DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
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APR 0 6 2004

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 legislative initiatives as part of the National Defense Authorization Bill for Fiscal Year 2005.

The purpose of each proposal is stated in the accompanying 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 presenting of these legislative proposals for your consideration and the consideration of the Congress.

Sincerely,

Daniel J. Dell'Orto
Principal Deputy General Counsel

Enclosure
As Stated

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

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SEC. ___ . PAYMENT OF FEDERAL EMPLOYEE HEALTH BENEFIT PREMIUMS FOR MOBILIZED FEDERAL EMPLOYEES.

(a) AUTHORITY TO CONTINUE BENEFIT COVERAGE.—Section 8905a of title 5, United States Code is amended—

(1) in subsection (a), by striking "paragraph (1) or (2) of";

(2) in subsection (b)—

(A) in paragraph (1)(B), by striking "and" at the end;

(B) in paragraph (2)(C), by striking the period at the end and inserting "; and"; and

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

"(3) any employee who—

"(A) is enrolled in a health benefits plan under this chapter;

"(B) is a member of a Reserve component of the armed forces;

"(C) is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);

"(D) is placed on leave without pay or separated from service to perform active duty; and

"(E) serves on active duty for a period of more than 30 consecutive days."; and

(4) in subsection (e)(1)—

(A) in subparagraph (A), by striking "or" at the end;

(B) in subparagraph (B), by striking the period at the end and inserting ";

or"; and

(C) by adding at the end the following new subparagraph:

"(C) in the case of an employee described in subsection (b)(3), the date which is 24 months after the employee is placed on leave without pay or separated from service to perform active duty.".

(b) AUTHORITY FOR AGENCIES TO PAY PREMIUMS.—Subparagraph (C) of section 8906(e)(3) of such title is amended by striking "18 months" and inserting "24 months".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on March 1, 2003.

Section-by-Section Analysis

This section would extend the period during which an employing agency may pay both the employee's share and the agency's share of the premiums for continued coverage under the Federal Employee Health Benefit Program (FEHBP) for Reserve component members who are called to active duty in support of a contingency operation.

The current 18-month limit coincides with the period an employer is required to provide continued healthcare insurance coverage for an employee who is absent from work to perform military service, as required under the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4317). With the second year of a partial mobilization for the Global War on Terrorism, the Department of Defense is requiring some Reserve component members to serve the full 24 months authorized under section 12302 of title 10, United States Code. This section would prevent the families of such members from having to switch to the military healthcare system for the last six months of the member's mobilization.

This section also would allow each agency to determine if they want to pay the entire premium share for their mobilized reservists and for how long. Agencies that decide to pay the entire premium share for their employees' entire mobilization period must use funds already appropriated for civilian pay and benefits.

The effective date for this section would coincide with the expiration of FEHBP coverage under section 8906 of title 5 for reservists first mobilized in response to the terrorist attacks of September 11, 2001.

Cost implications: The Department of Defense estimates the cost of providing an additional six months of FEHB coverage at $2 million per year.

SEC. ___ . ANNUITY COMMENCING DATES.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8345(b)(1) of title 5, United States Code, is amended by striking "the first day of the month after" both places it appears and inserting "the day after".

(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8464(a) of such title is amended to read as follows:

"(a) Except as otherwise provided in this chapter—

"(1) an annuity payable from the Fund commences on the day after—

"(A) separation from the service, in the case of an employee or Member retiring under section 8412 or 8414; or

"(B) pay ceases and the applicable age and service requirements are met in the case of an employee or Member retiring under section 8413; and

"(2) an annuity payable from the Fund commences on the day after separation from the service or the day after pay ceases and the requirements for title to an annuity are met in the case of an employee or Member retiring under section 8451.".

Section-by-Section Analysis

This section would enable employees under the Federal Employees' Retirement System (FERS) to retire and begin receiving their annuity the next day. Under current law, Civil Service Retirement System (CSRS) employees who retire on any of the first three days of a month begin receiving their annuity the next day; FERS employees must wait until the following month to receive their annuity.

Cost implications for DoD-affected personnel: Permitting Department of Defense employees under FERS and CSRS the same flexibility in establishing the date of retirement would have no significant effect on the retirement fund. Employees would contribute to the retirement fund for the total period of coverage.

SEC. ___ . CIVIL SERVICE RETIREMENT SYSTEM COMPUTATION FOR PART-TIME SERVICE.

Section 8339(p) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(3) In the administration of paragraph (1)—

"(A) subparagraph (A) of such paragraph shall apply to any service performed before, on, or after April 7, 1986;

"(B) subparagraph (B) of such paragraph shall apply to all service performed on a part-time or full-time basis on or after April 7, 1986; and

"(C) any service performed on a part-time basis before April 7, 1986, shall be credited as service performed on a full-time basis.".

Section-by-Section Analysis

This section would treat Civil Service Retirement System (CSRS) employees the same as those under the Federal Employees' Retirement System (FERS), which treats part-time service as proportional for purposes of annuity calculation, thus creating neither a windfall nor a shortfall in the annuity.

Specifically, this section would provide a special annuity computation formula for employees who performed part-time service after April 7, 1986, that would extend application of full-time rates of pay in computing average salary to all service, regardless of when it was performed. Paragraph (1)(A) would apply to any service performed before, on, or after April 7, 1986; and paragraph (1)(B) would apply to all service performed on a part-time or full-time basis on or after April 7, 1986. Under paragraph (1)(C), any service performed on a part-time basis before April 7, 1986, would be credited as service performed on a full-time basis. This section addresses only the calculation of the annuity and does not change the law with respect to eligibility for retirement, in which each year of part-time service counts as a full year.

Existing law makes it difficult to retain critical retirement-eligible employees on a reduced schedule in their last years without penalizing their earlier full-time service. Under current law, employees under CSRS who work part-time at the end of their careers, and who have full-time service before that time, suffer a discount in their annuity because of a statutory

change in the annuity calculation in 1986. Those with full-time service on or before April 7, 1986 suffer the greatest discount. Before 1986, employees who worked most of their careers on a part-time basis could switch to a full-time schedule in their last three years and receive an annuity as if they had been full-time employees for their full careers. In 1986, Congress corrected that windfall through a complex formula. It was not apparent then, nor during the downsizing decade of the 1990s, that the 1986 change also unintentionally penalized full-time service by using a formula that applies a part-time high-three salary to full-time service. Existing law acts as a retention disincentive for those whose talent is still needed but who desire a reduced schedule at the end of their careers.

NUMBER OF DOD PERSONNEL AFFECTED: Nearly 300 Department of Defense employees under CSRS retire each year from working a part-time schedule.

RESOURCE REQUIREMENTS RELATED TO DOD ($K):

	FY05	FY06	FY07	FY08	FY09
Total	$633	$645	$715	$729	$743

Cost implications for DoD-affected personnel: This section assumes that 2 percent of CSRS employees (or 278) would retire annually from a part-time schedule, resulting in increased annuities costing the retirement fund a total of $633,000 for the retirees in Fiscal Year (FY) 2005. This section includes a budget inflation factor of 1.8 percent for FY 2005, and 1.9 percent each for FY 2006-2009 based on Program Budget Review Guidance.

SEC. ___ . ANNUAL LEAVE ENHANCEMENTS.

(a) ACCRUAL OF LEAVE FOR NEWLY HIRED FEDERAL EMPLOYEES WITH QUALIFIED EXPERIENCE.—

(1) IN GENERAL.—Section 6303 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(e)(1) In this subsection, the term 'period of qualified non-Federal career experience' means any equal period of service performed by an individual that—

"(A) except for this subsection would not otherwise be service performed by an employee for purposes of subsection (a); and

"(B) was performed in a position—

"(i) the duties of which were directly related to the duties of the position in an agency that such individual holds; and

"(ii) which meets such other conditions as the Office of Personnel Management shall prescribe by regulation.

"(2) For purposes of subsection (a), the head of an agency may deem a period of qualified non-Federal career experience performed by an individual to be a period of service performed as an employee.".

(2) EFFECTIVE DATE.—This section shall take effect 120 days after the date of enactment of this Act and shall apply only to an individual hired on or after that effective date.

(b) SENIOR EXECUTIVE SERVICE ANNUAL LEAVE ENHANCEMENTS.—

(1) IN GENERAL.—Section 6303(a) of such title is amended—

(A) in paragraph (2), by striking "and" at the end;

(B) in paragraph (3), by striking the period at the end and inserting "; and"; and

(C) by adding after paragraph (3) the following new paragraph:

"(4) one day for each full biweekly pay period for an employee in a position paid under section 5376 or 5383, or for an employee in an equivalent category for which the minimum rate of basic pay is greater than the rate payable at GS-15, step 10.".

(2) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Office of Personnel Management shall prescribe regulations to carry out the amendments made by this subsection.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Paragraph (1) shall take effect 120 days after the date of enactment of this Act.

(B) REGULATIONS.—Paragraph (2) shall take effect on the date of enactment of this Act.

Section-by-Section Analysis

This section would allow mid-career and senior employees entering the Federal service for the first time to accrue annual leave at a rate commensurate with that earned by other employees at a similar point in their careers. It would allow the head of an agency to credit non-Federal career experience as creditable service for leave purposes, provided that the non-Federal duties were directly-related to the duties of the Federal position for which the employee is selected. Mid-career and senior employees entering the Federal government for the first time could accrue annual leave at six to eight hours per pay period, based on creditable non-Federal service.

Existing law requires non-Federal employees recruited into mid-level and higher positions to start earning annual leave as new employees, regardless of their private sector experience or tenure. Currently, employees accrue annual leave of four hours per pay period for the first three years of Federal service, six hours if they have three or more years but less than fifteen years of service, and eight hours if they have fifteen years or more of service. This structure hinders the recruitment of experienced private sector employees, who normally would expect to receive annual leave benefits similar to those enjoyed in their private sector employment.

This section also would provide that all Senior Executive Service, other senior level employees, and employees in any equivalent category where the basic pay rate exceeds GS-15, step 10, to accrue annual leave at the maximum rate of one day (eight hours) for each pay period. In addition, it would authorize the Office of Personnel Management to prescribe regulations to carry out the provisions of this section.

Cost implications: Leave accrual would have little budgetary impact, aside from minimal lost productivity as measured in terms of salary. This would likely be counterbalanced by an enhanced ability to recruit qualified mid-career and senior employees to the Federal service.

SEC. ____. INFLATION ADJUSTMENT FOR ACQUISITION-RELATED DOLLAR THRESHOLDS.

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

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

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

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

(1) made only after consultation with the Director of the Office of Management and Budget and calculated as indexation adjustments using appropriate inflation measures to be determined by the Director;

(2) made effective October 1 of each year divisible by five reflecting the cumulative effect of changes in the applicable economic indexes from the date the threshold was enacted to the second (April-June) calendar quarter preceding the effective date of the adjustment;

(3) rounded to facilitate implementation; and

(4) published in the Federal Register.

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

(1) the Act of March 3, 1931 (popularly known as the Davis-Bacon Act), 40 U.S.C. 276(a); or

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

(3) thresholds established by the United States Trade Representative pursuant to Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511, et seq.).

Section-by Section Analysis

This section would permit the Federal Acquisition Regulatory Council (FAR Council) to adjust the dollar thresholds set out 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 economic indexes 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 would also not be used in a manner that is inconsistent with any international agreement to which the United States is a party.

This authority would be 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. ___ . AIR QUALITY PLANS AND RANGE MANAGEMENT.

(a) CONFORMITY WITH CLEAN AIR ACT.—In all cases in which the requirements of section 176(c) of the Clean Air Act would have applied to proposed military readiness activities, the Department shall not be prohibited from engaging in such military readiness activities, but shall:

(1) estimate for all criteria pollutants for which the area is designated 'nonattainment' or 'maintenance' the quantity of emissions that are caused by the military readiness activities;

(2) notify the state air quality planning agency for the affected area of such emission estimates prior to engaging in proposed military readiness activities; and

(3) ensure that military readiness activities conform with the requirements of section 176(c) within three years of the date new activities begin.

(b) EPA APPROVAL.—Notwithstanding any other provisions of law, an implementation plan or plan revision required under the Clean Air Act shall be approved by the Administrator of the Environmental Protection Agency if:

(1) such plan or revision meets all the requirements applicable to it under the Clean Air Act other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of the Act, or in a regulation promulgated under such provision; and

(2) the submitting State established to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the

relevant national ambient air quality standards by the attainment date specified under the applicable provision of the Act, or in a regulation promulgated under such provision, but for emissions emanating from military readiness activities not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section.

(c) EFFECT ON STATE COMPLIANCE WITH OZONE STANDARDS.—Notwithstanding any other provisions of law, any state that establishes to the satisfaction of the Administrator that, with respect to an ozone nonattainment area in such State, such State would have attained the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from military readiness activities not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section, shall not be subject to the provisions of section 181(b)(2) and (4) or section 185 of the Act.

(d) EFFECT ON STATE COMPLIANCE WITH CARBON MONOXIDE STANDARDS.—Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator, with respect to a carbon monoxide nonattainment area in such State, that such State has attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from military readiness activities not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section, shall not be subject to the provisions of section 186(b)(2) of the Act.

(e) EFFECT ON STATE COMPLIANCE WITH PM-10 STANDARDS.—Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to a PM-10 nonattainment area in such State, such State would have attained the national ambient air quality standard for PM-10 by the applicable attainment date, but for

emission emanating from military readiness activities not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section, shall not be subject to the provisions of section 188(b)(2) of the Act.

SEC. ___ . RANGE MANAGEMENT.

(a) DEFINITION OF SOLID WASTE.—(1) The term 'solid waste' as used in the Solid Waste Disposal Act, as amended (42 U.S.C. § 6901 et seq.), does not include military munitions, including unexploded ordnance, and the constituents thereof, that are or have been deposited, incident to their normal and expected use, on an operational range, and remain thereon.

(2) Paragraph (1) shall not apply to military munitions, including unexploded ordnance, or the constituents thereof, that—

(A) are recovered, collected, and then disposed of by burial or landfilling;

(B) have migrated off an operational range;

(C) are deposited off of an operational range; or

(D) remain on the range once the range ceases to be an operational range.

(3) Nothing in this section affects the authority of federal, state, interstate, or local regulatory authorities to determine when military munitions, including unexploded ordnance, or the constituents thereof, become hazardous waste for purposes of the Solid Waste Disposal Act, as amended, including, but not limited to, sections 7002 and 7003, except for military munitions, including unexploded ordnance, or the constituents thereof, that are excluded from the definition of solid waste by this subsection.

(b) DEFINITION OF RELEASE.—(1) The term 'release' as used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §

9601 et seq.), does not include the deposit or presence on an operational range of any military munitions, including unexploded ordnance, and the constituents thereof, that are or have been deposited thereon incident to their normal and expected use, and remain thereon.

(2) Paragraph (1) shall not apply to military munitions, including unexploded ordnance, and constituents thereof, that—

(A) migrate off an operational range;

(B) are deposited off of an operational range; or

(C) remain on the range once the range ceases to be an operational range.

(3) Notwithstanding the provisions of paragraph (1), the authority of the President under section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, to take action because there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance includes the authority to take action because of the deposit or presence on an operational range of any military munitions, including unexploded ordnance, or the constituents thereof that are or have been deposited thereon incident to their normal and expected use and remain thereon.

(c) DEFINITION OF CONSTITUENTS.—For purposes of this section, the term 'constituents' means any materials originating from military munitions, including unexploded ordnance, explosive and non-explosive materials, and emission, degradation, or breakdown products of such munitions.

(d) CHANGE IN RANGE STATUS.—Nothing in this section affects the legal requirements applicable to military munitions, including unexploded ordnance, and the constituents thereof,

that have been deposited on an operational range, once the range ceases to be an operational range.

(e) Nothing in this section affects the authority of the Department to protect the environment, safety, and health on operational ranges.

Section-by-Section Analysis

These sections address application of the Clean Air Act, the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act), and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to military readiness activities.

Both sections are elements of the Readiness and Range Preservation Initiative, originally submitted by the Department of Defense in 2002. The proposed language has been widely reviewed by other interested Federal agencies, states, and private entities.

SEC. ___ . STREAMLINING MILITARY CONSTRUCTION TO REDUCE FACILITY ACQUISITION AND CONSTRUCTION CYCLE TIME.

(a) THRESHOLDS.—(1) Section 2805 of title 10, United States Code, is amended as follows:

(A) in subsection (a)(1) by striking "$1,500,000" and inserting "$3,000,000" and striking the last sentence,

(B) in subsection (b)(1) by striking "$750,000" and inserting "$2,000,000", and

(C) in subsection (c)(1), by striking everything following "not more than" through the period at the end of subparagraph (B) and inserting "$2,000,000.".

(2) Section 2811(b) of title 10, United States Code, is amended by striking "$5,000,000" and inserting "$10,000,000".

(b) CONGRESSIONAL NOTIFICATION.—(1) Subsection (b) of section 2803 of title 10, United States Code, is amended by striking its last sentence.

(2) Subsection (b) of section 2804 of title 10, United States Code, is amended by striking it last sentence.

(3) Section 2805(b)(1) of title 10, United States Code, is amended by inserting at its end—"This paragraph shall not apply to unspecified minor military construction projects using funds made available for operation and maintenance in accordance with subsection (c).".

(4) Section 2807 of title 10, United States Code, is amended as follows:

(A) by striking subsection (b) and renumbering subsections (c) and (d) as (b) and (c) respectively; and

(B) in subsection (b) as renumbered, by striking "(1)" and by striking ", and (2)"

and everything that follows up to the period at the end of the sentence.

(5) Section 2813(c) of title 10, United States Code, is amended by striking "30-day" and inserting "14-day" and by striking "21-day" and inserting "7-day".

(6) Subsection (b) of section 2854 of title 10, United States Code, is amended by striking its last sentence.

(c) COST VARIATIONS.—Section 2853(a) of title 10, United States Code, is amended by striking "or 200 percent of the minor construction project ceiling specified in section 2805(a)(1), whichever is less,".

(d) CODIFICATION OF COMMITTEE LANGUAGE.—Subsection (e) of section 2811 of title 10, United States Code, is amended by adding the following at its end–

"A repair project and a military construction project may be combined so long as, taken together, they result in a complete and usable facility or a complete and usable improvement to an existing facility.".

Section-by-Section Analysis

This section would revise multiple administrative requirements associated with unspecified minor military construction to streamline the presently burdensome process and reduce cycle time. Increasing the cost limits for minor construction projects would allow the Department of Defense (DoD) to respond more effectively to urgent and unforeseen requirements with properly sized and scoped facilities and reduce the recapitalization rate faster by allowing facility projects under $3,000,000 to be funded with an unspecified minor construction account instead of the normal military construction programming and budgeting process. For operations and maintenance funded projects the limit will be raised to $2,000,000.

Additionally, existing Congressional notification and wait requirements slow the progress of these minor construction projects considerably.

This section would allow DoD to increase the appropriated amount of a military construction project by the lesser of 25 percent of the amount appropriated or 200% of the unspecified military construction threshold, which currently stands at $1.5 million. It would utilize 25% of the appropriated amount as the sole threshold for determining whether a cost variation notification is required. Limiting the requirement for a cost variation to 25% of the

project's appropriated amount would reduce the frequency of cost variation notifications and would create a threshold that reacts to local economic factors by using the project cost as the baseline for calculating the cost variation limit. This would allow the construction agents to manage limited cost growth on military construction projects more effectively and efficiently.

Consistent with Congress's expressed intent, this section would allow the combination of repair and military construction projects that alone would not result in a complete and usable facility but taken together would do so. This is necessary because some larger repair projects contain small portions that constitute construction. Rather than defining the entire project as construction—often then exceeding military construction limitations—it is more efficient to allow the two aspects of the effort to be combined to produce a complete and usable project.

Taken together, the revisions of the multiple administrative requirements contained in this section would help DoD in its ongoing quest to streamline the process and expedite actual construction of unspecified minor military construction projects. Such projects often take as long as 5 years from identification of requirements to completion of facilities ready for occupancy.

SEC. ___ . LIABILITY PROTECTION FOR VOLUNTEERS WORKING IN THE MARITIME ENVIRONMENT.

Section 1588(d)(1)(B) of title 10, United States Code, is amended to read as follows:

"(B) Section 2733 of this title, chapter 171 of title 28, and, in the case of volunteers aboard United States Navy sailing vessels engaged in training naval personnel or competition involving naval personnel, chapters 20 and 22 of title 46 (relating to claims for damages or loss).".

Section-by-Section Analysis

This section would remedy an inadvertent oversight in existing law by extending to volunteers working in the maritime training environment the same status and legal protections presently available to volunteers working on land-based assignments.

Existing law allows the Secretaries of the Military Departments to use volunteers for a variety of services. The Secretary of the Navy accepts voluntary services for the purposes of sailing and other water-related activities. Qualified volunteers educate and train U.S. Naval Academy students and Naval Reserve Officer Training Corps students.

Presently, these volunteers are considered Federal employees only for the purposes of claims for damages and loss arising under the Military Claims Act and the Federal Tort Claims Act. Claims for damages or injury that arise from activities falling within admiralty and maritime jurisdiction, however, only may be brought under the Public Vessels Act and the Suits in Admiralty Act. Under existing law, a volunteer would not be considered a Federal employee for purposes of claims brought under the Public Vessels Act and the Suits in Admiralty Act. Instead, the determination of whether that volunteer is individually liable for torts committed within admiralty and maritime jurisdiction would be subject only to common law agency principles.

This section would ensure that volunteers are considered Federal employees for the purposes of claims for damages and loss falling within admiralty and maritime jurisdiction. It would provide volunteers with greater protection and certainty, and would permit the Secretary of the Navy to make greater use of volunteers.

SEC. ___ . PROFESSIONAL ACCREDITATION OF MILITARY DENTISTS.

Section 1077(c) of title 10, United States Code, is amended—

(1) by striking "A" and inserting "(1) Except as specified in paragraph (2), a"; and

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

"(2) Dependent children aged 12 or younger who are enrolled in a dental plan under section 1076a of this title may be treated in military graduate dental education programs if—

"(A)(i) treatment of pediatric dental patients is required to comply with American Dental Association accreditation standards; or

"(ii) pediatric dental training is required to enable dentists to provide dental care for children accompanying their sponsor outside of the United States; and

"(B) there are insufficient numbers of non-enrolled eligible beneficiaries to meet these training requirements.

"Authority to treat dependent children enrolled in a dental plan will be limited to treatment by post-graduate students in dental treatment facilities with American Dental Association accredited post-graduate dental education programs. The total number of children enrolled in a dental plan who are treated by the military departments under this paragraph will not exceed 2000 in any fiscal year.".

Section-by-Section Analysis

This section would maintain the viability of the military departments' dental training programs. If a select number of pediatric patients are not available for critical training programs, the programs will lose accreditation and must close.

American Dental Association accreditation standards for military dental training programs require treatment of pediatric patients to meet requirements for the delivery of authorized dental care to children accompanying sponsors at locations outside the United States.

Currently, to meet training and accreditation standards, two major facilities per military department (six total) offering oral and maxillofacial surgery residencies and one Triservice Orthodontic Residency Program for all three military departments see children under the age of 12. This population group is mandated in the accreditation requirements for these programs. This section would allow the military departments to treat this specific category of patients. Estimates of patient load requirements to sustain training facilities are between 500 and 600 patients annually for each military department. All of the training programs combined saw fewer than 2,000 children aged 12 and under in Fiscal Year 2002, roughly 0.5 percent of the total number of children-beneficiaries under the age of 12. Hence a minuscule group of beneficiaries is all that is needed to maintain these training programs.

If these seven major training programs in oral surgery and orthodontics, by law, cannot see this population of children, they cannot remain accredited, and must close in the near future. The military programs provide the major source of these specialists for active duty care. Orthodontists and oral surgeons are among the highest paid dental specialists in the civilian community and are almost impossible to recruit. Hence, they must be trained in military dental residency training programs to meet readiness requirements.

Loss of accreditation and possible closure of post-graduate education programs that require treatment of pediatric patients would have a devastating effect on the recruitment and retention of dental officers and the ability of the military departments to ensure the oral health and readiness of active duty service members.

SEC. ___ . REQUIREMENT FOR OWNERS OR OPERATORS PROPOSING NEW SANITARY MUNICIPAL SOLID WASTE LANDFILLS TO PROVIDE NOTICE TO ADJACENT MILITARY AIRFIELDS AND ALLOW COMMENT IN THE SOLID WASTE PERMITTING PROCESS.

(a) IN GENERAL.—Owners or operators proposing to establish a new sanitary municipal solid waste landfill or lateral expansion of any sanitary municipal solid waste landfill within a five-mile radius of a military airfield must, within a reasonable time, notify the commanding officer of that military airfield of the proposed new landfill or expansion of a landfill. The Secretary concerned shall conduct a compatibility study to determine the extent of any adverse impacts on aircraft operations and navigable airspace. The Secretary shall issue a report on the findings of the compatibility study. Any report on a compatibility study conducted pursuant to this section shall be considered in the permitting process required by the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and its implementing regulations.

(b) REGULATIONS.—The Administrator of the Environmental Protection Agency shall, within one year of the date of enactment of this Act, publish a note in the regulations governing sanitary municipal solid waste landfills to inform owners and operators of sanitary municipal solid waste landfills of their obligations under this section.

(c) DEFINITIONS.—(1) The term "sanitary municipal solid waste landfill" has the meaning given that term in section 1004(26) of the Solid Waste Disposal Act (42 U.S.C. 6903(26)) Title 40 of the Code of Federal Regulations (40 CFR Part 258.2).

(2) The term "military airfield" means an airfield or air station that is under the jurisdiction, custody, or control of the Secretary concerned.

(3) The term “Secretary concerned” has the meaning given that term in section 101(a)(9) of title 10, United States Code.

Section-by-Section Analysis

This section would require an owner or operator proposing the construction or expansion of a sanitary landfill (municipal solid waste landfill) within a five-mile radius of a military airfield to provide notice to the commanding officer of that military airfield and the opportunity for the Secretary of the military department or the Secretary of the Department of Homeland Security, as the case may be, to make compatibility recommendations in the environmental permitting process. Such municipal solid waste facilities attract birds that may pose a flight safety hazard to military aircraft. Currently, a similar notice requirement is located in U.S. Environmental Protection Agency regulation 40 C.F.R. § 258.10; however, this requirement applies only to public use airports.

Aircraft bird strikes can result in tragic mishaps, such as the deaths of 24 airmen on a four-engine U.S. military plane that crashed in 1995 at Elmendorf Air Force Base, Alaska. According to the Federal Aviation Administration (FAA), an estimated 87 percent of the collisions between wildlife and civil aircraft occurred on or near airports when aircraft were less than 2,000 feet above ground level. Collisions with wildlife at these altitudes are especially dangerous because aircraft pilots have minimal time to recover. Databases managed by the FAA and the Air Force show more than 54,000 civil and military aircraft reported strikes with wildlife from 1990 to 1999 (FAA AC No. 150/5200-34).

SEC. ___ . IMPROVED INVOLUNTARY ACCESS TO RESERVE COMPONENT MEMBERS FOR ENHANCED TRAINING.

(a) RESERVE COMPONENTS GENERALLY.—Section 12301 of title 10, United States Code, is amended—

(1) in subsection (a), by striking "(other than for training)";

(2) in subsection (c)—

(A) by inserting "as provided in subsection (a)" after "be ordered to active duty"; and

(B) by striking "(other than for training)" each place it occurs; and

(3) in subsection (e), by striking "(other than for training)" and inserting "as provided in subsection (a)".

(b) READY RESERVE.—Section 12302 of such title is amended—

(1) in subsection (a), by striking "(other than for training)"; and

(2) in subsection (c), by striking "(other than for training)".

(c) ORDER TO ACTIVE DUTY OTHER THAN DURING WAR OR NATIONAL EMERGENCY.—Section 12304(a) of such title is amended by striking "(other than for training)".

(d) STANDBY RESERVE.—Section 12306 of such title is amended—

(1) in subsection (a), by striking "active duty (other than for training) only as provided in section 12301 of this title" and inserting "active duty as provided in subsection (b) and section 12301 of this title"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "(other than for training)" and inserting

"as provided for in section 12301(a)"; and

(B) in paragraph (2), by striking "(other than for training)" and inserting "as provided for in section 12301(a)".

Section-by-Section Analysis

This section would provide the Department of Defense (DoD) with improved access to Reserve component (RC) personnel for the purpose of individual or collective skill training required to meet deployment standards and timelines for emergent missions or contingencies.

Existing law states that a Reservist may not be ordered to active duty for the purpose of training without the member's consent. Although members may be ordered to active duty to attend related training en route to deployment, this approach adds to post-mobilization training time, disrupts unit cohesion, and usually results in overwhelming the training pipeline. A more phased approach is desirable and achievable.

Existing law governing RC mobilization and training was fashioned years ago during the height of the Cold War, when our nation had time to mobilize and train large numbers of RC forces to prosecute known threats. This construct now is untenable given that the new strategic threat environment requires more immediate responses to less predictable missions and contingencies.

National strategy policy presently calls for swift, decisive, and sometimes pre-emptive action that requires tailored forces organized and trained for emergent and specific missions and tasks. Involuntary activation of Reserve component personnel in certain cases is essential to accomplish required training prior to mobilization. This section would adopt an agile, flexible "train, mobilize and deploy" approach that provides an additional tool to facilitate rapid activation, training and tailoring of forces to meet emergent missions, and the rapid delivery of capabilities to counter the threat.

This section would not overly burden individuals, family or employers and it would allow for timely, planned training. It also would minimize the disruptive effects of last-minute personnel reassignments and its cascading effects. By promoting more efficient use of training resources and reducing the time required for RC forces to meet readiness requirements for deployment, this proposal would help ensure that Combatant Commanders have access to fully trained and mission ready forces for the entire period of emergent missions or contingencies.

This section is narrowly tailored to ensure that DoD only activates members to support emergent mission requirements during time of war or other national emergency.

SEC. ___ . MILITARY PERSONNEL DEMONSTRATION PROJECTS.

(a) IN GENERAL.—Chapter 3 of title 10, United States Code, is amended by inserting after section 129c the following new section:

"**§ 129d. Military personnel demonstration projects**

"(a) AUTHORITY.—As provided in this section, the Secretary of Defense, in consultation with the Director of the Office of Management and Budget, may conduct and evaluate demonstration projects regarding the military personnel system. Subject to the provisions of this section, this authority shall not be limited by any lack of specific authority under this title or title 37 to take the action contemplated, or by any provision of this title or any rule or regulation prescribed under this title which is inconsistent with the action, including any law or regulation relating to the methods of—

"(1) establishing qualification requirements for, recruitment for, and appointment to positions;

"(2) determining requirements and compensating personnel;

"(3) assigning, reassigning, separating or promoting personnel;

"(4) providing incentives to personnel, including the provision of group or individual incentive bonuses or pay;

"(5) involving military members in personnel decisions; and

"(6) reducing requirements.

"(b) PLANS.—Before conducting or entering into any agreement or contract to conduct a demonstration project, the Secretary shall—

"(1) develop a plan for such project which describes its purpose, the personnel

groups to be covered, the project itself, its anticipated outcomes and the method of evaluating the project;

"(2) at least 30 days in advance of the date a project is to take effect, provide notification of the proposed project—

"(A) to personnel who are likely to be affected by the project; and

"(B) to each House of the Congress; and

"(3) provide each House of the Congress with the final version of the plan and a summary of the results of each project.

"(c) WAIVER.—No demonstration project under this section may provide for a waiver of this title or title 37 except with the approval of the Secretary.

"(d) LIMITATIONS.—(1) Each demonstration project shall—

"(A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

"(B) terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond the date to the extent necessary to validate the results of the project.

"(2) Not more than 10 active demonstration projects may be in effect at any time.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"129d . Military personnel demonstration projects.".

Section-by-Section Analysis

This section would allow the Secretary of Defense to conduct demonstration projects

regarding the military personnel system. The Department of Defense must meet quickly emerging, asymmetric threats and needs flexibility to align its human resources more efficiently. The Secretary could use these demonstration projects to test innovative force structure ideas.

The Secretary of Defense would institute the demonstration projects involving only small groups of military personnel in order to test programs designed to optimize manpower and financial resources, including possible alternate career paths for small groups of officers aimed at improving retention.

SEC. ___ . ONE-YEAR EXTENSION OF ARMY COLLEGE FIRST PROGRAM.

Section 573(h) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 113 Stat. 623; 10 U.S.C. 513 note), as amended, is amended by striking "September 30, 2004" and inserting "September 30, 2005".

Section-by-Section Analysis

This section would extend the Army College First Program for one year through the end of Fiscal Year 2005. Section 573 of the National Defense Authorization Act for Fiscal Year 2000 requires the Secretary of Army to submit to Congress a report that assesses the value of the College First Program. The Department of Defense expects to submit the report to Congress in the near future. This section would allow the Army to continue to compete in a highly challenging labor market while the Administration reviews the RAND report before deciding whether to expand the pilot across all military departments.

SEC. ___ . ONE-YEAR EXTENSION OF BONUS AND SPECIAL PAY AUTHORITIES FOR CERTAIN HEALTH CARE PROFESSIONALS.

(a) NURSE OFFICER CANDIDATE ACCESSION PROGRAM.—Section 2130a(a)(1) of title 10, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(b) ACCESSION BONUS FOR REGISTERED NURSES.—Section 302d(a)(1) of title 37, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(c) INCENTIVE SPECIAL PAY FOR NURSE ANESTHETISTS.—Section 302e(a)(1) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(d) ACCESSION BONUS FOR DENTAL OFFICERS.—Section 302h(a)(1) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(e) ACCESSION BONUS FOR PHARMACY OFFICERS.—Section 302j(a) of such title is amended by striking "September 30, 2004" and inserting "December 31, 2005".

Section-by-Section Analysis

This section would extend for one year, until December 31, 2005, accession and retention incentives for certain nurses, dentists and pharmacy officers. Experience has revealed that manning levels in the nursing, dental and pharmacy fields would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing replacements. The Department of Defense and Congress long have recognized the cost-effectiveness of these incentives in supporting effective personnel levels within these specialized fields.

SEC. ___ . ONE-YEAR EXTENSION OF SPECIAL ENLISTMENT AND RETENTION BONUSES AND SPECIAL PAYS.

(a) AVIATION OFFICER RETENTION BONUS.—Section 301b(a) of title 37, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(b) REENLISTMENT BONUS FOR ACTIVE MEMBERS.—Section 308(g) of such title is amended by striking "December 31, 2004" and inserting " December 31, 2005".

(c) ENLISTMENT BONUS.—Section 309(e) of such title is amended by striking "December 31, 2004" and inserting " December 31, 2005".

(d) RETENTION BONUS FOR MEMBERS QUALIFIED IN A CRITICAL MILITARY SKILL.—Section 323(i) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(e) ACCESSION BONUS FOR NEW OFFICERS IN CRITICAL SKILLS.—Section 324(g) of such title is amended by striking "December 31, 2004" and inserting " December 31, 2005".

Section-by-Section Analysis

This section would extend for one year, until December 31, 2005, accession and retention bonuses for certain military personnel possessing critical skills, including occupations that are arduous or that feature extremely high training and replacement costs. Experience shows that retention of such personnel would be unacceptably low without these incentives, which in turn would generate the substantially greater costs associated with recruiting and developing replacements. The Department of Defense and the Congress long have recognized the cost-effectiveness of financial incentives in supporting effective staffing in such critical military skills.

SEC. ___ . ONE-YEAR EXTENSION OF BONUSES AND SPECIAL PAYS FOR NUCLEAR OFFICERS.

(a) SPECIAL PAY FOR NUCLEAR-QUALIFIED OFFICERS EXTENDING PERIOD OF ACTIVE SERVICE.—Section 312(e) of title 37, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(b) NUCLEAR CAREER ACCESSION BONUS.—Section 312b(c) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(c) NUCLEAR CAREER ANNUAL INCENTIVE BONUS.—Section 312c(d) of such title is amended by striking "December 31, 2004"' and inserting "December 31, 2005".

Section-by-Section Analysis

This section would extend for one year, through December 31, 2005, accession and retention incentives for nuclear qualified officers, an occupation that features extremely high training costs. These incentives would help retain such officers, which is much more cost-effective than finding and training new accessions.

Nuclear officer accessions and retention continue to be below that required to sustain the existing force structure. Over the past three years, submarine officer retention has been 28 percent, 28 percent, and 34 percent for Fiscal Years 2000, 2001, and 2002, respectively, well below the steady state requirement of 38 percent. Nuclear trained surface warfare officers have experienced similar retention challenges with 20 percent, 19 percent, and 18 percent for Fiscal Years 2000, 2001, and 2002, respectively, again well below the steady state requirement of 24 percent. Although Fiscal Year 2003 retention is improving for the submarine force, higher retention of 43 percent will be required in the future to compensate for recent deficient accession rates.

SEC. ___. FOIA EXEMPTION FOR CERTAIN PRODUCTS GENERATED BY COMMERCIAL SATELLITES.

(a) PROHIBITION FROM DISCLOSURE UNDER FREEDOM OF INFORMATION ACT.-Data, imagery, and derived products generated by commercial remote sensing satellite systems that are prohibited from sale to customers other than the United States Government and U.S. Government-approved customers under the terms of an operating license issued under Chapter 82 of title 15, United States Code (commonly referred to as the Land Remote Sensing Policy Act) shall not be made available under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act).

(b) REQUIREMENT FOR SAFEGUARDING.-All Federal departments and agencies shall safeguard information described in subsection (a) commensurate with the sensitivity of the information concerned.

(c) APPLICATION OF STATE OR LOCAL DISCLOSURE LAWS.-Information subject to this section that a Federal department or agency has provided to state and local authorities shall not be made available to the general public pursuant to any State or local law requiring disclosure of information or records.

Section-by-Section Analysis

This section would exempt data, imagery, and derived products generated by commercial satellites and under license for the exclusive use of the U.S. Government from disclosure to the general public under the Freedom of Information Act (FOIA).

The U.S. Government often enters exclusive license agreements with commercial satellite operators that prohibit these companies from selling certain unclassified data and imagery except to the U.S. Government or approved customers, but the FOIA subsequently defeats the purpose of these exclusive license agreements by mandating disclosure to the general public upon request. Under existing law, there is no adequate FOIA exemption for such

unclassified data and imagery. The U.S. Government prefers to keep this commercial data and imagery unclassified, because it is more simple to share data and imagery with coalition partners in contingency operations and with state and local officials for purposes of disaster relief and homeland security operations. Keeping the data and imagery unclassified also relieves commercial remote sensing operators from the detailed security requirements for safeguarding classified information that otherwise would apply to their communications links, personnel, processing facilities, and archives.

This section also would exempt covered data and imagery from mandatory release by state or local authorities under their own "freedom of information" or "sunshine in government" statutes. This section is not intended to prohibit the U.S. Government from sharing with its contractors and affiliated researchers any data imagery.

SEC. ___. PROTECTION OF INFORMATION REGARDING WEAPONS OF MASS DESTRUCTION.

(a) PROHIBITION FROM DISCLOSURE UNDER FREEDOM OF INFORMATION ACT.—Information concerning weapons of mass destruction, as defined in subsection (d) of this section, shall not be disclosed under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act). Any information controlled under the Atomic Energy Act of 1954, as amended, is exempt from the provisions of this Act.

(b) REQUIREMENT FOR SAFEGUARDING.—All Federal departments and agencies shall safeguard information concerning weapons of mass destruction commensurate with the sensitivity of the information concerned.

(c) APPLICATION OF STATE OR LOCAL DISCLOSURE LAWS.—Information subject to this section that a Federal department or agency has provided to state and local authorities shall not be made available pursuant to any State or local law requiring disclosure of information or records.

(d) Definitions.—(1) "Weapon of mass destruction" has the same meaning as given in Section 2302 of title 50, United States Code;

(2) "Information concerning weapons of mass destruction" means information that—

(A) would assist in developing, producing, or using weapons of mass destruction or in evading the detection or the monitoring of the development, production, use, or presence of weapons of mass destruction; or

(B) would disclose a vulnerability to the effects of a weapon of mass destruction.

(3) Examples of such information could include, but are not limited to, formulas and design descriptions of lethal and incapacitating materials; maps, designs, security/emergency response plans, and vulnerability assessments for facilities containing weapons of mass destruction materials; studies of the effects and possible methods of weaponization of weapons of mass destruction materials; design details, capabilities, and application of detection, surveillance, countermeasures, and measurement equipment or plans; United States Government evaluations of response plans of state and local governments; and evaluation of weapons of mass destruction dispersal systems or methods.

Section-by-Section Analysis

This section would exempt certain information concerning weapons of mass destruction from disclosure to the general public under the Freedom of Information Act (FOIA). It would also require U.S. Government agencies that possess or control such information to safeguard such information commensurate with its sensitivity, and it would preempt contrary State or local laws.

Individuals, corporations, universities, and State and local governments operate research programs, chemical plants, nuclear power stations, medical treatment facilities, and other activities that generate information that could assist a terrorist or other adversary to make or use a weapon of mass destruction. Such information created by or for the United States Government can be classified under current authorities, when appropriate, and certain unclassified information about U.S. Government programs may be properly withheld from disclosure under exemption (b)(2) of FOIA. However, exemption (b)(2) does not provide protection against release by the U.S. Government under FOIA of unclassified information about non-U.S. Government facilities and activities that may be of significant value to terrorists or other adversaries seeking to attack U.S. interests by chemical, biological, radiological, or nuclear means. In most cases, information about non-U.S. Government facilities or activities will not fall within any current FOIA exemption, even though its release might create a significant risk to national security. This section would provide statutory protection against a requirement to release such information under FOIA and similar State and local laws.

SEC. ___. BARTER AGREEMENTS WITH COMMERCIAL FIRMS TO EXCHANGE SELECTED PERSONAL PROPERTY ITEMS.

(a) BARTER AUTHORITY.—The Secretary of the Army may enter into barter agreements with commercial firms to exchange or sell selected Army personal property and apply the exchange allowance or proceeds from sale in whole or in part payment for the acquisition of authorized personal property or repair (to include remanufacture) of existing personal property.

(b) SELECTION OF PROPERTY.—The Secretary shall select non-excess personal property under the control of the Department of the Army that is eligible for barter under this section from Department of Defense supply classes VII and IX that does not require demilitarization when provided to the public. The Secretary shall prescribe regulations to implement this section and ensure that property is selected for barter on a business case analysis. A letter describing the personal property selected for barter under this section shall be sent to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) SELECTION OF AGREEMENTS.—The Secretary or the Secretary's designee shall publish public notice of the opportunity for barter transactions under this section and seek offers for barter agreements. The Secretary or the Secretary's designee shall select from the offers received the barter agreement with the best consideration to the Army for the personal property to be exchanged.

(d) PROCEEDS.—Notwithstanding section 3302(b) of title 31, United States Code, all proceeds from the sale of personal property under this section shall be available

during the fiscal year in which the property was sold and for three fiscal years thereafter for obligation for the acquisition of authorized personal property or repair (to include remanufactures) of personal property. Any sales proceeds not applied to purchase or repair transactions during this time period shall be deposited in the United States Treasury as miscellaneous receipts.

(e) LIMITATIONS.—(1) The personal property to be acquired under this section must be authorized by law.

(2) Proceeds from exchange of one class of personal property shall be used for the acquisition or repair of the same class of personal property.

(f) PERIOD OF AUTHORITY.—The authority to enter into agreements under subsection (a) and to make exchanges under any such agreement is effective during the 3 year period beginning on the date of October 1, 2004.

(g) FINAL REPORT.—Not later than 1 January 2008, the Secretary of the Army shall submit to the congressional defense committees a report containing the Secretary's evaluation of the program savings from the exchange authority provided under this section.

Section-by-Section Analysis

This section would allow the Secretary of the Army to conduct a five-year pilot program to barter non-excess Class VII (major end items) and IX (repair parts) inventory for more modern equipment or the repair of current equipment.

The Department of Defense (DoD) divides supplies and equipment into ten categories of materiel. Class VII, major end items, is a final combination of end products that is ready to use, including tanks, aircraft, communication equipment, missiles, weapon systems, mobile machine shops, vehicles, gas masks, and launchers. Major end items represent a low percentage of the total line items of DoD's inventory, but a high percentage of its total dollar value. Class IX, repair parts, consists of any part, subassembly, assembly, or component required for installation in the maintenance or repair of an end item, subassembly, or component. These parts support the

maintenance and repair functions performed throughout DoD on all materiel except medical materiel.

This section would allow the Department of the Army to barter with commercial firms certain major end items and repair parts in exchange for the repair of existing property or the acquisition of new items within the category of materiel. Any proceeds not applied to purchase or repair transactions during the same fiscal year, or the three subsequent fiscal years, would be deposited in the United States Treasury as miscellaneous receipts.

Congress previously granted similar authority to the Department of the Navy. Section 819 of the National Defense Authorization Act for Fiscal Year 1999 authorized the Secretary of the Navy to enter into barter agreements to convey trucks and other tactical vehicles in exchange for the repair and remanufacture of ribbon bridges.

This section would help transform the Joint Force by producing lighter, more agile, and easily deployable military units. Monies that ordinarily would be lost through disposal of items could be retained and used to obtain modern equipment needed for transformation. The proposal will streamline Department of Defense processes by decreasing the time necessary to acquire new equipment and help eliminate unneeded inventory in a more expedient manner.

SEC. ___ . RETENTION OF FEES FROM INTELLECTUAL PROPERTY LICENSES.

(a) IN GENERAL.— Chapter 165 of title 10, United States Code, is amended by adding at the end the following new section:

" § 2787. Retention of Fees from Licensing of Intellectual Property of the Military Departments.

"(a) AUTHORITY TO RETAIN FEES.— (1) Under regulations prescribed by the Secretary of Defense, the Secretary concerned may license trademarks, service marks, certification marks, and collective marks owned or controlled by a military department and retain and expend fees received from such licensing.

"(2) The terms "trademarks, service marks, certification marks, and collective marks" have the meaning given those terms in section 45 of the Trademark Act of 1946 (15 U.S.C. 1127).

"(b) SECRETARIAL DESIGNATION.—The Secretary concerned shall designate those trademarks, service marks, certification marks, and collective marks the licensing of which will generate fees to be retained under this section.

"(c) USE OF FEES.—(1) Funds received from licensing under this section shall be used for the expenses incurred by the department for securing trademark registrations and operating the licensing program under this section.

"(2) During any fiscal year, if funds in the account exceed the anticipated expenses of the program during such year, the Secretary concerned may designate those funds as excess and expend them as provided in paragraph (3).

"(3) Not more than fifty percent of any such excess funds shall be available for military

personnel recruiting and retention activities of the department. The remainder of such funds shall be available for morale, welfare, and recreation activities of the department.

"(4) Funds in the account shall remain available for two years after the end of the fiscal year in which the funds were received.".

(b) CLERICAL AMENDMENT.— The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2787. Retention of fees from licensing of intellectual property of the military departments"

Section-by-Section Analysis

This section would allow the Secretaries of the Military Departments to establish programs to license trademarks and insignias, and to retain associated fees. The Trademark Act (15 U.S.C. 1051 et. seq.) authorizes agencies of the United States Government to register trademarks with the U.S. Patent and Trademark Office. The Department of the Army alone has over 130 registered trademarks. The U.S. Post Office and the Department of Commerce also are heavily involved in trademark protection and licensing.

There is strong consumer demand for bumper stickers, decals, clothing and other types of products bearing the reproduction of trademarks and insignias owned by the military departments. For example, trademark licensing has played a major role at the military academies in providing branded product to their students, alumni and fans to allow them to display their school spirit and support.

It also appears there is strong consumer demand for branded products bearing the trademarks and insignias of the various military departments. The Department of Defense (DoD) would prefer to provide the public with an opportunity to purchase branded military products that are reasonably priced and of good quality, and at the same time prevent the use of its trademarks
on products that are poorly manufactured or that reflect poorly on the military departments or their members. A strong trademark registration program also would help prevent misuse or abuse of those trademarks on the Internet.

Fees received from the trademark licenses would be used to cover the costs incurred in securing trademark registrations. Any funds in excess of such costs would be available for military personnel recruiting and retention activities, as well as morale, welfare, and recreation activities. DoD spends millions of dollars annually to recruit and retain personnel. A strong brand licensing program would provide direct support to recruitment and retention by creating

additional awareness of the military brands and the organizations they represent.

SEC. ___ . REVISED ACCESSION BONUS FOR NURSES.

Section 302d(a)(1) of title 37, United States Code, is amended by striking "four" and inserting "three".

Section-by-Section Analysis

This section would allow the Department of Defense to pay an accession bonus to nurses who accept a three-year service commitment. Existing law requires nurses to commit to four years of service before they may receive the bonus.

The national shortage of nurses coupled with pressure from many private healthcare organizations offering signing bonuses for one- and two-year commitments has reduced the effectiveness of the nurse accession bonus to attract qualified candidates. To illustrate, the Department of the Air Force has not achieved its recruitment goal for four consecutive years, falling short by 29 percent or more each year. As a result, endstrength for nurses is 104 below target with several critical specialties undermanned. This dire situation soon could impact the quality of patient care.

The Department of the Air Force has attacked the shortage of nurses problem aggressively by enhancing incentive programs; Reserve Officer Training Corps scholarships for nursing students have been increased from 25 to 50 per year; the cap on enlisted commissions has been eliminated; the number of Nurse Transition Program (non-experienced nurses) quotas for recruiting has been increased from 90 to 150; and it has established a loan repayment program. The maximum age for accessing several critical specialties has been increased from 40 to 47 years, and an additional 12 months constructive service credit has been given to those in critical fields.

This section would offer another important tool to recruit nurses.

SEC. ___ . INCREASE IN MAXIMUM MONTHLY RATE AUTHORIZED FOR HARDSHIP DUTY PAY.

(a) INCREASE.—Section 305(a) of title 37, United States Code, is amended by striking "$300" and inserting "$750".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2004.

Section-by-Section Analysis

This section would increase the statutory maximum payable in Hardship Duty Pay (HDP) from $300 to $750 per month.

Sections 606 and 619 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 117 Stat. 1392) increased Imminent Danger Pay (IDP) by $75 per month and the Family Separation Allowance (FSA) by $150 per month through December 31, 2004. The Department of Defense (DoD) is assessing whether these increased pays should be extended further. Should DoD determine that the present increases to IDP and FSA should not be made permanent, DoD would prefer to substitute an additional $225 in HDP to members serving in Operations Iraqi Freedom and Enduring Freedom in combat areas to ensure they receive a steady income stream. Increasing the statutory cap to $750 would give DoD an important tool to recognize troops serving under the most arduous of circumstances and to meet future needs as they emerge.

SEC. ___ . CHANGE IN PERSONNEL STRENGTH ACCOUNTING.

(a) IN GENERAL.—Section 115 of title 10, United States Code, is amended—

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

"(a) ACTIVE-DUTY AND SELECTED RESERVE AVERAGE STRENGTHS TO BE AUTHORIZED BY LAW.—Congress shall authorize personnel strength levels for each fiscal year for each of the following:

"(1) The average strength for each of the armed forces (other than the Coast Guard) for:

"(A) active-duty personnel (other than members of a Reserve component described in subsection (b)(1)(B)) who are to be paid from funds appropriated for active-duty personnel, and

"(B) active-duty personnel and full-time National Guard duty personnel who are to be paid from funds appropriated for Reserve personnel and who perform duties in connection with organizing, administering, recruiting, instructing, or training the Reserve components of the armed forces as prescribed in section 12310 of this title.

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

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively;

(3) by inserting after subsection (a) the following new subsection (b):

"(b) CERTAIN RESERVES ON ACTIVE DUTY TO BE AUTHORIZED BY LAW.—(1) Congress

shall authorize the average strength for members of a Reserve component on active duty (other than for training) or full-time National Guard duty (other than for training) who are to be paid from funds appropriated for—

"(A) Reserve personnel, other than as authorized under subsection (a)(1); or

"(B) active duty personnel, to include funds reimbursed to Reserve appropriations for Reserve or National Guard personnel to perform active duty or full-time National Guard duty, provided—

"(i) the period of duty is for three years or less; and

"(ii) the cumulative period of active duty (other than for training) and full-time National Guard duty (other than for training) performed by the member in the previous 1460 days is less than 1095 days.

"(2) In determining the cumulative period of active duty under paragraph (1)(B)(ii), the period of active duty served by a member who has not previously served in the Selected Reserve of the Ready Reserve, or who is called or ordered to active duty under an authority listed in subsection (f), shall not be included.";

(4) in subsection (c), as redesignated by paragraph (2), by striking "end strength" both places it appears and inserting "average strength";

(5) in subsection (d), as redesignated by paragraph (2)—

(A) by striking "END STRENGTHS" in the heading and inserting "AVERAGE STRENGTHS"; and

(B) by striking "end strength" both places it appears and inserting "average strength";

(6) in subsection (e), as redesignated by paragraph (2)—

(A) by striking "END-OF-QUARTER" in the heading;

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

"(1) The Secretary of Defense shall prescribe and include in the budget justification documents submitted to Congress in support of the President's budget for the Department of Defense for any fiscal year the Secretary's proposed end-of-quarter strengths for each quarter of the fiscal year for which the budget is submitted, in addition to the Secretary's proposed fiscal-year average strengths for that fiscal year. Such strengths shall be submitted for each category of personnel required to be authorized by law under subsection (a), (b) or (d). The Secretary shall ensure that resources are provided in the budget at a level sufficient to support the average strengths as submitted.";

(C) by striking paragraph (2);

(D) by redesignating paragraph (3) as paragraph (2); and

(E) by amending paragraph (2), as redesignated by subparagraph (D), to read as follows:

"(2) Whenever the Secretary determines—

"(A) that the average-strength level for a fiscal year under subsection (a), (b) or (d) will not be achieved; and

"(B) that this failure will adversely affect national security, "the Secretary shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.";

(7) by amending subsection (f), as redesignated by paragraph (2), to read as follows:

"(f) AUTHORITY OF THE SECRETARY OF DEFENSE TO INCREASE THE STRENGTH OF CERTAIN RESERVES ON ACTIVE DUTY.—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may increase the strength authorized pursuant to subsection (b) for a fiscal year for any of the armed forces by a number equal to—

"(1) the number of members of a Reserve component of that armed force on active duty in support of a contingency operation;

"(2) the number of members of the National Guard called into Federal service under section 12406 of this title;

"(3) the number of members of the militia called into Federal service under chapter 15 of this title; and

"(4) the number of members of a Reserve component called to or retained on active duty under sections 12301(g), 12301(h) or 12322 of this title.";

(8) by striking subsections (g) and (h) and inserting the following new subsection:

"(g) DEFINITION.—In this section, the term 'average strength' means the average of the monthly strength levels for the fiscal year.".

(b) CONFORMING AMENDMENTS.—(1) Section 691 of such title is repealed.

(2) Section 113(l)(4) of such title is amended by striking "end-stregth" and inserting "strength".

(3) Section 115a of such title is amended—

(A) in subsection (a)(1), by striking "end-strength" and inserting "average

strength";

(B) in subsection (e)(1), by striking "end-strength" and inserting "strength".

(4) Section 123a of such title is amended—

(A) by striking "end strength" each place it appears and inserting "strength"; and

(B) by striking "end-strength" each place it appears and inserting "strength".

(5) Section 123b(a) of such title is amended by striking "END-STRENGTH" in the subsection heading and inserting "STRENGTH".

(6) Section 168(f)(1)(A) of such title is amended by striking "end strength" and inserting "strength".

(7) Section 487(b)(1)(3) of such title is amended by striking "end strength" and inserting "strength".

Section-by-Section Analysis

This section would change the method the Department of Defense (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 better 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, September 30th, of each year.

Managing for a one-day strength permits strength levels throughout the rest of the year to vary widely without conflicting with the end strength levels set out in section 691 of title 10. This encourages poor strength management practices, particularly in the fourth quarter where manning surges such as delaying retirements and other losses, and increasing recruiting takes place. These practices negatively affect real force readiness and quality.

To ensure that DoD and Congress sustain robust oversight and a healthy dialogue regarding military strength, this section would require the Secretary of Defense to advise the Committees on Armed Services whenever the strength varied in a way that compromised

national security. For example, if an improved economy unexpectedly drew down recruiting and retention early in the year, and the approved DoD budget was insufficient to correct this shortfall to the detriment of national security, the Secretary would notify the committees of the expected shortfall and its impact on national security.

This section would allow DoD to sustain adequate personnel, enhance stability in unit operating strength, and improve unit readiness over the entire year.

This section also would provide a new, comprehensive accounting plan for Reserve component members performing active duty other than training. Strength accounting has been too inconsistent, at times requiring Reserve component members on active duty to be counted as part of the authorized end strength for members on active duty, and at other times exempting them altogether.

This section would correct this shortcoming by establishing a single, comprehensive accounting structure for Reserve component personnel. It would provide the military departments and Combatant Commanders with appropriate flexibility in employing Guard and Reserve forces, without disadvantaging those same forces.

Reserve component members would be accounted for and managed as members of the Guard and Reserve – regardless of the type or duration of duty – unless they are on active duty for a period greater than three years which is paid from appropriations dedicated to the active force, or they have been on continuous or nearly continuous service on active duty for three out of the preceding four years filling active duty requirements.

This section would eliminate the existing 180-day strength accounting requirement and replace it with the requirement to provide positive accounting for Reservists on active duty regardless of the number of days of duty. This section would specify that Guard and Reserve members serving in support of a contingency operation must be counted as additional authorized strength. This would encourage the use of volunteers, unlike the current system that encourages the use of an involuntary call-up authority since the law excluded Reservists called to active duty involuntarily from active duty end strength limits.