



AIR CARGO SECURITY POLICY NEWSLETTER

US Legislation - H.R. 2017, DHS Appropriations for period ending Sept 30, 2012

June 10, 2011

“The Administration supports House (of Representatives) passage of H.R. 2017, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2012. The Administration is committed to ensuring the Nation lives within its means and reducing the deficit so that the Nation can compete in the global economy and win the future. That is why the President put forth a comprehensive fiscal framework that reduces the deficit by \$4 trillion, supports economic growth and long-term job creation, protects critical investments, and meets the commitments made to provide dignity and

security to Americans no matter their circumstances.

*While overall funding limits and subsequent allocations remain unclear pending the outcome of ongoing bipartisan, bicameral discussions between the Administration and congressional leadership on the Nation’s long-term fiscal picture, the bill provides **insufficient funding** for a number of programs in a way that undermines core government functions and investments key to economic growth and job creation”*



Thus begins a White House Statement of Administration Policy on H.R. 2017 issued by the Office of Management of the Budget (OMB)¹.

Although the sums being appropriated for TSA will be the envy of transportation security agencies worldwide, the fact that this Bill (which reduced funding by 2.6% for the Fiscal year ending on Sept 30th 2012) was only passed by the House of Representatives in May 2011 and that it still has to go before the US Senate for consideration indicates a level of "uncertainty" around future DHS funding.

Passage of the Bill in the House

At the end of May 2011 the US House of Representatives passed the H.R. 2017 appropriations bill for the Department of Homeland Security (DHS) in fiscal 2012 that cuts about \$1 billion from the department's budget in 2011.

H.R. 2017 passed the House 231-188, with Republicans largely favoring the bill and Democrats largely opposing it. The Democratic objections to the bill came mostly from its cuts to grant programs, which Republicans say have been too inefficient and too expensive in a time when the federal government must cut spending.

Overall the bill provides DHS in fiscal 2012 with \$40.6 billion, about \$1.1 billion, or 2.6 percent, less than funding for the department in fiscal 2011 and about \$3 billion, or 7 percent, less

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http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr2017r_20110531.pdf

than requested by the White House for next year. The roughly \$1 billion in reductions came mostly from DHS grant programs administered by the Federal Emergency Management Agency (FEMA).

Rep. Robert Aderholt, R-Ala, chair of the House Homeland Security Appropriations Subcommittee, hailed the bill as important for protecting the United States as well as being fiscally responsible.

"Homeland security and fiscal discipline are both clear national priorities, and the bill passed today accomplishes both," Aderholt said in a statement Thursday. "HR 2017 addresses continued need for robust national security and disaster recovery, while also considering the unquestioned need for fiscal restraint and prioritizing taxpayers' limited dollars toward vital security programs that will have an immediate impact on our nation's safety and security. The passage of this bill marks a great step toward fiscal responsibility and reiterates our commitment to reducing spending and providing an open and transparent appropriations process."

But Rep. Bennie Thompson, D-Miss, ranking member of the House Homeland Security Committee, summarized the view of many Democrats in denouncing the bill. *"This bill is simply an assault against the progress we've made protecting the homeland over the past ten years,"* Thompson said in a statement Thursday. *"I voted against this bill because not only did it arbitrarily cut the DHS budget, but it ignores gaps in preparedness grants for first responders and counter-terrorism initiatives."*

Thompson also criticized a provision in the bill that would block screeners at the Transportation Security Administration (TSA) from making use of collective bargaining rights



granted to them by TSA Administrator John Pistole.

The bill **now goes to the Senate for consideration** but Senate appropriators have not yet begun deliberations on their own bill. Moreover, the cuts in homeland security grant programs likely will not sit well with the Democratic-controlled Senate

Key points in the Bill (relating to TSA funding and 100% screening requirement)

The following sections are taken from the text of the Bill:

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*“For necessary expenses of the **Transportation Security Administration** related to providing transportation security support and intelligence pursuant to the Aviation and Transportation Security Act (Public Law 107–71; 13 115 Stat. 597; 49 U.S.C. 40101 note), \$1,032,790,000, to remain available until September 30, 2013: Provided, That the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives detailed expenditure plans for air cargo security, checkpoint support, and explosives detection systems procurement, refurbishment, and installation on an airport-by-airport basis for fiscal year 2013: Provided further, That these plans shall be submitted not later than 60 days after the date of enactment of this Act”*

*“For necessary expenses of the **Federal Air Marshals** \$961,375,000”*

[Page 87] SEC. 543.

(a) Not later than 180 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall submit to the Committees on Appropriations of the Senate and the House of Representatives, a report that either –

(1) certifies that the requirement for screening all air cargo on passenger aircraft by the deadline under section 44901(g) of title 49, United States Code, has been met; or

(2) includes a strategy to comply with the requirements under title 44901(g) of title 49, United States Code, including –

(A) a plan to meet the requirement under section 44901(g) of title 49, United States Code, to screen 100 percent of air cargo transported on passenger aircraft arriving in the United States in foreign air transportation (as that term is defined in section 40102 of that (title); and

(B) specification of -

(i) the percentage of such air cargo that is being screened; and

(ii) the schedule for achieving screening of 100 percent of such air cargo.

(b) The Assistant Secretary shall continue to submit reports described in subsection (a) (2) every 180 days thereafter until the Assistant Secretary certifies that the Transportation Security Administration has achieved screening of 100 percent of such air cargo.



Statement of Administrative Policy issued by OMB – programs adversely affected

The OBM policy statement^{Error! Bookmark not defined.} provided the White House view of the programs likely to be adversely affected by the expenditure cuts made by the House, as follows:

“Transportation Security Administration Passenger Security Fee. *The Administration is concerned that the Committee bill fails to reform the aviation passenger security fee.*

State and Local Grant Programs. *The Administration is concerned that the Committee bill insufficiently funds the Federal Emergency Management Agency’s State and local grants, including Assistance to Firefighter Grants. The funding level provided will adversely impact the entire portfolio of preparedness grants to State, local, tribal jurisdictions, and the transportation sector. Further, funding the SAFER program at the Committee’s level would reduce the number of firefighters funded by approximately 2,200 positions. Although large balances remain available in these programs, State and local governments depend on this funding to support ongoing homeland security prevention and preparedness programs and ensure that all levels of government have the capacity to adequately respond to threats. The Administration supports and appreciates the flexibility given to the Secretary to allocate limited homeland security grant funding to those areas deemed most critical.*

Science and Technology Research

Funding. *The funding for research and development provided in the Committee’s bill would limit the domestic investment in developing new capabilities to efficiently meet the demands of current and emerging homeland security threats through the elimination of more than 144 research projects in areas such as biological and explosives detection, advanced cyber security, and interoperability. Without domestic investment in new technologies and solutions targeted specifically at the homeland security threat, the United States will become increasingly dependent on foreign countries for any advances in homeland security technology.*

Coast Guard Fast Response Cutter and Shore Projects. *The Committee bill provides insufficient funds for key acquisition programs that will allow for the recapitalization of aging assets. The level of funding provided for Fast Response Cutters will unnecessarily delay production and increase future costs by delaying purchase of the proprietary specifications that are needed to replace aging patrol boats. Further, the funding level for shore and housing projects will deprive Coast Guard families of suitable housing in duty stations where housing market shortfalls exist and eliminate high priority shore projects that directly affect operations.*

Transportation Security Administration. *The funding level in the Committee bill for the Transportation Security Administration’s Federal Air Marshal Service will result in either reduced staffing in 2012 or curtailed domestic mission coverage on priority aviation flights. Further, the funding*



provided will not permit the deployment of 275 additional advanced imaging technology systems, which is an important tool for detecting both metallic and non-metallic threats as part of the aviation passenger screening process.

Federal Emergency Management Agency (FEMA) Disaster Relief Fund (DRF). *The Administration will continue to closely monitor Disaster Relief Fund balances and work with the Congress to ensure Fund solvency. The Administration, however, strongly objects to proposed language that would direct the President to submit a budget amendment or supplemental appropriations request with associated offsets when the Fund dips below a certain threshold. The Administration would view this provision as advisory.*

Headquarters Consolidation and Operation. *The Committee bill would delay the consolidation of the Department of Homeland Security headquarters by at least two years, resulting in higher lease costs and will mean the loss of construction efficiencies and increased future construction costs. The funding provided in the bill for the Office of the Secretary and Executive Management would result in a reduction-in-force.”*

Furthermore, the OBM stated that:

“The Administration also has a number of serious constitutional concerns. The Administration strongly objects to the provisions of section 537 that limit the use of funds to transfer detainees and otherwise restrict detainee transfers. Although the Administration opposes the release of detainees within the United States, section 537 is a dangerous and extraordinary challenge to

critical Executive branch authority to determine when and where to prosecute detainees, based on the facts and the circumstances of each case and our national security interests. It unnecessarily constrains the Nation’s counterterrorism efforts and would undermine national security, particularly where Federal courts are the best – or even the only – option for incapacitating dangerous terrorists. For decades, presidents of both political parties have leveraged the flexibility and strength of this country’s Federal courts to incapacitate dangerous terrorists and gather critical intelligence. The prosecution of terrorists in Federal court is an essential element of counterterrorism efforts – a powerful tool that must remain an available option.

The Administration strongly opposes any inclusion of ideological and political provisions that are beyond the scope of funding legislation. Should the Congress continue to include language that is not relevant to a funding debate, the Administration will oppose the bill.

The Administration looks forward to working with the Congress as the fiscal year 2012 appropriations process moves forward.”

The full text of H.R. 2017 can be accessed at:

<http://www.gpo.gov/fdsys/pkg/BILLS-104hr2017rh/pdf/BILLS-104hr2017rh.pdf>



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