

107TH CONGRESS
2D SESSION

S. 2020

To establish the Department of National Border Security.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2002

Mr. GREGG introduced the following bill; which was read twice and referred
to the Committee on Governmental Affairs

A BILL

To establish the Department of National Border Security.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Na-
5 tional Border Security Act of 2002”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) DEPARTMENT.—The term “Department”
9 means the Department of National Border Security
10 established by this Act.

1 (2) FEDERAL AGENCY.—The term “Federal
2 agency” has the meaning given to the term “agen-
3 cy” by section 551(1) of title 5, United States Code.

4 (3) IMMIGRATION ADJUDICATION FUNCTIONS.—
5 The term “immigration adjudication functions”
6 means the functions performed by the Executive Of-
7 fice for Immigration Review of the Department of
8 Justice and the authority of the Attorney General to
9 review the exercise of those functions.

10 (4) SECRETARY.—The term “Secretary” means
11 the Secretary of National Border Security.

12 **TITLE I—DEPARTMENT OF** 13 **NATIONAL BORDER SECURITY**

14 **SEC. 101. ESTABLISHMENT.**

15 (a) ESTABLISHMENT.—There is established an execu-
16 tive department to be known as the Department of Na-
17 tional Border Security.

18 (b) SECRETARY OF NATIONAL BORDER SECURITY.—

19 (1) IN GENERAL.—There shall be at the head
20 of the Department a Secretary of National Border
21 Security, who shall be appointed by the President,
22 by and with the advice and consent of the Senate.
23 The Department shall be administered, in accord-
24 ance with the provisions of this Act, under the su-
25 pervision and direction of the Secretary.

1 (2) CABINET LEVEL POSITION.—Section 5312
2 of title 5, United States Code, is amended by adding
3 at the end the following:

4 “Secretary of National Border Security.”.

5 (3) MEMBERSHIP ON THE NATIONAL SECURITY
6 COUNCIL.—Section 101(a) of the National Security
7 Act of 1947 (50 U.S.C. 402(a)) is amended in the
8 fourth sentence by striking paragraphs (5), (6), and
9 (7) and inserting the following:

10 “(5) the Secretary of National Border Security;
11 and

12 “(6) each Secretary or Under Secretary of such
13 other executive department, or of a military depart-
14 ment, as the President shall designate.”.

15 (c) DUTIES.—Under the direction, authority, and
16 control of the President, the Secretary shall be responsible
17 for the following:

18 (1) To plan and implement those United States
19 Government activities relating to border security.

20 (2) To work with State and local governments
21 and Federal agencies in protecting United States
22 border security, and to support State officials
23 through the use of regional offices around the
24 United States.

1 (3) To provide overall planning guidance to
2 Federal agencies regarding United States border se-
3 curity.

4 (4) To conduct exercise and training programs
5 for employees of the Department and establish effec-
6 tive command and control procedures for the full
7 range of potential contingencies regarding United
8 States border security.

9 (5) To develop annually a Federal plan for bor-
10 der security.

11 **SEC. 102. ORGANIZATION.**

12 (a) IN GENERAL.—The Department shall be com-
13 posed of the following entities and bureaus:

14 (1) The United States Customs Service, as
15 transferred by section 103.

16 (2) The Coast Guard, as transferred by section
17 104.

18 (3) The Bureau of Immigration Enforcement.

19 (4) The Bureau of Border-Related Drug En-
20 forcement.

21 (5) The Bureau of Agricultural Quarantine In-
22 spections.

23 (b) BUREAU OF IMMIGRATION ENFORCEMENT.—The
24 Bureau of Immigration Enforcement shall be headed by
25 an Assistant Secretary for Immigration Enforcement, who

1 shall be appointed by the President, by and with the advice
2 and consent of the Senate, and who shall assist the Sec-
3 retary in matters relating to the enforcement of United
4 States immigration laws, including the inspection, inves-
5 tigation, detention, and removal of aliens, but not includ-
6 ing any immigration adjudication functions. The Assistant
7 Secretary shall be compensated at the rate provided for
8 at level IV of the Executive Schedule under section 5315
9 of title 5, United States Code.

10 (c) BUREAU OF BORDER-RELATED DRUG ENFORCE-
11 MENT.—The Bureau of Border-Related Drug Enforce-
12 ment shall be headed by an Assistant Secretary for Bor-
13 der-Related Drug Enforcement, who shall be appointed by
14 the President, by and with the advice and consent of the
15 Senate, and who shall assist the Secretary in matters re-
16 lating to the enforcement of United States laws on con-
17 trolled substances at the international borders of the
18 United States with Canada and with Mexico. The Assist-
19 ant Secretary shall be compensated at the rate provided
20 for at level IV of the Executive Schedule under section
21 5315 of title 5, United States Code.

22 (d) BUREAU OF AGRICULTURAL QUARANTINE IN-
23 SPECTIONS.—The Bureau of Agricultural Quarantine In-
24 spections shall be headed by an Assistant Secretary for
25 Agricultural Quarantine Inspections, who shall be ap-

1 pointed by the President, by and with the advice and con-
 2 sent of the Senate, and who shall assist the Secretary with
 3 the agricultural quarantine inspection activities of the
 4 United States. The Assistant Secretary shall be com-
 5 pensated at the rate provided for at level IV of the Execu-
 6 tive Schedule under section 5315 of title 5, United States
 7 Code.

8 **SEC. 103. TRANSFER OF UNITED STATES CUSTOMS SERV-**
 9 **ICE.**

10 (a) FROM DEPARTMENT OF THE TREASURY.—The
 11 United States Customs Service is transferred to the De-
 12 partment of National Border Security.

13 (b) COMMISSIONER OF CUSTOMS.—

14 (1) IN GENERAL.—The first section of the Act
 15 entitled “An Act to create a Bureau of Customs and
 16 a Bureau of Prohibition in the Department of the
 17 Treasury”, approved March 3, 1927 (44 Stat. 1381;
 18 19 U.S.C. 2071), is amended—

19 (A) in the first sentence, by striking “De-
 20 partment of the Treasury” and inserting “De-
 21 partment of National Border Security”; and

22 (B) in the second sentence, by striking
 23 “Secretary of the Treasury” each of the two
 24 places it appears and inserting “Secretary of
 25 National Border Security”.

1 (2) COMPENSATION AT EXECUTIVE SCHEDULE
2 LEVEL IV.—Section 5315 of title 5, United States
3 Code, is amended by striking “Commissioner of Customs,
4 Department of the Treasury” and inserting
5 “Commissioner of Customs, Department of National
6 Border Security”.

7 (c) REAPPOINTMENT NOT REQUIRED.—The indi-
8 vidual who is serving as the Commissioner of Customs
9 within the Department of the Treasury on the day before
10 the effective date of this Act may continue to serve as the
11 Commissioner of Customs within the Department of Na-
12 tional Border Security on and after such date without re-
13 appointment.

14 **SEC. 104. TRANSFER OF COAST GUARD.**

15 (a) FROM DEPARTMENT OF TRANSPORTATION.—The
16 Coast Guard is transferred to the Department of National
17 Border Security.

18 (b) TITLE 14.—

19 (1) A SERVICE IN DEPARTMENT OF BORDER
20 SECURITY.—Section 1 of title 14, United States
21 Code, is amended by striking “Department of
22 Transportation” and inserting “Department of Na-
23 tional Border Security”.

24 (2) CONFORMING REFERENCES.—Such title is
25 further amended—

1 (A) by striking “Department of Transpor-
2 tation” each place it appears, and inserting
3 “Department of National Border Security”; and
4 (B) by striking “Secretary of Transpor-
5 tation” each place it appears, and inserting
6 “Secretary of National Border Security”.

7 (c) REAPPOINTMENT NOT REQUIRED.—The indi-
8 vidual who is serving as the Commandant of the Coast
9 Guard within the Department of Transportation on the
10 day before the effective date of this Act may continue to
11 serve as the Commandant of the Coast Guard within the
12 Department of National Border Security on and after
13 such date without reappointment.

14 **SEC. 105. REPORTING REQUIREMENTS.**

15 (a) BIENNIAL REPORTS.—Beginning two years after
16 the date of enactment of this Act, and every two years
17 thereafter, the Secretary shall submit to Congress a report
18 assessing the resources and requirements of Federal agen-
19 cies relating to border security issues.

20 (b) ADDITIONAL REPORT.—Not later than one year
21 after the date of the enactment of this Act, the Secretary
22 shall submit to Congress a report—

23 (1) assessing the progress of the Department
24 in—

1 (A) implementing the provisions of this
2 Act; and

3 (B) ensuring the core functions of each en-
4 tity transferred to the Department are main-
5 tained and strengthened; and

6 (2) recommending any conforming changes in
7 law necessary as a result of the enactment and im-
8 plementation of this Act.

9 **SEC. 106. COORDINATION WITH OTHER ORGANIZATIONS.**

10 The Secretary shall establish and maintain effective
11 mechanisms for the sharing of information and intel-
12 ligence with United States and international intelligence
13 entities.

14 **SEC. 107. PLANNING, PROGRAMMING, AND BUDGETING**
15 **PROCESS.**

16 The Secretary shall establish procedures to ensure
17 that the planning, programming, budgeting, and financial
18 activities of the Department are consistent with sound fi-
19 nancial and fiscal management principles. At a minimum,
20 those procedures shall provide for the planning, program-
21 ming, and budgeting of activities of the Department using
22 funds that are available for obligation for a limited num-
23 ber of years.

1 **TITLE II—TRANSFER OF FUNC-**
2 **TIONS AND SAVINGS PROVI-**
3 **SIONS**

4 **SEC. 201. DEFINITIONS.**

5 In this title:

6 (1) **FUNCTION.**—The term “function” means
7 any duty, obligation, power, authority, responsibility,
8 right, privilege, activity, or program.

9 (2) **OFFICE.**—The term “office” includes any
10 office, administration, agency, institute, unit, organi-
11 zational entity, or component thereof.

12 (3) **TRANSFEROR AGENCY.**—The term “trans-
13 feror agency” means any of the following agencies
14 with respect to the appropriate function or func-
15 tions:

16 (A) The Department of Justice, with re-
17 spect to the functions described in section
18 202(1) that are performed by the Immigration
19 and Naturalization Service on the day before
20 the effective date of this Act.

21 (B) The Department of the Treasury, with
22 respect to the functions performed by the
23 United States Customs Service on the day be-
24 fore the effective date of this Act.

1 (C) The Department of Transportation,
2 with respect to the functions performed by the
3 Coast Guard on the day before the effective
4 date of this Act.

5 (D) The Department of Justice, with re-
6 spect to the function described in section
7 202(4) that is performed by the Drug Enforce-
8 ment Administration on the day before the ef-
9 fective date of this Act.

10 (E) The Department of Agriculture, with
11 respect to the functions described in section
12 202(5) that is performed by the Department of
13 Agriculture on the day before the effective date
14 of this Act.

15 **SEC. 202. TRANSFER OF FUNCTIONS.**

16 There are transferred to the Secretary all functions
17 which the head of any transferor agency exercised on the
18 day before the effective date of this Act (including all re-
19 lated functions of any officer or employee of a transferor
20 agency) relating to—

21 (1) the enforcement of the United States immi-
22 gration laws (other than immigration adjudication
23 functions);

24 (2) the functions performed by the United
25 States Customs Service;

1 (3) the functions performed by the Coast
2 Guard;

3 (4) the enforcement of laws on controlled sub-
4 stances at the international borders of the United
5 States with Canada and with Mexico; or

6 (5) the administration of laws relating to agri-
7 cultural quarantine inspections.

8 **SEC. 203. DETERMINATIONS OF CERTAIN FUNCTIONS BY**
9 **THE OFFICE OF MANAGEMENT AND BUDGET.**

10 If necessary, the Director of the Office of Manage-
11 ment and Budget shall make any determination of the
12 functions that are transferred under section 202.

13 **SEC. 204. PERSONNEL PROVISIONS.**

14 (a) APPOINTMENTS.—The Secretary may appoint
15 and fix the compensation of such officers and employees,
16 including investigators, attorneys, and administrative law
17 judges, as may be necessary to carry out the respective
18 functions transferred under this title. Except as otherwise
19 provided by law, such officers and employees shall be ap-
20 pointed in accordance with the civil service laws and their
21 compensation fixed in accordance with title 5, United
22 States Code.

23 (b) EXPERTS AND CONSULTANTS.—The Secretary
24 may obtain the services of experts and consultants in ac-
25 cordance with section 3109 of title 5, United States Code,

1 and compensate such experts and consultants for each day
 2 (including traveltime) at rates not in excess of the rate
 3 of pay for level IV of the Executive Schedule under section
 4 5315 of such title. The Secretary may pay experts and
 5 consultants who are serving away from their homes or reg-
 6 ular place of business travel expenses and per diem in lieu
 7 of subsistence at rates authorized by sections 5702 and
 8 5703 of such title for persons in Government service em-
 9 ployed intermittently.

10 **SEC. 205. DELEGATION AND ASSIGNMENT.**

11 (a) IN GENERAL.—

12 (1) DELEGATION TO THE UNDER SECRE-
 13 TARIES.—Subject to paragraph (2), the Secretary
 14 shall delegate—

15 (A) the functions described in section
 16 202(1) to the Assistant Secretary for Immigra-
 17 tion Enforcement;

18 (B) the functions described in section
 19 202(2) to the Commissioner of Customs;

20 (C) the functions described in section
 21 202(3) to the Commandant of the Coast Guard;

22 (D) the functions described in section
 23 202(4) to the Assistant Secretary for Border-
 24 Related Drug Enforcement; and

1 (E) the functions described in section
2 202(5) to the Assistant Secretary for Agricultural
3 Quarantine Inspection.

4 (2) RESERVATION OF FUNCTIONS.—Policy and
5 administrative functions of functions transferred
6 under section 202 shall be reserved for exercise by
7 the Secretary.

8 (b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—
9 Delegations made under subsection (a) may be on a non-
10 exclusive basis as the Secretary may determine may be
11 necessary to ensure the faithful execution of the Sec-
12 retary’s responsibilities and duties under law.

13 (c) EFFECT OF DELEGATIONS.—Except as otherwise
14 expressly prohibited by law or otherwise provided in this
15 title, the Secretary may make delegations under this sub-
16 section to such officers and employees of the Department
17 as the Secretary may designate, and may authorize succes-
18 sive redelegations of such functions as may be necessary
19 or appropriate. No delegation of functions under this sub-
20 section or under any other provision of this title shall re-
21 lieve the official to whom a function is transferred pursu-
22 ant to this title of responsibility for the administration of
23 the function.

1 **SEC. 206. REORGANIZATION.**

2 Except as otherwise provided by section 205, the Sec-
3 retary is authorized to allocate or reallocate any function
4 transferred under section 202 among the officers of the
5 Department, and to establish, consolidate, alter, or dis-
6 continue such organizational entities in the Department
7 as may be necessary or appropriate.

8 **SEC. 207. RULES.**

9 The Secretary is authorized to prescribe, in accord-
10 ance with the provisions of chapters 5 and 6 of title 5,
11 United States Code, such rules and regulations as the Sec-
12 retary determines necessary or appropriate to administer
13 and manage the functions of the Department.

14 **SEC. 208. TRANSFER AND ALLOCATIONS OF APPROPRIA-**
15 **TIONS AND PERSONNEL.**

16 Except as otherwise provided in this title, the per-
17 sonnel employed in connection with, and the assets, liabil-
18 ities, contracts, property, records, and unexpended bal-
19 ances of appropriations, authorizations, allocations, and
20 other funds employed, used, held, arising from, available
21 to, or to be made available in connection with the func-
22 tions transferred by this title, subject to section 1531 of
23 title 31, United States Code, shall be transferred to the
24 Department. Unexpended funds transferred pursuant to
25 this section shall be used only for the purposes for which
26 the funds were originally authorized and appropriated.

1 **SEC. 209. INCIDENTAL TRANSFERS.**

2 The Director of the Office of Management and Budg-
3 et, at such time or times as the Director shall provide,
4 is authorized to make such determinations as may be nec-
5 essary with regard to the functions transferred by this
6 title, and to make such additional incidental dispositions
7 of personnel, assets, liabilities, grants, contracts, property,
8 records, and unexpended balances of appropriations, au-
9 thorizations, allocations, and other funds held, used, aris-
10 ing from, available to, or to be made available in connec-
11 tion with such functions, as may be necessary to carry out
12 the provisions of this title. The Director of the Office of
13 Management and Budget shall provide for the termination
14 of the affairs of all entities terminated by this title and
15 for such further measures and dispositions as may be nec-
16 essary to effectuate the purposes of this title.

17 **SEC. 210. EFFECT ON PERSONNEL.**

18 (a) IN GENERAL.—Except as otherwise provided by
19 this title, the transfer pursuant to this title of full-time
20 personnel (except special Government employees) and
21 part-time personnel holding permanent positions shall not
22 cause any such employee to be separated or reduced in
23 grade or compensation for one year after the date of trans-
24 fer of such employee under this title.

25 (b) EXECUTIVE SCHEDULE POSITIONS.—Except as
26 otherwise provided in this title, any person who, on the

1 day preceding the effective date of this title, held a posi-
 2 tion compensated in accordance with the Executive Sched-
 3 ule prescribed in chapter 53 of title 5, United States Code,
 4 and who, without a break in service, is appointed in the
 5 Department to a position having duties comparable to the
 6 duties performed immediately preceding such appointment
 7 shall continue to be compensated in such new position at
 8 not less than the rate provided for such previous position,
 9 for the duration of the service of such person in such new
 10 position.

11 (c) TERMINATION OF CERTAIN POSITIONS.—Posi-
 12 tions whose incumbents are appointed by the President,
 13 by and with the advice and consent of the Senate, the
 14 functions of which are transferred by this title, shall termi-
 15 nate on the effective date of this title.

16 **SEC. 211. SAVINGS PROVISIONS.**

17 (a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—
 18 All orders, determinations, rules, regulations, permits,
 19 agreements, grants, contracts, certificates, licenses, reg-
 20 istrations, privileges, and other administrative actions—
 21 (1) which have been issued, made, granted, or
 22 allowed to become effective by the President, any
 23 Federal agency or official thereof, or by a court of
 24 competent jurisdiction, in the performance of func-
 25 tions which are transferred under this title, and

1 (2) which are in effect at the time this title
2 takes effect, or were final before the effective date
3 of this title and are to become effective on or after
4 the effective date of this title,
5 shall continue in effect according to their terms until
6 modified, terminated, superseded, set aside, or revoked in
7 accordance with law by the President, the Secretary or
8 other authorized official, a court of competent jurisdiction,
9 or by operation of law.

10 (b) PROCEEDINGS NOT AFFECTED.—The provisions
11 of this title shall not affect any proceedings, including no-
12 tices of proposed rulemaking, or any application for any
13 license, permit, certificate, or financial assistance pending
14 before a transferor agency at the time this title takes ef-
15 fect, with respect to functions transferred by this title but
16 such proceedings and applications shall be continued. Or-
17 ders shall be issued in such proceedings, appeals shall be
18 taken therefrom, and payments shall be made pursuant
19 to such orders, as if this title had not been enacted, and
20 orders issued in any such proceedings shall continue in
21 effect until modified, terminated, superseded, or revoked
22 by a duly authorized official, by a court of competent juris-
23 diction, or by operation of law. Nothing in this subsection
24 shall be deemed to prohibit the discontinuance or modi-
25 fication of any such proceeding under the same terms and

1 conditions and to the same extent that such proceeding
2 could have been discontinued or modified if this title had
3 not been enacted.

4 (c) SUITS NOT AFFECTED.—The provisions of this
5 title shall not affect suits commenced before the effective
6 date of this title, and in all such suits, proceedings shall
7 be had, appeals taken, and judgments rendered in the
8 same manner and with the same effect as if this title had
9 not been enacted.

10 (d) NONABATEMENT OF ACTIONS.—No suit, action,
11 or other proceeding commenced by or against a transferor
12 agency, or by or against any individual in the official ca-
13 pacity of such individual as an officer of a transferor agen-
14 cy, shall abate by reason of the enactment of this title.

15 (e) ADMINISTRATIVE ACTIONS RELATING TO PRO-
16 MULGATION OF REGULATIONS.—Any administrative ac-
17 tion relating to the preparation or promulgation of a regu-
18 lation by a transferor agency relating to a function trans-
19 ferred under this title may be continued by the Depart-
20 ment with the same effect as if this title had not been
21 enacted.

22 **SEC. 212. TRANSITION.**

23 The Secretary is authorized to utilize—

24 (1) the services of such officers, employees, and
25 other personnel of a transferor agency with respect

1 to functions transferred to the Department by this
2 title; and

3 (2) funds appropriated to such functions for
4 such period of time as may reasonably be needed to
5 facilitate the orderly implementation of this title.

6 **SEC. 213. REFERENCES.**

7 Reference in any other Federal law, Executive order,
8 rule, regulation, or delegation of authority, or any docu-
9 ment of or relating to—

10 (1) the head of a transferor agency with regard
11 to functions transferred under section 202, shall be
12 deemed to refer to the Secretary; and

13 (2) a transferor agency with regard to functions
14 transferred under section 202, shall be deemed to
15 refer to the Department.

16 **SEC. 214. ADDITIONAL CONFORMING AMENDMENTS.**

17 (a) RECOMMENDED LEGISLATION.—After consulta-
18 tion with the appropriate committees of the Congress and
19 the Director of the Office of Management and Budget, the
20 Secretary shall prepare and submit to the Congress rec-
21 ommended legislation containing technical and conforming
22 amendments to reflect the changes made by this title.

23 (b) SUBMISSION TO THE CONGRESS.—No later than
24 6 months after the effective date of this title, the Secretary

1 shall submit the recommended legislation referred to
2 under subsection (a).

3 **TITLE III—EFFECTIVE DATE**

4 **SEC. 301. EFFECTIVE DATE.**

5 This Act shall take effect 6 months after the date
6 of enactment of this Act.

