Senators Feinstein and Cornyn Offer Amendment to Ensure that Homeland Security Funding is Based on Risk

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***Washington, DC** – U.S. Senators Dianne Feinstein (D-Calif.) and John Cornyn (R-TX) today urged the Senate to approve an amendment to the FY 2006 Homeland Security Appropriations bill that would ensure that homeland security grants are allocated based on where the threat of terrorist attack is greatest. The following is the prepared text of Senator Feinstein's floor speech:*

"Mr. President, I rise today to offer in support an amendment, which in essence is identical to the Homeland Security FORWARD Funding Act of 2005, Senate Bill Number 1013.

I am pleased to be joined by my colleague from Texas, Senator John Cornyn, as well as Senators Boxer, Hutchison, Kerry, Martinez, Schumer, Clinton, Corzine, Kennedy, Lautenberg, Nelson and Mikulski in this effort.

It is time for our nation to adopt risk-based analysis to guide critical resource allocation our homeland security efforts. The legislation will do exactly that. My amendment is, at bottom, extremely simple in approach – its key language, which appears at its very beginning, is clear, and I quote in full:

> *"The Secretary of Homeland Security shall ensure that homeland security grants are allocated based on an assessment of threat, vulnerability, and consequence to the maximum extent practicable."*

This legislation will ensure that these priorities are set, and set according to analysis of risk and threat. It will accomplish this goal through five basic mechanisms:

- First: The law requires the Secretary of Department of Homeland Security to allocate grants based on Risk: The legislation will mandate that funding decisions be designed according to an assessment of risk. This is a key element of the law, which makes this clear in its very first section, entitled risk-based funding, which reads, and I repeat this key phrase:

  "The Secretary [of Homeland Security] shall ensure that covered grants are allocated based on an assessment of threat, vulnerability, and consequence to the maximum extent possible."

  The bill defines "covered grants" as including the four major first-responder grant programs administered by the Department of Homeland Security:

1. The State Homeland Security Grant Program;
2. The Urban Area Security Initiative;
3. The Law Enforcement Terrorism Prevention Program; and
4. The Citizens Corps Program.

In addition to these four core grant programs, the legislation also covers grants "provided by the Department for improving homeland security," including grants for seaport and airport security."

The bottom line: If federal funds are going to be distributed to improve first responders ability to "prevent, prepare for, respond to, or mitigate threatened or actual terrorists attacks," those funds should be distributed in accordance with a risk-based analysis. Al Qa'ida and its allies to not attack based on a formula – this bill rejects the formula approach in favor of a framework that is flexible, and risk-focused.

- Second: The legislation requires that covered grants be designed to meet "essential capabilities." Essential capabilities, a concept defined in this law, is what we get for the money spent – the ability to meet the risk, by:

    - Reducing vulnerability to attack; and
    - Diminishing the consequences by effective response.

- Third: The bill requires States to quickly pass on federal funds to where they are needed: States should not hold federal funds back from where they are most needed. The bill will ensure that states quickly and effectively move the funds through.

- Fourth: The bill address the "small state minimum" issue: Current practice requires each state to get .75% of much of the grant funding. That means 37.5% of the funds are marked for distribution before any risk analysis. For instance, under the current appropriations bill, of the $1.918 billion appropriated, $548 million is taken right off the top, allocated to states, and thus not available to meet risk. The legislation will significantly reduce this large set-aside, with the minimum being reduced to .25% per state.

  I must admit that I am uncomfortable even with the .25 minimum, and would prefer to eliminate any such impediment to risk-based funding. But I understand the realities of the Senate, and decided to track what the President requested in his budget.

In this post-Cold War world of asymmetric threat there are two fundamental laws which apply to efforts to make our nation more secure against a terrorist attack.

The first law is that understanding and predicting what terrorists will do requires risk analysis. It is an uncomfortable fact that, even with the best intelligence, we will never know exactly how, when and where terrorists will strike -- the best we can do is try to assess risks and threats, and make predictions.

The second law is that our defense resources are not infinite. The sum total of money, time and personnel that can be devoted to homeland security is limited.

Together these two laws define the task for our nation. We must accurately assess the risks of an array of possible terrorist attacks, measure the vulnerability of all of these possible targets, and then divide up our resources based on that assessment.

We are failing in this effort.

The 9/11 Commission agreed, finding that "nothing has been harder for officials – executive or legislative – than to set priorities, making hard choices in allocating limited resources." The Commission concluded "Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities."

The New York Times agreed. In an editorial titled "Real Security, or Politics as Usual?" the Times wrote: Defending places where the terrorist threat is greatest is not parochialism; it is defending America." [Offer into record]

Last week's tragic events in London underscore the point. The effectiveness of the British response to these terrible attacks illustrates that they put their resources where the risk was – in London.

Reacting to these events, the New York Times wrote again, just last Friday: "Congress should take fast action on these fronts [and adopt] risk-based financing formula -- Just as London was an obvious place for an attack, parts of the United States are particularly likely targets. The 9/11 commission recommended that antiterrorism funds be allocated solely based on risk, but some members of Congress have been trying to set aside much of the money for low-risk areas. That is irresponsible. Congress should base as much of this financing as possible - ideally, 100 percent - on risk.

Despite these recommendations, we find again and again that scarce resources are allocated based on factors unrelated to real security. For instance, we have retained a "small state minimum" designed to ensure that every state gets a substantial portion of scarce resources, regardless of the measure of risk or vulnerability. As a result, a state such as Wyoming gets a 27.80 cents per capita in funding, while New York and California get $15.54 and $8.05 respectively.

It is not just the New York Times that agrees. The Heritage Foundation recently issued a report which began by stating: "the Feinstein/Cornyn proposal offers solid ideas on how to ensure that federal dollars are actually used to make Americans safer."

The problem is not just in Congress. For example, in a recent Department of Homeland Security Inspector General report it was found that in the critical area of port security, grants are "not well coordinated with the Information Analysis and Infrastructure Protection." The result? "funding of projects with low [risk and vulnerability] scores."

A recently issued joint report from the Center for Security Studies and the Heritage foundation found that there is "no funding formula that is based on risk analysis and divorces from politics… [w]ith only limited resources available to achieve the almost limitless goal of protecting the entire United States… it is critical that we set priorities."

This amendment (and the bill upon which it is based) builds on efforts last year by Representatives Cox and Turner, the Chair and Ranking Member, respectively, of the other bodies Homeland Security Committee. That effort passed the House of Representatives as part of the Intelligence Reform Bill, but was dropped at conference.

I understand and appreciate the efforts made by Senators Collins and Lieberman to craft the bill now before us. I applaud their leadership in this area, and think they have tried mightily to square the circle: the obvious need to allocate based on risk, with the realities of our legislative process. But I honestly do not believe they were able to accomplish the impossible.

The Collins/Lieberman bill, while it purports to be "risk-based" is actually not. It incorporates complex formulae, in which we try to replace entrusting risk analysis to the Department of Homeland Security with a pre-cooked list of factors which approximate what we believe will be the risk. I don't think that works, for the following reasons:

- First: The key to responding to Al Qa'ida and similar organizations if flexibility. While today it may seem obvious that mass transit or ports are "obvious" targets, tomorrow they may not be. Hopefully, our Intelligence Community will increasingly be effective in spying on our terrorist adversaries, and our analysts better at understanding and predicting their behavior. What they find could change, and change yet again. Building a formula mechanism based on our "best guess" about what Al Qa'ida will do is simply not good policy.

- Second: We created the Department of Homeland Security primarily to do exactly what this legislation calls for. The very first mission statement for the department is described as: [The Department will] Identify and understand threats, assess vulnerabilities, determine potential impacts and disseminate timely information to our homeland security partners and the American public.

  That is exactly what President Bush said in announcing the creating of the Department, when he stated: "this new department will bring together the best intelligence information about our vulnerabilities to terrorist attack so that we can act quickly to protect America.

  Senator Lieberman was a leader in this effort, and we all worked with him to create the Department of Homeland Security. In my view, the biggest selling point for this new Department was, as the President said, that for the first time we would have a place in the Government that would map threats against vulnerability, and thus allocate our defenses in an effective, efficient way. The Department of Homeland Security can be seen as the Department of Risk Analysis. So it is ironic that having provided the authority and responsibility to do this, the Congress then handcuffs the Secretary by restricting those resources based on geography, politics and parochial interests. Let's let the Secretary do the job we gave him.

- Third: In addition to creating the Department of Homeland Security, the Congress, again with the leadership of Senators Collins and Lieberman, reorganized the Intelligence Community. The purpose of this task was to ensure that the most important ingredient in risk analysis – good intelligence – was good enough to keep America safe.

So there is an irony that having gone to such trouble to improve the Intelligence Community, we are prepared to pass legislation which, for a large percentage of funds, will make intelligence irrelevant – all you will need is a map, a census, and a list of important places in each state. That makes no sense to me.

I mentioned the difference in funding levels, and amounts subject to risk. Last week the Congressional Research Service issued an analysis of the underlying Appropriations bill; Senator Collins bill, and my amendment. The results are startling:

If we assume that the base amount of Homeland Security Grant funding contained in the Appropriations bill becomes law, that means that the total amount available for these programs will be 1.918 billion dollars.

The underlying bill would allocate a considerable amount under the existing "small state minimum" framework, $579.2 million, leaving $1.3 billion to be allocated through a risk assessment process.

If the Collins-Lieberman amendment is adopted, $762 million will be allocated according to the formula, leaving even less to be allocated based on risk, only $1.155 billion. Only $251.2 million will be allocated based on the .25 small state minimum, leaving $1.66 billion for risk-based allocation.

Put another way: Under the current bill only 70% of available funds are allocated based on risk. If the Collins/Lieberman approach is adopted, that drops to 60%. Under the approach embodied in my amendment, 87% of funds go to risk.

The Bottom Line?: Our nation is in danger. We have a limited amount of resources available to defend ourselves. Those resources must be targeted where they can do the most good – where the risk is. That is the simple question which faces us today. How can we best protect America?

I believe the best way to protect America is to let the Secretary of Homeland Security do the job we so recently created: match resources to risk, using the best available intelligence analysis. That is the only way to safety. I urge my colleagues to vote in favor of this amendment."