



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

June 12, 2007
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 2638 – Department of Homeland Security Appropriations Act, 2008

(Sponsor: Rep. Obey (D), Wisconsin)

The Administration strongly opposes H.R. 2638 because, in combination with the other FY 2008 appropriations bills, it includes an irresponsible and excessive level of spending and includes other objectionable provisions.

The President has proposed a balanced budget without raising taxes. To achieve a balanced budget, the Administration supports a responsible discretionary spending total of not more than \$933 billion, which is a \$60 billion increase over the FY 2007 enacted level. The Democratic Budget Resolution and subsequent spending allocations adopted by the House Appropriations Committee exceed the President's discretionary spending topline by \$22 billion causing a 9 percent increase in FY 2008 discretionary spending and a 9 percent increase in the projected deficit for FY 2008. In addition, the Administration opposes the House Appropriations Committee's plan to shift \$3.5 billion from the Defense appropriations bill to non-defense spending, which is inconsistent with the Democrats' Budget Resolution. This bill and the Democrats' budget would lead to spending and tax increases that put economic growth and a balanced budget at risk.

H.R. 2638 exceeds the President's requests for programs funded in this bill by \$2.1 billion, part of the \$22 billion increase above the President's request for FY 2008 appropriations. The Administration has asked that Congress demonstrate a path to live within the President's topline and cover the excess spending in this bill through reductions elsewhere. Because Congress has failed to demonstrate such a path, if H.R. 2638 were presented to the President, he would veto the bill.

Section 536 inappropriately expands Davis-Bacon Act applicability to all federally-assisted projects funded under the bill. Such an expansion could, at a minimum, increase disaster recovery costs and delay disaster recovery projects. Furthermore, it is contrary to the Administration's longstanding policy opposing any statutory attempt to expand or contract the applicability of Davis-Bacon Act prevailing wage requirements. If the President is presented a bill that includes such an expansion of Davis-Bacon Act applicability, his senior advisors would recommend he veto the bill.

The President has called on Congress to reform the earmarking process that has led to wasteful and unnecessary spending. Specifically, he called on Congress to provide greater transparency and full disclosure of earmarks, to put them in the language of the bill itself, and to cut the cost and number by at least half. Earlier this year, the House adopted rules designed to bring greater transparency to the earmarking process, including disclosure of sponsors, costs, recipients, and

justifications. Unfortunately, these rules are being circumvented by a plan to add earmarks to bills at the last stage of the appropriations process when the Conference Committee finalizes the bills. This plan shields earmarks from public scrutiny, undermines the transparency reforms the House adopted earlier this year, and inhibits the ability of American taxpayers to hold their elected representatives accountable.

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

Several authorizing provisions and funding restrictions in this bill would, in combination, cause a significant adverse impact on the operations of the Department of Homeland Security (DHS) and impair the Department's ability to secure the homeland. These provisions, discussed in more detail below, include the funding of Secure Flight, the funding restriction on Principal Federal Officials, and the authorizing provisions regarding Chemical Security, Aviation Security Infrastructure Fees, and the requirement to contact all U.S. correctional facilities every month.

The Administration appreciates the Committee's strong support for strengthening border security by fully funding the requested 3,000 new Border Patrol agents and providing \$1 billion for the Secure Border Initiative. The Administration also appreciates the Committee's endorsement of the goal of deploying US-VISIT to all ports of entry in 2008, increasing funding for detention bed-space and interior enforcement efforts, and expanding deployment of radiation portal monitors to all the Nation's ports of entry.

Chemical Facility Security

The Administration strongly opposes section 532, which would significantly delay and weaken the Department's ability to implement its chemical facility security regime. The provision would prevent the Department from preempting State or local laws that actually conflict with and/or impede the Federal regulatory requirements for chemical facility security. The proposed provision also would weaken the Department's ability to protect from disclosure information transmitted to the Department for regulatory purposes -- information that could provide terrorists with insight into how to attack chemical facilities and foil existing defenses.

Federal Emergency Management Agency (FEMA)

The Administration strongly opposes the dramatic increase above the President's request for State and local homeland security grant programs, including the addition of two new grant programs (REAL ID grants and Interoperable Communications grants). The bill provides more than \$4.2 billion for these programs, nearly double the requested level. This amount of funding is unwarranted and unjustified. By the end of FY 2007, DHS will have provided over \$23 billion in direct preparedness support to state and local agencies, and these agencies have yet to spend approximately \$8.5 billion of these grant funds. Rather than appropriating an additional \$2 billion above the request, Congress should work together with the Administration to ensure that existing dollars are being appropriately spent and to develop a better understanding of what reductions in risk and increases in State and local capabilities can be achieved with these unspent funds. The Federal government must continue to stand together with State and local first responders in preparing for terrorist attacks and other major disasters. The Administration believes that the FY 2008 request accomplishes this and, when combined with other available

resources, provides strong support for State and local preparedness projects.

The Administration strongly objects to the prohibition on funding Principal Federal Officials (PFOs) during disasters or emergencies. The PFO plays a valuable role as the representative of the Secretary of Homeland Security in the field by coordinating overall Federal incident management. The Administration understands the need to provide clarity regarding the chain of command for incident management and is in the process of revising the National Response Plan in an appropriate manner.

Immigration and Custom Enforcement (ICE)

The Administration strongly opposes the bill's language regarding detention of illegal immigrant families. This language, which mandates that families be housed in a "non-penal home-like environment," is likely to increase illegal immigration, significantly increase the cost of detention operations, reduce the quality of medical care and education currently provided in ICE facilities, and significantly undermine security associated with detaining adult illegal aliens. Due to the lack of such facilities available to DHS, this measure would essentially mandate the re-introduction of the practice of "catch and release."

Language requiring ICE to obtain, on a monthly basis, information from every prison, jail, and correctional facility in the U.S. to identify incarcerated aliens would create an overly burdensome requirement, as there are more than 5,000 detention facilities in the U.S.

Customs and Border Protection (CBP)

The Administration strongly objects to the provision to establish a new CBP Officer position -- the CBP Officer/Law Enforcement Officer -- which would afford law enforcement retirement benefits to all CBP Officers who enter into service on or after July 1, 2008, as well as to incumbent CBP Officers who meet the age requirements to serve in law enforcement positions. The definition of "law enforcement officer" under the Federal Employees' Retirement System and the Civil Service Retirement System differs from the commonly understood concept of the phrase. CBP officers, while performing an important and necessary function, do not fit this definition and therefore should not be accorded the same treatment as employees whose primary duties are the investigation of criminal offenses. The provision also has significant cost implications, would encourage earlier retirements of the Officer force, and would set a precedent for other agencies across the Federal Government.

The Administration opposes statutory restrictions on the obligation of funds in support of strengthening border security associated with the Secure Border Initiative (SBI). The additive requirements imposed in the bill would serve as an impediment to gaining control of the border. DHS and the SBI program have already established extensive outreach and coordination with State and local officials and residents along the border.

Transportation Security Administration (TSA)

The Administration is very concerned by the Committee's decision to reduce significantly funding for the TSA Secure Flight program, which addresses critical vulnerabilities in the Nation's aviation security system. The program has already been delayed for many years, and

lack of sufficient funding in FY 2008 would further delay it beyond the current target deployment of 2010. TSA has provided all requested information on the program, including a life-cycle cost estimate.

The Administration is strongly opposed to the Committee's decision to require an arbitrary doubling of the percentage of air cargo carried on passenger aircraft subjected to physical inspection, which is not achievable with the resources provided and will adversely affect the flow of commerce. The Administration is working closely with Congress on proposals in H.R. 1 and S. 4 that would achieve the goals of this provision through a comprehensive air cargo security program.

The Administration strongly opposes section 539 of the bill, which would amend TSA's organic authority in the Aviation and Transportation Security Act (ATSA) and subject TSA's determinations setting the Aviation Security Infrastructure Fee (ASIF) to judicial review. This would unnecessarily prolong the amount of time necessary to collect security fees from air carriers, including underpayments based upon recommendations by the Comptroller General. The provision would also hinder the ability of TSA to realign ASIF based on current market share, as provided for in ATSA.

Coast Guard (USCG)

The Administration strongly objects to section 535, which would suspend the Coast Guard's efforts on the High Performing Organization for Civil Engineering, limiting USCG's ability to organize and administer its engineering programs and undermining the Commandant's general authority under 14 U.S.C. 632. Additionally, it would significantly affect the Commandant's efforts underway to realign the Coast Guard's mission support organization, of which civil engineering activities and elements comprise only one part.

Secret Service

The Administration objects to the elimination of \$3.1 million for presidentially-designated Secret Service protection for Executive Office of the President personnel. The bill leaves these costs unfunded for FY 2008. In addition, beyond FY 2008, the uncertainty of who will be protected and how much the Secret Service protection will cost would create an unnecessary burden for the Executive Office of the President. The Secret Service is better equipped to manage these costs.

The Administration strongly objects to the limitation on overtime compensation for Secret Service employees. Given the uncertain and variable nature of the Service's protective mission and the need for personnel with varied specialized skills, this language would impair the Service's ability to meet its mission. In addition, it would not reduce costs and would require new administrative systems to monitor overtime per employee.

Management

The Administration appreciates the funding provided for the design and buildout of the St. Elizabeths campus. This will be the first critical step toward a consolidated headquarters for the Department.

The Administration is opposed to any effort to reduce, eliminate, limit, or delay funding for DHS human resources initiatives. Section 531 would preclude the obligation of funding for human resources projects related to MAXHR until any pending litigation concerning the system is resolved. This provision could prevent the Administration from developing and implementing legally valid and successful aspects of the system due to concerns over potential litigation. In addition, it could dampen the Department's efforts to create new human resources programs that address concerns related to the Federal Human Capital Survey and the Department's ongoing efforts to improve employee morale. Further, the Committee provided only \$3 million of the \$15 million requested for a human capital system. Funding to support basic human resource services such as recruiting, hiring, training, diversity, succession planning, and internship programs would be severely impacted by this budget reduction. These funding reductions, limitations, and delays would have a negative impact on the development of sound human resources management practices designed to meet the diverse personnel requirements faced by the Department.

The Administration strongly objects to section 538, which would suspend for FY 2008 the authority of the Secretary of Homeland Security to reorganize the Department to rapidly meet changing mission needs.

The Administration is also concerned by the Committee's decision to prevent any obligation of funds to provide for the oversight or management of the Integrated Wireless Network program by any employee of the Office of the Chief Information Officer.

National Communications System

The Administration is concerned with the level of funding provided for Next Generation Network priority telecommunications services. The requested level of funding is necessary to provide priority communications services on packet-switched networks. Without this funding, programs such as the Wireless Priority Service and Government Emergency Telecommunications Service will lose coverage as communications carriers migrate from circuit-switched networks to packet-switched networks.

Federal Protective Service (FPS)

The bill prohibits FPS from using its resources to decrease its workforce until FPS submits a report to State and local law enforcement agencies on the FPS workload in that jurisdiction, signs a memorandum of agreement with that jurisdiction, and notifies Congress of these agreements. The Department is currently restructuring FPS to enhance the execution of its Federal building security mission and is developing a plan to ensure that the impact on State and local law enforcement agencies is considered in FPS workforce and security planning. The Administration is concerned that the requirement that the agreements be completed before any workforce changes can be made will unnecessarily delay the transformation of FPS.

Biological Incident Detection (BioWatch)

The Administration strongly opposes the proposed \$13.8 million cut to the BioWatch generation 3 program. The cut would delay the deployment of the new biodetection system by

approximately one year. The proposed cut would prevent acquisition of key testing and phase-in units, unnecessarily delaying protection for millions of Americans not covered under the current BioWatch system and critical improvements to the system as a whole.

Procurement

The Administration strongly supports the use of competition in awarding contracts to ensure taxpayers receive the best value but opposes language that would prohibit the Department from using all available tools under the procurement laws for awarding contracts. Although section 537(a) would permit exceptions during national emergencies, laws governing federal acquisition have long recognized other circumstances where non-competitive contract awards are necessary and prescribed processes to ensure such awards are appropriately justified. The restrictions on contracting in section 537 should be stricken so that the Department may use these well-established limited exceptions when necessary and justified.

Competitive Sourcing

The Administration strongly opposes sections 514 and 527, which impose a legislative restriction on the use of competitive sourcing for work performed by the Immigration Information Officers at the U.S. Citizenship and Immigration Services and the Federal Law Enforcement Training Center instructor staff at the Federal Law Enforcement Training Center. Depriving the Department of the operational efficiencies gained by competition limits its ability to direct Federal resources to other priorities. Management decisions about public-private competition and accountability for results should be vested with the Department. The Administration urges the House to delete this restriction.

Constitutional Concerns

Language under the heading “Border security Fencing, Infrastructure, and Technology” purports to require that the Secretary consult with members outside the Executive Branch prior to obligating funds. In addition, language under the heading “United States Immigration and Customs Enforcement, Salaries and Expenses” and in sections 508, 513, and 523 is unduly burdensome on the functions of the Executive Branch. Because these provisions would infringe on separation of powers, they should be modified to be permissive or deleted from the bill.

Several provisions of the bill purport to require approval of the Committees prior to Executive Branch action. These include Sections 504 and 509 and under the heading “Acquisition, Construction, and Improvements,” United States Coast Guard. Since these provisions would contradict the Supreme Court’s ruling in *INS v. Chadha*, they should be changed to require only notification of Congress.

Section 513 of the bill, which purports to prohibit the Executive Branch from screening certain passengers, should be stricken as inconsistent with the President’s constitutional authority as Commander in Chief to take steps necessary to protect the nation from foreign attack.

Section 518 purports to prohibit the use of funds with respect to the transmission of information to Congress. This section could impede communications within the Executive Branch, and could undercut the President's constitutional duty to "take care that the Laws be faithfully executed." The Administration urges the House to delete the provision.

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