

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue top and bottom. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The hourglass is centered on the page.

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*Creation of Executive Departments: Highlights from the  
Legislative History of Modern Precedents*

Thomas P. Carr, Government and Finance Division

Updated September 8, 2003

**Abstract.** This report describes the principal elements of legislative process used to establish executive branch entities. Legislative histories of the organic acts of these Cabinet departments are set out in narrative form in the body of the report, and in tabular format in the appendix.

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# CRS Report for Congress

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## **Creation of Executive Departments: Highlights from the Legislative History of Modern Precedents**

**Updated September 8, 2003**

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# Creation of Executive Departments: Highlights from the Legislative History of Modern Precedents

## Summary

On November 25, 2002, President George W. Bush signed legislation to establish a Department of Homeland Security (P.L. 107-296, 106 Stat. 2135). In the period from World War II until the establishment of this latest department, Congress also created or implemented major reorganizations of seven other Cabinet departments. This report provides a brief legislative history of the establishment of the Department of Homeland Security (DHS) and for the purpose of comparison, describes the principal elements of the legislative process that established the Departments of Defense; Health, Education, and Welfare (now, in part, Health and Human Services); Housing and Urban Development; Transportation; Energy; Education; and Veterans Affairs.

The legislative process surrounding the consideration of legislation to establish the Department of Homeland Security varied in some ways from the procedures that were generally associated with the creation of the other modern Cabinet departments. Responding to the need to strengthen homeland defense in the wake of the September 11 terrorist attacks, Congress passed legislation creating the department less than six months after receiving the President's formal legislative proposal.

Congressional consideration of legislation establishing earlier Cabinet departments generally exhibited certain common procedural elements:

- ! A formal presidential endorsement generally preceded congressional action.
- ! The predominant committees considering the legislation were the Government Operations (now Government Reform) Committee in the House and the Governmental Affairs Committee in the Senate, or their predecessors.
- ! With few exceptions, departmental creation proposals were considered under an open rule in the House; they were most often brought up for Senate consideration by unanimous consent.
- ! Votes on passage were generally by comfortable majorities.
- ! All bills but one went to conference to resolve House-Senate differences; except in two instances, conferees were drawn exclusively from the reporting committees.

Additional information on the history of creating Cabinet departments appears in CRS Report RL31472, *Departmental Organization, 1947-2003*. CRS Report RL30673, *The President's Cabinet: Evolution, Alternatives, and Proposals for Change*, analyzes the role of the Cabinet.

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# Creation of Executive Departments: Highlights from the Legislative History of Modern Precedents

## Introduction

On November 25, 2002, President George W. Bush signed legislation to establish a Department of Homeland Security (P.L. 107-296, 106 Stat. 2135). This marked the eighth time since World War II that Congress acted to create or implement major reorganizations of Cabinet-level departments: the Department of Defense (1947);<sup>1</sup> the Department of Health, Education, and Welfare (HEW) (1953);<sup>2</sup> the Department of Housing and Urban Development (1965); the Department of Transportation (1966); the Department of Energy (1977); the Department of Education (1979); the Department of Veterans Affairs (1988); and the Department of Homeland Security (DHS) (2002).

This report describes the principal elements of the legislative process used to establish these executive branch entities. Legislative histories of the organic acts of the eight Cabinet departments are set out in narrative form in the body of the report, and in tabular format in the appendix.<sup>3</sup>

## Procedural Characteristics

Congressional consideration of legislation establishing Cabinet departments generally exhibited certain common procedural elements. For instance, each successful proposal was preceded by a presidential endorsement and the submission of draft legislation by the executive branch.

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<sup>1</sup> The War Department was established in 1789. The National Security Act of 1947 reorganized all military services under a single National Military Establishment, which, in turn, was redesignated the Department of Defense in 1949.

<sup>2</sup> The Department of Health, Education, and Welfare was established in 1953. The remaining components of the department were renamed the Department of Health and Human Services in 1979, when the Department of Education was created.

<sup>3</sup> For additional information on the organization of these departments, see CRS Report RL31472, *Departmental Organization, 1947-2003*. CRS Report RL30673, *The President's Cabinet: Evolution, Alternatives, and Proposals for Change*, analyzes the role of the Cabinet. Additional information on the Department of Homeland Security can be found in CRS Report RL31751, *Homeland Security: Department Organization and Management — Implementation Phase*, and CRS Report RL31677, *Filling Presidentially Appointed, Senate-Confirmed Positions in the Department of Homeland Security*.

In the Congress in which they were approved, these proposals normally were considered by the House Committee on Government Operations (now the Government Reform Committee) and the Senate Committee on Governmental Affairs, or their predecessors. Exceptions to this general rule were Senate bill S. 758 in the 80<sup>th</sup> Congress, creating the National Military Establishment (later renamed the Department of Defense), which was referred to the Senate Armed Services Committee, and H.R. 6804 in the 95<sup>th</sup> Congress, the legislation establishing the Department of Energy, which was referred to both the House Government Operations, and Post Office and Civil Service Committees. The creation of a select committee in the House to consider homeland security legislation, with multiple committees submitting recommended amendments, was a departure from the usual pattern.

With the exception of the Defense Department and Veterans Affairs Department bills, the House considered earlier departmental creation under provisions of an open rule. The Defense measure was brought up by unanimous consent, and Veterans Affairs legislation was considered under suspension of the rules. The DHS bill, in contrast, was considered under a structured rule that specified the amendments that could be offered.

In the Senate, all earlier departmental creation bills were brought up by unanimous consent; the HEW reorganization joint resolution, however, was called up by motion. In 2002, Senate homeland security legislation was also called up by motion.

Votes in committee and on the House and Senate floor, to approve legislation creating the various Cabinet departments, were generally by comfortable majorities. An exception was House consideration of the Department of Education bill, which cleared committee by a single vote and passed the House by a four-vote margin.

Finally, with the exception of the resolution approving the HEW reorganization plan, which was passed by the House and agreed to in the Senate without amendment, earlier Cabinet departmental creation legislation went to conference to resolve differences between the House and Senate versions. Differences in the House and Senate versions of Homeland Security Department legislation were resolved by amendments between the houses.

With two exceptions, conferees were drawn from the reporting committees. In the case of the Department of Veterans Affairs bill conference, members of the Veterans Affairs Committees in the House and Senate joined conferees from the House Government Operations and Senate Governmental Affairs Committees. For the Energy Department bill conference, three members of the Energy and Natural Resources Committee were included in the Senate conference delegation, and three members of the Post Office and Civil Service Committee were included in the House conference delegation.

## Legislative History of the Department of Homeland Security

On June 6, 2002, President Bush announced that he would send a proposal to Congress to create a Department of Homeland Security. Such legislation had already been introduced in both the House and Senate,<sup>4</sup> but the President's endorsement of the idea added momentum to the effort. The President formally submitted his proposal to Congress on June 18. The bill was introduced, by request,<sup>5</sup> by Majority Leader Richard Armev as H.R. 5005 on June 24.

On June 13, House Speaker Dennis Hastert and Minority Leader Richard Gephardt announced an agreement on the procedures to be used in the House of Representatives for committee consideration of the Homeland Security Department legislation. On June 19, the House adopted H.Res. 449, by voice vote, creating a Select Committee on Homeland Security.<sup>6</sup>

Pursuant to the provisions of H.Res. 449, the President's bill was referred to the Select Committee on Homeland Security and to the Government Reform Committee, and simultaneously to 11 other committees. By July 12, all of the standing committees concerned were to report their recommendations to the select committee, which was charged with marking up the legislation. H.R. 5005 was reported to the House by the select committee on July 24 (H.Rept. 107-609, Pt. 1) by a 5-4 vote.

House debate on H.R. 5005 began July 25, extended late into the night, and concluded on July 26. The bill was initially considered in the House under the provisions of a structured rule (H.Res. 502). The resolution, which passed the House by voice vote, provided for 90 minutes of general debate, and waived all points of order against the bill. Twenty-seven amendments were made in order. An amendment in the nature of a substitute recommended by the Select Committee on Homeland Security was to be considered as original text for the purpose of amendment. The House adopted 16 of the 27 amendments made in order, and passed the bill July 26 by a 295-132 vote.

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<sup>4</sup> On May 2, 2002, Sen. Joseph Lieberman introduced S. 2452, a bill to establish the Department of National Homeland Security and the National Office for Combating Terrorism. On the same day, an identical bill (H.R. 4660) was introduced in the House of Representatives by Rep. Mac Thornberry.

<sup>5</sup> One or more Members who wish to put a legislative proposal formally before Congress can introduce the proposal as their own, or they can introduce it "by request," with those words printed on the face of the bill, after their names as sponsors. "By request" implies the Member or Members introduced the bill out of professional courtesy, but does not necessarily mean they are embracing its ideas.

<sup>6</sup> Pursuant to H.Res. 449, the Speaker appointed nine Members to serve on the committee: Reps. Richard Armev, Tom Delay, J.C. Watts, Deborah Pryce, Rob Portman, Nancy Pelosi, Martin Frost, Robert Menendez, and Rosa DeLauro. All of the Members selected held Republican or Democratic party-leadership positions.

Subsequently, on November 12, Representative Armeley, the House majority leader and chair of the Select Committee on Homeland Security, introduced a revised version of the legislation (H.R. 5710), which included revised language concerning public employee work rules. The bill was considered under a closed rule (H.Res. 600), and approved on a 299-121 vote.

In contrast to the select committee approach employed by the House, the Senate chose to handle Homeland Security Department proposals within the existing standing committee structure. On May 22, 2002, the Senate Governmental Affairs Committee marked up, and ordered reported with amendments, S. 2452, the National Homeland Security and Combating Terrorism Act of 2002, introduced by the committee chair, Senator Lieberman. The bill was reported to the Senate on June 24, with a written report (S.Rept. 107-175). Following receipt of the President's proposal, the Senate Governmental Affairs Committee revisited the legislation, approving a substitute to S. 2452 by a 12-5 vote on July 25.

The House-passed measure was received in the Senate July 30, and on the following day Senator Harry Reid made a motion to proceed to the consideration of H.R. 5005. A cloture motion coupled with the motion to proceed was subsequently withdrawn, on August 1. After the August congressional recess, the Senate began floor consideration of the House bill, approving the motion to proceed by a vote of 94-0 on September 3. Deliberations continued throughout September, as lawmakers wrestled with issues such as the civil service protections and collective bargaining rights of the employees of the new department. Debate focused on an amendment in the nature of a substitute (S.Amdt. 4471) submitted by Senator Lieberman that embodied the text of S. 2452 as modified by the Committee on Governmental Affairs.

On November 13, following the election day recess, the Senate resumed consideration of the bill. Pending on the floor was the Lieberman substitute (S.Amdt. 4471), which was subsequently tabled on a 50-47 vote. Senator Fred Thompson offered the text of the second House-passed bill (H.R. 5710) as a substitute amendment (S.Amdt. 4901).

On November 19, cloture was invoked on the bill by a vote of 83-16. After rejecting two Lieberman amendments to make certain provisions of the Thompson substitute ineffective (S.Amdt. 4911 and S.Amdt. 4953), the Senate adopted Thompson substitute by a vote of 73-26. The Senate then passed H.R. 5005, as amended, by a vote of 90-9, and returned the bill to the House. The House agreed to the Senate-amended version of the bill by unanimous consent on November 22, clearing the measure for the President's signature. President Bush signed the legislation into law on November 25, 2002.

Former Governor Tom Ridge of Pennsylvania was nominated to be the first secretary of the new department. The nomination was received in the Senate on January 7, 2003, and referred to the Committee on Governmental Affairs. The Senate confirmed the appointment January 22 by a 94-0 vote. Ridge was sworn in January 24, and the department became operational.



## Legislative History of Other Modern Cabinet Departments

### Department of Defense

The National Security Act of 1947 (P.L. 253, 61 Stat. 495), modified by amendments in 1949 (P.L. 216, 63 Stat. 578), set the organizational framework for the Department of Defense. Proposals to coordinate the activities of the military services were initially considered by Congress in 1944. Specific plans were put forth in 1945 by the Army, the Navy, and the Joint Chiefs of Staff. In a special message to Congress on December 19, 1945, President Harry S Truman proposed creation of a unified Department of National Defense.

A bill based upon Truman's recommendation was reported favorably by the Senate Military Affairs Committee in April 1946. The Military Affairs Committee made changes to the bill in response to the Navy's objections related to its retention of control over naval aviation and the Marine Corps. The Naval Affairs Committee held hearings on the revised bill in July 1946, but objected to the concentration of power in a single department. The Naval Affairs Committee did not report the measure, effectively blocking further consideration of the bill.<sup>7</sup>

President Truman renewed his efforts in 1947, sending draft legislation to Congress that had been vetted with the Army and the Navy. The President's bill was introduced in the House (H.R. 2319) on February 28, 1947, by Representative Clare Hoffman, and referred to the committee he chaired, the Committee on Expenditures in the Executive Departments (renamed the Committee on Government Operations on July 3, 1952). Hearings on the House bill, H.R. 2319, were held between April and July. On July 16, the Committee on Expenditures in the Executive Departments reported a clean bill, H.R. 4214, incorporating amendments agreed to by the committee (H.Rept. 80-961).

The House bill, H.R. 4214, was brought up for consideration under a unanimous consent agreement that waived all points of order against the bill, and allotted five hours of general debate. When the bill reached the floor on July 19, several members of the Armed Services Committee strongly supported the bill, but opposition came from several quarters, including members of the Appropriations, Veterans Affairs, and Armed Services Committees.<sup>8</sup> The House considered more than a dozen amendments, including several successful amendments offered by Representative W. Sterling Cole, to protect the status of the Navy. The amended bill passed by voice vote on July 19. The House then passed the Senate bill after substituting the text of H.R. 4214.

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<sup>7</sup> The Military Affairs Committee and the Naval Affairs Committee were merged into a new Armed Services Committee by the Legislative Reorganization Act of 1946.

<sup>8</sup> Among those opposing the bill were Rep. Cole, a member of the Armed Services Committee, Rep. Harry Sheppard, former chair of the Navy Appropriations Subcommittee, and Rep. Edith Rogers, chair of the Veterans Affairs Committee.

In the Senate, S. 758 was introduced March 3, 1947, by Senator John Chandler Gurney, chair of the Armed Services Committee. The bill's referral to this committee was delayed when the Senate Committee on Expenditures in the Executive Departments (renamed the Committee on Government Operations on March 3, 1952) also claimed jurisdiction over the bill. The dispute was resolved when President Pro Tempore Arthur Vandenberg ruled that the proper referral was to the Armed Services Committee. The Senate subsequently upheld this ruling on a voice vote.<sup>9</sup>

The Senate Armed Services Committee held extensive hearings over a 10-week period. The bill was marked up in executive session May 20, 1947, and approved by a 12-0 vote. Despite the unanimous vote, some committee members indicated they intended to refine the bill further by offering amendments on the Senate floor. S. 758 was reported by the Armed Services Committee on June 5 (S.Rept. 80-239).

The bill was brought to the Senate floor by unanimous consent on July 7, 1947. During two days of floor debate, arguments in favor of the bill were presented by members of the Armed Services Committee. Among the opponents, Senator Edward Robertson, the third-ranking majority member of the committee, voiced his concern that the bill would concentrate too much power in the hands of the proposed Secretary of National Security.

An amendment proposed by Senator Robert Taft, clarifying the duties of the National Security Council, was adopted. An amendment proposed by Senator Joseph McCarthy, prohibiting change in the status of the Marine Corps, was defeated. The bill, as amended, passed the Senate by voice vote July 9, 1947.

Conferees were drawn from the reporting committees, seven from Armed Services in the Senate (majority-minority ratio 4-3), and seven from Expenditures in the Executive Departments in the House (4-3 ratio). The Senate adopted the conference report by voice vote on July 24. The House followed suit on July 25 (H.Rept. 80-1051), and President Truman signed the bill into law on July 26 (P.L. 253, 61 Stat. 495). Pursuant to the effective date provisions in the statute, the National Military Establishment came into being on September 18, 1947. The nomination of James Forrestal as secretary of the department was received in the Senate July 26, 1947, referred to the Committee on Armed Services, and approved by the full Senate the same day by unanimous consent.

In 1949, the National Military Establishment was redesignated the Department of Defense, and the secretary was given greater authority over the military departments of the Army, Navy, and Air Force. These modifications, supported by Secretary Forrestal, were introduced as H.R. 5632 in the House (by Representative Dewey Short on July 13, 1949) and S. 1269 in the Senate (by Senator Millard Tydings on March 16, 1949). Extensive hearings were held by both the House and Senate Armed Services Committees.

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<sup>9</sup> For a discussion of the issues surrounding the jurisdictional dispute, and the rationale for the referral decision, see *Congressional Record*, vol. 93 (Mar. 3, 1947), pp. 1599-1607.

On May 12, the Senate Armed Services Committee reported an original bill, S. 1843. The Senate passed S. 1843 on May 26, and the House approved a less sweeping version, H.R. 5632, on July 18. Conferees resolved most of the differences in favor of the Senate version of the legislation. The conference report was agreed to in the Senate on July 28, and in the House on August 2 (H.Rept. 80-1142), clearing the measure for the President's August 10 signature (P.L. 216, 63 Stat. 578).

## Department of Health, Education, and Welfare

President Dwight D. Eisenhower proposed the creation of the Department of Health, Education, and Welfare in Reorganization Plan No. 1, submitted to Congress on March 12, 1953. The plan called for the creation of a Cabinet department that would absorb the functions of the existing Federal Security Agency (FSA). Congress affirmed the plan by adopting H.J.Res. 223, which the President signed into law April 1, 1953 (P.L. 13, 67 Stat. 18).

Under procedures mandated by the Reorganization Act of 1949 (P. L.109, 63 Stat. 203), reorganization plans were to take effect 60 days after submission unless either house of Congress passed a resolution of disapproval. Language in H.J.Res. 223, introduced March 12, 1953, by Representative Hoffman, chair of the Government Operations Committee, proposed to shorten this period, providing that the plan would take effect 10 days after enactment.<sup>10</sup> Consequently, the new department officially came into being on April 11, 1953.

Proposals to consolidate health, education, and welfare activities had been contemplated for several years. In 1947, the Senate Committee on Expenditures in the Executive Departments reported a bill to reorganize FSA, but the Senate took no further action. Similarly, in 1949 and 1950, President Harry S Truman submitted two reorganization plans, one to create a Department of Welfare, and another to create a Department of Health, Education, and Security. Both were disapproved by Congress.<sup>11</sup>

The ultimately successful consideration of HEW's organic act was set in motion by President Eisenhower's February 2, 1953 State of the Union message, advocating creation of the department. The formal reorganization plan was sent to Congress on March 12. On March 16, the House Government Operations Committee and the Subcommittee on Reorganization of the Senate Committee on Government Operations examined the proposal in joint hearings. On March 17, the House Government Operations Committee approved H.J.Res 223, 17-12, and reported it to the House (H.Rept. 83-166). The following day, March 18, the joint resolution was

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<sup>10</sup> No action was required by Congress for the Reorganization Plan to go into effect. The joint resolution was necessary only to provide an exception to the statutorily mandated 60-day effective date requirement.

<sup>11</sup> On Aug. 16, 1949, a resolution disapproving Reorganization Plan No. 1, creating the Department of Welfare, was adopted by a 60-32 vote in the Senate. On July 10, 1950, a resolution disapproving Reorganization Plan No. 27, creating the Department of Health, Education, and Security, was adopted in the House by a 249-71 vote.

considered under an open rule (H.Res.179), providing for two hours of general debate, and passed the House 291-86.

The Senate Government Operations Committee considered the joint resolution March 23, voting 12-1 to send it to the full Senate (S.Rept. 83-128). On March 30, a motion to proceed to the consideration of the joint resolution, made by Majority Leader Taft, was agreed to by voice vote. H.J.Res. 223 was debated briefly on the Senate floor, then passed by voice vote. After signing the joint resolution on April 1, President Eisenhower nominated former Federal Security Agency head Oveta Culp Hobby as the first secretary of the new department. The nomination was received in the Senate April 2, 1953, and referred to the Committee on Finance. The Senate unanimously confirmed the nomination on April 10, and the department officially began operation on April 11, pursuant to the provisions of the joint resolution.

The Department of Health, Education, and Welfare was renamed the Department of Health and Human Services on May 4, 1980, following the creation of the new Department of Education. (Consideration of P.L. 96-88, the Department of Education Organization Act, is detailed below).

## **Department of Housing and Urban Development**

The Department of Housing and Urban Development was established by P.L. 89-174, 79 Stat. 667 (H.R. 6927), signed by President Lyndon B. Johnson on September 9, 1965. The legislation provided that the department was to be created 60 days following the date of enactment, or no later than November 8. The actual implementation was postponed until January 13, 1966, following the completion of a special study group report on the federal role in solving urban problems.

From 1961 to 1965, both President John F. Kennedy and President Johnson had advanced proposals for the creation of a housing department. In a special message to Congress March 2, 1965, President Johnson specifically requested the establishment of a Department of Housing and Urban Development. As approved in 1965, the legislation basically elevated the Housing and Home Finance Agency (established in 1947) to Cabinet-level status.

Draft legislation to establish the department was transmitted to Congress in late March by the administration. Bills embodying the administration's proposals were introduced by Representative Henry Reuss on March 23, 1965 (H.R. 6654), and by Representative Dante Fascell on March 30 (H.R. 6927). In the Senate, the administration's legislation was introduced by Senator Abraham Ribicoff on March 25 (S. 1599). The House Government Operations Subcommittee on Executive and Legislative Reorganization held two days of hearings on April 5 and 6 on H.R. 6654, H.R. 6927, and related bills.

The Government Operations Committee selected H.R. 6927 for further consideration, voting 20-8 on May 11 to report the measure to the House (H.Rept. 89-337). On June 16, the House considered the bill under an open rule (H.Res. 419), which provided for two hours of general debate, and passed it with amendments, by a 217-184 vote, after rejecting a minority substitute, H.R. 8222. This Republican alternative, introduced by Representative Florence Dwyer on June 6, proposed

establishing an Office of Urban Affairs and Community Development in the Executive Office of the President, rather than a full Cabinet department.

The Senate Government Operations Subcommittee on Executive Reorganization held four days of hearings on S. 1599 on March 31, April 1 and 2, and May 19. The full committee approved the bill on July 30 by a 9-4 vote (the chair of the committee, Senator John McClellan, voting in the negative), and reported it to the Senate August 2 (S.Rept. 89-536).

The measure was brought up on the floor by unanimous consent on August 10, 1965. The main variation between the House and Senate versions of the legislation related to the status of the Federal Housing Administration (FHA). Among the Senate-adopted amendments was a proposal by Senator John Sparkman providing for the retention of the Federal Housing Administration. The House had rejected a similar provision.<sup>12</sup> The Senate subsequently passed H.R. 6927 on August 11, 57-33, after substituting the provisions of S. 1599.

The conference committee included five members of the Senate Government Operations Committee (3-2 ratio) and seven members of the House Government Operations Committee (5-2 ratio). The conference report (H.Rept. 89-844) was filed August 11. It was agreed to by voice vote and without debate in the Senate on August 30 and in the House on August 31. The bill became law with President Johnson's signature on September 9, 1965.

The nomination of Robert C. Weaver as the first secretary of the new department was received in the Senate January 14, 1966, and referred to the Committee on Banking and Currency. The nomination was agreed to by the Senate without objection on January 17.

## Department of Transportation

The Department of Transportation was established by P.L. 89-670, 80 Stat. 931, (H.R. 15963), enacted October 15, 1966. The department's first official day of operation was April 1, 1967. As early as 1936, a Senate select committee had recommended the creation of a transportation department. President Lyndon B. Johnson formally proposed the creation of the department in his State of the Union address on January 12, 1966, and sent a special message to Congress on March 2, detailing his recommendations.

The administration bill to create a Department of Transportation (H.R. 13200) was introduced in the House on March 2 by Representative Chet Holifield and in the Senate (S. 3010) by Senator Warren Magnuson. Over the next three months, the Subcommittee on Executive and Legislative Reorganization of the House Government Operations Committee held 11 days of hearings on the proposal. During the same time frame, nine days of hearings were conducted by the Senate Committee on Government Operations.

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<sup>12</sup> Conferees adopted language retaining the Federal Housing Administration as a separate entity in the new department.

On June 22, the House subcommittee approved H.R. 13200 and forwarded it to the Government Operations Committee. The full committee approved the bill on June 22 with an amendment in the nature of a substitute, and, on July 15, reported a clean bill to the House (H.R. 15963, H.Rept. 89-1701). On August 30, the House took up the bill under the provisions of an open rule (H.Res. 935), which provided for four hours of general debate. The bill passed, amended, by a vote of 336-42.

In the Senate, S. 3010 was considered by the Government Operations Committee and reported with amendments on September 27, 1966 (S.Rept. 89-1659). On the floor, the bill was brought up for consideration by unanimous consent. After substituting the provisions of its own bill, the Senate passed H. R. 15963 on September 29 by a vote of 64-2.

Six conferees from the House Government Operations Committee (4-2 ratio), and five from the Senate Government Operations Committee (4-1 ratio), met to resolve the differences in the two versions of the bill and filed the conference report on October 12 (H.Rept. 89-2236). On October 13, both the House and the Senate adopted the conference report by voice vote, clearing the measure for the President.

Alan Boyd was nominated to be the department's first secretary. The nomination was received in the Senate January 10, 1967, referred to the Committee on Commerce, and approved without objection in the Senate on January 12.

## Department of Energy

The Department of Energy was created by P.L. 95-91, 91 Stat. 565 (S. 826), signed by President Jimmy Carter on August 4, 1977.<sup>13</sup> President Carter formally proposed creation of the new department five months earlier, on March 1, 1977, in a special message to Congress. The plan was similar in many respects to President Gerald R. Ford's energy reorganization proposal submitted in the final month of his term. In 1971 and 1973, President Richard M. Nixon had also offered plans to reorganize federal energy agencies.

Several identical House bills embodying the President's proposal were referred to the Government Operations Committee.<sup>14</sup> The Legislation and National Security Subcommittee held six days of hearings on H.R. 4263 and related bills in March and April 1977. The subcommittee marked up H.R. 4263 and reported a clean bill, H.R. 6804, to the full committee.

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<sup>13</sup> The Department of Energy officially began operations on October 1, 1977. Pursuant to sec. 901 of the Department of Energy Organization Act, President Carter issued Executive Order 12009, prescribing that date as the effective date of the Act, as authorized by Congress.

<sup>14</sup> From April 25, 1967, to January 3, 1979, House rules limited the number of cosponsors to 25 per bill, requiring the introduction of identical bills when the number of cosponsors exceeded 25. In addition to H.R. 4263, the Department of Energy Act was introduced as H.R. 4466, H.R. 4806, H.R. 4807, H.R. 4808, H.R. 5299, and H.R. 5761.

The Post Office and Civil Service Committee also had asserted jurisdiction over the legislation. On April 19, the Employee Ethics and Utilization Subcommittee held hearings on the federal personnel ramifications of H.R. 4263, and Representative Robert Nix, chair of the full committee, forwarded suggested amendments to the Government Operations Committee. On May 13, in a letter to the Speaker, the Post Office and Civil Service Committee requested and received sequential referral of the legislation.<sup>15</sup> H.R. 6804 was reported by Government Operations on May 16, 1977 (H.Rept. 95-346, Pt. 1), and by Post Office and Civil Service on May 24 (H.Rept. 95-346, Pt. 2).

On June 2, the House considered H.R. 6804 under an open rule (H.Res. 603).<sup>16</sup> The majority of the 34 amendments considered were noncontroversial, and were adopted by voice votes. On the following day, June 3, the House passed H.R. 6804 by a 310-20 vote, then passed S. 826, after amending it to contain the language of H.R. 6804.

The Senate version of the proposed energy reorganization, S. 826, was introduced March 1, 1977, by Senator Abraham Ribicoff. Twelve days of hearings were held during March and April 1977 by the Governmental Affairs Committee (formerly the Government Operations Committee, renamed Governmental Affairs on February 4, 1977). An amended version of S. 826 was reported by the Committee on Governmental Affairs on May 14 (S.Rept. 95-164).

The bill was brought up for consideration in the Senate by unanimous consent on May 18. Seventeen amendments, making relatively minor changes, were proposed. All but three of these were adopted by voice vote without significant challenge. The bill, as amended, was then passed by a vote of 74-10.

Conferees were drawn from the two reporting committees in the House, 10 from Government Operations (7-3 ratio) and three from Post Office and Civil Service (2-1 ratio). In the Senate, eight conferees came from the Committee on Governmental Affairs (5-3 ratio) and three from the Committee on Energy and Natural Resources (1-2 ratio). Senator Henry Jackson, chair of the Committee on Energy and Natural Resources, requested that the bill be referred to his committee after the Governmental Affairs Committee had completed its consideration. No sequential referral was made, but three members of the Energy and Natural Resources Committee were appointed as conferees (in addition to Senator Jackson and Senator Lee Metcalf, who served on both committees).

The conference report on S. 826 was agreed to on August 2 in the House by a 353-57 vote and in the Senate by a 76-14 vote (H.Rept. 95-539, S.Rept. 95-367). President Carter signed the bill August 4, 1977, and on the same day nominated

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<sup>15</sup> A full chronology of the Post Office and Civil Service Committee's efforts to obtain sequential referral appears in H.Rept. 95-346, Pt. 2, pp. 3-4.

<sup>16</sup> The resolution provided for three hours of general debate, two and one-half hours to be equally divided and controlled by the chair and ranking minority member of the Committee on Government Operations, and one-half hour to be equally divided and controlled by the chair and ranking minority member of the Committee on Post Office and Civil Service.

James Schlesinger to head the new department. The nomination was referred to the Committee on Energy and Natural Resources. Schlesinger was confirmed by the Senate without objection August 5.

## Department of Education

The Department of Education Organization Act, P.L. 96-88, 93 Stat. 668 (S.210), approved October 17, 1979, consolidated education components from the Department of Health, Education, and Welfare and other executive departments into a single Cabinet department.<sup>17</sup> The law also renamed the remaining components of HEW as the Department of Health and Human Services. Federal education agencies had existed at the subcabinet level as early as 1867, but, as federal education programs expanded, pressure to create a separate education department grew.

In a message to Congress February 28, 1978, President Carter proposed creating a Cabinet-level department of education. The proposal was a part of the President's education initiatives, which included financial aid to college-bound students as well as increased federal financial assistance to elementary and secondary education.

In the 95<sup>th</sup> Congress, bills proposing a Department of Education were introduced in both chambers. The Senate bill, S. 991, was introduced by Senator Abraham Ribicoff on March 14, 1977. The bill was reported from the Governmental Affairs Committee on August 9, 1978 (S.Rept. 95-1078), and passed the Senate 72-11 on September 28.

Representative Jack Brooks introduced H.R. 13778 on August 8, 1978. The bill cleared the Government Operations Committee on August 25 (H.Rept. 95-1531), but stalled on the floor. Opponents concerned about the bill's impact on independent local schools successfully blocked its consideration in the waning days of the 95<sup>th</sup> Congress.

In the 96<sup>th</sup> Congress, efforts to create the new department were renewed with the introduction of S. 210 by Senator Ribicoff, chair of the Governmental Affairs Committee, on January 24, 1979. The House bill, H.R. 2444, was introduced by Representative Brooks, chair of the Government Operations Committee, on February 27. The House Government Operations Subcommittee on Legislation and National Security held three days of hearings on H.R. 2444, March 26 and 27 and April 5. The Senate bill, which was similar to the measure approved in the previous Congress, was the subject of three days of hearings before the Senate Governmental Affairs Committee, February 6-8.

S. 210 was reported by the Governmental Affairs Committee on March 27, with an amendment in the nature of a substitute (S.Rept. 96-49). The bill was called up by unanimous consent on April 5, with consideration continuing on April 9, 10, 26,

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<sup>17</sup> The Department of Education was officially established on May 4, 1980. Pursuant to the provisions in sec. 601 of the Department of Education Organization Act, President Carter issued Executive Order 12212, designating May 4, 1980, as the effective date of the Act, as authorized by Congress.



and 30. On April 26, a time agreement was reached, specifying debate limits on all remaining amendments.<sup>18</sup> A controversial school-prayer amendment adopted on April 5 was subsequently stripped from the bill. Other amendments on sex education, unionization of teachers, and affirmative action were defeated by roll-call votes. Among the amendments adopted was one offered by Senator Dennis DeConcini to establish an Office of Bilingual Education and Minority Affairs. The bill, as amended, passed the Senate 72-21 on April 30.

On May 2, H.R. 2444 was ordered reported by the Government Operations Committee by a single vote, 20-19 (H.Rept. 96-143). The bill was considered on the floor under the provisions of an open rule (H.Res. 299), with three hours provided for general debate. Various amendments on subjects such as busing, racial quotas, abortion, and school prayer were agreed to. The final bill passed the House on July 11, by a four-vote margin, 210-206.

Five conferees appointed from the Senate Governmental Affairs Committee (3-2 ratio), and nine from the House Government Operations Committee (6-3 ratio) reached an agreement that dropped most of the House provisions. The Senate adopted the conference report (S.Rept. 96-326) on September 24 by a vote of 69-22. On September 27, the House followed suit, agreeing to the conference report (H.Rept. 96-459) by a vote of 215-201.

The November 14, 1979 nomination of Shirley Hufstedler as secretary of the department was referred to the Committee on Labor and Human Resources. On November 30, the Senate confirmed Hufstedler by a vote of 81-2.

## Department of Veterans Affairs

The Department of Veterans Affairs was created by P. L. 100-527, 102 Stat. 2635 (H.R. 3471), which upgraded the Veterans Administration to Cabinet status. The Department of Veterans Affairs Act was signed by President Ronald Reagan on October 25, 1988, and the redesignation became effective on March 15, 1989.

Proposals to make the Veterans Administration an executive department had been introduced in the 88<sup>th</sup> through the 100<sup>th</sup> Congresses. President Reagan's public endorsement of the idea on November 10, 1987, on the eve of Veterans Day, provided added momentum to the effort.

On the same day that the President made his endorsement, the House Government Operations Committee approved H.R. 3471 to create a Veterans Affairs Department. Introduced October 13, 1987, by the committee chair, Representative Brooks, the measure was reported to the House on November 16 (H. Rept. 100-435), and passed the House on November 17, under suspension of the rules, by a vote of 399-17.

Related legislation, S. 533, was introduced in the Senate February 17, 1987, by Senator Strom Thurmond, a senior minority member of both the Armed Services and

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<sup>18</sup> *Congressional Record*, vol. 125 (Apr. 26, 1979), pp. 8823-8825.

Veterans Affairs Committees. The Senate Governmental Affairs Committee held hearings on the measure December 9, 1987, and March 15 and 28, 1988.

The Governmental Affairs Committee marked up the bill April 14 and ordered it reported by a 9-0 vote. As reported, the bill incorporated an amendment in the nature of a substitute offered by Governmental Affairs Committee Chairman John Glenn, which made significant changes to the bill originally introduced by Senator Thurmond. The bill was reported to the Senate on May 12 (S.Rept. 100-342).

On July 11, 1988, the Senate began consideration of S. 533 under the terms of a unanimous consent agreement.<sup>19</sup> The agreement limited debate on the bill to two hours, and made in order specified amendments. On July 12, the Senate passed S. 533, adopting an amendment offered by Senator Alan Cranston to establish certain positions within the Veterans Benefit Administration. Amendments to change the effective date of the Act, and to allow limited judicial review of Veterans Administration compensation cases, were tabled.

The Senate then took up the House bill, inserted the amended text of S. 533 as a substitute, and passed H. R. 3471 by a vote of 84-11. Differences between the House- and Senate-passed versions of the bill were resolved in conference. The House conference delegation comprised eight members from the Government Operations Committee (5-3 ratio) and three from the Veterans Affairs Committee (2-1 ratio). Seven Senate conferees came from the Governmental Affairs Committee (4-3 ratio) and two from the Veterans Affairs Committee (1-1 ratio). The conference report was agreed to by voice vote on October 6 in the House (H.Rept. 100-1036) and October 18 in the Senate.

Edward Derwinski was nominated to be the first secretary of the new department. The nomination was received in the Senate January 20, 1989, and referred to the Committee on Veterans Affairs. The full Senate confirmed Derwinski on March 2, by a vote of 94-0.

## Proposals to Create Additional Cabinet Departments

Members of Congress regularly propose the establishment of new executive departments or reorganization of existing ones. For instance, in the 107<sup>th</sup> Congress, H.R. 2459, introduced July 7, 2001, by Representative Dennis Kucinich, sought to create a Department of Peace. It was referred to the House Government Reform, International Relations, Judiciary, and Education and the Workforce Committees.

In recent years, similar efforts have been mounted to establish:

- ! a Department of National Drug Control Policy (S. 1690, 105<sup>th</sup> Congress, introduced by Senator Lauch Faircloth, referred to the Governmental Affairs Committee);

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<sup>19</sup> For the text of the unanimous consent agreement see *Congressional Record*, vol. 134 (June 28, 1988), p. 16176.

- ! a Department of Trade (H.R. 2325, 104<sup>th</sup> Congress, introduced by Representative Toby Roth, referred to the National Security, Banking and Financial Services, International Relations, Government Reform and Oversight, and Ways and Means Committees);
- ! a Department of Science, Energy, and Technology (H.R. 1300, 103<sup>rd</sup> Congress, introduced by Representative Robert Walker, referred to the Government Operations Committee); and
- ! a Department of Arts and Humanities (H.R. 383, 102<sup>nd</sup> Congress, introduced by Representative Mary Rose Oakar, referred to the Government Operations Committee).

For the most part, these initiatives have not made significant progress in terms of formal congressional consideration. In each of the examples cited above, the bills were referred to committee, but received no further action.

One exception to this pattern has been the persistent efforts to elevate the Environmental Protection Agency (EPA) to Cabinet status. Such proposals were first introduced in the late 1980s and early 1990s. Both President William Clinton and President George H.W. Bush advocated executive department status for EPA. In 1993, one such bill, S. 171, introduced by Senator Glenn, passed the Senate, but received no House action. In the 107<sup>th</sup> Congress, H.R. 2438, the Department of Environmental Protection Act, introduced July 10, 2001, by Representative Sherwood Boehlert, was referred to the House Committee on Government Reform. In the Senate, a similar bill, S.159, introduced by Senator Barbara Boxer, was the subject of a July 24, 2001 hearing before the Committee on Governmental Affairs.

**Table 1: Key Legislative Documents and Dates Related to the Creation of Cabinet Departments, 1947 to 2002**

	<b>Public Law</b>	<b>House Bill (Special Rule)</b>	<b>Senate Bill</b>	<b>Committee Reports</b>	<b>Initial Passage</b>	<b>Conference Report Adopted (Or Final Passage)</b>
Department of Homeland Security	P.L. 107- 296 Nov. 25, 2002 <small><a href="http://wikileaks.org/wiki/CRS-RL7497">http://wikileaks.org/wiki/CRS-RL7497</a></small>	H.R.5005 June 24, 2002 (H.Res. 502)	S. 2452 May 2, 2002	H.Rept. 107-609 Pt. 1 (July 24, 2002) Select Committee on Homeland Security) S.Rept. 107-175 (June 24, 2002)	House July 26, 2002 Senate Nov. 19, 2002	House Nov. 22, 2002 Senate Nov. 19, 2002
Department of Veterans Affairs	P.L. 100- 527 Oct. 25, 1988 <small><a href="http://wikileaks.org">http://wikileaks.org</a></small>	H.R. 3471 Oct. 13, 1987	S. 533 Feb. 17, 1987	H.Rept. 100-435 (Nov. 16, 1987) Government Operations S.Rept. 100-342 (May, 12, 1988) Governmental Affairs	House Nov. 17, 1987 Senate July 12, 1988	H.Rept. 100-1036 House Oct. 6, 1988 Senate Oct. 18, 1988
Department of Education	P.L. 96-88 Oct. 17, 1979	H.R. 2444 Feb. 27, 1979 (H.Res. 299)	S. 210 Jan. 24, 1979	H.Rept. 96-143 (May, 14, 1979) Government Operations S.Rept. 96-49 (Mar. 27, 1979) Governmental Affairs	House July 11, 1979 Senate April 30, 1979	H.Rept. 96-459 S.Rept. 96-326 House Sept. 27, 1979 Senate Sept. 24, 1979

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Department of Energy	P.L. 95-91 Aug. 4, 1977	H.R. 6804 May, 2, 1977 (H.Res. 603)	S. 826 Mar. 1, 1977	H.Rept. 95-346, Pt. 1&2 Government Operations (May 16, 1977) Post Office and Civil Service (May 24, 1977) S.Rept. 95-164 (May 14, 1977) Governmental Affairs	House June 3, 1977 Senate May 18, 1977	H.Rept. 95-539 S.Rept. 95-367 House Aug. 2, 1977 Senate Aug. 2, 1977
Department of Transportation	P.L. 89-670 Oct. 15, 1966 <a href="http://wikileaks.org/wiki/CRS-RL3149">http://wikileaks.org/wiki/CRS-RL3149</a>	H.R. 15963 June 27, 1966 (H.Res. 935)	S. 3010 Mar. 2. 1966	H.Rept. 89-1701 (July 15, 1966) Government Operations S.Rept. 89-1659 (Sept. 27, 1966) Government Operations	House Aug. 30, 1966 Senate Sept. 29, 1966	H.Rept. 89-2236 House Oct. 13, 1966 Senate Oct. 13, 1966
Department of Housing and Urban Development	P.L. 89-174 Sept. 9, 1965 <a href="http://wikileaks.org/wiki/CRS-RL3149">http://wikileaks.org/wiki/CRS-RL3149</a>	H.R. 6927 Mar. 30. 1965 (H.Res. 419)	S. 1599 Mar. 25, 1965	H.Rept. 89-337 (May 11, 1965) Government Operations S.Rept. 89-536 (Aug. 2, 1965) Government Operations	House June 16, 1965 Senate Aug. 11, 1965	H.Rept. 89-884 House Aug. 31, 1965 Senate Aug. 30, 1965
Department of Health, Education, and Welfare	P.L. 13, Apr. 1, 1953	H.J. Res. 223 Mar. 12, 1953 (H.Res. 179), affirmed Reorganization Plan no. 1 of 1953		H.Rept. 83-166 (Mar. 17, 1953) Government Operations S.Rept. 83-128 (Mar. 23, 1953) Government Operations	House Mar. 18, 1953 Senate Mar. 30, 1953	—

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Department of Defense	P.L. 253 July 26, 1947	H.R. 4214 July 15, 1947	S. 758 Mar. 3, 1947	H.Rept. 80-961 (July 16, 1947) Expenditures in the Executive Departments S.Rept. 80-239 (June 5, 1947) Armed Services	House July 19, 1947 Senate July 9, 1947	H.Rept. 80-1051 House July 25, 1947 Senate July 24, 1947
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