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S.Res. 445: Senate Committee Reorganization for Homeland Security and Intelligence Matters

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Summary

Early in October 2004, a bipartisan Senate working group headed by Senators Mitch McConnell and Harry Reid issued a series of recommended reforms in Senate committee operation and jurisdiction with regard to homeland security and intelligence. The working group recommendations came in the wake of the final report of the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission), which urged Congress to reorganize its committee structures to oversee these issues more effectively.

Following four days of debate and amendment, on October 9, 2004, the Senate passed S.Res. 445, a resolution that implemented a number of the working group's suggestions regarding Senate Committee reorganization. These changes, which take effect on the convening of the 109th Congress, include lifting term limits on service on the Senate Intelligence Committee; raising the Intelligence Committee to category "A" status; giving the majority and minority leaders power to select the Intelligence Committee chair and vice chair; reducing the size of the panel from 17 to 15 members; and changing certain staffing processes of the Intelligence Committee. S.Res. 445 also renames the Senate Governmental Affairs Committee to the Senate Committee on Homeland Security and Governmental Affairs and transfers to the new panel jurisdiction over matters relating to the Department of Homeland Security, with certain limitations. The resolution establishes a new Intelligence Subcommittee of the Senate Committee on Appropriations and a new Subcommittee on Oversight on the Intelligence Committee. It also makes changes to the confirmation process and the sequential referral of matters reported from the Intelligence Committee. This report will be updated in the event of further changes to these provisions.

On October 9, 2004, the Senate adopted S.Res. 445, as amended, by a vote of 79 - 6. Passage of the resolution ends the current eight-year limitation for Senators serving on the Senate Select Committee on Intelligence. A substitute amendment to S.Res. 445 offered by Senators Mitch McConnell and Harry Reid was adopted by voice vote before

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final passage of the resolution. The amendment incorporated many intelligence and homeland security reorganization proposals put forward by a bipartisan leadership working group headed by the two Senators.

Intelligence Committee. S.Res. 445, as amended:

- ends the eight-year limitation on Senators serving on the Intelligence Committee;
- gives Senate floor leaders authority to name the Intelligence Committee chair and vice chair, in addition to their current authority to appoint all committee members;
- reduces the size of the Intelligence Committee from 17 to 15 members, but retains the requirement that the majority have only a one-seat margin on the committee;
- retains earmarked Intelligence Committee seats for two members each from the Committees on Appropriations, Armed Services, Judiciary, and Foreign Relations;
- allows the chairman and ranking member of the Armed Services Committee to serve as ex-officio non-voting members of the Intelligence Committee;
- authorizes the Intelligence Committee to establish subcommittees whose chair and vice chair would be selected by the full committee chair and vice chair respectively, and requires the establishment of an oversight subcommittee responsible for “ongoing oversight of intelligence activities;”
- assigns to the Intelligence Committee jurisdiction over civilian nominations to advice-and-consent positions within the intelligence community. Other committees with jurisdiction over these nominations would be allowed to hold hearings on and interview the nominees, but the Intelligence Committee would report the nominations;
- permits each Intelligence Committee member to appoint a staff aide to the committee staff (subject to the granting of appropriate security clearances), in addition to any core committee staff positions;
- formally allocates committee staff between the parties at a 60-40 ratio, excluding staff designees appointed by individual Senators;
- expands current requirements that the Intelligence Committee report periodically to the Senate on its findings to require such reports quarterly; and
- elevates the committee to category “A” assignment status. Under Senate rules, Senators generally may serve on no more than two “A” panels.

The current standing order (S.Res. 400, 94th Congress) establishing the Intelligence Committee requires that bills reported from the Intelligence Committee containing provisions within other committees’ jurisdictions (or bills reported from other committees containing provisions within the Intelligence Committee’s jurisdiction) be sequentially referred for 30 days (excluding days in which the Senate is not in session) to other committees if the other committees demanded it. This time period for “on demand sequential referral” is reduced to 10 days by S.Res. 445. If the other panel does not report the measure within the 10-day period, it is automatically discharged from further consideration of the measure. The Senate majority or minority leaders may extend the

referral period for a period of five additional days if the request is made prior to the expiration of the ten-day period.

Public Disclosure of Classified Information. S.Res. 445 also amends Senate standing orders relating to the procedure that the Select Committee on Intelligence can use to disclose certain classified material in its possession. The resolution adds provisions which require the Intelligence Committee to consult with the majority and minority leaders about the disclosure of classified information given to the committee by the executive branch and which the President does not want disclosed.

Intelligence Appropriations Subcommittee. S.Res. 445, as amended, establishes a new Appropriations Committee Subcommittee on Intelligence with jurisdiction over funding of intelligence matters. The resolution states that the Committee on Appropriations “shall reorganize into 13 subcommittees as soon as possible after the convening of the 109th Congress,” with the Appropriations Committee authorized to determine the jurisdiction of the new subcommittee.

Committee on Homeland Security and Governmental Affairs. The resolution renames the Senate Committee on Governmental Affairs the Senate Committee on Homeland Security and Governmental Affairs. The resolution gives the new panel jurisdiction over matters relating to the Department of Homeland Security, with certain limitations. S.Res. 445, as amended, exempted certain units within the Department of Homeland Security from transfer to the Homeland Security and Governmental Affairs Committee. Additional exemptions were added by floor amendments to the working group proposal.

Excluded from the jurisdiction of the Homeland Security and Governmental Affairs Committee under S.Res. 445, as amended, are the following:

- Transportation Security Administration (retained in the Commerce Committee);
- Federal Law Enforcement Training Center (retained in the Judiciary Committee);
- revenue and commercial functions of the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement, including matters relating to trade facilitation and trade regulation (retained in the Finance Committee);
- issues relating to the U.S. Citizenship and Immigration Services, the immigration functions of the U.S. Customs Enforcement, and the Directorate of Border and Transportation Security (retained in the Judiciary Committee);
- Coast Guard (retained in the Commerce Committee);
- Secret Service (retained in the Judiciary Committee); and
- National Flood Insurance Act of 1968, (retained in the Banking Committee) including the functions of the Federal Emergency Management Agency (FEMA) relating to that program (FEMA is currently in the Environment and Public Works Committee.)

The new Senate Committee on Homeland Security and Governmental Affairs would retain most of the jurisdiction of the current Governmental Affairs Committee, including

its authority to study “the efficiency, economy, and effectiveness of all agencies and departments of the Government.” S.Res. 445 as amended, removes from the committee’s present Rule XXV jurisdiction budget and accounting measures, other than appropriations, except as provided in the Congressional Budget Act of 1974.

S.Res. 445 grants the Senate Committee on the Budget, “exclusive jurisdiction over measures affecting the congressional budget process.” The resolution also gives the Budget Committee joint jurisdiction over the nominations of the Director and Deputy Director of the Office of Management and Budget, nominations which previously resided solely in Governmental Affairs.

Plan to Combine Authorization and Appropriation Power Rejected.

During consideration of S.Res. 445, an amendment was offered by Senator John McCain to give appropriations authority for intelligence agencies and functions to the Senate Intelligence Committee. Such a consolidation of authorizing and appropriating authority in one panel for intelligence was one recommendation of the 9/11 Commission.¹ The McCain amendment was rejected on October 7, 2004, by a vote of 23 to 74.

Potential Impact of the Reorganization. The provisions of S.Res. 445 go into effect with the convening of the 109th Congress. There remain, however, a number of questions that are likely to have to be addressed in the future. These topics are illustrative and non-comprehensive.

Provisions of the resolution make an assignment to the Intelligence Committee a permanent “A” assignment. Would Senators serving on the committee now be required to relinquish an existing category “A” assignment in order to remain on the Intelligence Committee, or would still additional Senators require waivers from assignment limits in the future? Would Senators with current assignments receive “grandfather rights” to keep their seats?

The resolution grants to the floor leaders the new right to designate the chair and vice chair of the Intelligence Committee. Because this would now be a permanent committee assignment, would it have been appropriate to retain the authority to designate chairs and vice chairs within the party conferences? There seems to be no discussion in the legislative history of S.Res. 445 as to whether the floor leaders would have authority to remove a committee member. Floor leaders would retain their authority to appoint rank-and-file committee members.

Would more information about the level of spending by the intelligence agencies be made public in the future, especially through functional allocations in budget resolutions and allocations of spending totals among appropriations subcommittees? The future operations of the congressional budget process are to be consolidated within the jurisdictions of the Committees on Budget, and Rules and Administration and S.Res. 445 is silent on the subject of making the total amount of the intelligence budget public.

¹ U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 420.

S. 2845, legislation to reorganize the intelligence agencies which is pending in a House-Senate conference committee, would necessarily also affect the jurisdiction of the Intelligence Committee, especially in connection with the number of nominees to be referred to the committee in the future. Specifics of the jurisdictional boundaries between the reorganized Senate Committee on Homeland Security and Governmental Affairs and other Senate committees would have to be determined in practice as bills are referred during the next Congress. In addition, committees involved may undertake efforts to establish formal agreements clarifying their respective jurisdictions. Such questions would fall within the jurisdiction of the Rules and Administration Committee.

The Senate has never before established an appropriations subcommittee by resolution. Would the Senate be required in the future to approve any further reorganization of Appropriations Committee subcommittees that affects the Intelligence or Defense Appropriations Subcommittees? As above, these questions involve the interpretation of Senate Rules, and the relationship between Senate Rules and a standing order (processes established by a resolution which does not formally amend the Standing Rules of the Senate). Both matters fall in the purview of the Senate Committee on Rules and Administration.

The resolution also authorizes new staffing arrangements for the Senate Intelligence Committee. The Senate Rules and Administration Committee is directly named in the amendment as being responsible for providing sufficient funds to the Intelligence Committee to permit the implementation of the staff designee system. How such a system would be implemented is unclear.

As noted, Senate Resolution 445 is a free standing resolution which does not formally amend the Rules of the Senate, but does so indirectly by establishing a “standing order.” The resolution amendment similarly does not directly amend Senate Rules. This approach to Senate reorganization is understandable because invoking cloture on a rules change normally requires 67 votes, while invoking cloture on something that does not directly amend the rules normally requires only 60. Failure to amend the rules directly, however, increases the potential for parliamentary error and might lead to future questions about the rules of the Senate.

Observations. Floor debate during consideration of S.Res. 445 made clear that the Senate acted to reorganize its committees in part because of perceived widespread public support for the recommendations of the 9/11 Commission. Some recommendations of the 9/11 Commission, such as combining authorization and appropriations authority, and to make the aggregate intelligence budget public, were not adopted by the Senate. Current press reports are noting that a majority of the functions performed by the Homeland Security Department will not be within the jurisdiction of the new Homeland Security and Governmental Affairs Committee even after passage of S.Res. 445. Similarly, some press reports have viewed the reorganization as only providing small additions to the authority of the Intelligence Committee.

Committee system changes in the Senate are rare and difficult to achieve, and S.Res. 445 is the most significant change in Senate committee operations since 1977. It is not clear whether observers will see the Senate reorganization as a significant change on the order of magnitude of the intelligence reorganization Congress is proposing for the executive branch. Senator Mitch McConnell summed it up on the floor in saying, “Not

every Senator will be happy with the result of the Senate working its will on this [reorganization] resolution. Some Members will complain this reform goes *too far*. Others will complain it *does not go far enough*. I believe we have struck an appropriate balance of reform that improves our ability to conduct oversight of intelligence and homeland security during a very serious time for our country.”²

² Senator Mich McConnell, remarks in the Senate, *Congressional Record*, daily edition, 108th Cong., 2nd sess., Nov. 9, 2004, p. S10922.