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FEMA Reorganization Legislation in the 109th Congress

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Summary

Members of Congress have introduced legislation in both the House and Senate to alter federal emergency management organizational structures and responsibilities, amend authorities that guide federal action, impose emergency management leadership qualification requirements, and make other changes. The proposals are based upon investigations conducted on the role of the Federal Emergency Management Agency (FEMA) and other entities in the response to Hurricane Katrina in the fall of 2005.

Some observers reduce the matter to one basic question: “Should FEMA remain within the Department of Homeland Security (DHS), or should the agency regain the independent status it had before the creation of DHS?” The issue, however, is more complex than just one of organizational placement. Other questions include the following:

- What should be the reach or limit of the entity’s authority?
- What degree of discretion should Congress extend to the President and executive branch officials to act in emergency situations?
- What functions or responsibilities should be transferred to the new entity? Which should be retained by other DHS entities?
- How can interagency coordination be ensured? To what extent should the White House be involved in emergency management on a continuing basis as well as during an emergency?
- How might Congress balance recognition of state sovereignty and primacy in the emergency management field while authorizing prompt federal response?
- If details such as personnel qualifications, training requirements, performance metrics, and interagency coordination mechanisms are set in statute, will federal agencies have the flexibility to adapt procedures and personnel to dynamic crises?

As of the date of this publication, Members have introduced at least 13 bills to reorganize FEMA or reorient the agency’s mission. Summary information on the 13 bills, and historical context for debate on the issue, is presented in CRS Report RL33369, *Federal Emergency Management and Homeland Security Organization: Historical Developments and Legislative Options*. Of the bills pending before Congress, two, H.R. 5316 and H.R. 5351, have been the subject of House committee action. Other bills that have been introduced in the House include H.R. 3656, H.R. 3659, H.R. 3685, H.R. 3816, H.R. 4009, H.R. 4397, H.R. 4493, and H.R. 4840. On July 11, 2006, the full Senate approved an amendment (S.Amdt. 4560) to the FY2007 appropriations bill (H.R. 5441) for the Department of Homeland Security. In addition, other Senate bills include S. 1615 and S. 2302.

This report will be updated when significant congressional action occurs on the pending legislation.

Contents

The Hurricane Katrina Investigations	1
House of Representatives Report	2
Senate Report	5
White House Report	7
Overview of Findings and Recommendations	9
Comparison of Pending Legislation	9

List of Tables

Table 1. House Hearings on Hurricane Katrina, 2 nd Session, 109 th Congress, by Committee	4
Table 2. Senate Hearings on Hurricane Katrina, 2 nd Session, 109 th Congress, by Committee	7
Table 3. Legislative Proposals Amending Emergency Management Structure and Authorities, Comparison of Existing Policy, S.Amdt. 4560 (to H.R. 5441), H.R. 5316, and H.R. 5351, 109 th Congress	12

FEMA Reorganization Legislation in the 109th Congress

The Hurricane Katrina Investigations

In the aftermath of Hurricane Katrina, Members of Congress and others raised questions about the scope and reach of federal emergency management policies, the procedures used to administer federal statutory authorities, the qualifications of personnel, and other issues. Most of the questions focused on the Federal Emergency Management Agency (FEMA), the agency primarily responsible for coordinating federal and non-federal disaster response activities.

Legislation pending before the 109th Congress would reconfigure the structure and mission of FEMA, which is currently part of the Department of Homeland Security (DHS) but served as an independent agency prior to 2003. Three of the 13 bills pending in the 109th Congress that would realign responsibility for federal emergency management functions have been acted upon.¹ H.R. 5351 and H.R. 5316 have been reported out of House committees. A Senate proposal was approved by the full Senate on July 11, 2006, as an amendment (S.Amdt. 4560) to the Department of Homeland Security appropriations legislation for FY2007 (H.R. 5441). Two of the three bills, H.R. 5351 and the Senate-approved amendment to H.R. 5441, would amend the Homeland Security Act (HSA) and shift the assignment of emergency management duties within DHS.² The other bill, H.R. 5316, would amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) and reestablish FEMA as an independent agency.³ Amendments considered by the Senate to reestablish FEMA as an independent agency (S.Amdt. 4563/S.Amdt. 4564) during the debate on H.R. 5441 were not approved.

These and other bills before the 109th Congress reflect investigative activities undertaken since Hurricane Katrina struck on August 29, 2005. By the spring of 2006, two congressional reports and a White House report had been issued. The findings, identified issues, and recommendations of the congressional and White House reports, as well as investigations conducted by the Government Accountability

¹ As of the date of publication, several other bills before the 109th Congress also would modify FEMA, its missions, or its operations. These bills include those that, like H.R. 5316, would reestablish FEMA as an independent agency (H.R. 3656, H.R. 3659, H.R. 3685, H.R. 3816, H.R. 4493, S. 1615, and S. 2302). Two other bills (H.R. 4009 and H.R. 4840) would recombine preparedness and response functions in DHS and impose qualification requirements on officials, and H.R. 4397 addresses qualification requirements.

² The Homeland Security Act of 2002 is codified at 6 U.S.C. 101 et seq.

³ The Stafford Act is codified at 42 U.S.C. 5121 et seq.

Office and the Inspector General of DHS, laid the groundwork for the consideration of alternative organizational arrangements for federal emergency management.

This report provides information on provisions of the Senate-approved amendment (S.Amdt. 4560) to the FY2007 appropriations bill, H.R. 5316, and H.R. 5351 that address concerns identified after Hurricane Katrina. To provide a context for information on the legislation, this report first summarizes findings and recommendations of the congressional and White House studies pertinent to the pending legislation reported from the House committees.

House of Representatives Report. On September 15, 2005, the House of Representatives approved H.Res. 437, which established the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina (referred to as the Select Committee). The activities of the committee were summarized in its final report as follows:

The Select Committee held nine hearings over the course of approximately three months. Select Committee Members and staff simultaneously conducted scores of interviews and received dozens of briefings from local, state, and federal officials; non-governmental organizations; private companies and individuals who provided or offered external support after Katrina; and hurricane victims. Select Committee Members and staff traveled numerous times to the Gulf Coast. The Select Committee also requested and received more than 500,000 pages of documents from a wide array of sources.⁴

The committee report presented findings but did not include recommendations. It noted successes, such as National Weather Service forecasts, efforts of search and rescue operations, and implementation of interstate mutual aid agreements. The majority of the report's findings, however, identified shortcomings and failures. Although none of the findings specifically addressed organizational issues, some of the findings arguably indicate that failures may have been associated with problems involving implementation of agency missions, questionable aspects of leadership, inappropriate interagency coordination mechanisms, or lack of clarity about shared responsibilities. The committee's findings that appear particularly relevant to the pending legislation include the following, with the text presented verbatim from the report:

It does not appear the President received adequate advice and counsel from a senior disaster professional.

The Secretary [of DHS] should have convened the Interagency Incident Management Group on Saturday, two days prior to landfall, or earlier to analyze Katrina's potential consequences and anticipate what the federal response would need to accomplish.

The Secretary [of DHS] should have designated the Principal Federal Official [PFO] on Saturday, two days prior to landfall, from the roster of PFOs who had

⁴ U.S. Congress, House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative*, 109th Cong., 2nd sess. (Washington: GPO, 2006), p. 11.

successfully completed the required training, unlike then-FEMA Director Michael Brown. Considerable confusion was caused by the Secretary's PFO decisions.

The Homeland Security Operations Center failed to provide valuable situational information to the White House and key operational officials during the disaster.

Federal agencies, including DHS, had varying degrees of unfamiliarity with their roles and responsibilities under the National Response Plan and National Incident Management System.

Earlier presidential involvement might have resulted in a more effective response.

Lack of communications and situational awareness paralyzed command and control.

DOD [Department of Defense]/DHS coordination was not effective during Hurricane Katrina.

DOD, FEMA, and the state of Louisiana had difficulty coordinating with each other, which slowed the response.

National Guard and DOD response operations were comprehensive, but perceived as slow.

The Coast Guard's response saved many lives, but coordination with other responders could improve.

DOD has not yet incorporated or implemented lessons learned from joint exercises in military assistance to civil authorities that would have allowed for a more effective response to Katrina.

Northern Command [within DOD] does not have adequate insight into state response capabilities or adequate interface with governors, which contributed to a lack of mutual understanding and trust during the Katrina response.

DOD lacked an information sharing protocol that would have enhanced joint situational awareness and communications between all military components.

Search and rescue operations were a tremendous success, but coordination and integration between the military services, the National Guard, the Coast Guard, and other rescue organizations was lacking.

Top officials at the Department of Health and Human Services and the National Disaster Medical System do not share a common understanding of who controls the National Disaster Medical System under Emergency Support Function-8.

Deployment confusion, uncertainty about mission assignments, and government red tape delayed medical care.

Contributions by charitable organizations assisted many in need, but the American Red Cross and others faced challenges due to the size of the mission, inadequate logistics capacity, and a disorganized shelter process.⁵

In addition to the hearings and interviews conducted by the select committee, oversight hearings before nine other House committees addressed a variety of matters related to the federal response. **Table 1** summarizes the topics of hearings held during the second session of the 109th Congress.

Table 1. House Hearings on Hurricane Katrina, 2nd Session, 109th Congress, by Committee

Committee/Number of hearings	Topics
Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina/9	Forecasts, FEMA role, decisions of Secretary Chertoff, preparedness and response, contractors, Alabama preparedness, victims reports, Mississippi preparedness, Louisiana preparedness
Appropriations/3	DHS, DOD, Housing and Urban Development (HUD) Department
Armed Services/1	DOD preparations
Energy and Commerce/3	Communications, fraud and waste, public health
Financial Services/8	Rebuilding, fair housing, housing needs (5 sessions), flood insurance
Government Reform/5	Preparedness, fraud and waste, contracting, international assistance, oversight
Homeland Security/4	Fraud and waste, FEMA restructuring, federalism, command and control
Science/1	Disaster research
Transportation and Infrastructure/4	DHS, need for legislation, risk reduction, FEMA
Ways and Means/1	Charities

Source: Information compiled from searches of CQ Committee Coverage (markups and hearings) data at CQ.com, available by subscription at [<http://www.cq.com/advancedsearch.do>], accessed June 15, 2006. The searches were conducted by Jennifer Manning, Knowledge Services Group, Congressional Research Service.

⁵ Ibid., pp. 2-5

Senate Report. From September 14, 2005, to April 21, 2006, the Senate Homeland Security and Governmental Affairs Committee (HSGAC) held 22 hearings on Hurricane Katrina-related issues.⁶ In the course of the committee investigation, staff interviewed 236 persons to obtain detailed information on events, operations, and procedures.⁷

The Senate committee report, published months after the House select committee report, included findings and recommendations. The Senate report included four “Foundational Recommendations” that, if implemented, would replace FEMA with a new entity, the National Preparedness and Response Authority (NPR). These recommendations include the following, presented verbatim from the report:

Create a New, Comprehensive Emergency Management Organization with DHS to Prepare for and Respond to All Disasters and Catastrophes.

From the Federal Level Down, Take a Comprehensive All-Hazards *Plus* Approach to Emergency Management.

Establish Regional Strike Teams and Enhance Regional Operations to Provide Better Coordination between Federal Agencies and the States.

Build a True, Government-Wide Operations Center to Provide Enhanced Situational Awareness and Manage Interagency Coordination in a Disaster.⁸

The specific characteristics of NPR, and other recommendations in the Senate report related to the pending legislation, may be summarized in the following manner:

- NPR is to be a distinct entity within DHS, with its missions and components protected from internal reorganizations or departmental reassignments.
- The Director of NPR would hold the same rank as a Deputy Secretary (Level II of the Executive Schedule, presidential appointees to be confirmed by the Senate), report directly to the Secretary, and serve as the adviser to the President for emergency management and as a direct conduit of information to the President during catastrophes.

⁶ A list of the hearings held, topics, and witnesses is presented in the final report issued by the committee. U.S. Senate, Committee on Homeland Security and Governmental Affairs, *Hurricane Katrina: A Nation Still Unprepared*, 109th Cong., 2nd sess. (Washington: GPO, 2006), pp. Appendix 3-2 through 3-8.

⁷ A list of those interviewed is presented in the Senate report, *ibid.*, pp. Appendix 4-1 through 4-23.

⁸ *Ibid.*, pp. Recommendations-1 through Recommendations-7.

- Three NPRA deputy directors would hold the same rank as most under secretaries (Level III of the Executive Schedule, presidential appointees to be confirmed by the Senate).
- Ten regional office directors would be part of the Senior Executive Service and would serve as Federal Coordinating Officers (FCOs). Enhanced intergovernmental and interagency interactions would be built with federal strike teams, staffing changes, and coordination efforts.
- NPRA would be responsible for the four phases of emergency management — preparedness, response, recovery, and mitigation — as well as infrastructure protection, and would adopt an “all-hazards plus” approach to include a wide range of capabilities for the broadest range of hazards.
- A National Operations Center (NOC) would integrate the operational duties currently vested in at least three different entities.
- Increased levels of commitment to and by state and local governments are necessary, along with efforts to better integrate non-governmental organizations into emergency management procedures and operations.
- The plans and systems for disaster response should be enhanced, including the capability to respond to catastrophic incidents.
- Coordination between DHS and DOD and Health and Human Services (HHS) should be improved.
- During the transition to NPRA, DHS should develop strategies to build career emergency management personnel capabilities.

Just as various House committees conducted hearings on Katrina-related issues, seven Senate committees in addition to the primary investigative body examined specific issues related to the disaster. **Table 2** provides summary information on those Senate hearings.

Table 2. Senate Hearings on Hurricane Katrina, 2nd Session, 109th Congress, by Committee

Committee/number of hearings	Topics
Homeland Security and Governmental Affairs/22	Recovery (2 sessions), FEMA performance, New Orleans, levee failures, Coast guard, private sector, FEMA operations professionals, levee responsibility, Mississippi recovery, Hurricane Pam simulation, urban search and rescue, pre-storm evacuation, post-storm evacuation, role of governors, law enforcement and communications, DOD role, DHS/FEMA leadership, waste and fraud, role of Secretary Chertoff, reform recommendations, housing
Appropriations/3	2006 hurricane season, supplemental appropriations
Banking, Housing, and Urban Affairs/4	Rebuilding, flood insurance (3 sessions)
Commerce, Science, and Transportation/3	Hurricane forecasting, communications, hurricane prediction
Environment and Public Works/2	Hurricane response
Health, Education, Labor, and Pensions/1	Hurricane response
Judiciary/1	Readiness
Special Aging/1	Needs of older Americans in disasters

Source: Information compiled from searches of CQ Committee Coverage (markups and hearings) data at CQ.com, available by subscription at [<http://www.cq.com/advancedsearch.do>], accessed June 15, 2006. The searches were conducted by Jennifer Manning, Knowledge Services Group, Congressional Research Service.

White House Report. The post-Katrina report issued by the White House does not include any recommendations for organizational changes; it does, however, include recommendations pertinent to organizational options, including some of the issues addressed in the pending legislative proposals. The recommendations in the White House report that appear relevant to the pending legislation include the following. The numbers that accompany the following recommendations are taken verbatim from the report and correspond to those presented in it.⁹

4. DHS should develop and implement Homeland Security Regions that are fully staffed, trained, and equipped to manage and coordinate all preparedness activities and any emergency that may require a substantial federal response.

⁹ The White House, *The Federal Response to Hurricane Katrina, Lessons Learned* (Washington: 2006), pp. 87-124.

5. Each Regional Director should have significant expertise and experience, core competency in emergency preparedness and incident management, and demonstrated leadership ability.
6. The PFO [Principal Federal Official] should have the authority to execute responsibilities and coordinate federal response assets.
8. Each region must be able to establish and resource rapidly deployable, self-sustaining incident management teams (IMT) to execute the functions of the JFO [Joint Field Office] and subordinate area commands that are specified in the NRP [National Response Plan] and NIMS [National Incident Management System].
9. DHS should establish several strategic-level, standby, rapidly deployable interagency task forces capable of managing the national response for catastrophic incidents that span more than one Homeland Security Region.
10. Integrate and synchronize the preparedness functions within the Department of Homeland Security.
11. DHS should establish a permanent standing planning/operations staff housed within the National Operations Center.
13. A unified departmental external affairs office should be created within DHS that combines legislative affairs, intergovernmental affairs, and public affairs as a critical component of the preparedness and response cycle.
15. Establish a National Operations Center to coordinate the national response and provide situational awareness and a common operating picture for the entire federal government.
19. Establish the Disaster Response Group (DRG).
30. DOD should consider assigning additional personnel (to include General officers) from the National Guard and the reserves of the military services to USNORTHCOM [U.S. Northern Command] to achieve enhanced integration of Active and reserve component forces for homeland security missions.
- 38(f). DHS should establish a Chief Logistics Officer to oversee all logistics operations across multiple support functions.
- 57(b). HHS in coordination with OMB and DHS should draft proposed legislation for submission to Congress, to transfer NDMS [National Disaster Medical System] from DHS to HHS.
63. Assign HHS the responsibility for coordinating the provision of human services during disasters.
69. Designate HUD as the lead federal agency for the provision of temporary housing.
76. Develop a Public Communications Coordination capability for crisis communications at the White House.

83. The National Economic Council should form an Impact Assessment Working Group to provide an overall economic impact assessment of major disasters, including the Departments of Homeland Security, Treasury, Commerce, Energy (Energy Information Administration), and Labor as well as the President's Council of Economic Advisors.

99. DHS should establish an office with responsibility for integrating non-governmental and other volunteer resources into federal, state, and local emergency response plans and mutual aid agreements. Further, DHS should establish a distinct organizational element to assist faith-based organizations.

110. DHS should consolidate the DHS Training and Exercise Structure.

116. DHS should establish a National Homeland Security University (NHSU) for senior officials that serves as a capstone to other educational and training opportunities.

118. The White House should consider establishing a Presidential Board to review the national security, homeland security, and counterterrorism professional development programs of federal departments and agencies to identify opportunities for further integration.

Overview of Findings and Recommendations. The House, Senate, and White House reports include common elements that appear pertinent to S. 3595, H.R. 5316, and H.R. 5351. All conclude that failures of leadership and initiative compromised efforts to provide necessary assistance to victims and communities. Coordination problems and failures to fully integrate response procedures, plans, and systems among federal agencies were also common findings, with particular attention given to the role of the Principal Federal Officer (PFO); the Homeland Security Operations Center; and DHS, DOD, and HHS officials. In addition to these failures, the reports noted the critical role of regional offices in building relationships with state and local governments.

One significant difference between the congressional reports and the White House report concerns examinations of the qualifications of the leadership in FEMA and DHS, notably the experience and training expected of leaders. Both the House and Senate reports concluded that problems stemmed, at least in part, from leadership shortcomings. On the other hand, the White House report focused on failures of process, systems, and planning, not the experience or qualifications of top officials.

Comparison of Pending Legislation

The House bills that have been acted upon during the 109th Congress adopt different approaches to the issues identified in the congressional and White House reports. Some of the more significant differences between the two House bills are the following:

- **Organizational location:** H.R. 5316 would establish FEMA as an independent cabinet level agency with direct access to the President; H.R. 5351 would keep FEMA in DHS as the Directorate of Emergency Management (DEM).

- **Base statutory authority:** H.R. 5316 would amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); H.R. 5351 would amend the Homeland Security Act, or HSA (6 U.S.C. 101 et seq.).¹⁰
- **Preparedness:** H.R. 5351 would authorize preparedness activities (school planning, pandemic influenza, emergency management preparedness grants) and condition eligibility for homeland security grants on the maintenance of catastrophic plans; H.R. 5316 does not include such provisions, but would add a title to the Stafford Act that would authorize establishment of a new comprehensive emergency preparedness system to improve federal and non-federal capabilities.
- **Presidential access:** H.R. 5316 would authorize the FEMA Director to have continual, direct access to the President at all times; H.R. 5351 would designate the head of the DEM as a “Cabinet Officer” for the duration of Incidents of National Significance.¹¹
- **Medical response:** A Chief Medical Officer would be appointed under H.R. 5351, and emergency medical response functions would be vested in the DEM; H.R. 5316 does not provide for such a position or such functions.
- **Personnel:** H.R. 5316 would authorize the Director of the independent FEMA to develop a human capital strategy; H.R. 5351 would retain the authority in DHS to develop a workforce strategy. Also, H.R. 5316 would authorize the establishment of a disaster workforce cadre, whereas H.R. 5351 would not.
- **Fraud and waste:** H.R. 5351 would provide new authority and requirements to prevent fraud and waste; H.R. 5316 would authorize the FEMA Director to use up to 1% of funds for oversight activities. Also, H.R. 5351 would require establishment of a system to ensure that equipment purchased by first responders is effective; H.R. 5316 does not contain a similar provision.
- **Regional offices:** H.R. 5351 would require the establishment of regional offices within DEM; H.R. 5316 would not.

¹⁰ The statutory authorities amended by the House bill reflect committee jurisdictions; the House Transportation and Infrastructure Committee exercises jurisdiction over the Stafford Act, whereas the House Homeland Security Committee has jurisdiction over the HSA.

¹¹ Incidents of National Significance include, but are not limited to, presidential major disaster and emergency declarations, as well as events that require the involvement of multiple federal agencies and situations that require federal involvement, at the Secretary’s discretion. See U.S. Department of Homeland Security, *National Response Plan*, as amended (Washington: 2005), p. 4.

The amendment to H.R. 5441 (S.Amdt. 4560), approved by the full Senate on July 11, 2006, is somewhat comparable to H.R. 5351. It differs, however, in that it would establish an Emergency Management Authority (EMA), not a Directorate of Emergency Management (DEM), within DHS. In addition, differences exist in the following areas:

- **Preparedness:** H.R. 5351 would provide for the pre-positioning of equipment, development of an asset inventory, funding for emergency management preparedness grants, planning for pandemic influenza, and catastrophic planning; S.Amdt. 4560 would not.
- **Response:** S.Amdt.4560 includes provisions regarding disaster “strike” teams and the establishment of a National Operations Center; H.R. 5351 does not.
- **Organization:** S.Amdt. 4560 would establish the EMA as a distinct entity within DHS and prohibit the Secretary from reorganizing it; H.R. 5351 would not establish DEM as a distinct entity and would not control reorganization authority.
- **Leadership:** H.R. 5351 would create the DEM head at the under secretary level, to report to the Secretary or Deputy Secretary. In contrast, the head of the EMA under S.Amdt.4560 would be at the deputy secretary level and would report only to the Secretary.
- **Communications:** H.R. 5351 would establish a communications office within DEM; S.Amdt. 4560 would not provide for such an office within the EMA.

Table 3 of this report presents summary information on existing law and administrative documents, and compares the provisions of the bills.

Table 3. Legislative Proposals Amending Emergency Management Structure and Authorities, Comparison of Existing Policy, S.Amdt. 4560 (to H.R. 5441), H.R. 5316, and H.R. 5351, 109th Congress

S.Amdt. 4560 ^A	H.R. 5316 ^B	H.R. 5351 ^A
SHORT TITLE		
United States Emergency Management Authority Act of 2006 [Sec. 601]	Restoring Emergency Services to Protect Our National from Disasters Act of 2006 (RESPOND Act of 2006) [Sec. 1]	National Emergency Management Reform and Enhancement Act of 2006
ORGANIZATION LOCATION AND STATUS		
Overview of existing policy: <i>FEMA and the Directorate of Preparedness are two of 26 entities reporting to DHS leadership. [6 U.S.C., 311-317, DHS 7/13/05 letter to Congress]</i>		
Would establish U.S. Emergency Management Authority (EMA) in the Department of Homeland Security (DHS) as a distinct entity by transferring FEMA and the Preparedness Directorate. [Sec. 602, §502(a), §504, §505]	Would establish FEMA as an independent “cabinet level” agency by transferring the functions of FEMA, specified DHS authorities not assigned to FEMA, and the Preparedness Directorate. [Sec. 101(a), Sec. 105]	Would combine FEMA and the Directorate of Preparedness and call it the Directorate of Emergency Management (DEM) within DHS. [Sec. 101(a), §§501(a), 502(b)]

S.Amdt. 4560 ^AH.R. 5316 ^BH.R. 5351 ^A**PRESIDENTIAL ACCESS*****Leadership levels/authority to report to the President***

Existing policy: *Under secretaries (U/S) report to the Secretary/Deputy Secretary. U/S for Federal Emergency Management may report to the President during Incidents of National Significance (INS) through the Principal Federal Officer (PFO). [Sec. Chertoff 7/13/05 letter to Congress]*

EMA Administrator would report directly and only to the DHS Secretary, and serve as the principal emergency preparedness and response adviser to the President, Homeland Security Council, and DHS Secretary and may make recommendations to Congress after informing Secretary. [Sec. 602, §502(c)(3,4)]

FEMA Director given secretary cabinet status and would report directly to the President at all times. [Sec. 103(a)(1)]

DEM head, established at U/S level, would report to the Secretary/Deputy Secretary and generally serve as the principal adviser to the President on emergency management. Would serve as a “Cabinet Officer” during Incidents of National Significance. [Sec.101(a), §§501(a)(1), 502(a), 503]

FUNCTIONS AND MISSION***Overall mission***

Existing policy: *FEMA mission includes response and recovery, but not emergency preparedness. [6 U.S.C. 317, DHS 7/13/2005 letter to Congress]*
The President is authorized to undertake a range of emergency management functions. [Stafford Disaster Relief Act, 42 U.S.C. 5121 et seq. and Executive Orders 12127, 12148, as amended, Reorganization Plan No. 3 of 1978]

EMA mission would include leading the nation in comprehensive emergency management (CEM) based on an “all-hazards-plus” strategy through administration of the Stafford Act, and undertaking other activities. [Sec. 602, §502(b), §503]

FEMA mission would be based on the all hazards, risk-based, comprehensive emergency management (CEM) framework and would include responsibility for the Stafford Act. [Sec. 101(b), Sec. 102(a)(1,2)]

DEM would have primary responsibility for preparing for, mitigating against, responding to, and recovering from terrorism, disasters, and other emergencies, with 18 specific tasks and authorities listed, including responsibility for the Stafford Act. [Sec. 101(a), §502(a)]

S.Amdt. 4560 ^A	H.R. 5316 ^B	H.R. 5351 ^A
Functions, personnel, assets, components, and liabilities of FEMA (except National Disaster Medical System) as well as the Preparedness Directorate and its leaders, as of June 1, 2006, would be transferred to EMA. [Sec. 602, §504]	The functions of current FEMA and the Preparedness Directorate, and the functions, personnel, and assets associated with six specified authorities would be transferred to the independent agency FEMA. [Sec. 105(a); Sec. 106(e)]	Functions of FEMA (the former Emergency Preparedness and Response Directorate) and the Preparedness Directorate would be transferred to DEM. [Sec. 101(a), §502(b,c)]
<i>Infrastructure protection</i>		
Existing policy: <i>The Preparedness Directorate is responsible for infrastructure protection. [6 U.S.C. 121 et seq., DHS 7/13/2005 letter to Congress] Directorate for Information Analysis and Infrastructure Protection established. [6 U.S.C. 121]</i>		
EMA Administrator responsible for security and resiliency of critical infrastructure protection, including cyber and communications assets. [Sec. 602, §502(10), §503(a)(1)(E) and §503(a)(12)]	No similar provision	Would establish Office for Infrastructure Protection in DEM. [Sec. 101(a), §591]
No similar provision	No similar provision	Would redesignate Information Analysis and Infrastructure Protection Directorate as Office of Intelligence and Analysis. [Sec. 106]
Position of Assistant Secretary for Cybersecurity and Telecommunications would be established in DHS (specific location unstated). [Sec. 602, §518(a)]	No similar provision	Office of Cybersecurity and Telecommunications would be established under authority of the DEM Under Secretary. [Sec. 101(a), §592]

S.Amdt. 4560 ^AH.R. 5316 ^BH.R. 5351 ^A*Specific preparedness functions*

Existing policy: *Preparedness functions assigned to the DHS Preparedness Directorate. [Original authority given to Office of Domestic Preparedness, 6 U.S.C. 238, reorganized under 6 U.S.C. 452, DHS 1/26/2004 letter to Congress and DHS 7/13/2005 letter to Congress]*

No similar provision	Includes notification requirement to state and local officials and a Sense of Congress provision on prepositioned equipment. [Sec. 205]	Would require establishment of prepositioned equipment program and asset inventory. [Sec. 101(a), §581-582]
No similar provision	No similar provision	Would establish Office of Training and Exercises in DEM to improve national preparedness capabilities. [Sec. 101(a), §522]
No similar provision	Would authorize grants for emergency equipment. [Sec. 207, §630]	No similar provision
Would require DHS Secretary to establish National Advisory Council on Emergency Preparedness and Response to advise the EMA Administrator. [Sec. 602, §508]	Would require establishment of a comprehensive emergency preparedness system, including: specification of national goals, priorities, requirements, and standards; authorizes federal frameworks, and requires enhancement of federal capabilities. [Title III, §701-709]	Would require Secretary to update emergency management capability standards. [Sec. 101(a), §523] Would establish National Advisory Council on Emergency Management to periodically review federal plans, standards, and capabilities. [Sec. 101(a), §509]
Would require that the EMA Administrator promote public preparedness. [Sec. 602, §512]	No similar provision	Would establish Office of Public and Community Preparedness. [Sec. 101(a), §527]

S.Amdt. 4560 ^A	H.R. 5316 ^B	H.R. 5351 ^A
No similar provision	No similar provision	Would authorize grantees to use DHS funds for preparedness activities by schools. [Sec. 109]
No similar provision	No similar provision	Would require national exercise to test Pandemic Influenza Strategy. [Sec. 111]
No similar provision	No similar provision	Would require establishment of a pilot program for public and private sector planning and response program. [Sec. 112]
No similar provision	No similar provision	Would authorize \$360 million for Emergency Management Performance Grants for FY2007. [Sec. 113]
Would require Administrator to establish nationwide standards for typing emergency resources and assets, including teams and equipment. [Sec. 602, §520]	No similar provision	No similar provision See also “Federalism,” below.
<i>Catastrophic planning</i>		
Existing policy: <i>No catastrophic planning provisions in HSA or Stafford Act, but Catastrophic Incident Annex (CIA) in National Response Plan (NRP) sets out guidance for federal action. [NRP CIA]</i>		
EMA Administrator, in consultation with other federal officials, must develop a system capable of responding to catastrophic incidents. [Sec. 602, §503(b)]	No similar provision	Would require testing and enhancement of state and local capabilities for response to catastrophic incidents. [Sec. 101(a), §522(e)]

S.Amdt. 4560 ^A	H.R. 5316 ^B	H.R. 5351 ^A
No similar provision	FEMA Director would fund state and local catastrophic planning and capabilities; does not condition receipt of aid. [Sec. 201, §616]	Would condition federal homeland security financial aid for states and urban areas on maintenance of catastrophic plans and capabilities; does not provide funding. [Sec. 101(a), §524]
<i>Specific response functions</i>		
Existing policy: <i>Response Division exists in FEMA. [Secretary Chertoff's 2SR reorganization, adopted 10/1/05] President required to establish emergency support teams in response to major disasters or emergencies. [42 U.S.C. 5144] Response capabilities authorized, including control of Nuclear Incident Response Team (NIRT), National Response Plan (NRP), and National Incident Management System (NIMS). (6 U.S.C. 312(5,6))</i>		
Would require each regional administrator to establish multi-agency strike teams and would authorize necessary funds. [Sec. 602, §507(e)]	Would amend Stafford Act by requiring President to establish emergency disaster response teams that meet specified criteria. [Sec. 202, §303]	No similar provision
Would establish the National Incident Management System (NIMS) Integration Center in the EMA. [Sec. 602, §509]	Would require maintenance of NIMS and NRP, enumerates related requirements, and would establish the Integration Center. [Title III, §704, 705, 708] FEMA would be lead agency for National Response Plan. [Sec. 102(b)]	Would establish NIMS and NRP Integration Center (NIC). [Sec. 101(a), §541] Would authorize NIRT operations. [Sec. 101(a), §543]
Would establish a National Search and Rescue Response System in the EMA. [Sec. 602, §514]	No similar provision	Would authorize the Urban Search and Rescue System. [Sec. 101(a), §544]
Would establish a National Operations Center in DHS. [Sec. 602, §510]	Would require FEMA Director to establish emergency operations center. [Sec. 203]	No similar provision
No similar provision	Would require Director to establish logistics system. [Sec. 204]	Would require identification of areas for logistic support centers as part of asset inventory program. [Sec. 101(a), §582(f)]

S.Amdt. 4560 ^A	H.R. 5316 ^B	H.R. 5351 ^A
No similar provision	Would require establishment of communications capability. [Sec. 206]	Would include Sense of Congress provision on consultation on SAFECOM communications program (Project 25). [Sec. 110]
No similar provision	Population groups with limited English proficiency would be identified and assisted. [Sec. 209]	No similar provision
No similar provision.	No similar provision	Would authorize \$85 million for each fiscal year for National Disaster Medical System and require report on whether the system should remain in DHS. [Sec. 103]
Chief Medical Officer (CMO) would be required to establish a program to assess health and safety of first responders after Incidents of National Significance. [Sec. 602, §511(d)]	No similar provision	No similar provision
<i>Specific recovery functions</i>		
Existing policy: <i>FEMA administers functions through a Recovery Division; HSA charges FEMA with responsibility for recovery and rebuilding communities. [Secretary Chertoff's 2SR reorganization, adopted 10/1/05, 6 U.S.C. 317(a)(2)(D)]</i>		
No similar provision	No similar provision	Would authorize pre-event recovery contract authority for regional directors. [Sec. 101(a), §585]
No similar provision	No similar provision	Would statutorily establish the Gulf Coast Recovery Office (now established through presidential directive). [Sec. 102]

S.Amdt. 4560 ^AH.R. 5316 ^BH.R. 5351 ^A***Continuity of Operations (COOP)*** ^C

Existing policy: *Federal departments and agencies are responsible for contingency planning, including continuity of operations, within the executive branch, in coordination with FEMA. [E.O. 12656, Presidential Decision Directive (PDD) 67, and Federal Preparedness Circular (FPC) 65]*

No similar provision

Responsibilities of the proposed independent FEMA would include developing guidance for and coordinating federal continuity plans and operations. [Sec. 102(a)(3)]

No similar provision

Communications

Existing policy: *DHS Secretary authorized to coordinate communications systems through the Office of State and Local Coordination (now Preparedness Directorate). [6 U.S.C. 112, DHS letter of 7/13/05 to Congress]*

No similar provision(s)

Would require that the independent FEMA maintain interoperable communications capability. [Sec. 206]

Would establish Office of Communications in DEM; enumerates authorities, organization, and requirements. [Sec. 101(a), §561-568]
Sets forth responsibility of Office of Interoperability and Compatibility. [Sec. 104, §314]

LEADERSHIP***Appointment authority (PAS means presidentially appointed, with the advice and consent of the Senate.)***

Existing policy: *U/S for Federal Emergency Management is Level III PAS position. [6 U.S.C. 113; Reorganized under 6 U.S.C. 452; see letter from Sec. Chertoff to Congress, 4/6/06] U/S for Preparedness is Level III PAS position. [6 U.S.C. 113; Reorganized under 6 U.S.C. 452; see letter from Sec. Chertoff to Congress, 7/13/05]*

Assistant Secretary (A/S) for Grants and Training is a Level IV PAS position in the Directorate of Preparedness. [6 U.S.C. 238; reorganized under 6 U.S.C. 452; letter from Sec. Ridge to Congress, 1/26/04, and letter from Sec. Chertoff to Congress, 7/13/05] U.S. Fire Administration is located in the Directorate of Preparedness. [6 U.S.C. 313; reorganized under 6 U.S.C. 452, letter from Sec. Chertoff to Congress, 7/13/05] Its administrator is Level IV PAS position under a separate statute. [15 U.S.C. 2204] Appointments to most other leadership positions made by the Secretary.

S.Amdt. 4560 ^A	H.R. 5316 ^B	H.R. 5351 ^A
EMA Administrator would be a Level II PAS position. [Sec. 602, §502(c)(1); Sec. 603(a)(1)]	Would establish FEMA Director as a Level I PAS position. [Sec. 103(a)(1)]	Would establish U/S for Emergency Management, as head of DEM, as a PAS position (pay level not specified). [Sec. 101(a), §501(a)]
Directors for Preparedness and for Response and Recovery would be Level III PAS positions reporting to the Administrator. [Sec. 602, §506(a); Sec. 603(a)(2)]	Would authorize the FEMA Director to appoint a Deputy Director in the competitive service. [Sec. 103(b)(1)]	Dep. U/S's for Emergency Preparedness and Mitigation, and for Emergency Response and Recovery would be PAS positions (pay levels not specified). [Sec. 101(a), §501(b,c)]
Would establish A/S for Cybersecurity and Telecommunications, with appointment authority and pay level unspecified. [Sec. 602, §518(a)]	No similar provision	Would establish five A/Ss as PAS positions to head specified offices (pay levels not specified). [Sec. 101(a), §501(d)]
U.S. Fire Administration would be within EMA. [Sec. 602, §504(1)] The Administrator's rank would be that of Assistant Secretary in DHS. [Sec. 602, §518(b)]	U.S. Fire Administration would be transferred to FEMA. [Sec. 105(a)(3)(E) and 106(e)]	U.S. Fire Administration would be under the authority of the U/S for Emergency Management. [Sec.101(a), §§502(b) and 502(c)(5)]
Would establish the Chief Medical Officer (CMO) as a PAS position (pay level unspecified). [Sec. 602, §511(a)]	No similar provision	Would establish the CMO as a PAS position. A deputy CMO would be appointed by the Secretary. (Pay levels are unspecified.) [Sec. 101(a), §§505(a) and (d)]
Regional administrators would be appointed by DHS Secretary and would report to EMA Administrator (pay level unspecified). [Sec. 602, §507(b)(1)]	No similar provision	DHS Secretary would appoint regional directors and deputy directors after consulting with state and local officials (pay level unspecified). [Sec. 101(a), §504]
No similar provision	Would authorize FEMA Director to appoint a chief financial officer (CFO) who shall be in the competitive service or Senior Executive Service. [Sec. 108(a)]	No similar provision

CRS-21

S.Amdt. 4560 ^A	H.R. 5316 ^B	H.R. 5351 ^A
No similar provision	Inspector general (IG) office established, with pay level and appointment authority unspecified. [Sec. 104]	DHS IG would appoint deputy IG for Response and Recovery (pay level unspecified). [Sec. 205]
Would establish Director of the Office for the Prevention of Terrorism in DHS, with pay level and appointment authority unspecified. [Sec. 602, §517(b)(1)]	No similar provision	DHS Secretary would appoint three office directors, and one center director (pay levels unspecified). [Sec. 101(a), §501-§541]
Qualifications		
Existing policy: <i>None specified in statute.</i>		
Persons filling EMA Administrator and Director positions would have to hold at least five years of executive leadership and management experience, “significant experience in crisis management” or related field, and substantial staff and budget management ability. DHS FEMA and Preparedness officials may serve as directors during interim period. [Sec. 602, §§502(c)(3) and 506(b,c)]	Director and Deputy Director would be selected from individuals who have extensive experience in emergency preparedness, response, recovery, and mitigation for all hazards, including major disasters, acts of terrorism and other emergencies. [Sec. 103]	Would require that U/S have demonstrated ability in and knowledge of emergency management and homeland security. [Sec. 101(a), § 501(a)(2)] Deputy U/S for Emergency Preparedness and Mitigation would be required to possess same for emergency preparedness and mitigation. [Sec. 101(a), § 501(b)(2)] Deputy U/S for Emergency Response and Recovery would be required to possess same for emergency response and recovery. [Sec. 101(a), § 501(c)(2)]
Regional administrators would be Senior Executive Service employees qualified to serve as FCO. [Sec. 602, §507(b)(2)]	No similar provision	Regional directors and dep. directors would be required to possess ability in and knowledge of emergency management, and familiarity with region’s geography and demography. [Sec. 101(a), § 504(b)(3)]

S.Amdt. 4560 ^A	H.R. 5316 ^B	H.R. 5351 ^A
EMA would include a CMO with demonstrated ability in and a knowledge of public health and medicine. [Sec. 602, §511(b)]	No similar provision	CMO, Deputy CMO would be required to possess ability in and knowledge of medicine and public health. [Sec. 101(a), §§ 505(b) and 505(e)]
No positions would be established by this bill that would be subject to these statutes.	Qualifications are specified under existing statutes for the CFO and IG positions that would be established by this bill. [31 U.S.C. 901(a)(3); 5 App. Inspector General Act of 1978, Sec. 3]	Deputy IG for Response and Recovery would be required to possess integrity and ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. [Sec. 205(a), §813(b)]

Delegation and Assignment

Existing policy: *As provided for in the Homeland Security Act, “Unless otherwise provided in the delegation or by law, any function delegated under this chapter may be redelegated to any subordinate.” [6 U.S.C. 455(c)]*

DHS Secretary would be prohibited from reducing EMA authority or capabilities except as provided by subsequent statutes. Prohibits diversion of EMA assets and missions to other DHS components. [Sec. 602, §505(c)]

Except where otherwise expressly prohibited by law or provided by the bill, the Director would be authorized to delegate to FEMA officers and employees any of the functions transferred to the Director under the bill or subsequently vested in him. Successive redelegations as necessary or appropriate could be authorized by the Director. The Director would retain the responsibility for the administration of such functions. [Sec. 106(b)]

No similar provision

S.Amdt. 4560 ^AH.R. 5316 ^BH.R. 5351 ^A**Rules**

Existing policy: *“The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5 [administrative procedure], except as specifically provided in this chapter, in laws granting regulatory authorities that are transferred by this chapter, and in laws enacted after November 25, 2002.” [6 U.S.C. 112(e)]*

No similar provision

The Director would be authorized to prescribe rules and regulations as necessary or appropriate, in accordance with 5 U.S.C. Chapters 5 (administrative procedure) and 6 (regulatory functions), to administer and manage FEMA. [Sec. 106(d)]

No similar provision

INTERAGENCY AND INTERGOVERNMENTAL COORDINATION***Federal interagency coordination***

Existing policy: *Secretary of DHS (and during Incidents of National Significance, the Principal Federal Official, or PFO) and the Federal Coordinating Officer (FCO) during major disasters and emergencies [42 U.S.C. 5143; National Response Plan, Homeland Security Presidential Directive (HSPD)-5]*

No similar provision

FEMA would be required to have a liaison office to coordinate with DHS during potential or actual terrorist incident. [Sec. 105(d)]

Authority of FCOs would remain unaffected. [Sec. 101, §504(g)]

No similar provision

No similar provision

Would establish a National Biosurveillance Integration System to assure interagency coordination of biological events. [Sec. 101(a), §506]

S.Amdt. 4560 ^A	H.R. 5316 ^B	H.R. 5351 ^A
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Federalism

Existing policy: *FCO coordinates with state official(s) during major disasters or emergencies. [42 U.S.C. 5143] DHS Secretary required to develop and co-locate regional offices of agencies transferred to DHS. [6 U.S.C. 346] Office for National Capital Region Coordination established in DHS. [6 U.S.C. 462]*

<p>EMA Administrator would be required to establish 10 regional offices, each with a Regional Advisory Council, and may designate the Office for National Capital Region Coordination as a regional office. [Sec. 602, §503(a)(13), §507(a)] Regional administrators would coordinate activities with state and local governments in the geographical area served. [Sec. 602, §507(c)] Administrator would be required to establish area offices for the Pacific and Caribbean areas. [Sec. 602, §705(d)]</p>	<p>No similar provisions</p>	<p>Would establish and set forth responsibilities of regional offices and Regional Advisory Councils on Emergency Management. [Sec. 101(a), §504(a-c)] Agency representatives would be housed in regional offices. [Sec. 101(a), §504(f)] Would establish Office of National Capital Region Coordination in DEM. [Sec. 101(a), §508]</p>
<p>No similar provision</p>	<p>No similar provision</p>	<p>Would establish Office of State, Local, and Tribal Government Coordination. [Sec. 101(a), §507]</p>
<p>Would authorize \$4 million for each fiscal year 2007 through 2010 for administering and improving the Emergency Management Assistance Compact (EMAC). [Sec. 602, §516]</p>	<p>Would authorize grants for the administration of EMAC. [Sec. 302]</p>	<p>Would authorize grants for the administration of EMAC. [Sec. 101(a), §546]</p>
<p>Would establish the Metropolitan Medical Response System (MMRS) in the EMA. [Sec. 602, §515]</p>	<p>No similar provision</p>	<p>Would authorize grants to be provided through the MMRS. [Sec. 101(a), §545]</p>
<p>No similar provision</p>	<p>No similar provision</p>	<p>Authority of state, local, and tribal governments would remain unaffected by provisions of the legislation. [Sec. 101, §504(g)]</p>

S.Amdt. 4560 ^A	H.R. 5316 ^B	H.R. 5351 ^A
Would require EMA Administrator to promote public and community preparedness. [Sec. 602, §512]	No similar provision	Would establish Office of Public and Community Preparedness to assist state, local, and tribal governments in public preparedness activities. [Sec. 101(a), §527]
Would establish an Office for the Prevention of Terrorism in DHS to be headed by a director to coordinate with state and local agencies. [Sec. 602, §517]	No similar provision	Would allow use of grants to hire intelligence analysts in state, local, and tribal governments. [Sec. 105]
No similar provision, but does require that the Office of Terrorism work with the Office of Grants and Training on terrorism prevention grants. [Sec. 602, §517(d)(4)]	No similar provision	Would establish Office of Grants and Planning in DEM to aid preparedness of state and local governments. [Sec. 101(a), §521]
<i>Relationships with non-governmental organizations (NGOs)</i>		
<i>Existing policy: Agreement exists for the delivery of mass care by NGOs after Incidents of National Significance (INS) [National Response Plan] President authorized to use services of disaster relief NGOs. [42 U.S.C. 5152]</i>		
National Advisory Council on Emergency Preparedness and Response would include private sector representatives. [Sec. 602, §508]	National Emergency Preparedness Task Force would include non-governmental organizations. [Sec. 301(a), §707]	Would establish a Regional Advisory Council including private sector members. [Sec. 101(a), §504(e)]
No similar provision	No similar provision	Would encourage use of national private sector networks for emergency response. [Sec. 101(a), §542]
No similar provisions	No similar provisions	Would establish a small business database for contracting. [Sec. 101(a), §583] Would establish public-private sector pilot program for planning and response. [Sec. 112]

S.Amdt. 4560 ^AH.R. 5316 ^BH.R. 5351 ^A***Credentials***Existing policy: *No provisions in current policy.*

Would require Administrator to establish credentialing system to identify national requirements for federal and non-federal emergency response personnel. [Sec. 602, §519]

No similar provision

No similar provision

PERSONNEL ^DExisting policy: *Authorizes the establishment of a new human resources management system, referred to as Max-HR, for DHS. [5 U.S.C. Chapter 97] Permits changes to the staffing, position classification, pay, performance management, adverse actions and appeals, and labor management relations systems.*

No similar provision

Officers and employees would be subject to the appointment, compensation, and other provisions of Title 5, *United States Code* (Title 5), to the same extent and in the same manner as any other officer or employee, but officers and employees would not be subject to 5 U.S.C. Chapter 97. [Sec. 106 (a)(1)]

No similar provision

Applicability of Civil Service laws and selectionExisting policy: *Current statutory policies do not provide authority for agency Directors to fix compensation.*

No similar provision

The Director could appoint and fix the compensation of officers and employees, including investigators, attorneys, and administrative law judges, necessary to carry out transferred functions. They would be subject to the appointment, compensation, and other provisions of Title 5 to the same extent and in the

No similar provision

S.Amdt. 4560 ^A	H.R. 5316 ^B	H.R. 5351 ^A
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same manner as any other officer or employee (as defined by 5 U.S.C. Chapter 21), but officers and employees would not be subject to 5 U.S.C. Chapter 97. [Sec. 106(a)(1)]

Experts and consultants

Existing policy: *An agency head may contract for the temporary (up to one year) or intermittent services of experts and consultants without regard to the Title 5 United States Code provisions on appointment or the 5 U.S.C. Chapters 51 and 53 provisions on position classification and pay. [5 U.S.C. §3109]*

No similar provision

In accordance with 5 U.S.C. §3109, the Director could obtain the services of experts and consultants, who would be compensated as specified. [Sec. 106(a)(2)]

No similar provision

Effect on personnel

Existing policy: *Specified transferred personnel would not be separated or reduced in pay grade or compensation for one year after the date of the transfer, except as otherwise provided in that chapter of the code. [6 U.S.C. 411(b)(1)] Any individual in an Executive Schedule position appointed to a comparable position in the new department without a break in service would continue to be compensated at no less than that pay rate. [6 U.S.C. 411(b)(2)]*

No similar provision

Specified transferred personnel would not be separated or reduced in pay grade or compensation for one year after the date of the transfer, except as otherwise provided by the bill. Any individual in an Executive Schedule position appointed to a comparable position in the new agency without a break in service would continue to be compensated at no less than that pay rate, except as otherwise provided by the bill. [Sec. 106(g)]

No similar provision

Workforce development and training

Existing policy: *Executive agency heads must submit a strategic plan for program activities to the Office of Management and Budget (OMB) and Congress at least every three years. The plan, which must include specified elements, must cover at least five years forward from the fiscal year in which it is submitted. [5 U.S.C. 306] A Chief Human Capital Officer (CHCO), among other responsibilities, sets the strategy for developing the workforce, assesses the characteristics and future needs of the workforce based on the mission and strategic plan of the agency, and aligns human resources policies and programs with the agency’s mission, strategic goals, and performance outcomes. [5 U.S.C. 1402] Training for DHS employees is governed by 5 U.S.C. Chapter 41.*

No similar provision

Would authorize the Director to develop a human capital strategy to ensure that FEMA has a workforce of the appropriate size and with the appropriate skills and training to effectively carry out its mission and responsibilities, consistent with the policies and plans developed pursuant to the strategy. The human capital strategy would include specified elements. Not later than six months after the enactment of Chapter 101, on FEMA personnel, the Director would be required to submit the human capital strategy to Congress with periodic updates to follow. [Sec. 121, §10102]

No similar provision

No similar provision

The A/S for Training and Exercises would be required to establish a comprehensive program for the professional development and education of homeland security personnel at all levels of government, nongovernmental organizations, and emergency management personnel in the private sector. [Sec. 101(a), § 522(c)(8)]

No similar provision

No similar provision

The National Exercise Simulation Center would provide a learning environment for the homeland security personnel of all federal departments and agencies. [Sec. 101(a), § 522(i)(2)]

No similar provision

S.Amdt. 4560 ^A	H.R. 5316 ^B	H.R. 5351 ^A
No similar provision	Would establish a graduate-level “Homeland Security Education Program” for senior federal officials and selected state and local officials, with specified requirements for the use of existing resources, for enrollment, and for a service commitment from participants. [Sec. 101(a), § 526]	No similar provision
No similar provision	Would establish requirements for the Government Accountability Office (GAO) to report to Congress on homeland security training. [Sec. 108(a)(b)]	No similar provision

Recruitment

Existing policy: *Payment of recruitment bonuses by executive agency heads governed by existing authority. [5 U.S.C. 5753] In addition, several other provisions at 5 U.S.C. 5753 apply to recruitment bonuses.*

No similar provision	Would authorize FEMA Director to pay recruitment bonuses for difficult-to-fill positions, with specifications regarding amount and form of the bonus and requirements for an employee receiving a bonus. Political appointees not eligible to receive recruitment bonuses. Authority to pay bonuses would end five years after enactment of Chapter 101. [Sec. 121, §10103]	No similar provision
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S.Amdt. 4560 ^AH.R. 5316 ^BH.R. 5351 ^A***Retention***

Existing policy: *Payment of retention bonuses by executive agency heads governed by existing authority. [5 U.S.C. 5754] Several additional provisions at 5 U.S.C. 5754 apply to retention bonuses.*

No similar provision

Would authorize the Director to pay bonuses to retain certain hard-to-retain employees under specified circumstances, with specifications regarding the amount and form of the bonus and service agreement requirements for an employee receiving a bonus. A retention bonus could not be based on any period of service which is the basis for a recruitment bonus. The authority to pay bonuses would end five years after Chapter 101 was enacted. [Sec. 121, §10104]

No similar provision

Disaster workforce

Existing policy: *Current statutory policy does not address disaster reserve cadre.*

No similar provision

Authorizes the establishment, within FEMA, of a disaster workforce reserve cadre to meet the agency's surge requirements during emergencies. The Director would review the current disaster workforce reserve and redevelop it to create a cadre with specified characteristics. Also includes provisions facilitating the participation of annuitants in such a cadre and for cadre member training expenses. [Sec. 121, §10105]

No similar provision

S.Amdt. 4560 ^AH.R. 5316 ^BH.R. 5351 ^A**INVESTIGATIONS AND REPORTS***Accountability, waste and fraud prevention and oversight*Existing policy: *Penalties established for persons who knowingly misapply Stafford Act assistance proceeds. [42 U.S.C. 5157]*

No similar provision(s)

Would permit the Director to authorize use by recipient agencies of up to 1% of mission assignment funds for oversight activities to prevent fraud and waste. [Sec. 208]

Would mandate establishment of a fraud prevention training program. [Sec. 101(a), §584] Would amend HSA to require DHS to prevent and detect fraud, waste, and abuse of funds administered by the directorate. [Sec. 201, §707] Would provide for an assessment of, and report concerning, the past and potential future use of independent private sector inspectors general. [Sec. 202]

Grantees would be required to report on expenditure of federal emergency management funds. [Sec. 203]

Would require increased information sharing among federal agencies to confirm identity and eligibility of emergency assistance. [Sec. 204]

Would establish a Deputy Inspector General for Response and Recovery, under the DHS IG, as a career position. This official would conduct and supervise audits and investigations related to disaster assistance funding. [Sec. 205]

Would amend the HSA to protect the DHS official seal and insignia. [Sec. 206]

S.Amdt. 4560 ^AH.R. 5316 ^BH.R. 5351 ^A**Reporting and evaluation**

Existing policy: *Current statutory policy does not contain comparable reporting or evaluation requirements.*

No similar provisions

Director would be required to report to Congress on recommended legislation. [Sec. 108(b)]
 Director would be required to submit annual reports to Congress on emergency preparedness in the nation. [Sec. 301(a), §703(b)(8)]

No similar provisions

Would establish a “Saver Program” to provide evaluations of emergency response equipment and systems. [Sec. 602, §513]

No similar provision(s)

Would require establishment of System Assessment and Validation for Emergency Responders Program. [Sec. 101(a), §525]
 Would require report on organizational changes from National Academy of Public Administration. [Sec. 107]
 Would require report from Comptroller General on homeland security training. [Sec. 108]

Reorganization ^E

Existing policy: *President was granted specified reorganization authority during the year following the effective date of HSA. [6 U.S.C. 542]*
DHS Secretary has ongoing broad reorganization authority under the act. [6 U.S.C. 452]

Would exempt EMA from the Secretary’s broad reorganization authority under 6 U.S.C. 452. [Sec. 602, §505(b)]

FEMA Director would exercise authority to reorganize FEMA similar to that of the DHS Secretary under 6 U.S.C. 452. [Sec. 106(c)]

DHS Secretary would have broad reorganization authority under 6 U.S.C. 452, but notification of Congress would be required 120 days, rather than 60 days, in advance of any proposed action within the directorate. [Sec. 101(a), §510]

TRANSFER AND TRANSITION*Transfer and Allocations of Appropriations and Personnel*

Existing policy: *Emergency management-related functions, personnel, assets, and liabilities were transferred to the DHS Secretary. [6 U.S.C. 503] Certain functions were subsequently re-transferred within DHS under the President's and secy's reorganization authorities. For specific information, see specific functional categories above. Requirements for transferring functions and activities, generally, are specified at 31 U.S.C. 1531.*

No similar provisions, but see "Overall Mission," above, for transfers.

Transfers from DHS to FEMA would be subject to 31 U.S.C. 1531. The personnel employed in connection with the functions transferred by Sec. 105 would be transferred to FEMA. Additionally, the assets, liabilities, contracts, property records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or made available in connection with the functions transferred by Sec. 105 would be transferred to FEMA. Funds transferred which were unexpended would be used only for the purposes for which they were originally authorized and appropriated. [Sec. 106(e)]
The OMB Director, in consultation with the FEMA Director, could make such determinations as necessary for the functions transferred by Section 105. He also could, as necessary, make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the functions. The OMB Director would provide for the termination of the affairs of all entities

No similar provisions, but see "Overall Mission," above, for transfers.

S.Amdt. 4560 ^A

H.R. 5316 ^B

H.R. 5351 ^A

terminated by Title I of H.R. 5316 and for such further measures and dispositions as necessary. [Sec. 106(f)]

Transition

Existing policy: *HSA transition provisions include those requiring the development of an initial reorganization plan, calling for a review of congressional committee structures, allowing for transitional authorities, terminating executive-level positions not explicitly transferred, requiring continuity of inspector general oversight, and providing for incidental transfers. [6 U.S.C. 541-557] The transition period is defined as “the 12-month period beginning on the effective date of [the] Act.” [6 U.S.C. 541(2)]*

U/S of Federal Emergency Management and U/S of Preparedness may serve as directors until permanent directors are appointed. [Sec. 602, §506(c)] Legal references to FEMA or its director would be considered to apply to the EMA and the Administrator. [Sec. 603(c)]

Transition would be required to be carried out no later than 2/1/07. [Sec. 105(b)] FEMA Director may use FEMA personnel and funds to implement the transition. [Sec. 105(c)] The bill would also provide for the continuity of legal documents, proceedings, legal suits and actions, regulatory actions, and legal references. [Sec. 107]

No similar provision(s)

PROCUREMENT

Existing policy: *The HSA includes procurement provisions pertaining to research and development, personal services, special streamlined acquisition authority, unsolicited proposals, contracts with corporate expatriates, and emergency procurement flexibility. [6 U.S.C. 393-395, 421-428] The act does not address limitations on subcontracting, non-competitive contracts, or prohibitions on consideration of political affiliation in the award of agency contracts.*

No similar provision(s)

Would instruct the Director to promulgate regulations placing limitations on subcontracting agency-contracted work [Sec. 131], and on the length of certain non-competitive contracts. [Sec. 132] In addition, the bill would prohibit the consideration of political affiliation in the award of agency contracts. [Sec. 133]

Would direct the Secretary, through the U/S for Emergency Management and in coordination with regional directors, to establish and maintain a small business database for federal contracting related to major disasters and emergency assistance activities. [Sec. 101(a), §583]

Source: This table is based on sources cited. Keith Bea, Barbara L. Schwemle, L. Elaine Halchin, and Henry B. Hogue, Government and Finance Division, Congressional Research Service, contributed to the development of this table.

^A S.Amdt. 4560, the amendment approved by the full Senate during debate on H.R. 5441, and H.R. 5351 (as reported from committee) would amend the Homeland Security Act of 2002 (P.L. 107-296, as amended), 6 U.S.C. 311 et seq.

^B H.R. 5316 (as reported from committee) would amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, as amended), 42 U.S.C. 5121 et seq.

^C For further analysis of authorities governing government contingency programs, see CRS Report RL32752, *Continuity of Operations (COOP) in the Executive Branch: Issues in the 109th Congress*, by R. Eric Petersen.

^D For information on the new human resources management system at DHS, see CRS Report RL32261, *DHS's Max-HR Personnel System: Regulations on Classification, Pay, and Performance Management Compared with Current Law and Implementation Plans*, by Barbara L. Schwemle; CRS Report RL32255, *Homeland Security: Proposed Regulations for the Department of Homeland Security Human Resources Management System (Subpart E) Compared with Current Law*, by Jon O. Shimabukuro; and CRS Report RL33052, *Homeland Security and Labor-Management Relations: NTEU v. Chertoff*, by Thomas J. Nicola and Jon O. Shimabukuro.

^E For the reorganization plan under Sec. 1502 (6 U.S.C. 542), see White House Office, "Department of Homeland Security Reorganization Plan," Nov. 25, 2002, Washington, DC, available at [http://www.whitehouse.gov/news/releases/2002/11/reorganization_plan.pdf], accessed on July 3, 2006. Reorganizations under Sec. 872 of the act (6 U.S.C. 452) were specified in letters from the Secretary of Homeland Security to leaders of the appropriate congressional committees on the following dates: Jan. 26, 2004, July 13, 2005, and Apr. 4, 2006.