



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

July 8, 2003
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 2658 – Department of Defense Appropriations Bill, FY 2004

(Sponsors: Young (R), Florida; Obey (D), Wisconsin)

The Administration supports House passage of the FY 2004 Department of Defense Appropriations Bill, and looks forward to working with the House to address the Administration's concerns addressed below. The Administration has not yet reviewed classified information related to the bill, and reserves comment on these actions.

The Administration applauds the House Committee for reporting a bill that is fiscally responsible. The President supports a discretionary spending total of \$784.7 billion, along with advance appropriations of \$23.2 billion for FY 2005 – in accordance with his Budget and the FY 2004 Congressional Budget Resolution. Only within such a fiscal environment can we encourage increased economic growth and a return to a balanced budget.

Based on OMB scoring, the House bill is \$2.4 billion below the President's FY 2004 discretionary request. While this is consistent with the discretionary total agreed to for the FY 2004 appropriations bills, the Administration is opposed to the way in which this reduction was achieved. The reduction is achieved primarily from a \$2 billion rescission of FY 2003 supplemental funds for Iraq, which would reduce the Administration's flexibility to address emerging urgent security and reconstruction requirements.

The Administration is concerned about the justification for the shift of over \$3 billion from Operations and Maintenance to Procurement and Research, Development, Test, and Evaluation. As noted below, several provisions in the bill are particularly problematic:

- Reductions predicated on reducing cash balances in the Defense Working Capital Funds would push cash balances to dangerously low levels;
- Across-the-board cuts to support services and to Air Force base operations are excessive, and will have adverse impacts across a wide range of services and operations; and,
- Reductions of \$0.3 billion in information technology spending do not seem prudent at a time when such investment is becoming critical to battlefield success.

The Administration is opposed to the \$661 million reduction to Military Personnel accounts. In

particular, the reduction for prior-year unobligated balances is questionable, given that the Military Personnel accounts consistently spend approximately 99 percent of their appropriated amounts and need to keep some unobligated funds in reserve to pay upward adjustments for travel, moving, and other claims. Also, reductions to the guard and reserve will reduce the military's flexibility to schedule and train its reserve force, and reductions to requested special pays and allowances may affect the ability to retain military personnel with critical skills.

The House bill includes an increase of \$0.8 billion for Procurement and \$2.7 billion for Research, Development, Test, and Evaluation for a number of unrequested programs. These increases come at the expense of more important transformational programs included in the President's Budget. For example, the bill provides \$0.3 billion for upgrades to such legacy programs as the Bradley Fighting Vehicle and Abrams tank, which the Administration terminated to fund programs related to the Army's Objective Force.

The Administration also opposes the bill's funding reductions for other transformational programs such as information technology programs, the Navy's next-generation destroyer and LHA-R amphibious ship replacement programs, the Space Based Radar, military satellite communications, and the ballistic missile defense program. In particular, cuts to the Space Based Radar and Military Satellite Communications will force delays in fielding these important programs.

The bill fails to provide the funding for the Department to enter into a multiyear procurement contract for Virginia Class attack submarines. With this omission, significant savings over the life of the submarine program will be foregone. The Administration urges the House to provide this funding and inclusion of the Virginia Class program.

The Administration urges the House to support the President's request for an indefinite appropriation to help address the problem of volatile fuel prices. Currently, funding forecasts pre-date actual purchase by 20 months. An indefinite appropriation would allow the Department to cover the difference between the funds budgeted for refined petroleum products and actual market expenses.

The Administration applauds the Committee for providing \$44.1 million for the Chemical Stockpile Emergency Preparedness Program. This funding will provide for a robust emergency preparedness program while protecting the operational funding of disposal sites.

The Administration opposes any provisions that would require recommendations on the establishment of a national standard for acceptable levels of perchlorate groundwater contamination. The proposal conflicts with the Administration's current process whereby the National Academies review the science underlying the assessment of health effects of perchlorate as part of the current regulatory process.

Constitutional Concerns

The Administration is concerned with several provisions as noted. Provisions of the bill,

including sections 8010, 8105 and 8036, are inconsistent with the President's constitutional authority to recommend to the Congress such legislative measures as he judges necessary and expedient. The executive branch shall implement sections 8014 and 8089, which would authorize the provision of benefits to Native Hawaiians, in a manner consistent with the requirement to afford equal protection of the laws under the Due Process Clause of the Fifth Amendment to the Constitution. Section 8012 prohibits the use of funds under the act to lobby Congress, but does not explicitly provide for normal executive-legislative interactions or communications which the President is constitutionally entitled to undertake. This language should be amended to permit such normal communications respecting the legislative process. The bill also earmarks certain Air Force, "Operation and Maintenance" funds for "the purpose of funding minority aviation training;" this provision appears to be a government-imposed set-aside subject to strict scrutiny under the Fifth Amendment. The Administration objects to section 8064 and will interpret this provision to require only notification to Congress, since any other interpretation would contradict the Supreme Court ruling in *INS v. Chadha*. Provisions requiring prior notice of initiation of special access programs or of military operations shall be construed in a manner consistent with the President's constitutional authority to protect the Nation's secrets and as Commander in Chief of the armed forces.

* * * * *