



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

June 17, 2004
(House/Corrected)

STATEMENT OF ADMINISTRATION POLICY

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

H.R. 4567 – Department of Homeland Security Appropriations Bill, FY 2005

(Sponsors: Young (R), Florida; Obey (D), Wisconsin)

The Administration supports House passage of the FY 2005 Department of Homeland Security Appropriations Bill, as reported by the House Committee.

The President supports a discretionary spending total of not more than \$819 billion, in addition to \$2.5 billion in advance appropriations for Project Bioshield, consistent with his FY 2005 Budget. The President's Budget responsibly holds the growth in total discretionary spending to less than four percent and the growth in non-security spending to less than one percent, while providing the critical resources needed for our Nation's highest priorities: fighting the War on Terror, strengthening our homeland defenses, and sustaining the momentum of our economic recovery.

Consistent with the need for responsible spending restraint, the Administration urges the Congress to fully fund unavoidable obligations and not to include any emergency funding, including contingent emergencies, unless mutually agreed upon in advance by both the Congress and the Administration.

The Administration is pleased that the level of funding in the Committee-reported bill is consistent with the \$819 billion discretionary total and that the Committee has produced a bill that funds many of the Department's highest priorities. We believe that on the whole the bill provides for a robust level of funding for homeland security. In particular, the Administration applauds the Committee's support of critical homeland security programs like the Container Security Initiative (CSI), the Customs-Trade Partnership Against Terrorism (C-TPAT), funding for improved radiation detection technology and the biosurveillance initiative, as well as other priorities such as immigration backlog reduction, and expedited disposal of excess Coast Guard housing. While we have several concerns with the bill, we appreciate the speed with which the House has started to address the budgetary needs of the Department, and look forward to working with the Congress to expedite passage of the legislation while addressing the following concerns.

State and Local Programs

The Committee provides \$4.0 billion for State and local programs, including firefighter assistance, which is more than \$500 million above the request. While we appreciate the

Committee's support for the first responder community, the Administration believes that the programs funded through the Department of Homeland Security (DHS) should be better targeted toward terrorism preparedness. The bill does not provide the request to double funding for the risk-based Urban Area Security Initiative (UASI) program, but instead provides funding above the requested level for the basic State and local formula grant program. We urge the Congress to focus these grant funds on the areas of highest threat by fully funding the President's request for UASI and we look forward to working with the Congress to restore funds to the requested level.

The Administration is also concerned that both the Emergency Management Performance Grants program and the Firefighter Assistance Grants program fail to focus on homeland security preparedness, and critical reforms proposed in the budget were not accepted. In order to meet the President's goal of increasing Federal resources devoted to protecting the homeland and using those funds most effectively, we encourage the House to adopt language that would eliminate arbitrary funding formulas and maximum grant awards, and allow greater targeting of funds based on threats and vulnerabilities.

The bill also proposes to cut the Citizen Corps program by \$20 million below the FY 2004 level and \$30 million below the FY 2005 request. The Administration urges the House to provide the full \$50 million request for this important terrorism preparedness priority.

Management Structure

There are a number of sections of the Committee bill that alter the management structure at DHS and are inconsistent with the law that established the Department (P.L. 107-296). For example, section 515 revises the Homeland Security Act to require the Chief Financial Officer, Chief Information Officer, and Chief Procurement Officer to report directly to the Secretary of Homeland Security rather than the Undersecretary for Management at DHS. The fragmentation of senior DHS management disregards the President's vision of a consolidated management structure at DHS and the need for integrated oversight of management to ensure mission needs are met. The Administration urges the House to remove section 515 and revise the bill to provide a consolidated appropriation for DHS departmental management, as requested in the President's Budget. The bill fails to fund the Office of Legislative Affairs at the Departmental level. The Administration believes this office fulfills a significant role facilitating interaction with Congress and should be funded.

Contract Policy

An amendment adopted during the Committee markup would retroactively prohibit the Department from contracting with subsidiaries of foreign-incorporated firms that are treated as domestically-inverted entities. The Administration appreciates the intent of this amendment to clarify the original prohibition on contracting with domestically-inverted firms in the Homeland Security Act, but is concerned that the pending legislation is overly broad and may have unintended negative consequences. Moreover, this amendment could prompt U.S. trading partners to question U.S. compliance with its international obligations under various government procurement agreements, including the World Trade Organization Agreement on Government

Procurement. The provision needs to be modified in a way that ensures the best value for American taxpayers without exposing the Government to significant contract termination costs or interruption of critical homeland security projects.

Disaster Relief

The Administration's request for disaster relief funding is underfunded by more than \$100 million. The requested funding level is based on the five-year average of total disaster costs excluding large, one-time events. Full funding of the request for the disaster relief program is initially important to ensure that the Department is able to respond appropriately to the Nation's unforeseen emergencies and natural disasters.

Coast Guard

The Administration has serious concerns about proposals to require the Coast Guard to review foreign vessel security plans. Such a requirement would detract from, rather than enhance, maritime security by diverting resources from verifying security measures on board foreign vessels to administratively reviewing vessel security plans. The Coast Guard would also be required to deny entry of any foreign flag vessels without an approved plan, which could severely disrupt the flow of trade into and out of U.S. ports.

The Administration also opposes the inclusion of \$16 million in unrequested funding for alteration or removal of obstructive bridges. Alteration of obstructive highway bridges is eligible for funding from the Federal-Aid Highways program. Funds provided for these purposes in this bill could be more effectively dedicated to homeland security activities.

Transportation Security Administration (TSA)

The Administration appreciates the bill's strong commitment to improve the security of the air cargo system through a strategic approach that combines enhancements to the known shipper system, targeted physical inspection, additional inspector manpower, and improvements in technology. Given this strategic approach, we encourage the House to continue to provide the Department the flexibility it needs to set the appropriate physical inspection protocol standards and goals.

The bill does not include language proposed by the Administration that the Congressional Budget Office would score as providing the full \$750 million in air carrier security fee collections authorized by law and determined by TSA to be appropriate. We urge the House to include this language as a partial offset to TSA aviation security spending, as proposed in the budget.

Constitutional Concerns

The Administration objects to a number of provisions in the bill that would purport to require Committee approval before Executive Branch execution. These provisions should be changed to require only notification of Congress, since any other interpretation would contradict

the Supreme Court ruling in *INS v. Chadha*.

Section 516 requires that the Commandant of the Coast Guard submit annually to the Congress “a list of approved but unfunded Coast Guard priorities and the funds needed for each priority.” To the extent that this provision is viewed as requiring the Commandant to make a legislative recommendation, it violates the Constitution’s Recommendation Clause, which vests that authority in the President, and it should be deleted. The Administration is willing to work with the Committee on alternative ways to provide a better understanding of Coast Guard capital planning.

In addition, section 525 prevents OMB and several offices at the Department from reviewing DHS agencies’ reports to the Congress. This provision raises constitutional concerns, since it might infringe on the President’s power to oversee his subordinates in the Executive Branch. The Administration urges the House to remove this provision.

Other Objectionable Provisions

Section 520 transfers authority to perform Departmental background checks from OPM to DHS. The Administration is concerned that this provision would require the Department to take responsibility for additional work that it cannot currently support and for which it has no current expertise. We encourage the House to remove this provision.

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