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U.S. GOVERNMENT
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108TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPT. 108–460 Part 4

FASTER AND SMARTER FUNDING FOR FIRST RESPONDERS ACT OF 2004

JUNE 21, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3266]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3266) to authorize the Secretary of Homeland Security to make grants to first responders, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Faster and Smarter Funding for First Responders Act of 2004".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Faster and Smarter Funding for First Responders.

"TITLE XVIII—FUNDING FOR FIRST RESPONDERS

"1801. Faster and smarter funding for first responders.
"1802. Essential capabilities for first responders.
"1803. Task Force on Essential Capabilities for First Responders.
"1804. Covered grant eligibility and criteria.
"1805. Use of funds and accountability requirements.
"1806. National standards for first responder equipment and training.
"1807. Definitions.
Sec. 4. Modification of Homeland Security Advisory System.
"Sec. 203. Homeland Security Advisory System.
Sec. 5. Coordination of industry efforts.
Sec. 6. Superseded provision.
Sec. 7. Sense of Congress regarding interoperable communications.
Sec. 8. Sense of Congress regarding Citizen Corps councils.
Sec. 9. Study regarding nationwide emergency notification system.
Sec. 10. Authorization of appropriations.
Sec. 11. Authority to enter into contracts and issue Federal loan guarantees.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) In order to achieve its objective of minimizing the damage, and assisting in the recovery, from terrorist attacks, the Department of Homeland Security must play a leading role in assisting communities to reach the level of preparedness they need to respond to a terrorist attack.

(2) First responder funding is not reaching the men and women of our Nation's first response teams quickly enough, and sometimes not at all.

(3) To reform the current bureaucratic process so that homeland security dollars reach the first responders who need it most, it is necessary to clarify and consolidate the authority and procedures of the Department of Homeland Security to support first responders.

(4) Ensuring adequate resources for the new national mission of homeland security requires a discrete and separate grant making process for homeland security funds for first response to terrorist acts, on the one hand, and for first responder programs designed to meet pre-9/11 priorities, on the other.

(5) Homeland security grants to first responders must be based on the best intelligence concerning the capabilities and intentions of our terrorist enemies, and that intelligence must be used to target resources to the Nation's greatest risks, vulnerabilities, and consequences.

(6) The Nation's first response capabilities will be improved by sharing resources, training, planning, personnel, and equipment among neighboring jurisdictions through mutual aid agreements and regional cooperation. Such regional cooperation should be supported, where appropriate, through direct grants from the Department of Homeland Security.

(7) An essential prerequisite to achieving the Nation's homeland security objectives for first responders is the establishment of well-defined national goals for terrorism preparedness. These goals should delineate the essential capabilities that every jurisdiction in the United States should possess or to which it should have access.

(8) A national determination of essential capabilities is needed to identify levels of State and local government terrorism preparedness, to determine the nature and extent of State and local first responder needs, to identify the human and financial resources required to fulfill them, and to direct funding to meet those needs and to measure preparedness levels on a national scale.

(9) To facilitate progress in attaining essential capabilities for State and local first responders, the Department of Homeland Security should seek to allocate homeland security funding for first responders to meet nationwide needs.

(10) Private sector resources and citizen volunteers can perform critical functions in assisting in preventing and responding to terrorist attacks, and should be integrated into State and local planning efforts to ensure that their capabili-

ties and roles are understood, so as to provide enhanced State and local operational capability and surge capacity.

(11) Public-private partnerships, such as the partnerships between the Business Executives for National Security and the States of New Jersey and Georgia, can be useful to identify and coordinate private sector support for State and local first responders. Such models should be expanded to cover all States and territories.

(12) An important component of national standards is measurability, so that it is possible to determine how prepared a State or local government is now, and what additional steps it needs to take, in order to respond to acts of terrorism.

(13) The Department of Homeland Security should establish, publish, and regularly update national voluntary consensus standards for both equipment and training, in cooperation with both public and private sector standard setting organizations, to assist State and local governments in obtaining the equipment and training to attain the essential capabilities for first response to acts of terrorism, and to ensure that first responder funds are spent wisely.

SEC. 3. FASTER AND SMARTER FUNDING FOR FIRST RESPONDERS.

(a) IN GENERAL.—The Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 361 et seq.) is amended—

(1) in section 1(b) in the table of contents by adding at the end the following:

"TITLE XVIII—FUNDING FOR FIRST RESPONDERS

"1801. Faster and smarter funding for first responders.
"1802. Essential capabilities for first responders.
"1803. Task Force on Essential Capabilities for First Responders.
"1804. Covered grant eligibility and criteria.
"1805. Use of funds and accountability requirements.
"1806. National standards for first responder equipment and training.
"1807. Definitions."; and

(2) by adding at the end the following:

"TITLE XVIII—FUNDING FOR FIRST RESPONDERS

"SEC. 1801. FASTER AND SMARTER FUNDING FOR FIRST RESPONDERS.

"(a) COVERED GRANTS.—This title applies to any grant provided by the Department to States, regions, or directly eligible tribes to improve the ability of first responders to prevent, prepare for, respond to, or mitigate threatened or actual terrorist attacks, especially those involving weapons of mass destruction, and including any grant under the following:

"(1) STATE HOMELAND SECURITY GRANT PROGRAM.—The State Homeland Security Grant Program of the Department, or any successor to such grant program.

"(2) URBAN AREA SECURITY INITIATIVE.—The Urban Area Security Initiative of the Department, or any successor to such grant program.

"(b) EXCLUDED PROGRAMS.—This title does not apply to or otherwise affect the following Federal grant programs or any grant under such a program:

"(1) NONDEPARTMENT PROGRAMS.—Any Federal grant program that is not administered by the Department.

"(2) FIRE GRANT PROGRAMS.—The fire grant programs authorized by sections 33 and 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229, 2229a).

"(3) EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE ACCOUNT GRANTS.—The Emergency Management Performance Grant program and the Urban Search and Rescue Grants program authorized by title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 et seq.); the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (113 Stat. 1047 et seq.); and the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.).

"SEC. 1802. ESSENTIAL CAPABILITIES FOR FIRST RESPONDERS.

"(a) ESTABLISHMENT OF ESSENTIAL CAPABILITIES.—

"(1) IN GENERAL.—The Secretary shall establish clearly defined essential capabilities for State and local government preparedness for terrorism, in consultation with—

"(A) the Task Force on Essential Capabilities for First Responders established under section 1803;

"(B) the Under Secretaries for Emergency Preparedness and Response, Border and Transportation Security, Information Analysis and Infrastructure Protection, and Science and Technology, and the Director of the Office for Domestic Preparedness;

"(C) other appropriate Federal agencies;

"(D) State and local first responder agencies and officials; and

"(E) groups responsible for setting standards relevant to the first responder community.

"(2) DEADLINES.—The Secretary shall—

"(A) establish essential capabilities under paragraph (1) within 30 days after receipt of the initial submission of a final report under section 1803(c)(2); and

"(B) regularly update such essential capabilities as necessary, but not less than every 3 years.

"(3) PROVISION OF ESSENTIAL CAPABILITIES.—The Secretary shall ensure that essential capabilities established under paragraph (1) are provided promptly to the States and to the Congress. The States shall make the essential capabilities available as necessary and appropriate to local governments within their jurisdictions.

"(b) OBJECTIVES.—The Secretary shall ensure that essential capabilities established under subsection (a)(1) meet the following objectives:

"(1) SPECIFICITY.—The determination of essential capabilities specifically shall describe the training, planning, personnel, and equipment that different types of communities in the Nation should possess, or to which they should have access, in order to meet the Department's goals for terrorism preparedness based upon—

"(A) the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States; and

"(B) the types of threats, vulnerabilities, geography, size, and other factors that the Secretary has determined to be applicable to each different type of community.

"(2) FLEXIBILITY.—The establishment of essential capabilities shall be sufficiently flexible to allow State and local government officials to set priorities based on particular needs, while reaching nationally determined terrorism preparedness levels within a specified time period.

"(3) MEASURABILITY.—The establishment of essential capabilities shall be designed to enable measurement of progress towards specific terrorism preparedness goals.

"(c) THREATS TO BE CONSIDERED.—

"(1) IN GENERAL.—In establishing essential capabilities under subsection (a)(1), the Secretary specifically shall consider the variables of threat, vulnerability, and consequences with respect to the Nation's population (including transient commuting and tourist populations) and critical infrastructure. Such consideration shall be based upon the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States.

"(2) CRITICAL INFRASTRUCTURE SECTORS.—The Secretary specifically shall consider threats of terrorism against the following critical infrastructure sectors in all areas of the Nation, urban and rural:

"(A) Agriculture.

"(B) Banking and finance.

"(C) Chemical industries.

"(D) The defense industrial base.

"(E) Emergency services.

"(F) Energy.

"(G) Food.

"(H) Government.

"(I) Postal and shipping.

"(J) Public health.

"(K) Information and telecommunications networks.

"(L) Transportation, ports, and containers.

"(M) Water.

"(N) Courts and justice facilities.

The order in which the critical infrastructure sectors are listed in this paragraph shall not be construed as an order of priority for consideration of the importance of such sectors.

"(3) CONSIDERATION OF ADDITIONAL THREATS.—In establishing essential capabilities under subsection (a)(1), the Secretary shall take into account any other

specific threat to a population (including a transient commuting or tourist population) or critical infrastructure sector that the Secretary has determined to exist.

"SEC. 1803. TASK FORCE ON ESSENTIAL CAPABILITIES FOR FIRST RESPONDERS.

"(a) ESTABLISHMENT.—To assist the Secretary in establishing essential capabilities under section 1802(a)(1), the Secretary shall establish an advisory body to be known as the Task Force on Essential Capabilities for First Responders not later than 60 days after the date of the enactment of this section.

"(b) DRAFT REPORT.—

"(1) IN GENERAL.—The Task Force shall submit to the Secretary, not later than one year after its establishment by the Secretary under subsection (a) and every 3 years thereafter, a draft report on its recommendations for the essential capabilities all State and local government first responders should possess, or to which they should have access, to enhance terrorism preparedness, including—

"(A) to prevent a terrorist attack;

"(B) to protect persons and critical infrastructure against attack; and

"(C) to enhance terrorism response and mitigation capabilities if such an attack occurs.

"(2) THREATS TO BE CONSIDERED IN DETERMINING ESSENTIAL CAPABILITIES.—

"(A) IN GENERAL.—In reporting to the Secretary on its recommendations for essential capabilities, the Task Force specifically shall consider the critical infrastructure sectors described in section 1802(c)(2), and the threats to populations in all areas of the Nation, urban and rural, including the following:

"(i) Biological threats.

"(ii) Nuclear threats.

"(iii) Radiological threats.

"(iv) Incendiary threats.

"(v) Chemical threats.

"(vi) Explosives.

"(vii) Suicide bombers.

"(viii) Cyber threats.

"(ix) Any other threats based on proximity to specific past acts of terrorism or the known activity of any terrorist group.

"(B) NO PRIORITY.—The order in which the threats are listed in subparagraph (A) shall not be construed as an order of priority for consideration of the importance of such threats.

"(3) RISK-BASED.—The draft report shall be based upon the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States provided to the Task Force pursuant to subsection (d).

"(4) CONTENTS.—The draft report shall—

"(A) include a priority ranking of essential capabilities, in order to provide guidance to the Secretary and to the Congress on determining the appropriate allocation of, and funding levels for, first responder needs;

"(B) set forth a methodology by which any State or local government will be able to determine the extent to which it possesses or has access to the essential capabilities that States and local governments having similar risks should obtain;

"(C) describe the availability of national voluntary consensus standards, and whether there is a need for new national voluntary consensus standards, with respect to first responder training and equipment;

"(D) include such additional matters as the Secretary may specify in order to further the terrorism preparedness capabilities of first responders; and

"(E) include such revisions to the contents of past reports as are necessary to take into account changes in the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection or other relevant information as determined by the Secretary.

"(c) REVIEW AND REVISION OF DRAFT REPORT.—

"(1) REVIEW AND COMMENTS.—Within 30 days after the date of the submission of the draft report by the Task Force under subsection (b), the Secretary shall review and provide comments to the Task Force on the contents of the draft report.

"(2) REVISION AND SUBMISSION OF FINAL REPORT.—Within 30 days after receiving the Secretary's comments, the Task Force shall—

"(A) revise its draft report based on the comments provided by the Secretary, and any other comments it has solicited and received, if the Task Force determines that such revisions are appropriate; and

"(B) submit the final report on essential capabilities to the Secretary and to the Congress.

"(d) TASK FORCE ACCESS TO INFORMATION.—

"(1) SECURITY CLEARANCES.—For purposes of carrying out its responsibilities under this section, the Task Force shall be provided as a matter of priority appropriate security clearances, including interim security clearances.

"(2) ACCESS TO FINISHED INTELLIGENCE.—For purposes of carrying out its responsibilities under this section, the Task Force shall be provided access to all finished intelligence and analytic products it may request from the Directorate for Information Analysis and Infrastructure Protection or other sources within the Department concerning the nature and likelihood of terrorist attacks on the territory of the United States.

"(3) ACCESS TO ASSESSMENT TOOLS.—For purposes of carrying out its responsibilities under this section, the Task Force shall be provided access to all tools or methodologies currently or formerly used by the Department and its predecessor organizations to assess the preparedness capabilities of State and local governments.

"(4) VALID CLEARANCES.—Nothing in this section shall be considered to authorize a member of the Task Force to have access to classified information unless that member possesses a valid clearance to receive such information.

"(e) MEMBERSHIP.—

"(1) IN GENERAL.—The Task Force shall consist of 25 members appointed by the Secretary, and shall—

"(A) represent a cross section of first responder disciplines; and

"(B) include both State and local representatives within each discipline.

"(2) TERM OF MEMBERS.—Each appointed member of the Task Force shall serve for a term not to exceed 18 months. No individual may be appointed as a member of the Task Force for more than 2 terms.

"(3) SELECTION OF MEMBERS.—The Secretary shall include in the membership of the Task Force—

"(A) members selected from the emergency response field, including firefighters and law enforcement, hazardous materials response, emergency medical services, and emergency management personnel (including public works personnel routinely engaged in emergency response);

"(B) health scientists, emergency and inpatient medical providers, and public health professionals, including experts in emergency health care response to chemical, biological, radiological, and nuclear terrorism, and experts in providing mental health care during emergency response operations;

"(C) experts from Federal, State, and local governments, and the private sector, representing standards-setting organizations, including representation from the voluntary consensus codes and standards development community, particularly those with expertise in firefighting, law enforcement, and emergency medical services delivery; and

"(D) State and local officials with expertise in terrorism preparedness, subject to the condition that if any such officials are elected officials, an equal number shall be selected from each of the two major political parties.

"(4) EX OFFICIO MEMBERS.—The Secretary shall designate one or more officers of the Department to serve as ex officio members of the Task Force, one of whom shall be the designated officer of the Federal Government for purposes of subsection (e) of section 10 of the Federal Advisory Committee Act.

"(5) DIVERSITY IN COMPOSITION OF TASK FORCE.—In appointing members to the Task Force, the Secretary shall ensure, to the extent practicable, that its membership—

"(A) is geographically diverse;

"(B) includes representatives from both rural and urban jurisdictions;

"(C) includes representatives from both management and labor;

"(D) includes representatives from both uniformed and nonuniformed professions;

"(E) includes representatives from both voluntary and professional services;

"(F) includes representatives from both government and nongovernment emergency medical services; and

"(G) includes sufficient personnel with security clearances necessary to review classified materials that may be needed to conduct the business of the Task Force.

"(6) CHAIR.—At the first meeting of the Task Force, the membership of the Task Force appointed under paragraph (3) shall elect a chair of the Task Force.

"(f) MEETINGS.—The Task Force shall meet as often as necessary to complete reports in accordance with this section.

"(g) PAY.—

"(1) IN GENERAL.—Members of the Task Force shall serve without pay by reason of their work on the Task Force.

"(2) FEDERAL OFFICERS AND EMPLOYEES.—Members of the Task Force who are officers or employees of the United States shall receive no additional pay by reason of their service as a member of the Task Force.

"(h) TRAVEL EXPENSES.—Members of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Task Force.

"(i) SERVICES, FUNDS, AND STAFF.—The Secretary shall provide to the Task Force, on a non-reimbursable basis, such administrative services, funds, staff, facilities, and other support services as the Secretary determines necessary, in consultation with the chair of the Task Force, for the Task Force to perform its duties efficiently and in accordance with this section.

"(j) DETAILS.—Upon the request of the Task Force, the Secretary may detail, without reimbursement, any personnel of the Department to assist the Task Force in carrying out its duties. Any such detail of an employee shall be without interruption or loss of civil service status or privilege.

"(k) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.), including subsections (a), (b), and (d) of section 10 of such Act, and section 552b(c) of title 5, United States Code, shall apply to the Task Force.

"SEC. 1804. COVERED GRANT ELIGIBILITY AND CRITERIA.

"(a) GRANT ELIGIBILITY.—Any State, region, or directly eligible tribe shall be eligible to apply for a covered grant.

"(b) AWARDING GRANTS.—

"(1) CRITERIA.—In awarding covered grants, the Secretary shall assist States and local governments in achieving the essential capabilities for first responders established by the Secretary under section 1802.

"(2) THREAT ASSESSMENTS.—In assessing threats for purposes of awarding covered grants, the credibility of the threat shall be weighted more than population concentration or critical infrastructure or any other consideration.

"(c) STATE HOMELAND SECURITY PLANS.—

"(1) SUBMISSION OF PLANS.—The Secretary shall require that any State applying to the Secretary for a covered grant must submit to the Secretary a 3-year State homeland security plan that—

"(A) demonstrates the extent to which the State has achieved the essential capabilities that apply to the State, and describes the extent to which the State used the methodology developed pursuant to section 1803(b)(4)(B) to evaluate the level of its essential capabilities;

"(B) demonstrates the additional needs of the State necessary to achieve the essential capabilities that apply to the State;

"(C) includes a prioritization of such additional needs based on threat, vulnerability, and consequence assessment factors applicable to the State;

"(D) describes how the State intends—

"(i) to address such additional needs at the city, county, regional, State, and interstate level, and with respect to any Indian tribes within its boundaries;

"(ii) to use all Federal, State, and local resources available for the purpose of addressing such additional needs; and

"(iii) to give particular emphasis to regional planning and cooperation, both within its jurisdictional borders and with neighboring States; and

"(E) is developed in consultation with and subject to appropriate comment by local governments within the State.

"(2) APPROVAL BY SECRETARY.—The Secretary may not award any covered grant to a State unless the Secretary has approved the applicable State homeland security plan.

"(d) CONSISTENCY WITH STATE PLANS.—The Secretary shall ensure that each covered grant is used to supplement and support, in a consistent and coordinated manner, the applicable State homeland security plan or plans.

"(e) APPLICATION FOR GRANT.—

"(1) IN GENERAL.—Any State, region, or directly eligible tribe may apply for a covered grant by submitting to the Secretary an application at such time, in such manner, and containing such information as is required under this subsection, or as the Secretary may reasonably require.

"(2) DEADLINES FOR APPLICATIONS AND AWARDS.—All applications for covered grants must be submitted to the Secretary no later than February 15 of the fiscal year for which they are submitted. The Secretary shall award covered grants pursuant to all approved applications for such fiscal year as soon as practicable, but not later than July 31 of such year.

"(3) AVAILABILITY OF FUNDS.—All funds awarded by the Secretary under covered grants in a fiscal year shall be available for obligation through the end of the subsequent fiscal year.

"(4) MINIMUM CONTENTS OF APPLICATION.—The Secretary shall require that each applicant include in its application, at a minimum—

"(A) the purpose for which the applicant seeks covered grant funds and the reasons why the applicant needs the covered grant to meet the essential capabilities for terrorism preparedness within the boundaries of the State, region, or directly eligible tribe to which the application pertains;

"(B) a description of how, by reference to the applicable State homeland security plan or plans under subsection (c), the allocation of grant funding proposed in the application, including, where applicable, the amount not passed through under section 1805(e)(1), would assist in fulfilling the essential capabilities specified in such plan or plans;

"(C) a statement of whether a mutual aid agreement applies to the use of all or any portion of the covered grant funds;

"(D) if the applicant is a region—

"(i) a precise geographical description of the region and a specification of all participating and nonparticipating local governments within the geographical area comprising that region;

"(ii) a specification of what governmental entity within the region will administer the expenditure of funds under the covered grant; and

"(iii) a designation of a specific individual to serve as regional liaison;

"(E) if the applicant is a directly eligible tribe, a designation of a specific individual to serve as tribal liaison;

"(F) a capital budget showing how the applicant intends to allocate and expend the covered grant funds; and

"(G) a statement of how the applicant intends to meet the matching requirement, if any, that applies under section 1805(e)(2).

"(5) REGIONAL APPLICATIONS.—

"(A) SUBMISSION TO STATE OR STATES.—To ensure the consistency required under subsection (d), an applicant that is a region must simultaneously submit its application to the Department and to each State of which any part is included in the region.

"(B) OPPORTUNITY FOR STATE COMMENT.—Before awarding any covered grant to a region, the Secretary shall provide an opportunity to each State of which any part is included in a region, during the 30-day period beginning on the date on which the region submits an application for a covered grant, to comment to the Secretary on the consistency of the region's plan with the State's homeland security plan.

"(C) FINAL AUTHORITY.—The Secretary shall have final authority to determine the consistency of any regional application with the applicable State homeland security plan or plans and approve any regional application. The Secretary shall notify each State of which any part is included in a region of the approval of a regional application for that region.

"(D) REGIONAL LIAISONS.—A regional liaison designated under paragraph (4)(D)(iii) shall—

"(i) coordinate with Federal, State, local, regional, and private officials within the region concerning terrorism preparedness;

"(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials within the region to assist in the development of the regional application and to improve the region's access to covered grants; and

"(iii) administer, in consultation with State, local, regional, and private officials within the region, covered grants awarded to the region.

"(6) TRIBAL APPLICATIONS.—

"(A) SUBMISSION TO STATE OR STATES.—To ensure the consistency required under subsection (d), an applicant that is a directly eligible tribe must simultaneously submit its application to the Department and to each State within the boundaries of which any part of that tribe is located.

"(B) OPPORTUNITY FOR STATE COMMENT.—Before awarding any covered grant to a directly eligible tribe, the Secretary shall provide an opportunity to each State within the boundaries of which any part of that tribe is located, during the 30-day period beginning on the date on which the tribe submits an application for a covered grant, to comment to the Secretary on the consistency of the tribe's plan with the State's homeland security plan.

"(C) FINAL AUTHORITY.—The Secretary shall have final authority to determine the consistency of any application of a directly eligible tribe with the applicable State homeland security plan or plans and approve any application of that tribe. The Secretary shall notify each State within the boundaries of which any part of that tribe is located of the approval of an application of that tribe.

"(D) TRIBAL LIAISON.—A tribal liaison designated under paragraph (4)(E) shall—

"(i) coordinate with Federal, State, local, regional, and private officials concerning terrorism preparedness;

"(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials to assist in the development of the application of that tribe and to improve the tribe's access to covered grants; and

"(iii) administer, in consultation with State, local, regional, and private officials, covered grants awarded to that tribe.

"(E) LIMITATION ON NUMBER OF DIRECT GRANTS.—The Secretary may make covered grants directly to not more than 20 directly eligible tribes per fiscal year.

"(F) TRIBES NOT RECEIVING DIRECT GRANTS.—An Indian tribe not receiving a grant directly under this section is eligible to receive funds under a covered grant from the State or States within the boundaries of which any part of that tribe is located, consistent with the homeland security plan of the State as described in subsection (c). If a State fails to comply with section 1805(e)(1), the tribe is entitled to pursue the procedures set forth in section 1805(f)(3) to the extent applicable.

"(7) EQUIPMENT STANDARDS.—If an applicant for a covered grant proposes to upgrade or purchase, with assistance provided under the grant, new equipment or systems that do not meet or exceed any applicable national voluntary consensus standards established by the Secretary under section 1806(a), the applicant shall include in the application an explanation of why such equipment or systems will serve the needs of the applicant better than equipment or systems that meet or exceed such standards.

"(f) FIRST RESPONDER GRANTS BOARD.—

"(1) ESTABLISHMENT OF BOARD.—The Secretary shall establish a First Responder Grants Board, consisting of—

"(A) the Secretary;

"(B) the Under Secretary for Emergency Preparedness and Response;

"(C) the Under Secretary for Border and Transportation Security;

"(D) the Under Secretary for Information Analysis and Infrastructure Protection;

"(E) the Under Secretary for Science and Technology; and

"(F) the Director of the Office for Domestic Preparedness.

"(2) CHAIRMAN.—

"(A) IN GENERAL.—The Secretary shall be the Chairman of the Board.

"(B) EXERCISE OF AUTHORITIES BY DEPUTY SECRETARY.—The Deputy Secretary of Homeland Security may exercise the authorities of the Chairman, if the Secretary so directs.

"(3) RANKING OF GRANT APPLICATIONS.—

"(A) PRIORITIZATION OF GRANTS.—The Board shall evaluate and annually prioritize all pending applications for covered grants based upon the degree to which they would lessen the threat to, vulnerability of, and consequences for persons and critical infrastructure.

"(B) ACHIEVING NATIONWIDE CAPABILITY.—In evaluating and prioritizing grant applications under subparagraph (A), the Board shall seek to achieve and enhance essential capabilities throughout the Nation.

"(C) MINIMUM AMOUNTS.—After evaluating and prioritizing grant applications under subparagraph (A), the Board shall ensure that, for each fiscal year—

"(i) the States, the District of Columbia, and the Commonwealth of Puerto Rico each receive no less than 0.25 percent of the funds available for covered grants for that fiscal year for purposes of implementing

its homeland security plan in accordance with the prioritization of additional needs under subsection (c)(1)(C);

"(ii) the United States Virgin Islands, America Samoa, Guam, and the Northern Mariana Islands each receive no less than 0.08 percent of the funds available for covered grants for that fiscal year for purposes of implementing its homeland security plan in accordance with the prioritization of additional needs under subsection (c)(1)(C); and

"(iii) directly eligible tribes under section 1807(8) collectively receive no less than 0.25 percent of the funds available for covered grants for that fiscal year for purposes of addressing needs identified in the applications of such tribes, consistent with the homeland security plan of each State within the boundaries of which any part of any such tribe is located.

"(4) FUNCTIONS OF UNDER SECRETARIES.—The Under Secretaries referred to in paragraph (1) shall seek to ensure that the relevant expertise and input of the staff of their directorates are available to and considered by the Board.

"SEC. 1805. USE OF FUNDS AND ACCOUNTABILITY REQUIREMENTS.

"(a) IN GENERAL.—A covered grant may be used for—

"(1) purchasing or upgrading equipment, including computer software, to enhance terrorism preparedness and response;

"(2) exercises to strengthen terrorism preparedness and response;

"(3) training for prevention (including detection) of, preparedness for, or response to attacks involving weapons of mass destruction, including training in the use of equipment and computer software;

"(4) developing or updating response plans;

"(5) establishing or enhancing mechanisms for sharing terrorism threat information pursuant to this Act;

"(6) systems architecture and engineering, program planning and management, strategy formulation and strategic planning, life-cycle systems design, product and technology evaluation, and prototype development for terrorism preparedness and response purposes;

"(7) additional personnel costs resulting from—

"(A) elevations in the threat alert level of the Homeland Security Advisory System;

"(B) travel to and participation in exercises and training in the use of equipment and on prevention activities; and

"(C) the temporary replacement of personnel during any period of travel to and participation in exercises and training in the use of equipment and on prevention activities;

"(8) the costs of equipment (including software) required to receive, transmit, handle, and store classified information;

"(9) enhancing facilities to serve as operations centers, or hardening critical infrastructure against potential attack by the addition of barriers, fences, gates, and other such devices;

"(10) the costs of commercially available equipment that complies with, where applicable, national voluntary consensus standards, and that facilitates interoperability, coordination, and integration between emergency communications systems, including—

"(A) mobile vehicles that contain equipment such as commercial telephone trunk lines, VHF and UHF radios, patch panels, and crosspatches, among other technologies and equipment; and

"(B) communications system overlay software and hardware that allow multiple disparate communications networks to act as one network;

"(11) educational curricula development for first responders to ensure that they are prepared for terrorist attacks;

"(12) training and exercises to assist public elementary and secondary schools in developing and implementing programs to instruct students regarding age-appropriate skills to prepare for and respond to an act of terrorism; and

"(13) other appropriate activities as determined by the Secretary.

"(b) PROHIBITED USES.—Funds provided as a covered grant may not be used—

"(1) to supplant State or local funds for, or otherwise support, traditional missions of State and local law enforcement, firefighters, emergency medical services, or public health agencies, unless such support serves a dual purpose and the funds are primarily intended to enhance terrorism preparedness;

"(2) to acquire land; or

"(3) for any State or local government cost sharing contribution.

"(c) ASSISTANCE REQUIREMENT.—The Secretary may not request that equipment paid for, wholly or in part, with funds provided as a covered grant be made avail-

able for responding to emergencies in surrounding States, regions, and localities, unless the Secretary undertakes to pay the costs directly attributable to transporting and operating such equipment during such response.

"(d) FLEXIBILITY IN UNSPENT HOMELAND SECURITY GRANT FUNDS.—Upon request by the recipient of a covered grant, the Secretary may authorize the grantee to transfer all or part of funds provided as the covered grant from uses specified in the grant agreement to other uses authorized under this section, if the Secretary determines that such transfer is in the interests of homeland security.

"(e) STATE, REGIONAL, AND TRIBAL RESPONSIBILITIES.—

"(1) PASS-THROUGH.—The Secretary shall require a recipient of a covered grant that is a State to obligate or otherwise make available to local governments, first responders, and other local groups, to the extent required under the State homeland security plan or plans specified in the application for the grant, not less than 80 percent of the grant funds, resources purchased with the grant funds having a value equal to at least 80 percent of the amount of the grant, or a combination thereof, by not later than the end of the 45-day period beginning on the date the grant recipient receives the grant funds.

"(2) COST SHARING.—

"(A) IN GENERAL.—The Federal share of the costs of an activity carried out with a covered grant to a State, region, or directly eligible tribe awarded after the 2-year period beginning on the date of the enactment of this section shall not exceed 75 percent.

"(B) INTERIM RULE.—The Federal share of the costs of an activity carried out with a covered grant awarded before the end of the 2-year period beginning on the date of the enactment of this section shall be 100 percent.

"(C) IN-KIND MATCHING.—Each recipient of a covered grant may meet the matching requirement under subparagraph (A) by making in-kind contributions of goods or services that are directly linked with the purpose for which the grant is made, including, but not limited to, any necessary personnel overtime, contractor services, administrative costs, equipment fuel and maintenance, and rental space.

"(3) CERTIFICATIONS REGARDING DISTRIBUTION OF GRANT FUNDS TO LOCAL GOVERNMENTS.—Any State that receives a covered grant shall certify to the Secretary, by not later than 30 days after the expiration of the period described in paragraph (1) with respect to the grant, that the State has made available for expenditure by local governments, first responders, and other local groups the required amount of grant funds pursuant to paragraph (1).

"(4) ANNUAL REPORT ON HOMELAND SECURITY SPENDING.—Each recipient of a covered grant shall submit a report to the Secretary not later than 60 days after the end of each fiscal year. Each recipient of a covered grant that is a region must simultaneously submit its report to each State of which any part is included in the region. Each recipient of a covered grant that is a directly eligible tribe must simultaneously submits its report to each State within the boundaries of which any part of such tribe is located. Each report must include the following:

"(A) The amount, ultimate recipients, and dates of receipt of all funds received under the grant during the previous fiscal year.

"(B) The amount and the dates of disbursements of all such funds expended in compliance with paragraph (1) or pursuant to mutual aid agreements or other sharing arrangements that apply within the State, region, or directly eligible tribe, as applicable, during the previous fiscal year.

"(C) How the funds were utilized by each ultimate recipient or beneficiary during the preceding fiscal year.

"(D) The extent to which essential capabilities identified in the applicable State homeland security plan or plans were achieved or enhanced as the result of the expenditure of grant funds during the preceding fiscal year.

"(E) The extent to which essential capabilities identified in the applicable State homeland security plan or plans remain unmet.

"(5) INCLUSION OF RESTRICTED ANNEXES.—A recipient of a covered grant may submit to the Secretary an annex to the report under paragraph (4) that is subject to appropriate handling restrictions, if the recipient believes that discussion in the report of unmet needs would reveal sensitive but unclassified information.

"(6) PROVISION OF REPORTS.—The Secretary shall ensure that each report under paragraph (4) is provided to the Under Secretary for Emergency Preparedness and Response and the Director of the Office for Domestic Preparedness.

"(f) INCENTIVES TO EFFICIENT ADMINISTRATION OF HOMELAND SECURITY GRANTS.—

"(1) PENALTIES FOR DELAY IN PASSING THROUGH LOCAL SHARE.—If a recipient of a covered grant that is a State fails to pass through to local governments, first responders, and other local groups funds or resources required by subsection (e)(1) within 45 days after receiving funds under the grant, the Secretary may—

"(A) reduce grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (e)(1);

"(B) terminate payment of funds under the grant to the recipient, and transfer the appropriate portion of those funds directly to local first responders that were intended to receive funding under that grant; or

"(C) impose additional restrictions or burdens on the recipient's use of funds under the grant, which may include—

"(i) prohibiting use of such funds to pay the grant recipient's grant-related overtime or other expenses;

"(ii) requiring the grant recipient to distribute to local government beneficiaries all or a portion of grant funds that are not required to be passed through under subsection (e)(1); or

"(iii) for each day that the grant recipient fails to pass through funds or resources in accordance with subsection (e)(1), reducing grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (e)(1), except that the total amount of such reduction may not exceed 20 percent of the total amount of the grant.

"(2) EXTENSION OF PERIOD.—The Governor of a State may request in writing that the Secretary extend the 45-day period under paragraph (1) for an additional 15-day period. The Secretary may approve such a request, and may extend such period for additional 15-day periods, if the Secretary determines that the resulting delay in providing grant funding to the local government entities that will receive funding under the grant will not have a significant detrimental impact on such entities' terrorism preparedness efforts.

"(3) PROVISION OF NON-LOCAL SHARE TO LOCAL GOVERNMENT.—

"(A) IN GENERAL.—The Secretary may upon request by a local government pay to the local government a portion of the amount of a covered grant awarded to a State in which the local government is located, if—

"(i) the local government will use the amount paid to expedite planned enhancements to its terrorism preparedness as described in any applicable State homeland security plan or plans;

"(ii) the State has failed to pass through funds or resources in accordance with subsection (e)(1); and

"(iii) the local government complies with subparagraphs (B) and (C).

"(B) SHOWING REQUIRED.—To receive a payment under this paragraph, a local government must demonstrate that—

"(i) it is identified explicitly as an ultimate recipient or intended beneficiary in the approved grant application;

"(ii) it was intended by the grantee to receive a severable portion of the overall grant for a specific purpose that is identified in the grant application;

"(iii) it petitioned the grantee for the funds or resources after expiration of the period within which the funds or resources were required to be passed through under subsection (e)(1); and

"(iv) it did not receive the portion of the overall grant that was earmarked or designated for its use or benefit.

"(C) EFFECT OF PAYMENT.—Payment of grant funds to a local government under this paragraph—

"(i) shall not affect any payment to another local government under this paragraph; and

"(ii) shall not prejudice consideration of a request for payment under this paragraph that is submitted by another local government.

"(D) DEADLINE FOR ACTION BY SECRETARY.—The Secretary shall approve or disapprove each request for payment under this paragraph by not later than 15 days after the date the request is received by the Department.

"(g) REPORTS TO CONGRESS.—The Secretary shall submit an annual report to the Congress by December 31 of each year—

"(1) describing in detail the amount of Federal funds provided as covered grants that were directed to each State and region in the preceding fiscal year;

"(2) containing information on the use of such grant funds by grantees; and

"(3) describing, on a nationwide and State-by-State basis—

"(A) the extent to which essential capabilities identified in applicable State homeland security plan or plans were created or enhanced as the result of the expenditure of covered grant funds during the preceding fiscal year;

"(B) the extent to which essential capabilities identified in applicable State homeland security plan or plans remain unmet; and

"(C) an estimate of the amount of Federal, State, and local expenditures required to attain across the United States the essential capabilities established under section 1802(a).

"SEC. 1806. NATIONAL STANDARDS FOR FIRST RESPONDER EQUIPMENT AND TRAINING.

"(a) EQUIPMENT STANDARDS.—

"(1) IN GENERAL.—The Secretary, in consultation with the Under Secretary for Science and Technology and the Director of the Office for Domestic Preparedness, shall, not later than 6 months after the date of enactment of this section, support the development of, promulgate, and update as necessary national voluntary consensus standards for the performance, use, and validation of first responder equipment for purposes of section 1804(e)(7). Such standards—

"(A) shall be, to the maximum extent practicable, consistent with any existing voluntary consensus standards;

"(B) shall take into account, as appropriate, new types of terrorism threats that may not have been contemplated when such existing standards were developed; and

"(C) shall be focused on maximizing interoperability, interchangeability, durability, flexibility, efficiency, efficacy, portability, sustainability, and safety.

"(2) REQUIRED CATEGORIES.—In carrying out paragraph (1), the Secretary shall specifically consider the following categories of first responder equipment:

"(A) Thermal imaging equipment.

"(B) Radiation detection and analysis equipment.

"(C) Biological detection and analysis equipment.

"(D) Chemical detection and analysis equipment.

"(E) Decontamination and sterilization equipment.

"(F) Personal protective equipment, including garments, boots, gloves, and hoods and other protective clothing.

"(G) Respiratory protection equipment.

"(H) Interoperable communications, including wireless and wireline voice, video, and data networks.

"(I) Explosive mitigation devices and explosive detection and analysis equipment.

"(J) Containment vessels.

"(K) Contaminant-resistant vehicles.

"(L) Such other equipment for which the Secretary determines that national voluntary consensus standards would be appropriate.

"(b) TRAINING STANDARDS.—

"(1) IN GENERAL.—The Secretary, in consultation with the Under Secretaries for Emergency Preparedness and Response and Science and Technology and the Director of the Office for Domestic Preparedness, shall support the development of, promulgate, and regularly update as necessary national voluntary consensus standards for first responder training carried out with amounts provided under covered grant programs, that will enable State and local government first responders to achieve optimal levels of terrorism preparedness as quickly as practicable. Such standards shall give priority to providing training to—

"(A) enable first responders to prevent, prepare for, respond to, and mitigate terrorist threats, including threats from chemical, biological, nuclear, and radiological weapons and explosive devices capable of inflicting significant human casualties; and

"(B) familiarize first responders with the proper use of equipment, including software, developed pursuant to the standards established under subsection (a).

"(2) REQUIRED CATEGORIES.—In carrying out paragraph (1), the Secretary specifically shall include the following categories of first responder activities:

"(A) Regional planning.

"(B) Joint exercises.

"(C) Intelligence collection, analysis, and sharing.

"(D) Emergency notification of affected populations.

"(E) Detection of biological, nuclear, radiological, and chemical weapons of mass destruction.

"(F) Such other activities for which the Secretary determines that national voluntary consensus training standards would be appropriate.

"(c) CONSULTATION WITH STANDARDS ORGANIZATIONS.—In establishing national voluntary consensus standards for first responder equipment and training under this section, the Secretary shall consult with relevant public and private sector groups, including—

"(1) the National Institute of Standards and Technology;

"(2) the National Fire Protection Association;

"(3) the National Association of County and City Health Officials;

"(4) the Association of State and Territorial Health Officials;

"(5) the American National Standards Institute;

"(6) the National Institute of Justice;

"(7) the Inter-Agency Board for Equipment Standardization and Interoperability;

"(8) the National Public Health Performance Standards Program;

"(9) the National Institute for Occupational Safety and Health;

"(10) ASTM International;

"(11) the International Safety Equipment Association (ISEA); and

"(12) to the extent the Secretary considers appropriate, other national voluntary consensus standards development organizations, other interested Federal, State, and local agencies, and other interested persons.

"SEC. 1807. DEFINITIONS.

"In this title:

"(1) BOARD.—The term 'Board' means the First Responder Grants Board established under section 1804(f).

"(2) COVERED GRANT.—The term 'covered grant' means any grant to which this title applies under section 1801.

"(3) ELEVATIONS IN THE THREAT ALERT LEVEL.—The term 'elevations in the threat alert level' means any designation (including those that are less than national in scope) that raises the homeland security threat level to either the highest or second highest threat level under the Homeland Security Advisory System referred to in section 201(d)(7).

"(4) ESSENTIAL CAPABILITIES.—The term 'essential capabilities' means the levels, availability, and competence of emergency personnel, planning, training, and equipment across a variety of disciplines needed to effectively and efficiently prevent, prepare for, and respond to acts of terrorism consistent with established practices.

"(5) REGION.—The term 'region' means—

"(A) any geographic area consisting of all or parts of 2 or more contiguous States, counties, municipalities, or other local governments that have a combined population of at least 1,650,000 or have an area of not less than 20,000 square miles, and that, for purposes of an application for a covered grant, is represented by 1 or more governments or governmental agencies within such geographic area, and that is established by law or by agreement of 2 or more such governments or governmental agencies in a mutual aid agreement; or

"(B) any other combination of contiguous local government units (including such a combination established by law or agreement of two or more governments or governmental agencies in a mutual aid agreement) that is formally certified by the Secretary as a region for purposes of this Act with the consent of—

"(i) the State or States in which they are located, including a multi-State entity established by a compact between two or more States; and

"(ii) the incorporated municipalities, counties, and parishes which they encompass.

"(6) TASK FORCE.—The term 'Task Force' means the Task Force on Essential Capabilities for First Responders established under section 1803.

"(7) FIRST RESPONDER.—The term 'first responder' shall have the same meaning as the term 'emergency response provider'.

"(8) DIRECTLY ELIGIBLE TRIBE.—The term 'directly eligible tribe' means any Indian tribe or consortium of Indian tribes that—

"(A) meets the criteria to participate in Self-Governance set forth in section 402(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458bb(c));

"(B) employs at least 10 full-time personnel in a law enforcement or emergency response agency with the capacity to respond to calls for law enforcement or emergency services; and

"(C)(i) is located on, or within 5 miles of, an international border or waterway;

"(ii) is located within 5 miles of a facility within a critical infrastructure sector identified in section 1802(c)(2);

"(iii) is located within or contiguous to one of the 50 largest metropolitan statistical areas; or

"(iv) has more than 1,000 square miles of Indian country, as described in section 1151 of title 18, United States Code.".

(b) DEFINITION OF EMERGENCY RESPONSE PROVIDERS.—Section 2(6) of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 101(6)) is amended by inserting "fire," after "law enforcement,".

(c) TEMPORARY LIMITATION ON APPLICATION.—The following provisions of title XVIII of the Homeland Security Act of 2002, as amended by subsection (a), shall not apply during the 2 year period beginning on the date of the enactment of this Act:

(1) Subsections (b), (c), (e) (except paragraph (5) of such subsection), and (f)(3)(B) of section 1804.

(2) Subparagraphs (D) and (E) of section 1805(e)(4).

(3) Section 1805(g)(3).

SEC. 4. MODIFICATION OF HOMELAND SECURITY ADVISORY SYSTEM.

(a) IN GENERAL.—Subtitle A of title II of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 121 et seq.) is amended by adding at the end the following:

"SEC. 203. HOMELAND SECURITY ADVISORY SYSTEM.

"(a) IN GENERAL.—The Secretary shall revise the Homeland Security Advisory System referred to in section 201(d)(7) to require that any designation of a threat level or other warning shall be accompanied by a designation of the geographic regions or economic sectors to which the designation applies.

"(b) REPORTS.—The Secretary shall report to the Congress annually by not later than December 31 each year regarding the geographic region-specific warnings and economic sector-specific warnings issued during the preceding fiscal year under the Homeland Security Advisory System referred to in section 201(d)(7), and the bases for such warnings. The report shall be submitted in unclassified form and may, as necessary, include a classified annex.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after the item relating to section 202 the following:

"203. Homeland Security Advisory System.".

SEC. 5. COORDINATION OF INDUSTRY EFFORTS.

Section 102(f) of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 112(f)) is amended by striking "and" after the semicolon at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting "; and", and by adding at the end the following:

"(8) coordinating industry efforts to identify private sector resources and capabilities that could be effective in supplementing Federal, State, and local government agency efforts to prevent or respond to a terrorist attack.".

SEC. 6. SUPERSEDED PROVISION.

This Act supersedes section 1014 of Public Law 107–56.

SEC. 7. SENSE OF CONGRESS REGARDING INTEROPERABLE COMMUNICATIONS.

(a) FINDING.—The Congress finds that—

(1) many first responders working in the same jurisdiction or in different jurisdictions cannot effectively and efficiently communicate with one another, and

(2) their inability to do so threatens the public's safety and may result in unnecessary loss of lives and property.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that it is of national importance that interoperable emergency communications systems that to the extent possible meet national voluntary consensus standards should be developed and promulgated as soon as practicable for use by the first responder community.

SEC. 8. SENSE OF CONGRESS REGARDING CITIZEN CORPS COUNCILS.

(a) FINDING.—The Congress finds that Citizen Corps councils help to enhance local citizen participation in terrorism preparedness by coordinating multiple Citizen Corps programs, developing community action plans, assessing possible threats, and identifying local resources.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that individual Citizen Corps councils should seek to enhance the preparedness and response capabilities

of all organizations participating in the councils, including by providing funding to as many of their participating organizations as practicable to promote local terrorism preparedness programs.

SEC. 9. STUDY REGARDING NATIONWIDE EMERGENCY NOTIFICATION SYSTEM.

(a) STUDY.—The Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies and representatives of providers and participants in the telecommunications industry, shall conduct a study to determine whether it is cost-effective, efficient, or feasible to establish and implement an emergency telephonic alert notification system that will—

(1) alert persons in the United States of imminent or current hazardous events caused by acts of terrorism; and

(2) provide information to individuals regarding appropriate measures that may be undertaken to alleviate or minimize threats to their safety and welfare posed by such events.

(b) TECHNOLOGIES TO CONSIDER.—In conducting the study, the Secretary shall consider the use of the telephone, wireless communications, and other existing communications networks to provide such notification.

(c) REPORT.—Not later than 9 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a report regarding the conclusions of the study.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

For making covered grants (as that term is defined in section 1807 of the Homeland Security Act of 2002, as amended by this Act) there is authorized to be appropriated to the Secretary of Homeland Security $3,400,000,000 for fiscal year 2006.

SEC. 11. AUTHORITY TO ENTER INTO CONTRACTS AND ISSUE FEDERAL LOAN GUARANTEES.

(a) FINDING.—Congress finds that there is a public interest in protecting high-risk nonprofit organizations from international terrorist attacks that would disrupt the vital services such organizations provide to the people of the United States and threaten the lives and well-being of United States citizens who operate, utilize, and live or work in proximity to such organizations.

(b) PURPOSES.—The purposes of this section are to—

(1) establish within the Department of Homeland Security a program to protect United States citizens at or near high-risk nonprofit organizations from international terrorist attacks through loan guarantees and Federal contracts for security enhancements and technical assistance;

(2) establish a program within the Department of Homeland Security to provide grants to local governments to assist with incremental costs associated with law enforcement in areas in which there are a high concentration of high-risk nonprofit organizations vulnerable to international terrorist attacks; and

(3) establish an Office of Community Relations and Civic Affairs within the Department of Homeland Security to focus on security needs of high-risk nonprofit organizations with respect to international terrorist threats.

(c) AUTHORITY.—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.), as amended by this Act, is further amended by adding at the end the following:

"TITLE XIX—PROTECTION OF CITIZENS AT HIGH-RISK NONPROFIT ORGANIZATIONS

"SEC. 1901. DEFINITIONS.

"In this title:

"(1) CONTRACT.—The term 'contract' means a contract between the Federal Government and a contractor selected from the list of certified contractors to perform security enhancements or provide technical assistance approved by the Secretary under this title.

"(2) FAVORABLE REPAYMENT TERMS.—The term 'favorable repayment terms' means the repayment terms of loans offered to nonprofit organizations under this title that—

"(A) are determined by the Secretary, in consultation with the Secretary of the Treasury, to be favorable under current market conditions;

"(B) have interest rates at least 1 full percentage point below the market rate; and

"(C) provide for repayment over a term not less than 25 years.

"(3) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' means an organization that—

"(A) is described under section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; and

"(B) is designated by the Secretary under section 1903(a).

"(4) SECURITY ENHANCEMENTS.—The term 'security enhancements'—

"(A) means the purchase and installation of security equipment in real property (including buildings and improvements), owned or leased by a nonprofit organization, specifically in response to the risk of attack at a nonprofit organization by an international terrorist organization;

"(B) includes software security measures; and

"(C) does not include enhancements that would otherwise have been reasonably necessary due to nonterrorist threats.

"(5) TECHNICAL ASSISTANCE.—The term 'technical assistance'—

"(A) means guidance, assessment, recommendations, and any other provision of information or expertise which assists nonprofit organizations in—

"(i) identifying security needs;

"(ii) purchasing and installing security enhancements;

"(iii) training employees to use and maintain security enhancements; or

"(iv) training employees to recognize and respond to international terrorist threats; and

"(B) does not include technical assistance that would otherwise have been reasonably necessary due to nonterrorist threats.

"SEC. 1902. AUTHORITY TO ENTER INTO CONTRACTS AND ISSUE FEDERAL LOAN GUARANTEES.

"(a) IN GENERAL.—The Secretary may—

"(1) enter into contracts with certified contractors for security enhancements and technical assistance for nonprofit organizations; and

"(2) issue Federal loan guarantees to financial institutions in connection with loans made by such institutions to nonprofit organizations for security enhancements and technical assistance.

"(b) LOANS.—The Secretary may guarantee loans under this title—

"(1) only to the extent provided for in advance by appropriations Acts; and

"(2) only to the extent such loans have favorable repayment terms.

"SEC. 1903. ELIGIBILITY CRITERIA.

"(a) IN GENERAL.—The Secretary shall designate nonprofit organizations as high-risk nonprofit organizations eligible for contracts or loans under this title based on the vulnerability of the specific site of the nonprofit organization to international terrorist attacks.

"(b) VULNERABILITY DETERMINATION.—In determining vulnerability to international terrorist attacks and eligibility for security enhancements or technical assistance under this title, the Secretary shall consider—

"(1) threats of international terrorist organizations (as designated by the State Department) against any group of United States citizens who operate or are the principal beneficiaries or users of the nonprofit organization;

"(2) prior attacks, within or outside the United States, by international terrorist organizations against the nonprofit organization or entities associated with or similarly situated as the nonprofit organization;

"(3) the symbolic value of the site as a highly recognized United States cultural or historical institution that renders the site a possible target of international terrorism;

"(4) the role of the nonprofit organization in responding to international terrorist attacks; and

"(5) any recommendations of the applicable State Homeland Security Authority established under section 1906 or Federal, State, and local law enforcement authorities.

"(c) DOCUMENTATION.—In order to be eligible for security enhancements, technical assistance or loan guarantees under this title, the nonprofit organization shall provide the Secretary with documentation that—

"(1) the nonprofit organization hosted a gathering of at least 100 or more persons at least once each month at the nonprofit organization site during the preceding 12 months; or

"(2) the nonprofit organization provides services to at least 500 persons each year at the nonprofit organization site.

"(d) TECHNICAL ASSISTANCE ORGANIZATIONS.—If 2 or more nonprofit organizations establish another nonprofit organization to provide technical assistance, that established organization shall be eligible to receive security enhancements and technical assistance under this title based upon the collective risk of the nonprofit organizations it serves.

"SEC. 1904. USE OF LOAN GUARANTEES.

"Funds borrowed from lending institutions, which are guaranteed by the Federal Government under this title, may be used for technical assistance and security enhancements.

"SEC. 1905. NONPROFIT ORGANIZATION APPLICATIONS.

"(a) IN GENERAL.—A nonprofit organization desiring assistance under this title shall submit a separate application for each specific site needing security enhancements or technical assistance.

"(b) CONTENT.—Each application shall include—

"(1) a detailed request for security enhancements and technical assistance, from a list of approved enhancements and assistance issued by the Secretary under this title;

"(2) a description of the intended uses of funds to be borrowed under Federal loan guarantees; and

"(3) such other information as the Secretary shall require.

"(c) JOINT APPLICATION.—Two or more nonprofit organizations located on contiguous sites may submit a joint application.

"SEC. 1906. REVIEW BY STATE HOMELAND SECURITY AUTHORITIES.

"(a) ESTABLISHMENT OF STATE HOMELAND SECURITY AUTHORITIES.—In accordance with regulations prescribed by the Secretary, each State may establish a State Homeland Security Authority to carry out this title.

"(b) APPLICATIONS.—

"(1) SUBMISSION.—Applications shall be submitted to the applicable State Homeland Security Authority.

"(2) EVALUATION.—After consultation with Federal, State, and local law enforcement authorities, the State Homeland Security Authority shall evaluate all applications using the criteria under section 1903 and transmit all qualifying applications to the Secretary ranked by severity of risk of international terrorist attack.

"(3) APPEAL.—An applicant may appeal the finding that an application is not a qualifying application to the Secretary under procedures that the Secretary shall issue by regulation not later than 90 days after the date of enactment of this title.

"SEC. 1907. SECURITY ENHANCEMENT AND TECHNICAL ASSISTANCE CONTRACTS AND LOAN GUARANTEES.

"(a) IN GENERAL.—Upon receipt of the applications, the Secretary shall select applications for execution of security enhancement and technical assistance contracts, or issuance of loan guarantees, giving preference to the nonprofit organizations determined to be at greatest risk of international terrorist attack based on criteria under section 1903.

"(b) SECURITY ENHANCEMENTS AND TECHNICAL ASSISTANCE; FOLLOWED BY LOAN GUARANTEES.—The Secretary shall execute security enhancement and technical assistance contracts for the highest priority applicants until available funds are expended, after which loan guarantees shall be made available for additional applicants determined to be at high risk, up to the authorized amount of loan guarantees. The Secretary may provide with respect to a single application a combination of such contracts and loan guarantees.

"(c) JOINT APPLICATIONS.—Special preference shall be given to joint applications submitted on behalf of multiple nonprofit organizations located in contiguous settings.

"(d) MAXIMIZING AVAILABLE FUNDS.—Subject to subsection (b), the Secretary shall execute security enhancement and technical assistance contracts in such amounts as to maximize the number of high-risk applicants nationwide receiving assistance under this title.

"(e) APPLICANT NOTIFICATION.—Upon selecting a nonprofit organization for assistance under this title, the Secretary shall notify the nonprofit organization that the Federal Government is prepared to enter into a contract with certified contractors to install specified security enhancements or provide specified technical assistance at the site of the nonprofit organization.

"(f) CERTIFIED CONTRACTORS.—

"(1) IN GENERAL.—Upon receiving a notification under subsection (e), the nonprofit organization shall select a certified contractor to perform the specified security enhancements, from a list of certified contractors issued and maintained by the Secretary under subsection (j).

"(2) LIST.—The list referred to in paragraph (1) shall be comprised of contractors selected on the basis of—

"(A) technical expertise;

"(B) performance record including quality and timeliness of work performed;

"(C) adequacy of employee criminal background checks; and

"(D) price competitiveness.

"(3) OTHER CERTIFIED CONTRACTORS.—The Secretary shall include on the list of certified contractors additional contractors selected by senior officials at State Homeland Security Authorities and the chief executives of county and other local jurisdictions. Such additional certified contractors shall be selected on the basis of the criteria under paragraph (2).

"(g) ENSURING THE AVAILABILITY OF CONTRACTORS.—If the list of certified contractors under this section does not include any contractors who can begin work on the security enhancements or technical assistance within 60 days after applicant notification, the nonprofit organization may submit a contractor not currently on the list to the Secretary for the Secretary's review. If the Secretary does not include the submitted contractor on the list of certified contractors within 60 days after the submission and does not place an alternative contractor on the list within the same time period (who would be available to begin the specified work within that 60-day period), the Secretary shall immediately place the submitted contractor on the list of certified contractors and such contractor shall remain on such list until—

"(1) the specified work is completed; or

"(2) the Secretary can show cause why such contractor may not retain certification, with such determinations subject to review by the Comptroller General of the United States.

"(h) CONTRACTS.—Upon selecting a certified contractor to provide security enhancements and technical assistance approved by the Secretary under this title, the nonprofit organization shall notify the Secretary of such selection. The Secretary shall deliver a contract to such contractor within 10 business days after such notification.

"(i) CONTRACTS FOR ADDITIONAL WORK OR UPGRADES.—A nonprofit organization, using its own funds, may enter into an additional contract with the certified contractor, for additional or upgraded security enhancements or technical assistance. Such additional contracts shall be separate contracts between the nonprofit organization and the contractor.

"(j) EXPEDITING ASSISTANCE.—In order to expedite assistance to nonprofit organizations, the Secretary shall—

"(1) compile a list of approved technical assistance and security enhancement activities within 45 days after the date of enactment of this title;

"(2) publish in the Federal Register within 60 days after such date of enactment a request for contractors to submit applications to be placed on the list of certified contractors under this section;

"(3) after consultation with the Secretary of the Treasury, publish in the Federal Register within 60 days after such date of enactment, prescribe regulations setting forth the conditions under which loan guarantees shall be issued under this title, including application procedures, expeditious review of applications, underwriting criteria, assignment of loan guarantees, modifications, commercial validity, defaults, and fees; and

"(4) publish in the Federal Register within 120 days after such date of enactment (and every 30 days thereafter) a list of certified contractors, including those selected by State Homeland Security Authorities, county, and local officials, with coverage of all 50 States, the District of Columbia, and the territories.

"SEC. 1908. LOCAL LAW ENFORCEMENT ASSISTANCE GRANTS.

"(a) IN GENERAL.—The Secretary may provide grants to units of local government to offset incremental costs associated with law enforcement in areas where there is a high concentration of nonprofit organizations.

"(b) USE.—Grant funds received under this section may be used only for personnel costs or for equipment needs specifically related to such incremental costs.

"(c) MAXIMIZATION OF IMPACT.—The Secretary shall award grants in such amounts as to maximize the impact of available funds in protecting nonprofit organizations nationwide from international terrorist attacks.

"SEC. 1909. OFFICE OF COMMUNITY RELATIONS AND CIVIC AFFAIRS.

"(a) IN GENERAL.—There is established within the Department, the Office of Community Relations and Civic Affairs to administer grant programs for nonprofit organizations and local law enforcement assistance.

"(b) ADDITIONAL RESPONSIBILITIES.—The Office of Community Relations and Civic Affairs shall—

"(1) coordinate community relations efforts of the Department;

"(2) serve as the official liaison of the Secretary to the nonprofit, human and social services, and faith-based communities; and

"(3) assist in coordinating the needs of those communities with the Citizen Corps program.

"SEC. 1910. AUTHORIZATION OF APPROPRIATIONS AND LOAN GUARANTEES.

"(a) NONPROFIT ORGANIZATIONS PROGRAM.—There are authorized to be appropriated to the Department to carry out the nonprofit organization program under this title, $100,000,000 for fiscal year 2005 and such sums as may be necessary for fiscal years 2006 and 2007.

"(b) LOCAL LAW ENFORCEMENT ASSISTANCE GRANTS.—There are authorized to be appropriated to the Department for local law enforcement assistance grants under section 1908, $50,000,000 for fiscal year 2005 and such sums as may be necessary for fiscal years 2006 and 2007.

"(c) OFFICE OF COMMUNITY RELATIONS AND CIVIC AFFAIRS.—There are authorized to be appropriated to the Department for the Office of Community Relations and Civic Affairs under section 1909, $5,000,000 for fiscal year 2005 and such sums as may be necessary for fiscal years 2006 and 2007.

"(d) LOAN GUARANTEES.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated in each of fiscal years 2005, 2006, and 2007, such amounts as may be required under the Federal Credit Act with respect to Federal loan guarantees authorized by this title, which shall remain available until expended.

"(2) LIMITATION.—The aggregate value of all loans for which loan guarantees are issued under this title by the Secretary may not exceed $250,000,000 in each of fiscal years 2005, 2006, and 2007.".

(d) CLERICAL AMENDMENT.—The table of contents under section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101(b)) is amended by adding at the end the following:

"TITLE XIX—PROTECTION OF CITIZENS AT HIGH-RISK NONPROFIT ORGANIZATIONS

"Sec. 1901. Definitions.
"Sec. 1902. Authority to enter into contracts and issue Federal loan guarantees.
"Sec. 1903. Eligibility criteria.
"Sec. 1904. Use of loan guarantees.
"Sec. 1905. Nonprofit organization applications.
"Sec. 1906. Review by State Homeland Security Authorities.
"Sec. 1907. Security enhancement and technical assistance contracts and loan guarantees.
"Sec. 1908. Local law enforcement assistance grants.
"Sec. 1909. Office of Community Relations and Civic Affairs.
"Sec. 1910. Authorization of appropriations and loan guarantees.".

PURPOSE AND SUMMARY

H.R. 3266, the "Faster and Smarter Funding for First Responders Act of 2004" would improve the effectiveness and efficiency with which the Department of Homeland Security ("DHS") issues grants to States, local governments, and first responders to prevent, prepare for, mitigate, and respond to terrorism.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 3266, the "Faster and Smarter Funding for First Responders Act of 2004," was introduced on October 8, 2003. The bill changes the criteria for distributing funding for two existing grant programs managed by the Office for Domestic Preparedness ("ODP"). Since 1998, ODP, as part of the Department of Homeland Security and previously as part of the Department of Justice, has had the mission of enhancing State and local capabilities for responding to terrorists using weapons of mass destruction ("WMD"). One of the two grant programs is the State Homeland Security grant program, which the Committee on the Judiciary authorized in the USA PATRIOT Act after the September 11, 2001 terrorist attacks. The other grant program is the Urban Area Security Initiative grant program, which was established in fiscal year 2003. The bill was introduced to improve the management of these grant

because of numerous complaints from State and local governments and first responder organizations that the money was not being distributed efficiently and effectively.

FOCUS ON TERRORISM PREPAREDNESS AND RESPONSE

The Judiciary Committee has long understood that State and local officials must be trained and assisted in the essential skills necessary to deal with a terrorist attack. While some argue that the grants should be provided for all hazards, a terrorist attack is a Federal crime and requires skills and training above and beyond those needed to deal with a natural disaster. ODP provides the needed funds for unique training, equipment, and technical assistance to all first responders in the event of a terrorist attack or a planned attack based on the unique needs for such an event. Prevention is one such unique need. Indeed, in its recently issued report, DHS's Task Force on State and Local Homeland Security Funding "strongly recommend[ed] that State and local governments consider allocating these and future resources to enhance the ability of State, county, municipal and tribal governments to detect and prevent future acts of terrorism." [1]

As a result of the Committee on the Judiciary's efforts, ODP coordinates and manages these programs. ODP, when it was part of the Department of Justice, was responsible for establishing Federal domestic preparedness programs and activities to assist State and local governments to prepare for, and respond to, terrorist incidents, including attacks involving weapons of mass destruction. In 2001, the Committee on the Judiciary, through the enactment of the USA PATRIOT Act (Public Law No. 107–56), authorized ODP (formerly the Office for State and Local Domestic Preparedness Support of the Office of Justice Programs) to provide State grants that enhance the capability of State and local jurisdictions to prepare for, and respond to, terrorist acts. The Committee on the Judiciary changed the name of this office to the Office of Domestic Preparedness in Public Law No. 107–273, the "21st Century Department of Justice Appropriations Authorization Act," and further authorized ODP. ODP was transferred from the Department of Justice to the Department of Homeland Security in H.R. 5005, the "Homeland Security Act," which became Public Law No. 107–296 on November 25, 2002.

THE STATE HOMELAND SECURITY GRANT PROGRAM

The State Homeland Security grant program provides direct financial assistance to each of the Nation's States and territories. The program is designed to enhance the capability of State and local agencies to prevent and respond to incidents of terrorism involving the use of chemical, biological, radiological, nuclear, or explosive weapons. Under the formula authorized in the USA PATRIOT Act, the DHS distributes three quarters of 1 percent (.75 %) of the amount appropriated for the program to each State. The remaining amount is distributed based upon population.

[1] U.S. Department of Homeland Security, the Homeland Security Advisory Council, A Report from the Task Force on State and Local Homeland Security Funding, p. 13 (June 2004).

THE URBAN AREA SECURITY INITIATIVE GRANT PROGRAM

Under the Urban Area Security Initiative grant program, the Department of Homeland Security selected urban areas based on a formula that considered such factors as critical infrastructure, population density, and credible threat information. Funding was based upon an urban area assessment and strategic plan. Eighty percent of the funds allocated to the State under this program had to be awarded to the designated cities and contiguous counties within the urban area based on the strategic plan. The State was authorized to use the remaining twenty percent for further security enhancements within the urban area.

CONSOLIDATION OF THE STATE HOMELAND SECURITY AND THE URBAN AREA SECURITY INITIATIVE GRANT PROGRAMS

H.R. 3266, as introduced, would authorize the DHS to consolidate the State Homeland Security and the Urban Area Security Initiative grant programs and replace the minimum formula and population based distribution with a funding distribution based on: (1) the degree to which applications would lessen the threats, vulnerabilities, and consequences of a terrorist attack; and (2) the degree to which applications demonstrate a valid need for such funding. The bill also directs the Secretary of DHS to establish "essential capabilities" that different types of communities should obtain to prepare for potential terrorist acts, and directs grant assistance to be utilized to build these essential capabilities in a measurable fashion. Under the bill, the States must disburse the grant money to local governments within 45 days or receiving the funds. The bill would increase total funding in fiscal year 2006 to $3.4 billion, and would expand the suggested list of activities covered by the grants to include covering the costs of additional personnel during heightened threat alerts and training activities. Another change would allow the Department to transfer funds directly to local recipients.

THE COMMITTEE AMENDMENTS TO H.R. 3266

The Grant Formula

The Committee supports robust funding for State and local first responders. First responders are most likely to confront a terrorist attack before any Federal official. According to the Appropriations committee website "Since September 11, 2001, $26.7 billion has been provided to first responders—including terrorism prevention and preparedness, general law enforcement, firefighter assistance, airport security, seaport security, and public health preparedness."[2] The Committee understands the limitation of resources and supports the efforts to consolidate the management of first responder grants under ODP. The Committee recognizes that the grants should be risk-based, but also realizes that the terrorist threat is flexible and will shift to targets not supported or protected. Often terrorists shift their focus from hard targets where security is enhanced to "soft targets" where security is weak. Our Nation's homeland security is only as strong as our weakest link.

[2] Highlights of the FY05 Homeland Security Appropriations Bill, website of House Committee on Appropriations, June 9th, 2004.

The terrorists conspire against the United States and its citizens, wherever they may reside. Just this week, a Somali immigrant was indicted for plotting to bomb a shopping center in America's heartland. The aim of terrorists is to kill innocent people and eliminate every aspect of our society; and if they cannot strike one area, due to a build-up in defenses, they will strike another. So, while our defenses must focus more on the areas with greater threats and vulnerabilities, we cannot afford to ignore any part of our Nation. We must cover our heartland, as well as our coastal cities. The 911 attacks demonstrated that when one area of our Nation is attacked, the entire Nation is affected—our relatives, our National and local economies, and our morale are harmed. The death grip of a terrorist attack that touches one State—touches the Nation. Thus, the Committee has amended H.R. 3266 to reflect the balance between the need to base the grants on threats and the need to protect the entire Nation against the shifting sites of terrorists.

Coverage of Territories and Indian Tribes

The security of Indian reservations and tribal lands against acts of terrorism must be considered by DHS and the States as part of their overall goal of protecting the American homeland against terrorism. The DHS must also consider security of the territories against acts of terrorism. H.R. 3266 as amended by the Committee on the Judiciary ensures such coverage. Similar to current law, the amended bill provides a base level of funding for the territories. Puerto Rico and the District of Columbia are treated as States. Indian Tribes are treated as described below.

The Committee has amended H.R. 3266 in recognition that, while the "Homeland Security Act of 2002" ("HSA") defines Indian Tribes as "local governments," they are in fact sovereign governments that should be respected in the development of Federal homeland security policy. While some Indian Tribes already possess sophisticated emergency management infrastructure, the Committee acknowledges that many Indian Tribes lack the administrative capability and the public safety infrastructure to administer grant funds directly under this title. Therefore, in section 1804 as amended, the Committee establishes a program to permit twenty "directly eligible Tribes" or consortia of tribes to receive covered grants from DHS. This program parallels that established for regions; it requires directly eligible Tribes to designate a liaison, to submit simultaneously its application to both DHS and to each State within the boundaries of which any part of that tribe is located and to submit an application consistent with any applicable State homeland security plan or plans.

The Committee, however, recognizes that the vast majority of Indian Tribes will not be eligible to receive direct grant funding. As a consequence, the Committee expects the States to treat Indian Tribes fairly in the grant process. In section 1804(c)(1)(D)(i) as amended, for example, the Committee directs States to consider tribal homeland security issues in their homeland security plans in the same manner as other entities defined as "local governments."

In section 1804(e)(6)(f) as amended, the Committee instructs States to treat Indian Tribes like any other entity defined as a "local government" in determining how to provide funds in accordance with those plans. Thus, Indian Tribes, like other entities de-

fined as "local governments" under the HSA, are eligible to receive grant funds as a pass-through to the extent consistent with any applicable State homeland security plan or plans. In addition, the Committee strongly anticipates that States will not place unreasonable conditions or restrictions on tribal receipt of grant funds, such as dividing tribal lands among different funding regions or districts or requiring loyalty oaths or waivers of sovereign immunity.

The Committee hopes that this program will result in an outcome analogous to that of the Tribal Self Governance Program established pursuant to the "Indian Self-Determination and Education Assistance Act of 1974." That program, which the Federal Government and Indian Tribes widely view as a success, not only represents a workable approach to enhancing tribal government capabilities, but also respects the government-to-government relationship between the United States and Indian Tribes. Finally, nothing in this title is intended to exclude Indian Tribes where the term "local government" is used on its own, because as noted above, under the HSA, Indian Tribes are included in the definition of "local government."

HEARINGS

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held one hearing on H.R. 3266 on November 20, 2003. Testimony was received from three witnesses: The Honorable Suzanne Mencer, Director of the Office for Domestic Preparedness in the Department of Homeland Security; the Honorable Raymond Kelly, Commissioner of Police for the City of New York; and Bill Bishop, Director of the Idaho Bureau of Homeland Security.

COMMITTEE CONSIDERATION

On June 16, 2004, the Committee on the Judiciary met in open session and ordered favorably reported the bill, H.R. 3266, as amended, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee consideration of H.R. 3266.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3266, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

H.R. 3266—Faster and Smarter Funding for First Responders Act of 2004

Summary: Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 3266 would cost about $3.5 billion over the 2005–2009 period and an additional $400 million after 2009. Enacting this bill would not affect direct spending or revenues.

H.R. 3266 would authorize the Secretary of the Department of Homeland Security (DHS) to change the criteria used to distribute funding for two existing first responder grant programs established after September 11, 2001—the State Homeland Security and the Urban Area Security Initiative grant programs. In addition, this bill would authorize the appropriation of $3.4 billion in 2006 for first responder grants.

H.R. 3266 would authorize the DHS to contract with appropriate companies to improve security at those 501(c)3 nonprofit organizations that are determined to be most vulnerable to potential terrorist attacks. In addition, the bill would establish a new loan guarantee program for all nonprofit organizations that might need additional security enhancements to protect them from terrorist attacks. The bill also would establish a grant program for local law enforcement agencies to offset costs associated with increased security in areas with a high concentration of nonprofit organizations. Finally, the bill would establish a new Office of Community Relations and Civic Affairs to administer the new security program for nonprofit organizations, among other duties.

H.R. 3266 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Assuming the authorized amount is fully appropriated, the bill would increase funding for existing aid programs while changing conditions for receiving those funds; any costs incurred by state, local, or tribal governments would be voluntary.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3266 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—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
First Responder Grant Program:					
Authorization Level	*	3,400	0	0	0
Estimated Outlays	*	510	1,020	918	578
Security Contracts for Nonprofit Organizations [1]:					
Estimated Authorization Level	100	100	100	0	0
Estimated Outlays	25	75	100	75	25
Loan Guarantees for Nonprofit Organizations:					
Estimated Authorization Level	13	13	13	0	0

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
Estimated Outlays	3	10	13	10	3
Law Enforcement Grants [1]:					
Estimated Authorization Level	50	50	50	0	0
Estimated Outlays	12	38	50	38	12
Office of Community Relations and Civic Affairs [1]:					
Estimated Authorization Level	5	5	5	0	0
Estimated Outlays	5	5	5	0	0
Total Changes:					
Estimated Authorization Level	168	3,568	168	0	0
Estimated Outlays	45	638	1,188	1,041	618

[1] The 2006 and 2007 levels assume these programs continue at the level authorized for 2005.

Note.—* = Costs of less than $500,000 for administrative changes that would be made by the bill.

Basis of estimate: For this estimate, CBO assumes that H.R. 3266 will be enacted near the end of fiscal year 2004 and that the necessary amounts will be appropriated in each year starting in 2005. Estimates of outlays are based on historical spending patterns of similar programs and information from the Department of Homeland Security. CBO estimates that implementing H.R. 3266 would cost about $3.5 billion over the 2005–2009 period and an additional $400 million after 2009.

First Responder Grants

Almost $10 billion has been appropriated for first responder grants since fiscal year 2003, including about $3 billion in fiscal year 2004. 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). That law authorized the appropriation of such sums as necessary for first responder grants through fiscal year 2007. H.R. 3266 would replace this authorization of appropriations with a one-year authorization of $3.4 billion in fiscal year 2006.

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 would follow historical spending patterns for existing state and local grant programs for emergency management activities. CBO estimates that implementing the first responder grant program would cost about $3 billion over the 2006–2009 period and nearly $400 million after 2009.

Under the State Homeland Security grant program, DHS distributes three-quarters of one percent of the amount appropriated for the program to each state. The remaining funds are distributed to states based on population. The Urban Area Security Initiative grant program provides funding to high-threat areas of the country. Under H.R. 3266, DHS would consolidate these two existing programs and distribute 0.25 percent of the grants to each state, 0.08 percent to U.S. territories, and 0.25 percent to eligible tribes. The rest of the funding would be distributed based on threats, vulnerabilities, and risk assessments for each state and locality. H.R. 3266 also would require states to disburse grant money to local governments within 45 days of receiving funds from the federal government, or states would face penalties as well as pay 25 percent of the total cost of the grant activities.

Security Contracts for Nonprofit Organizations

H.R. 3266 would authorize the DHS to contract with appropriate companies to improve security at those 501(c)(3) nonprofit organizations that are determined to be most vulnerable to potential terrorist attacks. Nonprofit organizations would have to meet certain criteria, such as providing services to at least 500 persons each year at a particular site, to be eligible for assistance under this bill. H.R. 3266 would authorize the appropriation of $100 million in 2005 and such sums as is necessary in 2006 and 2007 for these contracts. For this estimate, CBO assumes that amounts authorized to be appropriated in 2006 and 2007 would be equal to the 2005 authorization level. Assuming appropriation of the authorized funds, CBO estimates that implementing these security enhancement contracts would cost $300 million over the 2005–2009 period.

Loan Guarantees for Nonprofit Organizations

This legislation would establish a new loan guarantee program to improve security at nonprofit organizations. Under this new loan guarantee program, the federal government would insure loans, with at least a 25-year repayment term, made to such nonprofits to support security enhancements or to provide related training to employees. The legislation does not specify that any guarantee fees would be charged to the nonprofits or that there would not be any limitation on the percentage of the loan that would be insured by the federal government. Consequently, CBO assumes that DHS would insure up to 100 percent of the loan value and that the borrower would not be charged any guarantee fees.

This legislation would authorize the appropriation of such amounts as necessary for the cost of loan guarantees for 2005 through 2007 and would authorize a $250 million limitation on the cumulative value of the loans that may be guaranteed for each fiscal year. The new loan program would be considered a discretionary federal credit program that requires appropriation action each year to establish this loan limitation and to provide a credit subsidy appropriation for the cost of such loan guarantees.

Based on information from various nonprofit organizations, CBO assumes that nonprofit organizations face similar financial risks to those of small businesses. Using the Small Business Administration 7(a) program (i.e., the general business loan program) as a proxy, CBO assumes that, like small businesses, the default rate for loans made to nonprofit organizations would be about 10 percent and that recoveries on such losses would be about 50 percent. Using those assumptions, CBO estimates that the subsidy rate for the new loan guarantee program would be about 5 percent, and implementing this bill would cost $39 million over the next five years, assuming appropriation of the necessary amounts. (Note.—The 7(a) program has a smaller net subsidy because it includes up-front guarantee fees that offset some of the default costs.)

Law Enforcement Grants

H.R. 3266 would authorize DHS to provide grants to local law enforcement agencies in areas where there is a high concentration of nonprofit organizations. These grants would pay for increased costs associated with protecting these organizations. H.R. 3266 would authorize the appropriation of $50 million in 2005 and such

sums as is necessary in 2006 and 2007 for these grants. For this estimate, CBO assumes that the amount authorized to be appropriated in 2006 and 2007 would be equal to the 2005 authorization level. Assuming appropriation of the authorized funds, CBO estimates that providing these grants would cost $150 million over the 2005–2009 period.

Office of Community Relations and Civic Affairs

This bill would establish a new office within DHS to administer the new security enhancement program for nonprofit organizations. In addition, the office would coordinate community relations efforts for the department, serve as the liaison to nonprofit, social services, and faith-based organizations, and assist in coordinating the needs of those communities for the department's Citizen Corps program. H.R. 3266 would authorize the appropriation of $5 million in 2005 and such sums as necessary in 2006 and 2007 for this office. For this estimate, CBO assumes that amounts authorized to be appropriated in 2006 and 2007 would be equal to the 2005 authorization level. Assuming appropriation of the authorized funds, CBO estimates that this new office would cost $15 million over the 2005–2009 period.

Intergovernmental and private-sector impact: H.R. 3266 contains no intergovernmental or private-sector mandates as defined in UMRA but would make several changes to existing grant programs. First, it would consolidate at least two current programs—the State Homeland Security Grant and the Urban Area Security Initiative—and authorize the appropriation of $3.4 billion in fiscal year 2006. 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, total funding would increase. This bill also would expand eligible activities to include covering the costs of additional personnel during heightened threat alerts and training activities.

This bill also would authorize DHS to transfer funds directly to the local recipients, reduce the portion of the grant retained by the state, or impose additional restrictions if states fail to provide funds to local first responders in a timely manner. According to the grant requirements, states would be required to certify that they have provided 80 percent of the funds within 45 days of receipt. Funds that states may lose would be allocated to local jurisdictions. Any costs incurred by state, local, or tribal governments as a result of those changes to the grant programs would be voluntary.

Other provisions of the bill would require DHS to create, with input from local first responders and trade representatives, voluntary standards for equipment and training for first responders. The bill also would require DHS to revise the Homeland Security Advisory System to include geographic and economic-sector designations.

Previous CBO estimates: On July 16, 2003, CBO transmitted a cost estimate for S. 1245, the Homeland Security Grant Enhancement Act of 2003, as ordered reported by the Senate Committee on Governmental Affairs on June 17, 2003. On September 9, 2003, CBO transmitted a cost estimate for S. 930, the Emergency Preparedness and Response Act of 2003, as ordered reported by the

Senate Committee on Environment and Public Works on July 30, 2003. Both bills would authorize the appropriation of different grant amounts for first responders. S. 930 also would authorize grants for urban search and rescue task forces.

On March 30, 2004, CBO transmitted a cost estimate for H.R. 3266 as ordered reported by the House Select Committee on Homeland Security on March 18, 2004. On June 8, 2004, CBO transmitted a cost estimate for H.R. 3266 as ordered reported by the House Committee on Energy and Commerce on June 3, 2004. The versions of the legislation approved by those two committees are similar, and the cost estimates are identical.

On June 14, 2004, CBO transmitted a cost estimate for H.R. 3266, the Faster and Smarter Funding for First Responders Act of 2004, as ordered reported by the House Committee on Transportation and Infrastructure on June 2, 2004. This version would authorize the appropriation of funds over the 2006–2009 period, while the other versions of H.R. 3266 would authorize funding only for 2006.

The version approved by the House Committee on the Judiciary is similar to the version approved by the Select Committee on Homeland Security, but it would guarantee minimum funding for states, territories, and tribes. In addition, the version approved by the House Committee on the Judiciary includes new grant and loan guarantee programs to enhance security at high-risk nonprofit organizations. These new programs would cost about $500 million over the 2005–2009 period.

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

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

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee on the Judiciary agrees with the statement of the Select Committee on Homeland Security that H.R. 3266 is intended to "reform the manner in which the Department of Homeland Security issues grants to enhance the ability of States, local governments, and first responders to prevent, prepare for, mitigate, and respond to acts of terrorism; (2) to direct the Secretary of DHS to establish 'essential capabilities' that different types of communities should obtain in order to prepare for potential terrorist acts; (3) to improve the grant process by streamlining and speeding up the delivery of Federal grant assistance for first responders to build these essential capabilities in a measurable fashion; and (4) to establish a consolidated structure for evaluating and prioritizing grant applications based on the degree to which they would lessen the threat to, vulnerability of, and consequences for persons and critical infrastructure sectors in the event of a terrorist attack."[3]

[3] H.R. Rep. No. 108–460, Part I at 22.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, of the Constitution, which grants Congress the power to provide the common defense of the United States.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 1. Short title; table of contents. The short title is the "Faster and Smarter Funding for First Responders Act of 2004."

Sec. 2. Findings. The bill contains 13 finding of facts that: (1) the Department of Homeland Security must play a leading role in assisting communities to be prepared to respond to a terrorist attack; (2) first responder funding is not reaching communities fast enough; (3) the authority and procedures must be consolidated at the Department of Homeland Security; (4) there must be separate grant programs for terrorist preparedness and for the pre-9/11 missions; (5) homeland security grants must be based on best intelligence to target resources to the Nation's greatest risks, vulnerabilities, and consequences; (6) sharing resources, training, planning, personnel, and equipment between neighboring jurisdictions will improve first response capabilities; (7) well defined National goals are essential to achieve the Nation's homeland security objectives; (8) a National determination of essential capabilities is needed to identify levels of preparedness by State and local governments to respond to terrorism and the needs of those governments; (9) the Department should fund first responders to meet Nationwide needs to allow States to attain essential capabilities; (10) private sector resources and citizen volunteers can perform critical functions to help prevent and respond to terrorist attacks and should be part of the State and local government plans to prepare for such attacks; (11) public-private partnerships can be useful to identify and coordinate private sector support for State and local first responders; (12) measurability is an important component of National standards to determine the level of preparedness of States and localities; and (13) the Department of Homeland Security should establish, publish, and regularly update National voluntary consensus standards for both training and equipment, in cooperation with both public and private sector standard setting organizations to assist States and localities.

Sec. 3. Faster and Smarter Funding for First Responders. This section amends the "Homeland Security Act of 2002" (Public Law No. 107–296; 6 U.S.C. § 361 et seq.) by adding a new title XVIII—Funding for First Responders. There are seven sections under this new title, which authorize a first responder grant program that would replace the program authorized in the USA PATRIOT Act.

> *Section 1801. Faster and smarter funding for first responders.* This section describes that the grants covered are the State Homeland Security Grant Program and the Urban Area Security Information Program. This section also states that grants excluded are any Federal grant program not administered by the Department of Homeland Security, the Fire Grant Program, and the Emergency Management Planning and Assistance grants.

Section 1802. Essential capabilities for first responders. This section requires the Secretary to establish clearly defined "essential capabilities" for State and local government preparedness for terrorism. Essential capabilities are defined as the levels, availability, and competence of emergency personnel, planning, training, and equipment to effectively prevent, prepare for, and respond to acts of terrorism under § 1807. Determining essential capabilities will help communities determine what planning, training, equipment, and other capabilities are needed to respond effectively to the specific risks faced by the different States and regions.

This section also lists areas that may be threatened or vulnerable. Subparagraph (c)(2) specifically provides a list of critical infrastructure to determine essential capabilities. The Committee added courts and justice facilities as well as ports and containers to this list.

Section 1803. Task force on essential capabilities for first responders. This section requires the Secretary to establish a Task Force on Essential Capabilities for First Responders to make recommendations for the essential capabilities that State and local governments should possess to prevent attacks; protect persons and critical infrastructure; enhance terrorism preparedness; and enhance terrorism response capabilities.

This section provides a list of threats against the population that may be considered in determining critical infrastructure. For instance, the list includes biological, nuclear, and chemical threats. The Task Force report making these recommendations is to be based upon the most current risk assessment of the threats against the U.S. by the Directorate for Information Analysis and Infrastructure Protection.

Under this section, the report should include a priority ranking of essential capabilities; a methodology for States and localities to determine whether essential capabilities have been met; a description of the availability of national voluntary consensus standards for equipment and training; and any additional matters specified by the Secretary.

This section also provides that members of the Task Force shall receive appropriate security clearances. Each member shall serve for a term not to exceed 18 months and be limited to two terms. The Members shall include first responders, health scientists, medical providers, and public health officials. Additionally the membership shall include standard setting experts from Federal, State, and local governments and the private sector. State and local experts on terrorism preparedness shall also be represented.

The Federal Advisory Committee Act shall apply to the Task Force.

Section 1804. Covered grant eligibility and criteria. This section sets the grant criteria and eligibility. Any State or region is eligible to apply for a covered grant.

A grant may not be awarded unless the Secretary has approved the applicable State homeland security plan. A State must submit a 3-year homeland security plan that:

(1) demonstrates the extent to which a State has achieved essential capabilities and describes the extent to which

the State used the methodology under § 1803(b)(4)(B) to evaluate the level of essential capabilities;

(2) demonstrates what the State needs additionally to achieve essential capabilities;

(3) includes prioritization of additional needs based on threat, vulnerability, and consequence assessments;

(4) describes how the State plans to address additional needs at all levels of local government; and

(5) was developed in consultation with local government.

The Secretary shall ensure each covered grant awarded is used to supplement and support the applicable State homeland security plan.

This section allows for regions to apply for a grant. The region must simultaneously submit its application to the Department and to each State covered by the region. Each State is provided an opportunity to comment on the consistency of a region's grant with the State's homeland security plan before the Secretary awards a region a grant.

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 multipurpose 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 also 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. The Committee recognizes that these Regional Councils may already be in a unique position to fill a void in planning and in 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.

This section also establishes the "First Responder Grants Board." This Board consists of the Secretary, who serves as the Chairman; the Under Secretaries for Emergency Preparedness and Response, Border and Transportation Security, Information Analysis and Infrastructure Protection, and Science and Technology; and the Director of the Office for Domestic Preparedness.

The Board shall evaluate and prioritize all current grant applications and seek to enhance essential capabilities throughout the Nation.

The Committee amended this section to include a new method of distribution and a guaranteed minimum that would en-

sure that *all* States, Indian Tribes and territories receive a guaranteed amount of funding. Nevertheless, these changes will not preclude the Department of Homeland Security from consolidating the State Homeland Security and the Urban Area Security Initiative Grant Programs as proposed under H.R. 3266 or from allocating grants based on threats, vulnerabilities, and consequences for States and localities.

Specifically, the Committee amended this section in two distinct ways. First, the Committee revised how the Department of Homeland Security allocates the grants. Under the State Homeland Security Grant Program, the DHS provides each applicant with its guaranteed minimum and then allocates a second distribution of the remaining funds to each State on a population basis. As amended by the Committee, the Department fo Homeland Security would first allocate such grants based on risk and then provide additional funds for those applicants that have not met the minimum guaranteed threshold. Second, the Committee revised the minimum formula. The minimum base level will be .25 percent of the total funds allocated to each State. This percentage was a compromise between the current States with high-risk of terrorism and the more rural States that may have a lower risk of terrorism.

Thus, for example, if the minimum equals $10 million for each State, the revised formula (*i.e.,* the new distribution method and minimums) would work as follows:

> If the Department of Homeland Security finds that 40 States qualify for funds greater than the $10 million minimum, then such States would not receive any additional funds. If the Department determines that the other 10 States qualify for only $5 million based on a risk assessment, then each State would receive an additional $5 million to ensure that they receive the minimum determined necessary for adequate protection. Thus, only 10 States, in this hypothetical, would receive an amount allocated without regard to risk compared to the current formula where all States receive an amount allocated without regard to risk.

Accordingly, this amendment gives each State a base level of funding so that every State is equipped to fight terrorism. This amendment also recognizes that various locales face varying threat levels and therefore, allocates funds to areas based upon threats, vulnerabilities, and consequences. These threats, vulnerabilities, and consequences are forever changing and shifting.

The Committee also wanted to emphasize the importance of focusing on threat and amended the bill to ensure that the Department weighs threats above all other criteria.

Section 1805. Use of funds and accountability requirements. This section provides a list for which the grants may be used and a list of prohibited uses. The list is non-exclusive. The section authorizes the Secretary to provide funds for other appropriate uses. Appropriate use of funds could, for example, be used to purchase medical training equipment. The funds could also be used to assist with the cost of building a cruise ship screening facility required by the U.S. Customs to screen passengers as they disembark from cruise ships. The Directors of

the CIA and the FBI have both recently stated that al Qaeda has shifted its focus to "soft targets." Cruise ships could be the target of such attacks as they have been in the past. Cruise ships could also transport terrorists to our shores.

This section also requires the States to pass through 80 percent of the funds to local governments, first responders, and other local groups. Section 1805 of the Act requires States to pass through not less than 80 percent of the grant funds "to local governments, first responders, and other local groups, to the extent required under State homeland security plan or plans specified in the application of plans. . . ." In most jurisdictions, the public safety and first responder structure is operated on a county or local jurisdiction level with a support role by State government. In a few jurisdictions, however, such as the Commonwealth of Puerto Rico, the primary responsibility for public safety services including police, fire, emergency medical services, and HAZ-Mat, are principally operated on a jurisdiction wide basis by professional employees—in Puerto Rico's case, by professional employees of Commonwealth agencies. In such a jurisdiction, the grantee passing through grant funds authorized by this legislation of such "first responder" agencies meets the requirements of this section.

Additionally, the bill requires cost sharing with the Federal share not to exceed 75 percent. The cost sharing will not begin for 2 years after the date of enactment. This section also allows for in-kind matching to meet the matching requirement. This means in-kind contributions of goods and services that are directly linked with the purpose for which a grant is made may be used for matching.

This section contains penalties for failing to pass through the required amount within 45 days after receiving funds under the grant. The Governor of a State may request in writing an extension for an additional 15 days.

This section also requires the Secretary of Homeland Security to report to Congress annually on the program.

Section 1806. National standards for first responder equipment and training. This section requires the Secretary, in consultation with the Under Secretary for Science and Technology and the Director of the Office for Domestic Preparedness, shall, not later than 6 months after the date of enactment of this section, support the development of, promulgate, and update as necessary National voluntary consensus standards for the performance and use of first responder equipment and training. For equipment standards, the bill provides that the standards shall be, to the maximum extent practicable, consistent with any existing voluntary consensus standards. Additionally, the bill States that the Secretary shall consult with relevant public and private sector groups in establishing National voluntary consensus standards and provide a non-exclusive list. The bill addresses new standards for first responders. Specifically, section 1806(c) enumerates the associations with which the Department should consult when developing voluntary consensus standards for first responder equipment and training. The Committee amended this section by adding the International Safety Equipment Association (ISEA), the trade association for

manufacturers of protective equipment, to the list of associations. The Committee believes that manufacturers of protective equipment would add vital insight on the limitations and feasibilities of products and technologies.

The bill also specifies categories of equipment and training to be considered first responder equipment and training.

Section 1807. Definitions. This section defines "Task Force," "Board," "Covered Grant," "Elevations in the Threat Alert Level," "Essential Capabilities," "First Responder," and "Region."

Sec. 4. Modification of Homeland Security Advisory System. The bill would require the Secretary to revise the Homeland Security Advisory System to require that any designation of a threat level or other warning be accompanied by a designation of the geographic regions or economic sectors to which the designation applies. This section would also require the Secretary to report to Congress annually regarding the geographic region-specific or economic sector-specific warnings issued during the preceding fiscal year.

Sec. 5. Coordination of industry efforts. This section amends section 102(f) of the Homeland Security Act of 2002 (6 U.S.C. § 112(f)), which required the Secretary to appoint a Special Assistant to the Secretary who shall be responsible for coordination of the Department's mission and responsibility with that of the Private Sector. This section would add that the Special Assistant would coordinate industry efforts "to identify private sector resources and capabilities that could be effective in supplementing Federal, State, and local government agency efforts to prevent or respond to a terrorist attack."

Sec. 6. Superseded provision. This section states that the bill supersedes section 1014 of the USA PATRIOT Act, which created the State Homeland Security Grant program.

Sec. 7. Sense of Congress regarding interoperable communications. This section states it is the sense of the Congress "that interoperable emergency communications systems that to the extent possible meet National voluntary consensus standards should be developed and promulgated as soon as practicable for use by the first responder community." One pressing issue that first responders and the Federal Government must resolve is the issue of interoperability. In the Committee on the Judiciary's Fiscal Year 2004 Budget Views and Estimates, the Committee expressed its support for the Department of Homeland Security assistance to states and localities to resolve the issue of interoperability.

The Committee believes that first responders should receive Federal support to resolve interoperability in its efforts to prevent, prepare for, and respond to terrorist attacks. Interoperability means first responders can communicate with other first responders when it is necessary. Communications may not be interoperable because local police, firefighters, and emergency workers are unable to exchange voice and data communications. There are various reasons for this problem, including antiquated equipment, incompatible systems, a lack of funding, and a fragmented spectrum.

Sec. 8. Sense of Congress regarding Citizens Corps. This section provides that "individual Citizen Corps councils should seek to enhance the preparedness and response capabilities of all organiza-

tions participating in the councils, including by providing funding to as many of their participating organizations as practicable to promote local terrorism preparedness programs."

Sec. 9. Study Regarding Nationwide Emergency Notification System. This section states that the Secretary of Homeland Security and other Federal agents shall conduct a study to see if it is feasible to implement an emergency telephonic alert notification system to alert US citizens of terrorist attacks and provide them with safety information. This section also provides various technologies for the Secretary to consider and requests a report within 9 months of the Act's enactment regarding the conclusions of the study.

Sec. 10. Authorization of appropriations. This section authorizes to be appropriated to the Secretary $3.4 billion for fiscal year 2006 for the grants.

Sec. 11. Authority to enter into contracts and issue Federal loan guarantees. The Committee added this section. This section would authorize the Secretary of Homeland Security to provide $100 million in security assistance in FY 2004 to 501(c)(3) organizations that demonstrate they are at a high risk of a terrorist attack based upon specific threats of international terrorist organizations; prior attacks against similarly situated organizations by international terrorists; the vulnerability of the specific site; the symbolic value of the site as a highly recognized American institution; or the role of the institution in responding to terrorist attacks. After the funds have been expended for the highest risk institutions, Federal loan guarantees would be available to make loans available on favorable terms. Funds would be administered by a new office in the Department dedicated to working with high-risk non-profits.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

* * * * * * *

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

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203. Homeland Security Advisory System.

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TITLE XVIII—FUNDING FOR FIRST RESPONDERS

1801. Faster and smarter funding for first responders.

1802. Essential capabilities for first responders.
1803. Task Force on Essential Capabilities for First Responders.
1804. Covered grant eligibility and criteria.
1805. Use of funds and accountability requirements.
1806. National standards for first responder equipment and training.
1807. Definitions.

TITLE XIX—PROTECTION OF CITIZENS AT HIGH-RISK NONPROFIT ORGANIZATIONS

Sec. 1901. Definitions.
Sec. 1902. Authority to enter into contracts and issue Federal loan guarantees.
Sec. 1903. Eligibility criteria.
Sec. 1904. Use of loan guarantees.
Sec. 1905. Nonprofit organization applications.
Sec. 1906. Review by State Homeland Security Authorities.
Sec. 1907. Security enhancement and technical assistance contracts and loan guarantees.
Sec. 1908. Local law enforcement assistance grants.
Sec. 1909. Office of Community Relations and Civic Affairs.
Sec. 1910. Authorization of appropriations and loan guarantees.

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) * * *

* * * * * * *

(6) The term "emergency response providers" includes Federal, State, and local emergency public safety, law enforcement, *fire,* emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.

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TITLE I—DEPARTMENT OF HOMELAND SECURITY

* * * * * * *

SEC. 102. SECRETARY; FUNCTIONS.

(a) * * *

* * * * * * *

(f) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

(1) * * *

* * * * * * *

(6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges; **[**and**]**

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure**[**.**]***; and*

(8) coordinating industry efforts to identify private sector resources and capabilities that could be effective in supplementing Federal, State, and local government agency efforts to prevent or respond to a terrorist attack.

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TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

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SEC. 203. HOMELAND SECURITY ADVISORY SYSTEM.

(a) IN GENERAL.—The Secretary shall revise the Homeland Security Advisory System referred to in section 201(d)(7) to require that any designation of a threat level or other warning shall be accompanied by a designation of the geographic regions or economic sectors to which the designation applies.

(b) REPORTS.—The Secretary shall report to the Congress annually by not later than December 31 each year regarding the geographic region-specific warnings and economic sector-specific warnings issued during the preceding fiscal year under the Homeland Security Advisory System referred to in section 201(d)(7), and the bases for such warnings. The report shall be submitted in unclassified form and may, as necessary, include a classified annex.

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TITLE XVIII—FUNDING FOR FIRST RESPONDERS

SEC. 1801. FASTER AND SMARTER FUNDING FOR FIRST RESPONDERS.

(a) COVERED GRANTS.—This title applies to any grant provided by the Department to States, regions, or directly eligible tribes to improve the ability of first responders to prevent, prepare for, respond to, or mitigate threatened or actual terrorist attacks, especially those involving weapons of mass destruction, and including any grant under the following:

(1) STATE HOMELAND SECURITY GRANT PROGRAM.—The State Homeland Security Grant Program of the Department, or any successor to such grant program.

(2) URBAN AREA SECURITY INITIATIVE.—The Urban Area Security Initiative of the Department, or any successor to such grant program.

(b) EXCLUDED PROGRAMS.—This title does not apply to or otherwise affect the following Federal grant programs or any grant under such a program:

(1) NONDEPARTMENT PROGRAMS.—Any Federal grant program that is not administered by the Department.

(2) FIRE GRANT PROGRAMS.—The fire grant programs authorized by sections 33 and 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229, 2229a).

(3) EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE ACCOUNT GRANTS.—The Emergency Management Performance Grant program and the Urban Search and Rescue Grants program authorized by title VI of the Robert T. Stafford Disaster

Relief and Emergency Assistance Act (42 U.S.C. 5195 et seq.); the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (113 Stat. 1047 et seq.); and the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.).

SEC. 1802. ESSENTIAL CAPABILITIES FOR FIRST RESPONDERS.

(a) ESTABLISHMENT OF ESSENTIAL CAPABILITIES.—

(1) IN GENERAL.—The Secretary shall establish clearly defined essential capabilities for State and local government preparedness for terrorism, in consultation with—

(A) the Task Force on Essential Capabilities for First Responders established under section 1803;

(B) the Under Secretaries for Emergency Preparedness and Response, Border and Transportation Security, Information Analysis and Infrastructure Protection, and Science and Technology, and the Director of the Office for Domestic Preparedness;

(C) other appropriate Federal agencies;

(D) State and local first responder agencies and officials; and

(E) groups responsible for setting standards relevant to the first responder community.

(2) DEADLINES.—The Secretary shall—

(A) establish essential capabilities under paragraph (1) within 30 days after receipt of the initial submission of a final report under section 1803(c)(2); and

(B) regularly update such essential capabilities as necessary, but not less than every 3 years.

(3) PROVISION OF ESSENTIAL CAPABILITIES.—The Secretary shall ensure that essential capabilities established under paragraph (1) are provided promptly to the States and to the Congress. The States shall make the essential capabilities available as necessary and appropriate to local governments within their jurisdictions.

(b) OBJECTIVES.—The Secretary shall ensure that essential capabilities established under subsection (a)(1) meet the following objectives:

(1) SPECIFICITY.—The determination of essential capabilities specifically shall describe the training, planning, personnel, and equipment that different types of communities in the Nation should possess, or to which they should have access, in order to meet the Department's goals for terrorism preparedness based upon—

(A) the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States; and

(B) the types of threats, vulnerabilities, geography, size, and other factors that the Secretary has determined to be applicable to each different type of community.

(2) FLEXIBILITY.—The establishment of essential capabilities shall be sufficiently flexible to allow State and local government officials to set priorities based on particular needs, while reaching nationally determined terrorism preparedness levels within a specified time period.

(3) MEASURABILITY.—The establishment of essential capabilities shall be designed to enable measurement of progress towards specific terrorism preparedness goals.

(c) THREATS TO BE CONSIDERED.—

(1) IN GENERAL.—In establishing essential capabilities under subsection (a)(1), the Secretary specifically shall consider the variables of threat, vulnerability, and consequences with respect to the Nation's population (including transient commuting and tourist populations) and critical infrastructure. Such consideration shall be based upon the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States.

(2) CRITICAL INFRASTRUCTURE SECTORS.—The Secretary specifically shall consider threats of terrorism against the following critical infrastructure sectors in all areas of the Nation, urban and rural:

(A) Agriculture.
(B) Banking and finance.
(C) Chemical industries.
(D) The defense industrial base.
(E) Emergency services.
(F) Energy.
(G) Food.
(H) Government.
(I) Postal and shipping.
(J) Public health.
(K) Information and telecommunications networks.
(L) Transportation, ports, and containers.
(M) Water.
(N) Courts and justice facilities.

The order in which the critical infrastructure sectors are listed in this paragraph shall not be construed as an order of priority for consideration of the importance of such sectors.

(3) CONSIDERATION OF ADDITIONAL THREATS.—In establishing essential capabilities under subsection (a)(1), the Secretary shall take into account any other specific threat to a population (including a transient commuting or tourist population) or critical infrastructure sector that the Secretary has determined to exist.

SEC. 1803. TASK FORCE ON ESSENTIAL CAPABILITIES FOR FIRST RESPONDERS.

(a) ESTABLISHMENT.—To assist the Secretary in establishing essential capabilities under section 1802(a)(1), the Secretary shall establish an advisory body to be known as the Task Force on Essential Capabilities for First Responders not later than 60 days after the date of the enactment of this section.

(b) DRAFT REPORT.—

(1) IN GENERAL.—The Task Force shall submit to the Secretary, not later than one year after its establishment by the Secretary under subsection (a) and every 3 years thereafter, a draft report on its recommendations for the essential capabilities all State and local government first responders should possess, or to which they should have access, to enhance terrorism preparedness, including—

(A) to prevent a terrorist attack;

(B) to protect persons and critical infrastructure against attack; and

(C) to enhance terrorism response and mitigation capabilities if such an attack occurs.

(2) THREATS TO BE CONSIDERED IN DETERMINING ESSENTIAL CAPABILITIES.—

(A) IN GENERAL.—In reporting to the Secretary on its recommendations for essential capabilities, the Task Force specifically shall consider the critical infrastructure sectors described in section 1802(c)(2), and the threats to populations in all areas of the Nation, urban and rural, including the following:

(i) Biological threats.

(ii) Nuclear threats.

(iii) Radiological threats.

(iv) Incendiary threats.

(v) Chemical threats.

(vi) Explosives.

(vii) Suicide bombers.

(viii) Cyber threats.

(ix) Any other threats based on proximity to specific past acts of terrorism or the known activity of any terrorist group.

(B) NO PRIORITY.—The order in which the threats are listed in subparagraph (A) shall not be construed as an order of priority for consideration of the importance of such threats.

(3) RISK-BASED.—The draft report shall be based upon the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States provided to the Task Force pursuant to subsection (d).

(4) CONTENTS.—The draft report shall—

(A) include a priority ranking of essential capabilities, in order to provide guidance to the Secretary and to the Congress on determining the appropriate allocation of, and funding levels for, first responder needs;

(B) set forth a methodology by which any State or local government will be able to determine the extent to which it possesses or has access to the essential capabilities that States and local governments having similar risks should obtain;

(C) describe the availability of national voluntary consensus standards, and whether there is a need for new national voluntary consensus standards, with respect to first responder training and equipment;

(D) include such additional matters as the Secretary may specify in order to further the terrorism preparedness capabilities of first responders; and

(E) include such revisions to the contents of past reports as are necessary to take into account changes in the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection or other relevant information as determined by the Secretary.

(c) REVIEW AND REVISION OF DRAFT REPORT.—

(1) REVIEW AND COMMENTS.—Within 30 days after the date of the submission of the draft report by the Task Force under subsection (b), the Secretary shall review and provide comments to the Task Force on the contents of the draft report.

(2) REVISION AND SUBMISSION OF FINAL REPORT.—Within 30 days after receiving the Secretary's comments, the Task Force shall—

(A) revise its draft report based on the comments provided by the Secretary, and any other comments it has solicited and received, if the Task Force determines that such revisions are appropriate; and

(B) submit the final report on essential capabilities to the Secretary and to the Congress.

(d) TASK FORCE ACCESS TO INFORMATION.—

(1) SECURITY CLEARANCES.—For purposes of carrying out its responsibilities under this section, the Task Force shall be provided as a matter of priority appropriate security clearances, including interim security clearances.

(2) ACCESS TO FINISHED INTELLIGENCE.—For purposes of carrying out its responsibilities under this section, the Task Force shall be provided access to all finished intelligence and analytic products it may request from the Directorate for Information Analysis and Infrastructure Protection or other sources within the Department concerning the nature and likelihood of terrorist attacks on the territory of the United States.

(3) ACCESS TO ASSESSMENT TOOLS.—For purposes of carrying out its responsibilities under this section, the Task Force shall be provided access to all tools or methodologies currently or formerly used by the Department and its predecessor organizations to assess the preparedness capabilities of State and local governments.

(4) VALID CLEARANCES.—Nothing in this section shall be considered to authorize a member of the Task Force to have access to classified information unless that member possesses a valid clearance to receive such information.

(e) MEMBERSHIP.—

(1) IN GENERAL.—The Task Force shall consist of 25 members appointed by the Secretary, and shall—

(A) represent a cross section of first responder disciplines; and

(B) include both State and local representatives within each discipline.

(2) TERM OF MEMBERS.—Each appointed member of the Task Force shall serve for a term not to exceed 18 months. No individual may be appointed as a member of the Task Force for more than 2 terms.

(3) SELECTION OF MEMBERS.—The Secretary shall include in the membership of the Task Force—

(A) members selected from the emergency response field, including firefighters and law enforcement, hazardous materials response, emergency medical services, and emergency management personnel (including public works personnel routinely engaged in emergency response);

(B) health scientists, emergency and inpatient medical providers, and public health professionals, including ex-

perts in emergency health care response to chemical, biological, radiological, and nuclear terrorism, and experts in providing mental health care during emergency response operations;

(C) experts from Federal, State, and local governments, and the private sector, representing standards-setting organizations, including representation from the voluntary consensus codes and standards development community, particularly those with expertise in firefighting, law enforcement, and emergency medical services delivery; and

(D) State and local officials with expertise in terrorism preparedness, subject to the condition that if any such officials are elected officials, an equal number shall be selected from each of the two major political parties.

(4) EX OFFICIO MEMBERS.—The Secretary shall designate one or more officers of the Department to serve as ex officio members of the Task Force, one of whom shall be the designated officer of the Federal Government for purposes of subsection (e) of section 10 of the Federal Advisory Committee Act.

(5) DIVERSITY IN COMPOSITION OF TASK FORCE.—In appointing members to the Task Force, the Secretary shall ensure, to the extent practicable, that its membership—

(A) is geographically diverse;

(B) includes representatives from both rural and urban jurisdictions;

(C) includes representatives from both management and labor;

(D) includes representatives from both uniformed and nonuniformed professions;

(E) includes representatives from both voluntary and professional services;

(F) includes representatives from both government and nongovernment emergency medical services; and

(G) includes sufficient personnel with security clearances necessary to review classified materials that may be needed to conduct the business of the Task Force.

(6) CHAIR.—At the first meeting of the Task Force, the membership of the Task Force appointed under paragraph (3) shall elect a chair of the Task Force.

(f) MEETINGS.—The Task Force shall meet as often as necessary to complete reports in accordance with this section.

(g) PAY.—

(1) IN GENERAL.—Members of the Task Force shall serve without pay by reason of their work on the Task Force.

(2) FEDERAL OFFICERS AND EMPLOYEES.—Members of the Task Force who are officers or employees of the United States shall receive no additional pay by reason of their service as a member of the Task Force.

(h) TRAVEL EXPENSES.—Members of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Task Force.

(i) SERVICES, FUNDS, AND STAFF.—The Secretary shall provide to the Task Force, on a non-reimbursable basis, such administrative services, funds, staff, facilities, and other support services as the Secretary determines necessary, in consultation with the chair of the Task Force, for the Task Force to perform its duties efficiently and in accordance with this section.

(j) DETAILS.—Upon the request of the Task Force, the Secretary may detail, without reimbursement, any personnel of the Department to assist the Task Force in carrying out its duties. Any such detail of an employee shall be without interruption or loss of civil service status or privilege.

(k) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.), including subsections (a), (b), and (d) of section 10 of such Act, and section 552b(c) of title 5, United States Code, shall apply to the Task Force.

SEC. 1804. COVERED GRANT ELIGIBILITY AND CRITERIA.

(a) GRANT ELIGIBILITY.—Any State, region, or directly eligible tribe shall be eligible to apply for a covered grant.

(b) AWARDING GRANTS.—

(1) CRITERIA.—In awarding covered grants, the Secretary shall assist States and local governments in achieving the essential capabilities for first responders established by the Secretary under section 1802.

(2) THREAT ASSESSMENTS.—In assessing threats for purposes of awarding covered grants, the credibility of the threat shall be weighted more than population concentration or critical infrastructure or any other consideration.

(c) STATE HOMELAND SECURITY PLANS.—

(1) SUBMISSION OF PLANS.—The Secretary shall require that any State applying to the Secretary for a covered grant must submit to the Secretary a 3-year State homeland security plan that—

(A) demonstrates the extent to which the State has achieved the essential capabilities that apply to the State, and describes the extent to which the State used the methodology developed pursuant to section 1803(b)(4)(B) to evaluate the level of its essential capabilities;

(B) demonstrates the additional needs of the State necessary to achieve the essential capabilities that apply to the State;

(C) includes a prioritization of such additional needs based on threat, vulnerability, and consequence assessment factors applicable to the State;

(D) describes how the State intends—

(i) to address such additional needs at the city, county, regional, State, and interstate level, and with respect to any Indian tribes within its boundaries;

(ii) to use all Federal, State, and local resources available for the purpose of addressing such additional needs; and

(iii) to give particular emphasis to regional planning and cooperation, both within its jurisdictional borders and with neighboring States; and

(E) is developed in consultation with and subject to appropriate comment by local governments within the State.

(2) APPROVAL BY SECRETARY.—The Secretary may not award any covered grant to a State unless the Secretary has approved the applicable State homeland security plan.

(d) CONSISTENCY WITH STATE PLANS.—The Secretary shall ensure that each covered grant is used to supplement and support, in a consistent and coordinated manner, the applicable State homeland security plan or plans.

(e) APPLICATION FOR GRANT.—

(1) IN GENERAL.—Any State, region, or directly eligible tribe may apply for a covered grant by submitting to the Secretary an application at such time, in such manner, and containing such information as is required under this subsection, or as the Secretary may reasonably require.

(2) DEADLINES FOR APPLICATIONS AND AWARDS.—All applications for covered grants must be submitted to the Secretary no later than February 15 of the fiscal year for which they are submitted. The Secretary shall award covered grants pursuant to all approved applications for such fiscal year as soon as practicable, but not later than July 31 of such year.

(3) AVAILABILITY OF FUNDS.—All funds awarded by the Secretary under covered grants in a fiscal year shall be available for obligation through the end of the subsequent fiscal year.

(4) MINIMUM CONTENTS OF APPLICATION.—The Secretary shall require that each applicant include in its application, at a minimum—

(A) the purpose for which the applicant seeks covered grant funds and the reasons why the applicant needs the covered grant to meet the essential capabilities for terrorism preparedness within the boundaries of the State, region, or directly eligible tribe to which the application pertains;

(B) a description of how, by reference to the applicable State homeland security plan or plans under subsection (c), the allocation of grant funding proposed in the application, including, where applicable, the amount not passed through under section 1805(e)(1), would assist in fulfilling the essential capabilities specified in such plan or plans;

(C) a statement of whether a mutual aid agreement applies to the use of all or any portion of the covered grant funds;

(D) if the applicant is a region—

(i) a precise geographical description of the region and a specification of all participating and nonparticipating local governments within the geographical area comprising that region;

(ii) a specification of what governmental entity within the region will administer the expenditure of funds under the covered grant; and

(iii) a designation of a specific individual to serve as regional liaison;

(E) if the applicant is a directly eligible tribe, a designation of a specific individual to serve as tribal liaison;

(F) a capital budget showing how the applicant intends to allocate and expend the covered grant funds; and

(G) a statement of how the applicant intends to meet the matching requirement, if any, that applies under section 1805(e)(2).

(5) REGIONAL APPLICATIONS.—

(A) SUBMISSION TO STATE OR STATES.—To ensure the consistency required under subsection (d), an applicant that is a region must simultaneously submit its application to the Department and to each State of which any part is included in the region.

(B) OPPORTUNITY FOR STATE COMMENT.—Before awarding any covered grant to a region, the Secretary shall provide an opportunity to each State of which any part is included in a region, during the 30-day period beginning on the date on which the region submits an application for a covered grant, to comment to the Secretary on the consistency of the region's plan with the State's homeland security plan.

(C) FINAL AUTHORITY.—The Secretary shall have final authority to determine the consistency of any regional application with the applicable State homeland security plan or plans and approve any regional application. The Secretary shall notify each State of which any part is included in a region of the approval of a regional application for that region.

(D) REGIONAL LIAISONS.—A regional liaison designated under paragraph (4)(D)(iii) shall—

(i) coordinate with Federal, State, local, regional, and private officials within the region concerning terrorism preparedness;

(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials within the region to assist in the development of the regional application and to improve the region's access to covered grants; and

(iii) administer, in consultation with State, local, regional, and private officials within the region, covered grants awarded to the region.

(6) TRIBAL APPLICATIONS.—

(A) SUBMISSION TO STATE OR STATES.—To ensure the consistency required under subsection (d), an applicant that is a directly eligible tribe must simultaneously submit its application to the Department and to each State within the boundaries of which any part of that tribe is located.

(B) OPPORTUNITY FOR STATE COMMENT.—Before awarding any covered grant to a directly eligible tribe, the Secretary shall provide an opportunity to each State within the boundaries of which any part of that tribe is located, during the 30-day period beginning on the date on which the tribe submits an application for a covered grant, to comment to the Secretary on the consistency of the tribe's plan with the State's homeland security plan.

(C) FINAL AUTHORITY.—The Secretary shall have final authority to determine the consistency of any application of a directly eligible tribe with the applicable State homeland security plan or plans and approve any application of that

tribe. The Secretary shall notify each State within the boundaries of which any part of that tribe is located of the approval of an application of that tribe.

(D) TRIBAL LIAISON.—A tribal liaison designated under paragraph (4)(E) shall—

(i) coordinate with Federal, State, local, regional, and private officials concerning terrorism preparedness;

(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials to assist in the development of the application of that tribe and to improve the tribe's access to covered grants; and

(iii) administer, in consultation with State, local, regional, and private officials, covered grants awarded to that tribe.

(E) LIMITATION ON NUMBER OF DIRECT GRANTS.—The Secretary may make covered grants directly to not more than 20 directly eligible tribes per fiscal year.

(F) TRIBES NOT RECEIVING DIRECT GRANTS.—An Indian tribe not receiving a grant directly under this section is eligible to receive funds under a covered grant from the State or States within the boundaries of which any part of that tribe is located, consistent with the homeland security plan of the State as described in subsection (c). If a State fails to comply with section 1805(e)(1), the tribe is entitled to pursue the procedures set forth in section 1805(f)(3) to the extent applicable.

(7) EQUIPMENT STANDARDS.—If an applicant for a covered grant proposes to upgrade or purchase, with assistance provided under the grant, new equipment or systems that do not meet or exceed any applicable national voluntary consensus standards established by the Secretary under section 1806(a), the applicant shall include in the application an explanation of why such equipment or systems will serve the needs of the applicant better than equipment or systems that meet or exceed such standards.

(f) FIRST RESPONDER GRANTS BOARD.—

(1) ESTABLISHMENT OF BOARD.—The Secretary shall establish a First Responder Grants Board, consisting of—

(A) the Secretary;

(B) the Under Secretary for Emergency Preparedness and Response;

(C) the Under Secretary for Border and Transportation Security;

(D) the Under Secretary for Information Analysis and Infrastructure Protection;

(E) the Under Secretary for Science and Technology; and

(F) the Director of the Office for Domestic Preparedness.

(2) CHAIRMAN.—

(A) IN GENERAL.—The Secretary shall be the Chairman of the Board.

(B) EXERCISE OF AUTHORITIES BY DEPUTY SECRETARY.—The Deputy Secretary of Homeland Security may exercise the authorities of the Chairman, if the Secretary so directs.

(3) RANKING OF GRANT APPLICATIONS.—

(A) PRIORITIZATION OF GRANTS.—The Board shall evaluate and annually prioritize all pending applications for covered grants based upon the degree to which they would lessen the threat to, vulnerability of, and consequences for persons and critical infrastructure.

(B) ACHIEVING NATIONWIDE CAPABILITY.—In evaluating and prioritizing grant applications under subparagraph (A), the Board shall seek to achieve and enhance essential capabilities throughout the Nation.

(C) MINIMUM AMOUNTS.—After evaluating and prioritizing grant applications under subparagraph (A), the Board shall ensure that, for each fiscal year—

(i) the States, the District of Columbia, and the Commonwealth of Puerto Rico each receive no less than 0.25 percent of the funds available for covered grants for that fiscal year for purposes of implementing its homeland security plan in accordance with the prioritization of additional needs under subsection (c)(1)(C);

(ii) the United States Virgin Islands, America Samoa, Guam, and the Northern Mariana Islands each receive no less than 0.08 percent of the funds available for covered grants for that fiscal year for purposes of implementing its homeland security plan in accordance with the prioritization of additional needs under subsection (c)(1)(C); and

(iii) directly eligible tribes under section 1807(8) collectively receive no less than 0.25 percent of the funds available for covered grants for that fiscal year for purposes of addressing needs identified in the applications of such tribes, consistent with the homeland security plan of each State within the boundaries of which any part of any such tribe is located.

(4) FUNCTIONS OF UNDER SECRETARIES.—The Under Secretaries referred to in paragraph (1) shall seek to ensure that the relevant expertise and input of the staff of their directorates are available to and considered by the Board.

SEC. 1805. USE OF FUNDS AND ACCOUNTABILITY REQUIREMENTS.

(a) IN GENERAL.—A covered grant may be used for—

(1) purchasing or upgrading equipment, including computer software, to enhance terrorism preparedness and response;

(2) exercises to strengthen terrorism preparedness and response;

(3) training for prevention (including detection) of, preparedness for, or response to attacks involving weapons of mass destruction, including training in the use of equipment and computer software;

(4) developing or updating response plans;

(5) establishing or enhancing mechanisms for sharing terrorism threat information pursuant to this Act;

(6) systems architecture and engineering, program planning and management, strategy formulation and strategic planning, life-cycle systems design, product and technology evaluation,

and prototype development for terrorism preparedness and response purposes;

(7) additional personnel costs resulting from—

(A) elevations in the threat alert level of the Homeland Security Advisory System;

(B) travel to and participation in exercises and training in the use of equipment and on prevention activities; and

(C) the temporary replacement of personnel during any period of travel to and participation in exercises and training in the use of equipment and on prevention activities;

(8) the costs of equipment (including software) required to receive, transmit, handle, and store classified information;

(9) enhancing facilities to serve as operations centers, or hardening critical infrastructure against potential attack by the addition of barriers, fences, gates, and other such devices;

(10) the costs of commercially available equipment that complies with, where applicable, national voluntary consensus standards, and that facilitates interoperability, coordination, and integration between emergency communications systems, including—

(A) mobile vehicles that contain equipment such as commercial telephone trunk lines, VHF and UHF radios, patch panels, and crosspatches, among other technologies and equipment; and

(B) communications system overlay software and hardware that allow multiple disparate communications networks to act as one network;

(11) educational curricula development for first responders to ensure that they are prepared for terrorist attacks;

(12) training and exercises to assist public elementary and secondary schools in developing and implementing programs to instruct students regarding age-appropriate skills to prepare for and respond to an act of terrorism; and

(13) other appropriate activities as determined by the Secretary.

(b) PROHIBITED USES.—Funds provided as a covered grant may not be used—

(1) to supplant State or local funds for, or otherwise support, traditional missions of State and local law enforcement, firefighters, emergency medical services, or public health agencies, unless such support serves a dual purpose and the funds are primarily intended to enhance terrorism preparedness;

(2) to acquire land; or

(3) for any State or local government cost sharing contribution.

(c) ASSISTANCE REQUIREMENT.—The Secretary may not request that equipment paid for, wholly or in part, with funds provided as a covered grant be made available for responding to emergencies in surrounding States, regions, and localities, unless the Secretary undertakes to pay the costs directly attributable to transporting and operating such equipment during such response.

(d) FLEXIBILITY IN UNSPENT HOMELAND SECURITY GRANT FUNDS.—Upon request by the recipient of a covered grant, the Secretary may authorize the grantee to transfer all or part of funds provided as the covered grant from uses specified in the grant agree-

ment to other uses authorized under this section, if the Secretary determines that such transfer is in the interests of homeland security.

(e) STATE, REGIONAL, AND TRIBAL RESPONSIBILITIES.—

(1) PASS-THROUGH.—The Secretary shall require a recipient of a covered grant that is a State to obligate or otherwise make available to local governments, first responders, and other local groups, to the extent required under the State homeland security plan or plans specified in the application for the grant, not less than 80 percent of the grant funds, resources purchased with the grant funds having a value equal to at least 80 percent of the amount of the grant, or a combination thereof, by not later than the end of the 45-day period beginning on the date the grant recipient receives the grant funds.

(2) COST SHARING.—

(A) IN GENERAL.—The Federal share of the costs of an activity carried out with a covered grant to a State, region, or directly eligible tribe awarded after the 2-year period beginning on the date of the enactment of this section shall not exceed 75 percent.

(B) INTERIM RULE.—The Federal share of the costs of an activity carried out with a covered grant awarded before the end of the 2-year period beginning on the date of the enactment of this section shall be 100 percent.

(C) IN-KIND MATCHING.—Each recipient of a covered grant may meet the matching requirement under subparagraph (A) by making in-kind contributions of goods or services that are directly linked with the purpose for which the grant is made, including, but not limited to, any necessary personnel overtime, contractor services, administrative costs, equipment fuel and maintenance, and rental space.

(3) CERTIFICATIONS REGARDING DISTRIBUTION OF GRANT FUNDS TO LOCAL GOVERNMENTS.—Any State that receives a covered grant shall certify to the Secretary, by not later than 30 days after the expiration of the period described in paragraph (1) with respect to the grant, that the State has made available for expenditure by local governments, first responders, and other local groups the required amount of grant funds pursuant to paragraph (1).

(4) ANNUAL REPORT ON HOMELAND SECURITY SPENDING.—Each recipient of a covered grant shall submit a report to the Secretary not later than 60 days after the end of each fiscal year. Each recipient of a covered grant that is a region must simultaneously submit its report to each State of which any part is included in the region. Each recipient of a covered grant that is a directly eligible tribe must simultaneously submits its report to each State within the boundaries of which any part of such tribe is located. Each report must include the following:

(A) The amount, ultimate recipients, and dates of receipt of all funds received under the grant during the previous fiscal year.

(B) The amount and the dates of disbursements of all such funds expended in compliance with paragraph (1) or pursuant to mutual aid agreements or other sharing arrangements that apply within the State, region, or directly eligible tribe, as applicable, during the previous fiscal year.

(C) How the funds were utilized by each ultimate recipient or beneficiary during the preceding fiscal year.

(D) The extent to which essential capabilities identified in the applicable State homeland security plan or plans were achieved or enhanced as the result of the expenditure of grant funds during the preceding fiscal year.

(E) The extent to which essential capabilities identified in the applicable State homeland security plan or plans remain unmet.

(5) INCLUSION OF RESTRICTED ANNEXES.—A recipient of a covered grant may submit to the Secretary an annex to the report under paragraph (4) that is subject to appropriate handling restrictions, if the recipient believes that discussion in the report of unmet needs would reveal sensitive but unclassified information.

(6) PROVISION OF REPORTS.—The Secretary shall ensure that each report under paragraph (4) is provided to the Under Secretary for Emergency Preparedness and Response and the Director of the Office for Domestic Preparedness.

(f) INCENTIVES TO EFFICIENT ADMINISTRATION OF HOMELAND SECURITY GRANTS.—

(1) PENALTIES FOR DELAY IN PASSING THROUGH LOCAL SHARE.—If a recipient of a covered grant that is a State fails to pass through to local governments, first responders, and other local groups funds or resources required by subsection (e)(1) within 45 days after receiving funds under the grant, the Secretary may—

(A) reduce grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (e)(1);

(B) terminate payment of funds under the grant to the recipient, and transfer the appropriate portion of those funds directly to local first responders that were intended to receive funding under that grant; or

(C) impose additional restrictions or burdens on the recipient's use of funds under the grant, which may include—

(i) prohibiting use of such funds to pay the grant recipient's grant-related overtime or other expenses;

(ii) requiring the grant recipient to distribute to local government beneficiaries all or a portion of grant funds that are not required to be passed through under subsection (e)(1); or

(iii) for each day that the grant recipient fails to pass through funds or resources in accordance with subsection (e)(1), reducing grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (e)(1), except that the total amount of such reduction may not exceed 20 percent of the total amount of the grant.

(2) EXTENSION OF PERIOD.—The Governor of a State may request in writing that the Secretary extend the 45-day period under paragraph (1) for an additional 15-day period. The Secretary may approve such a request, and may extend such period for additional 15-day periods, if the Secretary determines that the resulting delay in providing grant funding to the local gov-

ernment entities that will receive funding under the grant will not have a significant detrimental impact on such entities' terrorism preparedness efforts.

(3) PROVISION OF NON-LOCAL SHARE TO LOCAL GOVERNMENT.—

(A) IN GENERAL.—The Secretary may upon request by a local government pay to the local government a portion of the amount of a covered grant awarded to a State in which the local government is located, if—

(i) the local government will use the amount paid to expedite planned enhancements to its terrorism preparedness as described in any applicable State homeland security plan or plans;

(ii) the State has failed to pass through funds or resources in accordance with subsection (e)(1); and

(iii) the local government complies with subparagraphs (B) and (C).

(B) SHOWING REQUIRED.—To receive a payment under this paragraph, a local government must demonstrate that—

(i) it is identified explicitly as an ultimate recipient or intended beneficiary in the approved grant application;

(ii) it was intended by the grantee to receive a severable portion of the overall grant for a specific purpose that is identified in the grant application;

(iii) it petitioned the grantee for the funds or resources after expiration of the period within which the funds or resources were required to be passed through under subsection (e)(1); and

(iv) it did not receive the portion of the overall grant that was earmarked or designated for its use or benefit.

(C) EFFECT OF PAYMENT.—Payment of grant funds to a local government under this paragraph—

(i) shall not affect any payment to another local government under this paragraph; and

(ii) shall not prejudice consideration of a request for payment under this paragraph that is submitted by another local government.

(D) DEADLINE FOR ACTION BY SECRETARY.—The Secretary shall approve or disapprove each request for payment under this paragraph by not later than 15 days after the date the request is received by the Department.

(g) REPORTS TO CONGRESS.—The Secretary shall submit an annual report to the Congress by December 31 of each year—

(1) describing in detail the amount of Federal funds provided as covered grants that were directed to each State and region in the preceding fiscal year;

(2) containing information on the use of such grant funds by grantees; and

(3) describing, on a nationwide and State-by-State basis—

(A) the extent to which essential capabilities identified in applicable State homeland security plan or plans were created or enhanced as the result of the expenditure of covered grant funds during the preceding fiscal year;

(B) the extent to which essential capabilities identified in applicable State homeland security plan or plans remain unmet; and

(C) an estimate of the amount of Federal, State, and local expenditures required to attain across the United States the essential capabilities established under section 1802(a).

SEC. 1806. NATIONAL STANDARDS FOR FIRST RESPONDER EQUIPMENT AND TRAINING.

(a) EQUIPMENT STANDARDS.—

(1) IN GENERAL.—The Secretary, in consultation with the Under Secretary for Science and Technology and the Director of the Office for Domestic Preparedness, shall, not later than 6 months after the date of enactment of this section, support the development of, promulgate, and update as necessary national voluntary consensus standards for the performance, use, and validation of first responder equipment for purposes of section 1804(e)(7). Such standards—

(A) shall be, to the maximum extent practicable, consistent with any existing voluntary consensus standards;

(B) shall take into account, as appropriate, new types of terrorism threats that may not have been contemplated when such existing standards were developed; and

(C) shall be focused on maximizing interoperability, interchangeability, durability, flexibility, efficiency, efficacy, portability, sustainability, and safety.

(2) REQUIRED CATEGORIES.—In carrying out paragraph (1), the Secretary shall specifically consider the following categories of first responder equipment:

(A) Thermal imaging equipment.

(B) Radiation detection and analysis equipment.

(C) Biological detection and analysis equipment.

(D) Chemical detection and analysis equipment.

(E) Decontamination and sterilization equipment.

(F) Personal protective equipment, including garments, boots, gloves, and hoods and other protective clothing.

(G) Respiratory protection equipment.

(H) Interoperable communications, including wireless and wireline voice, video, and data networks.

(I) Explosive mitigation devices and explosive detection and analysis equipment.

(J) Containment vessels.

(K) Contaminant-resistant vehicles.

(L) Such other equipment for which the Secretary determines that national voluntary consensus standards would be appropriate.

(b) TRAINING STANDARDS.—

(1) IN GENERAL.—The Secretary, in consultation with the Under Secretaries for Emergency Preparedness and Response and Science and Technology and the Director of the Office for Domestic Preparedness, shall support the development of, promulgate, and regularly update as necessary national voluntary consensus standards for first responder training carried out with amounts provided under covered grant programs, that will enable State and local government first responders to achieve optimal levels of terrorism preparedness as quickly as prac-

ticable. Such standards shall give priority to providing training to—

(A) enable first responders to prevent, prepare for, respond to, and mitigate terrorist threats, including threats from chemical, biological, nuclear, and radiological weapons and explosive devices capable of inflicting significant human casualties; and

(B) familiarize first responders with the proper use of equipment, including software, developed pursuant to the standards established under subsection (a).

(2) REQUIRED CATEGORIES.—In carrying out paragraph (1), the Secretary specifically shall include the following categories of first responder activities:

(A) Regional planning.

(B) Joint exercises.

(C) Intelligence collection, analysis, and sharing.

(D) Emergency notification of affected populations.

(E) Detection of biological, nuclear, radiological, and chemical weapons of mass destruction.

(F) Such other activities for which the Secretary determines that national voluntary consensus training standards would be appropriate.

(c) CONSULTATION WITH STANDARDS ORGANIZATIONS.—In establishing national voluntary consensus standards for first responder equipment and training under this section, the Secretary shall consult with relevant public and private sector groups, including—

(1) the National Institute of Standards and Technology;

(2) the National Fire Protection Association;

(3) the National Association of County and City Health Officials;

(4) the Association of State and Territorial Health Officials;

(5) the American National Standards Institute;

(6) the National Institute of Justice;

(7) the Inter-Agency Board for Equipment Standardization and Interoperability;

(8) the National Public Health Performance Standards Program;

(9) the National Institute for Occupational Safety and Health;

(10) ASTM International;

(11) the International Safety Equipment Association (ISEA); and

(12) to the extent the Secretary considers appropriate, other national voluntary consensus standards development organizations, other interested Federal, State, and local agencies, and other interested persons.

SEC. 1807. DEFINITIONS.

In this title:

(1) BOARD.—The term "Board" means the First Responder Grants Board established under section 1804(f).

(2) COVERED GRANT.—The term "covered grant" means any grant to which this title applies under section 1801.

(3) ELEVATIONS IN THE THREAT ALERT LEVEL.—The term "elevations in the threat alert level" means any designation (including those that are less than national in scope) that raises the homeland security threat level to either the highest or second

highest threat level under the Homeland Security Advisory System referred to in section 201(d)(7).

(4) ESSENTIAL CAPABILITIES.—The term "essential capabilities" means the levels, availability, and competence of emergency personnel, planning, training, and equipment across a variety of disciplines needed to effectively and efficiently prevent, prepare for, and respond to acts of terrorism consistent with established practices.

(5) REGION.—The term "region" means—

(A) any geographic area consisting of all or parts of 2 or more contiguous States, counties, municipalities, or other local governments that have a combined population of at least 1,650,000 or have an area of not less than 20,000 square miles, and that, for purposes of an application for a covered grant, is represented by 1 or more governments or governmental agencies within such geographic area, and that is established by law or by agreement of 2 or more such governments or governmental agencies in a mutual aid agreement; or

(B) any other combination of contiguous local government units (including such a combination established by law or agreement of two or more governments or governmental agencies in a mutual aid agreement) that is formally certified by the Secretary as a region for purposes of this Act with the consent of—

(i) the State or States in which they are located, including a multi-State entity established by a compact between two or more States; and

(ii) the incorporated municipalities, counties, and parishes which they encompass.

(6) TASK FORCE.—The term "Task Force" means the Task Force on Essential Capabilities for First Responders established under section 1803.

(7) FIRST RESPONDER.—The term "first responder" shall have the same meaning as the term "emergency response provider".

(8) DIRECTLY ELIGIBLE TRIBE.—The term "directly eligible tribe" means any Indian tribe or consortium of Indian tribes that—

(A) meets the criteria to participate in Self-Governance set forth in section 402(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458bb(c));

(B) employs at least 10 full-time personnel in a law enforcement or emergency response agency with the capacity to respond to calls for law enforcement or emergency services; and

(C)(i) is located on, or within 5 miles of, an international border or waterway;

(ii) is located within 5 miles of a facility within a critical infrastructure sector identified in section 1802(c)(2);

(iii) is located within or contiguous to one of the 50 largest metropolitan statistical areas; or

(iv) has more than 1,000 square miles of Indian country, as described in section 1151 of title 18, United States Code.

TITLE XIX—PROTECTION OF CITIZENS AT HIGH-RISK NONPROFIT ORGANIZATIONS

SEC. 1901. DEFINITIONS.

In this title:

(1) CONTRACT.—The term "contract" means a contract between the Federal Government and a contractor selected from the list of certified contractors to perform security enhancements or provide technical assistance approved by the Secretary under this title.

(2) FAVORABLE REPAYMENT TERMS.—The term "favorable repayment terms" means the repayment terms of loans offered to nonprofit organizations under this title that—

(A) are determined by the Secretary, in consultation with the Secretary of the Treasury, to be favorable under current market conditions;

(B) have interest rates at least 1 full percentage point below the market rate; and

(C) provide for repayment over a term not less than 25 years.

(3) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means an organization that—

(A) is described under section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; and

(B) is designated by the Secretary under section 1903(a).

(4) SECURITY ENHANCEMENTS.—The term "security enhancements"—

(A) means the purchase and installation of security equipment in real property (including buildings and improvements), owned or leased by a nonprofit organization, specifically in response to the risk of attack at a nonprofit organization by an international terrorist organization;

(B) includes software security measures; and

(C) does not include enhancements that would otherwise have been reasonably necessary due to nonterrorist threats.

(5) TECHNICAL ASSISTANCE.—The term "technical assistance"—

(A) means guidance, assessment, recommendations, and any other provision of information or expertise which assists nonprofit organizations in—

(i) identifying security needs;

(ii) purchasing and installing security enhancements;

(iii) training employees to use and maintain security enhancements; or

(iv) training employees to recognize and respond to international terrorist threats; and

(B) does not include technical assistance that would otherwise have been reasonably necessary due to nonterrorist threats.

SEC. 1902. AUTHORITY TO ENTER INTO CONTRACTS AND ISSUE FEDERAL LOAN GUARANTEES.

(a) IN GENERAL.—The Secretary may—

(1) enter into contracts with certified contractors for security enhancements and technical assistance for nonprofit organizations; and

(2) issue Federal loan guarantees to financial institutions in connection with loans made by such institutions to nonprofit organizations for security enhancements and technical assistance.

(b) LOANS.—The Secretary may guarantee loans under this title—

(1) only to the extent provided for in advance by appropriations Acts; and

(2) only to the extent such loans have favorable repayment terms.

SEC. 1903. ELIGIBILITY CRITERIA.

(a) IN GENERAL.—The Secretary shall designate nonprofit organizations as high-risk nonprofit organizations eligible for contracts or loans under this title based on the vulnerability of the specific site of the nonprofit organization to international terrorist attacks.

(b) VULNERABILITY DETERMINATION.—In determining vulnerability to international terrorist attacks and eligibility for security enhancements or technical assistance under this title, the Secretary shall consider—

(1) threats of international terrorist organizations (as designated by the State Department) against any group of United States citizens who operate or are the principal beneficiaries or users of the nonprofit organization;

(2) prior attacks, within or outside the United States, by international terrorist organizations against the nonprofit organization or entities associated with or similarly situated as the nonprofit organization;

(3) the symbolic value of the site as a highly recognized United States cultural or historical institution that renders the site a possible target of international terrorism;

(4) the role of the nonprofit organization in responding to international terrorist attacks; and

(5) any recommendations of the applicable State Homeland Security Authority established under section 1906 or Federal, State, and local law enforcement authorities.

(c) DOCUMENTATION.—In order to be eligible for security enhancements, technical assistance or loan guarantees under this title, the nonprofit organization shall provide the Secretary with documentation that—

(1) the nonprofit organization hosted a gathering of at least 100 or more persons at least once each month at the nonprofit organization site during the preceding 12 months; or

(2) the nonprofit organization provides services to at least 500 persons each year at the nonprofit organization site.

(d) TECHNICAL ASSISTANCE ORGANIZATIONS.—If 2 or more nonprofit organizations establish another nonprofit organization to provide technical assistance, that established organization shall be eligible to receive security enhancements and technical assistance under this title based upon the collective risk of the nonprofit organizations it serves.

SEC. 1904. USE OF LOAN GUARANTEES.

Funds borrowed from lending institutions, which are guaranteed by the Federal Government under this title, may be used for technical assistance and security enhancements.

SEC. 1905. NONPROFIT ORGANIZATION APPLICATIONS.

(a) IN GENERAL.—A nonprofit organization desiring assistance under this title shall submit a separate application for each specific site needing security enhancements or technical assistance.

(b) CONTENT.—Each application shall include—

(1) a detailed request for security enhancements and technical assistance, from a list of approved enhancements and assistance issued by the Secretary under this title;

(2) a description of the intended uses of funds to be borrowed under Federal loan guarantees; and

(3) such other information as the Secretary shall require.

(c) JOINT APPLICATION.—Two or more nonprofit organizations located on contiguous sites may submit a joint application.

SEC. 1906. REVIEW BY STATE HOMELAND SECURITY AUTHORITIES.

(a) ESTABLISHMENT OF STATE HOMELAND SECURITY AUTHORITIES.—In accordance with regulations prescribed by the Secretary, each State may establish a State Homeland Security Authority to carry out this title.

(b) APPLICATIONS.—

(1) SUBMISSION.—Applications shall be submitted to the applicable State Homeland Security Authority.

(2) EVALUATION.—After consultation with Federal, State, and local law enforcement authorities, the State Homeland Security Authority shall evaluate all applications using the criteria under section 1903 and transmit all qualifying applications to the Secretary ranked by severity of risk of international terrorist attack.

(3) APPEAL.—An applicant may appeal the finding that an application is not a qualifying application to the Secretary under procedures that the Secretary shall issue by regulation not later than 90 days after the date of enactment of this title.

SEC. 1907. SECURITY ENHANCEMENT AND TECHNICAL ASSISTANCE CONTRACTS AND LOAN GUARANTEES.

(a) IN GENERAL.—Upon receipt of the applications, the Secretary shall select applications for execution of security enhancement and technical assistance contracts, or issuance of loan guarantees, giving preference to the nonprofit organizations determined to be at greatest risk of international terrorist attack based on criteria under section 1903.

(b) SECURITY ENHANCEMENTS AND TECHNICAL ASSISTANCE; FOLLOWED BY LOAN GUARANTEES.—The Secretary shall execute security enhancement and technical assistance contracts for the highest priority applicants until available funds are expended, after which loan guarantees shall be made available for additional applicants determined to be at high risk, up to the authorized amount of loan guarantees. The Secretary may provide with respect to a single application a combination of such contracts and loan guarantees.

(c) JOINT APPLICATIONS.—Special preference shall be given to joint applications submitted on behalf of multiple nonprofit organizations located in contiguous settings.

(d) MAXIMIZING AVAILABLE FUNDS.—Subject to subsection (b), the Secretary shall execute security enhancement and technical assistance contracts in such amounts as to maximize the number of high-risk applicants nationwide receiving assistance under this title.

(e) APPLICANT NOTIFICATION.—Upon selecting a nonprofit organization for assistance under this title, the Secretary shall notify the nonprofit organization that the Federal Government is prepared to enter into a contract with certified contractors to install specified security enhancements or provide specified technical assistance at the site of the nonprofit organization.

(f) CERTIFIED CONTRACTORS.—

(1) IN GENERAL.—Upon receiving a notification under subsection (e), the nonprofit organization shall select a certified contractor to perform the specified security enhancements, from a list of certified contractors issued and maintained by the Secretary under subsection (j).

(2) LIST.—The list referred to in paragraph (1) shall be comprised of contractors selected on the basis of—

(A) technical expertise;

(B) performance record including quality and timeliness of work performed;

(C) adequacy of employee criminal background checks; and

(D) price competitiveness.

(3) OTHER CERTIFIED CONTRACTORS.—The Secretary shall include on the list of certified contractors additional contractors selected by senior officials at State Homeland Security Authorities and the chief executives of county and other local jurisdictions. Such additional certified contractors shall be selected on the basis of the criteria under paragraph (2).

(g) ENSURING THE AVAILABILITY OF CONTRACTORS.—If the list of certified contractors under this section does not include any contractors who can begin work on the security enhancements or technical assistance within 60 days after applicant notification, the nonprofit organization may submit a contractor not currently on the list to the Secretary for the Secretary's review. If the Secretary does not include the submitted contractor on the list of certified contractors within 60 days after the submission and does not place an alternative contractor on the list within the same time period (who would be available to begin the specified work within that 60-day period), the Secretary shall immediately place the submitted contractor on the list of certified contractors and such contractor shall remain on such list until—

(1) the specified work is completed; or

(2) the Secretary can show cause why such contractor may not retain certification, with such determinations subject to review by the Comptroller General of the United States.

(h) CONTRACTS.—Upon selecting a certified contractor to provide security enhancements and technical assistance approved by the Secretary under this title, the nonprofit organization shall notify the Secretary of such selection. The Secretary shall deliver a contract to such contractor within 10 business days after such notification.

(i) CONTRACTS FOR ADDITIONAL WORK OR UPGRADES.—A nonprofit organization, using its own funds, may enter into an additional contract with the certified contractor, for additional or up-

graded security enhancements or technical assistance. Such additional contracts shall be separate contracts between the nonprofit organization and the contractor.

(j) EXPEDITING ASSISTANCE.—In order to expedite assistance to nonprofit organizations, the Secretary shall—

(1) compile a list of approved technical assistance and security enhancement activities within 45 days after the date of enactment of this title;

(2) publish in the Federal Register within 60 days after such date of enactment a request for contractors to submit applications to be placed on the list of certified contractors under this section;

(3) after consultation with the Secretary of the Treasury, publish in the Federal Register within 60 days after such date of enactment, prescribe regulations setting forth the conditions under which loan guarantees shall be issued under this title, including application procedures, expeditious review of applications, underwriting criteria, assignment of loan guarantees, modifications, commercial validity, defaults, and fees; and

(4) publish in the Federal Register within 120 days after such date of enactment (and every 30 days thereafter) a list of certified contractors, including those selected by State Homeland Security Authorities, county, and local officials, with coverage of all 50 States, the District of Columbia, and the territories.

SEC. 1908. LOCAL LAW ENFORCEMENT ASSISTANCE GRANTS.

(a) IN GENERAL.—The Secretary may provide grants to units of local government to offset incremental costs associated with law enforcement in areas where there is a high concentration of nonprofit organizations.

(b) USE.—Grant funds received under this section may be used only for personnel costs or for equipment needs specifically related to such incremental costs.

(c) MAXIMIZATION OF IMPACT.—The Secretary shall award grants in such amounts as to maximize the impact of available funds in protecting nonprofit organizations nationwide from international terrorist attacks.

SEC. 1909. OFFICE OF COMMUNITY RELATIONS AND CIVIC AFFAIRS.

(a) IN GENERAL.—There is established within the Department, the Office of Community Relations and Civic Affairs to administer grant programs for nonprofit organizations and local law enforcement assistance.

(b) ADDITIONAL RESPONSIBILITIES.—The Office of Community Relations and Civic Affairs shall—

(1) coordinate community relations efforts of the Department;

(2) serve as the official liaison of the Secretary to the nonprofit, human and social services, and faith-based communities; and

(3) assist in coordinating the needs of those communities with the Citizen Corps program.

SEC. 1910. AUTHORIZATION OF APPROPRIATIONS AND LOAN GUARANTEES.

(a) NONPROFIT ORGANIZATIONS PROGRAM.—There are authorized to be appropriated to the Department to carry out the nonprofit organization program under this title, $100,000,000 for fiscal year

2005 and such sums as may be necessary for fiscal years 2006 and 2007.

(b) LOCAL LAW ENFORCEMENT ASSISTANCE GRANTS.—There are authorized to be appropriated to the Department for local law enforcement assistance grants under section 1908, $50,000,000 for fiscal year 2005 and such sums as may be necessary for fiscal years 2006 and 2007.

(c) OFFICE OF COMMUNITY RELATIONS AND CIVIC AFFAIRS.—There are authorized to be appropriated to the Department for the Office of Community Relations and Civic Affairs under section 1909, $5,000,000 for fiscal year 2005 and such sums as may be necessary for fiscal years 2006 and 2007.

(d) LOAN GUARANTEES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated in each of fiscal years 2005, 2006, and 2007, such amounts as may be required under the Federal Credit Act with respect to Federal loan guarantees authorized by this title, which shall remain available until expended.

(2) LIMITATION.—The aggregate value of all loans for which loan guarantees are issued under this title by the Secretary may not exceed $250,000,000 in each of fiscal years 2005, 2006, and 2007.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JUNE 16, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. Pursuant to notice, I now call up the bill, H.R. 3266, the "Faster and Smarter Funding For First Responders Act of 2003," for purposes of markup and move its favorable recommendation to the House.

[The Committee Print, showing the text of H.R. 3266 as reported by the Select Committee on Homeland Security, follows:]

[COMMITTEE PRINT]

(Showing the text of H.R. 3266 as reported by the Select Committee on Homeland Security)

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 "Faster and Smarter Funding for First Responders Act
6 of 2004".

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Faster and Smarter Funding for First Responders.

"TITLE XVIII—FUNDING FOR FIRST RESPONDERS

"1801. Faster and smarter funding for first responders.
"1802. Essential capabilities for first responders.
"1803. Task Force on Essential Capabilities for First Responders.
"1804. Covered grant eligibility and criteria.
"1805. Use of funds and accountability requirements.
"1806. National standards for first responder equipment and training.
"1807. Definitions.
Sec. 4. Modification of Homeland Security Advisory System.
"Sec. 203. Homeland Security Advisory System.
Sec. 5. Coordination of industry efforts.
Sec. 6. Superseded provision.
Sec. 7. Sense of Congress regarding interoperable communications.
Sec. 8. Sense of Congress regarding Citizen Corps councils.
Sec. 9. Study regarding nationwide emergency notification system.
Sec. 10. Authorization of appropriations.

9 **SEC. 2. FINDINGS.**

10 The Congress finds the following:

11 (1) In order to achieve its objective of mini-
12 mizing the damage, and assisting in the recovery,

1 from terrorist attacks, the Department of Homeland
2 Security must play a leading role in assisting com-
3 munities to reach the level of preparedness they need
4 to respond to a terrorist attack.
5 (2) First responder funding is not reaching the
6 men and women of our Nation's first response teams
7 quickly enough, and sometimes not at all.
8 (3) To reform the current bureaucratic process
9 so that homeland security dollars reach the first re-
10 sponders who need it most, it is necessary to clarify
11 and consolidate the authority and procedures of the
12 Department of Homeland Security to support first
13 responders.
14 (4) Ensuring adequate resources for the new
15 national mission of homeland security requires a dis-
16 crete and separate grant making process for home-
17 land security funds for first response to terrorist
18 acts, on the one hand, and for first responder pro-
19 grams designed to meet pre-9/11 priorities, on the
20 other.
21 (5) Homeland security grants to first respond-
22 ers must be based on the best intelligence con-
23 cerning the capabilities and intentions of our ter-
24 rorist enemies, and that intelligence must be used to

1 target resources to the Nation's greatest risks,
2 vulnerabilities, and consequences.
3 (6) The Nation's first response capabilities will
4 be improved by sharing resources, training, plan-
5 ning, personnel, and equipment among neighboring
6 jurisdictions through mutual aid agreements and re-
7 gional cooperation. Such regional cooperation should
8 be supported, where appropriate, through direct
9 grants from the Department of Homeland Security.
10 (7) An essential prerequisite to achieving the
11 Nation's homeland security objectives for first re-
12 sponders is the establishment of well-defined na-
13 tional goals for terrorism preparedness. These goals
14 should delineate the essential capabilities that every
15 jurisdiction in the United States should possess or
16 to which it should have access.
17 (8) A national determination of essential capa-
18 bilities is needed to identify levels of State and local
19 government terrorism preparedness, to determine
20 the nature and extent of State and local first re-
21 sponder needs, to identify the human and financial
22 resources required to fulfill them, and to direct fund-
23 ing to meet those needs and to measure prepared-
24 ness levels on a national scale.

1 (9) To facilitate progress in attaining essential
2 capabilities for State and local first responders, the
3 Department of Homeland Security should seek to al-
4 locate homeland security funding for first responders
5 to meet nationwide needs.
6 (10) Private sector resources and citizen volun-
7 teers can perform critical functions in assisting in
8 preventing and responding to terrorist attacks, and
9 should be integrated into State and local planning
10 efforts to ensure that their capabilities and roles are
11 understood, so as to provide enhanced State and
12 local operational capability and surge capacity.
13 (11) Public-private partnerships, such as the
14 partnerships between the Business Executives for
15 National Security and the States of New Jersey and
16 Georgia, can be useful to identify and coordinate pri-
17 vate sector support for State and local first respond-
18 ers. Such models should be expanded to cover all
19 States and territories.
20 (12) An important component of national
21 standards is measurability, so that it is possible to
22 determine how prepared a State or local government
23 is now, and what additional steps it needs to take,
24 in order to respond to acts of terrorism.

1 (13) The Department of Homeland Security
2 should establish, publish, and regularly update na-
3 tional voluntary consensus standards for both equip-
4 ment and training, in cooperation with both public
5 and private sector standard setting organizations, to
6 assist State and local governments in obtaining the
7 equipment and training to attain the essential capa-
8 bilities for first response to acts of terrorism, and to
9 ensure that first responder funds are spent wisely.

10 **SEC. 3. FASTER AND SMARTER FUNDING FOR FIRST RE-**
11 **SPONDERS.**

12 (a) IN GENERAL.—The Homeland Security Act of
13 2002 (Public Law 107–296; 6 U.S.C. 361 et seq.) is
14 amended—

15 (1) in section 1(b) in the table of contents by
16 adding at the end the following:

"TITLE XVIII—FUNDING FOR FIRST RESPONDERS

"1801. Faster and smarter funding for first responders.
"1802. Essential capabilities for first responders.
"1803. Task Force on Essential Capabilities for First Responders.
"1804. Covered grant eligibility and criteria.
"1805. Use of funds and accountability requirements.
"1806. National standards for first responder equipment and training.
"1807. Definitions."; and

17 (2) by adding at the end the following:

"TITLE XVIII—FUNDING FOR FIRST RESPONDERS

"SEC. 1801. FASTER AND SMARTER FUNDING FOR FIRST RESPONDERS.

"(a) COVERED GRANTS.—This title applies to any grant provided by the Department to States or regions to improve the ability of first responders to prevent, prepare for, respond to, or mitigate threatened or actual terrorist attacks, especially those involving weapons of mass destruction, and including any grant under the following:

"(1) STATE HOMELAND SECURITY GRANT PROGRAM.—The State Homeland Security Grant Program of the Department, or any successor to such grant program.

"(2) URBAN AREA SECURITY INITIATIVE.—The Urban Area Security Initiative of the Department, or any successor to such grant program.

"(b) EXCLUDED PROGRAMS.—This title does not apply to or otherwise affect the following Federal grant programs or any grant under such a program:

"(1) NONDEPARTMENT PROGRAMS.—Any Federal grant program that is not administered by the Department.

"(2) FIRE GRANT PROGRAMS.—The fire grant programs authorized by sections 33 and 34 of the

1 Federal Fire Prevention and Control Act of 1974
2 (15 U.S.C. 2229, 2229a).
3 "(3) EMERGENCY MANAGEMENT PLANNING
4 AND ASSISTANCE ACCOUNT GRANTS.—The Emer-
5 gency Management Performance Grant program and
6 the Urban Search and Rescue Grants program au-
7 thorized by title VI of the Robert T. Stafford Dis-
8 aster Relief and Emergency Assistance Act (42
9 U.S.C. 5195 et seq.); the Departments of Veterans
10 Affairs and Housing and Urban Development, and
11 Independent Agencies Appropriations Act, 2000
12 (113 Stat. 1047 et seq.); and the Earthquake Haz-
13 ards Reduction Act of 1977 (42 U.S.C. 7701 et
14 seq.).
15 **"SEC. 1802. ESSENTIAL CAPABILITIES FOR FIRST RESPOND-**
16 **ERS.**
17 "(a) ESTABLISHMENT OF ESSENTIAL CAPABILI-
18 TIES.—
19 "(1) IN GENERAL.—The Secretary shall estab-
20 lish clearly defined essential capabilities for State
21 and local government preparedness for terrorism, in
22 consultation with—
23 "(A) the Task Force on Essential Capabili-
24 ties for First Responders established under sec-
25 tion 1803;

1 "(B) the Under Secretaries for Emergency
2 Preparedness and Response, Border and Trans-
3 portation Security, Information Analysis and
4 Infrastructure Protection, and Science and
5 Technology, and the Director of the Office for
6 Domestic Preparedness;
7 "(C) other appropriate Federal agencies;
8 "(D) State and local first responder agen-
9 cies and officials; and
10 "(E) groups responsible for setting stand-
11 ards relevant to the first responder community.
12 "(2) DEADLINES.—The Secretary shall—
13 "(A) establish essential capabilities under
14 paragraph (1) within 30 days after receipt of
15 the initial submission of a final report under
16 section 1803(c)(2); and
17 "(B) regularly update such essential capa-
18 bilities as necessary, but not less than every 3
19 years.
20 "(3) PROVISION OF ESSENTIAL CAPABILI-
21 TIES.—The Secretary shall ensure that essential ca-
22 pabilities established under paragraph (1) are pro-
23 vided promptly to the States and to the Congress.
24 The States shall make the essential capabilities

1 available as necessary and appropriate to local gov-
2 ernments within their jurisdictions.
3 "(b) OBJECTIVES.—The Secretary shall ensure that
4 essential capabilities established under subsection (a)(1)
5 meet the following objectives:
6 "(1) SPECIFICITY.—The determination of es-
7 sential capabilities specifically shall describe the
8 training, planning, personnel, and equipment that
9 different types of communities in the Nation should
10 possess, or to which they should have access, in
11 order to meet the Department's goals for terrorism
12 preparedness based upon—
13 "(A) the most current risk assessment
14 available by the Directorate for Information
15 Analysis and Infrastructure Protection of the
16 threats of terrorism against the United States;
17 and
18 "(B) the types of threats, vulnerabilities,
19 geography, size, and other factors that the Sec-
20 retary has determined to be applicable to each
21 different type of community.
22 "(2) FLEXIBILITY.—The establishment of es-
23 sential capabilities shall be sufficiently flexible to
24 allow State and local government officials to set pri-
25 orities based on particular needs, while reaching na-

1 tionally determined terrorism preparedness levels
2 within a specified time period.
3 "(3) MEASURABILITY.—The establishment of
4 essential capabilities shall be designed to enable
5 measurement of progress towards specific terrorism
6 preparedness goals.
7 "(c) THREATS TO BE CONSIDERED.—
8 "(1) IN GENERAL.—In establishing essential ca-
9 pabilities under subsection (a)(1), the Secretary spe-
10 cifically shall consider the variables of threat, vulner-
11 ability, and consequences with respect to the Na-
12 tion's population (including transient commuting
13 and tourist populations) and critical infrastructure.
14 Such consideration shall be based upon the most
15 current risk assessment available by the Directorate
16 for Information Analysis and Infrastructure Protec-
17 tion of the threats of terrorism against the United
18 States.
19 "(2) CRITICAL INFRASTRUCTURE SECTORS.—
20 The Secretary specifically shall consider threats of
21 terrorism against the following critical infrastructure
22 sectors in all areas of the Nation, urban and rural:
23 "(A) Agriculture.
24 "(B) Banking and finance.
25 "(C) Chemical industries.

1 "(D) The defense industrial base.
2 "(E) Emergency services.
3 "(F) Energy.
4 "(G) Food.
5 "(H) Government.
6 "(I) Postal and shipping.
7 "(J) Public health.
8 "(K) Information and telecommunications
9 networks.
10 "(L) Transportation.
11 "(M) Water.
12 The order in which the critical infrastructure sectors
13 are listed in this paragraph shall not be construed
14 as an order of priority for consideration of the im-
15 portance of such sectors.
16 "(3) CONSIDERATION OF ADDITIONAL
17 THREATS.—In establishing essential capabilities
18 under subsection (a)(1), the Secretary shall take
19 into account any other specific threat to a popu-
20 lation (including a transient commuting or tourist
21 population) or critical infrastructure sector that the
22 Secretary has determined to exist.

1 **"SEC. 1803. TASK FORCE ON ESSENTIAL CAPABILITIES FOR**
2 **FIRST RESPONDERS.**

3 "(a) ESTABLISHMENT.—To assist the Secretary in
4 establishing essential capabilities under section
5 1802(a)(1), the Secretary shall establish an advisory body
6 to be known as the Task Force on Essential Capabilities
7 for First Responders not later than 60 days after the date
8 of the enactment of this section.

9 "(b) DRAFT REPORT.—

10 "(1) IN GENERAL.—The Task Force shall sub-
11 mit to the Secretary, not later than one year after
12 its establishment by the Secretary under subsection
13 (a) and every 3 years thereafter, a draft report on
14 its recommendations for the essential capabilities all
15 State and local government first responders should
16 possess, or to which they should have access, to en-
17 hance terrorism preparedness, including—

18 "(A) to prevent a terrorist attack;

19 "(B) to protect persons and critical infra-
20 structure against attack; and

21 "(C) to enhance terrorism response and
22 mitigation capabilities if such an attack occurs.

23 "(2) THREATS TO BE CONSIDERED IN DETER-
24 MINING ESSENTIAL CAPABILITIES.—

25 "(A) IN GENERAL.—In reporting to the
26 Secretary on its recommendations for essential

capabilities, the Task Force specifically shall consider the critical infrastructure sectors described in section 1802(c)(2), and the threats to populations in all areas of the Nation, urban and rural, including the following:

"(i) Biological threats.

"(ii) Nuclear threats.

"(iii) Radiological threats.

"(iv) Incendiary threats.

"(v) Chemical threats.

"(vi) Explosives.

"(vii) Suicide bombers.

"(viii) Cyber threats.

"(ix) Any other threats based on proximity to specific past acts of terrorism or the known activity of any terrorist group.

"(B) NO PRIORITY.—The order in which the threats are listed in subparagraph (A) shall not be construed as an order of priority for consideration of the importance of such threats.

"(3) RISK-BASED.—The draft report shall be based upon the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism

against the United States provided to the Task Force pursuant to subsection (d).

"(4) CONTENTS.—The draft report shall—

"(A) include a priority ranking of essential capabilities, in order to provide guidance to the Secretary and to the Congress on determining the appropriate allocation of, and funding levels for, first responder needs;

"(B) set forth a methodology by which any State or local government will be able to determine the extent to which it possesses or has access to the essential capabilities that States and local governments having similar risks should obtain;

"(C) describe the availability of national voluntary consensus standards, and whether there is a need for new national voluntary consensus standards, with respect to first responder training and equipment;

"(D) include such additional matters as the Secretary may specify in order to further the terrorism preparedness capabilities of first responders; and

"(E) include such revisions to the contents of past reports as are necessary to take into ac-

1 count changes in the most current risk assess-
2 ment available by the Directorate for Informa-
3 tion Analysis and Infrastructure Protection or
4 other relevant information as determined by the
5 Secretary.
6 "(c) REVIEW AND REVISION OF DRAFT REPORT.—
7 "(1) REVIEW AND COMMENTS.—Within 30 days
8 after the date of the submission of the draft report
9 by the Task Force under subsection (b), the Sec-
10 retary shall review and provide comments to the
11 Task Force on the contents of the draft report.
12 "(2) REVISION AND SUBMISSION OF FINAL RE-
13 PORT.—Within 30 days after receiving the Sec-
14 retary's comments, the Task Force shall—
15 "(A) revise its draft report based on the
16 comments provided by the Secretary, and any
17 other comments it has solicited and received, if
18 the Task Force determines that such revisions
19 are appropriate; and
20 "(B) submit the final report on essential
21 capabilities to the Secretary and to the Con-
22 gress.
23 "(d) TASK FORCE ACCESS TO INFORMATION.—
24 "(1) SECURITY CLEARANCES.—For purposes of
25 carrying out its responsibilities under this section,

1 the Task Force shall be provided as a matter of pri-
2 ority appropriate security clearances, including in-
3 terim security clearances.
4 "(2) ACCESS TO FINISHED INTELLIGENCE.—
5 For purposes of carrying out its responsibilities
6 under this section, the Task Force shall be provided
7 access to all finished intelligence and analytic prod-
8 ucts it may request from the Directorate for Infor-
9 mation Analysis and Infrastructure Protection or
10 other sources within the Department concerning the
11 nature and likelihood of terrorist attacks on the ter-
12 ritory of the United States.
13 "(3) ACCESS TO ASSESSMENT TOOLS.—For
14 purposes of carrying out its responsibilities under
15 this section, the Task Force shall be provided access
16 to all tools or methodologies currently or formerly
17 used by the Department and its predecessor organi-
18 zations to assess the preparedness capabilities of
19 State and local governments.
20 "(4) VALID CLEARANCES.—Nothing in this sec-
21 tion shall be considered to authorize a member of
22 the Task Force to have access to classified informa-
23 tion unless that member possesses a valid clearance
24 to receive such information.
25 "(e) MEMBERSHIP.—

1 "(1) IN GENERAL.—The Task Force shall con-
2 sist of 25 members appointed by the Secretary, and
3 shall—
4 "(A) represent a cross section of first re-
5 sponder disciplines; and
6 "(B) include both State and local rep-
7 resentatives within each discipline.
8 "(2) TERM OF MEMBERS.—Each appointed
9 member of the Task Force shall serve for a term not
10 to exceed 18 months. No individual may be ap-
11 pointed as a member of the Task Force for more
12 than 2 terms.
13 "(3) SELECTION OF MEMBERS.—The Secretary
14 shall include in the membership of the Task Force—
15 "(A) members selected from the emergency
16 response field, including firefighters and law en-
17 forcement, hazardous materials response, emer-
18 gency medical services, and emergency manage-
19 ment personnel (including public works per-
20 sonnel routinely engaged in emergency re-
21 sponse);
22 "(B) health scientists, emergency and in-
23 patient medical providers, and public health
24 professionals, including experts in emergency
25 health care response to chemical, biological, ra-

1 diological, and nuclear terrorism, and experts in
2 providing mental health care during emergency
3 response operations;
4 "(C) experts from Federal, State, and local
5 governments, and the private sector, rep-
6 resenting standards-setting organizations, in-
7 cluding representation from the voluntary con-
8 sensus codes and standards development com-
9 munity, particularly those with expertise in fire-
10 fighting, law enforcement, and emergency med-
11 ical services delivery; and
12 "(D) State and local officials with exper-
13 tise in terrorism preparedness, subject to the
14 condition that if any such officials are elected
15 officials, an equal number shall be selected from
16 each of the two major political parties.
17 "(4) EX OFFICIO MEMBERS.—The Secretary
18 shall designate one or more officers of the Depart-
19 ment to serve as ex officio members of the Task
20 Force, one of whom shall be the designated officer
21 of the Federal Government for purposes of sub-
22 section (c) of section 10 of the Federal Advisory
23 Committee Act.
24 "(5) DIVERSITY IN COMPOSITION OF TASK
25 FORCE.—In appointing members to the Task Force,

1 the Secretary shall ensure, to the extent practicable,
2 that its membership—
3 "(A) is geographically diverse;
4 "(B) includes representatives from both
5 rural and urban jurisdictions;
6 "(C) includes representatives from both
7 management and labor;
8 "(D) includes representatives from both
9 uniformed and nonuniformed professions;
10 "(E) includes representatives from both
11 voluntary and professional services;
12 "(F) includes representatives from both
13 government and nongovernment emergency
14 medical services; and
15 "(G) includes sufficient personnel with se-
16 curity clearances necessary to review classified
17 materials that may be needed to conduct the
18 business of the Task Force.
19 "(6) CHAIR.—At the first meeting of the Task
20 Force, the membership of the Task Force appointed
21 under paragraph (3) shall elect a chair of the Task
22 Force.
23 "(f) MEETINGS.—The Task Force shall meet as often
24 as necessary to complete reports in accordance with this
25 section.

1 "(g) PAY.—

2 "(1) IN GENERAL.—Members of the Task
3 Force shall serve without pay by reason of their
4 work on the Task Force.

5 "(2) FEDERAL OFFICERS AND EMPLOYEES.—
6 Members of the Task Force who are officers or em-
7 ployees of the United States shall receive no addi-
8 tional pay by reason of their service as a member of
9 the Task Force.

10 "(h) TRAVEL EXPENSES.—Members of the Task
11 Force shall be allowed travel expenses, including per diem
12 in lieu of subsistence, at rates authorized for employees
13 of agencies under subchapter I of chapter 57 of title 5,
14 United States Code, while away from their homes or reg-
15 ular places of business in the performance of services for
16 the Task Force.

17 "(i) SERVICES, FUNDS, AND STAFF.—The Secretary
18 shall provide to the Task Force, on a non-reimbursable
19 basis, such administrative services, funds, staff, facilities,
20 and other support services as the Secretary determines
21 necessary, in consultation with the chair of the Task
22 Force, for the Task Force to perform its duties efficiently
23 and in accordance with this section.

24 "(j) DETAILS.—Upon the request of the Task Force,
25 the Secretary may detail, without reimbursement, any per-

1 sonnel of the Department to assist the Task Force in car-
2 rying out its duties. Any such detail of an employee shall
3 be without interruption or loss of civil service status or
4 privilege.

5 "(k) APPLICABILITY OF FEDERAL ADVISORY COM-
6 MITTEE ACT.—The Federal Advisory Committee Act (5
7 U.S.C. App.), including subsections (a), (b), and (d) of
8 section 10 of such Act, and section 552b(c) of title 5,
9 United States Code, shall apply to the Task Force.

10 **"SEC. 1804. COVERED GRANT ELIGIBILITY AND CRITERIA.**

11 "(a) GRANT ELIGIBILITY.—Any State or region shall
12 be eligible to apply for a covered grant.

13 "(b) GRANT CRITERIA.—In awarding covered grants,
14 the Secretary shall assist States and local governments in
15 achieving the essential capabilities for first responders es-
16 tablished by the Secretary under section 1802.

17 "(c) STATE HOMELAND SECURITY PLANS.—

18 "(1) SUBMISSION OF PLANS.—The Secretary
19 shall require that any State applying to the Sec-
20 retary for a covered grant must submit to the Sec-
21 retary a 3-year State homeland security plan that—

22 "(A) demonstrates the extent to which the
23 State has achieved the essential capabilities
24 that apply to the State, and describes the ex-
25 tent to which the State used the methodology

1 developed pursuant to section 1803(b)(4)(B) to
2 evaluate the level of its essential capabilities;
3 "(B) demonstrates the additional needs of
4 the State necessary to achieve the essential ca-
5 pabilities that apply to the State;
6 "(C) includes a prioritization of such addi-
7 tional needs based on threat, vulnerability, and
8 consequence assessment factors applicable to
9 the State;
10 "(D) describes how the State intends—
11 "(i) to address such additional needs
12 at the city, county, regional, State, and
13 interstate level;
14 "(ii) to use all Federal, State, and
15 local resources available for the purpose of
16 addressing such additional needs; and
17 "(iii) to give particular emphasis to
18 regional planning and cooperation, both
19 within its jurisdictional borders and with
20 neighboring States; and
21 "(E) is developed in consultation with and
22 subject to appropriate comment by local govern-
23 ments within the State.
24 "(2) APPROVAL BY SECRETARY.—The Sec-
25 retary may not award any covered grant to a State

1 unless the Secretary has approved the applicable
2 State homeland security plan.
3 "(d) CONSISTENCY WITH STATE PLANS.—The Sec-
4 retary shall ensure that each covered grant is used to sup-
5 plement and support, in a consistent and coordinated
6 manner, the applicable State homeland security plan or
7 plans.
8 "(e) APPLICATION FOR GRANT.—
9 "(1) IN GENERAL.—Any State or region may
10 apply for a covered grant by submitting to the Sec-
11 retary an application at such time, in such manner,
12 and containing such information as is required
13 under this subsection, or as the Secretary may rea-
14 sonably require.
15 "(2) DEADLINES FOR APPLICATIONS AND
16 AWARDS.—All applications for covered grants must
17 be submitted to the Secretary no later than Feb-
18 ruary 15 of the fiscal year for which they are sub-
19 mitted. The Secretary shall award covered grants
20 pursuant to all approved applications for such fiscal
21 year as soon as practicable, but not later than July
22 31 of such year.
23 "(3) AVAILABILITY OF FUNDS.—All funds
24 awarded by the Secretary under covered grants in a

1 fiscal year shall be available for obligation through
2 the end of the subsequent fiscal year.
3 "(4) MINIMUM CONTENTS OF APPLICATION.—
4 The Secretary shall require that each applicant in-
5 clude in its application, at a minimum—
6 "(A) the purpose for which the applicant
7 seeks covered grant funds and the reasons why
8 the applicant needs the covered grant to meet
9 the essential capabilities for terrorism prepared-
10 ness within the State or region to which the ap-
11 plication pertains;
12 "(B) a description of how, by reference to
13 the applicable State homeland security plan or
14 plans under subsection (c), the allocation of
15 grant funding proposed in the application, in-
16 cluding, where applicable, the amount not
17 passed through under section 1805(c)(1), would
18 assist in fulfilling the essential capabilities spec-
19 ified in such plan or plans;
20 "(C) a statement of whether a mutual aid
21 agreement applies to the use of all or any por-
22 tion of the covered grant funds;
23 "(D) if the applicant is a region—
24 "(i) a precise geographical description
25 of the region and a specification of all par-

1 ticipating and nonparticipating local gov-
2 ernments within the geographical area
3 comprising that region;
4 "(ii) a specification of what govern-
5 mental entity within the region will admin-
6 ister the expenditure of funds under the
7 covered grant; and
8 "(iii) a designation of a specific indi-
9 vidual to serve as regional liaison;
10 "(E) a capital budget showing how the ap-
11 plicant intends to allocate and expend the cov-
12 ered grant funds; and
13 "(F) a statement of how the applicant in-
14 tends to meet the matching requirement, if any,
15 that applies under section 1805(e)(2).
16 "(5) REGIONAL APPLICATIONS.—
17 "(A) SUBMISSION TO STATE OR STATES.—
18 To ensure the consistency required under sub-
19 section (d), an applicant that is a region must
20 simultaneously submit its application to the De-
21 partment and to each State of which any part
22 is included in the region.
23 "(B) OPPORTUNITY FOR STATE COM-
24 MENT.—Before awarding any covered grant to
25 a region, the Secretary shall provide an oppor-

1 tunity to each State of which any part is in-
2 cluded in a region, during the 30-day period be-
3 ginning on the date on which the region sub-
4 mits an application for a covered grant, to com-
5 ment to the Secretary on the consistency of the
6 region's plan with the State's homeland security
7 plan.

8 "(C) FINAL AUTHORITY.—The Secretary
9 shall have final authority to determine the con-
10 sistency of any regional application with the ap-
11 plicable State homeland security plan or plans
12 and approve any regional application. The Sec-
13 retary shall notify each State of which any part
14 is included in a region of the approval of a re-
15 gional application for that region.

16 "(D) REGIONAL LIAISONS.—A regional li-
17 aison designated under paragraph (4)(D)(iii)
18 shall—

19 "(i) coordinate with Federal, State,
20 local, regional, and private officials within
21 the region concerning terrorism prepared-
22 ness;

23 "(ii) develop a process for receiving
24 input from Federal, State, local, regional,
25 and private sector officials within the re-

1 gion to assist in the development of the re-
2 gional application and to improve the re-
3 gion's access to covered grants; and
4 "(iii) administer, in consultation with
5 State, local, regional, and private officials
6 within the region, covered grants awarded
7 to the region.
8 "(6) EQUIPMENT STANDARDS.—If an applicant
9 for a covered grant proposes to upgrade or purchase,
10 with assistance provided under the grant, new equip-
11 ment or systems that do not meet or exceed any ap-
12 plicable national voluntary consensus standards es-
13 tablished by the Secretary under section 1806(a),
14 the applicant shall include in the application an ex-
15 planation of why such equipment or systems will
16 serve the needs of the applicant better than equip-
17 ment or systems that meet or exceed such standards.
18 "(f) FIRST RESPONDER GRANTS BOARD.—
19 "(1) ESTABLISHMENT OF BOARD.—The Sec-
20 retary shall establish a First Responder Grants
21 Board, consisting of—
22 "(A) the Secretary;
23 "(B) the Under Secretary for Emergency
24 Preparedness and Response;

1 "(C) the Under Secretary for Border and
2 Transportation Security;
3 "(D) the Under Secretary for Information
4 Analysis and Infrastructure Protection;
5 "(E) the Under Secretary for Science and
6 Technology; and
7 "(F) the Director of the Office for Domes-
8 tic Preparedness.
9 "(2) CHAIRMAN.—
10 "(A) IN GENERAL.—The Secretary shall be
11 the Chairman of the Board.
12 "(B) EXERCISE OF AUTHORITIES BY DEP-
13 UTY SECRETARY.—The Deputy Secretary of
14 Homeland Security may exercise the authorities
15 of the Chairman, if the Secretary so directs.
16 "(3) RANKING OF GRANT APPLICATIONS.—
17 "(A) PRIORITIZATION OF GRANTS.—The
18 Board shall evaluate and annually prioritize all
19 pending applications for covered grants based
20 upon the degree to which they would lessen the
21 threat to, vulnerability of, and consequences for
22 persons and critical infrastructure.
23 "(B) ACHIEVING NATIONWIDE CAPA-
24 BILITY.—In evaluating and prioritizing grant

1 applications under subparagraph (A), the Board
2 shall—
3 "(i) seek to achieve and enhance es-
4 sential capabilities throughout the Nation;
5 and
6 "(ii) seek to allocate a portion of the
7 funds available for covered grants each fis-
8 cal year for the purpose of making covered
9 grants to each approved applicant that the
10 Board determines has demonstrated a
11 valid need in its application.
12 "(4) FUNCTIONS OF UNDER SECRETARIES.—
13 The Under Secretaries referred to in paragraph (1)
14 shall seek to ensure that the relevant expertise and
15 input of the staff of their directorates are available
16 to and considered by the Board.
17 **"SEC. 1805. USE OF FUNDS AND ACCOUNTABILITY RE-**
18 **QUIREMENTS.**
19 "(a) IN GENERAL.—A covered grant may be used
20 for—
21 "(1) purchasing or upgrading equipment, in-
22 cluding computer software, to enhance terrorism
23 preparedness and response;
24 "(2) exercises to strengthen terrorism prepared-
25 ness and response;

1 "(3) training for prevention (including detec-
2 tion) of, preparedness for, or response to attacks in-
3 volving weapons of mass destruction, including train-
4 ing in the use of equipment and computer software;
5 "(4) developing or updating response plans;
6 "(5) establishing or enhancing mechanisms for
7 sharing terrorism threat information pursuant to
8 this Act;
9 "(6) systems architecture and engineering, pro-
10 gram planning and management, strategy formula-
11 tion and strategic planning, life-cycle systems de-
12 sign, product and technology evaluation, and proto-
13 type development for terrorism preparedness and re-
14 sponse purposes;
15 "(7) additional personnel costs resulting from—
16 "(A) elevations in the threat alert level of
17 the Homeland Security Advisory System;
18 "(B) travel to and participation in exer-
19 cises and training in the use of equipment and
20 on prevention activities; and
21 "(C) the temporary replacement of per-
22 sonnel during any period of travel to and par-
23 ticipation in exercises and training in the use of
24 equipment and on prevention activities;

1 "(8) the costs of equipment (including software)
2 required to receive, transmit, handle, and store clas-
3 sified information;
4 "(9) enhancing facilities to serve as operations
5 centers, or hardening critical infrastructure against
6 potential attack by the addition of barriers, fences,
7 gates, and other such devices;
8 "(10) the costs of commercially available equip-
9 ment that complies with, where applicable, national
10 voluntary consensus standards, and that facilitates
11 interoperability, coordination, and integration be-
12 tween emergency communications systems,
13 including—
14 "(A) mobile vehicles that contain equip-
15 ment such as commercial telephone trunk lines,
16 VHF and UHF radios, patch panels, and
17 crosspatches, among other technologies and
18 equipment; and
19 "(B) communications system overlay soft-
20 ware and hardware that allow multiple dis-
21 parate communications networks to act as one
22 network;
23 "(11) educational curricula development for
24 first responders to ensure that they are prepared for
25 terrorist attacks;

1 "(12) training and exercises to assist public ele-
2 mentary and secondary schools in developing and
3 implementing programs to instruct students regard-
4 ing age-appropriate skills to prepare for and respond
5 to an act of terrorism; and
6 "(13) other appropriate activities as determined
7 by the Secretary.
8 "(b) PROHIBITED USES.—Funds provided as a cov-
9 ered grant may not be used—
10 "(1) to supplant State or local funds for, or
11 otherwise support, traditional missions of State and
12 local law enforcement, firefighters, emergency med-
13 ical services, or public health agencies, unless such
14 support serves a dual purpose and the funds are pri-
15 marily intended to enhance terrorism preparedness;
16 "(2) to construct buildings or other physical fa-
17 cilities;
18 "(3) to acquire land; or
19 "(4) for any State or local government cost
20 sharing contribution.
21 "(c) ASSISTANCE REQUIREMENT.—The Secretary
22 may not request that equipment paid for, wholly or in
23 part, with funds provided as a covered grant be made
24 available for responding to emergencies in surrounding
25 States, regions, and localities, unless the Secretary under-

1 takes to pay the costs directly attributable to transporting
2 and operating such equipment during such response.
3 "(d) FLEXIBILITY IN UNSPENT HOMELAND SECU-
4 RITY GRANT FUNDS.—Upon request by the recipient of
5 a covered grant, the Secretary may authorize the grantee
6 to transfer all or part of funds provided as the covered
7 grant from uses specified in the grant agreement to other
8 uses authorized under this section, if the Secretary deter-
9 mines that such transfer is in the interests of homeland
10 security.
11 "(e) STATE AND REGIONAL RESPONSIBILITIES.—
12 "(1) PASS-THROUGH.—The Secretary shall re-
13 quire a recipient of a covered grant that is a State
14 to obligate or otherwise make available to local gov-
15 ernments, first responders, and other local groups,
16 to the extent required under the State homeland se-
17 curity plan or plans specified in the application for
18 the grant, not less than 80 percent of the grant
19 funds, resources purchased with the grant funds
20 having a value equal to at least 80 percent of the
21 amount of the grant, or a combination thereof, by
22 not later than the end of the 45-day period begin-
23 ning on the date the grant recipient receives the
24 grant funds.
25 "(2) COST SHARING.—

1 "(A) IN GENERAL.—The Federal share of
2 the costs of an activity carried out with a cov-
3 ered grant to a State or region awarded after
4 the 2-year period beginning on the date of the
5 enactment of this section shall not exceed 75
6 percent.
7 "(B) INTERIM RULE.—The Federal share
8 of the costs of an activity carried out with a
9 covered grant awarded before the end of the 2-
10 year period beginning on the date of the enact-
11 ment of this section shall be 100 percent.
12 "(C) IN-KIND MATCHING.—Each recipient
13 of a covered grant may meet the matching re-
14 quirement under subparagraph (A) by making
15 in-kind contributions of goods or services that
16 are directly linked with the purpose for which
17 the grant is made, including, but not limited to,
18 any necessary personnel overtime, contractor
19 services, administrative costs, equipment fuel
20 and maintenance, and rental space.
21 "(3) CERTIFICATIONS REGARDING DISTRIBU-
22 TION OF GRANT FUNDS TO LOCAL GOVERNMENTS.—
23 Any State that receives a covered grant shall certify
24 to the Secretary, by not later than 30 days after the
25 expiration of the period described in paragraph (1)

1 with respect to the grant, that the State has made
2 available for expenditure by local governments, first
3 responders, and other local groups the required
4 amount of grant funds pursuant to paragraph (1).
5 "(4) REPORT ON HOMELAND SECURITY SPEND-
6 ING.—Each recipient of a covered grant shall submit
7 a report to the Secretary not later than 60 days
8 after the end of each fiscal year. Each recipient of
9 a covered grant that is a region must simultaneously
10 submit its report to each State of which any part is
11 included in the region. Each report must include the
12 following:
13 "(A) The amount, ultimate recipients, and
14 dates of receipt of all funds received under the
15 grant during the previous fiscal year.
16 "(B) The amount and the dates of dis-
17 bursements of all such funds expended in com-
18 pliance with paragraph (1) or pursuant to mu-
19 tual aid agreements or other sharing arrange-
20 ments that apply within the State or region, as
21 applicable, during the previous fiscal year.
22 "(C) How the funds were utilized by each
23 ultimate recipient or beneficiary during the pre-
24 ceding fiscal year.

1 "(D) The extent to which essential capa-
2 bilities identified in the applicable State home-
3 land security plan or plans were achieved or en-
4 hanced as the result of the expenditure of grant
5 funds during the preceding fiscal year.
6 "(E) The extent to which essential capa-
7 bilities identified in the applicable State home-
8 land security plan or plans remain unmet.
9 "(5) INCLUSION OF RESTRICTED ANNEXES.—A
10 recipient of a covered grant may submit to the Sec-
11 retary an annex to the report under paragraph (4)
12 that is subject to appropriate handling restrictions,
13 if the recipient believes that discussion in the report
14 of unmet needs would reveal sensitive but unclassi-
15 fied information.
16 "(6) PROVISION OF REPORTS.—The Secretary
17 shall ensure that each report under paragraph (4) is
18 provided to the Under Secretary for Emergency Pre-
19 paredness and Response and the Director of the Of-
20 fice for Domestic Preparedness.
21 "(f) INCENTIVES TO EFFICIENT ADMINISTRATION OF
22 HOMELAND SECURITY GRANTS.—
23 "(1) PENALTIES FOR DELAY IN PASSING
24 THROUGH LOCAL SHARE.—If a recipient of a cov-
25 ered grant that is a State fails to pass through to

1 local governments, first responders, and other local
2 groups funds or resources required by subsection
3 (e)(1) within 45 days after receiving funds under the
4 grant, the Secretary may—
5 "(A) reduce grant payments to the grant
6 recipient from the portion of grant funds that
7 is not required to be passed through under sub-
8 section (e)(1);
9 "(B) terminate payment of funds under
10 the grant to the recipient, and transfer the ap-
11 propriate portion of those funds directly to local
12 first responders that were intended to receive
13 funding under that grant; or
14 "(C) impose additional restrictions or bur-
15 dens on the recipient's use of funds under the
16 grant, which may include—
17 "(i) prohibiting use of such funds to
18 pay the grant recipient's grant-related
19 overtime or other expenses;
20 "(ii) requiring the grant recipient to
21 distribute to local government beneficiaries
22 all or a portion of grant funds that are not
23 required to be passed through under sub-
24 section (e)(1); or

"(iii) for each day that the grant recipient fails to pass through funds or resources in accordance with subsection (e)(1), reducing grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (e)(1), except that the total amount of such reduction may not exceed 20 percent of the total amount of the grant.

"(2) EXTENSION OF PERIOD.—The Governor of a State may request in writing that the Secretary extend the 45-day period under paragraph (1) for an additional 15-day period. The Secretary may approve such a request, and may extend such period for additional 15-day periods, if the Secretary determines that the resulting delay in providing grant funding to the local government entities that will receive funding under the grant will not have a significant detrimental impact on such entities' terrorism preparedness efforts.

"(3) PROVISION OF NON-LOCAL SHARE TO LOCAL GOVERNMENT.—

"(A) IN GENERAL.—The Secretary may upon request by a local government pay to the

1 local government a portion of the amount of a
2 covered grant awarded to a State in which the
3 local government is located, if—
4 "(i) the local government will use the
5 amount paid to expedite planned enhance-
6 ments to its terrorism preparedness as de-
7 scribed in any applicable State homeland
8 security plan or plans;
9 "(ii) the State has failed to pass
10 through funds or resources in accordance
11 with subsection (e)(1); and
12 "(iii) the local government complies
13 with subparagraphs (B) and (C).
14 "(B) SHOWING REQUIRED.—To receive a
15 payment under this paragraph, a local govern-
16 ment must demonstrate that—
17 "(i) it is identified explicitly as an ul-
18 timate recipient or intended beneficiary in
19 the approved grant application;
20 "(ii) it was intended by the grantee to
21 receive a severable portion of the overall
22 grant for a specific purpose that is identi-
23 fied in the grant application;
24 "(iii) it petitioned the grantee for the
25 funds or resources after expiration of the

1 period within which the funds or resources
2 were required to be passed through under
3 subsection (e)(1); and
4 "(iv) it did not receive the portion of
5 the overall grant that was earmarked or
6 designated for its use or benefit.
7 "(C) EFFECT OF PAYMENT.—Payment of
8 grant funds to a local government under this
9 paragraph—
10 "(i) shall not affect any payment to
11 another local government under this para-
12 graph; and
13 "(ii) shall not prejudice consideration
14 of a request for payment under this para-
15 graph that is submitted by another local
16 government.
17 "(D) DEADLINE FOR ACTION BY SEC-
18 RETARY.—The Secretary shall approve or dis-
19 approve each request for payment under this
20 paragraph by not later than 15 days after the
21 date the request is received by the Department.
22 "(g) REPORTS TO CONGRESS.—The Secretary shall
23 submit an annual report to the Congress by December 31
24 of each year—

"(1) describing in detail the amount of Federal funds provided as covered grants that were directed to each State and region in the preceding fiscal year;

"(2) containing information on the use of such grant funds by grantees; and

"(3) describing, on a nationwide and State-by-State basis—

"(A) the extent to which essential capabilities identified in applicable State homeland security plan or plans were created or enhanced as the result of the expenditure of covered grant funds during the preceding fiscal year;

"(B) the extent to which essential capabilities identified in applicable State homeland security plan or plans remain unmet; and

"(C) an estimate of the amount of Federal, State, and local expenditures required to attain across the United States the essential capabilities established under section 1802(a).

"SEC. 1806. NATIONAL STANDARDS FOR FIRST RESPONDER EQUIPMENT AND TRAINING.

"(a) EQUIPMENT STANDARDS.—

"(1) IN GENERAL.—The Secretary, in consultation with the Under Secretary for Science and Technology and the Director of the Office for Domestic

1 Preparedness, shall, not later than 6 months after
2 the date of enactment of this section, support the
3 development of, promulgate, and update as nec-
4 essary national voluntary consensus standards for
5 the performance, use, and validation of first re-
6 sponder equipment for purposes of section
7 1804(c)(6). Such standards—
8 "(A) shall be, to the maximum extent prac-
9 ticable, consistent with any existing voluntary
10 consensus standards;
11 "(B) shall take into account, as appro-
12 priate, new types of terrorism threats that may
13 not have been contemplated when such existing
14 standards were developed; and
15 "(C) shall be focused on maximizing inter-
16 operability, interchangeability, durability, flexi-
17 bility, efficiency, efficacy, portability, sustain-
18 ability, and safety.
19 "(2) REQUIRED CATEGORIES.—In carrying out
20 paragraph (1), the Secretary shall specifically con-
21 sider the following categories of first responder
22 equipment:
23 "(A) Thermal imaging equipment.
24 "(B) Radiation detection and analysis
25 equipment.

1 "(C) Biological detection and analysis
2 equipment.
3 "(D) Chemical detection and analysis
4 equipment.
5 "(E) Decontamination and sterilization
6 equipment.
7 "(F) Personal protective equipment, in-
8 cluding garments, boots, gloves, and hoods and
9 other protective clothing.
10 "(G) Respiratory protection equipment.
11 "(H) Interoperable communications, in-
12 cluding wireless and wireline voice, video, and
13 data networks.
14 "(I) Explosive mitigation devices and ex-
15 plosive detection and analysis equipment.
16 "(J) Containment vessels.
17 "(K) Contaminant-resistant vehicles.
18 "(L) Such other equipment for which the
19 Secretary determines that national voluntary
20 consensus standards would be appropriate.
21 "(b) TRAINING STANDARDS.—
22 "(1) IN GENERAL.—The Secretary, in consulta-
23 tion with the Under Secretaries for Emergency Pre-
24 paredness and Response and Science and Tech-
25 nology and the Director of the Office for Domestic

1 Preparedness, shall support the development of, pro-
2 mulgate, and regularly update as necessary national
3 voluntary consensus standards for first responder
4 training carried out with amounts provided under
5 covered grant programs, that will enable State and
6 local government first responders to achieve optimal
7 levels of terrorism preparedness as quickly as prac-
8 ticable. Such standards shall give priority to pro-
9 viding training to—
10 "(A) enable first responders to prevent,
11 prepare for, respond to, and mitigate terrorist
12 threats, including threats from chemical, bio-
13 logical, nuclear, and radiological weapons and
14 explosive devices capable of inflicting significant
15 human casualties; and
16 "(B) familiarize first responders with the
17 proper use of equipment, including software,
18 developed pursuant to the standards established
19 under subsection (a).
20 "(2) REQUIRED CATEGORIES.—In carrying out
21 paragraph (1), the Secretary specifically shall in-
22 clude the following categories of first responder ac-
23 tivities:
24 "(A) Regional planning.
25 "(B) Joint exercises.

1 "(C) Intelligence collection, analysis, and
2 sharing.
3 "(D) Emergency notification of affected
4 populations.
5 "(E) Detection of biological, nuclear, radi-
6 ological, and chemical weapons of mass destruc-
7 tion.
8 "(F) Such other activities for which the
9 Secretary determines that national voluntary
10 consensus training standards would be appro-
11 priate.
12 "(c) CONSULTATION WITH STANDARDS ORGANIZA-
13 TIONS.—In establishing national voluntary consensus
14 standards for first responder equipment and training
15 under this section, the Secretary shall consult with rel-
16 evant public and private sector groups, including—
17 "(1) the National Institute of Standards and
18 Technology;
19 "(2) the National Fire Protection Association;
20 "(3) the National Association of County and
21 City Health Officials;
22 "(4) the Association of State and Territorial
23 Health Officials;
24 "(5) the American National Standards Insti-
25 tute;

1 "(6) the National Institute of Justice;

2 "(7) the Inter-Agency Board for Equipment
3 Standardization and Interoperability;

4 "(8) the National Public Health Performance
5 Standards Program;

6 "(9) the National Institute for Occupational
7 Safety and Health;

8 "(10) ASTM International; and

9 "(11) to the extent the Secretary considers ap-
10 propriate, other national voluntary consensus stand-
11 ards development organizations, other interested
12 Federal, State, and local agencies, and other inter-
13 ested persons.

14 **"SEC. 1807. DEFINITIONS.**

15 "In this title:

16 "(1) BOARD.—The term 'Board' means the
17 First Responder Grants Board established under
18 section 1804(f).

19 "(2) COVERED GRANT.—The term 'covered
20 grant' means any grant to which this title applies
21 under section 1801.

22 "(3) ELEVATIONS IN THE THREAT ALERT
23 LEVEL.—The term 'elevations in the threat alert
24 level' means any designation (including those that
25 are less than national in scope) that raises the

1 homeland security threat level to either the highest
2 or second highest threat level under the Homeland
3 Security Advisory System referred to in section
4 201(d)(7).

5 "(4) ESSENTIAL CAPABILITIES.—The term 'es-
6 sential capabilities' means the levels, availability,
7 and competence of emergency personnel, planning,
8 training, and equipment across a variety of dis-
9 ciplines needed to effectively and efficiently prevent,
10 prepare for, and respond to acts of terrorism con-
11 sistent with established practices.

12 "(5) REGION.—The term 'region' means—

13 "(A) any geographic area consisting of all
14 or parts of 2 or more contiguous States, coun-
15 ties, municipalities, or other local governments
16 that have a combined population of at least
17 1,650,000 or have an area of not less than
18 20,000 square miles, and that, for purposes of
19 an application for a covered grant, is rep-
20 resented by 1 or more governments or govern-
21 mental agencies within such geographic area,
22 and that is established by law or by agreement
23 of 2 or more such governments or governmental
24 agencies in a mutual aid agreement; or

"(B) any other combination of contiguous local government units (including such a combination established by law or agreement of two or more governments or governmental agencies in a mutual aid agreement) that is formally certified by the Secretary as a region for purposes of this Act with the consent of—

"(i) the State or States in which they are located, including a multi-State entity established by a compact between two or more States; and

"(ii) the incorporated municipalities, counties, and parishes which they encompass.

"(6) TASK FORCE.—The term 'Task Force' means the Task Force on Essential Capabilities for First Responders established under section 1803.

"(7) FIRST RESPONDER.—The term 'first responder' shall have the same meaning as the term 'emergency response provider'.".

(b) DEFINITION OF EMERGENCY RESPONSE PROVIDERS.—Section 2(6) of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 101(6)) is amended by inserting "fire," after "law enforcement,".

1 (c) TEMPORARY LIMITATION ON APPLICATION.—The
2 following provisions of title XVIII of the Homeland Secu-
3 rity Act of 2002, as amended by subsection (a), shall not
4 apply during the 2 year period beginning on the date of
5 the enactment of this Act:
6 (1) Subsections (b), (c), (e) (except paragraph
7 (5) of such subsection), and (f)(3)(B) of section
8 1804.
9 (2) Subparagraphs (D) and (E) of section
10 1805(e)(4).
11 (3) Section 1805(g)(3).

12 **SEC. 4. MODIFICATION OF HOMELAND SECURITY ADVI-**
13 **SORY SYSTEM.**

14 (a) IN GENERAL.—Subtitle A of title II of the Home-
15 land Security Act of 2002 (Public Law 107–296; 6 U.S.C.
16 121 et seq.) is amended by adding at the end the fol-
17 lowing:

18 **"SEC. 203. HOMELAND SECURITY ADVISORY SYSTEM.**

19 "(a) IN GENERAL.—The Secretary shall revise the
20 Homeland Security Advisory System referred to in section
21 201(d)(7) to require that any designation of a threat level
22 or other warning shall be accompanied by a designation
23 of the geographic regions or economic sectors to which the
24 designation applies.

1 "(b) REPORTS.—The Secretary shall report to the
2 Congress annually by not later than December 31 each
3 year regarding the geographic region-specific warnings
4 and economic sector-specific warnings issued during the
5 preceding fiscal year under the Homeland Security Advi-
6 sory System referred to in section 201(d)(7), and the
7 bases for such warnings. The report shall be submitted
8 in unclassified form and may, as necessary, include a clas-
9 sified annex.".

10 (b) CLERICAL AMENDMENT.—The table of contents
11 in section 1(b) of the Homeland Security Act of 2002 (6
12 U.S.C. 101 et seq.) is amended by inserting after the item
13 relating to section 202 the following:

"203. Homeland Security Advisory System.".

14 **SEC. 5. COORDINATION OF INDUSTRY EFFORTS.**

15 Section 102(f) of the Homeland Security Act of 2002
16 (Public Law 107–296; 6 U.S.C. 112(f)) is amended by
17 striking "and" after the semicolon at the end of paragraph
18 (6), by striking the period at the end of paragraph (7)
19 and inserting "; and", and by adding at the end the fol-
20 lowing:

21 "(8) coordinating industry efforts to identify
22 private sector resources and capabilities that could
23 be effective in supplementing Federal, State, and
24 local government agency efforts to prevent or re-
25 spond to a terrorist attack.".

1 **SEC. 6. SUPERSEDED PROVISION.**

2 This Act supersedes section 1014 of Public Law 107–
3 56.

4 **SEC. 7. SENSE OF CONGRESS REGARDING INTEROPERABLE**
5 **COMMUNICATIONS.**

6 (a) FINDING.—The Congress finds that—

7 (1) many first responders working in the same
8 jurisdiction or in different jurisdictions cannot effec-
9 tively and efficiently communicate with one another,
10 and

11 (2) their inability to do so threatens the public's
12 safety and may result in unnecessary loss of lives
13 and property.

14 (b) SENSE OF CONGRESS.—It is the sense of the
15 Congress that it is of national importance that interoper-
16 able emergency communications systems that to the extent
17 possible meet national voluntary consensus standards
18 should be developed and promulgated as soon as prac-
19 ticable for use by the first responder community.

20 **SEC. 8. SENSE OF CONGRESS REGARDING CITIZEN CORPS**
21 **COUNCILS.**

22 (a) FINDING.—The Congress finds that Citizen
23 Corps councils help to enhance local citizen participation
24 in terrorism preparedness by coordinating multiple Citizen
25 Corps programs, developing community action plans, as-
26 sessing possible threats, and identifying local resources.

1 (b) SENSE OF CONGRESS.—It is the sense of the
2 Congress that individual Citizen Corps councils should
3 seek to enhance the preparedness and response capabilities
4 of all organizations participating in the councils, including
5 by providing funding to as many of their participating or-
6 ganizations as practicable to promote local terrorism pre-
7 paredness programs.

8 **SEC. 9. STUDY REGARDING NATIONWIDE EMERGENCY NO-**
9 **TIFICATION SYSTEM.**

10 (a) STUDY.—The Secretary of Homeland Security, in
11 consultation with the heads of other appropriate Federal
12 agencies and representatives of providers and participants
13 in the telecommunications industry, shall conduct a study
14 to determine whether it is cost-effective, efficient, or fea-
15 sible to establish and implement an emergency telephonic
16 alert notification system that will—

17 (1) alert persons in the United States of immi-
18 nent or current hazardous events caused by acts of
19 terrorism; and

20 (2) provide information to individuals regarding
21 appropriate measures that may be undertaken to al-
22 leviate or minimize threats to their safety and wel-
23 fare posed by such events.

24 (b) TECHNOLOGIES TO CONSIDER.—In conducting
25 the study, the Secretary shall consider the use of the tele-

1 phone, wireless communications, and other existing com-
2 munications networks to provide such notification.
3 (c) REPORT.—Not later than 9 months after the date
4 of the enactment of this Act, the Secretary shall submit
5 to the Congress a report regarding the conclusions of the
6 study.

7 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

8 For making covered grants (as that term is defined
9 in section 1807 of the Homeland Security Act of 2002,
10 as amended by this Act) there is authorized to be appro-
11 priated to the Secretary of Homeland Security
12 $3,400,000,000 for fiscal year 2006.

Without objection, the bill will be considered as read and open for amendment at any point, and the text as reported by the Select Committee on Homeland Security, which the Members have before them, will be considered as read, considered as the original text for purposes of amendment, and open for amendment at any point.

The Chair recognizes himself for 5 minutes to explain the bill.

This bill enables the Department of Homeland Security——

Mr. WATT. Mr. Chairman, I am having trouble hearing you down here.

Chairman SENSENBRENNER. This bill enables the Department of Homeland Security to provide grants to States, local government, and first responders more effectively and efficiently. It was introduced on October 8 in response to complaints that funding was being ineffectively appropriated. Accordingly, this bill consolidates the State Homeland Security Grant Program and the Urban Areas Security Initiative Grant Program, which are both managed by the Office of Domestic Preparedness.

Under the State Homeland Security Grant Program, money was distributed based upon a formula as provided by the PATRIOT Act, which gave 75 one-hundredths of 1 percent of the funding to each State and distributed the remainder based on population. The Urban Area Security Initiative Grant Program distributed funds based upon a formula that considered such factors as critical infrastructure, population density, and credible threat information.

By consolidating these programs, the bill maximizes the capabilities of limited resources and grants funds based upon threats, vulnerabilities, and consequence assessments to the targeted terrorist threat that we recognize is always changing. The bill would increase needed funding for first responders and improve our Nation's ability to combat terrorism.

The Chair would note that this Committee's referral of this legislation expires on June 21, and we have already been granted a previous extension by the leadership, so we have to get this done today.

Who wishes to give the Democratic opening statement?

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I am pleased you have scheduled this markup on H.R. 3266.

The bill provides funds for first responders, the men and women who are putting themselves on the line every day to provide for our safety and security, and who would be the first people to respond to a terrorist act or threat.

While there are concerns about the impact of the formula that has been proposed, it is clear that you have made a good effort in trying to ensure that every State has at least a little amount of money with which to provide for its security immediately, while reserving most of the funds for distribution based on actual threat assessments.

Prevention and response for crisis and consequence management are the two primary responsibilities of first responders in their efforts to prevent acts of terrorism, whenever possible, and to address those that are not prevented. Any terrorist act will be local at the point of its impact, so focusing on strengthening the ability of first responders to prevent and respond to terrorist acts is the key to any effective antiterrorism effort.

Arming our first responders with the best technologies, equipment, and training to react in the event of a catastrophic terrorist attack is extremely vital to the continued protection of our Nation. To this end, terrorist preparedness grants for first responders must be allocated quickly where the risk is the greatest.

H.R. 3266 will significantly contribute to this ongoing effort, and we look forward to working with you, Mr. Chairman, and our colleagues on other Committees of jurisdiction to assure that these ends are actually met.

I thank you, and I yield back.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will be included in the record at this point.

The Chair offers an amendment, and the clerk will report the amendment.

[The amendment offered by Mr. Sensenbrenner follows:]

AMENDMENT TO H.R. 3266

OFFERED BY MR. SENSENBRENNER

(Page & line nos. refer to the bill as reported by the Select Committee on Homeland Security (H. Rept. 108–460, Part I))

In section 1801(a) of the Homeland Security Act of 2002 (as proposed to be added by section 2 of the bill), strike ''States or regions'' and insert ''States, regions, or directly eligible tribes''.

In section 1804(a) (as so proposed), strike ''State or region'' and insert ''State, region, or directly eligible tribe''.

In section 1804(c)(1)(D)(i) (as so proposed), insert after ''interstate level'' the following: '', and with respect to any Indian tribes within its boundaries''.

In section 1804(e)(1) (as so proposed), strike ''State or region'' and insert ''State, region, or directly eligible tribe''.

In section 1804(e)(4)(A) (as so proposed), strike ''within the State or region'' and insert ''within the boundaries of the State, region, or directly eligible tribe''.

In section 1804(e)(4) (as so proposed)—

(1) redesignate subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(2) insert after subparagraph (D) the following new subparagraph:

1 "(E) if the applicant is a directly eligible
2 tribe, a designation of a specific individual to
3 serve as tribal liaison;

In section 1804(e) (as so proposed)—

(1) redesignate paragraph (6) as paragraph (7); and

(2) insert after paragraph (5) the following new paragraph:

4 "(6) TRIBAL APPLICATIONS.—
5 "(A) SUBMISSION TO STATE OR STATES.—
6 To ensure the consistency required under sub-
7 section (d), an applicant that is a directly eligi-
8 ble tribe must simultaneously submit its appli-
9 cation to the Department and to each State
10 within the boundaries of which any part of that
11 tribe is located.
12 "(B) OPPORTUNITY FOR STATE COM-
13 MENT.—Before awarding any covered grant to
14 a directly eligible tribe, the Secretary shall pro-
15 vide an opportunity to each State within the
16 boundaries of which any part of that tribe is lo-
17 cated, during the 30-day period beginning on
18 the date on which the tribe submits an applica-

tion for a covered grant, to comment to the Secretary on the consistency of the tribe's plan with the State's homeland security plan.

"(C) FINAL AUTHORITY.—The Secretary shall have final authority to determine the consistency of any application of a directly eligible tribe with the applicable State homeland security plan or plans and approve any application of that tribe. The Secretary shall notify each State within the boundaries of which any part of that tribe is located of the approval of an application of that tribe.

"(D) TRIBAL LIAISON.—A tribal liaison designated under paragraph (4)(E) shall—

"(i) coordinate with Federal, State, local, regional, and private officials concerning terrorism preparedness;

"(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials to assist in the development of the application of that tribe and to improve the tribe's access to covered grants; and

1 ''(iii) administer, in consultation with
2 State, local, regional, and private officials,
3 covered grants awarded to that tribe.
4 ''(E) LIMITATION ON NUMBER OF DIRECT
5 GRANTS.—The Secretary may make covered
6 grants directly to not more than 20 directly eli-
7 gible tribes per fiscal year.
8 ''(F) TRIBES NOT RECEIVING DIRECT
9 GRANTS.—An Indian tribe not receiving a grant
10 directly under this section is eligible to receive
11 funds under a covered grant from the State or
12 States within the boundaries of which any part
13 of that tribe is located, consistent with the
14 homeland security plan of the State as de-
15 scribed in subsection (c). If a State fails to
16 comply with section 1805(e)(1), the tribe is en-
17 titled to pursue the procedures set forth in sec-
18 tion 1805(f)(3) to the extent applicable.

In section 1804(f)(3)(B) (as so proposed), strike ''the Board shall'' and all that follows through the period at the end and insert ''the Board shall seek to achieve and enhance essential capabilities throughout the Nation.''.

In section 1804(f)(3) (as so proposed), insert at the end the following new subparagraph:

"(C) MINIMUM AMOUNTS.—After evaluating and prioritizing grant applications under subparagraph (A), the Board shall ensure that, for each fiscal year—

"(i) the States, the District of Columbia, and the Commonwealth of Puerto Rico each receive no less than 0.45 percent of the funds available for covered grants for that fiscal year for purposes of implementing its homeland security plan in accordance with the prioritization of additional needs under subsection (c)(1)(C);

"(ii) the United States Virgin Islands, America Samoa, Guam, and the Northern Mariana Islands each receive no less than 0.15 percent of the funds available for covered grants for that fiscal year for purposes of implementing its homeland security plan in accordance with the prioritization of additional needs under subsection (c)(1)(C); and

"(iii) directly eligible tribes under section 1807(8) collectively receive no less than 0.45 percent of the funds available for covered grants for that fiscal year for

1 purposes of addressing needs identified in
2 the applications of such tribes, consistent
3 with the homeland security plan of each
4 State within the boundaries of which any
5 part of any such tribe is located.

In section 1805(b) (as so proposed), strike paragraph (2) and redesignate paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

In section 1805(e) (as so proposed), strike ''STATE AND REGIONAL RESPONSIBILITIES.—'' and insert ''STATE, REGIONAL, AND TRIBAL RESPONSIBILITIES.—''.

In section 1805(e)(2)(A) (as so proposed), strike ''State or region'' and insert ''State, region, or directly eligible tribe''.

In section 1805(e)(4) (as so proposed)—

(1) in the matter preceding subparagraph (A)—

(A) strike ''REPORT'' and insert ''ANNUAL REPORT''; and

(B) insert before ''Each report must include'' the following: ''Each recipient of a covered grant that is a directly eligible tribe must simultaneously submits its report to each State

within the boundaries of which any part of such tribe is located.''; and

(2) in subparagraph (B), strike ''State or region,'' and insert ''State, region, or directly eligible tribe,''.

In section 1806(a)(1) (as so proposed), strike ''section 1804(e)(6)'' and insert ''section 1804(e)(7)''.

In section 1806(c) (as so proposed)—

(1) strike ''and'' at the end of paragraph (10);

(2) redesignate paragraph (11) as paragraph (12); and

(3) insert after paragraph (10) the following new paragraph:

''(11) the International Safety Equipment Association (ISEA); and''.

In section 1807 (as so proposed), strike the closing quotation marks and period at the end of paragraph (7) and insert the following after paragraph (7):

''(8) DIRECTLY ELIGIBLE TRIBE.—The term 'directly eligible tribe' means any Indian tribe or consortium of Indian tribes that—

''(A) meets the criteria to participate in Self-Governance set forth in section 402(c) of

the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458bb(c));

''(B) employs at least 10 full-time personnel in a law enforcement or emergency response agency with the capacity to respond to calls for law enforcement or emergency services; and

''(C)(i) is located on, or within 5 miles of, an international border or waterway;

''(ii) is located within 5 miles of a facility within a critical infrastructure sector identified in section 1802(c)(2);

''(iii) is located within or contiguous to one of the 50 largest metropolitan statistical areas; or

''(iv) has more than 1,000 square miles of Indian country, as described in section 1151 of title 18, United States Code.''.

The CLERK. Amendment to H.R. 3266 offered by Sensenbrenner. In section 1801(a) of the Homeland Security Act of 2002 (as proposed to be added by section 2 of the bill), strike——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the Chair recognizes himself for 5 minutes.

I speak today in support of an amendment to H.R. 3266. The amendment would ensure that all States and territories are protected and that grants focus on threats, vulnerabilities, and consequence assessments for each State and locality.

I would point out that I believe this to be a compromise between the existing law, which will end up staying in place if this bill is not enacted, meaning passed in the other body and signed by the President, and the original base bill, which does not contain a floor for any State or territory.

The terrorists conspire against the United States and any and all of its citizens wherever they may reside. Just this week, a Somali immigrant was indicted for plotting to bomb a shopping center in America's heartland. The aim of terrorists is to kill and eliminate every aspect of our society. And if they cannot strike one area due to a buildup of defenses, they will strike another.

While our defenses may focus more on the areas with greater threats, we cannot afford to ignore any part of our Nation. We must cover our heartland as well as our coastal cities. The 9/11 attacks demonstrated that when one area of our Nation is attacked, the entire Nation is affected. Our relatives, friends and our national and local economies and our morale are harmed. The death grip of a terrorist attack that touches one State touches the Nation, and the Nation responded, as they did in the case of the Pentagon and Twin Towers attacks.

Accordingly, this amendment gives each State a base level of funding so each State is equipped to fight terrorism. This amendment also recognizes that various locales face varying threat assessments and therefore allocates funds to areas based upon threats and vulnerabilities. These threats and vulnerabilities are forever changing and shifting. Our enemy is patient and will strike wherever and whenever possible.

Finally, this amendment would ensure that Indian tribes and territories will receive adequate funding to combat terrorism. Terrorists do not recognize borders, and I have no doubt that they will strike where they can find a vulnerable spot in America's defenses. In an attempt to give all Americans the defenses necessary to protect themselves, I urge support of this amendment.

And let me again reiterate the fact, the funding mechanism that is contained in the base bill is a tremendous improvement over the existing law. It consolidates grants. It allows for consolidated grant applications; that means less paperwork on the part of the localities and States that submit applications.

However, if we get into a food fight over who can get more by changing the formula, this bill is not going to pass. The Chairman of the Appropriations Subcommittee in the House is adamant that there be a base minimum funding formula. The Senate represents States if States end up getting significantly reduced funding. We all know what happens over in the other body.

So while the bill contains a no-State-minimum guarantee contrasted to the .75-percent-per-State-minimum guarantee, I would

implore the Members to think when they are considering my amendment that making the perfect the enemy of the good will mean that the existing law stays on the books. I don't want to see that happen. I don't think many of my colleagues would like to see that happen, and please don't forget about that when we are dealing with this amendment.

Ms. WATERS. Would the gentleman yield?

Chairman SENSENBRENNER. I yield to the gentlewoman from California.

Ms. WATERS. Thank you very much, Mr. Chairman. And I would like to commend you for the work that you have done to try and bring before us a bill that we can all agree on.

I just simply need to ask you, under the critical infrastructure sectors where you identify agriculture, banking and finance, chemical industries, et cetera, I see no mention of ports and containers. And I am very concerned about ports and containers. It seems to be the least secured part of our infrastructure. We still don't know whether or not we have the kind of technology to examine the containers that are coming to our ports, and I see no specific coverage.

Chairman SENSENBRENNER. If the gentlewoman would allow me to reclaim my time.

This does not deal with the amendment. But once we are done with the amendment, I would ask that the appropriate parts of the bill be amended to include ports and containers, because I agree that there is a tremendous vulnerability there, and that should be considered in terms of threat assessments.

Ms. WATERS. Thank you very much, Mr. Chairman.

Chairman SENSENBRENNER. My time has expired.

The gentleman from New York, Mr. Nadler.

Mr. NADLER. I have a second degree amendment to your amendment at the desk, Nadler .095.

[The amendment offered by Mr. Nadler follows:]

AMENDMENT TO THE SENSENBRENNER AMENDMENT

OFFERED BY MR. NADLER

Page 5, line 7, strike ''0.45 percent'' and insert ''0.25 percent''.

Page 5, line 16, strike ''0.15 percent'' and insert ''0.08 percent''.

Page 5, line 24, strike ''0.45 percent'' and insert ''0.25 percent''.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the Sensenbrenner amendment to H.R. 3266 offered by Mr. Nadler, page 5, line 7, strike "0.45 percent" and insert "0.25 percent".

Mr. NADLER. I waive the reading of the amendment.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the gentleman is recognized for 5 minutes.

Mr. NADLER. Mr. Chairman, I commend you for this amendment. I do think the structure in the amendment is a great improvement over the structure in the current law. It is essentially the same as the structure in the bill reported out by the Homeland Security Committee and much superior to the structure of the bill reported out by the other Committee on which I serve, which will remain nameless at the moment.

And I agree with you that the enemy of the perfect is often the enemy of the good, and the perfect would be no State minimum, because this should be a risk-based bill. There are tremendous costs. My own city of New York is obviously a major target. The police department of New York City spent $200 million in the last fiscal year alone on terrorism prevention. It is absurd when Wyoming receives $38 and change per person and New York gets $5 and change per person when New York is probably a more likely terrorist target than is Wyoming. And this bill goes in the right direction.

I do believe, however, that what my amendment does would be to change it from .45 in your amendment to .25 percent as the minimum; .25 percent would give States a minimum that is approximately half of what they receive today. It is a logicalphased approach to moving away from a .0 system toward a system that more rationally distributes preparedness funds based on the actual risks faced by States and localities. This approach recognizes that every State needs something, but also recognizes that risk factors should carry more weight than the distribution of funds.

Now why .25 percent? It is consistent with other counterterrorism grant programs that we have. The HRSA bioterrorism funds have a .24 percent minimum. The local law enforcement block grant program has a .25 percent minimum. These grants serve similar purposes, and no one is complaining that the minimums are too low. What is so different about the ODB terrorism preparedness funds that would lead Congress to allocate such a large minimum amount to each State when compared to the minimums in the other programs that I just mentioned?

If States have a legitimate need for—legitimate need for funds above the .25 percent level, they can apply and be rewarded additional funds out of this program. Nothing prevents them from receiving the funds they need to address real threats based on risk. I urge the Committee to accept this amendment, to make the minimum .25 percent, which is consistent with other programs and would lead, I think, to a more rational distribution of the funds.

I thank you and yield back.

Chairman SENSENBRENNER. The Chair will recognize himself in opposition, mildly, to the amendment.

I commend the gentleman from New York to recognize that everybody ought to get some of this money. And you know, let me say

that terrorists have got a very adept way of finding out where the weakest link and the greatest vulnerability is, and that means the entire country is at risk.

Also, the purpose of terrorism strikes is to ruin the economy of the United States, which is the engine of our strength and the engine of both our economic freedom and our political freedom, both of which they hate. That means, I think, that no part of this country is exempt, and everybody should have at least some money if only for the purpose to have terrorism on the agenda and to provide better training and better equipment for first responders. We do not wish to have the first responders become the first victims of a terrorist strike, particularly a chemical or biological or radiological attack.

I think this will facilitate the passage of this bill. I think the figure is still subject to negotiation of the gentleman's amendment. I am not going to support it, because I think .45 is more halfway between .75 and zero, but nonetheless, I am not going to trip over my shoelaces if the amendment is adopted.

The gentleman from Florida.

Mr. KELLER. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KELLER. I am going to say something I never said in 4 years here on this Committee, I 100 percent totally agree with Mr. Nadler and will be supporting this amendment.

I don't think we should have any State minimums. I think we should go where the threat is. The idea that Vermont should get the same as Florida I think is silly.

But I think the Chairman has a lot of wisdom, and we are going to get stuck with something. The Chairman has proposed .45, which is certainly an improvement over .75. I like Congressman Nadler's approach better because, if we went with the .45, that would be the floor to which we would start negotiations. And if we went with Nadler, I think .25 would be the floor, and we get closer to .45. I think the Nadler approach is a better way to go, and I urge my colleagues to adopt.

Mr. NADLER. Once out of 4 years isn't so bad.

Mr. WATT. I can't resist the temptation, I agree with the gentleman.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Weiner.

Mr. WEINER. Thank you, Mr. Chairman. I want to thank you, Mr. Chairman, as always, fighting so hard to defend the jurisdiction of this Committee.

I think much more so than the other Committees that have been involved, we have been focusing on this issue of trying a way to balance out the needs of various cities and localities. I agree with Mr. Keller that, fundamentally, you don't have mandatory minimums on this anymore than you would of agriculture funding or any other program. I think we should always strive to forward resources where they are needed most.

I do, however, believe that none of us are going to be offering an amendment to have no minimum guarantee, because I fundamentally agree with your position that what we have to do now is to

try to craft a compromise that gets us away from where we are today. We essentially began with a grant program that had minimum guarantees and little else. We then went back and, realizing when Wyoming was getting more per capita than New York and Florida combined, we were making a mistake. We created this high-threat urban area program. I think the name has changed a couple of times, and it is now the Urban Area Security Initiative.

And then what we did is we allowed Homeland Security to expand that program to include the entire country; 50 cities and 30 transportation administrations are now eligible. And everyone is tripping over themselves to be declared high-threat urban areas even though, in many cases, they are not. What we are trying to do with the Sensenbrenner bill and the Cox bill to a large degree is to say, let us remember why we are in this business, which is to try and deal with threats.

And I think the Cox bill and Mr. Sensenbrenner's bill, which mirrors it closely, goes a long way to doing that. I would remind my colleagues, it is absolutely true what the Chairman says, that there are potential threats looming out there. But we must not forget the idea that some localities, New York chief among them, don't need to worry about potential threats that have actually happened, not the successful ones but also the far less noticed unsuccessful ones.

Commissioner Kelly, the police commissioner from our city, is fond of telling a story of Iyman Farris who, 2 years after the destruction of the World Trade Center, was in New York City, stayed at a hotel near Newark, he drove into Manhattan, ate at a Pakistani restaurant near City Hall and reported back to his handlers, quote, "The weather is too hot." what did he mean? According to depositions and according to testimony, what he meant was he saw police cars located at each stanchion of the Brooklyn Bridge 24 hours a day, and their plans to blow up the Brooklyn bridge would have to wait.

It is not hypothetical. It is not what could have been. It is a real actual threat. And I think that the Sensenbrenner bill goes a long way to recognizing that actual threat is what we should be focusing our attention on. And I think the Nadler amendment brings us to a point that, when we go into negotiations with the other Committees, unlike what happened in my other Committee, there is a realistic sense that we have to strike a compromise. And I want to commend Chairman Sensenbrenner and urge a yes vote on the Nadler amendment.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California.

Ms. WATERS. Thank you, Mr. Chairman.

I want to make it clear that I do commend you for the work that has been done.

I agree with Mr. Nadler. Security is not an area where we should have to scrimp and apportion based on what we define as threat potential. I think all of our infrastructure is threatened. I think it is just as easy for a terrorist to blow up a nuclear power plant in some small town as it is to topple a building in Los Angeles or someplace else.

I would just say to you, Mr. Chairman, because you have so much influence on the opposite side of the aisle, that we should talk about where to find the necessary dollars to make sure that

we can cover all of what needs to be covered as we talk about funding and dealing with our first responders.

Yesterday, I learned that there was a tremendous multibillion dollar subsidy that was given to the tobacco industry. And I would just ask my friends who are in control of this House to think about where we could find the funds to make sure that we don't just talk about funding our first responders, but we actually do it, and we don't have to get into the business of trying to find out whether or not New York is a little bit more of a threat than Los Angeles or vice versa.

Ms. LOFGREN. Would the gentlelady yield?

Ms. WATERS. I will yield.

Ms. LOFGREN. I will support the Nadler amendment.

But as the gentleman from Florida mentioned, I don't believe there ought to be any minimums in this bill. I did want to mention something, however. Many of us serve on the Homeland Security Committee as well the Judiciary, and certainly, the Chairman and I do. And those of us who serve on that Committee recently had the opportunity to attend classified briefings relative to the Critical Infrastructure Threat Assessment.

Obviously, since it is classified, we cannot discuss what was on those lists. I will say that the lists were so shoddily constructed, and they were so deficient, that Members from both sides of the aisle who attended the classified briefing expressed their dismay very vocally to the Department. So I think, in addition to pursuing funding based on threat, we need, all of us in this House, to jump all over the Department of Homeland Security for failing to actually establish the threat that was their charge to do in the last 2.5 years.

And we are doing our part here in the Congress. But if we adopt this new method of allocating, we have a real problem that we are facing, because there is no plan. There is no plan. And that is something that I would suggest all the Members have the right to receive that classified briefing, whether or not they are on the Homeland Security Committee. And I highly recommend that each Member of this Committee do so and take a look at their own district and see what is not the list. It will be a real eye opener.

And I thank the lady for yielding.

Chairman SENSENBRENNER. The question is on the Nadler amendment to the Sensenbrenner amendment.

Those in favor will say aye.

Those opposed, no.

The ayes appear to have it. The ayes have it. The amendment to the amendment is agreed to.

The question now is on the Sensenbrenner amendment as amended.

Those in favor will say aye.

Opposed, no.

The gentleman from New York.

Mr. WEINER. I have an amendment.

Chairman SENSENBRENNER. Is this an amendment to the Sensenbrenner amendment?

Mr. WEINER. This is not an amendment.

Chairman SENSENBRENNER. The question now is again on the Sensenbrenner amendment as amended by the Nadler amendment.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. And the amendment as amended is agreed to.

Now without objection, the Chair, under the authority to make technical and conforming changes, is authorized to include port and container security in the appropriate parts of the bill as amended by this Committee.

Hearing no objection, the Chair is given that authority.

Now are there further amendments?

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Mr. Chairman, I have an amendment at the desk.

[The amendment offered by Mr. Watt follows:]

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC

Amendment to Committee Print offered by Mr. Watt

Page 11, after line 11 insert the following:

"(N) Courts and Justice facilities."

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. WATT. And perhaps we can deal with it the same way you just dealt with it on the ports.

Chairman SENSENBRENNER. The gentleman proposes to add courts and justice facilities.

Without objection, the amendment is agreed to.

Are there further amendments?

Ms. WATERS. While you are in an amending mood, let me think of more.

Mr. NADLER. Mr. Chairman, there is an amendment at the desk, Nadler .092.

[The amendment offered by Mr. Nadler follows:]

AMENDMENT TO H.R. 3266
OFFERED BY MR. NADLER

At the end of the bill, insert the following new section:

SEC. ___. AUTHORITY TO ENTER INTO CONTRACTS AND ISSUE FEDERAL LOAN GUARANTEES.

(a) FINDING.—Congress finds that there is a public interest in protecting high-risk nonprofit organizations from international terrorist attacks that would disrupt the vital services such organizations provide to the people of the United States and threaten the lives and well-being of United States citizens who operate, utilize, and live or work in proximity to such organizations.

(b) PURPOSES.—The purposes of this section are to—

(1) establish within the Department of Homeland Security a program to protect United States citizens at or near high-risk nonprofit organizations from international terrorist attacks through loan guarantees and Federal contracts for security enhancements and technical assistance;

(2) establish a program within the Department of Homeland Security to provide grants to local governments to assist with incremental costs associated

with law enforcement in areas in which there are a high concentration of high-risk nonprofit organizations vulnerable to international terrorist attacks; and

(3) establish an Office of Community Relations and Civic Affairs within the Department of Homeland Security to focus on security needs of high-risk nonprofit organizations with respect to international terrorist threats.

(c) AUTHORITY.—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.), as amended by this Act, is further amended by adding at the end the following:

"TITLE XIV—PROTECTION OF CITIZENS AT HIGH-RISK NONPROFIT ORGANIZATIONS

"SEC. 1901. DEFINITIONS.

" In this title:

"(1) CONTRACT.—The term 'contract' means a contract between the Federal Government and a contractor selected from the list of certified contractors to perform security enhancements or provide technical assistance approved by the Secretary under this title.

"(2) FAVORABLE REPAYMENT TERMS.—The term 'favorable repayment terms' means the repay-

ment terms of loans offered to nonprofit organizations under this title that—

"(A) are determined by the Secretary, in consultation with the Secretary of the Treasury, to be favorable under current market conditions;

"(B) have interest rates at least 1 full percentage point below the market rate; and

"(C) provide for repayment over a term not less than 25 years.

"(3) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' means an organization that—

"(A) is described under section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; and

"(B) is designated by the Secretary under section 1903(a).

"(4) SECURITY ENHANCEMENTS.—The term 'security enhancements'—

"(A) means the purchase and installation of security equipment in real property (including buildings and improvements), owned or leased by a nonprofit organization, specifically

in response to the risk of attack at a nonprofit organization by an international terrorist organization;

"(B) includes software security measures; and

"(C) does not include enhancements that would otherwise have been reasonably necessary due to nonterrorist threats.

"(5) TECHNICAL ASSISTANCE.—The term 'technical assistance'—

"(A) means guidance, assessment, recommendations, and any other provision of information or expertise which assists nonprofit organizations in—

"(i) identifying security needs;

"(ii) purchasing and installing security enhancements;

"(iii) training employees to use and maintain security enhancements; or

"(iv) training employees to recognize and respond to international terrorist threats; and

"(B) does not include technical assistance that would otherwise have been reasonably necessary due to nonterrorist threats.

"SEC. 1902. AUTHORITY TO ENTER INTO CONTRACTS AND ISSUE FEDERAL LOAN GUARANTEES.

"(a) IN GENERAL.—The Secretary may—

"(1) enter into contracts with certified contractors for security enhancements and technical assistance for nonprofit organizations; and

"(2) issue Federal loan guarantees to financial institutions in connection with loans made by such institutions to nonprofit organizations for security enhancements and technical assistance.

"(b) LOANS.—The Secretary may guarantee loans under this title—

"(1) only to the extent provided for in advance by appropriations Acts; and

"(2) only to the extent such loans have favorable repayment terms.

"SEC. 1903. ELIGIBILITY CRITERIA.

"(a) IN GENERAL.—The Secretary shall designate nonprofit organizations as high-risk nonprofit organizations eligible for contracts or loans under this title based on the vulnerability of the specific site of the nonprofit organization to international terrorist attacks.

"(b) VULNERABILITY DETERMINATION.—In determining vulnerability to international terrorist attacks and eligibility for security enhancements or technical assistance under this title, the Secretary shall consider—

"(1) threats of international terrorist organizations (as designated by the State Department) against any group of United States citizens who operate or are the principal beneficiaries or users of the nonprofit organization;

"(2) prior attacks, within or outside the United States, by international terrorist organizations against the nonprofit organization or entities associated with or similarly situated as the nonprofit organization;

"(3) the symbolic value of the site as a highly recognized United States cultural or historical institution that renders the site a possible target of international terrorism;

"(4) the role of the nonprofit organization in responding to international terrorist attacks; and

"(5) any recommendations of the applicable State Homeland Security Authority established under section 1906 or Federal, State, and local law enforcement authorities.

"(c) DOCUMENTATION.—In order to be eligible for security enhancements, technical assistance or loan guarantees under this title, the nonprofit organization shall provide the Secretary with documentation that—

"(1) the nonprofit organization hosted a gathering of at least 100 or more persons at least once each month at the nonprofit organization site during the preceding 12 months; or

"(2) the nonprofit organization provides services to at least 500 persons each year at the nonprofit organization site.

"(d) TECHNICAL ASSISTANCE ORGANIZATIONS.—If 2 or more nonprofit organizations establish another nonprofit organization to provide technical assistance, that established organization shall be eligible to receive security enhancements and technical assistance under this title based upon the collective risk of the nonprofit organizations it serves.

"SEC. 1904. USE OF LOAN GUARANTEES.

"Funds borrowed from lending institutions, which are guaranteed by the Federal Government under this title, may be used for technical assistance and security enhancements.

"SEC. 1905. NONPROFIT ORGANIZATION APPLICATIONS.

"(a) IN GENERAL.—A nonprofit organization desiring assistance under this title shall submit a separate application for each specific site needing security enhancements or technical assistance.

"(b) CONTENT.—Each application shall include—

"(1) a detailed request for security enhancements and technical assistance, from a list of approved enhancements and assistance issued by the Secretary under this title;

"(2) a description of the intended uses of funds to be borrowed under Federal loan guarantees; and

"(3) such other information as the Secretary shall require.

"(c) JOINT APPLICATION.—Two or more nonprofit organizations located on contiguous sites may submit a joint application.

"SEC. 1906. REVIEW BY STATE HOMELAND SECURITY AUTHORITIES.

"(a) ESTABLISHMENT OF STATE HOMELAND SECURITY AUTHORITIES.—In accordance with regulations prescribed by the Secretary, each State may establish a State Homeland Security Authority to carry out this title.

"(b) APPLICATIONS.—

"(1) SUBMISSION.—Applications shall be submitted to the applicable State Homeland Security Authority.

"(2) EVALUATION.—After consultation with Federal, State, and local law enforcement authorities, the State Homeland Security Authority shall evaluate all applications using the criteria under sec-

tion 1903 and transmit all qualifying applications to the Secretary ranked by severity of risk of international terrorist attack.

"(3) APPEAL.—An applicant may appeal the finding that an application is not a qualifying application to the Secretary under procedures that the Secretary shall issue by regulation not later than 90 days after the date of enactment of this title.

"SEC. 1907. SECURITY ENHANCEMENT AND TECHNICAL ASSISTANCE CONTRACTS AND LOAN GUARANTEES.

"(a) IN GENERAL.—Upon receipt of the applications, the Secretary shall select applications for execution of security enhancement and technical assistance contracts, or issuance of loan guarantees, giving preference to the nonprofit organizations determined to be at greatest risk of international terrorist attack based on criteria under section 1903.

"(b) SECURITY ENHANCEMENTS AND TECHNICAL ASSISTANCE; FOLLOWED BY LOAN GUARANTEES.—The Secretary shall execute security enhancement and technical assistance contracts for the highest priority applicants until available funds are expended, after which loan guarantees shall be made available for additional applicants determined to be at high risk, up to the authorized

1 amount of loan guarantees. The Secretary may provide
2 with respect to a single application a combination of such
3 contracts and loan guarantees.

4 "(c) JOINT APPLICATIONS.—Special preference shall
5 be given to joint applications submitted on behalf of mul-
6 tiple nonprofit organizations located in contiguous set-
7 tings.

8 "(d) MAXIMIZING AVAILABLE FUNDS.—Subject to
9 subsection (b), the Secretary shall execute security en-
10 hancement and technical assistance contracts in such
11 amounts as to maximize the number of high-risk appli-
12 cants nationwide receiving assistance under this title.

13 "(e) APPLICANT NOTIFICATION.—Upon selecting a
14 nonprofit organization for assistance under this title, the
15 Secretary shall notify the nonprofit organization that the
16 Federal Government is prepared to enter into a contract
17 with certified contractors to install specified security en-
18 hancements or provide specified technical assistance at the
19 site of the nonprofit organization.

20 "(f) CERTIFIED CONTRACTORS.—

21 "(1) IN GENERAL.—Upon receiving a notifica-
22 tion under subsection (e), the nonprofit organization
23 shall select a certified contractor to perform the
24 specified security enhancements, from a list of cer-

tified contractors issued and maintained by the Secretary under subsection (j).

"(2) LIST.—The list referred to in paragraph (1) shall be comprised of contractors selected on the basis of—

"(A) technical expertise;

"(B) performance record including quality and timeliness of work performed;

"(C) adequacy of employee criminal background checks; and

"(D) price competitiveness.

"(3) OTHER CERTIFIED CONTRACTORS.—The Secretary shall include on the list of certified contractors additional contractors selected by senior officials at State Homeland Security Authorities and the chief executives of county and other local jurisdictions. Such additional certified contractors shall be selected on the basis of the criteria under paragraph (2).

"(g) ENSURING THE AVAILABILITY OF CONTRACTORS.—If the list of certified contractors under this section does not include any contractors who can begin work on the security enhancements or technical assistance within 60 days after applicant notification, the nonprofit organization may submit a contractor not currently on the list

1 to the Secretary for the Secretary's review. If the Sec-
2 retary does not include the submitted contractor on the
3 list of certified contractors within 60 days after the sub-
4 mission and does not place an alternative contractor on
5 the list within the same time period (who would be avail-
6 able to begin the specified work within that 60-day pe-
7 riod), the Secretary shall immediately place the submitted
8 contractor on the list of certified contractors and such con-
9 tractor shall remain on such list until—
10 "(1) the specified work is completed; or
11 "(2) the Secretary can show cause why such
12 contractor may not retain certification, with such de-
13 terminations subject to review by the Comptroller
14 General of the United States.
15 "(h) CONTRACTS.—Upon selecting a certified con-
16 tractor to provide security enhancements and technical as-
17 sistance approved by the Secretary under this title, the
18 nonprofit organization shall notify the Secretary of such
19 selection. The Secretary shall deliver a contract to such
20 contractor within 10 business days after such notification.
21 "(i) CONTRACTS FOR ADDITIONAL WORK OR UP-
22 GRADES.—A nonprofit organization, using its own funds,
23 may enter into an additional contract with the certified
24 contractor, for additional or upgraded security enhance-
25 ments or technical assistance. Such additional contracts

1 shall be separate contracts between the nonprofit organi-
2 zation and the contractor.

3 "(j) EXPEDITING ASSISTANCE.—In order to expedite
4 assistance to nonprofit organizations, the Secretary
5 shall—

6 "(1) compile a list of approved technical assist-
7 ance and security enhancement activities within 45
8 days after the date of enactment of this title;

9 "(2) publish in the Federal Register within 60
10 days after such date of enactment a request for con-
11 tractors to submit applications to be placed on the
12 list of certified contractors under this section;

13 "(3) after consultation with the Secretary of
14 the Treasury, publish in the Federal Register within
15 60 days after such date of enactment, prescribe reg-
16 ulations setting forth the conditions under which
17 loan guarantees shall be issued under this title, in-
18 cluding application procedures, expeditious review of
19 applications, underwriting criteria, assignment of
20 loan guarantees, modifications, commercial validity,
21 defaults, and fees; and

22 "(4) publish in the Federal Register within 120
23 days after such date of enactment (and every 30
24 days thereafter) a list of certified contractors, in-
25 cluding those selected by State Homeland Security

1 Authorities, county, and local officials, with coverage
2 of all 50 States, the District of Columbia, and the
3 territories.

4 **"SEC. 1908. LOCAL LAW ENFORCEMENT ASSISTANCE**
5 **GRANTS.**

6 "(a) IN GENERAL.—The Secretary may provide
7 grants to units of local government to offset incremental
8 costs associated with law enforcement in areas where there
9 is a high concentration of nonprofit organizations.

10 "(b) USE.—Grant funds received under this section
11 may be used only for personnel costs or for equipment
12 needs specifically related to such incremental costs.

13 "(c) MAXIMIZATION OF IMPACT.—The Secretary
14 shall award grants in such amounts as to maximize the
15 impact of available funds in protecting nonprofit organiza-
16 tions nationwide from international terrorist attacks.

17 **"SEC. 1909. OFFICE OF COMMUNITY RELATIONS AND CIVIC**
18 **AFFAIRS.**

19 "(a) IN GENERAL.—There is established within the
20 Department, the Office of Community Relations and Civic
21 Affairs to administer grant programs for nonprofit organi-
22 zations and local law enforcement assistance.

23 "(b) ADDITIONAL RESPONSIBILITIES.—The Office of
24 Community Relations and Civic Affairs shall—

"(1) coordinate community relations efforts of the Department;

"(2) serve as the official liaison of the Secretary to the nonprofit, human and social services, and faith-based communities; and

"(3) assist in coordinating the needs of those communities with the Citizen Corps program.

"SEC. 1810. AUTHORIZATION OF APPROPRIATIONS AND LOAN GUARANTEES.

"(a) NONPROFIT ORGANIZATIONS PROGRAM.—There are authorized to be appropriated to the Department to carry out the nonprofit organization program under this title, $100,000,000 for fiscal year 2005 and such sums as may be necessary for fiscal years 2006 and 2007.

"(b) LOCAL LAW ENFORCEMENT ASSISTANCE GRANTS.—There are authorized to be appropriated to the Department for local law enforcement assistance grants under section 1908, $50,000,000 for fiscal year 2005 and such sums as may be necessary for fiscal years 2006 and 2007.

"(c) OFFICE OF COMMUNITY RELATIONS AND CIVIC AFFAIRS.—There are authorized to be appropriated to the Department for the Office of Community Relations and Civic Affairs under section 1909, $5,000,000 for fiscal

1 year 2005 and such sums as may be necessary for fiscal
2 years 2006 and 2007.
3 "(d) LOAN GUARANTEES.—
4 "(1) AUTHORIZATION OF APPROPRIATIONS.—
5 There are authorized to be appropriated in each of
6 fiscal years 2005, 2006, and 2007, such amounts as
7 may be required under the Federal Credit Act with
8 respect to Federal loan guarantees authorized by
9 this title, which shall remain available until ex-
10 pended.
11 "(2) LIMITATION.—The aggregate value of all
12 loans for which loan guarantees are issued under
13 this title by the Secretary may not exceed
14 $250,000,000 in each of fiscal years 2005, 2006,
15 and 2007.".
16 (d) CLERICAL AMENDMENT.—The table of contents
17 under section 1(b) of the Homeland Security Act of 2002
18 (6 U.S.C. 101(b)) is amended by adding at the end the
19 following:

"TITLE XIV—PROTECTION OF CITIZENS AT HIGH-RISK NONPROFIT ORGANIZATIONS

"Sec. 1901. Definitions.
"Sec. 1902. Authority to enter into contracts and issue Federal loan guarantees.
"Sec. 1903. Eligibility criteria.
"Sec. 1904. Use of loan guarantees.
"Sec. 1905. Nonprofit organization applications.
"Sec. 1906. Review by State Homeland Security Authorities.
"Sec. 1907. Security enhancement and technical assistance contracts and loan guarantees.
"Sec. 1908. Local law enforcement assistance grants.

"Sec. 1909. Office of Community Relations and Civic Affairs.
"Sec. 1910. Authorization of appropriations and loan guarantees.".

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3266 offered by Mr. Nadler. At the end of the bill, insert the following new section: Section: Authority to enter into contracts——

Mr. NADLER. Mr. Chairman, I waive the reading.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Before I start my statement, let me say there are three things: The text of the bill—text of the amendment. A summary of the amendment.

[The information referred to follows:]

Summary of the "High-Risk Non-Profit Security Enhancement Act of 2004" H.R. 4108/S. 2275

Need for the Legislation: There is a compelling public interest in protecting high-risk non-profit institutions from terrorist attacks that would disrupt the vital health, social, religious and educational services they provide to the American people, and threaten the lives and well-being of American citizens who operate, utilize, and live or work in proximity to such institutions.

The risk to such institutions since 9/11 is clear. According to Director of Central Intelligence George Tenet, al Qaeda has turned its focus to "soft targets." FBI Director Robert Mueller also testified that al Qaeda might attack soft targets such as schools and universities and houses of worship. International terrorists' willingness to attack targets of all types has been made readily apparent with attacks in the United States, Spain, Germany, Iraq, Israel, Tunisia, Kenya, Morocco, and Turkey, including an international Red Cross building, synagogues, train stations, hotels, airports, restaurants, night clubs, and cultural centers.

Security Assistance and Loan Guarantees to High-Risk Non-Profits: This bill would authorize the Secretary of Homeland Security to provide in FY 2005 up to $100 million in security assistance to 501(c)(3) organizations demonstrating a high risk of terrorist attack based upon: specific threats of international terrorist organizations; prior attacks against similarly situated organizations; the vulnerability of the specific site; the symbolic value of the site as a highly recognized American institution; or the role of the institution in responding to terrorist attacks. After funds have been expended for the highest risk institutions, Federal loan guarantees would be available to make loans available on favorable terms. Funds would be administered by a new office in the Department of Homeland Security dedicated to working with high-risk non-profits.

Amount of the Request: The authorized amount of assistance -- $100 million -- is a fraction of the assessed needs of high-risk non-profits, which is well in excess of $1 billion. However, in view of current budgetary constraints, supporters of this legislation have proposed a modest level of Federal assistance.

How would the funds be administered? Applicant organizations would submit their requests to State Homeland Security Authorities that would determine which organizations qualify as "high risk" and prioritize qualifying requests. Qualifying requests would then be forwarded to the Secretary of Homeland Security who would prioritize all qualifying requests. Funds would not flow directly to selected applicants; instead, the Secretary would enter into contracts with security providers to install security enhancements and provide technical assistance.

What could the funds be used for? The funds could be used for security enhancements, such as concrete barriers, and "hardening" of windows and doors, as well as technical assistance to assess needs, develop plans, and train personnel. Funds could *not* be used for security equipment that would reasonably be necessary for protection from neighborhood crime.

Grants to local police: The bill also includes $50 million in available grant funds for local police departments to provide additional security in areas where there is a high concentration of high-risk non-profits.

Support for the Legislation: There is broad national support for this legislation, including: American Association of Museums; American Association of Homes and Services for the Aging; American Hospital Association; American Jewish Congress; American Red Cross; American Society of Association Executives; American Symphony Orchestra League; Association of Art Museum Directors; Association of Science-Technology Centers; Independent Sector; Jewish United Fund/Jewish Federation of Metropolitan Chicago; National Assembly of Health and Human Services Organizations; National Association of Independent Colleges and Universities; Theatre Communications Group; UJA Federation of New York; Union of Orthodox Jewish Congregations; United Jewish Communities; United Synagogue of Conservative Judaism; United Way of America; and YMCA of the USA.

Mr. NADLER. And a letter in opposition to the amendment—we are being very fair—in support of my amendment.

Mr. Chairman, I am pleased to offer the High-Risk Nonprofit Security Act as an amendment to this legislation. I originally introduced this bill with Congressman Nethercutt, Engel and Shays. It is currently co-sponsored by 58 Members, up and down the political spectrum, including Congress Members Pence, Berman, Bachus, Weiner and Wexler who serve on this Committee.

This legislation is supported by a wide range of organizations, including the YMCA, the United Way, United Jewish Communities, American Hospital Association, the American Red Cross and the Union of Orthodox Jewish Congregations.

The base bill before us is meant to provide greater protection for the American people. Unfortunately, this legislation without this amendment does not offer adequate protection to thousands of nonprofit institutions that are some of our most vulnerable soft targets. The United States has an obligation to protect organizations that are potential targets of terrorism.

Recent bombings of synagogues in Instanbul and Casablanca and the bombings of mosques and the United Nations headquarters in Iraq show that the terrorist threats to soft targets is very real. We must provide the means to protect nonprofit organizations from potential attacks by those who espouse hate and violence. This amendment would authorize the Secretary of Homeland Security to provide up to $100 million for security assistance in fiscal year 2005 to 501(c)(3) nonprofit organizations that are at risk of being attacked by terrorists.

In addition to funds that would be spent on protections for high-risk institutions, such as glass-proofed doors or barriers to car bombs, Federal loan guarantees would be available through a new office in the Department of Homeland Security that would work with vulnerable nonprofit organizations. These funds and loan guarantees would be used for security enhancements, such as jersey barriers and blast proof doors as well as technical assistance to assess security needs, develop plans and train personnel.

This amendment would also provide $50 million in grant funds to local police departments to provide additional security in areas where there is a high concentration of high-risk nonprofits.

Mr. Chairman, I believe that all American citizens are owed the best efforts of the Federal Government to protect them from terrorism. Some people have expressed concern that this amendment may blur the line between the separation of church and State. I do not believe this is true. The loan guarantees in this bill are modeled after the loan guarantees provided in the Church Arson Prevention Act, a law that passed the House unanimously. The terrorism protection funds in the bill are very similar to the soundproofing funds we currently provide to private, public and parochial schools located in close proximity to airports to ensure that students have the ability to concentrate on class and not on the 747 flying overhead.

These programs provide a service to American citizens, but do not in any way promote religion. This bill would protect American citizens but not in any way promote religion. Members know—I think Members know that I have taken personally a very strict po-

sition on Government not promoting religion, but neither should we penalize religion.

Many of the most threatened targets in this country are religious institutions or are affiliated with religious institutions, and they deserve the protection of the United States Government on an equal footing with any other nonreligious similarly-threatened institution. Mr. Chairman, the threat is serious and real. Communities around the globe have been targeted simply because of who they are. Charitable institutions and houses of worship are targets precisely because of what they represent to the terrorists.

If the duty of Government to protect citizens from terrorism has any meaning, it must include the obligation to protect potential soft targets from terrorists. By accomplishing this critical national security function without in any way getting involved with the kind of issues raised by giving Federal funds directly to faith-based institutions, which this amendment would not do, we have—this amendment strikes an appropriate balance and ensures the safety or goes the distance toward assuring the safety of all Americans.

I want to thank my colleagues for their support and urge a yes vote on this important amendment.

I thank you and yield back.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott, has a secondary amendment. Let's get that on the table first.

Mr. SCOTT. I have amendment number 51.

[The amendment offered by Mr. Nadler follows:]

AMENDMENT TO THE AMENDMENT OFFERED BY MR. NADLER TO H.R. 3266 OFFERED BY MR. SCOTT OF VIRGINIA

(Secondary amendment to NADLER.092)

In the section proposed to be inserted at the end of the bill and the title proposed to be inserted in the Homeland Security Act of 2002 by such section, strike ''international'' each place it appears.

Chairman SENSENBRENNER. Clerk will report the amendment.

The CLERK. Amendment to the Nadler amendment offered by Mr. Scott of Virginia to H.R. 3266. In the section proposed to be inserted at the end of the bill and the title proposed to be inserted in the Homeland Security Act of 2002 by such section, strike "international" each place it appears.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

My amendment would require the word "international" to be consistently struck from the amendment where it appears.

For decades, America has been the witness of acts of international terrorism abroad. It is only in our recent history that America and Americans are forced too well to learn the consequences of international terrorism here at home. Before the attacks on the World Trade Center and the Pentagon on September 11, international extremism was but a real but remote concern for most of us.

But let us not forget the decades of terrorism by the Ku Klux Klan or individual attacks, such as the bombings of the 16th Street Baptist Church in Alabama in 1963, the bombings of the Federal building in Oklahoma, 1995, and other such events. As we address terrorism, we should legislate to combat and eradicate all terrorism. And when we vote for bills to protect us in our homes and communities, we should not turn a blind eye to the threat of terrorism that exists here at home.

If we are going to support additional funding to law enforcement and security enhancements to protect high-risk nonprofit organizations that come under terrorist attack, we should not distinguish between those that are threatened by fanatics abroad and those who are threatened by fanatics at home. A terrorist, regardless of race, religion, national origin, sex or ideology, remains a terrorist and purposely exacts physical and emotional harm to its victims.

Southern Poverty Law Center's Intelligence Project, which monitors hate groups and extremist activities throughout the United States, reported that there were 751 hate groups in 48 States in America in 2003, and the number is rising. If we are going to pass an amendment, we should protect ourselves from these groups as well as international terrorists.

I yield back.

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I am deeply sympathetic with the purpose of this secondary amendment. I visited the 16th Street Baptist Church in Alabama with John Lewis and others last year, but I do not believe this amendment is well advised here—the secondary amendment is well advised.

We have a long experience with domestic terrorism. We have programs and laws that deal with it. For example, the Church Arson Prevention Act, on which part of this amendment is modeled, is designed to deal with that threat. The threat of international terrorism—or at least the recognition of international terrorism—is new. This amendment is carefully negotiated with a lot of people in both the House and Senate and is targeted at international terrorism.

And I believe we should deal with the new international terrorist threat. If there is some weakness in our existing laws with respect to domestic terrorism, we should deal with that separately. But this is very carefully targeted and carefully negotiated and should be left for that purpose.

Chairman SENSENBRENNER. Would the gentleman yield?

I am happy to support the gentleman's amendment and also support him in his opposition to the Scott second-degree amendment for the reasons stated. So I would urge a no vote on the Scott amendment and adopting the gentleman from New York's amendment in a clean manner.

Mr. NADLER. I thank the gentleman. And I think that expresses it all.

Ms. WATERS. Mr. Chairman, look this way.

Chairman SENSENBRENNER. I don't think the Chair has ignored the gentleman from California at all.

Ms. WATERS. You have not.

Chairman SENSENBRENNER. Mr. Watt.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. For the purpose of doing a couple of things, first, I presume that whatever amount of money, whatever we are authorizing the use of money for, there is still some monetary limit on it. And I presume whatever monies would be allocated to this purpose would be coming out of other purposes. Is that correct?

Mr. NADLER. Would the gentleman yield?

Mr. WATT. Yes.

Mr. NADLER. The estimated need to deal with this threat is between $1 and $2 billion. This bill starts dealing with that by authorizing $100 million. It is not out of existing funds, but a new authorization, though.

Mr. WATT. But if you broaden the uses under this bill, aren't you just spreading a certain amount of money thinner?

Mr. NADLER. Would the gentleman yield again?

Mr. WATT. Yes.

Mr. NADLER. This bill would authorize $100 million. If you broadened what you could use it for, yes, you could potentially spend that $100 million more broadly.

Mr. WATT. That is the point I am trying to make.

Now my second question then is, why would we set up a whole different structure for nonprofits than the bill has? Why wouldn't we do it just like we did on ports and courts and governments and things on pages 10 and 11? Why would we have a whole different infrastructure for 501(c)(3) organizations? Can somebody justify that for me?

Mr. NADLER. If the gentleman would yield.

For two reasons. We set up a separate program for two reasons. Number one, because it is a very specific—frankly, I think there are a number of different threats. We ought to have a separate program for ports and a separate program for airports and so forth because you have to target these things differently. But it is a very specific threat aimed at churches and synagogues. So that is the first reason.

The second reason is that, because precisely because some of these institutions are sectarian religious institutions, we put special protections in this bill that you don't have in some of the other legislation to prevent entanglement with church-State problems. Some people think we didn't do enough of that. We did a heck of a lot more. I would disagree, I think we did enough. But in the regular legislation, it doesn't exist.

Mr. WATT. I presume the Secretary, on page 10, line 20 of the bill, of the base bill, would have the authority to promulgate regulations or requirements for any of these things. Why would we have a whole separate section that seems to put nonprofits on a higher plane than the other things that are covered under this bill? I mean, that is the concern I have.

It seems to me that we are dealing—we are always going to be dealing with a limited amount of money, and we are going to take that limited amount of money and target in a specific way to nonprofits, in a way that we are not even targeting the ports or courts or food or Government or any other criteria.

Mr. NADLER. Would the gentleman yield?

Mr. WATT. Yes.

Mr. NADLER. We have many specific programs in the Federal Government to deal with specific threats. The fear is that this is a very specific threat. We know about it. We have seen it in Istanbul and Buenos Aires and various other places. And the fear is, if we don't have a specific program to deal with it, it might not be dealt with.

Mr. WATT. I am not suggesting that we don't have a specific program, but I am suggesting that we treat it just like we did with the items on pages 10 and 11 of the bill. Just add another section that makes it clear that that is one of the things that can be dealt with rather than setting up a whole separate infrastructure for nonprofits.

Chairman SENSENBRENNER. Gentleman's time has expired.

Mr. WATT. I ask unanimous consent for 30 additional seconds.

Chairman SENSENBRENNER. Without objection.

Mr. WATT. And just to make the point, I think we are going to—this is elevating one segment of our threat over other segments, but it is also going to get us into certain arguments about whether the Baptists are more threatened than the other faiths are more threatened. I think this is a—I mean, I am content to recognize the additional threat, but I don't think we ought to be setting up a whole separate infrastructure for it.

Chairman SENSENBRENNER. The gentleman's time has once again expired.

Does the gentlewoman from California want to be recognized now?

The gentlewoman is recognized for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman.

I think Mr. Watt has raised some interesting questions about what this means. And I am, too, concerned about providing protection for our religious institutions, but I see they are identified as nonprofits. Not all religious institutions are nonprofit. And I am wondering whether or not this means that, as Mr. Watt has said, whether or not we include in this the Baptists, the Methodists and the Muslims, everybody. What does this mean? And perhaps, I

could yield to the gentleman from New York and he can could better——

Mr. NADLER. This isn't specifically for religious institutions. This is for nonprofit institutions that are threatened, among them religious institutions: The United Way, the Red Cross, YMCA are among the people who helped draft this bill, because some of their facilities may well be threatened. So it is not just religious institutions. Now frankly, maybe I am just ignorant, but I am startled to hear that there are for-profit religious institutions.

Ms. WATERS. You are right. There are religious institutions that are for-profit.

Mr. NADLER. I wasn't aware of that, and maybe we will have to consider that in some way, but this is directed at nonprofit institutions, not just religious institutions.

Ms. WATERS. That answers my question about who is covered under your proposed amendment.

Chairman SENSENBRENNER. The Chair would remind the membership that the current pending question is the Scott amendment to the Nadler amendment. For what purpose does the gentleman from New York seek recognition?

Mr. WEINER. Strike the last word. If I could clarify a question, I think, what Mr. Watt listed earlier. What is listed on pages 10 and 11 are the areas and countries of the world that we should devote our attention to based on threat. Don't misread this list to say that there is going to be, because page 10, line 24, says banking and finance, means that grants are going to be going to the JP Morgan company.

What I think the Nadler bill seeks to recognize is that there are, in the real world, institutions like the Red Cross, religious institutions and others that are under direct threat. There is a very strange dynamic going on. You have police departments, FBI, law enforcement agencies going and visiting these institutions and saying, "You know, we hear there is a threat against your institution. You have to put concrete barriers on the sidewalk outside, and we are leaving, and we are not going to provide any assistance in helping you do that, although it is far beyond what any organization or institution is prepared to do."

I think what the bill that Congressman Nadler and I and others on this Committee are sponsoring and want to include here simply recognizes the real threat.

And just responding to Ms. Waters and something you said also, it could well be that we are going to be wrestling with this for some time and may have to come back 6 months from now and say listen, "It seems that there are some real threats to other types of institutions and organizations, and we have to adapt to those." if you look to the headlines at the places that are being attacked by terrorism around the world are identifiable United States institutions, religious institutions and religious institutions of many different faiths.

And I think this is a reflection of the idea that, at the same time, Government has to rally around certain sectors of the economy to protect them. In some cases, we are also asking private organizations that are unprepared to do it because they don't have the resources or they don't know how to provide some funding. So that is why you don't simply include them on the list of 10 and 11, be-

cause they are already included in the list of 10 and 11 as places that might be problematic. What this bill does, though, is provide them direct funding, which is an entirely different question.

And as for the notion of mixing international terrorism with domestic terrorism, which is what the Scott amendment to the Nadler amendment does, I agree with Congressman Nadler and the Chairman that we have to keep an eye on what we are actually trying to respond to since September 11. There is no doubt that there is a long litany of challenges, safety and others, that are posed in this country all the time. This legislation is intended to deal with the threat of international terrorism, and I think it would be wise to limit this amendment to that for the time being, although I would encourage us to come back and have hearings about domestic terrorism.

Mr. WATT. Would the gentleman yield?

I am just wondering why he doesn't think the language on page 11, lines 16 through 22, would be comprehensive enough to include this. Even if it is not specified as one of the listed items, it seems to me that this is broad enough to enable grants to——

Mr. WEINER. If I could reclaim.

This is broad enough that when the Homeland security Department allocates resources to localities and States, what they can base that calculation on. And yes, if New York City says, "We have a very large community of Jewish institutions that have been subject to threat, we want that to be included as one of the reasons we should get more money," absolutely they can.

But what the Nadler amendment does is say, wait a minute, we are asking private institutions that are subject to threat to take their own steps to harden themselves. We are going to provide additional funds to allow you to do that. And that is not what the base bill does. I mean an equivalent would be, which I don't suggest by the way, saying, Yankee Stadium and Shay Stadium have additional threats. Now those are institutions that, as profit-making institutions, already have large security budgets and the like. We might not say to them, you need extra resources.

But a small church, a synagogue, a mosque that doesn't have the ability to counter those threats, they would be able to get small grants, and they would be relatively small grants if the entire allocation would only be $100 million nationwide.

Chairman SENSENBRENNER. The gentleman's time is about to expire.

The question is on the Scott amendment to the Nadler amendment.

Those in favor will say aye.

Opposed, no.

Noes appear to have it. The noes have it. The amendment is not agreed to.

The question is now on the Nadler——

Mr. SCOTT. I have another secondary amendment.

[The amendment offered by Mr. Scott follows:]

H.L.C.

Amendment Offered by

Mr SCOTT **of** _____

To the Amendment Offered by

MR NADLER **of** _____

Strike "contract" each place it appears and make such technical and conforming changes as may be necessary.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment offered by Mr. Scott to the Nadler amendment to H.R. 3266. Strike "contract" each place it appears.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, one of the problems we have had with this is that we have had different versions, and we are under a time restraint, which is not the fault of this Committee, but that is just the way it is.

As I understand the amendment, it provides funding for indirect loans and law enforcement, but it also has direct contracts. And that creates a problem when you are actually fixing places of worship. There are several Supreme Court cases that speak directly to this. One is the Tilton case, which holds that while the law allowed money which funded sectarian and nonsectarian colleges and while the law allowed money to go to religious institutions, it also contained a proviso that expressly forbid funds being used on buildings that would be used for worship or sectarian instruction. The court upheld the program, but it unanimously held the proviso was constitutionally necessary and unanimously invalidated the part of the statute which would have allowed religious schools to convert the

Federally funded facilities for worship and sectarian instruction after 20 years had elapsed.

There is another case, the Nyquist decision which held that the court simply recognized that sectarian schools perform secular educational functions as well as religious functions, and some form of aid may be channeled to the secular without providing direct aid to the sectarian, but the channel is narrow. The court went on to say that, if the State may not erect buildings in which religious activities are to take place, it may not maintain such buildings or renovate them. The Government funding, in other words, is only constitutional if there is no possibility that structures will be used for sectarian worship or instruction. This bill apparently allows the Government funding for reinforcing places of worship, and therefore, under those two decisions as well as others, is unconstitutional, and therefore the amendment would cure the bill of those unconstitutional problems.

Chairman SENSENBRENNER. The gentleman from New York.

Mr. NADLER. Thank you, Mr. Chairman.

I rise in opposition to the secondary amendment. There is no direct contract provided in this bill between the Government and any sectarian or religious institution. My amendment on page 2 defines the word "contract" as follows: The term contract means a contract between the Federal Government and a contractor selected from a list of certified contractors to perform security enhancements and to provide technical enhancements approved by the secretary.

There is no privity of contract between the Federal Government or any other agency of Government and any sectarian or, for that matter, nonsectarian institution. We were very careful about that.

Second of all, there is also a provision in the bill—and I think it comports with those two Supreme Court decisions. We now, the Federal Government now gives, provides funding to parochial schools, public schools to put in soundproofing to schools near airports so that the students can concentrate on their arithmetic or Bible classes and not on the noise of the 747. We are providing loan guarantees under the Church Arson Prevention Act, Rehabilitation Act, which would provide for loan guarantees to help rebuild.

What we are saying is, for things that are necessary to protect against terrorism—and specifically in the bill, we say the term "security enhancement" does not include enhancements that would otherwise have been reasonably necessary due to nonterrorist threats. So, for example, if a church wants to put in a burglar alarm system, which would help against regular burglars not just terrorists, it couldn't be funded by this.

I think we have put in enough safeguards to take it away from that provision. I think that this is constitutional, and we have written it carefully for that purpose, and it doesn't fall under those Supreme Court decisions.

And to take the word "contract" everywhere it appears out of the bill would simply render the bill incoherent. You can't take the word "contract" out of the bill. And the contracts, in any case, are not with sectarian institutions. They are with contractors.

Mr. SCOTT. Would the gentleman yield?

Can the Government pick and choose which places of worship will be the beneficiaries of this Government assistance?

Mr. NADLER. Not just which places of worship. The Government will have to choose, on the basis of the degree of threat, which nonprofit institutions, religious or otherwise, would be helped. By definition, since we are providing $100 million authorization, not appropriation, the authorization, the estimated cost is $1 to $2 billion. The Department of Homeland Security is going to have to do triage. They are going to have to say that the threat is worse here than there, and that is a nonsectarian decision.

Is the Red Cross building in this town more threatened than the local church or vice versa? Yeah. Well, assuming that they both apply, they have to make that decision.

Mr. SCOTT. Would the gentleman yield? In the Cleveland Voucher Case, the court went to show that the parents were making the choice and not the Federal Government. And in this case, it is clearly the Federal Government who is making a choice.

Mr. Chairman, I would like to ask unanimous consent that a letter from the Jewish Reconstructionist Federation and American Center of Reform Judaism and Americans United For Separation of Church and State in opposition be introduced.

[The information referred to follows:]

AMERICANS UNITED
for Separation of Church and State

National Office

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Washington, D.C. 20002

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(202) 466-2587 fax

americansunited@au.org

www.au.org

June 16, 2004

Dear Committee Member,

On behalf of Americans United for Separation of Church and State, I am writing to urge your opposition to the "High Risk Nonprofit Security Enhancement Act of 2004" (S. 2275/H.R. 4108) as an amendment to HR 3266, the "Faster and Smarter for First Responders Act." Americans United represents more than 70,000 individual members throughout the fifty states and in the District of Columbia, as well as cooperating houses of worship and other religious bodies committed to the preservation of religious liberty. We believe this legislation is unconstitutional and would significantly erode church-state separation protections.

While Americans United certainly appreciates that the threat of terrorism is real, we believe that the thrust of the legislation to allow for direct security enhancements to nonprofits, including religious bodies, is misdirected and that the most efficient way to make our non-profits, including our religious institutions, more secure is through enhancing the abilities of our First Responders. There is no constitutional prohibition, of course, on providing additional government funds for law enforcement protections of nonprofits, including houses of worship. The amendment, however, is unconstitutional and violates the separation of church and state. Specifically, Americans United has several concerns with the amendment as currently drafted:

- Government funding will flow directly to houses of worship for capital improvements in violation of the Constitution. Time after time, the Supreme Court has required that no government funds be used to maintain, restore, or make capital improvements to physical structures that are used as houses of worship, even if religious services are infrequent. Three Supreme Court decisions (Tilton v. Richardson, 403 U.S. 672 (1971), Hunt v. McNair, 413 U.S. 734 (1973), Committee for Public Education v. Nyquist, 413 U.S. 756 (1973)) make clear that it is unconstitutional to allow federal grants for capital improvements of structures devoted to worship or religious instruction, and all three of these decisions remain binding law on the federal government.

- The amendment authorizes below market loan guarantees to non-profits, including houses of worship. Americans United believes these below-market government loans provide subsidies to houses of worship and are therefore unconstitutional.

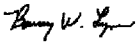
- We are deeply troubled by the numerical definitions for eligible nonprofits. The current construct of the eligibility requirement will exclude almost all secular nonprofits and minority religious nonprofits

from receiving government funding because they are not large enough to meet the numerical thresholds to trigger coverage.

Although it is certainly appropriate for Congress to address the security needs of our nation's high-risk non-profit institutions, we believe that this amendment, as currently drafted, is misguided and will likely lead to severe and unconstitutional church-state entanglement, thwarting our nation's longstanding commitment to the preservation of religious liberty. In our attempts to safeguard our nation, we must not destroy the very principle which has served our nation well and stands as one of our greatest achievements. Again, I urge your opposition to the "High Risk Nonprofit Security Enhancement Act of 2004" (S. 2275/H.R. 4108), as an amendment to HR 3266.

If you have any questions regarding this legislation or would like further information on any other issue of importance to Americans United, please do not hesitate to contact Aaron D. Schuham, Legislative Director, at (202) 466-3234, extension 240.

Sincerely,



Rev. Barry W. Lynn
Executive Director

JEWISH RECONSTRUCTIONIST FEDERATION
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Phone: 215-782-8500
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RELIGIOUS ACTION CENTER
OF REFORM JUDAISM
2027 MASSACHUSETTS AVE., NW
WASHINGTON, DC 20036
PHONE (202) 387-2800
FAX (202) 667-9070

June 10, 2004

Dear Member of the 108th Congress:

On behalf of the Union for Reform Judaism (URJ), whose more than 900 congregations across North America encompass 1.5 million Reform Jews, and the Jewish Reconstructionist Federation (JRF), with over 100 congregations representing 60,000 Reconstructionist Jews, we ask you to oppose the "High Risk Nonprofit Security Enhancement Act of 2004" (S. 2275/H.R. 4108). The security needs of our nation's high-risk non-profit institutions deserve the fullest attention of Congress, but not in a manner that dangerously threatens the wall separating church and state, which has been a bedrock of democracy and the foundation of religious liberty in our country for over two hundred years.

Terrorism is a threat to the very fabric of our country. Non-profit institutions, particularly religious organizations, and most particularly Jewish ones, are at great risk from these acts of violence and hatred. As organizations representing hundreds of Jewish congregations across America, we are well aware of the mounting costs of synagogue security in a post-9/11 world. We are actively striving to support our congregations in every way we can, through technical assistance and by supporting appropriate legislative enactments towards a more effective homeland security policy, including additional local police protection for the most likely targets.

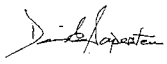
While we have deep respect for the many non-profit, religious, and Jewish organizations that support this bill, our longstanding support for the separation of church and state requires that we oppose this legislation, and we urge you to do the same. We have several concerns with the bill as currently written:

- The legislation allows for the funding of pervasively sectarian institutions with government money, which the U.S. Supreme Court has never condoned.
- Though the funds are funneled through independent security contractors, in the end, government money will be directly making capital improvements to houses of worship in violation of fundamental principles of the First Amendment.

- The bill permits some services and improvements to religious organizations to be funded through federal loan guarantees that ensure below-market rates and longer repayment periods. While a less direct form of funding, these remain, effectively, government subsidies to religion.
- The limited funds allocated through the bill, together with the high cost of capital improvements, ensure that very few non-profit institutions will actually receive substantial aid, and far more effective uses could be made for these funds in strengthening security for our communities and institutions.

The separation of church and state in this country has allowed religion to flourish here unmatched among all democratic nations. This is one of America's unique gifts to civilization and the chief guarantor of our religious liberty. Now, as we press forward in the fight against terror, we must not abandon the very ideals and freedoms for which our country stands. We urge you to oppose the "High Risk Nonprofit Security Enhancement Act of 2004" (S. 2275/H.R. 4108). This legislation, though earnest and compassionate in intent, seriously weakens the wall separating church and state, which is a vital protector of religious liberty for all Americans.

Respectfully,



Rabbi David Saperstein
Director
Religious Action Center of Reform Judaism

Daniel G. Cedarbaum
President
Jewish Reconstructionist Federation

Chairman SENSENBRENNER. Without objection.

Mr. NADLER. Could I ask unanimous consent to insert in the record the letter in support?

[The information referred to follows:]

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June 10, 2004

Max M. Fisher
Honorary Chair of the Board

Robert Goldberg
Chair of the Board

Morton B. Plant
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Judy Levin
Morris Offit
Robert M. Schrager
Richard Wexler
Mark Wilf
Harold Zlot

Dear Member of the 108th Congress:

You recently received a letter from the Religious Action Center of Reform Judaism and the Jewish Reconstructionist Federation opposing on church-state grounds the "High-Risk Non-Profit Security Enhancement Act of 2004. (S. 2275 / H.R. 4108)"

The legislation was carefully crafted in consultation with Rep. Jerrold Nadler, the ranking member of the House Constitution Subcommittee, to avoid any Establishment Clause encroachments. The points raised in the letter of opposition are misinformed, as follows:

1. The letter asserts: "the legislation allows for the funding of pervasively sectarian institutions with government money, which the U.S. Supreme Court has never condoned."

   - In fact, the legislation does not "allow for the funding of pervasively sectarian institutions with government money." **No Federal funds go to non-profit institutions under this bill.** It allows for the Federal government to enter into contracts with security firms to install concrete barriers and other protective measures at all non-profit institutions including religious institutions. Obviously, placement of concrete barriers, or coating windows with blast-proof Mylar ***does not in any way contribute to the sectarian activities of a synagogue or church***. It simply fulfills the high responsibility of our government to protect its citizens from international terrorist attacks.

2. The letter states: "though the funds are funneled through independent security contractors, in the end, government money will be directly making capital improvements to houses of worship in violation of fundamental principles of the First Amendment."

   - In fact, the legislation does not make "capital improvements to houses of worship." It is absurd to argue that concrete barriers, Mylar windows, and blast proof doors are "capital improvements." They do not add to the attractiveness or utility of synagogues, churches, or schools. Rather, they are unattractive and could actually reduce market values.

3. The letter asserts: "The bill permits some services and improvements to religious organizations to be funded through federal loan guarantees that ensure below-market rates and longer repayment periods. While a less direct form of funding, these remain, effectively, government subsidies to religion."

   - In fact, the loan guarantees called for in the bill would reimburse banks in the event that a non-profit defaults on loans for security enhancements. Government payments would go to banks. It is a misrepresentation to suggest that any Federal money would go to sectarian institutions under this provision.

4. Finally, the letter states: "The limited funds allocated through the bill, together with the high cost of capital improvements, ensure that very few non-profit institutions will actually receive substantial aid, and far more effective uses could be made for these funds in strengthening security for our communities and institutions."

- This assertion that the $100 million is insufficient is an argument for more resources--not a justification for opposing the government's responsibilities to protect our citizenry.

In closing, if you are one of the more than 70 Members of Congress who have already cosponsored this legislation, we thank you on behalf of 156 Jewish Community Federations, as well as the American Red Cross, United Way of America, the American Hospital Association and the entire non-profit coalition.

If you have not yet cosponsored this legislation, we urge you to do so expeditiously in order to express your support for the government's important role and responsibility in protecting from international terrorist attacks the tens of millions of Americans who utilize, live, or work in proximity to our nation's vital non-profit institutions.

Respectfully,

Charles S. Konigsberg
Vice President

Attachment: Bill Summary

Chairman SENSENBRENNER. Without objection as well.

The question is on the second Scott second-degree amendment to the Nadler amendment.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

The question now is on the Nadler amendment. Those in favor will say aye.

Opposed no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

The gentleman from New York, Mr. Weiner.

Mr. WEINER. Weiner .089.

[The amendment offered by Mr. Weiner follows:]

H.L.C.

AMENDMENT TO H.R. 3266

OFFERED BY MR. WEINER

In section 1804 (as proposed to be added by section 2 of the bill)—

(1) strike "(b) GRANT CRITERIA.—In awarding covered grants," and insert the following:

1 "(b) AWARDING GRANTS.—

2 "(1) CRITERIA.—In awarding covered grants,

; and

(2) insert at the end the following new paragraph:

3 "(2) THREAT ASSESSMENTS.—In assessing

4 threat for purposes of awarding covered grants, the

5 credibility of the threat shall be weighted more than

6 population concentration or critical infrastructure. or any other consideration

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. H.R. 3266 offered by Mr. Weiner——

Mr. WEINER. Request unanimous consent it be accepted as read.

Chairman SENSENBRENNER. Without objection, so ordered. The gentleman is recognized for 5 minutes.

Will the gentleman yield?

This is a very constructive amendment that further targets the money based upon threat amendments. I think it is an improvement to the bill and would urge the Members to support it.

The question is on the Weiner amendment. Those in favor will say aye.

Opposed no.

The ayes appear to have it. The ayes have it.

Are there further amendments?

If there are no further amendments, a reporting quorum is present.

Without objection, the version of the bill reported by the Select Committee on Homeland Security laid down as the base text as amended is adopted.

The question occurs on the motion to report the bill H.R. 3266 favorably as amended.

All in favor will say aye.

Opposed, no. The ayes appear to have it. The ayes have it. The motion to report favorably is agreed to.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules.

Without objection, the staff is directed to make any technical and conforming changes including the one relating to container and port security, and all Members will be given 2 days, as provided by the rules, in which to submit additional dissenting supplemental or minority views.

I think this is a good time to adjourn. We will have another markup next week with the remaining bills on the agenda. The Committee stands adjourned.

[Whereupon, at 1:00 p.m., the Committee was adjourned.]

ADDITIONAL VIEWS

These views note concerns with H.R. 3266 as amended by the Nadler amendment authorizing the Federal Government to enter into and execute security enhancement and technical assistance contracts—including security enhancements in the form of improvement upon real property—for the direct benefit of buildings used for worship or sectarian service or instruction. While it is conceded that the purpose of the amendment is to protect high-risk non-profit organizations, the part of the provision which authorizes the Government to provide funds directly for the purpose of improvements or enhancements of places used for worship appears to be in violation of the Constitution.

The Supreme Court has repeatedly held that no Government funds can be used to maintain, restore, or make capital improvements to physical structures that are used as houses of worship, even if religious services are infrequent. This amendment, therefore, runs contrary to what is allowed under the Constitution and our First Amendment jurisprudence. The amendment empowers the Secretary of the Department of Homeland Security to provide Government money towards "the purchase and installation of security equipment in real property (including buildings and improvements), owned or leased by a nonprofit organization," an act that is clearly unconstitutional to the extent that it applies to houses of worship or buildings used for sectarian instruction.

Three Supreme Court decisions make clear that it is unconstitutional to allocate Federal grants for the repair or preservation of structures devoted to worship or religious instruction, and all three decisions remain binding law. In *Tilton* v. *Richardson,* 403 U.S. 672 (1971), the Court laid the framework for the current constitutional requirements regarding construction, upkeep, and maintenance of religious institutions' physical facilities. *Tilton* involved a challenge to the constitutionality of a Federal law under which Federal funds were used by secular and religious institutions of higher education for the construction of libraries and other campus buildings. While the law allowed money to go to religious institutions, it also contained a proviso that expressly forbade funds from being used on buildings that would be used for worship or sectarian instruction. The Court upheld the program, but it *unanimously* held that the proviso was constitutionally necessary and *unanimously* invalidated part of the statute that would have allowed religious schools to convert the federally-funded facilities for worship or sectarian instruction after twenty years had passed. The Court made clear that no building that was built with Federal funds can ever be used for worship or sectarian instruction. 403 U.S. at 692.

In two subsequent cases decided 2 years later, the Supreme Court clearly reaffirmed the principle that the First Amendment

prohibits the Government from subsidizing the construction or repair of buildings used as houses of worship. In *Hunt* v. *McNair,* 413 U.S. 734 (1973), the Supreme Court upheld the South Carolina Educational Facilities Authority Act, which established an "Educational Facilities Authority," through which educational facilities could borrow money for use in their facilities at favorable interest rates. However, the Act required each lease agreement to contain a clause forbidding religious use in such facilities and allowing inspections to enforce that requirement. 413 U.S. at 744. The Court upheld the Act, including the condition that Government-funded bond financed physical structures could never be used for religious worship or instruction.

Finally, in *Committee for Public Education* v. *Nyquist,* 413 U.S. 756 (1973), the Supreme Court struck down New York's program of providing grants to nonpublic schools for use of maintenance and repair of "school facilities and equipment to ensure health, welfare, and safety of enrolled students." 413 U.S. at 762. The Court summarized its previous holdings as "simply recogniz[ing] that sectarian schools perform secular, educational functions as well as religious functions, and that some forms of aid may be channeled to the secular without providing direct aid to the sectarian. But the channel is a narrow one." *Id.* at 775. The Court then held that "[i]f the State may not erect buildings in which religious activities are to take place, it may not maintain such buildings or renovate them when they fall into disrepair." *Id.* at 777. In other words, Government funding for either the construction or maintenance and repair of physical structures is unconstitutional if there is any possibility that the structures will be used for sectarian worship or instruction. Otherwise the Government would be subsidizing religious activity.

Thus, under *Tilton, McNair,* and *Nyquist,* it would be unconstitutional for the Federal Government to enter into and execute security enhancement and technical assistance contracts that will augment any buildings used by non-profit organizations for worship or religious instruction. All three of these cases firmly establish that it is constitutionally impermissible for the Government to provide aid for the construction, repair, or maintenance of any buildings that are, or might be, used for religious purposes, even when the underlying purpose is to enhance homeland security.

JOHN CONYERS, JR.
ROBERT C. SCOTT.

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