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APR 10 2003

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

Dear Mr. Speaker:

The Department of Defense proposes the enclosed legislation relating to the management of the Department of Defense and to the transfer of naval vessels to foreign countries. These proposals are part of the departmental legislative program for the Second Session of the 106th Congress and we urge their enactment. The purpose of each proposal is stated more fully in its accompanying sectional analysis.

We propose repealing an internal joint staff report on the roles and missions of the Armed Forces. It is redundant to the Quadrennial Defense Review and an unnecessary duplication of that effort. We are recommending a funding mechanism for the Defense Loan Guarantee Program and a continuation, until September 30, 2003, of the tuition reimbursement and training program for our civilian acquisition workforce members in shortage positions. We are seeking similar authority for the Defense Intelligence Agency to that already provided the Central Intelligence Agency regarding Freedom of Information Act requests for operational intelligence files and the decennial review of exempted operational files. Finally, we are seeking the authority for the President to transfer 17 naval vessels to the following countries; Australia (four vessels), Turkey (two vessels), Brazil (six vessels), Chile (two vessels), Egypt (one vessel), and Greece (two vessels). Legislation is necessary to transfer these vessels because they are either under 20 years of age or in excess of 3,000 tons (10 U.S.C. 7307(a)).

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,

Douglas A. Dworkin
Acting General Counsel

Enclosures
As Stated





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APR 18 2003

The Honorable Al Gore
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

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**SEC. ____ . ELIMINATION OF TRIENNIAL REPORT ON THE ROLES AND
MISSIONS OF THE ARMED FORCES.**

1 (a) Section 153 of title 10, United States Code, is amended—

2 (1) in subsection (a), by striking "(a) PLANNING; ADVICE; POLICY

3 FORMULATION.—"; and

4 (2) by striking subsection (b).

5 (b) Subsection 118(e) of title 10, United States Code, is amended by inserting after the

6 first sentence the following two new sentences:

7 "The Chairman shall also include his assessment of the assignment of functions (or roles and

8 missions) to the Armed Forces and recommendations for change the Chairman considers

9 necessary to achieve the maximum efficiency of the Armed Forces. This roles and missions

10 assessment should consider the unnecessary duplication of effort among the armed forces and

11 changes in technology that can be applied effectively to warfare."

Sectional Analysis

Repealing subsection 153(b) and amending subsection 118(e) would consolidate redundant reporting requirements related to the assessment of service roles and missions.

Subsection 153(b) requires the Chairman, Joint Chiefs of Staff to submit to the Secretary of Defense, a review of the assignment of roles and missions to the armed forces. The review must address changes in the nature of threats faced by the United States, unnecessary duplication of effort among the armed forces, and changes in technology that can be applied effectively to warfare. The report must be prepared once every three years, or upon the request of the President or the Secretary. It is not required that the report be forwarded to Congress.

Section 118 of title 10, codified section 901 of the National Defense Authorization Act for Fiscal Year 2000, that established a permanent requirement for the Secretary of Defense to conduct a Quadrennial Defense Review (QDR) in conjunction with the Chairman, Joint Chiefs of Staff. The Department of Defense has designed the QDR to be a fundamental and comprehensive examination of America's defense needs from 1997-2015; to include assessments of potential threats, strategy, force structure, readiness posture, military modernization programs, defense infrastructure, and other elements of the defense program. Amending subsection 118(e)

would explicitly require the Chairman's review of the QDR to include an assessment of service roles and missions and recommendations for change that would maximize force efficiency and resources.

Simultaneously preparing the QDR and the roles and missions study requires the concentrated efforts of many Joint Staff action officers for a period of more than eighteen months. Eliminating this duplication of effort, however, will significantly enhance the Joint Staff's ability to meet an expanding list of congressionally or Department of Defense mandated reporting requirements on a wide variety of sensitive defense topics. These topics include, joint experimentation, training, and integration of the armed forces; examination of new force structures, operational concepts, and joint doctrine; global information operations; and homeland defense, particularly with regard to managing the consequences of the use of weapons of mass destruction within the United States, its territories, or possessions.

SEC. ____ . DEFENSE EXPORT LOAN GUARANTEE PROGRAM.

1 (a) The Secretary of Defense, with the approval of the Office of Management and Budget,
2 may make available, not to exceed \$500,000 in total from funds available to the Department of
3 Defense for operation and maintenance in FY2001, 2002, and 2003, for the expenses of the
4 Department of Defense that are directly attributable to the administration of the defense export
5 loan guarantee program under subchapter VI of chapter 148 of title 10, United States Code.

6 (b) The Secretary, using funds in the special account referred to in section 2540c(d) of
7 title 10, United States Code, shall replenish operation and maintenance accounts for amounts
8 expended from such accounts for expenses referred to in subsection (a).

9 (a)

Sectional Analysis

The Defense Export Loan Guarantee (DELG) program was established in 1995 by section 1321 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106). In order to fund the initial operational expenses of the program, subsection (c) of section 1321 provided that up to \$500,000 of the amounts appropriated to the Department of Defense for operation and maintenance during fiscal year 1996 were to be made available for the necessary expenses directly attributable to the administration of the program. However, due to the limited volume of business, the DELG program has been unable to generate sufficient revenue to become self-sustaining. Therefore, it is necessary to make operation and maintenance funds available for the operational expenses of the DELG program on an ongoing basis. These amounts shall be replenished from amounts available in the special account into which administrative fees are deposited in accordance with section 2540c(d) of title 10, United States Code.

**SEC. ____ . CONTINUATION OF TUITION REIMBURSEMENT AND TRAINING FOR
ACQUISITION PERSONNEL IN SHORTAGE CATEGORIES.**

1 Section 1745(a) of title 10, United States Code, is amended by striking “September 30,
2 2001” and inserting in lieu thereof “September 30, 2003”.

Sectional Analysis

The Defense Acquisition Workforce Improvement Act (DAWIA) provides in section 1745 of title 10, United States Code that the Secretary of Defense “shall provide for tuition reimbursement and training” for acquisition personnel in the Department of Defense for the purposes described in section 4107(b) of title 5. Section 4107(b) authorizes tuition reimbursement and training for civilian acquisition workforce members for acquisition positions in a shortage category, until September 30, 2001.

There continues to be a shortage of qualified acquisition personnel and projections indicate shortages in the out years to 2003. Factors such as increased competition with private industry, a booming job market and a downsized workforce have contributed to the shortage of qualified personnel. Our acquisition professionals now more than ever need superior job skills to incorporate new technologies and new ways of doing business into the acquisition process.

Approval of the legislation will not require additional appropriations. Reimbursements will be limited to available appropriations.

SEC. ____ . CERTAIN EXEMPTIONS FOR DEFENSE INTELLIGENCE AGENCY FILES.

1 (a) IN GENERAL.—Subchapter I of chapter 21 of title 10, United States Code is amended by
2 adding at the end the following new section:

3 **“§ 426. Exemption of certain operational files from search, review, publication, or disclosure**

4 “(a) GENERAL EXEMPTION FROM DISCLOSURE.—Other than as noted in subsection (b),
5 operational files of the Defense Intelligence Agency may be exempted by the Director of Defense
6 Intelligence Agency and the Director of Central Intelligence from the provisions of section 552 of
7 title 5, United States Code (Freedom of Information Act), which require publication or disclosure,
8 or search or review in connection therewith.

9 “(b) SEARCH AND REVIEW AND PRIVACY ACT DISCLOSURES.—Operational files of the
10 Defense Intelligence Agency relating to—

11 “(1) United States citizens or aliens lawfully admitted for permanent residence who
12 have requested information on themselves pursuant to the provisions of section 552 of title
13 5, United States Code (Freedom of Information Act), or section 552a of title 5 (Privacy Act
14 of 1974);

15 “(2) any special activity the existence of which is not exempt from disclosure under
16 the provisions of section 552 of title 5 (Freedom of Information Act); or

17 “(3) the specific subject matter of an investigation by the intelligence committees of
18 the Congress, the Intelligence Oversight Board, the Department of Justice, the Office of
19 General Counsel of the Department of Defense, the Office of Inspector General of the
20 Defense Intelligence Agency, or the Office of the Secretary of Defense for any impropriety,
21 or violation of law, Executive order, or Presidential directive, in the conduct of an
22 intelligence activity

1 shall continue to be subject to the search and review for information provisions of section 552 of
2 title 5.

3 “(c) STATUS OF ASSOCIATED FILES.—(1) Files not exempted under this section that contain
4 information derived or disseminated from exempted operational files are subject to search and
5 review.

6 “(2) The inclusion of information from exempted operational files in files that are not
7 exempted does not affect the exemption of the originating operational files from search, review,
8 publication, or disclosure.

9 “(3) Records from exempted operational files that are disseminated and referenced in files
10 that are not exempt and that were returned to exempted operational files for sole retention are
11 subject to search and review.

12 “(d) DEFINITIONS.—For the purposes of this title the term “operational files” means—

13 “(1) files which document the conduct of foreign intelligence or counterintelligence
14 operations or intelligence or security liaison arrangements or information exchanges with
15 foreign governments or their intelligence or security services;

16 “(2) files which document the means by which foreign intelligence or
17 counterintelligence is collected through scientific and technical systems; and

18 “(3) files which document investigations conducted to determine the suitability of
19 potential foreign intelligence or counterintelligence sources; except that files which are the
20 sole repository of disseminated intelligence are not operational files.

21 “(e) JUDICIAL REVIEW.—Whenever any person who has requested agency records under
22 section 552 of title 5, United States Code (Freedom of Information Act), alleges that the Defense
23 Intelligence Agency has improperly withheld records because of failure to comply with any

1 provision of this section, judicial review shall be available under the terms set forth in section
2 552(a)(4)(B) of title 5, United States Code, except that--

3 “(1) in any case in which information specifically authorized under criteria
4 established by an Executive order to be kept secret in the interest of national defense or
5 foreign relations which is filed with, or produced for, the court by the Defense Intelligence
6 Agency, such information shall be examined ex parte, in camera by the court;

7 “(2) the court shall, to the fullest extent practicable, determine issues of fact based on
8 sworn written submissions of the parties;

9 “(3) when a complaint alleges that requested records were improperly withheld
10 because of improper placement solely in exempted operational files, the complainant shall
11 support such allegation with a sworn written submission, based upon personal knowledge or
12 otherwise admissible evidence;

13 “(4) (A) when a complainant alleges that requested records were improperly withheld
14 because of improper exemption of operational files, the Defense Intelligence Agency shall
15 meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating
16 to the court by sworn written submission that exempted operational files likely to contain
17 responsive records currently perform the functions set forth in subsection (d) of this section;
18 and

19 “(B) the court may not order the Defense Intelligence Agency to review the content
20 of any exempted operational file or files in order to make the demonstration required under
21 subparagraph (A) of this paragraph, unless the complainant disputes the Defense Intelligence
22 Agency's showing with a sworn written submission based on personal knowledge or
23 otherwise admissible evidence;

1 “(5) in proceedings under paragraphs (3) and (4) of this subsection, the parties shall
2 not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure
3 [U.S.C. Rules of Civil Procedure, Rules 26-36], except that requests for admission may be
4 made pursuant to rules 26 and 36 [U.S.C. Rules of Civil Procedure, Rules 26 and 36];

5 “(6) if the court finds under this subsection that the Defense Intelligence Agency has
6 improperly withheld requested records because of failure to comply with any provision of
7 this section, the court shall order the Defense Intelligence Agency to search and review the
8 appropriate exempted operational file or files for the requested records and make such
9 records, or portions thereof, available in accordance with the provisions of section 552 of
10 title 5, United States Code (Freedom of Information Act), and such order shall be the
11 exclusive remedy for failure to comply with this section; and

12 “(7) if at any time following the filing of a complaint pursuant to this subsection the
13 Defense Intelligence Agency agrees to search the appropriate exempted operational file or
14 files for the requested records, the court shall dismiss the claim based upon such complaint.

15 “(f) SAVINGS PROVISION.—The provisions shall not be superseded except by a provision of
16 law enacted after the date of enactment of this Act which specifically cites and repeals or modifies
17 its provisions.”; and

18 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of Subchapter I of such
19 chapter 21 is amended by inserting after the item relating to section 425 the following new item:

20 “426. Exemption of certain operational files from search, review, publication, or disclosure.”.

Sectional Analysis

Each year, DIA receives a multitude of requests the subjects of which are addressed in operational intelligence files. While the vast majority of these reports are exempt from release

because they are classified, the Freedom of Information Act still requires a time-consuming search and review of these documents. The proposed legislation parallels the similar exemption the Central Intelligence Agency enjoys for this category of files (50 U.S.C. §431) and adds this provision as a new section 426 to title 10, following the conventions of that title.

Subsection (a) exempts DIA operational files from search, review and disclosure under FOIA.

Subsection (b) provides for certain exceptions to the exemption, most notably requests by U.S. citizens or resident aliens about themselves and investigations into improprieties by intelligence activities.

Subsection (c) further narrows the exemption by providing for an exception of information from operational files disseminated or included in non-exempt files.

Subsection (d) defines the term "operational files."

Subsection (e) provides for judicial review for anyone who believes this exemption is being wrongfully applied.

Subsection (f) clarifies statutory construction of legislation enacted after the date this legislation is enacted.

SEC. ____ . DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.

(a) IN GENERAL.—Subchapter I of chapter 21 of title 10, United States Code is amended by adding at the end the following new section:

“§ 427. Decennial review of exempted operational files

1 “(a) REQUIRED REVIEW.—Not less than once every ten years, the Director of the
2 Defense Intelligence Agency and the Director of Central Intelligence shall review the
3 exemptions in force under subsection (a) of section 426 of this title to determine whether
4 such exemptions may be removed from any category of exempted files or any portion
5 thereof.

6 “(b) HISTORICAL VALUE AND PUBLIC INTEREST.—The review required by
7 subsection (a) shall include consideration of the historical value or other public interest in
8 the subject matter of the particular category of files or portions thereof and the potential
9 for declassifying a significant part of the information contained therein.

10 “(c) JUDICIAL REVIEW.—A complainant who alleges that the Defense Intelligence
11 Agency has improperly withheld records because of failure to comply with this section
12 may seek judicial review in the district court of the United States of the district in which
13 any of the parties reside, or in the District of Columbia. In such a proceeding, the court's
14 review shall be limited to determining (1) whether the Defense Intelligence Agency has
15 conducted the review required by subsection (a) within ten years of enactment of this title
16 or within ten years after the last review, and (2) whether the Defense Intelligence Agency,
17 in fact, considered the criteria set forth in subsection (b) in conducting the required
18 review.”; and

1 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of Subchapter
2 I of such Chapter 21 is amended by inserting after the item relating to section 426 the
3 following new item:
4 “427. Decennial review of exempted operational files.”.

Sectional Analysis

This section provides for a decennial review of the exempt files and again parallels the statutory scheme for similar CIA files (50 U.S.C. §432).

Section (a) mandates a decennial review for releasability of the exempt files.

Section (b) insures that historical value and public interest are considered in the review process.

Section (c) provides for judicial review of allegations that information has been wrongfully withheld.

Passage of this bill will result in increased efficiency in responding to FOIA requests, thereby saving money and shortening the average time required to respond to requests.

1 (e) GREECE. The President is authorized to transfer to the Government of the Greece
2 two "KNOX" class frigates VREELAND (FF 1068) and TRIPPE (FF 1075). Such transfers shall
3 be on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j).

4 (f) TURKEY.—The President is authorized to transfer to the Government of the Turkey
5 two "OLIVER HAZARD PERRY" class guided missile frigates JOHN A MOORE (FFG 19) and
6 FLATLEY (FFG 21). Such transfers shall be on a combined lease-sale basis under sections 61
7 and 21 of the Arms Export Control Act (22 U.S.C. 2796, 2761). The authority granted by this
8 section is in addition to that granted under section 1018(a)(9) of Public Law 106-65.

9 **SEC. 2. WAIVER OF REQUIREMENT FOR NOTIFICATION TO CONGRESS.**

10 Section 516 (f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(f)) and Section
11 525 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999
12 (Public Law 105-277) and any similar, successor provision, does not apply with respect to the
13 transfers authorized under this Act..

14 **SEC. 3. INAPPLICABILITY OF AGGREGATE ANNUAL LIMITATION ON VALUE**
15 **OF TRANSFERRED EXCESS DEFENSE ARTICLES.**

16 The value of a vessel transferred to another country on a grant basis under section 516 of
17 the Foreign Assistance Act of 1961 (22 U.S.C. 2321j) pursuant to section 1 of this Act shall not
18 be counted for the purpose of section 516(g) of the Foreign Assistance Act of 1961 in the
19 aggregate value of excess defense articles transferred to countries under that section in any fiscal
20 year.

21 **SEC 4. COST OF TRANSFERS.**

22 Any expense of the United States in connection with a transfer authorized by this Act
23 shall be charged to the recipient.

1 **SEC. 5. CONDITIONS RELATING TO COMBINED LEASE-SALE TRANSFERS.**

2 A transfer of a vessel on a combined lease-sale basis authorized by section 1 shall be
3 made in accordance with the following requirements:

4 (1) The President may transfer the vessel first by lease, with the lease payments
5 suspended for the term of the lease, if the country entering into the lease for the vessel
6 simultaneously enters into a foreign military sales agreement for the transfer of title to the vessel.

7 (2) The President may not deliver to the purchasing country title to the vessel until the
8 purchase price of the vessel under such a foreign military sales agreement is paid in full.

9 (3) Upon payment of the purchase price in full under such a sales agreement and delivery
10 of title to the recipient country, the President shall terminate the lease.

11 (4) If the purchasing country fails to make full payment of the purchase price in
12 accordance with the sales agreement by the date required under the sales agreement --the sales
13 agreement shall be immediately terminated; the suspension of lease payments under the lease
14 shall be vacated; and the United States shall be entitled to retain all funds received on or before
15 the date of the termination under the sales agreement, up to the amount of lease payments due
16 and payable under the lease and all other costs required by the lease to be paid to that date.

17 (5) If a sales agreement is terminated pursuant to paragraph (4), the United States shall
18 not be required to pay any interest to the recipient country on any amount paid to the United
19 States by the recipient country under the sales agreement and not retained by the United States
20 under the lease.

21 **SEC. 6. FUNDING OF CERTAIN COSTS OF TRANSFERS.**

22 There is hereby appropriated into the Defense Vessels Transfer Program Account such
23 funds as may be necessary for the costs (as defined in section 502 of the Congressional Budget

1 Act of 1974 (2 U.S.C. 661a)) of the lease-sale transfers authorized by subsection (1). These
2 funds are available only for the purpose of covering those costs.

3 **SEC. 7. EXPIRATION OF AUTHORITY.**

4 The authority granted by the first section of this Act shall expire at the end of the two-
5 year period beginning on the date of the enactment of this Act.

Sectional Analysis

SECTION 1 Provides authority to the President to transfer seventeen naval vessels to Australia, Brazil, Chile, Egypt, Greece, and Turkey. Because these naval vessels displace in excess of 3,000 tons or are less than 20 years of age statutory approval for the transfers is required under 10 U.S.C. 7307(a).

The four KIDD class ships, proposed to be transferred to the Government of Australia, were approved by Congress to be transferred to Greece in FY99 ship transfer legislation. The Government of Greece, however, did not accept the offer.

The two PERRY class frigates proposed for transfer to Turkey under lease/sale authority were approved by Congress to be transferred to Turkey by sale in the FY00 ship transfer legislation. Because of Turkish financial uncertainties caused by recent natural disasters, however, this proposal, which is in addition to the sale authority previously granted, is needed to give Turkey some flexibility in determining the most appropriate means to acquire the ships.

Additionally, SECTION 1 provides the applicable law for these transfers. Each naval vessel must be transferred to a foreign government or international organization under the Arms Export Control Act or the Foreign Assistance Act. The specific statutory authorities to transfer naval vessels to foreign governments and international organizations include:

a. Section 21 of the Arms Export Control Act (22 U.S.C. 2761) which provides authority for the sale of defense articles from stock.

b. Section 61 of the Arms Export Control Act (22 U.S.C. 2796) which provides authority for the lease of defense articles from stock.

c. Section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j) which provides the authority for the grant transfer of defense articles from stock.

SECTION 2 Relieves the Department of Defense of the requirement to provide a separate congressional notification of each of these transfers.

SECTION 3 Provides that the value of naval vessels authorized for transfer by grant by

this Act will not be included in determining the aggregate value of transferred excess defense articles.

SECTION 4 Provides that all costs are to be borne by the foreign recipients, including fleet turnover costs, maintenance, repairs, and training.

SECTION 5 Authorizes the transfer of high value ships on a combined lease-sale basis under Section 61 and 21 of the Arms Export Control Act (22 U.S.C. 2796 and 2761 respectively).

SECTION 6 Provides for the appropriation of funds that may be necessary for the costs of the combined lease-sale transfers in order to satisfy the requirements of 2 U.S.C. 661c. These funds will be appropriated into the Defense Vessels Transfer Program Account, which was established in the FY99 ship transfer legislation.

SECTION 7 Provides that the transfers authorized by this Act must be executed within two years of the date of enactment. This allows a reasonable opportunity for agreement on terms and for execution of the transfer.