



GENERAL COUNSEL

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

MAR 26 2003

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

*Dear Mr. President:*

The Department of Defense requests that Congress enact the enclosed legislative initiatives as part of the National Defense Authorization Act for Fiscal Year 2004. The purpose of each proposal is stated in its accompanying section-by-section analysis.

The Department will propose additional vital legislative initiatives in a separate, stand-alone bill, "the Defense Transformation for the 21<sup>st</sup> Century Act."

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

Sincerely,

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

William J. Haynes II

Enclosure  
As Stated





GENERAL COUNSEL

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

MAR 26 2003

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

Dear Mr. Speaker:

The Department of Defense requests that Congress enact the enclosed legislative initiatives as part of the National Defense Authorization Act for Fiscal Year 2004. The purpose of each proposal is stated in its accompanying section-by-section analysis.

The Department will propose additional vital legislative initiatives in a separate, stand-alone bill, "the Defense Transformation for the 21<sup>st</sup> Century Act."

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

Sincerely,

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

William J. Haynes II

Enclosure  
As Stated



**SEC. \_\_\_\_ . AUTHORIZE THE NAVAL POSTGRADUATE SCHOOL TO PROVIDE  
INSTRUCTION TO ENLISTED MEMBERS PARTICIPATING IN THE  
INFORMATION SECURITY SCHOLARSHIP PROGRAM AND  
EXECUTIVE EDUCATION SEMINARS.**

1 Section 7045 of title 10, United States Code, is amended—

2 (1) in subsection (a), by amending paragraph (2) to read as follows:

3 "(2) The Secretary may permit an enlisted member of the armed forces to receive  
4 instruction at the Naval Postgraduate School provided the member—

5 "(A) is assigned permanently to the Naval Postgraduate School or a nearby  
6 command and is admitted on a space-available basis; or

7 "(B) is assigned temporarily for the purpose of attending executive level  
8 seminars.”.

9 (2) in subsection (b)—

10 (A) by striking "The" and inserting "Except as may be prescribed by the Secretary  
11 of Defense with regard to attendance pursuant to chapter 112 of this title, the";

12 (B) by striking "officers" and inserting "military members";

13 (C) by inserting "on a space-available basis" after "instruction at the Postgraduate  
14 School"; and

15 (D) by adding a period after "appropriate" and by striking "(taking into  
16 consideration the admission of enlisted members on a space-available basis).".

**Section-by-Section Analysis**

This proposal would authorize the Naval Postgraduate School to provide additional instruction opportunities to enlisted members.

Under existing law, the Naval Postgraduate School only may instruct enlisted members "on a space-available basis" (10 U.S.C. 7045(a)(2)). This proposal would allow assignment of enlisted members to the Naval Postgraduate School for the purpose of full-time instruction in the field of information assurance and participation in executive level seminars.

The Naval Postgraduate School is an essential learning resource that provides job-related, defense-focused instruction and education to enhance combat effectiveness. The school maintains programs and courses that are capable of meeting the advanced instruction and technical education requirements of both officer and enlisted personnel alike.

Additionally, the Department of the Navy has a requirement to provide selected senior enlisted leaders with the foundation to approach problems and develop solution sets in the same fashion as their commanders. Executive education courses that meet these needs exist at the Naval Postgraduate School for selected flag officers. For example, one- and two-week-long courses related to creative thinking and developing business case solutions are particularly relevant to the development of Master Chief Petty Officers being assigned to major headquarters. The Naval Postgraduate School can support the participation of 120 Master Chief Petty Officers in such executive education courses over a three-year period.

**SEC. \_\_\_\_ . EXCLUSION OF RETIRED RECALL FROM END-STRENGTH  
COMPUTATIONS AND GRADE STRENGTH TABLES DURING TIME  
OF WAR OR NATIONAL EMERGENCY.**

1 (a) PERSONNEL STRENGTHS: REQUIREMENTS FOR ANNUAL AUTHORIZATION.—Section  
2 115(d) of title 10, United States Code, is amended by adding at the end the following new  
3 paragraph:

4 "(12) Retired members ordered to active duty under section 688 of this title during time  
5 of war or national emergency declared by Congress or the President during any period members  
6 of a reserve component are serving on active duty pursuant to an order to active duty under the  
7 authority of section 12301 or 12302 of this title, and for a period terminating on the last day of  
8 the one-year period beginning on the date of the termination of the war or national emergency."

9 (b) AUTHORIZED STRENGTHS: COMMISSIONED OFFICERS ON ACTIVE DUTY IN GRADES OF  
10 MAJOR, LIEUTENANT COLONEL, AND COLONEL AND NAVY GRADES OF LIEUTENANT  
11 COMMANDER, COMMANDER, AND CAPTAIN.—Section 523(b) of such title is amended by adding  
12 at the end the following new paragraph:

13 "(8) Retired officers ordered to active duty under section 688 of this title during time of  
14 war or national emergency declared by Congress or the President in which members of the  
15 reserve component are serving on active duty pursuant to an order to active duty under the  
16 authority of section 12301 or 12302 of this title, and for a period terminating on the last day of  
17 the one-year period beginning on the date of the termination of the war or national emergency."

**Section-by-Section Analysis**

This amendment would exclude retirees recalled to active duty from annual personnel

end strength and grade strength limitations. Such retirees would be similarly situated to mobilized reservists who presently are excluded from annual active-duty end strength and grade strength limitations.

Marine Corps experience following 11 September 2001 is representative of this issue. Post 11 September, significant numbers of Marine retirees volunteered to serve in uniform again. Many retained unique skills and experiences and had left active duty only recently. To recall these Marines, however, would have caused the Marine Corps to exceed active-duty end strength and authorized grade strength tables, resulting in fewer new accessions and a slowdown in promotions. Either condition would have negative impacts on the manpower system for years to come.

Additionally, the recall of volunteer retired officers could reduce or eliminate the requirement to mobilize non-volunteer Reservists. This readily available and experienced manpower source could be a tremendous asset to the nation during times of war or national emergency.

**SEC. \_\_\_\_ . INCREASE AUTHORITY TO LEASE MILITARY FAMILY HOUSING IN  
FOREIGN COUNTRIES.**

1 Section 2828 of title 10, United States Code, is amended as follows:

2 (1) Subsection (e) is repealed;

3 (2) Subsection (f) is repealed; and

4 (3) Subsection (g) is redesignated as subsection (e).

**Section-by-Section Analysis**

This proposal would allow the Secretary of Defense to procure military family housing in foreign countries. The Secretary requires this authority because overseas housing markets are constantly changing in price and availability.

For example, the existing statutory restriction will require the Navy to cancel existing leases in Italy without being able to execute new leases in corresponding capacity, a circumstance that will see both unnecessary relocations and family separations.

**SEC. \_\_\_\_ . COMMERCIAL SPACE COMPETITIVENESS AND CONTRIBUTIONS OF FUNDS AND SERVICES FROM NON-FEDERAL AGENCIES.**

1 (a) NON-FEDERAL INVESTMENTS.—Section 501 of the National Aeronautics and Space  
2 Administration Authorization Act for Fiscal Year 1993 (Public Law 102-588, 106 Stat. 5122, 15  
3 U.S.C. 5801), is amended by adding at the end the following new paragraph:

4 "(11) The provision of non-federal sources of investment to finance improvements and  
5 additions to U.S. space launch infrastructure can strengthen and expand or otherwise enhance the  
6 United States commercial space transportation industry.";

7 (b) DEFINITION OF NON-FEDERAL.—Section 502 of the National Aeronautics and Space  
8 Administration Authorization Act for Fiscal Year 1993 (Public Law 102-588, 106 Stat. 5123, 15  
9 U.S.C. 5802), is amended by adding at the end the following new paragraph:

10 "(15) 'non-federal' means private sector entities, state government entities and local  
11 government entities.";

12 (c) NON-FEDERAL INVESTMENT IN RANGE INFRASTRUCTURE.—Title V of the National  
13 Aeronautics and Space Administration Authorization Act for Fiscal Year 1993 (Public Law 102-  
14 588, 106 Stat. 5129, 15 U.S.C. 5808), is amended by adding at the end the following new  
15 section:

16 **"SEC. 511. NON-FEDERAL INVESTMENT IN RANGE INFRASTRUCTURE.**

17 "(a) ACCEPTANCE OF FUNDS.—The head of an executive agency providing launch  
18 property or launch services pursuant to chapter 701 of title 49 may accept funds or other property  
19 or assistance from non-federal entities for improvements and additions or modernization of space  
20 launch infrastructure or services, if the improvements and additions or modernization contribute  
21 to the strengthening and expansion of or will otherwise enhance the United States commercial



1 space transportation industry. Notwithstanding section 1342 of title 31, the head of an agency  
2 may also accept, subject to regulations issued by the head of an agency, voluntary service for the  
3 United States if the service—

4           "(1) is to be performed by a non-federal entity as part of an agency program  
5           established for the purpose of providing improvements and additions or modernization of  
6           space launch infrastructure;

7           "(2) is to be uncompensated; and

8           "(3) is not to be used to displace any employee.

9           "(b) USE OF FUNDS.—The head of an executive agency may agree to receive funds or  
10          launch or reentry property from non-federal entities and may agree to use those funds or property  
11          to develop, purchase, sustain, improve, and/or integrate specified launch or reentry facilities or  
12          property in a manner that will enhance the use of such facilities for commercial launch or reentry  
13          operations.

14          "(c) AGREEMENT TERMS AND CONDITIONS.—The head of the executive agency may  
15          include the following terms in the agreements described in subsection (b):

16                "(1) The amount and terms of any payment the non-federal entity shall provide to  
17                the executive agency, and description of any property or services;

18                "(2) An allocation of responsibility for future operation, maintenance,  
19                sustainment, integration, and development of any property; and

20                "(3) Such other terms and conditions as may be agreed between the head of the  
21                executive agency and the non-federal entity.

22          "(d) COLLECTION BY THE EXECUTIVE AGENCY.— The head of the executive agency may  
23          accept payments under this section pursuant to the terms and conditions of any agreement as

1 described under this section. Amounts received under this subsection shall be credited to  
2 appropriations of the agency available for these purposes and shall be available for obligation  
3 until expended.";

4 (d) TITLE 49 DEFINITIONS.—Section 70102 of title 49, United States Code, is amended by  
5 adding at the end the following new subsection:

6 "(18) 'direct costs' means the actual costs that—

7 "(A) can be associated unambiguously with a commercial launch or reentry effort;

8 and

9 "(B) the Government would not incur if there were no commercial launch or  
10 reentry effort."

11 (e) EXECUTIVE AGENCY ASSISTANCE.—Section 70103 of such title is amended by  
12 inserting the words, "including the Administrator, National Aeronautics and Space  
13 Administration, and the Secretary of Defense," after "the head of an executive agency";

14 (f) CHANGE TO GENERAL REQUIREMENTS AND CONSIDERATIONS.—Section 70111 of such  
15 title is amended to read as follows:

16 "(a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—(1) The Secretary of  
17 Transportation shall facilitate and encourage the acquisition by the private sector and State  
18 governments of United States Government launch and reentry property or launch and reentry  
19 services, including utilities, on a reimbursable basis when—

20 "(A) the property or services will be used to support United States private  
21 sector and State government commercial space activities;

22 "(B) such use can be supported by existing or planned Federal resources;

23 "(C) such use is not inconsistent with Federal activities;

1                   "(D) equivalent commercial property or services are not available on  
2 substantially reasonable terms; and

3                   "(E) such use is consistent with public health and safety, safety of  
4 property, national security, foreign policy interests, and international treaty  
5 obligations. In carrying out this paragraph, the head of the agency providing the  
6 property or services shall consult with other appropriate Federal officials.

7                   "(2) Federal agencies, including the National Aeronautics and Space  
8 Administration and the Department of Defense, may allow non-federal entities to acquire  
9 or use such launch or reentry property or launch or reentry services in accordance with  
10 paragraph (1).

11                   "(b) PRICE.—(1) In consultation with the Secretary, the head of the executive agency  
12 providing the property or service under subsection (a) shall establish the price for the property or  
13 service. The price for—

14                   "(A) acquiring launch property by sale or transaction instead of sale is the  
15 fair market value;

16                   "(B) acquiring launch property (except by sale or transaction instead of  
17 sale) is an amount equal to the direct costs, including specific wear and tear and  
18 property damage, that the Government incurred because of acquisition of the  
19 property; and

20                   "(C) launch services or reentry services is an amount equal to the direct  
21 costs, including the basic pay of Government civilian and contractor personnel,  
22 that the Government incurred because of acquisition of the services.

23                   "(2) The Secretary shall ensure the establishment of uniform guidelines for, and

1 consistent implementation of, this section by all Federal agencies.

2 "(c) NON-FEDERAL ENTITY ACCESS.—Subject to satisfying the requirements in  
3 subsection (a) and consistent with the needs of national defense, non-federal entities shall be  
4 granted access to United States Government launch and reentry property, launch and reentry  
5 services, including utilities, and launch and reentry scheduling opportunities. However, the  
6 Secretary of Transportation and Secretary of Defense shall consult with the Secretary of State  
7 and be guided by his views with respect to any proposed acquisition or other activities that may  
8 affect foreign policy and international treaty obligations.

9 "(d) COLLECTION BY SECRETARY.— The Secretary may collect a payment under this  
10 section with the consent of the head of the executive agency establishing the price. Amounts  
11 collected under this subsection shall be credited to the appropriation from which the cost of  
12 providing the property or service was paid, and shall be available for obligation for the same  
13 period and other purposes as the appropriation in which credited.

14 "(e) COLLECTION BY OTHER GOVERNMENTAL HEADS.— The head of a department,  
15 agency, or instrumentality of the Government may collect a payment for an activity involved in  
16 producing a launch vehicle or reentry vehicle, or the payload of either, for launch or reentry if  
17 the activity was agreed to by the owner or manufacturer of the launch vehicle, reentry vehicle, or  
18 payload. Amounts collected under this subsection shall be credited to the appropriation from  
19 which the cost of providing the property or services was paid, and shall be available for  
20 obligation for the same period and purposes as the appropriation in which credited."

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

Since the enactment of the Commercial Space Launch Act in 1984, Congress has consistently recognized that the economic growth and national security of the United States are dependent on a robust U.S. commercial space industry. Congress has found that the interests of

the United States Government and the U.S. commercial space industry are mutually promoted by allowing the commercial use of Government space launch and reentry property and services on a non-interference and reimbursable basis. Accordingly, the Executive branch and Congress have taken significant steps to enhance private sector launches, reentries and associated services.

U. S. Government agencies have employed the resources and statutory authorities provided by Congress to develop a strong and mutually beneficial partnership with members of the commercial space industry. Nevertheless, nearly two decades of experience has demonstrated that there are legal impediments to the optimal use of U.S Government property and services to support commercial space launch and reentry operations. Enactment of the proposed amendments will enable important improvements to U.S. Government launch facilities that will increase the robustness and competitiveness of the commercial space industry while protecting and promoting national security and other public interests at no additional cost to the taxpayer.

The existence of legal impediments was addressed in the February 2000 report of the interagency working group on "The Future Management and Use of the U.S. Space Launch Bases and Ranges," after which the House Armed Services Committee requested that the Secretary of Defense submit a report identifying them in detail. In compliance with this request, on April 16, 2001, the Department of Defense submitted its "Report on Legal Impediments to Non-Federal Funding of Spacelift Range Improvements and Maintenance." The current legislative proposal was developed by representatives of the agencies participating in the Space Transportation Working Group of the Space Policy Coordinating Committee to provide statutory relief from the most significant of these legal impediments.

One significant legal impediment is the fact that under current law there is no mechanism by which non-federal entities (e.g., corporations or state or local spaceport authorities) can contribute funds with any confidence that they will be used to improve U.S. Government launch and reentry property and services to better meet the needs of commercial space operations. Such contributions would be intended to finance improvements that are useful for commercial launch or reentry operations but that are not funded by Congress to fulfill the primary mission of the launch facilities to assure access to space for DoD, intelligence, and civil government launches. Currently, any contribution of funds received by a U.S. Government agency must generally be deposited in the Treasury as a miscellaneous receipt. The agency has no authority to use such funds unless Congress specifically authorizes and appropriates them for the purpose contemplated. Furthermore, U.S. Government agencies generally may not lawfully solicit donations. The proposed legislation would authorize U.S. Government agencies to enter into agreements with non-federal entities whereby contributions of funds or property would be used to improve the capabilities of certain launch or reentry facilities or services, and it would authorize the contributed funds to be used by the agencies for such improvements.

A similar legal impediment arises from the fact that U.S. Government agencies are authorized to collect from commercial space operators the "direct costs" of using U.S. Government facilities and services, but the amounts collected must be deposited into the Treasury and are not available to the agency unless they are later authorized and appropriated by the Congress. The proposed legislation would make such funds available to the agencies to

cover the costs of providing such support to commercial space operators. No change is proposed to the definition of "direct costs", although the current definition would be relocated to Section 70102, where other definitions appear.

Additionally, current law generally prohibits the acceptance by U.S. Government agencies of voluntary services. This proposal would authorize the acceptance of voluntary services from non-federal entities as part of an agency program established for the purpose of providing improvements and additions or modernization of space launch infrastructure, so long as no employee is displaced.

Moreover, state and local governments have also devoted significant resources to improving the conduct of commercial space operations. This proposal would enhance the abilities of the U.S. Government to cooperate with state and local governments.

The non-federal investments authorized by these changes in current law could decrease the timeline to implement the Range Standardization and Automation program as well as provide support to the commercial space industry that could not be otherwise provided.

Finally, the proposed legislation would amend the stated criteria under which launch or reentry property and services may be provided at "direct cost" to commercial space launch operators. Currently, such property and services may be provided only if they are "excess" to Government needs. The proposed amendment to 49 U.S.C. 70103 would authorize the provision of such property and services when such action is "consistent with public health and safety, national security, international treaty obligations, and the missions of those Federal agencies." In practice, the "excess capacity" limitation has been applied in a manner that has accommodated commercial launches whenever they have not unreasonably interfered with government launches. The proposed change would realign the statutory language with established practice, and it would also provide more useful guidance for the provision of items such as utilities.

**SEC. \_\_\_\_ . AUTHORITY TO ENSURE DEMILITARIZATION OF SIGNIFICANT  
MILITARY EQUIPMENT FORMERLY OWNED BY THE  
DEPARTMENT OF DEFENSE.**

1 (a) IN GENERAL.—Chapter 153 of title 10, United States Code, is amended by inserting  
2 after section 2582 the following new section:

3 **“§ 2582a. Continued authority to require demilitarization of significant military equipment**  
4 **after disposal**

5 "(a) AUTHORITY TO REQUIRE DEMILITARIZATION.—The Secretary of Defense may require  
6 any person in possession of significant military equipment formerly owned by the Department of  
7 Defense—

8 "(1) to demilitarize the equipment;

9 "(2) to have the equipment demilitarized by a third party; or

10 "(3) to return the equipment to the U.S. Government for demilitarization.

11 "(b) COST AND VALIDATION OF DEMILITARIZATION.—When the demilitarization of  
12 significant military equipment is carried out by the person in possession of the equipment  
13 pursuant to paragraph (1) or (2) of subsection (a), the person shall be solely responsible for all  
14 demilitarization costs, and the United States shall have the right to validate that the equipment  
15 has been demilitarized.

16 "(c) RETURN OF EQUIPMENT TO THE U.S. GOVERNMENT.—When the Secretary of Defense  
17 requires the return of significant military equipment for demilitarization by the U.S.  
18 Government, the Secretary shall bear all costs to transport and demilitarize the equipment. If the  
19 person in possession of the significant military equipment obtained the property in the manner  
20 authorized by law or regulation and the Secretary determines that the cost to demilitarize and

1 return the property to the person is prohibitive, the Secretary shall reimburse the person for the  
2 fair market value of the property and for the reasonable transportation costs incurred by the  
3 person to purchase the equipment.

4 "(d) ESTABLISHMENT OF DEMILITARIZATION STANDARDS.—The Secretary of Defense  
5 may prescribe by regulation what constitutes demilitarization for each type of significant military  
6 equipment.

7 "(e) PROPERTY INITIALLY SOLD OUTSIDE THE UNITED STATES.—To the extent that the  
8 significant military equipment proposed for demilitarization would be subject to export or  
9 transfer authorization of the Department of State (such as where the items were sold initially by a  
10 Department of Defense facility outside of the United States), the exercise by the Secretary of  
11 Defense of his authority under this section shall be subject to the concurrence of the Secretary of  
12 State prior to transfer to the Department of Defense for demilitarization.

13 "(f) OTHER SIGNIFICANT MILITARY EQUIPMENT.—Upon the request of the Secretary of  
14 State, the Department of Defense may exercise the powers granted by this section regarding  
15 other significant military equipment that was sold or granted by, or subject to the defense export  
16 licensing authorities of, the United States government..

17 "(g) EXCEPTIONS.—This section does not apply—

18 "(1) when a person is in possession of significant equipment formerly owned by  
19 the Department of Defense for the purpose of demilitarizing the equipment pursuant to a  
20 U.S. Government contract.

21 "(2) to small arms weapons issued under the Defense Civilian Marksmanship  
22 Program established in Title 36, United States Code.

23 "(3) to issues by the Department of Defense to museums where demilitarization



1 has been performed in accordance with departmental regulations.

2 "(4) to other issues and undemilitarized significant military equipment under the  
3 provisions of departmental regulations.

4 "(h) DEFINITION OF SIGNIFICANT MILITARY EQUIPMENT.—In this section, the term  
5 ‘significant military equipment’ means—

6 "(1) an article for which special export controls are warranted under the Arms  
7 Export Control Act (22 U.S.C. 2751 et seq.) because of its capacity for substantial  
8 military utility or capability, as identified on the United States Munitions List  
9 maintained under sect 121.1 of title 22, Code of Federal Regulations; and

10 "(2) any other article designated by the Department of Defense as requiring  
11 demilitarization before its disposal."

12 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 153 is  
13 amended by adding at the end the following item:

14 "2583. Continued authority to require demilitarization of significant military equipment after disposal."

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

Section 1051 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261)(1998) requested the Secretary of Defense to provide "draft legislation that the Secretary considers appropriate to clarify the authority of the Government to recover critical and sensitive defense property that has been inadequately demilitarized". In consonance with this direction, this proposal would amend Title 10, United States Code, to permit the United States to recover significant military equipment (SME) that has been released by the U.S. Government without proper demilitarization. The possession of improperly demilitarized Department of Defense property by individuals and business entities has caused grave concern both in the media and in Congress, and has been a topic of study by the Defense Science Board. The importance of this issue has been heightened by the events of September 11, 2001, and the war on terrorism.

Questions on the amount of compensation due a possessor of these materials have arisen in those cases where confiscation by the Department has been permitted. This proposal, if enacted, would provide needed clarification on several issues. First, it would clarify the law on

this issue and codify the type of material subject to recovery by specifically adopting the definition of SME as is contained in the Code of Federal Regulations. Second, it would permit a possessor to be compensated in an amount equal to fair market value and reasonable administrative costs, such as transportation and storage costs, assuring the possessor obtained the property through legitimate channels. Exceptions are provided for certain categories of possessors, including museums and the Civilian Marksmanship program.

The proposal recognizes the interest of the Department of State in materials sold at United States facilities in foreign countries and requires that to the extent that the significant military equipment proposed for demilitarization would be subject to export or transfer authorization of the Department of State (such as where the items were sold initially by at a Department of Defense facility outside of the United States), the exercise by the Secretary of Defense of his authority under this section shall be subject to the concurrence of the Secretary of State prior to transfer to the Department of Defense for demilitarization . It also permits the Department of Defense to exercise the authorities under this section upon the request of the Secretary of Defense for SME sold or granted by, or subject to the defense export licensing authorities of, the United States government.

**SEC. \_\_\_\_ . ELIMINATION OF SOLICITATION ISSUANCE DELAY.**

1 (a) ELIMINATION OF THE SMALL BUSINESS ACT 15-DAY CONTRACT AWARD

2 DELAY.—Paragraph (3) of section 8(e) of the Small Business Act (15 U.S.C. 637(e)(3)) is  
3 amended by adding at the end the following new subparagraphs:

4 "(C) Notwithstanding subparagraphs (A) and (B), the 15-day wait period may be  
5 eliminated when—

6 "(1) the notice required by paragraph (1)(A) and the solicitation are  
7 are issued simultaneously;

8 "(2) five days are added to the period specified in subparagraph (B) for  
9 submission of bids or proposed offers;

10 "(3) the acquisition does not involve the bundling of contracts as that term  
11 is defined in section 3(o) of the Small Business Act (15 U.S.C. 632(o)); and

12 "(4) the acquisition does not exceed \$7,000,000.

13 "(D) Subparagraph (C) shall not be used if the President determines its use is  
14 inconsistent with any international agreement to which the United States is a party."

15 (b) ELIMINATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT 15-DAY

16 SOLICITATION ISSUANCE DELAY.—Section 18(a) of the Office of Federal Procurement Policy  
17 Act (41 U.S.C. 416(a)) is amended by adding at the end the following new paragraph:

18 "(8)(A) Notwithstanding paragraph (3)(A), the 15-day wait period may be  
19 eliminated when—

20 "(i) the notice required by paragraph (1)(A) and the solicitation are issued  
21 simultaneously;

22 "(ii) five days are added to the period specified in paragraph (3)(B) for

1 submission of bids or proposals;  
2 "(iii) the acquisition does not involve the bundling of contracts as that  
3 term is defined in section 3(o) of the Small Business Act (15 U.S.C. 632(o)); and  
4 "(iv) the acquisition does not exceed \$7,000,000.  
5 "(B) Subparagraph (A) shall not be used if the President determines its use is  
6 inconsistent with any international agreement to which the United States is a party."

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

This proposal would amend companion provisions of the Small Business and Office of Federal Procurement Policy Acts to eliminate, under certain conditions, the requirement of a 15-day wait period between publication of the synopsis of a proposed contracting action and the subsequent publication of the solicitation to which the synopsis refers.

Initially, the 15-day wait period was designed to ensure that small businesses, competing for Government contracts, would have sufficient time to respond to solicitations. At the time of the passage of the current provisions, small businesses did not necessarily have instant access to information regarding contracting opportunities. During a wait period, these businesses could use the time either to locate these opportunities themselves or to use outside locator services to bring contracting opportunities to their attention. Then, small businesses could contact contracting activities either to ensure that they were on pertinent mailing lists or to request that a hard copy of the solicitation be sent to them upon issuance.

In today's business environment, businesses, both large and small, have electronic access to Government contracting opportunities. With the establishment of "FedBizOpps" as the single Government-wide point of entry for all Government contracting, contractors now have instant access to view notices of contracting opportunities. Hence, the reason for a wait period no longer exists. Elimination of this period would shorten lead-times and streamline the Government acquisition process, without disadvantaging any potential Government contractor. Furthermore, the limitations placed on the use of this procedure, as well as the addition of days for the submission of offers, ensures adequate protection of small business interests.

**SEC. \_\_\_\_ . LOGISTICS SUPPORT FOR FRIENDLY NATIONS.**

1           Section 2342 of title 10, United States Code, is amended by adding at the end the  
2 following new subsection:

3           “(e) Notwithstanding any other provision of law or regulation, the Secretary of Defense,  
4 when in the best interests of the United States and subject to the availability of appropriations,  
5 may with the concurrence of the Secretary of State provide logistics support, supplies and  
6 services, on a reimbursable or non-reimbursable basis, without a completed cross-servicing or  
7 foreign military sales agreement, to the following countries participating, with or on behalf of the  
8 United States, in an exercise, a contingency operation, as defined by section 101 of this title, or  
9 war:

10                   “(1) North Atlantic Treaty Organization bodies and member countries;

11                   “(2) Countries permitting stationing of United States Armed Forces, importation  
12 of United States military equipment and materials and porting of ships;

13                   “(3) Countries holding a defense alliance with the United States; and

14                   “(4) Countries hosting military exercises involving the United States.”.

**Section-by-Section Analysis**

This proposal is designed to give the Secretary of Defense the flexibility needed to permit rapid deployment and provide rapid support without the existence of a finalized agreement or foreign military sale, when such is in the best interests of the United States. Such flexibility is desirable in light of the current war on terrorism and the potential need for rapid responses.

**SEC. \_\_\_\_ . SCIENCE, MATHEMATICS, ENGINEERING AND TECHNOLOGY**

**EDUCATION.**

1 Section 2192 of title 10, United States Code, is amended—

2 (1) by redesignating subsection (b) as subsection (c); and

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

4 "(b)(1) In furtherance of the authorities in this chapter and in other laws that provide for  
5 educational programs related to science, mathematics, engineering, and technology, the  
6 Secretary of Defense may—

7 "(A) enter into contracts, grants, and cooperative agreements with eligible parties;

8 "(B) provide cash awards and other items to eligible parties; and

9 "(C) accept voluntary services from eligible parties.

10 "(2) For purposes of paragraph (1), 'eligible parties' shall include other departments and  
11 agencies of the Federal Government, State and local governments, individuals, and not-for-profit  
12 and other organizations in the private sector."

**Section-by-Section Analysis**

Several authorities permit the Secretary of Defense to engage in science, mathematics and engineering education programs, but the Secretary lacks sufficient authority to allocate funds to individuals, institutions, or other eligible participants, to further these efforts. The absence of express, statutory authority prevents the Secretary from making awards in connection with science fairs and from funding other basic outreach activities, and may adversely affect a wide range of activities such as curriculum improvement, delivery and dissemination. The proposed amendment would enable the Secretary to develop a more comprehensive and attractive array of educational programs.

**SEC. \_\_\_\_ . RETENTION OF ACCUMULATED LEAVE.**

1 Section 701(f) of title 10, United States Code, is amended to read as follows:

2 "(f) The Secretary of Defense may authorize a member who serves on active duty for a  
3 continuous period of at least 120 days in an area in which he is entitled to special pay under  
4 section 310(a) of title 37 or a member assigned to a deployable ship, mobile unit, or to other duty  
5 designated for the purpose of this section, to include duty assignments in support of contingency  
6 operations, during a fiscal year, and who, except for this paragraph, would lose any accumulated  
7 leave in excess of 60 days at the end of the fiscal year, to retain an accumulated total of 120 days  
8 leave. Leave in excess of 60 days accumulated under this subsection is lost unless it is used by  
9 the member before the end of the third fiscal year after the fiscal year in which the service  
10 terminated."

**Section-by-Section Analysis**

This proposal would allow service members to retain up to 120 days of leave, if they serve for a period of at least 120 days in an area in which they are entitled to receive hostile fire or imminent danger pay. Existing law only allows service members to retain up to 90 days of leave in such a circumstance.

Since September 11, 2001, many service members have accumulated more than 90 days of leave due to continuous service in support of contingency operations. This proposal would allow such service members to save an additional 30 days of accumulated leave that presently is subject to forfeit.

**SEC. \_\_\_\_ . ADMINISTRATIVE SERVICES AND SUPPORT FOR FOREIGN LIAISON OFFICERS.**

(a) ESTABLISHMENT.—Subchapter II of chapter 138 of title 10, United States Code, is amended by adding at the end the following new section:

**"§ 2350m. Administrative services and support for foreign liaison officers**

"(a) AUTHORITY.—The Secretary of Defense may provide administrative services and support to foreign liaison officers performing duties while such officers temporarily are assigned to components or commands of the United States armed forces or combatant commands. For purposes of this section, the term 'administrative services and support' includes base or installation operation support services, office space, utilities, copying services, fire and police protection, and computer support.

"(b) REIMBURSEMENT.—The Secretary of Defense may provide the services and support authorized under subsection (a) with or without reimbursement as the Secretary of Defense deems appropriate."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter II of chapter 138 is amended by adding at the end the following new item:

"2350m. Administrative services and support for foreign liaison officers."

**Section-by-Section analysis**

This proposal would authorize the Secretary of Defense to provide administrative services and support to foreign liaison officers of other countries performing duties in the United States. Reimbursement for such services and support would not be mandatory.

Through the DoD Foreign Liaison Officer Program, representatives of foreign governments are temporarily assigned to components or commands of U.S. armed forces and combatant commands. During their tenure as foreign liaison officers, the foreign representatives work with United States military personnel to develop compatible and interoperable equipment, training, and doctrine.



The Foreign Liaison Officer Program promotes regional stability and strengthens existing international agreements by encouraging peacetime engagement, cooperation, and compatibility between the United States and foreign military services. The Program also allows participating countries to observe the tactics, techniques, and procedures of the host country military service. The increased use of multinational forces in combined-force operations makes this program an invaluable tool for maintaining readiness and building coalitions. The Program promotes mutually beneficial relationships between the United States military and its allies.

Available administrative services and support would include base or installation operation support services, office space, utilities, copying services, fire and police protection, and computer support. In contrast, the proposal would not authorize the United States to pay for: salary and allowances; travel by the officers and their dependents; subsistence costs and expenses for the officers and their dependents; compensation for the loss of, or damage to, the personal property of the officers or their dependents; movement of the household effects of the officers or their dependents; preparation and shipment of the remains and funeral expenses associated with the death of an officer or the officer's dependents; formal and informal training of the officers; and expenses in connection with the return of an officer whose assignment has been terminated or expired, along with his dependents.

**SEC. \_\_\_\_ . DELEGATION OF SPECIAL FINDING FOR PLACEMENT IN THE  
READY RESERVE.**

1           Section 10145(d) of title 10, United States Code, is amended by striking "The Secretary  
2 concerned may not delegate his authority under the preceding sentence no lower than the Deputy  
3 Chief of Staff for Personnel."

**Section-by-Section Analysis**

This proposal would allow the Secretaries of the military departments to delegate determinations of whether retired members possess a skill that is so critical that they will be permitted to serve in a Reserve component following retirement.

Section 12741 of title 10 permits a member who retired with a regular retirement and subsequently serves in an active status in a Reserve component to request a reserve retirement upon reaching age 60. This has several advantages. First, it allows for retired pay to be recalculated to include all reserve service (in addition to the 20 plus years of service that resulted in a regular retirement). It also bases the reserve retired pay on the pay scale in effect at the time of retirement, or in the case of a member who entered service after September 7, 1980, on the "high three" prior to retirement. Finally, it includes any promotions subsequently earned while serving in the Guard or Reserve. This makes continued service in a Reserve component an attractive opportunity for regular retirees. Because this provision has made reserve service an attractive option for regular retirees, some Reserve components have recruited regular retirees actively to join the Selected Reserve.

Accessing enlisted retirees, however, is a lengthy process due to the requirement that a Secretary of a military department make a special finding that the member's service in the Ready Reserve is indispensable. This proposal would streamline the process by allowing the Secretary to delegate the determination to an appropriate level within the military department.

**SEC. \_\_\_\_ . SUPPORT OF FOREIGN NATIONS COMMITTED TO COMBATING  
GLOBAL TERRORISM.**

1           (a) **AUTHORITY.**—Notwithstanding any other provision of law, the Secretary of Defense,  
2 with the concurrence of the Secretary of State, may provide military assistance or support to  
3 foreign nations assisting United States military operations or other activities to combat global  
4 terrorism. Such assistance may include the provision of equipment, supplies, services, and  
5 funding.

6           (b) **LIMITATION ON SUPPORT.**—Military assistance provided under the authority of this  
7 section may not exceed \$200,000,000 in any fiscal year.

8           (c) **ADDITIONAL AUTHORITY.**—The authority to provide assistance under this section is  
9 in addition to any other authority to provide assistance to foreign countries.

**Section-by-Section Analysis**

This section would authorize up to \$200,000,000 in assistance to foreign nations for the purpose of assisting the U.S. in combating global terrorism.

This authority would better position the Department of Defense to assist foreign nations whose support is critical to counterterrorism efforts. DoD requires this flexibility to respond quickly to operational needs, such as providing equipment or services to such forces to enhance their readiness and effectiveness.

**SEC. \_\_\_\_ . MILITARY DEPARTMENT SUPPORT OF COMBATANT COMMANDS.**

- 1 Title 10, United States Code is amended—
- 2 (1) in section 3013(c)(4), by striking “(to the maximum extent practicable)”;
- 3 (2) in section 5013(c)(4), by striking “(to the maximum extent practicable)”;
- 4 (3) in section 8013(c)(4), by striking “(to the maximum extent practicable)”.

**Section-by-Section Analysis**

This proposal would clarify the responsibility of the Secretaries of the Military Departments to fulfill the current and future operational requirements of the Combatant Commands, subject to the authority, direction, and control of the Secretary of Defense.

Existing law only requires the Secretaries of the Military Departments to provide such support “to the maximum extent practicable.” Eliminating this language would clarify that the war-fighting function of the Combatant Commands is the principal responsibility of the Department of Defense.

**SEC. \_\_\_\_ . APPLICATION OF TRAVEL CARD MANAGEMENT IMPROVEMENTS  
TO THE COAST GUARD.**

1 Section 2784a(e) of title 10, United States Code, is amended to read as follows:

2 "(e) COAST GUARD.—The Secretary of the department in which the Coast Guard is  
3 operating may require that travel or transportation allowances due a civilian employee or  
4 military member of the Coast Guard be disbursed directly to the issuer of a Federal contractor-  
5 issued travel charge card, but only in an amount not to exceed the authorized travel expenses  
6 charged by that Coast Guard member to that travel charge card issued to that employee or  
7 member. The Secretary of the department in which the Coast Guard is operating also may  
8 establish requirements similar to those established by the Secretary of Defense pursuant to this  
9 section for deduction or withholding of pay or retired pay from a Coast Guard employee,  
10 member, or retired member who is delinquent in payment under the terms of the contract under  
11 which the card was issued and does not dispute the amount of the delinquency."

**Section-by-Section Analysis**

Section 1008 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314, 116 Stat. 2634) authorized the Secretary of Defense to require disbursement of travel or transportation expenses directly to the issuer of a Defense travel card. It also authorized pay offsets for delinquent accounts. This section would authorize the Secretary of the department in which the Coast Guard is operating to establish similar requirements for Coast Guard military members and civilian employees who hold Federal contractor-issued travel charge cards. This amendment is consistent with executive and legislative initiatives to reduce delinquency rates among holders of Federal contractor-issued travel charge cards.