



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

May 19, 2004  
(Senate)

## STATEMENT OF ADMINISTRATION POLICY

### S. 2400 - National Defense Authorization Act for Fiscal Year 2005

(Sen. Warner (R) VA)

The Administration thanks the Senate Armed Services Committee for its continued support of our national defense and supports Senate passage of S. 2400. The Committee's strong support for the President's priorities is appreciated and is critical to the continued successful prosecution of the global war on terrorism.

The Administration is pleased that the bill's overall funding levels closely match the President's request. We are very concerned, however, that the redistribution of funds among accounts will have a negative effect on military operations. The migration of funding from the Operation and Maintenance (O&M) accounts to the Procurement and Research, Development, Test, and Evaluation accounts will impact negatively the accounts that are primarily funding the global war on terrorism. These redistributions are further compounded by a \$1.7 billion across-the-board cut from lower than expected inflation and by a similar reduction in Working Capital Fund cash balances. The inflation cut cannot realistically be absorbed, because those savings do not exist. The President's budget was based on inflation projections that are still valid. Further, the Working Capital Fund balances are being used to address FY 2004 requirements and therefore will not be available in FY 2005. The practical effect of these reductions would be cuts to critical readiness accounts in the Operation and Maintenance appropriations. The Administration urges full funding of the President's request in the manner in which it was requested.

BRAC. The Administration would strongly oppose any amendments to weaken, delay, or repeal the base realignment and closure (BRAC) authority passed by the Congress three years ago. If the President is presented a bill that weakens, delays, or repeals the BRAC authority, the Secretary of Defense, joining with other senior advisors, would recommend that the President veto the bill.

The Administration appreciates inclusion of the following provisions:

Train and Equip. The Administration thanks the Committee for including section 1053, which will help U.S. forces enhance the ability of Iraqi and Afghan military and security forces to combat terrorism and support U.S. and coalition military operations. This provision is an important step toward achieving the fuller authority that the President requested, including the full \$500 million requested authorization level. We will continue to work with Congress to fully support the President's request in order to meet urgent needs in Afghanistan. We also will work to extend this authority to other friendly nearby regional nations in order to increase DOD's ability to provide training and equipment to key countries in response to time-sensitive requirements that may emerge in the global war on terror. The Administration also will work to include requested transfer authority that would enable the U.S. Air Force to upgrade the air traffic control systems through the Caucasus and Central Asia into the Operation Enduring

Freedom theater of operations.

Personnel. The Administration appreciates the Committee's support for many of its personnel-related legislative proposals, including the request for pay raises for our troops, and also appreciates the flexible authority to temporarily increase troop strength.

Commander's Emergency Response Program (CERP). The Administration appreciates the Committee's support of CERP in section 311 and urges its inclusion in the final bill. By providing resources to our field commanders, CERP is critical to Iraq's future and the safety of our troops.

Transformation. The Administration appreciates the inclusion of funding for key transformational programs such as the Army's Future Combat Systems, Unmanned Aerial Vehicles, the Joint Unmanned Combat Aerial Systems program, and the construction of the Navy's first DD(X) destroyer and Littoral Combat Ship.

Colombia. The Administration is pleased that the bill would extend through FY 2006 the expanded authorities to assist Colombia's democratic government in its fight against narco-terrorists from the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC). While the Administration notes that any numerical limit on military personnel deployments is inconsistent with the authority committed by the Constitution to the President to conduct the Nation's foreign affairs and command the armed forces, the Administration also appreciates that the Committee granted the Administration's request to increase the number of troops and contractors deployable in support of Plan Colombia at one time. These measures are critical to the continued success of U.S. policy in Colombia and to help President Uribe prosecute a unified campaign against terrorism and drug traffickers.

Environmental Cleanup. The Administration appreciates the Committee's strong support for the President's initiative to accelerate environmental remediation of Department of Energy (DOE) sites. We also strongly support section 3116, which clarifies the Secretary of Energy's authority to classify and dispose of nuclear waste resulting from reprocessing activities in the State of South Carolina. The Administration hopes this issue will be resolved soon in the States of Washington and Idaho.

Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA). The Administration appreciates the Committee's support for DOE's efforts to improve execution of EEOICPA. Consistent with the Administration's legislative proposal, section 3143 would remove impediments to processing that have contributed to a significant backlog of applications and allow DOE to further accelerate completion of applications through the physicians panel.

Threat Reduction and Nonproliferation. The Administration appreciates the SASC's strong support for DOD Threat Reduction and DOE Nonproliferation programs. The provisions to: (1) authorize appropriations for the full request of \$409 million for DOD's Cooperative Threat Reduction Program, (2) grant permanent authority for the President to waive, annually, the conditions that must be met before continuing the Russian chemical demilitarization program at Shchuch'ye, (3) authorize appropriations of \$1.3 billion for DOE nonproliferation programs, and (4) remove the \$50 million limitation on DOE nonproliferation funds that can be spent on new

projects outside of the former Soviet Union, will significantly enhance efforts that are critical to the security of our nation and the world.

The Administration will work with Congress to address concerns with the following issues as the bill moves through the legislative process:

Restrictions on Transfer of Funds. The Administration is concerned about restrictions on DOD's ability to transfer a limited amount of money to respond to unanticipated events or to address changes in program execution. For example, the bill does not fully support the Administration's request for \$4 billion in general transfer authority.

Military Housing Privatization. The Administration urges Senate support in providing relief from the cap on budget authority on Military Housing Privatization Initiative projects. The Department expects to reach the current \$850 million cap on family housing in November 2004. It is essential to raise the cap to \$1.85 billion if the Department is to meet its 2007 goal of eliminating inadequate housing and improving the quality of life of its military families.

Expanded Health and Personnel Benefits/TRICARE. The Administration supports the provision of a demonstration program to determine the interest in and impact of expanding health care benefits to non-mobilized Reservists who are unemployed or uninsured. In addition, the Administration will work with Congress to ensure the continuing availability through FY 2005 of important benefits provided before and after mobilization. In considering any new initiatives, the Administration urges Congress to oppose including any language which would have the effect of restricting the Department's flexibility and resources essential to successfully prosecute the war.

Global Peace Operations Initiative. The Administration urges inclusion of the President's proposal to authorize DOD, subject to the concurrence of the Secretary of State, to conduct (or transfer funds for the Department of State to conduct) train and equip activities for the purpose of increasing the capacity of other countries to conduct peace operations. At a time of increasing instability in many parts of the world, the global capacity to conduct peace operations, particularly peace enforcement, is not keeping pace with demand. The Administration's proposal would address this shortfall by permitting the United States to improve both the quality and quantity of other nations' peacekeepers. This initiative also would ensure that there is a reliable cadre of global peacekeepers that will lessen the peacekeeping burden on U.S. personnel.

Support of Sensitive Military Operations to Combat Terrorism. The Administration urges inclusion of this requested authority, which would enable U.S. Special Operations Forces to provide support to small numbers of foreign forces, irregular forces, groups, or individuals that could assist U.S. military operations to combat terrorism. This proposal is designed to facilitate U.S. military operations against terrorism and not for the primary purpose of developing foreign capabilities and internal security mechanisms.

Transfer of Nebraska Avenue Complex. The Administration strongly urges expedited passage of free-standing legislation to transfer ownership of the Nebraska Avenue Complex (NAC) from the Navy to the General Services Administration to allow for the consolidation of the Department of Homeland Security (DHS) headquarters operations at the NAC. We are concerned that delaying the transfer would hamper DHS' mission to ensure our Nation's security,

and we will continue to work with the Committee to resolve any outstanding concerns with pending transfer language.

Responsibilities of Chief Information Officers. Section 801 would transfer acquisition and management responsibility for Information Technology (IT) integral to a weapon system from DOD's Chief Information Officer to the Military Services' acquisition executives and a board of senior officials. This provision conflicts with private sector best practices for IT management and could undermine the gains made under the Clinger-Cohen Act by reintroducing stove-piping and problems with interoperability.

Reductions to Proposed Investment Programs. The Administration is concerned with the bill's production cut of two F/A-22 aircraft and the associated \$280 million reduction, as well as the \$200 million cut (40 percent of the President's request) of the Kinetic Energy Interceptors, a key element of the Ballistic Missile Defense System. We also have concerns with the \$145 million reduction to the VXX program, which would delay Initial Operational Capability for the critical Presidential helicopter one year from FY 2009 to FY 2010.

Prohibition on Aircraft Retirement. The Administration has concerns about section 131, which prohibits the retirement of KC-135E tanker aircraft in FY 2005, because it would limit DOD's flexibility to manage its assets to meet combatant commander requirements as fully and efficiently as possible.

Shipbuilding. The Administration has concerns with section 123, which would allow flexible funding of submarine engineered re-fueling overhauls, because it would weaken the validity of the budget process. Sufficient authority exists to reprogram as necessary to support these overhauls. The bill authorizes \$11.4 billion for procurement of nine new Navy ships, \$250 million more than requested. The Administration appreciates the support for the shipbuilding program but is concerned that \$250 million in unrequested funding for the acceleration of the LHA(R) Amphibious Assault Ship Program and the second DD(X) Class Destroyer Program will place a burden on future budget requests, which may prove to be counterproductive to the long; term shipbuilding program.

Space Launch. Section 1032, which creates a "Panel on the Future of Military Space Launch", would be duplicative of the Administration's ongoing work to develop a new National Space Transportation Policy, which is intended to be completed within the next few months. The provision should be deleted.

Consolidation of Counterintelligence Offices of DOE and the National Nuclear Security Administration (NNSA). The Administration has concerns with section 3118, because it would effectively prohibit DOE from consolidating counterintelligence functions into a single office reporting directly to the Secretary of Energy, as requested in the Administration's proposal. Authorizing the Secretary of Energy to consolidate counterintelligence responsibilities for the entire DOE complex, but only in NNSA is unworkable. Section 3118 is an impediment to coherent and effective counterintelligence activities necessary for the entire DOE complex, and we strongly urge the Senate to amend this provision consistent with the Administration's proposal.

Constitutional Concerns. Provisions contravening the President's constitutional authority to

supervise the unitary executive branch and act as the Commander-in-Chief should be deleted or modified. For instance, section 905 of the bill should be amended to eliminate the requirement, as a condition of the exercise of authority, that the Secretary of the Navy submit legislation to Congress, as the requirement contravenes the Constitution's commitment exclusively to the President of the authority to supervise the unitary executive branch and to submit for the consideration of Congress such measures as the President judges necessary and expedient. Similarly, section 1033(a) of the bill should be amended to grant the Secretary of Defense discretion to establish, rather than to require, a separate dedicated program element, because such a requirement contravenes the Constitution's commitment exclusively to the President of authority to submit for the consideration of Congress such measures as the President judges necessary and expedient in the format of his choosing, including budget proposals that are measures seeking appropriations.

Information Protection. Section 1034(c) and (d) should be amended to clarify that land remote sensing information shared by the Federal Government with tribal governments be protected in the same manner as information shared with State and local governments. Provisions establishing commissions or panels (including sections 841(f)(3), 902, and 1032(d)(1)) should be amended to ensure that the commissions or panels may secure direct access to information "to the extent permitted by law," to preserve statutory protections for various types of information specifically protected by law. In addition, the appointment of the members of the commission established by section 902, examining the roles and missions of the armed forces, should be vested in the President or the Secretary of Defense rather than being constituted on a partisan basis. Regarding section 841, the bill should be modified to establish a more appropriate means of providing administrative and financial support for the proposed Commission on the Future of the National Technology and Industrial Base.

Redundant Functions. Section 914 of the bill should be deleted because it would establish in DOD a cancer institute to perform research that has no special relationship to the armed forces and that duplicates functions better performed by the National Cancer Institute in the Department of Health and Human Services.

Interagency Contracting. The Administration has concerns with sections 803 and 815, which would significantly restrict the Department's ability to use other agencies' contracts for meeting mission needs. The Administration seeks to work with Congress on more tailored measures to augment internal controls at the Department and the agencies through which it contracts.

Inclusion of Additional Administration Proposals. We will work with Congress to secure enactment of other Administration proposals, such as the Readiness and Range Preservation Initiative and executive protection authorities for DOE's Federal protective force. We also will work to enact the authority requested in the President's budget for \$200 million to train and equip forces solely in Afghanistan as part of the Afghan Freedom Support Act.

#### Additional Potential Amendments

Competitive Sourcing. We would also strongly oppose any amendment that significantly limits DOD's flexibility on competitive sourcing, such as by mandating that the Department's employees compete for a certain percentage of work currently performed by contractors. Arbitrary quotas concerning commercial work to be performed by Federal employees would

undermine the Department's ability to redirect its manpower to military activities, likely require the redeployment of uniformed personnel from critical in-theatre operations to non-core support activities, increase operating costs, and sacrifice billions of dollars in potential cost savings. If the final version of the bill contains such a provision previously noted above, the President's senior advisors will recommend that he veto the bill.

EEOICPA. The Administration would oppose the adoption of any amendment that would substantially expand the costs and scope of the EEOICPA Federal compensation program, or delay processing of Part D applications by shifting processing responsibilities out of DOE and creating an unworkable process in the Department of Labor.

Energy Savings Performance Contracts. The Administration would object to the movement of the Energy Savings Performance Contracts (ESPCs) authority from DOE to DOD. In addition, we would oppose the expansion of ESPC authorities to non-building applications since it is inconsistent with Federal fiscal and procurement policies. The Administration supports immediate extension of current ESPC authority for all agencies.

UN Oil-for-Food. The Administration strongly supports efforts to ensure accountability for the UN Oil-for-Food program and has successfully urged the establishment of a high-level inquiry. However, the Administration would have concerns with attempts to withhold assessed contributions to the UN, which could undermine the Volcker inquiry initiated by the UN Secretary-General.

\$25 Billion Contingent Emergency Reserve Fund. We understand that an amendment may be offered that would authorize the \$25 billion contingent emergency reserve fund to support operations in Iraq and Afghanistan. We urge the Senate to support the request for this fund to ensure there is no disruption in funding and resources for our armed forces.

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