



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

May 11, 2006
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 5122 - National Defense Authorization Act for Fiscal Year 2007

(Reps. Hunter (R) CA and Skelton (D) MO)

The Administration supports House passage of H.R. 5122 and commends the House Armed Services Committee for its continued support of our national defense. The Committee's strong support for the President's priorities is critical to the continued successful prosecution of the Global War on Terror. The bill raises a number of significant concerns, which we look forward to addressing with Congress as the bill moves through the legislative process.

The Administration thanks the Committee for its effort to sustain the All Volunteer Force during this great military challenge, to meet the Defense Strategy, and consistent with the Quadrennial Defense Review (QDR)-related proposals, to provide logistical support, supplies, and services to allied forces, and to loan military equipment to allies for operations in Iraq and Afghanistan. We also appreciate the Committee's support for authorization to enhance the regional combating terrorism fellowship program and for many other programs, including full funding of the Administration's request for Cooperative Threat Reduction, Base Closure and Realignment implementation, and support of military construction projects and family housing.

The Administration also thanks the House for providing the vital funds in its recently passed Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006. The Administration appreciates Congress' strong commitment to our troops and the Global War on Terror and thanks the Committee for authorizing the \$50 billion bridge fund. We look forward to working with Congress to ensure that funding is allocated in the most effective way to meet the needs of commanders in the field.

Defense Health Program: The Administration is disappointed that the Committee in Section 704 rejected the Department of Defense (DoD) plan to adjust TRICARE health fees and payments for retired military beneficiaries under age 65. These proposed phased-in cost adjustments would largely capture the inflation increases that have occurred since cost sharing was first established in 1996. The DoD plan would make high-quality military health care more sustainable in the future. Not allowing the DoD to proceed with these changes will add over \$700 million in costs in FY 2007 and \$11.2 billion in costs from FY 2007 through FY 2011.

Further, the Administration strongly opposes Section 709, which expands TRICARE eligibility to all Selected Reserve members and their families and dramatically worsens the fiscal situation by increasing the government subsidy for non-mobilized reservists and their families at an estimated cost of \$400 million in FY 2007 and \$3.6 billion from FY 2007 through FY 2011. By FY 2011, it is estimated that the annual cost for this expanded benefit will reach \$1.2 billion. It is critical for Congress to eliminate these unfunded expansions and work with the Administration to place the system on a sound fiscal foundation.

Government Contributions to Medicare-Eligible Retiree Health Care Fund: Currently, government contributions to pay the annual accruing liability of the current active duty and reserve forces towards their future age-65 and over medical care benefits are recorded in DoD budget accounts, because DoD is the agency that carries out the operations for which the cost is incurred. The Administration strongly opposes Section 589, which purports to block reporting these as payments from DoD budget accounts. Because these contributions are already permanent, indefinite discretionary appropriations from the General Fund, it is not entirely clear how this provision would alter current law. One interpretation is that this provision would require that these costs be recorded in Treasury, rather than DoD budget accounts and, accordingly would result in an \$11 billion annual windfall for the DoD discretionary accounts, and a like increase in the deficit. We are hopeful that we can reach an agreement with the Congress that makes clear that this provision does not alter the current practice of scoring accrual costs to the DoD discretionary accounts. Without such an agreement the independent Board of Actuaries for this Fund would recommend disbanding itself.

Buy American Provisions: The Administration strongly opposes legislative provisions, such as sections 812, 831, 832 and 1211 that would undermine the longstanding U.S. policy – repeatedly affirmed by Congress – to open U.S. procurement markets to suppliers from allied and friendly countries that open their procurement markets to U.S. suppliers. These sections 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. Such provisions would restrict U.S. suppliers' access to foreign markets; would decrease competition; increase costs for U.S. taxpayers; and unnecessarily add red tape to the procurement process. Section 831 would greatly expand the application of the Berry Amendment to an entirely new class of items and materials, at the prime contract and all subcontract levels, as determined by a Strategic Materials Protection Board that would be created by Section 832. DoD suppliers rely on global supply chains for materials, often without knowing the country of origin. Section 831 would preclude DoD suppliers from purchasing virtually any foreign-made commercial items, components or materials, such as information technology products, commercial aircraft, and commercial aircraft engines. These two sections, which would require domestic sources for all critical items, fail to recognize that it is acceptable to rely on dependable foreign sources from allied and friendly countries for many critical items. Unwillingness to rely on such dependable foreign sources would undermine future efforts to build coalitions. Section 812 would prohibit procurements from certain entities based on possible foreign subsidies to those entities thereby reducing competition, driving up costs, and negatively impacting firms that partner with foreign entities, thereby discouraging the formation of such arrangements. In addition, Section 1211 would prohibit procurements from any entity that has exported or transferred certain items linked to the U.S. Munitions List to the People's Republic of China, causing irreparable damage to DoD's efforts to implement a strategy of world-wide engagement with allies and friendly nations. If the President is presented a bill that includes such provisions, his senior advisors will recommend that he veto the bill.

The Administration has a number of other concerns, including:

End Strength: The Administration opposes increases in minimum active Army and Marine Corps end strengths in Title IV, because they could require DoD to maintain a higher personnel level than is needed. The restructuring of the Army and the Marine Corps, plus other initiatives, are enabling our military to get more warfighting capability from current end strength. The

President already has sufficient authority to adjust the size of the Army and Marine Corps as necessary for the current national emergency.

Military Pay Raise: The Administration regrets that the Committee rejected the proposal to target pay increases for those serving over thirty years, and elected instead to apply funds towards a higher (2.7 percent) across-the-board hike. The 2.2 percent across-the-board increase proposed in the President's Budget, when combined with the overall military benefit package, provides a significant increase for Servicemembers and their families. The Administration proposed the 2.2 percent increase because that is what is necessary to recruit high-quality people to the Armed Forces. The Administration strongly opposes the additional and unnecessary increase in across-the-board pay.

Death Gratuity for Federal Civilian Employees: The Administration strongly opposes Section 1104, which would amend the Federal Employees' Compensation Act (FECA) to provide an additional \$100,000 death benefit for surviving family members of civilian employees employed with an Armed Force in all contingency operations. This provision would raise equity concerns by eroding the uniformity of benefits provided by FECA. The Administration is working with Congress to address death benefit issues for certain civilian employees outside of FECA, and supports such provisions in the Senate-passed Supplemental Appropriations Bill for Defense, the Global War on Terror and Hurricane Recovery for 2006.

Requirement to Maintain Aircraft Carriers: The Administration urges the House to support repeal of the requirement to maintain 12 aircraft carriers. We urge Congress to eliminate this provision and any other requirement to spend funds to maintain a ship that the Navy believes is no longer essential. In configuring the fleet for 11 carriers, the Navy will ensure that it makes effective use of existing carrier ports.

DD(X) Split Funding: The Administration strongly opposes the requirements of Section 1503 to authorize only one DD(X) in FY 2007. This action would require additional funds in FY 2007 to execute this alternative strategy and would have an overall effect of raising the end-cost for both ships by a total of \$211 million. We urge Congress to authorize the budget request for split funding of two ships for FY 2007.

Various Reductions and Weapons Retirement Restrictions: The Administration strongly opposes the Committee's reduction in the VH-71 Presidential Helicopter program, the Transformational Communications Satellite, missile defense, Space Radar, and Joint Strike Fighter long lead procurement. These cuts will cause significant delays in fielding critical new capabilities and force the continued use of aging or obsolete equipment. The Administration is also disappointed that the Committee cut \$326 million from the President's Budget for Future Combat Systems and placed constraints on the program's execution, which will unnecessarily impede Army modernization plans and programs. Finally, the Administration is concerned with various restrictions on retiring U-2, KC-135E, F-117, and B-52 aircraft. Restrictions on retiring older aircraft will divert funds from procuring more capable replacement systems.

Unrequested Procurement Funding and Acquisition Restrictions: The Administration also opposes the Committee's effort to continue the Joint Strike Fighter Alternative Engine program, to purchase additional C-17s, to specify a minimum of 299 strategic airlift aircraft, to provide funds for construction of a second Virginia Class submarine in FY 2009, and to add unrequested

funds to various other programs. These changes to the President's request unnecessarily restrict the Secretary of Defense's flexibility to plan an effective modernization program and divert resources from higher priorities. The Administration also opposes cost caps on various Naval vessels and other provisions restricting the Department's ability to manage its acquisition processes. The Department is implementing a broad range of acquisition improvements to correct past problems and it is premature for Congress to direct changes until this process is complete.

Limitation on Contracts for the Acquisition of Certain Services: The Administration strongly opposes restrictive language which would preclude, without a Secretary of Defense-approved waiver, use of service contracts for requirements that exceed \$150 million. Furthermore, the proposed restriction against establishing service contracts in an amount that exceeds 75 percent of the value of any asset constitutes counterproductive congressional micromanagement of DoD's acquisition system. The Department of Defense must have the flexibility to utilize service contracts when it determines that a service contract approach provides the most effective means to acquire a particular capability. We would like to work with Congress to address alternative means of providing insight into the funds allocated against service contracts.

China/Taiwan-Related Issues: Section 1206, relating to U.S. exchanges with Taiwan officials, inappropriately interferes with the President's authority to conduct diplomatic, intelligence, and military activities and should be stricken from the bill. This section raises foreign and national security concerns in this region of the world and raises Constitutional concerns in that they could interfere with the President's constitutional authority with respect to foreign relations, diplomacy, and the recognition of foreign states.

Fissile Materials Disposition Program: The Administration welcomes the committee's support for the National Nuclear Security Administration's Surplus Fissile Materials Disposition Program. However, we are concerned that the Committee has significantly reduced funds for construction of the U.S. MOX facility. Without adequate funding, the U.S. facility cannot be constructed on schedule, and the effect over time will be to greatly increase total construction costs. In addition, further delays would threaten the ability to meet commitments to South Carolina and significantly increase the likelihood that the Department of Energy would have to pay penalties and take other actions as set forth in existing law.

Restrictions on Shipyard Maintenance: The Administration opposes section 1012, which would require that certain ships, which presently accomplish maintenance and repair in foreign shipyards, instead be serviced at shipyards in the United States. This restriction would decrease the operational availability of such ships and increase costs. The Administration also opposes subsection (g) of section 1013, which would specify the amount of work for a specific shipyard. This sets a precedent that could be sought by other shipyards.

Administration Priorities Not included in H.R. 5122: The Administration encourages the House to include important Administration-requested priorities, including QDR-related proposals, which promote transformation in the Defense Department and enhance our ability to prosecute the Global War on Terror. Some proposals would increase flexibility to train and equip partner nations operating with or instead of U.S. forces for critical counter-terrorism and stabilization operations. Other proposals provide critical authorities for Combatant Commanders to address security priorities in different regions of the world and to respond better and more effectively to

support allies, coalition partners, and others in the War on Terror. These include:

Interoperability Development and Training: This proposal would authorize expenditures of DoD operations and maintenance funds by the Secretary of Defense as necessary to provide training to foreign military and civilian government personnel, as well as certain non-governmental organization personnel, in order to enhance interoperability during multinational operations.

Building the Partnership Security Capacity of Military and Security Forces: This proposal would modify section 1206 of the National Defense Authorization Act for FY 2006 in order to increase flexibility to train and equip partner nations operating with or instead of U.S. forces for critical counter-terrorism and stabilization operations.

Support for Local Populations During Operations by U.S. Forces: This proposal would expand the Commanders' Emergency Response Program (CERP) to include U.S. military operations outside of Iraq and Afghanistan by allowing the Secretary of Defense, with the concurrence of the Secretary of State, to authorize U.S. military commanders to use DoD funds for urgent humanitarian relief and reconstruction assistance to local populations where U.S. forces are participating in a contingency operation.

Change to Acquisition and Cross-Servicing Agreements Definition to Allow Loan of Significant Military Equipment: This proposal would authorize the Defense Department to transfer items identified as significant military equipment to allies in the Global War on Terror if the Secretary of Defense determines that it is in the security interests of the U.S. to provide such support.

Amendment to the Arms Export Control Act: This proposal would authorize the establishment of an account for advance purchases of equipment to be used by coalition partners in the Global War on Terror.

Expansion of Humanitarian and Civic Assistance to Include Developing Communications and Information Capacity: This proposal would expand the authority of DoD to provide humanitarian and civic assistance to develop the capacity of host nations' information and communications technology. In the case of humanitarian operations, the Southeast Asia tsunami and earthquakes demonstrate the need to rapidly synergize international relief operations through the insertion of ICT systems.

Clarification of Rapid Acquisition Authority to Respond to Combat Emergencies: This proposal would clarify the rapid acquisition authority provided to the Secretary of Defense to respond to combat emergencies in section 806 of the Bob Stump National Defense Authorization Act. It would allow use of the authority to address any deficiency that has resulted in combat casualties or fatalities, authorize the Secretary of Defense to delegate this authority to the Under Secretary of Defense (Acquisition, Technology & Logistics), and authorize the waiver of domestic source and domestic content restrictions that would inhibit the rapid acquisition of equipment needed by the warfighters.

Protection of Information Regarding Weapons of Mass Destruction: This proposal would exempt from disclosure under the Freedom of Information Act (FOIA) certain information in the possession of the Department of Defense concerning weapons of mass destruction (WMD), which does not also meet the threshold for national security classification.

Military Unaccompanied Housing: Local Comparability of Floor Area: This proposal would benefit DoD by removing an inequality for unaccompanied personnel berthing in non-privatized housing facilities. Currently, unaccompanied housing constructed through MILCON is not based on private sector standards, and has no correlation to local conditions that are factored into privatized unaccompanied housing, Basic Allowance for Housing rates, and family housing. This section would permit use of "off the shelf" private sector designs and industry construction practices and techniques, thus lowering construction costs, which the Department expects will offset any increased cost associated with building a larger unit than currently permitted. The experience of the Department in applying local standards, designs, and construction practices and techniques for military housing has been larger and more livable dwellings at costs comparable to those it would have expended using MILCON unique standards - all to the benefit of our personnel.

Support for Counter-Drug Activities of Certain Foreign Governments: The Administration appreciates that the Committee seeks to codify the Department's counter-narcotics authorities, but urges the House to adopt the requested proposal. This proposal would also add several key countries proposed for counter-narcotics assistance including: Niger, Mauritania, Mali, Chad, Indonesia, Philippines, Thailand, and Malaysia. These countries, nominated by Combatant Commanders, are either a source or transit country for narcotics and are capable and willing to use assistance provided by the United States to promote bilateral efforts to address the threat. The Administration opposes the funding reductions and the limitation on the Secretary's ability to provide crew-served weapons to counter-narcotics security forces. Restricting this authority to Afghanistan limits the Secretary's ability to support counter-narcotics and security forces in partner nations where heavily armed narcotics traffickers sometimes outmatch government forces in terms of resources and equipment.

Flexibility in Complying with Air Quality Plans: This proposal would clarify application of the conformity provisions of the Clean Air Act to avoid unnecessarily restricting the flexibility of DoD, State, and Federal regulators to accommodate new or realigned military readiness activities into applicable air pollution control schemes.

Flexibility in Range Management: This proposal would clarify application of the Solid Waste Disposal Act (SWDA) (also known as the Resource Conservation and Recovery Act (RCRA)) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to military readiness activities.

Prohibition of Court-Ordered Payments Before Retirement Based on Imputation of Retired Pay: Many State courts have mandated immediate payment of the value of a Servicemember's pension pursuant to a divorce decree even when the Servicemember remains on active duty and does not draw retired pay. Courts requiring such payments fail to recognize that retirement-eligible Servicemembers do not necessarily control their date of retirement. Further, some of our most experienced leaders are being forced to leave active duty in order to meet their court-ordered financial obligation. A September 1999 DoD report to Congress recommended such court orders be prohibited and advised that "[to] provide for the national defense, the armed forces must be allowed to control when a member is permitted to retire." The Administration urges Congress to adopt the requested proposal.

Improvements to Facilitate Targeted Shaping of the Armed Forces: The Administration urges the House to include all of the Administration-requested expanded/reinstated Force Shaping tools to include voluntary separation pay incentives, reduction in force authority and an expanded selective early retirement authority. DoD needs these authorities to facilitate strategic recapitalization plans developed in accordance with the QDR. The Committee's bill contains a portion of the original request for voluntary separation pay, but does not go far enough to incentivize personnel with more than 12 years of service to separate. In addition, failure to expand the selective early retirement authority hinders the ability to reach force projection targets. Failure to reinstate the reduction-in-force authority eliminates the ability to ensure the force projection targets are met all together.

Expansion of Operations of Civil Support Teams: While the Administration appreciates that the Committee has, as requested, expanded the mission of the Civil Support Teams, the Administration regrets that the Committee rejected the proposal to authorize the Civil Support Teams to execute their mission across the border in Canada and Mexico. This capability would be critical in circumstances where Americans may face a direct threat from a terrorist attack with a weapon of mass destruction while visiting those nations, or an indirect threat from the consequences of such an attack spilling across our borders. The Administration also is concerned that this provision has excluded necessary oversight by the Secretary of Defense for the approval of the conduct of Civil Support Team duties in response to a natural or man-made disaster. In the absence of this oversight, DoD could be obligated to expend significant Federal funds by State governors.

The Administration looks forward to working with the Congress to address these and other budget, policy, and constitutional concerns.

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