement state and local resources based on risks and vulnerabilities that merit additional support." (*The 9/11 Commission Report*, p. 396.) S. 2845 and H.R. 10 propose to change the current formula used in distributing first responder grant funding to states and localities. Both bills would include threat and risk criteria in the distribution of grant funds.

### House Provisions

H.R. 10 (Title V, Subtitle A, sec. 5003) would require the Secretary of Homeland Security to establish a task force responsible for identifying first responder capabilities essential to preventing and responding to terrorist attacks. Additionally, the Secretary would establish a First Responder Grants Board that would evaluate and prioritize state homeland security assistance applications based on the application's enhancement of first responder essential capabilities. H.R. 10 would also guarantee states a minimum of 0.25% of total appropriations for homeland security assistance. States with international borders and coastlines would be deemed as high risk and allocated a guaranteed minimum of 0.45%.

### Senate Provisions

S. 2845 (Title X, Subtitle E, Section 1054) would establish a new homeland security assistance program, entitled the Threat Based Homeland Security Grant Program (TBHSGP), that would include the State Homeland Security Grant Program (SHSGP), Law Enforcement Terrorism Prevention Program (LETPP), and the Urban Area Security Initiative (UASI). UASI would receive 25% of the amount appropriated for the TBHSGP, with the remaining 75% going to SHSGP activities. Additionally, S. 2845 would allocate 38.6% of SHSGP to be distributed to states. Each state would receive 0.75% (of that 38.6%) or a per capita share (as defined by the 2002 census population estimate), whichever is greater.

UASI funding would be allocated to major metropolitan areas based on such criteria as population density, high threat related to critical infrastructure, and other threat variables identified by the DHS Secretary. The remaining SHSGP funding (following the allocation of state minimums) would be allocated based on similar criteria. The bill also proposes to establish a second homeland security assistance fund—the Large High-Threat State Fund (LHTSF)—that would be appropriated at 10.8% of the amount appropriated to TBHSGP to provide additional funding to states that chose the per capita funding, if 38.6% of SHSGP were not sufficient. If Congress chose not to fund the LHTSF, the guaranteed state minimum and per capita amount allocated to states would be proportionally reduced.

### Comments

Neither H.R. 10 nor S. 2845 propose to fund state and local homeland security assistance strictly on threat and risk. Both bills propose a guaranteed minimum to each state, though both bills do propose to provide some homeland security assistance funding based on threat.

## Digital TV Conversion

Prepared by Linda K. Moore, Analyst in Telecommunications Policy, CRS Resources, Science, and Industry Division

### Overview

The 9/11 Commission report specifically recommended that Congress should support pending legislation releasing spectrum for public safety. This refers to H.R. 1425 (Harman), a bill to "provide for the expedited and increased assignment of spectrum for public safety purposes." The intent of the bill is to free up spectrum designated for public safety use that is currently occupied by television broadcast stations. Public safety benefits from the timely availability of the promised channels would include enhanced interoperability in radio communications. These channels are being held until such time as the transition to digital television (DTV) has reached levels of market penetration prescribed by Congress in the Balanced Budget Act of 1997. When the specified level of market penetration has been reached, broadcasters are to cease analog broadcasting and the channels used for this purpose are to be released. There is, however, no deadline for the release and many have opined that the transition process could take many years to complete. The current policy debate in Congress regarding the conversion to digital television focuses on whether to attempt an expedited transition to DTV with the release by a date certain of all encumbered channels; or to require the timely availability of channels designated for public safety only, addressing the larger issue of complete DTV conversion with separate legislation.

### House Provisions

H.R. 10 was amended (Sec. 5011) to provide a sense of Congress that all analog broadcast channels should be vacated by December 31, 2006, for public safety and commercial uses. The amendment states that this can be achieved by eliminating the exemption that requires a full 85% market penetration of DTV and/or signal converters, one of the provisions originally established by Congress as a criterion for allowing a delay. Most experts believe that it is this provision that is allowing the indefinite delay of the release of the spectrum. Many advocate the release of all the affected channels at once and support this approach for many reasons, including, notably, fairness (so that all TV broadcasters would be treated equally and none would be placed at a disadvantage by having to pay the costs of transition in advance of competitors); availability of spectrum for new commercial applications, including broadband wireless; availability of additional spectrum for public safety use beyond what has already been allocated; and substantial revenue for the U.S. Treasury from spectrum auctions. Critics of a mandated hard deadline are concerned with the choice of date—many preferring a date of 2009 or later in order to allow more time for market forces to guide the transition—and with the protection of consumers who rely on over-the-air broadcasts, to cite two frequently mentioned considerations. Some advocates of a swift and complete transition to DTV have argued that consumer needs could be met through a program that would subsidize the purchase of set-top boxes that would convert digital signal to analog.

### Senate Provisions

The issue of freeing spectrum was incorporated in S. 2845 with an amendment that, in its original language, replicated S. 2820 (McCain). This amendment became Sections 1061 to 1073 of the Senate bill, Title F. Regarding the release of spectrum, Senator McCain would have required the full release of encumbered spectrum by date certain. As finally amended and agreed, however, only those channels required for public safety would be freed, although the FCC would have the authority to clear other channels, as needed, to prevent interference. This language appears in Section 1063. Other sections cover matters related to the conversion to DTV (1067-1070). Several sections cover interoperability (see "Interoperable Communications and Warning Systems" below). Section 1064 would require a study and report to Congress on the advisability of providing additional channels to public safety.

### Comments

Section 5011 of the House bill and Section 1063 of the Senate bill offer two major viewpoints on how to approach the release of spectrum for public safety. The findings in Section 5011 closely parallel the arguments made by Senator McCain on the Senate floor in favor of clearing all channels, as provided in S. 2820. The Senate, voted, however, to adopt language that dealt primarily with providing spectrum for public safety, similar to H.R. 1425, the bill on which the 9/11 Commission based its recommendation. Furthermore, the Senate version provides for necessary changes by amending the Communications Act; the House bill supports what it identifies as a preferred course of action but does not legislate any changes in existing statutes. The purpose of Section 1064, dealing with a study regarding providing additional spectrum for public safety, is not addressed in the House bill. Within the public safety community there is substantial concern that additional spectrum, contiguous to existing assigned channels, must be provided in order to support full interoperability and emerging technologies.

## Government Reorganization Authority

Prepared by Morton Rosenberg, Specialist in American Public Law, CRS American Law Division

Both H.R. 10 and S. 2845 contain provisions authorizing future reorganizations of the intelligence community. The approaches taken differ substantially.

**Section 5021 of H.R. 10** would reauthorize the President's authority under 5 U.S.C. 901-912, which expired on December 31, 1984, to submit proposed reorganization plans for fast-track congressional consideration and approval, with certain modifications. Under the 1984 law, a plan could transfer the whole or part of an agency, or the whole or part of the functions of an agency, to the jurisdiction and control of another agency, and it could abolish all or part of the functions of an agency, "except that no enforcement or statutory program shall be abolished by the plan." A plan could not create a new executive department; abolish or transfer an executive department or independent regulatory agency, or all the functions thereof; consolidate two or more executive departments or independent regulatory agencies, or all the functions of such entities; continue an agency or a function beyond the period it was authorized by law; authorize an agency to exercise a function not expressly authorized by law at the time the plan is proposed; or create a new agency that is not a component or part of an existing executive department or independent agency. A plan also could not deal with more than one logically consistent subject matter, and, as with all previous versions of statutory reorganization authority, the authorization expired within a defined limited period.

Section 5021 would amend Section 905 to allow only submission of reorganization plans for 11 named intelligence community units as well as elements of any other department or agency that may be designated either by the President alone, or jointly by the NID and the head of the department or agency concerned, as an element of the intelligence community. Section 903(a)(2) would be amended to allow for the abolition of all or part of the functions of a covered entity without the formerly included limitation that "no enforcement junction or statutory program shall be abolished by the plan." Section 903 would also be amended to allow a plan to propose creation of a new agency. Also, the grant of reorganization authority would be permanent, rather than subject to periodic congressional reauthorization.

**Section 333 of S. 2845** does not renew the existing reorganization statute, but rather provides that the NID, with the approval of the President, and after consultation with affected intelligence community elements, would be allowed to "allocate or reallocate functions among the officers of the National Intelligence Program, and may establish, consolidate, alter, or discontinue organizational units within the Program, but only after providing notice of such action to Congress, which shall include an explanation of the rationale for the action." This authority would not "extend to any action inconsistent with law," and could only be undertaken with the approval of each of the congressional intelligence committees and the Senate Governmental Affairs and House Government Reform Committees. These latter congressional approval requirements would appear to be legislative vetoes proscribed by the Supreme Court in *INS v. Chadha*, 462 U.S. 919 (1983).

## Restructuring Relating to the Department of Homeland Security and Congressional Oversight

Prepared by Nye Stevens, Deputy Assistant Director and Specialist in American National Government, CRS Government and Finance Division

### Overview

The 9/11 Commission identified "unity of effort" in congressional oversight of homeland security and intelligence as a primary thrust of its recommendations. It also noted that the Department of Homeland Security needed to regularly monitor threats to the nation's transportation, communications, financial, and other infrastructure institutions in order to develop plans and exercise mechanisms to enhance preparedness. H.R. 10 contains several organizational provisions that would direct the Department's attention to particular areas of vulnerability, and a sense of the House provision urging attention to organization of the House relating to homeland security in the 109th Congress. The Senate bill does not include these matters.

### House Provisions

Title V(c) contains several provisions relating to the organizational structure of the Department of Homeland Security. The provisions would

- establish an office of counternarcotics enforcement in the Department, and provide accountability mechanisms, including reports to Congress (Sec. 5025) and inclusion of counternarcotics enforcement in relevant individual performance appraisals (Sec. 5026);
- create an Assistant Secretary for Cybersecurity, who would have primary responsibility within the Department over the National Communications System (Sec.5028);

- directing the Secretary to ensure and to report to Congress that law enforcement and intelligence information is effectively shared with those in the Department responsible for security-related screening of individuals and entities interacting with U.S. border and transportation systems (Section 5029); and
- create an Under Secretary for the Private Sector and Tourism to assess and coordinate policies of the Department that affect the private sector, including the tourism industry (Section 5030).

The House bill also contains a sense of the House provision (Section 5027) that discusses the activities and recommendations of the Select Committee on Homeland Security, the Appropriations Committee, and various rules changes related to continuity of Congress in an emergency. It expresses the sense of the House that the Rules Committee should act on these various recommendations at the start of the 109th Congress.

### Senate Provisions

The Senate bill does not contain comparable organizational provisions relating either to the Department or congressional jurisdictions. However, on October 9, 2004, the Senate passed S.Res. 445, making a number of committee organizational and jurisdictional changes to become effective at the beginning of the 109th Congress, including renaming the Committee on Governmental Affairs as the Committee on Homeland Security and Governmental Affairs.

### Comments

Congress wants to ensure that the Department of Homeland Security is attuned to emerging threats to the nation's infrastructure, and that its attention goes well beyond the pre-existing jobs of the entities that were brought into the new department. Two ways that Congress can focus the attention of an executive department on specific areas of concern are to provide for a statutory position to be filled by an individual Congress can call to account, and to require regular reports on activities and progress toward solving particular problems.

## Improvements to Information Security

Prepared by Jeffrey Seifert, Analyst in Information Science and Technology, CRS Resources, Science, and Industry Division

### Overview

A recurrent theme throughout the 9/11 Commission Report is that the role of information in facilitating intelligence and homeland security objectives cannot be understated. Specifically, the 9/11 Commission Report recommendations emphasize the importance of good information acquisition and analysis techniques, as well as the ability to share information among relevant entities. Although the 9/11 Commission Report does not explicitly discuss information security issues, there is an implicit understanding that information security must be considered when designing and implementing an information sharing system. To that end, both H.R. 10 and S. 2845 include provisions designed to strengthen agency planning for information security needs.

### House Provisions

Section 5031 would amend the Clinger-Cohen Act (P.L. 104-106) by inserting either a word (i.e., "security" or "secure") or a phrase (i.e., "including information security risks" or "investments in

information technology [including information security needs]") in five different places in the information technology management law. Although the Clinger-Cohen Act already includes some references to information security, these changes are intended to more explicitly emphasize that information security concerns must be taken into account as part of the information technology capital planning and investment control responsibilities carried out by the Office of Management and Budget (OMB) and individual agencies.

### Senate Provisions

Section 1101 in S. 2845 as engrossed by the Senate is identical to Section 5031 in H.R. 10, as engrossed by the House.

### Comments

These provisions are identical to those in H.R. 4570, which was introduced on June 15, 2004 by Representative Putnam and referred to the Committee on Government Reform.

## Personnel Management Improvements

Prepared by Jack Maskell, Legislative Attorney, CRS American Law Division

### Personal Financial Disclosure

Section 5043 of H.R. 10 amends the Ethics in Government Act of 1978 [EGA] to change financial disclosure requirements for certain officers and employees who would be employed in or under the Office of National Intelligence Director, or an element of the intelligence community. The public disclosures required of such personnel are similar to those required under the EGA, although the de minimis thresholds for requiring the disclosure of certain items are raised under the bill, the number of "categories of values" for disclosure of reported items are reduced and the values in each category correspondingly expanded, and certain exceptions from disclosure of past income from clients are expanded. Some of these changes are along the lines of those proposed by the Office of Government Ethics for "streamlining" the disclosure requirements of presidential appointees (see, S. 1811, 107th Congress, S.Rept. 107-152). The Senate bill (S. 2845) would not provide for such changes in the public financial disclosure requirements, but rather directs the Office of Government Ethics to evaluate and report on recommendations for improving the financial disclosure system and the federal conflict of interest laws in general, and provides for a review of the presidential appointment process with an eye to reducing the number of positions requiring Senate confirmation.

### Agency Plans Required

Prepared by Henry Hogue, Analyst in American National Government, CRS Government and Finance Division

#### *Overview*

Legislation was introduced in both the 107th and 108th Congresses to reduce the number of Senate-confirmed appointments to executive branch positions. For example, the Presidential Appointments Improvement Act of 2001 (S. 1811) was first introduced during the 107th Congress. Among other things, the bill would have required each agency to submit, within 180 days of enactment, a plan providing for the "reduction of—(A) the number of positions within that agency that require an appointment by the President, by and with the advice and consent of the

Senate; and (B) the number of levels of such positions within that agency" (S. 1811 (107th Cong.), Sec. 6(b)(2)). The bill was not acted upon by the full Senate. Similar legislation was introduced in the Senate (S. 765) and the House (H.R. 1603) during the 108th Congress.

### *House Provision*

Section 5044 of H.R. 10 would direct agency heads to submit to the President, the Senate Governmental Affairs Committee, and the House Government Reform Committee, plans for the reduction in the number and levels of presidentially appointed positions requiring the advice and consent of the Senate. The provision is very similar to S. 765, Section 6 and H.R. 1603, Section 6.

### *Senate Provision*

S. 2845, Section 1102(c) is very similar to H.R. 10, Section 5044.

### *Comments*

The two versions of the legislation, H.R. 10, and S. 2845, have very similar provisions in this area.

## Section 5042 (Vacancies Act Exceptions)

Prepared by Henry Hogue, Analyst in American National Government, CRS Government and Finance Division

### *Overview*

The 9/11 Commission Report included a recommendation (#38) that appointments to key national security positions at the time of presidential transitions occur more quickly. The 9/11 Commission called for seven specific remedial changes: initiation of the security clearance process for prospective appointees to national security positions immediately after the presidential election; pre-election identification, by each presidential candidate, of potential members of his transition team to allow for timely security clearance; centralization of the security clearance process in one agency; pre-inaugural submission, to the Senate, of nominations by the President-elect to positions on the "national security team;" expedited Senate consideration of these nominations; elimination of advice and consent requirements for any "national security team" members below Level III of the Executive Schedule; and prompt and thorough written national security information exchange between the outgoing and incoming administrations.

### *House Provision*

Section 5042 of H.R. 10 would rewrite the presidential inaugural transition section (5 U.S.C. 3349a) of the "Federal Vacancies Reform Act of 1998" ("Vacancies Act"; codified at 5 U.S.C. 3345-3349d). It would allow incumbent or newly elected Presidents, following an inauguration, to make certain types of temporary appointments to certain advice and consent positions without two restrictions in the Vacancies Act that would otherwise apply.

### *Senate Provision*

S. 2845 has no provision related to this issue.

### *Comments*

Although the changes to the President's temporary appointment authority proposed by Section 5042 might have the effect of filling certain positions more quickly immediately following inaugurations, it was not among the specific changes called for by the Commission.

The Vacancies Act allows the President to make temporary appointments, without the advice and consent of the Senate, to positions that would otherwise require such advice and consent (PAS positions). At present, the presidential inaugural transition section of the act allows a newly inaugurated President to make such appointments for longer terms than would otherwise be allowed by the act. The rewritten presidential transition section would continue to permit this practice for newly inaugurated Presidents.

The rewritten section would also add a provision that would apply to both incumbent and newly inaugurated Presidents. It would remove, for "national security positions" during inaugural periods, certain limitations related to one temporary appointment method. The Vacancies Act presently provides three methods for temporarily filling vacant PAS positions. One method allows the President to direct an officer or employee of an agency where a PAS position vacancy exists to temporarily perform the functions and duties of that office. The law requires that such a person (1) must have been at the agency for not less than 90 of the preceding 365 days and (2) must have been paid at a rate equal to or greater than a position at GS-15 of the General Schedule. Section 5042 would remove these two requirements for "any vacancy in any specified national security position that exists during the 60-day period beginning on inauguration day." With regard to this provision, the legislation would define "specified national security position[s]" as "not more than 20 positions requiring Senate confirmation, not to include more than three heads of Executive Departments, which are designated by the President on or after an inauguration day as positions for which the duties involve substantial responsibility for national security."

## Confirmation

Prepared by Betsy Palmer, Analyst in American National Government-Congress, CRS Government and Finance Division

### *Overview*

The 9-11 Commission recommended that the Senate change its process for confirming members of the National Security Team, to ensure there is a smooth and quick transition between presidential administrations when it comes to those responsible for national security policy. To facilitate a better process, the 9/11 Commission recommended that "The Senate, in return, should adopt special rules requiring hearings and votes to confirm or reject national security nominees within 30 days of their submission."[4] The 9/11 Commission's report did not say how to implement or enforce this recommendation. The 9/11 Commission also recommended that the requirement that the Senate provide advice and consent on some nominations be abolished.

### *House Provisions*

Section 5041 of the House amendment to S. 2845 would require that the Office of Personnel Management create a list of all national security positions which require Senate confirmation within 60 days after enactment. For the top positions, such as the Secretary of Defense, who are Level 1 employees on the Executive Schedule, the House bill would not change the current

[4] *The 9/11 Commission Report*, p. 422.

Senate confirmation process. The President would choose a nominee and submit their name to the Senate for its advice and consent. The nominee would then have to be confirmed by the Senate.

The House-passed version of S. 2845, however, would change the Senate confirmation process for other national security nominees. For Executive Schedule Level II employees within the National Security Team, such as the Deputy Attorney General, and Executive Level III employees, such as an Under Secretary of State, the House amendment would require that the Senate act within 30 days of receiving a nomination, or the nomination would go into effect without Senate action. The House amendment does not contain any details about how the Senate might implement such a 30-day deadline. An analysis of the Bush and Clinton Administrations showed that the majority of national security nominees were confirmed within 30 days (see CRS Report RL32551, *9/11 Commission Recommendations: The Senate Confirmation Process for Presidential Nominees*, by Betsy Palmer, which also contains analysis of the potential impact of a 30-day deadline for Senate consideration of some nominations.).

For Level IV and Level V national security employees who currently require Senate confirmation, the House amendment would remove that requirement and allow them to be appointed at the discretion of the President.

### *Senate Provisions*

As passed by the Senate, S. 2845 was amended to include a provision that calls for quick action on nominees but would not commit the Senate to deadlines. Instead, the bill at Section 1081(b) includes a "sense of the Senate" resolution stating that "the Senate committees to which these nominations are referred should, to the fullest extent possible, complete their consideration of these nominations, and, if such nominations are reported by the committees, the full Senate should vote to confirm or reject these nominations within 30 days of their submission." This is, essentially, an affirmation of the current confirmation process.

### *Comments*

The House-passed version of the bill would make major changes in the Senate's confirmation process. Dozens of positions that now require Senate confirmation, such as assistant secretaries of Defense, would no longer be subject to Senate approval. This could result in somewhat uneven application of the advice and consent function. An assistant secretary of Labor, for example, would be required to obtain the assent of the Senate while top National Security appointees would not. The House-passed provisions would remove the Senate's advice and consent role for an additional set of nominees, if the Senate did not have an up or down vote within 30 days of receiving the nomination. The group this provision would cover includes the Director of Central Intelligence and the Secretaries of the Air Force, Army and Navy.

## Security Clearance Modernization

Prepared by Fred Kaiser, Specialist in American National Government, Government and Finance Division

### Overview

Proposals have existed for many years about expediting and otherwise improving the security clearance process, that is, determining a federal employee's or applicant's eligibility for access to classified national security information. The 9/11 Commission recognized this in presenting two of its 41 recommendations, which suggest modernizing the clearance process, among other

matters. The Commission proposed: "Information procedures should provide incentives for sharing, to restore a better balance between security and shared knowledge"; and "The president should lead the government-wide effort to bring the national security institutions into the information revolution. He should coordinate the resolution of the legal, policy, and technical issues across agencies to create a "'trusted information network.'"

## House Provisions

Sections 5071-5078 of H.R. 10, are designed to modernize the security clearance process. The provisions would standardize the process across federal agencies, set uniform requirements for the clearance levels, and expedite background investigations. New, clarified, or enhanced powers to accomplish these goals include authority that would allow the establishment of government-wide criteria and standards for financial disclosure, administration of polygraphs, and security clearance questionnaires, as well as a national database regarding security clearances.

The House bill details other proposed changes. It specifies offices which would be responsible for certain types or levels of clearances, provides specifically for reciprocity among agencies in accepting background investigations conducted for other agencies, and sets a time-limit for conducting a clearance (a total of 60 days, consisting of 40 days for the investigation and 20 for the adjudication). H.R. 10 also calls for increased or improved use of existing tools and technology in conducting investigations, provides for interim clearances in certain situations, on-going monitoring of clearance holders using a new "regularly recurring verification" process. This process could be used as a basis for terminating a security clearance and in periodic reinvestigations to address emerging threats. In addition, the new "regularly recurring verification" could replace periodic reinvestigations, if the National Intelligence Director (NID) certifies it.

Section 5077 would change the national security clearance process during presidential transitions. It would require the President-elect to submit to the NID the names of candidates for high-level national security positions (at or above the undersecretary level) as soon as possible after a general election. The NID would be responsible for the "expeditious completion" of background investigations for such individuals before the inauguration. A similar process would be required for prospective transition team members needing clearance, with completion required, "to the fullest extent practicable," by the day after the general election.

## Senate Provisions

S. 2845 (Sec. 116) responds to the need to improve the clearance process, by calling upon the President, in consultation with the National Intelligence Director, to establish uniform standards for access to classified information; ensure the consistent implementation of such requirements throughout the government; ensure that an individual who is granted or continued eligibility for access by one agency is treated as eligible for access at the same level elsewhere in the government; establish uniform standards for polygraph examinations, financial disclosure, and security clearance questionnaires; and ensure that the proposed national database meets the needs of the intelligence community. The bill also provides for the President to select one federal agency which would be responsible for conducting all security clearances investigations throughout the government for employees and contractors and maintain all security clearances of such employees or contract personnel.

S. 2845 would also amend the Presidential Transition Act of 1963, including provisions to recommend submission by the President-elect to the agency with national security clearance functions of "names of candidates for high level national security positions through the level of

undersecretary" as soon as possible after the presidential election; and to require the appropriate agency to carry out background investigations of these candidates for high-level national security positions "as expeditiously as possible ... before the date of the inauguration." It would similarly facilitate this process for those prospective transition team members needing clearance, with completion required, "to the fullest extent practicable," by the day after the general election.

### Comments

The House and Senate bills offer similar solutions to similar problems. Improvements in expediting the security clearance process, setting uniform standards, and requiring reciprocity are common elements. Both, moreover, call for setting government-wide criteria and standards for financial disclosure, administration of polygraphs, and security clearance questionnaires as well as requirements for a national database regarding security clearances. The two versions differ, however, in their specificity (with H.R. 10 being more extensive and detailed than S. 2845) and their specifics. The House bill, for instance, adds provisions designating an official in charge of program oversight and administration, clearing applicants for a presidential transition team and for high-ranking positions in a new administration, and instituting a new "regularly recurring verification" requirement. It would also centralize background investigations in a single agency.

## Emergency Financial Preparedness

Prepared by William Jackson, Specialist in Financial Institutions, CRS Government and Finance Division

### Overview

The House Financial Services Committee markup of H.R. 10 added several financial preparedness/security provisions to the measure, which the 9/11 Commission had not recommended. The resulting Committee language included the following, among other things, in its Report dated October 1, 2004. These amendments would strengthen financial institutions from within, against natural and unnatural (terrorist) disasters in their operations. Senate-passed S. 2845 generally follows the Commission's focus on intelligence and security matters, including infrastructure protection for financial institutions.

### House Provisions

House-passed H.R. 10, Title V, Subtitle G:

—Section 5082 expresses the sense of Congress that the Treasury, in consultation with other agencies, furnish resources and report efforts to educate consumers and employees of the financial services industry about domestic counter-terrorist financing activities.

—Sections 5084-5086, titled "Emergency Securities Response Act of 2004." Enables the Securities and Exchange Commission (SEC) to issue orders and take other emergency actions to address extraordinary private securities market disturbances. Gives the Treasury authority parallel to the SEC for government securities market disturbances.

—Section 5087 requires the Federal Reserve, the Office of the Comptroller of the Currency, and the SEC to report on private sector financial business continuity plans, including more financial services entities than are under existing regulatory guidance. The agencies published their regulation in the *Federal Register in 2003,* as the *Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System*.

—Section 5088 expresses the sense of Congress that insurance and credit rating companies consider businesses' compliance with private sector disaster and emergency preparedness standards in assessing insurability and creditworthiness, to encourage private sector investment in disaster and emergency preparedness.

—Section 5089 requires the Treasury to report on its efforts to encourage public/private partnerships to protect critical financial infrastructures.

### Senate Provisions

Senate-passed H.R. 2845, Title X, Subtitle D, Section 1045 includes a sense of the Congress provision for insurance and credit rating companies as above. Its Section1046 requires the Department of Homeland Security to address and report on financial institutions, among other sectors, in critical infrastructure and readiness assessments.

### Comments

The House had passed the freestanding SEC/Treasury emergency preparedness language, known as the Emergency Securities Response Act of 2003, as H.R. 657 on February 20, 2003. The Senate did not take it up. H.R. 10 would encourage financial businesses smaller than the largest "wholesale" transacting and clearing entities, the only firms now covered by the *Interagency Paper*, to undertake emergency preparedness, largely through existing financial coordination and regulatory arrangements. The Senate measure would place a significant amount of preparedness responsibility with the Department of Homeland Security, including establishment of a program to promote private sector preparedness initiatives (Section 1044). The insurance and credit rating provision of both resembles concerns over lending and insuring in areas subject to flooding and the like, where planning against the consequences of disasters is important for project financing.

## Other Matters—Mutual Aid

Prepared by Keith Bea, Specialist in American National Government, CRS Government and Finance Division

### Overview

For decades state and local governments have relied upon mutual aid agreements to obtain assistance from other units of government to prepare for and respond to catastrophes that overwhelm their resources. The importance of such initiatives was emphasized in 1996 when Congress enacted P.L. 104-321. This statute signified congressional approval of the Emergency Management Assistance Compact (EMAC), which the Southern Governors Association initiated after Hurricane Andrew devastated south Florida in 1992. Mutual aid agreements, including EMAC, set forth the procedures and conditions under which emergency assistance is provided to requesting states. While the mutual aid agreements have improved emergency management capabilities, the 9/11 Commission and others have expressed concern that existing mutual aid agreements do not adequately address certain emergency preparedness and response needs. The 9/11 Commission specifically found that congressional action was required to resolve liability and indemnification "impediments" in the National Capital Region (NCR).

### House Provisions

H.R. 10, Section 5102, would authorize local, state or federal officials to negotiate mutual aid agreements for emergency assistance and to facilitate participation in training exercises consistent

with state laws. Officials responding to an event or training in an exercise in a host state would remain liable under their own state laws and would be covered by the death benefit and workers compensation provisions of their home state. Litigation must be brought in the state courts of the responders or in U.S. District Courts within the responders' state; suits against federal officials may only be considered in a U.S. District Court. Section 5103 provides that authorized representatives may enter into litigation management agreements that would provide for a federal cause of action for claims against Emergency Response Providers. This federal cause of action would apply the substantive law either of the state in which the acts of terrorism occurred, or of the state determined by the choice of law principles agreed to in the litigation management agreement. However, state law would not apply if it were inconsistent with or preempted by federal law. Section 5103 of the bill also prohibits punitive damages and does not protect persons or entities that commit or support terrorism acts. Section 5106 requires that the Secretary inventory, catalog, and evaluate existing compacts.

### Senate Provisions

As amended on the floor of the Senate, S. 2845 Section 1042 would authorize state and local government officials in the National Capital Region (NCR), and federal officials, to enter into mutual aid agreements for emergency response, preparing for or recovering from an emergency, or training for such activities. The District of Columbia would be authorized to purchase liability and indemnification insurance or self-insure against claims. Responding parties are subject to liability laws of their own state, and legal actions may be brought only under the laws of the responder's state, or federal law as appropriate. The bill provides for a good faith exception and requires that workers compensation as well as death benefits be provided according to the laws of the responders' states.

### Comments

Considerable differences exist between the mutual aid provisions in the two bills. While H.R. 10 provides authority for mutual aid agreements across the nation and establishes a national standard for claims against responders, S. 2845 focuses solely on the National Capitol Region. Both bills provide that the laws of the responders' "home" state are to be followed in resolving litigation. While H.R. 10 does not specifically address mutual aid agreements for the NCR, Section 5010 does indirectly address the issue—it requires that DHS study the definition of National Capitol Region and consider its geographic boundaries.

## Interoperable Communications and Warning Systems

Prepared by Linda K. Moore, Analyst in Telecommunications Policy, CRS Resources, Science, and Industry Division

### Interoperable Communications

Interoperability, also referred to as compatibility or connectivity, refers to the capability for different systems to readily contact each other. Facilitating interoperability has been a policy concern of public safety officials for a number of years. Since September 11, 2001—when communications failures added to the horror of the day—achieving interoperability for public safety communications has become an important national policy concern for Congress. Support of communications interoperability, or connectivity, is also recommended by the 9/11 Commission, through the selective establishment and funding of signal corps units in high-risk urban areas. Because there are many policy considerations related to interoperable

communications, the issue is addressed in several places throughout both the House and Senate bills. The discussion here addresses those sections that deal primarily with governance and the development of infrastructure for communications interoperability.

### *House Bill*

Section 5006 of H.R. 10 provides a sense of Congress regarding the desirability of continuing programs that support interoperable systems and radios and that standards for these should meet prevailing, voluntary consensus standards. Section 5131 specifies ways in which interoperability might be achieved. It also would provide a statutory definition of interoperability. Section 5131 would establish a new, unnamed program to enhance public safety interoperable communications at all levels of government. This program would have some of the functions currently planned for Office of Interoperability and Compatibility, created October 1, 2004, by the Department of Homeland Security (DHS). These include coordination with other federal agencies and provision of training and technical assistance to state and local public safety agencies. Other program responsibilities reflect the bill's definition of interoperability, to include the establishment of a comprehensive national approach to achieving public safety interoperable communications and encouragement for the development and use of open architectures. The program would also accelerate the development of national voluntary consensus standards. The bill further would create the statutory authority for the Office of Interoperability and Compatibility, specifying the functions of such an office. Functions would be limited to the management of the SAFECOM program and of an expedited effort to assure interoperable communications in high-risk urban areas. SAFECOM is an umbrella program for interoperability that is part of the Science and Technology Directorate of DHS. Other provisions of Section 5131 would provide consulting for interoperable communications in high-risk jurisdictions and would allow for multi-year commitments for interoperability grants. To receive funding, states would be required to submit detailed plans to DHS.

### *Senate Bill*

Sections 1065 and 1066 of S. 2845 would provide statutory authority for SAFECOM, and authorize funding for program development. In addition to providing for coordination of all federal programs dealing with interoperability, a key provision of the bill would require SAFECOM to provide research and development for a communications system architecture that would enhance the potential for a coordinated response to a national emergency. Eligibility for funding would include a requirement that applicants provide assurance that any equipment or system purchased with grant funds would be compatible with the communications architecture that SAFECOM is required to develop, as well as any program standards. In Section 1043, the Senate bill would require the Secretary of the Department of Homeland Security, among others, to encourage the establishment of effective emergency communications capabilities in high-risk urban areas.

### *Comments*

Although there are numerous differences in the key provisions regarding interoperability (Section 1065 of the Senate bill and Section 5131 of the House bill) a significant difference is in the placement of authority. The Senate bill would strengthen SAFECOM in its role as lead program for interoperability within the federal government. The House bill would circumscribe SAFECOM, limiting its functions. A new program would be authorized with responsibilities that are more encompassing than those of the Senate bill. The 9/11 Commission report speaks of the

creation of a signal corps to assure connectivity in some areas. Section 5131 would provide for the development of communications capability that has some characteristics of a signal corps.

## Warning Systems

The 9/11 Commission report discusses the effectiveness of emergency alerts at the World Trade Center on September 11, 2001, and recommends in its analysis that there be better coordination of communications between first responders and emergency (911) call centers in order to reach the civilian population. This type of coordination has typically been addressed by the public safety community primarily within the context of the development of an effective all-hazards warning system that is able to reach all levels of the civilian population and authorities concerned with any aspect of public safety.

### *House Bill*

Requirements for a study about the use of telecommunications networks as part of an all-hazards warning system are included in H.R. 10 in Section 5009. The goals of the study would be to consider the practicality of establishing a telecommunications-based warning system that would also provide information on safety measures that might be taken in response to the warning. The legislative proposal specifies that technologies to consider would be telephone, wireless communications, and other existing communications networks. Section 5135 would establish a pilot study to test innovative warning systems, specifically one that is based on an AMBER Alert Communications network. AMBER Alerts are used to broadcast information about missing or abducted children using a variety of media, including the internet and the existing Emergency Alert System. A recent technological innovation provides a Web portal that uses a dedicated server and software to format messages for a variety of media. It also is able to target specific groups of recipients. The ability to identify certain groups is often referred to as creating a virtual community.

### *Senate Bill*

There are no provisions regarding warning systems for civilians in the Senate bill.

### *Comments*

In a homeland security context, the ability to establish and contact a virtual community can save lives. If some of the new warning systems technologies, in conjunction with emergency response procedures, had been available in the New York City area on the morning of September 11, a large number of people in the World Trade Center could have known within minutes what was going on and might have received an early order to evacuate the buildings. Cell phones, pagers, e-mail, and telephone systems would have sent out the warning. At the same time, electronic signs on the major roads, tunnels, and bridges leading to Manhattan would have flashed signs telling motorists to turn around, etc. Although there has been much discussion and some progress at the federal level in upgrading warning systems, most experts in this area see a significant gap between what new technology can provide and what is currently in place.

# Senate Provisions Not in H.R. 10

## National Preparedness

Prepared by John Moteff, Specialist in Science and Technology, CRS Resources, Science, and Industry Division

### Senate Provisions

S. 2845, Section 1045 (Title X, Subtitle D) is entitled Critical Infrastructure and Readiness Assessments. This section requires the Secretary of Homeland Security to:

"(A) identify those elements of the United States' transportation, energy, communications, financial, and other institutions that need to be protected;
(B) develop plans to protect that infrastructure; and
(C) exercise mechanisms to enhance preparedness."

It requires the Secretary to report to Congress 180 days after enactment of the bill and annually, thereafter, on—

"(1)...the progress in completing vulnerability and risk assessments of the nation's critical infrastructure;
(2) the adequacy of the Government's plans to protect such infrastructure; and
(3) the readiness of the Government to respond to threats against the United States."

The first part of this section corresponds directly with the 9/11 Commission's language used to introduce its final recommendation. The Commission's final recommendation stated that "the Department of Homeland Security should regularly assess the types of threats the country faces to determine (a) the adequacy of the government's plans—and progress against those plans—to protect America's critical infrastructure, and (b) the readiness of the government to respond to the threats...." The second part of the Senate's language roughly corresponds to the Commission's language. However, the emphasis in the Commission's language is to "regularly assess the type of threats" and to use this regular reassessment to determine the adequacy and progress of government's plans to protect critical infrastructure. The Senate language calls for something a little different: a report on the progress of vulnerability and risk assessments and the adequacy of government plans to protect critical infrastructure. Vulnerability and risk assessments can be considered as input to the government's effort to plan for critical infrastructure protection, but not the plan itself. The Senate language does not mention a regular assessment of the types of threat. Finally, the Senate language goes beyond the 9/11 Commission's recommendation and requires a report, with deadlines.

### House Provisions

The House bill does not have a similar provision. Its language regarding a transportation security plan (Title II, Subtitle G, Section 2172) is similar, but relates only to the transportation infrastructure.

## Review of Components of National Intelligence Program

Prepared by Richard Best, Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division

### Senate Bill

S. 2845, Section 338, provides that the National Intelligence Program (notwithstanding the earlier definition in Section 2) shall consist of all "programs, projects, and activities" that are part of the National Foreign Intelligence Program (NFIP) upon the date of enactment; the NID and the Secretary of Defense, however, are to review Joint Military Intelligence Programs and Tactical Intelligence (JMIP) and Related Activities (TIARA) and certain other Defense Intelligence Agency/DOD programs. Upon completion of the review, the NID shall submit to the President recommendations regarding programs, projects, and activities, if any, to be included in the National Intelligence Program along with comments by the Secretary of Defense. This review would assess whether JMIP/TIARA programs in agencies (especially, the National Security Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency) that will be under the authority of the NID should be transferred into the National Intelligence Program (which the NID will manage), remain in their present agencies under management of the Secretary of Defense, or be transferred out of their present agencies to other locations in the Defense Department. Floor debate on this provision centered on weighing the importance of strengthening the control of national intelligence agencies by the NID versus the importance of ensuring that programs directly related to supporting military operations remain responsive of the Secretary of Defense.

### House Bill

H.R. 10 has no comparable provision.

## Quality of Analysis Issues

Prepared by Richard Best, Specialist in National Defense, CRS Foreign Affairs, Defense, and Trade Division

### Senate Provisions

Several sections of S. 2845 prescribe responsibilities to ensure that intelligence information is, as mandated in Section 222, "timely, objective, independent of political considerations, and has not been shaped to serve policy goals." Section 142 establishes an Ombudsman of the National Intelligence Authority whose office is to include an Analytic Review Unit that will conduct detailed evaluations of intelligence analysis by various agencies. The evaluations are to be forwarded to agency heads and to congressional committees. The Analytic Review Unit is to make recommendations for awards, commendations, additional training, or disciplinary or other actions.

Section 145 of S. 2845 would establish an Office of Alternative Analysis within the National Intelligence Authority. This office would subject each National Intelligence Estimate (NIE) and potentially other analytical products, prior to completion, to "a thorough examination of all facts, assumptions, analytic methods, and judgments utilized in or underlying any analysis, estimation, plan, evaluation, or recommendation contained in such estimate." Each NIE or other product evaluated shall include an appendix containing the findings of the Office of Alternative Analysis. The results of each evaluation shall also be submitted to congressional intelligence committees.

Section 207 of S. 2845 expresses the sense of Congress that the NID should consider the advisability of establishing an alternative analysis capability for each element of the intelligence community. The NID is to submit a report within one year describing actions taken to establish this capability.

### House Provisions

H.R. 10 has no comparable provisions.

## Amendment 3841, Amendment 3837

Prepared by Blas Nuñez-Neto, Analyst in Social Legislation, CRS Domestic Social Policy Division

### Amendment 3841

S. 2845, Section 1122, would require DHS to present a plan within 6 months of the enactment for the systematic surveillance of the *Southwest* border by remotely piloted aircraft. The Secretary is directed to implement the submitted plan as a pilot program as soon as sufficient funds are appropriated and available.

### Amendment 3837

S. 2845, Title IX, Sections 901-905, would authorize DHS to carry out a pilot program to test advanced technology, such as sensors, cameras, and unmanned aerial vehicles, between ports of entry (POE) along the *Northern* border. The Secretary is authorized to work with whatever private and public agencies are necessary to procure and use the advanced technologies, and is directed to report no later than one year after enactment of the act on the pilot program.

## Transmittal of Record, to Presidential Candidates, Relating to Presidentially Appointed Positions

Prepared by Henry Hogue, Analyst in American Government, CRS Government and Finance Division

### Senate Provision

S. 2845, Section 1102(b), would direct the Office of Personnel Management (OPM) to transmit an electronic record "on Presidentially appointed positions," with specified content, to a major party presidential candidate soon after his or her nomination, and to subsequently make such a record available to any other presidential candidate.

### House Provision

H.R. 10 has no provision related to this issue.

## Author Information

Roger S. White, Coordinator
Senior Specialist in Economic Policy

Elizabeth B. Bazan
Legislative Attorney

Alfred Cumming
Specialist in Intelligence and National Security

Andrew Feickert
Specialist in Military Ground Forces

Richard A. Best Jr.
Specialist in National Defense

Jeffrey J. Kuenzi
Specialist in Education Policy

Charles Doyle
Senior Specialist in American Public Law

Bart Elias
Specialist in Aviation Policy

William J. Krouse
Specialist in Domestic Security and Crime Policy

Michael John Garcia
Legislative Attorney

Todd B. Tatelman
Legislative Attorney

Ruth Ellen Wasem
Specialist in Immigration Policy

Lisa M. Seghetti
Section Research Manager

John Frittelli
Specialist in Transportation Policy

Susan B. Epstein
Specialist in Foreign Policy

Christopher M. Blanchard
Analyst in Middle Eastern Affairs

K. Alan Kronstadt
Specialist in South Asian Affairs

Marjorie Ann Browne
Specialist in International Relations

Christopher Bolkcom
Specialist in Military Aviation

Martin A. Weiss
Specialist in International Trade and Finance

Shawn Reese
Analyst in Emergency Management and Homeland Security Policy

Jack Maskell
Legislative Attorney

Henry B. Hogue
Analyst in American National Government

Betsy Palmer
Analyst on the Congress and Legislative Process

Frederick M. Kaiser
Specialist in American National Government

Keith Bea
Section Research Manager

Linda K. Moore
Specialist in Telecommunications Policy

John D. Moteff
Specialist in Science and Technology Policy

Raphael F. Perl
Specialist in International Affairs

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