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APR 27 2006

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

Dear Mr. President:

The Department of Defense requests that the Congress enact the enclosed legislative 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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The Honorable Dennis Hastert  
Speaker of the House of Representatives  
Washington, D.C. 20515

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**SEC. \_\_\_\_ . INCREASE IN AUTHORIZED MAXIMUM LEASE TERM FOR FAMILY HOUSING.**

- 1 Section 2828(d)(1) of title 10, United States Code, is amended by striking "10 years, or  
2 15 years in the case of leases in Korea" and inserting "15 years".

**Section-by-Section Analysis**

This section would increase from 10 years to 15 years the maximum length of lease that the Department of Defense may enter for housing facilities. It coincides with the provision in section 2804(a) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), which increased the period for leases in Korea from 10 to 15 years.

This authority is necessary for the Department to be able to fully exploit "build to lease" initiatives, particularly in overseas locations. This authority has special relevance as the Department transforms its overseas presence. Although there will eventually be a reduced overseas presence, there will continue to be a need for quality family housing. Build-to-lease housing is an option that provides quality housing with no capital investment and no acquisition of land from the host nation.

Recently, for example, United States Army, Europe (USAREUR), determined it needed more than 800 units in Grafenwoehr, Germany. In order to reduce present costs, USAREUR sought build-to-lease bids, but could not receive a suitable offer because the bidders-German businesses-failed to obtain necessary financing. That failure was in turn the result of the fact that financial institutions considered the obligation remaining at the end of the 10-year firm term too high. These financial institutions sought higher rent rate, and/or longer terms. Given the current statute, the U.S. Forces could not provide sufficient inducements to mitigate financial institution concerns. Increasing the lease term from 10 years to 15 years would mitigate financial institution concerns and make this option available.

This option is fiscally prudent, and allows combatant commanders to focus military construction priorities on operational requirements, while knowing families will still receive improved quality of life in their housing.

**SEC. \_\_\_\_ . NON-DISCLOSURE OF SELECTION BOARD PROCEEDINGS.**

1 (a) EXTENSION TO ALL ACTIVE DUTY SELECTION BOARDS.—Section 618(f) of title 10,  
2 United States Code, is amended to read as follows:

3 "(f)(1) Proceedings of a selection board convened under section 611 of this title shall not  
4 be disclosed to any person not a member of the board.

5 "(2) Board discussions and deliberations, and any written or documentary records thereof,  
6 shall—

7 "(A) be immune from legal process;

8 "(B) not be admitted as evidence; and

9 "(C) not be used for any purpose in any action, suit, or judicial or administrative  
10 proceeding without the consent of the Secretary of the military department concerned.

11 "(3) The provisions of this subsection shall apply retroactively to all selection boards  
12 convened under section 611 of this title, including selection boards convened prior to the  
13 effective date of this section."

14 (b) RESERVE SELECTION BOARD PROCEEDINGS.—(1) Section 14104 of such title is  
15 amended to read as follows:

16 **"§ 14104. Non-disclosure of board proceedings**

17 "(a) The proceedings of a selection board convened under section 14101 of this title shall  
18 not be disclosed to any person not a member of the board.

19 "(b) Board discussions and deliberations, and any written or documentary records thereof,  
20 shall—

21 "(1) be immune from legal process;

22 "(2) not be admitted as evidence; and

1           "(3) not be used for any purpose in any action, suit, or judicial or administrative  
2 proceeding without the consent of the Secretary of the military department concerned.

3           "(c) The provisions of this section shall apply to all selection boards convened under  
4 section 14101 of this title, including selection boards convened prior to the effective date of this  
5 section."

6           (2) The table of sections at the beginning of chapter 1403 of such title is amended by  
7 striking the item relating to section 14104 and inserting the following new item:

8 "14104. Non-disclosure of board proceedings."

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

This section would make all active duty and Reserve selection board proceedings absolutely privileged against disclosure, including disclosure in civil litigation, without the consent of the Secretary of the military department concerned. The current privilege against disclosure only applies to active duty promotion boards. This section would extend the privilege to all proceedings of selection boards (including retirement boards and continuation boards). This section does not define the term "proceedings" because selection board proceedings can differ somewhat from one military department to another. However, all such proceedings are intended to be included within this section.

Selection boards ensure the selection of the best-qualified officers for promotion. An absolute privilege would encourage the confidential, free, uninhibited, and candid deliberations necessary to make difficult decisions among highly-qualified officers. Allowing non-selected officers to use the court system to gain access to board deliberations undermines the confidentiality of these deliberations and chills the deliberations of future boards.

Three recent Federal district court decisions have held that the current privilege is not absolute and may be overcome by a plaintiff's discovery requests in civil litigation. Although the D.C. Circuit Court of Appeals overturned one of these decisions in the consolidated *In re England*, 375 F.3d 1169 (D.C. Cir. 2004), the other decisions provide precedents for courts to rule that the current language in section 618 of title 10, United States Code, does not support an absolute privilege against discovery. This section would prevent courts from extending this reasoning to Reserve selection board deliberations.

This section also would clarify Congress' original intent that all selection board proceedings shall be exempt from disclosure under section 552 of title 5, United States Code.

The active duty provision would mirror current regulations by the Secretary of the Navy.

**SEC. \_\_\_\_ . HUMANITARIAN AND CIVIC ASSISTANCE WITH RESPECT TO THE  
DETECTION AND CLEARANCE OF LANDMINES AND EXPLOSIVE  
REMNANTS OF WAR.**

Chapter 20 of title 10, United States Code, is amended—

(1) in section 401—

(A) by striking paragraphs (a)(4), (b)(2), and (e)(5); and

(B) in subsection (c)—

(i) in paragraph (2), by striking subparagraph (B);

(ii) by striking paragraph (3); and

(iii) by redesignating paragraph (4) as paragraph (3);

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

**"§ 406. Humanitarian assistance with respect to the detection and clearance of landmines  
and explosive remnants of war**

"(a) IN GENERAL.—(1) Under regulations prescribed by the Secretary of Defense, United States armed forces and Department of Defense civilian technicians may provide on-site education, training, and technical assistance in support of the physical detection, clearance or destruction of landmines and other explosive remnants of war in a foreign country if these activities will promote the security interests of both the United States and the country in which the activities are to be carried out.

"(2) The Secretary of Defense shall ensure that no member of the United States armed forces, while providing assistance under this section—

"(A) engages in the physical detection, clearance or destruction of landmines or other explosive remnants of war (unless the member does so for the concurrent purpose

1 of supporting a United States military operation); or

2 "(B) provides such assistance as part of a military operation that does not involve  
3 the United States armed forces.

4 "(3) Members of the United States armed forces may participate in activities under this  
5 section only if it is determined that their participation will promote their specific operational  
6 readiness skills.

7 "(4) Humanitarian mine action assistance may not be provided under this section to any  
8 foreign country unless the Secretary of State specifically approves the provision of such  
9 assistance.

10 "(b) AUTHORIZATION AND LIMITATIONS.—(1) Expenses incurred as a direct result of  
11 providing assistance under this section shall be paid out of funds appropriated to the Department  
12 of Defense for such purpose.

13 "(2) Expenses covered include the following expenses incurred:

14 "(A) Travel, transportation, and subsistence expenses of Department of Defense  
15 personnel providing such assistance.

16 "(B) The cost of any equipment, services, transportation, or supplies acquired for  
17 the purpose of carrying out or supporting activities under this section, including any  
18 nonlethal, individual or small-team landmine or explosive remnant of war clearing  
19 equipment or supplies that are to be transferred or otherwise furnished to a foreign  
20 country in furtherance of the provision of assistance under this section.

21 "(C) The cost of equipment, services, transportation, and supplies provided in any  
22 fiscal year under paragraph (2)(B) may not exceed \$10,000,000 in any fiscal year."; and  
23 (3) in the table of sections at the beginning of such chapter, by adding at the end the

1 following new item:  
2 "406. Humanitarian assistance with respect to the detection and clearance of landmines and explosive  
3 remnants of war."

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

This section would separate the authority to conduct humanitarian mine action from the authority to conduct humanitarian and civic assistance. Humanitarian and civic assistance activities are conducted in conjunction with authorized military operations and are funded through the Operations and Maintenance funds of military departments. Department of Defense (DoD) participation in humanitarian mine action activities is conducted as part of the U.S. Government's interagency Humanitarian Mine Action Program, consistent with national security and security cooperation objectives, and is funded through the Overseas Humanitarian, Disaster and Civic Aid appropriation.

This section also would eliminate the existing requirement in section 401 of title 10, United States Code, that humanitarian mine action activities promote both (1) the security interests of the United States and the country in which the activities are to be carried out and (2) the specific operational readiness skills of the members of the Armed Forces who participate in the activities. As a result of this requirement, DoD is currently precluded from conducting humanitarian mine action activities in instances in which military forces are not available.

Due to the extremely high operational deployment tempo of the U.S. 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 U.S. 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 during periods when military personnel are not available to conduct the missions due to competing demands.

DoD civilian technicians already are present 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 in humanitarian demining efforts and also permit the DoD to tap the civilian expertise available in other DoD agencies and installations such as the Explosive Ordnance Disposal School.

When U.S. military personnel are available to conduct humanitarian mine action activities in conjunction with authorized military operations, they will continue to participate in such activities only when it is determined that it will promote their operational readiness skills. However, in those cases where U.S. Armed Forces are not available to participate, this section would enable qualified DoD civilians to both maintain the continuity of the DoD Humanitarian Mine Action program and to simultaneously gain the additional benefit of those same operational



readiness skills for the DoD and the United States Government as a whole.

In addition, this section would broaden current authority to enable the DoD to provide transportation services to countries to move their demining trainees to a location where the training is being conducted. The DoD conducts its Humanitarian Mine Action Program in both bi-lateral and multi-lateral settings. Regional training may be conducted in one country by U.S. trainers, necessitating the movement of third country participants to the training site, which may be thousands of miles away. This is typically the case in Central and South America, where many countries cannot afford the cost of the transportation required. The authority to provide such transportation, when necessary, would facilitate bi-lateral and multi-lateral humanitarian mine action training.

**SEC. \_\_\_\_ . REGIONAL DEFENSE COMBATING TERRORISM FELLOWSHIP  
PROGRAM.**

1 Section 2249c of title 10, United States Code, is amended—

2 (1) in the section title by striking "Counterterrorism" and inserting "Combating  
3 Terrorism";

4 (2) by striking subsection (a) and inserting:

5 "(a) **AUTHORITY TO USE FUNDS.**—Under regulations prescribed by the Secretary of  
6 Defense, funds appropriated to the Department of Defense may be used to pay any costs  
7 associated with the education and training of foreign military officers and other foreign officials  
8 at military or civilian educational institutions, regional centers, conferences, seminars, or other  
9 training programs conducted under the Regional Defense Combating Terrorism Fellowship  
10 Program, including the costs of transportation and travel and subsistence costs."

11 (3) in subsection (b), by striking "\$20,000,000" and inserting "\$25,000,000".

12 (4) by adding the following new subsection (d):

13 "(d) **OBLIGATION OF FUNDS.**—Funds made available for a fiscal year may be obligated  
14 for the total cost of an education or training program conducted under subsection (a), including a  
15 program that crosses fiscal years."

**Section-by-Section Analysis**

The Regional Defense Counterterrorism Fellowship Program (CTFP) is the Department's go-to program for engaging potential partners in the Global War on Terror. The Program funds the education and training of mid-to-senior level foreign civilians and military officers with combating terrorism responsibilities.

This proposed amendment to section 2249c of title 10, United States Code, which authorizes the CTFP, is intended to describe the nature of the Program more clearly, to clarify the authorities associated with the Program, and to enable the Program to be managed more effectively and efficiently.

Paragraphs (1) and (2) amend the title of the Program to clarify that the Program is intended to cover the entire spectrum of programs and activities involved in the fight against terrorism - not just counterterrorist programs.

Paragraph (2) also revises the description of the Program's scope to cover comprehensively all costs associated with the education and training of foreign officials at CTFP programs, including developing and conducting CTFP courses (not just transportation and subsistence costs at a particular event), expands the range of foreign officials eligible for CTFP programs (not limited to ministry of defense and security officials), and authorizes training at civilian and non-U.S. institutions (currently limited to U.S. military institutions). These revisions will permit the Department to fund all costs associated with developing and conducting CTFP courses and training events, target all foreign officers and officials with combating terrorism responsibilities, and permit the Department to fund training at select international institutions, such as the Turkey Center of Excellence.

Paragraph (3) increases the authorized annual funding level for the Program from \$20,000,000 to \$25,000,000, which will permit the Department to expand existing training programs and fund the creation of new ones.

Paragraph (4) would provide the Department authority to use Combating Terrorism Fellowship Program funds to pay for training programs on a reimbursable basis under the Economy Act in the fiscal year when the training program commences. Currently, the requirements of the Economy Act require split payments for training courses that cross fiscal years, which causes severe financial and bookkeeping difficulties for the CTFP, the Military Departments and the schoolhouses.

**SEC. \_\_\_\_ . CLARIFICATION OF AUTHORITY TO CARRY OUT CERTAIN  
PROTOTYPE PROJECTS.**

1           Section 845(a) of the National Defense Authorization Act for Fiscal Year 1994 (10  
2           U.S.C. 2371 note), as amended by section 823 of the National Defense Authorization Act for  
3           Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3387), is amended—

4                     (1) in paragraph (2)(A), by inserting "or, for a defense agency, the director of the  
5           defense agency" after "(41 U.S.C. 414(c))"; and

6                     (2) in paragraph (3), by inserting "or a director of a defense agency" after  
7           "executive".

**Section-by-Section Analysis**

This section would amend section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-139; 10 U.S.C. 2371 note), as amended by section 823 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), to provide that the director of a defense agency may make the written determination necessary to exercise the authority, without redelegation, for the defense agency to carry out a prototype project that is expected to cost the Department of Defense in excess of \$20 million but not in excess of \$100 million. This amendment would provide the director of a defense agency with the same authority as the senior procurement executive of a military department for his organization's initiation of a prototype project valued at between \$20 million and \$100 million. The amendment would have no effect on the requirement for military departments and defense agencies to seek a written determination of the Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)) that would authorize them to carry out a prototype project that is expected to cost the Department of Defense in excess of \$100 million. Without the proposed amendment, section 845 would require defense agencies to seek a written determination by the USD(AT&L) not only for prototypes valued in excess of \$100 million, but also for prototypes valued in excess of \$20 million but not in excess of \$100 million.

**SEC. \_\_\_\_ . AMENDMENT TO THE ARMS EXPORT CONTROL ACT.**

1 (a) IN GENERAL.—The Arms Export Control Act is amended—

2 (1) by striking "Special Defense Acquisition Fund" each place it appears and  
3 inserting "Defense Coalition Support Fund";

4 (2) in section 51 (22 U.S.C. 2795)—

5 (A) in subsection (a)(1)—

6 (i) by striking "in consultation";

7 (ii) by inserting "concurrence of the" before "Secretary of State";

8 (iii) by adding "and management" after the word "control";

9 (iv) by inserting "temporary use or" after "anticipation of their";

10 and

11 (v) by inserting ", including to support coalition or international  
12 military stability or counter-terrorist operations" after "international  
13 organizations";

14 (B) in subsection (a)(3)—by adding the words "(including temporary use)"  
15 after the word "transfer";

16 (C) in subsection (a)(4)—

17 (i) by striking the words "narcotics control purposes" and adding  
18 the words "building partner capacity"; and

19 (ii) by striking "such as small boats, planes (including helicopters),  
20 and communication equipment";

21 (D) in subsection (b)—

22 (i) by striking "and" after "costs," in subsection (b)(2);

1 (ii) by inserting after subsection (b)(3) the following new  
2 subsections:

3 "(4) collections from leases made pursuant to section 61 of this Act,

4 "(5) contributions of money or property from any United States or foreign  
5 person or entity, foreign government, or international organization for use by  
6 DoD for purposes of the Fund,"; and

7 (iii) by inserting "to the Department of State or the Department of  
8 Defense" after "authorized and appropriated";

9 (E) in subsection (c)—

10 (i) by striking the first and second sentences of subsection (c)(1)  
11 and inserting "Except during a period of active hostilities, the value of  
12 property purchased and held in inventory under this section may not  
13 exceed \$200,000,000.";

14 (ii) by inserting a new second sentence of subsection (c)(1) to read  
15 as follows: "Amounts credited to the Fund under subsection (b) shall  
16 remain available until expended";

17 (iii) by striking "(1)" before "The size"; and

18 (iv) by striking subsection (c)(2); and

19 (F) by inserting after subsection (c) a new subsection (d) to read as

20 follows:

21 "(d) TRANSFER OF FUNDS.—In order to carry out the purposes of this Fund, amounts in  
22 the Fund may be transferred to any current appropriation, fund, or account of the Department of  
23 Defense or the Department of State, and shall be merged with the appropriation, fund, or account

1 to which transferred."; and

2 (3) in section 52 (22 U.S.C. 2795a), in subsection (a), by adding the words  
3 "(including temporary use)" after the word "transfer"; and in subsection (b), by striking  
4 "The President may" and inserting "The Secretary of Defense with the concurrence of  
5 the Secretary of State may".

6 (b) CONFORMING AMENDMENTS.—Section 114 of title 10, United States Code, is  
7 amended—

8 (1) by striking subsection (c); and

9 (2) redesignating subsections (d), (e), and (f), as (c), (d), and (e), respectively.

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

This section would authorize the President to establish a Defense Coalition Support Account to better support coalition partners in the War on Terrorism. During recent support of coalition war fighting partners, the Department of Defense identified requirements for warfighters (such as, night vision devices, communication equipment, and body armor) that could not be met in a timely manner using current authorities. To build partner capacity and maximize effective support of coalition partners, the USG must be able to authorize and fund the acquisition or use of defense equipment so it will be readily available when it is required. Building partnership capacity in support of counter-terrorism, military and stability operations requires a more time-sensitive approach than current authorities provide. DoD needs to be able to have warfighter equipment in its inventory or to expedite the award of contracts to procure or re-procure equipment that has been or can be made available for sale or temporary use to coalition partners.

The purpose of this proposed revision to existing legislation for a Special Defense Acquisition Fund (SDAF), which has been decapitalized, is to provide a responsive and flexible authority that DoD may use, under the direction of the President, and with the concurrence of the Secretary of State, to build partner capacity and support countries who are helping the U.S. to fight the Global War on Terrorism (GWOT). This revised authority would allow DoD to provide temporary use of DoD equipment, to include Significant Military Equipment, to coalition partners. It would also provide authority to pre-purchase equipment for sale or loan to its partners, using funds that have been made available to DoD through appropriations by the Congress or by using donations from non-U.S. Government sources (e.g., foreign governments, international organizations, and private donors). Advance purchase will focus on high demand warfighter support equipment that has long procurement lead time, as recent experience from the conflicts in Iraq and Afghanistan has demonstrated. Under this authority, we believe DoD could accept orders from other federal agencies such as the Department of State, to purchase or loan

equipment to coalition partners for GWOT purposes like counter-terrorism, stability operations, border security and peacekeeping activities.

The War on Terrorism requires broader and more flexible authorities. No existing law provides the authorities that are found in this proposed revision to the Arms Export Control Act (AECA).. The Defense Coalition Support Account (DCSA) proposal provides a better mechanism that builds on aspects of the Special Defense Acquisition Fund (SDAF) (authorized by the International Security and Development Cooperation Act of 1981, Public Law 97-113, and decapitalized by former President Clinton in 1993), and on some aspects of the newer Defense Cooperation Account (10 U.S.C. 2608) that was created to be used to support the U.S. military in the first Gulf War.

The Quadrennial Defense Review Report specifically mentions that the Department will seek to establish a Defense Coalition Support Account to fund and, as appropriate, stockpile routine defense articles such as helmets, body armor, and night vision devices (NVDs) for use by coalition partners.

This proposed authorization language needs to be codified in permanent law. Further, the initiative may require funding or obligational authority in future annual appropriations Acts.

The Department of Defense has been returning SDAF funds to the Treasury on an annual basis. Currently, \$6.684M remains in the SDAF account, which is scheduled and scored with Office of Management and Budget to be returned to Treasury in FY06, but could serve as "seed" funds for this initiative if authorized by the Congress. Once the Defense Coalition Support Account is established, it could sustain itself (revolving account) without further regular appropriations through collections of sales or transfers made from this account, contributions accepted by the Secretary of Defense, and collections from transfers or sales of defense articles made pursuant to section 21(a)(1)(A) of the Arms Export Control Act of 1976, or the Foreign Assistance Act of 1961, as amended, representing the actual value of defense articles not intended to be replaced in DoD stocks. The proceeds from items sold from stock not to be replaced are normally deposited into Miscellaneous Receipts with other collections, such as nonrecurring cost recoupments, and range from approximately \$10M to \$30M per year.

Our recommendation for capitalization includes retaining funds currently in the Special Defense Acquisition Fund (SDAF) 11X4116 - \$6.684M to be transferred into the new account when it is established. When established with Treasury, we would make this transfer and collect funds into the DCSA account from Proceeds for Sales from Stock not to be replaced, currently deposited into following accounts: 213041 - Army, Recoveries under FMS Program; 173041 - Navy, Recoveries under FMS Program; 573041 - Air Force, Recoveries under FMS Program; and 973041 - Defense, Recoveries under FMS Program. Equipment transfers will occur within the Foreign Military Sales (FMS) and lease procedures of the AECA or as transfers for temporary use under the express authority in this revised statute. When the equipment is transferred, receipts from the sale or lease will be collected and deposits into the account and become part of the capitalization. We would also collect and deposit any contributions received



for purposes of the Account and any receipts from the sale or transfer of the assets from the Account.

**SEC. \_\_\_\_ . TIME-IN-GRADE REQUIREMENT FOR PROMOTION TO CAPTAIN IN  
THE ARMY, AIR FORCE, AND MARINE CORPS AND LIEUTENANT IN  
THE NAVY.**

Section 619(a)(1)(B) of title 10, United States Code, is amended by striking "2005" and inserting "2008".

**Section-by-Section Analysis**

This section temporarily extends the statutory rule concerning the time-in-grade requirement for promotion to captain in the Army, Air Force, and Marine Corps, and corresponding promotion to lieutenant in the Navy until 2008. Section 619(a)(1) of title 10, United States Code, provides that an officer in the grade of second lieutenant (or ensign in the Navy) may not be promoted until the officer serves 18 months in that grade. The statute also provides that an officer serving in the grade of first lieutenant (or lieutenant (junior grade) in the Navy) may not be promoted until the officer serves 24 months in that grade. Thus, the statute does not permit the promotion of an officer to the grade of captain or (lieutenant in the Navy) until the officer has 42 months of total service as an officer.

Prior to October 1, 2005, the statute authorized promotion to captain (or lieutenant in the Navy) after 18 months of service in the grade of first lieutenant (or lieutenant (junior grade) in the Navy). Thus, the statute authorized the military departments to promote an officer to captain (or lieutenant in the Navy) after 36 months of total service as an officer. This section would amend section 619(a)(1) to restore that authority. The statute would be amended to authorize the promotion of officers serving in the grade of first lieutenant (or lieutenant (junior grade) in the Navy) after serving 18 months in that grade, rather than 24 months.

As a matter of policy, the Army has promoted officers to captain at 38 months of service (18 months as a second lieutenant and 20 months as a first lieutenant). To fill current allocations for these officers, the Army should promote to the grade of captain after 38 months of service. The renewed authority will ensure the Army continues to have the flexibility necessary to maintain the current captain end strength.

**SEC. \_\_\_\_ . STREAMLINE JURISDICTION OVER GOVERNMENT CONTRACT  
CLAIMS, DISPUTES AND APPEALS ARISING OUT OF MARITIME  
CONTRACTS.**

1           Section 4 of the Contract Disputes Act of 1978 (41 U.S.C. 603) is amended to read as  
2 follows:

3           "SEC. 4. Appeals under subsection (g) of section 8 and suits under section 10 arising out  
4 of maritime contracts shall be governed exclusively by this Act."

**Section-by-Section Analysis**

This section would make federal court jurisdiction over Contract Disputes Act of 1978 (41 U.S.C. 601 et. seq.) ("CDA") claims, disputes and appeals the same, whether or not they arise out of a maritime contract.

Contract claims and appeals arising out of a maritime contract are currently subject to the jurisdiction of the U.S. District Courts under the Suits in Admiralty Act of March 9, 1920 (46 U.S.C. 741-752), as amended ("SAA"), or the Public Vessels Act (46 U.S.C. 781-790) ("PVA"), as applicable. The CDA specifically provides under Section 603 that "[A]ppeals under paragraph (g) of section 607 of this title and suits under section 609 of this title, arising out of maritime contracts, shall be governed by chapter 20 [SAA] or chapter 22 [PVA] as applicable, to the extent that those chapters are not inconsistent with this chapter." In addition, the SAA and PVA have been interpreted to confer *in personam* federal admiralty jurisdiction over maritime contract claims against the United States (including claims involving public vessels), effecting a waiver of sovereign immunity, without requiring the plaintiff to exhaust administrative remedies under the CDA. The SAA and PVA thereby create a separate jurisdictional basis upon which to make a claim against the government or appeal an administrative determination under a maritime contract. All other CDA contract claims and appeals, excluding the Tennessee Valley Authority, are under the federal court jurisdiction of the Court of Appeals for the Federal Circuit (41 U.S.C. 607(g)) or the U.S. Court of Federal Claims (41 U.S.C. 609(a)(1)).

Prior to passage of the SAA in 1920, all contractual claims, including contract claims in admiralty, against the United States were brought pursuant to the Tucker Act (28 U.S.C. 1346, 1491) (1911) under which the Court of Claims had jurisdiction. The passage of the SAA, which vested exclusive jurisdiction in the District Courts where a suit against the government is maritime in nature, repealed the Tucker Act and the jurisdiction of the Court of Claims insofar as a contract claim related to a maritime contract. See *Matson Navigation Co. v. United States*, 284 U.S. 352 (1932); *Amell v. United States*, 384 U.S. 158 (1966). When Congress subsequently

passed the CDA, they considered applying the CDA to appeals of administrative determinations of claims arising out of maritime contracts. S.Rep. No. 1118 at 18, 95th Cong., 2nd Sess. (1978). At that time, Congress stated that since the District Courts were vested with exclusive admiralty jurisdiction, the courts had developed an expertise in admiralty matters "resulting in a common body of procedural and substantive law, applicable to private litigants and the United States alike." *Id.* Congress also opined that admiralty matters sounding in contract involve unique maritime issues and procedural questions to warrant continued District Court jurisdiction. *Id.*

However, since passage of the CDA, experience has demonstrated that CDA disputes and appeals arising out of maritime contracts, in almost all cases, involve only issues related to government procurement law and regulation and do not require the application of the unique expertise for which the District Courts are recognized in maritime matters. Federal government contract law has developed as a separate specialty practice in its own right, and federal court expertise in this area now resides in the Court of Federal Claims (formerly the Court of Claims or U.S. Claims Court) and the Court of Appeals for the Federal Circuit rather than in U.S. District Courts. The ability to invoke admiralty jurisdiction in CDA cases because it involves a maritime contract provides claimants with the ability to forum shop among the District Courts, with disparate procedural and substantive law, when uniformity in federal procurement law should be the desired objective.

For these reasons, this section would eliminate separate U.S. District Court jurisdiction over claims, disputes and appeals arising out of federal government maritime contracts.

**SEC. \_\_\_\_ . MANDATORY SEPARATION OF RESERVE OFFICERS IN THE GRADE  
OF LIEUTENANT GENERAL OR VICE ADMIRAL.**

1 Section 14508 of title 10, United States Code, is amended—

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

4 (2) by inserting after subsection (b) the following new subsection (c):

5 "(c) THIRTY-EIGHT YEARS OF SERVICE FOR LIEUTENANT GENERALS AND VICE  
6 ADMIRALS.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date,  
7 each reserve officer of the Army, Air Force, or Marine Corps in the grade of lieutenant general  
8 and each reserve officer of the Navy in the grade of vice admiral shall, 30 days after completion  
9 of 38 years of commissioned service, be separated in accordance with section 14514 of this  
10 title."

**Section-by-Section Analysis**

This section would add a mandatory separation provision for years of service in the case of Reserve component officers serving in the grades of lieutenant general and vice admiral. This change, along with the provisions of section 511 of the National Defense Authorization Act for Fiscal Year 2006 (which established the requirement for mandatory separation for those officers at age 64), would mirror the provisions covering regular general and flag officers serving in the grade of O-9.

Specifically, this section would amend section 14508 of title 10, United States Code, to allow a Reserve component officer in the grade of lieutenant general or vice admiral to be retained in an active status until the officer reaches 38 years of commissioned service. Section 14512 of title 10, as amended by section 511 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), specifies that a Reserve component officer in the grade of lieutenant general or vice admiral could be retained in an active status until the officer becomes 64 years of age. The proposed change to section 14508 of title 10, combined with the change made to section 14512, are consistent with the criteria governing regular officers of the same grade under sections 636 and 1251 of title 10, respectively. These changes are based on the recent change that authorized the chief or director of the various Reserve components to be

appointed to the grade of lieutenant general, or vice admiral in the case of the Naval Reserve. However, there is currently no provision that governs the mandatory removal for years of service of Reserve component officers serving in those positions or that grade.



3936.60	3936.60	3936.60	3936.60	3936.60	3936.60	3936.60	3936.60
3106.50	3106.50	3106.50	3106.50	3106.50	3106.50	3106.50	3106.50

<b>No FOGI</b>	<b>No FOGI</b>		<b>No FOGI</b>		<b>No FOGI</b>	
<b>28</b>	<b>30</b>	<b>32</b>	<b>34</b>	<b>36</b>	<b>38</b>	<b>40</b>
14508.60	15234.00	15234.00	15995.70	15995.70	16795.50	16795.50
12801.30	13441.50	13441.50	14113.50	14113.50	14819.10	14819.10
11598.30	11888.40	11888.40	12185.70	12185.70	12185.70	12185.70
10287.90	10493.70	10493.70	10493.70	10493.70	10493.70	10493.70
9035.70	9216.30	9216.30	9216.30	9216.30	9216.30	9216.30
7373.10	7373.10	7373.10	7373.10	7373.10	7373.10	7373.10
6252.30	6252.30	6252.30	6252.30	6252.30	6252.30	6252.30
5355.90	5355.90	5355.90	5355.90	5355.90	5355.90	5355.90
3936.60	3936.60	3936.60	3936.60	3936.60	3936.60	3936.60
3106.50	3106.50	3106.50	3106.50	3106.50	3106.50	3106.50

**COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE**

**AS AN ENLISTED MEMBER OR WARRANT OFFICER**

	<b>&lt;2</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>8</b>	<b>10</b>
<b>O-3E</b>	0.00	0.00	0.00	4392.00	4602.00	4833.00	4982.70
<b>O-2E</b>	0.00	0.00	0.00	3857.40	3936.60	4062.00	4273.50
<b>O-1E</b>	0.00	0.00	0.00	3106.50	3317.70	3440.10	3565.50

  

	<b>12</b>	<b>14</b>	<b>16</b>	<b>18</b>	<b>20</b>	<b>22</b>	<b>24</b>	<b>26</b>
	5228.40	5435.40	5554.20	5715.90	5715.90	5715.90	5715.90	5715.90
	4437.00	4558.80	4558.80	4558.80	4558.80	4558.80	4558.80	4558.80
	3688.80	3857.40	3857.40	3857.40	3857.40	3857.40	3857.40	3857.40

<b>No FOGI</b>	<b>No FOGI</b>		<b>No FOGI</b>		<b>No FOGI</b>	
<b>28</b>	<b>30</b>	<b>32</b>	<b>34</b>	<b>36</b>	<b>38</b>	<b>40</b>
5715.90	5715.90	5715.90	5715.90	5715.90	5715.90	5715.90
4558.80	4558.80	4558.80	4558.80	4558.80	4558.80	4558.80
3857.40	3857.40	3857.40	3857.40	3857.40	3857.40	3857.40

**WARRANT OFFICERS**

	<b>&lt;2</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>8</b>	<b>10</b>
<b>W-5</b>	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>W-4</b>	3402.00	3660.00	3765.00	3868.50	4046.40	4222.20	4400.70
<b>W-3</b>	3106.80	3236.40	3369.00	3412.80	3552.00	3825.90	4110.90
<b>W-2</b>	2749.20	3009.30	3089.40	3144.60	3322.80	3600.00	3737.10
<b>W-1</b>	2413.20	2672.40	2742.90	2890.50	3065.10	3322.20	3442.20

  

	<b>12</b>	<b>14</b>	<b>16</b>	<b>18</b>	<b>20</b>	<b>22</b>	<b>24</b>	<b>26</b>
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3133.50	3133.50	3133.50	3133.50	3133.50	3133.50	3133.50
2630.10	2630.10	2630.10	2630.10	2630.10	2630.10	2630.10
2062.80	2062.80	2062.80	2062.80	2062.80	2062.80	2062.80
1729.20	1729.20	1729.20	1729.20	1729.20	1729.20	1729.20
1458.90	1458.90	1458.90	1458.90	1458.90	1458.90	1458.90
1301.40	1301.40	1301.40	1301.40	1301.40	1301.40	1301.40
0.00	0.00	0.00	0.00	0.00	0.00	0.00

**\*Cap for up to 26 years of service is \$12,666.66 in 2006**

**\*\*Assumed level of cap for commissioned offices in grade O-10 in FY 2007 is \$12,945.33**

**<sup>1</sup>Notwithstanding the pay rates specified in this table, the actual basic pay for commissioned officers in grades O-7 through O-10 may not exceed the rate of pay for level III of the Executive Schedule and the actual basic pay for all other officers, including warrant officers, may not exceed the rate of pay for level V of the Executive Schedule.**

**<sup>2</sup>Subject to the preceding footnote, while serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chair of the Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in section 161(c) of title 10, United States Code, basic pay for this grade is \$17,972.10, regardless of cumulative years of service computed under section 205 of title 37, United States Code.**

**<sup>3</sup>Notwithstanding the pay rates specified in this table, the actual basic pay for enlisted members may not exceed the rate of pay for level V of the Executive Schedule.**

**<sup>4</sup>Subject to the preceding footnote, while serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, the Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or the Senior Enlisted Advisor for the Chairman of the Joint Chiefs of Staff, basic pay for this grade is \$6,642.60, regardless of cumulative years of service computed under section 205 of title 37, United States Code.**

**<sup>5</sup>In the case of members in the grade of E-1 who have served less than 4 months on active duty, basic pay is \$1,203.90.**

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

The primary purpose of military compensation is to provide a force structure that can support defense manpower requirements and policies. To ensure that the uniformed services can recruit and retain a force of sufficient numbers and quality to support the military, strategic and operational plans of this nation, military compensation must be adequate. Analysis of the earnings of military members with their civilian counterparts, suggests that without some

adjustment to both the level and structure of basic pay, the military will face difficulties in both recruiting and retention. In addition, given the changes in the technology of warfare, the compensation structure must change to accommodate longer career lengths. Thirty-year careers are in some instances an inefficient way to utilize accumulated human capital, experience and training.

The results of the military and civilian earnings profile comparisons and the life-cycle earnings analysis lead to several recommendations that both raise the level of pay and alter the structure of the pay table. The structural modifications include extending the pay table to 40 years, targeting pay raises in the enlisted mid-grade ranks, and providing sufficient incentive for enlisted members to enter and remain in the ranks of warrant officers. Recommended adjustments are as follows:

- Target large basic pay increases for enlisted members serving in the E-5 to E-7 grades. This would alter the pay structure and thus the shape of the earnings profile, making enlisted pay more competitive with the members' similarly educated civilian counterparts.
- Raise basic pay for warrant officers to provide incentives to join the warrant officer corps and complete a career in those ranks.
- Extend the Basic Pay table to 40 years providing longevity step increases to the higher officer, warrant officer and enlisted grades.
- Provides a minimum pay increase of 2.2 percent to every pay grade.

The goal of the Department of Defense, as recommended by the 9th Quadrennial Review of Military Compensation, has been to bring regular military compensation to the 70th percentile of private civilians when you compare experience and education in order to maintain the Department's competitive position. This section would accomplish that goal, while extending the military pay table to 40 years of service to support the Secretary of Defense's oft-stated transformational initiative to extend military careers beyond the typical 20-26 years.

This section provides a pay table, beginning April 1, 2007, describing the changes in basic pay.

**SEC. \_\_\_\_ . LAND TRANSFER FROM ARLINGTON NAVAL ANNEX TO ARLINGTON  
NATIONAL CEMETERY.**

1           Section 2881(h) of the National Defense Authorization Act for Fiscal Year 2000 (Public  
2 Law 106-65; 113 Stat. 880) is amended by striking paragraphs (1) and (2) and inserting the  
3 following new paragraphs:

4                   "(1) January 1, 2013;

5                   "(2) the date when the Arlington Naval Annex property is no longer required (as  
6 determined by the Secretary of Defense) for use as temporary office space; or

7                   "(3) twelve months after the date the Secretary of the Army notifies the Secretary  
8 of Defense that the Arlington Naval Annex property is needed for the expansion of  
9 Arlington National Cemetery."

**Section-by-Section Analysis**

This proposal would provide needed flexibility for the reuse of the Arlington Navy Annex. Section 2881(h) of Pub. L. 106-65, which this proposal would amend, requires the Secretary of Defense to transfer administrative jurisdiction over the Arlington Navy Annex to the Department of the Army not later than January 1, 2010, or when the Navy Annex is no longer required for use as temporary office space during the Pentagon renovation, whichever is earlier. Section 2881(c) further requires that, upon transfer to the Secretary of the Army, the Secretary of Defense must provide for the removal of improvements, e.g., Federal Office Building #2 (FOB #2), and prepare the property for use as part of Arlington National Cemetery (ANC). (Part of the Navy Annex has already been transferred under the 2002 National Defense Authorization Act for construction of the Air Force Memorial; that transfer is not affected by this proposed amendment.)

The proposed change is necessary to take into account more recent projections on ANC out-year requirements as well as realignments mandated under the base closure and realignment (BRAC) process. This proposal maintains Congress' original intent that the Navy Annex be transferred to ANC to accommodate the cemetery's future requirements, but it also recognizes that the Department of Defense will need office space during transitions required by BRAC. The proposal allows the Department to wind down its occupancy of FOB #2 in an economically sensible way during BRAC, while still allowing ANC to obtain the property as soon as it needs

it. In a period of two years alone, office space at FOB #2 will cost approximately \$20 million less than equivalent office space elsewhere in the National Capital Region. The proposal does not obstruct or degrade the cemetery's requirements because its own projections indicate it will not need the land until at least 2015. In case those projections are mistaken, ANC will still be able to request the transfer at any time and DoD will be required to fulfill that request within 12 months.

This proposal is in conformance with the master plan required by section 2881 of Pub. L. 106-65. This proposal does not affect the requirements of the Defense Base Closure and Realignment Act of 1990 regarding deadlines for completing the realignment of the current tenant organizations in FOB #2.

**Cost Implications:** No discernable budget impact. To the extent it will reduce the draw on the Base Closure Account, 2005, those funds have not yet been planned and programmed.