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House, Senate diverge on 9/11 response

As clock winds down on 108th Congress, lawmakers focus on 9/11 commission goals.

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WASHINGTON — With most of its legislative work unfinished, the closing days of the 108th Congress are coming down to a quick march to get some form of the 9/11 commission recommendations into law.

House GOP leaders, who once opposed using the commission's final report as the template for reform, have moved closer to it in recent weeks. "It is a much more comprehensive enacting of the 9/11 commission recommendations than anyone would have thought possible a few weeks ago," says Rep. Chris Cox (R) of California, chair of the House Select Committee on Homeland Security, who credits the commission with "a good job in public diplomacy."

But the House version still differs from the Senate's on issues from new law enforcement authorities to whether the Pentagon should be forced to accept a lower profile in intelligence decisions - setting up turf battles among lawmakers.

At a briefing to release their bill on Friday, GOP leaders carried fresh copies of the 9/11 commission report. In a draft table of contents, released later in the day, the original title, "Terror Prevention and Responses Act," had been replaced with "The 9/11 Commission Implementation Act."

It's a sign of the immense prestige of the 9/11 commission, now disbanded, and the power of national security as a public concern in an election year. Like the 2002 vote that created the Department of Homeland Security, this debate occurs just before a national election, with Americans paying attention to what happens in Washington.

For both parties, the upcoming decisions on everything from a new national-intelligence czar to broad new powers for law enforcement carry huge political risks. Even the hint of appearing hesitant on any reform that might make Americans safer could be fatal at the polls, as Democrats learned when they lost control of the Senate in 2002.

The risks of rushing

But a range of security experts say that a rush to legislate can also be risky. Last week, a bipartisan group of former Defense and Intelligence officials, including former Secretary of State Henry Kissinger, called for more time. "We are concerned that the reforms of the magnitudes that are being talked about, and with the impact that they will have on the conduct of intelligence and on the national security machinery, should not be rushed through in the last week of a congressional session, in the middle of a presidential election campaign," he told a Senate panel.

"I don't usually agree with Henry Kissinger on anything, but Congress is rushing this because they want to do something," says Melvin Goodman, senior fellow at the Center for International Policy and a former CIA and State Department analyst.



"The two leading recommendations of the commission are very harmful," he adds. "The call to put an intelligence czar inside the executive branch shows they don't understand the politicization of intelligence. And centralizing analysis of intelligence shows they don't recognize the importance of redundancy."

The shakeups outlined in both the House and Senate versions are broad, ranging from a new director of national intelligence to new mandates for setting priorities in security spending. In a major departure from current practice, lawmakers in both the House and Senate are backing the commission's recommendation to make risk - not population or size - the basis for security decisions.

"Throughout the government, nothing has been harder for officials ... than to set priorities," the commission concluded. "Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities." That means more money for Washington and New York, less for states like Wyoming: "Congress should not use this money as a pork barrel."

Another key issue is the authority a new national intelligence director (NID) will have over budget and personnel decisions, most of which are now made in the Pentagon. The Defense Department currently controls 80 percent of intelligence spending. In the Senate, a turf battle is shaping up between the Senate Governmental Affairs Committee, tasked with preparing legislation for the Senate floor, and the Armed Services Committee, which defends Pentagon prerogatives. The House version, and that proposed by the White House, assigns the NID less control over these issues than do either the 9/11 commission or the Senate.

While the Senate urges some disclosure of the intelligence budget, the House does not. "In the past, liberal Democrats have sought to publicize that number in order to increase the pressure to cut intelligence spending.... I believe that telling our enemies how much we spent ... diminishes our national security," said Speaker Dennis Hastert. The commission urged disclosing the overall intelligence budget.

In another controversial move, the House version includes enhancements for law enforcement not in the 9/11 commission report. Many of these appeared in a leaked Justice Department memo in January 2003, dubbed by critics "Patriot II," after the 2001 USA Patriot Act. These include greater authority to investigate lone-wolf terrorists, such as would-be airline shoe-bomber Richard Reid, or suspected terrorist sleeper cells. Under an expanded Foreign Intelligence Surveillance Act, such parties could be targeted on the basis of less strict standards.

The proposed House version, to be marked up in committees this week, also mandates programs for pilots to carry firearms and sentences up to life imprisonment for terrorist hoaxes. "The House leadership bill is yet another veiled attempt to pass Patriot II piecemeal," says Laura Murphy, director of the ACLU's Washington legislative office. "It's a virtual wish list for law enforcement that would undermine liberty."

What's not included

Conspicuous for its absence in both the House and main Senate version is an overhaul of congressional oversight of intelligence activities. "Of all our recommendations, strengthening congressional oversight may be among the most difficult and important," the commission concluded. Currently, 88 committees and subcommittees oversee security. "The American people may have to insist that these changes occur, or they may well not happen."

The commissioners, who continue to comment on legislation, back the Senate version, and, as of this writing, are studying the new House version. Some worry that if debate grows too partisan, as it is becoming in the House, reform will stall.

"We have desperately hoped for the welfare of the nation that this process does not become politicized," says 9/11 commissioner Richard Ben-Veniste, a Democrat. There has been great progress ... up to this point, and it

would be not only a shame, but shameful, if the process dissolved into trying to score political points."

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