

## **ANALYSIS FOR THE HOMELAND SECURITY ACT OF 2002**

### **Section 1. Short title; table of contents.**

This section provides a short title and a table of contents for the bill. The bill's short title is the "Homeland Security Act of 2002."

### **Section 2. Definitions.**

This section provides definitions for a number of terms used in the bill. As provided in the definitions, "Department" in the bill refers to the Department of Homeland Security, and "Secretary" refers to the Secretary of Homeland Security. Other important defined terms are "assets" and "functions," which are used recurrently in the bill in referring to the resources and operations that are to be transferred to the new Department of Homeland Security.

Many of the definitions in the section are borrowed from pre-existing statutes, such as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288. Among such borrowed definitions are that of "State," which includes the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and that of "local government," which includes all non-federal public entities and Indian tribes and tribal and Alaska Native organizations and villages. Another borrowed definition is that of "major disaster," which includes both natural disasters and severe fires, floods, and explosions, regardless of cause.

### **Section 3. Construction; severability.**

This section, modeled on existing law, provides an express rule of construction and severability for the bill.

### **Section 4. Effective date.**

This section specifies an effective date for the bill, which is thirty days following enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

## **TITLE I—DEPARTMENT OF HOMELAND SECURITY**

This title establishes the Department of Homeland Security, defines its primary missions and responsibilities, and creates its principal offices.

### **Section 101. Executive department; mission.**

This section establishes the Department of Homeland Security in the executive branch of the United States government and defines its primary missions and responsibilities. The primary missions of the department include preventing terrorist attacks within the United States, reducing the vulnerability of the United States to terrorism at home, and minimizing the damage and assisting in the recovery from any attacks that may occur. The Department's primary responsibilities correspond to the five major functions established by the bill within the Department: information analysis and infrastructure protection; chemical, biological, radiological, nuclear, and related countermeasures; border and transportation security; emergency preparedness and response; and coordination with other parts of the federal government, with state and local governments, and with the private sector. These primary missions and responsibilities are not exhaustive, and the Department will continue to carry out other functions of the agencies it will absorb.

### **Section 102. Secretary; functions.**

This section provides that the Department will be headed by a Secretary of Homeland Security appointed by the President and confirmed by the Senate. The section gives the Secretary full authority and control over the Department and the duties and activities performed by its personnel, and it endows him with the authorities necessary to fulfill the Department's statutory mission to protect the American homeland.

### **Section 103. Other officers.**

This section creates the personnel structure that will support the Secretary in carrying out the missions and responsibilities of the Department. The section establishes a senior management team consisting of up to twelve Senate-confirmed officials, including a Deputy Secretary, an Under Secretary for each of the four divisions within the Department, an Under Secretary for Management, and up to six additional Assistant Secretaries whose duties may be defined by the Secretary. Additionally, the section provides for appointment of a Senate-confirmed Inspector General and a Senate-confirmed Commandant of the Coast Guard, under the same conditions provided in current law. The Director of the Secret Service, who is not currently Senate confirmed, will be appointed by the President without Senate confirmation. The General Counsel, Chief Financial Officer, and Chief Information Officer will also be presidential appointees not requiring Senate confirmation. The section authorizes appointment by the President of up to ten additional Assistant Secretaries; this will give the Secretary important flexibility in designing, structuring, and establishing the Department.

## **TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION**

This title concerns the responsibilities of the Department of Homeland Security for information analysis and infrastructure protection.

## **Section 201. Under Secretary for Information Analysis and Infrastructure Protection.**

This section specifies primary responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection. These include: (1) receiving and analyzing law enforcement information, intelligence, and other information in order to understand the nature and scope of the terrorist threat to the American homeland and to detect and identify potential threats of terrorism within the United States; (2) comprehensively assessing the vulnerabilities of key resources and critical infrastructures; (3) integrating relevant information, intelligence analyses, and vulnerability assessments to identify protective priorities and support protective measures; (4) developing a comprehensive national plan for securing key resources and critical infrastructures; (5) taking or seeking to effect necessary measures to protect those key resources and infrastructures; (6) administering the Homeland Security Advisory System, exercising primary responsibility for public threat advisories, and providing specific warning information to state and local governments and the private sector, as well as advice about appropriate protective actions and countermeasures; and (7) reviewing, analyzing, and making recommendations for improvements in the policies and procedures governing the sharing of law enforcement, intelligence, and other information relating to homeland security within the federal government and between the federal government and state and local governments.

## **Section 202. Functions transferred.**

This section identifies agencies and functions relevant to information analysis and infrastructure protection that are to be transferred to the Department of Homeland Security. These include the National Infrastructure Protection Center of the FBI (other than the Computer Investigations and Operations Section), the National Communications System of the Department of Defense, the Critical Infrastructure Assurance Office of the Department of Commerce, the Computer Security Division of the National Institute of Standards and Technology, the National Infrastructure Simulation and Analysis Center of the Department of Energy, and the Federal Computer Incident Response Center of the General Services Administration.

## **Section 203. Access to information.**

This section establishes the Secretary of Homeland Security's entitlement to receive intelligence and other information from agencies and departments of the United States government for the purpose of fulfilling the mission of information analysis and infrastructure protection. Under the terms of this section, there are three broad categories of information to which the Secretary is given access.

The first includes reports, assessments and analytical information relating to threats of terrorism in the United States and to other areas within the Department's responsibility. These materials represent the work product of United States law

enforcement, intelligence, and other government agencies. This category ordinarily would not include “raw,” unprocessed data; for example, recordings or verbatim transcripts of conversations. Unless the President directs otherwise, all executive agencies have an affirmative obligation to furnish the specified reports, assessments, and analytical information to the Secretary, even if no request has been made for them.

The second category of material to which the Secretary is granted access by this section is information concerning infrastructure or other vulnerabilities of the United States to terrorism. This material may include “raw” data or information. In this category, too, unless the President directs otherwise, federal agencies are required to furnish the material to the Secretary without request.

The final category includes unprocessed “raw” data or information on subjects other than infrastructure or other vulnerabilities of the United States to terrorism. The Secretary has the right to receive such information only as the President provides. If the President provides that the Secretary shall have access to such information and it relates to significant and credible threats of terrorism, however, that information must be provided to the Secretary without request. Otherwise, the Secretary may request the material or make other cooperative arrangements with other executive agencies to receive it.

It is anticipated that the Secretary and executive agency heads will enter into agreements regarding thresholds for the automatic provision of each category of materials, but that information sharing will not be delayed pending such agreements. Given that the initial volume of information may be high, prior to the execution of any such agreements, the Secretary is expected to work with agency heads to ensure the orderly and appropriate sharing of information.

In all cases, the Secretary is required to ensure that material received pursuant to this section is used only for the performance of official duties and is protected from unauthorized disclosure. The Secretary’s right to receive information is also made subject to the traditional authority of the intelligence and law enforcement agencies to protect sources and methods and sensitive law enforcement information.

#### **Section 204. Information voluntarily provided.**

This section encourages the sharing of information with the Department of Homeland Security by the private sector, state and local governments, and individuals. It provides that information voluntarily provided by non-federal parties to the Department of Homeland Security that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism is not subject to public disclosure under the Freedom of Information Act. Also, such information would not lose its protected character if forwarded by the Department of Homeland Security to other federal departments or agencies.

## **TITLE III—CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR COUNTERMEASURES**

This title concerns the responsibilities of the Department of Homeland Security for chemical, biological, radiological, and nuclear countermeasures.

### **Section 301. Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures.**

This section specifies primary responsibilities of the Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures. These include: (1) securing the people, infrastructures, property, resources, and systems in the United States from acts of terrorism involving chemical, biological, radiological, or nuclear weapons or other emerging threats, (2) conducting a national scientific research and development program to support the mission of the Department, including developing national policy and coordinating the federal government's (non-military) efforts to counter these types of terrorist threats, including relevant research and development, (3) establishing priorities and directing and supporting national research and development and procurement of technology and systems for detecting, preventing, protecting against, and responding to terrorist attacks using chemical, biological, radiological, nuclear, or related weapons and materials, and for preventing the importation of such weapons and materials into the United States, and (4) establishing guidelines for state and local efforts to develop and implement countermeasures in this area.

### **Section 302. Functions transferred.**

This section identifies agencies and functions relevant to chemical, biological, radiological, and nuclear countermeasures that are to be transferred to the Department of Homeland Security. These include the select agent registration enforcement programs and activities of the Department of Health and Human Services, certain relevant programs and activities of the Department of Energy, the National Bio-Weapons Defense Analysis Center of the Department of Defense, and the Plum Island Animal Disease Center of the Department of Agriculture.

### **Section 303. Conduct of certain public health-related activities.**

This section requires the Secretary of Homeland Security to carry out his civilian human health-related biological, biomedical, and infectious disease defense research and development responsibilities through agreements with the Department of Health and Human Services unless the President otherwise directs, and gives the Secretary specific transfer authority to fund such agreements. In carrying out these responsibilities, however, the Secretary retains full authority to establish the research and development program, including the setting of priorities. The section also gives the Secretary specific authority to fund other research and development projects that he elects to carry out through the Department of Health and Human Services or other federal agencies.

### **Section 304. Military activities.**

This section clarifies that nothing in the bill confers upon the Secretary of Homeland Security any authority to engage in warfighting, the military defense of the United States, or other traditional military activities.

## **TITLE IV—BORDER AND TRANSPORTATION SECURITY**

This title concerns the responsibilities of the Department of Homeland Security for border and transportation security.

### **Section 401. Under Secretary for Border and Transportation Security.**

This section specifies primary responsibilities of the Under Secretary for Border and Transportation Security. These include: (1) preventing the entry of terrorists and the instruments of terrorism into the United States, (2) securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, (3) administering the immigration and naturalization laws of the United States, including the establishment of rules governing the granting of visas and other forms of permission to enter the United States to individuals who are not citizens or lawful permanent residents, (4) administering the customs laws of the United States, and (5) ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce in carrying out these responsibilities.

### **Section 402. Functions transferred.**

This section identifies agencies and functions relevant to border and transportation security that are to be transferred to the Department of Homeland Security. These include the United States Customs Service (now in the Department of the Treasury), the Immigration and Naturalization Service (now in the Department of Justice), the Animal and Plant Health Inspection Service (now in the Department of Agriculture), the Coast Guard (now in the Department of Transportation), and the Transportation Security Administration (now in the Department of Transportation). The section expressly requires that the Coast Guard be maintained as a distinct entity within the Department of Homeland Security. In addition, because of its important role in securing public buildings, the Federal Protective Service of the General Services Administration is also transferred to the Department.

### **Section 403. Visa issuance**

This section transfers to the Secretary of Homeland Security control over the issuance and denial of visas to enter the United States, while preserving the Secretary of State's traditional authority to deny visas to aliens based upon the foreign policy interests of the United States. The section expressly authorizes the Secretary of Homeland Security to delegate his authority under this section to State Department and other federal government personnel and provides that the Secretary will exercise his authority through

the Secretary of State. The section does not alter the employment status of diplomatic or consular officers processing visas abroad, who will remain employees of the Department of State.

## **TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE**

This title concerns the responsibilities of the Department of Homeland Security for emergency preparedness and response.

### **Section 501. Under Secretary for Emergency Preparedness and Response.**

This section specifies primary responsibilities of the Under Secretary for Emergency Preparedness and Response. These include: (1) helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies, (2) establishing standards, conducting exercises and training, evaluating performance, and providing funds in relation to the Nuclear Incident Response Team (defined in section 504 of the bill), (3) providing the federal government's response to terrorist attacks and major disasters, (4) aiding the recovery from terrorist attacks and major disasters, (5) working with other federal and non-federal agencies to build a comprehensive national incident management system, (6) consolidating existing federal government emergency response plans into a single, coordinated national response plan, and (7) developing comprehensive programs for developing interoperative communications technology and ensuring that emergency response providers acquire such technology. The responsibility of providing the federal government's response to terrorist attacks and major disasters – item (3) above – includes a number of specific functions: (A) coordinating the overall response, (B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and the Nuclear Incident Response Team, (C) overseeing the Metropolitan Medical Response System, and (D) coordinating other federal response resources.

As with other parts of the bill, the specification of primary responsibilities in this section does not detract from other important functions that will be transferred to the Department of Homeland Security, such as those of the United States Fire Administration of the Federal Emergency Management Agency. In all areas, the bill fully preserves the authority to carry out the functions of the Federal Emergency Management Agency, including support for community initiatives that promote homeland security, such as the Citizen Corps.

### **Section 502. Functions transferred.**

This section identifies agencies and functions relevant to emergency preparedness and response that are to be transferred to the Department of Homeland Security. These include (1) the Federal Emergency Management Agency; (2) the following units of the Department of Justice: the Office for Domestic Preparedness of the Office of Justice Programs, the National Domestic Preparedness Office of the Federal Bureau of Investigation, and the Domestic Emergency Support Teams; and (3) the following units

of the Department of Health and Human Services: the Office of the Assistant Secretary for Public Health Emergency Preparedness (including the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System) and the Strategic National Stockpile.

**Section 503. Nuclear incident response.**

This section authorizes the Secretary of Homeland Security, in connection with an actual or threatened terrorist attack, major disaster, or other emergency, to call certain elements of the Department of Energy and the Environmental Protection Agency into service as an organizational unit of the Department of Homeland Security. While so operating, these elements would be subject to the direction, authority, and control of the Secretary of Homeland Security. This grant of authority to the Secretary of Homeland Security would not limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing the elements from their respective agencies, or from exercising ordinary direction, authority, and control over them.

**Section 504. Definition.**

This section defines the term ‘Nuclear Incident Response Team’ for purposes of title V of the bill. The definition makes clear what entities of the Department of Energy and the Environmental Protection Agency could be called into service under this title as a unit of the Department of Homeland Security.

**Section 505. Conduct of certain public health-related activities.**

This section requires the Secretary of Homeland Security to carry out the following responsibilities through agreements with the Department of Health and Human Services, unless the President otherwise directs, and gives the Secretary specific transfer authority to fund such agreements: (1) all biological, chemical, radiological, and nuclear preparedness-related construction, renovation, and enhancement of security for research and development or other facilities owned or occupied by that Department; and (2) all public health-related activities being carried out by that Department on the effective date of the bill (other than activities under functions transferred by the bill to the Department of Homeland Security) to assist state and local government personnel, agencies, or authorities, non-federal public and private health care facilities and providers, and public and non-profit health and educational facilities, to plan, prepare for, prevent, identify, and respond to biological, chemical, radiological, and nuclear events and public health emergencies. In carrying out these responsibilities, the Secretary retains full authority to establish the preparedness and response program, including the setting of priorities.

**TITLE VI—MANAGEMENT**

This title concerns the management and administration of the Department of Homeland Security.

**Section 601. Under Secretary for Management.**

This section specifies primary responsibilities of the Under Secretary for Management. These include: (1) budget and fiscal matters, (2) procurement, (3) human resources and personnel, (4) information technology and communications systems, (5) facilities, property, equipment, and other material resources, (6) security for personnel, information technology and communications systems, and material resources, and (7) identification and tracking of performance measures.

**Section 602. Chief Financial Officer.**

This section expressly authorizes the Secretary of Homeland Security to direct to whom the Chief Financial Officer of the Department of Homeland Security shall report.

**Section 603. Chief Information Officer.**

This section expressly authorizes the Secretary of Homeland Security to direct to whom the Chief Information Officer of the Department of Homeland Security shall report.

**TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; GENERAL PROVISIONS**

**Subtitle A—Coordination with Non-Federal Entities**

**Section 701. Responsibilities.**

This section specifies responsibilities of the Secretary of Homeland Security relating to coordination with state and local officials and the private sector in carrying out the mission of the Department of Homeland Security. These include coordinating with state and local governments and the private sector to ensure adequate planning, equipment, training, and exercise activities; coordinating and, as appropriate, consolidating, the federal government's communications and communications systems relating to homeland security with state and local governments, the private sector, other entities, and the public; directing and supervising federal grant programs for state and local government emergency response providers; and distributing, or, as appropriate, coordinating the distribution of, warnings and information to state and local governments and to the public.

**Subtitle B—Inspector General**

**Section 710. Authority of the Secretary.**

This section, modeled on sections 8 and 8e of the Inspector General Act, places the Secretary of Homeland Security on essentially the same footing, with respect to the

Department of Homeland Security, as the Secretary of Defense and the Attorney General, with respect to their own Departments. Under those two sections, the Secretary of Defense and the Attorney have limited authority to circumscribe the activities of their departmental Inspectors General upon notice to Congress. Consistent with those two sections, this section expressly requires the Secretary of Homeland Defense to notify the Congress within thirty days of any exercise of the limiting authority. This section reflects a carefully drawn balance between the need to respect the unusual and sensitive nature of the substantive work of the Departments and the overall purposes of the Inspector General Act.

### **Subtitle C—United States Secret Service**

#### **Section 720. Functions transferred.**

This section provides for the transfer of the United States Secret Service to the Department of Homeland Security. The section expressly requires that the Secret Service be maintained as a distinct entity within the Department.

### **Subtitle D—General Provisions**

#### **Section 730. Establishment of Human Resources Management System.**

This section creates a new part of title 5, United States Code, to allow the Secretary, jointly with the Director of the Office of Personnel Management, to issue regulations to create and adjust a human resources management system for the Department. Because the Department's mission includes contributing to the security of the nation and responding to evolving threats and conditions, the provision calls for the Secretary and the Director of the Office of Personnel Management to create a modern, flexible, and responsive program.

#### **Section 731. Advisory Committees.**

This section provides that the Secretary of Homeland Security may establish, appoint the members of, and use the services of advisory committees. The section further provides that the Federal Advisory Committee Act, Pub. L. No. 92-463, is to be inapplicable to any advisory committee so established or used; but the Secretary is required to publish notice in the Federal Register announcing the establishment of an advisory committee and its membership and purpose. Both the Central Intelligence Agency and the Federal Reserve System are now exempted by statute from the Federal Advisory Committee Act. *See* 5 U.S.C. app. 2 § 4(b). In view of the need for the Department of Homeland Security to establish or to use the services of advisory committees on highly confidential and sensitive homeland security matters, it is desirable to provide the Department with an exemption comparable to those already in existence for the Central Intelligence Agency and the Federal Reserve System.

Section 731 also provides that the services of an individual as a member of an advisory committee established under the section does not bring that member within any of three provisions of title 18 of the United States Code: section 203 (relating, in part, to the compensation of special government employees for outside representational services); section 205 (relating, in part, to the activities of special government employees in bringing claims against the government); and section 207 (relating, in part, to post-employment restrictions on special government employees). These exceptions are needed to enable the Department of Homeland Security to secure the services of individuals on its advisory committees who are highly qualified to serve and are otherwise willing to do so, but who might be reluctant to accept such appointments if it might expose them to the risk of a criminal prosecution for their outside work or activities. Section 731 nonetheless provides that such individuals shall remain subject to the criminal prohibitions of sections 203, 205 and 207 of title 18 with respect to any particular matter that directly involves the Department or in which the Department is directly interested.

### **Section 732. Acquisitions; property.**

This section contains authorities of the Secretary of Homeland Security relating to acquisitions and property.

Subsection (a) authorizes the Department of Homeland Security to engage in transactions other than contracts, grants, and cooperative agreements (so-called “other transactions”), for research and development and prototype efforts. With the intent of attracting non-traditional contractors who offer innovative and cutting-edge technology, such other transactions are exempt from procurement laws. The Defense Advance Research Projects Agency currently uses this authority for significant research and development projects.

Subsection (b) authorizes the Department of Homeland Security to contract for private sector services, including consultants and experts, using a form of contracting that allows for the creation of an employer-employee relationship. Normally, agencies are required to obtain these services by direct hire under competitive appointment or other procedures under civil service laws. While contracts that create employer-employee relationships are generally prohibited, the nature of the Department’s work may necessitate this additional flexibility in securing services.

Subsection (c) authorizes the Department of Homeland Security to invoke 40 U.S.C. 474 to avoid the application of any procurement statute or regulation that would impair the accomplishment of the Department’s mission. Normal procurement operations would be subject to current government-wide procurement statutes and regulations. This exemption, however, would provide authority for necessary purchases or disposal that otherwise might not be allowed under current law. This same statutory authority exists for the Central Intelligence Agency and the Atomic Energy Commission (now vested in the Energy Research and Development Administration).

Subsection (d) gives the Secretary of Homeland Security authority to acquire and dispose of property, specifically as follows: (1) acquiring replacement real property by exchange or transfer in participation with another agency under mutually agreeable terms or by selling or exchanging real property assets to or with any non-federal source; (2) making unexpired portions of leases of real property available for interim uses, through leases, licenses, permits, or similar instruments issued to another federal agency or a non-federal entity; and (3) making underutilized portions of government-owned real property available through outlease agreements with a federal agency or a non-federal entity. The subsection also authorizes the Secretary of Homeland Security to deposit the proceeds from these transactions in any account in the Treasury available for purposes of the Department of Homeland Security.

Subsection (e) requires that the Administrator of the General Services Administration delegate, upon the written request of the Secretary of Homeland Security, disposal authorities for surplus real and related personal property.

Subsection (f) allows the Secretary of Homeland Security to retain the bulk of the net proceeds from surplus personal property transactions.

### **Section 733. Reorganization; transfer.**

Subject to specific limitations, this section gives the Secretary of Homeland Security authority to reorganize the Department of Homeland Security by allocating or reallocating functions within the Department and by establishing, consolidating, altering or discontinuing organizational units within the Department. It also gives the Secretary limited authority (up to five percent) to transfer funding between appropriations accounts upon fifteen days notice to the House and Senate Appropriations Committees.

These authorities are critical to the successful establishment and organization of a new department. They allow the Secretary to fulfill the purpose of the bill by bringing together the many different functions and organizational units that will be consolidated in the new department and having them work together in new ways, and with new priorities. Similar reorganization authority was granted in the acts creating the Department of Energy and the Department of Education. Appropriations transfer provisions are enacted annually in a number of appropriations acts.

The Secretary's authority to reorganize would not extend to the abolition of an entity that the bill establishes or requires to be maintained as a distinct entity, including the United States Secret Service and the Coast Guard.

### **Section 734. Miscellaneous provisions.**

This section, which adapts or makes applicable by cross-reference existing provisions of law, provides miscellaneous authorities to the Department of Homeland Security. These miscellaneous authorities relate largely to housekeeping matters such as the design and institution of an official Departmental seal, property given to the

Department, certain authorities of the Secretary of Transportation with respect to the Coast Guard and other federal personnel, and general delegation and redelegation authority within the Department.

**Section 735. Authorization of appropriations.**

This section authorizes the appropriation of such sums as may be necessary to carry out the purposes of the bill.

**TITLE VIII—TRANSITION**

This title concerns the orderly transfer of agencies and functions from their current locations to the Department of Homeland Security.

**Section 801. Definitions.**

For purposes of this title, this section defines “agency” to include any entity, organizational unit, or function, and defines “transition period” to mean the twelve-month period beginning on the effective date of the bill.

**Section 802. Transfer of agencies.**

This section provides that the transfer of an agency to the Department of Homeland Security will occur when the President so directs within the twelve-month transition period. It further authorizes the transfer of related adjudicatory and review units, such as the immigration judges, Board of Immigration Appeals, and Executive Office for Immigration Review, associated with the Immigration and Naturalization Service.

**Section 803. Transitional authorities.**

Subsection (a) of this section directs officials having responsibilities relating to an agency that will be transferred to the Department of Homeland Security to provide requested assistance to the Secretary of Homeland Security in preparing for the transfer and integration of the agency into the Department of Homeland Security.

Subsection (b) expressly authorizes the head of any executive agency, upon the request of the Secretary of Homeland Security, to provide services and to detail personnel to assist with the transition, on a reimbursable or nonreimbursable basis.

Pending the transfer of an agency to the Department of Homeland Security, subsection (c) authorizes the President to transfer to the Secretary of Homeland Security up to five percent of the unobligated balance of any appropriation available to the agency to fund the purposes authorized in the bill. Notice of at least 15 days to the Appropriations Committees would be required prior to such a transfer.

Subsection (d) allows the President to make interim acting appointments to fill the new offices created by the bill pending confirmation of nominees. The President is authorized to designate in an acting capacity any person who held a Senate-confirmed position immediately prior to the effective date (if that person is still a Senate-confirmed officer on the date of designation) or immediately prior to the date of designation. Subsection (d)(2) makes clear that, in accordance with established case law, Senate-confirmed officers who are appointed to fill new offices in the Department whose duties are germane to their original offices may be appointed without undergoing an additional confirmation proceeding. *See, e.g., Weiss v. United States*, 510 U.S. 163 (1994); *Shoemaker v. United States*, 147 U.S. 282 (1893).

Subsection (e)(1) provides that, upon the transfer of an agency to the Department of Homeland Security, the pertinent personnel, assets, and liabilities will be transferred, subject to the approval of the Director of the Office of Management and Budget. Subsection (e)(2) provides that the Secretary of Homeland Security will have all functions relating to a transferred agency that any other official could by law exercise in relation to the agency immediately before its transfer to the Department of Homeland Security, and in addition all functions vested in the Secretary by the bill or by law.

#### **Section 804. Savings provisions.**

This section contains provisions to ensure the appropriate continuation and effectiveness of rules, proceedings, laws, and other provisions relating to agencies, notwithstanding the enactment of the bill and the transfer of agencies to the Department of Homeland Security. Subsection (a) provides for the continued effectiveness of completed administrative actions, such as orders, rules, regulations, personnel actions, permits, grants, contracts, and licenses. Subsection (b) provides for the continuation of pending proceedings in an agency, such as notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance. Subsection (c) provides for the continuation of pending civil actions. Subsection (d) provides that references relating to an agency in pre-existing statutes, executive orders, rules, regulations, and delegations of authority are generally to be understood so as to give them continued effect in a manner consistent with the agency's transfer to the Department of Homeland Security. For example, a reference to the Coast Guard as being in the Department of Transportation or under the authority of the Secretary of Transportation would be deemed to be a reference to the Coast Guard as being in the Department of Homeland Security or under the authority of the Secretary of Homeland Security, and a reference to the Attorney General as carrying out functions that are now assigned to the Immigration and Naturalization Service would be deemed to be a reference to the Secretary of Homeland Security as carrying out the same functions. Subsection (e) allows for the continuation and use in the Department of the various personnel and employment systems in place in the transferred agencies prior to transfer.

### **Section 805. Terminations.**

This section provides for the termination of certain offices when all of an agency's functions have been transferred to the Department of Homeland Security.

### **Section 806. Incidental transfers.**

This section authorizes and directs the Director of the Office of Management and Budget, in consultation with the Secretary of Homeland Security, to make certain additional incidental dispositions of personnel, assets, and liabilities related to functions transferred to the Department of Homeland Security.

## **TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS**

This title makes technical and conforming amendments to existing statutes that are needed for consistency or to effectuate earlier provisions of the bill. These amendments are not exhaustive; it is anticipated that other conforming and technical amendments will be enacted as necessary or appropriate in light of the changes made by the bill.

### **Section 901. Inspector General Act.**

Conforming to the creation of an office of Inspector General for the Department of Homeland Security, this section amends certain provisions of the Inspector General Act to ensure the application of that Act to the new office. Additionally, the section corrects clerical errors in that Act.

### **Section 902. Executive Schedule.**

This section amends certain provisions of title 5 of the United States Code, in order to specify the Executive Schedule levels for offices created by earlier provisions of the bill.

### **Section 903. United States Secret Service.**

Conforming to the transfer of the United States Secret Service to the Department of Homeland Security, this section amends certain provisions of titles 3 and 18 of the United States Code, relating to the United States Secret Service, by replacing references to the Department and Secretary of the Treasury with references to the Department and Secretary of Homeland Security.

### **Section 904. Coast Guard.**

Conforming to the transfer of the Coast Guard to the Department of Homeland Security, this section amends certain provisions of title 14 of the United States Code, relating to the Coast Guard, by replacing references to the Department and Secretary of

Transportation with references to the Department and Secretary of Homeland Security. Additionally, the section corrects a clerical error in title 14.

**Section 905. Strategic National Stockpile and smallpox vaccine development.**

Conforming to the transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department of Homeland Security, this section amends certain provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. No. 107-188), by replacing references to the Department and Secretary of Health and Human Services with references to the Department and Secretary of Homeland Security.

**Section 906. Select agent registration.**

Conforming to the transfer of the select agent registration program of the Department of Health and Human Services to the Department of Homeland Security, this section amends certain provisions of the Public Health Service Act and Public Health Security and Bioterrorism Preparedness and Response Act of 2002, by replacing references to the Department and Secretary of Health and Human Services with references to the Department and Secretary of Homeland Security.

**Section 907. National Bio-Weapons Defense Analysis Center.**

Conforming to the incorporation into the Department of Homeland Security of the National Bio-Weapons Defense Analysis Center of the Department of Defense, this section establishes and defines the mission of that Center.