



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 30, 2005
(Senate)

STATEMENT OF ADMINISTRATION POLICY

H.R. 2863 – Department of Defense Appropriations Bill, FY 2006

(Sponsors: Cochran (R) Mississippi; Byrd (D) West Virginia)

The Administration appreciates that the Senate Appropriations Committees reported this bill in a timely manner.

The Administration is committed to working with Congress to ensure the overall discretionary spending limit is not breached; that the Department of Defense (DOD) is adequately funded; and that non-security-related spending is reduced below last year's level. The Administration is concerned that the spending limits reflected in the Senate 302(b) allocations would result in an unacceptable shift of over \$7 billion from critical defense requirements to fund non-security-related accounts.

The Administration appreciates the Committee's continued support for our national defense and Global War on Terror priorities, particularly the \$8.6 billion in additional procurement for urgent Army and Marine Corps force protection needs and for rapidly implementing the Army's Modularity program. The Administration looks forward to working with Congress to ensure that there is no interruption of resources for the Global War on Terror in FY 2006 and that the \$50 billion bridge fund is allocated in the most effective way to meet the needs of commanders in the field. The Administration urges approval of the full \$4 billion in General Transfer Authority requested by the President. This higher amount is essential for the Department to address its most pressing requirements during this time of war.

The Administration strongly opposes the Senate's \$7 billion reduction to Defense from the President's request. These cuts will either result in deterioration of our force readiness or will require base DoD needs be inappropriately funded through future supplemental requests. Base funding requirements should not be shifted to supplemental bills as a way to increase non-security-related discretionary spending and breach overall discretionary spending limits. The President's senior advisors would recommend that he veto a Department of Defense Appropriations bill that significantly underfunds the Department to avoid a reduction to non-security spending.

The Administration appreciates that Congress has acted swiftly to address the emergency requirements to meet immediate needs arising from the consequences of Hurricane Katrina and looks forward to working with Congress to fund our long-term recovery efforts in the Gulf Coast and other affected regions. The Administration anticipates making further requests that will provide for a comprehensive response and recovery effort after fully assessing the impact of the recent hurricanes.

The Administration would like to take this opportunity to share additional views regarding the Committee's version of the bill.

Military Personnel Accounts

The Administration opposes the reduction to the base military personnel accounts by more than \$2.5 billion. A reduction of this magnitude would lead to a shortfall in military personnel accounts.

Operation and Maintenance Funding

The Administration opposes the Committee's \$2.3 billion reduction to the President's request for operation and maintenance funding, including the across-the-board reductions in the bill's General Provisions. The Administration is concerned that these reductions could damage the readiness of U.S. forces and their preparedness for critical operations in Afghanistan and Iraq. The \$282 million reduction for military-to-civilian conversions would limit one of DOD's most productive initiatives for reducing the strain on our armed forces. Military-to-civilian conversions are part of the President's Management Agenda for Competitive Sourcing and would free up critically needed troops for the Global War on Terror.

The Administration opposes the \$137.5 million cut in funding for the audit of DOD financial systems. This cut would disrupt the Department's ongoing improvements to these systems and its financial statements. The Administration looks forward to working with Congress toward successful implementation of DOD's financial improvement plan.

Support to Other Nations

The Administration supports section 9007, which authorizes up to \$500 million for the Commanders' Emergency Response Program, and section 9009, which authorizes logistical support to coalition forces. The Administration appreciates the inclusion of section 9006 of the bill, which authorizes up to \$500 million in DOD operation and maintenance funds to train, equip, and provide related military assistance to military forces in Iraq and Afghanistan. In addition, section 9010 requires the Secretary of Defense to submit a quarterly report on performance indicators and measures for progress toward military and political stability in Iraq. The Administration appreciates the need to keep the Congress informed, but the minimum requirements of the report are onerous and place additional burdens on leaders and staff who are critical to the ongoing war.

Restrictions and Limitations on Acquisition Programs

The Administration is concerned with the numerous funding reductions, prior-year rescissions, and acquisition guidelines for specific programs, particularly those affecting Navy shipbuilding, Air Force space systems, and Army modernization. The Administration opposes major reductions to transformational programs, including reductions of \$250 million for the Transformational Communication Satellite, \$236 million in the Joint Tactical Radio System,

\$100 million in the Army's Future Combat Systems, \$200 million for the Joint Unmanned Air Combat System, \$126 million from Space Radar, \$100 million from the Space Based Infrared System, \$195 million from the Advanced Medium Range Air-to-Air Missile, \$50 million from the Joint Air-to-Surface Standoff Missile, and \$111 million for Missile Defense Agency Ballistic Missile Defense System Interceptors. These large reductions will cause significant delays or cancellation of these programs that are key elements of DOD's transformation strategy and vital to our coalition warfare operations. In addition, the Administration objects to the \$270 million reduction in development funding for the Joint Strike Fighter. This reduction will cause additional schedule slips and cost increases in this critical joint and international program. The Administration also urges Congress to approve funds for an integrated DOD and Department of Energy program to study the feasibility of adapting an existing warhead to a new precision earth-penetrator casing and a supporting bomber platform.

National Drug Intelligence Center (NDIC)

The Administration appreciates the Committee's support of the President's funding request to close down the NDIC and urges the Senate to include language requested in the budget to close the center. NDIC has proven ineffective in achieving its assigned mission, and the Administration believes closure of NDIC and reassignment of its missions to other organizations represents a step towards more efficient coordination and management of counter-drug intelligence activities.

Classified Programs

The Administration looks forward to reviewing the classified annex and working with Congress to address any concerns on classified programs as the legislative process moves forward. The Administration continues to discourage any efforts, such as section 8081, to enact secret laws as part of defense funding legislation and encourages instead appropriate use of classified annexes to committee reports and joint statements of managers that accompany the final legislation.

Potential Floor Amendments

Amendments Interfering with Effective Conduct of War on Terror. The Administration understands that amendments may be offered to establish a national commission on the detainee operations or to regulate the detention, treatment, or trial of terrorists captured in the war on terror. The Administration strongly opposes such amendments, which would interfere with the protection of Americans from terrorism by diverting resources from the war to answer unnecessary or duplicative inquiries or by restricting the President's ability to conduct the war effectively under existing law. The Constitution and the Authorization for Use of Military Force Joint Resolution (Public Law 107-40, September 18, 2001) provide the authority the President needs to conduct the war effectively and protect the American people. If legislation is presented that would restrict the President's authority to protect Americans effectively from terrorist attack and bring terrorists to justice, the President's senior advisers would recommend that he veto the bill.

Base Realignment and Closure (BRAC). The Administration would strongly oppose any amendment that would have the effect of weakening the BRAC process, or of delaying implementation of the BRAC Commission's recommendations. If the President is presented a bill that weakens, delays, or otherwise adversely impacts the BRAC process, the Secretary of Defense, joining with other senior advisors, will recommend that the President veto the bill.

Buy American Act Amendments. The Administration would strongly oppose any amendment that would limit our flexibility in applying the Buy American Act or that would undermine the longstanding U.S. policy -- repeatedly affirmed by Congress -- to open U.S. procurement markets to suppliers from foreign countries that open their procurement markets to U.S. suppliers. Such amendments would harm U.S. companies and workers, as foreign governments would likely respond by restricting U.S. suppliers access to their procurement markets. Such amendments also would decrease competition, increase costs for U.S. taxpayers, and unnecessarily add red tape to the procurement process. In the case of defense-related amendments, such legislation also could jeopardize our military readiness, when our objective should be to enhance our ability to get the best capability for the warfighter at the best value for the taxpayer. If the President is presented a bill that includes such an amendment, his senior advisors will recommend that he veto the bill.

Competitive Sourcing

The Administration strongly opposes a provision in the bill (section 8014(a)3) that would unnecessarily subject private sector bidders to intrusive data requirements concerning the provision of health benefits to their employees. While well intentioned, this provision ultimately undermines the efficiencies in private health plans and provides another disincentive for the private sector to participate in DOD's competitions. Further, by discouraging private sector interest in competitive sourcing, this provision places at risk significant savings -- estimated to be \$6 billion from FYs 2001 to 2006 -- generated by the Competitive Sourcing initiative of the President's Management Agenda. Small business participation in competitions will be eliminated since this provision makes it particularly burdensome to assemble competitive offers. The Administration urges the House to eliminate DOD-specific restrictions to take advantage of Government-wide Circular A-76 policies to achieve the best value for the taxpayer.

Constitutional Concerns

Provisions of the bill that purport to specify the content of Presidential recommendations for enactment of appropriations laws, such as section 8010(b), 8036, and 8108, should be revised to require such content only "to the extent the President shall judge necessary and expedient," so as to make the provisions consistent with the Constitution's commitment to the President of exclusive authority to recommend to Congress such measures as he judges necessary and expedient. Also, recognizing the Executive Branch's constitutional entitlement to communicate with Congress, section 8012 of the bill should be amended to make explicit that it does not prevent officers or employees of the United States from communicating to Congress through the proper official channels requests for action on legislation or appropriations matters.

Provisions of the bill concerning the reporting of military activities to Congress,

including sections 8007, 8011, 8064, 8102, and 9005, should be revised, and will be construed, in a manner consistent with the President's constitutional authority to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties. The Administration also recommends deletion of section 8111, relating to integration of intelligence information, as unnecessary.

Two provisions of the bill authorize the provision of benefits to Native Hawaiians. The Department of Justice advises that there is a substantial, unresolved question whether Congress has authority to deal with Native Hawaiians as it does with Indian tribes. To the extent the definition of "Native Hawaiian" constitutes a racial, rather than political, classification, such programs would be subject to strict scrutiny in Federal courts.
