



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

April 5, 2005
(Senate)

STATEMENT OF ADMINISTRATION POLICY

S. 600 - Foreign Relations Authorization Act, Fiscal Year 2006 and 2007

(Senator Lugar (R) Indiana)

The Administration supports Senate passage of S. 600. The bill authorizes appropriations for the Department of State, the Broadcasting Board of Governors (BBG), Millennium Challenge Assistance, many other foreign assistance activities, and other related programs and agencies at levels consistent with the President's fiscal year (FY) 2006 budget request. It also includes a number of important requested provisions concerning foreign relations and foreign assistance matters. The Administration commends the Committee for its efforts to produce a bill that supports and enhances the Nation's interests. Nevertheless, certain provisions raise concerns as noted below, and the Administration looks forward to working with the Congress to address these and other concerns as the legislative process moves forward.

Division A (Foreign Relations Authorizations) contains appropriations authorizations and a number of requested authorities that greatly support and enhance the Administration's ability to carry out the Nation's foreign policy. At the same time, some provisions restrict the President's flexibility to conduct foreign policy, raise managerial or constitutional concerns, or are at variance with the FY 2006 budget.

Section 401 makes permanent the 27.1-percent United Nations peacekeeping rate, which is not consistent with the Administration's request for a two year extension.

The Administration objects to Section 203, which authorizes police powers to State Department contract guards, because its objective can be accomplished through administratively delegated protective authorities. Additionally, Section 213, which establishes a new Victims of Crime Office, is duplicative of existing efforts.

The Administration objects to Section 312, which would impose a deadline for issuing regulations regarding retirement credit for government service performed abroad. As noted in the President's September 30, 2002, signing statement on Public Law 107-228, this retirement credit undermines fundamental principles underlying Federal retirement systems. The Administration had proposed legislation to remedy these inequities.

Section 303 includes the Administration's proposal to enhance Danger Pay benefits overseas. However, it also authorizes additional enhanced overseas differential pay benefits, which place additional pressure on the budget. The Administration believes that the current differential rate of 25% is sufficient to meet recruitment and retention needs. Section 309, which relates to personnel reviews, could weaken accountability for performance.

Several provisions raise constitutional (as well as foreign policy) concerns. Section 807, relating to Jerusalem, would infringe upon the President's constitutional authority to conduct the Nation's foreign affairs, supervise the unitary executive branch, and determine the terms on which recognition is given to foreign states. Sections 602(c) and 805 would infringe upon the President's constitutional authority by imposing reporting requirements concerning diplomatic negotiations. These provisions would impermissibly infringe on the President's authority to conduct foreign affairs and international negotiations and should be amended to reflect that these reports need only contain information as the President deems appropriate.

The Administration appreciates inclusion within Title VII of several provisions that provide flexible authorities to the Office of the Coordinator for Reconstruction and Stabilization, but urges that authorities be provided consistent with the Administration's request. Section 706 confers the rank of Ambassador on the newly established head of the Office of the Coordinator for Reconstruction, who is appointed by the Secretary of State with the advice and consent of the Senate. This section violates the Appointments Clause of the Constitution and should be changed to provide for appointment by the President with the advice and consent of the Senate. Section 707(c), which would require a report to include legislative recommendations to the Congress, should be amended to provide for submissions only to the extent the President judges them necessary and expedient, as provided by the Recommendations Clause of the Constitution.

Division B (Foreign Assistance Authorizations) includes a broad range of flexible and useful foreign assistance and defense export licensing authorities. In particular, Sections 2203 and 2212 provide added flexibility to respond to unanticipated contingencies. Section 2231, which raises Congressional notification thresholds for arms sales and exports, and Section 2515, which authorizes funding for the President's Global Peace Operations Initiative (GPOI), are also welcome. The Administration would request additional flexibility for GPOI to ensure that these funds can be applied more flexibly to a wider variety of countries.

Division B also includes some provisions and earmarks that restrict the President's flexibility to conduct foreign policy, raise managerial concerns or constitutional concerns, or are at variance with the FY 2006 budget. Of particular concern is Section 2516, which expands the number of focus countries included in the Emergency Plan for AIDS Relief. The Emergency Plan targets 15 countries, representing at least fifty percent of HIV infections worldwide, and this sustained focus is allowing the Emergency Plan to make great progress in turning the tide of the disease. Increasing the number of focus countries will undermine the Plan's effectiveness.

The Administration strongly supports the goals of Title XXVII (Protection of Vulnerable Populations). However, Section 2712, which requires the Secretary of State to designate a new coordinator, and Section 2721, assigning specific responsibilities to this coordinator, interfere with the Secretary's discretion to effectively manage the Department and could impede the goals of this title by restricting the Secretary's ability to implement the most effective administrative mechanisms for the Act. Other provisions of concern include program authorizations in Title XXIII (Radiological Terrorism Security) and parts of Title XXIV (Global Pathogen Surveillance) that are duplicative of existing activities and unnecessary. The fifteen new reports as well as managerial positions created in Division B create a cumulative burden on the Department of State and other affected agencies, which might work counter to the intended purposes.

Provisions of Division B raising constitutional concerns include sections 2116(d), 2238(b), 2511(b), 2513(c), 2520(b), 2806, and 2807, which would infringe upon the President's constitutional authority by imposing reporting requirements that concern diplomatic negotiations. These should be amended to reflect that these reports need only contain information as the President deems appropriate. Additionally, Section 2303(b), requiring the Secretary of State to submit reports including budget recommendations, should be amended to provide for submissions only to the extent the President judges necessary and expedient, as provided by the Recommendations Clause of the Constitution.

Budget Estimates and Enforcement

This bill would affect direct spending and receipts. To sustain the economy's expansion, it is critical to exercise responsible restraint over Federal spending. The Budget Enforcement Act's pay-as-you-go requirements and discretionary-spending caps expired on September 30, 2002. The President's FY 2006 Budget includes a proposal to extend the discretionary caps through 2010, a pay-as-you-go

requirement for direct spending, and a new mechanism to control the expansion of long-term unfunded obligations. OMB's cost estimate of this bill currently is under development.

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