

# Report for Congress

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

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

## Summary

Congress is now considering proposals to create a Department of Homeland Security. Since World War II, Congress has created or implemented major reorganizations of seven of the now existing 14 Cabinet departments. This report describes the principal elements of legislative process that established the Departments of Defense; Health, Education, and Welfare (HEW) (now, in part, Health and Human Services); Housing and Urban Development; Transportation; Energy; Education; and Veterans Affairs.

Congressional consideration of legislation establishing Cabinet departments has generally exhibited certain common procedural elements. In each case, successful congressional action was preceded by a presidential endorsement, the submission of draft legislation, or, in one instance, a reorganization plan by the President.

In the Congress in which they were approved, these proposals were considered by the House Committee on Government Operations and the Senate Committee on Governmental Affairs (or their predecessors). The bill creating the Department of Defense (considered by the Senate Armed Services Committee), and the bill creating the Department of Energy (considered in part by the House Post Office and Civil Service Committee), were the two exceptions to this procedure.

With the exception of the Defense and Veterans Affairs Departments, all the departmental creation proposals were considered in the House under provisions of an open rule. In the Senate, the bills were most often brought up by unanimous consent; the HEW reorganization joint resolution was called up by motion.

Votes in committee and on final passage were generally by comfortable majorities. An exception was the House consideration of the Department of Education bill (H.R. 2444, 96<sup>th</sup> Congress), which cleared committee by a single vote and passed the House by a four-vote margin.

Finally, with the exception of the joint resolution approving the Department of HEW reorganization plan, all the legislation went to conference to resolve differences between House and Senate versions. With two exceptions, conferees were drawn from the reporting committees. House and Senate Veterans Affairs Committee members joined the conference on the Department of Veterans Affairs legislation, and members of the Senate Energy and Natural Resources Committee and the House Post Office and Civil Service Committee served on the Energy Department conference.

Additional information on the history of creating Cabinet departments appears in CRS Report RL31472, *Departmental Organization, 1947-2001*. 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 June 6, 2002, President George W. 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, but the President's endorsement of the idea added momentum to the effort. The President formally submitted his proposal to Congress on June 18, 2002. The bill was introduced, by request,<sup>1</sup> by Majority Leader Richard Armey as H.R. 5005 on June 24.

On June 13, 2002, House Speaker Dennis Hastert (R-IL) and Minority Leader Representative Richard Gephardt (D-MO) 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, 2002, the House adopted H.Res. 449, by voice vote, creating a Select Committee on Homeland Security.

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 with relevant jurisdiction. By July 12, all of the standing committees concerned were to report their recommendations to the Select Committee, which is charged with marking up the legislation. H.R. 5005 was reported to the House on July 24 by the Select Committee on Homeland Security (H.Rept. 107-609). The bill passed the House July 26 by a 295-132 vote.

In contrast, the Senate chose to handle Homeland Security Department proposals within the existing standing committee structure. On May 22, 2002, the Senate Governmental Affairs Committee had marked up, and ordered reported with amendments, S. 2452, the National Homeland Security and Combating Terrorism Act of 2002, introduced by Senator Joseph Lieberman (D-CT). The bill was reported to the Senate on June 24, 2002, with a written report (S.Rept. 107-175). The Senate Governmental Affairs Committee revisited the issue, approving a substitute to S. 2452 by a 12-5 vote on July 25.

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<sup>1</sup>Members who embrace a legislative concept can introduce it as their own, or they can introduce it "by request," with those words printed on the face of the bill, after their name as sponsor. This implies they introduced the bill out of professional courtesy, but does not mean they are necessarily embracing its ideas.

Since World War II, Congress has acted to create or implement major reorganizations of seven of the now existing 14 Cabinet departments: the Department of Defense (1947);<sup>2</sup> the Department of Health, Education, and Welfare (HEW) (1953);<sup>3</sup> the Department of Housing and Urban Development (1965); the Department of Transportation (1966); the Department of Energy (1977); the Department of Education (1979); and the Department of Veterans Affairs (1988).

This report describes the principal elements of legislative process used to establish these 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. (For additional information on the organization of these departments, see CRS Report RL31472, *Departmental Organization, 1947-2001*. CRS Report RL30673, *The President's Cabinet: Evolution, Alternatives, and Proposals for Change* analyzes the role of the Cabinet.)

## Procedural Characteristics

Congressional consideration of legislation establishing Cabinet departments has 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.

In the Congress in which they were approved, these proposals were considered by the House Committee on Government Operations and the Senate Committee on Governmental Affairs.<sup>4</sup> (Consideration and referral to committee of similar or related measures in preceding Congresses is beyond the scope of this report.)

With the exception of the Defense and Veterans Affairs bills, all the departmental creation measures were considered in the House 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.) In the Senate, the bills were most often brought up by unanimous consent; the HEW reorganization joint resolution was called up by motion.

Votes to approve the various Cabinet departments in committee and on the floor were generally by comfortable majorities. An exception was House consideration of the Department of Education bill, H.R. 2444, which cleared committee by a single vote and passed the House by a four-vote margin.

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<sup>2</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>3</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>4</sup>Exceptions to this general rule are Senate bill S. 758 in the 80<sup>th</sup> Cong., creating the National Military Establishment, and H.R. 2444 in the 95<sup>th</sup> Cong., the legislation establishing the Department of Energy. Consideration of these measures is detailed in later sections of this report.

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, all the legislation went to conference to resolve differences between the House and Senate versions. With two exceptions, conferees were drawn from the reporting committees. In the case of the Department of Veterans Affairs legislation, 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 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 Histories

### Department of Defense

The National Security Act of 1947, modified by amendments in 1949, 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 further changes to the bill in response to Navy objections related to their 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>5</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 (R-MI), 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 5 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

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<sup>5</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.

opposition came from several quarters, including members of the Appropriations, Veterans Affairs, and Armed Services Committees.<sup>6</sup> The House considered more than a dozen amendments, including several successful amendments offered by Representative W. Sterling Cole (R-NY), 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.

In the Senate, S. 758 was introduced March 3, 1947, by Senator John Chandler Gurney (R-SD), chairman of the Armed Services Committee. It was referred to the Armed Services Committee, but this referral 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 (R-MI) ruled that the proper referral was to the Armed Services Committee. This ruling was subsequently upheld by the Senate on a voice vote.<sup>7</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, amended, and approved by a 12-0 vote. Despite the unanimous vote, some committee members indicated they intended to further refine the bill 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 (R-WY), 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 (R-OH), clarifying the duties of the National Security Council, was adopted. An amendment proposed by Senator Joseph McCarthy (R-WI), 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

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<sup>6</sup>Among those opposing the bill were Rep. W. Sterling Cole (R-NY), a member of the Armed Services Committee, Rep. Harry Sheppard (D-CA), former chairman of the Navy Appropriations subcommittee, and Rep. Edith Rogers (R-MA), chairman of the Veterans Affairs Committee.

<sup>7</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.

National Military Establishment came into being on September 18, 1947, the day after the confirmation of James Forrestal as the new Secretary of Defense.

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 (R-MO) on July 13, 1949) and S. 1269 in the Senate (by Senator Millard Tydings (D-MD) on March 16, 1949). Extensive hearings were held by both the House and Senate Armed Services Committees.

On May 12, the Senate Armed Services Committee reported an original bill, S. 1843. The Senate passed S. 1843, on May 26, 1949, and the House approved a less sweeping version, H.R. 5632, on July 18. Conferees resolved most of the differences in favor of the stronger Senate version of the legislation, and 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 (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 Clare Hoffman (R-MI), chairman of the Government Operations Committee, proposed to shorten this period, providing that the plan would take effect 10 days after enactment.<sup>8</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>9</sup>

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<sup>8</sup>No action was required by Congress for the Reorganization Plan to go into effect. The joint resolution was only necessary to provide an exception to the statutorily mandated 60-day effective date requirement.

<sup>9</sup>On August 16, 1949, a resolution disapproving Reorganization Plan No. 1, creating the  
(continued...)

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 considered under an open rule (H.Res.179), providing for 2 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 Robert Taft (R-OH), was agreed to by voice vote. H.J.Res. 223 was debated briefly on the Senate floor, then passed by voice vote. President Eisenhower signed the joint resolution on April 1, and then nominated former Federal Security Agency head Oveta Culp Hobby as the first secretary of the new department. Her nomination was confirmed on April 10, and the department officially began operation pursuant to the provisions of the joint resolution, on April 11, 1953.

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 no later than November 8, 60 days following the date of enactment. 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 1964, both President John F. Kennedy and President Johnson had advanced proposals for the creation of a housing department. As approved in 1965, the legislation basically elevated the Housing and Home Finance Agency (established in 1947) to Cabinet-level status.

Bills embodying the administration's proposals were introduced by Representative Henry Reuss (D-WI) on March 23, 1965 (H.R. 6654), and by Representative Dante Fascell (D-FL) on March 30 (H.R. 6927). In the Senate, the administration's legislation was introduced by Senator Abraham Ribicoff (D-CT) on

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<sup>9</sup>(...continued)

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.

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 2 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 (R-NJ) on June 6, 1965, 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 4 days of hearings on S. 1599 on March 31, April 1 and 2, and May 19. The bill was approved by the full committee on July 30 by a 9- 4 vote (the chairman of the committee, Senator John McClellan(D-AR), 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. Among the amendments adopted was a proposal by Senator John Sparkman (D-AL) providing for the retention of the Federal Housing Administration. 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 from the Senate Government Operations Committee (3-2 ratio) and seven members from 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.

## **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 Department of Transportation. 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 was introduced on March 2 by Representative Chet Holifield (D-CA) in the House (H.R. 13200) and Senator Warren Magnuson (D-WA) in the Senate (S. 3010). 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.

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 4 hours of general debate. The bill passed with amendments 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, 1966 (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.

## 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>10</sup> President Carter formally proposed creation of the new department five months earlier in a special message to Congress on March 1, 1977. The plan was similar in many respects to President Gerald R. Ford's energy reorganization proposal submitted in the final month of his term. President Richard M. Nixon had also offered plans to reorganize federal energy agencies in 1971 and 1973.

In the House, several identical bills embodying the President's proposal were referred to the Government Operations Committee.<sup>11</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 the bill and reported a clean bill, H.R. 6804, to the full committee.

Jurisdiction over the legislation had also been asserted by the Post Office and Civil Service Committee,<sup>12</sup> which held hearings at the subcommittee level and

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<sup>10</sup>The Department of Energy officially began operations on October 1, 1977. Pursuant to section 901 of the Department of Energy Organization Act, President Jimmy Carter issued Executive Order 12009, prescribing October 1, 1977 as the effective date of the Act.

<sup>11</sup>From Apr. 25, 1967, to Jan. 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.

<sup>12</sup>In the 104<sup>th</sup> Cong., the jurisdiction of the Post Office and Civil Service Committee was absorbed by the Committee on Government Reform and Oversight (formerly known as the Committee on Government Operations, and now called the Committee on Government

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>13</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>14</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 subsequently 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 (D-CT). Twelve days of hearings were held during March and April 1977 by the Governmental Affairs Committee (formerly the Government Operations Committee, renamed Governmental Affairs, February 4, 1977). An amended version of S. 826 was reported by the Committee on Governmental Affairs on May 4 (S.Rept. 95-1649).

The bill was brought up for consideration in the Senate by unanimous consent on May 18, 1977. 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 (D-WA), chairman 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 (D-MT), 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).

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<sup>12</sup>(...continued)  
Reform).

<sup>13</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. 1, pp. 3-4.

<sup>14</sup>The resolution provided for 3 hours of general debate, 2 ½ hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, and one-half hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service.

## 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>15</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 the 95<sup>th</sup> Congress, bills proposing a Department of Education were introduced in the House (H.R. 13778) on August 8, 1978, by Representative Jack Brooks (D-TX), and in the Senate (S. 991) on March 14, 1977, by Senator Abraham Ribicoff (D-CT). The Senate 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. In the House, H.R. 13778 cleared the Government Operations Committee on August 25 (H.Rept. 95-1531), but stalled on the floor. Opponents concerned about the impact of the bill 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, chairman of the Governmental Affairs Committee, on January 24, 1979. The House bill, H.R. 2444, was introduced by Representative Brooks, chairman 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 and 30. On April 26, a time agreement was reached, specifying debate limits on all remaining amendments.<sup>16</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 (D-AZ) to establish an Office of Bilingual Education and Minority Affairs. The bill as amended passed the Senate 72-21 on April 30, 1979.

On May 2, H.R. 2444 was 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 3 hours provided for general debate. A

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<sup>15</sup>The Department of Education was officially established on May 4, 1980. Pursuant to the provisions in section 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.

<sup>16</sup>*Congressional Record*, vol. 125, Apr. 26, 1979, pp. 8823-8825.

series of 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.

## **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 committee Chairman Jack Brooks (D-TX), the measure was reported to the House on November 16, 1987 (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 (R-SC), a senior minority member of both the Armed Services and 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 Chair John Glenn (D-OH), 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>17</sup> The agreement limited debate on the bill to 2 hours, and made in order specified amendments. On July 12, 1988, the Senate passed S. 533, adopting an amendment offered by Senator Alan Cranston (D-CA) to establish certain positions within the Veterans Benefit Administration. Amendments to change the

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<sup>17</sup>The text of the unanimous consent agreement appears at: *Congressional Record*, vol. 134, June 28, 1988, p. 16176.

effective date of the Act, and to allow limited judicial review of VA compensation cases, were tabled.

The following day, July 12, the Senate took up the House bill. The Senate inserted the amended text of S. 533 as a substitute, and then 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). Senate conferees came from the Governmental Affairs Committee (seven, 4-3 ratio) and Veterans Affairs Committee (two, 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.

## **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 (D-OH), seeks 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 (R-NC), referred to the Governmental Affairs Committee);
- ! a Department of Trade (H.R. 2325, 104<sup>th</sup> Congress, introduced by Representative Toby Roth (R-WI), referred to 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 (R-PA), 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 (D-OH), 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 above cited examples, the bills were referred to committee, but received no further action.

One exception to this pattern has been the persistent effort to elevate the Environmental Protection Agency (EPA) to Cabinet status. Such proposals were first introduced in the late 1980s and early 1990s. Both President Bill Clinton and President George H.W. Bush advocated executive department status for EPA. In 1993, one such bill, S. 171, introduced by Senator John Glenn (D-OH), 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 (R-

NY), was referred to the House Committee on Government Reform. In the Senate, a similar bill, S.159, introduced by Senator Barbara Boxer (D-CA), 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 1988**

	Public Law	House Bill (Special rule if applicable)	Senate Bill	Committee Reports	Initial Passage	Conference Report	Conference Report Adopted
Department of Veterans Affairs	P.L. 100-527 Oct. 25, 1988	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) Government 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
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	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	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 # 1 of 1953		H.Rept. 166 (Mar. 17, 1953) Government Operations S.Rept. 128 (Mar. 23, 1953) Government Operations	House Mar. 18, 1953 Senate Mar. 30, 1953	--	--
Department of Defense	P.L. 253 July 26, 1947	H.R. 4214 July 15, 1947	S. 758 Mar. 3, 1947	H.Rept. 961 (July 16, 1947) Expenditures in the Executive Departments S.Rept. 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