



U. S. SENATE REPUBLICAN POLICY COMMITTEE

Legislative Notice

No. 17

July 7, 2009

**S. 1298—Department of Homeland Security Appropriations
for Fiscal Year 2010**

*On June 18, 2009, the Appropriations Committee reported S. 1298 by a vote of 30-0;
S. Report 111-31.*

Noteworthy

- On July 7, 2009, the Senate began consideration of H.R. 2892, the House-passed Department of Homeland Security (DHS) appropriations bill. Majority Leader Reid, on behalf of Senators Byrd and Inouye, offered a substitute amendment containing the text of S. 1298 as reported by the Senate Appropriations Committee. S. 1298 is the subject of this Legislative Notice.
- S. 1298 provides a total of \$44.288 billion for Homeland Security, including rescissions, fee-funded programs, and transfers. Appropriated spending is \$44.082 billion, an amount which is \$2.8 billion (seven percent) more than the fiscal year (FY) 2009 level.
- The bill provides additional funds for construction of a single DHS headquarters, by adding \$50 million on top of the \$650 million already appropriated in the Stimulus Bill. According to the committee report, more than \$1.1 billion has been appropriated to this project between DHS and the General Services Administration.
- The bill provides generous amounts for the Administration's southbound border enforcement efforts aimed at stopping the illegal gun and cash smuggling operations that the Administration argues are a significant driver of the drug cartel violence on the U.S.-Mexico border. Specifically, the bill provides \$40 million (50 percent more than requested in the Obama budget) for Customs and Border Protection's efforts in this area and \$45 million more than the requested amount for Immigration and Customs Enforcement's Southwest Border enforcement efforts.
- The bill provides \$800 million for southern border fencing and for the Secure Border Initiative. There are no construction mileage requirements in the bill or in the committee report, but the bill places a hold on \$50 million of the appropriated funds until the Department produces an expenditure plan for its border security program.
- The bill extends the E-Verify program for three years and provides \$118.5 million to operate the program, \$6.5 million more than the administration request, to cover additional staff and system enhancements aimed at strengthening the program's anti-ID fraud mechanisms.
- The Statement of Administration Policy indicates strong support for H.R. 2892 with the committee-reported text of S. 1298.
- The House of Representatives passed H.R. 2892 on June 24 by a vote of 398-37.

Highlights

DHS Summary of Appropriations (budget authority in millions of dollars)

Title I				
Analysis and Operations	327	357	346	348
Office of the Inspector General	120	128	128	132
Subtotal: Title I	1,291	1,390	1,255	1,341
Title II				
Customs and Border Protection	10,501	10,049	9,967	10,170
Immigration and Customs Enforcement	5,009	5,458	5,428	5,445
Transportation Security Administration	5,369	5,396	5,294	5,312
U.S. Coast Guard	9,607	9,729	9,968	10,239
U.S. Secret Service	1,513	1,490	1,461	1,487
Net subtotal: Title II	31,991	32,122	32,120	32,653
Total fee collections	5,004	4,128	5,260	4,114
Gross subtotal: Title II	36,987	36,250	37,380	36,767
Title III				
National Protection & Programs Directorate	1,158	1,319	1,280	1,324
Office of Health Affairs	157	138	128	135
Federal Emergency Management Agency	7,573	7,235	7,353	7,078
Net subtotal: Title III	8,888	8,692	8,761	8,538
Total fee collections		640		1,115
Gross subtotal: Title III	8,888	9,332	8,761	9,652
Title IV				
Citizenship and Immigration Services	102	364	248	136
Federal Law Enforcement Training Center	333	289	283	288
Science and Technology	933	968	968	995
Domestic Nuclear Detection Office	514	366	366	374
Net subtotal: Title IV	1,882	1,987	1,865	1,792
Total fee collections	2,539	2,503	2,503	2,503
Gross subtotal: Title IV	4,421	4,490	4,368	4,295
Rescissions	-28	----	-14	-36
Gross DHS budget authority	51,513	51,268	51,749	52,020
Total fee collections	-7,543	-7,077	-7,763	-7,732
Net DHS budget authority	43,970	44,191	43,986	44,288

Sources: CRS and Senate-reported S. 1298 and S.Rept. 111-31.

Background

The Homeland Security Act of 2002 (P.L. 107-296) transferred the functions, relevant funding, and most of the personnel of 22 agencies and offices to the new Department of Homeland Security (DHS) created by the Act. DHS funding is organized into four major areas: Management and Operations; Security, Enforcement and Investigations; Preparedness and Recovery; and Research, Development, Training and Services.

Security, Enforcement and Investigations, the largest of the four areas, contains five main components: U.S. Customs and Border Protection (CPB); U.S. Immigration and Customs Enforcement (ICE); Transportation Security Administration (TSA); U.S. Coast Guard; and U.S. Secret Service. Preparedness and Recovery is comprised of the Federal Emergency Management Administration (FEMA) and the National Protection and Programs Directorate. Research, Development, Training and Services is comprised of U.S. Citizenship and Immigration Services; the Federal Law Enforcement Training Center; the Directorate for Science and Technology; and the Domestic Nuclear Detection Office.

Bill Provisions

Title I – Departmental Management and Operations

Title I provides \$1.34 billion for Departmental Management and Operations, \$49.2 billion more than the FY 2009 appropriation and \$49.3 billion less than the administration request. Significant spending accounts include:

Office of the Secretary and Executive Management: Provides \$149.3 million for the Office of the Secretary, which is \$25.8 million more than the FY09 appropriation and \$11.5 million less than the administration request.

Office of Undersecretary of Management: \$307.7 million is provided for the Office of Undersecretary of Management, including \$63.6 million for DHS headquarters consolidation. Including the \$650 million provided for this project in the American Recovery and Reinvestment Act and funds provided to the General Services Administration, more than \$1.1 billion has been appropriated for this project.

Analysis and Operations: Provides \$347.8 million for Analysis and Operations, which is \$20.4 million more than the FY09 appropriation and \$9.5 million less than the administration request. Details of this appropriation are included in a classified annex to the committee report.

Title II – Security, Enforcement and Investigations

Title II provides \$32.7 billion for Security, Enforcement and Investigations, which is \$661.3 million more than FY09 and \$530.6 million more than the administration request. Significant spending accounts include:

U.S. Customs and Border Protection (CBP): Provides \$10.169 billion in direct appropriations (not including fee accounts) to CBP, which is \$330.8 million less than FY09 and \$120.6 million more than the administration request. \$8.076 billion is provided for salaries and expenses. Of this amount, \$3.525 billion is provided for border security and control. This amount will support 22,800 positions along the borders. \$40 million is recommended to combat southbound smuggling along the United States' border with Mexico. \$800 million is provided for border security fencing, infrastructure and technology through the Secure Border Initiative. The committee report requires DHS to submit a strategic plan for ESTA (Electronic System for Travel Authorization)—the electronic system authorized by the 9/11 Act to screen travelers to the U.S. from countries that participate in the Visa Waiver Program.

Immigration and Customs Enforcement (ICE): Provides \$5.445 billion in direct appropriations for ICE (not including estimated fee collections of \$304.8 million), \$435.9 million more than the FY09 appropriation and \$12.9 million less than the administration request. Included in this amount is \$1.8 billion for salaries and expenses related to domestic and international investigations and \$2.5 billion for salaries and expenses for detention and removal operations. The Committee recommends an additional \$45 million and 230 positions to the Southwest Border Enforcement Initiative, the mission of which is to enhance current efforts to identify criminal activities and eliminate vulnerabilities that pose a threat to our nation's borders.

The committee report also claims that bill language ensures “that all illegal aliens encountered when enforcing our immigration laws are apprehended.” But the text of the bill does not appear to contain the provision described. The closest the actual legislative language comes to dealing with apprehension of illegal aliens is in language that ICE agents *may* exercise all authorities available to them when they encounter aliens *convicted of a crime*.

The committee report also makes a point of applauding the Department's commitment to continuing immigration worksite enforcement “against both employers and employees.”

Transportation Security Administration (TSA): Provides \$5.312 billion in appropriations (net of fees and the aviation security capital fund), which is \$55.2 million less than FY09 and \$83.8 million less than the administration request. Included in this amount is \$4.395 billion for screening operations and \$860.1 million for Federal Air Marshals.

U.S. Coast Guard: Provides \$10.239 billion for the Coast Guard, including \$241.5 million for overseas contingency operations, which is \$637.6 million more than FY09 and \$509.7 million more than the administration request. Included in this amount is \$6.8 billion in operating expenses, \$1.195 billion for integrated deepwater systems, which includes aircraft and surface ships, and \$1.4 billion in mandatory retired pay.

U.S. Secret Service: Provides \$1.487 billion for the Secret Service, \$26.3 million less than FY09 and \$2.9 million less than the administration request. Included in this amount is \$850.8 million in salaries and expenses for protection and \$356.5 million in salaries and expenses for investigations.

Title III – Preparedness and Recovery

Title III provides \$8.538 billion for the Protection, Preparedness, Response and Recovery Directorate, \$350.8 million less than FY09 and \$154.2 million less than the administration request. Significant spending accounts include:

National Protection and Programs Directorate: \$1.324 billion is provided for the National Protection and Programs Directorate, \$165.9 million more than FY09 and \$5.25 million more than the administration request. This amount includes \$196.1 million for infrastructure protection, \$398.7 million for the National Cyber Security Division, \$901.4 million for infrastructure protection and information security, and \$1.115 billion for the Federal Protective Service, which is offset by \$1.115 billion in collections.

Federal Emergency Management Agency (FEMA): \$7.078 billion is appropriated for FEMA, \$494.5 million less than FY09 and \$156.4 million more than the administration request. Of this amount, \$909.7 million is provided for management and administration, \$950 million is provided for the State Homeland Security Grant Program, of which \$60 million goes towards Operation Stonegarden for security efforts along the southern U.S. border, \$3.067 billion is provided for State and Local Programs, \$4.217 billion is provided for grants and training, and \$1.391 billion is provided for Disaster Relief.

Title IV – Research, Development, Training and Services

Title IV provides \$1.792 billion for Research, Development, Training and Services, not including \$2.503 billion in fee accounts. This amount is \$89 million less than FY09 and \$194.9 million less than the administration request. Notable items in this title include:

United States Citizenship and Immigration Services (CIS): Provides \$136 million for CIS in appropriations plus \$2.503 billion in user fees, which is \$1.99 million less than the FY09 amount and \$228 million less than the administration request.

Federal Law Enforcement Training Center: \$287.8 million is provided for the Federal Law Enforcement Training Center, \$45 million less than FY09 and \$1 million less than the administration request.

Science and Technology: \$995 million is provided for Science and Technology, \$62 million more than FY09 and \$26.5 million more than the administration request.

Domestic Nuclear Detection Office: \$374 million is provided for the Domestic Nuclear Detection Office, \$140 million less than FY09 and \$7.9 million more than the budget request.

Title V – General Provisions

Title V is composed of General Provisions concerning restrictions on unobligated balances, the Department's Working Capital Fund and various other measures. Of particular note, the bill:

- provides for a three-year extension of the E-Verify program as well as for the EB-5 Immigrant Investor Pilot program (Sec. 545),

- requires DHS to use E-Verify for all hires in the Office of the Secretary, which encompasses all the central headquarters offices of the Department (Sec. 533),
- mandates that none of the funds may be used in contravention of the Buy America Act (section 511),
- prohibits the destruction of any horse belonging to the federal government unless adoption has been offered first (section 527), and
- prohibits any funds being used for the planning, testing, piloting or developing a national identification card (section 537).

Administration Position

The Statement of Administration Policy (SAP) on S. 1298 as reported by the Senate Appropriations Committee indicates strong support for H.R. 2892 with the committee-reported text of S. 1298, and specifically expresses support for the E-Verify program, support for the Committee’s contingent termination of the Coast Guard’s antiquated radio navigation system that has been supplanted by civilian the Global Positioning System (funding for the system is continued in the House bill), support for the Committee’s recommending transfer of the Federal Protective Service to the National Protection Programs Directorate (the House bill does not recommend such a transfer), and concern over underfunding for FEMA’s Disaster Relief Fund. The Administration also urges Congress to provide funding to reform immigration fees.

Cost

S. 1298 would result in the following new outlays (amounts in billions):

FY 2010	\$26.687
FY 2011	\$8.416
FY 2012	\$5.133
FY 2013	\$1.871
FY 2014 and future years	\$1.204

Possible Amendments

Possible amendments include a five-year extension of the E-Verify program. The committee report “strongly supports E-Verify” and calls it “an essential tool for employers committed to maintaining a legal workforce and a key deterrent to illegal immigration.” Additional potential amendments could include language directing or authorizing the Secretary to direct all federal contractors to use E-Verify as a condition of accepting a federal government contract or subcontract. The Bush-era Executive Order and federal procurement rule requiring contractors to use E-Verify are currently tied up in litigation and their implementation has been postponed three times by the Obama Administration. Administration sources are indicating that the Obama Administration will preserve part of the federal contractor rule, but even if that policy decision is implemented, the rule may remain tied up in litigation for months unless Congress reinforces the Administration’s authority to implement such a requirement through explicit statutory language.