SEC. ___. SUBMISSION TO CONGRESS OF FUTURE-YEARS DEFENSE PROGRAM.

Section 221 of title 10, United States Code, is amended—

(1) by amending subsection (d) to read as follows:

"(d) The Secretary of Defense shall also make each future-years defense program available to the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service."; and

(2) by striking subsection (e).

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would remove the statutory requirement to submit an Unclassified Future-Years Defense Program (FYDP) to the Congress, the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service. It would also remove the requirement to certify the accuracy of the input to the FYDP. The proposal retains delivery of a classified FYDP to the Congress and other offices.

The FYDP, by its design, is a comprehensive, detailed, classified display over a five-to seven year time horizon of all of the forces, manpower, and funding required to resource the U.S. defense strategy. The FYDP is designed as an internal Department of Defense (DoD) decision tool. It presents a coherent view of the Department's program, and to be of use the FYDP must integrate classified and unclassified information and make their relationships explicit.

The Department is concerned that attempting publication of unclassified FYDP data might inadvertently reveal sensitive information. With the ready availability of data mining tools and techniques, and the large volume of data on the Department's operations and resources already available in the public domain, additional unclassified FYDP data, if it were released, potentially allows adversaries to derive sensitive information by compilation about the Department's weapons development, force structure, and strategic plans. Due to the lack of knowledge about the information that adversaries already possess, the Department seeks to limit release of additional unclassified information in this format. Even aside from exposing vulnerabilities, additional unclassified FYDP data may allow adversaries to target additional intelligence exploitation efforts.

The Department is also concerned about the potential harm to its interactions with commercial interests by release of FYDP information prior to the budget year. Exposing resources allocated to future acquisition plans may encourage bids and other development activities not beneficial to the Government. The Department has long-standing policies that are

designed to prevent the release of FYDP information to prevent commercial interests from gaining an unfair advantage in future acquisition actions. These policies require that Department of Defense contractor personnel must have a valid "need to know" before being permitted to access any planning, programming, budgeting, or execution information, including the FYDP, whether classified or unclassified.

The breadth and depth of the data that would be contained in an unclassified FDYP, as a compilation, would be greater than any other document the Department produces. The conclusions and inferences that could be drawn from the data it would contain could cause serious risk to the national defense. However, because of that very depth and breadth, it is difficult, if not impossible, to know up front what those conclusions and inferences would be, especially when combined with information from other sources. Unfortunately, the current Federal processes for protecting sensitive but unclassified information are much weaker than those for classified data, and so the risk of inadvertent disclosure of all or part of an unclassified FYDP is much higher than the Department considers prudent.

Under this proposal, the Department would continue to provide the Congress with the full classified FYDP as a combined representation of classified and unclassified data. The Department would welcome discussions on an alternative that would provide the Congress with the information they require to satisfy their oversight requirements.

The proposal would also strike the requirement that Department of Defense officials certify that the data used to construct the FYDP is accurate. This requirement is unnecessary as information from these systems is already used to provide the President's Budget.

Budget Implications: The resources required to implement the current statutory requirement are included within the Fiscal Year (FY) 2021 President's Budget request. If CAPE's legislative proposal is enacted, the estimated savings shown in the table below would be applied to the next highest priority within CAPE's budget. CAPE already builds the FYDP and is currently required to provide to Congress the full, classified FYDP. This language does not relieve DoD of that requirement. This proposal would simply avoid additional workload in terms of coordination, certification, and review of classification markings, information, and displays.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element**
	(.15)	(.15)	(.05)	(.05)	(.05)	Operation and Maintenance, Defensewide	Multiple	Multiple	Multiple
Total	(.15)	(.15)	(.05)	(.05)	(.05)	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 221 of title 10, United States Code:

§221. Future-years defense program: submission to Congress; consistency in budgeting

(a) The Secretary of Defense shall submit to Congress each year, not later than five days after the date on which the President's budget is submitted to Congress that year under section 1105(a) of title 31, a future-years defense program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(b)(1) The Secretary of Defense shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Secretary in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31 for any fiscal year, as shown in the future-years defense program submitted pursuant to subsection (a).

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress under that section for any fiscal year.

(c) Nothing in this section shall be construed to prohibit the inclusion in the future-years defense program of amounts for management contingencies, subject to the requirements of subsection (b).

(d)~~(1)~~ The Secretary of Defense shall also make each future-years defense program available to the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service. ~~The Secretary of Defense shall make available to Congress, the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service each future-years defense program. under this section as follows:~~

~~(A) By making such program available electronically in the form of an unclassified electronic database.~~

~~(B) By delivering printed copies of such program to the congressional defense committees.~~

~~(2) In the event inclusion of classified material in a future-years defense program would otherwise render the totality of the program classified for purposes of this subsection—~~

~~(A) such program shall be made available to Congress in unclassified form, with such material attached as a classified annex; and~~

~~(B) such annex shall be submitted to the congressional defense committees, the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service.''.~~

~~(e) Each future-years defense program under this subsection shall be accompanied by a certification by the Under Secretary of Defense (Comptroller), in the case of the Department of~~

~~Defense, and the comptroller of each military department, in the case of such military department, that any information entered into the Standard Data Collection System of the Department of Defense, the Comptroller Information System, or any other data system, as applicable, for purposes of assembling such future-years defense program was accurate.~~