



No. 78

October 6, 2004

## **S. Res. 445 - Senate Intelligence and Homeland Security Oversight Reform**

Calendar No. 770

*S. Res. 445 was reported by the Committee on Rules and Administration on October 5, 2004, without amendment, by a vote of 12-0; no written report was filed at that time.*

### **Noteworthy**

- Under a unanimous consent agreement, the Senate will proceed to the consideration of S. Res. 445 immediately following passage of S. 2845.
- S. Res. 445, as reported by the Rules Committee, contains only one provision: it eliminates the provision on term limits for members of the Senate Select Committee on Intelligence. It is anticipated that a managers' amendment will be offered by Majority Leader Frist, Minority Leader Daschle, and the Republican and Democrat whips. That proposal contains a number of additional provisions designed to improve the Senate's oversight ability related to Intelligence and Homeland Security matters.
- The likely managers' proposal amends S. Res. 400 of the 94<sup>th</sup> Congress, which governs the Select Committee on Intelligence, and it effectively changes the jurisdiction of several Senate Committees. It proposes to combine oversight of most Department of Homeland Security functions and provide that jurisdiction to the Committee on Governmental Affairs, and it renames that committee the Committee on Homeland Security and Governmental Affairs.
- Additionally, the managers' proposal would create a new Appropriations Subcommittee on Intelligence, and would combine the Military Construction and the Defense Appropriations subcommittees.
- The managers' proposal also provides several fundamental reforms to the Senate Select Committee on Intelligence. Among them, it changes the committee's status from "B" to "A" (discussed later), and it provides that each member of the committee select a staffer of his/her choice to serve as his/her designated representative on the committee.
- Amendments are anticipated, including one to remove appropriations authority on intelligence matters from the Appropriations Committee and give it to the Intelligence Committee.

## Highlights

- S. Res. 445, as reported, amends S. Res. 400 of the 94<sup>th</sup> Congress, which established the Senate Select Committee on Intelligence.
- The managers' proposal amends S. Res. 400 and also contains provisions that affect the jurisdiction of several Standing Committees.
- As a Senate resolution, this legislation is final upon Senate passage; it does not require the approval of the House, nor the President's signature. This resolution remains in effect in subsequent Congresses, unless and until amended.

*The following summary of the managers' proposal was provided by the Office of the Senate Majority Whip.*

### **Recommendation I**

The Senate should improve the structure and enhance the authority of the existing **Select Committee on Intelligence** by implementing the following reforms:

1. Eliminate term limits for Committee Members.
2. Ensure Majority has no more than a 1-Member advantage.
3. Maintain apportioned slots for Armed Services, Appropriations, Foreign Relations, and Judiciary Committees.
4. Allow the Chairman and Ranking Member of Armed Services to serve as *ex officio* (non-voting) Members of the Committee.
5. Elevate status of Committee from "B" to "A." ("A" committees are those listed under paragraph 2 of Senate Rule XXV. "B" committees are those listed under paragraph 3 of Senate Rule XXV.)
6. Maintain Majority Leader and Minority Leader's ability to appoint all Committee Members. Members, once appointed, would serve without term limits.
7. At the beginning of each Congress, the Majority Leader and Minority Leader shall select a Chairman and Vice Chairman of the Committee.
8. Reduce size of the Committee to 15 Members.
9. Allow each Committee Member to hire a staff member of his choice to serve as his personal designee on the Committee, subject to Committee clearance criteria.
10. Maintain non-partisan professional staff.
11. Give Intelligence Committee a stronger role in reviewing civilian intelligence nominees.
12. Create a Subcommittee on Oversight, and maintain Committee's authority to create additional Subcommittees as it deems necessary.
13. Maintain Committee's subpoena authority.
14. Require the Committee to make regular reports to the full Senate.

### **Recommendation II**

The Senate should consolidate appropriations authority over intelligence by creating an **Appropriations Subcommittee for Intelligence**, and combine the Military Construction and Defense Subcommittees.

### **Recommendation III**

The Senate should create a **Homeland Security Authorization Committee** by adding jurisdiction to and renaming the Governmental Affairs Committee. The new Homeland Security Committee should retain its current status as a permanent “A” committee.

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## **Provisions**

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**Sec. 100. Purpose.** States the purpose is to improve the effectiveness of the Senate Select Committee on Intelligence and to improve the Senate’s oversight of homeland security.

### **Title I — Homeland Security Oversight Reform**

**Sec. 101. Homeland Security.**

(a) Renames the Committee on Governmental Affairs the Committee on Homeland Security and Governmental Affairs.

(b) Defines Committee’s jurisdiction:

- Provides that the Committee’s jurisdiction shall include legislation relating primarily to: the Department of Homeland Security, except matters relating to the Coast Guard; the Transportation Security Administration; the Federal Law Enforcement Training Center; and the revenue functions of the Customs Service.
- Provides that the Committee retain all of the previous jurisdiction and duties of the Committee on Governmental Affairs. [For a complete listing of the Governmental Affairs Committee’s current jurisdictional authority and duties, see Senate Rule XXV.]

(c) Defines “additional duties.” [Same as current Senate Rule XXV.]

(d) States that the jurisdiction of the Committee on Homeland Security and Governmental Affairs provided in this resolution shall supersede the jurisdiction of any other committee of the Senate provided in the Rules of the Senate.

### **Title II — Intelligence Oversight Reform**

**Sec. 201. Intelligence Oversight.** Amends S. Res. 400 of the 94<sup>th</sup> Congress, which established the Senate Select Committee on Intelligence. This section includes the following provisions:

- Provides that the Chairman and Ranking Member of the Armed Services Committee (if not already a member of the Select Committee) shall be *ex officio* members of the Select Committee on Intelligence. They shall have no vote and shall not be counted for purposes of determining a quorum.

- Limits the number of members on the Select Committee on Intelligence to 15 members.
  - Currently, there are 17 members.
- Provides that of the seven at-large members appointed to the Select Committee, the majority leader shall appoint the majority members and the minority leader shall appoint the minority members, with the majority having a one-vote margin.
- Eliminates term limits on Members being able to serve on the Select Committee.
  - Currently, Members may only serve a total of eight years on the Select Committee.
- Provides that, at the beginning of each Congress, the Majority Leader shall select a Chairman of the Select Committee and the Minority Leader a Vice Chairman for the Select Committee.
  - Currently, at the beginning of each Congress, the Members of the Senate who are members of the majority party of the Senate shall select a Chairman for the Select Committee, and the minority selects a Vice Chairman.
- States that the Select Committee may be organized into subcommittees, and that each subcommittee shall have a Chairman and Vice Chairman selected by the Chairman and Vice Chairman of the Select Committee, respectively. [See also the provision in Title IV of the managers' proposal that requires the establishment of a Subcommittee on Oversight.]
  - S. Res. 400 does not provide specifics on subcommittees.
- Modifies the Select Committee's reporting requirements to the full Senate so that the Select Committee "shall make regular and periodic, *but not less than quarterly*, reports to the Senate." [Emphasis reflects change from S. Res. 400].
- Provides that each member of the Select Committee can select one staffer of his/her choosing to serve as his/her designated representative on the Select Committee. The staffer will be hired by the Select Committee, be subject to all rules and procedures of the Select Committee, be required to meet all security clearance requirements, and be afforded full access to all Select Committee information, meetings, staff, records, and databases.
  - S. Res. 400 does not provide specifics on Member-chosen staff representatives.
- Adds that the Select Committee "shall have final responsibility for reviewing, holding hearings, and voting on civilian persons nominated by the President to fill a position within the intelligence community that requires the advice and consent of the Senate." Also, "other committees with jurisdiction over the nominees' executive branch department may hold hearings and interviews with that person."
  - Currently, the Select Committee can hold hearings on individuals nominated for intelligence-related posts in the executive branch. However, the Select Committee does not have final responsibility for all intelligence-related nominations. For example: under current practice, the Senate Foreign Relations Committee conducts a confirmation hearing and has final say over the State Department post of Assistant Secretary of State for Intelligence and Research. Under S. Res. 445, the Foreign

Relations Committee will be able to conduct a confirmation hearing on a nomination for the post of Assistant Secretary of State for Intelligence and Research; however, the Select Committee will have final responsibility for reviewing and voting on this nomination.

### **Title III — Committee Status**

#### **Sec. 301. Committee Status.**

(a) The Committee on Homeland Security and Governmental Affairs will remain an “A” committee.

(b) The Select Committee on Intelligence shall be elevated to the rank of a select “A” committee.

### **Title IV — Intelligence-Related Subcommittees**

#### **Sec. 401. Subcommittee Related to Intelligence Oversight.**

(a) A Subcommittee on Oversight shall be established on the Select Committee on Intelligence, and (b) shall be responsible for ongoing oversight of intelligence activities.

#### **Sec. 402. Subcommittee Related to Intelligence Appropriations.**

(a) A Subcommittee on Intelligence shall be established on the Appropriations Committee. The Subcommittee on Military Construction shall be combined with the Subcommittee on Defense.

(b) The Subcommittee on Intelligence shall have jurisdiction over funding for intelligence matters.

### **Title V — Effective Date**

#### **Sec. 501. Effective Date.**

This resolution shall take effect on the convening of the 109<sup>th</sup> Congress.

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### **Administration Position**

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No formal Statement of Administration Policy (SAP) will be issued on this legislation because it is a Senate resolution that does not require the President’s signature.

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## **Other Views**

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The National Commission on Terrorist Attacks Upon the United States (otherwise known as the 9/11 Commission) released a report on July 26, 2004 offering numerous proposals for congressional reform. See Section 13.4 “Unity of Effort in Congress” of the 9/11 Commission’s report.

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## **Possible Amendments**

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As of press time, no amendment list was available; however, amendments are expected. The unanimous consent agreement providing for the resolution’s consideration does not limit amendments.

Among amendments that may be offered is one to provide the Select Committee on Intelligence with appropriating authority.