



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

July 20, 2005  
(House)

## STATEMENT OF ADMINISTRATION POLICY

### H.R. 2601 - Foreign Relations Authorization Act, Fiscal Years 2006 and 2007

(Reps. Smith (R) NJ and Payne (D) NJ)

The Administration opposes H.R. 2601, as reported by the House International Relations Committee. H.R. 2601 authorizes appropriations for the Department of State as well as the Broadcasting Board of Governors (BBG), and contains other foreign relations provisions. The Administration appreciates the Committee's efforts to produce a bill that contains provisions that are consistent with and support the Administration's request. However, the bill also includes a significant number of provisions that restrict the President's flexibility to conduct foreign affairs or that raise managerial, budgetary, constitutional, or other concerns. The Administration looks forward to working with Congress to address these and other concerns as the bill moves through the legislative process.

The Administration is committed to effective and efficient export controls and supports many of the goals of the Strategic Export Control and Security Assistance Act (Title VII). However, the Administration strongly opposes this title as drafted because several of its provisions may have adverse consequences for legitimate trade and U.S. national security interests. Section 711 limits the Secretary's discretion to manage and organize the Department by codifying positions and responsibilities. The Administration opposes Section 712, which micromanages defense export licensing and related bureaucratic structures by unnecessarily creating a new export control board and by mandating export review deadlines. The Administration also opposes Section 728, which expands reporting on unauthorized uses and retransfers of U.S. Government defense articles to all commercial defense exports. This is ill suited as a means to monitor private, unlicensed exports. While the Administration is very committed to sanctioning missile proliferation, we do not support Section 742 as it does not provide discretionary sanctions but mandates additional ones.

The Administration opposes sections 210 and 211 regarding Jerusalem. The permanent status of Jerusalem is a volatile issue with sensitivities throughout the region and needs to be resolved by the parties. The President has stated that such provisions impermissibly interfere with his constitutional authority to formulate the position of the United States, speak for the Nation in international affairs, and determine the terms on which recognition is given to foreign states. U.S. policy regarding Jerusalem has not changed.

The Administration opposes Section 921, which would shift \$240 million from Foreign Military Financing to the Economic Support Fund Account for Egypt, and would completely change the nature of our assistance program in that country. Such changes could be viewed in a way that may undermine our efforts to achieve U.S. foreign policy goals in the Middle East and could have a negative consequence for political and economic reform in Egypt.

The Administration objects to the problematic mandates in Section 923, relating to assistance under the Middle East Partnership Initiative, and Section 946, relating to assistance for Vietnam, as well as the onerous certification requirements in Sections 944, 904, and 932 (relating to assisting the Palestinian Authority). Such provisions limit the President's flexibility to conduct the Nation's foreign policy.

The Administration objects to authorizations levels and provisions at variance with the President's request, including provisions that establish benefits that create significant budgetary pressure. Section 305 establishes overseas comparability or locality pay. Adjustments to overseas compensation levels should be linked to performance and considered as part of an overall review of Foreign Service personnel modernization. The total cost for all agencies to implement this provision is estimated to exceed \$125 million, which would be difficult to absorb in a constrained fiscal environment. Other concerns include Section 303, which authorizes additional enhanced hardship pay benefits beyond the Administration's proposal, as well as the earmark in Section 216. Finally, Section 310, regarding death gratuities, raises policy concerns about these types of benefits.

The Administration does not support the Nuclear Black Market Elimination Act (Title VIII) as drafted, as it does not provide the President with any new authorities to shut down illicit proliferation networks, but could tie his hands and jeopardize law enforcement and other nonproliferation cooperation in these areas.

While the Administration appreciates the intent behind the ADVANCE Democracy Act (Title VI), it raises a number of concerns. For example, Section 612, which mandates a categorization of countries, could constrain the Secretary's authority to determine appropriate terms and conditions to enable discretionary foreign assistance to best serve our diverse foreign policy objectives. Section 611 limits the Secretary's discretion to manage and organize the Department by codifying positions, by including responsibilities that are not directly related to democracy promotion, and by requiring new bureaucratic entities.

The Administration objects to Section 307, which would impose a deadline for issuing regulations regarding retirement credit for government service performed abroad. The President has stated, "This retirement credit undermines fundamental principles underlying Federal retirement systems." The Administration proposed legislation to remedy these inequities. The Administration also objects to other provisions of the bill such as Sections 308, 317, 318, and 942, which undercut the Secretary's authority to manage and organize the Department.

The Administration is disappointed that H.R. 2601 does not include a number of requested provisions, including the Western Hemisphere Initiative, which would provide much needed authority to respond to the increase in passport demands as a result of provisions contained in the Intelligence Reform and Terrorism Prevention Act of 2004. H.R. 2601 also does not include the requested two-year extension of the currently-enacted 27.1-percent United Nations (UN) peacekeeping rate. Our efforts to promote reform at the UN would be severely handicapped if the United States does not honor its financial commitments to the UN.

H.R. 2601 contains over 40 new reporting requirements, which cumulatively create an administrative burden on the Department of State and other affected agencies, raise substantive policy, organizational and legal concerns, and may work counter to the intended purposes. For example, Section 1002 (Global Terrorism Report) does not reflect the allocation of responsibility for counterterrorism data integration and analysis to the National Counterterrorism Center, imposes a requirement for making data comparable to past years' reports that is not practicable, and seeks a revised definition of international terrorism that will over-extend the scope of the reporting.

Many provisions in the bill raise constitutional concerns. Sections 210, 211, and 212 would infringe upon the President's constitutional authority to conduct the Nation's foreign affairs and supervise the unitary Executive Branch. Sections 104(c)(2), 403(e)(1), 611(c)(1)(A) & (B), 611(c)(1)(C), 617, 757, 822, 1009, 1105, and 1106 would infringe on the President's foreign affairs powers by attempting to direct communications and negotiations with foreign entities and international organizations.

Sections 603, 641, 921(b), 922, 923(b), 941, 942(a), 1101(b), and 1107(b) would infringe on the President's foreign affairs powers by attempting to direct the Nation's foreign policy. These should be amended to reflect "the sense of Congress." Several sections would infringe upon the President's constitutional authority by imposing reporting requirements concerning diplomatic negotiations, including: 403(e)(3), 612(b), 620, 741(c)(3)(B), 824, 842(a)(2), 922(b), 1001(b)(2)(D), 1002(e)(1), 1006, 1013(a)(3), 1014(c), 1015(c)(1)(E), 1016(c)(1), 1017(c)(1), 1021(b)(6), 1024(c), and 1025. 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 contain information only as the President deems appropriate.

Sections 712(b)(1), 1021(b)(7), and 1023(b), which require the submission of legislative proposals to Congress, 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. Sections 101(1)(H), 318, and 1011(a) & (d) raise constitutional concerns regarding the requirement that the Federal Government afford equal protection of the laws under the Due Process Clause of the Fifth Amendment. Sections 616 and 742(b) could infringe on the President's authority, respectively, to control diplomatic communications and serve as the international voice of the United States and to protect national security information.

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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