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OFFICE OF MANAGEMENT AND BUDGET  
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July 21, 2005  
(Senate)

## STATEMENT OF ADMINISTRATION POLICY

### S. 1042 - National Defense Authorization Act for Fiscal Year 2006

(Sen. Warner (R) VA)

The Administration commends the Senate Armed Services Committee for its continued support of our national defense and supports passage of S. 1042. The Committee's strong support for the President's priorities is critical to the continued successful prosecution of the Global War on Terror.

The Administration appreciates the Committee's support of the President's overall Budget level for defense activities. Any significant reductions from this overall level of \$419 billion, such as the levels proposed by the Senate Appropriations Committee's current 302(b) allocation for defense, would be strongly opposed. The Administration thanks the Committee for providing the requested 3.1 percent military pay raise, the authorized increase to the death gratuity and life insurance benefits, and the reauthorization of needed special pays and bonuses. We appreciate the Committee's support for many programs, especially acquisition programs critical to ensuring America's future military dominance – such as the DD(X) destroyer and other next-generation ships, Joint Strike Fighter, Heavy Lift Replacement Helicopter, and Future Combat Systems programs. We also appreciate the Committee's support for Defense Health, Cooperative Threat Reduction, and the Energy Conservation Investment Program.

The Administration also thanks Congress for providing the vital funds in the recently enacted FY 2005 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief. The Administration appreciates Congress' strong commitment to our troops and the Global War on Terror and notes that the supplemental funding will be sufficient to pay for our efforts through the end of the current fiscal year. While the \$50 billion bridge fund included in this bill is not needed for the remainder of FY 2005, the Administration looks forward to working with Congress to ensure that there is no interruption of resources for the Global War on Terror in FY 2006 and that funding is allocated in the most effective way to meet the needs of commanders in the field.

The Administration encourages the Senate to include the requested Administration priorities, including:

Security Partnerships with Other Nations: We strongly urge Congress to provide the Administration with the full set of authorities requested to build security partnerships to fight the Global War on Terror. The requested authorities include the Commander's Emergency Response Program (CERP) Fund, authority to train and equip foreign military or security forces, reimbursement for coalition support forces, logistics support to other nations, and support for emergency stabilization and reconstruction activities. Flexible authorities provided by Congress have proven critical in responding to needs in Afghanistan and Iraq. The requested authorities build upon this success but also would enable a broader range of responses to address the Global War on Terror, including new tools to ensure that foreign states do not become terrorist havens. While the Administration appreciates the Committee's authorization of \$500 million in the CERP for Iraq and Afghanistan, we urge Congress to extend the CERP authority for use

anywhere it is needed, make it permanent, and include the concurrence of the Secretary of State, as the Administration has requested.

Stabilization and Reconstruction Support: The Administration strongly urges the inclusion of its proposal to temporarily authorize the Department of Defense (DOD), at the request of the Secretary of State, to transfer funds, goods, and services to other U.S. departments and agencies, such as the new Office of the Coordinator for Reconstruction and Stabilization (S/CRS), for the purpose of restoring or maintaining peace and security in a foreign country. This authority would be used for unforeseen emergencies requiring immediate stabilization and reconstruction assistance where a response is in the U.S. national interest. At a time of increasing instability in many parts of the world, it is important that the U.S. Government has the ability to respond quickly to such situations. This emergency authority would enable DOD, the State Department, and other Federal agencies to work together during stabilization, security, and reconstruction operations and eliminate delays in deploying S/CRS and other U.S. Government elements in the critical stages of stabilization, security, and reconstruction efforts.

Robust Nuclear Earth Penetrator: The Administration urges the Senate to approve the Administration's request to fund an integrated DOD and Department of Energy program to study the feasibility of adapting an existing warhead to a new precision penetrator casing and bomber platform integration.

Purchase and Destruction of Weapons Overseas: The Administration thanks the Committee for authorizing funds to purchase weapons abroad for force protection and to destroy them, but urges Congress to modify section 324 to include the concurrence of the Secretary of State, as the Administration had requested.

Protection of Sensitive Information: The Administration supports section 922, which would protect sensitive operational information of the Defense Intelligence Agency, and recommends that access by the space control advisory committee to Federal agency information under section 911(d)(1), apply only "to the extent permitted by law," in order to preserve existing protections for sensitive information, including personal information, intelligence sources and methods, and trade secrets.

Military Construction/Family Housing: The Administration supports the \$12.1 billion authorized for military construction and family housing, which will help meet the Nation's military construction priorities for our forces at home and abroad. The Administration is concerned, however, that the bill does not provide the flexibility to use operation and maintenance funds for emergency construction requirements outside the United States.

The Administration has a number of concerns, including:

Amendments Interfering with Effective Conduct of War on Terror: The Administration understands that amendments may be offered to establish a national commission on the detainee operations or to regulate the detention, treatment or trial of terrorists captured in the war on terror. The Administration strongly opposes such amendments, which would interfere with the protection of Americans from terrorism by diverting resources from the war to answer unnecessary or duplicative inquiry or by restricting the President's ability to conduct the war effectively under existing law. The Constitution and the Authorization for Use of Military Force Joint Resolution (Public Law 107-40, September 18, 2001) provide the authority the President

needs to conduct the war effectively and protect the American people. If legislation is presented that would restrict the President's authority to protect Americans effectively from terrorist attack and bring terrorists to justice, the President's senior advisers would recommend that he veto the bill.

Aircraft Carrier Force Structure: The Administration strongly opposes any further delay in the retirement of the carrier *U.S.S. John F. Kennedy*. The Senate is urged to eliminate section 321, which prohibits retirement of the carrier for at least another 180 days beyond currently imposed restrictions and perhaps longer. We would oppose any requirement to spend funds to maintain a ship that the Navy believes is no longer essential. In configuring the fleet for 11 carriers, the Navy will ensure that it makes effective use of existing carrier ports.

Base Realignment and Closure: The Administration strongly opposes the \$376 million funding reduction for implementing recommendations of the 2005 Base Realignment and Closure (BRAC) Commission. This reduction would slow BRAC implementation and thus delay achievement of the mission improvements provided by BRAC changes, costing the DOD more money over the long term. Delaying the completion of base closures and realignments also would hinder community efforts to quickly reuse DOD facilities and mitigate the economic impact of BRAC actions.

The Administration would strongly oppose any amendment to weaken, delay, or repeal the authority for the 2005 BRAC round. If the President is presented a bill that weakens, delays, or repeals the BRAC authority, the Secretary of Defense, joining with other senior advisers, will recommend that the President veto the bill.

Buy American Act Amendments: The Administration would strongly oppose any amendment that would limit our flexibility in applying the Buy American Act or that would undermine the longstanding U.S. policy -- repeatedly affirmed by Congress -- to open U.S. procurement markets to suppliers from foreign countries that open their procurement markets to U.S. suppliers. Such amendments would harm U.S. companies and workers, as foreign governments would likely respond by restricting U.S. suppliers' access to their procurement markets. Such amendments also would decrease competition, increase costs for U.S. taxpayers, and unnecessarily add red tape to the procurement process. In the case of defense-related amendments, such legislation also could jeopardize our military readiness, when our objective should be to enhance our ability to get the best capability for the warfighter at the best value for the taxpayer. If the President is presented a bill that includes such an amendment, his senior advisers will recommend that he veto the bill.

End-Strength: The Administration strongly opposes increases in minimum Army and Marine Corps end-strength (sections 401 and 402). The President has sufficient authority to adjust the size of the Army and Marine Corps as necessary for the current national emergency. No changes to end-strength authorizations are needed at this time.

Acquisition Restrictions: The Administration is concerned with section 122, which would incrementally fund the Navy's future nuclear aircraft carrier, CVN 21, over four years. This marks a substantial move away from the Administration's full funding policy, and we urge the Senate to remove this provision. The Administration also opposes sections 132, 134, and 135, which would prohibit the retirement of any KC-135E tanker aircraft, F-117 fighter aircraft, or C-130E/H tactical airlift aircraft in FY 2006, because these prohibitions would unnecessarily limit

DOD's flexibility to manage its assets and meet combatant commander requirements in the most efficient manner.

Unrequested Additions: The Committee's bill would authorize increased funding for a large number of weapon systems and programs, including an additional \$400 million for Science and Technology programs, \$49 million for homeland defense initiatives, and \$80 million for additional chemical and biological weapons defenses. Although some of these increases, in isolation, might seem to benefit U.S. defense capabilities, the Administration is concerned that the Committee reduced Service Operations and Maintenance funds to carry out these authorized increases. The Administration also objects to section 137, which would require the Air Force to procure up to two aircraft dedicated solely to aeromedical evacuation. This requirement is not only unnecessary, since the Air Force no longer needs dedicated aeromedical evacuation aircraft, but would restrict DOD's ability to effectively manage its resources. The Administration is especially troubled by the \$1.3 billion general cut in section 1004 (based on unrealistic inflation projections) and reductions to transformational programs used to pay for these unrequested additions.

Reductions to Transformational Programs: The Administration is concerned by the Committee's reduction of the Joint Tactical Radio System by \$308.3 million. Although the program has experienced difficulties and is being restructured this year, the full request will be needed in FY 2006 to avoid a delay of up to two years in fielding this transformational, networked tactical communication system, which is vital to our future coalition warfare operations. In addition, the Administration opposes the deep cuts in the Transformational Satellite Program and Space Radar, which have the potential to revolutionize future military operations.

Fissile Material Disposition Program: The Administration is concerned that the \$200 million reduction in the Fissile Material Disposition program would prevent the start of construction of a mixed oxide (MOX) fuel-fabrication facility in South Carolina in FY 2006, and result in a two-to three-year delay in the project. While there were delays in reaching an agreement with the Russian government, agreement has now been reached on these protections, allowing the Fissile Material Disposition program to proceed. Reduction of funding for the U.S. facility could undermine Russian confidence in the MOX approach and put at risk international support and funding for the Russian MOX facility.

Capital Security Cost Sharing: The Administration strongly opposes section 1008 because it could prevent DOD from contributing to overseas cost sharing for critical security improvements under the Capital Security Cost Sharing program administered by the Department of State. This program requires all Federal agencies with authorized positions overseas to budget for and contribute to the construction of new secure embassy compounds for those positions.

Contract Support Acquisition Centers: The Administration strongly opposes Section 802, which would require DOD to establish a contract support acquisition center at the Defense Logistics Agency and each of the Military Departments, as premature and potentially inefficient. DOD continues to take active measures to improve the procurement of services, which include instituting management structure improvements. Currently, DOD is reviewing the implementation and effect of those improvements, which should be considered before statutorily mandating a new organizational structure for acquiring services. By mandating a new organization structure, section 802 would eliminate the flexibility that DOD needs to acquire services in the most efficient manner.

DOD Financial Improvements: The Administration supports the Committee's requirement that DOD have a comprehensive and integrated financial management improvement plan to guide expenditure of resources on improvement activities. However, the Administration is concerned that the Committee's expenditure restrictions and \$200 million funding reduction contained in Sec. 328 would disrupt the Department's ongoing improvements. The Administration looks forward to working with Congress toward a successful implementation of DOD's financial improvement plan.

Competitive Sourcing: The Administration would strongly oppose any amendment that would unnecessarily subject private-sector bidders to intrusive data requirements concerning the provision of health benefits to their employees. While well-intentioned, such an amendment would ultimately undermine the efficiencies in private health plans and provide a disincentive for the private sector to participate in DOD's competitions. Further, by discouraging private-sector interest in competitive sourcing, it would place at risk significant savings -- \$6 billion estimated to be generated from DOD competitions completed between FY 2001 and 2006 -- from the Competitive Sourcing initiative of the President's Management Agenda. Small business participation in competitions will be severely hampered since this provision makes it particularly burdensome to assemble competitive offers. The Administration urges the Senate to permit DOD to take advantage of government-wide OMB Circular A-76 policies to achieve the best value for the taxpayer.

Personnel Issues: While grateful that the Committee's bill provides support for our military and their families, the Administration is concerned about the following personnel issues:

Thrift Savings Plan Pilot: The Administration opposes section 652, which would establish a new pilot program to pay first-term enlistees matching Government contributions to their Thrift Savings Plan contributions. The unparalleled retirement benefits which service members already receive serve as a powerful retention tool. Any significant changes to retirement benefits should be part of a comprehensive review of compensation policy. Moreover, if this pilot program is intended primarily as a recruitment tool, the Department already has more cost-effective tools at its disposal.

Reservist Medical Exams: The new requirement in section 531 for yearly physical exams for non-activated reserve members would not enhance readiness, but would entail costs to the services of approximately \$600 million over five years. Reservists currently receive a physical at least once every five years, with the Secretary of Defense ordering reservists to receive physicals more often if necessary. When activated, reservists already must undergo a physical to ensure they can deploy.

Acquisition Workforce Restriction: The Administration opposes section 832's mandated 15 percent increase in the DOD acquisition workforce over the next three fiscal years and section 572's restrictions on converting military to civilian positions in medical care. These provisions would impede the Secretary of Defense's ability to manage the workforce effectively.

Military-Civilian Conversion: The \$285 million reduction in military-civilian conversion funds will eliminate the flexibility of the Secretary of Defense to use those converted positions to enhance the strength of operating units. This reduction in military-civilian conversions would have an adverse impact on all the services, especially Army transformation.

Hardship Duty Pay: The Administration is concerned that the Committee has not authorized an increase in the ceiling on Hardship Duty Pay. This flexible pay is a valuable tool for enhancing retention of some of our most critical service members in a timely manner.

Promotion Board Information Credibility: Because promotion board consideration of adverse information that is not credible would be unfairly prejudicial to a military officer, section 504 should be amended to require submission to a board only of "credible" information of an adverse nature.

Finally, the Administration encourages the Senate not to adopt unrequested benefits. New or major expansion of benefits should await the results of the comprehensive review undertaken by the Secretary of Defense's Advisory Committee on Military Compensation and the results of the statutorily required Quadrennial Review of Military Compensation.

Defense Intelligence SES Positions: The Administration is disappointed the Committee did not include the Administration's proposal to increase the number of Defense Intelligence Senior Executive Service positions. These additional positions are essential to meeting the increased demands for intelligence support.

Unmanned Aerial Vehicle (UAV) Reconnaissance to Detect and Monitor Border Traffic: The Administration opposes section 1031, which would authorize DOD to conduct UAV reconnaissance to detect and monitor suspicious air, sea, and surface traffic along the U.S. border. This authority could imply a continuous mission requirement for DOD, which would place even greater demands on already heavily used UAV assets. Also, under Title 10, Section 374, the Department already is authorized to provide aerial reconnaissance support to civilian law enforcement agencies who request DOD support using the established Request for Assistance (RFA) process. Section 1031 could lead to a recurring border security mission for DOD outside the scope of Title 10, Section 374. The Administration would support express statutory authority for DOD to use UAVs in support of civilian law enforcement, but would not support a potentially continuous mission requirement directing DOD employment of these UAV assets in any particular way.

Support for Critical White House Communications Activities: The Administration strongly urges Congress to support the Administration's request to amend section 912 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201) to enable the White House Communications Agency (WHCA) to provide critical audiovisual support services for the President and the White House. These services help the President and senior White House staff in communicating with the American people and the world in executing his official duties during times of peace and national crisis by audio and visual means. The proposed change will enable the WHCA to streamline its operations and manage its personnel and resources more effectively and efficiently and eliminate a cumbersome process for requesting and billing for support provided. Accordingly, the Administration has determined that it would be most effective to fund these activities directly through WHCA, and the FY 2006 Budget submission for WHCA reflects this decision. Without this amendment, the WHCA will lack authority to expend FY 2006 funds expressly requested for this purpose.

Small Business Innovation Research Programs: The Administration is concerned about the intent of section 814, which would require that DOD maintain lists of Small Business Innovation

Research (SBIR) programs that have completed the research and development phase of the program (Phase II) and have the potential for rapid transition to an openly competitive commercial phase (Phase III). We are concerned that the intent to establish lists of Phase II projects will lead to expectations that DOD will fund Phase III projects, which are outside the scope of the SBIR program.

Grades of the Judge Advocates General: The Administration opposes section 505, which would elevate the Judge Advocates General to 3-star grade. This provision would: (1) undermine the flexibility of the President to determine what positions of importance and responsibility merit grades above the major general or rear admiral (upper half); (2) add unnecessary and rank-heavy bureaucracy; and (3) create unique selection procedures for one class of 3-star officers by imposing selection board procedures rather than permitting the Secretary of Defense to use his discretion. The Judge Advocates General, as 2-star officers, already participate fully in the legal affairs of their respective Military Departments and the entire DOD and would enjoy no greater access to senior officials as a result of their elevation to 3-star status.

Legal Services in DOD: To protect individuals receiving military legal assistance, section 1044(e)(1) of title 10, United States Code, as contained in section 553 of the bill – which grants the right to practice law anywhere in the United States to judge advocates or civilian attorneys authorized to provide military legal assistance – should be amended to provide that a judge advocate or civilian attorney must be a "member of the bar of the highest court in at least one State or Territory or the District of Columbia." In addition, section 923 should be stricken in order to preserve the authority of the Secretary of the Air Force to determine the appropriate functions and duties of his subordinates who provide legal services consistent with applicable law.

Classified Programs: The Administration opposes section 1002, which would incorporate the classified annex into the bill. The Administration discourages the practice of enacting secret laws and encourages instead appropriate non-binding uses of classified annexes to committee reports and the joint statements of managers that accompany final legislation, and therefore recommends striking section 1002(a).

The Administration looks forward to working with the Congress to address other concerns, including constitutional ones, such as concern with sections 212(d)(3), 537(e)(3), 591(d)(3), 902(c)(3)(C), and 1042(c), which seek submission of legislative recommendations by Executive Branch officials. These sections should be modified to require submission only of such recommendations "as the President judges necessary and expedient," in order to be consistent with the President's constitutional authority to supervise the unitary Executive Branch and the Recommendations Clause of the Constitution. The Administration also will work with Congress to eliminate the unintended and potentially discriminatory effects of section 581, so as to ensure the eligibility of U.S. citizen children of non-citizen DOD employees living abroad to enroll in DOD schools.

### Budget Estimates and Enforcement

This bill would affect direct spending and receipts. To sustain the economy's expansion, it is critical to exercise responsible restraint over Federal spending. The Budget Enforcement Act's pay-as-you-go requirements and discretionary spending caps expired on September 30, 2002. The President's FY 2006 Budget includes a proposal to extend the discretionary caps through 2010, a pay-as-you-go requirement for direct spending, and a new mechanism to control the

expansion of long-term unfunded obligations. OMB's cost estimate of this bill is currently under development.

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