

Intelligence Reform and Terrorism Prevention Act of 2004

The bill is intended to implement the recommendations of the 9-11 Commission that proposed sweeping changes in how US intelligence agencies are organized.

The act creates a new director of national intelligence to oversee all intelligence agencies, and who would have the power to develop the overall intelligence budget. The new director, however, would not control the day-to-day operations of the agencies, and the Pentagon would still manage approximately 80% of all intelligence spending.

The President will preserve the current chain of command linking the Defense secretary to military intelligence and military intelligence to battlefield commanders.

The measure authorizes at least 2,000 additional border security agents and establishes federal standards for state-issued drivers' licenses and other forms of identification.

Section I

Background & Summary

Although the United States has conducted intelligence activities since the Revolutionary War, only since World War II have they been coordinated on a government-wide basis. Today's intelligence community can trace its origins to the Japanese surprise attack on Pearl Harbor and the subsequent establishment in 1942 of the US first comprehensive intelligence agency, the Office of Strategic Services (OSS).

However, with the onset of the Cold War, President Truman recognized the need for a larger, more centralized intelligence system. In 1947, the National Security Act created the National Security Council (NSC) and the Central Intelligence Agency (CIA) to coordinate national intelligence activities and to correlate, evaluate, and disseminate national security intelligence.

The act defined the director of Central Intelligence as head of the intelligence community, head of the CIA, and principal intelligence adviser to the president. Today, the U.S. intelligence "community" comprises 15 different agencies, including the CIA, the Defense Intelligence Agency (DIA), the FBI, the National Reconnaissance Office (NRO), the National Security Agency (NSA) — which collects, intercepts and processes foreign signals intelligence, such as phone calls and e-mails — as well as foreign intelligence activities of the State Department, Homeland Security Department, and other agencies.

Although the CIA director is technically "head" of the intelligence community, most of the nation's intelligence agencies — including the NSA, NRO, and NSA — remain under the effective control of the Defense Department. To this day, military-related intelligence activities reportedly account for over 80% of national intelligence spending, including roughly \$30 billion for the DIA, NSA, and National Imagery and Mapping Agency. Although classified, the CIA reportedly controls only \$5 billion of the overall intelligence budget that is thought to total well over \$40 billion a year.

Section II

Intelligence Reorganization

This part of the bill authorizes the first major reorganization of the US intelligence agencies since the end of World War II, establishes a new position of director of national intelligence with authority over most intelligence agencies, and creates a national counterterrorism center to coordinate terrorism intelligence from throughout the government.

Director of National Intelligence

The act establishes a new position of director of national intelligence (DNI) to oversee all US intelligence activities.

The DNI would act as principal advisor to the President, the National Security Council, and the Homeland Security Council for foreign and domestic intelligence matters relating to national security.

The DNI — who would have to be confirmed by the Senate — would ensure that appropriate agencies and departments have access to and receive all-source intelligence support needed to carry out their own missions as well as to perform independent, competitive analysis.

The DNI could not also serve as the Director of the Central Intelligence Agency (CIA) or as the head of any other element of the intelligence community, and the director's office would not be located in the Executive Office of the President.

Military Chain of Command

The bill directs the President to write new regulations to preserve the military chain-of-command from the President to Defense secretary to battlefield commander. Specifically, it directs the President to write new regulations that "respect and do not abrogate" the dispersal of intelligence in the chain of command to ensure that intelligence can pass directly from satellites to battlefield commanders.

Budget Authority

The bill allows the DNI to "develop and determine" an annual budget for the national intelligence program, which would be based on budget proposals provided by the heads of agencies and organizations of the intelligence community and their respective department heads. It also requires the heads of such agencies and organizations to comply with the DNI's requests for information for the purpose of determining the national intelligence budget and allows the DNI — based on intelligence priorities set by the president — to provide budget "guidance" to the heads of all intelligence-community agencies.

However, the Pentagon would still manage roughly 80% of all intelligence spending.

Operational Authority

Under the measure, the DNI would "monitor the implementation and execution" of intelligence operations, but would not be directly in charge of the CIA's clandestine operations.

The bill also requires that by October 2008 the DNI not be physically based at CIA headquarters in Langley, Va.

Transfer/Reprogramming of Funds

The measure permits the DNI to transfer some funds between intelligence programs, but only with the approval of the Office of Management and Budget (OMB).

Specifically, the DNI could transfer or reprogram national intelligence funds out of any department or agency as long as the amount in a single fiscal year is less than \$150 million, is less than 5% of the department's or agency's national intelligence funds, and does not terminate an

acquisition program. These limits would not apply if the DNI obtains the concurrence of the affected department head.

All transfers or reprogrammings by the DNI must be for a higher-priority intelligence activity; must support an emergent need, improve program effectiveness, or increase efficiency; and could not involve funds from the CIA Reserve for Contingencies or a DNI Reserve for Contingencies.

Finally, the measure prohibits national intelligence program funds from being transferred or reprogrammed without the approval of the DNI, except in accordance with procedures prescribed by the director.

Personnel

The act authorizes 500 new personnel billets within the Office of the DNI, and allows the DNI, with the approval of the OMB director, to transfer 150 personnel funded within the intelligence community to the DNI office for up to two years.

In addition, for the first 12 months after a national intelligence center is created, the DNI could transfer 100 personnel authorized for elements of the intelligence community to the center. The DNI would have to receive the approval of the OMB director as well as notify appropriate congressional committees of such transfers.

Finally, the DNI could transfer unlimited numbers of personnel authorized for an element of the intelligence community to another such element for a period of not more than two years. The DNI could only make such transfer if the personnel are being transferred to an activity that is a higher-priority intelligence activity, and the transfer supports an emergent need, improves program effectiveness, or increases efficiency. The DNI must notify appropriate congressional committees of such transfers.

The DNI could nominate only the deputy director of national intelligence and the CIA director — although the national intelligence director's "concurrence" would be required for other appointments, including the heads of the National Security Agency, National Reconnaissance Office, and assistant secretary of State for intelligence and research.

CIA Domestic Powers

The bill continues the current prohibition on the CIA director's having any police, subpoena, or law enforcement powers, or any internal security functions.

Foreign Liaison

The measure authorizes the DNI to oversee the coordination of relationships with the intelligence or security services of foreign governments or international organizations.

National Counterterrorism Center

The bill establishes a National Counterterrorism Center to serve as the primary organization for analyzing and integrating all US intelligence pertaining to terrorism and counterterrorism.

The measure also transfers the current agency-wide Terrorist Threat Integration Center to the new center.

The Director of the center would have to be confirmed by the Senate and could not simultaneously serve in any other capacity in the executive branch. The act requires the center's Director to report to the DNI on budget and intelligence matters, and to the President on the planning and progress of joint counterterrorism operations (other than intelligence operations).

The center could conduct "strategic operational planning" — which is defined to include the mission, the objectives to be achieved, the tasks to be performed, interagency coordination of operational activities, and the assignment of roles and responsibilities. The center's director would monitor the implementation of strategic operational plans, and obtain relevant information from departments and agencies on the progress of such entities in implementing the plans. However, he would not have explicit authority to assign operational responsibilities to agencies or to track implementation of operations.

National Intelligence Centers

The measure authorizes the director of national intelligence (DNI) to establish regional national intelligence centers to address intelligence priorities. These centers would have primary responsibility, in their areas of intelligence responsibility, for providing all-source analysis and for identifying and proposing to the DNI intelligence collection and production requirements. It also requires the DNI to ensure that the centers have sufficient personnel; that the intelligence community shares information with the center in order to facilitate their mission; and that each center has a separate budget account.

National Counterproliferation Center

The measure directs the President to establish a National Counterproliferation Center no later than 18 months after the date of enactment. The president could waive this requirement if he certifies to Congress that it does not materially improve the government's ability to halt the proliferation of weapons of mass destruction.

Improve Analytical Capabilities

The DNI is directed, within 180 days of enactment, to establish a process to ensure that the intelligence community conducts alternative intelligence analysis.

The measure requires the DNI to appoint an official to counsel, conduct arbitration, offer recommendations, and, as appropriate, initiate inquiries into real or perceived problems of analytic tradecraft or politicization, biased reporting, or lack of objectivity in intelligence analysis.

The DNI is directed to assign an individual to review whether intelligence products are based on all sources of available intelligence, properly describe the quality and reliability of underlying sources, properly caveat and express uncertainties or confidence in analytic judgments, and properly distinguish between underlying intelligence and the assumptions and judgments of analysts.

Information Sharing

The bill establishes information-sharing standards and a community information-technology officer to help intelligence sharing across all agencies and "connect the dots".

Specifically, the President is directed to establish, within a year of enactment, an "information sharing environment" to facilitate the sharing of terrorism information among all appropriate federal, state, local, tribal and private sector entities, through the use of policy guidelines and technologies.

Civil Liberties Oversight Board

The bill creates a privacy and civil liberties oversight board within the Executive Office of the President that would ensure that privacy and civil liberties concerns are appropriately considered

in the implementation of laws, regulations, and executive branch policies related to fighting terrorism. Specifically, the board would review regulations and policies, including information-sharing guidelines, and provide advice to the president and departments and agencies in the executive branch.

Education and Training

The act directs the director of national intelligence (DNI) to develop a comprehensive education, recruitment, and training plan to meet the linguistic requirements of the intelligence community. The DNI would establish an integrated framework that brings together the educational components of the intelligence community to promote joint education and training, including establishing an intelligence community scholarship program, to provide college scholarships for students in exchange for service within the intelligence community.

Section III

Border Security, Terrorist Travel & Crime

This section offers provisions aimed at increasing US border security, track and curtail terrorist travel by tightening travel-document requirements and examination, and increase criminal penalties for terrorist crimes.

Border Security

Expanded Pre-Inspection at Foreign Airports

The measure increases to 50 — up from 25 — the number of pre-inspection stations at foreign airports where US immigration officers are assigned to assist air carriers in the detection of fraudulent documents. The stations would be set up at foreign airports that serve as a point of departure for a significant number of arrivals at U.S. ports of entry without valid documentation, but where no pre-inspection station currently exists.

The measure authorizes \$25 million in FY 2005, and \$40 million in each of fiscal years 2006 and 2007 to carry out the program expansion.

Increase Full-Time Border Patrol Agents

The act authorizes DHS, in fiscal years 2006 through 2010, to increase by at least 2,000 each year, the number of full-time, active-duty border-patrol agents. The measure requires at least 20% of each year's additional agents to be assigned to the northern border.

Increase Full-Time Immigration and Customs Enforcement Investigators

The bill authorizes DHS, in fiscal years 2006 through 2010, to increase by 800 each year the number of full-time active-duty investigators examining violations of immigration laws.

Increase in Detention Space

The act authorizes DHS to increase by 8,000, in each of fiscal years 2006 through 2010, the number of beds available for immigration detention and deportation operations. Priority would be given to those facing deportation on national security grounds.

Northern Border Security Pilot Program

The measure permits DHS to carry out a pilot program to test advanced technologies, such as sensors, video, and unmanned aerial vehicles, to improve border security between ports of entry

along the U.S.-Canadian border. The measure authorizes such sums as may be necessary to carry out the program

Southwest Border Surveillance

The act directs DHS to provide the President with a plan for the systematic surveillance of the southwest border of the United States by remotely-piloted aircraft, and to implement the plan as soon as sufficient funds are appropriated and available.

Terrorist Travel

Terrorist Travel Intelligence Strategy

The measure requires the director of the National Counterterrorism Center to submit to Congress a strategy for combining terrorist travel intelligence with operations and law enforcement into a "cohesive effort" to intercept terrorists, find terrorist-travel facilitators, and constrain terrorist mobility domestically and internationally. The measure authorizes such sums as may be necessary for each of fiscal years 2005 through 2009 for these purposes.

International Agreements to Track & Curtail Terrorist Travel

The measure directs the President to lead efforts to develop international agreements to inhibit terrorist travel with the use of lost, stolen or falsified documents. Such agreements would establish a system for sharing information on lost, stolen, and fraudulent passports and other travel documents; establish a real-time verification system for passports and other travel documents; have all countries agree to criminalize and impose penalties on the use and trafficking of stolen and false documents; prevent the issuance of passports for bribes; and permit immigration and border officials to confiscate lost, stolen or falsified passports at ports of entry.

Human Smuggling and Trafficking Center

The measure establishes a Human Smuggling and Trafficking Center — an interagency program aimed at countering terrorist travel. The center would submit a report to Congress annually on vulnerabilities in the United States and in foreign travel systems that may be exploited by international terrorists, human smugglers and traffickers.

Biometric Entry and Exit Data System

The bill directs DHS to develop a plan to accelerate the full implementation of an automated biometric entry-exit program, and to report to Congress within six months on that plan.

The measure requires the integration, within two years, of the biometric entry-exit program with all U.S. Citizenship and Immigration Services, Homeland Security, Justice and State department systems that process or contain information on aliens.

The measure authorizes such sums as may be necessary for the period of FY 2005 through FY 2009 to carry out these provisions.

Visa and Passport Security Program

The agreement creates, within the State Department's Bureau of Diplomatic Security, a Visa and Passport Security Program. The program would have four goals — analyze methods by which terrorists use false documents to travel illegally; identify individuals who facilitate illegal terrorist travel; identify countries that need assistance in making their travel documents more secure from fraud; and randomly inspect U.S. visa and passport applications for accuracy, efficiency and potential fraud.

The measure directs the head of the program, in coordination with appropriate agencies, to prepare a strategic plan to disrupt individuals or organizations, domestic or foreign, that are involved in the production or distribution of fraudulent travel documents.

Further, the bill directs the State Department, in coordination with the Homeland Security Department, to report to Congress by June 2005, on the feasibility and cost of establishing a system in which border officials in multiple countries have real-time access to information about newly issued passports that have been lost or stolen.

Increase Number and Training of Consular Officers

The agreement increases by 150 individuals, in each fiscal year from 2006 through 2009, the number of consular officers in the State Department. The measure requires that all immigrant and non-immigrant visa applications be reviewed and adjudicated by a consular officer and not by foreign nationals employed by the State Department.

The agreement requires an in-person consular interview for most applicants between the ages of 14 and 79 applying for nonimmigrant visas. Under certain conditions, waivers for this provision could be granted by consular officials or the State Department.

The measure directs that as part of the consular-training program provided by the State Department, officers also must receive training in detecting fraudulent documents and in general document forensics.

The agreement directs DoS, in conjunction with DHS, to survey each diplomatic and consular post where visas are issued to assess the extent to which fraudulent documents are presented by visa applicants. It provides that no later than 31 July 2005, at least one anti-fraud specialist be assigned to posts that experience the highest levels of fraudulent documents by visa applicants.

Travel Documents for Foreign Travel

The agreement directs the DHS, in consultation with the State Department, to develop and implement, by 2008, a plan to require all travellers coming into or returning to the United States, including U.S. citizens and citizens from Canada and other Western Hemisphere countries, to present a passport or other documents sufficient to denote citizenship and identity.

Identification for Domestic Commercial Air Travel

The measure directs DHS, within six months of enactment, to develop and propose to Congress minimum standards of identification required for passengers on domestic commercial airlines. It requires both the House and Senate to vote on resolutions approving the standards within 15 business days after such resolutions are either reported or discharged from the appropriate committees.

If the standards are not approved, within one year of a rejection vote, passengers on domestic commercial airlines would have to present either a valid passport, domestic identification documents deemed appropriate by DHS, appropriate immigration documents, or documents issued by countries whose citizens do not need a passport to travel to the United States. These standards would not apply to people younger than age 17, and the DHS could waive them in the case of a medical emergency.

Revocation of Visas & Other Travel Documents

Under current law, the State Department has the discretion to revoke any visa or other documentation issued to an alien at any time, effective back to the date of issuance of the document. The bill bars judicial review of the revocation of any visa. The measure also provides that revocation of a visa is grounds for deportation, although a judicial review would be permitted

if the revocation of a visa is the sole reason for the deportation. This provision would be applicable to revocations made before or after the date of enactment.

Deportation of Aliens Trained by Terrorist Organizations

The measure makes deportable any alien who has received military-type training from an organization that, at the time of the training, was a designated terrorist organization.

The measure also directs the comptroller general to conduct a study to evaluate the extent to which weaknesses in the U.S. asylum system could be exploited by terrorists.

Bar Aliens Who Participated in Torture, Genocide & Religious Persecution

The bill bars the admission of, and makes deportable, any alien who has ordered, or participated in, an act of genocide, torture or extrajudicial killing.

The measure also bars the admission of, and makes deportable, anyone who, while serving as a foreign government official, was responsible for, or directly carried out, "particularly severe violations" of religious freedom.

Office of Special Investigations

The measure establishes within the Justice Department an Office of Special Investigations to investigate and take legal action to strip the citizenship of any naturalized citizen who is found to have participated in genocide, torture or illegal killings. The measure also allows for the criminal prosecution, or extradition for prosecution, of anyone found to have committed these crimes.

Terrorist Crime & Prosecution

"Lone Wolf" Terrorists

Under current law, the Foreign Intelligence Surveillance Act (FISA) permits searches and surveillance of agents of foreign powers, requiring "probable cause" that the target is an agent of a foreign power. Current law defines "agents of foreign powers" as individuals other than U.S. citizens or legal residents who act in the United States on behalf of a foreign power.

The agreement expands the definition of "an agent of a foreign power" to include individuals who "engage in international terrorism or activities in preparation." This provision is intended to allow the government to use FISA to investigate so-called lone wolf terrorists — individuals acting alone. The provision would expire at the end of 2005, at the same time that several provisions included in the USA PATRIOT Act (PL 107-56) also expire.

The measure requires the Justice Department to report to Congress every six months, in a manner consistent with the protection of national security, on the number of people targeted for FISA orders allowing electronic surveillance, searches and access to records; the number of times that information was obtained through these searches or that surveillance was used in criminal proceedings; and to provide summaries of significant legal interpretations of FISA and copies of decisions of FISA courts.

Pre-trial Detention of Terrorists

The measure adds federal crimes of terrorism punishable by more than 10 years in prison to the list of offenses for which bail is denied, unless the defendant can demonstrate to the court that he or she is not a flight risk or a danger to the community.

Military Training from Terrorist Organizations

The agreement makes it a crime to receive military training from a designated foreign terrorist organization. The measure provides that the defendant must have known that the organization has engaged in, or engages in, terrorism.

Penalties for violating this provision include fines and 10 years in prison. An alien convicted under this section would, in addition, be subject to deportation as provided for in another section of the agreement.

Bringing In and Harboring Certain Aliens

The measure increases, by up to 10 years, the criminal penalties for smuggling and harboring illegal aliens — if the crime was part of an ongoing commercial smuggling ring; the aliens were transported in groups of 10 or more; the aliens were transported under life-endangering conditions; or the aliens represented a life-threatening health risk to the people of the United States.

Expand Prohibition on Material Support to Terrorism

The measure specifies that it is a crime to provide material support or resources for carrying out an act of international or domestic terrorism, or to aid in the concealment or escape from an act of terrorism.

The measure clarifies the definitions of several types of material support, including training, personnel and expert advice or assistance. In response to concerns raised by the U.S. Court of Appeals for the Ninth Circuit that "training" and "expert advice or assistance" could include speech, the measure provides that nothing in this section could be construed to abridge rights protected under the Constitution.

The measure clarifies current law by stating that the defendant must know that the organization has been designated as a foreign terrorist organization by the State Department or know that it engages in the type of terrorist activity that can cause an organization to be so designated.

The measure allows an individual to apply to the State Department and the Justice Department for a waiver to provide personnel, training or expert advice or assistance to a designated foreign terrorist organization only if the material support is not used to carry out terrorist activities.

These provisions would sunset at the end of 2006.

Penalties for Terrorist & Military Hoaxes

The bill makes it a crime for anyone to convey false or misleading information relating to explosives, firearms, destruction of vessels, terrorism, sabotage of nuclear facilities, aircraft piracy, dangerous weapons or explosives on an aircraft, homicide or attempted homicide, or damaging or destroying facilities. The measure also makes it a crime to convey false or misleading information about the death, injury, capture or disappearance of a member of the armed forces. Those convicted would be subject to fines and up to five years in prison. In cases where serious bodily injury or death occurs, the penalty would increase to a maximum of 20 years, or life in prison, respectively.

The measure also directs courts to order reimbursement of costs to any party responding to terrorist hoaxes, and permits civil actions to be brought by any party incurring costs or losses as a result of the hoax.

Further, it increases, from five to eight years in prison, the maximum penalty for anyone convicted of making false statements or obstructing justice in cases relating to international or domestic terrorism.

Weapons of Mass Destruction

Under current law, the use of a weapon of mass destruction (WMD) against any U.S. national anywhere in the world, against anyone in the United States, and against any property owned or leased by the United States, is punishable by death.

The bill specifies that it is a crime, punishable by prison or death, to use the mail or any facility of interstate or foreign commerce, or to travel, in order to carry out an attack using a WMD, and adds chemical weapons to the definition of a WMD.

The measure expands the prohibition on the possession of nuclear material to include those who "participate in the development or production of any special nuclear material or atomic weapons."

The measure also provides penalties of up to 20 years in prison for anyone who willfully participates in or conspires to provide material support to a nuclear weapons program, or other weapons of mass destruction programs of a foreign terrorist power.

Penalties for Possession of Smallpox and Certain Weapons

The bill increases penalties for the production, possession and use of portable anti-aircraft missile systems designed to destroy aircraft, such as the Stinger; radiological dispersal devices ("dirty bombs"); and the smallpox virus. The measure establishes fines of up to \$2 million and a minimum sentence of 25 years in prison, or life in prison if death results from the actions of the defendant in these cases.

The measure also allows law enforcement to apply to the court for a wiretap in an investigation relating to the possession of these weapons. The illegal possession of these weapons would also be added to the list of "federal crimes of terrorism" and could be cause for further investigations into money-laundering and providing material support to foreign terrorists.

Grand Jury Information Sharing

Current law permits the disclosure of grand-jury matters to government personnel, including state and local governments, to assist in enforcing federal criminal law. Information involving foreign intelligence or counterintelligence matters may be shared with any federal officials needing it for their official duties. Sharing that information is limited to issues pertaining to protecting the United States from attacks of a foreign power, sabotage or international terrorism by a foreign power or agent, clandestine intelligence activities by a foreign power or agent, or pertaining to the national defense of the country, or the conduct of foreign affairs in the United States. Sharing can be done without court permission, but the court must be notified within a reasonable time after disclosure.

The measure permits the disclosure of grand-jury information to a foreign government to assist in enforcing federal criminal law, and permits sharing of foreign intelligence or counterintelligence information with foreign and state governments to protect against attacks. Under the measure, the information could only be used consistent with guidelines to be issued by the Justice Department and the National Intelligence Director. The measure also permits the sharing of grand jury information with foreign governments and foreign courts at the request of the U.S. government.

Section IV

Transportation Security

Following the 9-11 attacks, Congress enacted several aviation-security provisions as part of the Aviation and Transportation Security Act (PL 107-71), which created the Transportation Security Administration (TSA). The 9-11 commission made several recommendations about additional ways to expand aviation security, including developing enhanced screening of passengers, baggage and cargo; improved use of no-fly lists; and the use of biometric screening.

The 9-11 Commission also expressed concern that nearly 90% of the funding for the TSA is used on aviation security to — in the commission's words — "fight the last war." Most of the transportation provisions in both the House bill and the conference agreement, however, focus on aviation security.

The act requires the development of a national strategy for transportation security. It extends the authorization for several aviation-security programs through FY 2006. It also requires the development of screening technology using biometrics, puts the government in charge of comparing passenger names against terrorist watch lists, and sets new requirements for screening baggage and passengers for explosives and weapons.

The measure includes portions of legislation to combat the threats posed to aircraft by shoulder-fired missiles. It includes several provisions to increase the security of cargo transported by air. Finally, it requires passengers on cruise ships to be checked against passenger watchlists and sets deadlines for certain reports on security at the nation's ports and waterways.

Strategic Planning for Transportation Security

The act requires DHS to prepare and update, as needed, a National Strategy for Transportation Security as well as transportation security plans that are specific to the various sectors and modes of transportation. These strategies would be developed jointly with the Transportation Department. The department must provide reports on the plans to Congress by April 1, 2005, and must provide updates every two years. In addition, the department would be required to provide periodic progress reports on implementing the plans.

The act specifies that the aviation security plan must establish a damage-mitigation-and-recovery plan for the aviation system in the case of a terrorist attack, and that it must include a "threat matrix" outlining each threat to the aviation system and the layers of security that are in place to respond to such threats. Under the bill, the Transportation Security Administration (TSA) would be required to issue operational criteria based on the aviation plan within 90 days of the department's reports.

Authorization for Aviation Security Programs

The measure extends through FY 2006 the authorization for certain aviation-security programs. The Aviation and Transportation Security Act authorized such sums as may be necessary for certain aviation programs through FY 2005.

Biometric Technology

The measure requires the development of standards for biometric technology — which uses physical or behavioral characteristics to identify, or verify the identity of, an individual. Under the measure, the Transportation Security Administration (TSA) must establish — by March 31, 2005 — system requirements and performance standards for the use of biometrics, a list of products and vendors that meet the standards, procedures for implementing the systems that minimize false positives and limit the ability of individuals who assume a false identity to pass, and the best practices for incorporating the technology into current systems.

The measure also requires, and authorizes such sums as may be necessary for, TSA to establish a travel credential for law enforcement officers that incorporates biometric technology. The travel credential would be developed in consultation with the Justice Department. As part of this process, the TSA must develop procedures to ensure that the travel credentials are given only to proper officials, that they address false matches and non-matches, and become invalid if any credentials are lost, stolen, or are no longer authorized. The procedures would also have to establish a process to verify the identity of an officer that wants to carry a weapon on a plane without disclosing their identity as an officer. The measure requires that the development and issuance of these travel credentials occur no later than 120 days after enactment.

The measures authorizes \$20 million for the TSA to research and develop advanced biometric-technology applications to aviation security, and it authorizes \$1 million for a competitive center of excellence that will develop and expedite the federal government's use of biometric technology. It also urges the Homeland Security Department and the intelligence community to share information on biometric technology.

Passenger Watchlists

New Pre-Screening Process for Passengers

The bill requires the Transportation Security Administration (TSA) to begin testing, by January 1, a new system for the pre-screening of airline passengers, now done by the airlines, that will compare passenger names against the "automatic selectee" and "no fly" lists, using all appropriate information in the consolidated and integrated terrorist-watch lists maintained by the government. The TSA would assume responsibility from the airlines for the pre-screening 180 days after the completion of testing.

The measure requires the TSA to establish a procedure for passengers to dispute their inclusion on the list, to ensure that the system will not produce a large number of false positives, to establish an internal oversight board, to implement security measures, to adopt oversight policies, and to ensure that there are no privacy concerns with the technological architecture.

Within 180 days of the completion of testing, air carriers would be required to submit passenger-name records to the TSA to allow implementation of the screening system.

Employee Screening

Under the act, the TSA must coordinate with the Transportation Department and the Federal Aviation Administration (FAA) to ensure that employees are checked against the watchlists before being certified by the FAA, receiving credentials for secure areas of an airport, or receiving credentials for the air-operations area of an airport.

Charter Flights

Within 90 days of assuming responsibility for passenger pre-screening, the TSA would be required to establish a process to allow operators and renters of charter aircraft that weighs more than 12,500 pounds to request that the department screen passengers of, or individuals seeking to charter or rent a plane. In addition, the new process must allow the operators to refuse to charter or lease a plane if an interested party is identified on a watch list.

International Flights

The act requires the Homeland Security Department to issue proposed rules that would allow the department to compare passenger information for any international flight to or from the United States before the flight departs. Any such rules must also include appeal procedures for

passengers that are erroneously flagged. Currently, passengers names are only checked against watch lists after a flight departs.

Report on Consolidated Terror Watch List

The measure requires the director of national intelligence to submit to Congress a report within 180 days of enactment, on the Terrorist Screening Center consolidated screening watch list. The report would be developed with the Homeland Security, State and Justice departments.

Report on Privacy Concerns

The measure requires the Homeland Security Department's security privacy officer to submit a report to Congress assessing the impact that automatic-selectee and no-fly lists may have on privacy and civil liberties. The report would include recommendations on any necessary practices, regulations, or legislation, as well as a discussion of the implications for other modes of transportation.

Passenger & Baggage Screening

The act has a number of provisions relating to the screening of passengers and baggage for explosives and other weapons.

Detection Equipment

The measure requires the Transportation Security Agency (TSA) to give priority to technology at screening checkpoints that will detect non-metallic weapons, weapons of mass destruction, and explosives on individuals, in their clothes, or in their carry-on items. Further, the TSA must ensure that the equipment, either by itself or as part of an integrated system, can detect the types of weapons or explosives that would likely be used by terrorists. It also requires the TSA to submit a strategic plan for deploying the technology.

The act authorizes \$250 million, in addition to other authorized funds, for the TSA to research, develop, and install detection equipment.

Improved Explosives Detection

The measure requires the TSA to develop plans and guidelines for implementing improved explosive-detection systems at airports. It authorizes \$100 million, in addition to other authorized funds, for TSA to carry out research on such systems.

Pilot Program for Enhanced Technology

The measure requires the TSA to initiate a pilot program by March 31, 2005, that will deploy and test advanced airport-screening devices in at least five airports in the United States. The measure authorizes the use of \$150 million of funds in FY 2005 and FY 2006 for the pilot program.

Baggage Screening

The measure requires the TSA to take any action necessary to expedite the installation and use of in-line baggage-screening devices. Under the measure, the TSA must submit a schedule for the expedited installation to Congress within 180 days, as well as a schedule for replacing trace-detection equipment. As part of the FY 2006 budget request, the TSA would submit a proposed formula for sharing costs between the federal government, local governments and the private sector, make recommendations for defraying costs, and provide the results of a review of innovative financing.

Over the period from FY 2005 to FY 2007, the act increases — from \$250 million annually to \$400 million annually — the amounts authorized to be appropriated for airport-security-

improvement projects. These authorized levels are in addition to \$250 million in fees that are set aside each year from the Aviation Security Capital Fund to fund such projects.

It also requires DHS to provide assistance to airports that have baggage-screening areas that are not in public view that will allow the airports to acquire and install security monitoring cameras that will deter theft from checked baggage and will assist in the resolution of liability claims. Such sums as may be necessary would be authorized for this purpose.

Prohibited Items

The act requires the TSA to conduct a review of the list of items that are prohibited from being carried onto a passenger aircraft. It further requires the TSA to release a revised list of items that includes butane lighters and any other changes deemed appropriate.

Screeners

The measure requires the TSA to develop and submit to Congress new standards for determining the aviation-security staffing at airports. Once developed, the Government Accountability Office (GAO) would be required to review the standards. In addition, the Homeland Security Department would be required to study the feasibility of integrating federal screeners at airports with other aviation-security functions carried out by the department.

The act also requires the TSA to take steps to improve the job performance of screeners. As part of this requirement, the the TSA must submit a report to Congress on the results of any human-factors studies conducted to understand performance problems.

Air Cargo Security

The act includes several provisions to increase the security of cargo transported on passenger aircraft and cargo planes. It authorizes more than \$900 million to improve security and develop new technology.

Increased Security

The act requires the Transportation Security Agency (TSA) to develop new transportation-security requirements within eight months of enactment that will enhance and improve the security of air cargo in both passenger and cargo aircraft. It authorizes \$200 million annually from FY 2005 to FY 2007 for the TSA to improve air cargo security.

New Technology

The act requires the TSA to develop technology that will better identify, track and screen air cargo. It provides \$100 million annually from FY 2005 to FY 2007 for the Homeland Security Department to conduct research for enhanced air-cargo security technology and for the deployment of such technology. It also requires the Homeland Security Department to carry out a grant program, including the use of innovative financing techniques, to encourage the deployment of advanced technology.

Pilot Program for Blast-Resistant Containers

The measure authorizes \$2 million for a TSA pilot program to evaluate the use of blast-resistant containers for cargo and baggage on passenger aircraft to minimize the effect of the detonation of an explosive device. It also allows the TSA to provide assistance to air carriers that volunteer to participate.

Report on International Threats

The measure also requires the Homeland Security Department to work with the Defense Department and the Federal Aviation Administration to submit a report to Congress describing the procedures in place to address international threats of inbound cargo aircraft that may carry

explosives or weapons of mass destruction. The report also would contain an analysis of the potential of establishing secure facilities along the borders where aircraft containing such weapons may be diverted.

Federal Air Marshals and Flight Deck Officers

The measure includes several provisions related to federal air marshals and federal flight deck officers. Among other things, it authorizes an additional \$83 million for the period of FY 2005 to FY 2007 for the deployment of air marshals.

Anonymity for Federal Air Marshals

The act requires the federal air marshals program to develop operational initiatives to protect the anonymity of air marshals. Some whistle-blowers have argued that air marshals are conspicuous on flights because they are forced to wear business dress while flying.

International Flights

The measure encourages the president to pursue international acts that maximize the deployment of federal air marshals and federal flight deck officers on international flights.

Training

The act authorizes training on in-flight counterterrorism procedures and tactics to federal law enforcement officers who fly while on duty. It also requires that TSA screeners and federal air marshals receive training in identifying fraudulent documents, including visas and passports, and makes such training available to law enforcement personnel who work on the nation's borders.

It also allows the Bureau of Immigration and Customs Enforcement, in collaboration with the State Department, to direct the Federal Air Marshal Service to provide training to foreign law enforcement personnel. The bureau would be required to verify the identity of participating foreign officers against terrorist watchlists, and the bureau is allowed to establish fees for the training.

Anti-Missile Programs

The act includes initiatives to combat the threat posed to civilian commercial aircraft by man-portable air defense systems, also known as MANPADS, which are surface-to-air missile systems that are designed to be portable, such as the Stinger missile. Similar language passed the House in July by a unanimous vote of 423 ayes as the Commercial Aviation MANPADS Defense Act.

The measure requires the Federal Aviation Administration (FAA) to establish a process for certifying missile-defense systems, requires DHS to report on its plans for protecting airports and airplanes from shoulder-fired weapons, and encourages the president to pursue programs and international efforts that will reduce the availability of shoulder-fired weapons. These efforts are intended to address the threat while the Homeland Security Department is conducting its two-phase development and demonstration program.

FAA Certification Process

The measure requires the FAA to establish a process for conducting airworthiness and safety certification for missile-defense systems to protect civilian aircraft from shoulder-fired missiles. The process would be required to be developed as soon as practicable, but no later than when Phase II of the Homeland Security Department's development and demonstration program is completed. As part of the process, the FAA must certify that the countermeasures can be safely integrated with aircraft systems.

Under the measure, the FAA must accept the Homeland Security Department's certification that a missile-defense system is effective to protect against shoulder-fired missiles, and the FAA would be required to expedite the certification process of the use of the system for commercial aircraft.

The measure requires the FAA to submit a report to the House Transportation and Infrastructure and the Senate Commerce, Science and Transportation committees 90 days after the initiation of certification, and every year thereafter until Dec. 31, 2008.

Report on Anti-Missile Plans

The act requires the Homeland Security Department to submit a report — which could be classified — that describes the department's plan to secure airports — and aircraft arriving at and departing from airports — against attacks using shoulder-fired weapons. The report must be submitted within one year of enactment to the House Transportation and Infrastructure Committee and the Senate Commerce, Science and Transportation Committee.

Reduction Programs & International Efforts

The measure encourages the president to pursue programs to reduce the number of shoulder-fired missiles available worldwide, and it authorizes such funding as may be necessary to carry out such programs. It requires a report from the president on the status of these programs within 180 days of enactment and annual reports thereafter from the State Department.

It requires the president to pursue international diplomatic and cooperative efforts, including bilateral and multilateral treaties, to limit the availability and transfer of shoulder-fired missiles and to achieve destruction of existing stockpiles. It further encourages the president to attempt to negotiate acts with other countries to limit proliferation of the weapons.

The measure requires the president to submit reports on the international efforts as well as the progress in complying with recommendations in a recent GAO report. The State Department also would be required to provide annual briefings to congressional committees.

Other Aviation Security Provisions

New Pilot Licenses

The measure requires the FAA to issue improved pilot licenses within one year of enactment. The new licenses would be required to be tamper-resistant, would include a photograph of the licensed individual, and would be capable of accommodating a digital photo, biometric technology, or any other unique identifier chosen by the FAA.

Flight Deck Protections

The act requires the Transportation Security Administration (TSA) to transmit a report to Congress on the costs and benefits of using secondary barriers to protect the flight deck on aircraft.

Cockpit-to-Cabin Communication

The measure requires the TSA and the FAA to conduct a study on the viability of providing devices or methods that will enable a flight crew to discreetly notify the pilot of a security or safety issue in the cabin of a plane. As part of the study, the TSA and FAA are required to consider technology that is readily available and that could be quickly integrated. The measure requires that a report on the study be provided to Congress within 180 days.

Maritime Security

Watch Lists for Cruise Ships

The act requires the Transportation Security Administration to begin screening passengers and crew members on cruise ships against terrorist databases. It requires the development of "no transport" and "automatic selectee" lists similar to those used for aviation screening, including methods for correcting erroneous entries.

The department would be required to issue regulations to compel cruise ship operators to provide necessary data.

Deadlines for Certain Requirements

The measure sets deadlines on certain maritime security requirements in current law. Among other things, it requires that a national maritime security plan be completed no later than April 1, 2005. It requires that a detailed vulnerability assessment of the facilities and vessels that may be involved in a transportation-security incident be completed by Dec. 31, 2004.

It gives the Homeland Security Department 90 days from enactment to provide a program management plan for the transportation-security-card program, a report on efforts to seek an international act on standards for seafarer identification, and a report on the use of non-Coast Guard personnel for Coast Guard functions. It also requires a status report on the development of systems and standards for tracking international cargo sent on ships, and for enhancing the physical security of shipping containers.

Section V

Financial Provisions

This section summarizes the provisions that address the government's efforts to combat terrorist financing and money laundering as well as provisions that will help the financial industry respond to any future terrorist attacks.

The 9-11 Commission commended the government for its efforts to track terrorist financing, and urged that such efforts continue to receive a high priority in U.S. counterterrorism efforts. Its report specifically notes that "terrorists have shown considerable creativity in their methods of moving money."

The conference act includes a number of provisions to increase the government's efforts to combat terrorist financing. It provides additional funding for the Treasury Department's Financial Crimes Enforcement Network, authorizes the printing of securities for foreign governments, expands existing authority to respond to emergencies in the financial market, and requires studies of the private sector's emergency plans. It also prevents bank examiners from working for a bank or financial institution that they examined for at least one year after they leave a regulatory agency.

Enforcement Provisions

Financial Crimes Enforcement Network

The measure authorizes an additional \$35.5 million in FY 2005 for the Treasury Department's Financial Crimes Enforcement Network (FinCEN), which is responsible for combating money laundering. The bulk of the additional funding — \$16.5 million — is for BSA Direct, which will re-design the way that FinCEN accepts data from financial institutions in compliance with the Bank Secrecy Act (BSA), the way that law enforcement queries the database, and the manner that

data are shared with financial institutions. An additional \$8 million is authorized to develop and provide training in the use of technology to detect and prevent financial crimes and terrorism.

The measure also authorizes \$5 million for additional analytical tools, \$3 million to upgrade data networking, and \$3 million to improve the Office of Compliance.

Money Laundering & Financial Crimes Strategy

The measure extends provisions in the Money Laundering and Financial Crimes Strategy Act (PL 105-310), which requires the Treasury Department, in collaboration with the Justice Department, to submit to Congress a national strategy for combating money laundering and related financial crimes. Under the act, the department would be required to submit additional national strategies in both 2005 and 2007.

The act also authorizes \$15 million in each of FY 2004 and FY 2005 to fund the designation of high-risk money-laundering areas that warrant enhanced scrutiny by federal, state and local officials. The funding for these efforts expired in FY 2003.

Report on Terrorist Financing

The act requires the Treasury Department to provide a report to Congress within 270 days of enactment that evaluates the current state of U.S. efforts to curtail the international financing of terrorism as well as ways to improve such efforts.

Amendments to the Patriot Act

The measure makes a number of corrections to the terrorist-financing and money-laundering provisions of the USA Patriot Act (PL 107-56), as well as other provisions that were amended by that law. These changes are intended to ensure that the provisions are executed as intended and can be enforced by the relevant federal agencies.

In addition, it makes the terrorist-financing and money-laundering provisions permanent by repealing a provision that would have allowed the provisions to terminate if Congress enacted a joint resolution to that effect.

Wiring Money

The measure requires the Treasury Department to draft regulations for reporting certain cross-border wire transfers to assist in anti-money-laundering efforts. The measure requires that these regulations be issued in their final form within three years of enactment. Prior to issuing the regulations, the department would be required to request a report identifying the information that would be relevant to the efforts, recommending the appropriate form, manner, content and frequency of filing the reports, and identifying the technology necessary for FinCEN to receive, keep, use and disseminate information to law enforcement and other personnel.

Currency & Stamp Printing

The measure authorizes the Bureau of Engraving and Printing to produce currency, postage stamps and other security documents for foreign governments — provided that the foreign government reimburses the United States for the costs of production. The measure stipulates that the production of documents for other countries should not interfere with domestic printing needs and must be consistent with U.S. foreign policy.

The bureau has received printing requests from the governments of several developing nations that lack the ability to print their own currency, and the bureau has requested authorization to fulfill these requests. Printing currency and documents for other nations would allow the bureau to test security and anti-counterfeiting measures that could be employed in future upgrades of

U.S. currency. It also would make use of the bureau's excess printing capacity while helping to stabilize the currency systems of developing nations.

International Cooperation and Coordination

Sense of Congress

The measure expresses the sense of the Congress that the Treasury Department should continue to promote the dissemination of international anti-money-laundering and terrorist-financing standards, and that it should press for full implementation of the the Financial Action Task Force's recommendations by all countries in order to curb financial risks and hinder terrorist financing around the globe. The Financial Action Task Force (FATF) is an international grouping of countries that meets to address issues related to money laundering, terrorist financing and other financial crimes.

It also expresses the sense of Congress that the targeting of terrorist financial facilitators by intelligence and law enforcement agencies should be a critical weapon in the efforts to stop terrorist financing. It further states that efforts to track terrorist financing must be paramount in U.S. counterterrorism efforts.

Interagency Working Group

The measure requires the Treasury secretary, or his designee as the lead U.S. official to the Financial Action Task Force, to continue to convene the interagency U.S. government FATF working group, which includes representatives from all relevant federal agencies. Although this group currently meets, these provisions codify the practice and are intended to make the already-strong cooperation permanent.

Under the measure, the group must meet once a year to advise the Treasury secretary on policies that should be pursued by the United States regarding the development of common, international anti-money-laundering and counter-terrorist financing standards, to assess the adequacy and implementation of such standards, and to recommend new standards as necessary.

Additional Reports from the Treasury Department

The act requires the Treasury Department to work with the International Monetary Fund (IMF) to foster global efforts to combat money laundering and terrorist financing, and to ensure that country performance under international standards is effectively monitored. In addition, the department must ensure that such issues are a part of regular reviews of country progress and that they are considered part of a sound financial system. Many of these activities are already being carried out, but the act would codify them in law.

The act expands the annual report that the Treasury Department must provide to Congress to include a progress report on the department's efforts to fight terrorist financing through international financial institutions and multilateral policymaking bodies.

Role of the Treasury Department in Multinational Negotiation

The measure clarifies that the Office of Multilateral Negotiations must coordinate with the Treasury Department when developing recommendations for the State Department regarding multilateral financial institutions, and it clarifies that the Treasury Department remains the lead representative and negotiator for the United States within international financial institutions and other financial policymaking bodies.

Emergency Financial Preparedness

Emergency Authority over Financial Markets

The conference act expands the Security and Exchange Commission's (SEC) authority and flexibility to take emergency actions in response to significant disruptions and disturbances in the securities market.

It allows the SEC to extend its emergency orders for up to 30 business days. Under current law, such orders are limited to 10 business days. The act does not include House-passed language that would have allowed emergency orders to be extended for up to 90 days.

It also expands the definition of "emergency" that triggers the SEC's authority to include major disturbances that substantially disrupt, or threaten to disrupt, the functioning of the market, the activities of investment companies or other market segments, or the transmission and processing of stock transaction. (Under current law, emergency authority is focused on disturbances that cause excessive fluctuations in stock prices, or that disrupt stock-trading clearance and settlement procedures.)

The measure widens the SEC's emergency-relief authority to include all federal security laws, except the Public Utility Holding Company Act. The emergency powers in current law apply only to the Securities and Exchange Act of 1934; after the Sept. 11 attacks, the SEC had to rely on certain interpretive rulings to take certain action, and this broader authority is intended to give the SEC broader authority in emergencies.

In addition, the act allows the Treasury Department to take similar emergency actions with respect to government securities or markets.

Study on Business Continuity Planning

The measure requires the Federal Reserve, the Office of the Comptroller of the Currency and the SEC to jointly conduct a study on private-sector efforts to implement a 2003 report on business continuity planning. The report would be required to examine efforts by private-sector financial-services firms to implement continuity plans, the extent to which such plans has been done in a geographically dispersed manner, and the need to cover a greater number of entities than recommended by the 2003 report. In addition, the report would be required to recommend any necessary legislative and regulatory changes.

Private Sector Preparedness

The act also expresses the sense of Congress that the insurance industry and credit-rating agencies, where relevant, should consider a company's compliance with disaster and emergency-compliance standards when assessing insurability and creditworthiness, to encourage investment in disaster and emergency preparedness.

Bank Examiners

The measure prohibits senior bank examiners from accepting employment at a bank that they examined for at least one year after they leave the regulatory agency. The banking agency would be permitted to waive this prohibition on a case-by-case basis if the waiver is consistent with the public interest and granted prior to the former examiner's affiliation with the bank. Under the measure, violators could be prohibited from any association with a bank for a period of five years.

The measure also requires a study by the leading banking regulators on its efforts to retain current examiners and to attract new ones.

Public-Private Partnerships

The act expresses the sense of Congress that the Treasury Department should work with the DHS and other federal agencies to furnish sufficient personnel and technological and financial resources to foster the formation of public-private-sector coalitions that would educate consumers

and employees of the financial services industry about domestic counter-terrorist-financing activities. In addition, it urges the department and its partners to submit annual reports on the efforts.

It also requires the Treasury Department to provide a report on its efforts to encourage the formation of public-private partnerships to protect critical financial infrastructure, and on any recommendations on administrative or legislative action regarding the partnerships.

Section VI

Foreign Policy Provisions

This section deals with provisions of the conference act on S 2845 that make a number of changes to the conduct of U.S. foreign policy, including improving U.S. diplomacy and outreach.

Public Diplomacy

The act requires an annual assessment of U.S. public-diplomacy activities and strategy, and encourages the State Department to improve its recruitment and training systems in the area of public diplomacy, including requiring the State Department to seek individuals with applicable public-relations and language skills to enhance its public-diplomacy capabilities.

It also recommends that ambassadors take an active role in public diplomacy, and directs that public-diplomacy experience be used when considering an applicant's promotion into the Senior Foreign Service.

Muslim Outreach

The measure declares that the United States should commit to a long-term and sustainable investment in promoting engagement with people at all levels of society in predominately Muslim countries.

Specifically, the act authorizes a pilot program to provide scholarship grants to American-sponsored schools in Muslim countries. The measure directs the State Department to establish an International Youth Opportunity Fund through an existing international organization, such as UNESCO (United Nations Educational, Scientific and Cultural Organization), to improve public education in predominantly Muslim countries.

The measure also requires a report from the President on initiatives of the Broadcasting Board of Governors and the State Department on Muslim outreach efforts, and requires the development of indigenous media in Muslim countries to carry the United States' message.

Finally, the act expresses the sense of Congress that the United States should seek to build multilateral cooperation of the U.S.-led Community of Democracies and its efforts linking political and economic freedom to the prevention of the spread of terrorism, including using the community as the vehicle for multilateral support for political, economic, social, and educational reform in Arab and Muslim countries.

Middle East Partnership Initiative

The measure authorizes "such sums as may be necessary" for each of fiscal years 2005 and 2006 for the Middle East Partnership Initiative, a program currently authorized in law, and expresses the sense of congress that a significant portion of those funds should be made available to promote the rule of law in the Middle East.

Enhancing Free & Independent Media

The act states that the State Department should include the promotion of free press and the development of professional journalists as part of the overall public-diplomacy-program strategy, and states further that foreign governments have a responsibility to discourage unprofessional and unethical media.

The measure authorizes grants to the National Endowment for Democracy to fund a private-sector group to establish a free-media network to help participants to share information concerning development of free media in societies in transition.

Multilateral Diplomacy

The act contains a number of provisions to strengthen U.S. leadership and increase U.S. effectiveness at international organizations and multilateral institutions.

Democracy Caucus

The act calls for the president to continue to strongly support the new democracy caucus at the United Nations, the U.N. Human Rights Commission, the U.N. Conference on Disarmament, and other broad-based international organizations.

Leadership & Membership of International Organizations

The act directs the State Department to use U.S. influence to reform the criteria for membership and leadership positions within all U.N. bodies and other international and multilateral institutions, ~~so as to exclude countries that violate the principles of the specific organization, and~~ which are subject to sanctions imposed by the U.N. Security Council.

Multilateral Diplomacy

The measure directs the State Department to establish training courses in multilateral diplomacy for foreign-service officers to appropriate chiefs of mission, and appropriate members of the civil service.

Foreign Terrorist Organizations

The measure eliminates the current requirement that designations of foreign terrorist organizations (FTOs) lapse after two years unless renewed by the secretary of State, and replaces this requirement with procedures allowing entities designated as FTOs to petition the secretary every two years to have their designations revoked, and with a mandatory review of designations after six years if they have not previously been reviewed as a result of a petition.

Terrorist Sanctuaries

The act expresses the sense of Congress that it should be U.S. policy to develop and implement a comprehensive strategy to address current and potential terrorist sanctuaries.

Such a policy should identify and prioritize foreign countries that are, or that could be, used as terrorist sanctuaries; assess current U.S. resources being provided to such foreign countries; and develop and implement a coordinated strategy to prevent terrorists from using such countries as sanctuaries.

The measure requires the President to report to Congress on a strategy for addressing and, where possible, eliminating such sanctuaries.

Export Administration Act

The measure amends the Export Administration Act of 1979 to ensure that regulations relating to state sponsors of terrorism also apply to terrorist sanctuaries.

The law, which was written and amended during the Cold War, regulates the export of civilian goods and technology that have military applications — so-called dual-use items.

Afghanistan

The act makes a general declaration of policy reaffirming the commitment of Congress to the principles and goals of the Afghanistan Freedom Support Act of 2002, including reiterating U.S. support for a development program for Afghanistan and the upcoming parliamentary elections, and the necessity for additional nations to step forward and shoulder additional economic and military burdens.

The measure amends the Freedom Support Act by striking the \$1.8 billion authorized for FY 2004. Instead, the measure provides "such sums as may be necessary" in FY 2005 and FY 2006.

Coordinator of Assistance for Afghanistan

The measure's "findings" note that the 9/11 commission criticized U.S. assistance to Afghanistan as overly divided among specific programs, and notes that the flexible funding mechanisms put in place by the Afghanistan Freedom Support Act have not been used to date.

The act requires the appointment of a coordinator for assistance to Afghanistan with broad powers to dispense aid.

Long-Term Strategy for Afghanistan

The act requires the preparation of a long-term strategy for U.S. policy toward Afghanistan, and the submission of a plan to Congress to implement and monitor the progress of that strategy.

The report should outline a five-year strategy that includes specific and measurable goals, time frames for accomplishing such goals, and specific resource levels necessary for accomplishing the long-term development and security needs of Afghanistan.

Anti-Drug Efforts in Afghanistan

The act expresses the sense of Congress that the president should make the substantial reduction of illegal-drug production and trafficking in Afghanistan a priority in the global war on terrorism; and that the Defense Department should expand cooperation with the Afghan government and international organizations involved in counter-drug activities to assist in providing a secure environment for anti-drug personnel in Afghanistan.

The measure requires the Defense and State departments to report to Congress within 120 days of enactment on the progress made towards substantially reducing poppy-cultivation and heroin-production capabilities in Afghanistan, and the extent to which profits from illegal drug activity in the country are used to financially support terrorist organizations.

International Peacekeeping

The act directs the President to encourage other countries to actively participate in expanded, international peacekeeping operations in Afghanistan, and to report on his efforts in this regard.

Disarm Warlords

The measure states that it is U.S. policy, in consultation with the government of Afghanistan, to take immediate steps to disarm private militias in Afghanistan.

U.S.-Saudi Relations

The act expresses the sense of Congress that the relationship between the United States and Saudi Arabia should include a more robust dialogue between the people and government of the United States and the people and government of Saudi Arabia.

The measure requires the president to submit to Congress, within 180 days of enactment, a strategy for expanding collaboration with the people and government of Saudi Arabia on subjects of mutual interest and of importance to the United States — including intelligence and security cooperation in the fight against terrorism; political and economic reform in Saudi Arabia and throughout the Middle East; and the promotion of greater tolerance and respect for cultural and religious diversity in Saudi Arabia and throughout the Middle East.

U.S.-Pakistani Relations

The act expresses the sense of Congress that the United States is committed, over the long-term, to help to ensure a promising, stable, and secure future for Pakistan, and should provide assistance to encourage and enable Pakistan to continue to improve upon its commitment to combating extremists.

The measure states that Pakistan should seek to resolve any outstanding difficulties with its neighbors and other countries in its region; make efforts to fully control its territory and borders; make progress towards becoming a more effective and participatory democracy; participate more vigorously in the global marketplace and to continue to modernize its economy; take all necessary steps to halt the spread of weapons of mass destruction; continue to reform its education system; and, in general, should continue to implement a strategy of moderation.

The act requires the President to transmit a detailed strategy within 180 days of enactment for the long-term engagement of the United States with Pakistan, and continues current waivers of restrictions on assistance to Pakistan that would prevent the expenditure of these funds.

Treaty Oversight

The Case-Zablocki Act of 1972 requires that the secretary of State publish an annual report of all treaties and international acts to which the United States is a party, and provides for further transmittal of classified agreements to Congress when a public release would be contrary to national interests of the United States.

The act tightens current law to provide for more rigorous congressional oversight on the State Department. Specifically, the measure requires the compilation of a classified report of executive agreements and a further clarification of the types of agreements subject to transmittal to Congress.

Section VII

IDs, Security Clearances & Other Provisions

This section describes provisions in the conference agreement on S 2845 relating to state-issued identification documents, public-safety communications, security clearances, and other miscellaneous provisions.

The measure sets federal standards for state-issued drivers licenses, identification cards and birth certificates. It creates a uniform security clearance process among federal agencies. It requires a joint program to enhance public-safety communications, and authorizes DHS to make multi-year funding commitments to help state and local governments improve such communications.

The act requires only agency studies into financial disclosure and conflict-of-interest rules for some executive branch employees.

The measure requires DHS to protect civil rights and civil liberties as it carries out its duties, creates a new office to coordinate geospatial information, and expands the duties of the counternarcotics office.

The act also allows the Justice Department to conduct background checks on private security officers, and directs the department to report to Congress on all of its statutory requirements for criminal history background checks.

Identification Standards

The act requires states and territories, which currently establish their own standards for identity documents, to certify to the Transportation Department that they are meeting federal requirements in the issuance of drivers licenses, identification cards, and birth certificates. The standards would have to be developed by the Transportation and Homeland Security departments within 18 months of enactment. Two years after those standards are published as federal regulations, federal agencies could no longer accept state-issued identification documents and birth certificates unless they meet new federal standards. The measure authorizes such sums as may be necessary in fiscal years 2005 to 2009 for the federal government to assist states in compliance with the new identification and birth certificate rules.

The act also increases from 25 years to 30 years the maximum time in prison for identity fraud related to acts of international terrorism.

Drivers Licenses & Identity Cards

The act requires that each state include on every drivers license and identification card the person's full legal name, date of birth, gender, digital photograph, address of principal residence, and signature. The cards also would have to display an identification card or drivers-license number, security features designed to prevent counterfeiting, and a common, machine-readable technology, such as a magnetic strip.

The measure stipulates that the federal regulations could not infringe on any state's power to set criteria for who is eligible to apply for a driver's license in that state, nor could they dictate a specific design.

It prohibits states, starting one year after enactment, from displaying Social Security numbers on drivers licenses, vehicle registrations or any other document with an electronic strip by which the number could be conveyed.

The act authorizes such sums as may be necessary in fiscal years 2005 through 2009 for the Transportation Department to provide grants to states to help them comply with the new federal regulations regarding drivers licenses. States would receive grants based upon the number of drivers licenses and identification cards they issue, with each state receiving at least 0.5% of the total grant funds.

Birth Certificates

The act requires the Health and Human Services department (HHS), within one year of enactment, to establish minimum federal standards required to recognize state-issued birth certificates. The measure requires that state or local governments certify birth certificates and use safety paper or an alternative tamper-resistant medium to issue the certificates. States would have to require proof of identity in order to issue a birth certificate. However, HHS could not mandate a single form for all states. In order for state-issued birth certificates to be federally recognized, states would have to comply with the standards within two years of their issuance; however, HHS could extend compliance deadlines on a case-by-case basis.

The measure authorizes such sums as may be necessary for HHS to award grants to states to help them comply with the new federal regulations regarding birth certificates and to computerize birth and death records. States would receive grants based upon the number of certificates they issue, with each state receiving at least 0.5% of the total grant funds.

The act also authorizes such sums as may be necessary in fiscal years 2005 through 2009 for HHS to award grants to states to develop systems to electronically store birth and death certificates.

Social Security Numbers

The measure makes several changes to the issuance and management of Social Security numbers.

It directs the Social Security Administration to create minimum standards to verify documents submitted for an original or replacement Social Security card, and improve the process of granting Social Security numbers at birth in order to prevent fraud and error. It also restricts the issuance of multiple replacement Social Security cards to three per year per individual, and 10 per life.

The act contains a provision to create an interagency security task force to prevent counterfeit Social Security cards and numbers. The task force would be established within 18 months of enactment, and would work to create new standards to prevent fraud, verify documents, and increase enforcement of penalties against fraud.

The measure requires the Social Security Administration to make improvements to the process of issuing Social Security numbers at birth to prevent duplicate numbers, numbers assigned to unnamed infants, or other errors. The administration would have to report to Congress on the improvements within one year of enactment.

The act also requires the administration to conduct a study into the best process for ensuring accurate assignment of Social Security numbers at birth. It requires the Social Security Administration, within 18 months of enactment, to submit the report to the House Ways and Means and Senate Finance committees.

Uniform Security Clearance Process

The act requires the president, within 90 days of enactment, to select a single department, agency, or entity in the executive branch to bear responsibility for directing day-to-day operations relating to security clearances and developing uniform federal policies for clearances. That entity, in consultation with the president within 180 days of enactment, would select a single agency of the executive branch to conduct security clearance investigations of federal employees and contractors who need access to classified information. The agency would maintain all security clearances for those employees.

The measure requires the Office of Personnel Management, within one year of enactment, to establish an integrated, secure national database for the purpose of administering security-clearance procedures. The database would merge information from existing federal records systems into a single program.

The act requires any agency authorized to conduct an investigation into security-clearance applications to check the database to determine whether a security-clearance candidate has had past clearances, or has had clearances revoked or denied by other agencies. The measure permits agencies to withhold information from the database about certain individuals in the interest of national security.

The act requires all security-clearance background investigations and decisions to be accepted by all agencies. Similarly, all security-clearance background checks started by an authorized agency would be transferable to any other authorized agency. The act prohibits authorized agencies from setting their own additional standards for security clearances. It also bans agencies from initiating a new security-clearance background check for an individual if another agency has already authorized or started an investigation for a clearance of the same level. These reciprocity provisions could be repealed on a case-by-case basis in the interest of national security.

Technology & Priority of Clearances

The act requires the entity in charge of security clearances to develop a plan to expedite the security-clearance process. That plan would have to include a system under which agencies make a decision on 90% of security-clearance applications within 60 days of receiving the application.

The measure requires the entity in charge of security clearances to evaluate the possible use of technology to expedite the security-clearance process.

Clearances & Presidential Transitions

The measure calls on a president-elect to submit to the FBI or other appropriate agency the names of candidates for high-level national security positions through the level of under secretary of executive departments as soon as possible after an election. It directs the agencies to complete background investigations on those candidates as soon as possible before the presidential inauguration.

The act allows each major-party candidate in a presidential election year to submit, before the election, requests for security clearances for potential members of a presidential-transition team, so that clearances could be processed in advance.

Further, the act directs outgoing executive branch employees who specialized in national security to prepare a detailed, classified report outlining potential security threats, major covert operations, and pending decisions on the use of military force. That report would be provided to the president-elect as soon as possible after an election.

Public Safety Communications

The act includes several provisions aimed at improving the interoperability of communications systems used by first responders.

Spectrum Provisions

The act declares that Congress should pass legislation in the first session of the 109th Congress that establishes a comprehensive approach to the timely return — as early as Dec. 31, 2006 — of the analog broadcast spectrum.

Under current law, broadcasters are required to switch from analog to digital transmissions and return parts of the broadcast spectrum by Dec. 31, 2006, or the date on which more than 85% of the households in a broadcaster's market view digital broadcasts. Once this spectrum is returned, it is anticipated that public safety officials will use it for interoperable communications. Some fear that the 85% requirement will prevent broadcasters from fully turning over the spectrum, thus delaying public safety officials from using the spectrum. Others fear that forcing broadcasters to return spectrum by a date certain may harm broadcasters or viewers.

The act also requires the Federal Communication Commission (FCC), Homeland Security Department and National Telecommunications and Information Administration to conduct a study on the need for additional allocations of spectrum for first-responder needs, and to develop strategies to meet public-safety-communications needs.

Enhancing Public Safety Communications

The measure also includes several provisions aimed at enhancing public safety communications.

It requires the DHS to work with the Commerce Department and the FCC to establish a program to enhance public-safety interoperable communications at all levels of government. It also allows for the establishment of an Office for Interoperability and Compatibility in the Homeland Security Department's Science and Technology Directorate. The act authorizes more than \$117 million over five years for these efforts.

The measure allows the DHS to make multi-year commitments of funding to states, local governments, regions, and Indian tribes for the purpose of enhancing the interoperability of communication capabilities for first responders. Under the measure, the department could obligate up to \$150 million in any future fiscal year, and the commitments could last up to three years. Applicants for such funding would be required to submit interoperable communications plans for approval that include a five-year plan for improving communications.

The act requires DHS to work with the FCC, the Defense Department and state and local officials to support the development of interoperable communications in the event of an emergency in urban areas and other areas determined to be of high risk. It also requires a report on accelerating the development of voluntary consensus standards, and it requires the president to establish a method for coordinating cross-border interoperability with both Mexico and Canada.

Homeland Security Department

The act includes several provisions related to the organization and duties of the DHS and its component parts.

Civil Liberties & Civil Rights

The act includes several provisions — based on the Homeland Security Civil Rights and Civil Liberties Protection — to ensure that the department protects civil rights and liberties while carrying out its responsibilities. It adds a provision to the department's mission statement to ensure that homeland security efforts do not diminish the civil rights and liberties of Americans.

The measure codifies the existing responsibilities of the department's officer for civil rights and civil liberties, including the development of policies that protect rights, overseeing compliance, and investigating complaints. It requires the officer for civil rights and civil liberties to work with the department's privacy officer to coordinate on programs, policies and procedures to protect civil rights. The department's inspector general would be authorized to designate a senior official to coordinate investigations of abuse of civil rights and liberties.

The act also requires the department to comply with existing regulations — known as the "Common Rule" — that protect human research subjects. While many departments and agencies have signed on to the Common Rule, DHS has not.

Office of Geospatial Management

The act creates an Office of Geospatial Management under the department's chief information officer to coordinate the department's geospatial information and technology, including maps, charts, computer data and the equipment used by the department to collect, analyze and disseminate such information. The new office would be headed by a geospatial information officer appointed by the secretary. The act also authorizes such sums as may be necessary in each fiscal year for the office.

Counternarcotics Office

The measure expands the duties of the counternarcotics office, which coordinates policies and operations to stop the illegal entry of drugs into the United States. It also authorizes \$6 million in FY 2005 for the office.

The act allows the office's director to serve on various task forces, including the Joint Terrorism Task Force, in which he or she would help track and sever connections between illegal drug trafficking and terrorism. It requires the office's director to submit annual evaluations to Congress on the department's counternarcotics activities. It also allows the director to be appointed as the US interdiction coordinator by the Office of National Drug Control Policy, but the director could not serve concurrently in any other branch of the federal government.

The act allows the parts of the department designated as National Drug Control Program Agencies to include the enforcement of federal, state, and local narcotics laws as a criterion in performance evaluations.

Emergency Preparedness Compacts

The measure requires the Federal Emergency Management Agency, which is part of the DHS, to establish a program to support the development of emergency-preparedness compacts around the country.

Coordination

The measure requires DHS to ensure that there is ongoing coordination of federal efforts to prevent, prepare for, and respond to terrorist acts and other disasters.

It requires DHS to coordinate industry efforts to identify private sector resources and capabilities that could be effective in supplementing efforts by federal, state and local officials to prevent and respond to terrorist attacks. It also requires consultation on issues related to the travel and tourism industries.

Warning Systems

The act requires DHS to work with the FCC, as well as other relevant agencies and representatives of the telecommunications industry, to study the cost effectiveness and feasibility of establishing an alert notification system via telephone, wireless communications, or other existing communication networks.

It also authorizes a pilot study under which the department could issue public warnings about threats to homeland security using a warning system similar to the AMBER Alert network, which issues reports on missing children. The act specifically bans the use of money from the Highway Trust Fund, however, to support the pilot project.

Enhancing Preparedness

The act includes several provisions that were recommended by the 9-11 Commission to enhance the nation's preparedness.

Incident Command System

The measure expresses the sense of Congress that the United States must adopt a unified incident command system, and enhance the connection between government agencies at all levels to prepare for and respond to terrorist attacks. It also urges emergency responders to adopt the National Incident Management System (NIMS), which is the name of the incident command system that the president directed DHS to create. It also calls on DHS to make implementation of the incident command system a condition for receiving federal financial assistance.

Capital Region

The measure authorizes mutual aid between local governments and regional authorities in the Washington, D.C., area, or "National Capital Region," which also includes areas of Maryland and Virginia. This aid could be used to provide emergency services or resources during an emergency or public service event, and it could be used to prepare for and respond to terrorist attacks.

The measure includes provisions to address liability and other issues that might arise when first responders provide assistance to other jurisdictions in the area. Among other things, it authorizes the use of funds for the District of Columbia to purchase insurance against liability claims.

Pilot Projects

The measure requires DHS to establish at least two pilot projects in high-threat urban areas or regions that are likely to implement a national model strategic plan to foster interagency communications and coordinate the efforts of federal, state, and local first responders. It authorizes such sums as may be necessary to carry out the projects.

Private Sector Standards

It has been estimated that 85% of the nation's critical infrastructure is controlled by the private sector, and the 9-11 Commission endorsed voluntary preparedness standards adopted by the American National Standards Institute. The act expresses the sense of Congress that DHS should promote the adoption of voluntary preparedness standards for the private sector, such as those recommended by the American National Standards Institute.

Reports on Infrastructure Assessments

The measure requires DHS to report — within six months of enactment — to Congress on the department's progress in completing vulnerability and risk assessments of the nation's critical infrastructure, the adequacy of government plans to protect such infrastructure, and the government's readiness to respond to terrorist attacks.

Northern Command

The bill expresses the sense of Congress that the Defense Department should regularly assess the adequacy of the plans and strategies of the US Northern Command in order to ensure that it is prepared to respond to military and paramilitary threats within the United States. This was another recommendation of the 9/11 Commission.

First Responder Funding

The bill declares that Congress should pass legislation in the first session of the 109th Congress to reform the system of distributing federal funding for emergency preparedness — for first responders.

Financial Disclosure Requirements

The bill requires a study into financial disclosure requirements for some executive branch employees. It requires that within 180 days of enactment, the Office of Government Ethics submit a report to Congress recommending improvements to financial disclosure rules for executive branch employees. Within one year of enactment, the office would have to conduct a review of conflict-of-interest laws relating to executive branch employees.

The measure requires each agency head, within 180 days of enactment, to submit a plan to reduce the number of positions that require presidential nomination and Senate confirmation to the president, and the Senate Homeland Security and Governmental Affairs and House Government Reform committees.

It also requires, within 15 days of a major party's nomination of a presidential candidate, the Office of Personnel Management to send an electronic record on presidentially appointed positions to that candidate. The electronic record would have to include descriptions of all positions appointed by the president, the names of people holding those positions, a list of any vacancies, and the date after the election by which appointments should be made.

Background Checks

Criminal History Background Checks for Private Security Officers

The measure permits employers to request the Justice Department to conduct criminal background checks on individuals employed as "private security officers." Under the measure, the employer would have to have written consent from the employee to conduct the background check, and the request would have to be made through a state identification bureau. The FBI would be permitted to charge an employer a fee to process these background checks.

Report on Justice Department Background Checks

The bill requires the Justice Department to report to Congress within six months on all statutory requirements for criminal history record checks that are required to be conducted by the Justice Department or any of its components.

The bill includes recommendations for improving, standardizing and consolidating existing requirements for conducting criminal background checks for non-criminal justice purposes. In making recommendations, the Justice Department is directed by the conference act to consider the effectiveness and efficiency of using commercial and state databases as a supplement to the FBI's integrated fingerprint, biometric and criminal history database, and include information on any feasibility studies conducted by the department on establishing a system to provide criminal history information for private employers.

Extension of Pilot Program for Background Checks on Volunteers

It extends for an additional 12 months (for a total of 30 months) a pilot program for criminal background checks on volunteers at children's programs.

Other Provisions

- Directs the Homeland Security Department , within six months of enactment, to report to Congress on federal facilities at high risk for a terrorist attack, and to recommend minimum identification standards to access those facilities.
- Requires the FBI to maintain a "state of the art and up to date" information technology system; and requires the agency to report annually to the House and Senate Judiciary committees on the effectiveness of the technology systems.
- Continues for an additional year — through Nov. 19, 2005 — a provision in current law that requires airlines to honor tickets for flights on other airlines that have suspended service due to insolvency or bankruptcy. Under the law, passengers must make arrangements with an airline within 60 days of the suspension of service. This requirement, which has been in place since 2001, expired on November 19.