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HOMELAND SECURITY GRANT ENHANCEMENT ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 21

together with

ADDITIONAL VIEWS

TO PROVIDE FOR HOMELAND SECURITY GRANT COORDINATION AND SIMPLIFICATION, AND FOR OTHER PURPOSES

MAY 24, 2005.—Ordered to be printed

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MAY 24, 2005.—Ordered to be printed

Ms. COLLINS, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 21]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 21) to provide for homeland security grant coordination and simplification, and for other purposes, having considered the same reports favorably thereon with amendments and recommends that the bill do pass.

I. PURPOSE AND SUMMARY

The Senate Homeland Security and Governmental Affairs Committee (the Committee) approved S. 21, the Homeland Security Grant Enhancement Act of 2005 on April 13, 2005. This bill seeks to create a stronger, more streamlined, yet accountable program of federal financial assistance to State and local governments and first responders responsible for protecting our homeland.

Nearly 4 years have passed since the attacks on September 11, 2001 and over 2 years since the formation of the Department of Homeland Security. While the Senate spent more than three months debating the Homeland Security Act, the law contains virtually no guidance on how the Department is to assist those at the State and local level with their homeland security needs. Congress wrote a 187-page law creating the Department, yet included but a single paragraph on grant programs for first responders. As a result, the Department has been left with little guidance from Congress as to how State and local grant decisions should be made.

As with so many other issues, much of the front-line responsibility for homeland security has fallen squarely on the shoulders of our State and local officials and more than 9 million first respond-

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ers. Communities across America have risen to this challenge and developed scores of innovative homeland security strategies.

Instead of encouraging these new ideas, however, the tangled web of federal homeland security grant programs has the potential to stifle the Department's ability to foster State and local innovation. Instead of providing a foundation on which States and localities can build homeland security strategies tailored to specific risks, the various federal homeland security programs present States and communities with a mountain of paperwork. Instead of giving communities the flexibility they need, State and local officials face an inflexible grant structure. The current grant system is slow and uncoordinated. Much of this problem stems from the lack of planning before funds are spent.

In February 2005, the Government Accountability Office issued a report entitled "Homeland Security: Management of First Responder Grant Programs has Improved, but Challenges Remain." It concluded that a "major challenge in administering first responder grants is balancing two goals: minimizing the time it takes to distribute grant funds to state and local first responders, and ensuring appropriate planning and accountability for the effective use of grant funds." GAO further opined that "[e]ffective collaboration among ODP, states, and others in developing appropriate preparedness performance goals and measures will be essential to ensuring that the nation's emergency response capabilities are appropriately identified, assessed, and strengthened."

Other observers also have found that while DHS grant management has improved in recent years, much more needs to be done. For example, the Office of the Inspector General for the Department of Homeland Security issued a report in December 2004 entitled "Major Management Challenges Facing the Department of Homeland Security." Among departmental challenges described in the report were the management of homeland security grants. S. 21 takes a balanced approach to restructuring the homeland security grant system to fix systemic flaws and require resource allocation decisions to be based on risk, while ensuring predictable funding to address the most pressing homeland security needs.

The homeland security grant system is fundamentally flawed because it operates backwards. For example, under the Urban Area Security Initiative (UASI), DHS issues funds to a limited number of cities, which then apply to DHS for approval to "drawdown" funds for each purchase. The result is cities get funds before they know what they will spend them on. This is a backwards approach, forcing cities only after the fact to make decisions and draw-up plans on how to draw-down funds. This legislation would reverse that order and require planning first, and spending second. The result will be quicker and smarter expenditures of funds combined with better long-term thinking. The legislation will also require that national benchmarks be adopted to measure the nation's progress toward better terrorism preparedness and ensure that resources are spent wisely.

The current system also often fails to think regionally. The lack of regional thinking was highlighted by a recent DHS decision to eliminate several cities from the UASI program. The list retained Minneapolis, Minnesota as eligible for urban area funding, but eliminated St. Paul, Minnesota from the list. The absurd result was

half of the "Twin Cities" designated as at risk of terrorist attack such that UASI funding was appropriate, and the other half designated as not at risk and not eligible for funding. S. 21 will encourage more resource allocation decisions to be made on a regional basis resulting in better national preparedness coverage at a lower aggregate cost.

This legislation would provide State and local governments and communities with the resources they need to protect their communities by establishing a predictable stream of funding to each and every State while at the same time directing more resources to the areas most at risk of a terrorist attack; making it easier to apply for grants; promoting flexibility in the use of homeland security funding; and resulting in smarter, more effective spending of funds.

Departmental organization

S. 21 would reorganize the administrative process for obtaining selected first responder grant programs within the Department of Homeland Security (DHS). The legislation would codify action the Secretary took in March 2004 to consolidate the Office for Domestic Preparedness and the Office of State and Local Government Coordination (SLGC).

Streamlining homeland security grant programs

S. 21 also creates an Interagency Committee to Coordinate and Streamline Homeland Security Grant Programs (Interagency Committee) to be led by the Secretary of DHS. Among its duties, the Interagency Committee would identify all duplicative application, planning, and reporting requirements among Federal homeland security assistance programs; assess State and local needs and capabilities; and advise the DHS Secretary on implementing appropriate performance measures for grant recipients. In addition, the Interagency Committee would provide recommendations to Federal agencies on the coordination of homeland security grant programs; specifically, recommendations on streamlining and standardizing application, reporting, and planning requirements.

Information clearinghouse

In addition, S. 21 establishes a Homeland Security Information Clearinghouse within the OSLGC, which would be maintained by the Office for Domestic Preparedness. The clearinghouse would be charged with providing States and localities with information on grant programs and the use of Federal funds. The clearinghouse would gather and publish information on best practices in homeland security and voluntary standards for training programs, equipment, and exercises. The Committee finds that the Lessons Learned Information Sharing network (LLIS.gov) is one effective way to meet this need. The Committee strongly encourages the Office of State and Local Government Coordination and Preparedness's continued use of LLIS.gov, in conjunction with the Memorial Institute for the Prevention of Terrorism, as the nationwide lessons learned and information-sharing network for emergency response providers and homeland security officials. The Committee also encourages SLGCP to expand the LLIS.gov model to address lessons learned, best practices, and information-sharing imperatives for both the Private Sector as well as the American

Public. Further, the committee expects the Department to incorporate LLIS.gov into its annual budget to ensure consistent resourcing of this vital program.

Voluntary consensus standards

S. 21 requires that the Secretary support the development of national voluntary consensus standards for first responder equipment and training. Applicants for grant funds who want to use those funds to purchase or upgrade equipment that did not meet these standards would have the burden of explaining why such equipment would better serve their needs than equipment that did meet the standards.

The Committee supports the efforts of the System Assessment and Validation for Emergency Responders (SAVER) program. Operated by the Office for Domestic Preparedness System Support Division, the SAVER program provides independent equipment assessment and validation of commercially-available off-the-shelf emergency responder products. The Committee supports the expansion of this service for first responders to cover a broad spectrum of first responder products and urges vigorous dissemination of this valuable information.

National voluntary consensus standards would compliment DHS's current system for disseminating equipment and vendor information to grantees, while helping to ensure that first responders receive the quality equipment that they need and deserve. There is no complete list of recommended or approved products that DHS provides to grantees. However, venders are encouraged to register with a site affiliated with the LLIS (Lessons Learned Information Sharing)—the Responder Knowledge Base (*http://www2.rkb.mipt.org/*). By establishing national voluntary consensus standards, S. 21 assists DHS in providing all information that grantees need to spend homeland security dollars wisely.

Essential capabilities

Building on the National Preparedness Goal recently issued by DHS, S. 21 requires that the Secretary establish "essential capabilities" for state and local governments. Essential capabilities are the levels and competence of emergency personnel, planning and equipment that are needed to prevent, prepare for, and respond to acts of terrorism and other catastrophic events. Different types of communities will have different essential capabilities. The bill also provides for the creation of a First Responder Task Force, made up of state and local first responders and other state and local officials, to advise the Secretary on the establishment and periodic updating of these essential capabilities.

The Committee does not intend for DHS to take a "back-to-the-drawing-board" approach in implementing this provision. Rather, the Committee expects the Department to use the National Preparedness Goal as a starting point from which, working with first responders and other experts, it is to develop essential capabilities. The Committee strongly encourages the Department to broadly solicit comment from first responders and others to understand how the National Preparedness Goal, the National Preparedness Guidance, and associated guidance and standards developed by the Department are working at the state and local level, so that the De-

partment may take these lessons into account in establishing essential capabilities.

The establishment of essential capabilities will provide important guidance to states and localities trying to improve their terrorism preparedness, as well as benchmarks for measuring both state and national progress in achieving that preparedness. Essential capabilities, moreover, would be intimately tied to the grant decision making process by requiring consideration of how funding decisions will help accomplish key preparedness goals, and thereby providing a basis for prioritizing among needs. The establishment of essential capabilities also creates an important barrier to wasteful and inappropriate spending, as states and regions, in applying for and allocating homeland security grant funds, will have to demonstrate that the funds are being used to achieve specific capabilities.

Homeland security grants

S. 21 authorizes formula based and discretionary homeland security grants to States and regions for first responder preparation activities, such as emergency planning, risk assessments, mutual aid agreements, equipment, training, and exercises. Funding would be provided for overtime expenses incurred during periods of heightened alerts, for training activities, and for certain activities in support of federal border protection. To be eligible for a homeland security grant, States would be required to complete a State Homeland Security Plan that addresses matters including interoperable communications, incident command systems, regional coordination, response planning, and training exercises. The plan must also include a three-year strategy for allocating funding to localities based on risk, capability, and need, as well as an assessment of the shortfall between existing and needed response capabilities. The bill provides basic guidelines for States to use in developing their plans, including mandatory input from local officials, first responders, and the private sector.

Accountability

Considerable attention has been devoted to the alleged misuse of homeland security grant funding. S. 21 contains a variety of tools to preserve the integrity of these programs. S. 21 includes a number of other provisions designed to increase accountability and ensure the appropriate use of homeland security grant funds. These include:

1. *Independent Audit:* An annual GAO audit and report on Homeland Security grants to states.
2. *Robust Reporting Requirements:* Grant recipients will be required annually to report to the Secretary on how funds were spent and on progress toward achieving essential capabilities. Currently, states report spending in broad categories, which means that wasteful expenditures easily could be missed.
3. *Tying Spending to Standards:* A requirement that states distribute and spend Homeland Security funding only in ways that measurably help state, local, or tribal jurisdictions meet preparedness standards and achieve essential capabilities to be set by the Department (i.e., funds cannot be spent on leather jackets or garbage trucks unless they demonstrably increase preparedness and essential capabilities as defined by DHS).

4. *Providing Remedies for Non-Compliance:* Authorizes the Secretary of Homeland Security to terminate or reduce grant payments if a state or locality fails to comply with the bill's accountability requirements.

5. *Coordinating Expenditures of Federal Funds:* Establishes an interagency committee to ensure that federal homeland security dollars from all sources are spent in a coordinated manner, avoiding purchases of duplicative equipment or services, or the purchase of incompatible equipment.

State and local flexibility

The needs of our States, localities, and first responders vary widely across the nation. This legislation would ensure that federal homeland security assistance is sufficiently flexible to meet these diverse needs.

Prior to the Emergency Wartime Supplemental Appropriations Act of 2003, the Office for Domestic Preparedness allocated the same percentage of each State's funds for training, equipment, exercises, and planning, thus leaving no room to accommodate different States' priorities. In each and every State, 70 percent of the federal funds were required to be spent for equipment, 18 percent for exercises, 7 percent for planning, and 5 percent for training. In allocating funds this way, the federal government effectively said that Maine must spend exactly the same portion of its homeland security dollars on training as Ohio and Hawaii. Moreover, States could not transfer surplus funds from one category to another to meet their needs.

The bill would give State and local governments greater flexibility with previously appropriated ODP grant funds by allowing grant recipients to request and the Secretary to approve funding transfers among different activities, including equipment, training, exercises, and planning. For new funding, State and local governments have even more flexibility in funding, provided that such spending is consistent with State homeland security plans.

Smuggling weapons of mass destruction

The bill would impede the smuggling of weapons of mass destruction into the United States using vehicles that carry municipal solid waste. Approximately 180 municipal trash trucks from Canada cross the U.S. border every day, for example, to deposit cargo in Michigan landfills. Because the dense and variable cargo in these vehicles, sometimes including sludge, resists analysis using the mechanical inspection devices typically at U.S. border crossings, and because discovery of illegal drugs on one such Canadian vehicle confirmed the truck's use in smuggling, serious questions have arisen about the effectiveness of current border screening procedures for detecting chemical, nuclear, biological or radiological materials that could be concealed on these vehicles.

The bill would bar further entry of these vehicles into the United States unless and until the Secretary certifies to Congress that the methods and technologies being used to screen these vehicles for such weapons are as effective as the methods and technologies being used to screen for such weapons in other items of commerce entering the United States via other commercial vehicle transport. This provision is intended to prompt a thorough re-evaluation of

the screening procedures now being used for vehicles carrying municipal solid waste, and to strengthen U.S. border protections against efforts to use these vehicles to secretly transport chemical, nuclear, biological or radiological materials into the country.

II. BACKGROUND

At present, State and local governments receive assistance for homeland security activities from a range of Federal departments and agencies as well as DHS. Despite the diffuse origins of funding, these Federal programs share a similar goal: To assist State and local governments in their efforts to enhance the capabilities of first responders to prepare for and respond to terrorist attacks, particularly attacks involving weapons of mass destruction.

The vast majority of these activities fall into the categories of emergency planning, training, equipment, and exercises. Congress has also provided limited funding for personnel compensation and overtime expenses incurred during times of heightened alert through these entities and programs.

Federal assistance is also available from programs that are not specifically oriented to first responders or terrorism preparedness. State and local governments may seek emergency preparedness assistance in the form of block grants and categorical grants from programs administered by the Departments of Health and Human Services (HHS), Justice (DOJ), and Transportation (DOT), and the Environmental Protection Agency (EPA).

Since the terrorist attacks of September 2001, both Congress and the President have given increased attention to the role of first responders in the nation's homeland security efforts. This attention is evident in the funding Congress provided in fiscal year 2004 where $2.925 billion was appropriated for the programs authorized in S. 21. Additional funds were provided to first responders under other programs such as the FIRE Act grants and Emergency Management Performance grants. The Administration and Congress have made numerous proposals to restructure existing first responder assistance programs. Thus far, none has been enacted into law.

A wide range of policy concerns led to the development of S. 21. These concerns are not limited to first responder preparedness programs. Rather, they are pertinent to the broader debate over Federal assistance for State and local homeland security efforts. A number of such policy concerns are discussed briefly below.

Complexity of grant applications and planning requirements

At present, State and local governments seeking Federal assistance for their homeland security efforts, and emergency preparedness in general, may apply to DOJ, DOT, EPA, and HHS, as well as to entities within DHS, such as ODP and the Federal Emergency Management Agency (FEMA). This multitude of programs presents a complex array of application requirements. Nearly all applications contain planning requirements that are intended to promote the effective use of funds, but they also create an overwhelming amount of paperwork for State and local officials. The various application and planning requirements are often duplicative, calling for similar assessments, analyses, and spending plans. State and local officials have told the Committee that each program

requires numerous administrative steps. For example, to receive funds from ODP's State Homeland Security Grant Program, States must go through as many as 12 steps in order to obtain approval.

S. 21 would address this problem in two ways. First, the bill creates an Interagency Committee to identify duplicative application and planning requirements in emergency preparedness programs and make recommendations on streamlining those requirements. Second, the bill sets up a single, clear set of goals for the Threat-Based Homeland Security Grant Program, the predecessors of which have, in the past, subjected State and local governments to annual changes in planning and application requirements.

Coordination of information within DHS

The Committee supports coordination of programs and information within DHS. The Committee directs the Office for Domestic Preparedness to work with the Science and Technology Directorate and the Information Analysis and Infrastructure Protection Directorate to ensure that State and local governments and first responders receive information regarding threat, vulnerability assessments, and mitigation technologies for high risk sites in their jurisdictions, such as manufacturing facilities using chemicals and hazardous shipments.

Allocation of funds

The State Homeland Security Grant Program (SHSGP), the Law Enforcement Terrorism Prevention Program (LETPP) and the Urban Area Security Initiative (UASI) currently comprise the core terrorism-related first responder grant programs. Created in the wake of the September 11, 2001 terrorist attacks, the SHSGP grants (which provide funding for first responder training and equipment to all states) and LETPP grants (which provides funding for the terrorism prevention activities of state and local law enforcement) have roots in section 1014 of the USA PATRIOT Act (42 U.S.C. § 3714), which directed the Office for Domestic Preparedness (then in the Department of Justice) to make a grant to each state "to enhance the capability of State and local jurisdictions to prepare for and respond to terrorist acts." The Patriot Act provision, however, provides virtually no additional guidance on the structure or priorities for such grant programs. Funds for the UASI program, which provides grants to a limited number of urban areas deemed to be high-risk, have been provided for in homeland security appropriations acts, but UASI is otherwise unmentioned in statute.

To date, all funds under the SHSGP and LETPP programs have been distributed in accordance with a funding formula. Pursuant to section 1014 of the Patriot Act, each state (as well as the District of Columbia and Puerto Rico) receives 0.75% of the total available funds, with four territories each receiving a 0.25% share; together, these allocations account for 40% of the total. In the absence of further statutory guidance and likely not yet in a position to meaningfully assess relative risks, DHS chose, in previous years, to distribute the remaining 60% of SHSGP and LETPP funds to states in direct proportion to the states' population. For FY 2005, Congress effectively ratified this approach by requiring, in the DHS appropriations Act, that the Department allocate funding under these programs "in the same manner as fiscal year 2004."

At the other end of the spectrum, the allocation of UASI grants has been left almost entirely to the discretion of the Secretary. DHS on its own determines the number of cities that are to receive UASI grants, the identities of those cities and the amount each is to receive, based on a largely nonpublic methodology that has changed each year. The "application" process consists of providing various pieces of information and making certifications to the Department only *after* the allocation decisions have been made. The program's "black box" approach to grant distribution has the potential to create an impression of arbitrariness. While few would question DHS's decision to award the most substantial UASI grants to the obviously high-threat cities of New York City and Washington, D.C., there is a lack of transparency about the overall process for allocating (and not allocating) UASI grants.

In awarding UASI grants, moreover, DHS has focused narrowly on individual cities, rather than looking at the full regions that are likely to be seriously affected by, and required to respond to, any attack. Perhaps the most obvious example of this was DHS's decision in FY2005 to award a UASI grant to Minneapolis but not to St. Paul, ignoring the fact that the so-called "Twin Cities" form a single, interdependent metropolitan area. This practice can also potentially lead DHS to focus on one city of a certain size while overlooking a region of an equal geographic size and with an equal number of people that happens to be divided into several different towns (a not uncommon political geography in New England, for example)—though both areas may be subject to similar risks. In FY2005, DHS for the first time also imposed a population threshold for UASI grants, thereby precluding cities that did not meet this threshold (which was measured solely within the city limits) from even being considered for any UASI funds, regardless of the actual risk the city might otherwise face.

S. 21 would replace SHSGP, LETPP and UASI with a new homeland security grant program, the Threat-Based Homeland Security Grant Program, aimed at supporting the nation's first responders and preventers. The new program would not affect first responder grant programs in existence prior to September 11, 1991, including Emergency Management Performance Grants and Firefighter Assistance Grants. Nor does the new program encompass targeted critical infrastructure grants, such as grants for port security or transit security, which are intended to remain separate and distinct programs.

The grant program created by S. 21 strives to create a better and more effective balance between formula funding and discretionary grants. S. 21 allocates a substantially larger share of funds to discretionary, threat-based grants than has previously been the case, but at the same time provides each state with a significant level of baseline funding. The Committee believes that maintaining a meaningful level of baseline funding is necessary to ensure that, as a nation, we make progress toward achieving an adequate level of nationwide preparedness. On 9–11, terrorists attacked high-profile targets in two of our great cities, and no reasonable person would doubt that terrorists continue to be drawn to such targets. But it is also true that terrorists around the world have attacked "soft targets" and less prominent places: in Bali, Indonesia, terrorists targeted a discotheque; in Beslan, Russia, they targeted a school;

in Madrid, they targeted a commuter train; in Oklahoma City, a government building. We simply cannot know with certainty where terrorists will strike next, and we would be foolish to leave whole swaths of the country unprotected. Moreover, the effects of certain kinds of potential attacks, such as biological weapons attacks or attacks on the nation's food supply, are unlikely to neatly limit themselves to a single, circumscribed geographic area. Finally, much of the money provided from this grant program, like its predecessors, will be used to help states and localities build long-term capacity to prevent and respond to terrorist attacks, including the procurement of equipment over time, and the systematic and ongoing training of first responder personnel. A predictable, reasonable level of baseline funding facilitates state planning and encourages states and localities to invest in these necessary long-term efforts by helping ensure that funding will continue to be available to them each year.

S. 21 provides a sliding-scale baseline amount of funding to each state. Each state would receive a minimum of 0.55% of the total funds appropriated under the Threat-Based Homeland Security Grant Program. Because states that are larger and/or more densely populated face greater risks and greater costs in preparing for and responding to a terrorist attack, such states receive higher baseline amounts, based on a formula that combines population and population density.

All funds beyond those necessary to cover the baseline allocations—over 60% of the total—would be distributed based on the relative threat, vulnerability, and consequences faced by the area from a terrorist attack. In dollar amounts, this means that S. 21 would distribute twice the money based on risk as was the case in FY05. From this funding pool, the Secretary can make threat-based grants to both states and to metropolitan regions. Grants to regions can comprise up to 50% of the total threat-based grant funding. All funds are to be distributed to assist states or region to achieve essential capabilities to prevent, prepare for, and respond to acts of terrorism and other catastrophic events.

Encouraging regional cooperation and a regional perspective on preparedness, S. 21 moves the focus of local funding from individual cities to metropolitan regions. Unlike the current "black box" situation under UASI, moreover, where DHS simply announces a list of cities it has selected to fund, S. 21 would establish an application process for metropolitan region funding. In applying for funding, communities are given considerable flexibility in forming regions that make the most sense locally: a region must simply be made up of two or more contiguous municipalities, counties, parishes or Indian tribes, and must include the largest city in the metropolitan area. To place some limits on the number of regional applications DHS would have to review, only regions within the 100 largest metropolitan statistical areas (MSAs) would be automatically eligible to apply, though other regions could apply with the consent of the Governor of the relevant state or states and of the Secretary.

S. 21 requires that grants to regions be prioritized based on threat, vulnerability and consequences from a terrorist attack, with the Secretary directed to give consideration to such factors as population; population density; the presence of critical infrastructure

and key assets in the region or in nearby jurisdictions; proximity to international borders and coastlines; the presence of at-risk sites or activities in nearby jurisdictions; whether there has been a prior terrorist attack in the eligible metropolitan region; whether any part of the eligible metropolitan region has ever had a higher threat level under the Homeland Security Advisory System than the threat level for the United States as a whole; and the extent of unmet essential capabilities in the region. The bill also directs the Secretary to take into account the extent to which all the jurisdictions in the metropolitan area are participating in the regional application; regions that include more of the jurisdictions in their metropolitan area are to be given priority in funding—encouraging and rewarding regional cooperation. The bill also prohibits DHS from establishing a population threshold for regions that would exclude areas from consideration that otherwise faced significant threats, vulnerabilities or consequences from terrorism.

All funds beyond the baseline allocations that are not given out in grants to regions would be distributed to states, based on the threat, vulnerability and consequence faced by the state from a terrorist attack. As with regional grants, there would be a competitive application process, and the Secretary is to consider similar factors in allocating state threat-based grants: population density; coastline; international borders; the presence of critical infrastructure and key assets; threats and vulnerabilities related to at-risk sites or activities in adjacent jurisdictions; having had a prior terrorist attack in the State or in a metropolitan region that is wholly or partly in the state; any part of the state having ever had a higher threat level under the Homeland Security Advisory System than the threat level for the nation as a whole; and the extent to which the state has unmet essential capabilities. Eighty percent of all state grant funds would have to be passed through to local governments within 60 days.

S. 21 authorizes $2.925 billion for grants in FY06 and FY07 and such sums as are necessary thereafter. This is the same level of funding appropriated for SHSGP, LETPP and UASI grants in FY04. In FY05, funds for these grant programs were reduced to $2.385 billion and the President's FY06 budget has proposed that the programs be reduced further to $2.04 billion. The Committee does not believe that such decreases in first responder funding are justified. Indeed, evaluations such as that conducted by a task force of the Council on Foreign Relations have found that significantly *more* rather than less funding is necessary to ensure adequate levels of first responder preparedness.[1]

Additional allocation considerations

The bill recognizes the importance of continued support for terrorism prevention efforts at the state and local level by providing for up to 25% of the total funding under the bill to be used for Law Enforcement Terrorism Prevention Program purposes. These purposes include information sharing to preempt terrorist attacks; target hardening; threat recognition; interoperable communications

[1] Warren Rudman, Richard Clarke, Jaime Metzl, et al., "Drastically Underfunded, Dangerously Unprepared: Report of an Independent Task Force Sponsored by the Council on Foreign Relations," Council on Foreign Relations (2003), available at *http://www.cfr.org/pdf/Responders_TF*.pdf.

systems; and overtime expenses associated with providing enhanced law enforcement operations in support of Federal Agencies for increased border security and border crossing enforcement. The Committee approves of the activities conducted under Operation Stonegarden as an important method to buttress federal border protection activities using state and local law enforcement personnel.

The Committee recognizes that threat, risk, and vulnerability related to critical infrastructure or key national assets, as identified in the State Homeland Security Plan or as identified by the Secretary can take many different forms. Key national assets include national nuclear weapons laboratories; nuclear power plants; land and sea ports of entry; US military bases, service academies and other defense assets; homeland security training centers; chemical industries; and maritime centers. The Committee particularly notes the national interest in the securing of the national food systems from threats of terrorist attack. The Committee commends the work conducted by 11 mid-western states to collaborate on efforts to prevent agroterrorism in the Multistate Partnership for Security in Agriculture. The Committee feels that this is the type of collaborative state initiative and participation that S. 21 seeks to foster and encourage elsewhere in the country.

In allocating discretionary grants to states and metropolitan regions, the Committee also strongly urges the Secretary to consider military, tourist, and commuter populations that may be present in an area at any given time. Although generally not included in the official population figures for a state or metropolitan area, these transient populations can be substantial—Las Vegas, NV, for example, hosts an average of nearly 300,000 short-term residents on any given day—and require similar protection to other residents in the event of a terrorist attack or other catastrophic event. In the past, DHS has considered some locations at risk of a potential terrorist attack because of their increased short-term populations; at a minimum, these additional populations place increased burdens on state and local first responders and preventers. It is important that regions and states with substantial short-term populations have sufficient resources to ensure the safety of these visitors.

Funding applications and distribution

Under S. 21, discretionary, threat-based grants to both metropolitan regions and states would be given out in a competitive, application-based process. This reverses the current process and would, sensibly, require applications and planning *before* homeland security grant funds are awarded.

States are required to submit to the Secretary applications for grants that detail how the requested funds will be used to achieve essential capabilities. In order to receive grants, states must also have an approved state homeland security plan, developed with the input of local officials and first responders, that addresses how the state will respond to terrorist attacks and other catastrophic events and includes priorities for the allocation of funding to local governments, based on the localities' risks, capabilities and needs. By requiring states to plan how they will distribute money *before* they receive grants, the Committee hopes to speed up the actual obligation and disbursement of funds to localities once the grants are

awarded, and so help address an issue that has been a continuing source of frustration for some local governments.

In order to ensure statewide coordination and consistency with state plans, eligible metropolitan regions intending to apply for threat-based grants must submit their application to DHS through the Governor of each state within which the metropolitan region is a part. The Governor is given the opportunity to notify the Secretary if the Governor believes that the application is inconsistent with the state plan or if the Governor otherwise does not support the application, but the Governor may not prevent the application from being considered by DHS and must transmit the application to the Secretary within 30 days of receipt.

A number of State and local organizations, including the National Conference of State Legislatures, the National Governors Association, the National Association of Counties, the Council of State Governments, and the International City/County Management Association support State coordination of the first responder grant program, with 80 percent of the resources being distributed by the States to units of local government. The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, established in accordance with Section 1405 of the National Defense Authorization Act for Fiscal Year 1999, Public Law 105–261, agreed with this approach. In its fourth annual report to Congress, the Advisory Panel, also known as the Gilmore Commission, concluded that States must have discretion over the use of grant funds to ensure the allocation of resources on the basis of assessed needs.

The Committee agrees that state-wide coordination in homeland security planning is needed, but also cautions that funding must reach the local level in a timely manner. S. 21 would require States, consistent with their state homeland security plans, to provide 80 percent of all grant funds to local governments. This approach would allow states to coordinate their homeland security plans with local entities and to retain funds for initiatives and planning that is more effectively accomplished on a state-wide basis, while ensuring that the large majority of homeland security funding is provided to localities. For grants received pursuant to an award to an eligible metropolitan region wholly or partly within the state, the state must use any of the money it retains on items or services that benefit the eligible metropolitan region. Furthermore, States would be required to distribute all funds to localities within 60 days of receipt.

S. 21 requires funds to be allocated based on the State Homeland Security Plan approved by the Secretary. The Committee understands, however, that in certain cases state and local officials and first responders should be authorized to address security needs, such as those required to protect large public events, not foreseen during the development of the homeland security plan. The Secretary should ensure that state and local governments and first responders have sufficient flexibility to meet these immediate security needs, should they arise.

Existing regional mechanism

The Committee recognizes that there is a long-standing, well established network of councils of governments, regional planning

commissions, regional planning organizations, development districts and other multi-purpose associations of local governments that have the capability and expertise necessary to coordinate regional emergency response plans. The composition of these entities varies widely. These organizations, collectively known as Regional Councils, are multi-purpose, multi-jurisdictional public organizations created by local governments to respond to Federal and State programs. Many of them are bi-state or even tri-state and are officially recognized in the states and localities they serve. Regional Councils have a long history of working with each other on projects that cross regions and cross state lines. Having more than 40 years of experience in planning economic development, disaster recovery, and transportation and infrastructure analysis, they serve as conveners that bring together the public, private, and civic sectors. These Regional Councils may already be in a unique position to fill a void in planning and coordinating homeland security plans across jurisdictional boundaries while providing an unbiased and apolitical environment capable of analyzing needs based on merit alone without creating another layer of government bureaucracy. The Committee urges the Department to fully utilize Regional Councils in the grant-making process.

Distribution of funds to tribes

The Committee recognizes that Indian tribes, authorized tribal organizations, and Alaska Native villages play an important role in protecting our communities from terrorist incidents. The Committee is concerned by reports that sufficient homeland security funding is not being allocated to the tribal governments by the states.

At least twenty-eight Indian tribes inhabit land on or easily accessible to the Mexican and Canadian borders. In some areas, the international border is guarded by wooden or barbed-wire fences or has no barrier. Numerous pieces of critical infrastructure, including energy resources that serve county and state governments, are located in Indian Country. The Committee is concerned that, even though the critical infrastructure, international borders, and populations that reside on tribal land are incorporated in state homeland security plans and grant applications, most states do not allocate a corresponding level of funding to the tribes.

Many Indian tribal governments have entered into Memoranda of Understanding or inter-governmental agreements with county, state, and local law enforcement to address criminal activity and civil disorder on Indian lands. However, numerous counties and states have historic disputes with tribes on law enforcement and jurisdictional issues that hamper the ability to enter into such agreements. Consequently, some Indian tribes are not included in state homeland security planning and do not receive resources to enhance their ability to respond immediately to terrorist threats that may affect infrastructure and resources located on or adjacent to Indian lands.

The Committee intends for states to provide homeland security funding allocations to tribes in the same manner local governments are provided funding. S. 21 holds States accountable for providing the necessary resources to help tribal communities achieve essential capabilities. The bill further directs that tribes do not have to

go through a local government to receive funding, but rather should receive funding directly from the State.

The Committee is troubled by reports that some States are using tribal sovereignty as a reason to refuse to allocate funds to tribes. For the purposes of homeland security planning and funding, the Committee directs State governments to respect tribal sovereignty by providing funding to tribes so that tribes may exercise their responsibility for tribal lands located within State borders. However, the Committee respects the separate sovereign status and jurisdictional authority of tribes and is not implying that tribes are local governments for purposes of homeland security.

Flexibility of Homeland Security grant funds

At present, terrorism preparedness programs generally fund four broad categories of assistance: planning, training, equipment, and exercises. In some instances, funding may also be used for personnel compensation, overtime, and construction. Prior to the Emergency Wartime Supplemental Appropriations Act of 2003, ODP's formula program, which is the largest grant for terrorism preparedness, gave recipients separate allocations for planning, training, equipment, and exercises, but did not give them discretion to transfer funds among these activities.

Many State and local officials have told the Committee that the range of eligible activities should be expanded to give State and local recipients broad discretion in the use of funds. Specifically, they have asked for the flexibility to transfer past funds among different activities (i.e., planning, training, equipment, and exercises) and for overtime expenses incurred during times of heightened alert.

S. 21 would give State and local governments greater discretion over the use of terrorism preparedness grant funds. Section 4 would allow grants to be used to fund overtime expenses relating to training activities and increased security during times of heightened alert status, as determined by the Secretary.

The Committee is concerned by testimony that local jurisdictions have been unable to take advantage of WMD training for first responders due to the cost of 'backfilling' positions of employees assigned to training. The Committee directs ODP to allow the use of formula grant funds for overtime costs that are directly attributable to participation in ODP-funded first responder training.

Communications system grants

S. 21, as amended, includes International Border Community Interoperable Communications Demonstration Project, a program to examine solutions to the daunting problem of cross border interoperability. In selecting communities for participation, the Committee strongly urges the Secretary to select sites along the borders that reflect a variety of conditions, including at least one site with significant border crossings (at least 8,000,000 crossings per year), commerce activity (at least $50,000,000,000 in commerce per year and other economic activities), and critical infrastructure, such as bridges, railways, pipelines and water resources.

III. Legislative History

S. 21 builds upon a bill first introduced in the last Congress, S. 1245, the Homeland Security Grant Enhancement Act of 2003 which was introduced on June 12, 2003 by Senator Susan M. Collins of Maine. S. 1245 was offered as an amendment to the Intelligence Reform and Terrorism Prevention Act of 2004 in October of 2004. It passed the Senate by voice vote, but ultimately, it was not included in the enacted legislation.

S. 21, the Homeland Security Grant Enhancement Act of 2005 was introduced on January 21, 2005. Senators Lieberman, Carper, Akaka, Feingold, and Voinovich joined as original cosponsors. Senators Chafee and Coburn followed as cosponsors thereafter.

On April 13, 2005, the Committee met in a business session to consider S. 21. An amendment in the nature of a substitute was offered by Chairman Collins and Ranking Member Lieberman. The substitute was adopted by voice vote.

The Committee adopted by voice vote an amendment offered by Senator Levin and co-sponsored by Senators Collins and Lieberman to authorize a demonstration project for cross border interoperable communications.

The Committee opposed, in a 15–1 roll call vote, an amendment sponsored by Senator Lautenberg to add as a finding to the bill selected portions of a 9/11 Commission recommendation.

The Committee adopted by voice vote an Amendment sponsored by Senators Lautenberg and Warner to add to the list of criteria to be considered in allocating threat-based funds to states and eligible metropolitan regions two additional factors: first, whether an area has been previously attacked by terrorists; and second, whether an area has been issued a DHS alert level that is higher than the rest of the country.

S. 21 was then reported out of Committee by voice vote.

IV. Section-by-Section

Section 1. Short Title

Section 1 sets the short title of S. 21 as the "Homeland Security Grant Enhancement Act of 2005."

Section 2. Interagency Committee To Streamline Grant Programs

Subsection (a) would amend the Homeland Security Act of 2002 by inserting section 802.

HSA section 802—Interagency committee to coordinate and streamline homeland security grant programs

Establishment

Establishes the Interagency Committee to Coordinate and Streamline Homeland Grant Programs to ensure coordination of separate federal department or agency grant programs. The Interagency Committee would also ensure coordination among DHS grant programs for State and local preparedness.

Composition

The Committee shall include representatives of the Department of Homeland Security (including the U.S. Fire Administration), the

Department of Health and Human Services, the Department of Transportation, the Department of Justice, the Environmental Protection Agency, and other federal government representatives determined to be necessary by the President.

Responsibilities

Provides that the Interagency Committee shall consult with State and local governments and emergency response providers regarding their homeland security needs and capabilities. This Interagency Committee would also advise the Secretary on the development of performance measures for homeland security grant programs. The Interagency Committee would report any findings to the information clearinghouse established under section 801(c).

No later than 1 year after enactment, the Interagency Committee must develop a proposal to streamline and standardize planning requirements to eliminate duplication, ensure accountability, and promote coordination in homeland security assistance programs.

The section also requires the Interagency Committee to report to Congress and the President on these studies.

Section 3. Streamlining Federal Homeland Security Grants Administration

Section 3 codifies existing practice by establishing the Office for State and Local Government Coordination and Preparedness (OSLGCP) within the Office of the Secretary. It creates a presidentially-appointed, Senate-confirmed position of Executive Director of this office. It also moves the Office for Domestic Preparedness from the Directorate of Border and Transportation Security into OSLGCP, provides that the Director of the Office for Domestic Preparedness report to the Executive Director of OSLGCP and eliminates the requirement that the Director be Presidentially appointed and Senate confirmed.

Homeland Security Information Clearinghouse

Subsection (d) of section 3 would amend section 801 of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) by establishing a Homeland Security Information Clearinghouse, within the Office of State and Local Government Coordination and Preparedness. It would have the Clearinghouse assist State and local governments, and first responders by creating or enhancing a web site, a toll-free number, and a single publication containing information on homeland security grant programs.

Under this section, the Clearinghouse, in consultation with the Interagency Committee, would coordinate any Federal agency's technical assistance to State and local governments to conduct threat and vulnerability assessments. The Clearinghouse would also establish templates for conducting threat analyses and vulnerability assessments.

This section instructs the Clearinghouse to work with State and local governments, first responders, the National Domestic Preparedness Consortium, the National Memorial Institute for the Prevention of Terrorism, and private organizations to gather and validate best practices in State and local homeland security programs and practices. Information on equipment, training, and other services acquired with Federal funds under the homeland security

grant programs would be gathered by the Clearinghouse and made available to State and local governments and first responders. Information regarding voluntary standards of training, equipment, and exercises would also be provided to State and local governments and first responders. The section further instructs the Clearinghouse to provide States, localities, and first responders with any other information the Secretary determines necessary.

Section 4. Essential Capabilities for First Responders and the Threat-based Homeland Security Grant Program

Section 4 would amend Homeland Security Act of 2002 by adding sections 1801–1808.

HSA section 1801—Definitions

"Metropolitan regions" are defined as the 100 largest metropolitan statistical areas (MSAs) in the country, or combined statistical areas that include those MSAs. Both MSAs and combined statistical areas are as defined by the Office of Management and Budget.

"Eligible metropolitan regions" are defined as a combination of two or more municipalities, counties, parishes or Indian tribes within a metropolitan region that includes the largest city in the metropolitan region, or, alternatively, any other combination of contiguous local governments that is formally certified by the Secretary and has the consent of the state(s) in which the local governments are located.

"Essential Capabilities" are defined as the levels, availability, and competence of personnel, planning, training and equipment needed to effectively and efficiently prevent, prepare for and respond to threatened or actual domestic terrorist attacks and other catastrophic events.

"Sliding-scale baseline allocation" is an index used to calculate a state's allocation under the sliding scale baseline distribution in HSA section 1804(f)(1) and is defined as 0.001 multiplied by the sum of (a) the value of a State's population relative to that of the most populous of the 50 States, where the population of such States has been normalized to a maximum value of 100 and (b) ¼ of the value of a State's population density relative to that of the most densely populated of the 50 States, where the population density of such States has been normalized to a maximum value of 100. Normalizing population and population density means that both values are put on a scale of 0–to–100, so that the most populous state (or in the case of population density, the most densely populated state) has a value of 100, a state with half the population of the most populous state has a value of 50, a state with a quarter of the population of the most populous state has a value of 25, and so on.

This section also defines the terms "Indian Tribe", "Population", "Population Density", and "Threat-based Homeland Security Grant program".

HSA section 1802—Preservation of pre–9/11 grant programs for traditional first responder missions.

This section excludes the programs that follow from amendment under this Act: the Firefighter Assistance Program (including grants awarded under the SAFER Act); the Emergency Manage-

ment Performance Grant Program, the Urban Search and Rescue Grant Program, the Justice Assistance Grants, the Public Safety and Community Policing Grant Program, grant programs under the Public Health Service Act, and the Emergency Response Assistance Program.

HSA section 1803—Essential capabilities for first responders

Establishment

This section would require the Secretary to establish clearly defined essential capabilities for State and local government preparedness needs. The Secretary would be required to build upon the National Preparedness Goal and must consult with the Task Force on Essential Capabilities, appropriate federal agencies, State and local emergency response providers, State and local officials, and relevant consensus-based standards making organizations. The Secretary must ensure descriptions of the essential capabilities are provided to the States and Congress. The States must make them available to local governments.

Objectives

This section provides that the essential capabilities must meet the objectives that follow:

Specificity—The essential capabilities must specifically describe the training, planning, personnel, and equipment that different types of communities should possess or have access to in order to meet the Department's goals for preparedness. Essential capabilities are to be tailored to address the different requirements of different types of communities.

Flexibility—The essential capabilities must be sufficiently flexible to allow State and local government officials to set priorities based on local or regional needs.

Measurability—The essential capabilities must be designed to enable measurement of progress toward specific terrorism preparedness goals.

Comprehensiveness—The essential capabilities must be made within the context of a comprehensive State emergency management system.

Factors to be considered

Essential capabilities will be different for different types of communities. A very large and densely populated high-risk city like New York will have a different level of essential capabilities that it needs to attain than will a small, remotely located town. Similarly, a community with a nuclear power plant or with a port will need to have capabilities to deal with the particular consequences of potential attacks on those types of facilities that a community without such facilities will not need to have. This section requires that in establishing essential capabilities for different types of communities, the Secretary must specifically consider variables of threat, vulnerability, and consequences with respect to population (including transient commuting and tourist populations), population density, critical infrastructure, coastline, and international borders, as well as other factors the Secretary deems important.

Task force on essential capabilities for first responders

This section would establish an advisory body to assist the Secretary in formulating the essential capabilities. It would ensure that the Task Force does not terminate within two years as generally required under the HSA, and instead requires the Task Force to terminate in 5 years unless the Secretary extends it. Within 9 months of enactment, and every three years thereafter, the Task Force must submit a report to the Secretary on its recommendations for essential capabilities for preparedness related to acts of terrorism. This section provides that the membership of the Task Force shall consist of 25 members appointed by the Secretary and include members from emergency response field, health professionals, experts from Federal, State and local governments and the private sector, and State and local officials with expertise in terrorism preparedness. Finally, this section mandates compliance with the Federal Advisory Committee Act.

HSA section 1804—Threat-based Homeland Security grant program

Establishment

Establishes a new grant program, the Threat-Based Homeland Security Grant Program, which replaces the State Homeland Security Grant Program, the Law Enforcement Terrorism Prevention Program and the Urban Area Security Initiative. Authorizes the Secretary to make grants to States and eligible metropolitan regions under this program to enhance homeland security. Provides that the grants made under this section are to be governed by the terms of this section and not by any other provision of law, and that any requirement of section 1014 of the USA Patriot Act shall be deemed to be satisfied by this grant program.

Use of funds

Provides that grants are to be used to address homeland security matters related to acts of terrorism or catastrophic events or to address shortfalls in essential capabilities. Sets forth permissible uses for grant funds, including planning; purchasing and upgrading equipment; conducting emergency preparedness exercises; training; the payment of overtime expenses related to training or an increase in the threat level; terrorism prevention activities traditionally permitted under the LETPP program; and other approved activities related to achieving essential capabilities.

Subsection (b)(3) prohibits the use of grant funds to acquire land or construct buildings or other physical facilities, except for those described in section 611 of the Disaster Relief Act of 1974 (42 U.S.C. 5196). The Committee understands that section 611 would cover construction to alter or remodel existing buildings for the purpose of making them secure against terrorist attack or able to withstand or protect against chemical, radiological or biological attack, such as by altering HVAC systems or providing secure testing and treatment facilities in public health laboratories or in hospitals; and that grants under this bill could therefore be used for such construction. To the extent that grants under this bill are used to construct buildings or facilities as described in section 611, all of the terms of section 611 will be applicable and the Committee expects them to be fully complied with.

Equipment standards

Provides that grant applicants who propose to use grant funds to purchase equipment that does not meet applicable national voluntary consensus standards must include in their application an explanation of why such equipment will better serve their needs than equipment that does meet the standards.

Application

Provides for grant application procedures for States and metropolitan regions. State applicants must explain how the requested funds would be used to achieve essential capabilities; must have an approved homeland security plan; and must demonstrate satisfactory progress toward achieving essential capabilities. Eligible metropolitan regions (defined in HSA Section 1801) must include in their applications an explanation of how the requested funds would be used to achieve essential capabilities; and how the use of the funds would be consistent with relevant state homeland security plans. Where not all the local jurisdictions in a metropolitan region are participating in the application, the applicants must explain why the eligible metropolitan region, as constituted, is an appropriate unit to receive grants to prevent, prepare for, and respond to terrorism. Requires that eligible metropolitan regions submit their applications to the relevant governor(s) for the governor's review. If the governor does not support the regional application or finds it inconsistent with the state plan, the governor is to notify the Secretary of that fact.

Homeland Security plan

States applying for grants are required to have a 3-year state homeland security plan. This section requires that the plan include a 3-year strategy for achieving various goals; measures to assess the extent to which those goals have been achieved; and priorities for allocating grant funds to local governments based on risk, capabilities and needs. It also provides that states are to complete a comprehensive risk assessment and an assessment of capabilities and needs. The section provides further that states are to coordinate state planning activities with the activities of local governments and are to seek input from local stakeholders through the establishment of an advisory committee made up of local officials and emergency response providers.

Allocation

Provides for an initial baseline distribution of grant funds to states. Each state would receive the greater of either (1) 0.55% of all appropriated funds or (2) the state's sliding scale baseline allocation (defined in Section 1801) multiplied by 28.62% of the total amount appropriated for the Threat-Based Homeland Security Grant Program. The District of Columbia would receive a fixed 0.55% share, Puerto Rico 0.35%, and the remaining territories, 0.055% each. The sliding-scale figure in option 2), above, represents each state's weighted share (where weighting is done based on a combination of population and population density) of the pot of money (28.62%) that results from adding together the 0.55% minimum distribution to each state, plus the amounts allocated for the District of Columbia and the remaining territories.

After the initial baseline distribution, the section provides for up to 50% of the remaining funds to be used to provide grants to eligible metropolitan regions to assist in achieving essential capabilities. In making such grants, the Secretary is to prioritize among regional applications by considering the relative threat, vulnerability, and consequences faced by the eligible metropolitan region from a terrorist attack, including consideration of whether there has been a prior terrorist attack in the eligible metropolitan region; whether any part of the eligible metropolitan region has ever had a higher threat level under the Homeland Security Advisory System than the threat level for the nation as a whole; the eligible metropolitan region's population; its population density; the degree of threat, vulnerability and consequence related to the presence of critical infrastructure in the region or in nearby jurisdictions; whether the eligible metropolitan region has a coastline bordering ocean or international waters; whether it is at or near an international border; the extent to which the eligible metropolitan region includes all municipalities, counties, parishes and Indian tribes within the region; and the extent to which the eligible region has unmet essential capabilities. Grants to eligible metropolitan regions are to be distributed through the state or states in which the region is located. The state or states provide not less than 80% of the funds to the eligible metropolitan region, and any funds retained by the state must be expended on items or services that benefit the eligible metropolitan region.

The section provides that all remaining funds are to be used to provide grants to each state to assist in achieving essential capabilities. It requires the Secretary to prioritize among state applications by considering the relative threat, vulnerability, and consequences faced by the state from a terrorist attack, including consideration of whether there has been a prior terrorist attack in the State or in a metropolitan region that is wholly or partly in the State; whether any part of the State has ever had a higher threat level under the Homeland Security Advisory System than the threat level for the nation as a whole; the percent of a State's population residing in MSAs; threat, vulnerability and consequence related to the presence of critical infrastructure; whether the state has an international border; whether the state has a coastline bordering ocean or international waters; threats, vulnerabilities and consequences related to at-risk sites or activities in adjacent states; and the extent to which the state has unmet essential capabilities. It further requires that, in prioritizing among states applications that the Secretary balance the competing goals of ensuring that the essential capabilities of the highest-risk areas are achieved quickly and that basic levels of preparedness are achieved nationwide.

This section provides that the State must make available to local governments not less than 80% of the grant funds the state receives and must do so within 60 days. It requires that grant funds supplement and not supplant other state and local government funds.

This section provides that the Secretary may designate not more than 25% of the total amounts appropriated to be used for the LETPP program, to provide grants to law enforcement to enhance capabilities for terrorism prevention.

Report on Homeland Security spending

Requires that all grant recipients annually submit a report to the Secretary of DHS that contains an accounting of how grants funds were spent and the progress the recipient is making in achieving essential capabilities.

Accountability

Provides that any grant recipient that expends $500,000 or more in a fiscal year is to submit to the Secretary an organization-wide financial and compliance audit report.

Remedies for non-compliance

Provides that, where the Secretary finds that a grant recipient has failed to substantially comply with any provision in the section, the Secretary shall terminate or reduce payments or limit the use of funds to activities not affected by the failure to comply. This section also provides that, where a state fails to comply, including failing to provide grants funds to local governments in a timely fashion, local governments may petition for funds to be provided directly to the local government.

Reports to Congress

Requires that the Secretary submit an annual report to Congress that provides an accounting on how resources provided to state and local governments were expended and evaluating the progress of States and local governments in achieving essential capabilities.

Authorization of appropriations

Authorizes $2.925 billion for fiscal years 2006 and fiscal year 2007 and such sums as are necessary for each fiscal year thereafter.

HSA section 1805—Eliminating Homeland Security fraud, waste and abuse

Section (a) requires an annual Government Accountability Office audit of the Threat-Based Homeland Security Grant Program and a report to Congress of the results. Section (b) requires the Secretary to conduct reviews of grants authorized under this Act to ensure that recipients allocate funds consistent with the guidelines established by the Department.

HSA section 1806—Flexibility in unspent Homeland Security funds

This section would allow for reallocation of funds among different categories of uses, upon request of a State and with the approval of the Director of the Office of Domestic Preparedness.

HSA section 1807—National standards for first responder equipment and training

The section requires that the Secretary support the development of national voluntary consensus standards for first responder equipment and training. Applicants for grant funds who want to use those funds to purchase or upgrade equipment that did not meet these standards would have the burden of explaining why such equipment would better serve their needs than equipment that meets the standards.

HSA section 1808—Certification relative to the screening of municipal solid waste

This section requires the Bureau of Customs and Border Protection to submit a report to Congress examining the methodologies and technologies used to screen municipal solid waste entering the United States for chemical, nuclear, biological or radiological weapons. If those methods and technologies are less effective than those used to screen other commercial commerce, the report must detail what actions the Bureau will take to achieve the same level of effectiveness in the screening of solid waste. If the Bureau fails to implement the additional actions, if required, the Secretary must deny entry into the U.S., vehicles carrying solid waste until it can be reported to Congress that the screening technologies for solid waste are as effective as those used to screen other types of commercial cargo.

Section 5. Communication System Grants

This section establishes the International Border Community Interoperable Communications Demonstrations Project. The Demonstration Project would involve at least six communities, three on each border, to foster interoperable communications among Federal, State, local, and tribal government agencies in the United States with similar agencies in Canada or Mexico.

V. Evaluation of Regulatory Impact

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the "regulatory impact which would be incurred in carrying out this bill." Carrying out S. 21 would have no regulatory impact.

VI. Changes to Existing Law

Pursuant to Paragraph 12, Rule XXVI of the Standing Rules of the Senate, this section describes changes to existing law.

Title VIII of the Homeland Security Act of 2002 (6 U.S.C. 361 et seq.) is amended by inserting Section 802 to establish an Interagency Committee to Coordinate and Streamline Homeland Security Grant Programs.

Section 801(a) of the Homeland Security Act of 2002 (6 U.S.C. 361 (a)) is amended to rename "the Office for State and Local Government Coordination" "the Office for State and Local Governmental Coordination and Preparedness." Subsection (a) is further amended by inserting paragraph (2) providing for this Office to be headed by the Executive Director of State and Local Government Coordination Preparedness, who is to be appointed by the President, by and with the advice and consent of the Senate.

Section 430 (a) of the Homeland Security Act of 2002 (6 U.S.C. 430) is amended by striking the provisions locating the Office for Domestic Preparedness within the Directorate of Border and Transportation Security. The remaining provisions of this section are moved to the newly designated Section 803. Subsection (b) of Section 803 is further amended by striking "who shall be appointed by the President" and inserting "who shall report directly to the Executive Director of State and Local Government Coordination and Preparedness." Technical amendments are made to clarify that

the transferred office would no longer be located within a specific Directorate and to assign the management of the Homeland Security Information Clearinghouse to the Office for Domestic Preparedness.

Section 801 of the Homeland Security Act of 2002 (6 U.S.C. 361) is amended by adding section (c) at the end to establish a Homeland Security Information Clearinghouse.

The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting Title XVIII Essential Capabilities for First Responders and Threat-Based Homeland Security Grant Program at the end of the Act.

Section 2(6) of the Homeland Security Act of 2002 (6 U.S.C. 101(6)) is amended by inserting "(including fire services)" after "local emergency public safety".

VII. Congressional Budget Office Cost Estimate

S. 21—Homeland Security Grant Enhancement Act of 2005

Summary: S. 21 would authorize the Secretary of the Department of Homeland Security (DHS) to change the criteria used to distribute funding for three existing first-responder grant programs established after September 11, 2001—the State Homeland Security, the Law Enforcement Terrorism Prevention, and the Urban Area Security Initiative grant programs. Under the bill, these three grant programs would be governed by the provisions of a new initiative known as the Threat-Based Homeland Security Grant Program. In addition, this bill would authorize the appropriation of $2.9 billion for first-responder grants for both 2006 and 2007, and such sums as are necessary for each subsequent year for first responder grants.

Assuming appropriation of the authorized and estimated amounts, CBO estimates that implementing the bill would cost about $9.9 billion over the 2006–2010 period. Enacting S. 21 would not affect direct spending or revenues.

S. 21 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would provide several benefits to state, local, and tribal governments. Assuming the authorized amounts are fully appropriated, the bill would increase funding for existing aid programs while changing conditions for receiving those funds; any costs to state, local, or tribal governments would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 21 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
First-responder grant program: [a]					
Estimated authorization level	2,925	2,925	2,989	3,054	3,123
Estimated outlays	293	1,375	2,282	2,931	2,962
Border interoperability demonstration project:					
Estimated authorization level	5	5	5	0	0
Estimated outlays	1	3	5	4	2

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
Total changes:					
Estimated authorization level	2,930	2,930	2,994	3,054	3,123
Estimated outlays	294	1,378	2,287	2,935	2,964

[a] Under current law, such sums as necessary are authorized to be appropriated for 2006 and 2007 for first-responder grants.

Basis of estimate: For this estimate, CBO assumes that S. 21 will be enacted near the start of fiscal year 2006 and that the specified and estimated amounts will be appropriated for each year. CBO estimates that implementing S. 21 would cost about $9.9 billion over the 2006–2010 period.

Threat-based Homeland Security grant program

The Office of Domestic Preparedness (within DHS) derives its primary authority to distribute grants to states and localities to prepare and respond to terrorism from the USA PATRIOT Act (Public Law 107–56). Almost $9 billion has been appropriated for these first-responder grants since fiscal year 2003, including about $2.7 billion in fiscal year 2005. That law authorizes the appropriation of such sums as necessary for first-responder grants through fiscal year 2007. S. 21 would replace this authorization of appropriations with a specific authorization level of just over $2.9 billion annually in 2006 and 2007. The bill also would extend the authority for such grants after 2007 at whatever level is necessary. For this estimate, CBO assumes that the authorized amount will be appropriated for 2006 and 2007 and that the program will continue at that level with adjustments for anticipated inflation.

For this estimate, CBO assumes that states would need to update their State Homeland Security Plans for approval by DHS to reflect new grant requirements. After that update, we expect that spending under the bill would follow historical spending patterns for existing state and local grant programs for emergency management activities. CBO estimates that implementing the Threat-Based Homeland Security grant program would cost about $9.9 billion over the 2006–2010 period.

Demonstration program

S. 21 would authorize the appropriation of such sums as are necessary over the 2006–2008 period for an International Border Community Interoperable Communications Demonstration Project. Under this provision, DHS would select six communities, at least three on the southern border and three on the northern border, to serve as demonstration projects to address issues concerning communications across the nation's borders. The Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) established the Office for Interoperability and Compatibility within DHS's Directorate of Science and Technology. For this estimate, we assume that this new office would manage the international demonstration project as well as a domestic interoperability program. Based on information from DHS, CBO estimates that $5 million would be needed each year over the 2006–2008 period. Assuming appropriation of the necessary funds, CBO estimates that implementing this provision would cost $15 million over the 2006–2010 period.

Intergovernmental and private-sector impact: S. 21 contains no intergovernmental or private-sector mandates as defined in UMRA. Section 4 of the bill would deny entry of commercial motor vehicles carrying municipal solid waste into the United States unless the Bureau of Customs and Border Protection certifies to the Congress that the methodologies and technologies used to screen such vehicles for weapons are as effective as the screening of other commercial materials entering the United States. The Bureau of Customs and Border Protection indicates that such certification would be provided before the deadline specified in the bill. CBO believes, therefore, there would be no interruption of service, and thus no mandate.

The bill would make several changes to existing grant programs for state, local, and tribal governments. First, it would consolidate at least three current programs—the State Homeland Security Grant, the Law Enforcement Terrorism Prevention Program, and the Urban Area Security Initiative—and authorize the appropriation of almost $15 billion over the 2006–2010 period. Second, it would change how those funds are allocated. While some states would receive less funding than in previous years and others would receive more, assuming authorized funds are fully appropriated, there would be a small increase in total funding, and each state would receive a minimum of 0.55 percent of available funds. This bill would allow certain metropolitan areas to apply for funds directly and would expand eligible activities to include covering the costs of some overtime activities during heightened threat alerts and training activities.

The bill also would authorize DHS to transfer funds directly to the local recipients, reduce the portion of grants retained by the state, or impose additional restrictions if states fail to provide funds to local first responders in a timely manner. States would be required to provide 80 percent of the funds or resources to local recipients within 60 days of receipt. If states fail to comply with that requirement, funds would be allocated directly to local jurisdictions. Any costs to state, local, or tribal governments as a result of these changes to the grant programs would be incurred voluntarily.

State, local, and tribal governments would benefit from several other provisions of the bill that require DHS to create, with input from local first responders and trade representatives, essential capabilities and voluntary standards for equipment and training for first responders; a demonstration project for interoperable communication systems; and a Homeland Security Information Clearinghouse.

Estimate prepared by: Federal Costs: Julie Middleton; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF SENATOR CARL LEVIN

This legislation includes language that I offered that will assist our first responders by creating demonstration projects at our northern and southern borders. The amendment provides that the Secretary of Homeland Security shall establish at least six International Border Community Interoperable Communications Demonstration Projects—no fewer than three of these demonstration projects shall be on the northern border, and no fewer than three of these demonstration projects shall be on the southern border. These Interoperable Communications Demonstrations will address the interoperable communications needs of police officers, firefighters, emergency medical technicians, National Guard, and other emergency response providers at our borders.

Further, this bill contains language I proposed that requires the Secretary of Homeland Security to deny entry of any commercial motor vehicle carrying municipal solid waste from Canada until the Secretary certifies that the methods and technology used to inspect the vehicles for potential weapons of mass destruction as well as biological, chemical and nuclear materials, are as efficient as the methods and technology used to inspect other commercial vehicles.

Each month, thousands of trucks of solid municipal waste are being brought into the United States for disposal in U.S. landfills. The large size and dense character of these shipments provide opportunities for malicious individuals or groups who may wish to evade detection as they attempt to smuggle dangerous contraband into our country. This language will help to ensure the effective screening for weapons of mass destruction in shipments of solid municipal waste.

CARL LEVIN.

ADDITIONAL VIEWS OF SENATOR DANIEL K. AKAKA

The Homeland Security Grant Enhancement Act provides for a fair and equitable distribution of funds between the States. However, I am concerned about the lack of access tribal governments have to this funding. In the current funding mechanism, federal homeland security grants are allocated to States, which in turn are supposed to direct at least 80 percent of the funding to local and tribal governments. However, more often than not, Indian tribes are being passed over by the States.

Even though the population, critical infrastructure, and international borders that lie on tribal land are incorporated in State homeland security plans and grant applications, most States do not allocate a corresponding level of funding to the tribes. For example, the Tohono O'odham Nation has received less than $100,000 from the State of Arizona over the past three years, yet the Nation is responsible for securing 75 miles of border between the United States and Mexico. As security tightens up along the rest of the Arizona border, more and more illegal immigrants are choosing to cross through Indian country because of the lack of border enforcement.

I do not believe this problem will be solved simply by directing States to include tribal governments in the funding allocation process since States know there will be no significant consequences if they ignore such a direction. Numerous counties and States have historic disputes with Indian tribes over jurisdictional and funding issues which can impede the funding pass-through process. In addition, there are reports that States are using tribal sovereignty as a reason to refuse allocation of funds to tribes. In order for the international borders and critical infrastructure that lie on tribal land to be adequately protected, tribes must be allowed to bypass State governments and apply directly to the Department of Homeland Security (DHS) for funding.

DANIEL K. AKAKA

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