

September 24, 2001
(Senate)

S. 1438 - National Defense Authorization Act for FY 2002
(Sen. Levin (D) MI)

The Administration commends the Senate for its action in developing comprehensive and balanced national security legislation that is largely consistent with the Administration's national defense priorities. S.1438 supports the Administration's effort to address shortfalls in readiness, enhance the quality of life for our military troops and their families, and begin the transformation of the Nation's defense capabilities to meet twenty-first century threats. In particular, the Administration is pleased that S. 1438, as modified by the manager's amendment, would contain authorizations consistent with the President's request for missile defense. The bill also provides for an additional round of base closure and realignment, which is vital to implement for reasons of national security, such as ensuring efficient military use of limited resources.

The Administration strongly supports the bill's authorization of an additional round of Base Closure and Realignment in 2003. Enactment of this provision will ensure that the Department of Defense can reshape and restructure its installations to serve the country's national security in the 21st century. Additionally, it has the potential to generate substantial and recurring savings that could be applied to resource shortfalls in sustainment, modernization, and facility recapitalization. The Administration also applauds the increase provided by S.1438 for the quality of life of our members of the Armed Forces by providing a pay raise of at least 6% for enlisted members, at least 5% for officers, and up to 10% for members in certain pay grades. The Administration applauds the Committee's efforts to eliminate the out-of-pocket housing costs for members by 2003.

S. 1438, however, includes several other provision, which are of concern to the Administration.

Vieques

The Administration is concerned that S. 1438 does not include language that would eliminate the requirement in section 1503 of the FY 2001 Defense Authorization Act, for the President to provide for a binding referendum to be conducted among the Vieques electorate on whether it approves or disapproves of the continuation of training by Armed Forces at the Navy's training sites on the island. Conducting a local referendum on issues critical to the Department of Defense sets a bad precedent and strikes at the heart of military readiness. The Administration urges the Senate to adopt its proposed Vieques legislation to avoid such a precedent and potential domino effect on our other military training ranges.

B-1 Bomber Retirement

S. 1438 would prohibit the retirement of any B-1 bombers until Congress receives various reports and studies from DoD. The Administration is concerned that this reporting requirement would unnecessarily delay the B-1 consolidation plan and inhibit the Secretary's ability to manage the Department's activities in an efficient manner. Delaying the consolidation means that more support funding would be required to maintain B-1s that are no longer required. In addition, these delays may slow the savings shift for critical upgrades to the remaining B-1

bomber fleet.

Under Secretary of the Air Force for Acquisition of Space Launch Vehicles and Services

The Administration objects to Section 902 that would assign responsibility for the acquisition of space launch vehicles and space launch services for the Department of Defense and the National Reconnaissance Office (NRO) to the Under Secretary of the Air Force. Assignment of this responsibility should remain the prerogative of the Secretary of Defense.

VA Disability Compensation

S. 1438 would authorize military retirees to receive VA disability compensation without a reduction in retirement pay. While the provision would be contingent on passage of subsequent legislation, the Administration opposes the repeal of the current prohibition on the concurrent receipt of military retired pay and VA disability compensation. However, the Administration is currently conducting a study of the issue of concurrent receipt of military retired pay and VA disability benefits as requested in section 314 of the budget resolution (H. Con. Res. 83). Section 314 states that the Secretary of Defense should submit the report not later than November 6, 2001, along with any legislation considered appropriate.

Transfer of Montgomery GI Bill Entitlement

Section 539 of S.1438 would allow certain military personnel to transfer part of their GI Bill entitlement to family members. The GI Bill is intended to help military personnel readjust to civilian life and has been very successful. The Administration opposes allowing this important program to be compromised by potentially reducing the benefit available to the service member.

Civilian Separation Authorities

Section 1113 of S. 1438 allows the continued DoD use of civilian Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Pay (VSIP) for workforce restructuring in FY 2003. The Administration appreciates the inclusion of this provision but requests that it be changed to allow use of these authorities in FY 2002 also. These restructuring authorities are critical to supporting DoD's workforce plan and future missions, and it is important that plans initiated in FY 2001 be continued in FY 2002.

Contract Authority for Multiple Year Lease of Prepositioned Ships

S. 1438 does not include the Administration's request for contract authority to allow the Working Capital Funds (Military Sealift Command (MSC)) to enter into multiple year leases for prepositioned ships. Without contract authority, DoD will be required to negotiate the contracts on an annual basis, which would require prepositioned ships to return each year to the United States for cargo off load, reducing readiness and increasing costs.

Management Efficiencies

The Administration opposes Section 1002 reducing the Defense Department's authorization by \$1.63 billion to reflect management efficiencies. While the Department plans on undertaking a number of efforts to become more efficient, a funding cut in FY 2002 based on estimates of

savings could end up coming from military requirements, not management efficiencies.

Consolidation of Contract Requirements

The Administration opposes section 822, which would create a new set of statutory provisions applicable only to the Defense Department that would duplicate and expand upon existing contract bundling laws. Section 822 would diminish DoD's ability to consolidate any requirement, irrespective of whether the requirement is suitable for award to small business. The Department uses consolidated contracts to provide a more efficient and effective way of doing business that has resulted in significant savings that would be negatively impacted by this legislation. Rather than imposing restrictions on contract consolidations, the focus should remain on contract bundling -- i.e., where there may be potential harm to small business. Also, to avoid unnecessary confusion and burden, this section should either amend existing contract bundling laws or replace them.

Federal Acquisition

The Administration supports strengthening its acquisition practices to improve the results achieved by its contractors through better management, consistent use of competition, and contracts that have been shaped to produce cost-effective quality performance. However, the Administration opposes the statutory imposition of burdensome reporting requirements, as called for by section 801, that could unnecessarily divert resources away from the activities that can ensure the best return of taxpayer dollars. Moreover, the Administration supports improved use of competition on multiple award contracts but is concerned that section 803, as currently drafted, will significantly reduce efficiency offered to the Department by the multiple award schedules program operated by the General Services Administration. The Administration seeks to work with Congress to ensure the forces of competition, accountability, and efficiency are better balanced in the placement of orders under multiple award contracts and that current requirements designed to encourage the employment of the blind and severely disabled remain in effect.

Federal Prison Industries

The Administration is greatly concerned that Section 821 could affect the safe and effective administration of Federal prisons. The Administration believes that Federal agencies should have the flexibility through competition to purchase quality goods and services at fair and reasonable prices with the expectation of timely performance. The Administration seeks to work with the Congress to develop legislation that would establish a comprehensive program that provides the Attorney General with the authority to maintain adequate work opportunities at Federal prisons when the performance of contract work could significantly impact the safe and effective administration of the facility, that addresses purchases by civilian agencies as well as the Department of Defense, and that implements an appropriate phase-out of the mandatory source.

Privatization of Military Housing

The Administration is disappointed that the Senate bill does not include language that would make DoD's authority to privatize military housing permanent. Improving the quality of military housing is a top priority of the Administration. Privatization enables DoD to provide service

members and their families with adequate and affordable housing more quickly than through traditional methods. The Administration urges the Senate to include permanent privatization authority in the final bill.

Alternative Leasing Authority for Military Housing

Section 2804 restricts DoD's flexibility in the military housing privatization program by placing restrictions on leases of DoD property within that program, particularly by requiring those leases to be at not less than fair market value, and mandating the return of all proceeds from the leases to the Treasury, as opposed to the Family Housing Improvement Fund. Current law allows the Department of Defense flexibility in determining the terms of leasing and conveyance of properties so that the value of those properties can be used to produce better housing for our military members and their families. The Department benefits from the existing arrangement because it can apply proceeds from leasing and property conveyance to military family housing privatization activities. The Administration opposes any provision that restricts efforts to provide adequate military housing for our service members.

Pentagon Reservation

The Administration requests that Congress strike Section 2842, which limits the use of funds for the Pentagon Reservation. The Administration needs substantial flexibility with regard to Pentagon Reservation funds, in the wake of the terrorist attack on the Pentagon of September 11, 2001.

Armed Forces Retirement Home

The Administration objects to section 1041-1051 dealing with the Armed Forces Retirement Home. These sections would create a mismatch of civilian-military authorities that would further endanger the financial solvency of these veterans' homes, exempt a particular group of employees from various parts of title 5, United State Code, and establish a competing system for the acquisition and disposition of Federal agencies' lands. The Administration urges deletion of these unnecessary and undesirable provisions.

Department of Energy Operations Office Complex

The Administration recognizes that section 3134 is intended to facilitate financing for improvements in energy efficiency at the Department of Energy's New Mexico operations office complex. The Administration is concerned, however, that this provision is inconsistent with Federal fiscal and procurement policies and would absorb significant discretionary funds. We hope to work with Congress to make this provision consistent with sound fiscal and procurement practices.

The Administration looks forward to working with Congress through the legislative process to improve these and other provisions of concern to the Administration, including constitutional concerns, that may be identified.

Pay-As-You-Go (PAYGO) Scoring

Any law that would effect direct spending is subject to the pay-as-you-go requirements of the

Balanced Budget and Emergency Deficit Control Act. Accordingly, S. 1438 or any substitute amendment in lieu thereof, that would also effect direct spending, will be subject to the pay-as-you-go requirement. OMB's PAYGO scoring of S. 1438 is still under development. The Administration will work with Congress to ensure that any unintended sequester of spending does not occur under current law or the enactment of any other proposals that meet the President's objectives to reduce the debt, fund priority initiatives, and grant tax relief to all income tax paying Americans.

[Ed. Note: Copied from <http://www.whitehouse.gov/omb/legislative/sap/107-1/S1438-s.html> and converted to PDF without change on August 14, 2006.]