Section-by-Section Analysis

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

Sections 101 through 104 provide procurement authorization for the Military Departments and for Defense-wide Activities in amounts equal to the budget authority included in the President's Budget for fiscal year 2006.

Subtitle B—Army Programs

Section 111 authorizes the Army and Navy to enter into multiyear contracts for the procurement of UH-60/MH-60 Helicopters in accordance with the request contained in the President's budget for fiscal year 2006. This section would save an estimated $397.0 million.

Section 112 authorizes the Army to enter into multiyear contracts for the procurement of Modernized Target Acquisition Designation Sights and Pilot Night Vision Sensors. Funding for this program has been included in the President's budget for fiscal year 2006. This section would save an estimated $104.3 million.

Section 113 authorizes the Army to enter into multiyear contracts for the procurement of Apache Block II Conversions. Funding for this program has been included in the President's budget for fiscal year 2006. This section would save an estimated $63.0 million.

Subtitle C—Navy Programs

Section 121 would allow the Department of the Navy to contract for and commence, without full funding, a split-funded Aircraft Carrier Refueling Complex Overhaul (RCOH) of the USS CARL VINSON from the Shipbuilding, Conversion and Repair, Navy account in Fiscal Year 2006. Section 126 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398), provided similar authority for a split-funded nuclear refueling overhaul of the USS DWIGHT D. EISENHOWER (CVN 69).

Cost Implications: This section is consistent with the Navy's budget request and would provide the necessary authorization to execute the CVN 70 overhaul with split-funding in Fiscal Years 2006 and 2007. Without this language, the Secretary of the Navy cannot execute the budget request.

Section 122 would allow the Secretary of the Navy to continue with the design, advance

procurement and advance construction of the Amphibious Assault Ship-General Purpose (LHA Replacement or LHA(R) ship) through Fiscal Year (FY) 2006 using FY 2006 funds.

Originally planned for FY 2008, the Department of Defense (DoD) is accelerating the LHA(R) ship by one year to replace the aging LHA 1 Class ships, which will reach the end of their administratively-extended service lives between 2011 and 2015 (with no further cost-effective way to extend them further). The SCN account in the Department of Defense Appropriations Act, 2005 (Public Law 108-287), contains $150 million in Advance Procurement funds for the ship in FY 2005. The Department of the Navy plans to seek an additional $150 million in Advance Procurement funds in FY 2006 and then fund the detail design and construction in FYs 2007 and 2008. The advance procurement funds will allow the Navy to procure critical Contractor Furnished and Government Furnished long-lead time items; maintain a steady industrial base for the LHA(R) ship; and start relieving the LHA 1 ships as scheduled.

Cost Implications: Without this language, the Navy would not be able to execute the current shipbuilding plan. This section is consistent with the Navy's budget request and would provide the necessary authorization to execute the construction of the LHA(R) ship in FYs 2007 and 2008. Without this language, the Secretary of the Navy cannot execute the budget request.

Section 123 would provide the Department of Defense (DoD) the authority to purchase any Maritime Prepositioning Ships (MPS) that are currently under charter to the Navy. Without this authority, the DoD could not use the National Defense Sealift Fund (NDSF) to purchase the five MPS currently under charter which were originally built in foreign shipyards, despite the fact that U.S. shipyards have so substantially lengthened and rebuilt these vessels that more than 80 percent of their capital costs are attributable to reconstruction and conversion work done within the United States.

The original prohibition on using funds from the NDSF to purchase foreign-built vessels provided an exemption for the purchase of up to five foreign-built vessels. The DoD used those five exemptions in the early 1990's to purchase foreign-built vessels for conversion in U.S. shipyards into Large Medium Speed Roll-On/Roll-Off vessels. In 1997, Congress authorized an additional two exemptions, which the DoD used to purchase vessels for conversion in U.S. shipyards into the Maritime Prepositioning Force (Enhanced) vessels.

The thirteen MPS directly support the Marine Corps and Fleet Commanders in their prepositioning mission. All thirteen are now in the 18-20th year of their 25-year charter periods. Purchasing the ships before the end of their charter periods would save significant funds and assure the DoD of continued use of these unique, militarily useful ships beyond the end of their current charter periods (between Fiscal Year (FY) 2009 and FY 2011). Otherwise, the DoD would continue to make capital hire payments (essentially paying the mortgages on the ships) during the current contracts, but the ships would revert to their owners at the end of the charter periods. The DoD then would face much more expensive replacement options to bridge the gap between MPS and Maritime Prepositioning Force - Future through FY 2020. No other U.S. flag

vessels are available for charter to meet this requirement.

By contrast, purchasing the MPS vessels in FY 2006 would save an estimated $841 million through a combination of savings in capital hire and charter payments between FY 2006 and FY 2020 (when the last MPS would be phased out of service) and the continuing residual value of the ships thereafter. Since final negotiations normally would occur only after the appropriation of funds, this section would give the Department of the Navy (DoN) some flexibility in applying funds from the NDSF to the purchases.

The DoN has programmed $749.8 million in the NDSF to finance MPS purchase options in FY 2006.

Subtitle D—Air Force Programs

Section 131 would provide the Secretary of the Air Force the authority to sell or trade-in older mobility aircraft and use the sale proceeds to procure additional aircraft. Specifically, it would permit the Secretary to sell older, less capable C-17s directly to U.S. companies and place them in the Civil Reserve Air Fleet (CRAF); the sale proceeds would offset the procurement costs of expanding the total C-17 fleet. This would enhance the CRAF; allow the CRAF to fulfill a larger portion of the mobility requirement; provide a substantial offset to the cost of new aircraft; and avoid future modernization and operations costs – all without losing access to the capacity during war.

If the Department of Defense (DoD) determines that it needs additional outsize airlift capacity, expanding the CRAF in this manner would reduce the cost of adding that capacity. The CRAF program represents a longstanding partnership between the DoD and the U.S. aviation industry. The CRAF provides the DoD with access to a large reserve of commercial passenger and commodity cargo airlift capacity that is capable of moving military forces and cargo within 24-48 hours after a call-up notification. Expanding the CRAF with outsize capacity would reduce the cost of airlift without sacrificing military readiness.

There are precedents for allowing the DoD to use the proceeds from aircraft sales or trade-ins to offset the cost of new aircraft. Section 8107 of the Department of Defense Appropriations Act, 1998 (Public Law 105-56) and section 8133 of the Department of Defense Appropriations Act, 2000 (Public Law 106-79) authorized the military departments to trade-in operational support aircraft and apply the proceeds to offset the cost of replacement capacity. In addition, section 807 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106) authorized the Secretary of the Army to trade-in existing commercial utility cargo vehicles for credit against the cost of leasing new replacement vehicles. The DoD anticipates that trading in C-17s to the manufacturer for credit towards new aircraft would be preferable to sales because civil certification is necessary prior to public use, and the ability to credit the replacement contract in the budget year of contract full funding.

To operate commercially, military aircraft require a Federal Aviation Administration (FAA) Part 25 type certification in the transport category. Since the aircraft still fulfills part of the military airlift requirement, this section would allow the use of 14 C.F.R. 21.27 to certify the aircraft without having to declare the aircraft surplus. The FAA has approved the use of this language.

This section also would maintain State Department oversight of the commercial operation through the International Traffic in Arms Regulations (22 C.F.R. Part 121) and the U.S. Munitions List. The State Department has issued an Advisory Opinion for this operation.

Cost Implications: According to industry and Wall Street, the expected trade-in value for each of the first ten C-17s is approximately $80-120 million, depending on the value of the aircraft to the commercial market and the commercial cost to certify the aircraft. After that, the trade-in value should increase as market demand grows.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Section 201 provides for the authorization of Military Departments and Defense-wide research, development, test, and evaluation appropriations in amounts equal to the budget authority included in the President's Budget for fiscal year 2006.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

Section 301 provides for authorization of the operation and maintenance appropriations of the Military Departments and Defense-wide activities in amounts equal to the budget authority included in the President's Budget for fiscal year 2006.

Section 302 authorizes appropriations for the Defense Working Capital Funds and the National Defense Sealift Fund in amounts equal to the budget authority included in the President's Budget for fiscal year 2006.

Section 303 authorizes appropriations for fiscal year 2006 for the Armed Forces Retirement Home Trust Fund for the Armed Forces Retirement Home in an amount equal to the budget authority included in the President's Budget for fiscal year 2006.

Section 304 authorizes appropriations for other Department of Defense Programs for the Defense Health Program; for Chemical Agents and Munitions Destruction; for Drug Interdiction and Counter-drug Activities, Defense-Wide; and for the Defense Inspector General in amounts equal to the budget authority included in the President's Budget for fiscal year 2006.

Subtitle B—Environmental Provisions

Section 311 would expand the Department's authority to execute consensual agreements under 10 U.S.C. § 2701 to include owners of covenant properties. Section 2701 currently allows agreements with other Federal agencies, state and local governments, Indian tribes, and non-profit conservation organizations to perform various services under the Defense Environmental Restoration Program. This authority has been used, for instance, to enter into environmental cleanup agreements with local governments in which those entities perform the cleanup for the Department in order to allow early transfer of base closure property to them. These agreements would not be able to change the cleanup standard applicable to the site.

Under section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the United States is required to provide a deed covenant guaranteeing it will perform remediation of contamination discovered after property transfer. The covenant does not provide for the property owner to perform the remediation directly; under the covenant, the remediation must be performed by the United States. There is no current authority for the agency responsible for such contamination to pay an owner of such property the owner's costs in directly undertaking remedial action for which the United States is responsible. The owner is put to the substantial burden and expense of pursuing its remedy through litigation.

Previously undetected contamination discovered in the course of developing a property may halt construction efforts at a considerable cost in idle equipment, construction crews, and schedule delays to the owner. While a prompt response by the United States to the contamination is the key to allowing development to continue and minimizing the cost of delays to the owner, circumstances may arise in which the owner is better situated to conduct the remedial action. Timely and financially successful redevelopment often depends on prompt response to any discovery of contamination-which, during redevelopment, frequently first occurs when the developer starts to dig foundations and utility trenches.

Due to the potential time delays associated with the United States itself responding to such discoveries, the covenant warranties in section 120(h) can be burdensome to property owners who subsequently uncover contamination. The covenants provide for action only by the United States, while the developer often needs to take immediate remedial action to stay on schedule. Providing the Department with authority to enter into advance, consensual agreements with such property owners for appropriate costs in responding to newly discovered contamination is consistent with congressional intent in requiring agencies to provide the section 120(h) covenant. It helps to assure local redevelopment authorities and developers that purchasing or accepting Federal land will not leave them burdened with the cost of responding to contamination that is the responsibility of the Department. Because such agreements would be entirely consensual, a property owner could reject such an agreement and rely entirely upon its rights under the section 120(h) covenants.

Subsection (a): This subsection provides that an entity seeking the ability to substitute

itself for the United States in directly performing a remedial action and obtaining reimbursement therefore would first enter into an agreement with the United States to perform the required services. The agreement will assure that funds are available to complete the remedial action and that the action is consistent with the Department's cleanup obligations established under law. Standards applied would be those established by law to ensure that the resulting privately conducted cleanup would perform neither more nor less than the work required to meet the legal standards applicable to the site. Those standards would, as a matter of law, be whatever legal standards applied to the site based on the reuse at the time of the original transfer. The agreement could not change those standards.

To ensure fidelity in this process, the Department would offer a standard and uniform agreement, separate from the deed and its 120(h) covenants, to property recipients at the time of transfer. Property recipients could either accept or reject the agreement, depending on their preferences. If they reject it, they would then rely upon their rights under the 120(h) covenants. The choice would be entirely that of the property recipients.

Subsection (b): This subsection provides that the appropriate base closure account is the sole source of funding for agreements under this section at base closure site.

Section 312 eliminates portions of the annual Report on Environmental Quality Programs and Other Environmental Activities. These portions of the report require extensive data collection, but do not provide any data that is meaningful for program management. No member of Congress, nor any staffers, has ever raised any questions about the data in these sections. Although the Department submits this report far beyond the statutory deadline as well as beyond the legislative cycles for Congress to develop the budget, no one from Congress has ever requested the report. OSD and the DoD Components do not use the information to manage their programs.

Congress added the requirement to include a list of planned or ongoing projects which exceed $1.5 million (Section (b)(2)(D) in 1996. Since added, the Department has not received a single question on the list. The list is very difficult to track due to changing requirements and changing estimated/actual costs. The DoD Components do not collect this data for any other purpose than this report. Collection of the data in this manner does not help the DoD Components improve the management of these programs nor the costs of these programs. Eliminating this reporting requirement does not impact other reporting requirements for environment related Military Construction projects.

Congress added the requirement to include a statement on the fines and penalties (Section (b)(2)(E)) based on a single large fine assessed by the Environmental Protection Agency against Ft. Wainwright, AK in 1996. Since then no fine has reached that size. Therefore, we have concluded that fine was an anomaly and not indicative of a trend to large fines and penalties. Further collection of this data has not helped identify any problems for the Department to address.

This section will reduce costs to the Department of Defense. It will allow a more efficient use of existing resources by eliminating duplicative effort. At the Office of the Secretary of Defense level, the Report costs $325,000 a year to produce, a sum that does not include DoD Component resources.

Sections 313 and 314 address application of the Clean Air Act, the Solid Waste Disposal Act (SWDA) (also known as the Resource Conservation and Recovery Act (RCRA)), and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to military readiness activities.

Air Quality: The section on air quality plans would clarify the application of the conformity provisions of the Clean Air Act to avoid unnecessarily restricting the flexibility of the Department of Defense (DoD), state, and federal regulators to accommodate military readiness into applicable air pollution control schemes. 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.

Range Management: Subsection (a)(1) would exclude military munitions, including unexploded ordnance, and the constituents thereof from the definition of "solid waste" under the SWDA when DoD deposits such items on an operational range incident to normal use, and such items remain thereon. Subsection (a)(2) provides that the exclusion in subsection (a)(1) does not apply to certain listed activities or circumstances such as traditional waste management activities like burial or land-filling, migration off an operational range, or firing off range. Subsection (a)(2) additionally provides that the exclusion in subsection (a)(1) ceases to apply once the operational range on which the items were deposited ceases to be an operational range. Subsection (a)(3) explicitly preserves the authority of federal, state, interstate, and local regulatory authorities to determine when, after an operational range ceases to be an operational range, these items become a hazardous waste subject to the Act.

Subsection (b)(1) would exclude from the definition of "release" under CERCLA the presence of military munitions, including unexploded ordnance, and the constituents thereof, that DoD deposited incidental to normal use on an operational range and that remain thereon. Subsection (b)(2) provides that the exclusion in subsection (b)(1) does not apply to certain listed activities or circumstances, such as migration off an operational range or firing off range.

Subsection (b)(2) additionally provides that the exclusion in subsection (b)(1) ceases to apply once the operational range on which the items were deposited ceases to be an operational range. Subsection (b)(3) explicitly preserves 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.

Subsection (c) provides definitions of terms, including incorporating by reference terms

already defined in title 10, United States Code.

Subsection (d) reaffirms that the exclusions set forth in subsections (a)(1) and (b)(1) do not apply once the operational range ceases to be an operational range.

Subsection (e) reaffirms the DoD's authority to protect the environment, safety, and health on operational ranges.

As noted above and reiterated in subsection (d), this section would have no effect on the legal requirements applicable to military munitions, including unexploded ordnance, or the constituents thereof, once the range on which they were deposited ceases to be an operational range. These provisions would restrict the application of certain authorities under CERCLA and RCRA for covered munitions while those ranges remain operational. Application of those same authorities when the range ceases to be an operational range is not affected by these two provisions. Nor would this section place any restriction on the applicability of the Safe Drinking Water Act on or off of an operational range. Nothing in this section affects a private party's right of action against the United States or any of its agencies to recover costs expended in the clean up of military munitions and unexploded ordnance, and the constituents thereof, that are present on property formerly operated (directly or through a contractor) or formerly owned by the United States.

Section 315 would allow the Federal Government to remove to Federal courts all civil actions and criminal prosecutions brought under the Clean Air Act and Safe Drinking Water Act. A Federal forum in such cases is vital because State court actions against Federal agencies and officers often involve complex Federal issues and Federal-State conflicts. The Federal courts are better situated to strike a proper balance between competing local and national interests.

This section would duplicate identical authority already available in Clean Water Act cases under 33 U.S.C. 1323. It would not alter the requirement that the ability to remove a lawsuit hinges on the assertion of a defense based in Federal law under 28 U.S.C. 1442(a)(l).

Recent court decisions demonstrate the need for this legislative change. In the case of *People of the State of California v. United States*, 215 F.3d 1005 (9th Cir. 2000), the U.S. Court of Appeals for the Ninth Circuit decided that section 304(e) of the Clean Air Act, 42 U.S.C. 7604(e), was not superseded by or inconsistent with a subsequently enacted 1996 amendment to the Federal Removal Statute (28 U.S.C. 1441 et seq.). Pursuant to this ruling, Federal activities could be enjoined by state courts, and penalties assessed, if these activities are found by a state court to violate provisions of state or local air pollution control laws. The Department of Defense already has been adversely affected by this decision. On March 18, 2002, a state court in California ruled that McClellan Air Force Base was subject to civil penalties for violations of the Clean Air Act. The Department of the Air Force paid a fine of $235,000 as a result of this ruling.

In a more recent case, the U.S. Court of Appeals for the Eleventh Circuit issued an opinion directly contrary to that issued by the Ninth Circuit. In *City of Jacksonville v. Department of the Navy*, 348 F.3d 1307 (11th Cir. 2003), the Eleventh Circuit declined to follow the Ninth Circuit and specifically held that section 304(e) of the Clean Air Act did not preclude removal under the Federal Removal Statute of cases brought in state courts.

This split between the circuits inevitably will lead to confusion and inconsistency, forcing state and Federal entities to litigate the removal issue in each circuit. The Federal Government anticipated that the City of Jacksonville would appeal the Eleventh Circuit's decision to the Supreme Court. The City of Jacksonville, however, declined to seek *certiorari* to the Supreme Court. This left the Federal Government with no ability to achieve certainty, aside from either a legislative fix or a new lawsuit that, at both the District and Circuit Court levels, would have produced a result allowing the United States to be the party appealing to the Supreme Court. This section would eliminate any confusion or inconsistency and establish a consistent, nationwide standard for removal issues.

The ruling in *People of the State of California* will have significant consequences in the circuits that follow that opinion. While State and local courts are capable of applying Federal law, State and local judges (particularly when they are untenured, appointed, or elected) may face pressures not present in the Federal courts when adjudicating matters and fashioning remedies involving Federal agencies, especially if the litigation generates significant local public interest. Furthermore, subjecting Federal agencies to State and local court jurisdiction without reasonable recourse to the Federal system could provide local governing bodies the ability to tailor ordinances specifically designed to frustrate Federal activities, while not similarly burdening private, State, or local activities with a similar or greater impact on environmental resources. That no such ordinances have yet been identified does not negate their possibility. Indeed, the ruling creates an inherent unfairness to Federal activities, vis-à-vis their private, state, and local counterparts. Absent legislative relief, Federal agencies will be forced to operate under the specter of possibly being constrained by federally-tailored local ordinances. Without allowing removal of such cases to Federal district court, the United States would be forced to challenge such discriminatory regulation in each local jurisdiction or to hire additional personnel to sufficiently monitor and, when necessary, attempt to affect the actions of state and local regulatory authorities at levels not required before the ruling in *People of the State of California*.

Section 316 would clarify federal court jurisdiction to review challenges to removal or remedial action. Current law bars federal court challenges to clean-up actions until the clean-up is complete. In most cases, section 113(h) would prohibit judicial review of on-going removal or remedial actions to avoid interference with an expeditious clean-up effort.

Prior to 1997, the bar on judicial review was understood to apply equally to federally-owned sites as to privately-owned sites. In 1997, however, the United States Court of Appeals for the Ninth Circuit ruled that courts can review remedial actions at federal facilities before the clean-up is complete. The Court concluded that the current text of section 113(h)

applies fully only to privately-owned sites and federal agencies do not receive the full protection of 113(h). If this case becomes a controlling precedent, ongoing remedial actions undertaken at federal sites may be delayed by litigation, while similar response actions undertaken by the Environmental Protection Agency or private parties are protected from judicial review until those clean-ups are complete. On the other hand, no other district or circuit court has followed the lead of the Ninth Circuit in this matter. In the absence of a fundamental disagreement in the federal judiciary on this issue, it is questionable whether the U.S. Supreme Court will feel compelled to hear such a case in the near future. Further legislative clarification will safeguard ongoing clean-up operations

This section would amend section 113(h) to clarify its provisions and establish parity between clean-ups on and off federal facilities.

Subtitle C—Workplace and Depot Issues

Section 321 would allow the Department of Defense (DoD) to retain funds received for fire protection services provided to combat fires within the vicinity of Federal lands. Existing law authorizes Federal agencies with fire protection responsibilities to enter into reciprocal agreements with fire protection organizations in the vicinity of the Federal lands, but specifies that agencies must deposit the reimbursement they receive into the Treasury as miscellaneous receipts. This section would authorize the Department of Defense to retain such funds.

Many DoD installations, especially those in the western United States, include large tracts of undeveloped land vulnerable to wildfires. Mutual aid agreements ensure the availability of resources in case a large-scale fire outstrips an installation's fire suppression resources. Such agreements also obligate an installation to respond to off-base fires, which easily can outnumber on-base fires. Existing law requires installation commanders to absorb overtime and maintenance costs associated with non-DoD fires. This is unacceptable and significantly detracts from the DoD mission at installations.

Cost Implications: This section would result in proceeds previously deposited into the Treasury as miscellaneous receipts being credited to Department of Defense appropriations.

Section 322 would make permanent the Department of Defense's (DoD's) temporary authority to contract for security-guard functions at military installations that are or otherwise would be performed by members of the Armed Forces. It also would provide the DoD with the authority to use commercial sources to provide firefighting and security-guard functions during the closure and conveyance of a military installation or facility. These changes would enable the DoD to utilize service members for core military functions and allow greater transition flexibility with local police and firefighting organizations.

Existing law prohibits, with certain exceptions, contracting for firefighting or security-guard functions at military installations. Section 332 of the Bob Stump National Defense

Authorization Act for Fiscal Year 2003 (Public Law 107-314; 116 Stat. 2513) provided the DoD with temporary authority to contract for the increased performance of security-guard functions that are, or otherwise would be, performed by members of the Armed Forces. Section 324 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375; 118 Stat. 1846) extended this authority through September 30, 2006. New paragraph (5) would make this authority permanent; it would not permit the DoD to contract for security-guard functions that are, or would be, performed by civilian employees.

The current prohibition also has inhibited the DoD's ability to manage the transition of an active military installation through closure and property disposal. When the local government chooses not to provide firefighting and security-guard services at a closed military installation, the DoD must retain Federal employees or temporarily hire Federal employees to perform these functions. At installations where military personnel performed such functions, the military departments had to hire a large, new Federal workforce which they later had to terminate when the property was conveyed. These hirings and subsequent terminations followed Reductions in Force conducted by the closing installations and increased personnel turbulence and personnel costs.

For example, upon closure of the Naval Station Roosevelt Roads, the Department of the Navy (DoN) sought to redeploy the military personnel performing security-guard functions as quickly as possible to other locations where there was a military mission requirement. Because the DoN could not contract the function, the DoN had to recruit, conduct physicals on, hire and train 49 new Federal employees as security guards. When the DoN disposes of the property, expected within two years, the DoN will have to terminate these employees.

Cost Implications: This section would have no immediate budget implications. However, members of the Armed Forces are paid from Military Personnel funds. Contract costs for firefighting and security-guard functions are normally funded by Operations and Maintenance funds at active installations and by Base Closure account funds at closed installations.

Section 323 extends authority provided the Department of Defense in FY 2004 to use Research, Development, Test and Evaluation (RDT&E) funding to develop and field ballistic missile defense capabilities into future years. In December 2002, the President directed the Department of Defense to field a missile defense capability, beginning in 2004, and continuously to improve on that capability over time. The Department executes that direction through the Missile Defense Agency (MDA). MDA uses an evolutionary, capability-based acquisition approach to field Ballistic Missile Defense System (BMDS) capabilities and improve those capabilities through the spiral development of, and the subsequent fielding of, incremental upgrades to individual BMDS elements and components.

MDA is funded almost entirely by Defense-wide RDT&E funds. In FY 2004, Congress supported the President's directive by authorizing the RDT&E funds appropriated to MDA to be used for fielding purposes since fielding requires a range of activities that cross traditional fiscal

lines. Examples of necessary expenses related to fielding that go beyond RDT&E include, but are not limited to, Military Construction (for buildings, facilities and improvements necessary to field missile defenses) and Operation and Maintenance (for operating and sustaining the fielded system).

The need for this legislation flows from DoD's evolutionary approach to the development and fielding of missile defenses. There is no final or fixed missile defense architecture. Rather, the composition of missile defenses, including the number, type, and location of fielded elements and components, will change over time to meet changing threats and to take advantage of technological developments. By authorizing MDA to use RDT&E funds for fielding purposes, Congress has provided the Director the flexibility to employ innovative technologies and capabilities across the entire spectrum of agency activities (research, development, construction, test and evaluation, fielding, and operational support).

In requesting this continued authority, MDA has considered the amendment to Title 10 enacted as part of the FY 2004 authorization which requires the Secretary of Defense to submit with the annual budget request the potential dates that individual missile defense program elements will be available for fielding, and the estimated dates that the elements will be transferred to a Service. As a general principle, procurement and other non-RDT&E functions should be carried out by the Services.

A more flexible approach is required for BMDS development. Since research, development, test and evaluation of BMDS elements and components must continue, some number of BMDS elements and components will remain a part of the BMDS test bed even after being fielded as part of the initial capability. As a result, there will not be a clean break between development and initial operational use. Nor will there be a clean break between MDA's need to continue development while at the same time working with a military service to start integration of individual elements or components into the service's budget and, at the appropriate time, its force structure. Elements and components will need to be evaluated and transfers to a service planned on an individual basis within the context of concurrently developing and operating a single BMDS. The length of time that shared responsibilities may be necessary will be tailored to each element or component.

The essential advantage offered by this approach is that the Secretary of Defense will meet emerging challenges and field militarily useful capabilities within the shortest possible times. This legislation is necessary to fully realize those advantages by providing MDA the funding flexibility it needs to use its RDT&E appropriation to develop, test, construct, field, and support BMDS elements and components that are not ready for transfer, but which have a militarily-useful capability and should be fielded as components of a layered missile defense while development continues. This will allow MDA to take full advantage of the spiral development and capabilities-based acquisition approach.

Section 324. The term "fire protection", as used in the current statute, has been

interpreted to only refer to firefighting. The interpretation does not include potential emergency services that should be shared with the neighboring communities of federal facilities, especially in light of September 11, 2001. Increasing flexibility and the discretionary authority to include these services, such as basic and advanced life support, hazardous materials containment and confinement, and special rescues, will permit federal facilities to more fully respond to an increased range of potential emergencies.

Subtitle D-Other Matters

Section 331. In accordance with the discussion of this subject in the report of the Senate Committee on Appropriations on the Fiscal Year 2005 Department of Defense Appropriations Act, the budget for fiscal year 2006 is proposing that the National Security Education Program be funded within the "Operation and Maintenance, Defense-Wide" account and that the National Security Education Trust Fund be terminated. This legislation provides for the closing of the Trust Fund; transfer of any balances in the fund to the Operation and Maintenance, Defense-Wide account and makes technical and conforming amendments to David L. Boren National Security Education Act of 1991 (Public Law 102-183; 105 Stat. 1271), which created the Program and the Trust Fund. It also repeals sections 809 and 810 of the Act, relating only to program funding for fiscal years 1992 through 1996.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Section 401 prescribes the personnel strengths for the active forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's Budget for fiscal year 2006.

Subtitle B—Reserve Forces

Section 411 prescribes the strengths for the selected Reserve of each reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's budget for fiscal year 2006.

Section 412 prescribes the end strengths for reserve component members on full-time active duty or full-time National Guard duty for the purpose of administering the reserve forces for fiscal year 2006.

Section 413 prescribes the end strengths for the reserve components of the Army and Air Force for dual status military technicians for fiscal year 2006.

Section 414 prescribes the maximum end strengths for the reserve components of the

Army and Air Force for non-dual status military technicians for fiscal year 2006.

Title V—Military Personnel Policy

Subtitle A Officer Personnel Policy

Section 501 would eliminate frocking for officers above the grade of major general or rear admiral and ensure that officers appointed to positions of importance and responsibility would be entitled to the full rank and benefits of their grade as soon as they begin serving in their 10 U.S.C. 601 position. This section also would exclude officers from general and flag distribution limitations during their transition from positions of importance and responsibility under section 601(b).

There are a limited number of flag and general officers in each grade. Each officer fills an allocated number as long as they remain on active duty, including after the officer has been relieved of their assignment and remains on active duty while on terminal leave or in transition to another section 601 position. As a result, a newly assigned officer will carry all the responsibility and accountability of a new assignment, but will not receive the benefits of the grade specified for that position until the terminal leave of an officer of that grade has ended (a maximum of 60 days).

This section would not permanently increase the number of general or flag officers authorized for any armed force under 10 U.S.C. 526. Instead, it would provide the Department of Defense (DoD) the flexibility to allow senior officers serving in positions of importance and responsibility under section 601 to use the terminal leave they have earned, while ensuring that officers newly confirmed to such positions have the full rank and pay commensurate to their duties and responsibilities from the day on which they begin to serve in such positions.

Cost Implications: DoD estimates this section would cost $850,000 from Fiscal Year (FY) 2006-2010. For cost purposes, DoD assumed that every officer appointed under 10 U.S.C. 601 would take command, and assume an office, in which the incumbent takes 60 days of terminal leave prior to retirement. The military departments have approximately ten O-10 moves, and 40 O-9 moves, each year. DoD anticipates that the cost of an O-10 move (from O-9 to O-10) would be $4,000, and an O-9 move (from O-8 to O-9) would be $3,000.

RESOURCE REQUIREMENTS ($THOUSANDS):

	FY06	FY07	FY08	FY09	FY10
Navy	35	36	37	38	39
Marine Corps	16	17	18	19	20

Army	58	60	61	62	64
Air Force	51	52	54	56	57
Total	160	165	170	175	180

Section 502. Section 526(b)(2)(A) of title 10, United States Code, authorizes the Chairman of the Joint Chiefs of Staff to designate up to 10 general and flag officer position on the staffs of the combatant commands as positions to be held only by reserve component general and flag officers who are below the grade of lieutenant general or vice admiral. This section would increase the number of designated positions to 11 and permit such a position on the Joint Staff.

The successful integration of full-time Reserve general officers as members of the staffs of the combatant commands has proven to be of enormous value. The reserve component is an integral part of the prosecution of the Global War on Terrorism and Homeland Defense. The unique qualifications, experience, and knowledge offered by a reserve general or flag officer provides a vital link as an interagency liaison between the Joint Staff, combatant commands, and the civilian community in the development of antiterrorism/force protection and military assistance to civil authority doctrine, policy, training requirements. The inherent relationship between a reserve component general or flag officer and the civilian infrastructure cannot be duplicated by an active component officer when dealing with mission assurance issues and facilitating collaboration and cooperation in support of consequent management operations and plans. The growing requirements of the homeland defense mission necessitate an additional full-time reserve component general officer on the Joint Staff.

This section would not increase the number of reserve component general or flag officers or the number of joint reserve component positions. However, it would increase the number of general or flag officers on active duty.

Cost Implications: This section would permit one additional reserve general or flag officer to serve on active duty. The estimated annual cost to the Department of Defense for an O-7/O-8 general or flag officer is approximately $133,000-$178,000.

Subtitle B—Reserve Component Personnel Matters

Section 511 would allow the Secretaries of the military departments to pay the costs of room and board for Reserve Officers' Training Corps (ROTC) scholarship students when those costs exceed the cost of tuition, fees, books, and laboratory expenses. This would create the flexible scholarship program the Department of the Army needs to recruit the additional Reserve officers they need.

Existing law allows ROTC scholarships to cover the cost of tuition or room and board,

and limits the cost of room and board to the cost of tuition, fees, books, and laboratory expenses. This reduces the flexibility of the ROTC scholarship program in the schools whose tuition, books, and fees cost more than room and board.

The Secretary of the Army needs a more flexible scholarship program to increase the Army ROTC by fifteen percent, which is necessary to meet the enhanced mission of the Reserve components. Removing the cap on financial assistance would permit the military departments to combine existing scholarship and stipend authority with assistance provided by the university to create a cost-effective educational assistance package. The majority of scholarship recipients would receive tuition aspect of the scholarship program. The others would receive room-and-board assistance because other sources are paying tuition.

This section also would enable ROTC recruiters to target effectively high-quality prospects with required academic disciplines at lower-cost state schools.

Cost Implications: The Department of the Army is the only military department that currently plans to use this new authority. This will not increase the cost of the scholarship program, but instead reallocate existing funds to cover the additional cost for room and board.

Section 512 would clarify that members of a Reserve component who have been ordered to active service in support of a contingency operation or in response to a war or national emergency may qualify for educational assistance only for active service that commences on or after September 11, 2001. It also would allow the Secretary of Defense to provide educational assistance to members of the Selected Reserve who leave the Selected Reserve for not more than 90 days, but remain members of the Ready Reserve.

Existing law entitles a member to educational assistance starting on September 11, 2001 for qualifying active service prior to September 11th. This is contrary to the intent of the President, which was to assist members who had been called to duty after the terrorist attacks of September 11th. This section would remove any claim of educational assistance by members who served prior to September 11th, but who enroll in school after September 10th.

This section also would allow a member of the Selected Reserve who incurs a short break (not to exceed 90 days) from service in the Selected Reserve to receive educational assistance if the individual remains a member of the Ready Reserve and under conditions prescribed by the Secretary of Defense. This would allow a member who desires to switch to a different Reserve component or transfer to a new unit in another location the opportunity to do so without jeopardizing his entitlement to educational assistance. It also could allow a member who makes an impulsive decision to separate from the Selected Reserve to remain eligible for this benefit if the individual rejoins the Selected Reserve within the specified time limit, provided the individual remained in the Ready Reserve during the break in Selected Reserve service.

Finally, this section would specify that the Secretary of Veterans Affairs would prescribe

the form and manner in which a member eligible for multiple education benefits would elect among them. The Secretary concerned has this responsibility under existing law. This change would streamline and simplify the process because the Department of Veterans Affairs (VA) administers the educational programs and members' claims for assistance. Allowing the members to file their elections directly with VA would expedite processing of the claims.

Section 513 would revise the existing Selected Reserve enlistment and affiliation bonuses to provide the Reserve components with a more flexible and enhanced incentive for members separating from active duty to affiliate with a unit or in a position in the Selected Reserve facing a critical shortage.

The existing bonuses were designed to recruit and retain individuals in the Selected Reserve when such service consisted of two weeks of annual training and 48 periods of inactive duty training each year. Reserve component members now can expect to serve more frequently and for longer periods, particularly in support the Global War on Terrorism. Because of these changes, the Department of Defense needs more flexible enlistment and affiliation bonuses to attract the right individuals for critically-short skills, units and pay grades.

Section 618 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) increased the Selected Reserve enlistment bonus to $10,000, which will help the Reserve components meet their non-prior service recruiting objectives. This section would extend the enhanced enlistment bonus to members who are separating from active duty and agree to affiliate with the Selected Reserve. The current prior service enlistment bonus is only available to individuals who have completed their military service obligation and been discharged. The current affiliation bonus for members with a remaining military service obligation is inadequate; it only pays members $50 for each month of remaining service obligation. This section would increase the maximum bonus amount paid to members with a remaining service obligation who agree to continue their military career by joining the Selected Reserve. Because of their military training and experience, the military departments place great emphasis on retaining these members in the Selected Reserve after they separate from active duty. It is more cost-effective and provides a more ready force than only recruiting individuals who never have served in the armed forces. Having the authority to provide a richer incentive to members who agree to serve in the Selected Reserve following release from active duty is increasingly more important in light of the recruiting challenges experienced by some Reserve components in fiscal year 2005.

The military departments would pay for the enhanced affiliation bonus out of existing funds.

Section 514 would authorize a critical skills retention bonus for Reserve component members who agree to serve at least two years in a skill or unit in the Selected Reserve of a Reserve component that the Secretary of Defense or the Secretary of Homeland Security determines to be critically short.

The existing bonuses were designed to recruit and retain individuals in the Selected Reserve when such service consisted of two weeks of annual training and 48 periods of inactive duty training each year. Reserve component members now can expect to serve more frequently and for longer periods, particularly in support the Global War on Terrorism. Because of these changes, the Reserve components need more flexible retention incentives to enable them to act quickly and decisively to curtail possible or emerging personnel shortages.

While attrition has been consistent with historic levels and within acceptable norms for the Reserve components overall, attrition in certain specialties exceeds acceptable levels. For example, the Army Reserve has an overall attrition rate in the low-to-mid 20 percent range, but much higher attrition rates over the past two years for military police (just over 50 percent), medical specialties (32 percent), and transportation (31 percent in Fiscal Year (FY) 2002 and 38 percent in FY 2003). The Naval Reserve, with an overall attrition rate of just below 25 percent, has experienced a 32 percent attrition rate Seabees. This new bonus authority would provide the Reserve components with a flexible incentive they could target at pockets of skill and personnel shortages as they emerge and assist in maintaining the readiness of the All Volunteer Force.

Section 515 would provide consistency throughout the Reserve components of the military departments regarding the deferment of retirement of selected reserve general and flag officers until age 64.

Currently, the Secretary of the Navy may defer the retirements of up to 10 reserve general or flag officers within the Department of the Navy until age 64. By contrast, the Secretary of the Army and the Secretary of the Air Force may defer the retirements of only the Chief of the National Guard Bureau, adjutant generals, and reserve commanding generals of the Army in command of the troops of a State until age 64. This section would provide the Secretary of the Army and Secretary of the Air Force with the same authority currently provided only to the Secretary of the Navy. This would ensure that the Department of Defense (DoD) may retain its most experienced general and flag officers and further DoD's transformational goal of increased service by its most successful individuals.

Section 516 would allow the Department of the Army to initiate a demonstration program using Reserve component members to perform test and evaluation of certain acquisition programs, including developmental testing, operational testing and new equipment training. Pay allowances and expenses for these members would be paid from previously appropriated multi-year research, development, testing, and evaluation funds and procurement funds, in an amount not to exceed $10 million a year.

The Department of the Army previously maintained a contingent of active component soldiers dedicated to supporting developmental training. These soldiers were returned to the operating force as a result of the 1997 Quadrennial Defense Review. The Department of the Army now relies almost exclusively on civilian contractors to test and evaluate developmental training. Given the very high cost of these contractors, however, the Department of the Army

would prefer to use Reserve Component members for this function. Additionally, Reserve Component members provide expertise into a program earlier in the development cycle, resulting in the earlier introduction of required engineering changes and reduced overall development costs and time.

Using multi-year research, development, testing, and evaluation funds and procurement funds to reimburse the pay, allowances, and expenses of Reserve Component members would be efficient and practical. In contrast, the existing financial arrangement at times is counter-productive. When Reserve Component personnel engage in testing and training, the personnel costs are paid from one-year Reserve Component personnel appropriations. When testing or training is accelerated or delayed into another fiscal year, Reserve Component units frequently must reprogram funds from other training or mission activities to cover these costs, with adverse impacts on unit training and readiness.

Subtitle C—Joint Officer Management and Professional Military Education

Section 521 would change the mission statement of the Naval Postgraduate School (NPS) to place greater emphasis on professional education to enhance combat effectiveness in support of national security. It would expand the eligibility of enlisted members to receive instruction in graduate-level, non-degree programs and courses at NPS. This would ensure the force is sufficiently proficient to meet the technology demands of the new era. This section also would authorize a pilot program to assess whether graduate degrees in technical and engineering curricula can increase the proficiency of enlisted members in certain assignments.

The Navy needs educated and experienced officers and enlisted members to lead and manage the technological advances and dynamic changes experienced by the Navy in recent years. Senior enlisted members now perform duties once-performed by junior officers, and new duties are emerging. The Navy must prepare selected enlisted leaders for assignments involving emerging technologies, systems, strategies, practices, and policies. For example, the Navy has identified specific positions within its Centers for Naval Engineering, Intelligence, Cryptology, and Submarine Learning that require graduate-level knowledge and skills. Existing NPS certificate programs would provide some of that knowledge, with other programs being developed.

This section would allow the Secretary of the Navy to conduct a pilot program to evaluate the effect of graduate degrees on proficiency in select operational, staff and headquarters level assignments. NPS would enroll no more than ten enlisted members each academic year for graduate programs commencing in Academic Year (AY) 2006 (summer 2006 - summer 2007) and ending in AY 2011 (summer 2011 - summer 2112). The curricula would include courses in Information Systems and Operations, Information Systems Technology, Systems Engineering and Analysis, Undersea Warfare, Combat Systems, and Space Systems.

This section would not increase funding requirements. Participants in the pilot program

would fill vacant seats within existing programs at no increased cost to NPS. Efficiencies achieved through training transformation initiatives would offset the approximately $200,000 cost of distance learning for certain certificates and courses.

Subtitle D—Military Service Academies

Section 531 would allow Permanent Military Professors (PMPs) at the United States Naval Academy with over 36 years of service to receive the same $250-per-month pay increase that such professors currently receive at the other service academies. This would help the Naval Academy retain valuable, highly-qualified instructors whose comparable private sector compensation would be much higher, particularly in the technical disciplines which would comprise the majority of these officers.

The Department of the Navy has established a program to create and retain PMPs to help fill critical instructor billets at the United States Naval Academy. Officers chosen for the program agree to complete their doctoral degrees in select disciplines and then teach at the Naval Academy until they reach statutory retirement.

Section 532 would allow the Secretary of the Navy to retain certain exceptional PMPs in these teaching positions beyond statutory retirement. Only those PMPs would be eligible for the $250-per-month pay increase. There are no further within-grade increases for officer-instructors who are retained after 26 years of service.

Cost Implications: If Congress enacts section 532, the Department of Defense estimates it would cost $66,000 annually to pay the monthly bonus to the maximum of 22 PMPs. If Congress does not enact section 532, section 531 would have no cost because currently PMPs at the Naval Academy must retire after 30 years of service. Because no PMPs have served more than 30 years, the Department of the Navy would not incur a cost under this section until at least Fiscal Year 2012.

Section 532 would allow the Secretary of the Navy to retain certain exceptional Permanent Military Professors (PMPs) at the United States Naval Academy on active duty beyond their statutory retirement, the same authority that the secretaries of the other two military departments currently possess. Under this section, PMPs retained beyond 28 years would remain eligible for promotion to captain (O-6).

The Department of the Navy has established a program to create and retain PMPs to help fill critical instructor billets at the United States Naval Academy. Officers chosen for the program agree to complete their doctoral degrees in select disciplines and then teach at the Naval Academy until they reach statutory retirement. The Secretary of the Army and the Secretary of the Air Force have the authority to retain permanent professors at the United States Military Academy and United States Air Force Academy, respectively, after they have completed 30 years of active commissioned service. The Secretary of the Navy requires the same authority to retain

and promote on a case-by-case basis PMPs with extensive college-level teaching experience, a doctorate, and military experience.

The Secretary of the Navy would continue PMPs on active duty only on the recommendation of the Superintendent of the Naval Academy and with the concurrence of the Chief of Naval Operations. The Secretary would determine how long each PMP could continue to serve.

Subtitle E—Other Education and Training Matters

Section 541 would double the cap on the total number of Reserve Officers' Training Corps (ROTC) scholarships the Department of the Army may provide to cadets desiring to remain in the Reserve components. This would help provide the additional Reserve component officers the Army National Guard and Army Reserve need to fulfill their new mission.

The Department of the Army has increased Army ROTC by fifteen percent primarily to provide the additional Reserve junior officers it requires to satisfy changing needs. Existing law, however, limits to 208 the annual number of scholarships available for cadets who want to remain in the Reserve components. Additional ROTC scholarships would produce more commissioned Reserve officers because retention rates for cadets on scholarship (approximately 75 percent) are much higher than for non-scholarship cadets (approximately 51 percent).

This section would allow more National Guard and Army Reserve members to enter ROTC, attend college, and use their Selected Reserve Montgomery GI Bill benefits.

Cost Implications: The Army would fund this section with existing funds. They would offset any increase in Reserve component scholarships with a decrease in active component scholarships.

Section 542 would clarify that the prohibition on compensating members "of a reserve component" for correspondence courses applies not only to members of the Reserves, but also to members of the Army National Guard and the Air National Guard. The Department of Defense always has interpreted this prohibition to include members of the National Guard when not in a federal status. The United States Court of Appeals for the Federal Circuit held otherwise in *Clark v. United States*, 322 F.3d 1358 (Fed. Cir., 2003). Therefore, this clarification is needed to ensure equal treatment for all Reserve component members with respect to compensation for correspondence courses.

Subtitle F—Military Justice Matters

Section 551 would make it unlawful to knowingly manufacture or traffic in any device, substance, or other product with the intent to facilitate the defeat of screening tests for controlled substances. This section would apply only to persons who, by such actions, obtain anything of

value aggregating $1,000 or more during any one-year period. Potential penalties would include a fine of up to $250,000 and five years in prison.

Many of the more than two million service members and civilian personnel within the Department of Defense (DoD) serve in some of the nation's most important and sensitive security positions as well as positions with small margins for safety, such as operating nuclear reactors, operating, controlling and maintaining high performance and heavy lift aircraft, and demilitarizing chemical weapons. As a result, these individuals may undergo random drug testing, the successful application of which is imperative to DoD.

There is increasing evidence that drug tests are being compromised by a wide range of products and substances sold in interstate commerce with the intent to facilitate a person's efforts to defeat and defraud such testing. These products are readily available on the Internet and at vitamin centers, adult entertainment businesses, and other outlets. They are marketed to military members and the roughly 40 million workers in the United States who are subject to drug testing as a condition of their employment or continued employment. These products include beverages and teas that "detoxify" body fluids to quickly and artificially induce a negative result on a drug urinalysis test; compounds that adulterate a drug-tainted urine sample to generate a false negative result; clean human and synthetic urine; and concealable storage devices and dispensers that hold clean or synthetic urine, including at least one product that replicates the human anatomy in order to help fool urinalysis monitors. Media accounts indicate this is a growing, multi-million dollar industry. While military members caught using these products are subject to prosecution, recent arrests suggest a growing awareness and use of these products among military members, with the result that drug urinalysis testing may be losing its ability to detect and deter drug use.

This section would make it more difficult to manufacture and market products that defeat or compromise the effectiveness of a drug screening test. It would authorize the prosecution of manufacturers and vendors of these products who intend to facilitate the defeat of drug testing. Requiring a showing of intent is necessary because some products may have other, legitimate uses. The threat of federal prosecution should persuade some manufacturers and vendors to voluntarily remove these products from the marketplace or at least stop advertising that these products could defeat drug testing.

Without this or similar legislation, efforts by military members and others to compromise drug testing efforts would pose a significant and growing threat to national security.

Section 552 would permit the Secretary concerned to authorize arraignments and other proceedings under Article 39(a) of the Uniform Code of Military Justice (10 U.S.C. 839) at a location remote from the military judge via video-teleconferencing-type technology when the accused has a counsel physically present at his location.

Currently, Article 39(a)(4) requires the presence of the accused during all Article 39(a) sessions. Article 39(a) sessions are those sessions of a court-martial that include arraignments,

guilty plea inquiries, advisements of rights, motion sessions, and various other administrative tasks. Article 39(a) sessions are not used to present evidence to the trier of fact. Pursuant to this statutory language, the President has enacted procedural rules that implement this requirement in Rules for Courts-Martial 804 and 805.

This section, and subsequent rule changes, would allow for appearances of the accused and counsel or the military judge by remote means at Article 39(a) sessions. This amendment would recognize the worldwide, mobile, and in-theater considerations that are unique to the Armed Forces of the United States as they relate to criminal justice proceedings. Allowing for Secretarial implementation would ensure the needs of the individual services are addressed prior to the implementation of this section. This procedure would be similar to the Military Extraterritorial Jurisdiction Act that allows initial appearances of a civilian accused with a Federal Magistrate via telephonic or like measures. Should this proposed amendment pass, the Joint Service Committee on Military Justice is prepared to recommend the necessary rules changes to the President for inclusion in the next Executive order amending the Manual for Courts-Martial.

Section 553 would revise and clarify the statutes of limitations for murder, rape, and child abuse offenses under Article 43 of the Uniform Code of Military Justice (10 U.S.C. 843).

Specifically, this section would include all murders in the class of offenses that have no statute of limitations and clarify that rape is an offense that has an unlimited statute of limitations. This section also would provide, consistent with 18 U.S.C. 3283, a life-of-the-child/victim statute of limitations for certain enumerated child abuse offenses. This increase in the UCMJ statute of limitations applicable to child abuse offenses would conform military practice to that of Federal jurisdictions. However, the "life-of-the-child/victim" standard inadvertently creates a problem with the intended extension of the statute of limitations should the child/victim soon die after the abusive incident. It was Congress' intent to *increase* the statute of limitations for the prosecution of certain child abuse offenses. Unfortunately, Congress' choice of language actually could operate to *decrease* the statute of limitations if a child/victim were to unexpectedly die, or die as a direct or indirect result of the abusive incident. For example, if at age 12 a child is abused and subsequently reports the abuse, but before charges are bought the child unexpectedly dies at age 14, or commits suicide due to the emotional trauma being experienced, the child/victim's death only two years after the abusive incident would close the life-of-the-child/victim statute of limitations' period and bar prosecution. To address such circumstances, this section would provide for increasing the period of the statute of limitation to become the life of the child/victim or within 5 years from the date of the offense, whichever is greater.

In addition, this section, again consistent with 18 U.S.C. 3283, would add kidnapping to the list of enumerated offenses for the life-of-the-child/victim statute of limitations.

Finally, this section would expand the definition of "child abuse offense" so the life-of-

the-child/victim statute of limitations would specifically apply to certain, particularly egregious Title 18 offenses committed against victims under the age of 18 at the time of the offense.

Section 554 would eliminate the requirement that rape under the Uniform Code of Military Justice (UCMJ) be committed without the victim's consent. It also would eliminate the mistake-of-age defense from the crime of carnal knowledge of a child under section 920 of title 10, United States Code (Article 120).

Currently, for a service member to be found guilty of rape, Article 120, UCMJ, requires the government to prove that the service member committed sexual intercourse by force and without consent. This section would eliminate the requirement that the government prove that the victim did not consent to sexual intercourse, unless the issue of consent is first raised by the defense. This change is consistent with the majority of State jurisdictions, as well as the federal prosecution scheme in 18 U.S.C. 2241 *et al*. It also would allow the government to focus on the accused and the force applied to the victim rather than on the victim's manifestation of lack of consent.

If Congress passes these changes, the Joint Service Committee on Military Justice (JSC) would recommend changes to the Manual for Courts-Martial (MCM) to implement this section. As part of those recommendations, the JSC also would propose MCM changes that recognize varying degrees of culpability, with corresponding changes in the maximum punishment under Article 120 based upon the amount and type of force applied. Conceptually, this approach is consistent with the majority of State jurisdictions and 18 U.S.C. 2241 *et al*.

The effective date provision would provide the Department of Defense with the twelve months necessary before implementation of these legislative changes to process and staff the corresponding MCM changes requiring Presidential signature, and to properly train military justice practitioners, law enforcement investigators, commanders and service members worldwide.

Section 555 would create the offense of "stalking" of another person under the Uniform Code of Military Justice (UCMJ).

Currently, military case law recognizes criminal culpability for actions that amount to "stalking" offenses, and allows the military to bring charges under Article 134, UCMJ, that are modeled after other jurisdictions when the military can prove that the conduct is prejudicial to good order and discipline or is of a nature to bring discredit upon the Armed Forces. *See United States v. Saunders*, 39 M.J. 1 (2003). In addition, the Article 93, UCMJ, offense of "Cruelty and Maltreatment" encompasses acts of sexual harassment of subordinates. In other situations, acts of sexual harassment may be charged as a violation of Department of Defense (DoD) and Military Department regulations punishable under Article 92, UCMJ. The addition of "stalking" under new Article 93a would complement the prohibited acts covered in Article 93, UCMJ, but without regard to whether that person is the offender's subordinate.

The DoD has modeled this section after the Federal "Model Antistalking Code for the States" by (1) requiring a "course of conduct;" (2) specifically including "sexual assault" as but one example of "bodily harm;" and (3) including members of the victim's immediate family among those persons who can be threatened with such bodily harm or death. Unlike the Federal statute at 18 U.S.C. 2261A, and consistent with the military's worldwide jurisdiction, this section lacks the requirement that the conduct involve traveling in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States.

Section 556 would require sodomy under Article 125 of the Uniform Code of Military Justice (UCMJ) to be committed by force and would create a specific offense of sodomy of a child.

Currently, under Article 125, UCMJ (10 U.S.C. 925), a service member who is found guilty of engaging in unnatural carnal copulation with another person or an animal is convicted of sodomy. There is no statutory requirement that the service member commit this offense "by force." This section would require the government to prove that the act of unnatural carnal copulation with another person was done "by force." This section also would delineate the specific offense of sodomy of a child.

Finally, this section would remove from coverage under Article 125, UCMJ, all acts of sodomy that are not committed by force or not committed with a child. Instead, the Joint Service Committee on Military Justice (JSC) would propose complementary changes to the Manual for Courts-Martial (MCM) placing all sexual acts between consenting adults that are prejudicial to good order and discipline or service discrediting, including "consensual sodomy" and "bestiality," under one consolidated paragraph 62 addressing sex-related offenses in Part IV of the MCM.

The effective date provision would provide the Department of Defense with the twelve months necessary before implementation of these legislative changes to process and staff the corresponding MCM changes requiring Presidential signature, and to properly train military justice practitioners, law enforcement investigators, commanders and service members worldwide.

Subtitle G—Management and Administrative Matters

Section 561 would ensure that judge advocates and civilian legal assistance attorneys properly licensed in one State can provide legal assistance services to military personnel and their family members, and all other persons entitled to legal assistance services, while stationed in another State without being concerned that their professional licenses are at risk.

For over 60 years, the military departments have provided personal legal assistance (*e.g.*, drafting of wills and other legal documents and advice on a variety of personal legal issues) independent of State regulation to millions of active duty and retired personnel and their family members. The Department of Defense (DoD) always has taken the position that military and

civilian DoD attorneys have the authority to provide legal assistance regardless of duty location or where the military or civilian attorney may be licensed to practice law. Section 1044 of title 10, United States Code, limits the provision of legal assistance to matters involving personal civil legal affairs and specifies who is eligible for such assistance, but it does not require legal assistance to be provided subject to State rules regulating the practice of law. Within the past few years, however, questions have arisen within the civilian bar (*e.g.*, the American Bar Association's Commission on Multijurisdictional Practice) whether legal assistance attorneys practicing outside of their licensing jurisdictions are in fact engaging in the unauthorized practice of law.

This section would not grant any new authority to military and civilian DoD attorneys who provide legal assistance. It also would not in any way overrule State licensing authority. Instead, this section merely would provide an unambiguous recognition of the value and importance of the personal legal advice provided to millions of active duty and retired personnel and their family members, and clarify and codify the authority of the military departments to continue to provide that advice.

Subtitle H—Other Matters

Section 571 would codify and uniformly apply existing practices regarding enlistment into the armed forces.

Sections 3253 and 8253 of title 10, United States Code, prohibit the enlistment into the Army or Air Force during peacetime of persons who are neither citizens nor permanent residents of the United States. No corresponding statute currently applies to the Navy, Marine Corps, or Coast Guard. By regulation, the Navy, Marine Corps and Coast Guard allow citizens, permanent residents and U.S. nationals to enlist. Section 341 of the Compacts of Free Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau (Public Laws 108-188 and 99-658) also permit citizens of these nations who are authorized to be admitted to the United States under the Compacts to enlist in all of the armed forces.

This section would not reduce the ability any of the armed forces currently possess to deny enlistment to any person.

Section 572 would increase for five years the number of O-5s and O-6s who could voluntarily retire at their highest grade after serving in that grade for only two years. This would enhance the ability of the military departments to shape and balance the force to achieve the proper officer skill-and-grade mix to meet war-fighting requirements.

Existing law limits the number of officers below the grade of lieutenant general or vice admiral for whom the Secretary concerned may reduce the service-in-grade requirement to two percent of the authorized active-duty strength for that grade in that fiscal year. This section

would increase that limit to four percent for lieutenant colonels and commanders, and colonels and Navy captains. This would permit more officers to retire from the military after serving two years in their highest grade and allow other officers to serve longer careers. It also would provide an incentive for retirement-eligible officers to accept assignments (especially post-command assignments) they otherwise might reject to avoid incurring an additional three-year obligation in order to retire at the highest grade satisfactorily held.

Section 573 would consolidate the separate restrictions on the frocking of brigadier generals, rear admirals (lower half), major generals and rear admirals into a single restriction of 85 for both grades. This would provide increased flexibility when frocking officers to the two lowest general and flag officer grades without increasing the current maximum number of frocked officers.

A single overall limit also would permit the military departments to address their changing requirements throughout the year. As promotion lists are released, demand for frocking increases as these officers are selected and assigned to joint, international, and command positions. This demand rapidly decreases as officers are promoted.

Retaining the separate limits for each general and flag officer grade could increase the number of vacant major general or rear admiral joint billets. The joint community is one of the main beneficiaries of frocking to the grade of major general and rear admiral. Combatant commanders often select from individuals on promotion lists to fill critical positions within their commands. Restricting the pool of promotable officers as candidates for these billets could have a detrimental effect on the warfighting commands.

Section 574 would require officers eligible for consideration by a selection board to submit written communication to the board no later than11:59 PM the day before the board convenes.

Existing law allows the correspondence to arrive no later than midnight on the first day the board convenes. This creates the potential for a board to have reviewed, briefed and acted upon an officer's record before they receive additional information from the officer. Receiving written correspondence after the fact requires the officer's record to be pulled, prepared again, and re-submitted for board consideration. At a minimum, this could delay the process or result in the need for special selection boards (and their corresponding additional expense).

Section 575 would allow the Secretary of Defense to conduct demonstration projects regarding the military personnel system.

The Department of Defense (DoD) increasingly has focused on creating a more strategic, modernized and flexible officer personnel management system, in particular, a system that leverages its human capital to improve organizational effectiveness while enhancing its members' quality of life. The Secretary of Defense would use this new demonstration authority to evaluate

new and more flexible changes to the personnel management system to determine whether they should be applied to the general force.

This section would implement the recommendations of a recent RAND study, "New Paths to Success: Demonstrating Career Alternatives for Field Grade Officers," which outlined policies that the DoD might test; offered suggestions on how the DoD could evaluate these tests; and suggested communities which might be suitable for the tests. In addition, this section is patterned after the recently-enacted National Security Personnel System as well as authority the Office of Personnel Management recently received to waive existing federal human resources management laws and regulations to enable it to propose, develop, test, and evaluate changes to its own human resources management system.

If enacted, 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 alternate career paths for certain groups of officers. The DoD proposes testing the following communities:

- The Department of the Navy would develop policies and practices to address current and future Surface Warfare Officer shortfalls in grades O-4 to O-6 and keep subject matter experts in areas where the Navy cannot afford to lose them.

- The Special Operations Command (SOCOM) would evaluate new approaches to managing gains and losses of personnel who have completed more than 20 years of service. Specifically, SOCOM would target individuals serving in critical specialties in an environment in which such individuals are departing for lucrative civilian jobs.

- The Department of the Army's Foreign Area Officer program would eliminate the "up-or-out" promotion policy throughout the FAO community. This policy is particularly inappropriate in light of the community's high mid-career training costs, the high value placed on cultural understanding and personal relationships, and the value placed on maturity and age in other cultures. Under this project, officers would be promoted as needed, but they would not face mandatory separation or retirement if they were passed over for promotion at least twice within a single grade. Instead, employability, not promotability, would govern their continued service. This project would remove all grade-based service tenures and allow officers to serve up to approximately 40 years. After reaching initial retirement eligibility at 20 years of service, officers could continue serving if a major Army command, Army headquarters, or the DoD offers them a commitment for employment.

Section 576 would amend the Internal Revenue Code of 1986 to equalize the income tax treatment of individuals who are killed in a combat zone (or as a result of wounds incurred while so serving) with the income tax treatment of individuals killed by terrorism or military action.

Section 692(c) of title 26, United States Code, forgives all taxes imposed on a military member or civilian employee who dies from wounds incurred in a terroristic or military action. This tax forgiveness applies to both the tax year of, and the tax year prior to, the individual's death. Section 692(a) forgives all taxes imposed on a member of the Armed Forces who is killed in a combat zone or as a result of wounds incurred while so serving. However, under section 692(a), if the death occurs in the same year that the member entered the combat zone, only that year's taxes are forgiven. This section would extend tax forgiveness to the year prior to that member's death.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Section 601 would make permanent the Family Subsistence Supplemental Allowance (FSSA) program.

The FSSA program increases the Basic Allowance for Subsistence for low-income junior enlisted members by up to $500 per month to make their households ineligible for food stamps. Since its implementation on May 1, 2001, the FSSA program has successfully provided our most needy members with additional financial help.

Less than five hundredths of one percent of the total armed forces participates in the FSSA program.

Cost Implications: Continuing the FSSA program would cost an estimated $2.0 million annually.

Section 602 would eliminate the payment of the basic allowance for housing (BAH) differential. The intent of the BAH program is to provide an increased allowance to members with dependents because of their increased housing needs. Members who support children that do not reside with them do not have this increased housing need and, therefore, should not receive an increase in their housing allowance.

This section also would amend the definition of a dependent, for purposes of the BAH program only, by requiring an unmarried child of a service member to reside with the member unless separated by the necessity of military service or to receive institutional care as a result of incapacitation or disability.

Section 603 would update the pay and allowances that an enlisted member or warrant officer may continue to receive after accepting an appointment/commission as an officer so long as the officer continues to perform the duty which created the entitlement to or eligibility for that pay.

The saved pay provisions in section 907 of title 37, United States Code, are designed to prevent an enlisted member or warrant officer from suffering financially by accepting an appointment/commission. Since officers are paid some pay and allowances at a rate lower than enlisted members, section 907 contains provisions to ensure that an enlisted member (or warrant officer) who accepts an appointment/commission as an officer is paid no less than they would have received if they had remained an enlisted member or warrant officer. However, section 907 does not reflect the many changes made to pay and allowances since 1980.

This section would update the pay and allowances that may be considered as part of saved pay. For example, a member who received Submarine Duty Incentive Pay as an enlisted member, but was designated a Surface Warfare Officer and assigned to a destroyer after appointment as an officer, should no longer receive sub pay. This section also would exclude certain pay and allowances from saved pay. For example, this section would exclude Career Enlisted Flyer Incentive Pay because, by definition, an officer cannot be eligible for that pay.

Subtitle B—Bonuses and Special and Incentive Pays

Section 611 would clarify that Secretaries of the military departments may pay foreign language proficiency pay (FLPP) to all members either in an annual lump sum or in installments. Existing law permits Secretaries to pay FLPP to Reserve component members in either a lump sum or in monthly installments. On the other hand, Secretaries may pay members on active duty only in monthly installments.

Furthermore, existing law permits Reserve component members (when not performing active duty) to receive a maximum of $6,000 in a one-year period. Members on active duty may receive $12,000. This section would permit all members to receive a maximum of $12,000 in one year.

The changes proposed by this section would allow the Department of Defense (DoD) to establish a single program for all members in the force – members on active duty as well as Reserve component personnel. DoD believes this would enhance the incentive value of the pay at no additional cost to the Department; for example, one payment of $6,000 in a 12-month period costs DoD the same as 12 monthly payments of $500.

FLPP should be paid to all qualifying members on the basis of the foreign language proficiency they achieve. It should not be apportioned differently for members of the Reserve components because it takes the same amount of effort for a member of the Reserve component to maintain his proficiency as it does for an active duty member.

Members who receive FLPP, but do not satisfy eligibility requirements for the entire certification period for which the bonus was paid, shall be subject to the repayment provisions of new section 327 of title 37, United States Code, as added by section 615 of this Act.

These changes would generate no increase in expenditures over existing law. The military departments would accommodate the expenditures within existing funds or would budget to that amount prior to implementation of the program changes.

Section 612 would increase the legislative limit for the Selective Reenlistment Bonus (SRB) from $60,000 to $90,000. This would ensure that the military departments have the ability to increase reenlistment incentives for targeted critical skills, as required, to retain sufficient high quality personnel and counter the lure of the high technology private sector without having to request smaller, more frequent increases from Congress.

Following measured increases in SRB award levels that significantly improved retention rates, the Navy reached the current $60,000 legislative limit in 2001 for 13 of 16 senior nuclear skill categories. However, retention among senior, nuclear-trained personnel remains significantly below requirements of 70-90 percent. This indicates that the private sector job market for nuclear-trained individuals remains strong despite a sluggish economy. Increasing the statutory limit for SRB would enable the Secretary of the Navy to compete with the strong civilian market in such industries as electronics, computer, and power generation for senior nuclear-trained personnel.

The screening requirements, advanced education, and high standards of personal performance and integrity required for the Naval Nuclear Propulsion Program produce some of the most highly trained enlisted personnel in the military and help the Program maintain an unparalleled safety record in support of national security. Safe and reliable reactor operations require the retention of sufficient nuclear enlisted personnel in the Program. In addition, improving the retention of nuclear-trained personnel is critical to ensuring all nuclear-powered carriers and submarines will be adequately manned and able to deploy in support of the Navy's Fleet Response Plan. SRB has proven to be the surest and most cost-effective means of improving retention of enlisted members possessing critical skills. Increasing the SRB limit would cost less than the $100,000 it would cost to train new personnel to replace experienced personnel who leave for better-paying private sector jobs. Furthermore, the Navy primarily needs to retain those senior sailors eligible for reenlistment in Zones B and C whose experience, if lost, would take 10 to 14 years to replace. In the long term, this would result in appreciable overall cost savings to the Military Personnel, Navy account.

Cost Implications: Navy estimates this increased authority would cost $55.9 million from Fiscal Year 2005-2009. This assumes that increased SRB awards would improve current retention rates for personnel with targeted critical skills. The Navy has implemented policy directives which currently limit SRB awards, for communities other than nuclear-trained personnel in zones B and C, to $45,000. The proposed increase in the SRB statutory limit would affect about 3 percent of those eligible for SRB. Actual SRB award levels would remain at the discretion of the Secretaries of the military departments to establish within existing SRB budgets.

FY06	FY07	FY08	FY09	FY10

Navy	$10.5M	$10.9M	$11.2M	$11.5M	$11.8M

Section 613 would extend critical recruiting and retention incentive programs for the Reserve components that are due to expire at the end of calendar year 2005. Absent these incentives, the Reserve components may experience more difficulty in meeting skilled manning and strength requirements.

The Reserve components rely heavily on their ability to recruit individuals with prior military service; approximately half of all accessions are former service members or members who are separating from active duty. This is a high-priority recruiting market for the Reserve components because accessing individuals with prior military experience reduces training costs and retains a valuable, trained military asset. The Selected Reserve affiliation bonus and the prior service enlistment bonus provide important incentives to individuals with prior military service to serve in the Reserve components.

The special pay for enlisted members assigned to high priority units is an even more focused incentive because it specifically targets manning in units that have historically been understaffed.

The Reserve components need the Selected Reserve reenlistment bonus to help maintain required manning levels in skill areas with critical shortages by retaining members currently serving in the Selected Reserve. With a smaller active duty force from which to recruit, the bonus becomes more critical to meeting manning requirements.

The Reserve components historically have found it challenging to meet the required manning in the health care professions. The incentive that targets health care professionals who possess a critically short skill is essential to meet required manning levels.

Extending the Ready Reserve enlistment and reenlistment bonus authorities would allow the Reserve components to target these bonuses at individuals who possess skills that are under-subscribed, but are critical in the event of mobilization.

Finally, the health professions loan repayment program has proven to be one of our most powerful recruiting tools for attracting young health professionals trained in specialty areas that are critically short in the Selected Reserve. Extending this authority is critical to the continued success of recruiting young, skilled health professionals into the Selected Reserve.

All of these bonuses and special pays provide an important array of incentives that are necessary for the Reserve components to meet manning requirements. Extending these authorities another year would ensure continuity of these programs.

Cost Implications: The military departments already have programmed funds for these incentives.

Section 614 would provide Secretaries of the military departments the authority to pay Assignment Incentive Pay (AIP) in a lump sum and/or in installments.

Existing law permits Secretaries of the military departments to provide AIP in monthly allotments. However, a June 2004 study by the Center for Naval Analyses found that were the Navy to pay AIP to members in a lump sum at the beginning of the assignment, it would: (1) significantly increase the incentive for members to volunteer for arduous and/or hard-to-fill assignments; and (2) be more cost-effective than comparable monthly payments. Similar studies of other pays and bonuses (*e.g.*, the Selective Reenlistment Bonus) likewise have shown that lump-sum payments can offer an equal or greater incentive for a lesser amount than would otherwise be paid in annual installments or monthly payments.

AIP is an effective tool for encouraging members to accept assignments in difficult-to-fill locations. It has enabled Navy to reduce greatly their reliance on non-monetary methods (such as sea duty credit, which historically has hampered Navy's ability to man sea billets) as an incentive for personnel to volunteer for difficult-to-fill locations and billets. Enabling the military departments to pay AIP in a lump sum would enhance their ability to cost-effectively fill these hard-to-fill positions.

Section 615 would create a single statutory provision governing repayment of bonuses, special pays, and educational benefits for members who do not fulfill the obligated service or other terms of the agreements they enter.

Over the years, as Congress has added new bonuses, special pays, and educational benefits, variances in the repayment provisions have grown. Today, recoupment provisions vary considerably across the spectrum of benefit and pay authorities. Some statutes require or permit recoupment when a member fails, for any reason, to complete an obligated period of service. Others require recoupment only if the member voluntarily terminates service before the end of the obligated period. Still others require a member to enter into a written agreement under which the individual would reimburse the government a pro-rated amount of the pay/benefit if the member "voluntarily or because of misconduct" fails to complete the required period of service (which has caused significant problems in administration). Finally, some have no repayment provisions at all. The lack of consistency among the statutory provisions results in inequities and perceptions of unfair treatment among members.

The Department of Defense (DoD) seeks to establish one simple policy and repayment procedure for all persons who enter into agreements involving obligated military service in exchange for bonuses, special pays, or educational benefits. The Secretary concerned would prescribe standard regulations on applicable procedures including the method for computing the amount of the repayment, the conditions under which an exception to the required repayment would apply and, when repayment is not required, the conditions under which future installment payments would not be made to the member. For the DoD, this new authority would be administered under regulations prescribed by the Secretary of Defense. By establishing an

effective date of April 1, 2006, the DoD seeks to provide adequate time for the Secretary to establish regulations to implement the new authority.

Within the flexibility of the single statutory repayment provision and exceptions to be recognized, the DoD would establish a standard policy that is based on sound stewardship of public funds and fairness to recipients. That policy likely would require repayment of unearned compensation or benefits in cases where the member does not for any reason complete the obligated service. It also would ensure that repayment would not be required for an individual who cannot fulfill the obligation (either service obligation or maintenance of skill qualification) because of injury, illness, impairment or death not the result of the individual's misconduct. Finally, it would provide the Secretary flexibility to determine whether repayment would be against equity and good conscience or otherwise would be contrary to the interests of the United States.

This section does not address three title 37 pay authorities the DoD has not used for many years: section 312a (Special Pay: Nuclear-Trained and Qualified Enlisted Members), section 315 (Special Pay: Engineering and Scientific Career Continuation Pay), and section 317 (Special Pay: Officers in Critical Positions Extending Period of Active Duty).

Section 616 would increase the statutory maximum payable in Hardship Duty Pay (HDP) from $300 to $750 per month.

Currently, the Department of Defense (DoD) caps monthly HDP for the arduousness of serving in a designated hardship location at $150 per month, and for serving in a designated hardship mission at $150 per month. Thus, under normal circumstances, the $300-per-month statutory cap is adequate. However, increasing the cap to $750 would give the DoD an important tool to rapidly recognize troops serving under the most arduous of circumstances, in sequential assignment, and to meet future needs as they emerge.

Cost Implications: It is impossible for the DoD to estimate the cost of this section because its budgetary impact would depend on future utilization, which in turn would depend on such current unknowns as the size of the military force serving in areas of extreme arduous duty and sequential assignments.

Subtitle C—Retired Pay

Section 621 would prohibit state courts from requiring immediate payment of retirement benefits from a property settlement in a divorce action when the affected servicemember, though eligible, has not yet retired.

Existing law prevents courts from forcing servicemembers to retire, but does not address when a distribution from retired pay could or should begin. Some states have mandated immediate payment of the value of a servicemember's pension pursuant to a divorce action even

though the member remains on active duty and does not draw retirement pay. California courts, for example, require a servicemember who remains on active duty past retirement eligibility to pay the former spouse his future pension out of current income. *See, e.g.*, *Gillmore v. Gillmore*, 29 Cal. 3d 418; 629 P.2d 1 (1981). In that case, the Court reasoned that the employee-spouse, by postponing retirement, effectively deprived the non-employee spouse of her immediate enjoyment of an asset earned by the two of them during the marriage. Such holdings have become the norm in both community property and equitable distribution states. As a result, a retirement-eligible servicemember who otherwise would remain on active duty may have no choice but to retire in order to comply with the financial liabilities imposed by such courts. Forced retirement under such circumstances is unjust, unwarranted, and harmful to the security of the United States. As the Department of Defense (DoD) noted in its September 1999 report to the Committees on Armed Services of the Senate and the House of Representatives, "[to] provide for our national defense, the armed forces must be allowed to control when a member is permitted to retire." In that report DoD specifically recommended for the first time amending section 1408 of title 10, United States Code, to explicitly prohibit a court from requiring a member to begin payments of retirement benefits to a former spouse before the member actually retires.

Courts that require servicemembers who remain on active duty past retirement eligibility to pay their former spouses future, unreceived pensions out of current income ignore the fact that retirement-eligible members, unlike employee-spouses in the private sector, do not have sole control over the date of their retirement, but instead may be called upon to serve on active duty as long as it is in best interest of the national defense. This section would require servicemembers to pay a portion of their pensions only after they receive the pensions.

Subtitle D—Other Matters

Section 631 would prevent a State or Territory from imposing sales, use, excise, or similar taxes on the personal property of nonresident service members in the absence of a credit against the tax for sales, use, excise, or similar taxes previously paid to another State or Territory. Currently, the Commonwealth of Puerto Rico imposes its excise tax on nonresident service members who ship personal property that it considers luxury items, such as motorcycles, boats, other watercraft, and mobile homes. Members are transferred to Puerto Rico pursuant to military orders and are absent from their home residence or domicile solely by reason of compliance with military orders. Having already paid sales or use taxes similar in nature to an excise tax to another State or Territory, these service members are being taxed twice on the same property because the Commonwealth of Puerto Rico does not recognize a credit against its excise tax for these prior tax payments. The intent of section 511 of the Servicemembers Civil Relief Act to protect nonresident service members from double taxation and losing their domicile for tax purposes is frustrated when a local taxing authority can impose its own excise tax despite service members already having paid a similar tax on the same property. This section also would preclude other jurisdictions from imposing similar taxes on nonresident service members.

This section would not affect the revenue of the Federal government.

Section 632 would provide the Secretary of Defense with the authority to pay for members of the Armed Forces to obtain professional credentials, licenses and certifications as part of the Department of Defense (DoD) Training Transformation Implementation Plan. Federal agencies already possess similar authority to pay for civilian employees to obtain such credentials, licenses and certifications.

The military departments increasingly use commercially-available systems, products, and services with certification standards corresponding to military occupation specialties. Therefore, they should not duplicate standards where there is significant overlap of knowledge, skills and abilities between the civilian private sector and the Armed Forces. For example, professional credentials, licenses and certifications are an essential element of the Department of the Navy (DoN)'s transformation to performance-based training based on required, position-related knowledge, skills and abilities. This section would enable the DoN to use existing, nationally-accepted industry standards and associated training, and significantly reduce training time for positions significantly similar to positions in the private sector. Professional credentials, licenses and certifications would improve the DoN's ability to verify and measure how well members attain necessary knowledge, skills and abilities, and also outline criteria for career progression.

In exercising this authority the military departments would limit payments to those directly associated with obtaining credentials and certifications. They would not duplicate other educational benefits already available for military members. In addition, the military departments would not use this authority to pay for expenses incurred by individuals to meet the basic qualifications for entry into specific officer communities and professions (*e.g.*, bar examinations for lawyers and licenses for doctors and nurses).

Cost Implications: This section would enable the Armed Forces to leverage training opportunities available from the private sector to potentially reduce the costs involved in providing essentially the same training exclusively within the military. The military departments would fund the costs of this section from within existing Operation and Maintenance funds under the Defense Training Transformation initiative. This initiative would identify the commercial sources that could provide training and education more efficiently and effectively than traditional DoD schoolhouse training. Based on an initial survey of potential commercial sources, the DoN anticipates this section would cost $5-7 million per year. The DoN continues to refine its cost estimates and expects a 25-50 percent group discount with commercial certification providers.

Section 633. Existing law requires the Secretary concerned to retain State income taxes withheld from the monthly retired or retainer pay of a member or former member during any calendar quarter and disburse it to the States during the month following that calendar quarter. This section would provide for disbursement to the States on a monthly, rather than a quarterly, basis. This would be consistent with generally-accepted accounting principles and the practices of other Federal government entities with respect to State income tax withholding and

disbursement. For example, the National Finance Center, the General Services Administration, and the Department of the Interior make State income tax disbursements on a monthly basis. In addition, the Defense Finance and Accounting Service (DFAS) already makes payments monthly for active duty members and civilian employees of the Department of Defense. As a result, this section would ensure that DFAS' practices with respect to retired and retainer pay are consistent with those of other agencies providing payroll services, as well as with the other pay lines serviced by DFAS.

Section 634 would allow service members to include compensation received while serving in a combat zone, which generally is excluded from gross income, as gross income for purposes of contributing to an individual retirement account (IRA). This would enable members in combat zones who contribute to IRAs to continue to save for retirement without the fear of adverse tax consequences.

For traditional and Roth IRAs, a taxpayer can contribute the lesser of a set dollar amount ($4,000 in 2005) or an amount equal to their compensation includible in gross income. These limits put service members who serve in the 31 combat zone tax-excluded areas and contribute to an IRA at a disadvantage. All of the compensation received by enlisted members and warrant officers for any month during any part of which they spend time in a combat zone is excluded from gross income. Officers can exclude a limited amount of compensation from gross income; for 2004 the limit is $6,315.90 per month. Therefore, service members who serve in combat zones would have very little gross income for tax purposes and, thus, could contribute very little to an IRA.

In addition, service members who contribute the maximum set dollar amount to an IRA, but do not have that much compensation for gross income, face significant tax consequences. Their excess contribution is subject to a 6 percent excise tax and a requirement that the member withdraw the contribution and all earnings attributable to the contribution. The earnings must be reported as income and are subject to income tax and a 10 percent penalty for early withdrawal if the member is younger then 59½ at the time of the withdrawal.

Section 635 would eliminate an inadvertent restriction placed on the ability of members assigned to a deployable ship, mobile unit or other designated duty to retain accumulated leave at the end of a fiscal year.

Section 542 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136) increased the maximum amount of accumulated leave a member could retain who was assigned to an area in which the member was entitled to receive Imminent Danger/Hostile Fire Pay (IDP/HFP), or was assigned to a deployable ship, mobile unit, or other designated duty, from 90 days to 120 days. However, that provision also extended to members assigned to a deployable ship, mobile unit or other designated duty the requirement that they serve on active duty for a continuous period of at least 120 days. Previously, this requirement applied only to members entitled to receive IDP/HFP. This change unduly penalizes shipboard members and those

assigned to land-based deployable units (such as Navy SEAL teams or Seabee Battalions) whose extended deployments might not satisfy the new requirement simply because they did not join the ship or unit in time to accumulate 120 days of continuous active service by the end of the fiscal year. This new requirement also fails to adequately take into account other operational duties that may preclude a member from taking leave, but which do not qualify as duty comparable to serving in an IDP/HFP area (because there is no other designated duty truly comparable to serving in an imminent danger area).

In addition, existing law seriously reduces the Department of Defense (DoD)'s discretion to define circumstances under which members can accumulate leave. Leave accumulation and use is an important element of personnel readiness, so unnecessarily restricting the DoD's discretion reduces the effectiveness of the program and degrades the leave benefit for individual members.

TITLE VII—HEALTH CARE PROVISIONS

Subtitle A—Enhanced Benefits for Reserves

Section 701 would allow reservists to elect TRICARE coverage in advance of actually reporting for active duty and still retain their employer-sponsored health plan. Under existing law, if reservists elect TRICARE coverage prior to actually departing for military duty and do not continue to maintain their employer-sponsored health care, the Uniformed Services Employment and Reemployment Rights Act (USERRA) treats the employee-reservists as if they were not covered under the employer-sponsored health plan. This creates problems for the employee-reservists when they return from military duty.

According to the Department of Labor, an employer is only required to provide employees returning from uniformed service with the same employer-sponsored health benefits they had when they actually left to perform military duty. This harms reservists who terminate their employer-sponsored health plan coverage early in favor of TRICARE under the delayed-effective-date of active-duty order provision in section 1074(d) of title 10, United States Code. Employees who elect to terminate their employer-sponsored health coverage early are not entitled to immediate reinstatement in the employer's health plan when they return because they had no coverage when they actually left to perform military duty. Unless the employer chooses to allow them to be reinstated in the plan immediately, an employee would have to wait for the next enrollment opportunity provided by the employer and be subject to any exclusion for preexisting conditions that may be imposed on new enrollments. This situation also applies to reservists who terminate their employer-sponsored health plan upon receipt of orders but who, because of a change in mobilization plans, are never called to active duty. They too would not be able to re-enroll in the employer's health plan immediately unless the employer decides to provide that opportunity.

Since this situation was never contemplated when USERRA was drafted, this clarifying amendment is needed to provide the protections intended under USERRA.

Section 702 would correct a shortcoming in section 1074 of title 10, United States Code, that provides access to military health benefits to military officers in an inactive-reserve status prior to receipt of an appointment in the regular component of the uniformed services. Section 708 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136) amended section 1074 to provide eligibility for Department of Defense (DoD)-sponsored health care to Reserve officers without health insurance or other health benefits who have requested orders to active duty for their initial period of active duty following commissioning and had that request approved, but have not yet to be issued orders.

The DoD believes the original intent of section 708 was to ensure that Reserve Officers' Training Corps (ROTC) graduates have access to military health benefits while awaiting active-duty status (*i.e.*, after graduation/commissioning and before they report for active duty (EAD) and receive an appointment in the regular component of the uniformed services). However, while developing implementation requirements for section 708, the DoD's Office of General Counsel advised that – according to the statute – once a member receives orders to active duty (which are generally provided well in advance of the active-duty report date), the member would lose their eligibility for health care under section 1074(a). This section would correct that problem.

Section 703 would amend section 704 of the Servicemembers Civil Relief Act by providing that a servicemember who is ordered to active duty under a mobilization or similar statute and terminates health insurance coverage is entitled upon release from active duty to reinstatement of the health insurance coverage. This amendment would prohibit any increase in premiums for such health insurance after reinstatement and during the balance of the period for which coverage would have been continued had the coverage not been terminated. As an exception, a health care insurance carrier could increase premiums to the extent of any general increase in the premiums charged by the carrier for the same health insurance coverage for persons similarly covered during the period between the termination and the reinstatement.

Subtitle B—Other Benefits Improvements

Section 711 would allow the Assistant Secretary of Defense for Health Affairs to relocate the Patient Safety Center from the Armed Forces Institute of Pathology to improve the quality or efficiency of their operations and interactions with the rest of the Military Health System. The Department of Defense has no current plans to move the Center.

This section also would remove the name of a trademarked product ("MedTeams") to reflect the termination of DoD's contract with Dynamics Resource Corporation, the proprietary owner of that name.

Subtitle C—Planning, Programming, and Management

Section 721 would update the terminology used in the required elements of the Annual Report on the Quality of Health Care Furnished under the Health Care Programs of the Department of Defense and clarify the areas addressed in the report. This would better align the report with current standards and initiatives advocated by Federal agencies and civilian healthcare organizations so that the Military Health System compares itself as much as possible to civilian benchmarks.

The terminology and scope of metrics concerning the quality of health and medical care have evolved rapidly in recent years. For example, the term "clinical pathway" has become more narrowly focused than in the past and currently refers to a very specific type of documentation used in the setting of clinical practice guidelines, which comprise a subset of evidence-based medicine. The current, more inclusive and more appropriate term for defining requirements for a report on quality health care is "evidence-based practices." Conversely, usage of the phrase "health report card" has expanded and now includes a wide variety of mechanisms for reporting health indicators. Language directing inclusion of information on quality measures, patient safety, and population health is more precise and more relevant for a report on quality health care.

Subtitle D—Medical Readiness Tracking and Health Surveillance

Section 731 section would revise the current requirement for members of the Selected Reserve to be "examined as to the member's physical fitness every five years, or more often, as the Secretary concerned considers necessary" and to execute and submit "annually" a certificate of physical condition. The section would be revised to require that a member of the Selected Reserve "be provided a periodic health assessment on a frequency basis established by the Secretary concerned" and execute and submit a certificate of physical condition "on a frequency basis established by the Secretary concerned."

The amendment will require that members of the Selected Reserve be provided "periodic health assessments," rather than examinations as to a member's physical fitness. Periodic health assessments will focus on preventive services and risk analysis. This focus will improve individual health and medical readiness. The amendment will also provide the military departments with the authority to determine the appropriate frequency for assessments and for submitting certificates of physical condition.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Acquisition Policy and Management

Section 801 would expand small business prime contracting opportunities by providing a greater opportunity to use small business set-aside procedures. Current law limits subcontracting to less than 50 percent since it requires the small business prime contractor to perform at least 50 percent of manufacturing supplies and to bear at least 50 percent of personnel costs for services. This legislative proposal is more reflective of greater subcontracting, teaming and leader follower approach that the Department of Defense is currently moving towards because it allows small business prime contractors to subcontract more of the effort as long as the subcontracts are awarded to other small businesses. Additionally, the language is consistent with the Historically Underutilized Business Zone (HUBZone) small business language found at 15 U.S.C. 632 (p)(5)(A)(III).

The amendment would provide the Department of Defense (DoD) a greater opportunity to support small businesses through the use of small business set-aside procedures. The amendment would expand DoD's flexibility to increase the number of prime contract awards going to small business concerns. Moreover, the amendment should increase the number of identifiable small business concerns doing business with the DoD.

Section 802 would change the annual submittal of the Joint Warfighting Science and Technology (JWSTP) to a biennial requirement and eliminate the requirement to include summaries of technology area reviews and assessments (TARAs).

The section would provide better alignment of the reporting requirement with existing science and technology planning cycles including the biennial requirements inputs provided by the Joint Chiefs of Staff and the biennial budget process.

The TARAs are an iterative internal process that measures and evaluates technological progress. The JWSTP is a strategic planning document that includes a compilation of relevant technology objectives. TARAs review a broader set of technology objectives that are not necessarily JWSTP objectives. Reporting on TARA activities provides an incomplete picture of the DoD science and technology programs relative to the JWSTP.

Section 803 would establish a five year pilot program to allow certain additional Department of Defense (DoD) organizations to use Cooperative Research and Development Agreements (CRADAs) to establish partnership agreements for joint research and development. These additional organizations would include any entity that conducts research and development or engineering as part of its mission, such as universities, depots, logistics centers, test centers, shipyards, and arsenals.

Existing law provides CRADA authority only for a "laboratory," which is defined to include facilities or groups of facilities for which research, development, or engineering is a "substantial purpose." This "substantial purpose" limitation is interpreted to preclude some DoD technical activities or organizations such as universities, depots, logistics centers, test centers,

shipyards, and arsenals from entering CRADAs. This definition would extend to the statute authorizing CRADAs, 15 U.S.C. 3710a, for such DoD technical activities.

To illustrate, this section would allow organizations such as the Defense Acquisition University or the National Defense University to enter CRADAs with private entities such as the Brookings Institute or Science Applications International Corporation to conduct joint research projects. Similarly, the Aberdeen Proving Ground could enter CRADAs with private sector companies to perform research that is mission essential to Aberdeen and benefits their programs, but that also would ensure that the private sector companies would retain access to the research results.

This section also would allow DoD to license DoD-owned intellectual property that may or may not be patented, and to retain associated royalties consistent with existing statutes on patent licensing, 35 U.S.C. 209, and royalties, 15 U.S.C. 3710c.

This section would enhance DoD's ability to license valuable technologies and intellectual property that it has developed, but which may or may not be eligible for patent protection. In today's fast-paced economy, it is essential to keep pace with cutting edge technologies. Many private companies have adapted to this trend by choosing to protect their most valuable intellectual property as a trade secret or copyright, rather than pursue formal patents. The disadvantages of the patent system are that it is relatively expensive and extremely slow; it typically takes from 18 months to several years to receive a patent. In certain fast-paced technology areas such as computer software the technology would be nearly obsolete by the time a patent issues. In contrast, copyright or trade secret protections are available immediately upon development of the technology and for a nominal cost.

Presently, DoD primarily uses the expensive and slow patent system to protect and license its technologies. There is no copyright protection for Government-developed works, and only extremely limited opportunities for protection that is similar to a trade secret. For example, technologies developed by the Government under a CRADA may be protected from release under the Freedom of Information Act for up to five years (see 15 U.S.C. 3710a(c)(7)(B)). DoD oftentimes finds it is difficult to identify a private entity that is willing to invest time and money to develop and refine a DoD technology unless that technology would receive some form of intellectual property protection that would prohibit competitors from engaging in unfair business practices or infringement. As a result, many existing DoD laboratories find their cutting edge technologies are not utilized, refined, or commercialized in the most cost effective and efficient manner.

This section would remedy this situation by providing a limited mechanism for DoD organizations to license valuable in-house technologies without incurring the expense and delays of the patent system. DoD organizations would be permitted to license computer software developed at the laboratory for royalties or royalty-free, as they see fit. The section facilitates the Department's technology transfer effort, and ensures that a licensee's time, effort, and investment

is protected, by permitting the DoD to restrict unlicensed uses of that technology, including exemption from any mandatory unlicensed release under FOIA for 5 years (modeled after 15 U.S.C. 3710a(c)(7)(B)). It also would permit DoD to retain and distribute any royalties it receives under these licenses under the same conditions that already apply to royalties received for patent licenses (see 15 U.S.C. 3710c).

Section 804. Section 808(e)(2) of the National Defense Authorization Act for Fiscal Year 1998 made unallowable the compensation of certain executives in excess of a "benchmark" to be set by regulations, and made the statutory cap expressly applicable to contracts entered into before, on, or after the date of enactment. In *General Dynamics Corp. v. United States*, 47 Fed.Cl. 514 (Fed. Cl. 2000), the court held that the application of the statutory cap to a contract awarded prior to the enactment date of the National Defense Authorization Act for Fiscal Year 1998 constituted a breach of contract, and that the Government was liable for breach damages due to the retroactive application of the cap. The amendment would make the statutory cap prospective from the date of its enactment, and avoid the breach of contract due to the retroactive application of the statutory cap addressed in General Dynamics. Executive compensation would still be subject to a test of reasonableness.

Section 805 would amend subsections (c) and (d) of section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (10 U.S.C. 2302 note) (as added by section 811 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005) to clarify the rapid acquisition authority provided to the Secretary of Defense to respond to combat emergencies. Section 811 provided rapid acquisition authority for combat capability deficiencies that resulted in combat fatalities. This provision would expand the rapid acquisition authority to allow for acquiring equipment and services. It would allow use of the authority to address any deficiency that has resulted in combat casualties or fatalities. It would authorize the Secretary of Defense to delegate this authority to the Under Secretary of Defense (Acquisition, Technology & Logistics). It would also authorize the waiver of domestic source and domestic content restrictions that would inhibit the rapid acquisition of protective materials needed by the warfighters. Protective materials are materials that protect against casualties by providing a physical barrier to ballistic, nuclear, radiological, chemical, biological, or high energy attacks.

The provision also adjusts the notification requirement from reporting within 15 days after each determination made to reporting quarterly on the basis of each determination made.

Section 806 would clarify 10 U.S.C. 2533a. This clarification would retain the fundamental domestic preference requirements of the law, but it would enable the Department of Defense and its suppliers to better implement, comply with, and enforce the law.

The proposed new subsection (f) would promote civil-military integration in the manufacturing processes of the Department's suppliers. It would allow suppliers of aircraft, missiles and space systems, ships, tank-automotive items, weapons and ammunition, or components thereof, at the prime and subcontractor levels, to use commingled foreign and

domestic specialty metals supplies so long as the contractor (or for components, the producer of the component) procures an equivalent amount of domestically-melted specialty metal .

It eliminates the obligation of suppliers of these items or components to have two separate production lines, one for the commercial/civil items or components and one for military items and components. As a result, the provision will eliminate the administrative and costly burden that suppliers face in ensuring that items and components destined for the Department's procurements include only specialty metal melted in the United States, while ensuring that the domestic industry is protected by requiring the purchase of an equivalent amount of domestic specialty metals. Eliminating the need for separate production lines for commercial and military products may encourage additional suppliers to participate in the Department's procurements and ultimately, result in lower costs to the Department.

The proposed change to the redesignated subsection (i) relates to items that contain a small quantity of textile components or materials that are not produced in the United States or that are of unknown origin. Suppliers have identified recurring situations where items cannot be produced for the Department without obtaining a time consuming domestic non availability determination for a small quantity of a textile component or material of either foreign origin or unknown origin. Typically, the situation arises when a change occurs within a contractor's supply chain during contract performance.

In such a situation, the Department is compelled to issue a stop work order and suspend acceptance of further deliveries and payments until a domestic non-availability determination is made pursuant to subsection (c) of 10 U.S.C. 2533a. The lead-time to reach such a determination can be many months. This creates a significant delay in deliveries and hardship for the end users, the suppliers, and the suppliers' workforce. Many of these suppliers are small business concerns dedicated to serving the needs of the Department, and they and their workforce are incapable of withstanding the effects of prolonged periods without cash flow. Consequently, unemployment ensues and companies are pushed to the brink of bankruptcy. To illustrate, one case involved the production of military dress coats that were adversely impacted by the domestic non availability of goat hair canvas valued at less than $1.00 per coat. This legislative proposal addresses this problem by providing a practical clarification of the textile content requirement of subsection (a) of 10 U.S.C. 2533a. It would allow the procurement of covered items that contain a textile component or material of foreign or unknown origin provided the textile component or material is valued not greater than (1) the simplified acquisition threshold or (2) 10 percent of the value of the end item, whichever is less.

Section 807 would increase the limitation on advance billing of working capital fund customers from $1 billion to $4 billion. The Department of Defense (DoD) utilizes advance billing to manage cash shortfalls without disrupting logistics operations. DoD generally does not use advance billing in peacetime, nor does it use advance billing very often (e.g., DoD has not used it in the past two years).

Following the war to liberate Kuwait, large, legislatively-directed, cash transfers from the Defense Working Capital Funds threatened the solvency of the Funds. To maintain their solvency, the Funds advance-billed customers $5-6 billion. In 1998, section 1007 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261) and section 8146 of the Department of Defense Appropriations Act, 1999 (Public Law 105-262) adopted the current $1 billion limitation on advance billing. Imposed in peacetime, this limitation could severely constrain logistics support during the Global War on Terror. For example, if four of the five sub-elements of the Funds were low on cash at the same time, the limitation would be only $250 million for each of the Army, Navy, Air Force, and Defense-Wide subaccounts – less than the monthly outlays for several of the Funds in recent months.

The Funds are designed to be flexible and responsive to customer demands within a business-like structure. They have surged in response to the Global War on Terror and, overall, are operating at levels 25 percent greater than their peacetime business base. In dollar terms, the Funds are operating at $22 billion above their $81 billion peacetime base. Business for some of the Funds has grown 70-90 percent above their peacetime level. In addition, the Funds finance fuel purchases. Given current prices in world markets, DoD predicts that fuel price variability alone will greatly exceed the current $1 billion limitation. The size of these variations, the requirement to provide logistics support during wartime, and the financial volatility involved with the Funds all support increasing substantially the limitation on this essential, last-chance mechanism for financial flexibility in managing these Funds.

Section 808 would raise the dollar limits for purchases from the military exchanges for goods and services outside the United States. This section helps ensure a readily available source of supplies, especially during times of emergency.

Section 809 would permit the Secretary of Defense to enter into acquisition and cross-servicing agreements (ACSA) with regional international organizations of which the United States is not a member. Under current law, the Secretary may enter into ACSAs only with regional organizations of which the United States is a member.

Acquisition agreements and cross-servicing agreements permit the United States armed forces to obtain specified logistic support from, and to provide similar support to, the other party to the agreement on a reimbursable basis. Originally designed for and limited to NATO nations and organizations, the authority was expanded in 1994 to include certain non-NATO nations and regional organizations of which the United States is a member.

In connection with that expanded authority, the Conference Committee on the bill-the FY 1995 Defense Authorization Act-said:

"The conferees agree to limit the expansion of the Secretary's authority to international organizations 'of which the United States is a member.' If the Defense Department determines after experience with this expanded authority that expanding it further to include international

organizations of which the United States is not a member would enhance the U.S. national interest, the conferees encourage the Department of Defense to submit a legislative proposal to make this change."

Recent experience has demonstrated the value of being able to conclude such agreements with regional organizations of which the United States is not a member.

During the 2003 turmoil in Liberia, the United States Joint Task Force Liberia was on the scene, but peacekeeping forces were provided by the Economic Community of West African States (ECOWAS)--an organization of which the United States is not a member--through that organization's Mission in Liberia ("ECOMIL"). Had we had an ACSA with ECOWAS, the United States could have furnished essential logistic support. Instead, other, less efficient mechanisms had to be worked out in order to support the ECOMIL forces. This experience demonstrated that the lack of an ACSA with an umbrella regional organization impedes our ability to support that organization in activities we wish to encourage.

As the United States moves to a supporting role in some of those areas of the world in which we have not traditionally had forces stationed, we must of necessity rely on regional organizations of which we are not a member, essentially because we are not a part of the region, e.g., ECOWAS and the African Union (AU). Empowering and strengthening these regional organizations, and encouraging them to take a more active role in peace operations in their regions will be furthered by the availability of an ACSA. An example is the AU in Darfur: Nigeria and Rwanda are offering forces. We have an ACSA with Rwanda but not as yet with Nigeria. Having an ACSA with the AU would strengthen the position and authority of the AU and would permit us to help the AU forces in Darfur regardless of the particular nation contributing the force.

Regional organizations of which we are not a member but with which it is in our interests to cooperate include ECOWAS (Liberia and Pan-Sahel); the European Union (EU) (EUFOR in the Balkans); AU (Darfur). This section would permit the Secretary of Defense to enter into ACSAs with such regional organizations.

The proposed fourth paragraph would delete Section 2347, of title 10, United States Code, concerning the Limitation on amounts that may be obligated or accrued by the United States. Currently, transactions under Subchapter I of Chapter 138, "Acquisition and Cross-Servicing Agreements" (ACSA) (Title 10, U.S.C., 2341-2350), limit the United States to very specific dollar amounts for transactions. These dollar thresholds were originally set in 1980 and have not been adjusted for inflation, making them remarkably small today. At a time when ACSA use is increasing dramatically, ACSA's ceiling limits are slowly but surely decreasing. While these ceiling limits are not a direct operational threat, they have led to the proliferation of related fuel agreements that could be covered under the ACSA mantle. Such a proliferation is a poor use of U.S. government resources and confusing to other countries.

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

Section 811 will improve small business prime contracting and subcontracting opportunities with the Department of Defense (DoD) through re-establishment of small business set-aside procedures in the four designated industry groups. The re-establishment of small business set-aside procedures will encourage small business concerns to participate in DoD prime contracting requirements. The experienced gained by small business in the prime contracting arena generally supports those small businesses in their efforts to become subcontractors. Repealing this legislation would streamline and simplify DoD contract data collection and reporting requirements and reduce the administrative effort necessary to carry out the statute.

This section consistent with the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

This legislation will re-establish small business set-aside procedures in the four designated industry groups. The repeal also applies to the ten targeted industry categories. It reduces the ever expanding number of program goals the DoD is expected to support. The repeal would also eliminate the "emerging small business" prime contracting goals with regard to the four designated industry groups.

Section 812 would reauthorize Energy Savings Performance Contracts (ESPC) essential to the Department's energy reduction strategy.

Section 804 (c) of the National Energy Policy Act (42 U.S.C. 8287c) imposed a sunset clause which terminated authority for Federal agencies to enter into new ESPC contracts, effective October 1, 2003. The recently passed Defense Authorization Act of 2005 extended the sunset clause until October 1, 2006. Up until authority was terminated, ESPC contracts provided an alternate financing source to installations with viable energy conservation projects but a lack of available direct appropriations. ESPC contracts accounted for over half of all energy reductions measured throughout the Department and was a critical component of the Department's energy reduction plan, reported on annually to Congress in the Energy Management Report assimilated by the Department of Energy. ESPC contracts, while representing a commitment of up to 25 years, are paid for out of energy savings which must be guaranteed by the contractor, so directly scoring ESPC contracts is not a fair assessment of the commitment, nor is it a fair representation of the savings that will result.

Developing ESPC contracts is a significant effort, taking well over one year from start to finish. Contemplating an annual reauthorization, while helpful, would have the negative impact of deterring installations from putting forth the effort given the uncertainty of Congressional intent and legislative outcome each year. This section would extend authority until 2010 which would allow the Department to ramp up significantly the quantity of ESPC contracting and implement numerous energy conservation projects that would otherwise remain unfunded or compete for other sources of direct financing.

Section 813 would make needed minor changes to the newly revised Defense Acquisition Workforce Improvement Act (DAWIA), chapter 87 of title 10, United States Code, enacted by section 812 of the National Defense Authorization Act for Fiscal Year 2005 (NDAA for FY2005). Specifically, minor changes are necessary to correct inaccuracies in numbering caused by revisions made in NDAA for FY2005 and to provide for parity in the designation of civilian and military Critical Acquisition Positions.

Section 1732 would be revised to correct inaccuracies in numbering caused by revisions made in the NDAA for FY2005.

Section 1733 would be revised to eliminate differences in the authorities provided for the management of civilian and military Critical Acquisition Positions created by revisions made in the NDAA for FY2005. The continuing theme of DAWIA has been to create parity between the civilian and military members of the Defense Acquisition Workforce. The NDAA for FY2005 introduces a different standard for the designation of civilian Critical Acquisition Positions and does not extend that standard to the designation of military Critical Acquisition Positions. Revisions to section 1733 would re establish the parity sought by DAWIA and provide the Secretary with the same authorities for the designation of both civilian and military Critical Acquisition Positions.

Section 814 would allow the Department of Defense (DoD) to benefit from a "tax" that creates the Acquisition Workforce Training Fund. At present, the Fund receives 5 percent of the service fees collected by executive agencies under certain contracts specified in the statute. DoD is excluded from contributing to, or benefiting from, the 5 percent fees. This section would enable DoD to create much needed new and expanded learning solutions for the DoD Acquisition Workforce. These learning assets could be leveraged to benefit the rest of the federal acquisition workforce.

The statute anticipated a process whereby the five percent tax used to establish the Fund would only be applied to purchases made by the civilian agencies. This approach is impractical because it requires a two-tiered price structure; one price for civilian agencies and a separate price for DoD buyers. This two-tiered pricing structure would cause significant administrative burdens both for buyers, agencies that administer the contracts, and suppliers.

Section 815 would streamline the supply chain by removing the procurement burden at overseas activities, while still allowing personnel at overseas establishments to have access to quality locally produced perishable food items at good prices. This will permit the use of existing Prime Vendor Program contracts in accordance with applicable procurement laws, including acquisition regulations governing the use of small business contracting programs.

Current law requires that funds made available to the Department of Defense may not be used to procure food if it is not grown, processed, reused or produced in the United States. The exception at subsection (d)(3) allows an establishment located outside the United States to purchase perishable foods for its personnel without application of these requirements.

To purchase perishable food, and comply with the statute, military establishments located outside the United States must award the contract at their overseas location. Thus, Prime Vendor food distribution contracts, already awarded in the United States, may not be used.

Subtitle C—United States Defense Industrial Base Provisions

Section 821. The National Defense Stockpile anticipates that under current market conditions, it will exceed its current authority before the end of FY 2006, which will require the Department of Defense to cease sales. If customers cannot rely on the Department to be a stable supplier of materials, they will go elsewhere, thereby jeopardizing the ability to achieve future revenue goals. Uncertainty in whether or not the Department will be able to remain in the market also will lead to market disruption and instability.

Subtitle D—Extension of Temporary Program Authorities

Section 831 would codify the existing appropriations act restriction on modifying equipment within five years of its retirement or disposal and add a new exception for modifications costing less than $100,000.

Section 8053 of the Department of Defense Appropriations Act for Fiscal Year 1998 (Public Law 105-56), prohibits the use of appropriated funds to modify an aircraft, weapon, ship or other item of equipment that will be retired or otherwise disposed of within 5 years after completion of the modification. The Secretary of a military department may waive this restriction if the waiver is necessary on the basis of national security, and he so notifies the congressional defense committees in writing. Safety modifications do not require waivers. This prohibition applies to all modifications that upgrade or enhance the ship or other weapons system's performance regardless of (1) the dollar amount; (2) the extent of the physical modifications to the weapons platform; (3) the temporary nature of the installation; or (4) whether the equipment will be removed at the end of the platform's life and reused on another platform.

This section would codify section 8053 and create a new exception for military departments to modify equipment within five years of retirement or disposal without the waiver and notice requirements if the value of the modification does not exceed $100,000. This would eliminate unnecessary delays in achieving the mission-essential modernization of the Department of Defense's (DoD's) warfighting assets and allow DoD to divert its resources to higher-priority mission and operational matters.

DoD's many years of experience with section 8053 and its predecessor statutes (Congress adopted the first version in 1991) has shown the waiver process to be unduly burdensome given (1) the relatively small cost of most modifications (most cost well under $50,000); (2) that the majority of the modifications involve only minor physical changes; and (3) that all modifications processed for a waiver involving ships have involved the cost-benefit "payback" of equipment that will be removed and reused on another ship. This section would balance DoD's need for administrative relief with Congress's desire to ensure that defense dollars are spent for modifications to aging assets only when necessary for national security reasons.

As the average age of U.S. Navy ships increases, and the ships constructed in the 1980s rapidly approach decommissioning dates, the number of ship modifications and waiver packages will continue to increase in the future. Currently, the Secretary of the Navy approves approximately 100-150 waiver packages each year. Ships forward deploy 1-2 times within the five years before decommissioning. Each ship typically requires modifications – especially to their Command Control Communications Computers and Intelligence Systems – to meet new missions or interoperability requirements with other ships. The current reality of declining budgets, increased optempo demands, and rapidly changing defense missions already force Fleet Commanders and Type Commanders to prioritize their limited modernization resources. That Congress has never objected to any waiver by the Secretary of the Navy demonstrates how wisely and prudently DoD uses its modernization dollars.

Section 832. The Bob Stump National Defense Authorization Act for Fiscal Year 2003 created a five-year program by which the Defense Logistics Agency could provide logistics support and services to a contractor in support of its performance on a contract for the construction, modification or maintenance of a weapons system. The authority granted expires on September 30, 2007. This section seeks to extend the authority to 2010 due to administrative concerns. The statute requires the Secretary of Defense to issue regulations before the granted authority is used; and these regulations currently are in the process of final coordination. Moving the expiration date to 2010 would better provide the five-year pilot period envisioned by the statute.

Subtitle E—Other Acquisition Matters

Section 841 would clarify and simplify the existing provision of law that precludes the Secretary of Defense from procuring ball and roller bearings from manufacturers who are not part of the National Technology and Industrial Base.

The current restriction on acquisition of foreign ball and roller bearings is not clear because it restricts ball bearings and roller bearings "in accordance with subpart 225.71 of part 225 of the Defense Federal Acquisition Regulation Supplement (DFARS), as in effect on October 23, 1992." The DFARS in effect on October 23, 1992, is not readily available to the public. Furthermore, there have been many changes to the DFARS since 1992. For example, does "small purchase" equate to "simplified acquisition"?

This section would remove the reference to subpart 225.71 of part 225 of the Defense Federal Acquisition Regulation Supplement, as in effect on October 23, 1992.

Section 842. In the early 1990's, the Department of Defense recognized a need for its laboratory industrial base to remain up-to-date. Specifically, the labs often needed to adapt facilities quickly to meet emergent requirements. The speed at which change is required often exceeds the ability of the current military construction program to provide required facilities. In 1996 Congress authorized the Department of Defense Laboratory Revitalization Demonstration Program with an aim to increasing the flexibility of Defense laboratories to modernize antiquated facilities. Section 2892 of Public Law 104-106, as later amended by section 2871of Public Law 105-261, provided limits for operation and maintenance funded minor military construction higher than allowed under 10 U.S.C. § 2805 to specifically allow Department of Defense laboratories more flexibility to provide required facilities. This flexibility has proven invaluable in allowing the laboratories to meet emergent requirements to support transformational initiatives.

The section would add a new subsection to 10 U.S.C. § 2805 addressing laboratory revitalization. The new subsection would apply limits and definitions based on those in the temporary authority of the Department of Defense Laboratory Revitalization Demonstration Program. Further, this would codify the Department of Defense Laboratory Revitalization Demonstration Program as a permanent authority.

The section would also, as a stylistic measure, insert subsection headings.

Section 843. Section 638 of title 15, United States Code, requires all federal agencies with R&D budgets over 100 million dollars to set aside 2.5% of those budgets for Small Business Innovation Research. It requires the federal agencies to unilaterally determine research topics that further critical technologies as identified by either (A) the National Critical Technologies Panel in a report required by title 42; or (B) the Secretary of Defense, in the 1992 report issued in accordance with section 2522 of title 10, and in subsequent reports. The Department of Defense's (DoD's) critical technology planning document was subsumed by later legislation and section 2522 of 10 U.S.C. was ultimately repealed. Title 15 still references the deleted 10 U.S.C. 2522.

This section replaces the repealed reporting requirement with the current DoD documents guiding R&D - the Joint Warfighting S&T Plan, the Defense Technology Area Plan and the

Defense Research Plan, by referencing 10 U.S.C. 2501 (note). The section corrects title 15 by changing the reference. This correction is necessary to retain a DoD document as the SBIR/STTR topic determination; otherwise the non-DoD authority identified in title 42 is the default SBIR/STTR topic determinant.

This section is very important to the DoD. SBIR set-aside funds are approximately $1 billion in R&D investment, and as such represent a significant part of the DoD R&D program. The section allows the SBIR program to best meet DoD needs, that is to ensure DoD SBIR funds are spent on technologies important to the DoD.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Intelligence-Related Matters

Section 901. The proposed section 706 of the National Security Act of 1947, as laid out above, is based directly on existing sections 701 through 704 of the National Security Act of 1947. These sections currently provide the Central Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, and the National Security Agency with specific exemptions from the Freedom of Information Act (FOIA). The section above will extend these FOIA exemptions to the Defense Intelligence Agency's (DIA's) Human Intelligence and Technology Directorates' operational files in a manner similar to the other Agencies' exemptions. The new section closely follows the wording of section 704, which provided a FOIA exemption for certain NSA operational files. Section 704 is the most recently enacted FOIA exemption of the group.

Amendments to the National Security Act of 1947 that would allow FOIA exempted operational files to continue to be subject to search and review for information concerning the specific subject matter of an investigation by the respective National Geospatial-Intelligence Agency, National Reconnaissance Office, and National Security Agency Inspector General for any impropriety, or violation of law, Executive Order, or Presidential directive, in the conduct of an intelligence activity. The proposed amendments are consistent with the language proposed by the DIA.

Section 902 would make a technical correction to permit the Department of Defense to modernize its internal directive governing the defense counterintelligence polygraph program, and it would expand the class of persons covered.

In enacting 10 U.S.C. § 1564a, Congress recognized that polygraph examinations are a useful tool in screening DoD's military and civilian personnel, contractor personnel, detailees, and applicants whose duties involve access to Top Secret or Special Access information. Recent experience in Cuba, Afghanistan, and Iraq has demonstrated that such personnel may also have access to other types of highly sensitive information whose disclosure or manipulation would

jeopardize human life or safety, compromise intelligence sources and methods, or otherwise endanger military operations. Personnel of special concern include security guards, vehicle drivers, and linguists.

This section would authorize the Department, under standards established by the Secretary of Defense, to employ counterintelligence polygraph screening for additional personnel who have access to highly sensitive information other than Top Secret or Special Access information.

Subtitle B—Other Matters

Section 911 would expand the eligibility criteria for these two positions by allowing individuals with substantial experience in the field of test and evaluation to be selected for these jobs regardless of their present or former affiliation with the Department of Defense.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Section 1001 repeals the requirement for a separate budget request for procurement of reserve equipment.

Section 1002 repeals the requirement for a two-year budget cycle for the Department of Defense.

Section 1003 would allow the Department of Defense (DoD) to extend from two to five years its ability to capture all expired funds from the military personnel and operation and maintenance appropriations.

Existing law allows DoD to transfer funds from military personnel and operation and maintenance appropriations to the Foreign Currency Fluctuations, Defense account only during the first two years after such appropriations have expired. DoD should be able to withdraw funds from an account during all of its expired years; otherwise gains in the last three years of an expired account must lapse because DoD cannot use those funds, including previously transferred Foreign Currency Fluctuations funds, for any other purpose.

The current two-year restriction apparently is a carry-over from the days of the "M" account, when all appropriations carried a two-year expired life. In 1990, Congress amended the current account closing law (section 1552(a) of title 31, United States Code) to extend the expired period to five years, but did not amend section 2779 of title 10 to accommodate that extension. DoD should be able to take advantage of all expiring, unobligated funds.

The increased revenue generated by section 821 to authorize the sale of an additional $200 million in commodities from the National Defense Stockpile should be more than enough to cover even the most pessimistic estimates of the possible increased spending resulting from this proposed change in the authorization for the Foreign Currency Fluctuation account.

Section 1004 would enable the Secretary of the military department concerned to authorize the use of funds appropriated for active forces to support reserve component forces that have been notified they will be ordered to active duty in support of a contingency operation. Section 101(a)(13)(B) of title 10, United States Code, defines "contingency operation" as a military operation that "results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of [title 10], chapter 15 of [title 10], or any other provision of law during a war or during a national emergency declared by the President or Congress." Thus, the amendment would authorize the use of appropriated funds to support reserve component units that have been alerted for mobilization.

Training and equipping a reserve component unit after mobilization delays the mobilization process and negatively impacts operations at the mobilization site. Use of active component funding upon alert would allow units to reach the proper levels of training and equipment readiness necessary to execute the assigned mission in a timely manner.

Use of active component funds during the alert phase will allow reserve component units to achieve the required level of readiness more quickly. For example, units must bring their Combat Prescribed Load List of repair parts from a peacetime level to the "Go to War/Mobilized Mission" level prior to actual mobilization. The ability to begin this process upon unit alert saves precious time during a crisis.

Under the Home Station Soldier Readiness Program, reserve component units should have wills, physicals, dental checks, and similar activities completed prior to mobilization. This often does not happen because of a shortage of qualified personnel and a shortage of funds to obtain assistance. The ability to bridge any gaps in the reserve component funding will help ensure a more efficient mobilization process.

Not all soldiers in reserve component units have the required functional skills training to accomplish the mission. Training is often provided at the mobilization site to bring existing personnel up to standards. The ability to use active component funds during the alert phase of mobilization to ensure reserve component personnel have adequate training is necessary to improve the efficiency of the process.

Active component funds are currently being used to resolve these deficiencies once the reserve component units have been mobilized. Use of active component funds while the reserve component unit is in the alert phase will save precious time during a crisis and potentially save funds during the mobilization phase.

Section 1005 would clarify the authority of the Department of Defense (DoD) to use operation and maintenance funds to purchase weapons in foreign countries where U.S. armed forces are engaged in military operations when the cognizant combatant commander determines that such a program – sometimes referred to as a weapons buy-back program – should be undertaken for force protection purposes.

Weapons buy-back programs have previously been undertaken in Panama and Haiti with substantial success. Because the DoD's authority to engage in such programs has been unclear, the DoD sometimes has used its "emergency and extraordinary expense" authority under section 127 of title 10, United States Code, to fund these programs.

In view of the security environment in Afghanistan and Iraq, and the need to respond promptly to similar threats elsewhere in prosecuting the War on Terrorism, clear statutory authority to conduct such programs is desirable.

This section also would authorize the cognizant combatant commander, with the concurrence of the State Department, to transfer weapons acquired under this section to the military or security forces of another country. Weapons not suitable for transfer would be destroyed.

Section 1006. The Army must have the flexibility to utilize funding available to meet mission requirements. Maintaining separate accountability of obligations by component burdens the readiness of the units. In a multi-component unit, the ability to eliminate the inequality of funding by balancing the programs across components is a readiness enhancer.

Since active O&M cannot be used to finance these missions, the units rely on guard/reservists to perform most of them using guard/reserve O&M funds. The Army estimates that about $50 million in funding for active and reserve missions are affected by the restrictions of current law. This section would address most of the Army's problem with funding these multi-component units.

This section would authorize the obligation, expenditure, or transfer of Operation and Maintenance, Army (OMA), funds to support elements of the reserve components assigned to a multiple-component unit. This section defines a multiple-component unit as a unit comprised of personnel or equipment, or both, from active and reserve components. Some active Army units and reserve/guard units have troops from multiple components of the Army. Currently, active-duty troops in Army Reserve or Guard units cannot perform certain missions because the missions cannot be legally financed using Reserve/Guard O&M funds. Even though the opposite situation is also true, it is much rarer.

Subtitle B—Counter-Drug Activities

Section 1011 would extend current authorities five more years. The current authority, which expires at the end of FY 2006, enables the Department of Defense to assist the counter-drug activities of any other department or agency of the Federal Government or of any State, local, or foreign law enforcement agency for any of the purposes set forth in the act. This support has been key to our national drug strategy, and it will remain critical in the future to stem the flow of illicit drugs into our country.

This section also clarifies that the Department of Defense may establish and operate bases of operations or training facilities for the purpose of facilitating a wide variety of foreign law enforcement counter-drug activities. The current authorities provide that the Department may establish and operate bases of operations or training facilities for the purpose of facilitating counter-drug activities without defining the term counter-drug activities. While we believe that the current authorities are very broad, we are being asked to provide this type of support for a broader spectrum of counter-drug related criminal justice activities. This section provides helpful clarification.

In countries such as Afghanistan, the whole spectrum of counter-drug activities is insubstantial or nonexistent. For example, the widespread absence of an Afghan legal structure inhibits the progress of counter-drug activities. A trained counternarcotics security force may be able to detect drug trafficking, but without a system for processing suspected traffickers the effort provides little benefit.

The Department is moving its counternarcotics support into new geographic regions to attack a source of terrorist funding as part of the War on Terrorism, and to support countries that are key to our national drug control strategy and defense security cooperation goals. These new regions contain several underdeveloped countries. The Department needs to be able to help countries build an initial capability in order to move the process forward until the host nation can take over.

Subtitle C—Reports

Section 1021 would relieve the Department of Defense of the requirement to submit an annual report to the Congress regarding the plan for developing, deploying, and sustaining a prompt global strike capability. The Secretary has already submitted the 2004 report. The existing law specifies eleven elements that are to be included in this report and in subsequent annual updates. The Department is in compliance with the substantive portion of the existing law found in paragraph (a) of section 1032. This portion states, "The Secretary of Defense shall establish an integrated plan for developing, deploying, and sustaining a prompt global strike capability in the Armed Forces. The Secretary shall update the plan annually." The Secretary has issued policy guidance supporting the implementation of this portion of the law. In addition, the United States Strategic Command has developed a plan that provides this type of military capability with the Secretary approving its basic concepts.

The Department does not envision significant enough changes to the current plan that would warrant annual reports. The changes that will occur are tied to material research, development, and acquisition processes that have long timelines and are already subject to congressional scrutiny. Implementation of this section would remove an administrative burden and a duplication of effort. Periodic updates on the global strike capability would be contained in a variety of Department of Defense communications with the Congress, including the President's Budget Submission, the Secretary's testimony, and testimony by the Commander, United States Strategic Command.

Section 1022 would eliminate a redundant reporting requirement. It also would further streamline management of the Department of Defense (DoD) and save the DoD 30 workdays per year.

Pursuant to section 483 of title 10, United States Code, the Secretary of Defense must submit a semi-annual report to Congress concerning transfers to and from selected readiness subactivity groups (SAGs) within the active operation and maintenance (O&M) appropriations. These mid-year and end-of-year High Priority Readiness Transfer Reports include the total amount of transfers into funds available for that activity, the total amount of transfers from funds available for that activity, the net amount of transfers, and a detailed explanation of the transfers into and out of funds available for an activity. These reports highlight the movement of funds between O&M SAGs, but they also provide more detail than congressional committees could find useful.

The DoD already provides such detailed execution reports to the Congress as the Rebaseline Report, which provides the execution track by O&M SAGs; the DD 1415 Reprogramming Request, which provides detailed information on the movement of funds prior to execution; and the DD 1002 Execution Status Report, which provides detailed execution summaries on a monthly basis. The DoD has tailored these reports to provide useful and meaningful data specifically requested by the Congress. The reports required by section 483 do not provide any additional useful information.

Subtitle D—Defense Against Terrorism and Other Domestic Security Matters

Section 1031 would clarify the responsibilities for testing of preparedness for nuclear, radiological, biological and chemical weapons and related materials in accordance with the Homeland Security Act of 2002.

Currently law directs the Secretary of Defense to "develop and carry out a program for testing and improving the responses of Federal, State, and local agencies to emergencies involving biological weapons and related materials and emergencies involving chemical weapons and related materials."

Subsection (c) of section 112 and subsection (c)(1) of section 238 of title 6, United States Code, as well as Homeland Security Presidential Directive - 8, National Preparedness (December 2003), assign the responsibility for national preparedness and a national preparedness training program to the Secretary of Homeland Security. In addition, section 238 of Title 6, United States Code, assigned to the Department of Homeland Security the responsibility for "coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support." This section would update section 2315 of title 50, United States Code, to comply with current statutory authorities and executive directives.

Subtitle E—Personnel Security Matters

Section 1041 would allow delegation of authority to civilian directors to issue security regulations. The Internal Security Act of 1950 currently refers to the Secretary of Defense and those military commanders designated by the Secretary. Since enactment of that provision, significant portions of the Department of Defense, and particularly its Defense Agencies and Field Activities, have been created under the control of directors who often are civilians and in any case are not denominated as commanders.

The language of this provision should be updated to recognize this change in organizational structure to enable the Secretary of Defense to designate either military commanders or military or civilian directors, as is appropriate given the nature of the organization, to exercise the authorities of this law regarding promulgating regulations for control of military installations, facilities, etc. This will fill a gap in authority for control of Defense facilities, often of primary operational importance, such that the Secretary of Defense will not have to exercise the authority of this law directly, but may delegate it as he does with other military installations.

Subtitle F—Transportation-Related Matters

Section 1051 would authorize travel and transportation for family members of members of the Uniformed Services and federal employees who are repatriated after being held captive by an enemy of the United States. This amendment supports members of Uniformed Services in the Global War on Terrorism and demonstrates the commitment of the American people to those who fight this War. Reuniting a former captive member of the United States Government with family members is an important responsibility of the Services.

Transportation-in-kind, a monetary allowance, or reimbursement would be authorized for transportation of a family member between the home of the family member and the location of the repatriation site at which the member of the Uniformed Services or federal employee is located. Family members could be provided per diem or reimbursement for actual and necessary expenses of travel. Not more than three family members could be provided travel and transportation, unless the Secretary concerned determines travel and transportation for additional

family members would be appropriate. Travel and transportation could be provided for an attendant for a family member if the family member is unable to travel unattended and no other family member is able to serve as the attendant.

Section 1052 would provide the United States Transportation Command authority to budget, develop, and acquire transportation and distribution peculiar equipment and activities. The United States Transportation Command was assigned the peacetime mission as the single manager for the Department of Defense for common user transportation and the Distribution Process Owner, tasked to improve all aspects of distribution from manufacture delivery to the soldier in the field.

The current structure for the conduct of research and development is along modal lines. The Air Force is tasked to develop and procure transportation aircraft. Army procures trucks and railroad cars for the Department of Defense. Navy acquires Fast Sealift Ships. While this section does not seek to change that basic research and development structure, a problem exists in that little progress in the intermodal transportation specific area is being made. This is due in part to poor coordination of efforts by the Services, and in part due to peacetime oversight being assigned to a combatant commander who is without the accompanying authority to conduct research and development in the commander's assigned areas. Currently what limited research and development is being conducted in this area is accomplished by the United States Transportation Command submitting project specific requests for DOD-wide research and development funds; or submitting budget proposals for the Air Force, as its executive agency, to include in its budget requests. The competition with non-transportation needs oftentimes precludes the Department of Defense from taking advantage of technology that would greatly enhance the ability to move essential Department of Defense cargo faster and cheaper than currently exists. The new mission relative to the distribution process is likewise well suited for application of RDT&E by a combatant commander.

As the basic procurement of vessels and vehicles would be unchanged and because USTRANSCOM already accomplishes some of the needed research through use of Department of Defense or Air Force budgets, the proposed change would have little or no cost or budgetary effect. If enacted, this section will not increase the budgetary requirements of the Department of Defense.

Section 1053 would conform the definitions of state and public aircraft to internationally understood definitions, allow the Department of Defense to update its transportation regulations without fear of losing authority to accomplish missions, eliminate the threat of an inadvertent waiver of sovereign immunity through regulatory non compliance, and eliminate confusing language from a key definition regarding aviation.

Currently, the definition of Public Aircraft contained in title 49, United States Code, Section 40102 (a)(37) and title 49, United States Code, Section 40125, cause the status of a commercial aircraft to change from civil to public if under contract with the federal government.

While originally enacted to prohibit DOD from infringing on commercial air operations, the use of the term "commercial purposes" conflicts with missions assigned to the Department of Defense by Congress and has not been applied to any DOD operations at least since the law was last changed and with no records of that issue being discussed between the Departments at any time.

The Department of Defense operates the majority of its transport category aircraft through the use of a working capital fund, receiving reimbursement from customers authorized by law to use the services of the Department. Most of those laws, with the exception of the Economy Act, are in title 10 and under the purview of the Defense Committees of the House and Senate. Most, if not all, of those uses would fit within the definition of "commercial purposes" because the working capital fund statute, section 2208 of title 10, requires reimbursement. That does not mean that the Department is seeking to take business away from the private sector. The Department only maintains and operates those owned or controlled transportation resources needed to meet approved DOD emergency and wartime requirements and anticipated exercise or peacetime forecast requirements that cannot reasonably be met from commercial transportation resources. Both the authority and the budget for Department of Defense aircraft operations are controlled by Congress. To place additional restrictions in title 49, United States Code, tied to laws, regulations, and directives that were in place prior to November 1, 1999 creates statutory conflicts and makes it virtually impossible for the Department to update its transportation regulations.

Normally, the definition is provided in title 49, United States Code, to draw a distinction between civil aircraft, regulated by that title; and public aircraft, regulated by titles 10, 14, 32, 50 and others. The definition was not intended to control military aircraft operations or to potentially create a conflict with the Convention on International Civil Aviation (the Chicago Convention of 1944) which recognizes only "civil" and "state" aircraft. The threat that military aircraft of the Department of Defense will become civil aircraft because they are determined to be engaged in "commercial activities," with the potential international legal issues associated with such a waiver of sovereign immunity, for deviating from an obsolete regulation should be repealed.

Subtitle G—Other Matters

Section 1061. The purpose of this pilot program is to test an alternative crewing concept onboard certain combatant vessels. This section would further initiatives to transform the Navy by authorizing the Secretary of the Navy to establish a pilot program that would allow Federal civil service mariners to serve in non-combat positions on certain designated Navy warships and ensure that such civilian mariners would be entitled to receive the highest level of protection under the Geneva Conventions. It is contemplated that the program would involve approximately 450 Reserve civilian mariner crew positions on three ships – a command ship and two submarine tenders – although this section would provide authority to add or change vessels, within the categories designated in proposed section 10219(e) above. The number of Reserve

civilian mariners and positions also would vary if the number or types of ships were to change. These Reserve Civilian Mariners would serve on active duty only when their warship engages in belligerent operations. While on active duty, these mariners would be subject to the Uniform Code of Military Justice and appropriate implementing regulations.

This section would apply only to civil service mariners of the Military Sealift Command employed on the date of enactment of this section who elect to serve on designated warships, and any civil service mariner appointed to a position and assigned to serve on designated warships after the date of enactment.

Reserve civilian mariners would continue to perform the same functions while on active duty as they did previously. They would continue to receive any regular civil service pay, overtime, allowances, entitlements, emoluments and benefits (e.g., FEGLI, FEHB, FECA, Long Term Health Care and retirement) to which they are entitled. They also would receive, in certain circumstances, military pay and certain allowances, entitlements, emoluments and benefits while on active duty under this program. The time period of this military leave "save pay" provision is the same as that available to other Federal civil service employees who are Reservists or members of a National Guard.

Instead of providing TRICARE or any other military health benefits under chapter 55 of title 10, the Navy would pay the employee portion of Federal Employee Health Benefits and administrative expenses in accordance with 5 U.S.C. 8906(e)(3) for mariners activated for more than 30 consecutive days, consistent with the payment of such health benefit expenses for other civil service employees activated for more than 30 consecutive days. Reserve civilian mariners also would not be eligible for retired pay under 10 U.S.C. 12741. In addition, this program would entitle Reserve civilian mariners to the 44 days per calendar year of military leave Army and Air Force military technicians receive in connection with overseas duty. Activation shall not exceed the maximum number of days of military leave authorized for Federal civil servants, unless the Secretary of the Navy waives that limit in case of military exigency.

The Secretary may issue implementing regulations that establish different authorities, procedures, and standards for this specialized and limited category of reservist than currently exist in law and regulation. A reporting requirement from the Secretary of the Navy to the Secretary of Defense will assess the success of the pilot program. The report to the Secretary of Defense would measure the safety/injury rate, oilspills, manpower and crew cost savings, military personnel billet reductions, customer satisfaction, damage control capabilities, activations and drills, civil service mariner recruitment and retention, crew morale, and engineering readiness.

Cost Implications: This section would cost an estimated $2.45 million annually. This assumes the manning of three ships by approximately 150 civilian mariners per ship activated for the maximum military leave permitted under the program.

Section 1062 would modernize and update titles 10 and 32 of the United States Code by striking the obsolete term "Territory" (with a capital "T") as it was originally defined in 1956 when Alaska and Hawaii were Territories. Throughout titles 10 and 32, the term "territory" (with a small "t") is frequently used in its more modern connotation, generally meaning American Samoa, Guam, and the Virgin Islands, although the term "territory" itself is not generally defined in either title. The changes made by this section make no substantive changes to titles 10 and 32.

Subsection (a) strikes the term and definition of "Territory" in title 10, United States Code, section 101(a)(2), and then makes the necessary conforming amendments to the remainder of the title.

Subsection (b) amends the definition of "Territory" in title 32, United States Code, section 101(1), and then makes the necessary conforming amendments to the remainder of the title.

The existing definition of "Territory" in title 32 includes a reference that applies it to all other laws concerning the militia and Guard and provides that its use includes Guam and the Virgin Islands. Because of this general cross reference, the definition in title 32 cannot be completely eliminated. Additionally, throughout both titles, where the term "Territory" is used in a section with possible application to the militia or Guard, the conforming amendments insert specific reference to Guam and the Virgin Islands to maintain their current status under the title 32 definition. In those title 10 references that include "possessions", this addition of specific references to Guam and the Virgin Islands is unnecessary since they are already included under that title's definition of "possessions". In addition, where the reference to Puerto Rico is being amended to conform to the above changes, the current status of Puerto Rico as a commonwealth of the United States is updated and "Commonwealth of Puerto Rico" is inserted in place of "Puerto Rico".

This section has no discernable budget implications.

Section 1063 would consolidate several provisions of Chapter 159 of title 10, relocate one provision to subtitle C of title 10, and make several technical corrections. This section makes no substantive change in the law, other than a clarification regarding application of Chapter 159 to the Pentagon Reservation. It is a housekeeping measure.

Subsections (a), (b), (c), and (d) would consolidate the provisions of Chapter 159 of title 10, United States Code, that encompass the acquisition of real property into two sections. Subsections (a) and (b) merge subsection 2661(c) and sections 2663, 2672, 2672a, and 2676 into two sections, the first, a revised section 2663 addressing acquisition in general, and the second, a new section 2664 addressing limitations on acquisition. Subsection (c) repeals subsection 2661(c) and sections 2672, 2672a, and 2676 since their provisions have been inserted in the revised section 2663 and new section 2664. Subsection (d) amends the table of sections at the beginning of Chapter 159 to reflect these changes.

Subsection (e) relocates section 2814 to subtitle C of title 10, *Navy and Marine Corps*. The section deals solely with Navy authority at a Navy installation. Although it should originally have been codified in subtitle C of title 10, it was mistakenly submitted as a provision for subtitle A, *General Military Law*. The provision should be moved to its appropriate location within title 10—the Navy and Marine Corps subtitle.

Subsection (f) would repeal a reference in 10 U.S.C. § 2665 to 10 U.S.C. § 2664, which was itself repealed in the Ronald Reagan National Defense Authorization Act for Fiscal Year 2005. The remainder of section 2665 is not affected other than for two technical corrections relating to references to the repealed subsection (a).

Subsection (g) would apply the real property provisions of Chapter 159 of title 10 to the Pentagon Reservation under the authority the Secretary of Defense. This amendment adds a definition applicable to Chapter 159 clarifying that, with regard to the Pentagon Reservation, the provisions of the chapter would also be applicable to the Secretary of Defense. Section 2674 of the chapter provides that the Pentagon Reservation, as the Headquarters of the Department of Defense, is under the jurisdiction, custody, and control of the Secretary of Defense and not under the control of a Military Department. This is unique in that all other DoD property is directly under the jurisdiction, custody, and control of the Secretaries of the military departments. This amendment closes the gap of authority, particularly with regard to the leasing provisions at 10 U.S.C. § 2667.

Section 1064 would make various non-substantive clerical, conforming, and technical corrections. In the National Defense Authorization Act for Fiscal Year 2004, the Congress adopted general definitions for the terms "congressional defense committees" and "base closure laws", both located in 10 U.S.C. § 101. With that enactment, much of the unnecessary repetition was also corrected in conforming amendments to other sections of title 10. This section addresses the remaining conforming amendments that were not made in the 2004 Act as well as other technical corrections.

Subsection (a). The most extensive conforming amendments with regard to "congressional defense committees" are in chapter 169 on Military Construction and Military Family Housing. In that chapter, the practice has been to use the term "appropriate committees of Congress" to mean the same four committees now defined generally in title 10 as "congressional defense committees." To obtain the greatest benefit from this use of a single uniform term, chapter 169 should conform to the rest of the title. Because that chapter also included the two Intelligence Committees as appropriate committees of Congress for projects carried out by or for the use of DoD intelligence components, these conforming amendments continue to include those two committees in chapter 169 for purposes of such projects. The proposed amendment to section 2694a would delete the now redundant definitions of "appropriate committees of Congress" and "base closure law". It would also change the definition of "State" to be more accurate, since the current definition refers to "territories and possessions", most of which do not have organized governments to which this section would

apply, e.g., Wake Island, Midway Island, and Johnston Atoll. The specific reference to Guam being equivalent to a state for purposes of section 2694a does not change Guam's status under this provision of law or under the Guam Land Return Act, Public Law 106-504.

In subsection (b), the conforming amendments for purposes of the definition of "base closure laws" are only to those previously enacted provisions which still have effect. A number of previously enacted provisions contain a definition of base closure laws, but are transitory in their application and do not require change now.

In subsection (c), the deletion in section 2703(b) of title 10 of the cross-reference to the definition of "unexploded ordnance" in section 2710 is a technical correction. When the term "unexploded ordnance" was enacted as a general definition in section 101(e) of title 10, it was also repealed in section 2710. The current cross-reference in section 2703 to section 2710 for this term is no longer accurate. The other two terms in 2703(b) are still defined in section 2710. In subsection (d), the deletion of the comma after the second use of the word "explosives" in the definition of "military munitions" in section 101(e) of title 10 is a technical correction. When originally proposed, this definition had no comma in the phrase "…including bulk explosives and chemical warfare agents…". During the legislative drafting process, the original language was reordered for purposes of numbering clauses. Inadvertently, a comma was placed after the word "explosives" which changed the meaning of the phrase. Originally, the word "bulk" was meant to modify both "explosives" and "chemical warfare agents", but with the comma it only modifies "explosives". Since the same paragraph previously refers to "chemical and riot control agents", a second reference to "chemical warfare agents" would be redundant except if modified by "bulk". This brings in chemical agents stored in bulk prior to being weaponized.

This section has no discernable budget implications.

Section 1065 would prohibit the manufacture, sale, or wearing of insignia or awards for civilian employees of, and other civilians who render service to, the Department of Defense that the Secretary of Defense has not authorized. It would maintain the integrity and honorary status of these various decorations, which is vital if they are truly to have the recognition that they warrant. For example, the Secretary of Defense's Defense of Freedom Medal, awarded to civilians who are injured or killed in the line of duty, is currently available for purchase on the internet.

Section 1066 would allow the Secretary of Defense to provide children of full-time, locally-hired Department of Defense (DoD) employees who are U.S. citizens or nationals what is in essence a space-required, tuition-free education in Department of Defense Dependents Schools (DoDDS). The Secretary would have the discretion to authorize all, some, or none of the children of locally-hired DoD personnel to enroll under this section. The Secretary also would be able to withdraw such authorizations.

Because of a waiver granted by the then-Assistant Secretary of Defense for Force Management Policy beginning in School Year 2002-2003, locally hired, full-time nonappropriated fund DoD employees could enroll their children tuition-free if DoDDS determined there was space available for such children. Children of locally-hired appropriated fund DoD employees also may enroll in DoDDS on a space-available, tuition-free basis pursuant to a long-standing regulatory waiver.

Cost Implications: The Department of Defense Education Activity can absorb the small resource costs associated with this section due to the limited numbers of students affected. Enrollment data from School Year 2002-2003 show only a small increase in the number of dependents enrolled in DoDDS as a result of the waiver permitting the enrollment of dependents of locally-hired nonappropriated fund employees.

TITLE XI—DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL

Section 1101 provides the Secretary of Defense authority to non-competitively appoint recipients of financial assistance to appropriate positions in the Department of Defense at any time during the period of their scholarship or fellowship, and upon completion of their degrees. Current law authorizes the Secretary of Defense to carry out a scholarship and fellowship program with an employment payback component. This section also enables participants in the program to engage in internship and training activities between semesters.

The Department of Defense is confronted with a continuing challenge in educating, training, recruiting, and retaining individuals in certain science, mathematics, engineering, and language disciplines that are critical to the national security functions of the department.

The addition of these authorities will improve substantially our ability to recruit, develop, and retain individuals who will be critical in fulfilling the Department's national security mission.

Section 1102 would increase the number of defense industry civilians who could enroll in the Naval Postgraduate School's (NPS's) defense product development program and expand the program to include other systems engineering curricula.

Existing law allows up to ten defense industry civilians to enroll in the NPS's defense product development program to enhance the ability of the Department of Defense (DoD) and defense-oriented contractors to reduce the time required to field defense systems. Mixing experienced, practicing systems engineers with active-duty officers and students from defense laboratories has increased the diversity of backgrounds and perspectives and provided insights into the problems industry faces when it implements military designs. Student and faculty program critiques confirm that this breadth and diversity contribute to the quality of the educational experience. Systems engineering is a relatively new field that currently involves the teaching of practice more than principles. Like NPS's product development curriculum, its systems engineering curricula emphasize the importance of interdisciplinary course work and

student design activities, making the broader mix of students in the program a critical element to achieve the breadth of disciplines covered and the experiences represented.

The DoD will complete a full review of this program by September 1, 2005, as required by the original legislation (section 535 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398)). The review will include a survey of all students who have completed the program regarding the perceived benefits of allowing defense contractors into the program beside their military uniform and Federal civilian counterparts. Preliminary results from informal assessments of both faculty and students indicate significant value in having a defense contractor perspective in the classroom. Based on their assessment of this value, defense organizations that support the program, as well as defense contractors, have indicated their desire to expand the enrollment of civilians in the program.

The NPS product development and systems engineering programs have grown significantly since their inception, with the number of graduates expected to triple from 2003 to 2005. Currently about 1,840 students, primarily DoD civilian employees, are enrolled in these programs. To maximize the benefits of these programs, it is important to maintain a sufficient ratio of defense industry civilians to DoD civilians and military officers.

This section would not increase the program's costs because defense industry participants pay their own tuition.

Section 1103 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; 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 created a complex formula to correct that windfall. 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 PERSONNEL AFFECTED: Nearly 300 Department of Defense (DoD) employees under CSRS retire each year from working a part-time schedule.

RESOURCE REQUIREMENTS ($K):

	FY06	FY07	FY08	FY09	FY10
Total	$645	$715	$729	$743	$758

Cost Implications: The DoD estimates this section would cost $3.59 million from Fiscal Year (FY) 2006 to FY 2010. This estimate assumes that two 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 $645,000 for the retirees in FY 2006. This estimate includes a budget inflation factor of 1.9 percent each for FY 2007-2009 and 2.0 percent for FY 2010 based on Program Budget Review Guidance.

Section 1104 would allow the Department of Defense (DoD) to determine when an annuitant, upon reemployment, would receive both their full salary and their annuity from the Civil Service Retirement and Disability Fund. This would allow the DoD to authorize annuitants to receive both their full salary and their annuity under specific circumstances (e.g., when filling hard-to-fill or critical positions). Otherwise, the DoD either would offset a reemployed annuitant's salaries or terminate their annuity, as established under chapters 83 and 84 of title 5, United States Code.

Existing law excludes a Civil Service Retirement System or Federal Employees' Retirement System annuitant who retired involuntarily through discontinued service retirement from consideration as an employee for purposes of retirement or the Thrift Savings Plan upon reemployment. This prevents individuals who retired involuntarily (through no fault of their own) from paying into the retirement system upon reemployment and subsequently enhancing their retirement annuity benefit with additional service and a higher average salary.

This section would provide the DoD the necessary flexibility to reemploy annuitants under DoD and federal placement and return-to-work programs while compensating employees based on the critical nature of the position. This section also would allow the DoD to reemploy annuitants who were involuntarily separated and compensate them in a way that is beneficial to

both the DoD and the employee. This section would correct this unintended consequence of current law.

Section 1105 would ensure that the Secretary of Defense retains jurisdiction over the Department of Defense (DoD) Priority Placement Program (PPP), an important, long-standing, internal DoD program. The DoD's ability to administer the aspects of this program will ensure its continued success in placing employees adversely affected by downsizing.

The Secretary's jurisdiction over the PPP is critical to the continued success of a program unique to the DoD. Since its inception in 1965, the PPP has placed over 170,000 employees displaced through no fault of their own in other jobs in the DoD. For example, the PPP will be the primary tool the DoD uses to retain employees displaced by Base Realignment and Closure (BRAC) 2005. The PPP assigns placement priorities based on the condition or severity of the displacement action (*e.g.*, reduction in force, transfer of function, return from overseas, reduction in grade, etc.) and requires mandatory placement of certain displaced employees. Its success is contingent upon the DoD being able to run the program without the cost and delays resulting from third-party reviews.

The Merit Systems Protection Board (MSPB) first attempted to assert jurisdiction over internal, voluntary placement actions taken under the PPP several years ago. MSPB review of PPP placements is costly in terms of the manpower and resources required to resolve such cases; disrupts final placement of affected employees; hinders mission accomplishment pending resolution of such appeals; and, to date, has had no direct effect on the outcome of previous MSPB cases. The MSPB has rendered mixed opinions regarding its jurisdiction over this program. This section would clarify that the MSPB has no jurisdiction over placements made through the PPP. It would not affect the involvement of the MPSB in those cases in which their jurisdiction is clear.

Section 1106 would extend through September 30, 2010, the Department of Defense's (DoD's) authority to separate in a reduction in force (RIF) an employee not affected by the RIF in order to protect another employee who otherwise would be separated by the RIF. This authority is an integral part of the wide range of programs the DoD requires to downsize and transform humanely and effectively.

Section 1107 would extend the requirement that the Department of Defense (DoD) pay the government's share of the health premium for 18 months for employees involuntarily separated, or voluntarily separated from a surplus position, due to a reduction in force. Under existing law, DoD civilian employees involuntarily separated (or voluntarily separated from a surplus position) before October 1, 2006 (or February 1, 2007, if specific notice of such separation was given before October 1, 2006) are eligible to elect continued health benefits coverage for up to 18 months under the Federal Employees Health Benefits Program (FEHBP). The DoD continues to pay the employer portion of the FEHBP premiums; the employee is responsible for the employee share plus a small administrative fee.

This section would extend eligibility for continued health benefit coverage to employees separated before October 1, 2010, or February 1, 2011 (if specific notice of such separation was given before October 1, 2010). This extension is critical as the DoD continues downsizing and prepares for Base Realignment and Closure 2005 and global realignment actions.

Section 1108 would extend the Department of Defense's (DoD's) authority to pay severance payments in a lump sum, rather than on a biweekly basis. Lump-sum payments cushion the impact of involuntary separation and provide employees with personal financial flexibility. This authority, exclusive to the DoD, is a critical tool the DoD needs to restructure its workforce, especially with a new Base Realignment and Closure round scheduled to begin in 2005.

Section 1109 would allow Department of Defense and United States Coast Guard white-collar, nonappropriated fund (NAF) employees who are non-exempt from the Fair Labor Standards Act to choose compensatory time-off in lieu of overtime pay. Currently, these are the only NAF employees who cannot make this choice. This section would correct that inequity.

TITLE XII—MATTERS RELATING TO OTHER NATIONS

Subtitle A—Matters Related to Iraq, Afghanistan, and Global War on Terrorism

Section 1201 authorizes the President to build the capacity of partner nations' military or security forces to combat terrorism or participate in or support U.S., coalition, or international military or stability operations.

The war on terrorism is global. Terrorist networks exist across the world, including in many countries with which the U.S. is not at war. A key U.S. goal is to fight the Global War on Terrorism in partnership with other countries that, themselves, seek to close safe havens, disrupt or destroy terrorist or criminal networks, or contribute to international stability through participation in international or regional peacekeeping missions. The armed forces of the U.S. cannot win this war by themselves.

Developing partner nation security capacities benefits the United States in a number of ways. First, many GWOT tasks can best be done by indigenous forces fighting for their countries: they know the local geography, language and culture. Second, strong partner nations can govern more effectively and extend the rule of law to their territories, leading to a more stable international order. Increased international stability and fewer terrorist safe havens would reduce the strain on U.S. military forces caused by frequent international deployments and preserve the lives of American troops.

This section would address problems encountered in training and equipping partner nation security forces for combating terrorism since September 11, 2001. It would provide

permanent flexibility to increase partnership nation capability to combat terrorism, to support U.S. or coalition military and stability operations, or to participate in such operations as part of an international coalition.

Partnership security capacity building provided by the Department of Defense (DoD), with the concurrence of the Secretary of State, under this authority could take the form of equipment, supplies, services, training and funding. The total value of DoD partnership security capacity building under this authority would be limited to $750,000,000 in any fiscal year.

DoD would use this authority to help countries meet threats, to form a more effective force, or to reduce the need for U.S. military participation.

Section 1202 would authorize the Secretary of Defense to provide supplies, services, transportation and other logistical support directly to coalition or other foreign forces participating in or supporting efforts by the United States to conduct military and stability operations around the globe. It would revise and make permanent authority originally provided temporarily in section 1106 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108-106), and section 9009 of the Department of Defense Appropriations Act, 2005 (Public Law 108-287).

Before the Secretary could utilize this authority, a potential recipient of assistance would need this support in order to participate in military operations, and the Secretary would have to determine that such participation will eliminate the need for, or reduce the number of, U.S. forces deployed in connection with such an operation. This reduces not only the cost to the Department, but the burden on American servicemen and women. In addition, providing direct support is more efficient in many cases than providing support on a reimbursable basis.

DoD used this type of authority in Fiscal Year 2004 to provide airlift, sealift, food, water, and a variety of other services to coalition partners in Iraq. This support has enabled coalition partners to participate when they otherwise would lack the financial means and logistical capability to move troops over long distances and pay for extended deployments. Their participation has reduced the stress on U.S. forces operating in Iraq.

Section 1203 would authorize the Secretary of Defense, with the concurrence of the Secretary of State, to reimburse key cooperating nations for their costs in connection with their participation in, or support of, United States military operations in Iraq, Afghanistan, and other operations in the Global War on Terrorism. This would make permanent authority Congress has provided the Department of Defense (DoD) in supplemental appropriations acts since 2002.

DoD has used this authority, generally referred to as Coalition Support Fund reimbursement authority, to reimburse key cooperating countries supporting U.S. military operations in both Iraq and Afghanistan. This authority has enabled coalition partners to participate when they otherwise would lack the financial means and logistical capability to move

troops over long distances and pay for extended deployments. Their participation has reduced the stress on U.S. forces operating in Iraq and Afghanistan.

Section 1204. With the growing importance of stabilization, security and reconstruction efforts to winning the global war on terrorism and achieving long-term U.S. security objectives, it is critical that U.S. Government agencies work together in an integrated fashion in the field. Military operations alone are not sufficient to win the peace and must be paired with effective civilian stabilization and reconstruction capabilities. In most recent cases, the Department of Defense (DOD) has borne an overwhelming share of the burden for stabilization and reconstruction tasks because of the absence of other U.S. Government agencies with resources to perform them. DOD's expanded role in these activities drains scarce resources and detracts from its abilities to deter and defend against threats to the United States and its national security interests.

The Secretary of State would share responsibility for stabilization and reconstruction assistance activities by working with DOD. Upon her request to the Secretary of Defense, and his determination that an unforeseen emergency exists, the two agencies would work together along with such other U.S. Government entities as the Secretary of State may determine, in providing reconstruction, security, and stabilization services to other foreign countries. The State Department has recently established an Office of Coordinator for Reconstruction and Stabilization (S/CRS), which would organize the dispatch of State personnel and other civilian agency experts to work with DOD in the field during a crisis. These civilians could contribute manpower and skills that could reduce the burden on DOD's personnel and other resources substantially.

Current funding levels for S/CRS allow it to train and plan, but not to deploy operational elements in a crisis, leaving DOD with the primary responsibility to undertake stabilization, security, and reconstruction efforts in situations where the U.S. military has been involved. This section would authorize the Secretary of Defense at the request of the Secretary of State to provide to the Department of State, including the S/CRS, and any other Federal agency, up to $200 million in DOD resources in response to a crisis in a foreign country that requires immediate reconstruction, security and stabilization assistance.

Stabilization, security and reconstruction require a quick and coordinated response among many actors. Current funding authorities are often slow or stovepiped, hindering effective implementation. This emergency authority would enable DOD , the State Department and other Federal agencies to work together during stabilization, security and reconstruction operations and eliminate delays in deploying S/CRS and other U.S. Government elements in the critical stages of stabilization, security and reconstruction efforts.

Subtitle B—Other Matters

Section 1211 would authorize the Department of Defense (DoD) to transfer the War Reserves Stockpile, Allies, Korea (WRSA-K) inventory to the Republic of Korea (ROK) in exchange for concessions based on "net realizable value," as defined in the Office of Management and Budget's Statement of Federal Financial Accounting Standards Number 3. Valuation based on net realizable value would enable DoD to consider the cost of disposing WRSA-K inventory not transferred. Previous legislative initiatives (Public Law 103-236, Section 509 and Public Law 106-113, Section 1232) permitted an exchange for concessions based on fair market value, but the ROK considered these efforts for peacetime transfer of WRSA-K as cost prohibitive.

22 U.S.C. 2321h provides that defense articles in WRSA-K may be transferred to the ROK only through Foreign Military Sales or through grant military assistance. Transfer of the WRSA-K in peacetime to the ROK would save the United States as much as $1.3 billion, enable the ROK to fund necessary maintenance, improve self-sufficiency, and use aging WRSA-K munitions for near-term training purposes.

In the absence of this authority, DoD may be required to spend upwards of $532 million to maintain the existing, aging WRSA-K inventory. The estimated cost of returning the entire inventory to the United States may exceed $640 million, and demilitarization costs may exceed $650 million.

Section 1212 would amend chapter 155 of title 10, United States Code, by replacing section 2611 to streamline the management of the Department's Regional Centers for security studies. Currently, these centers are authorized to accept gifts and donations under various provisions of the law throughout title 10. This initiative would consolidate that set of laws into one provision that would provide a uniform and consistent authority for all DoD centers to accept gifts and donations.

Currently the five Regional Centers operate under various existing legal authorities. As new centers were established, new legislation was passed to govern each center. As a result, the centers have different sets of legal rules guiding their acceptance of gifts and donations. The variety of authorities hinders effective management and oversight of the centers, and provides broad authority for some centers but only limited authority for other centers.

The Regional Centers are very important tools for achieving U.S. foreign and security policy objectives. The centers allow the Secretary of Defense and the regional Combatant Commanders to reach out actively and comprehensively to militaries and defense establishments around the world to lower regional tensions, strengthen civil-military relations in developing nations, and address critical regional security challenges.

Section 1213. The Regional Defense Counterterrorism Fellowship Program (CT Fellowship Program) enables the Department of Defense to assist key countries in the war on terrorism by providing training and education for combating terrorism activities.

The draft language amends the title of the program to Regional Defense Combating Terrorism Fellowship. Within the Department of Defense lexicon the term "counterterrorism" refers only to offensive operations, whereas the phrase combating terrorism denotes the full-spectrum of offensive and defensive approaches to fighting terrorism. This title will more accurately align the program with Department of Defense approach to the Global War on Terrorism and better capture the diverse array of courses and programs that the program seeks to offer. The proposed language additionally broadens and definitively identifies the types of education and training programs that the CT Fellowship can support. As such, the proposed legislation will allow the Department to more effectively identify, create, and promote the diverse types of training that our foreign partners in the global war on terrorism require.

The CT Fellowship has become the "go to" program within the Department when we look to address counterterrorism issues in partner nations. No other Defense Department program can fund the creation of new counterterrorism courses and programs as quickly or effectively as the CT Fellowship. The proposed changes to the program's authorization language will provide added flexibility to support unusual, non-traditional, or "target of opportunity" training and education initiatives. Definitively authorizing such activities will serve to enhance the flexible, policy-responsive nature of the program.

The modified language will additionally permit the program to fund non-U.S. instructors and make use of the courses and programs offered at foreign defense and security institutions. The program's academic advisor routinely evaluates the relevancy and suitability of the courses provided in U.S. institutions. The advisor will perform the same review of any foreign institution courses and programs to ensure that these conditions are met within foreign programs. Integrating valuable foreign expertise and experiences into the program supports the critical objectives of developing a global counterterrorism coalition and building regional solutions and capacities.

Section 1214 separates the authority to conduct humanitarian mine action from the authority to conduct humanitarian and civic assistance. Humanitarian and civic assistance are activities conducted in conjunction with authorized military operations, and are funded through the Operations and Maintenance funds of the specific military department involved. The Department of Defense (DoD) participation in humanitarian mine action activities is conducted as part of the United States Government's interagency humanitarian mine action program and in accordance with national security and security cooperation objectives, and is funded through the Overseas Humanitarian, Disaster and Civic Aid account.

The existing law poorly serves the US. The multiple references within the existing Section 401 to restrictions addressing only the landmine and explosive remnants of war detection and clearance activities bears witness to the ill fit. Furthermore, the promotion of specific operational readiness skills of the members of the US Armed Forces is a requirement for humanitarian and civic assistance activities, not originally intended for US personnel engaged in humanitarian mine action efforts.

Establishing a separate section for humanitarian mine action will eliminate recurring confusion between humanitarian mine action and humanitarian and civic assistance.

This section also separates the authority to conduct humanitarian mine action and the corresponding contributions to the security interests of the United States from the requirement to address the specific operational readiness skills of the members of the armed forces who participate in these activities.

This section will allow DoD to engage in humanitarian mine action activities that address the national security interests of the United States without being tied to the operational readiness skills of the armed forces participating. Humanitarian mine action offers DoD opportunities to conduct security cooperation activities in countries that are important in the global war on terrorism. As written, section 401 restricts DoD's ability to conduct these security cooperation activities with national security implications in instances in which military forces are not available.

Due to the extremely high operational deployment tempo of US Armed Forces, their ability to participate in DoD humanitarian mine action programs is extremely limited. The prolonged nature of the War on Terrorism dictates that the availability of military personnel to contribute to humanitarian mine action will be limited at times. This proposed change to Title 10 would enable DoD civilian technicians, in addition to their US Armed Forces counterparts, to conduct the on-site education, training, and technical assistance that this program offers. Being able to tap into existing DoD civilian expertise offers continuity to humanitarian mine action programs at those times military personnel are not available to conduct the missions due to competing demands.

These DoD civilian technicians already exist at the DoD Humanitarian Demining Training Center at Ft. Leonard Wood, MO. This proposed change to Title 10 would simply maximize their utilization and employment by the Department of Defense in humanitarian demining efforts and also permit DoD to tap the civilian expertise available in other DoD agencies and installations such as the EOD School.

Addressing the operational readiness skills of US Armed Forces will continue to be the priority, but in those cases where US Armed Forces are not available to participate, this proposed change would enable qualified DoD civilians to both maintain continuity of the DoD humanitarian mine action program and to gain the additional benefit of those same operational readiness skills for DoD as a whole and the United States Government.

This section also will enable DoD to provide transportation services to countries to move their demining trainees to the location where the training is being conducted. DoD conducts its Humanitarian Mine Action Program in both a bi-lateral and multi-lateral setting. Training may be conducted in one country by U.S. trainers necessitating the movement of third country participants to find their way to the training site, normally hundreds if not thousands of miles

away. This is typically the case in Central and South America. These countries cannot afford the cost of transportation—that is just one reason they are requesting demining assistance in the first place. We must be able to provide reasonable and prudent amounts of transportation services to facilitate bi-lateral and multi-lateral humanitarian mine action training.

Section 1215 would revise the geographic restriction found in 10 U.S.C. 1051, Personal Expenses. Coalitions today don't conform to Unified Command Plan boundaries. Because the authority provided in Section 1051 contemplated the strengthening of regional relationships, it hasn't kept pace with cooperative efforts that span the globe. Also, the current language provides greater flexibility to the various combatant commands. Central Command's involvement with coalition-partner countries outside its own theater has necessitated Joint Staff approval of Combatant Commander Initiatives Funds to obtain the authority to pay such countries' costs to participate. Eliminating the geographic restriction in section 1051 would allow the sponsoring unified command to treat all developing country invitees in the same way, and avoid the need for extraordinary approvals or a "patchwork" of funding strategies to conduct a given conference or meeting. This change will provide greater flexibility for the Department of Defense to manage the Global War on Terror.

Section 1216 provides the Secretary of Defense the authority to pay the temporary travel expenses of coalition members and extends this authority an additional four years. The demands of the Global War On Terror (GWOT) necessitated many changes in the way we fight alongside our coalition partners. In January 2003, CENTCOM established the Combined Planning Group (CPG), a mix of international and US officers, to work with our US national planning staff. The CPG capitalizes on coalition contributions while increasing the planning capabilities of CENTCOM Headquarters for coalition operations.

The CPG provides a mechanism to leverage the expertise of certain members of the coalition with those of the CENTCOM staff. This combined effort increases the role they play in the planning of all phases of operations in support of the GWOT. The CPG is a success. Non-US members of the CPG must, however, be able to travel during their assignment to the CPG or the underlying purpose of the CPG is greatly diminished. This travel will include trips to Washington, D.C, the CENTCOM Area of Operations, or other command-directed locations.

Current law authorizes funding certain expenses of coalition liaison officers from developing nations who are temporarily assigned to the headquarters in connection with the planning for, or conduct of, a coalition operation. This proposed legislation will help CENTCOM deal with changing world conditions. These conditions have blurred the lines between current practices and the traditional paradigm of liaison officers, exchange officers and the normal funding responsibilities associated with those officers. This is an extremely cost-effective "return on investment" for the benefit of having an additional, complementary planning element of hand-selected international staff officers working in an integrated fashion with CENTCOM staff.

Section 1217 would improve local health care delivery and advance healthcare and technical assistance to Host Nation health officials. Costs of medical supplies have increased over the years, and continue to increase. The cost of medical supplies required per HCA/MEDRETE project has increased from $25,000 in 1997 to $40,000 in 2004. As the cost of medical & surgical supplies has increased, the number of HCA/MEDRETE projects that DoD can execute has continued to decrease.

Currently, HCA/MEDRETE projects are being executed and sourced to the services as "Medical, Surgical, Dental or Veterinarian" HCA projects. Adding the word surgical will bring the statue in line with the language being used today.

When Department of Defense military medical, surgical, dental or veterinarian, unit/teams deploy to execute an HCA/MEDRETE they involve themselves in providing some form of education, training and technical assistance to the Host Nation health officials. The purpose is to improve local health care in that Host Nation. Adding the recommended language will provide the statute under which these activities can occur.

Section 1218 would expand the authority of the Department of Defense to provide humanitarian and civic assistance in conjunction with military operations to include authority to restore or develop the capacity of the host nation's information and communications technology as necessary to provide basic information and communications services.

Section 401 of title 10, United States Code, authorizes U.S. military forces, in conjunction with military operations, to provide humanitarian and civic assistance in the areas of medical, dental, and veterinary care; surface transportation systems, well drilling and sanitation facilities; construction and repair of public facilities; and detection and clearance of landmines. Recent experience in military operations in Iraq and in providing military assistance to the tsunami victims in southern Asia indicates that the restoration or development of the host nation's basic information and communications capacity is vital to successful humanitarian programs. As with the other types of assistance authorized by 10 U.S.C. 401, military units will often have the capacity to provide such assistance in conjunction with military operations.

TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

Section 1301 would make permanent the President's current authority to waive restrictions and eligibility requirements under the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952) and section 502 of the FREEDOM Support Act (22 U.S.C. 5852). This authority expires on September 30, 2005. The authority was previously granted for fiscal years 2003, 2004 and 2005.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

TITLE XXVIII—GENERAL PROVISIONS

Subtitle A—Military Construction Program and Military Family Housing Changes

Section 2801. Subsection a. The existing cost thresholds effectively limit the size and scope of facilities to be constructed utilizing unspecified minor construction funds from both the military construction and operations and maintenance appropriations. Increasing the cost limits for minor construction projects will allow the Department of Defense to (1) respond more effectively to urgent and unforeseen requirements with properly sized and scoped facilities and (2) 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.

Subsection b. Congressional notification with a waiting period slows the construction process, since projects are not initiated until after the waiting period. The proposed legislation would reduce paperwork and enable projects to be executed more quickly.

Subsection c. Currently, section 2853 of title 10, United States Code, allows the Department 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 (currently $1.5M). The proposed legislative change 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. It would also minimize delays associated with a congressional notification.

Subsection d. This would codify language contained in House of Representatives Appropriations Committee Report 106-221, page 12, that allows 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 have to define 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.

Section 2802 would authorize the Secretary of the Air Force, if it is in the best economic interest of the Air Force, to purchase the 300-unit military family housing project at Eielson Air Force Base, Alaska, that was constructed and leased by the Secretary under section 801 of the Military Construction Authorization Act, 1984 (Public Law 98-115). This lease will expire in July 2006. The purchase price would be the fair market value for the family housing project.

Section 2804 of the National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261) provided the Secretary of the Air Force similar authority to purchase a 366-unit family housing project at Eielson Air Force Base. This section would allow the Secretary to purchase the base's other 300-unit family housing project.

Purchasing this housing project would be less costly than a military construction project to build 300 new housing units. It also would provide immediate housing for service members and their families; a military construction project for 300 units generally would take two years to construct.

Section 2803 would repeal the requirement that Secretaries of the military departments must consult with the Secretary of Housing and Urban Development (HUD) on the availability of suitable alternative housing before entering into contracts to construct authorized family housing units in the United States. If the Secretary of HUD does not advise the Secretary concerned within 21 days of the availability of alternative housing, the Secretary concerned may enter into a contract for the construction of the authorized housing units. HUD housing is often built to standards unsuitable for military families and located too far from military installations. As a result, during the past 10 years the Department of Defense has not used alternative HUD housing. The current process has outlived its usefulness; creates unnecessary paperwork; and needlessly delays contract awards and project completions.

Section 2804 would permit the Army to transform Fort Buchanan, Puerto Rico, to meet its new mission as an Army Reserve installation. Current law provides that no acquisition, construction, conversion, rehabilitation, extension, or improvement of any facility at Fort Buchanan, Puerto Rico, may be initiated or continued on or after October 30, 2000. Thus, there is a moratorium on new construction at Fort Buchanan pending a determination that such construction would be required despite the potential for relocation to Roosevelt Roads. This section would revise the moratorium and permit construction, conversion, rehabilitation, extension, and improvement of reserve component facilities at Fort Buchanan with operation and maintenance appropriations within monetary limitations applicable to the use of such appropriations for minor construction.

Since the enactment of the moratorium, all active Army units that were assigned to Fort Buchanan have been assigned to the continental United States. Congress enacted section 8132 of the Department of Defense Appropriations Act, 2004 (Public Law 108-87). Section 8132 required the Secretary of the Navy to close Naval Station Roosevelt Roads (NSSR) no later than 1 April 2004.

On October 1, 2003, Fort Buchanan was re-designated as an Army Reserve installation. The construction moratorium, however, prohibits reserve component military construction projects that were not approved prior to October 30, 2000, unless the moratorium is terminated by the enactment of a law that authorizes the acquisition, construction, conversion, rehabilitation, extension, or improvement of a facility at Fort Buchanan. Thus, the moratorium prohibits minor construction projects that would be funded with operation and maintenance appropriations. The prohibition will delay planned construction at Fort Buchanan that is necessary to transform Fort Buchanan for its new mission as an Army Reserve installation.

Section 2805 would increase the number of units that the Secretary of the Army is authorized to lease from 2,400 to 2,800. The additional 400 units would support the Army's initiative to permanently reposition United States Forces in Korea near the DMZ to a centralized southern location. The Garrison at Yongsan also will relocate most of it's forces to this location. All of these actions have been negotiated with the Republic of Korea and were approved in October 2004 by the Korean Parliament.

The centralized southern location currently does not have sufficient existing housing to accommodate the influx of troops caused by the relocation of forces. It has been determined that utilizing build-to-lease projects are the most economical means to provide adequate housing for soldiers and their families, as well as supporting the Army's on-going quality of life initiatives in Korea. The alternatives to using this program would be to use Army Family Housing Construction funds to build on-post housing, or curtail the expansion of accompanied tours and using MILCON to construct more barracks. These additional leased units also would enhance the Army's readiness and quality of life by supporting the expansion of accompanied tours and strengthen the partnership between the United States and the Republic of Korea.

Subtitle B—Real Property and Facilities Administration

Section 2811 would provide the Secretaries of the military departments the authority to convey real property determined to be surplus to the needs of the Federal government to any person who agrees to carry out a military construction project or land acquisition, or transfer housing to the military department, in exchange for the property. Existing law limits this authority to property located on an installation that is closed or realigned under a base closure law. This section would extend the authority to real property determined to be surplus on active bases, but only after screening for other Federal agencies' potential need of the property for further Federal use.

Under existing law, the Department of Defense (DoD) can only report surplus real property to the General Services Administration for disposal in accordance with the Federal Property and Administrative Services Act of 1949 (as implemented by the Federal Management Regulation). Such disposals do not provide any net benefit to the DoD because any funds obtained from disposal are subject to appropriation.

This section would complement the DoD's ability to accept in-kind consideration for leasing non-excess property pursuant to section 2667 of title 10, United States Code, because it would enable the DoD to obtain an in-kind benefit for the disposal of surplus real property at active bases, as well as closed bases.

Section 2869 of title 10, United States Code, assures that the DoD and the taxpayer receive fair value in such exchanges by requiring that the fair market value of the consideration received must be at least equal to the fair market value of the real property conveyed.

The DoD is committed to ensuring that military construction projects, land acquisitions, or housing received as consideration meet high-priority DoD requirements by seeking as consideration projects that are in the DoD Future Years Defense Program or, if of smaller dollar value, qualify as Unspecified Minor Construction projects.

Subtitle C—Other Matters

Section 2821. The notification threshold for real property transactions is intended to equal the Military Construction Act funded unspecified minor military construction threshold. Thus, when the minor construction threshold changes, the real property transactions threshold would change too. The proposed language simplifies the process and makes it more uniform, thereby reducing the number of notifications and keeps them up-to-date without periodic legislative adjustments.