

# CRS Report for Congress

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## Department of Homeland Security: Should the Transportation Security Administration be Included?

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### Summary

President George W. Bush has unveiled a plan to create a new Department of Homeland Security (H.R. 5005, introduced by request). The new department would be formed by consolidating all or part of 22 of the more than 100 different government organizations that are currently involved in antiterrorist activities. As part of this proposal, the recently created Transportation Security Administration (TSA) would be removed from the Department of Transportation (DOT) and transferred to the new entity. Supporters of the transfer argue that attacks on transportation make up too large a portion of terrorist attacks, world-wide, to leave the TSA out of the new department and that to do so would create problems of dual lines of authority for transportation security. They also assert that by year's end, TSA's size, importance, and law-enforcement role will make the TSA so significant to homeland security that a meaningful homeland security department cannot be created without it. Opponents of shifting TSA out of DOT argue that, in passing the Aviation and Transportation Security Act (ATSA) (P.L. 107-71), Congress, after much debate, placed the TSA in the DOT and that there is no reason to replay the debate so soon. They also argue that TSA is itself an agency under construction and that to move it to a new department would delay the implementation of ATSA and weaken important ties to the transportation expertise of DOT. This report summarizes these and other arguments on both sides of this issue. It does not reflect the views of CRS, which does not take positions on public policy issues.

This report will be updated as warranted by events.

On June 6, 2002, President George W. Bush unveiled a plan to consolidate the antiterrorist activities of 22 federal agencies to create a cabinet-level Department of Homeland Security. The transfer of the recently created Transportation Security Administration from the Department of Transportation to the new department is part of the proposal (H.R. 5005, introduced by request). Congressional proposals to create a department of homeland security predate the President's plan. The National Homeland Security and Combating Terrorism Act of 2002 (H.R. 4660; S. 2452), introduced on May

2, 2002, has many provisions similar to the President's proposal. At that time, however, the sponsors chose not to include the TSA in their proposal, preferring to focus more narrowly on two areas of concern, border security and emergency preparedness and response. Since the release of the President's plan, Members from both parties have expressed general support for the new department. Some Members, however, have expressed interest in modifying the plan as the implementing legislation is written and considered. Since the President's plan was made public, few have expressed an absolute opposition to any government reorganization that creates a new department or agency for homeland security. The debate over which existing agencies or agency components will be consolidated into a department of homeland security, however, has now begun in earnest. The transfer of the TSA from the Department of Transportation to the proposed department is part of this debate.<sup>1</sup>

After a brief summary of recent developments, this report discusses some broad issues involved in creating a department of homeland security that are relevant to the debate over including the TSA. It then provides a pro/con analysis of including the TSA in a department similar to that proposed by the President. Finally, the report mentions a number of other issues that could influence the debate.<sup>2</sup>

## Recent Developments

On July 22, 2002, a modified version of the Administration's proposal (H.R. 5005, introduced by Representative Arme) emerged from a contentious markup meeting of the House Select Committee on Homeland Security. H.R. 5005, as reported, transfers the TSA to the proposed Department of Homeland Security. The bill requires that the TSA be maintained as a distinct unit within the new Department for 2 years after enactment. The bill also provides a process by which airports, that determine that they cannot meet the December 31, 2002 deadline for the ATSA requirement that all checked baggage be screened by explosive detection systems (EDS) can have up until December 31, 2003, to execute their EDS implementation plans. In addition, the bill prohibits the new department from receiving any funding from the various transportation trust funds. In the Senate, Senator Lieberman has proposed an amendment in the nature of a substitute to S. 2452, the National Homeland Security and Combating Terrorism Act, which is more in line with the Administration proposal than the original version of S. 2452 that was marked up by the Senate Government Affairs Committee in June. The bill differs from the House version significantly in that it transfers the authorities, functions, personnel,

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<sup>1</sup> Much of what follows draws from both a variety of written sources as well as informal discussions with agency and industry officials. See also *Homeland Security: the Presidential Coordination Office*, by Harold C. Relyea. CRS Report RL31148, and *Homeland Security Office: Issues and Options*, by Rensselaer Lee. CRS Report RL31421. On the CRS Home Page see, [Office of Homeland Security](#) and also [Department of Homeland Security](#), by Harold C. Relyea.

<sup>2</sup> This report is not an overall analysis of President Bush's Department of Homeland Security proposal, H.R. 5005 or S. 2452. It is restricted to the purported advantages and disadvantages of transferring the TSA to the new department. Broader organizational issues are discussed only to the extent necessary for context. For a more detailed description of the bills see CRS Report RL31513, *Homeland Security: Side-by-Side Comparison of H.R. 5005 and S. 2452, 107<sup>th</sup> Congress*.

and assets of the TSA to the Directorate of Border and Transportation Protection within the new Department, but does not require that the TSA be maintained as a distinct entity. The Senate bill also does not extend the EDS deadline or prohibit the use of transportation trust fund revenues for the new Department.

## Broader Issues

A number of broad issues form the context within which the debate over whether or how to fold the TSA into the new department are worth mentioning as follows.

**Appropriate Span of Control.** A number of observers have commented that there are probably 40 to 50 federal agencies with responsibilities that directly support the war on terrorism. The debate over span of control can range from arguments that all antiterrorist functions should be drawn together into one department to having a coordinating entity that would facilitate communication and cooperation across federal agencies. All of the legislative proposals, to date, fall in the middle of these two extremes. S. 2452, as introduced, would have established a Department of Homeland Security made up of all or parts of seven federal agencies and would also establish, in the Executive Office of the President, a National Office for Combating Terrorism to “coordinate, oversee, and evaluate the implementation and execution” of a “national strategy for combating terrorism and the homeland security response.” The President’s plan (H.R. 5005) draws the proposed department’s components from a broader range of federal agencies and would also continue the operation of the Office of Homeland Security and the Homeland Security Council. The TSA would be part of the proposed department’s Division of Border and Transportation Security. The theme of effective communication across departmental lines has been the focus of much of the post September 11 antiterrorism policy debates. The reported version of H.R. 5005 as well as the substitute amendment to S. 2452 now both agree with the broad outline of President Bush’s proposal on institutional span of control. Current differences in degree of control include differing budgetary flexibility and Civil Service protection provisions.

**Security vs. Efficiency.** In the United States, aviation, railroads, trucking, and marine transportation operate, at least in part, on a commercial basis. Even airport authorities, which are generally public entities, are nearly always managed like businesses. Within the context of the security debate, this situation creates a tension between the traditional mission of most transportation organizations--to facilitate the efficient movement of people and goods--and the heightened priority of the security mission. Airline and airport managers, in particular, have expressed concern that heightened security measures could reach a point where travel and shipping by air could be discouraged, leading to a period of prolonged financial losses, as well as loss of market share to other modes of transportation. Law enforcement and security stakeholders generally assert that, in the post-September 11 environment, security must be the highest transportation priority, and argue that the public has shown a willingness to accept security-related delays and “hassles.” To a great extent, the security vs. efficiency debate was resolved in favor of security by passage of the Aviation and Transportation Security Act (ATSA) in November 19, 2001.

**Departmental Purpose.** An underlying issue, which may be seen as being parallel to the security vs. efficiency issue, is the historical purpose of the Department of Transportation and whether it enhances or inhibits the security mission of the TSA.

Historically, the DOT has seen its purpose as facilitating the movement of people and goods. Some would argue that this places the DOT in tacit alliance with transportation industries. For example, the views of commercial air carriers are seen as influential in policymaking within the Federal Aviation Administration (FAA). During the ATSA debate in the autumn of 2001, both the DOT and the Air Transport Association, which represents the major air carriers, argued against shifting the responsibility for the screening of passengers and baggage to the Department of Justice. In the end, Congress established the TSA outside of the FAA, but within DOT. Some would still argue that, even outside the FAA, but within DOT, the TSA will reflect a pro-industry perspective. However, some air carrier executives, as well as some airport executives, have expressed frustration based on their perception that the TSA's focus is unbalanced, dominated by a strict law enforcement view of transportation security, and lacking adequate concern for the hassles and other inefficiencies that air travelers are facing.

**Law Enforcement Perspective vs. Transportation Perspective.** During the process of forming the TSA and implementing ATSA, some airport as well as airline executives have complained that TSA employees and contractors have shown an absence of understanding and lack of concern for airport and air carrier methods of operation. Some speculate that, in part, this is an outgrowth of a tension between the law enforcement perspective of many of TSA's recently hired former law enforcement officials and the transportation industry perspective of airport and airline officials.

## **Transferring the TSA to a Department of Homeland Security**

Prior to the release of the President's proposal, there was little public debate concerning a proposed transfer of the TSA to a new homeland security department. This was probably because ATSA placed the TSA in DOT and the issue was initially settled in the minds of many observers.<sup>3</sup> Although the versions of H.R. 5005 and S. 2452, now under active consideration, would both transfer the TSA to the proposed department, some continue to express concern over the transfer of the fledgling agency, the timing of the proposed transfer and its organizational implications.

### **Pro: Transfer the TSA to the Proposed New Department.**

- ! ATSA created the TSA and charged it with responsibility for the security of all modes of transportation. Given that roughly one-third of all terrorist attacks, world-wide, target transportation, a department of homeland security would be incomplete without the TSA.
- ! Not including the TSA in the new department would give two departments the responsibility for transportation security. Including the

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<sup>3</sup> The Senate-passed bill (S. 1447) would have shifted the screening of passengers and property to the Department of Justice. The Federal Air Marshal program would have been administered by the Secretary of DOT, but under guidelines prescribed by the Attorney General. The House-passed version provided for the creation of the TSA, inside the DOT, but outside the Federal Aviation Administration.

TSA in a new department could be an opportunity to consolidate and clarify the lines of authority.<sup>4</sup>

- ! International airports are to air transportation what border crossings are to surface transportation. Not including TSA in a new homeland security department would leave out a major component of border control.
- ! Historically, DOT, as an agency, has been the lead federal agency in supporting transportation infrastructure building and facilitating safe and efficient transportation. The agency has been responsive to air carrier and airport concerns about the cost and delay implications of security measures. Removing the TSA from the DOT would help keep the TSA focused on security and make it less easily swayed by the profit concerns of the transportation industries.
- ! The TSA is too big to be left out of the new department or left inside the DOT. With TSA staffing estimates approaching 70,000 personnel, leaving it out of a new homeland security department could in effect establish the latter as a “rump” agency, leaving the largest homeland security agency outside of its control. If left inside DOT, the TSA would dwarf most other DOT agencies and divert the agency’s efforts away from its traditional transportation mission.
- ! Leaving the TSA within the DOT endangers the budget of the remainder of the DOT. The combination of the high funding priority for security and the TSA’s escalating needs estimates could constrain spending on other transportation needs. In this budgetary environment, for example, the balances of the Airport and Airway Trust Fund could be siphoned off for aviation security, leaving other aviation needs, such as spending for increased airport capacity and air traffic control modernization, short-changed.

### **Con: Do Not Transfer the TSA to the Proposed New Department.**

- ! The TSA is an agency under construction. It is facing enormous challenges (of technology and personnel) as it works to meet the ambitious timetable set forth in the ATSA. Shifting the agency to a new department would disrupt its formation and delay its urgently needed implementation. It would also weaken useful ties to other parts of DOT.
- ! In passing ATSA, Congress placed the TSA in the DOT. There is no reason to replay a policy debate that Congress decided last November.
- ! The TSA is already under criticism from airline and airport industry officials for not having a customer friendly mind-set. Shifting the TSA out of the DOT can only exacerbate the “hassle factor” that passengers face from redundant and multilayered security measures at airports.
- ! Effective transportation security requires an understanding of law enforcement, transportation systems, and infrastructure. Shifting the TSA out of the DOT would separate these components and would require

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<sup>4</sup> H.R. 4660 includes responsibility for elements of transportation security in two of its proposed directorates, the Directorate of Prevention and the Directorate of Critical Infrastructure. This language would probably need to be modified or removed from the bill if the TSA is kept out of the proposed department, or there would be a conflict of authority over transportation security.

hiring more staff in the new department to provide expertise that already exists at DOT.

- ! Keeping the TSA in the DOT will help keep the agency focused on the security element of transportation. It is no accident that ATSA, the major security legislation passed in the aftermath of the September 11 attacks, was entirely concerned with transportation security, and to remove that concern from DOT is counterproductive.
- ! As mentioned earlier, the TSA's budget and estimates of its personnel needs have grown rapidly. Including the TSA in the proposed department could overwhelm the latter, diverting its resources from securing of U.S. sea ports and border crossings, improving emergency response capabilities, and strengthening security coordination.

## Related Unresolved Issues

**Committee Jurisdiction.** As part of the DOT, the TSA falls under the jurisdiction of the House Transportation and Infrastructure Committee and the Senate Committee on Commerce, Science, and Transportation. Should the TSA be incorporated into a new department, this jurisdiction could change and be assigned to one or more other committees. It is also uncertain which of the 13 appropriations subcommittees in either the House or Senate would have or share jurisdiction over a new department, but it is possible that the TSA or its components would shift to the jurisdiction of other subcommittees.

**How TSA Will Fulfill Its Role in Non-Aviation Transportation Security.** ATSA places the TSA in charge of the security of all modes of transportation. The Act is, however, largely silent on the specifics of how the fledgling agency will assert its authority over the security of the non-aviation modes of transportation. For example, the role of the TSA in port security is unclear, given that both the U.S. Coast Guard and the U.S. Customs Service are active in port security. Whether or not the TSA becomes part of the proposed department and how the TSA will fulfill its role under ATSA in assuring the security of non-aviation transportation, awaits further clarification.

**What Will Be the TSA's role in Border Security?** Within the context of the President's proposal the TSA would be placed in the Border and Transportation Security Division along with the Coast Guard, Customs Service, the Animal and Plant Health Inspection Service, and the Border Patrol and other enforcement elements of the Immigration and Naturalization Service (INS). The major federal players at U.S. points-of-entry (POE), including international airports as well as land border crossings, are the Customs Service and the INS. Whether the TSA will have a security role at U.S. POEs has not been clarified. Should TSA become a player, its role, vis-a-vis the other federal agencies at the border, would need clarification.

**Labor Issues.** Some are concerned that TSA's more generous salaries relative to the other agencies transferring to the Border and Transportation Security Division (BTS) could become a contentious issue within the division. Would, for example, Customs and INS salaries be adjusted? Another unresolved labor issue is TSA's less restricted power to hire and fire personnel.