

Calendar No. 971

110TH CONGRESS }
2d Session }

SENATE

{ REPORT
110-466 }

TO PROVIDE FOR THE APPOINTMENT OF
THE CHIEF HUMAN CAPITAL OFFICER OF
THE DEPARTMENT OF HOMELAND SEC-
URITY BY THE SECRETARY OF HOMELAND
SECURITY

R E P O R T

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2816

TO PROVIDE FOR THE APPOINTMENT OF THE CHIEF HUMAN CAP-
ITAL OFFICER OF THE DEPARTMENT OF HOMELAND SECURITY
BY THE SECRETARY OF HOMELAND SECURITY



SEPTEMBER 16, 2008.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

69-010

WASHINGTON : 2008

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SEPTEMBER 16, 2008.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2816]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2816) to provide for the appointment of the Chief Human Capital Officer of the Department of Homeland Security by the Secretary of Homeland Security, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 2816 is to provide for the appointment or designation of the Chief Human Capital Officer (CHCO) of the Department of Homeland Security (DHS) by the Secretary of Homeland Security, so the DHS CHCO would be selected in the same manner as all other department and agency CHCOs.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The federal government’s human capital management became a concern when the Government Accountability Office (GAO) included federal workforce management on its 2001 high-risk list:

The government's approach to managing its people—its human capital—is the critical missing link in reforming and modernizing the federal government's management practices. Many agencies are experiencing serious human capital challenges, such as skills imbalances, succession planning challenges, outdated performance management systems, and understaffing. The combined effect of these challenges serves to place at risk the ability of agencies to efficiently, economically, and effectively accomplish their missions, manage critical programs, and adequately serve the American people both now and in the future. To a significant extent, serious management challenges across a wide range of federal agencies, covering programs that involve billions of federal expenditures, can be attributed to shortcomings in how agencies manage their human capital.¹

In that report, the GAO identified leadership continuity as one of the human capital management challenges across the federal government.²

The Chief Human Capital Officers Act of 2002 was enacted as part of the Homeland Security Act of 2002 to address the human capital problems identified by the GAO and help the federal government properly manage its workforce.³ To provide for the leadership continuity called for by the GAO, the Chief Human Capital Officers Act created CHCOs at the federal government's 24 largest departments and agencies to assist the heads of agencies in selecting, developing, training, and managing a high-quality, productive workforce and to implement the laws, rules and regulations governing civil service within agencies.⁴ The head of each of those departments and agencies was given the authority to appoint or designate its agency's CHCO.⁵ The Act also established an interagency CHCO Council to advise and coordinate the personnel functions of each agency.⁶ The legislation required that the Council be chaired by the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget.⁷

The Homeland Security Act of 2002 also provided for the Presidential appointment of a Secretary of Homeland Security and other DHS officers.⁸ Among the officers required to be appointed by the President is the DHS CHCO.⁹ The requirement that the President appoint the DHS CHCO is unique, for each head of the other federal agencies has the authority to appoint or designate its agency's CHCO.¹⁰ Agency heads have varied in appointing CHCOs who are political appointees as well as career employees; in June of 2008, 11 agencies represented on the CHCO Council had career employees filling the position.¹¹

¹ GAO, *High Risk Series: An Update*, GAO-01-263, January 1, 2001, pp. 8-9.

² *Id.* p. 18.

³ Section 1302 of Public Law 107-296 (Nov. 25, 2002) (5 U.S.C. Secs. 1401-1402); 148 *Cong. Rec.* S11182 (November 15, 2002) (statement of Senator Voinovich).

⁴ 5 U.S.C. Sec. 1401; 31 U.S.C. Sec. 901(b).

⁵ *Id.*

⁶ Section 1303 of Public Law 107-296 (Nov. 25, 2002) (5 U.S.C. Sec. 1401 note).

⁷ *Id.*

⁸ 5 U.S.C. Sec. 112-113.

⁹ 5 U.S.C. Sec. 113(d)(3).

¹⁰ 5 U.S.C. Sec. 1401.

¹¹ Susan Marshall, Office of Personnel Management Director, Congressional Relations, email to Tara Shaw, September 8, 2008.

S. 2816 would align the statutory appointment authority relating to the DHS CHCO with the appointment authority relating to other agency CHCOs by providing the Secretary of Homeland Security with the authority to appoint or designate the DHS CHCO.¹²

As noted by the GAO, sustained leadership is necessary to help agencies address their human capital needs, and the Committee believes that a long-term, stable CHCO is needed to help select, train, and manage the workforce at DHS, where approximately 180,000 employees were combined into a new entity less than six years ago.¹³ However, there have been seven CHCOs at DHS over the past five years.¹⁴ Three of those CHCOs were Acting CHCOs who served as CHCO an average of two and one-half months.¹⁵ This turnover highlights the need for the Secretary of Homeland Security to have the authority and flexibility to designate a career DHS CHCO who can remain at DHS beyond the end of any given Presidential administration. In the May 14, 2008, Homeland Security and Governmental Affairs Committee hearing to consider the nomination of Paul A. Schneider to be Deputy Secretary of DHS, Mr. Schneider also expressed support for allowing the Secretary of Homeland Security to appoint or designate the DHS CHCO:

Being the chief human capital officer at the Department of Homeland Security is probably one of the toughest human resources or human capital positions in the federal government. The fact that by law it's a political appointee means that, for the most part, that person will leave on January 20th. You have no idea how difficult it was for us to recruit the gentleman that the president just announced to be the chief human capital officer for what turns out to be the remaining seven months of the administration. And the fact of the matter is one of the biggest challenges we have in this department is human capital . . . The challenges that we have in hiring, in professional development, are probably unique in the federal government. Having a career civil servant [as CHCO], especially, frankly, at this point in time, where somebody could carry over to the next administration, would be absolutely essential, I think, to improve the management operations of the department, especially in this very critical area.¹⁶

III. LEGISLATIVE HISTORY

S. 2816 was introduced by Senator Voinovich on April 3, 2008. The bill was read twice and referred to the Committee on Homeland Security and Governmental Affairs. S. 2816 was co-sponsored by Senator Akaka and Senator Domenici.

On June 25, 2008, the Committee considered S. 2816. The Committee ordered the bill favorably reported without amendment by voice vote. Members present were Lieberman, Akaka, Carper, Pryor, McCaskill, Collins, Coleman, Coburn, and Sununu.

¹² 5 U.S.C. Sec. 1401; 31 U.S.C. Sec. 901(b).

¹³ GAO, *High Risk Series: An Update*, GAO-01-263, p. 18-19, January 1, 2001; GAO, *Organizational Transformation: Implementing Chief Operating Officer/Chief Management Officer Positions in Federal Agencies*, GAO-08-322T, p. 8, December 13, 2007.

¹⁴ Jeffrey T. Readinger, U.S. Department of Homeland Security Director, Office of Legislative Affairs, e-mail to Tara Shaw, July 1, 2008.

¹⁵ *Id.*

¹⁶ Senate Homeland Security and Governmental Affairs Committee Hearing To Consider the Nomination of: Paul A. Schneider to be Deputy Secretary, U.S. Department of Homeland Security, May 14, 2008.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Appointment of the Chief Human Capital Officer by the Secretary of Homeland Security

This section amends section 103(d) of the Homeland Security Act of 2002 by striking paragraph (3) of that subsection, which provides for the appointment of the DHS CHCO by the President, and renumbering the remaining paragraphs.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Congressional Budget Office (CBO) states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on State, local, or tribal governments. The legislation contains no other regulatory impact.

VI. ESTIMATED COST OF LEGISLATION

JUNE 27, 2008.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2816, a bill to provide for the appointment of the Chief Human Capital Officer of the Department of Homeland Security by the Secretary of Homeland Security.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

PETER R. ORSZAG,
Director.

Enclosure.

S. 2816—A bill to provide for the appointment of the Chief Human Capital Officer of the Department of Homeland Security by the Secretary of Homeland Security

Under current law, the Chief Human Capital Officer of the Department of Homeland Security is appointed by the President. S. 2816 would remove this Presidential authority, thus enabling the Secretary of Homeland Security to appoint a person to this position. CBO estimates that implementing S. 2816 would have no significant costs to the federal government. Enacting the bill would not affect direct spending or revenues.

S. 2816 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the following changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE**TITLE 6. DOMESTIC SECURITY****CHAPTER 1. HOMELAND SECURITY ORGANIZATION****SUBCHAPTER I. DEPARTMENT OF HOMELAND
SECURITY****SEC. 113. OTHER OFFICERS.**

* * * * *

(d) OTHER OFFICERS.— To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Information Officer.

[(3) A Chief Human Capital Officer.]

[(4)] (3) An Officer for Civil Rights and Civil Liberties.

[(5)] (4) A Director for Domestic Nuclear Detection.

