



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

October 19, 2005  
(Senate)

## STATEMENT OF ADMINISTRATION POLICY

### H.R. 3058 -- Transportation, Treasury, Judiciary, HUD and Related Agencies

#### Appropriations Bill, FY 2006

(Sponsors: Cochran (R) Mississippi; Byrd (D) West Virginia)

The Administration is committed to working with Congress to ensure the overall discretionary spending limit is not breached; that the Department of Defense is adequately funded; and that non-security related spending is reduced below last year's level. The Administration is concerned that the spending limits reflected in the Senate 302(b) allocations would result in an unacceptable shift of over \$7 billion from critical defense requirements to non-security related accounts, including \$2.7 billion to accounts within the jurisdiction of the Transportation, Treasury, Judiciary and HUD Subcommittee.

The Administration appreciates that Congress has acted swiftly to address the emergency requirements to meet immediate needs arising from the consequences of Hurricanes Katrina and Rita and looks forward to working with Congress to fund our long-term recovery efforts in the Gulf Coast and other affected regions. The Administration anticipates making further requests that will provide for a comprehensive response and recovery effort after fully assessing the impact of the hurricanes.

The Committee bill exceeds the levels assumed in SAFETEA-LU by \$4.2 billion and contains a \$2.3 billion rescission of highway contract authority. If the final appropriations bill contains obligation limitations for surface transportation programs that exceed the levels assumed in the recently enacted surface transportation bill, or relies on excessively large rescissions of highway contract authority to increase non-emergency spending, the President's senior advisors would recommend that he veto the bill.

The Administration would like to take this opportunity to share additional views regarding the Senate version of the bill.

#### Department of Transportation

The Administration supports the measures included by the Committee to limit Amtrak's financial losses. However, these provisions fall well short of the fundamental reforms proposed by the Administration, which are designed to improve Amtrak's performance and accountability, and the bill does not include provisions that were enacted in FY 2004 and FY 2005 to encourage accountability and competition. Further, the Committee bill provides \$1.45 billion for Amtrak, which is 20 percent more than its FY 2005 appropriation and close to triple its FY 2001 appropriation. In the absence of reforms, this level of taxpayer funding for a private corporation would be unacceptable to the Administration, and the President's senior advisors would recommend that he veto the bill.

The Committee bill provides a one-year extension for the war risk insurance program for domestic air carriers. The Administration is opposed to a straight extension of this program, which crowds out private sector mechanisms for diversifying risk. The Administration is committed to working with Congress to ensure that air carriers more equitably share in the risks associated with this program.

The Administration is concerned that the Committee did not provide the entire \$100 million requested for the new Department of Transportation (DOT) headquarters project. The building has been leased at Congressional direction. If it is not completed due to DOT's inability to fulfill its build-out obligations, lease payments will still need to be made on a vacant building.

#### Department of the Treasury

The Administration appreciates the funding that the Committee has provided for the Treasury Department. These funds will enable the Department to carry out its essential economic and financial missions and develop and present to Congress and the American people the President's economic agenda for jobs, growth, lower taxes, and retirement and health security. The Administration appreciates that the bill provides the requested increase for Internal Revenue Service (IRS) tax enforcement. This increase is needed to address the tax gap. However, the Administration objects to section 204, which would limit the ability of the IRS to maximize the efficiency and quality of taxpayer service by shifting resources from taxpayer assistance centers to more efficient and higher service quality telephone and internet options. Further, section 204 would inappropriately involve the Inspector General for Tax Administration in policy making with respect to IRS proposals to make taxpayer service changes. This could compromise its independence.

The Administration looks forward to working with Congress to enact the proposal to collect and spend receipts from new user fees at the Alcohol and Tobacco Tax and Trade Bureau (TTB). Enactment of these fees would allow TTB to recover the costs of providing regulatory services to the alcohol industry. The services provided by TTB ultimately protect the public against misleading labels, adulterated alcohol, and dishonest persons entering the alcohol business; and promote fair competition among industry members. TTB's regulatory efforts provide value to the industry, and the industry should pay for the benefits it receives from these efforts.

The Administration objects to language included in the Senate Committee bill regarding the regulations controlling agricultural trade with Cuba that are enforced by the Office of Foreign Assets Control. The Administration is strongly opposed to any efforts to weaken these regulations, and if the final version of the bill contained such a provision, the President would veto the bill.

#### Department of Housing and Urban Development

The Administration appreciates the Committee's support for the President's Budget proposals but is concerned with the overall funding level, which adds over \$2 billion to the President's request for programs in the Department of Housing and Urban Development (HUD) in addition to continuing funding of CDBG formula grants. The Administration appreciates the

elimination of funding for Empowerment Zones, but asks Congress to adopt Administration proposals for budget savings, including HOPE VI Grants, Section 108 Loans, Brownfields, and earmarked projects. The Administration also objects to the creation of a new, unauthorized, and duplicative \$50 million program, the Affordable Housing and Economic Development Technical Assistance Board.

The Administration appreciates the Committee's support for programs to help end chronic homelessness and urges the Senate to provide full funding for HUD's component of the interagency Prisoner Re-entry Initiative. The Senate is also urged to provide funding for the American Dream Downpayment initiative at the level in the President's Budget to support first-time homeownership. The Administration is concerned that the bill does not support the Strengthening America's Communities Initiative, but will continue working with Congress on this proposal.

The Administration is pleased that the Section 8 tenant-based housing assistance program funding structure provides a set amount of funds to each public housing agency (PHA); however, the Committee is correct that without real reforms to this program, such as those proposed by the Administration, PHAs will have difficulty maximizing the issuance and renewal of vouchers, thereby missing opportunities to aid more low-income households within existing funds.

The Administration urges Congress to fund the request for Youthbuild and adopt its proposed legislation that would transfer the program to the Department of Labor, promoting coordination with the One-Stop Career Center partner programs.

#### Executive Office of the President

The Administration appreciates the Committee's support for the Office of National Drug Control Policy (ONDCP), but urges the adoption of the proposed transfer of the High Intensity Drug Trafficking Areas program to the Department of Justice, where it can more effectively coordinate with the Organized Crime Drug Enforcement Task Force. Additionally, the Administration urges funding of this program at the requested level.

The Administration appreciates that the Committee has folded funding for the Office of Policy Development (OPD) into the budget for the Executive Office of the President (EOP), and strongly urges the Senate to build on the Committee's good work by adopting the President's request to consolidate all of the White House accounts. The consolidation initiative presents the best means for the President to realign or reallocate the resources and staff available to meet changing priorities or emergent national needs in a timely manner.

The Senate is also strongly urged to include the headings "United States Trade Representative", "Office of Science and Technology Policy", and "Council on Environmental Quality" in the general provision making available the transfer not to exceed 10 percent as requested by the President.

The Administration strongly objects to language that would severely constrain the Administration's review of federal water projects conducted under Executive Order 12322, which ensures that projects provide the highest returns to the Nation and are consistent with established environmental and economic principles and guidelines. Under this Executive

Order, the Office of Management and Budget conducts a rigorous and diligent review of water resource projects to ensure that taxpayer dollars are well spent, which the bill's arbitrary time constraints could preclude.

#### United States Postal Service

The Administration opposes the \$29 million the Committee provided to the United States Postal Service (USPS) for revenue forgone for reduced rate mail. In 2003, USPS received windfall pension savings of approximately \$3 billion annually, more than compensating for the loss of this appropriation. It is essential for the USPS to cover its expenses while minimizing costs to the taxpayers.

#### Civilian Pay

The Administration urges the Senate to adopt the President's civilian pay proposal and strongly opposes any provision that would provide for a government-wide pay raise that exceeds the 2.3 percent pay raise proposed in the President's Budget. The 3.1 percent increase provided in the Committee proposal exceeds the President's request by nearly \$1 billion, and provides a percentage increase that exceeds the statutory base pay increase, and the average increase in private sector pay as measured by the Employment Cost Index. Any recruitment or retention problems facing the Government are limited to a few areas and occupations and do not warrant such an arbitrary across-the-board increase. An increase to 3.1 percent across-the-board would be very difficult for agencies to absorb, particularly when combined with any other across-the-board reductions used to meet overall spending targets, and will likely require reductions-in-force or shifts of resources away from critical programmatic priorities.

In addition, the Administration opposes the provision applying the 3.1-percent across-the-board increase to all civilian employees of the Department of Homeland Security (DHS) and Department of Defense (DOD), contrary to the new authorities conferred upon these agencies by Congress to design and implement a modern personnel and pay system that best meets their needs.

The Administration also opposes the provision relating to pay adjustments for blue collar employees, which would disregard the results of local blue collar wage surveys and provide a pay increase identical to local General Schedule employees. These provisions could result in paying blue-collar employees at rates higher than local labor markets would support and would create a host of technical and equity problems.

#### Federal Employees Health Benefits Program (FEHBP)/Abortion

The Administration urges the Senate to adopt the House provisions, which include the prohibition in current law against the use of Federal funds in the FEHBP for abortions, except in cases where the life of the mother is endangered or the pregnancy is the result of an act of rape or incest. The President's senior advisors would recommend he veto the bill if it were presented to him without language similar to the House provisions.

#### Election Assistance Commission

The Administration urges the Senate to provide the requested level of funding for the Election Assistance Commission (EAC). This level would fully fund EAC's Help America Vote Act -- mandated fiscal management responsibilities for the nearly \$3 billion in grants distributed to the States, and the implementation of a rigorous testing and certification program to improve the reliability, security, and integrity of the Nation's voting equipment.

#### President's Management Agenda

The Administration is very concerned about support for the President's Management Agenda (PMA), which seeks to ensure that the resources entrusted to the Federal government are well-managed and wisely used.

The Senate is commended for its support for E-Government, a government-wide initiative of the PMA, which gives citizens a convenient way to interact with their government and brings cost savings and efficiencies to agencies. The bill, however, provides only \$8 million for FAA Information Security, which is \$4 million below the required funding level for this important program. Though the Administration understands that the Committee is concerned about transfers of funds from FAA to other agencies in support of E-Government, such transfers are necessary to provide the best results for the American people.

The Administration strongly objects to section 843, which would effectively require that all but the smallest public-private competitions be decided on the basis of lowest cost. By marginalizing the consideration of quality, this provision would weaken competitive sourcing as a management tool to achieve the best overall value for the taxpayer. In addition, the procedural details of section 843 undermine efforts to eliminate redundant technology investments made by individual agencies to support the performance of common commercial functions, such as accounting services. Competitive sourcing studies conducted in FY 2003 and 2004 are expected to generate \$2.5 billion in savings over the next five years. Federal employees have won 90 percent of all competitions conducted under the current rules in spite of various concerns that competitive sourcing would result in a loss of government jobs. The Administration will continue to work closely with the Senate on finding the best way to implement the PMA, however, if the final version of the bill were to significantly erode the PMA, the President's senior advisors would recommend he veto the bill.

The Administration also opposes any efforts to reverse competitions that have already been completed. The Federal Aviation Administration (FAA) has transitioned the provision of flight services to a contractor that will save more than \$2.2 billion, encourage private sector investment and increase performance of the operation for customers and stakeholders. The Administration welcomes the opportunity to work with Congress on authority to reinforce a successful transition and provide relief to employees facing the most significant displacement burden. Canceling the contract would result in costs up to \$325 million in FY 2006 and would strongly discourage industry from participating in future competitions. If the final version of the bill contains a provision to prohibit implementation of the FAA competition of flight service station operations, the President's senior advisors would recommend he veto the bill.

#### Potential Amendments – FAA Bargaining Authority, Cuba, Private Collection Agencies

The Administration understands that an amendment may be offered that would alter

FAA's current authority regarding bargaining impasses. To ensure accountability to the flying public and taxpayers, FAA maintains the authority to bargain over compensation and benefits and, if necessary, determine how impasses are resolved. If such an amendment were adopted, it would undermine this accountability by giving a third party responsibilities that appropriately belong to the President and the Congress. The Administration urges the Committee to oppose such an amendment. If the final version of the bill contained such a provision, the President's senior advisers would recommend that he veto the bill.

The Administration understands that an amendment may be offered that would weaken current sanctions against Cuba. The Administration believes that it is essential to maintain sanctions and travel restrictions to deny economic resources to the brutal Castro regime. The licensing process helps to ensure that humanitarian and cultural travel facilitates genuine exchanges between U.S. travelers and ordinary Cuban citizens and that any sales to Cuba are done within the bounds of the law. Lifting the sanctions now, or limiting our ability to enforce them, would provide assistance to a repressive regime at the expense of the Cuban people. If the final version of the bill contained such a provision, the President would veto the bill.

The Administration understands that an amendment may be offered that would prohibit the Department of the Treasury from contracting with Private Collection Agencies (PCAs). The Administration would oppose such an amendment. The American Jobs Creation Act of 2004 permits PCAs to assist the IRS in the collection of delinquent tax debts. Similar measures instituted by various States have met with much success, allowing for more efficient collections while also safeguarding the privacy rights of individual taxpayers.

### Constitutional Concerns

Provisions in section 820 of the bill relating to communications with Congress and protection of national security information interfere with the authority of the President to supervise the unitary Executive Branch and as Commander in Chief and therefore should be deleted. Similarly, section 835 of the bill, which purports to prohibit limitations on assignment of Coast Guard personnel to duties with Congress, should be stricken as inconsistent with the President's constitutional authority to supervise the unitary Executive Branch and as Commander in Chief. To ensure consistency with the constitutional authority of the President to supervise the unitary Executive Branch, language under the heading "Department of Housing and Urban Development, Office of Inspector General" that purports to grant independent authority should be amended to specify that the authority granted or prohibition imposed is subject to the authority of the President.

Certain provisions of the bill authorize the provision of benefits to Native Hawaiians. There is a substantial, unresolved question whether Congress has authority to deal with Native Hawaiians as it does with Indian tribes. To the extent the definition of "Native Hawaiians" constitutes a racial, rather than political, classification, such programs would be subject to strict scrutiny in Federal courts.

Provisions in the bill, such as language under the heading "Department of Housing and Urban Development, Management and Administration, Salaries and Expenses," that purport to condition execution of a law upon compliance with documents, such as congressional committee

reports, that do not have the force of law because they do not comply with the bicameralism and presentment requirements of the Constitution, should be amended to eliminate references to such documents. Also, because the execution of a law cannot constitutionally be conditioned upon concurrence by an employee of the Judicial Branch, the reference to agreement by the Director of the Administrative Office of the United States Courts under the heading "Courts of Appeals, District Courts, and Other Judicial Services, Court Security" should be deleted.

The Administration objects to a number of provisions in the bill that purport to require congressional committee approval before Executive Branch execution. These provisions should be deleted or changed to require only notification of Congress, since any other interpretation would contradict the Supreme Court's ruling in *INS v. Chadha*. Such provisions include sections 200, 211, 212, 217, 218, 603, 609, 710, 711, 720, 813, 822, and 839, and language in the bill under the headings "Department of Transportation, Office of the Secretary, Salaries and Expenses," "Department of Transportation, Office of the Secretary, Working Capital Fund," "Federal Transit Administration, Administrative Expenses," "Department of the Treasury, Departmental Offices, Salaries and Expenses," and "General Services Administration, Real Property Activities, Federal Buildings Fund."

Because the Constitution vests exclusively in the President the authority to submit for the consideration of Congress such measures, including requests for enactment of appropriations laws, as the President shall judge necessary and expedient, section 604 should be amended to delete provisions that purport to regulate the content of a budget request for FY 2007.

The provision of the bill creating the Affordable Housing and Economic Development Assistance Technical Assistance Board raises serious constitutional concerns under the Appointments Clause. Because this board would exercise significant authority under the law, this provision should be amended so that members of the board are appointed by the Secretary of HUD.

Provisions under the heading "Office of Management and Budget, Salaries and Expenses," that relate to agricultural marketing and transcripts should be deleted, as is consistent with the President's constitutional authority to supervise the unitary Executive Branch.

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