



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
1600 DEFENSE PENTAGON  
WASHINGTON, D. C. 20301-1600

APR 10 2003

The Honorable J. Dennis Hastert  
Speaker of the House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

The Department of Defense requests that the Congress enact the enclosed Bill, "The Defense Transformation for the 21<sup>st</sup> Century Act."

Each section of the Bill is accompanied by an explanatory section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of this Bill for your consideration and the consideration of the Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "W. J. Haynes II".

William J. Haynes II

Enclosure:  
As Stated





GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
1600 DEFENSE PENTAGON  
WASHINGTON, D. C. 20301-1600

APR 10 2003

The Honorable Richard B. Cheney  
President of the Senate  
Washington, D.C. 20510

Dear Mr. President:

The Department of Defense requests that the Congress enact the enclosed Bill,  
"The Defense Transformation for the 21<sup>st</sup> Century Act."

Each section of the Bill is accompanied by an explanatory section-by-section  
analysis.

The Office of Management and Budget advises that there is no objection, from the  
standpoint of the Administration's program, to the presentation of this Bill for your  
consideration and the consideration of the Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "W. J. Haynes II".

William J. Haynes II

Enclosure:  
As Stated



# AN ACT

To promote the national security by providing a National Security Personnel System for the Department of Defense; a streamlined acquisition system both efficient and effective in order to provide servicemembers on the battlefield with the most modern and lethal equipment; realistic appropriations and authorization laws responsive to an ever-changing national security environment; and the coordination of the activities of the Department of Defense with other departments and agencies of the Government concerned with national security.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## **SEC. 1. SHORT TITLE.**

This Act may be cited as the "Defense Transformation for the 21<sup>st</sup> Century Act of 2003".

## **SEC. 2. TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

### **TITLE I—PERSONNEL TRANSFORMATION**

#### **Subtitle A—Transformation of Civilian Personnel**

- Sec. 101. National security personnel system.
- Sec. 102. Defense Acquisition Workforce Improvement Act streamlining.
- Sec. 103. Priority placement of displaced civilian employees.
- Sec. 104. Establishment of auxiliaries within the military departments to coordinate volunteers.

#### **Subtitle B—Transformation of Management of Senior Military Leadership**

- Sec. 111. Equivalency of pay for service chiefs of staff and combatant commanders.
- Sec. 112. Length of service for the senior leaders of the military departments.
- Sec. 113. Length of service for the Chairman and Vice Chairman of the Joint Chiefs of Staff.
- Sec. 114. Length of service for the assistants to the Chairman of the Joint Chiefs of Staff for National Guard and Reserve matters.
- Sec. 115. Eliminate mandatory terms of service for certain general and flag staff officers.
- Sec. 116. Lateral reassignment of certain generals and admirals.
- Sec. 117. Eliminate distribution quotas for general and flag officers serving in the grades of O-7 and O-8.
- Sec. 118. Extending age limits for active duty general and flag officers.
- Sec. 119. Extending age limits for Reserve and National Guard general and flag officers.
- Sec. 120. Eliminate mandatory retirement of active duty general and flag officers after 30 years of service.
- Sec. 121. More flexible retirement rules for military officers.
- Sec. 122. More flexible computation of retired pay for officers and senior enlisted members.
- Sec. 123. Eliminate retired pay limit applicable to general and flag officers.

#### **Subtitle C—Transformation of Military Personnel**

- Sec. 131. Measuring personnel strengths.

- Sec. 132. Access to secondary schools by military recruiters.
- Sec. 133. Waiver of military education eligibility and post-education placement requirements.
- Sec. 134. Length of joint duty assignments.
- Sec. 135. Ordering reserve component members to active duty to respond to disasters, accidents, or catastrophes.
- Sec. 136. Improved involuntary access to reserve component members for enhanced training.
- Sec. 137. Medical and dental screening for members of selected reserve units alerted for mobilization.

## **TITLE II—ACQUISITION TRANSFORMATION**

### **Subtitle A—Transformation of Acquisition Process**

- Sec. 201. Repeal requirements for major defense acquisition programs.
- Sec. 202. Applicability of Clinger-Cohen Act to equipment integral to a weapon or weapon system and Department of Defense information technology management.
- Sec. 203. Inflation adjustment of acquisition-related dollar thresholds.
- Sec. 204. Security interest exception to domestic source or content requirements.
- Sec. 205. Clarification of Buy American requirements.
- Sec. 206. Amendment of cataloging and standardization provisions.

### **Subtitle B—Transformation of Contracting Process**

- Sec. 211. Contracting for security guards and firefighting services.
- Sec. 212. Contracts with small businesses.
- Sec. 213. Performance based logistics: special procurement and funding authority.
- Sec. 214. Depot-related legislative reform.

## **TITLE III—INSTALLATION MANAGEMENT TRANSFORMATION**

- Sec. 301. Readiness and range preservation initiative.

## **TITLE IV—ADMINISTRATIVE TRANSFORMATION**

### **Subtitle A—Transformation of DoD Organization**

- Sec. 401. Reorganization within the Department of Defense.
- Sec. 402. Reassignment of personnel serving in the Office of the Secretary of Defense.
- Sec. 403. Appointments of retired members of the armed forces to positions in the Department of Defense.
- Sec. 404. Transfer of Department of Defense personnel security investigative functions and defense personnel performing those functions.
- Sec. 405. Conversions of commercial activities.

### **Subtitle B—Transformation of Appropriations and Budget Process**

- Sec. 411. Enhanced general transfer authority.
- Sec. 412. Transfer of funds to correct specific acquisition funding problems.
- Sec. 413. Ballistic missile defense system.
- Sec. 414. Funding for the Missile Defense Agency.

### **Subtitle C—Transformation of Information Gathering for Congress**

- Sec. 421. Sunset on recurring reports.
- Sec. 422. Repeal of various reports required of the Department of Defense.

### **Subtitle D—Transformation of Management of Naval Vessels**

- Sec. 431. Repeal of notice and wait period prior to reducing the inventory of combatant surface vessels.
- Sec. 432. Overhaul and repair of ships on extended deployments.

### **Subtitle E—Miscellaneous Provisions**

- Sec. 441. Support of foreign nations committed to combating global terrorism.

## **TITLE I—PERSONNEL TRANSFORMATION**

### **Subtitle A—Transformation of Civilian Personnel**

- Sec. 101. National security personnel system.
- Sec. 102. Defense Acquisition Workforce Improvement Act streamlining.
- Sec. 103. Priority placement of displaced civilian employees.
- Sec. 104. Establishment of auxiliaries within the military departments to coordinate volunteers.

### **Subtitle B—Transformation of Management of Senior Military Leadership**

- Sec. 111. Equivalency of pay for service chiefs of staff and combatant commanders.
- Sec. 112. Length of service for the senior leaders of the military departments.
- Sec. 113. Length of service for the Chairman and Vice Chairman of the Joint Chiefs of Staff.
- Sec. 114. Length of service for the assistants to the Chairman of the Joint Chiefs of Staff for National Guard and Reserve matters.
- Sec. 115. Eliminate mandatory terms of service for certain general and flag staff officers.
- Sec. 116. Lateral reassignment of certain generals and admirals.
- Sec. 117. Eliminate distribution quotas for general and flag officers serving in the grades of O-7 and O-8.
- Sec. 118. Extending age limits for active duty general and flag officers.
- Sec. 119. Extending age limits for Reserve and National Guard general and flag officers.
- Sec. 120. Eliminate mandatory retirement of active duty general and flag officers after 30 years of service.
- Sec. 121. More flexible retirement rules for military officers.
- Sec. 122. More flexible computation of retired pay for officers and senior enlisted members.
- Sec. 123. Eliminate retired pay limit applicable to general and flag officers.

### **Subtitle B—Transformation of Military Personnel**

- Sec. 131. Measuring personnel strengths.
- Sec. 132. Access to secondary schools by military recruiters.
- Sec. 133. Waiver of military education eligibility and post-education placement requirements.
- Sec. 134. Length of joint duty assignments.
- Sec. 135. Ordering reserve component members to active duty to respond to disasters, accidents, or catastrophes.
- Sec. 136. Improved involuntary access to reserve component members for enhanced training.
- Sec. 137. Medical and dental screening for members of selected reserve units alerted for mobilization.

### **Subtitle A—Transformation of Civilian Personnel**

## **SEC. 101. DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL**

**SYSTEM.**

1 (a) IN GENERAL.—(1) Subpart I of part III of title 5, United States Code, is amended by  
2 adding at the end the following new chapter:

**"CHAPTER 99—DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL**

**SYSTEM**

Sec.

"9901. Definitions.

"9902. Establishment of human resources management system.

"9903. Contracting for personal services.

"9904. Attracting highly qualified experts.

"9905. Employment of older Americans.

"9906. Special pay and benefits for certain employees outside the United States.

3 **"§ 9901. Definitions**

4 "For purposes of this chapter—

5 "(1) the term 'Director' means the Director of the Office of Personnel

6 Management; and

7 "(2) the term 'Secretary' means the Secretary of Defense.

8 **"§ 9902. Establishment of human resources management system**

9 "(a) IN GENERAL.—(1) Notwithstanding any other provision of this title, the Secretary  
10 may, in regulations prescribed jointly with the Director, establish, and from time to time adjust, a  
11 human resources management system for some or all of the organizational or functional units of  
12 the Department of Defense. If the Secretary certifies that issuance or adjustment of a regulation,  
13 or the inclusion, exclusion, or modification of a particular provision therein, is essential to the  
14 national security, the Secretary may, subject to the direction of the President, waive the  
15 requirement in the preceding sentence that the regulation or adjustment be issued jointly with the  
16 Director.

1           "(2) Any regulations established pursuant to this chapter shall be established as internal  
2 rules of departmental procedure, consistent with section 553 of this title.

3           "(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

4                   "(1) be flexible;

5                   "(2) be contemporary;

6                   "(3) not waive, modify, or otherwise affect—

7                           "(A) the public employment principles of merit and fitness set forth in  
8 section 2301, including the principles of hiring based on merit, fair treatment  
9 without regard to political affiliation or other non-merit considerations, equal pay  
10 for equal work, and protection of employees against reprisal for whistleblowing;

11                           "(B) any provision of section 2302, relating to prohibited personnel  
12 practices;

13                           “(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9);

14                   or

15                           "(ii) any provision of law implementing any provision of law referred to in  
16 section 2302(b)(1), (8), and (9) by—

17                                   "(I) providing for equal employment opportunity through  
18 affirmative action; or

19                                   "(II) providing any right or remedy available to any employee or  
20 applicant for employment in the public service;

21                           "(D) any other provision of this part (as described in subsection (c)); or

22                           "(E) any rule or regulation prescribed under any provision of law referred  
23 to in this paragraph;

1           "(4) ensure that employees may organize, bargain collectively as provided for in  
2 this chapter, and participate through labor organizations of their own choosing in  
3 decisions which affect them, subject to the provisions of this chapter and any exclusion  
4 from coverage or limitation on negotiability established pursuant to law; and

5           "(5) not be limited by any specific law or authority under this title that is waivable  
6 under this chapter or by any provision of this chapter or any rule or regulation prescribed  
7 under this title that is waivable under this chapter, except as specifically provided for in  
8 this section.

9           "(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part referred to in  
10 subsection (b)(3)(D) are (to the extent not otherwise specified in this title)—

11           "(1) subparts A, E, G, and H of this part;

12           "(2) chapters 34, 45, 47, 57, 72, 73, and 79; and

13           "(3) sections 3131, 3132(a), 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315,  
14 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), and 3504.

15           "(d) LIMITATIONS RELATING TO PAY.—(1) Nothing in this section shall constitute  
16 authority to modify the pay of any employee who serves in an Executive Schedule position  
17 under subchapter II of chapter 53 of this title.

18           "(2) Except as provided for in paragraph (1), the total amount in a calendar year of  
19 allowances, differentials, bonuses, awards, or other similar cash payments paid under this title to  
20 any employee who is paid under section 5376 or 5383 of this title or under title 10 or under other  
21 comparable pay authority established for payment of Department of Defense senior executive or  
22 equivalent employees may not exceed the total annual compensation payable to the Vice  
23 President under section 104 of title 3.



1 "(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

2 "(1) IN GENERAL.—In order to ensure that the authority of this section is exercised  
3 in collaboration with, and in a manner that ensures the participation of, employee  
4 representatives in the planning, development, and implementation of any human  
5 resources management system or adjustments to such system under this section, the  
6 Secretary and the Director shall provide for the following:

7 "(A) NOTICE OF PROPOSAL.—The Secretary and the Director shall, with  
8 respect to any proposed system or adjustment—

9 "(i) provide to the employee representatives representing any  
10 employees who might be affected a written description of the proposed  
11 system or adjustment (including the reasons why it is considered  
12 necessary);

13 "(ii) give such representatives at least 30 calendar days (unless  
14 extraordinary circumstances require earlier action) to review and make  
15 recommendations with respect to the proposal; and

16 "(iii) give any recommendations received from such  
17 representatives under clause (ii) full and fair consideration in deciding  
18 whether or how to proceed with the proposal.

19 "(B) PRE-IMPLEMENTATION CONGRESSIONAL NOTIFICATION,  
20 CONSULTATION, AND MEDIATION.—Following receipt of recommendations, if any,  
21 from such employee representatives with respect to a proposal described in  
22 subparagraph (A), the Secretary and the Director shall accept such modifications  
23 to the proposal in response to the recommendations as they determine advisable

1 and shall, with respect to any parts of the proposal as to which they have not  
2 accepted the recommendations—

3 "(i) notify Congress of those parts of the proposal, together with  
4 the recommendations of the employee representatives;

5 "(ii) meet and confer for not less than 30 calendar days with the  
6 employee representatives, in order to attempt to reach agreement on  
7 whether or how to proceed with those parts of the proposal; and

8 "(iii) at the Secretary's option, or if requested by a majority of the  
9 employee representatives participating, use the services of the Federal  
10 Mediation and Conciliation Service during such meet and confer period to  
11 facilitate the process of attempting to reach agreement.

12 "(C) IMPLEMENTATION.—

13 "(i) Any part of the proposal as to which the representatives do not  
14 make a recommendation, or as to which the recommendations are  
15 accepted by the Secretary and the Director, may be implemented  
16 immediately.

17 "(ii) With respect to any parts of the proposal as to which  
18 recommendations have been made but not accepted by the Secretary and  
19 the Director, at any time after 30 calendar days have elapsed since the  
20 initiation of the congressional notification, consultation, and mediation  
21 procedures set forth in subparagraph (B), if the Secretary determines, in  
22 the Secretary's sole and unreviewable discretion, that further consultation  
23 and mediation is unlikely to produce agreement, the Secretary may

1                   implement any or all of such parts, including any modifications made in  
2                   response to the recommendations as the Secretary determines advisable.

3                   "(iii) The Secretary shall notify Congress promptly of the  
4                   implementation of any part of the proposal and shall furnish with such  
5                   notice an explanation of the proposal, any changes made to the proposal as  
6                   a result of recommendations from the employee representatives, and of the  
7                   reasons why implementation is appropriate under this subparagraph.

8                   "(D) CONTINUING COLLABORATION.—If a proposal described in  
9                   subparagraph (A) is implemented, the Secretary and the Director shall—

10                   "(i) develop a method for the employee representatives to  
11                   participate in any further planning or development which might become  
12                   necessary; and

13                   "(ii) give the employee representatives adequate access to  
14                   information to make that participation productive.

15                   "(2) NATIONAL LEVEL COLLABORATION.—The Secretary may, at the Secretary's  
16                   discretion, engage in any and all collaboration activities described in this subsection at an  
17                   organizational level above the level of exclusive recognition.

18                   "(3) PROVISIONS FOR EMPLOYEES NOT IN A UNIT.—In the case of any employees  
19                   who are not within a unit with respect to which a labor organization is accorded exclusive  
20                   recognition, the Secretary and the Director may develop procedures for representation by  
21                   any appropriate organization which represents a substantial percentage of those  
22                   employees or, if none, in such other manner as may be appropriate, consistent with the  
23                   purposes of this subsection.

1           "(4) PROCEDURES.—Any procedures necessary to carry out this subsection shall  
2           be established as internal rules of department procedure which shall not be subject to  
3           review.

4           "(f) PROVISIONS REGARDING NATIONAL LEVEL BARGAINING.—(1) Any human resources  
5           management system implemented or modified under this chapter may include employees of the  
6           Department of Defense from any bargaining unit with respect to which a labor organization has  
7           been accorded exclusive recognition under chapter 71 of this title.

8           "(2) For any bargaining unit so included under paragraph (1), the Secretary at his sole  
9           and exclusive discretion may bargain at an organizational level above the level of exclusive  
10          recognition. Any such bargaining shall—

11           "(A) be binding on all subordinate bargaining units at the level of recognition and  
12          their exclusive representatives, and the Department of Defense and its subcomponents,  
13          without regard to levels of recognition;

14           "(B) supersede all other collective bargaining agreements, including collective  
15          bargaining agreements negotiated with an exclusive representative at the level of  
16          recognition, except as otherwise determined by the Secretary;

17           "(C) not be subject to further negotiations for any purpose, including bargaining  
18          at the level of recognition, except as provided for by the Secretary; and

19           "(D) except as otherwise specified in this chapter, not be subject to review or to  
20          statutory third-party dispute resolution procedures outside the Department of Defense.

21          "(3) The National Guard Bureau and the Army and Air Force National Guard are  
22          excluded from coverage under this subsection.

23          "(4) Any bargaining completed pursuant to this subsection with a labor organization not

1 otherwise having national consultation rights with the Department of Defense or its  
2 subcomponents shall not create any obligation on the Department of Defense or its  
3 subcomponents to confer national consultation rights on such a labor organization.

4 "(g) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

5 "(1) It is the sense of Congress that—

6 "(A) employees of the Department of Defense are entitled to fair treatment  
7 in any appeals that they bring in decisions relating to their employment; and

8 "(B) in prescribing regulations for any such appeals procedures, the  
9 Secretary—

10 "(i) should ensure that employees of the Department of Defense  
11 are afforded the protections of due process; and

12 "(ii) toward that end, should be required to consult with the Merit  
13 Systems Protection Board before issuing any such regulations.

14 "(2) Any regulations under this section that relate to any matters within the  
15 purview of chapter 77 of this title shall—

16 "(A) be issued only after consultation with the Merit Systems Protection  
17 Board;

18 "(B) ensure the availability of procedures that—

19 "(i) are consistent with requirements of due process; and

20 "(ii) provide, to the maximum extent practicable, for the  
21 expeditious handling of any matters involving the Department of Defense;

22 and

23 "(C) modify procedures under chapter 77 only insofar as such

1 modifications are designed to further the fair, efficient, and expeditious resolution  
2 of matters involving the employees of the Department of Defense.

3 "(h) PROVISIONS RELATED TO SEPARATION AND RETIREMENT INCENTIVES.—(1) The  
4 Secretary may establish a program within the Department of Defense under which employees  
5 may be eligible for early retirement, offered separation incentive pay to separate from service  
6 voluntarily, or both. This authority may be used to reduce the number of personnel employed by  
7 the Department of Defense or to restructure the workforce to meet mission objectives without  
8 reducing the overall number of personnel. This authority is in addition to, and notwithstanding,  
9 any other authorities established by law or regulation for such programs.

10 "(2) For purposes of this section, the term 'employee' means an employee of the  
11 Department of Defense, serving under an appointment without time limitation, except that such  
12 term does not include—

13 "(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of  
14 this title, or another retirement system for employees of the Federal Government;

15 "(B) an employee having a disability on the basis of which such employee is or  
16 would be eligible for disability retirement under any of the retirement systems referred to  
17 in paragraph (1); or

18 "(C) for purposes of eligibility for separation incentives under this section, an  
19 employee who is in receipt of a decision notice of involuntary separation for misconduct  
20 or unacceptable performance.

21 "(3) EARLY RETIREMENT.—An employee who is at least 50 years of age and has  
22 completed 20 years of service, or has at least 25 years of service, may, pursuant to regulations  
23 promulgated under this section, apply and be retired from the Department of Defense and receive

1 benefits in accordance with chapter 83 or 84 if the employee has been employed continuously  
2 within the Department of Defense for more than 30 days before the date on which the  
3 determination to conduct a reduction or restructuring within one or more Department of Defense  
4 Component is approved pursuant to the program established under subsection (a).

5 "(4) SEPARATION PAY.—(A) Separation pay shall be paid in a lump sum or in  
6 installments and shall be equal to the lesser of—

7 "(i) an amount equal to the amount the employee would be entitled to receive  
8 under section 5595(c) of this title, if the employee were entitled to payment under such  
9 section; or

10 "(ii) \$25,000.

11 "(B) Separation pay shall not be a basis for payment, and shall not be included in the  
12 computation, of any other type of Government benefit. Separation pay shall not be taken into  
13 account for the purpose of determining the amount of any severance pay to which an individual  
14 may be entitled under section 5595 of this title, based on any other separation.

15 "(C) Separation pay, if paid in installments, shall cease to be paid upon the recipient's  
16 acceptance of employment by the Federal Government, or commencement of work under a  
17 personal services contract as described in paragraph (6).

18 "(5) REEMPLOYMENT.—(A) An employee who receives separation pay under such  
19 program may not be reemployed by the Department of Defense for a 12-month period beginning  
20 on the effective date of the employee's separation, unless this prohibition is waived by the  
21 Secretary on a case-by-case basis.

22 "(B) An employee who receives separation pay under this section on the basis of  
23 a separation occurring on or after the date of the enactment of the Federal Workforce

1 Restructuring Act of 1994 (Public Law 103-236; 108 Stat. 111) and accepts employment  
2 with the Government of the United States, or who commences work through a personal  
3 services contract with the United States within 5 years after the date of the separation on  
4 which payment of the separation pay is based, shall be required to repay the entire  
5 amount of the separation pay to the Department of Defense. If the employment is with  
6 an Executive agency (as defined by section 105 of this title) other than the Department of  
7 Defense, the Director may, at the request of the head of that agency, waive the repayment  
8 if the individual involved possesses unique abilities and is the only qualified applicant  
9 available for the position. If the employment is within the Department of Defense, the  
10 Secretary may waive the repayment if the individual involved is the only qualified  
11 applicant available for the position. If the employment is with an entity in the legislative  
12 branch, the head of the entity or the appointing official may waive the repayment if the  
13 individual involved possesses unique abilities and is the only qualified applicant  
14 available for the position. If the employment is with the judicial branch, the Director of  
15 the Administrative Office of the United States Courts may waive the repayment if the  
16 individual involved possesses unique abilities and is the only qualified applicant  
17 available for the position.

18 "(6) Under this program, early retirement and separation pay may be offered only  
19 pursuant to regulations established by the Secretary, subject to such limitations or conditions as  
20 the Secretary may require.

21 "(i) PROVISIONS RELATING TO REEMPLOYMENT.—If an annuitant receiving an annuity  
22 from the Civil Service Retirement and Disability Fund becomes employed in a position within  
23 the Department of Defense, his annuity shall continue. An annuitant so reemployed shall not be



1 considered an employee for purposes of chapters 83 or 84.

2 **"§ 9903. Contracting for personal services**

3 "(a) OUTSIDE THE UNITED STATES.—Funds available to the Department of Defense shall  
4 be available to contract with individuals for services to be performed outside the United States as  
5 determined by the Secretary to be necessary and appropriate for supporting the Department's  
6 programs and activities abroad. Such individuals employed by contract to perform such services  
7 shall not, by virtue of such employment, be considered to be employees of the United States  
8 Government for purposes of any law administered by the Office of Personnel Management or  
9 under any human resources management system established pursuant to this chapter. Such  
10 contracts are authorized to be negotiated, the terms of the contracts to be prescribed, and the  
11 work to be performed where necessary, without regard to such statutory provisions as relate to  
12 the negotiation, making and performance of contracts and performance of work in the United  
13 States.

14 "(b) NATIONAL SECURITY MISSIONS.—Notwithstanding any other provision of law, sums  
15 made available to the Department of Defense by appropriation or otherwise may be expended as  
16 determined by the Secretary to be necessary to carry out the national security mission of the  
17 Department of Defense, for personal services contracts, including personal services without  
18 regard to limitations on types of persons to be employed.

19 "(c) EXPERTS AND CONSULTANTS.—(1) Subject to paragraphs (2) and (3) and  
20 notwithstanding the provisions of section 129b of title 10, the Secretary may—

21 "(A) procure by contract the services of experts or consultants (or of  
22 organizations of experts or consultants), who may provide such services with or without  
23 compensation, as determined by the Secretary, and may perform such duties as the

1 Secretary may prescribe without being deemed to be employees of the Department of  
2 Defense except, at the discretion of the Secretary, for the purposes of—

3 "(i) the Ethics in Government Act of 1978;

4 "(ii) chapter 73 of this title; and

5 "(iii) section 27 of the Office of Federal Procurement Policy Act; and

6 "(B) pay in connection with such services travel expenses of individuals,  
7 including transportation and per diem in lieu of subsistence while such individuals are  
8 traveling from their homes or places of business to official duty stations and return, as  
9 may be authorized by law.

10 "(2) In order to procure the services of experts or consultants (or an organization of  
11 experts or consultants), the Secretary must determine that—

12 "(A) the procurement of such services is advantageous to the United States; and

13 "(B) such services cannot be provided adequately by the Department of Defense.

14 "(d) IMPLEMENTATION.—Implementation of this section shall be at the Secretary's sole,  
15 exclusive, and unreviewable discretion.

16 **"§ 9904. Attracting highly qualified experts**

17 "(a) IN GENERAL.—The Secretary may carry out a program using the authority provided  
18 in subsection (b) in order to attract highly qualified experts in needed occupations, as determined  
19 by the Secretary.

20 "(b) AUTHORITY.—Under the program, the Secretary may—

21 "(1) appoint personnel from outside the civil service and uniformed services (as  
22 such terms are defined in section 2101 of this title) to positions in the Department of  
23 Defense without regard to any provision of this title governing the appointment of

1 employees to positions in the Department of Defense;

2 "(2) prescribe the rates of basic pay for positions to which employees are  
3 appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay  
4 authorized for senior-level positions under section 5376 of this title, as increased by  
5 locality-based comparability payments under section 5304 of this title, notwithstanding  
6 any provision of this title governing the rates of pay or classification of employees in the  
7 executive branch; and

8 "(3) pay any employee appointed under paragraph (1) payments in addition to  
9 basic pay within the limit applicable to the employee under subsection (d)(1).

10 "(c) LIMITATION ON TERM OF APPOINTMENT.—(1) Except as provided in paragraph (2),  
11 the service of an employee under an appointment made pursuant to this section may not exceed 5  
12 years.

13 "(2) The Secretary may, in the case of a particular employee, extend the period to which  
14 service is limited under paragraph (1) by up to one additional year if the Secretary determines  
15 that such action is necessary to promote the Department of Defense's national security missions.

16 "(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—(1) The total amount of the additional  
17 payments paid to an employee under this section for any 12-month period may not exceed the  
18 least of the following amounts:

19 "(A) \$50,000 in fiscal year 2004, which may be adjusted annually thereafter by  
20 the Secretary, with a percentage increase equal to one-half of one percentage point less  
21 than the percentage by which the Employment Cost Index, published quarterly by the  
22 Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar  
23 year exceeds the Employment Cost Index for the base quarter of the second year before

1 the preceding calendar year.

2 "(B) The amount equal to 50 percent of the employee's annual rate of basic pay.

3 "(2) An employee appointed under this section is not eligible for any bonus, monetary  
4 award, or other monetary incentive for service except for payments authorized under this section.

5 "(e) SAVINGS PROVISIONS.—In the event that the Secretary terminates this program, in  
6 the case of an employee who, on the day before the termination of the program, is serving in a  
7 position pursuant to an appointment under this section—

8 "(1) the termination of the program does not terminate the employee's  
9 employment in that position before the expiration of the lesser of—

10 "(A) the period for which the employee was appointed; or

11 "(B) the period to which the employee's service is limited under  
12 subsection (c), including any extension made under this section before the  
13 termination of the program; and

14 "(2) the rate of basic pay prescribed for the position under this section may not be  
15 reduced as long as the employee continues to serve in the position without a break in  
16 service.

17 **"§ 9905. Employment of older Americans**

18 "(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary, at his  
19 sole, exclusive, and unreviewable discretion, may appoint older Americans into positions in the  
20 excepted service for a period not to exceed two years, provided that—

21 "(1) any such appointment shall not result in—

22 "(A) the displacement of individuals currently employed by the  
23 Department of Defense (including partial displacement through reduction of non-

1 overtime hours, wages, or employment benefits); or

2 "(B) the employment of any individual when any other person is in a  
3 reduction-in-force status from the same or substantially equivalent job within the  
4 Department of Defense; and

5 "(2) the individual to be appointed is otherwise qualified for the position, as  
6 determined by the Secretary.

7 "(b) EFFECT ON EXISTING RETIREMENT BENEFITS.—Notwithstanding any other provision  
8 of law, an individual appointed pursuant to subsection (a) who otherwise is receiving an annuity,  
9 pension, social security payment, retired pay, or other similar payment shall not have the amount  
10 of said annuity, pension, social security, or other similar payment reduced as a result of such  
11 employment.

12 "(c) EXTENSION OF APPOINTMENT.—Notwithstanding subsection (a), the Secretary may  
13 extend an appointment made pursuant to this section for up to an additional two years if the  
14 individual employee possesses unique knowledge or abilities that are not otherwise available to  
15 the Department of Defense.

16 "(d) DEFINITION.—For purposes of this section, the term 'older American' means any  
17 citizen of the United States who is at least 55 years of age.

18 **"§ 9906. Special pay and benefits for certain employees outside the United States**

19 "The Secretary may provide to certain civilian employees of the Department of Defense  
20 assigned to activities outside the United States and designated by the Secretary for the purposes  
21 of this subsection—

22 "(1) allowances and benefits—

23 "(A) comparable to those provided by the Secretary of State to members of the

1 Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 (Public Law  
2 96-465, 22 U.S.C. 4081 et seq.) or any other provision of law; or

3 "(B) comparable to those provided by the Director of Central Intelligence to  
4 personnel of the Central Intelligence Agency; and

5 "(2) special retirement accrual benefits and disability in the same manner provided for by  
6 the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 et seq.) and in section 18 of the  
7 Central Intelligence Agency Act of 1949 (50 U.S.C. 403r)."

8 (2) The table of chapters for part III of such title is amended by adding at the end of  
9 subpart I the following new item:

10 "99. Department of Defense National Security Personnel System.....9901".

11 (b) IMPACT ON DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL.—(1) Any exercise of  
12 authority under chapter 99 of such title (as added by subsection (a)), including under any system  
13 established under such chapter, shall be in conformance with the requirements of this subsection.

14 (2) No other provision of this Act or of any amendment made by this Act may be  
15 construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of  
16 this section, except to the extent that it does so by specific reference to this section.

17 (c) CONFORMING AMENDMENTS.—

18 (1) Section 6 of the Civil Service Miscellaneous Amendments Act of 1983  
19 (Public Law 98-224; 98 Stat. 49), as amended, is repealed.

20 (2) Section 342 of the National Defense Authorization Act for Fiscal Year 1995  
21 (Public Law 103-337; 108 Stat. 2721), as amended, is repealed.

22 (3) Section 1101 of the Strom Thurmond National Defense Authorization Act for  
23 Fiscal Year 1999 (Public Law 105-261; 112 Stat. 2139), as amended, is repealed.

1 (4) Section 4308 of the National Defense Authorization Act for Fiscal Year 1996  
2 (Public Law 104-106; 110 Stat. 669), as amended, is repealed.

### **Section-by-Section Analysis**

A National Security Personnel System for Department of Defense (DoD) civilian employees is an essential component of the Department's responsibility to defend the national security of the United States in the 21<sup>st</sup> century. DoD requires a system of human resources (HR) management that provides new and increased flexibility in the way it recruits, develops, assesses, compensates, assigns, and separates employees.

The National Security Personnel System would modify a fragmented personnel system that is governed by multiple titles of the United States Code, includes nine personnel demonstration projects covering over 30,000 employees, 50 different pay plans, and several alternative personnel systems.

The new system would be based upon the Department's Civilian Human Resources Strategic Plan and incorporate certain best practices from inside and outside the Department of Defense. It would feature streamlined recruitment and candidate ranking, universal pay banding for five career groups, supervisory pay, and simplified appointments, assignments, and reduction in force. It would accomplish these results while preserving the principles of merit, veterans' preference, equal opportunity, diversity, systematic development, ethical behavior, political neutrality, due process, and protection against non-merit based actions.

Congress consistently has advanced the cause of flexibility and competitiveness in DoD civilian HR management. Congressional action paved the way twenty years ago for the groundbreaking work in pay banding at the Navy's China Lake facility, enacted the first federal program of separation buyouts that avoids the human and economic toll of reduction in force, authorized critical personnel demonstration projects in the defense acquisition workforce and in defense laboratories and centers, provided flexibility in paying for degrees, and created scholarships to attract, advance, and keep those with information assurance skills. The Department now needs to fold these innovative pieces into a more joint, flexible, and expanded plan of strategic civilian human resources management that could become part of the Department's integrated force of active duty military personnel, civilian employees, and DoD contractors.

Specifically, proposed section 9902 would authorize the Secretary of Defense to establish a civilian human resources management system to enable the Department to fulfill its national security mission. This system would be merit-based. It also would protect veterans' preference and provide for collective bargaining at the national level (in lieu of local bargaining). In developing this system, the Director of the Office of Personnel Management would serve as a strategic and collaborative partner. Consistent with the Secretary's broad authority to manage military personnel, the Secretary also would exercise broad authority to manage DoD civilian

personnel, subject to the direction of the President, provided he certifies that such authority would be essential to the national security. The Secretary also would retain his existing authority to issue civilian personnel regulations internal to the Department that would not be subject to the notice and comment requirements of section 553 of title 5.

In addition, section 9902 would:

(1) provide for a collaborative process, based on the model established in the Homeland Security Act, for ensuring inclusion of employee representatives in the planning, development, and implementation of the human resources management system, while allowing the Secretary to conduct such collaboration at the national level;

(2) provide guidelines for the development of appellate procedures following the model established in the Homeland Security Act;

(3) establish a program under which employees would be eligible for early retirement, offered separation pay to separate from the service voluntarily, or both for purposes of reducing or restructuring the workforce;

(4) require the system developed under this chapter to comply with provisions in current law relating to political activity, oath of office, access to criminal history records for national security and other purposes, the Ethics in Government Act, and the Inspector General Act;

(5) allow annuitants who become employed in the Department to retain their annuities;

(6) cap Senior Executive Service pay, allowances, differentials, bonuses, awards and other payments at no more than the Vice President's total annual compensation; and

(7) authorize the Secretary of Defense to waive those provisions of title 5, including chapters 71, 75, and 77, not specifically listed in the section as unwaivable.

Proposed section 9903 would permit DoD to contract for personnel services in several critical areas, including critical staffing support in overseas posts when the State Department is unable to provide such support, such as direct support to Combatant Commanders, Joint Task Forces, the United States Southern Command's Joint Task Force Bravo, the Navy's Counter-Drug Forward Operating Location in El Salvador, and the United States European Command's Military Liaison Teams working to normalize relations with former Soviet Union countries in Eastern Europe, as well as to provide greater flexibility to the Secretary of Defense in obtaining the services of experts and consultants.

Proposed section 9904 would authorize DoD to hire highly qualified experts for up to five years, with the possibility of a one-year extension, and to prescribe the appropriate pay rates. It is consistent with the authority now available to the Defense Advanced Research Projects Agency and the Military Departments for hiring scientists and engineers.



Proposed section 9905 would authorize the Secretary of Defense to hire American citizens 55 years of age and older to work for the Department of Defense for up to two years, without a reduction in any retirement benefits, to fill needs that are not otherwise met by civilian employees.

Proposed section 9906 would authorize DoD to align the allowances and benefits of certain employees outside the United States with those of the Foreign Service and the Central Intelligence Agency.

Finally, the section would realign various civilian personnel demonstration projects with the National Security Personnel System by repealing their existing authorities, including the projects covering the Naval Weapons Center, China Lake, California and the Naval Ocean Systems Center, San Diego, California, defense science and engineering laboratories and centers, and the acquisition workforce demonstration project, as well as special hiring and pay authorities currently provided to the Defense Advanced Research Projects Agency and the Military Departments for scientists and engineers. To prevent any negative impact on the personnel covered by these projects during the transition to the DoD-wide human resources management system authorized by the section, the Secretary of Defense would authorize each of these projects to continue in place under the authority of chapter 99 until the new system was established and implemented.

## **SEC. 102. DEFENSE ACQUISITION WORKFORCE IMPROVEMENT ACT**

### **STREAMLINING.**

1 (a) IN GENERAL.—Part II of subtitle A of title 10, United States Code, is amended by  
2 inserting after chapter 87 the following new chapter:

#### **"CHAPTER 87A: DEFENSE ACQUISITION WORKFORCE STREAMLINING**

"Sec

"1701. Defense defense acquisition, technology, and logistics workforce.

"1702. Acquisition, technology, and logistic positions.

"1703. Assignment to critical acquisition, technology, and logistic positions.

"1704. Acquisition corps.

"1705. Defense Acquisition University.

3 **"§ 1701. Defense acquisition, technology, and logistics workforce**

4 (a) IN GENERAL.—The Secretary of Defense shall establish policies and procedures for  
5 the effective management (including accession, education, training, and career development) of  
6 persons serving in acquisition, technology, and logistics positions in the Department of Defense.

1           "(b) IMPLEMENTATION.— Implementation of this chapter shall be consistent with chapter  
2 99 of title 5.

3           "(c) SPECIAL PROGRAMS.—Pursuant to subsection (a), the Secretary may establish—

4                   "(1) a program to develop the knowledge, skills, and abilities of individuals to  
5 meet the qualification requirements established in section 1702 of this title to serve in  
6 acquisition, technology, and logistics positions;

7                   "(2) a contingency contracting force, consisting of members of the armed forces  
8 and civilian employees whose mission is to deploy in support of contingency operations  
9 and other operations of the Department of Defense and establish the qualifications for  
10 personnel assigned to such positions, and;

11                   "(3) such programs of rotation, internship, cooperative education, scholarship,  
12 tuition reimbursement, and centralized job referral as the Secretary deems appropriate.

13           "(c) DEFINITIONS.—(1) The term 'Acquisition Corps' means that group of military  
14 personnel and civilian employees of the Department of Defense selected pursuant to criteria  
15 established under section 1704 of this title.

16                   "(2) The term 'acquisition, technology, and logistics position' means a position designated  
17 pursuant to section 1702 of this title.

18                   "(3) The term 'acquisition, technology, and logistics workforce' means those military  
19 personnel and civilian employees of the Department of Defense occupying positions designated  
20 by the Secretary of Defense as acquisition, technology, and logistics positions pursuant to  
21 section 1702 of this title.

22                   "(4) The term 'critical acquisition, technology, and logistics position' means a position  
23 designated pursuant to section 1702 of this title.

1 **"§ 1702. Acquisition, technology, and logistics positions**

2 "At his sole, exclusive, and unreviewable discretion, the Secretary of Defense may—

3 "(1) establish and designate positions within the Department of Defense as acquisition,  
4 technology, and logistics positions subject to this chapter;

5 "(2) establish minimum qualification requirements and standards for each acquisition,  
6 technology, and logistics position or group of positions (to include the minimum level of  
7 training, education, and experience necessary to meet the minimum qualifications for each  
8 position or group of positions), based on the level of complexity of duties carried out in the  
9 position education requirements;

10 "(3) establish for civilian employees and military personnel in acquisition, technology,  
11 and logistics positions one or more career paths that are identified in terms of the education,  
12 training, experience, and assignments necessary for career progression to the most senior  
13 acquisition, technology, and logistics positions in the Department of Defense; and

14 "(4) within those positions designated as acquisition, technology, and logistics positions,  
15 designate as critical acquisition, technology, and logistics positions those positions that, because  
16 of the knowledge, skills, and abilities required to perform successfully the duties required are  
17 considered critical to the success of the Department of Defense acquisition mission.

18 **"§ 1703. Assignments to critical acquisition, technology, and logistics positions**

19 "The Secretary of Defense at his sole, exclusive, and unreviewable discretion may—

20 "(1) establish minimum lengths of time for assignments of military and civilian personnel  
21 to serve in critical acquisition, technology, and logistics positions;

22 "(2) limit reassignments within the period specified in paragraph (1); and

23 "(3) require that one or more senior acquisition officials within the Department of

1 Defense be responsible for the assignment of military and civilian personnel to fill critical  
2 acquisition, technology, and logistics positions.

3 **"§ 1704. Acquisition corps**

4 "(a) ESTABLISHMENT.—The Secretary of Defense at this sole, exclusive, and  
5 unreviewable discretion may—

6 "(1) establish within the Department of Defense an acquisition corps; and

7 "(2) establish criteria for the selection of military personnel and civilian  
8 employees to that corps.

9 "(b) PROMOTION RATE FOR OFFICERS IN ACQUISITION CORPS.—The qualifications of  
10 commissioned officers selected for that acquisition corps shall be such that those officers are  
11 expected, as a group, to be promoted at a rate not less than the rate for all line (or the equivalent)  
12 officers of the same armed force (both in the zone and below the zone) in the same grade.

13 **"§ 1705. Defense Acquisition University**

14 "(a) IN GENERAL.—The Secretary of Defense may establish and maintain a Defense  
15 Acquisition University to perform such educational, training, and research and analysis functions  
16 as the Secretary determines appropriate.

17 "(b) FACULTY MEMBERS.—(1) The faculty of the university may consist of such military  
18 personnel, civilian employees, and other personnel as the Secretary determines are necessary to  
19 meet the mission of the university.

20 "(2) The Secretary of Defense may establish one or more systems of compensation and  
21 management for the civilian employees serving as faculty members."

22 (b) CLERICAL AND CONFORMING AMENDMENTS.—(1) Chapter 87 of such title is  
23 repealed.

1 (2) The table of chapters at the beginning of subtitle A of such title and the beginning of  
2 part II of such subtitle are amended by striking the item relating to chapter 87 and inserting the  
3 following new item:

4 **"87A. Defense Acquisition Workforce Streamlining..... 1701".**

5 (3) Such title is further amended by striking "acquisition workforce" each place it appears  
6 and inserting "acquisition, technology, and logistics workforce".

### Section-by-Section Analysis

The Defense Acquisition Workforce Improvement Act (DAWIA), chapter 87 of title 10, United States Code, was enacted over 10 years ago to professionalize that portion of the Defense workforce dedicated to the acquisition of systems, goods, and services. Because the Department of Defense (DoD) has thoroughly implemented the Act, today DoD has one of the most professional workforces in the Federal Government.

Given the passage of time and the complete institutionalization of the Act, changes in the current statutory structure for the Defense acquisition, technology, and logistics workforce are necessary. Some portions of the original Act have expired. For example, section 1764 of title 10 authorizes the Secretary of Defense to establish different minimum experience requirements for contracting officers, program executive officers, and senior contracting officials from October 1, 1992 to September 30, 1998. Other sections of the original Act have limited the Department's flexibility in achieving the Act's purpose. For example, Congress had to pass specific legislation (that then needed further amendment) to authorize DoD to set educational requirements for the contracting workforce while preserving the use of senior enlisted military members in the contingency contracting force. Finally, the extreme detail in the Act, necessary at the time of enactment, no longer is needed. For example, the list of career fields does not include science and technology and logistics, both of which DoD has added to the DAWIA workforce since its enactment.

At the same time, the Department is seeking overall flexibility in managing its civilian workforce through the proposed National Security Personnel System (NSPS). This section would rewrite DAWIA to maintain the Act's policy objectives while allowing the Secretary of Defense to structure the acquisition, technology, and logistics workforce program by regulation within the NSPS, so the Secretary could change structural details as needed to continue to meet the policy objectives (e.g., adding career fields, adjusting certification qualifications, changing the way training is delivered, etc.) without needing future legislation.

Section 1701 would continue to require that the Secretary of Defense establish policies and procedures for the effective management (including accession, education, training, and

career development) of persons serving in acquisition, technology, and logistics positions in the Department of Defense. Further, this section would allow the Secretary, at his discretion, to establish special programs such as intern programs, cooperative education programs, rotational programs, and centralized job referral within DoD.

Section 1702 would allow the Secretary of Defense to establish qualification standards for AT&L positions; designate career paths in terms of education, training, and experience; and designate which AT&L positions are critical AT&L positions.

Section 1703 would allow the Secretary of Defense to establish minimum tour lengths for critical AT&L positions. DoD intends to retain the requirements that Program Managers and Program Executive Officers for major systems stay in place for four years or until the next major milestone.

Section 1704 would allow the Secretary of Defense to establish one or more Acquisition Corps and require promotion parity for Acquisition Corps officers with line officers.

Section 1705 would allow the Secretary of Defense to establish the Defense Acquisition University for training the AT&L workforce and allow the Defense Acquisition University to hire civilian faculty under title 10.

### **SEC. 103. PRIORITY PLACEMENT OF DISPLACED CIVILIAN EMPLOYEES.**

1 (a) IN GENERAL.—Chapter 81 of title 10, United States Code, is amended by adding at  
2 the end the following new section:

#### **"§ 1599e. Defense priority placement program**

4 "(a) PRIORITY PLACEMENT.—The Secretary of Defense, at his sole and exclusive  
5 discretion and notwithstanding the provisions of title 5, may establish one or more programs to  
6 promote stability of employment for Department of Defense civilian employees affected by  
7 changing mission requirements, streamlining efforts, overseas rotations (including rotations  
8 undertaken pursuant to section 1586 of this title), preferences established by law, and other such  
9 actions as the Secretary shall determine, by providing such employees priority consideration, as  
10 defined by the Secretary, for placement in other positions within the Department of Defense.

11 "(b) CONSTRUCTION.—The content of any program developed under subsection (a), and

1 any personnel action undertaken pursuant to such program, shall not be reviewable outside the  
2 Department of Defense."

3 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is  
4 amended by inserting at the end the following new item:  
5 "1599e. Defense priority placement program."

### **Section-by-Section Analysis**

This section would codify the Secretary of Defense's authority to establish a priority placement program for certain displaced civilian employees, subject to the discretion of the Secretary. There would be no appeal rights outside of DoD for determinations made in accordance with this program.

## **SEC. 104. ESTABLISHMENT OF AUXILIARIES WITHIN THE MILITARY**

### **DEPARTMENTS TO COORDINATE VOLUNTEERS.**

1 (a) IN GENERAL.—Part I of subtitle E of title 10, United States Code, is amended by  
2 inserting after chapter 1013 the following new chapter:

### **"CHAPTER 1015—AUXILIARIES**

"Sec.

"10701. Administration of auxiliaries.

"10702. Purpose of an auxiliary.

"10703. Eligibility, enrollments.

"10704. Members of the auxiliary; status.

"10705. Disenrollment.

"10706. Membership in other organizations.

"10707. Use of member's equipment and facilities.

"10708. Availability of appropriations.

"10709. Assignment and performance of duties.

"10710. Injury or death in line of duty.

"10711. Limitation on liability.

3 **"§ 10701. Administration of auxiliaries.**

4 "(a) An auxiliary of a military department is a nonmilitary organization administered by  
5 the Secretary of the military department concerned under the direction of the Secretary of

1 Defense. For command, control, and administrative purposes, the auxiliary shall include such  
2 organizational elements and units as are approved by the Secretary of the military department  
3 concerned, including, but not limited to, a national board and staff (to be known as the 'auxiliary  
4 headquarters unit'), districts, regions, divisions, and other organizational elements and units. The  
5 auxiliary organization and its officers shall have such rights, privileges, powers, and duties as  
6 may be granted to them by the Secretary of the military department concerned, consistent with  
7 this title and other applicable provisions of law. The Secretary of the military department  
8 concerned may designate the authority and responsibilities of the officers of the auxiliary that the  
9 Secretary considers necessary or appropriate for the functioning, organization, and internal  
10 administration of the auxiliary.

11 "(b) The national board of an auxiliary, and any auxiliary district or region, may form a  
12 corporation under State law in accordance with policies established by the Secretary of the  
13 military department concerned.

14 **"§ 10702. Purpose of an auxiliary.**

15 "The purpose of an auxiliary is to assist the military department under which it is  
16 established, as authorized by the Secretary of the military department concerned, in performing  
17 any non-combat function, power, duty, role, mission, or operation authorized by law for that  
18 military department.

19 **"§ 10703. Eligibility, enrollments.**

20 "An auxiliary shall be composed of citizens of the United States and its territories and  
21 possessions, who by reason of their special training or experience are deemed by the Secretary of  
22 the military department concerned to be qualified for duties and functions of the auxiliary, and  
23 who may be enrolled therein pursuant to regulations established by the Secretary of the military



1 department concerned.

2 **"§ 10704. Members of the auxiliary; status.**

3 "(a) Except as otherwise provided in this chapter, a member of an auxiliary shall not be  
4 considered a Federal employee and shall not be subject to the provisions of law relating to  
5 Federal employment, including those relating to hours of work, rates of compensation, leave,  
6 unemployment compensation, and Federal employee benefits.

7 "(b) A member of an auxiliary, while assigned to duty, shall be considered to be a  
8 Federal employee and shall be subject to the provisions of law relating to ethics, conflicts of  
9 interest, corruption and any other criminal or civil statutes and regulations governing the conduct  
10 of Federal employees.

11 "(c) A member of an auxiliary, while assigned to duty, shall be considered to be a Federal  
12 employee for purposes of the following:

13 "(1) Compensation for work injuries under chapter 81 of title 5.

14 "(2) The resolution of claims relating to damage to or loss of personal property of  
15 the member incident to service under the Military Personnel and Civilian Employees'  
16 Claims Act of 1964 (31 U.S.C. 3721).

17 "(d) A member of the auxiliary, while assigned to duty, shall be deemed to be a person  
18 acting under an officer of the United States or an agency thereof for purposes of section  
19 1442(a)(1) of title 28.

20 "(e) A member of the auxiliary, while assigned to duty, shall be deemed to be a member  
21 of a uniformed service for purposes of sections 10708 and 10710 of this title.

22 **"§ 10705. Disenrollment.**

23 "Members of an auxiliary may be disenrolled pursuant to applicable regulations

1 established by the Secretary of the military department concerned.

2 **"§ 10706. Membership in other organizations.**

3 "Members of an auxiliary may be appointed or enlisted in a Reserve component, pursuant  
4 to applicable regulations. Membership in the auxiliary shall not bar membership in any other  
5 naval or military organization.

6 **"§ 10707. Use of member's equipment and facilities.**

7 "The military department concerned may utilize for any purpose incident to carrying out  
8 its functions and duties, as authorized by the Secretary, equipment or facilities placed at its  
9 disposition for any such purpose by any member of the auxiliary, by any corporation,  
10 partnership, or association, or by any State or political subdivision thereof.

11 **"§ 10708. Availability of appropriations.**

12 "(a) Appropriations of the military department concerned may be made available for the  
13 payment of actual necessary traveling expenses and subsistence, or commutation of ration  
14 allowance in lieu of subsistence, of members of the auxiliary assigned to authorized duties, but  
15 shall not be available for the payment of compensation for personal services, incident to such  
16 operation, other than to personnel of the military department.

17 "(b)(1) The Secretary of the military department concerned may pay interest on a claim  
18 approved by the Secretary under this section in any case in which a payment authorized under  
19 this section is not made within 60 days after the submission of the claim in a manner prescribed  
20 by the Secretary.

21 "(2) The rate of interest for purposes of this section shall be the annual rate established  
22 under section 6621 of the Internal Revenue Code of 1986.

23 **"§ 10709. Assignment and performance of duties.**

1 "No member of an auxiliary, solely by reason of such membership, shall be vested with,  
2 or exercise, any right, privilege, power, or duty vested in or imposed upon the personnel of the  
3 military department concerned, except that any such member may, under applicable regulations,  
4 be assigned duties which, after appropriate training and examination, he has been found  
5 competent to perform, to effectuate the purposes of the auxiliary. No member of the auxiliary  
6 shall be placed in charge of an activity or organization assigned to the military department unless  
7 he has been designated specifically by authority of the Secretary of the military department  
8 concerned to perform such duty. Members of the auxiliary, when assigned to duties as herein  
9 authorized, shall, unless otherwise limited by the Secretary of the military department concerned,  
10 be vested with the same power and authority in the execution of such duties as members of the  
11 regular or Reserve of that military department assigned to similar duty. When any member of  
12 the auxiliary is assigned to such duty, he may, pursuant to regulations issued by the Secretary, be  
13 paid actual necessary traveling expenses, including a per diem allowance in conformity with  
14 standardized Government travel regulations in lieu of subsistence, while traveling and while on  
15 duty away from his home. No per diem shall be paid for any period during which quarters and  
16 subsistence in kind are furnished by the Government.

17 **"§ 10710. Injury or death in line of duty.**

18 (a) If a member of an auxiliary is physically injured, or dies as a result of physical injury,  
19 and the injury is incurred while performing any duty to which he has been assigned by  
20 competent military authority, the law authorizing compensation for employees of the United  
21 States suffering injuries while in the performance of their duties, applies, subject to this section.  
22 That law shall be administered by the Secretary of Labor to the same extent as if the member  
23 was a civil employee of the United States and was injured in the performance of that duty. For

1 benefit computation, regardless of pay or pay status, the member is considered to have had  
2 monthly pay of the monthly equivalent of the minimum rate of basic pay in effect for grade GS-9  
3 of the General Schedule on the date the injury is incurred.

4 (b) This section does not apply if the workmen's compensation law of a State, a territory,  
5 or another jurisdiction provides coverage because of a concurrent employment status of the  
6 member. When the member or a dependent is entitled to a benefit under this section and also to  
7 a concurrent benefit from the United States on account of the same disability or death, the  
8 member or dependent, as appropriate, shall elect which benefit to receive.

9 (c) If a claim is filed under this section with the Secretary of Labor for benefits because  
10 of an alleged injury or death, the Secretary of Labor shall notify the Secretary of the military  
11 department concerned who shall direct an investigation into the facts surrounding the alleged  
12 injury or death. The Secretary of the military department concerned then shall certify to the  
13 Secretary of Labor whether or not the injured or deceased person was a member of an auxiliary,  
14 the person's military status, and whether or not the injury or death was incurred incident to  
15 military service.

16 (d) A member of an auxiliary, who incurs or aggravates an injury, illness or disease while  
17 performing a duty to which the member has been assigned by competent authority, may be given  
18 medical care in facilities of the uniform services.

19 (e) In administering section 8133 of title 5, for a person covered by this section—

20 (1) the percentages applicable to payments under that section are—

21 (A) 45 percent under subsection (a)(2) of that section, where the member  
22 died fully or currently insured under title II of the Social Security Act (42 U.S.C.  
23 401 et seq.), with no additional payments for a child or children so long as the

1 widow or widower remains eligible for payments under that subsection;

2 (B) 20 percent under subsection (a)(3) of that section, for one child, and  
3 10 percent additional for each additional child, not to exceed a total of 75 percent,  
4 where the member died fully or currently insured under title II of the Social  
5 Security Act; and

6 (C) 25 percent under subsection (a)(4) of that section, if one parent was  
7 wholly dependent for support upon the deceased member at the time of the  
8 member's death and the other was not dependent to any extent; 16 percent to each  
9 if both were wholly dependent; and if one was, or both were, partly dependent, a  
10 proportionate amount in the discretion of the Secretary of Labor;

11 (2) payments may not be made under subsection (a)(5) of that section; and

12 (3) the Secretary of Labor shall inform the Commissioner of Social Security  
13 whenever a claim is filed and eligibility for compensation is established under subsection  
14 (a)(2) or (a)(3) of section 8133 of title 5. The Commissioner of Social Security then shall  
15 certify to the Secretary of Labor whether or not the member concerned was fully or  
16 currently insured under title II of the Social Security Act at the time of the member's  
17 death.

18 **"§ 10711. Limitation on liability.**

19 "A member of an auxiliary, while assigned to duty, shall be deemed a volunteer of a  
20 nonprofit organization or governmental entity for purposes of chapter 139 of title 42 (popularly  
21 known as the 'Volunteer Protection Act'). Subsection (d) of section 4 of such Act (42 U.S.C.  
22 14503(d)) shall not apply for purposes of any claim against a member of an auxiliary."

23 (b) CLERICAL AMENDMENT.—The tables of chapters at the beginning of such subtitle and

1 the beginning of part I of such subtitle are amended by inserting after the item relating to chapter  
2 1013 the following new item:  
3 "1015. Auxiliaries ..... 10701".

**Section-by-Section Analysis**

This section would allow private citizens, including many military retirees, to support the Armed Forces without engaging in full-time military service.

The Air Force and the Coast Guard already have organizations that provide a more formal structure in which private citizens may contribute to their respective missions. The Army, Navy, and Marine Corps presently have no similar organizations.

Additionally, DoD is developing programs to partner with business, the education community and others to gain access to cutting edge technology or highly specialized skills, which are difficult to maintain because of rapid technological advances. This includes areas such as super computing, biotechnology, communications technology, disaster management, and acoustics.

DoD would benefit from a readily available pool of volunteers to augment staffs in all functional areas or for assignment in a specific mission area.

Auxiliaries would enable DoD to provide an organized, systematic approach to managing volunteers.

**Subtitle B—Transformation of Management of Senior Military Leadership**

**SEC. 111. EQUIVALENCY OF PAY FOR SERVICE CHIEFS OF STAFF AND  
COMBATANT COMMANDERS.**

1 (a) PAY FOR CERTAIN POSITIONS.—(1) Notwithstanding any other provision of law, but  
2 subject to paragraph (2), the rate of basic pay for officers serving as Chairman or Vice Chairman  
3 of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of  
4 Staff for the Air Force, Commandant of the Marines Corps, Commandant of the Coast Guard, or  
5 Commander of a Combatant Command, shall be 110 percent of the basic pay for an officer at the

1 grade of O-10 with over 26 years of service, regardless of the cumulative years of service  
2 computed under section 205 of title 37, United States Code.

3 (2) The actual rate of basic pay may not exceed the rate of pay for level III of the  
4 Executive Schedule.

5 (b) RETIRED PAY.—Section 1406(i) of title 10, United States Code, is amended—

6 (1) in the heading, by inserting "Combatant Commanders," after "Chiefs of  
7 Service"; and

8 (2) in paragraph (1), by inserting "as a Combatant Commander," after "Chief of  
9 Service,".

### **Section-by-Section Analysis**

This section would provide equal pay for Service Chiefs of Staff and Combatant Commanders. Such equal pay is appropriate and equitable given the high degree of trust and responsibility DoD places upon both the Service Chiefs of Staff and Combatant Commanders.

## **SEC. 112. LENGTH OF SERVICE FOR THE SENIOR LEADERS OF THE MILITARY DEPARTMENTS.**

1 (a) CHIEF OF STAFF OF THE ARMY.—Paragraph (1) of section 3033(a) of title 10, United  
2 States Code, is amended to read as follows:

3 "(a)(1) There is a Chief of Staff of the Army, appointed for a period of four years by the  
4 President, by and with the advice and consent of the Senate, from the general officers of the  
5 Army. He serves at the pleasure of the President, and the President may extend the length of  
6 service as he determines necessary."

7 (b) CHIEF OF NAVAL OPERATIONS.—Paragraph (1) of section 5033(a) of such title is  
8 amended to read as follows:

1           "(a)(1) There is a Chief of Naval Operations, appointed by the President, by and with the  
2 advice and consent of the Senate. The Chief of Naval Operations shall be appointed for a term  
3 of four years, from officers on the active-duty list in the line of the Navy who are eligible to  
4 command at sea and who hold the grade of rear admiral or above. He serves at the pleasure of  
5 the President, and the President may extend the length of service as he determines necessary."

6           (c) COMMANDANT OF THE MARINE CORPS.—Paragraph (1) of section 5043(a) of such  
7 title is amended to read as follows:

8           "(a)(1) There is a Commandant of the Marine Corps, appointed by the President, by and  
9 with the advice and consent of the Senate. The Commandant shall be appointed for a term of  
10 four years from officers on the active-duty list of the Marine Corps not below the grade of  
11 colonel. He serves at the pleasure of the President, and the President may extend the length of  
12 service as he determines necessary."

13           (d) CHIEF OF STAFF OF THE AIR FORCE.—Paragraph (1) of section 8033(a) of such title is  
14 amended to read as follows:

15           "(a)(1) There is a Chief of Staff of the Air Force, appointed for a period of four years by  
16 the President, by and with the advice and consent of the Senate, from the general officers of the  
17 Air Force. He serves at the pleasure of the President, and the President may extend the length of  
18 service as he determines necessary."

### **Section-by-Section Analysis**

This section would eliminate existing restrictions on the length of service of the Chief of Staff of the Army, the Chief of Naval Operations, the Commandant of the Marine Corps, and the Chief of Staff of the Air Force.

This section would increase the flexibility of the President in managing the most senior levels of the officer corps. It also would correspond with DoD efforts to allow officers to serve



longer tours and tenure.

**SEC. 113. LENGTH OF SERVICE FOR THE CHAIRMAN AND VICE CHAIRMAN OF  
THE JOINT CHIEFS OF STAFF.**

1 (a) CHAIRMAN OF THE JOINT CHIEFS OF STAFF.—Subsection (a) of section 152 of title 10,  
2 United States Code, is amended—

3 (1) by amending paragraph (1) to read as follows:

4 "(1) There is a Chairman of the Joint Chiefs of Staff, appointed by the President,  
5 by and with the advice and consent of the Senate, from the officers of the regular  
6 components of the armed forces. The Chairman serves at the pleasure of the President  
7 for a term of two years, and the President may appoint the Chairman for additional two-  
8 year terms as he determines necessary."; and

9 (2) by striking paragraph (3).

10 (b) VICE CHAIRMAN OF THE JOINT CHIEFS OF STAFF.—Paragraph (3) of section 154(a) of  
11 such title is amended to read as follows:

12 "(3) The Vice Chairman serves at the pleasure of the President for a term of two years,  
13 and the President may appoint the Chairman for additional two-year terms as he determines  
14 necessary.".

**Section-by-Section Analysis**

This section would eliminate existing restrictions on the length of service of the Chairman and Vice Chairman of the Joint Chiefs of Staff.

This would increase the flexibility of the President in managing the most senior levels of the officer corps. It also would correspond with DoD efforts to allow officers to serve longer tours and tenure.

**SEC. 114. LENGTH OF TERMS FOR THE ASSISTANTS TO THE CHAIRMAN OF  
THE JOINT CHIEFS OF STAFF FOR NATIONAL GUARD AND  
RESERVE MATTERS.**

1           Subsection (c) of section 901 of the National Defense Authorization Act for Fiscal Year  
2           1998 (Public Law 105-85; 111 Stat. 1853), is amended by striking "for a term of two years and  
3           may be continued in that assignment in the same manner for one additional term. However, in  
4           time of war there is no limit on the number of terms."

**Section-by-Section Analysis**

This section would eliminate existing restrictions on the length of terms of the Assistants to the Chairman of the Joint Chiefs of Staff for National Guard and Reserve Matters. Instead, such officers would serve at the pleasure of the Chairman.

This section would increase the flexibility of the Chairman in managing the most senior levels of the Joint Staff. It also would correspond with DoD efforts to allow officers to serve longer tours and tenure.

**SEC. 115. ELIMINATE MANDATORY TERMS OF OFFICE FOR CERTAIN  
GENERAL AND FLAG STAFF OFFICERS.**

1           (a) ARMY.

2           (1) CHIEFS OF BRANCHES.—Section 3036 of title 10, United States Code, is  
3           amended—

4                       (A) by repealing subsection (c); and

5                       (B) by redesignating subsections (d) and (e) as subsections (c) and (d),  
6           respectively.

7           (2) JUDGE ADVOCATE GENERAL AND ASSISTANT JUDGE ADVOCATE

8           GENERAL.—Section 3037(a) of such title is amended by striking "An officer appointed as

1 the Judge Advocate General or Assistant Judge Advocate General normally holds office  
2 for four years. However, the President may terminate or extend the appointment at any  
3 time."

4 (3) DEPUTY AND ASSISTANT CHIEFS OF BRANCHES.—Section 3039(a) of such title  
5 is amended by striking "for a tour of duty of not more than four years,".

6 (4) CHIEF OF ARMY NURSE CORPS.—Section 3069(b) of such title is amended by  
7 striking ", but not for more than four years, and may not be reappointed to the same  
8 position".

9 (5) CHIEF OF THE ARMY MEDICAL SPECIALIST CORPS.—Section 3070(b) of such  
10 title is amended by striking ", but not for more than four years, and may not be  
11 reappointed".

12 (b) NAVY/MARINE CORPS.

13 (1) CHIEF OF THE BUREAU OF MEDICINE AND SURGERY.—Section 5137(a) of such  
14 title is amended by striking "for a term of four years,".

15 (2) CHIEF OF THE BUREAU OF NAVAL PERSONNEL.—Section 5141(a) of such title  
16 is amended by striking "for a term of four years,".

17 (3) CHIEF OF CHAPLAINS.—Subsection (c) of section 5142 of such title is  
18 repealed.

19 (4) JUDGE ADVOCATE GENERAL.—Section 5148(b) of such title is amended by  
20 striking ", for a term of four years".

21 (5) DIRECTOR OF THE NURSE CORPS OR DIRECTOR OF THE MEDICAL SERVICE  
22 CORPS.—Section 5150(c) of such title is amended by striking "for a term of four years,".

23 (c) AIR FORCE JUDGE ADVOCATE GENERAL AND DEPUTY JUDGE ADVOCATE

1 GENERAL.—Section 8037(a) of such title is amended—

2 (1) in subsection (a), by striking "The term of office is four years, but may be  
3 sooner terminated or extended by the President."; and

4 (2) in subsection (d)(1), by striking "The term of office of the Deputy Judge  
5 Advocate General is four years, but may be sooner terminated or extended by the  
6 President."

### Section-by-Section Analysis

This section would eliminate existing mandatory terms of office for specified general and flag staff officers. Instead, such officers would serve at the pleasure of the President or, in some cases, of the Secretary concerned.

This section would increase the flexibility of the President and the Secretary of Defense in managing the most senior levels of the officer corps.

### **SEC. 116. LATERAL REASSIGNMENT OF CERTAIN GENERALS AND ADMIRALS.**

1 Subsection (a) of section 601 of title 10, United States Code, is amended to read as  
2 follows:

3 "(a)(1) The President may designate positions of importance and responsibility to carry  
4 the grade of general or admiral or lieutenant general or vice admiral. The President may assign  
5 to any such position an officer of the Army, Navy, Air Force, or Marine Corps who is serving on  
6 active duty in any grade above colonel or, in the case of an officer of the Navy, any grade above  
7 captain. An officer assigned to any such position has the grade specified by the President for  
8 such position, as provided in paragraph (2).

9 "(2) An officer may be appointed initially to the grade of general or admiral or lieutenant  
10 general or vice admiral if he is appointed to that grade by the President, by and with the advice

1 and consent of the Senate. If the President or Secretary of Defense reassigns such an officer to  
2 another position of importance and responsibility at the same grade, no further appointment to  
3 that grade is required unless the position to which the officer is reassigned is established by law.

4 "(3) Except as provided in subsection (b), the appointment of an officer to a grade under  
5 this section for service in a position of importance and responsibility ends on the date of the  
6 termination of the assignment of the officer to that position."

### **Section-by-Section Analysis**

This section would allow the President to reassign senior leaders to positions of importance and responsibility at the same grade. Assignment to positions established in law, such as Chairman of the Joint Chiefs of Staff, Vice Chairman of the Joint Chiefs of Staff, Chiefs of the military departments, Chief of the National Guard Bureau, Reserve Chiefs and Guard Directors, and military department-specific Chiefs of Branches or Bureaus, would continue to require the advice and consent of the Senate.

This section would increase the flexibility of the President in managing the most senior levels of the officer corps.

### **SEC. 117. ELIMINATE DISTRIBUTION QUOTAS FOR GENERAL AND FLAG OFFICERS SERVING IN THE GRADES OF O-7 AND O-8.**

1 Section 525 of title 10, United States Code, is amended—  
2 (1) by repealing subsection (a); and  
3 (2) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c),  
4 respectively.

### **Section-by-Section Analysis**

This section would eliminate the grade distribution limitations for brigadier generals and rear admirals (lower half). Existing law requires 50 percent of general and flag officers to serve in the grade of O-7 and 15-16 percent to serve in the grades of O-9 and O-10. The remaining 34-35 percent of general and flag officers must serve at grade O-8.

Removing the restriction on officers serving at grade O-7 would allow the allocation between officers at O-7 and O-8 to change and would provide the Secretary of Defense with greater flexibility in managing and utilizing senior officers.

**SEC. 118. EXTENDING AGE LIMITS FOR ACTIVE DUTY GENERAL AND FLAG OFFICERS.**

1 Section 1251, of title 10, United States Code, is amended to read as follows:

2 **"§ 1251. Regular commissioned officers; exceptions**

3 "(a)(1) Unless retired or separated earlier, each regular commissioned officer of the  
4 Army, Air Force, or Marine Corps serving in a grade at or above brigadier general or rear  
5 admiral (lower half) in the Navy shall be retired on the first day of the month following the  
6 month in which the officer becomes 68 years of age.

7 "(2) Notwithstanding paragraph (1), the Secretary of Defense may defer the retirement of  
8 a general or flag officer, but such a deferment may not extend beyond the first day of the month  
9 following the month in which the officer becomes 72 years of age.

10 "(b)(1) Unless retired or separated earlier, each regular commissioned officer of the  
11 Army, Air Force, or Marine Corps (other than an officer who is a permanent professor, director  
12 of admissions, or registrar of the United States Military Academy or United States Air Force  
13 Academy or a commissioned warrant officer) serving in a grade below brigadier general or rear  
14 admiral (lower half) in the Navy shall be retired on the first day of the month following the  
15 month in which he becomes 62 years of age. An officer who is a permanent professor at the  
16 United States Military Academy or United States Air Force Academy, the director of admissions  
17 at the United States Military Academy, or the registrar of the United States Air Force Academy  
18 shall be retired on the first day of the month following the month in which he becomes 64 years

1 of age.

2 "(2) The Secretary of the military department concerned may defer the retirement under  
3 paragraph (1) of a health professions officer if during the period of the deferment the officer will  
4 be performing duties consisting primarily of providing patient care or performing other clinical  
5 duties.

6 "(3) The Secretary of the military department concerned may defer the retirement under  
7 paragraph (1) of an officer who is appointed or designated as a chaplain if the Secretary  
8 determines that such deferral is in the best interest of the military department concerned.

9 "(4)(A) Except as provided in subparagraph (B), a deferment under this subsection may  
10 not extend beyond the first day of the month following the month in which the officer becomes  
11 68 years of age.

12 "(B) The Secretary of the military department concerned may extend a deferment under  
13 this subsection beyond the day referred to in subparagraph (A) if the Secretary determines that  
14 extension of the deferment is necessary for the needs of the military department concerned.  
15 Such an extension shall be made on a case-by-case basis and shall be for such period as the  
16 Secretary considers appropriate.

17 "(5) For purposes of this subsection, a health professions officer is—

18 "(A) a medical officer;

19 "(B) a dental officer; or

20 "(C) an officer in the Army Nurse Corps, an officer in the Navy Nurse Corps, or  
21 an officer in the Air Force designated as a nurse."

### **Section-by-Section Analysis**

This section would permit active duty general and flag officers to serve until age 68. It also would permit the Secretary of Defense to defer the retirement of an active duty general or flag officer to the first day of the month following the month in which the officer reaches the age of 72. There would be no change to the retirement age restrictions for commissioned officers serving in grades below brigadier general or rear admiral.

This section would increase the flexibility of the President and the Secretary of Defense in managing the most senior levels of the officer corps. Extending age limits for general and flag officers corresponds with DoD efforts to allow officers to serve longer tours and tenure.

**SEC. 119. EXTENDING AGE LIMITS FOR RESERVE AND NATIONAL GUARD  
GENERAL AND FLAG OFFICERS.**

1 (a) MAXIMUM AGE FOR RESERVE COMPONENT GENERAL AND FLAG OFFICERS.—

2 (1) Section 14511 of title 10, United States Code, is amended to read as follows:

3 **"§ 14511. Separation at age 68: reserve officers in grades above colonel or Navy captain**

4 "(a) MAXIMUM AGE.—Unless retired, transferred to the Retired Reserve, or discharged at  
5 an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade above  
6 colonel and each reserve officer of the Navy in the grade above captain shall be separated in  
7 accordance with section 14515 of this title on the last day of the month in the month in which the  
8 officer becomes 68 years of age.

9 "(b) RETENTION BEYOND AGE 68.—Notwithstanding subsection (a), the Secretary of  
10 Defense may defer the retirement of a reserve officer serving in a grade above colonel in the case  
11 of the Army, Air Force, or Marine Corps, or a reserve officer serving in a grade above captain in  
12 the case of the Navy, but such a deferment may not extend beyond the last day of the month  
13 following the month in which the officer becomes 72 years of age."

14 (2) Sections 14510 and 14512 of such title are repealed.

15 (b) REPEAL YEARS OF SERVICE REQUIREMENT FOR RESERVE COMPONENT GENERAL AND



1 FLAG OFFICER.—Section 14508 of such title is repealed.

2 (c) ELIMINATION OF TERM LIMITATION FOR RESERVE COMPONENT GENERAL AND FLAG  
3 OFFICER POSITIONS.—

4 (1) Section 10502 of such title is amended—

5 (A) by striking subsection (b); and

6 (B) by redesignating subsections (c) and (d) as subsections (b) and (c),  
7 respectively.

8 (2) Subsection (a) of section 10505 of such title is amended—

9 (A) by striking paragraph (3); and

10 (B) by redesignating paragraph (4) as paragraph (3).

11 (3) Subsection (c) of section 3038 of such title is amended to read as

12 follows:

13 "(c) GRADE.—The Chief of Army Reserve, while so serving, holds the grade of  
14 lieutenant general.";

15 (4) Subsection (c) of section 5143 of such title is amended to read as follows:

16 "(c) GRADE.—The Chief of Naval Reserve, while so serving, holds the grade of vice  
17 admiral.";

18 (5) Subsection (c) of section 5144 of such title is amended to read as follows:

19 "(c) GRADE.—The Commander, Marine Forces Reserve, while so serving, holds the  
20 grade of lieutenant general.";

21 (6) Subsection (c) of section 8038 of such title is amended to read as follows:

22 "(c) GRADE.—(1) The Chief of Air Force Reserve, while so serving, holds the grade of  
23 lieutenant general.";

1 (7) Paragraph (3) of section 10506(a) of such title is amended by striking  
2 subparagraph (E).

3 (d) CONFORMING AMENDMENTS.—(1) Section 10214 of such title is amended by striking  
4 "sections 12004(b)(1), 12215, 12642(c), 14507(b), 14508(e), and 14512" and inserting "sections  
5 12004(b)(1), 12215, 12642(c), and 14507(b)";

6 (2) Section 14514 of such title is amended by striking "section 14507, 14508, 14704, or  
7 14705" and inserting "section 14507, 14704, or 14705";

8 (3) Section 14515 of such title is amended by striking "section 14509, 14510, 14511, or  
9 14512" and inserting "section 14509 or 14511";

10 (4) Section 14702 of such title is amended by striking "section 14506, 14507, or 14508"  
11 and inserting "section 14506 or 14507";

12 (5) Section 14705 of such title is repealed;

13 (6) The table of sections at the beginning of chapter 1407 of such title is amended—

14 (A) by amending the item relating to section 14511 to read as follows:

15 "14511. Separation at age 68: reserve officers in grades above colonel or Navy captain"; and

16 (B) by striking the items relating to sections 14508, 14510, and 14512.

17 (7) Subsection (a) of section 324 of title 32, United States Code, is amended by striking  
18 "An officer" and inserting "Except as provided in section 14511 of title 10, an officer".

### **Section-by-Section Analysis**

This section would permit Reserve and national guard general and flag officers to serve until age 68. It also would permit the Secretary of Defense to defer the retirement of a Reserve component general or flag officer to the first day of the month following the month in which the officer reaches the age of 72.

This section also would repeal the years of service requirement of Reserve and National

Guard general and flag officers, as well as term of office requirements currently established in law. These changes would increase the flexibility of the President and the Secretary of Defense in managing the most senior levels of the officer corps. Extending age limits, years of service, and term of office limitations correspond with DoD efforts to allow officers to serve longer tours and tenure.

**SEC. 120. ELIMINATE MANDATORY RETIREMENT OF ACTIVE DUTY GENERAL  
AND FLAG OFFICERS AFTER 30 YEARS OF SERVICE.**

- 1 (a) IN GENERAL.—Sections 635 and 636 of title 10, United States Code, are repealed.
- 2 (b) CONFORMING AMENDMENT.—Section 637(b) of such title is amended—
- 3 (1) by striking paragraph (2); and
- 4 (2) by redesignating paragraph (3) as paragraph (2).

**Section-by-Section Analysis**

This section would eliminate mandatory retirement of active duty general and flag officers after they complete 30 years of service. This would increase the flexibility of the Secretary of Defense in managing the most senior levels of the officer corps. Eliminating such mandatory retirement corresponds with DoD efforts to allow officers to serve longer tours and tenure.

**SEC. 121. MORE FLEXIBLE RETIREMENT RULES FOR MILITARY OFFICERS.**

- 1 (a) IN GENERAL.—Section 1370 of title 10, United States Code, is amended to read as
- 2 follows:
- 3 **"§ 1370. Commissioned officers: general rule; exceptions**
- 4 **"(a) RULE FOR RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—(1) Unless**
- 5 **entitled to a higher retired grade under some other provision of law, a commissioned officer**
- 6 **(other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps who**
- 7 **retires under any provision of law other than chapter 61 or chapter 1223 of this title shall, subject**

1 to the criteria specified under paragraph (2) or (3), be retired in the highest grade in which he  
2 served on active duty satisfactorily, as determined by the Secretary of the military department  
3 concerned.

4 "(2) In order to be eligible for voluntary retirement in a grade at or below the grade of  
5 major or lieutenant commander, a commissioned officer of the Army, Navy, Air Force, or  
6 Marine Corps covered by paragraph (1) must have served on active duty in that grade for not less  
7 than six months.

8 "(3)(A) In order to be eligible for voluntary retirement in a grade above major or  
9 lieutenant commander and below brigadier general or rear admiral (lower half), a commissioned  
10 officer of the Army, Navy, Air Force, or Marine Corps covered by paragraph (1) must have  
11 served on active duty in that grade for not less than three years, except that the Secretary of  
12 Defense may authorize the Secretary of the military department concerned to reduce such period  
13 to a period not less than two years.

14 "(B) An officer at or above the grade of lieutenant general or vice admiral may be retired  
15 in the highest grade in which he served on active duty satisfactorily, upon approval by the  
16 Secretary of the military department concerned and concurrence by the Secretary of Defense or  
17 another civilian official in the Office of the Secretary of Defense appointed by the President, by  
18 and with the advice and consent of the Senate.

19 "(C) The President may waive subparagraph (A) in individual cases involving extreme  
20 hardship or exceptional or unusual circumstances. The authority of the President under the  
21 preceding sentence may not be delegated.

22 "(4) A reserve or temporary officer who is notified that he will be released from active  
23 duty without his consent, and thereafter requests retirement under section 3911, 6323, or 8911 of

1 this title and is retired pursuant to that request, is considered for purposes of this section to have  
2 been retired involuntarily. An officer retired pursuant to section 1186(b)(1) of this title is  
3 considered for purposes of this section to have been retired voluntarily.

4 "(b) RETIREMENT IN NEXT LOWER GRADE.—An officer whose length of service in the  
5 highest grade he held while on active duty does not meet the service in grade requirements  
6 specified in subsection (a) or whose service on active duty in that grade was not determined to be  
7 satisfactory by the Secretary of the military department concerned shall be retired in the next  
8 lower grade in which he served on active duty satisfactorily, as determined by the Secretary of  
9 the military department concerned, for not less than six months.

10 "(c) RESERVE OFFICERS.—(1) Unless entitled to a higher grade, or to credit for  
11 satisfactory service in a higher grade, under some other provision of law, a person who is  
12 entitled to retired pay under chapter 1223 of this title shall, upon application under section 12731  
13 of this title, be credited with satisfactory service in the highest grade in which that person served  
14 satisfactorily at any time in the armed forces, as determined by the Secretary concerned in  
15 accordance with this subsection.

16 "(2) In order to be credited with satisfactory service in an officer grade (other than a  
17 warrant officer grade) below the grade of lieutenant colonel or commander, a person covered by  
18 paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the  
19 military department concerned) as a reserve commissioned officer in an active status, or in a  
20 retired status on active duty, for not less than six months.

21 "(3)(A)(1) In order to be credited with satisfactory service in an officer grade above  
22 major or lieutenant commander and below brigadier general or rear admiral (lower half), a  
23 person covered by paragraph (1) must have served satisfactorily in that grade (as determined by

1 the Secretary of the military department concerned) as a reserve commissioned officer in an  
2 active status, or in a retired status on active duty, for not less than three years, except that the  
3 Secretary of Defense may authorize the Secretary of the military department concerned to reduce  
4 such period to a period not less than two years.

5 "(2) An officer at or above the grade of lieutenant general or vice admiral may be retired  
6 in the highest grade in which he served satisfactorily, upon approval by the Secretary of the  
7 military department concerned and concurrence by the Secretary of Defense or another civilian  
8 official in the Office of the Secretary of Defense appointed by the president, by and with the  
9 advice and consent of the Senate.

10 "(B) A person covered by subparagraph (A)(1) who has completed at least six months of  
11 satisfactory service in grade and is transferred from an active status or discharged as a reserve  
12 commissioned officer solely due to the requirements of a nondiscretionary provision of law  
13 requiring that transfer or discharge due to the person's age or years of service may be credited  
14 with satisfactory service in the grade in which serving at the time of such transfer or discharge,  
15 notwithstanding the failure of the person to complete three years of service in that grade.

16 "(C) To the extent authorized by the Secretary of the military department concerned, a  
17 person who, after having been recommended for promotion in a report of a promotion board but  
18 before being promoted to the recommended grade, served in a position for which that grade is  
19 the minimum authorized grade may be credited for purposes of subparagraph (A)(1) as having  
20 served in that grade for the period for which the person served in that position while in the next  
21 lower grade. The period credited may not include any period before the date on which the  
22 Senate provides advice and consent for the appointment of that person in the recommended  
23 grade.

1           "(D) To the extent authorized by the Secretary of the military department concerned, a  
2 person who, after having been found qualified for Federal recognition in a higher grade by a  
3 board under section 307 of title 32, serves in a position for which that grade is the minimum  
4 authorized grade and is appointed as a reserve officer in that grade may be credited for the  
5 purposes of subparagraph (A)(1) as having served in that grade. The period of the service for  
6 which credit is afforded under the preceding sentence may only be the period for which the  
7 person served in the position after the Senate provides advice and consent for the appointment.

8           "(4) A person whose length of service in the highest grade held does not meet the service  
9 in grade requirements specified in this subsection shall be credited with satisfactory service in  
10 the next lower grade in which that person served satisfactorily (as determined by the Secretary of  
11 the military department concerned) for not less than six months."

12           (b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to  
13 the computation of retired or retainer pay of any individual who becomes entitled to that pay on  
14 or after the date of enactment of this Act.

### **Section-by-Section Analysis**

This section would provide more flexible retirement rules for military officers. Specifically, this section would eliminate the three-year time-in-grade requirement for all general and flag officers; eliminate the requirement for the Secretary of Defense to certify in writing to the President and Congress the satisfactory performance of duty for officers serving in grades O-9 and O-10; make permanent the time-in-grade waiver authority for all commissioned officers serving in grades O-5 and O-6; and provide legislative consistency between active and reserve commissioned officer retirement requirements.

## **SEC. 122. MORE FLEXIBLE COMPUTATION OF RETIRED PAY FOR OFFICERS AND SENIOR ENLISTED MEMBERS.**

1           (a) MODIFICATION OF RETIRED PAY FORMULAS.—(1) Chapter 71 of title 10, United

1 States Code, is amended by inserting after section 1401a the following new section:

2 **"§ 1401b. Maximum multiplier in the computation of retired pay**

3 "Notwithstanding any other provision of law that limits retired pay, computed under this  
4 chapter or under chapter 1223 of this title, to a maximum of 75 percent of the member's base  
5 determined under section 1406 or 1407 of this title, the maximum amount of retired pay as a  
6 percentage of such base will be limited as follows:

7 (1) For members retired before October 1, 2003, use limitations prescribed in other  
8 sections of law.

9 (2) For members retired on or after October 1, 2003, use the limitations prescribed in  
10 other sections of law except in the case of—

11 (A) members retired in the grade O-7 and above with more than 30 years of  
12 creditable service in the computation of the multiplier percentage under section 1409 of  
13 this title, such percentage is not limited to 75 percent for any time served in excess of 30  
14 years otherwise creditable after October 1, 2003; and

15 (B) members retired in the grades E-8 and E-9 with more than 30 years of  
16 creditable service in the computation of the multiplier percentage under section 1409 of  
17 this title, such percentage is not limited to 75 percent for any time served under  
18 conditions authorized such additional credit during a period established by the Secretary  
19 of Defense."

20 (2) The table of sections at the beginning of such chapter is amended by inserting after  
21 the item relating to section 1401a the following new item:

22 "1401b. Maximum multiplier in the computation of retired pay."

23 (b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to



1 the computation of retired or retainer pay of any individual who becomes entitled to that pay on  
2 or after the date of enactment of this Act.

### **Section-by-Section Analysis**

This section would allow general and flag officers to receive retired pay that exceeds 75 percent of base pay. This would provide greater incentive and more appropriate compensation for general and flag officers who desire to serve for more than 30 years after October 1, 2003. The same change would be made for grades E-8 and E-9 for service under conditions determined by the Secretary of Defense that such additional credit is in the best interest of personnel management.

This section corresponds with DoD efforts to allow members to serve longer careers.

### **SEC. 123. ELIMINATE RETIRED PAY LIMIT APPLICABLE TO GENERAL AND FLAG OFFICERS.**

1 (a) RETIRED PAY BASE FOR MEMBERS WHO FIRST BECAME MEMBERS BEFORE  
2 SEPTEMBER 8, 1980.—Section 1406 of title 10, United States Code, is amended by adding at the  
3 end the following new subsection:

4 "(j) In the case of a member at grade O-7 and above, the rates of basic pay used to  
5 compute the pay base prescribed in this section shall be the rates applicable to the grade or  
6 position without regard to any provision of law limiting such pay to the rate of pay for level III  
7 of the Executive Schedule."

8 (b) RETIRED PAY BASE FOR MEMBERS WHO FIRST BECAME MEMBERS AFTER SEPTEMBER  
9 7, 1980.—Section 1407 of such title is amended by adding at the end the following new  
10 subsection:

11 "(g) In the case of a member at grade O-7 and above, the rates of basic pay used to  
12 compute the pay base prescribed in this section shall be the rates applicable to the grade or

1 position without regard to any provision of law limiting such pay to the rate of pay for level III  
2 of the Executive Schedule."

3 (c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to  
4 the computation of retired or retainer pay of any individual who becomes entitled to that pay on  
5 or after the date of enactment of this Act.

### **Section-by-Section Analysis**

This section would remove the pay limitations on retired pay for general and flag officers. Existing laws place a cap on such pay equal to the pay authorized by level III of the Executive Schedule.

This section would increase the flexibility of the President and the Secretary of Defense in managing the most senior levels of the officer corps.

## **Subtitle C—Transformation of Military Personnel**

### **SEC. 131. MEASURING PERSONNEL STRENGTHS.**

1 (a) STRENGTH ACCOUNTING REQUIREMENT.—Section 115 of title 10, United States  
2 Code, is amended—

3 (1) by amending subsection (a) to read as follows:

4 "(a) Congress shall authorize personnel strength levels for each fiscal year for  
5 each of the following:

6 "(1) The average strength for each of the armed forces (other than the  
7 Coast Guard) for active-duty personnel who are to be paid from funds  
8 appropriated for active-duty personnel.

9 "(2) The average strength for each of the armed forces (other than the

1 Coast Guard) for active-duty personnel and full-time National Guard duty  
2 personnel who are to be paid from funds appropriated for reserve personnel.

3 "(3) The average strength for the Selected Reserve of each reserve  
4 component of the armed forces.";

5 (2) in subsection (b)—

6 (A) in paragraph (1), by striking "end strength" and inserting "strength";

7 and

8 (B) in paragraph (2), by striking "end strength" and inserting "strength";

9 (3) in subsection (c)—

10 (A) in paragraph (1)—

11 (i) by striking "end strength" both places it appears and inserting

12 "strength"; and

13 (ii) by striking "(a)(1)(A)" and inserting "(a)(1)"; and

14 (B) in paragraph (2)—

15 (i) by striking "end strength" both places it appears and inserting

16 "strength"; and

17 (ii) by striking "(a)(1)(B)" and inserting "(a)(2)"; and

18 (C) in paragraph (3)—

19 (i) by striking "end strength" both places it appears and inserting

20 "strength"; and

21 (ii) by striking "(a)(2)" and inserting "(a)(3)";

22 (4) in subsection (d)—

23 (A) by striking "end-strengths" and inserting "strengths";

1 (B) by striking "subsection (a)(1)" and inserting "paragraphs (1) and (2) of  
2 subsection (a)";

3 (C) in paragraph (9)(B), by striking "(a)(1)(A)" and inserting "(a)(1)";

4 (5) in subsection (e), by striking "subsection (a)(1)" and inserting "paragraphs (1)  
5 and (2) of subsection (a)";

6 (6) in subsection (f)—

7 (A) by striking "end strength" both places it appears and inserting  
8 "strength"; and

9 (B) by striking "(a)(1)(A)" and inserting "(a)(1)"; and

10 (7) in subsection (g), by striking "end strength" both places it appears and  
11 inserting "strength".

12 (b) CONFORMING AMENDMENTS.—(1) Subparagraph (A) of section 168(f)(1) of such title  
13 is amended—

14 (A) by striking "end strength" and inserting "strength"; and

15 (B) by striking "section 115(a)(1)" and inserting "paragraphs (1) and (2) of  
16 section 115(a)".

17 (2) Subsection (f) of section 691 of such title is amended by striking "section 115(a)(1)"  
18 and inserting "paragraphs (1) and (2) of section 115(a)";

19 (3) Subsection (b) of section 3201 of such title is amended by striking "section 115(a)(1)"  
20 and inserting "paragraphs (1) and (2) of section 115(a)";

21 (4) Paragraph (4) of section 12310(c) of such title is amended—

22 (A) by striking "end strength" and inserting "strength";

23 (B) by striking "section 115(a)(1)(B) and 115(a)(2)" and inserting "section

1 115(a)(2) and 115(a)(3)";

2 (5) Subsection (d) of section 16132 of such title is amended—

3 (A) by striking "end strength" and inserting "strength"; and

4 (B) by striking "section 115(a)(1)(B)" and inserting "section 115(a)(2)".

5 (6) Section 112 of title 32, United States Code, is amended—

6 (A) in subsection (e)—

7 (i) in the heading, by striking "END-STRENGTH" and inserting

8 "STRENGTH"; and

9 (ii) by striking "end strength" and inserting "strength";

10 (B) in subsection (f)—

11 (i) in the heading, by striking "END-STRENGTH" and inserting

12 "STRENGTH"; and

13 (ii) in paragraph (2), by striking "end strength" and inserting "strength";

14 and

15 (C) in subsection (g)(1), by striking "end strengths" and inserting "strengths".

### **Section-by-Section Analysis**

This section would change the method DoD uses to measure the strength for active duty and Reserve component personnel from strength at the end of the fiscal year to average strength throughout the year.

Managing by average strength is consistent with the process used to budget personnel appropriations and is a more realistic approach to managing active duty and Reserve personnel effectively. This approach would improve readiness by allowing DoD to better meet manning requirements rather than planning for a specific number on one day at the end of the year. Managing for a one-day strength encourages poor strength management practices, particularly in the 4th quarter where manning surges such as delaying retirements and other losses, and increasing recruiting takes place. These practices negatively impact real force readiness and quality.

This section would allow DoD to sustain adequate personnel over the entire year.

**SEC. 132. ACCESS TO SECONDARY SCHOOLS BY MILITARY RECRUITERS.**

1 Paragraph (5) of section 503(c) of title 10, United States Code, is amended to read as  
2 follows:

3 "(5) The requirements of this subsection do not apply to a private secondary school that  
4 maintains a religious objection to service in the armed forces and which objection is verifiable  
5 through the corporate or other organizational documents or materials of that school."

**Section-by-Section Analysis**

This section would allow military recruiters access to all secondary schools unless a school maintains a bonafide, verifiable religious objection to service in the Armed Forces. Existing law also makes an exception to such recruiter access when a school board policy "established by majority vote of the governing body" prohibits the access or release of information. This section would eliminate this latter basis for denying recruiter access to secondary schools.

This would make the standards consistent with the only exception contained in the No Child Left Behind Education Act of 2002 and ensure uniformity and improved opportunities for military recruiters.

**SEC. 133. WAIVER OF MILITARY EDUCATION ELIGIBILITY AND POST-  
EDUCATION PLACEMENT REQUIREMENTS.**

1 Section 663 of title 10, United States Code, is amended—

2 (1) in subparagraph (C) of subsection (a)(2), by striking "scientific and technical" and  
3 inserting "career field specialty";

4 (2) by striking subsection (d); and

5 (3) by redesignating subsection (e) as subsection (d).

## Section-by-Section Analysis

This section would allow the Secretary of Defense to waive mandatory CAPSTONE course participation for specific officers with critical skills. It also would afford the Secretary greater flexibility to manage military personnel by eliminating the existing requirement that at least 50 percent of officers receiving joint military education must be placed in joint duty assignments immediately upon graduation.

### SEC. 134. LENGTH OF JOINT DUTY ASSIGNMENTS.

1           Section 664 of title 10, United States Code, is amended to read as follows:

2           "**§ 664. Length of joint duty assignments**

3           "(a) **LENGTH OF JOINT DUTY ASSIGNMENTS.**—In the case of officers serving in a grade  
4 not less than Major, or, in the case of the Navy, Lieutenant Commander, the length of a joint  
5 duty assignment will mirror the standard tour length the Secretary of Defense establishes for  
6 each installation or location at which joint duty assignments as specified in section 668 of this  
7 title are authorized. Joint duty credit is awarded as provided by subsection (c). Duty at a  
8 qualified joint task force headquarters requires one year of total service credited in the manner  
9 specified in subsection (c).

10           "(b) **EXCLUSIONS FROM TOUR LENGTH.**—The Secretary of a military department may  
11 request that the joint activity to which an officer is assigned curtail the officer's joint assignment.  
12 The officer will receive full credit for service when an assignment was curtailed from the  
13 standards prescribed in subsection (a), provided the officer has served at least 24 months in a  
14 joint position with a tour length of greater than 24 months, or the full term of a Secretary of  
15 Defense-established tour length, and the joint activity agreed to the curtailment.

16           "(c) **FULL CREDIT FOR JOINT DUTY.**—An officer shall be considered to have completed a  
17 full tour of joint duty in a joint duty assignment for the purposes of awarding full credit upon the

1 completion of any of the following:

2 "(1) A joint duty assignment that meets the standards prescribed in subsection (a)  
3 or (b).

4 "(2) Accumulation of partial credit totaling one year of service earned by service  
5 in one or more joint task force headquarters as specified in subsection (a).

6 "(3) A joint duty assignment with respect to which the Secretary of Defense has  
7 granted a waiver under subsection (d).

8 "(4) A second joint duty assignment that is less than 24 months, without regard to  
9 the nature of credit awarded to the officer for his or her first assignment in a Joint Duty  
10 Assignment List position.

11 "(d) WAIVER AUTHORITY.—The Secretary of Defense may waive this section when it is  
12 considered essential for military personnel management. Such a waiver may be granted only on  
13 a case-by-case basis in the case of any officer."

### **Section-by-Section Analysis**

This section would allow the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, to define the standard for a full credit joint tour.

It would establish the DoD designated tour length for the joint duty location as the qualifying tour length for awarding full joint credit. This would maintain a 36-month tour length for the majority of officers serving in the joint community, but also would provide recognition for joint service performed by officers who serve shorter tours in remote locations, such as Korea.

This section also would grant full joint credit to officers who accumulate 365 or more days in Joint Task Force Headquarters.

## **SEC. 135. ORDERING RESERVE COMPONENT MEMBERS TO ACTIVE DUTY TO RESPOND TO DISASTERS, ACCIDENTS, OR CATASTROPHES.**



1 Section 12304 of title 10, United States Code, is amended—

2 (1) in subsection (b)—

3 (A) by striking "or" at the end of paragraph (1);

4 (B) by striking the period at the end of paragraph (2) and inserting "; or"; and

5 (C) by adding at the end the following new paragraph:

6 "(3) a serious natural or manmade disaster, accident, or catastrophe."; and

7 (2) in subsection (c)(1), by striking "or" and all that follows and inserting a period.

### **Section-by-Section Analysis**

This section would extend the President's authority to order Reserve component members to active duty to provide assistance in responding to a serious natural or manmade disaster, accident, or catastrophe. This would enable DoD to employ all of its assets in support of civil authorities as needed.

## **SEC. 136. IMPROVED INVOLUNTARY ACCESS TO RESERVE COMPONENT**

### **MEMBERS FOR ENHANCED TRAINING.**

1 (a) READY RESERVE.—Section 10147(a) of title 10, United States Code, is amended—

2 (1) in paragraph (1), by inserting "(A)" after "(1)";

3 (2) by redesignating paragraph (2) as subparagraph (B);

4 (3) by striking the period at the end of subparagraph (B) (as redesignated) and  
5 inserting "; and" ; and

6 (4) by adding at the end the following new paragraph (2):

7 "(2) serve an additional obligation of up to 90 days of active duty for training  
8 when directed by the affected military department, with the consent of the governor in  
9 the case of the National Guard, in instances where additional training to meet deployment

1 standards is required as prescribed by the Secretary of the military department  
2 concerned."

3 (b) RESERVE COMPONENTS GENERALLY.—Section 12301 of such title is amended—

4 (1) by redesignating subsections (e) through (h) as subsections (f) through (i),  
5 respectively;

6 (2) by inserting after subsection (d) the following new subsection (e):

7 "(e) At any time, an authority designated by the Secretary concerned may order a  
8 member of a reserve component under his jurisdiction to active duty for a period of not more  
9 than 90 days, with the consent of the governor in the case of the National Guard, in instances  
10 where additional training to meet deployment standards is required as prescribed by the  
11 Secretary of the military department concerned. Service of members pursuant to this subsection  
12 will not affect subsequent mobilization under sections 12301, 12302, 12303, or 12304 of this  
13 title."

14 (3) in subsection (g) (as redesignated), by striking "subsections (b) and (d)" and  
15 inserting "subsections (b), (d), and (e)".

### **Section-by-Section Analysis**

This section would provide DoD with improved involuntary access to Reserve Component units and/or individual members for the purpose of collective or individual skill training required to meet deployment standards.

Current laws governing the mobilization and training of the Reserve forces were fashioned to confront contingencies never experienced before 11 September 2001. These laws created processes built for wars in which we had some amount of warning and/or an identified state actor. Those factors allowed time for mobilizing and training large Reserve formations to prosecute the interests of our nation.

Today, the unpredictable nature of future conflicts requires that both Active and Reserve forces must be able to respond quickly to threats at home and abroad. This means that Reserve

forces must receive earlier, more effective training to ensure they are prepared to deploy immediately in response to imminent contingencies. Allowing involuntary activation for occupational skill and other necessary training would enhance greatly the military's ability to support the vital interests of the nation.

This section would improve access to personnel significantly and emphasize occupational skills qualification and collective unit training for upcoming operational missions, provide DoD with appropriate time to train prior to mission deployment, and would enhance greatly DoD's long-term ability to support the vital interests of the nation. This would benefit the military departments by offering another way to ensure all Reserve Component units are trained and ready to deploy when needed. It is narrowly tailored, however, to ensure that service members are activated only when their training is necessary to support essential missions during a time of war or national emergency.

**SEC. 137. MEDICAL AND DENTAL SCREENING FOR MEMBERS OF SELECTED  
RESERVE UNITS ALERTED FOR MOBILIZATION.**

1           Section 1074a of title 10, United States Code, is amended by adding at the end the  
2 following new subsection:

3           "(f)(1) The Department of Defense may provide medical and dental screening and care to  
4 members of the Selected Reserve who are assigned to a unit that has been alerted that the unit  
5 will be mobilized for active duty service in support of an operational mission or contingency  
6 operation, during a national emergency, or in time of war.

7           "(2) The medical and dental screening and care that may be provided under this  
8 subsection is screening and care necessary to ensure that a member meets the medical and dental  
9 standards for deployment.

10           "(3) The services provided under this subsection shall be provided to a member at no cost  
11 to the member and at any time after the unit to which the member is assigned is alerted or  
12 otherwise notified the unit will be mobilized."

**Section-by-Section Analysis**

This section would allow DoD to provide medical and dental screening and care for members of the Selected Reserve who are assigned to a unit that has been alerted or otherwise notified that the unit will be mobilized for active duty in support of an operational mission, contingency operation, during a national emergency, or in time of war.

Existing law provides authority for medical screening and dental screening and care for members of the Selected Reserve who are assigned to units scheduled for deployment within 75 days after mobilization. The current law is inadequate because medical care necessary to ensure members are deployable is unavailable until the members are actually on active duty.

## TITLE II—ACQUISITION TRANSFORMATION

### Subtitle A—Transformation of Acquisition Process

- Sec. 201. Repeal requirements for major defense acquisition programs.
- Sec. 202. Applicability of Clinger-Cohen Act to equipment integral to a weapon or weapon system and Department of Defense information technology management.
- Sec. 203. Inflation adjustment of acquisition-related dollar thresholds.
- Sec. 204. Security interest exception to domestic source or content requirements.
- Sec. 205. Clarification of Buy American requirements.
- Sec. 206. Amendment of cataloging and standardization provisions.

### Subtitle B—Transformation of Contracting Process

- Sec. 211. Contracting for security guards and firefighting services.
- Sec. 212. Contracts with small businesses.
- Sec. 213. Performance based logistics: special procurement and funding authority.
- Sec. 214. Depot-related legislative reform.

## Subtitle A—Transformation of Acquisition Process

### SEC. 201. REPEAL REQUIREMENTS FOR MAJOR DEFENSE ACQUISITION PROGRAMS.

1 (a) REPEALS.—Sections 2430, 2431, 2432, 2433, 2435, and 2440 of title 10, United  
2 States Code, are repealed.

3 (b) INDEPENDENT COST ESTIMATES.—Section 2434 of such title 10 is amended—

4 (1) in the title, by striking "; **operational manpower requirements**";

5 (2) in subsection (a), by striking "and a manpower estimate for the program have"

1 and inserting "has"; and

2 (3) in subsection (b)—

3 (A) by striking "s" in "estimates";

4 (B) by striking "—" after "require";

5 (C) by striking "(1)";

6 (D) by striking "(A)" and inserting "(1)";

7 (E) by striking "(i)" and inserting "(A)";

8 (F) by striking "(ii)" and inserting "(B)";

9 (G) by striking "(B)" and inserting "(2)";

10 (H) by striking "; and" after "control" and inserting a period; and

11 (I) by striking paragraph (2).

### Section-by-Section Analysis

This section would repeal overly burdensome administrative requirements pertaining to manpower estimates relating to major defense acquisition programs. DoD seeks to foster greater flexibility, efficiency, creativity, and innovation in its acquisition processes.

## **SEC. 202. APPLICABILITY OF CLINGER-COHEN ACT TO EQUIPMENT**

### **INTEGRAL TO A WEAPON OR WEAPON SYSTEM AND**

### **DEPARTMENT OF DEFENSE INFORMATION TECHNOLOGY**

### **MANAGEMENT.**

1 (a) EXCEPTION FOR EQUIPMENT INTEGRAL TO A WEAPON OR WEAPON

2 SYSTEM.—Subsection (c) of section 11103 of title 40, United States Code, is amended by adding

3 at the end the following new paragraph:

4 "(4) EQUIPMENT INTEGRAL TO A WEAPON OR WEAPON SYSTEM.—Notwithstanding

1 paragraphs (1), (2), and (3), sections 11302, 11303, 11312, 11313, and 11316 of this title do not  
2 apply to equipment determined by the Secretary of Defense to be an integral part of a weapon or  
3 weapon system."

4 (b) ELIMINATION OF DUPLICATE NATIONAL SECURITY SYSTEMS.—Subsection (a) of  
5 section 2223 of title 10, United States Code, is amended—

6 (1) by inserting "and" at the end of paragraph (3);

7 (2) by amending paragraph (4) to read as follows:

8 "(4) provide for the elimination of duplicate information technology systems, and  
9 recommend to the Secretary of Defense the elimination of duplicate national security  
10 systems, within and between the military departments and Defense Agencies."; and

11 (3) by striking paragraph (5).

12 (c) REPEAL OF CONGRESSIONAL NOTIFICATION AND REPORTING REQUIREMENTS.—(1)  
13 Section 811 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001  
14 (Public Law 106-398; 114 Stat.1654) is repealed.

15 (2) Section 351 of the Bob Stump National Defense Authorization Act for Fiscal Year  
16 2003 (Public Law 107-314; 116 Stat. 2458) is repealed.

### **Section-by-Section Analysis**

This section would remove equipment determined by the Secretary of Defense to be an integral part of a weapon or weapon system from the coverage of the Clinger Cohen Act, as codified in chapter 113 of title 40, United States Code (except for section 11315).

This section also would amend the additional information technology responsibilities of the DoD Chief Information Officer (CIO) prescribed by section 2223 of title 10, United States Code, to require that the DoD CIO provide recommendations to the Secretary of Defense concerning the elimination of duplicate national security systems and to remove from the DoD CIO's responsibilities the consolidated inventory requirements for mission critical and mission essential information systems. This amendment in no way limits the authorities or the

responsibilities of the DoD CIO for developing and maintaining an information technology architecture. In addition, the Congressional notification and reporting requirements of section 811 of Public Law 106-398 and section 351 of Public Law 107-348 would be repealed for DoD information technology systems.

Repeal of these provisions would provide Defense officials the flexibility to establish effective information technology management policies and to alter them as necessary to take full advantage of fast-changing information technologies and the transformation of the Department's acquisition practices. This section is not intended to, and if enacted would not, decrease emphasis within DoD on interoperability, investment planning, and performance and results based management.

## **SEC. 203. INFLATION ADJUSTMENT FOR ACQUISITION-RELATED DOLLAR**

### **THRESHOLDS.**

1 (a) **AUTHORITY.**—Subject to the requirements of subsection (b)—

2 (1) the Federal Acquisition Regulatory Council (as defined in section 25 of the  
3 Office of Federal Procurement Policy Act, 41 U.S.C. 421) may adjust the dollar  
4 thresholds set out in statutes that apply to the acquisition of goods or services by  
5 executive agencies (as defined in section 4(1) of the Office of Federal Procurement  
6 Policy Act, 41 U.S.C. 403(1)); and

7 (2) the head of an executive agency may adjust the dollar thresholds set out in  
8 statutes that apply exclusively to the acquisition of goods or services by that agency.

9 (b) **THRESHOLD ADJUSTMENTS.**—Adjustments to dollar thresholds shall be—

10 (1) made only after consultation with the Director of the Office of Management  
11 and Budget and calculated using escalation rates to be determined by the Director;

12 (2) made from the date the threshold was enacted to the date of adjustment;

13 (3) rounded to facilitate implementation; and

14 (4) published in the Federal Register.

1 (c) EXCLUSION.—The authority of this section does not apply to—

2 (1) the Act of March 3, 1931 (popularly known as the Davis-Bacon Act), 40

3 U.S.C. 276(a); or

4 (2) the Service Contract Act of 1965 (41 U.S.C. 351 et seq).

### Section-by-Section Analysis

This section would permit the Federal Acquisition Regulatory Council (FAR Council) to adjust the dollar thresholds set in statutes that apply to the acquisition of goods or services by executive agencies. The section would further permit the head of an executive agency to adjust the dollar thresholds set out in statutes that apply exclusively to the acquisition of goods or services by that agency.

Any adjustment to a threshold, by either the FAR Council or the head of an agency, would be made in consultation with the Director of the Office of Management and Budget (using escalation rates determined by the Director) -- i.e., no adjustments would occur automatically by operation of this provision. The authority of this section would not apply to the Davis-Bacon Act or the Service Contract Act. It also would not be used in a manner that is inconsistent with any international agreement to which the United States is a party.

This authority is especially important for low dollar procurements. The thresholds contained in many procurement-related laws were intended originally to exclude low-dollar value procurements and to minimize the impact on small businesses. However, these thresholds have not kept pace with inflation over time, and now create administrative hurdles for government, industry and contractors. As a result, fewer contracts and contractors qualify for exemptions. Indexing the thresholds for inflation would prevent the continued expansion of laws and restore the original intent concerning their applicability.

## **SEC. 204. SECURITY INTEREST EXCEPTION TO DOMESTIC SOURCE OR CONTENT REQUIREMENTS.**

1 (a) IN GENERAL.—Subchapter V of chapter 148 of title 10, United States Code, is  
2 amended by adding at the end the following new section:

### **"§ 2539c. Waiver of domestic source or content requirements**

4 "(a) AUTHORITY.—The Secretary of Defense may waive the application of any domestic



1 source requirement or domestic content requirement, with the exception of the Small Business  
2 Act (15 U.S.C. 631 et seq.), and articles or items listed in subsection (b)(1)(B)-(E) of section  
3 2533a of this title, if he determines that security interests are served by a waiver of such a  
4 requirement. This waiver authority includes, but is not limited to, circumstances in which—

5 (1) it is necessary to promote standardization, interoperability of conventional  
6 defense equipment with allied and friendly governments;

7 (2) it is necessary to enable the Department of Defense to obtain the best  
8 equipment available in the most expeditious manner and thereby enhance the readiness  
9 and capabilities of United States Armed Forces;

10 (3) it is necessary to encourage competition in Department of Defense  
11 procurements;

12 (4) significant cost savings for purchases of Department of Defense supplies can  
13 be achieved; and

14 (5) it is necessary to support wartime, anti-terrorist, or contingency operations.

15 "(b) COVERED REQUIREMENTS.—For purposes of this section:

16 "(1) A 'domestic source requirement' is any requirement under law that the  
17 Department of Defense must procure an item that is grown, reprocessed, reused,  
18 produced, or manufactured in the United States or by a manufacturer that is a part of the  
19 national technology and industrial base (as defined in section 2500(1) of this title).

20 "(2) A 'domestic content requirement' is any requirement under law that the  
21 Department of Defense must procure an item produced or manufactured partly or wholly  
22 from components and materials grown, reprocessed, reused, produced, or manufactured  
23 in the United States.

1           "(c) RELATIONSHIP TO OTHER WAIVER AUTHORITY.—The authority under subsection (a)  
2 to waive a domestic source requirement or domestic content requirement is in addition to any  
3 other authority to waive such requirement.

4           "(d) CONSTRUCTION WITH RESPECT TO LATER ENACTED LAWS.—This section may not be  
5 construed as being inapplicable to a domestic source requirement or domestic content  
6 requirement contained in a law enacted after the enactment of this section solely on the basis of  
7 the later enactment."

8           (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is  
9 amended by inserting after the item relating to section 2539b the following new item:  
10 "2539c. Waiver of domestic source or content requirements."

### **Section-by-Section Analysis**

This section would allow the Secretary of Defense to waive domestic source or content requirements when such requirements are not in consonance with security interests. This authority does not apply to the Small Business Act or textile and apparel items listed in section 2533a. This section would promote interoperability and standardization of defense equipment with other countries; enable DoD to obtain the best equipment available in the most expeditious manner and thereby enhance the readiness and capabilities of the Armed Forces; encourage competition in DoD procurements; yield significant cost savings for purchases of defense supplies; and help United States industry gain access to foreign markets without discrimination.

### **SEC. 205. CLARIFICATION OF BUY AMERICAN REQUIREMENTS.**

1           Section 2533a of title 10, United States Code, is amended—

2           (1) in subsection (a)—

3                   (A) by striking "subsections (c) through (h)" and inserting "subsections (b)  
4 through (i)"; and

5                   (B) by striking "if the item is not grown, reprocessed, reused, or produced in the

1 United States";

2 (2) in subsection (b), by amending paragraphs (1) through (3) to read as follows:

3 "(1) An article or item of—

4 "(A) meals ready-to-eat listed in Federal Supply Class 8970 unless the article or  
5 item is produced or manufactured in the United States;

6 "(B) textile fabrics listed in Federal Supply Class 8305; yarn or thread listed in  
7 Federal Supply class 8310; tents, tarpaulins, or covers listed in Federal Supply Class  
8 8340; or flags or pennants listed in Federal Supply Class 8345 unless the article or item  
9 is produced or manufactured in the United States and the textile components or materials  
10 are produced or manufactured wholly in the United States;

11 "(C) clothing or apparel listed in Federal Supply Class 8405, 8410, 8415, 8420,  
12 8425, 8450, 8470, or 8475; footwear listed in Federal Supply class 8430 or 8435; hosiery  
13 listed in Federal Supply Class 8440 or 8445; or badges or insignia listed in Federal  
14 Supply Class 8455 unless the article or item is produced or manufactured in the United  
15 States and the textile components or materials are produced or manufactured wholly in  
16 the United States;

17 "(D) individual equipment listed in Federal Supply Class 8465 manufactured or  
18 produced from or containing textile components or materials unless the article or item is  
19 produced or manufactured in the United States and the textile components or materials  
20 are produced or manufactured wholly in the United States.

21 "(E) textile household furnishings listed in Federal Supply Class 7210 and textile  
22 draperies, awnings, or shades listed in Federal Supply Class 7230 unless the article or  
23 item is produced or manufactured in the United States and the textile components or

1 materials are produced or manufactured wholly in the United States; or

2 "(F) parachutes listed in Federal Supply Group 1670, unless the article or item is  
3 produced or manufactured wholly in the United States and the textile components or  
4 materials are produced or manufactured wholly in the United States.

5 "(2) Equipment of the following Federal supply classifications that contain a specialty  
6 metal unless the specialty metal used to produce or manufacture the article or item, or an  
7 equivalent amount that is acquired by the contractor or a subcontractor, was smelted in the  
8 United States:

9 "(A) Weapons listed in Federal Supply Group 10.

10 "(B) Nuclear ordnance listed in Federal Supply Group 11.

11 "(C) Fire control equipment listed in Federal Supply Group 12.

12 "(D) Ammunition and explosives listed in Federal Supply Group 13.

13 "(E) Guided missiles listed in Federal Supply Group 14.

14 "(F) Aircraft and related components, accessories, and equipment listed in Federal  
15 Supply Groups 15, 16, and 17.

16 "(G) Space vehicles listed in Federal Supply Group 18.

17 "(H) Ships, small craft, pontoons, and floating docks listed in Federal Supply  
18 Group 19.

19 "(I) Ship and marine equipment listed in Federal Supply Group 20.

20 "(J) Passenger motor vehicles listed in Federal Supply Class 2310.

21 "(K) Tracked combat vehicles listed in Federal Supply Class 2350.

22 "(L) Engines, turbines, and components listed in Federal Supply Group 28.

23 "For the purposes of this paragraph, 'specialty metal' means:

1           "(A) steel—

2                   "(i) where the maximum alloy content exceeds one or more of the  
3 following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60  
4 percent; or

5                   "(ii) that contains more than 0.25 percent of any of the following  
6 elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel,  
7 titanium, tungsten, or vanadium;

8           "(B) metal alloys consisting of nickel, iron-nickel, and cobalt base alloys  
9 containing a total of other alloying metals (except iron) in excess of 10 percent;

10           "(C) titanium and titanium alloys; or

11           "(D) zirconium and zirconium base alloys."; and

12           "(3) Hand tools listed in Federal Supply Group 51 and measuring tools listed in Federal  
13 Supply Group 52, unless the article or item is produced or manufactured in the United States.";

14           (3) in subsection (c)—

15                   (A) by striking "Subsection (a)" and inserting "This section";

16                   (B) by inserting ", or component thereof," after "such article or item";

17                   (C) by striking "(1) or specialty metals (including stainless steel flatware)"; and

18                   (D) by inserting before the period at the end the following: "or, for items listed in  
19 subsections (b)(1)(A), (b)(2), and b(3), at a reasonable cost";

20           (4) in subsection (d)—

21                   (A) in the catchline, by striking "OUTSIDE THE UNITED STATES" and inserting "IN  
22 EXIGENT CIRCUMSTANCES";

23                   (B) by striking "Subsection (a) does not apply" and inserting "This section does

1 not apply";

2 (C) by amending paragraph (1) to read as follows:

3 "(1) Procurements of items listed in subsections (b)(1)(A), (b)(2), and (b)(3) in  
4 support of contingency operations as defined in section 101(a)(13) of this title, and  
5 procurements outside the United States of items listed in subsections (b)(1)(B) through  
6 (b)(1)(F) in support of combat operations.";

7 (D) by amending paragraph (3) to read as follows:

8 "(3) Procurements of items listed in subsections (b)(1)(A), (b)(2), and (b)(3) of  
9 unusual and compelling urgency under the authority of section 2304(c)(2) of this title,  
10 and emergency procurements by an establishment located outside the United States of  
11 items listed in subsections (b)(1)(B) through (b)(1)(F) for the personnel attached to such  
12 establishment.".

13 (5) by amending subsections (e) and (f) to read as follows:

14 "(e) EXCEPTION FOR SPECIALTY METALS.—This section does not apply to procurements  
15 of end items or components of equipment listed in subsection (b)(2) if the specialty metal used to  
16 produce or manufacture the item, or an equivalent amount that is acquired by the contractor or a  
17 subcontractor, was smelted in a foreign country that has a memorandum of understanding  
18 providing for reciprocal procurement of defense items that is entered into with the Department of  
19 Defense in accordance with section 2531 of this title.

20 "(f) EXCEPTION FOR WARFARE PROTECTIVE CLOTHING.—This section does not apply to  
21 procurements of nuclear, biological, chemical, or radiological warfare protective clothing or  
22 personal armor listed in Federal Supply Group 84 produced or manufactured in any foreign  
23 country that has a memorandum of understanding providing for reciprocal procurement of

1 defense items that is entered into with the United States in accordance with section 2531 of this  
2 title, provided that the textile and apparel components or materials are substantially all from  
3 textile and apparel components and materials produced or manufactured wholly in the United  
4 States or in any such foreign country.";

5 (6) in subsection (g), by striking "Subsection (a) does not apply" and inserting "This  
6 section does not apply";

7 (7) in subsection (h)—

8 (A) by striking "Subsection (a) does not apply" and inserting "This section does  
9 not apply";

10 (B) by striking "2304(g) of this title" and inserting "2302(7) of this title"; and

11 (C) by adding at the end the following new sentence:

12 "This section does not preclude the purchase of covered items with textile  
13 components and materials that are not produced or manufactured in the United  
14 States if the estimated value of all such textile components and materials is not  
15 greater than—

16 "(1) the simplified acquisition threshold; or

17 "(2) 10 percent of the total price of the covered items being purchased,  
18 whichever is less."; and

19 (8) in subsection (i)—

20 (A) by striking "This section" and inserting "(1) Except as provided in paragraph  
21 (2), this section"; and

22 (B) by adding at the end the following new paragraph:

23 "(2) This section does not apply to commercial items, or components thereof, that

1 are listed in sections (b)(1)(A), (b)(2), and (b)(3), except if the end item is specialty  
2 metal."

### **Section-by-Section Analysis**

This section would provide clarifications to help the Department of Defense and its suppliers to improve their understanding, implementation, compliance, and enforcement of the law. These clarifications would retain the fundamental domestic preference requirements of the law.

This section would allow DoD to make timely purchases of products (except for textile and apparel items listed in subsections (b)(1)(B) through (b)(1)(F) of section 2533a that are purchased in support of combat operations) needed to support contingency operations, such as Project Enduring Freedom, and in situations of unusual and compelling urgency.

This section would eliminate an existing anomaly that gives foreign suppliers greater latitude than domestic suppliers in the production and manufacture of chemical, biological, nuclear, and radiological protective clothing and specialty metals.

## **SEC. 206. AMENDMENT OF CATALOGING AND STANDARDIZATION**

### **PROVISIONS.**

1 Chapter 145 of title 10, United States Code, is amended—

2 (1) in section 2451—

3 (A) by striking subsection (b);

4 (B) by redesignating subsection (c) as subsection (b); and

5 (C) by amending subsection (b), as redesignated, to read as follows:

6 "(b) In standardizing supplies, the Secretary shall, to the highest degree  
7 practicable, standardize items used throughout the Department of Defense by adopting  
8 and using single voluntary standards, international or domestic, or when necessary,  
9 developing and using single government specifications, eliminating overlapping and  
10 duplicate specifications, and reducing the number of sizes and kinds of items that are



1 generally similar."

2 (2) in section 2452—

3 (A) by striking paragraphs (2), (3), and (4);

4 (B) by inserting a new paragraph (2) to read as follows:

5 "(2) participate with industry in the development of voluntary standards and use  
6 those standards in lieu of government specifications and standards to the maximum  
7 practical extent;"

8 (C) by redesignating paragraph (5) as paragraph (3);

9 (D) by redesignating paragraph (6) as paragraph (4), and by striking the words  
10 "bureaus, and services" and inserting " and defense agencies";

11 (E) by striking paragraph (7); and

12 (F) by redesignating paragraph (8) as paragraph (5);

13 (3) by repealing sections 2453 and 2454;

14 (4) in section 2457—

15 (A) by striking paragraph (d); and

16 (B) by redesignating paragraphs (e) and (f) as paragraphs (d) and (e) respectively;

17 and

18 (5) by repealing section 2458.

### **Section-by-Section Analysis**

This section would reduce duplication of items in Department of Defense inventories and standardize descriptions of items used repeatedly in Department of Defense procurement. The resulting cataloging system would be more compatible with the private sector.

## **Subtitle B—Transformation of Contracting Process**

### **SEC. 211. CONTRACTING FOR SECURITY GUARDS AND FIREFIGHTING SERVICES.**

1 Section 2465 of title 10, United States Code, is repealed.

#### **Section-by-Section Analysis**

This section would allow DoD to bid and compete contracts for security guard services as well as contracts for the performance of firefighting functions at military installations in the continental United States. DoD believes such contracts would be more cost-effective and would provide DoD needed flexibility to respond more effectively and rapidly to contingencies and other exigent situations, such as the need for enhanced security of military installations following September 11th.

### **SEC. 212. CONTRACTS WITH SMALL BUSINESSES.**

1 (a) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by inserting  
2 after section 2381 the following new section:

3 **"§ 2382. Contracts with small businesses**

4 "(a) SECRETARY OF DEFENSE AUTHORITY TO ESTABLISH GOALS.—The Secretary of  
5 Defense shall annually establish Department-wide goals for procurement contracts awarded to  
6 the small business concerns mentioned in section 15(g)(1) of the Small Business Act (15 U.S.C.  
7 644(g)(1)). Each goal shall be higher than the statutory goals for these categories stated in  
8 section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)). Achievement of the combined  
9 prime contracting and subcontracting goal will be calculated against the total prime contract  
10 awards to United States business concerns in each of the aforementioned categories.

11 Notwithstanding the Department-wide goal, each military department and defense agency shall

1 have annual goals that present, for that department or agency, the maximum practicable  
2 opportunity for each of the aforementioned small business categories in the performance of  
3 contracts and subcontracts.

4 "(b) EXEMPTION FROM REQUIREMENT TO NEGOTIATE GOALS.—The Department of  
5 Defense is exempt from negotiation with the Small Business Administration regarding small  
6 business goals.

7 "(c) PROVISIONS NOT AFFECTED.—Nothing in this section shall be construed as  
8 modifying or superseding, or as intended to impair or restrict, authorities or responsibilities—

9 "(1) related to contract bundling, including those established by sections 411  
10 through 414 of the Small Business Reauthorization Act of 1997 (Public Law 105-135); or

11 "(2) under any other provision set forth in the Small Business Act or this title,  
12 other than those that address set-asides, preferences, and size standards to the extent  
13 addressed in this section."

### **Section-by-Section Analysis**

This section would allow the Secretary of Defense to determine small business contract goals. This section would permit DoD to avail itself of the capabilities and technologies of small business, and would provide such businesses significant growth opportunities.

### **SEC. 213. PERFORMANCE BASED LOGISTICS: SPECIAL PROCUREMENT AND FUNDING AUTHORITY.**

1 (a) AUTHORITY.—Notwithstanding any other provision of law, the Department of  
2 Defense may enter into a Performance Based Logistics contract for a term not to exceed 10 years  
3 or, in the alternative, a 5-year contract with a 5-year option, if the Secretary of Defense  
4 determines that entering into such a contract is in the best interest of Government. The Secretary

1 shall fund each Performance Based Logistics contract on an annual basis. Notwithstanding any  
2 other provision of law, each Performance Based Logistics contract may contain a special  
3 termination cost clause of the type contained in Part 249 of the Defense Federal Acquisition  
4 Regulation Supplement.

5 (b) PERFORMANCE BASED LOGISTICS CONTRACTING.—The Secretary shall implement  
6 policy and regulations to foster savings and efficiencies in long-term Performance Based  
7 Logistics support for weapon systems. Such logistics support must efficiently use a combination  
8 of public and private industry capabilities.

9 (c) SPECIFIC AUTHORITY.—Notwithstanding any other provision of law, the Secretary  
10 may fund a Performance Based Logistics effort by utilizing procurement funds in lieu of  
11 Operations & Maintenance or Research Development, Testing & Evaluation funds without  
12 regard to the restrictions of section 1301(a) of title 31, United States Code.

13 (d) DEFINITION.—For the purposes of this section, the term "Performance Based  
14 Logistics contract" means a contract in which the contractor shall meet reliability, availability,  
15 and/or responsiveness requirements for logistical support which results in improved product  
16 effectiveness while reducing total ownership costs.

### **Section-by-Section Analysis**

This section would permit the Secretary of Defense to implement a Performance Based Logistics (PBL) program with the goal to improve the capability and availability of major weapons and components. Conventional integrated logistics support concepts do not provide the Secretary the funding flexibility and the ability to execute long-term partnerships to achieve this goal. Without the restrictions of 31 U.S.C. 1301(a), the Secretary could permit logistics contractors to apply procurement funds on logistics efforts in lieu of operation and maintenance (O&M), and research, development, test, and evaluation (RDT&E) accounts, in order to increase efficiencies, increase reliability, and/or manage parts obsolescence issues. Granting the Secretary the authority to enter into long-term PBL contracts would enable the contractor to reduce investment risk, maximize efficiencies, and manage parts obsolescence issues. As one

example, with respect to parts obsolescence, the logistics contractor would be able to make life of type buys, or, alternatively, invest in obsolete parts redesign strategies that have returns-on-investment beyond the current one-year logistics contract concept. Furthermore, this provision would give the Secretary the requisite authority to provide for specific PBL contract termination liability levels and commit funds to a level commensurate with the risk of termination.

To encourage efficiency, the Secretary would develop business case analyses that consider cost, schedule, and performance impacts to support the use of PBL contracts, and each PBL contract would track such metrics throughout the contract term.

As used in this section, the term "contractor" would include commercial sources, government sources, and/or public-private partnerships. Consistent with 10 U.S.C. 2464, the government would contract with any of these sources, as necessary, in order to improve product effectiveness and reduced total ownership costs.

#### **SEC. 214. DEPOT-RELATED LEGISLATIVE REFORM.**

1           (a) ESTABLISHING MINIMUM LEVEL OF PERFORMANCE OF DEPOT-LEVEL MAINTENANCE  
2 OF MATERIEL BY FEDERAL GOVERNMENT PERSONNEL OR AT A GOVERNMENT-OWNED  
3 FACILITY.—(1) Subsection (a) of section 2466 of title 10, United States Code, is amended to  
4 read as follows:

5           "(a) ALLOCATION OF WORKLOAD PERCENTAGE.—At least 50 percent of the funds made  
6 available in a fiscal year to a military department or a Defense Agency for depot-level  
7 maintenance and repair workload shall be used for the performance of such workload for the  
8 military department or the Defense Agency by Federal Government personnel or at a  
9 Government-owned facility."

10           (2) Paragraph (1) of section 2474(f) of such title is amended by striking "percentage  
11 limitation" and inserting "allocation of workload percentage".

12           (b) EXCLUDE WORKLOADS FOR SPECIAL ACCESS PROGRAMS FROM LIMITATIONS ON THE  
13 PERFORMANCE OF DEPOT-LEVEL MAINTENANCE OF MATERIEL.—Subsection (d) of section 2466  
14 of such title is amended to read as follows:

1           "(d) EXCEPTIONS.—Subsection (a) shall not apply with respect to—

2                   "(1) the Sacramento Army Depot, Sacramento, California; and

3                   "(2) workloads for special access programs."

4           (c) EXTENSION OF PARTNERSHIP EXEMPTION FOR CENTERS OF INDUSTRIAL AND  
5 TECHNICAL EXCELLENCE.—Section 2474(f)(1) of such title is amended by striking "at" and  
6 inserting "for".

### **Section-by-Section Analysis**

This section would change the emphasis of section 2466 of title 10, United States Code, from limiting contract performance of depot-level maintenance of materiel to requiring a minimum level of performance of such workloads by Federal Government personnel or at a Government-owned facility.

Currently, section 2466 limits contract performance to fifty percent of funds available for depot-level maintenance and repair workload. This section instead would require military departments and Defense Agencies to use at least fifty percent of their funds for the performance of such workload by Federal Government personnel or at a Government-owned facility. This would allow greater flexibility and foster public-private partnerships for work in public facilities by allowing the military department or Defense Agency to count all resources expended either at a Government-owned facility or for Government personnel at Government- or privately-owned facilities towards the fifty percent threshold.

This section would encourage Government and private industry business partnerships allowing for the sharing of investments in facilities and equipment. It also would foster a combined effort by contractor personnel and Federal Government personnel. In addition, this section would provide for effective utilization of facilities and equipment at Government-owned, government-operated facilities.

This section also would exclude workloads for special access programs from the limitations on the performance of depot-level maintenance of materiel by non-Federal Government personnel. Special access programs are typically low-density and highly specialized; therefore, there are few maintenance or sustainment concerns. Leveraging the contractor's investment used for the production of special access programs by contracting to meet sustainment requirements is a prudent approach. These unique characteristics of special access programs are recognized, and other statutes exclude special access programs. For example, section 2464(a)(3) of title 10 requires determination of core logistics capabilities, and that section includes an exemption for special access programs.

The scope of this exclusion is very limited, focusing only on the special access programs, and would affect approximately two to five percent of the total funds made available for depot maintenance.

Finally, this section would remove the existing geographic limitation in favor of a function-based analysis. This technical amendment would provide a Center of Industrial and Technical Excellence greater flexibility to enter into public-private partnerships.

### **TITLE III—INSTALLATION MANAGEMENT TRANSFORMATION**

Sec. 301. Readiness and range preservation initiative.

#### **SEC. 301. READINESS AND RANGE PRESERVATION INITIATIVE.**

1 (a) IN GENERAL.—(1) Part III of subtitle A of title 10, United States Code, is amended by  
2 inserting after chapter 101 the following new chapter:

#### **"CHAPTER 101A—READINESS AND RANGE PRESERVATION**

"Sec.

"2015 Purpose of this chapter.

"2016. Definitions.

"2017. Military readiness and the conservation of protected species.

"2018. Conformity with State Implementation Plans for air quality.

"2019. Range management and restoration.

#### **3 "§ 2015. Purpose of this chapter**

4 "The purpose of this chapter is to:

5 "(1) protect the lives and well-being of citizens of the United States and preserve their  
6 freedoms, economic prosperity, and environmental heritage by ensuring military readiness;

7 "(2) ensure military readiness by addressing problems created by encroachment on  
8 military readiness activities and lands, marine areas, and airspace reserved, withdrawn, or  
9 designated for a military use;

10 "(3) reaffirm the principle that such lands, marine areas, and airspace exist to ensure

1 military preparedness;

2 "(4) shield military readiness activities and lands, marine areas, and airspace reserved,  
3 withdrawn, or designated for a military use, including land, sea, and air training and operating  
4 areas, from encroachment, while ensuring that the Department of Defense fulfills its  
5 environmental stewardship responsibilities;

6 "(5) manage such lands, marine areas, and airspace for other purposes to the extent the  
7 non-military purpose does not reduce capability to support military readiness activities;

8 "(6) re-establish the appropriate balance between military readiness and environmental  
9 stewardship; and

10 "(7) establish a framework to ensure long-term sustainability of military ranges.

11 **"§ 2016. Definitions**

12 "For purposes of this chapter:

13 "(1) The term 'military readiness activities' includes all training and operations that relate  
14 to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and  
15 sensors for proper operation and suitability for combat use. The term does not include the  
16 routine operation of installation operating support functions, such as administrative offices,  
17 military exchanges, commissaries, water treatment facilities, storage, schools, housing, motor  
18 pools, laundries, morale, welfare and recreation activities, shops, and mess halls, nor the  
19 operation of industrial activities, or the construction or demolition of such facilities.

20 "(2) The terms 'combat' or 'combat use' include all forms of armed conflict and  
21 operational employment as well as those support functions necessary for armed conflict and  
22 operational employment, including transportation of personnel, weapons, supplies, ammunition  
23 and other military material to the vicinity of actual or potential armed conflict; intelligence



1 gathering in support of actual or potential armed conflict; command of and communications  
2 between military units; and similar activities necessary for the successful prosecution of armed  
3 conflict, whether or not conducted at the scene of actual conflict.

4 "(3) The term 'the Department' means the Department of Defense as defined in section  
5 101(a)(6) of this title and the Coast Guard when it is not operating as a service in the Department  
6 of the Navy.

7 **"§ 2017. Military readiness and the conservation of protected species**

8 "(a) The completion of an Integrated Natural Resources Management Plan, pursuant to  
9 the Sikes Act Improvement Act (16 U.S.C. 670a), for lands or other geographical areas owned or  
10 controlled by the Department, or designated for its use, that addresses endangered or threatened  
11 species and their habitat, provides the 'special management considerations or protection' required  
12 under the Endangered Species Act (16 U.S.C. 1532(5)(A)) and precludes designation of critical  
13 habitat for any such land or geographical areas under section 4 of the Endangered Species Act  
14 (16 U.S.C. 1533).

15 "(b) This section does not remove the requirement for agency consultation under section  
16 7(a)(2) of the Endangered Species Act (16 U.S.C. 1536(a)(2)).

17 **"§ 2018. Conformity with State Implementation Plans for air quality**

18 "(a) CONFORMITY WITH CLEAN AIR ACT.—In all cases in which the requirements of  
19 section 176(c) of the Clean Air Act would have applied to proposed military readiness activities,  
20 the Department shall not be prohibited from engaging in such military readiness activities, but  
21 shall:

22 "(1) estimate for all criteria pollutants for which the area is designated  
23 'nonattainment' or 'maintenance' the quantity of emissions that are caused by the military

1 readiness activities;

2 "(2) notify the state air quality planning agency for the affected area of such  
3 emission estimates prior to engaging in proposed military readiness activities; and

4 "(3) ensure that military readiness activities conform with the requirements of  
5 section 176(c) within three years of the date new activities begin.

6 "(b) EPA APPROVAL.—Notwithstanding any other provisions of law, an implementation  
7 plan or plan revision required under the Clean Air Act shall be approved by the Administrator of  
8 the Environmental Protection Agency if:

9 "(1) such plan or revision meets all the requirements applicable to it under the  
10 Clean Air Act other than a requirement that such plan or revision demonstrate attainment  
11 and maintenance of the relevant national ambient air quality standards by the attainment  
12 date specified under the applicable provision of the Act, or in a regulation promulgated  
13 under such provision; and

14 "(2) the submitting State established to the satisfaction of the Administrator that  
15 the implementation plan of such State would be adequate to attain and maintain the  
16 relevant national ambient air quality standards by the attainment date specified under the  
17 applicable provision of the Act, or in a regulation promulgated under such provision, but  
18 for emissions emanating from military readiness activities not otherwise meeting section  
19 176(c) of the Act pursuant to paragraph (a) of this section.

20 "(c) EFFECT ON STATE COMPLIANCE WITH OZONE STANDARDS.—Notwithstanding any  
21 other provisions of law, any state that establishes to the satisfaction of the Administrator that,  
22 with respect to an ozone nonattainment area in such State, such State would have attained the  
23 national ambient air quality standard for ozone by the applicable attainment date, but for

1 emissions emanating from military readiness activities not otherwise meeting section 176(c) of  
2 the Act pursuant to paragraph (a) of this section, shall not be subject to the provisions of section  
3 181(b)(2) and (4) or section 185 of the Act.

4 "(d) EFFECT ON STATE COMPLIANCE WITH CARBON MONOXIDE

5 STANDARDS.—Notwithstanding any other provision of law, any State that establishes to the  
6 satisfaction of the Administrator, with respect to a carbon monoxide nonattainment area in such  
7 State, that such State has attained the national ambient air quality standard for carbon monoxide  
8 by the applicable attainment date, but for emissions emanating from military readiness activities  
9 not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section, shall  
10 not be subject to the provisions of section 186(b)(2) of the Act.

11 "(e) EFFECT ON STATE COMPLIANCE WITH PM-10 STANDARDS.—Notwithstanding any

12 other provisions of law, any State that establishes to the satisfaction of the Administrator that,  
13 with respect to a PM-10 nonattainment area in such State, such State would have attained the  
14 national ambient air quality standard for PM-10 by the applicable attainment date, but for  
15 emission emanating from military readiness activities not otherwise meeting section 176(c) of  
16 the Act pursuant to paragraph (a) of this section, shall not be subject to the provisions of section  
17 188(b)(2) of the Act.

18 "**§ 2019. Range management and restoration**

19 "(a) DEFINITION OF SOLID WASTE.—(1)(A) The term 'solid waste,' as used in the Solid  
20 Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.), includes explosives, unexploded  
21 ordnance, munitions, munition fragments, or constituents thereof that;

22 "(i) are or have been deposited, incident to their normal and expected use,  
23 on an operational range, and;

1                   "(I) are removed from the operational range for reclamation,  
2                   treatment, disposal, treatment prior to disposal, or storage prior to or in  
3                   lieu of reclamation, treatment, disposal, or treatment prior to disposal;

4                   "(II) are recovered, collected, and then disposed of by burial or  
5                   landfilling; or

6                   "(III) migrate off an operational range and are not addressed under  
7                   the Comprehensive Environmental Response, Compensation, and Liability  
8                   Act of 1980, as amended (42 U.S.C. 9601 et seq.); or

9                   "(ii) are deposited, incident to their normal and expected use, off an  
10                  operational range, and are not promptly rendered safe or retrieved.

11                 "(B) The explosives, unexploded ordnance, munitions, munitions fragments, or  
12                 constituents thereof defined as solid waste in subparagraph (a)(1)(A) shall be subject to  
13                 the provisions of the Solid Waste Disposal Act, as amended, including but not limited to  
14                 sections 7002 and 7003, where applicable.

15                 "(2) Except as set out in subparagraph (1), the term 'solid waste,' as used in the Solid  
16                 Waste Disposal Act, as amended, does not include explosives, unexploded ordnance, munitions,  
17                 munitions fragments, or constituents thereof that:

18                 "(A) are used in training military personnel or explosives and munitions  
19                 emergency response specialists (including training in proper destruction of unused  
20                 propellant or other munitions) on an operational range;

21                 "(B) are used in research, development, testing, and evaluation of military  
22                 munitions, weapons, or weapon systems on an operational range;

23                 "(C) are or have been deposited, incident to their normal and expected use, and

1 remain on an operational range, except as provided in subparagraph (a)(1)(A);

2 "(D) are deposited, incident to their normal and expected use, off an operational  
3 range, and are promptly rendered safe or retrieved; or

4 "(E) are recovered, collected, and destroyed on-range during range clearance  
5 activities at operational ranges, but not including the on-range burial of unexploded  
6 ordnance and contaminants when the burial is not a result of product use.

7 "(3) Nothing in paragraphs (1) and (2) hereof affects the legal requirements applicable to  
8 explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof that  
9 have been deposited on an operational range once the range ceases to be an operational range.

10 "(b) DEFINITION OF RELEASE.—(1) The term 'release,' as used in the Comprehensive  
11 Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601  
12 et seq.), includes the deposit off an operational range, or the migration off an operational range,  
13 of any explosives, unexploded ordnance, munitions, munitions fragments, or constituents  
14 thereof.

15 "(2) The term 'release,' as used in the Comprehensive Environmental Response,  
16 Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.), does not include  
17 the deposit or presence on an operational range of any explosives, unexploded ordnance,  
18 munitions, munitions fragments, or constituents thereof that are or have been deposited thereon  
19 incident to their normal and expected use and remain thereon.

20 "(3) Notwithstanding the provisions of paragraph (2), the authority of the President under  
21 section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act  
22 of 1980, as amended (42 U.S.C. 9606(a)), to take action because there may be an imminent and  
23 substantial endangerment to the public health or welfare or the environment because of an actual

1 or threatened release of a hazardous substance includes the authority to take action because of  
2 the deposit or presence on an operational range of any explosives, unexploded ordnance,  
3 munitions, munitions fragments, or constituents thereof that are or have been deposited thereon  
4 incident to their normal and expected use and remain thereon.

5 "(4) Nothing in this section affects the authority of the Department to protect the  
6 environment, safety, and health on operational ranges."

7 (2) The table of chapters at the beginning of such subtitle and the beginning of part III of  
8 such subtitle are amended by inserting after the item relating to chapter 101 the following new  
9 item:

10 **"101A. Readiness and Range Preservation .....2015".**

11 (b) **MILITARY READINESS AND MARINE MAMMAL PROTECTION RECONCILIATION.**—The  
12 Marine Mammal Protection Act of 1972, as amended (Public Law 92-522; 86 Stat. 1027; 16  
13 U.S.C. 1361, et. seq.), is amended as follows:

14 (1) **DEFINITIONS.**—Section 3 (16 U.S.C. 1362) is amended—

15 (A) by amending paragraph (18) to read as follows:

16 "(18)(A) Except as provided in subparagraph (B), the term 'harassment' means  
17 any act of pursuit, torment, or annoyance which—

18 "(i) has the potential to injure a marine mammal or marine mammal stock  
19 in the wild; or

20 "(ii) has the potential to disturb a marine mammal or marine mammal  
21 stock in the wild by causing disruption of behavioral patterns, including, but not  
22 limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

23 "(iii) The term 'Level A harassment' means harassment described in

1           subparagraph (A)(i).

2                   "(iv) The term 'Level B harassment' means harassment described in  
3           subparagraph (A)(ii).

4           "(B) For purposes of military readiness activities, the term 'harassment' means  
5           any act which—

6                   "(i) injures or has the significant potential to injure a marine mammal or  
7           marine mammal stock in the wild; or

8                   "(ii)(I) disturbs or is likely to disturb a marine mammal or marine  
9           mammal stock in the wild by causing disruption of natural behavioral patterns,  
10           including, but not limited to, migration, surfacing, nursing, breeding, feeding, or  
11           sheltering, to a point where such behavioral patterns are abandoned or  
12           significantly altered; or

13                   "(II) is directed toward a specific individual, group or stock of marine  
14           mammals in the wild that is likely to disturb the individual, group, or stock of  
15           marine mammals by disrupting behavior, including, but not limited to, migration,  
16           surfacing, nursing, breeding, feeding, or sheltering."; and

17                   (B) by adding at the end the following new paragraphs:

18           "(30) The term 'military readiness activities' includes all training and operations  
19           that relate to combat, and the adequate and realistic testing of military equipment,  
20           vehicles, weapons, and sensors for proper operation and suitability for combat use. The  
21           term does not include the routine operation of installation operating support functions,  
22           such as administrative offices, military exchanges, commissaries, water treatment  
23           facilities, storage, schools, housing, motor pools, laundries, morale, welfare and

1 recreation activities, shops, and mess halls, nor the operation of industrial activities, or  
2 the construction or demolition of such facilities.

3 "(31) The terms 'combat' or 'combat use' include all forms of armed conflict and  
4 operational employment as well as those support functions necessary for armed conflict  
5 and operational employment, including transportation of personnel, weapons, supplies,  
6 ammunition and other military material to the vicinity of actual or potential armed  
7 conflict; intelligence gathering in support of actual or potential armed conflict; command  
8 of and communications between military units; and similar activities necessary for the  
9 successful prosecution of armed conflict, whether or not conducted at the scene of actual  
10 conflict.

11 "(32) The term 'Department of Defense' means the military departments and the  
12 Coast Guard when it is not operating as a service in the Department of the Navy."

13 (2) TAKING AND IMPORTING MARINE MAMMALS.—Section 101 (16 U.S.C. 1371)  
14 is amended—

15 (A) in subsection (a)—

16 (i) in paragraph (5)—

17 (I) in subparagraph (A), by inserting "and military  
18 readiness activities" after "other than commercial fishing"; and

19 (II) in subparagraph (D)(i), by inserting "and military  
20 readiness activities" after "other than commercial fishing"; and

21 (ii) by adding at the end the following new paragraph:

22 "(7)(A) Upon request by the Department of Defense for an authorization  
23 related to military readiness activities, the Secretary, shall allow, during periods



1 of not more than five consecutive years each, the incidental, but not intentional,  
2 taking of marine mammals of a species or population stock if the Secretary—

3 "(i) finds that the total of such taking during each five-year (or  
4 less) period concerned will have a negligible impact upon such species or  
5 stock and will not have an unmitigable adverse impact on the availability  
6 of such species or stock for taking for subsistence uses pursuant to  
7 subsection (b) of this section or section 1379(f) of this title, or in the case  
8 of a cooperative agreement under both this chapter and the Whaling  
9 Convention Act of 1949 (16 USC. 916 et seq.), pursuant to section  
10 1382(c) of this title; and

11 "(ii) prescribes regulations setting forth—

12 "(I) permissible methods of taking pursuant to such  
13 activity, and other means of affecting the least practicable adverse  
14 impact on such species or stock and its habitat, paying particular  
15 attention to rookeries and mating grounds, and on the availability  
16 of such species or stock for subsistence uses; and

17 "(II) requirements pertaining to the monitoring and  
18 reporting of such taking.

19 "(B) The Secretary shall withdraw, or suspend for a time certain, the  
20 permission to take marine mammals granted under subparagraph (A), if the  
21 Secretary finds, after notice and opportunity for public comment (unless  
22 subparagraph (C)(i) applies), that—

23 "(i) the regulations prescribed under subparagraph (A) regarding

1 methods of taking, monitoring, or reporting are not being substantially  
2 complied with; or

3 "(ii) the taking allowed under subparagraph (A) is having, or may  
4 have, more than a negligible impact on the species or stock concerned.

5 "(C)(i) The requirement for notice and opportunity for public comment  
6 shall not apply in the case of a suspension of permission to take if the Secretary  
7 determines that an emergency exists which poses a significant risk to well-being  
8 of the species or stock concerned.

9 "(ii) Sections 1373 and 1374 of this title shall not apply to the taking of  
10 marine mammals under the authority of this paragraph.

11 "(D)(i) Upon request by the Department of Defense for an authorization  
12 related to military readiness activities, the Secretary shall authorize, for periods of  
13 not more than 1 year, subject to such conditions as the Secretary may specify, the  
14 incidental, but not intentional, taking by harassment of marine mammals of a  
15 species or population stock if the Secretary finds that such harassment during  
16 each period concerned—

17 "(I) will have a negligible impact on such species or stock, and

18 "(II) will not have an unmitigable adverse impact on the  
19 availability of such species or stock for taking for subsistence uses  
20 pursuant to subsection (b) of this section, or 1379(f) of this title, or  
21 pursuant to a cooperative agreement under section 1388 of this title.

22 "(ii) The authorization for such military readiness activities shall  
23 prescribe, where applicable—

1                   "(I) permissible methods of taking by harassment pursuant to such  
2 military readiness activity, and other means of affecting the least  
3 practicable impact upon such species or stock and its habitat, paying  
4 particular attention to rookeries and mating grounds, and on the  
5 availability of such species or stock for subsistence uses pursuant to  
6 subsection (b) of this section, or 1379(f) of this title, or pursuant to a  
7 cooperative agreement under section 1388 of this title;

8                   "(II) the measures that the Secretary of Commerce or Secretary of  
9 Interior determines are necessary to ensure no unmitigable adverse impact  
10 upon the availability of the species or stock for subsistence uses pursuant  
11 to subsection (b) of this section, or 1379(f) of this title, or pursuant to a  
12 cooperative agreement under section 1388 of this title; and

13                   "(III) requirements pertaining to the monitoring and reporting of  
14 such taking by harassment, including requirements for the independent  
15 peer review of proposed monitoring plans or other research proposals  
16 where the proposed military readiness activity may affect the availability  
17 of the species or stock for subsistence uses pursuant to subsection (b) of  
18 this section, or 1379(f) of this title, or pursuant to a cooperative agreement  
19 under section 1388 of this title.

20                   "(iii) The Secretary shall publish a proposed authorization not later than  
21 45 days after receiving a request under this subparagraph and request public  
22 comment through notice in the Federal Register for a period of 30 days after  
23 publication. Not later than 45 days after the close of the public comment period,

1 if the Secretary makes the findings set forth in clause (E)(i), the Secretary shall  
2 issue an authorization with appropriate conditions to meet the requirements of  
3 clause (D)(ii).

4 "(iv) The Secretary shall modify, suspend, or revoke an authorization if  
5 the Secretary finds that the provisions of clauses (D)(i) or (D)(ii) are not being  
6 met.

7 "(v) A person conducting a military readiness activity for which an  
8 authorization has been granted under this subparagraph shall not be subject to the  
9 penalties of this chapter for taking by harassment that occurs in compliance with  
10 such authorization.

11 "(E) Nothing in this chapter shall require disclosure of information  
12 classified in the interests of national defense.";

13 (B) by redesignating subsection (e) as subsection (f); and

14 (C) by inserting after subsection (d) the following new subsection (e):

15 "(e) EXEMPTION OF ACTIONS NECESSARY FOR NATIONAL DEFENSE.—The Secretary of  
16 Defense, after conferring with the Secretary of Commerce, the Secretary of Interior, or both, as  
17 appropriate, may exempt any action or category of actions undertaken by the Department of  
18 Defense or its components from compliance with any requirement of the Marine Mammal  
19 Protection Act, 16 U.S.C. 1361 et seq., if he determines that it is necessary for national defense.  
20 Exemptions granted under this section shall be for a period of not more than two years.  
21 Additional exemptions for periods not to exceed two years each may be granted for the same  
22 action or category of actions upon the Secretary of Defense, after conferring with the Secretary  
23 of Commerce, the Secretary of Interior, or both as appropriate, making a new determination."

## Section-by-Section Analysis

This section would ensure that the armed forces of the United States are combat ready from the first day of combat while defining some of the environmental stewardship responsibilities of the military departments.

Military readiness is essential to the security of the United States, to the protection of the lives and well-being of our citizens, and to the preservation of our freedoms, economic prosperity, and our environmental heritage. A well-trained and well-equipped military is a principal component of military readiness, and to be well-trained and prepared, it is imperative that soldiers, sailors, Marines, and airmen train in the same manner as they fight. Testing of military equipment, vehicles, weaponry, and sensors is also a principal component of military readiness. In this regard, live-fire testing and training are an integral and necessary part of realistic military operations, testing, and training. Military lands and test and training ranges (including land, sea and air training, testing, and operating areas) exist to ensure military preparedness by providing realistic test and training opportunities.

The shield of military readiness protects our Nation's environment—our land, air, and water, as well as the fish, wildlife, and plant species that inhabit them. In addition to defending against foreign threats, the military acts as trustee, helping to protect the environment by its prudent and conscientious management of the natural resources of our military lands. Largely as a result of this stewardship, military lands present acceptable habitat for plants and wildlife, including protected species.

The Department of Defense (DoD) is proud of its record of environmental stewardship and is committed to maintaining and improving its stewardship in future. Our successful stewardship reflects not only the conscientious efforts of the men and women of the Armed Forces but also the overall compatibility of the DoD's mission with environmental protection.

In recent years, however, novel interpretations and extensions of environmental laws and regulations, along with such factors as population growth and economic development, have significantly restricted the military's access to and use of military lands and test and training ranges, and limited its ability to engage in live-fire testing and training. This phenomenon — often referred to as "encroachment" — has markedly restricted the military's ability to test and train realistically and, unless checked, promises to produce further restrictions in the future. Encroachment already has negatively affected military readiness and will continue to erode it unless this trend is halted. In some cases, environmental litigation threatens to thwart the primary mission of key military facilities.

National security concerns mandate that the military be able to train effectively, test systems adequately and realistically before fielding, and conduct military operations. Environmental litigation seeking to extend existing laws and regulations into contexts for which they were not designed, and which frustrate the use of military lands and test and training ranges for their intended purposes, requires focused legislation to ensure that military readiness receives

appropriate consideration.

This section is narrowly tailored to protect military readiness activities, not the entire scope of DoD activities. The thrust of the section is to prevent further extension of regulation rather than to roll back existing regulation.

#### Section 2015. Purpose.

This section would set out the purpose of this chapter and would direct the Secretary of Defense to implement the chapter consistent with those purposes. The chapter would promote military readiness by addressing problems created by encroachment on military lands, airspace, and training and testing while ensuring that the DoD remains mindful of its stewardship responsibilities. It would reaffirm the principle that military lands and airspace exist to ensure military preparedness. Finally, it would establish the appropriate balance between military readiness and environmental regulation and would establish a framework to ensure the long-term sustainability of military test and training ranges.

#### Section 2016. Definitions.

This section would provide definitions for the terms "military readiness activities," "combat" and "combat use," and the "Department," as they are used in the statute. Through the definition of "Department," military readiness activities also apply to the Coast Guard, both when it operates as a service in the Department of the Navy and when it operates as a component of the Department of Homeland Security.

#### Section 2017. Military readiness and the conservation of protected species.

This section would clarify the relationship between military training and a number of provisions in various conservation statutes, including the Sikes Act and the Endangered Species Act. This section would provide that Integrated Natural Resources Management Plans under the Sikes Act provide the special management considerations or protection required under the Endangered Species Act and would obviate the requirement for designation of critical habitat on military lands for which such Plans have been completed. The Sikes Act requires military installations to prepare plans that integrate the protection of natural resources on military lands with the use of military lands for military training. DoD must consult the U.S. Fish and Wildlife Service and the concerned State wildlife agency in the preparation of such plans and must seek their concurrence, as well as public comment on the final plan. Thus, the planning process offers adequate opportunity for consideration of the use of such lands for species conservation.

#### Section 2018. Conformity with State Implementation Plans for air quality.

This section would clarify the application of the conformity provisions of the Clean Air Act to make them more cooperative and not prohibitory when DoD activity is undertaken. The section would maintain DoD's obligation to conform its military readiness activities to applicable State Implementation Plans but would give DoD three years to demonstrate conformity. Under

the requirements of current law, it is becoming increasingly difficult to base military aircraft near developed areas.

#### Section 2019. Range management and restoration.

Subsection (a) would define the circumstances in which explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof are included in the definition of "solid waste" under the Solid Waste Disposal Act, and would exclude explosives, munitions, munitions fragments, or constituents thereof from the definition of "solid waste" under the Act when DoD deposits such items on an operational military range incidental to normal use, and such items remain thereon. Explosives, munitions, or munitions fragments removed from a range for reasons other than disposal, such as fragments removed for testing to determine weapon function, similarly, would be excluded. In addition, as noted above, this provision ceases to apply to such items when and if the operational range on which they were deposited ceases to be operational. This provision would clarify and confirm the Environmental Protection Agency's (EPA) Military Munitions Rule.

Subsection (b) would provide that the presence of explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof off an operational range, or the migration off an operational range of such items, constitutes a "release" under the Comprehensive Environmental Restoration, Compensation, and Liability Act (CERCLA), and would exclude from the definition of "release" under the Act the presence of explosives, munitions, munitions fragments, or the constituents thereof that DoD deposited incidental to normal use on an operational military range and that remain thereon. This provision ceases to apply to such items when and if the operational range on which they were deposited ceases to be operational. The provision explicitly would preserve the President's authority to address an imminent and substantial endangerment to the public health, welfare, or the environment under section 106(a) of CERCLA, and the DoD's authority to protect the environment, safety, and health on operational ranges.

The effect of these two provisions would be to establish the governing authorities under which DoD would manage its operational ranges, including the cleanup thereof. Explosives, munitions, munition fragments, or their constituents that land on and remain on an operational range, or land off range but are promptly rendered safe or retrieved, would be regulated exclusively under the Military Munitions Rule promulgated by EPA. Those that migrate off the range would be addressed under CERCLA.

As noted above, neither of these two provisions would have any effect on the legal requirements applicable to such items once the range on which they were deposited ceases to be an operational range.

#### Subsection (b). Military readiness and marine mammal protection reconciliation.

This subsection is narrowly tailored to protect military readiness activities, not the whole scope of Defense Department activities. It creates a regulatory regime for military readiness

activities that differs in a number of respects from current MMPA provisions of general applicability.

This proposal clarifies the definition of "harassment" for purposes of military readiness activities under the Marine Mammal Protection Act. To be considered "harassment," any military readiness activity must injure or have the significant potential to injure a marine mammal; disturb or likely disturb a marine mammal, causing a disruption of natural behavioral patterns to the point of abandonment or significant alternation; or be directed toward a specific individual, group, or stock of marine mammals, causing a disruption of natural behavioral patterns.

The new definition will provide greater clarity and notice regarding application of the Marine Mammal Protection Act (MMPA) to military readiness activities. It will also spare military readiness activities from the regulatory burden of seeking MMPA permits for relatively benign operations. The new definition will also bring about more certainty of application by regulatory agencies.

Additionally, the new definition reflects the position of the National Research Council (NRC). In a report published in 2000, the NRC stated there was no valid reason for regulating minor changes in behavior having no significant impact on the viability of the marine mammal stock. Rather, regulation should be focused on minimizing injury and biologically significant disruptions to behavior critical to survival and reproduction.

This proposal also provides definitions for the terms "military readiness activities," "combat" and "combat use," and the "Department," as they are used in the statute. Through the definition of "Department of Defense," military readiness activities of the Coast Guard are covered, both when it operates as a service in the Department of the Navy and when it operates as a component of the Department of Homeland Security.

This proposal would also cure deficiencies that currently exist when the authorization provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq) are applied to military readiness activities. Many of these deficiencies were recently highlighted in NRDC v. Evans, 232 F.Supp. 2d 1003 (N.D. Cal 2002), litigation that sought to stop deployment of the Navy's Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar system.

First, given the multi-mission nature of many platform and sensor systems employed in military readiness activities at sea, it becomes increasingly difficult to single out the "specific activity" of the system that may impact marine mammals. The elimination of this requirement would allow greater flexibility in conducting military readiness activities. Further, the requirement to identify the relevant activity and the underlying rulemaking process that forms the basis for issuing a permit will allow the impacts and scope of military readiness activities to be appropriately scoped and analyzed.

Second, the litigation revealed that the migratory nature of marine mammals and the



often varying biological and bathymetric features of geographic regions that migratory marine mammals occupy make it very difficult to identify "specified geographical regions" for military readiness activities that affect large portions of the ocean. The elimination of this requirement would allow greater flexibility in conducting military readiness activities without diminishing substantive environmental protections, since the underlying rulemaking process, which forms the basis for issuing a permit, will allow the impacts and scope of military readiness activities to be appropriately scoped and analyzed.

Third, the litigation also challenged the determination of that the SURTASS LFA sonar system would take no more than "small numbers" of marine mammals. The litigation revealed that Congressional reports on the MMPA have acknowledged that the "small numbers" criterion is incapable of definition from a quantitative point of view. Further, a "small numbers" limitation on the number of takes is inconsistent with the concept of allowing takes via a permit system and the "negligible impact" standard imposed by the MMPA in the permitting process. The "small numbers" limitation reflects a policy-based limitation derived from the moratorium on the take of marine mammals contained in the MMPA. In contrast, the "negligible impacts" limitation reflects a science-based limitation derived from the resource management policy of the MMPA. Given that takes are allowable via permit under the MMPA, the proper standard for measuring takes should be one determined only by science and based only upon resource management principals. Finally, elimination of the "small numbers" requirement would be consistent with the recommendations contained in the earlier- mentioned NRC report. Specifically, the report provided "it would desirable to remove the phrase 'of small numbers' from MMPA Section 1371(a)(5)(D)(i)" and that doing so would prevent the denial of permits for activities that might insignificantly harass large numbers of animals but still have "negligible impacts" on marine mammals.

The new subparagraph (E) makes it clear that although applications for harassment authorization or take permits should remain a public process where possible, in some instances concerning proposals involving military readiness, it may be impossible to disclose all information considered because some information has been properly classified in the interest of national defense. In some instances, it may not be possible to have public hearings because even disclosure of the nature of the proposal may disclose classified information.

Finally, the exemption for national defense addresses the lack of any national security exemption in the MMPA. Most environmental statutes provide authority to exempt certain actions or categories of actions for a limited period of time. Similarly the proposed exemption in the MMPA would allow the Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of Interior, or both, as appropriate, to exempt DoD activities or categories of activities from the requirements of the MMPA for up to two years, with renewable two periods of exemption. This provision is similar to the exemption provision in the Endangered Species Act, which allows the Secretary of Defense to direct exemptions on the basis of national security.

## **TITLE IV—ADMINISTRATIVE TRANSFORMATION**

### **Subtitle A—Transformation of DoD Organization**

- Sec. 401. Reorganization within the Department of Defense.
- Sec. 402. Reassignment of personnel serving in the Office of the Secretary of Defense.
- Sec. 403. Appointments of retired members of the armed forces to positions in the Department of Defense.
- Sec. 404. Transfer of Department of Defense personnel security investigative functions and defense personnel performing those functions.
- Sec. 405. Conversions of commercial activities.

### **Subtitle B—Transformation of Appropriations and Budget Process**

- Sec. 411. Enhanced general transfer authority.
- Sec. 412. Transfer of funds to correct specific acquisition funding problems.
- Sec. 413. Ballistic missile defense system.
- Sec. 414. Funding for the Missile Defense Agency.

### **Subtitle C—Transformation of Information Gathering for Congress**

- Sec. 421. Sunset on recurring reports.
- Sec. 422. Repeal of various reports required of the Department of Defense.

### **Subtitle D—Transformation of Management of Naval Vessels**

- Sec. 431. Repeal of notice and wait period prior to reducing the inventory of combatant surface vessels.
- Sec. 432. Overhaul and repair of ships on extended deployments.

### **Subtitle E—Miscellaneous Provisions**

- Sec. 441. Support of foreign nations committed to combating global terrorism.

## **Subtitle A—Transformation of DoD Organization**

### **SEC. 401. REORGANIZATION WITHIN THE DEPARTMENT OF DEFENSE.**

- 1 Section 125 of title 10, United States Code, is amended—
- 2 (1) in subsection (a), by striking "subsections (b) and (c)" in the second sentence and
- 3 inserting "subsections (b), (c), and (d)";
- 4 (2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and
- 5 (3) by inserting after subsection (a) the following new subsection (b):
- 6 "(b) Notwithstanding any provision of this title, after the expiration of 60 days after

1 providing notice of such action to the Congress, the Secretary of Defense, subject to the direction  
2 of the President, may substantially transfer, reassign, consolidate, reorganize, or abolish a  
3 function, power, organization, position, or duty vested in the Office of the Secretary of Defense,  
4 or an officer, official, or agency thereof."

### **Section-by-Section Analysis**

The Secretary of Defense must have flexibility to organize the Office of the Secretary to meet mission requirements. The purpose of this section is not to expand the size of the Secretary's staff. To the contrary, the Secretary must have this flexibility to achieve transformation consistent with the directive of the President and the wishes of Congress.

#### **SEC. 402. REASSIGNMENT OF PERSONNEL SERVING IN THE OFFICE OF THE SECRETARY OF DEFENSE.**

1 Section 143 of title 10, United States Code, is repealed.

### **Section-by-Section Analysis**

The Secretary of Defense must have authority to reassign civilian and military personnel within his office to suit his management goals. Although this section would repeal the existing personnel limit, or "cap," the Secretary is not interested in expanding the size of his staff. To the contrary, he must have this flexibility to respond to specific contingencies as necessary.

The existing "cap" is artificial and absolute, and includes all Washington Headquarters Services personnel and people who are "employed in" Office of the Secretary of Defense (OSD) functions. There is no waiver or exception to the "cap," even for war or national emergency. Current law prohibits the Secretary of Defense from reassigning operational functions out of OSD solely to reduce the number of personnel covered by the "cap."

#### **SEC. 403. APPOINTMENTS OF RETIRED MEMBERS OF THE ARMED FORCES TO POSITIONS IN THE DEPARTMENT OF DEFENSE.**

1 Section 3326 of title 5, United States Code, is repealed.

## Section-by-Section Analysis

This section would eliminate permanently the requirement that the Secretary of a receiving agency and the Office of Personnel Management approve all appointments of retired members of the Armed Forces in civil service positions, including nonappropriated fund instrumentalities, if the appointment would occur within 180 days of an individual's retirement. Presently, DoD may waive this requirement, with the result that DoD has been able to compete successfully with other government agencies and private sector entities in hiring highly qualified personnel retiring from military service.

### **SEC. 404. TRANSFER OF DEPARTMENT OF DEFENSE PERSONNEL SECURITY INVESTIGATIVE FUNCTIONS AND DEFENSE PERSONNEL PERFORMING THOSE FUNCTIONS.**

1           The Secretary of Defense may transfer to the Office of Personnel Management, and the  
2 Director of the Office of Personnel Management may accept, those personnel security  
3 investigations functions currently performed by the Department of Defense Defense Security  
4 Service. If the Office of Personnel Management accepts the transfer of those functions, it also  
5 shall accept the transfer of the Defense Security Service employees performing those functions  
6 and their first level supervisors at the time of the transfer. The Office of Personnel Management  
7 also may accept the transfer of the Defense Security Service employees who provide support  
8 services or higher level supervision if those positions are required after the transfer. The transfer  
9 under this Act of full-time personnel and part-time personnel shall not cause any such employee  
10 to be separated or reduced in grade or compensation for one year after the date of transfer to the  
11 Office of Personnel Management. Any transfer made pursuant to this section shall be considered  
12 a transfer of function for purposes of section 3503 of title 5, United States Code.

## Section-by-Section Analysis

The Department of Defense (DoD) seeks to divest itself of its capability to perform the

personnel security investigation activities currently performed by the Defense Security Service and to acquire those services from the Office of Personnel Management (OPM) on a reimbursable basis. Under current law, there is no mechanism that would allow the Secretary of Defense to transfer directly, and OPM to accept, this function and the employees performing it. This section would enable the Secretary of Defense to make such a transfer and to move the employees and their positions in status, and without a break in service, under section 3503 of title 5, United States Code.

This change would make OPM the central provider of these services for the Federal government. There are approximately 1,855 employees and positions in the Defense Security Service responsible for performing personnel security investigation activities. Transferring the skilled investigators who currently perform these services for DoD to OPM, in status, with their positions would ensure that OPM has the capacity to address the critical need for these services through the improved utilization of existing resources. It also would enable both OPM and DoD to assure affected employees that they will retain their federal employment even though DoD will be divesting itself of its in-house capability to perform personnel security investigation activities and will be acquiring those services from OPM.

At the same time, DoD will transform the remaining elements of the Defense Security Service into an organization focused on supporting dynamic, collaborative adjudication; industrial security enhanced with critical infrastructure protection and technology protection responsibilities, and improved security education, awareness, and training.

#### **SEC. 405. CONVERSIONS OF COMMERCIAL ACTIVITIES.**

1 (a) CHANGES TO ELEMENTS OF ANALYSIS.—Paragraph (3)(A) of section 2461(b) of title  
2 10, United States Code, is amended—

3 (1) by striking "of the cost";

4 (2) by striking "savings" and inserting "the best value";

5 (3) by redesignating subsection (iii) as subsection (iv); and

6 (4) by inserting after clause (ii) the following new clause (iii):

7 "(iii) Benefits in addition to price that warrant performance of the function by a  
8 source at a cost higher than that of performance by Department of Defense civilian  
9 employees."

10 (b) CONTRACTING IF BEST VALUE.—Section 2462(a) of such title is amended by striking

1 "such a source can provide such supply or service to the Department at a cost that is lower (after  
2 including any cost differential required by law, Executive order, or regulation) than the cost at  
3 which the Department can provide the same supply or service" and inserting "performance by  
4 that source represents the best value to the Government, determined in accordance with the  
5 competition requirements of OMB Circular A-76."

### **Section-by-Section Analysis**

This section would eliminate the existing requirement that the Department of Defense base its competitive sourcing decisions solely on cost. Enactment of this section would improve the DoD's procurement processes by ensuring that DoD considers quality, as well as cost, as a selection factor. It would also allow DoD to take advantage of the newly revised OMB Circular A-76 when it is finalized, which, for example, would allow for best value cost-technical tradeoff source selections for information technology functions.

## **Subtitle B—Transformation of Appropriations and Budget Process**

### **SEC. 411. ENHANCED GENERAL TRANSFER AUTHORITY.**

1 Section 2214 of title 10, United States Code, is amended to read as follows:

#### **"§ 2214. Transfer of funds: procedures and limitations**

3 "(a) GENERAL AUTHORITY.—Upon a determination by the Secretary of Defense that such  
4 action is necessary in the national interest, each fiscal year he may transfer an amount not to  
5 exceed two and one-half percent of the total appropriations or funds appropriated to the  
6 Department of Defense for that fiscal year of working capital funds of the Department of  
7 Defense or amounts made available to the Department of Defense in the act making  
8 appropriations for the Department of Defense for military functions of the Department of  
9 Defense (except military construction) for that fiscal year between such appropriations or funds

1 or any subdivision thereof. Amounts so transferred under this authority shall be merged with,  
2 and be available for the same purposes and for the same time period, as the appropriation or fund  
3 to which transferred.

4 "(b) LIMITATIONS.—The authority under subsection (a) may not be used unless it is based  
5 upon unforeseen military requirements, and for higher priority items than those for which the  
6 appropriations or funds being transferred were appropriated originally or for an item or activity  
7 for which funds are requested has been denied by the Congress.

8 "(c) CONGRESSIONAL NOTIFICATION.—The Secretary of Defense shall notify the  
9 Congress 15 days before any transfer is made under the authority of this section.

10 "(d) INCREASE IN TIME OF WAR OR NATIONAL EMERGENCY.—In time of war or national  
11 emergency declared by the President or the Congress, the amount which may be transferred  
12 under this section may be increased up to five percent."

### **Section-by-Section Analysis**

This section would authorize the Secretary of Defense to transfer working capital funds and funds appropriated in annual defense appropriations acts appropriation accounts or any subdivision thereof. This transfer authority is limited to two and one-half percent of the DoD's total appropriation for a given year. In a time of war or national emergency declared by the President or the Congress this amount could be increased by up to five percent of this amount. The Secretary of Defense would provide the Congress 15 days' notice before any such transfer is made. Finally, this section would repeal a provision in section 2214 limiting the preparation or presentation of reprogramming requests to Congress.

## **SEC. 412. TRANSFER OF FUNDS TO CORRECT SPECIFIC ACQUISITION**

### **FUNDING PROBLEMS.**

1 Section 2214 of title 10, United States Code, is amended—

2 (1) by redesignating subsections (b), (c), and (d) as subsections (d), (e), and (f),

1 respectively; and

2 (2) by inserting after subsection (a) the following new subsections:

3 "(b) TRANSFER OF FUNDS TO COMPLETE RESEARCH, DEVELOPMENT, TESTING, AND  
4 EVALUATION OF MAJOR DEFENSE ACQUISITION SYSTEMS.—In addition to any other transfer  
5 authority that may be provided in an appropriations act, upon a determination by the Milestone  
6 Decision Authority that such action is necessary to continue development efforts when  
7 additional development of an acquisition program is needed before procurement can begin, up to  
8 \$20,000,000 per acquisition program and up to a total of \$250,000,000 for a single fiscal year  
9 may be transferred from procurement P–1 line items of Acquisition Category I, II, III, and IV of  
10 a Procurement appropriation to the corresponding R–1 line items of a Research, Development,  
11 Test and Evaluation appropriation for the purpose of continuing development efforts.

12 "(c) TRANSFERS BACK TO PROCUREMENT APPROPRIATIONS.—Upon a determination that  
13 all or part of the funds transferred under subsection (b) are not necessary for the purposes  
14 provided therein, such amounts may be transferred back to a Procurement appropriation for the  
15 purpose of beginning procurement of the acquisition program for which funds were transferred."

### **Section-by-Section Analysis**

This section would provide the Secretary of Defense additional flexibility to correct specific acquisition funding problems that occur during the transition phase of an acquisition program from development to procurement. Because DoD acquisition programs must be developed and procured in separate appropriations, there currently is no management flexibility to resolve last-minute development problems quickly before a program transitions into production. This section would allow the transfer of \$20,000,000 per acquisition program and up to a total of \$250,000,000 for a single fiscal year from procurement P–1 line items of Acquisition Category I, II, III, and IV of a Procurement appropriation to the corresponding R–1 line items of a Research, Development, Test and Evaluation appropriation for the purpose of continuing development efforts.



**SEC. 413. BALLISTIC MISSILE DEFENSE SYSTEM.**

1 Section 223 of title 10, United States Code, is repealed.

**Section-by-Section Analysis**

This section would assist the missile defense agency to achieve the Secretary of Defense's goal to establish a single program for all work to research, develop, procure and field a layered missile defense system, particularly by allocating and re-allocating funds among competing priorities. DoD could take full advantage of spiral development and capabilities-based acquisition, by planning and executing work so as to increase effort in a project showing promise while reducing effort in another that may have less potential.

**SEC. 414. FUNDING FOR THE MISSILE DEFENSE AGENCY.**

1 (a) IN GENERAL.—Funds appropriated to the Department of Defense that are available for  
2 the Missile Defense Agency shall be appropriated under the heading "Missile Defense Agency"  
3 and shall be available for all necessary expenses for missile defense missions of the Department  
4 of Defense.

5 (b) AVAILABILITY OF FUNDS FOR THREE YEARS.—Funds authorized under this section  
6 shall remain available for obligation for three consecutive years.

**Section-by-Section Analysis**

This section would allow the Department of Defense to expend funds for the missile defense mission directly through the Missile Defense Agency. Existing law requires DoD to use funds primarily from Research, Development, Test and Evaluation accounts which limits the authority of the Secretary of Defense to assemble and field an initial missile defense capability.

It is essential that the Secretary of Defense have flexible authority to conduct all research, production, and construction activities necessary to defend the United States homeland, deployed forces, allies and friends from missile attack.

This section would allow DoD to move beyond prototypes to an initial set of capabilities planned for fiscal year 2004, including:

- 1) Up to 20 ground-based interceptors capable of intercepting and destroying

intercontinental ballistic missiles during the midcourse phase of flight located at Ft. Greely, Alaska (16 interceptors) and Vandenberg Air Force Base, Calif. (4 interceptors);

2) Up to 20 sea-based interceptors employed on existing Aegis ships to intercept ballistic missiles in the first few minutes after they are launched, during the ascent and midcourse phases of flight;

3) Deployment of air-transportable Patriot Advanced Capability-3 (PAC-3) systems to intercept short and medium range ballistic missiles;

4) Land, sea and space-based sensors, including existing early warning satellites, an upgraded radar now located at Shemya, Alaska, a new sea-based X-band radar, upgraded existing early warning radars in the United Kingdom and Greenland and use of radars and other sensors now on Aegis cruisers and destroyers.

Additionally, this section would make missile defense funds available for obligation for three years instead of the existing limitation of two years. This would provide DoD increased flexibility to move funds to successful projects based on mission goals and requirements. This section is essential to allow the Secretary of Defense to meet emerging challenges and field militarily useful capabilities within the shortest possible times.

## **Subtitle C—Transformation of Information Gathering for Congress**

### **SEC. 421. SUNSET ON RECURRING REPORTS.**

1 All requirements established by law that require the Secretary of Defense or any element  
2 of the Department of Defense to submit recurring reports to Congress or to a congressional  
3 committee shall be deemed to expire after five years from the date of enactment of the statute  
4 requiring the report. With the exception of the Secretary's annual report to Congress as required  
5 by section 113 of title 10, United States Code, this provision applies to all reports currently  
6 required to be submitted as well as any reporting requirements established after the effective date  
7 of this act.

### **Section-by-Section Analysis**

This section would provide a sunset of five years on recurring congressional reporting requirements. The Department has undergone a number of streamlining efforts in recent years, such as mandatory reductions in major defense headquarters personnel. At the same time the number of recurring reporting requirements has increased. DoD personnel expend considerable time and resources in developing these reports.

Information that is currently provided in the form of recurring reports will remain available to Congress upon request. In such cases, it is likely that the information DoD provides would be more current and, therefore, potentially more useful to the recipients.

## **SEC. 422. REPEAL OF VARIOUS REPORTS REQUIRED OF THE DEPARTMENT OF DEFENSE.**

The Department of Defense seeks to repeal various recurring reports required by the Congress. This section would allow the Department to employ its finite resources more efficiently, particularly during this time of war, and would improve Congress's ability to conduct effective oversight by focusing that effort on reports of substantial importance and utility.

To facilitate review, this section lists each report that the Department seeks to repeal by the order it appears in title 10 of the United States Code. Subsection (a) provides the specific reference to title 10. The subsections that follow seek to repeal reports by the order they appear in various uncodified statutory provisions found in various titles of the United States Code. The Section-by-Section Analysis appears immediately following each amended section and indicates the title of each report or reports, the stated purpose of the report, and the Department's rationale for seeking repeal.

- 1           (a) PROVISIONS OF TITLE 10.—Title 10, United States Code, is amended—
- 2                       (1) in section 113—
- 3                               (A) by striking subsection (j);
- 4                               (B) by striking subsection (m); and
- 5                               (C) by redesignating subsections (k) and (l) as (j) and (k), respectively;

### **Section-by-Section Analysis**

**Report Title: Report on the Cost of Stationing United States Armed Forces Outside the United States**

**Report Purpose:** The provision in subsection (j) requires the Secretary of Defense, in consultation with the Secretary of Commerce, to provide Congress, no later than April 8 of each year, with a report on the cost of stationing United States armed forces outside of the United

States. The report requires a detailed accounting of the costs incurred in the U.S. for such stationing, the costs incurred outside the U.S. for such stationing, and the effect of such expenditures outside the U.S. on the current U.S. balance of payments.

Reason the Report Should be Repealed: The report provides information of limited utility at extraordinary cost to DoD in terms of human resources. The General Accounting Office requested the information in this report only once for a specific study. The Congressional Budget Office no longer requests the information. Instead of an annual, recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

Report Title: **Information to Accompany Funding Request for Contingency Operation**

Report Purpose: The provision in subsection (m) requires the Secretary of Defense to provide Congress with a report on the objectives of each contingency operation involving a Presidential request for appropriations to support any deployment of 500 or more members of the armed forces. The report must include a discussion on the date or set of conditions the President identifies as defining the end of the mission.

Reason the Report Should be Repealed: This report is redundant. Requests for appropriations by the Department of Defense would include all relevant information regarding any new contingency operations.

- 1 (2) in section 116—
- 2 (A) by repealing this entire section in chapter 2; and
- 3 (B) by amending the table of sections at the beginning of such chapter 2
- 4 by striking the item relating to section 116;

**Section-by-Section Analysis**

Report Title: **Annual Operations and Maintenance Budget**

Report Purpose: This provision requires the Secretary of Defense to provide Congress with a report, no later than February 15 of each year, on the operations and maintenance of the armed forces. The report requires detailed information on numerous subjects, including the number of flying hours for military aircraft, training days for combat-arms units in the Army and Marine Corps, major repair work on Navy ships, and major vehicle overhauls. The report also requires DoD to make recommendations relating to the operations and maintenance budget for the upcoming fiscal year.

Reason the Report Should be Repealed: This report is redundant. DoD already provides

the requested information in the Operation and Maintenance OP-5 Budget Exhibit.

- 1 (3) in section 117—
- 2 (A) by striking subsection (e); and
- 3 (B) by redesignating subsection (f) as subsection (e);

### **Section-by-Section Analysis**

#### **Report Title: Joint Readiness Reviews**

**Report Purpose:** This provision requires the Secretary of Defense to provide Congress with a monthly report containing the results of the most recent joint readiness review, including the current information derived from the readiness reporting system.

**Reason the Report Should be Repealed:** This report is obsolete. DoD would prefer to eliminate the existing inefficient monthly report in favor of more timely, constantly-updated information delivered to interested members of Congress through a classified DoD internet site dedicated to readiness issues.

- 1 (4) in section 127—
- 2 (A) by striking subsection (d);

### **Section-by-Section Analysis**

#### **Report Title: Emergency and Extraordinary Expenses**

**Report Purpose:** This provision requires the Secretary of Defense to provide Congress with a quarterly report on any funds spent pursuant to subsections (a) and (b) of section 127, which authorize the expenditure of funds on an emergency or extraordinary basis.

**Reason the Report Should be Repealed:** This report is unnecessary. Congress already sets the annual limit for DoD emergency and extraordinary expenses in the annual DoD appropriations bill, so there is very little utility in tracking these items on a quarterly basis. Large expenditures (more than \$500,000) would remain reportable pursuant to section 127(c) of Title 10.

- 1 (5) in section 127a—
- 2 (A) by striking subparagraph (a)(3);
- 3 (B) by redesignating subparagraph (a)(4) as subparagraph (a)(3);

1 (C) by striking subsection (d); and  
2 (D) by redesignating subsections (e) through (i) as subsections (d) through  
3 (h), respectively;

### **Section-by-Section Analysis**

**Report Title: Report of Designation of an Operation as a Contingency Operation**

**Report Purpose:** The provision in subsection (a)(3) requires the Secretary of Defense to provide Congress with a report whenever DoD changes a routine operation, such as a normal training exercise, into a contingency operation.

**Reason the Report Should be Repealed:** This report is redundant. DoD already provides such information to Congress whenever it requests funds to support a contingency operation.

**Report Title: Report Upon Designation of an Operation for Which Funds Are Not Provided in Advance: Funding Mechanisms**

**Report Purpose:** The provision in subsection (d) requires the Secretary of Defense to provide Congress with a burdensome report regarding contingency operations that sets forth: (1) the manner by which DoD proposes to obtain funds for the cost to the United States of the operation; (2) a justification why the budgetary resources of another department or agency of the Federal government, instead of DoD resources, are not being used; (3) the objectives of the operation; (4) the estimated duration of the operation; (5) the estimated incremental cost of the operation to the U.S.; and (6) the exit criteria for the operation. The report is due within 45 days after the Secretary of Defense identifies an operation pursuant to subsection (a)(2) of section 127.

**Reason the Report Should be Repealed:** This report is redundant. DoD already provides appropriate and relevant information to Congress whenever it requests funds to support a contingency operation.

1 (6) in section 128—

2 (A) by striking paragraph (d);

### **Section-by-Section Analysis**

**Report Title: Physical Protection of Special Nuclear Material**

**Report Purpose:** This provision requires the Secretary of Defense to prepare an annual report, available to any interested member of the public, that explains the Secretary's determination to withhold unclassified information regarding DoD's plans to protect special

nuclear materials.

Reason the Report Should be Repealed: This report is unnecessary and potentially harmful to our national security.

1 (7) in section 129—

2 (A) by striking subsection (f);

### **Section-by-Section Analysis**

Report Title: **Prohibition of Certain Civilian Personnel Management Constraints**

Report Purpose: This provision requires the Secretary of each military department and the head of each defense agency to provide Congress with a report, no later than February 1 of each year, describing how these officials manage the civilian workforce under their jurisdiction. The report also requires these officials to certify that the civilian workforce is not subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees during the 12 months preceding the date on which the report is due.

Reason the Report Should be Repealed: This report is overly burdensome and unnecessary. The Secretaries of the military departments and the heads of the defense agencies manage according to a working capital fund concept where workforce levels are contingent upon workload. They do not manage on the basis of civilian end strength constraints, so the information requested by Congress serves no discernable purpose.

1 (8) in section 153—

2 (A) by striking subsection (d);

### **Section-by-Section Analysis**

Report Title: **Annual Report on Combatant Command Activities**

Report Purpose: The provision requires the Chairman of the Joint Chiefs of Staff to provide Congress with a report, no later than August 15 of each year, on the requirements of the combatant commands. The report requires discussion of the following: (a) a consolidation of the integrated priority lists of requirements of the combatant commands; (b) the Chairman's views on the consolidated lists; (c) a description of the funding proposed in the President's budget for the next fiscal year, and for the subsequent fiscal years covered by the most recent future-years defense program, to address each deficiency in readiness identified during the joint readiness review conducted under section 117 of title 10, United States Code, for the first quarter of the current fiscal year.

Reason the Report Should be Repealed: The report is overly burdensome and seeks pre-decisional information of extremely limited utility. The President's budget sets forth the requirements of the combatant commands.

1 (9) in section 184—

2 (A) by amending subsection (a) to read as follows:

3 "(a) AUTHORITY TO ESTABLISH REGIONAL CENTER FOR SECURITY STUDIES.—The  
4 Secretary of Defense may establish such regional centers for security studies as he deems  
5 necessary and appropriate.";

6 (B) by striking subsection (b); and

7 (C) by redesignating subsection (c) as subsection (b);

#### **Section-by-Section Analysis**

Report Title: **Advance Notification to Congress of the Establishment of New Regional Centers for Security Studies**

Report Purpose: The provision in subsection (a) requires the Secretary of Defense to provide Congress prior notification of his intent to establish a regional center for security studies. The notification must include a description of the mission and functions of the proposed center and an appropriate justification.

Reason the Report Should be Repealed: This report is redundant. DoD already provides such information to Congress through other means.

Report Title: **Operation of DoD Regional Centers for Security Studies**

Report Purpose: The provision in subsection (b) requires the Secretary of Defense to provide Congress with a report, no later than February 1 of each year, on the operation of DoD regional centers for security studies during the preceding fiscal year.

Reason the Report Should be Repealed: This report is overly burdensome and the information provided is of limited value. Since most Regional Centers issue periodic public reports on their activities, Congressional members and their staff could be added to the distribution list, or DoD would provide Congress with more relevant information in response to specific requests.

1 (10) in section 226—



- 1 (A) by repealing this entire section in chapter 9; and  
2 (B) by amending the table of sections for such chapter by striking the  
3 item relating to section 226;

### **Section-by-Section Analysis**

#### **Report Title: Scoring of Outlays**

**Report Purpose:** This provision requires the Director of the Office of Management and Budget (OMB) and the Director of the Congressional Budget Office (CBO) to provide Congress with a joint report, no later than December 15 of each year, containing an agreed resolution of all differences between the technical assumptions used by OMB and CBO in preparing the estimates with respect to all accounts in function 050 (national defense) for the budget to be submitted to Congress in the following year. If the two Directors are unable to agree upon any technical assumption, the report reflects the use of averages of the relevant account rates used by the two offices.

**Reason the Report Should be Repealed:** This report is unnecessary because it largely duplicates information already provided in the President's Budget. OMB and CBO already work together to achieve common outlay estimates. Further, the report provides information of extremely limited utility in that it seeks decisions on final budget estimates that are not complete on December 15, the report due date.

- 1 (11) for section 228—  
2 (A) by repealing this entire section in chapter 9; and  
3 (B) by amending the table of sections at the beginning of such chapter by  
4 striking the item relating to section 228;

### **Section-by-Section Analysis**

#### **Report Title: Monthly Reports on Allocation of Funds Within O&M Budget Sub-Activities**

**Report Purpose:** This provision requires the Secretary of Defense to provide Congress with a monthly report on the allocation of appropriations to Operation and Maintenance (O&M) budget activities and the sub-activities of those budget activities. Each report must be submitted no later than 60 days after the end of the month to which the report pertains, and must set forth the following for each sub-activity of the O&M budget activities: (1) the amount of budget authority appropriated for that sub-activity in the most recent regular DoD appropriations act; (2) the amount of budget authority actually made available for that sub-activity, taking into

consideration supplemental appropriations, rescissions, and other adjustments required by law or made pursuant to law; and (3) the amount programmed to be expended from such sub-activity.

Reason the Report Should be Repealed: The report is overly burdensome and redundant. DoD already provides such information to Congress through other reports, such as the rebaseline report, which provides the execution track requested by the Congress; the DD 1415 reprogramming request, which provides detailed movement of funds prior to execution; and the DD 1002 execution status report, which provides detailed execution on a monthly basis. DoD has tailored these reports to provide useful and meaningful data to Congress, eliminating the requirement for the additional report required by this section.

- 1                   (12) in section 401—
- 2                   (A) by striking subsection (d); and
- 3                   (B) by redesignating subsection (e) as subsection (d);

### **Section-by-Section Analysis**

Report Title: **Humanitarian and Civic Assistance Provided in Conjunction with Military Operations**

Report Purpose: This provision requires the Secretary of Defense to provide Congress, no later than March 1 of each year, a report on humanitarian and civic assistance activities carried out during the preceding fiscal year. The report requires the identities of the countries involved, a description of the activities, and the amount expended on each such activity.

Reason the Report Should be Repealed: The report provides information of limited utility at extraordinary cost to DoD in terms of human resources. The Defense Security Cooperation Agency (DSCA) typically requires 48 workdays and \$38,400 to prepare the report, which appears to generate very little interest from Congress. During the last 5 years, DSCA has received only one question from Congressional staff relating to this report, a request for a brief on the DoD Health Affairs program. Instead of an annual, recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1                   (13) in section 437—
- 2                   (A) by striking subsections (b) and (c);
- 3                   (B) by redesignating subsection (d) as subsection (b);

### **Section-by-Section Analysis**

Report Title: **Establishment of Defense Intelligence Commercial Activities**

Report Purpose: The provision in subsection (b) requires the Secretary of Defense to provide Congress with notification whenever DoD engages in commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by DoD.

Reason the Report Should be Repealed: This report is obsolete. In the eleven years since Congress authorized DoD to conduct commercial activities in connection with intelligence activities, DoD has issued directives and developed well-established practices and internal oversight in this area that are fully consistent with Congressional intent.

Report Title: **Annual Report on Defense Intelligence Commercial Activities**

Report Purpose: The provision in subsection (c) requires the Secretary of Defense to provide Congress with an annual report on all commercial activities authorized that were undertaken during the previous year, including expenditures for such activities and actions taken with respect to audits conducted to implement recommendations or correct deficiencies identified in such audits.

Reason the Report Should be Repealed: This report is obsolete. In the eleven years since Congress authorized DoD to conduct commercial activities in connection with intelligence activities, DoD has issued directives and developed well-established practices and internal oversight in this area that are fully consistent with Congressional intent.

- 1 (14) in section 482—
- 2 (A) by repealing this entire section in chapter 23; and
- 3 (B) by amending the table of sections for such chapter by striking the
- 4 item relating to section 482;

**Section-by-Section Analysis**

Report Title: **Personnel and Unit Readiness Quarterly Reports**

Report Purpose: This provision requires the Secretary of Defense to provide Congress with a report, no later than 45 days after the end of each calendar-year quarter, on military readiness.

Reason the Report Should be Repealed: This report is obsolete. DoD would prefer to eliminate the existing inefficient quarterly report in favor of more timely, constantly-updated information delivered to interested members of Congress through a classified DoD internet site dedicated to readiness issues.

- 1 (15) in section 483—

- 1 (A) by repealing this entire section in chapter 23; and  
2 (B) by amending the table of sections for such chapter by striking the  
3 item relating to section 483;

### **Section-by-Section Analysis**

**Report Title: Reports on Transfers from High-Priority Readiness Appropriations**

**Report Purpose:** This provision requires the Secretary of Defense to provide Congress with a report, not later than the date on which the President submits the budget for the fiscal year to Congress, on transfers during the preceding fiscal year from funds available for each covered budget activity. This section also requires the Secretary of Defense to provide Congress with a report, not later than June of each fiscal year, on transfers during the first six months of the fiscal year, from funds available for each covered budget activity.

**Reason the Report Should be Repealed:** The report is overly burdensome and redundant. DoD already provides such information to Congress through other reports, such as the rebaseline report, which provides the execution track requested by the Congress; the DD 1415 reprogramming request, which provides detailed movement of funds prior to execution; and the DD 1002 execution status report, which provides detailed execution on a monthly basis. DoD has tailored these reports to provide useful and meaningful data to Congress, eliminating the requirement for the additional report required by this section.

- 1 (16) in section 484—  
2 (A) by repealing this entire section in chapter 23; and  
3 (B) by amending the table of sections for such chapter by striking the  
4 item relating to section 484;

### **Section-by-Section Analysis**

**Report Title: Annual Report on Aircraft Inventory**

**Report Purpose:** This provision requires the Under Secretary of Defense (Comptroller) to provide Congress with an annual report on DoD's aircraft inventory. The report is required when the President submits the fiscal year budget to Congress. It must specify the inventory for the active and reserve components and categorize the aircraft in four major areas each with multiple subcategories.

**Reason the Report Should be Repealed:** This report is overly burdensome and unnecessary. Congress already has access to this data from multiple sources.

1 (17) in section 487—

2 (A) by repealing this entire section in chapter 23; and

3 (B) by amending the table of sections for such chapter by striking the

4 item relating to section 487;

### **Section-by-Section Analysis**

**Report Title: Unit Operations Tempo and Personnel Tempo: Annual Report**

**Report Purpose:** This provision requires the Secretary of Defense to provide an annual report describing the operations tempo and personnel tempo of the armed forces.

**Reason the Report Should be Repealed:** This report is obsolete and overly burdensome. DoD has implemented a new, uniform approach to personnel tempo management. In addition, DoD would prefer to eliminate the existing inefficient report in favor of more timely, constantly-updated information delivered to interested members of Congress through a classified DoD internet site dedicated to readiness issues.

1 (18) in section 520c—

2 (A) by striking subsections (b) and (c);

3 (B) by striking the designator and the catchline in the preceding matter;

4 (C) by amending the section title to read: "§ 520c. Provision of meals and  
5 refreshments for recruiting purposes"; and

6 (D) by amending the table of sections at the beginning of chapter 31 by  
7 replacing the item relating to section 520c with the following new item:

8 "520c. Provision of meals and refreshments for recruiting purposes.";

### **Section-by-Section Analysis**

**Report Title: Recruiting Functions – Use of Funds**

**Report Purpose:** This provision requires the Secretary of Defense to provide Congress with a report, not later than February 1 of each of the years 1998 through 2002, on the extent to which DoD used funds to pay for small meals and refreshments during recruitment functions.

Reason the Report Should be Repealed: This report is obsolete.

1 (19) in section 664—

2 (A) in clause (4)(F)(ii) of subsection (i), by striking "and notifies Congress  
3 upon each approval, providing the criteria that led to that approval";

#### **Section-by-Section Analysis**

Report Title: **Joint Duty Credit Notification to Congress**

Report Purpose: This provision requires the Secretary of Defense to report to Congress when he designates a specific temporary joint task force for joint-duty credit.

Reason the Report Should be Repealed: This report is redundant. DoD already provides Congress with the requested information in the DoD Annual Report.

1 (20) in section 983(e)(1)—

2 (A) by striking "and to Congress";

#### **Section-by-Section Analysis**

Report Title: **Institutions of Higher Education That Prevent ROTC Access/Military Recruiting on Campus – Denial of Grants and Contracts**

Report Purpose: This provision requires the Secretary of Defense to transmit separate notices to Congress and the Secretary of Education whenever he makes a determination to deny grants or contracts to institutions of higher education that prevent ROTC access or military recruiting on campus.

Reason the Report Should be Repealed: This report is unnecessary. Congress already requires DoD to provide such information to the Department and Education and to publish semi-annual reports in the Federal Register.

1 (21) in section 986—

2 (A) by striking subsection (e);

#### **Section-by-Section Analysis**

Report Title: **Security Clearances: Limitations**

Report Purpose: This provision requires the Secretary of Defense to provide Congress

with a report, not later than February 1 of each year, identifying every security clearance waiver granted during the preceding year, with an accompanying explanation supporting each individual waiver.

Reason the Report Should be Repealed: The report provides information of limited utility that does not warrant DoD's cost in terms of human resources. Instead of an annual, recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (22) in section 1060—
- 2 (A) by striking subsection (d); and
- 3 (B) by redesignating subsections (e), through (g) as subsections (d)
- 4 through (f) respectively;

#### **Section-by-Section Analysis**

Report Title: **Military Service of Retired Members With Newly Democratic Nations: Consent of Congress**

Report Purpose: This provision requires the Secretary of the military department concerned and the Secretary of State jointly to notify Congress whenever a retired military member accepts employment by the military forces of a newly democratized nation.

Reason the Report Should be Repealed: The report is unnecessary and overly burdensome. DoD does not track the employment decisions of all military retirees and lacks the capability to gather the data requested. Because the situation that concerns Congress occurs so rarely, DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (23) in section 1130—
- 2 (A) by striking subsection (b); and
- 3 (B) by redesignating subsections (c) and (d) as subsections (b) and (c),
- 4 respectively;

#### **Section-by-Section Analysis**

Report Title: **Consideration of Proposals for Decorations Not Previously Submitted in Timely Fashion: Procedures for Review and Recommendation**

Report Purpose: This provision requires the Secretaries of the military departments to provide Congress with written notice upon authorizing an award or presentation of a decoration, either for an individual or a unit, that is not otherwise authorized due to limitations of law or policy.

Reason the Report Should be Repealed: The report is unnecessary. DoD already consults Congress regarding such matters, and would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (24) in section 1557—
- 2 (A) by striking subsection (e); and
- 3 (B) by redesignating subsection (f) as subsection (e);

### **Section-by-Section Analysis**

Report Title: **Timeliness Standards for Disposition of Applications Before Correction Boards**

Report Purpose: This provision requires the Secretaries of the military departments to provide Congress with a report, not later than June 1, whenever a Corrections Board fails to meet applicable timeliness standards. The report must specify the reasons why the timeliness standard could not be met, the corrective actions initiated to ensure compliance in the future, and the number of waivers granted during the fiscal year.

Reason the Report Should be Repealed: The report provides information of limited utility at extraordinary cost to DoD in terms of human resources. DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (25) in section 1563—
- 2 (A) by repealing this entire section in chapter 80; and
- 3 (B) by amending the table of sections for such chapter by striking the item
- 4 relating to section 1563;

### **Section-by-Section Analysis**

Report Title: **Consideration of Proposals for Posthumous and Honorary Promotions and Appointments: Committee Report**

Report Purpose: This provision requires the Secretaries of the military departments, upon request of a Member of Congress, to review a proposal for the posthumous or honorary



promotion or appointment of a member or former member of the armed forces, or any other person considered qualified, that is not otherwise authorized by law.

Reason the Report Should be Repealed: The report provides information of limited utility at extraordinary cost to DoD in terms of human resources. DoD must coordinate the efforts of personnel in five separate offices to prepare the report. Instead of this overly burdensome report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

1 (26) in section 1597—

2 (A) by striking subsections (c) through (e);

### Section-by-Section Analysis

Report Title: **Civilian Employment Master Plan: Including Exceptions to Guidelines for Reduction and Involuntary Reductions of Civilian Positions**

Report Purpose: This provision requires the Secretary of Defense to include a report on a civilian employment master plan for DoD as a whole and for each military department, defense agency, and other principal component of the Department of Defense, in conjunction with the fiscal year budget submission. The master plan must include a profile of the levels of civilian positions sufficient to establish and maintain a baseline for tracking annual accessions and losses of civilian positions and to provide for the analysis of trends in the levels of civilian positions.

Reason the Report Should be Repealed: This report is obsolete. Consistent with the Government Performance and Results Act, the Federal government relies upon different information to assess the efficiency of civilian workforce plans. In addition, DoD already provides similar information in the fiscal year budget submission to Congress.

1 (27) in section 2010—

2 (A) by striking subsection (b); and

3 (B) by redesignating subsections (c) and (d) as subsections (b) and (c),

4 respectively;

### Section-by-Section Analysis

Report Title: **Participation of Developing Countries in Combined Exercises: Payment of Incremental Expenses**

Report Purpose: This provision requires the Secretary of Defense to provide Congress

with a report, not later than March 1 of each year, identifying the developing countries for which the United States has paid incremental expenses, and the amounts of such expenses, during the preceding year.

Reason the Report Should be Repealed: The report provides information of limited utility at extraordinary cost to DoD in terms of human resources. Instead of an annual, recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

1 (28) in section 2011—

2 (A) by striking subsection (e).

### **Section-by-Section Analysis**

Report Title: **Special Operations Forces Training with Friendly Foreign Forces**

Report Purpose: This provision requires the Secretary of Defense to provide Congress with a report, not later than April of each year, regarding expenses incurred by DoD in training special operations forces preparing to work with armed forces and other security forces of friendly foreign countries.

Reason the Report Should be Repealed: This report is overly burdensome and the information provided is of limited value. DoD would prefer to provide Congress with more relevant information in response to specific requests.

1 (29) in section 2166—

2 (A) by striking subsection (h);

### **Section-by-Section Analysis**

Report Title: **Annual Report for Western Hemisphere Institute for Security Cooperation**

Report Purpose: This provision requires the Secretary of Defense, in consultation with Secretary of State, to provide Congress with a report, no later than March 15 of each year, on the activities of the institute during the preceding year.

Reason the Report Should be Repealed: This report is unnecessary. DoD would prefer to provide Congress with the annual report prepared by the institute's board of visitors for the Secretary of Defense, since that report already contains the same information requested by Congress.

1 (30) in section 2208—

1 (A) in subsection (j)(2), by striking "and notifies Congress regarding the  
2 reasons for the waiver";

### Section-by-Section Analysis

**Report Title: Sales of Articles and Services of Defense Industrial Facilities to Purchasers Outside the Department of Defense**

**Report Purpose:** This provision requires the Secretary of Defense to notify Congress regarding the granting of a waiver of the conditions regarding a working capital funded industrial facility to sell articles to persons outside the Department of Defense, after the Secretary has made a determination that such waiver is necessary for reasons of national security.

**Reason the Report Should be Repealed:** The report provides information of limited utility at extraordinary cost to DoD in terms of human resources. Instead of an annual, recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

1 (31) in section 2212—  
2 (A) by striking subsections (d) and (e); and  
3 (B) by redesignating subsection (f) as subsection (d);

### Section-by-Section Analysis

**Report Title: Obligations for Contract Services: Reporting in Budget Object Classes**

**Report Purpose:** This provision requires the Secretary of Defense to provide Congress with a report, not later than 30 days after the date on which the fiscal year budget is submitted, indicating the results of a review of DoD services expected to be performed as contract services.

**Reason the Report Should be Repealed:** This report is redundant and provides information of limited utility. DoD already provides Congress more detailed data in its budget submission, specifically the PB-15 exhibit published in Vol. II of the Data Book. DoD also publishes similar data in the budget in the OP-32 and by object class.

1 (32) in section 2214—  
2 (A) by striking subsection (c); and  
3 (B) by redesignating subsection (d) as subsection (e);

## Section-by-Section Analysis

**Report Title: Report on Transfer of Funds: Procedure and Limitations; Notice to Congress**

**Report Purpose:** This provision requires the Secretary of Defense to notify Congress promptly whenever DoD transfers amounts in working capital funds or amounts provided in appropriation acts for military functions of DoD (other than military construction) between such funds or appropriations (or any subdivision thereof).

**Reason the Report Should be Repealed:** The report provides information of limited utility at extraordinary cost to DoD in terms of human resources. Instead of multiple ad hoc reports, DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (33) in section 2216—
- 2 (A) by striking subsection (i); and
- 3 (B) by redesignating subsection (j) as subsection (i);

## Section-by-Section Analysis

**Report Title: Quarterly Report on Defense Modernization Account**

**Report Purpose:** This provision requires the Secretary of Defense to provide Congress with a report, not later than 15 days after the end of each calendar quarter, on the Defense Modernization Account. The report includes: (a) the amount and source of each credit to the account during the quarter; (b) the amount and purpose of each transfer from the account during the quarter; and (c) the balance in the account at the end of the quarter and, of such balance, the amount attributable to transfers to the account from the Secretaries of the military departments.

**Reason the Report Should be Repealed:** The report provides information of limited utility at extraordinary cost to DoD in terms of human resources. Instead of a burdensome quarterly report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (34) in section 2222—
- 2 (A) by repealing this entire section in chapter 131; and
- 3 (B) by amending the table of sections for such chapter by striking the
- 4 item relating to section 2222;

## Section-by-Section Analysis

### Report Title: **Strategic Financial Management Improvement Plan**

Report Purpose: This provision requires the Secretary of Defense to provide Congress with a biennial plan, not later than September 30 of each even-numbered year, for the improvement of financial management within DoD, as part of the annual financial management improvement plan.

Reason the Report Should be Repealed: This report is redundant. DoD already provides Congress with such information through a variety of means including: the Chief Financial Officer's Act 5 Year Plan; the Remediation Plan developed for the Federal Financial Management Improvement Act of 1996; various testimony provided to assorted Congressional committees; and information provided independently to Congressional staff. In addition, DoD also provides OMB and GAO with updates on DoD's transformation efforts.

- 1 (35) in section 2224—
- 2 (A) by striking subsection (e); and
- 3 (B) by redesignating subsection (f) as subsection (e);

## Section-by-Section Analysis

### Report Title: **Annual Report on Defense Information Assurance Program**

Report Purpose: This provision requires the Secretary of Defense to provide Congress with an annual report on the Defense Information Assurance Program to include discussion on progress in achieving the objectives of the program; a summary of the program strategy and any changes in that strategy; a description of the information assurance activities of the Office of Secretary of Defense, Joint Staff, unified and specified commands, Defense Agencies, military departments, and other DoD supporting activities; program and budget requirements for the program for the past fiscal year, current fiscal year, budget year, and each succeeding fiscal year in the remainder of the current future-years defense program; an identification of critical deficiencies and shortfalls in the program; legislative proposals that would enhance the capability of DoD to execute the program; and a summary of the actions taken in the administration of sections 3534 and 3535 of Title 44 with DoD. The report is due at or about the time the President submits the annual fiscal year budget.

Reason the Report Should be Repealed: The report provides information of limited utility at extraordinary cost to DoD in terms of human resources. Instead of an overly burdensome annual report that duplicates information already provided to Congress through other reports, DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (36) in section 2255(b)—  
2 (A) by striking paragraph (2); and  
3 (B) by striking "(1)" after the catchline;

### **Section-by-Section Analysis**

**Report Title: Aircraft Accident Investigation Boards: Composition Requirements - Waiver**

**Report Purpose:** This provision requires the Secretaries of the military departments to notify Congress whenever they waive the standard regarding the required membership of aircraft accident investigation boards.

**Reason the Report Should be Repealed:** The report is obsolete. DoD is highly unlikely to make such a waiver request given that internal DoD regulations already require the majority of accident board members to be from outside the existing chain of command, a higher standard than the statute requires.

- 1 (37) in section 2281—  
2 (A) by striking subsection (d); and  
3 (B) by redesignating subsection (e) as subsection (d);

### **Section-by-Section Analysis**

**Report Title: Biennial Report on Sustainment and Operation of GPS**

**Report Purpose:** This provision requires the Secretary of Defense to provide Congress with a report, not later than 30 days after the end of each even-numbered fiscal year, on the Global Positioning System (GPS) to include discussion on the operational status of the system; the capability of the system to satisfy effectively (i) the military requirements for the system that are current as of the date of the report, and (ii) the performance requirements of the Federal Radionavigation Plan; the most recent determination by the President regarding continued use of the selective availability feature of the system and the expected date of any change or elimination of the use of that feature; the status of cooperative activities undertaken by the U.S. with the governments of other countries concerning the capability of the system or any augmentation of the system to satisfy civil, commercial, scientific, and military requirements, including a discussion of the status and results of activities undertaken under any regional international agreement; any progress made toward establishing GPS as an international standard for consistency of navigational service; any progress made toward protecting GPS from disruption and interference; and the effects of use of the system on national security, regional security, and the economic competitiveness of U.S. industry, including the GPS equipment and

service industry and user industries .

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility. Every two years, DoD expends approximately 100 workdays and \$100,000 compiling the report. DoD is unaware of any specific Congressional inquiries arising from this report, and has not received any requests for additional information or briefings. Instead of this recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1                   (38) in section 2282—
- 2                               (A) by repealing this entire section in chapter 136; and
- 3                               (B) by amending the table of sections for such chapter by striking the
- 4                   item relating to section 2282;

### Section-by-Section Analysis

Report Title: **B-2 Bomber Aircraft**

Report Purpose: This provision requires the Secretary of Defense to provide Congress with an annual report on the B-2 bomber program, specifically identifying the average full-mission capable rate of B-2 aircraft for the previous fiscal year and determining whether the rate is adequate for accomplishing the B-2's missions. In addition, the report must include an assessment of B-2 technical capabilities and whether these capabilities are adequate for missions assigned to the aircraft; identification of all ongoing and planned aircraft capability enhancements; identification and assessment of additional capabilities that make the aircraft more survivable and effective against known and evolving threats; and provision of a fiscally phased program for new initiatives to include the President's current budget, the current DoD unfunded priority list, and the maximum executable funding for B-2 aircraft given the requirement to maintain sufficient operational ready aircraft for assigned missions.

Reason the Report Should be Repealed: This report is no longer necessary. The B-2 bomber has been operational for years and has demonstrated repeatedly its ability to accomplish assigned missions. The B-2 bomber was successfully used in combat as part of Operation Allied Force, and when combined with the Joint Direct Attack Munition, demonstrated the highest rate of target destruction of any aircraft/weapon combination. Although the mission capable rate has averaged slightly above 37% for FY 2000, the 509<sup>th</sup> Bomb Wing demonstrated the ability to surge during Allied Force. While flying 30-hour missions from Whiteman AFB, the B-2 mission capable rate averaged more than 50%, which exceeds Air Combat Command's standard. During peacetime operations, a B-2 that is not mission capable due to a low observable maintenance problem is fully capable of flying training sorties to maintain aircrew proficiency and readiness and therefore the low observable maintenance problem does not significantly affect the B-2's ability to perform assigned missions.

1 (39) in section 2306b—

2 (A) by striking subsection (i);

3 (B) in subsection (l)—

4 (i) by striking paragraphs (1) and (6);

5 (ii) by redesignating paragraphs (2) through (10) as paragraphs (1)

6 through (8), respectively; and

7 (C) by redesignating subsections (j) through (l) as subsections (i) through

8 (k), respectively;

### **Section-by-Section Analysis**

#### **Report Title: Defense Acquisitions Specifically Authorized By Law**

Report Purpose: The provision in subsection (i) requires the Secretary of Defense to certify to Congress, before DoD can enter into a multi-year contract, that the current Future-Years Defense Program fully funds the support costs associated with the multiyear program, and that the proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

Reason the Report Should be Repealed: This report is obsolete. DoD and Congress now work together to program support costs in years beyond the Future Years Defense Program, which has replaced the multiyear program.

#### **Report Title: Multi-Year Procurement Contracts – Notice of Intent to Initiate**

Report Purpose: The provision in subsection (l)(1) requires the head of an agency to notify Congress of certain proposed contracts at least 30 days in advance of the award of such proposed contracts.

Reason the Report Should be Repealed: The report is redundant. DoD already provides Congress with the same information pursuant to subsections (i)(3) and (l)(3) of this section. Specifically, proposed multiyear contracts described in subparagraph (B) employ economic order quantity (EOQ) procurement in excess of \$20 million in any one year of the contract; or include an unfunded contingent liability in excess of \$20 million or include advanced procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year. Any contract employing EOQ funding or unfunded contingent liabilities at the levels described above would exceed a total contract value of \$500 million. Because subsections (i)(3) and (l)(3) of this section already require that any multiyear



procurement contract in an amount equal to or greater than \$500 million be specifically authorized by law in an appropriations act and in an act other than an appropriations act, DoD already notifies Congress of such a proposed contract because Congress would have had to take definitive action to provide authority to award the contract.

**Report Title: Multiyear Procurement Contracts - Notice of Intent to Terminate**

**Report Purpose:** The provision in subsection (l)(6) requires the head of an agency to provide Congress with written notice prior to the proposed termination of a multiyear procurement contract, and specifies that the proposed termination must wait until 10 days after the date of the written notice of the proposed termination.

**Reason the Report Should be Repealed:** The report is redundant. DoD already provides the same information to Congress pursuant to requirements under section 2306b(l)(3) and (l)(3) of title 10. The contract which is subject to this reporting requirement is a multiyear contract that employs economic order quantity (EOQ) procurement in excess of \$20 million in any one year of the contract; or includes an unfunded contingent liability in excess of \$20 million or includes advanced procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year. Any contract employing EOQ funding or unfunded contingent liabilities at the levels described above would exceed a total contract value of \$500 million. Because subsections (i)(3) and (l)(3) of this section already require that any multiyear procurement contract in an amount equal to or greater than \$500 million be specifically authorized by law in an appropriations act and in an act other than an appropriations act, DoD already notifies Congress of such a proposed contract because Congress would have had to take definitive action to provide authority to award the contract.

- 1                   (40) in section 2323—
- 2                   (A) in subsection (d), by amending paragraph (2) to read as follows:
- 3                   "where the Department of Defense has met its goal under subsection (a) during
- 4                   the proceeding fiscal year"; and
- 5                   (B) by striking subsection (i); and
- 6                   (C) redesignating subsection (j) as subsection (i);

**Section-by-Section Analysis**

**Report Title: Contract Goal for Small Disadvantaged Businesses and Certain Institutions of Higher Education – Applicability**

**Report Purpose:** The provision in subsection (d) requires the Secretary of Defense to notify Congress upon a determination that, based upon compelling national security

considerations, the small and disadvantaged business goals, as outlined in subsection (a), regarding a goal of 5 percent for the total combined amount obligated for contract and subcontracts, do not apply.

Reason the Report Should be Repealed: The report provides information of limited utility at extraordinary cost to DoD in terms of human resources. Instead of a recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

Report Title: **Contract Goal for Small Disadvantaged Businesses and Certain Institutions of Higher Education**

Report Purpose: The provision in subsection (i) requires the head of an agency to provide Congress with a report, not later than December 15 of each year, on the progress of the agency toward attaining small and disadvantaged business goals, as outlined in subsection (a).

Reason the Report Should be Repealed: Similar to subsection (d) above, the report provides information of limited utility at extraordinary cost to DoD in terms of human resources. Instead of a recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (41) in section 2327(c)(1)—
- 2 (A) in subparagraph (A), by striking "after the date on which such head of
- 3 an agency submits to Congress a report on the contract" and inserting "if in the
- 4 best interests of the government";
- 5 (B) by striking subparagraph (B); and
- 6 (C) by redesignating subparagraph (C) as subparagraph (B);

**Section-by-Section Analysis**

Report Title: **Contracts: Consideration of National Security Objectives.**

Report Purpose: The provision requires the head of an agency to provide Congress with a detailed report, prior to entering into a contract with a foreign firm or a subsidiary of such a firm, if the Secretary of Defense determines that entering into the contract is not inconsistent with the national security objectives of the United States. The report must include the identity of the foreign government concerned; the nature of the contract; the extent of ownership or control of the firm or subsidiary concerned or, if appropriate in the case of a subsidiary, by the foreign government concerned or the agency or instrumentality of such foreign government; and the reasons for entering into the contract.

Reason the Report Should be Repealed: The report provides information of limited utility at extraordinary cost to DoD in terms of human resources. Instead of a recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1                   (42) in section 2350a—  
2                   (A) by striking subsection (f); and  
3                   (B) in subsection (g), by striking paragraph (3);

### **Section-by-Section Analysis**

#### **Report Title: Cooperative Research and Development Projects**

Report Purpose: The provision in subsection (f) requires the Under Secretary of Defense for Acquisition, Technology and Logistics to provide Congress with a report, not later than March 1 of each year, on cooperative research and development projects. The report must include a description of the status, funding, and schedule of existing projects carried out for which memoranda of understanding (or other formal agreements) have been entered into, and a description of the purpose, funding, and schedule of any new projects proposed to be carried out (including those projects for which memoranda of understanding (or other formal agreements) have not yet been entered into) for which funds have been included in the budget submitted to Congress. This section further requires the Secretary of Defense, in conjunction with the Secretary of State, to provide a report, when warranted, enumerating those countries added or deleted from the existing designation, and the criteria used in determining the eligibility of a country.

Reason the Report Should be Repealed: The report is redundant. DoD already provides Congress with relevant information on high-cost cooperative programs, such as the Joint Strike Fighter, through other filings and reports. Instead of a recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

#### **Report Title: Side-by-Side Testing - Intent to Obligate Funds**

Report Purpose: The provision in subsection (g)(3) requires the Deputy Director for Defense Research and Engineering to notify Congress of his intent to obligate funds made available to carry out this subsection no less than 30 days before such obligation.

Reason the Report Should be Repealed: The report is unnecessary and overly burdensome.

- 1                   (43) in section 2350b—  
2                   (A) by striking subsection (d);

1 (B) by redesignating subsections (e), (f) and (g) as subsections (d), (e) and  
2 (f), respectively;

### Section-by-Section Analysis

**Report Title: Notification of Prime Contract Awards to Comply with Cooperative Agreements**

**Report Purpose:** The provision in subsection (d)(1) requires the Secretary of Defense to notify Congress each time the Secretary requires that a prime contract be awarded to a particular prime contractor or subcontractor to comply with a cooperative agreement. The notice also must include the rationale for exercising such authority.

**Reason the Report Should be Repealed:** The report is redundant. DoD provides the same notification to Congress pursuant to section 27 of the Arms Export Control Act.

**Report Title: Notification of Waivers Granted to Prime Contractors in Conjunction with Cooperative Agreements**

**Report Purpose:** The provision in subsection (d)(2) requires the Secretary of Defense to notify Congress each time the Secretary exercises a waiver to enter into contracts or incur obligations under section 27(d) of the Arms Export Control Act outside the United States.

**Reason the Report Should be Repealed:** Similar to the report required by subsection (d)(1), this report is redundant because DoD provides the same notification to Congress pursuant to section 27 of the Arms Export Control Act.

1 (44) in section 2350j—  
2 (A) by striking subsection (e); and  
3 (B) by redesignating subsections (f) and (g) as subsections (e) and (f),  
4 respectively;

### Section-by-Section Analysis

**Report Title: Notification of Burden Sharing Contributions by Designated Countries and Regional Organizations**

**Report Purpose:** The provision requires the Secretary of Defense to provide Congress with a report containing an explanation of the need for certain military construction projects; the then current estimate of the cost of the projects; and a justification for carrying out the projects. When the Secretary decides to carry out a military construction project under this section, DoD

may not commence the project until the end of the 21-day period beginning on the date on which the report is submitted to Congress.

Reason the Report Should be Repealed: The report is redundant and overly burdensome. DoD already provides this information to Congress in an annual report on burden-sharing contributions and their costs. Instead of a recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

1 (45) in section 2361(b)—

2 (A) by striking paragraph (2);

### **Section-by-Section Analysis**

Report Title: **Awards of Grants and Contracts to Colleges and Universities: Requirement of Competition**

Report Purpose: The provision requires the Secretary of Defense to provide Congress notice in writing of his intent to make a grant or award a contract to a college or university for the performance of research and development, or for the construction of any research or other facility, 180 days prior to making the grant or award.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility. DoD would prefer to provide Congress with more relevant information in response to specific requests.

1 (46) in section 2367—

2 (A) by striking subsections (c) and (d);

### **Section-by-Section Analysis**

Report Title: **Limitation on Creation of New Federally Funded Research and Development Centers**

Report Purpose: The provision in subsection (c) requires the head of an agency to provide Congress with a report describing the purpose, mission and general scope of effort of a new research and development center, at least 60 days prior to obligating or expending appropriations for the new center.

Reason the Report Should be Repealed: The report is obsolete. DoD has not established a new research and development center since 1984, nor does it intend to establish such a new center in the foreseeable future.

Report Title: **Identification of FFRDC Workload Effort**

Report Purpose: The provision in subsection (d) requires the Secretary of Defense to provide Congress with a report that sets forth the proposed amount of man-years of effort to be funded by DoD for each federally funded research and development center for that fiscal year budget.

Reason the Report Should be Repealed: The report is redundant. DoD would provide such information in its annual fiscal year budget submission.

- 1 (47) in section 2371—
- 2 (A) by striking subsection (h); and
- 3 (B) by redesignating subsection (i) as subsection (h);

### **Section-by-Section Analysis**

Report Title: **Research Projects: Transactions Other Than Contracts and Grants**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with a report, not later than 90 days after the end of each fiscal year, on the use by DoD during such fiscal year of cooperative agreements authorized under section 2358 of Title 10 that contain a clause under subsection (d) regarding recovery of funds, and any transactions authorized by subsection (a) regarding the authorization of additional forms of transactions. The report also includes discussion on the technology areas in which research projects were conducted under such agreements or other transactions; the extent of the cost-sharing among federal government and non-federal sources; the extent to which the use of the cooperative agreements and other transactions has contributed to a broadening of the technology and industrial base available for meeting DoD needs and has fostered within the technology and industrial base new relationships and practices that support the national security of the United States; and the total amount of payments, if any, that were received by the Federal government during the fiscal year covered by the report pursuant to a clause described in subsection (d) regarding recovery of funds that was included in the cooperative agreements and other transactions, and the amount of such payments, if any, that were credited to each account established under subsection (f) regarding support accounts.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility. DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (48) in section 2374a—
- 2 (A) by striking subsection (e); and
- 3 (B) by redesignating subsection (f) as subsection (e);

## Section-by-Section Analysis

### Report Title: **Prizes for Advanced Technology Achievements**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with a report, at the end of each fiscal year, on the administration of the program of Prizes for Advanced Technology Achievements. The report must include discussion on military applications of research, technology, or prototypes for which prizes were awarded; the total amount of prizes awarded; and the methods used for solicitation and evaluation of those methods.

Reason the Report Should be Repealed: As there has not yet been a competition to date, this report provides information of limited utility, does not provide any value to Congress, and is burdensome to prepare. DoD would propose amending the reporting requirement to delete the annual report and only require that a report be provided to Congress once DoD begins awarding prizes for such achievements.

- 1                   (49) in section 2399(e)—
- 2                               (A) by striking paragraph (2); and
- 3                               (B) by redesignating paragraph (3) as paragraph (2);

## Section-by-Section Analysis

### Report Title: **Operational Test and Evaluation of Defense Acquisition Programs**

Report Purpose: This provision requires the DoD Inspector General to review waivers granted by the Director of Operational Test and Evaluation for the prohibition contained in subsection (e)(1) regarding contracts for advisory and assistance services. The Inspector General is to include in his semiannual report an assessment of waivers made since the last semiannual report.

Reason the Report Should be Repealed: The report is unnecessary. In the thirteen years since this provision was enacted, there has never been a waiver granted by the Director of Operational Test and Evaluation to allow a contractor that participated in the development or production of a weapons system to provide advisory or assistance services with regard to the test and evaluation of that system. In each semiannual report Congress, the Inspector General reports that no waivers were issued and, therefore, that none were reviewed.

- 1                   (50) in section 2401—
- 2                               (A) in subsection (a), by striking "only as provided in subsection (b)" both
- 3                               times such phrase appears in the subsection;

1 (B) by striking subsection (b); and  
2 (C) by redesignating subsections (c) through (f) as subsections (b) through  
3 (e), respectively;

### Section-by-Section Analysis

**Report Title: Requirement for Authorization by Law of Certain Contracts Relating to Vessels and Aircraft**

**Report Purpose:** The provision requires the Secretaries of the military departments to notify Congress prior to issuing a solicitation and contract to lease or charter a vessel or aircraft, or for the provision of a service through use by a contractor of a vessel or aircraft, in which the terms of the contract provide for a substantial termination liability on the part of the U.S. The notification must include a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than providing for the lease, charter, or services involved through purchase of a vessel or aircraft to be used under the contract. The Secretary must then wait for a period of 30 days of continuous session of Congress following the date on which Congress received the notice before proceeding further.

**Reason the Report Should be Repealed:** The report is redundant. DoD already requests Congress to authorize funds for such purposes, and provides supporting information, before proposing any such lease or contract.

1 (51) in section 2410i—  
2 (A) in subsection (c), by striking the last sentence;

### Section-by-Section Analysis

**Report Title: Prohibition on Contracting with Entities That Comply with the Secondary Arab Boycott of Israel.**

**Report Purpose:** The provision requires the Secretary of Defense to provide Congress with a report, within 15 days after the end of each fiscal year, identifying each waiver to the existing prohibition against contracting with entities that comply with the Arab boycott of Israel. Before DoD may grant such a waiver, the Secretary of Defense must certify that such waiver was necessary in the national security interests of the United States.

**Reason the Report Should be Repealed:** The report is overly burdensome and provides information of limited utility. DoD has not processed such a waiver since 1995 and would prefer to provide Congress with more relevant information in response to specific requests.

1 (52) in section 2410m—



1 (A) by striking subsection (c);

**Section-by-Section Analysis**

Report Title: **Retention of Amount Collected From Contractors During the Pendency of Contract Dispute**

Report Purpose: The provision requires the Under Secretary of Defense (Comptroller) to provide Congress with an annual report on the amounts, if any, collected from contractors as a result of claims made by a military department or a defense agency under the Contract Disputes Act of 1978. The report must include: the total amount collected from contractors during the year preceding the year in which the report is submitted; the total amount available for obligation; the total amount disbursed in such preceding year and a description of the purpose for each disbursement; and the total amount returned to the Treasury in such preceding year.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility. Instead of this burdensome, annual report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

1 (53) in section 2432—

2 (A) in subsection (b)—

3 (i) by striking paragraph (1);

4 (ii) by redesignating paragraphs (2) and (3) as paragraphs (1) and

5 (2) respectively; and

6 (iii) in paragraph (2) (as redesignated)—

7 (I) by striking subparagraph (B);

8 (II) by striking "(A)" after the catch line; and

9 (III) by redesignating clauses (i), (ii) and (iii) as

10 subparagraphs (A), (B) and (C), respectively; and

11 (B)(i) by striking subsections (f) and (h); and

12 (ii) by redesignating subsection (g) as subsection (f);

**Section-by-Section Analysis**

Report Title: **Quarterly Selected Acquisition Reports**

Report Purpose: The provision in subsection (b)(1) requires the Secretary of Defense to provide Congress with a report, at the end of each fiscal year quarter, on current major defense acquisition programs. The report also includes a status report on each defense acquisition program that, at the end of such quarter, is defined as a major defense acquisition program.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility. Each year, DoD expends approximately 10 man-years to prepare these quarterly reports. DoD would prefer to provide Congress with more relevant information in response to specific requests.

Report Title: **Waiver of the Requirement to Submit Selected Acquisition Reports for a Particular DoD Program**

Report Purpose: The provision in subsection (b)(3)(B) requires the Secretary of Defense to notify Congress whenever it waives the requirement for submission of Selected Acquisition Reports for a program. The report is due not later than 60 days before the President submits a fiscal year budget to Congress.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility. Each year, DoD expends approximately 10 man-years to prepare this report. DoD would prefer to provide Congress with more relevant information in response to specific requests.

Report Title: **Comprehensive Selected Acquisition Reports**

Report Purpose: The provision in subsection (f) requires the Secretary of Defense to provide Congress with a comprehensive annual Selected Acquisition Report, within 60 days after the date on which the President submits a fiscal year budget to Congress, as well as a quarterly Selected Acquisition Report, within 45 days after the end of the fiscal year quarter.

Reason the Report Should be Repealed: These reports are overly burdensome and provide information of limited utility. Each year, DoD expends approximately 10 man-years to prepare these reports. DoD would prefer to provide Congress with more relevant information in response to specific requests.

Report Title: **Notification of Decision to Submit Research Development, Test & Evaluation-only Selected Acquisition Reports**

Report Purpose: The provision in subsection (h) requires the Secretary of Defense to notify Congress before making a decision to proceed to engineering and manufacturing development with respect to a major defense acquisition program, and when funds have been appropriated for such, not less than 15 days before the report is due under this section.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility. Each year, DoD expends approximately 10 man-years to prepare this report. DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (54) in section 2433—
- 2 (A) in subsection (d), by striking paragraph (3);
- 3 (B) by striking subsection (e); and
- 4 (C) by redesignating subsections (f), (g) and (h) as subsections (e), (f) and
- 5 (g), respectively;

### **Section-by-Section Analysis**

**Report Title: Unit Cost Reports**

Report Purpose: The provision in subsection (d)(3) requires the Secretaries of the military departments to notify Congress of any determination that a current program acquisition unit cost has increased by at least 15 percent, or by at least 25 percent, over the program acquisition unit cost for the program as shown in the Baseline Estimate. In the case of a determination based on a report submitted in accordance with subsection (c), this section requires the Secretary to notify Congress within 45 days after the date of that report, and include the date on which the determination was made.

Reason the Report Should be Repealed: These reports are overly burdensome and provide information of limited utility. Each year, DoD expends approximately 5 man-years to prepare these reports. DoD would prefer to provide Congress with more relevant information in response to specific requests.

**Report Title: Unit Cost Reports – Percentage Increase In The Program Acquisition Unit Cost By At Least 15 Percent**

Report Purpose: The provision in subsection (e)(1) requires the Secretaries of the military departments to provide Congress with a Selected Acquisition Report whenever they make a determination that the program acquisition unit cost or the procurement unit cost of a major defense acquisition program has increased by at least 15 percent. The report must be submitted for the first fiscal-year quarter ending on or after the date of determination or for the first fiscal-year quarter ending on or after that date, must include the information described in section 2432(e) of title 10, and must be submitted in accordance with section 2432(f) of title 10.

Reason the Report Should be Repealed: These reports are overly burdensome and provide information of limited utility. Each year, DoD expends approximately 5 man-years to

prepare these reports. DoD would prefer to provide Congress with more relevant information in response to specific requests.

**Report Title: Unit Cost Reports – Percentage Increase In The Program Acquisition Unit Cost Exceeds 25 Percent - Certification**

**Report Purpose:** The provision in subsection (e)(2) requires the Secretary of Defense to provide Congress a written certification whenever a percentage increase in the program acquisition unit cost or procurement unit costs of a major defense acquisition program exceeds 25 percent. The report is due before the end of the 30-day period beginning on the day when the Selected Acquisition Report containing the information is required to be submitted under section 2432(f) of title 10.

**Reason the Report Should be Repealed:** The report is overly burdensome and provides information of limited utility. Each year, DoD expends approximately 5 man-years to prepare the report. DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (55) in section 2457—
- 2 (A) by striking subsection (d); and
- 3 (B) by redesignating subsections (e) and (f) as subsections (d) and (e),
- 4 respectively;

**Section-by-Section Analysis**

**Report Title: Standardization of Equipment with North Atlantic Treaty Organization Members**

**Report Purpose:** The provision requires the Secretary of Defense to provide Congress with a report, before February 1, 1989, and biennially thereafter, that assesses the United States' progress in standardizing equipment, including weapon systems, ammunition, an fuel, procured for the use of the armed forces of the United States stationed in Europe under the North Atlantic Treaty or at least to make that equipment interoperable with equipment of other members of the North Atlantic Treaty Organization. The report must include each specific assessment and evaluation made and the results of each assessment and evaluation as well as the results achieved with the members of NATO; procurement action initiated on each new major system not complying with that policy; procurement action initiated on each new major system that is not standardized or interoperable with equipment of other members of NATO, including a description of the system chosen and the reason for choosing that system; the identity of each program of research and development for U.S. Armed Forces stationed in Europe and the common requirements; action of the alliance toward common NATO requirements if none exists; efforts to establish a regular procedure and mechanism in NATO to determine common

military requirements; a description of each existing and planned program of the Department of Defense that supports the development or procurement of a weapon system or other military equipment originally developed or procured by members of the organization other than the United States and for which funds have been authorized to be appropriated for the fiscal year in which the report is submitted, including a summary listing of the amount of funds; and a description of each weapon system or other military equipment originally developed or procured in the United States and that is being developed or procured by members of the organization other than the United States during the fiscal year for which the report is submitted.

Reason the Report Should be Repealed: The report is obsolete. Congress initiated the requirement for this report in 1989, and since that time, the U.S. largely has achieved its goal of standardizing equipment with NATO members.

- 1 (56) in section 2461a—
- 2 (A) by striking subsection (d); and
- 3 (B) by redesignating subsection (e) as subsection (d);

#### **Section-by-Section Analysis**

Report Title: **Development Of System For Monitoring Cost Savings Resulting From Workforce Reductions**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with a report, not later than February 1 of each fiscal year, on the results of the system for monitoring the performance, including the cost performance, of each function of DoD that is the subject of a workforce review. The report must include: the cost of workforce review; cost of performing a function before workforce review compared to costs incurred after implementing conversion, reorganization, or reengineering actions by the workforce review; and the actual savings derived from implementation of recommendations of the workforce review, compared to anticipated savings that were to result from those actions.

Reason the Report Should be Repealed: The report is obsolete and overly burdensome. As DoD's Business Initiative Council moves to alternate methods to find and measure savings and efficiencies, the focus on the A-76 program is diminishing. The report produces information of limited utility in relation to the cost of compiling the report, and DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (57) in section 2464—
- 2 (A) in subsection (b), by striking paragraph (3);

#### **Section-by-Section Analysis**

Report Title: **Core Logistics Functions - Waiver**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with a report whenever he determines to waive the requirements for performance workload needed to maintain a logistics capability, provided that such waiver is made under regulations prescribed by the Secretary and is based on a determination that government performance of the activity or function is no longer required for national defense reasons. A waiver may not take effect until the expiration of the first period of 30 days of continuous session of Congress that begins on or after the date on which the Secretary submits a report to Congress on the waiver.

Reason the Report Should be Repealed: The report is unnecessary. To date, DoD has not found it necessary to invoke this waiver. Additionally, DoD already provides Congress with similar information through a variety of different means and reports.

1 (58) in section 2467—

2 (A) by striking subsection (c);

**Section-by-Section Analysis**

Report Title: **Congressional Notification Of Cost Comparison Waiver**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with a report, not later than 10 days after a decision is made to waive the cost comparison study otherwise required under OMB Budget Circular A-76 as part of the process to convert to contractor performance any commercial activity of DoD, describing the commercial activity subject to the cost comparison waiver and the rationale for the waiver.

Reason the Report Should be Repealed: This report is unnecessary. Only two cost comparison waivers have been done since 1995. These waivers are based on in-depth analysis of a function before conversion to contract performance and are subject to administrative appeal under OMB Circular A-76. As is further required by A-76, notices of waivers are made available to the public. In addition, other reporting requirements provide the same notification information to Congress of the decision to transfer performance of the commercial or industrial type function to private sector performance.

1 (59) in section 2472—

2 (A) by striking subsection (b);

**Section-by-Section Analysis**

Report Title: **Management Of Depot Employees**

Report Purpose: The provision requires the Secretary of Defense to provide Congress

with a report, not later than December 1 of each fiscal year, on the number of employees employed and expected to be employed by the Department of Defense during that fiscal year to perform depot-level maintenance and repair of material.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility. Each year, DoD expends approximately 15 man-days to prepare the report. DoD would prefer to provide Congress with more relevant information in response to specific requests.

1 (60) in section 2493—

2 (A) by striking subsection (g);

### **Section-by-Section Analysis**

Report Title: **Fisher House: Administration as Nonappropriated Fund Instrumentality**

Report Purpose: The provision requires the Secretaries of the military departments to provide Congress with a report, not later than January 15 of each year, describing the operation of Fisher Houses and Fisher Suites associated with health care facilities.

Reason the Report Should be Repealed: The report is obsolete. This program has been an established, successful program for many years.

1 (61) for section 2504—

2 (A) by repealing the entire section in chapter 148; and

3 (B) by amending the section of tables for such chapter by striking the item

4 relating to section 2504;

### **Section-by-Section Analysis**

Report Title: **Department of Defense Technology and Industrial Base Policy Guidance**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with an annual report, by March 1 of each year, on DoD industrial and technological guidance issued to facilitate the attainment of national security objectives, including any guidance providing for the integration of industrial and technological capabilities considerations into its budget allocation, weapons acquisition, and logistics support decision processes; methods and analyses undertaken by DoD, alone or in cooperation with other Federal agencies, to identify and address industrial and technological capabilities concerns; industrial and technological

capabilities assessments prepared pursuant to section 2505 of title 10; other analyses used in developing DoD's budget submission for the next fiscal year, including a determination as to whether identified instances of foreign dependency adversely impact warfighting superiority; and DoD's programs and actions designed to sustain specific essential technological and industrial capabilities.

Reason the Report Should be Repealed: The report is obsolete and overly burdensome. Congress established this reporting requirement to ensure that DoD prescribed policies and procedures, performed analyses, and took actions necessary to sustain the industrial and technological capabilities needed to meet projected defense requirements in an era of sharp reductions in defense spending and a rapidly consolidating defense industry. Today, the defense budget has stabilized and is increasing. The U.S. defense industrial base no longer is shrinking. DoD has submitted the required report annually since 1997 and demonstrated that it is meeting its responsibilities in a timely and effective manner. The report is a summary of DoD industrial capabilities-related activities completed during the previous calendar year. It contains no original information and is of limited utility to the Congress. DoD will continue to analyze important elements of the national technology and industrial base in accordance with the requirements of section 2503 of title 10, perform periodic defense capability assessments in accordance with section 2505, and prescribe appropriate departmental guidance in accordance with section 2506.

1 (62) in section 2515—

2 (A) by striking subsection (d);

### **Section-by-Section Analysis**

#### Report Title: **Activities Of The Defense Office Of Technology Transition**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with a report, submitted each year at the same time that the President submits the fiscal year budget, on the activities of the Defense Office of Technology Transition along with a discussion of the accomplishments of the Office during the fiscal year preceding the fiscal year in which the report is submitted.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility. Each year, DoD expends approximately \$75,000 to prepare the report. DoD would prefer to provide Congress with more relevant information in response to specific requests.

1 (63) in section 2521—

2 (A) by striking subsection (e);

### **Section-by-Section Analysis**



Report Title: **Manufacturing Technology Program**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with a five-year plan for the Manufacturing Technology Program which establishes the overall manufacturing technology goals, milestones, priorities, and investment strategy for the program, as part of the budget justification documents submitted in support of the DoD's fiscal year budget. The report must include data for each of the five fiscal years covered by the plan, the objectives of, and funding for the program by each military department and each Defense Agency participating in the program.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility. Each year, DoD expends approximately \$200,000 to prepare the report. DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1                   (64) in section 2536(b)—
- 2                               (A) by striking paragraph (2); and
- 3                               (B) in paragraph (1)—
- 4                                       (i) by striking "(1)" after the catch line;
- 5                                       (ii) by redesignating subparagraphs (A) and (B) as paragraphs (1)
- 6                                       and (2), respectively; and
- 7                                       (iii) by redesignating clauses (i) and (ii) as subparagraphs (A) and
- 8                                       (B), respectively;

**Section-by-Section Analysis**

Report Title: **Award Of Certain Contracts To Entities Controlled By A Foreign Government**

Report Purpose: The provision requires the Secretary of Defense to notify Congress of any decision to grant a waiver under paragraph (1)(B) with respect to a contract. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the committees.

Reason the Report Should be Repealed: This report is unnecessary. It is an "as required" report that provides advance notice to Congress on waivers to the prohibition against awarding a highly classified contract to a company controlled by a foreign government. The Department of Defense has never granted a waiver under this provision, and there is little likelihood of any

contract triggering the need for such a report.

- 1 (65) in section 2537—  
2 (A) by striking subsection (b); and  
3 (B) by redesignating subsection (c) as subsection (b);

### **Section-by-Section Analysis**

**Report Title: Report to Congress – Improved National Defense Control of Technology Diversions Overseas**

**Report Purpose:** The provision requires the Secretary of Defense, the Secretary of Energy, and the Secretary of Commerce to provide Congress with an annual report, by March 31 of each year, containing a summary and analysis of the information collected on all contractors controlled by foreign persons. The report must include an analysis of accumulated foreign ownership of U.S. firms engaged in the development of defense critical technologies.

**Reason the Report Should be Repealed:** The report is overly burdensome. There are no existing databases to identify which contractors are controlled by foreign persons or entities. Requiring the collection of such information places additional administrative burdens on DoD and on DoD contractors, ultimately driving up the costs of acquisition and logistics.

- 1 (66) in section 2541d—  
2 (A) by striking subsection (b); and  
3 (B) by striking "(a)" and the catchline in the remaining matter;

### **Section-by-Section Analysis**

**Report Title: Critical Infrastructure Protection Loans**

**Report Purpose:** The provision requires the Secretary of Defense to provide Congress with a report, not later than March 1 of each year in which guarantees are made for loans under this subchapter, on the loan guarantee program.

**Reason the Report Should be Repealed:** This report is unnecessary. This subsection relates to an annual report of the loans and their effectiveness in securing the National Defense Infrastructure. The defense loan guarantee program has not been effective or widely used. Since this reporting requirement was established, only one such loan has been made. Therefore, the report is of little or no value.

- 1 (67) in section 2561—

- 1 (A) by striking subsections (c), (d) and (f); and
- 2 (B) by redesignating subsection (e) as subsection (c);

**Section-by-Section Analysis**

Report Title: **Annual Report – Humanitarian Assistance**

Report Purpose: The provision in subsection (c) requires the Secretary of Defense to provide Congress with an annual report on the provision of humanitarian assistance used for the purpose of providing transportation of humanitarian relief and for other humanitarian purposes worldwide. The report is due each year at the time of the President's submits the fiscal year budget.

Reason the Report Should be Repealed: This report is unnecessary and overly burdensome. DoD would prefer to provide Congress with more relevant information, such as country specific data maintained by the Defense Security Cooperation Agency, in response to specific requests. During the last five years, Congress has made no such inquiry.

Report Title: **Annual Report – Humanitarian Assistance to Unauthorized Countries**

Report Purpose: The provision in subsection (d) requires the Secretary of Defense to notify Congress in any case in which the Secretary provides for the transportation of humanitarian relief to a country to which the transportation of humanitarian relief has not been specifically authorized by law. The notification is to be submitted not less than 15 days before the commencement of such transportation.

Reason the Report Should be Repealed: This report is unnecessary and overly burdensome. DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (68) in section 2563—
- 2 (A) in subsection (c)(2), by striking "and notifies Congress regarding the
- 3 reasons for the waiver";

**Section-by-Section Analysis**

Report Title: **Articles And Services Of Industrial Facilities: Sale To Persons  
Outsides The Department Of Defense**

Report Purpose: The provision requires the Secretary of Defense to notify Congress whenever he waives the condition that an article or service must not be available from a United States commercial source in the case of a particular sale. The report must indicate the Secretary

of Defense finds the waiver is necessary for reasons of national security.

Reason the Report Should be Repealed: The report is unnecessary. The Secretary of Defense already is determined to take such action rarely and only for reasons of national security.

1 (69) in section 2631—

2 (A) in subsection (b)(3), by striking the last sentence;

### **Section-by-Section Analysis**

Report Title: **Supplies: Preference To United States Vessels**

Report Purpose: The provision requires the Secretary of Defense to notify Congress immediately whenever he determines to waive the requirement regarding work on certain vessels being performed in the United States. The report must indicate the Secretary of Defense finds the waiver is critical to the national security of the U.S.

Reason the Report Should be Repealed: This report is unnecessary. DoD does not anticipate contracting outside of the United States for the type of work that would generate the need for the report.

1 (70) in section 2645—

2 (A) by striking subsection (d);

3 (B) by striking subsection (g); and

4 (C) by redesignating subsections (e), (f) and (h) as subsections (d), (e) and

5 (f), respectively;

### **Section-by-Section Analysis**

Report Title: **Indemnification of the Department of Transportation for Losses Covered by Vessel War Risk Insurance**

Report Purpose: The provision in subsection (d) requires the Secretary of Defense to provide Congress with notification of a loss, as soon after the occurrence of the loss as possible and, in no event, more than 30 days after the date of the loss, that is covered by vessel war risk insurance in which the covered loss is or is expected to be in an amount in excess of \$1,000,000, as well as semi-annual reports thereafter updating the information, showing with respect to losses arising from such incident the total amount expended to cover such losses, the source of such funds, pending litigation, and estimated total cost to the government.

Reason the Report Should be Repealed: This report is unnecessary. DoD is required to submit this report only in the very rare event of a loss that is covered by defense-related vessel war risk insurance in the case of an accident in which the covered loss is, or is expected to be, in an amount in excess of \$1,000,000.

Report Title: **Annual Report on Contingent Liabilities**

Report Purpose: The provision in subsection (g) requires the Secretary of Defense to provide Congress with a report, not later than March 1 of each year, setting forth the current amount of the contingent outstanding liability of the United States under the vessel war risk insurance program under Title XII of the Merchant Marine Act of 1936.

Reason the Report Should be Repealed: This annual report is unnecessary. In the event of the occurrence of a loss or incident that is covered by this insurance, the Secretary of Defense already would be required to notify Congress promptly.

- 1                   (71) in section 2662—
- 2                               (A) by striking subsection (e);
- 3                               (B) by redesignating subsections (f) and (g) as subsections (e) and (f),
- 4                   respectively; and
- 5                               (C) in subsection (f), as redesignated by subparagraph (B), by striking ",
- 6                   and the reporting requirement set forth in subsection (e) must not apply with
- 7                   respect to a real property transaction otherwise covered by that subsection,";

**Section-by-Section Analysis**

Report Title: **Real Property Transactions - Lease of Rental Property by GSA for DoD in Excess of \$500,000**

Report Purpose: The provision requires the Secretaries of the military departments to provide Congress with a report, 30 days prior to the proposed occupancy of any general purpose space leased for a DoD element by the General Services Administration at an annual rental in excess of \$500,000 (excluding the cost of utilities and other operation and maintenance services), if the effect of such occupancy is to increase the total amount of such leased space occupied by all elements of DoD.

Reason the Report Should be Repealed: The report is redundant. Congress already requires the Secretaries of the military departments to provide information concerning leases exceeding this threshold prior to execution during the annual appropriations process.

- 1 (72) in section 2667a(c)—  
2 (A) by striking paragraph (2);  
3 (B) by striking "(1)" after the catch line;

### **Section-by-Section Analysis**

**Report Title: Leases: Non-Excess Property of Defense Agencies: Competitive Selection**

**Report Purpose:** The provision requires the Secretary of Defense to provide Congress with written notice, not later than 45 days before entering into a lease if the term exceeds one year and the fair market value of the lease interest exceeds \$100,000, describing the terms of the proposed lease, the competitive procedures in that lease, and the competitive procedures to select the lessee.

**Reason the Report Should be Repealed:** This report is unnecessary. It is highly unlikely that DoD would enter such a lease.

- 1 (73) in section 2676—  
2 (A) in subsection (d), by striking all after "is approved by the Secretary  
3 concerned" and inserting a period;

### **Section-by-Section Analysis**

**Report Title: Acquisition: Limitation on Real Property Not Owned by the United States**

**Report Purpose:** The provision requires the Secretaries of the military departments to notify Congress prior to acquiring real property not owned by the United States which results in a reduction in scope or the increase in cost of a land acquisition. The Secretaries only may award such a contract after a period of 21 days elapses from the date Congress receives the required the notification.

**Reason the Report Should be Repealed:** The report is obsolete. DoD would prefer to eliminate the existing inefficient report in favor of providing Congress with more relevant information in response to specific requests.

- 1 (74) in section 2680—  
2 (A) by striking subsection (e);

## Section-by-Section Analysis

### Report Title: **Leases: Land For Special Operations Activities**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with a report, not later than March 1 of each year, that identifies each leasehold interest in rear property that the Secretary determines is necessary in the interests of national security to facilitate special operations activities of forces of the special operations command. The report must contain a discussion of each project for the construction or modification of facilities.

Reason the Report Should be Repealed: The report is redundant. DoD already provides Congress similar information through separate reports.

- 1 (75) in section 2688—  
2 (A) by striking subsection (e);  
3 (B) by redesignating subsections (f) through (i) as subsections (e) through  
4 (h), respectively; and  
5 (C) in subsection (f), as redesignated by subparagraph (B), by striking the  
6 last sentence;

## Section-by-Section Analysis

### Report Title: **Utility Systems: Conveyance Authority: Notice-and-Wait Requirement**

Report Purpose: The provision requires the Secretaries of the military departments to provide Congress, prior to conveying a utility system, or part of a utility system, with an economic analysis (based upon accepted life-cycle costing procedures approved by the Secretary of Defense) demonstrating that the long-term economic benefit of the conveyance to the United States exceeds the long-term economic cost of the conveyance to the United States, and that the conveyance will reduce the long-term costs of the United States for utility services provided by the utility system concerned. DoD must wait for a period of 21 days to elapse after the date on which Congress receives the required economic analysis.

Reason the Report Should be Repealed: The report is unnecessary. The provisions of this section are very specific concerning the requirements for any such conveyance and sufficient to ensure DoD manages this authority appropriately. The additional notice and wait provision required by this report only serves as a further administrative burden.

- 1 (76) in section 2696—

- 1 (A) by striking subsections (c) and (d); and
- 2 (B) by redesignating subsection (e) as subsection (c);

**Section-by-Section Analysis**

Report Title: **Notice of Further Federal Use**

Report Purpose: The provision requires the Secretaries of the military departments to provide Congress with a copy of a notice issued by the General Services Administration (GSA) determining that further Federal use of a parcel of real property authorized or required to be conveyed by any provision of law is requested by a Federal agency. This provision also prohibits DoD from conveying the real property if Congress enacts a law rescinding the conveyance authority or requirement before the end of the 180-day period beginning on the date on which Congress receives from DoD the copy of GSA's notice.

Reason the Report Should be Repealed: The report is unnecessary. DoD would prefer to eliminate the requirement that it provide Congress with a copy of a notice issued by a separate Federal agency prior to taking any action regarding real property already possessed by the Federal government. This superfluous requirement contravenes Congress's and DoD's shared goal of effective, efficient government.

- 1 (77) in section 2703—
- 2 (A) in subsection (b)(2)—
- 3 (i) by striking subparagraph (B);
- 4 (ii) by striking the designator "(A)" which precedes "determines
- 5 that permanent relocation—";
- 6 (iii) by striking the dash that follows "such paragraph unless the
- 7 Secretary" in paragraph (2);
- 8 (iv) by realigning the previously designated subparagraph (A) to
- 9 follow at the end of paragraph (2); and
- 10 (v) by redesignating clauses (i) through (iii) as subparagraphs (A),
- 11 through (C), respectively;

**Section-by-Section Analysis**



**Report Title: Environmental Restoration Accounts: Facility Relocation Costs**

**Report Purpose:** The provision requires the Secretary of Defense or the Secretaries of the military departments, before undertaking the permanent relocation of a facility, to determine that: permanent relocation is the most cost effective method of responding to the release or threatened release of hazardous substances, pollutants or contaminants from the real property on which the facility is located and is supported by the affected community; and to provide Congress with written notice of the determination before undertaking the permanent relocation of the facility, including a description of the response action taken or to be taken in connection with the permanent relocation and a statement of the costs incurred or to be incurred in connection with the permanent relocation.

**Reason the Report Should be Repealed:** The report is redundant. DoD already provides Congress the same information on facility relocations for environmental restoration purposes pursuant to sections 2805(b) and 2810(b) of title 10. In addition, relocating the facility would be a requirement for an environmental response action under the Comprehensive Environmental Response, Compensation and Liability Act of 1980. It also is likely that the Environmental Protection Agency and/or equivalent state environmental regulators already would have approved the response action, including facility relocation.

- 1 (78) for section 2723—
- 2 (A) by repealing this entire section in chapter 161; and
- 3 (B) by amending the table of sections at the beginning of such chapter by
- 4 striking the item relating to section 2723;

**Section-by-Section Analysis**

**Report Title: Notification of Certain Security and Counterintelligence Failures within the Department of Defense**

**Report Purpose:** The provision requires the Secretary of Defense, in consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, as appropriate, to provide Congress with a notification of each security or counterintelligence failure or compromise of classified information relating to any defense operation, system, or technology of the United States that the Secretary considers likely to cause significant harm or damage to the armed services interests of the United States.

**Reason the Report Should be Repealed:** Instead of a burdensome recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

1 (79) in section 2803(b)—

2 (A) by striking "21-day" and inserting "7-day";

### **Section-by-Section Analysis**

#### **Report Title: Emergency Construction**

Report Purpose: The provision requires the Secretaries of the military departments to provide Congress with a report justifying a determination to carry out a military construction project not otherwise authorized by law. The report must indicate the current estimate of the cost of the project and a statement of the source of the funds to be used to carry out the project. The Secretaries may carry out such a project only after the end of the 21-day period beginning on the date Congress receives the required notification.

Reason the Report Should be Modified: The wait provision is overly burdensome. It adds delay to construction projects that are, by definition, urgent in nature.

1 (80) in section 2804—

2 (A) by striking "21-day" and inserting "7-day";

### **Section-by-Section Analysis**

#### **Report Title: Contingency Construction**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with a report justifying a determination to carry out a military construction project not otherwise authorized by law when deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or national interest. The report must indicate the current estimate of the cost of the project and a statement of the source of the funds to be used to carry out the project. The Secretary may carry out such a project only after the end of the 21-day period beginning on the date Congress receives the required notification.

Reason the Report Should be Modified: The wait provision is overly burdensome. It adds delay to construction projects that are, by definition, urgent in nature.

1 (81) in section 2805—

2 (A) in subsection (b), by striking paragraph (2); and

3 (B) by striking "(1)" that precedes the remaining matter;

### **Section-by-Section Analysis**

Report Title: **Unspecified Minor Construction**

Report Purpose: The provision requires the Secretaries of the military departments to notify Congress of a decision to carry out an unspecified minor military construction project costing more than \$500,000. The Secretaries may carry out such a project only after the end of the 21-day period beginning on the date Congress receives the required notification.

Reason the Report Should be Repealed: The report is unnecessary and overly burdensome. DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1                   (82) in section 2807—
- 2                   (A) by striking subsections (b) and (c); and
- 3                   (B) by redesignating subsection (d) as subsection (b);

**Section-by-Section Analysis**

Report Title: **Architectural and Engineering Services and Construction Design**

Report Purpose: The provision in subsection (b) requires the Secretaries of the military departments to notify Congress prior to obtaining architectural and engineering services and construction design in connection with military construction projects for which the estimated cost exceeds \$500,000. The notification must indicate the scope of the proposed project and the estimated cost of such services, and must be sent to Congress not less than 21 days before the initial obligation of funds for such services.

Reason the Report Should be Repealed: The report is unnecessary and overly burdensome. DoD would prefer to provide Congress with more relevant information in response to specific requests.

Report Title: **Reasons for Increase of Funds for Architectural and Engineering Services and Construction Design**

Report Purpose: The provision in subsection (c) requires the Secretaries of the military departments to submit a report to Congress upon determining that the amount authorized for architectural and engineering services and construction design in connection with military construction projects activities in any fiscal year are insufficient and must be increased. The report must include a statement of the reasons for the increase and a statement of the source of funds to be used for the increase. Such activities may proceed only after a period of 21 days has elapsed from the date Congress receives the required report.

Reason the Report Should be Repealed: The report is redundant. DoD already provides Congress the same information in the Annual Report to Congress pursuant to section 2861 of

title 10.

1 (83) in section 2809—

2 (A) by striking subsection (f);

### **Section-by-Section Analysis**

**Report Title: Long-term Facilities Contracts for Certain Activities and Services**

**Report Purpose:** The provision requires the Secretaries of the military departments to provide Congress with a written justification of the need to enter into a contract for the procurement of services in connection with the construction, management, and operation of a facility on or near a military installation for the provision of certain specified activities or services. The justification must include an economic analysis (based upon accepted life-cycle costing procedures) that demonstrates the proposed contract is cost effective when compared with alternative means of furnishing the same facility. DoD must wait for a period of 21 calendar days after Congress receives the required justification before entering into such a contract.

**Reason the Report Should be Repealed:** The report is redundant. DoD already provides Congress such information in its annual fiscal year budget submission.

1 (84) in section 2811—

2 (A) by striking subsection (d); and

3 (B) by redesignating subsection (e) as subsection (d);

### **Section-by-Section Analysis**

**Report Title: Repair of Facilities**

**Report Purpose:** The provision requires the Secretaries of the military departments to notify Congress upon making a decision to carry out a repair project for an entire single-purpose facility or one or more functional areas of a multipurpose facility with an estimated cost in excess of \$10,000,000. The notification must include the justification for the repair project and the current estimate of the cost of the project.

**Reason the Report Should be Repealed:** The report is redundant. DoD already provides Congress the same information in the military departments' annual reports, as well as the annual military construction appropriations process.

1 (85) in section 2812—

2 (A) in subsection (c), by striking paragraph (1);

1 (B) by striking "(2)" that precedes the remaining matter;

### **Section-by-Section Analysis**

#### **Report Title: Lease-Purchase of Facilities**

**Report Purpose:** The provision requires the Secretaries of the military departments to provide Congress, prior to entering into an agreement with a private contractor for the lease of a certain specified facility if the facility is provided at the expense of the contractor on a military installation under the jurisdiction of DoD, with a written justification of the need for the facility for which the proposed lease is being entered into and an economic analysis (based upon accepted life-cycle costing procedures) that demonstrates the cost effectiveness of the proposed lease compared with a military construction project for the same facility. DoD may not enter into such a lease until a period of 21 days has expired following the date on which Congress receives the justification and economic analysis.

**Reason the Report Should be Repealed:** The report is unnecessary. Due to scoring under the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act, the lease purchase authorized under section 2812 is rare. Other controls already are in place in section 2812 including provisions governing what can be leased and the number of leases that are authorized each year.

1 (86) in section 2813—

2 (A) by striking subsection (c);

### **Section-by-Section Analysis**

#### **Report Title: Acquisition of Existing Facilities in Lieu of Authorized Construction - Notice**

**Report Purpose:** The provision requires the Secretaries of the military departments to notify Congress of the determination to acquire an existing facility instead of carrying out an authorized military construction project. The notification must include the reasons for acquiring the facility. DoD may not enter into a contract for the acquisition of a facility until the end of the 30-day period beginning on the date the Secretary transmits such notification to Congress.

**Reason the Report Should be Repealed:** The report is unnecessary. DoD believes that Congress should entrust the Secretaries of the military departments to manage such acquisition programs consistent with the best interests of DoD and the American people. The required report is an unneeded administrative burden that delays important projects and results in less efficient government.

1 (87) in section 2815—

- 1 (A) by repealing this entire section in chapter 169; and
- 2 (B) by amending the table of section at the beginning of such chapter by
- 3 striking the item relating to section 2815;

**Section-by-Section Analysis**

**Report Title: Joint Use Military Construction Projects**

**Report Purpose:** The provision requires the Secretary of Defense to provide Congress with an annual report that includes a certification from each Secretary of a military department that, in evaluating military construction projects for inclusion in the President's fiscal year budget, the Secretaries evaluated the feasibility of carrying out the projects as joint use military construction projects. This report is due at the same time as the President's fiscal year budget.

**Reason the Report Should be Repealed:** The report is redundant. DoD already provides Congress this same information in the justification documents that accompany each military construction project submitted to Congress as part of the President's fiscal year budget.

- 1 (88) in section 2825—
- 2 (A) in subparagraph (b)(1)(B)—
- 3 (i) by striking clause (ii);
- 4 (ii) by striking ", and" at the end of clause (i); and
- 5 (iii) by striking "(i)" in the remaining text following "in the
- 6 preceding sentence if";
- 7 (B) in subsection (c)(1)—
- 8 (i) by striking subparagraphs (C) and (D);
- 9 (ii) by inserting "and" at the end of subparagraph (A); and
- 10 (iii) by striking the semi-colon at the end of subparagraph (B) and
- 11 inserting a period;

**Section-by-Section Analysis**

**Report Title: Improvements to Family Housing**

Report Purpose: The provision in subsection (b) requires the Secretaries of the military departments to notify Congress of a proposed waiver of the existing restriction that DoD may not expend funds for the improvement of any single family housing unit, or for the improvement of two or more housing units that are to be converted into or are to be used as a single family housing unit, if the cost per unit of such improvement in the case of improvements necessary to make the unit suitable for habitation for a handicapped person will exceed \$60,000 multiplied by the area construction cost index as developed by DoD for the location concerned at the time of the contract award. Prior to expending funds, DoD must wait for a period of 21 days after the date on which Congress has received notice from the Secretaries of the military departments of the proposed waiver and an economic analysis demonstrating that the improvement will be cost effective.

Reason the Report Should be Repealed: The report is redundant. DoD already provides Congress the same information in its annual reports and through the annual authorization and appropriations processes.

Report Title: **Construction in Lieu of Improving Family Housing Units**

Report Purpose: The provision in subsection (c) requires the Secretaries of the military departments to notify Congress prior to constructing replacement military family housing units in lieu of improving existing military family housing units. The notification must include an economic analysis demonstrating that the improvement project would exceed 70 percent of the cost of constructing replacement housing units intended for members of the armed forces in the same paygrade or grades as the members who occupy the existing housing units, and, if the replacement housing units are intended for members of the armed forces in a different pay grade or grades, justification of the need for the replacement housing units based upon the long-term requirements of the armed forces in the location concerned. DoD only may initiate such construction after a period of 21 days elapses after the date on which the Secretary submits to Congress the required notice.

Reason the Report Should be Repealed: The report is redundant. DoD already provides Congress the same information in its annual reports and through the annual authorization and appropriations processes.

- 1 (89) in section 2826—
- 2 (A) by striking subsection (b); and
- 3 (B) by redesignating subsections (c) through (i) as subsections (b) through
- 4 (h), respectively;

**Section-by-Section Analysis**

Report Title: **Inclusion of Net Square Footage Comparisons in Requests to**

## **Congress to Build Military Family Housing**

Report Purpose: The provision requires the Secretaries of the military departments to provide information to Congress on the net floor area of each unit of military family housing to be constructed, acquired, or improved in each request to Congress for authority to carry out such construction, acquisition, or improvement of military family housing.

Reason the Report Should be Repealed: The information DoD must provide to Congress is unnecessary and redundant. DoD believes that Congress should entrust the Secretaries of the military departments to manage such construction programs consistent with the best interests of DoD and the American people. DoD already provides Congress the same information in its fiscal year budget justification. Further, DoD already provides Congress this same information in the justification documents that accompany each military construction project submitted to Congress as part of the President's fiscal year budget.

- 1                   (90) in section 2827—
- 2                               (A) by striking subsection (b); and
- 3                               (B) by striking "(a) Subject to subsection (b), the Secretary" and inserting
- 4                   "The Secretary";

### **Section-by-Section Analysis**

Report Title: **Relocation of Military Family Housing Units**

Report Purpose: The provision requires the Secretaries of the military departments to notify Congress prior to awarding a contract to carry out a relocation of military family housing units from any location where the number of such units exceeds requirements for military family housing to any military installation where there is a housing shortage. The notification must include the proposed new locations of the housing units and the estimated cost of and source of funds for the relocation. DoD only may award such a contract after a period of 21 days elapses after the date on which the Secretary submits to Congress the required notice.

Reason the Report Should be Repealed: The report is unnecessary. The source of funds for such contracts typically is either the improvements or maintenance accounts of the family housing appropriation. DoD already must make separate reports to Congress if expenditures from either account exceeds certain thresholds.

- 1                   (91) in section 2828—
- 2                               (A) by striking subsection (f); and
- 3                               (B) by redesignating subsection (g) as subsection (f);



## Section-by-Section Analysis

### Report Title: **Leasing of Military Family Housing**

Report Purpose: The provision requires the Secretaries of the military departments to provide Congress with written notification prior to making a lease for family housing facilities, or for real property related to family housing facilities, in a foreign country for which the average estimated annual rental during the term of the lease exceeds \$500,000. The notification must include a discussion of the facts concerning the proposed lease. DoD only may make such a lease after a period of 21 days elapses after the date on which the Secretary submits to Congress the required notice.

Reason the Report Should be Repealed: The report is unnecessary. DoD believes that Congress should entrust the Secretaries of the military departments to manage military family housing programs consistent with the best interests of DoD and the American people.

- 1                   (92) in section 2835—
- 2                               (A) by striking subsections (b) and (g);
- 3                               (B) by redesignating subsections (c) through (h) as subsections (b) through
- 4                   (f), respectively; and
- 5                               (C) in subsection (a), by striking "Subject to subsection (b), the Secretary"
- 6                   and inserting "The Secretary";

## Section-by-Section Analysis

### Report Title: **Long-Term Leasing of Military Family Housing to Be Constructed**

Report Purpose: The provision in subsection (b) requires the Secretary of Defense to provide Congress with materials that identify the military housing projects to be constructed or rehabilitated to residential use near a military installation within the United States under the Secretary's jurisdiction at which there is a shortage of family housing. DoD must provide the materials to Congress along with its annual fiscal year budget submission.

Reason the Report Should be Repealed: The report is redundant. DoD already provides Congress information regarding lease contracts for military housing projects in its annual fiscal year budget submission.

### Report Title: **Notice of Long-Term Leasing of Military Family Housing to be Constructed**

Report Purpose: The provision in subsection (g) requires the Secretary of Defense to provide Congress, prior to entering a contract for the lease of family housing units to be constructed or rehabilitated to residential use near a military installation within the United States under the Secretary's jurisdiction at which there is a shortage of family housing, with a report on the economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective when compared with alternative means of furnishing the same housing facilities. DoD only may enter such a contract after a period of 21 days elapses after the date on which the Secretaries submit to Congress the required report.

Reason the Report Should be Repealed: The report is obsolete. DoD no longer enters into such contracts.

- 1                   (93) in section 2836—
- 2                               (A) in subsection (a), by striking "Subject to subsection (b), the Secretary"
- 3                               and inserting "The Secretary";
- 4                               (B) by striking subsection (b);
- 5                               (C) by striking subsection (f); and
- 6                               (D) by redesignating subsections (c) through (g) as subsections (b)
- 7                               through (e), respectively;

### **Section-by-Section Analysis**

Report Title: **Military Housing Rental Guarantee Program - Submission and Authorization**

Report Purpose: The provision in subsection (b) requires the Secretary of Defense to provide Congress with materials that identify any agreement DoD enters to assure the occupancy of rental housing to be constructed or rehabilitated to residential use by a private developer or by a State or local housing authority on private land, on land owned by a State or local housing authority on private land, on land owned by a State or local government, or on land owned by the United States, if the housing is to be located on or near a new military installation or an existing military installation that has a shortage of housing to meet the requirements of eligible members of the armed forces (with or without accompanying dependents). DoD must provide the materials to Congress along with its annual fiscal year budget submission.

Reason the Report Should be Repealed: The report is redundant. DoD already provides Congress information regarding contracts for military housing projects in its annual fiscal year budget submission.

**Report Title: Military Housing Rental Guarantee Program - Notice and Wait Requirement**

**Report Purpose:** The provision in subsection (f) requires the Secretary of Defense to provide Congress, prior to entering an agreement to assure the occupancy of rental housing to be constructed or rehabilitated to residential use by a private developer or by a State or local housing authority on private land, on land owned by a State or local housing authority on private land, on land owned by a State or local government, or on land owned by the United States, if the housing is to be located on or near a new military installation or an existing military installation that has a shortage of housing to meet the requirements of eligible members of the armed forces (with or without accompanying dependents), with a report containing an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed agreement is cost effective when compared with alternative means of furnishing the same housing facilities. DoD only may enter such an agreement after a period of 21 days elapses after the date on which the Secretaries submit to Congress the required report.

**Reason the Report Should be Repealed:** The report is redundant. DoD already provides Congress information regarding such agreements involving military housing projects in its annual fiscal year budget submission.

- 1 (94) in section 2837—
- 2 (A) in subsection (c)—
- 3 (i) by striking paragraph (2); and
- 4 (ii) by striking "(1)" after the catchline and preceding the
- 5 remaining matter;
- 6 (B) by striking subsection (f); and
- 7 (C) by redesignating subsections (g) and (h) as subsections (f) and (g),
- 8 respectively;

**Section-by-Section Analysis**

**Report Title: Limited Partnerships with Private Developers of Housing - Selection of Investment Opportunities**

**Report Purpose:** The provision in subsection (c) requires the Secretaries of the military departments to provide Congress, upon deciding to enter into a limited partnership with one or more private developers to encourage the construction of housing and accessory structures within commuting distance of an installation in order to meet the housing requirements of

members of the armed forces, and the dependents of such members, with a report that includes the justification for the limited partnership, the terms and conditions of the limited partnership, a description of the development costs for project under the limited partnership, and a description of the share of such costs to be incurred by the Secretary. DoD only may enter such a limited partnership after a period of 21 days elapses after the date on which the Secretaries submit to Congress the required report.

Reason the Report Should be Repealed: The report is unnecessary. DoD rarely enters such limited partnerships, and most housing privatization is carried out under the authority of sections 2871-2885 of title 10. Section 2837(d) of title 10 limits expenditures in the account to "such amounts as are provided in advance in appropriation Acts." In short, DoD already provides Congress with similar information whenever it requests Congress to provide authority to expend funds in accordance with section 2837(d).

Report Title: **Defense Housing Investment Account**

Report Purpose: The provision in subsection (f) requires the Secretaries of the military departments to provide Congress with a joint, annual report, not later than 60 days after the end of each fiscal year in which activities are carried out under this section, on the Defense Housing Investment Account specifying the amount and nature of all deposits into, and the expenditures from, the account during such fiscal year and of the amount and nature of all other expenditures made pursuant to such section during such fiscal year.

Reason the Report Should be Repealed: The report is unnecessary and overly burdensome.

- 1 (95) in section 2853—
- 2 (A) in subsection (c), by striking paragraphs (2) and (3);
- 3 (B) in the remaining matter, by striking "(1)" and the dash and realigning
- 4 the paragraph to read as a subsection; and
- 5 (C) by striking the semi-colon at the end of the remaining matter and
- 6 inserting a period;

**Section-by-Section Analysis**

Report Title: **Authorized Cost Variations**

Report Purpose: The provision requires the Secretaries of the military departments to provide Congress with notification regarding the increase in cost or reduction in scope of a military construction project, or the construction, improvement, and acquisition of a military

family housing project. Specifically, DoD must notify Congress of any increase in cost of more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a)(1) of title 10, United States Code, whichever is less, or reduction in the cost authorized for and the reasons therefore. DoD also must notify Congress of any reduction in the scope of work of more than 25 percent from the amount approved by Congress for that project, construction, improvement, or acquisition. In the event of such an increase in cost or reduction in the scope of work, DoD may not proceed with a project unless the Secretaries approve the increase in cost or reduction in scope, and a period of 21 days has elapsed after the date on which the Secretaries submit to Congress the required notification.

Reason the Report Should be Repealed: The report is redundant. DoD already provides Congress with the same information in a separate annual report to Congress in accordance with section 2861 of title 10. DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (96) in section 2854—
- 2 (A) by striking subsection (b); and
- 3 (B) by striking "(a) Subject to subsection (b), the" in the preceding matter
- 4 and inserting "The";

### **Section-by-Section Analysis**

Report Title: **Restoration or Replacement of Damaged or Destroyed Facilities**

Report Purpose: The provision requires the Secretaries of the military departments to notify Congress upon making a decision to carry out construction to repair, restore, or replace a facility under their respective jurisdictions, including a family housing facility, that has been damaged or destroyed, and the cost of the repair, restoration, or replacement is greater than the maximum amount for a minor construction project. The notification must include the justification for the project, the current estimate of the cost of the project, and the source of funds for the project. DoD only may carry out such construction after the end of the 21-day period beginning on the date Congress receives the required notification.

Reason the Report Should be Repealed: The report is unnecessary and overly burdensome. DoD believes that Congress should entrust the Secretaries of the military departments to manage such construction consistent with the best interests of DoD and the American people. To eliminate the unneeded administrative burden associated with preparing these notifications, DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (97) in section 2854a—

- 1 (A) by striking subsection (c); and  
2 (B) by redesignating subsections (d) through (g) as subsections (c) through  
3 (f), respectively;

### **Section-by-Section Analysis**

**Report Title: Conveyance of Damaged or Deteriorated Military Family Housing;  
Use of Proceeds**

**Report Purpose:** The provision requires the Secretaries of the military departments to provide Congress, prior to entering an agreement to convey any family housing facility that, due to damage or deterioration, is in a condition that is uneconomical to repair, with a report justifying the conveyance under the agreement, including an estimate of the consideration to be provided the United States under the agreement, an estimate of the cost of repairing the family housing facility to be conveyed, and an estimate of the cost of replacing the family housing facility to be conveyed. DoD may not enter into such an agreement until after a period of 21 calendar days has elapsed after the date Congress receives the required report.

**Reason the Report Should be Repealed:** The report is unnecessary and overly burdensome. DoD believes that Congress should entrust the Secretaries of the military departments to manage such conveyances consistent with the best interests of DoD and the American people. To eliminate the unneeded administrative burden associated with preparing these notifications, DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (98) in section 2865—  
2 (A) in subsection (e), by striking paragraph (2);  
3 (B) by striking subsection (f); and  
4 (C) by striking "(1)" after the catch line;

### **Section-by-Section Analysis**

**Report Title: Energy Conservation Construction Projects**

**Report Purpose:** The provision in subsection (e) requires the Secretary of Defense to notify Congress upon making a decision to carry out a military construction project for energy conservation, not previously authorized, using funds appropriated or otherwise made available for that purpose. DoD only may carry out such a military construction project after a period of 21 calendar days has elapsed after the date Congress receives the required notification.

Reason the Report Should be Repealed: The report is unnecessary and overly burdensome. The administrative burden associated with this report caused unneeded delay in the execution of a number of projects, including renovation of the Pentagon. DoD believes that Congress should entrust the Secretaries of the military departments to manage such construction consistent with the best interests of DoD and the American people. Instead of preparing these burdensome notifications, DoD would prefer to provide Congress with more relevant information in response to specific requests.

Report Title: **Energy Savings at Military Installations**

Report Purpose: The provision in subsection (f) requires the Secretary of Defense to provide Congress with a report, not later than December 31 of each year, describing actions taken to carry out energy savings at military installations, and the savings realized for the fiscal year ending in the year in which the report is made.

Reason the Report Should be Repealed: This report is redundant. DoD already provides Congress with similar information in separate reports, including the "Annual Energy Management Report" recently mandated by Congress in the National Defense Authorization Act for Fiscal Year 2002.

- 1 (99) in section 2866—
- 2 (A) in subsection (c), by striking paragraph (2); and
- 3 (B) by striking "(1)" after the catch line;

**Section-by-Section Analysis**

Report Title: **Water Conservation at Military Installations**

Report Purpose: The provision requires the Secretary of Defense to notify Congress upon making a decision to carry out a military construction project for water conservation, not previously authorized, using funds appropriated or otherwise made available to the Secretary for water conservation. DoD only may carry out such a military construction project after a period of 21 calendar days has elapsed after the date Congress receives the required notification.

Reason the Report Should be Repealed: The report is unnecessary and overly burdensome. The administrative burden associated with this report caused unneeded delay in the execution of a number of projects. DoD believes that Congress should entrust the Secretaries of the military departments to manage such construction consistent with the best interests of DoD and the American people. Instead of preparing these burdensome notifications, DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (100) in section 2867—

1

(A) by striking subsection (c);

**Section-by-Section Analysis**

**Report Title: Sale of Electricity from Alternate Energy and Cogeneration Production Facilities**

Report Purpose: The provision requires the Secretaries of the military departments to notify Congress before carrying out military construction projects under the energy performance plan developed by the Secretary of Defense under section 2865(a) of title 10, United States Code, including minor military construction projects authorized under section 2805 of title 10, United States Code, that are designed to increase energy conservation. The notification must include the justification for the project and the estimated cost of the project. DoD only may carry out such a military construction project after a period of 21 calendar days has elapsed after the date Congress receives the required notification.

Reason the Report Should be Repealed: The report is obsolete. Since 1984, when Congress first mandated this report, DoD regularly provides Congress with the requested information as part of the military construction authorization and appropriations process.

1

(101) in section 2875—

2

(A) by striking subsection (e);

**Section-by-Section Analysis**

**Report Title: Investments**

Report Purpose: The provision requires the Secretary of Defense to notify Congress prior to using amounts in the DoD Family Housing Improvement Fund or the DoD Military Unaccompanied Housing Improvement Fund to make a cash investment in an eligible entity carrying out projects for the acquisition or construction of housing units suitable for use as military family housing or as military unaccompanied housing. The notification must include the justification for the investment. DoD only may use amounts from these funds to make a cash investment after the end of the 30-day period beginning on the date Congress receives the required notification.

Reason the Report Should be Repealed: The report is redundant and overly burdensome. DoD already provides Congress with such information as part of separate reports required by this subchapter of title 10. DoD expends 10 man-days each year to prepare the report. Instead of preparing this burdensome, recurring report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

1

(102) in section 2884—



1 (A) by striking subsection (b);  
2 (B) in subsection (a)—  
3 (i) by striking "(1)";  
4 (ii) by redesignating subparagraphs (A) and (B) as paragraphs (1)  
5 and (2), respectively;  
6 (ii) by striking "(2)" and inserting "(b) CONTENT OF REPORTS.—";  
7 (C) by amending the section title to read as follows: "§ 2884. Project  
8 reports"; and  
9 (D) by amending the table of sections at the beginning of such chapter 169  
10 by striking the item relating to section 2884 and inserting the following new item:  
11 "2884. Project reports.";

### **Section-by-Section Analysis**

#### **Report Title: Department of Defense Housing Funds**

**Report Purpose:** The provision requires the Secretary of Defense to provide Congress with a report on the expenditures and receipts during the preceding year covering the DoD Family Housing Improvement Fund and the DoD Military Unaccompanied Housing Improvement Fund; a methodology for evaluating the extent and effectiveness of the use of alternative authorities for acquisition and improvement of military housing during the preceding fiscal year; and a description of DoD's objectives for providing military family housing and military unaccompanied housing for members of the armed forces. DoD must provide the report to Congress along with its annual fiscal year budget submission.

**Reason the Report Should be Repealed:** The report is unnecessary. DoD already provides Congress with this information, including expenditures, receipts, and financial statements, as part of its annual fiscal year budget submission. Instead of preparing this burdensome, annual report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

1 (103) in section 2902—  
2 (A) in subsection (g), by striking paragraph (2); and

1 (B) by striking "(1) after the catch line;

### **Section-by-Section Analysis**

Report Title: **Strategic Environmental Research and Development Program Council**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with the annual report prepared by the Strategic Environmental Research and Development Program Council, along with such comments as the Secretary considers appropriate. The report is due not later than March 15 of each year.

Reason the Report Should Be Repealed: The report is unnecessary. DoD would prefer to forward Congress the Council's annual report without requiring additional input from the Secretary of Defense. The Secretary would exercise discretion regarding whether to provide further comment on the Council's annual report.

1 (104) in section 5143—

2 (A) by striking subsection (e);

### **Section-by-Section Analysis**

Report Title: **Annual Report of the Chief of Naval Reserve**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with an annual report prepared by the Chief of Naval Reserve on the state of the Naval Reserve and the ability of the Naval Reserve to meet its missions, together with such comments on the report as the Secretary considers appropriate. The report is due at the same time DoD submits to Congress its annual fiscal year budget.

Reason the Report Should be Repealed: The report is redundant and overly burdensome. DoD already provides Congress the same information in numerous other reports submitted annually to Congress. DoD expends 12 man-days each year to prepare the report. Instead of preparing this burdensome, annual report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

1 (105) in section 6954—

2 (A) by striking subsection (f); and

3 (B) by redesignating subsection (g) as subsection (f);

### **Section-by-Section Analysis**

**Report Title: Nomination of Persons to the U.S. Naval Academy**

**Report Purpose:** The provision requires the Secretary of the Navy to provide to any member of Congress, upon the written request of such member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

**Reason the Report Should be Repealed:** The report is unnecessary. DoD would prefer that Congress eliminate an unneeded administrative burden by seeking such information directly from the U.S. Naval Academy.

- 1 (106) in section 7049—
- 2 (A) by striking subsection (c); and
- 3 (B) by redesignating subsections (d) through (g) as subsections (c) through
- 4 (f), respectively;

**Section-by-Section Analysis**

**Report Title: Defense Industry Civilians: Admission to Defense Product Development Program**

**Report Purpose:** The provision requires the Secretary of the Navy to provide Congress with a certification that defense industry employees are eligible to receive instruction at the Naval Postgraduate School during any academic year because such instruction will further the military mission of the school, will enhance the ability of the Department of Defense and defense-oriented private sector contractors engaged in the design and development of defense systems to reduce the product and project lead times required to bring such systems to initial operational capability, and will be done on a space-available basis and not require an increase in the size of the faculty of the school, an increase in the offerings of the school, or an increase in the laboratory facilities or other infrastructure of the school. The certification is due before the start of the academic year.

**Reason the Report Should be Repealed:** The report is unnecessary. DoD would prefer that Congress eliminate an unneeded administrative burden by seeking such information directly from the U.S. Naval Postgraduate School.

- 1 (107) in section 9356—
- 2 (A) by striking subsection (c);
- 3 (B) by redesignating subsections (d) and (e) as subsections (c) and (d),

1                   respectively; and

2                               (C) in subsection (a), by striking "Subject to subsection (c), the Secretary"

3                   and inserting "The Secretary";

### **Section-by-Section Analysis**

#### **Report Title: Acceptance of Guarantees with Gifts for Major Projects**

Report Purpose: The provision requires the Secretary of the Air Force to provide Congress with a report before accepting from a donor or donors a qualified guarantee for the completion of a major project for the benefit of the U.S. Air Force Academy. DoD may not accept such a qualified guarantee until 30 days expire following the date DoD submits the required report to Congress.

Reason the Report Should be Repealed: The report is unnecessary. A qualified guarantee is a standard banking practice that is used throughout the United States for substantial donations to universities and colleges. The banking industry will not provide the guarantee without careful consideration of the underlying plans.

1                   (108) in section 9514—

2                               (A) by striking subsection (c);

3                               (B) by striking subsection (f); and

4                               (C) by redesignating subsection (g) as subsection (f);

### **Section-by-Section Analysis**

#### **Report Title: Indemnification of Department of Transportation for Losses Covered by Defense-Related Aviation Insurance**

Report Purpose: The provision in subsection (c) requires the Secretary of Defense to notify Congress in the event of a loss that is covered by defense-related aviation insurance in the case of an accident in which the covered loss is (or is expected to be) in an amount in excess of \$1,000,000, as soon after the occurrence of the loss as possible, and in no event more than 30 days after the date of the loss. The Secretary also must provide Congress with semi-annual reports with all pertinent information and updates on each such accident.

Reason the Report Should be Repealed: The report is overly burdensome and provides information readily available to Congress through alternative sources. Instead of preparing this burdensome, annual report, DoD would prefer to provide Congress with more relevant information in response to specific requests.

Report Title: **Contingent Liabilities**

Report Purpose: The provision in subsection (f) requires the Secretary of Defense to provide Congress with a report, not later than March 1 of each year, setting forth the current amount of the contingent outstanding liability of the United States under the insurance program established at chapter 443 of title 49, United States Code, that allows the Secretary of Transportation to provide insurance or reinsurance against loss or damage arising out of any risk from the operation of an American aircraft or foreign-flag aircraft outside the United States.

Reason the Report Should be Repealed: The report is overly burdensome and provides information readily available to Congress through alternative sources. Instead of preparing this burdensome, annual report, DoD would prefer to provide Congress with more relevant information in response to a request regarding a specific incident or loss.

- 1 (109) in section 12302—
- 2 (A) in subsection (b), by striking the last sentence; and
- 3 (B) by striking subsection (d).

**Section-by-Section Analysis**

Report Title: **Ready Reserve Order to Active Duty in Time of National Emergency - Policies and Procedures**

Report Purpose: The provision in subsection (b) requires the Secretary of Defense to provide Congress with an annual report on the policies and procedures he considers necessary to achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent.

Reason the Report Should be Repealed: The report is obsolete. Congress originally mandated this report in the 1950's when the Reserve component was far different than it is today. With the advent of the all volunteer force, significantly increased integration, and standardization of training, equipment, and deployment methods, DoD has established a proven record of achieving fair treatment of the members of the Ready Reserve.

Report Title: **Ready Reserve Order to Active Duty in Time of National Emergency - Annual Report**

Report Purpose: The provision in subsection (d) requires the President to provide Congress with a report whenever one or more units of the Ready Reserve are ordered to active duty. The report must include a statement of the mission of each such unit ordered to active duty, an evaluation of such unit's performance of that mission, where each such unit is being deployed at the time of the report, and such other information regarding each unit as the President deems appropriate. The report is due on the first day of the second fiscal year quarter

immediately following the quarter in which the first unit or units are ordered to active duty and on the first day of each succeeding six-month period thereafter, so long as such unit is retained on active duty.

Reason the Report Should be Repealed: The report is redundant and overly burdensome. DoD already informs Congress whenever it orders to active duty a Reserve component unit. Instead of preparing this burdensome, annual report, DoD would prefer to provide Congress with more relevant, timely information in response to a request regarding the status of specific Reserve units.

- 1                   (110) for section 16137—
- 2                               (A) by repealing this entire section in chapter 1606; and
- 3                               (B) by amending the table of sections at the beginning of such chapter by
- 4                               striking the item relating to section 16137.

#### **Section-by-Section Analysis**

Report Title: **Educational Assistance for Members of the Select Reserve**

Report Purpose: The provision requires the Secretary of Defense to provide Congress with a report, no later than March 1 of each odd-numbered year, concerning the operation of the program to provide educational assistance to members of the Selected Reserve of the Ready Reserve of the armed forces who agree to remain members of the Selected Reserve for a period of not less than six years. The report must include the number of members of the Selected Reserve of the Ready Reserve of each armed force receiving, and the number entitled to receive, educational assistance during the preceding two fiscal years.

Reason the Report Should be Repealed: The report is unnecessary. Fifteen years have passed since Congress originally mandated this report, and DoD has established a proven record of achieving the goals of this educational assistance program. Instead of preparing this burdensome report, DoD would prefer to provide Congress with more relevant, timely information in response to specific requests.

- 1                   (b) FOREIGN ASSISTANCE ACT OF 1961.—Section 656 of the Foreign Assistance Act of
- 2                   1961 (Public Law 87-195) is repealed.

#### **Section-by-Section Analysis**

Report Title: **Foreign Military Training**

Report Purpose: The provision in section 656 requires the Secretary of Defense and the Secretary of State jointly to provide Congress with an annual report, not later than January 31 of each year, on all military training provided to foreign military personnel during the previous fiscal year and all such training proposed for the current fiscal year.

Reason the Report Should be Repealed: This report is overly burdensome. The Fiscal Year 2002 report consisted of more than 1,500 pages, reporting more than 49,500 different training events. Personnel needed to coordinate, review, staff and compile the report included approximately 4 action officers from the Defense Security Cooperation Agency; 7 action officers and information technology personnel from each of the Military Departments and from the respective service training field activities; 1-2 people in each Security Assistance Organization worldwide; 1-2 people from each Unified Command; and action and regional officers from the Joint Chiefs of Staff, Office of Secretary of Defense, the Department of Defense, and the Department of State. The net effort amounted to approximately 24 work years. The report costs approximately 1.8 million dollars to produce. DoD believes it would be more efficient and cost effective to respond to specific Congressional requests instead of providing this overly burdensome annual report.

1 (c) DEFENSE ACQUISITION IMPROVEMENT ACT OF 1986.—Section 908 of the Defense  
2 Acquisition Improvement Act of 1986 (as contained in section 101(c) of Public Law 99-500 and  
3 identically enacted in section 101(c) [title X] of Public Law 99-591 and title IX of division A of  
4 Public Law 99-661) (10 U.S.C. 2326 note) is amended by striking subsection (b).

### Section-by-Section Analysis

Report Title: **Audits of Undefinitized Contractual Actions**

Report Purpose: This provision requires the Secretary of Defense to provide Congress with a report on the management of undefinitized contractual actions by the Secretaries of the military departments, following a DoD Inspector General periodic audit of contractual actions under the jurisdiction of the Secretary of Defense, including the Defense Logistics Agency.

Reason the Report Should be Repealed: The report is overly burdensome and produces information of minimal utility. DoD would prefer that the DoD Inspector General use his finite resources to plan and conduct special audits based on greatest program risk and highest potential return.

1 (d) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1988 AND  
2 1989.—Section 1121 of the National Defense Authorization Act for Fiscal Years 1988 and 1989

1 (Public Law 100-180; 101 Stat. 1147) (10 U.S.C. 113 note) is amended—

2 (1) by striking subsection (f); and

3 (2) by redesignating subsections (g) and (h) as subsections (f) and (g),

4 respectively.

### **Section-by-Section Analysis**

#### **Report Title: Counter-Intelligence Polygraph Program**

**Report Purpose:** This provision requires the Secretary of Defense to provide Congress with an annual report on the polygraph examinations conducted by DoD during the previous fiscal year. The report must include a statement of the number of polygraph examinations administered; a description of the purposes and results of such examinations; a description of the criteria used for selecting programs and persons for examination; a statement of the number of persons who refused to submit to such an examination and a description of the actions taken as a result of their refusal; a statement of the number of persons for which such an examination indicated deception and the action taken as a result; and a detailed accounting of those cases in which more than two such examinations were needed to attempt to resolve discrepancies and those cases in which the examination of a person extended over more than one day.

**Reason the Report Should be Repealed:** The report is unnecessary and overly burdensome. DoD already is vigilant in ensuring that it administers polygraphs in full compliance with applicable law. Instead of preparing this burdensome report, DoD would prefer to provide Congress with more relevant, timely information in response to specific requests.

1 (e) DEFENSE AUTHORIZATION AMENDMENTS AND BASE CLOSURE AND REALIGNMENT

2 ACT OF 1990.—Section 206 of the Defense Authorization Amendments and Base Closure and

3 Realignment Act of 1990 (Public Law 100-526; 102 Stat. 2631) (10 U.S.C. 2687) is repealed.

### **Section-by-Section Analysis**

#### **Report Title: Base Realignment and Closure (BRAC)**

**Report Purpose:** This provision requires the Secretary of Defense to provide Congress with a report that includes: (1) a schedule of the closure and realignment actions carried out in that fiscal year, and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and (2) a description of the military installations, including those under



construction and those planned for construction, to which DoD will transfer functions as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers. DoD must provide the report along with its annual fiscal year budget submission.

Reason the Report Should be Repealed: The report is obsolete. DoD has completed all base closures authorized by this act.

- 1 (f) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1991.—The National  
2 Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1607, 1819, and  
3 1822, respectively) is amended –
- 4 (1) in section 831, by striking subsection (l);  
5 (2) in section 2921, by striking subsections (e), (f), (g)(1), and (g)(2); and  
6 (3) in section 2926, by striking subsection (g).

#### **Section-by-Section Analysis**

##### **Report Title: Mentor-Protege Pilot Program**

Report Purpose: The provision in section 831 (10 U.S.C. 2301 note) requires the Secretary of Defense to provide Congress with an annual report on DoD's Mentor-Protege program, which involves large defense contractors that agree to provide specified assistance to small or disadvantaged subcontractors for that fiscal year. The report is due not later than 6 months after the end of each of fiscal year, beginning in 2000 and continuing through 2007.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of minimal utility. In addition to the human resources expended to prepare this report, DoD expends approximately \$8,000 for printing costs. Instead of preparing this burdensome report, DoD would prefer to provide Congress with more relevant, timely information in response to specific requests.

##### **Report Title: Negotiations for Payment-In-Kind with Host Countries**

Report Purpose: The provision in section 2921(e) requires the Secretary of Defense to notify Congress before entering into negotiations with a host country regarding the acceptance by the United States of any payment-in-kind in connection with the release to the host country of improvements made by the United States at military installations in the host country or payment-in-kind compensation.

Reason the Report Should be Repealed: The report is unnecessary. DoD has been negotiating payment-in-kind for more than ten years, and has established a proven record of managing this program effectively and efficiently. DoD has realized savings of approximately \$391 million from payment-in-kind returns and an additional \$487 million in payment-in-kind as part of the return of Rhein Main Air Base, Germany.

Report Title: **Residual Value: OMB Review Of Proposed Settlements**

Report Purpose: The provision in section 2921(f) requires the Secretary of Defense to provide Congress with a report on proposed settlement agreements with host nations for the release of improvements having value in excess of \$10,000,000, made by the U.S. to facilities at an installation located in these host countries, not previously reviewed beforehand by the Director of the Office of Management and Budget (OMB).

Reason the Report Should be Repealed: The report is unnecessary. DoD already works closely with the Office of Management and Budget to ensure that the United States receives appropriate residual value compensation.

Report Title: **Residual Value: Payments-In-Kind (Military Construction/Facility Improvement)**

Report Purpose: The provision in section 2921(g)(1) requires the Secretary of Defense to notify Congress not less than 30 days before concluding an agreement for acceptance of military construction or facility improvements as a payment-in-kind.

Reason the Report Should be Repealed: The report is unnecessary. DoD already has achieved nearly all overseas facility returns. DoD believes that Congress should entrust the Secretary to manage these agreements consistent with the best interests of DoD and the American people. Instead of preparing this burdensome notification, DoD would prefer to provide Congress with more relevant information in response to specific requests.

Report Title: **Residual Value: Payments-In-Kind (Host Nation Payment Of Operating Costs)**

Report Purpose: The provision in section 2921(g)(2) requires the Secretary of Defense to notify Congress before taking any action to close or realign a military installation. The notification must include an evaluation of the fiscal, local, economic, budgetary, environmental, strategic, and operational consequences of such closure or realignment. DoD only may take action after a period of 30 legislative days expires following the day Congress receives the required notification.

Reason the Report Should be Repealed: The report is unnecessary. When DoD receives payment-in-kind from host nations, it receives compensation in the form of host-nation funded construction rather than operating costs. It is highly unlikely that DoD would receive payment-in-kind in the form of host nation payments of operating costs in the future.

Report Title: **Contracts For Certain Environmental Restoration Activities**

Report Purpose: The provision in section 2926(g) (10 U.S.C. 2687 note) requires the Secretary of Defense to provide Congress with a report, to be contained within the annual report to Congress required by section 2706 of title 10, United States Code, regarding DoD's environmental quality programs and other environmental activities, which shall include a description of the progress made during the preceding fiscal year in implementing and accomplishing the goals of improving the efficiency and effectiveness of the base closure environmental restoration program.

Reason the Report Should be Repealed: The report is redundant. DoD already provides Congress with such information through other means. DoD would prefer to respond to specific Congressional requests in order to provide more timely and useful information.

- 1 (g) DEFENSE ECONOMIC ADJUSTMENT, DIVERSIFICATION, CONVERSION, AND  
2 STABILIZATION ACT OF 1990.—Section 4004(c) of the Defense Economic Adjustment,  
3 Diversification, Conversion, and Stabilization Act of 1990 (Public Law 101-510; 104 Stat. 1849)  
4 is amended by striking paragraph (3).

**Section-by-Section Analysis**

Report Title: **Defense Economic Adjustment Planning**

Report Purpose: This provision requires the Defense Economic Adjustment Committee to provide the President and Congress with a report, not later than December 1 of each year, that describes Federal economic adjustment programs available to communities, businesses, and groups of workers; describes the implementation of defense economic adjustment assistance during the preceding fiscal year; and specifies the number of communities, businesses, and workers affected by defense budget reductions during the preceding fiscal year and such number assisted by Federal economic adjustment programs during that fiscal year.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility. The Economic Adjustment Committee's activities respond to adverse impacts of defense activities. These events do not occur every year or at predictable times. Therefore, compiling accurate and timely information is particularly difficult. In addition, DoD provides related information to Congress through alternative means, such as published Base Realignment and Closure announcements, the Catalog of Federal Domestic Assistance report of programs, and various General Accounting Office reports.

- 1 (h) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1992 AND 1993.—The

1 National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190; 105  
2 Stat. 1411 and 1562, respectively) is amended—

3 (1) in section 734—

4 (A) by striking subsection (c); and

5 (B) by redesignating subsections (d) through (f) as subsections (c)  
6 through (e), respectively; and

7 (2) by repealing section 2868.

### Section-by-Section Analysis

**Report Title: Registry of Members of the Armed Forces Who Were Exposed to Fumes From Burning Oil in Connection with Operation Desert Storm**

**Report Purpose:** The provision in section 734 (10 U.S.C. 1074 note) requires the Secretary of Defense to provide Congress with an annual report on the results of all on-going studies on the members of the armed forces who were exposed to fumes from burning oil in connection with Operation Desert Storm, to determine the health consequences, including any short- or long-term consequences, of the exposure of such members to the fumes of burning oil; and the need for additional studies related to the exposure of such members to such fumes. DoD must provide the report at or about the time that the President submits the fiscal year budget.

**Reason the Report Should be Repealed:** The report is obsolete. Since the Army Office of the Surgeon General provided a report regarding Burning Oil Exposure to the Congress in 1993, DoD has not received any substantial information to add to the registry on this subject.

**Report Title: Military Construction for Facilities Supporting New Weapons Systems**

**Report Purpose:** The provision in section 2868 (10 U.S.C. 2802 note) requires the Secretary of Defense to provide Congress with a report on military construction for the permanent basing of a new weapon system describing the site or sites selected or planned for that weapon system; the rationale for selecting such site or sites; and the military construction activities proposed for each such site. DoD must provide the report at or about the time that the President submits the fiscal year budget.

**Reason the Report Should be Repealed:** The report is redundant. DoD already provides Congress with such information in the materials that accompany its annual fiscal year budget.

1 (i) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993.—The National  
2 Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 106 Stat. 2367, 2439,  
3 2516, and 2609 respectively) is amended—

4 (1) in section 324—

5 (A) by striking subsection (b); and

6 (B) by striking "(a)" prior to "Sense of Congress" in the remaining matter;

7 (2) in section 722, by striking subsection (d);

8 (3) in section 1082(b)—

9 (A) by striking subparagraph (1)(B);

10 (B) by striking the dash; and

11 (C) by striking "(A)" preceding the remaining matter, and realigning it to  
12 read as a paragraph; and

13 (4) in section 2827—

14 (A) by striking subsection (b); and

15 (B) by redesignating subsection (c) as subsection (b).

### Section-by-Section Analysis

#### Report Title: **Overseas Environmental Restoration**

Report Purpose: The provision in section 324 (10 U.S.C. 2701 note) requires the Secretary of Defense to include in each annual *Report on Allied Contributions to the Common Defense* provided to Congress information, in classified and unclassified form, describing the efforts undertaken and the progress made by the President in carrying out environmental restoration activities at military installations outside the United States during the period covered by the report.

Reason the Report Should be Repealed: The report is unnecessary. DoD's overseas environmental restoration constitutes only a minimal portion of its overseas operational expenses. The cost of producing the report far outweighs the benefit of the meager information it provides.

Report Title: **Recommendations of the Working Group**

Report Purpose: The provision in section 722 (10 U.S.C. 1073 note) requires a joint services working group on the provision of military health care to provide Congress and the Secretary of Defense with a report of the group's recommendations regarding alternative means for continuing to provide accessible health care to persons who receive health care at military installations that are closing or that will be realigned.

Reason the Report Should be Repealed: This report is obsolete due to the implementation of new health care benefits such as TRICARE for Life.

Report Title: **Participation of DoD in Overseas Trade Shows and Military Exhibitions**

Report Purpose: The provision in section 1082(b) (10 U.S.C. 113 note) requires the Secretary of Defense to provide Congress with a report in the event that a United States defense contractor or industrial association requests DoD or a military department to provide support in the form of military equipment for any air show or trade exhibition to be held outside the United States. DoD must provide the report at least 45 days before the opening of the airshow or trade exhibition and describe why the show or exhibition is in the national security interest; describe the implications that promoting the sale of the weapons in question will have on arms control; and estimate any costs to be incurred.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility at significant cost. Rather than dedicate finite resources to preparation of this report, DoD would prefer to provide Congress with more relevant and timely information in response to specific requests.

Report Title: **Negotiations on Payments-in-Kind With Host Nations**

Report Purpose: The provision in section 2827 requires the Secretary of Defense to provide Congress with written notice prior to entering into negotiations with a host country on the U.S. acceptance of any payment-in-kind for improvements made by the U.S. at military installations in the host country.

Reason the Report Should be Repealed: The report is unnecessary. DoD has been negotiating payment-in-kind for more than ten years, and has established a proven record of managing this program effectively and efficiently. DoD has realized savings of approximately \$391 million from payment-in-kind returns and an additional \$487 million in payment-in-kind as part of the return of Rhein Main Air Base, Germany.

- 1 (j) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994.—The National  
2 Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 107 Stat. 1659 and 1931

1 respectively) is amended—

2 (1) by repealing section 542; and

3 (2) in section 2924, by striking subsection (b).

### **Section-by-Section Analysis**

#### **Report Title: Proposed Changes in Policies Regarding Combat Assignments of Female Members**

Report Purpose. The provision in section 542 (10 U.S.C. 113 note) requires the Secretary of Defense to notify Congress whenever he proposes to change existing military personnel policies in order to make available to female members of the armed forces assignment to any type of combat unit, class of combat vessel, or type of combat platform. The notification is due at least 30 days before DoD implements such change.

Reason the Report Should be Repealed: This report is unnecessary. The Secretary of Defense already assigns women in the Armed Services according to DoD mission requirements. Therefore, DoD would prefer to provide Congress with information in response to specific concerns.

#### **Report Title: OMB Review of Proposed Settlements**

Report Purpose. The provision in section 2924 (10 U.S.C. 2687 note) requires the Secretary of Defense to provide the Director of the Office of Management and Budget with a report on a proposed settlement with a host country regarding the release of improvements made by the U.S. to facilities at an installation located in the host country. The report is due at least 30 days before DoD enters such agreement of settlement.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility.

1 (k) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1995.—The National  
2 Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2804 and 2890,  
3 respectively) is amended—

4 (1) in section 721—

5 (A) by striking subsection (h); and

6 (B) by redesignating subsection (i) as subsection (h); and

1

(2) in section 1305, by striking subsection (h).

**Section-by-Section Analysis**

**Report Title: Programs Related to Desert Storm Mystery Illness**

**Report Purpose:** The provision in section 721 (10 U.S.C. 1074 note) requires the Secretary of Defense to provide Congress with an annual report on the DoD's efforts to inform members of the armed forces who served in the southwest Asia theater of operations during the Persian Gulf and their families of illnesses that may result from such service; to revise the physical evaluation board disability rating criteria and interim efforts to adjudicate cases before the revision of the criteria; and to share results of the review and any new ratings of service members previously separated.

**Reason the Report Should be Repealed:** This report is unnecessary. DoD has provided Gulf War veterans and their families with information regarding any substantial health-care developments for more than 11 years. For example, DoD publishes a special section in the Deployment Quarterly, "Gulf War Update," that addresses Gulf War-specific issues. DoD also maintains an interactive internet site, GulfLINK, that provides responses to specific inquiries.

**Report Title: Payments-in-Kind for Release of U.S. Overseas Military Facilities to NATO Host Countries**

**Report Purpose:** The provision in section 1305 requires the Secretary of Defense to notify Congress prior to entering an agreement for acceptance of host nation support or host nation payment of operating costs of United States forces as a payment-in-kind. The notification is due at least 30 days before DoD enters such an agreement.

**Reason the Report Should be Repealed:** The report is overly burdensome and unnecessary. DoD normally receives payment-in-kind from host nations in the form of military construction rather than operating costs.

1

(1) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1996.—Section 2840 of

2

the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106; 110 Stat.

3

564) is amended—

4

(1) in subsection (a)—

5

(A) by striking paragraph (4); and

6

(B) by redesignating paragraph (5) as paragraph (4); and



1 (2) in subsection (b)—

2 (A) by striking paragraph (4); and

3 (B) by redesignating paragraph (5) as paragraph (4).

### **Section-by-Section Analysis**

**Report Title: Transfer Authority in Connection With Construction or Provision of Military Family Housing**

**Report Purpose:** The provisions in section 2840 (10 U.S.C. 2687 note) require the Secretaries of the military departments to provide Congress with a report describing each agreement to transfer by deed real property or facilities located at or near a military installation closed or pending closure in exchange for prospective military family housing units. The report must specify the consideration the U.S. would receive in accordance with the agreement.

**Reason the Report Should be Repealed:** This report is unnecessary. DoD has completed all base closures pursuant to this specific law.

1 (m) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1997. The National  
2 Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 110 Stat. 2480 and 2653,  
3 respectively) is amended—

4 (1) in section 324, by striking subsection (c); and

5 (2) in section 1065, by striking subsection (b).

### **Section-by-Section Analysis**

**Report Title: Compliance with Annex V to the Convention**

**Report Purpose:** The provision in section 324(c) (10 U.S.C. 2706(b)) requires the Secretary of Defense to provide Congress with an annual report on the progress made in carrying out activities under the environmental quality programs of DoD and the military departments. The report is due within 45 days of the start of the fiscal year.

**Reason the Report Should be Repealed:** This report is obsolete. DoD has installed the pollution-control devices covered by this requirement.

**Report Title: Marshall Center Participation by Foreign Nations**

Report Purpose: The provision in section 1065(b) requires the Secretary of Defense to provide Congress with a report setting forth the names of the foreign nations permitted to participate in Marshall Center programs during the preceding year.

Reason the Report Should be Repealed: This report is redundant. DoD already provides the requested information in the Foreign Military Training Report and the Annual Report on Regional Centers.

1 (n) OMNIBUS CONSOLIDATED APPROPRIATIONS ACT, 1997.—Section 8009 of the  
2 Omnibus Consolidated Appropriations Act, 1997 (Public Law 104-208; 110 Stat. 3009-89) is  
3 amended—

4 (1) by striking "unless the congressional defense committees have been notified at  
5 least thirty days in advance of the proposed contract award";

6 (2) by striking the comma after "year"; and

7 (3) by striking the colon before "Provided".

### Section-by-Section Analysis

Report Title: **Transfers of Funds – Economic Order Quantity Procurement**

Report Purpose: This provision requires the Secretaries of the military departments to notify Congress at least 30 days in advance of a proposed contract award to initiate a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of \$20,000,000; or a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year.

Reason the Report Should be Repealed: This report is redundant. DoD already provides similar information pursuant to 10 U.S.C. 2306b(i)(3) and b(1)(3), which require that Congress authorize any multiyear procurement contract in an amount equal to or greater that \$500 million.

1 (o) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1998.—Section 349 of  
2 the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 111 Stat.  
3 1690) is amended by striking subsection (e).

## Section-by-Section Analysis

Report Title: **Partnerships for Investment in Innovative Environmental Technologies**

Report Purpose: The provision in section 349 (10 U.S.C. 2702 note) requires the Secretary of Defense to provide Congress with an annual report on the number of partnerships DoD enters with one or more private entities; a description of the nature of the technology involved in each such partnership; and a list of all partners in such partnerships.

Reason the Report Should be Repealed: The report is overly burdensome and provides information of limited utility. DoD would prefer to provide Congress with information in response to specific requests.

- 1 (p) STROM THURMOND NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR  
2 1999.—The Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public  
3 Law 105-261; 112 Stat. 2075 and 2155, respectively) is amended—  
4 (1) in section 745, subsection (e)—  
5 (A) by striking paragraph (2); and  
6 (B) by striking "(1)" following the catchline in the preceding matter; and  
7 (2) by repealing section 1223.

## Section-by-Section Analysis

Report Title: **Participation in TRICARE**

Report Purpose: The provision in section 349 (10 U.S.C. 1071 note) requires the Secretary of Defense and the Secretary of Veterans' Affairs jointly to provide Congress with a semiannual report, not later than March 1 and September 1 of each year, on the status of the review of the TRICARE program in identifying opportunities for increased participation by veterans in that program.

Reason the Report Should be Repealed: This report is unnecessary. DoD already submitted to Congress a final report indicating that veterans have attained reasonably expected levels of participation in TRICARE.

Report Title: **Development of the European Security and Defense Identity**

Report Purpose: The provision in section 1223 (22 U.S.C. 1928 note) requires the Secretary of Defense to provide Congress with various reports on the development of the European Security and Defense Identity (ESDI) within the NATO Alliance. The ESDI would enable the Western European Union, with the consent of the NATO Alliance, to assume the political control and strategic direction of specified NATO assets and capabilities.

Reason the Report Should be Repealed: This report is obsolete and provides information of limited utility. The requested information is no longer relevant and does not reflect the shift in focus between the European Union and NATO.

1 (q) DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1999.—Section 8005 of the  
2 Department of Defense Appropriations Act, 1999 (Public Law 105-262; 112 Stat. 2297) is  
3 amended by striking "Provided further, That the Secretary of Defense shall notify the Congress  
4 promptly of all transfers made pursuant to this authority or any other authority in this Act:".

#### **Section-by-Section Analysis**

Report Title: **Transfer of Working Capital Funds**

Report Purpose: This provision requires the Secretary of Defense to notify Congress of all transfers of working capital funds whenever he determines that such action is necessary in the national interest.

Reason the Report Should be Repealed: This report is redundant. DoD already notifies Congress of such transfers through DoD Reprogramming Actions (DD Form 1415-1) which require Congressional committee approval prior to implementation.

1 (r) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000. The National  
2 Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 113 Stat. 542, 697, 706,  
3 748, 756, 779, and 798, respectively) is amended—

4 (1) in section 212, by striking subsection (c);

5 (2) in section 724, by striking subsection (e);

6 (3) by repealing section 811;

7 (4) by repealing section 1025;

- 1 (5) in section 1039, by striking subsection (b);  
2 (6) in section 1201—  
3 (A) by striking subsections (d) and (e); and  
4 (B) by redesignating subsection (f) as subsection (d); and  
5 (7) in section 1402, by striking subsection (b)(2).

### **Section-by-Section Analysis**

#### **Report Title: Defense Science and Technology Program**

**Report Purpose:** The provision in section 212 (10 U.S.C. 2501 note) requires the Secretary of Defense to provide Congress with a report certifying that the defense budget does not jeopardize the stability of the defense technology base or increase the risk of failure to maintain technological superiority in future weapon systems.

**Reason the Report Should be Repealed:** This report is redundant. DoD already provides Congress with this information through various sub-elements of the DoD budget.

#### **Report Title: Joint Telemedicine and Telepharmacy Demonstration Projects**

**Report Purpose:** The provision in section 724 (10 U.S.C. 1092 note) requires the Secretary of Defense and the Secretary of Veterans Affairs jointly to provide Congress with a report, not later than December 31, 2002, on the joint telemedicine and telepharmacy demonstration projects. The report must include a description of each demonstration project and an evaluation of the feasibility and practicability of using telecommunication to provide health care and pharmacy services.

**Reason the Report Should Be Repealed:** This report is obsolete and redundant. DoD already provides Congress the same information through updates on Information Management and Information Technology activities in the annual report on medical informatics activities.

#### **Report Title: Mentor-Protege Program Improvements**

**Report Purpose:** The provision in section 811 (10 U.S.C. 2302 note) requires the Secretary of Defense to provide Congress with an annual report on the Mentor-Protege Program for that fiscal year.

**Reason the Report Should be Repealed:** The report is redundant and overly burdensome. DoD estimates that it expends approximately one-tenth of one contractor's full-time equivalent (FTE) position to produce the report, and an additional one-twentieth of a government FTE to supervise production of the report. The printing cost for the report is approximately \$8,000 per

year. Instead of compiling this burdensome, expensive report, DoD would prefer to provide Congress with information in response to specific requests.

**Report Title: U.S. Military Activities in Colombia**

**Report Purpose:** The provision in section 1025 (10 U.S.C. 113 note) requires the Secretary of Defense to provide Congress with a report, by January 1 of each year, on the use of U.S. armed forces in Colombia during the preceding year; the status of forces currently in Colombia; the cost of these missions; and the force-protection risks associated with these deployments.

**Reason the Report Should be Repealed:** This report is redundant and overly burdensome. The State Department currently provides Congress with a bi-monthly report containing the same information. Additionally, DoD estimates that it expends approximately 460 workdays each year to provide the report.

**Report Title: NATO Defense Capabilities Initiative**

**Report Purpose:** The provision in section 1039 (10 U.S.C. 113 note) requires the Secretary of Defense to provide Congress with a report on the implementation of the Defense Capabilities Initiative by members of NATO.

**Reason the Report Should be Repealed:** This report is obsolete. The Defense Capabilities Initiative and High-Level Steering Group programs ended on December 31, 2002. DoD submitted the final report to Congress nearly two years ago.

**Report Title: Limitation on Military-to-Military Exchanges and Contacts with Chinese People's Liberation Army**

**Report Purpose:** The provision in section 1201(d) (10 U.S.C. 168 note) requires the Secretary of Defense to provide Congress with written certification, not later than December 31 of each year, on whether DoD conducted any military-to-military exchanges or contacts during that calendar year that created a national security risk due to an inappropriate exposure to certain DoD operations, experiments, or activities.

**Reason the Report Should be Repealed:** This report is unnecessary. DoD already provides such information in a separate annual report on military-to-military contacts.

**Report Title: Military Exchanges Between the U.S. and Chinese People's Liberation Army**

**Report Purpose:** The provision in section 1201(e) (10 U.S.C. 168 note) requires the Secretary of Defense to provide Congress with a report, not later than March 31 of each year, with an assessment of the current state of military-to-military exchanges and contacts with the Chinese People's Liberation Army.

Reason the Report Should be Repealed: This report is overly burdensome. The costs in time, labor, and administrative expenses exceed its value. DoD would prefer to provide Congress with more timely and relevant information in response to specific requests.

Report Title: **Transfers of Military Sensitive Technology to Countries and Entities of Concern**

Report Purpose: The provision in section 1402(b)(2) (22 U.S.C. 2778) requires the Secretary of Defense, in consultation with the Joint Chiefs of Staff and the Director of Central Intelligence, to provide Congress with an assessment of the cumulative impact of licenses granted by the U.S. for exports of technologies and technical information with potential military applications during the preceding 5-calendar year period on the military capabilities of such countries and entities, and countermeasures that may be necessary to overcome the use of such technologies and technical information.

Reason the Report Should be Repealed: This report is redundant with reports already submitted to Congress by the Department of State, the Department of Commerce, and the Central Intelligence Agency.

1 (s) MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2001.—The Military Construction  
2 Appropriations Act, 2001 (Public Law 106-246; 114 Stat. 517 and 518, respectively) is  
3 amended—  
4 (1) by repealing section 125; and  
5 (2) in section 127, by striking all that follows after "including flag and general  
6 officer quarters" and inserting a period.

### **Section-by-Section Analysis**

Report Title: **Exercising of General Military Construction Authority for Military Family Housing**

Report Purpose: The provision in section 125 requires the Secretaries of the military departments to provide Congress with a report of any solicitation for a private-sector contract for the acquisition or construction of military and unaccompanied family housing units on or near military installations within the United States and its territories and possessions. The report is due not later than 60 days before DoD issues such a solicitation.

Reason the Report Should be Repealed: This report is unnecessary and provides information of limited utility. DoD would prefer to provide Congress with information in

response to specific requests.

**Report Title: Limitation on Use of O&M Funds for Maintenance and Repair of Flag/General Officer Quarters**

**Report Purpose:** The provision in section 127 (10 U.S.C. 2821 note) requires the Under Secretary of Defense (Comptroller) to notify Congress when he intends to spend more than \$25,000 per unit annually for the maintenance and repair of any general or flag officer quarters. The notification is due at least 30 days in advance of any expenditure. This provision further requires the Under Secretary to provide Congress with an annual report on all operations and maintenance expenditures for each individual flag and general officer quarters for the prior fiscal year.

**Reason the Report Should be Repealed:** This report is redundant. DoD already provides Congress with this information in its annual budget report.

- 1 (t) DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2001.—Section 8019 of the  
2 Department of Defense Appropriations Act, 2001 (Public Law 106-259; 114 Stat. 678) is  
3 amended by striking the last sentence.

**Section-by-Section Analysis**

**Report Title: Executive Agreements with NATO Members**

**Report Purpose:** The provision in section 8019 (10 U.S.C. 2687 note) requires the Secretary of Defense to provide Congress with a report on the endorsement of any executive agreements with a NATO member that would establish a separate account into which DoD would deposit residual value amounts negotiated in the return of U.S. military installations in NATO member states in lieu of direct monetary transfers to the United States Treasury. The report is due 30 days prior to the conclusion of such an agreement.

**Reason the Report Should be Repealed:** The report is unnecessary. DoD already works closely with the Office of Management and Budget to ensure that the United States receives appropriate residual value compensation and that such compensation is credited to the appropriate account. DoD would prefer to provide Congress with more relevant information in response to specific requests.

- 1 (u) FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR  
2 2001.—The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public



- 1 Law 106-398 Appendix; 114 Stat. 1654A-28 and 1654A-247, respectively) is amended—  
2 (1) by repealing section 131;  
3 (2) in section 1006, by striking subsection (c); and  
4 (3) by repealing section 1233.

### **Section-by-Section Analysis**

Report Title: **B-2 Bomber**

Report Purpose: The provision in section 131 (10 U.S.C. 2282) requires the Secretary of Defense to provide Congress with a report, by March 1<sup>st</sup> of each year, on the adequacy of the B-2 bomber's full-time mission capability; an assessment of whether the bomber's technical capabilities are adequate to its missions; any ongoing and planned technologies to enhance the bomber's capability; any additional technologies to enhance the bomber's capability and survivability; and funding requirements.

Reason the Report Should Be Repealed: This report is unnecessary. The B-2 bomber's mission-capable rates have improved markedly since Congress enacted this provision. Congress already has funded most elements of the Rate Improvement Plan. DoD already provides Congress with information concerning specific B-2 technical capabilities and planned technology enhancements in standard budget documentation. DoD expends nearly 700 man-hours to staff, compile, review, and produce the report.

Report Title: **Prompt Payment of Contract Vouchers**

Report Purpose: The provision in section 1006 (10 U.S.C. 2226) requires the Secretary of Defense to provide Congress with a report on the magnitude of any unpaid contract vouchers if such number exceeds 5 percent of the total number of contract vouchers DoD receives. The report is due no later than 30 days after the end of any month during which DoD has not made payment.

Reason the Report Should be Repealed: The report is unnecessary. Since this reporting requirement was instituted, DoD has never exceeded the 5% threshold.

Report Title: **Communist Chinese Military Companies Operating in the U.S.**

Report Purpose: The provision in section 1233 requires the Secretary of Defense to provide Congress with classified and unclassified reports, not later than February 1 of each year, with the latest information available on Communist Chinese military companies operating directly or indirectly in the United States or in any of its territories and possessions.

Reason the Report Should be Repealed: This report is unnecessary. The Central

Intelligence Agency and the Federal Bureau of Investigation are better situated to provide Congress with more relevant and timely information on this subject.

1 (v) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2002.—The National  
2 Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1180 and 1206,  
3 respectively) is amended—

4 (A) in section 804(a), by striking "of each of years 2003 through 2006" and  
5 inserting "2003,"; and

6 (B) by amending subsection (c) of section 1008 to read as follows:

7 "(c) INFORMATION TO AUDITORS.—Not later than 180 days prior to the date set by  
8 the Office of Management and Budget for submission of audited financial statements, the  
9 Under Secretary of Defense (Comptroller), the Assistant Secretary of each military  
10 department, and the defense agency executive with responsibility for financial  
11 management and comptroller functions shall each provide to the auditors of the financial  
12 statement of that official's department or agency for the fiscal year ongoing that official's  
13 preliminary management representation, in writing, regarding the expected reliability of  
14 the financial statement. The preliminary representation shall be consistent with guidance  
15 issued by the Director of the Office of Management and Budget for the final  
16 representation and shall include the basis for the reliability assessment stated in the  
17 representation."

### **Section-by-Section Analysis**

**Report Title: Maturity of Technology at Initiation of Major Defense Acquisition Programs**

**Report Purpose:** The provision in section 804 requires the Secretary of Defense to provide Congress with a report, not later than March 1 of each year, certifying that technology

has been demonstrated in a relevant environment or in an operational environment to be considered mature enough to use for product development in systems integration.

Reason the Report Should be Repealed: This report is unnecessary. DoD's policy is to use only mature technology to meet user needs. DoD addresses the importance of technology maturity throughout the current 5000 series regulations on systems acquisition. These regulations require the use of independently verified mature technology, not only for the systems development and demonstration phase but also for the production and deployment phase of the systems acquisition process. Additionally, DoD currently is revising its regulations to streamline and improve the acquisition process and make better use of its resources. These revisions will include key improvements to DoD's processes for assessing and validating technology maturity.

Report Title: **Reliability of Department of Defense Financial Statements**

Report Purpose: The provision in section 1008 requires the Under Secretary of Defense (Comptroller) and the Assistant Secretary of each military department with responsibility for financial management and comptroller functions to provide, not later than October 31 of each year, to the auditors of the financial statement of that official's department for the fiscal year ending during the preceding month that official's written preliminary management representation regarding the expected reliability of the financial statement.

Reason the Report Should be Modified: This section would change the due date for preliminary management representations to 180 days prior to the date set by the Office of Management and Budget for submission of financial statements. The flexibility offered by this change would enable the DoD Office of the Inspector General to efficiently plan and utilize its assets regardless of the actual due date of the financial statements to be evaluated. In addition, the section expands coverage to defense agencies that had not previously prepared financial statements, such as the National Security Agency, the Defense Intelligence Agency, and the National Imagery and Mapping Agency.

1           (w) DEPARTMENT OF DEFENSE AND EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR  
2 RECOVERY FROM AND RESPONSE TO TERRORIST ATTACKS ON THE UNITED STATES ACT,  
3 2002.—Section 8009 of the Department of Defense and Emergency Supplemental  
4 Appropriations for Recovery From and Response To Terrorist Attacks on the United States Act,  
5 2002 (Public Law 107-117; 115 Stat. 2249; 10 U.S.C. 401 note) is amended by striking ", and  
6 these obligations shall be reported to the Congress as of September 30 of each year".

**Section-by-Section Analysis**

Report Title: **Humanitarian and Civic Assistance Provided in Conjunction With Military Operations**

Report Purpose: The provision in section 8009 (10 U.S.C. 401 note) requires the Secretary of Defense to provide Congress with a report, as of September 30 of each year, on funds obligated for humanitarian and civic assistance costs incidental to authorized military operations.

Reason the Report Should be Repealed: This report is redundant. DoD already provides Congress with the same information through a separate report set forth at 10 U.S.C. 401(d).

- 1 (x) SENATE EXECUTIVE RESOLUTION 75 (105<sup>th</sup> Congress, 1<sup>st</sup> Session, Agreed to by the  
2 Senate on April 24, 1997).—Section 2, Condition 11, paragraph (F), of Senate Executive  
3 Resolution 75, a provision of the Senate's advice and consent to the ratification of the Chemical  
4 Weapons Convention (Treaty Doc. 103-21), is repealed.

### **Section-by-Section Analysis**

Report Title: **Chemical and Biological Weapons Defense Activities**

Report Purpose: This provision requires the President to provide Congress with a report, on January 1 of each year, on previous, current, and planned chemical and biological weapons defense activities.

Reason the Report Should be Repealed: This report is redundant and overly burdensome. Section 1703 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 50 U.S.C. 1523) already requires the Secretary of Defense to submit an annual report to Congress on chemical and biological defense. The report assesses the overall readiness of the Armed Forces to fight in a chemical-biological warfare environment and describes DoD's steps to improve such readiness. It also describes the requirements for chemical and biological warfare defense programs, including requirements for training, detection, and protective equipment, for medical prophylaxis and for treatment of casualties resulting from use of chemical and biological weapons. The Secretary of Defense also forwards to Congress an annual Report on Activities and Programs for Countering the Proliferation and NBC Terrorism (required under section 1503 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337, 108 Stat. 2916 (1994)) on the findings of the Counterproliferation Program Review Committee (established under section 1605 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 107 Stat. 1845), as amended by section 1502 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2914)). Finally, the present report is overly burdensome because it costs approximately \$22,000 annually in contractor fees to produce. Congress already receives a

substantial amount of useful and meaningful data annually from DoD on its chemical and biological weapons defense activities.

- 1 (y) THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Section 30 of the Office of  
2 Federal Procurement Policy Act (41 U.S.C. 426) is amended—  
3 (1) by striking subsection (e); and  
4 (2) by redesignating subsection (f) as subsection (e).

### **Section-by-Section Analysis**

#### **Report Title: Use of Electronic Commerce in Federal Procurement**

**Report Purpose:** Section 30(e) of the Office of Federal Procurement Policy Act requires the Administrator for Federal Procurement Policy to report to Congress every two years, through 2004, on the progress in the use of electronic commerce in federal procurement. The reporting requirement includes a discussion of progress made in facilitating access, including for small businesses, to procurement opportunities through a Government-wide entry point (GPE) on the Internet, and opportunities to expand this functionality. The report also requires an agency-by-agency reporting on volume and dollar value of transactions using various electronic commerce methods.

**Reason the Report Should be Repealed:** This reporting requirement is unnecessary. The report was designed, in part, to ensure a timely transition from paper-based to electronic processes for providing access to notices of solicitations through the GPE. As of October 1, 2001, all agencies have been required to use the Federal Business Opportunities website (i.e., "FedBizOpps"), the designated GPE, to provide access not just to notices for planned actions over \$35,000, but also to associated solicitations. Therefore, the main objective established for this reporting requirement has been satisfied. In addition, the reporting emphasis on collecting transactional data, in addition to being burdensome to collect, is of little to no value. Many of the past investments that such near-term reporting would measure are not the focus of current and future efforts, as the Administration currently is pursuing a strategic vision that recognizes the integrated nature of acquisition activities and the need for technology to reinforce this integration.

### **Subtitle D—Transformation of Management of Naval Vessels**

#### **SEC. 431. REPEAL OF NOTICE AND WAIT PERIOD PRIOR TO REDUCING**

## **THE INVENTORY OF COMBATANT SURFACE VESSELS.**

1 (a) IN GENERAL.—Section 7296 of title 10, United States Code, is repealed.

2 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of  
3 such title is amended by deleting the item relating to section 7296.

### **Section-by-Section Analysis**

Repeal of this section would provide the Department of the Navy with greater flexibility to design, modernize and manage the force of surface combatant vessels now and in the future, and to tailor the force more closely to current and foreseeable threats. Existing law requires a 90-day Congressional notice and wait period before the Navy may reduce below 116 the inventory of combatant surface vessels. The Navy is committed to maintaining a force structure and forward presence that supports DoD mission requirements.

## **SEC. 432. OVERHAUL AND REPAIR OF SHIPS ON EXTENDED DEPLOYMENTS.**

1 Section 7310 of title 10, United States Code, is amended by adding at the end the  
2 following new subsection:

3 "(c) VESSELS ON EXTENDED OVERSEAS DEPLOYMENTS.—(1) A vessel referred to in  
4 subsection (a) may be overhauled, repaired, or maintained in a shipyard outside the United States  
5 or Guam if it is on an extended overseas deployment.

6 "(2) An extended overseas deployment is a deployment outside the United States of a  
7 vessel homeported in the United States that exceeds, or is scheduled to exceed, 12 months  
8 without a return to the United States."

### **Section-by-Section Analysis**

This section would permit the Department of the Navy to conduct routine maintenance in a foreign shipyard for those vessels that are deployed for an extended period overseas. This would prevent the material degradation of the ship and permit longer duration of deployments overseas. Existing law prohibits the Navy from conducting routine maintenance in a foreign shipyard for all vessels with a home port in the United States.

## **Subtitle E—Miscellaneous Provisions**

### **SEC. 441. SUPPORT OF FOREIGN NATIONS COMMITTED TO COMBATING GLOBAL TERRORISM.**

1           (a) **AUTHORITY.**—Notwithstanding any other provision of law, the Secretary of Defense,  
2 with the concurrence of the Secretary of State, may provide military assistance or support to  
3 foreign nations assisting United States military operations or other activities to combat global  
4 terrorism. Such assistance may include the provision of equipment, supplies, services, and  
5 funding.

6           (b) **LIMITATION ON SUPPORT.**—Military assistance provided under the authority of this  
7 section may not exceed \$200,000,000 in any fiscal year.

8           (c) **ADDITIONAL AUTHORITY.**—The authority to provide assistance under this section is  
9 in addition to any other authority to provide assistance to foreign countries.

#### **Section-by-Section Analysis**

This section would authorize up to \$200,000,000 in assistance to foreign nations for the purpose of assisting the U.S. in combating global terrorism.

This authority would better position the Department of Defense to assist foreign nations whose support is critical to counterterrorism efforts. DoD requires this flexibility to respond quickly to operational needs, such as providing equipment or services to such forces to enhance their readiness and effectiveness.