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MAY 25 2006

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

Dear Mr. Speaker:

The Department of Defense requests that the Congress enact the enclosed legislative proposals as part of the National Defense Authorization Bill for Fiscal Year 2007.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

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

Sincerely,

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William J. Haynes II

Enclosure:  
As stated





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MAY 25 2006

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

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William J. Haynes II

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**SEC. \_\_\_\_ . TRANSFER OF NAVAL VESSELS TO CERTAIN FOREIGN RECIPIENTS.**

1 (a) TRANSFERS BY GRANT.—The President is authorized to transfer vessels to foreign  
2 recipients on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C.  
3 2321j), as amended, as follows:

4 (1) LITHUANIA.—To the Government of Lithuania, the OSPREY class minehunter  
5 coastal ships KINGFISHER (MHC-56) and CORMORANT (MHC-57).

6 (2) PORTUGAL.—To the Government of Portugal, the OLIVER HAZARD  
7 PERRY class guided missile frigates GEORGE PHILIP (FFG-12) and SIDES (FFG-14).

8 (3) TURKEY.—To the Government of Turkey, the OSPREY class minehunter  
9 coastal ship BLACK HAWK (MHC-58).

10 (b) TRANSFERS BY SALE.—The President is authorized to transfer vessels to foreign  
11 recipients on a sale basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761), as  
12 amended, as follows:

13 (1) TAIWAN.—To the authorities on Taiwan, the OSPREY class minehunter  
14 coastal ships ORIOLE (MHC-55) and FALCON (MHC-59).

15 (2) TURKEY.—To the Government of Turkey, the OSPREY class minehunter  
16 coastal ship SHRIKE (MHC-62).

17 (3) MEXICO.—To the Government of Mexico, the AUSTIN class amphibious  
18 transport dock ships OGDEN (LPD-5) and CLEVELAND (LPD-7).

19 (c) ALTERNATIVE TRANSFER AUTHORITY.—In the event that a recipient to which a vessel  
20 transfer is authorized under subsection (a) or (b) declines to accept the transfer, the President is  
21 authorized to transfer such vessel to another eligible recipient. Each such transfer shall be on a  
22 sale basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761), as amended, or a

1 grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j), as  
2 amended, and shall be subject to the normal Congressional notification procedures of those Acts.

3 (d) GRANTS NOT COUNTED IN ANNUAL TOTAL OF TRANSFERRED EXCESS DEFENSE  
4 ARTICLES.—The value of a vessel transferred to a recipient on a grant basis pursuant to authority  
5 provided by subsection (a) or (c) shall not be counted against the aggregate value of excess  
6 defense articles transferred in any fiscal year under section 516 of the Foreign Assistance Act of  
7 1961 (22 U.S.C. 2321j), as amended.

8 (e) COSTS OF TRANSFERS.—Any expense incurred by the United States in connection  
9 with a transfer authorized by this section shall be charged to the recipient.

10 (f) REPAIR AND REFURBISHMENT IN UNITED STATES SHIPYARDS.—To the maximum  
11 extent practicable, the President shall require, as a condition of the transfer of a vessel under this  
12 section, that the recipient to which the vessel is transferred have such repair or refurbishment of  
13 the vessel as is needed before the vessel joins the naval forces of that country performed at a  
14 shipyard located in the United States, including a United States Navy shipyard.

15 (g) EXPIRATION OF AUTHORITY.—The authority to transfer a vessel under this section  
16 shall expire at the end of the 2-year period beginning on the date of the enactment of this Act.

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

This section would authorize the President to sell five excess naval vessels to Mexico, Taiwan, and Turkey and to give away five excess naval vessels to Lithuania, Portugal, and Turkey. Because these naval vessels displace in excess of 3,000 tons or are less than 20 years of age, section 7307(a) of title 10, United States Code, requires statutory approval for the transfers.

This section also would allow the President to transfer a vessel to another recipient if the intended recipient declines to accept the proposed transfer without requiring the Department of Defense to request additional transfer authority.

These proposed transfers would improve the United States' political and military relationships with close allies. They would support strategic engagement goals and regional security cooperation objectives. Active use of former naval vessels by coalition forces in support of regional priorities is more advantageous than retaining vessels in the Navy's inactive fleet and disposing of them by scrapping or another method.

The United States would incur no costs in transferring these naval vessels. The recipients would be responsible for all costs associated with the transfers, including maintenance, repairs, training, and fleet turnover costs.

This section does not alter the effect of the Toxic Substances Control Act (or any other law) with regard to their applicability to the transfer of ships by the United States to foreign countries for military or humanitarian use. The laws and regulations that apply today would apply in the same manner if this section were enacted.

The Department of Defense estimates that the sale of these vessels may net the United States \$84.5 million in Fiscal Year 2007.

**SEC. \_\_\_\_ . PROTECTION OF DEPARTMENT OF DEFENSE PERSONS DESIGNATED  
BY THE SECRETARY OF DEFENSE**

1 Section 2674(b)(1) of title 10, United States Code, is amended—

2 (1) in the matter preceding subparagraph (A), by inserting after the first sentence  
3 the following new sentence: "In addition, the Secretary may authorize such law  
4 enforcement and security personnel to provide for the physical security and protection of  
5 Department of Defense personnel entitled to federal protection from assault and other  
6 crimes of violence under federal statutes, within or outside the United States, when threat  
7 conditions cause the Secretary to determine that such protection is necessary for reasons  
8 of national security.";

9 (2) in subparagraph (A), by striking "status; and" and inserting "status within or  
10 outside the United States;"

11 (3) by striking the period at the end of subparagraph (B) and inserting "; and"; and

12 (4) by adding at the end the following new subparagraphs:

13 "(C) may, when providing for the physical security and protection of  
14 persons under this section, make arrests without a warrant for violations of the  
15 United States Code committed in their presence to the extent otherwise authorized  
16 by law.

17 "(D) Nothing in paragraph (1) shall be construed to preclude or limit, in  
18 any way, the implied or inherent powers of the Secretary of Defense, the duties  
19 and authorities of the United States Department of State, United States Secret  
20 Service or any other Federal law enforcement agency.

21 "(E) The powers granted to law enforcement and security personnel under

1 paragraph (1), who provide for the physical security and protection of Department  
2 of Defense personnel entitled to federal protection from assault and other crimes  
3 of violence under federal statutes shall be exercised only in accordance with  
4 guidelines approved by the Secretary and the Attorney General."

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

This proposal seeks to amend section 2674 of title 10, United States Code, to clarify and expand the inherent authority of the Secretary of Defense to provide for the security and protection of certain high-risk military and civilian Department of Defense (DoD) personnel and distinguished official guests of the Department of Defense, both in the United States and abroad, with qualified security personnel.

As early as 1890, the Supreme Court recognized the inherent authority of federal law enforcement officers to provide personal protection to federal officials, even in the absence of a specific authorizing statute. *Cunningham v. Neagle*, 135 U.S. 1 (1890). In *Neagle*, the Court specifically recognized the inherent authority of a Deputy U.S. Marshal to protect a Supreme Court Justice from a murderous assault. In the wake of that decision, Congress later granted the United States Marshals Service express statutory authority to "protect Federal jurists, court officers, witnesses, and other threatened persons in the interests of justice where criminal intimidation impedes on the functioning of the judicial process . . . ." Title 28, United States Code, §566(e)(1)(A). In its July, 2000, report entitled SECURITY PROTECTION Standardization Issues Regarding Protection of Executive Branch Officials, the General Accounting Office (now the Government Accountability Office) recognized that agencies operating under such implied authorities are in need of clarity. The report recommended that the Director of the Office of Management and Budget consider whether such agencies should be provided with specific statutory authority to provide protection to executive branch officials. This is precisely what we are proposing herein.

DoD has long recognized its inherent authority to provide for the physical security and protection of senior Defense officials from threats of personal harm arising directly from their official duties. However, recent and profound changes in the nature and magnitude of terrorist threats against DoD officials, who present vulnerable and public targets to those that would strike at the nation's security apparatus, now make an express affirmation of the implied authorities of the Secretary of Defense to provide for their protection imperative. Given the increasingly violent and personal nature of recent terrorist attacks, security for high-risk DoD personnel has never been more important. The military and civilian security personnel currently performing these critical duties face exposure to potential liability for actions taken in the course of their duties and would benefit greatly from an expressed enunciation of statutory authority from Congress.

State Department "Special Agents" perform essentially the same security function for high-risk State Department officials, pursuant to authority set forth at Title 22, United States Code, Section 2709. This proposed amendment to Title 10, United States Code, Section 2674, would expressly reflect the Secretary of Defense's limited authority to provide for the physical security and protection of senior Defense officials and official guests of DoD, within the United States and abroad. However, in contrast to the State Department's broad protection authority, this proposed amendment would only authorize the Secretary of Defense to provide for such protection "when the threat conditions cause the Secretary to determine that such protection is necessary for reasons of national security." Thus, this legislation is narrowly tailored to provide for protection authority only when DoD has credible intelligence indicating that a terrorist organization or similar group may attempt to harm DoD officials.

Furthermore, although the proposed amendment would authorize DoD security personnel to effectuate arrests for violations of the United States Code committed in their presence, DoD anticipates that the arrest authority would only be exercised during the most serious of actual life-threatening emergencies, including but not limited to emergencies involving threats of bodily harm, intimidation, assault, abduction, attempted kidnapping and murder. (See generally 18 U.S.C. §§ 111, 112, 115, 1114, 1116, 1201 and 1203.) Without the authority to effectuate arrests, attempts of apprehending assailants would be futile if the DoD security personnel, who had witnessed firsthand acts of violence aimed at DoD officials, had to notify and wait for the arrival of other federal state, or local law enforcement officials to effectuate arrests. Finally, as a means of further limiting the scope of the domestic security and protection operations, such security and protection details will only be exercised in accordance with guidelines approved by the Secretary of Defense and the Attorney General of the United States.