



GENERAL COUNSEL

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

JUL 23 2001

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

Dear Mr. Speaker:

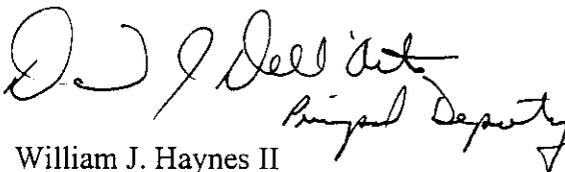
The Department of Defense proposes the enclosed legislation relating to the operations and management of the Department. These proposals are part of the departmental legislative program for the First Session of the 107th Congress and we urge their enactment. The purpose of each proposal is stated more fully in its accompanying sectional analysis.

The Department proposes three proposals specifically in support of the amended budget the President recently transmitted to the Congress for the Department of Defense. We request a change in the thresholds for implementation of the wage rates applicable for contracts with the Department of Defense pursuant to the Davis-Bacon Act and the Service Contract Act, and repeal of the specific budgeting requirements for missile defense programs. We also request express statutory authority for the Secretary of Defense to use Research, Development, Test and Evaluation funds to acquire, improve, or construct facilities that are needed to support the robust testing program for our Missile Defense System.

For more efficient management within the Department, we request removal of the requirement for specific Congressional action for the Secretary of the Navy to transfer ships in excess of 3,000 tons or less than 20 years of age, and repeal of the requirement that the Secretary certify to the Congress that the current Future Years Defense Program fully funds support costs associated with multiyear programs before entering into certain multiyear contracts.

The Office of Management and Budget advises that these proposals are in accord with the program of the President.

Sincerely,


Principal Deputy
for William J. Haynes II

Enclosures
As Stated





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1600 DEFENSE PENTAGON
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JUL 23 2001

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

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for William J. Haynes II *Principal Deputy*

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**SEC . ____ . DAVIS BACON ACT AND SERVICE CONTRACT ACT THRESHOLD
INCREASES.**

1 (a) RATE OF WAGES FOR LABORERS AND MECHANICS.—Beginning in fiscal year 2002 and
2 thereafter, as applied only to the Department of Defense, Section 1(a) of the Act of March 3,
3 1931, as amended (popularly known as the Davis Bacon Act; 40 U.S.C. 276a of title 40), is
4 amended by striking “\$2,000” in the first sentence and inserting “\$1,000,000”.

5 (b) REQUIRED CONTRACT PROVISIONS; MINIMUM WAGES.—Beginning in fiscal year 2002
6 and thereafter, as applied only to the Department of Defense, Section 2(a) of the Service Contract
7 Act of 1965 (41 U.S.C. 351) is amended by striking “\$2,500” and inserting “\$1,000,000”.

Sectional Analysis

These amendments to section 276a of title 40, United States Code, and section 351 of title 41, United States Code, would increase the thresholds beginning in fiscal year 2002 and thereafter for application of the Davis Bacon Act (DBA) and the Service Contract Act (SCA) from \$2,000 and \$2,500, respectively, to the simplified acquisition threshold, currently \$1,000,000. These increased threshold levels would apply only to the Department of Defense. The DBA and SCA thresholds have remained unchanged for over 35 years. Increasing and aligning these thresholds with the simplified acquisition threshold would:

Provide greater flexibility in purchasing small, short-term, off-the-shelf construction and service requirements, using purchase cards and/or multiple award, or ID/IQ contracts for task orders.

Be a significant step toward consistency in implementing socio-economic programs, simplified acquisition procedures, and competition requirements.

Enable the Department of Defense to maximize its effort to conduct business in a more business-like, or commercial, manner. Contract administration cost and effort would be minimized for the acquisition of commercial items.

Most of the small purchases made by federal installations are directed to local merchants (to ensure fair, commercial prices and immediate delivery). The protection of locality-based prevailing wage and benefit rates intended by DBA and SCA are not significantly minimized by an increase in business directed to local merchants. This relief would enable the Departments of Defense and Labor to focus administration and enforcement efforts on the more significant contract actions.

SEC. ____ . BALLISTIC MISSILE DEFENSE PROGRAM.

1 (a) IN GENERAL.—Sections 223 and 224 of title 10, United States Code, are repealed.

2 (b) CLERICAL AMENDMENT.—The table of sections for chapter 9 of such title 10 is
3 amended by striking the items relating to sections 223 and 224.

Sectional Analysis

Section 223 of title 10, United States Code, is proposed for repeal to reflect a more flexible approach to budgeting for missile defense programs. Section 223 currently provides for the annual budget request for missile defense programs to contain twelve identified program elements. Several of these programs are projected for transfer to the Military Services, while others face revision in accordance with the Administration’s near-term objective to develop an integrated, layered defense against limited ballistic missile threats to the United States, our deployed forces, our friends, and our allies. A more flexible program element structure will permit the redirection of missile defense funding to the development of integrated ballistic missile defense system elements, rather than particular missile defense programs, and will allow continual reassessment of results in the development of boost, midcourse, and terminal defense capabilities, as well as sensor and advanced technologies, so that accelerated development in those areas may be undertaken when warranted. It will also permit movement of funding from one technology to another within a program element, as necessary, to promote development of those ballistic missile defense system elements that demonstrate the greatest potential for success.

Section 224 of title 10, United States Code, is proposed for repeal to reflect the planned transfer of program responsibility for certain missile defense programs, as well as the procurement funding for those programs, from the Ballistic Missile Defense Organization to the Military Services. Section 224 currently provides for amounts budgeted for procurement of certain defined missile defense programs to be displayed in the budget in the Ballistic Missile Defense Organization subaccount of the “Procurement, Defense-Wide” appropriation.

SEC. ____ . MISSILE DEFENSE SYSTEM TEST BED FACILITIES.

1 (a) **AUTHORITY TO ACQUIRE OR CONSTRUCT FACILITIES.**— The Secretary of Defense,
2 using funds appropriated to the Department of Defense for research and development, may carry
3 out construction projects, or portions of projects, including the acquisition, improvement, or
4 construction of facilities of general utility, to establish and operate the Missile Defense System
5 Test Bed Facilities.

6 (b) **AUTHORITY TO PROVIDE ASSISTANCE TO LOCAL COMMUNITIES.**—The Secretary of
7 Defense, using funds appropriated to the Department of Defense for research and development,
8 may provide assistance, by grant or otherwise, to local communities to meet the need for
9 increased municipal or community services or facilities resulting from the construction,
10 installation, or operation of the Missile Defense System Test Bed Facilities, as determined
11 pursuant to subsection (c).

12 (c) **DETERMINATION OF COMMUNITY NEED.**—Assistance authorized in subsection (b)
13 may be provided only if the Secretary of Defense determines there is an immediate and
14 substantial increase in the need for such services or facilities as a direct result of the construction,
15 installation, or operation of the Missile Defense System Test Bed Facilities.

16 (d) **AUTHORIZATION LIMITATION.** The authority provided in subsection (a) may be used
17 to acquire, improve, or construct facilities at a total cost not to exceed \$500,000,000.

Sectional Analysis

This proposal would provide express statutory authority for the Secretary of Defense to use Research, Development, Test and Evaluation (R,D,T&E) funds to acquire, improve, or construct facilities that are part of a robust testing program of a Missile Defense System, and to mitigate impacts to surrounding communities that may be caused by construction, installation, and operation of Missile Defense System Test Bed Facilities.

The Missile Defense System is a multi-layered approach to defending against missiles in the boost, midcourse and terminal phases of their operation. The Department of Defense has determined that the National Missile Defense System requires further testing under realistic conditions closely resembling operational conditions. The proposed Missile Defense System Test Bed Facilities will include components at several different installations at widely dispersed locations. These facilities will realistically provide trajectory, sensing, and interception scenarios that resemble conditions under which a Ballistic Missile Defense System might be expected to defend. While the test bed will initially be used to test the Ground Based Midcourse element, the test bed will be capable of integrating boost, midcourse, and terminal element defenses and the sensors and battle management command, control and communication that support the element defenses.

The Test Bed Facilities would be designed to the scale and configuration appropriate for a testing mission, and therefore would not approximate the scope of facilities that would be required for an operational system. However, because of the realistic nature of the Test Bed Facilities, some of the facilities to be constructed would likely be used in the future if a decision were made to deploy a Ground Based Midcourse element of the Ballistic Missile Defense system. Also, some of the facilities required to be improved or constructed, such as a power generating plant, will support other operational activities. Section 2353 of title 10, United States Code, authorizes construction and acquisition of research, developmental, or test facilities needed for the performance of a research or development contract using R,D,T&E funds, provided that the facilities constructed do not have "general utility." Because some of the facilities to be improved or constructed may have general utility, subsection (a) of the proposed legislation will provide clear authority to undertake these projects using R,D,T&E funding.

Subsection (b) of the proposed legislation will provide the Department of Defense with authority to use R,D,T&E funds to mitigate impacts to surrounding communities resulting from the construction, installation, and operation of the Missile Defense System Test Bed Facilities. Potential impacts are expected to include increased demand for educational services, emergency services, utility consumption, waste disposal, and communication needs. This authority is similar to the authority currently available to the Department under 10 U.S.C. 2391 to provide assistance to communities that are directly and significantly adversely affected by a new or expanded military installation. R,D,T&E funding for this assistance is considered appropriate because the community assistance will be required as a result of the Department's research and development activities.

Subsection (c) requires a determination that there is an immediate and substantial increase in the need for additional services or facilities as a direct result of the construction, installation, or operation of the Test Bed Facilities before community assistance may be provided.

Subsection (d) establishes a \$500 million cap on the acquisition, improvement or construction of Test Bed Facilities under the authority provided in subsection (a).

**SEC. ____ . ELIMINATION OF A SPECIFIC ACT OF CONGRESS FOR THE
DISPOSAL OF NAVAL VESSELS.**

1 Section 7307 of title 10, United States Code, is amended—

2 (1) by striking subsection (a); and

3 (2) in subsection (b)—

4 (A) by striking “(b) OTHER VESSELS.—(1) A naval vessel not subject to
5 subsection (a)” and inserting “(a) NOTIFICATION TO CONGRESS OF NAVAL VESSEL
6 DISPOSALS.—A naval vessel”;

7 (B) by striking the designator for paragraph (2), redesignating the paragraph as a
8 subsection, and inserting the subsection designator and catchline as follows:

9 “(b) CONTINUITY OF A SESSION OF CONGRESS.—”; and

10 (C) in subsection (b), as redesignated by subparagraph (B), by inserting “of
11 subsection (a)” after “For purposes of paragraph (1)(B),”.

Sectional Analysis

The proposed amendment to 10 U.S.C. 7307 eliminates the statute’s different requirements and procedures based on the weight or age of a ship. The primary purpose for this proposed amendment is to provide the Navy with greater flexibility in accommodating changes in the requirements of other nations seeking ship transfers. With greater flexibility the Navy will be able to transfer ships more quickly, thereby reducing the Navy’s cost of maintenance and safe stowage. The proposed amendment will not curtail Congress’ oversight and control of the ship transfer process. Congress still will receive the 30 in-session days notice of proposed ship transfers as well as the pre-transfer notices required by sections 36(b) (sale from stock) and 62 (lease) of the Arms Export Control Act and section 516 (any type of transfer) of the Foreign Assistance Act.

Section 7307 of title 10 currently requires Congress to enact legislation specifically authorizing a transfer to another nation of any ship exceeding 3,000 tons in weight or less than 20 years of age. If the ship is less than 3,000 tons and over 20 years of age, 10 U.S.C. 7307 requires

that the Secretary of the Navy notify the Armed Services Committees of the Senate and House of Representatives of the proposed transfer and wait 30 in-session days before making the transfer.

For both types of ships, the transfer process begins with the Navy identifying ships available for transfer to other nations. At present there are approximately 150 ships in 4 Navy Inactive Ship Maintenance Facilities (NISMFs) and more ships stored in Maritime Administration facilities. The NISMFs are full and the ships in these facilities require maintenance and safe stowage until they are transferred to another nation or otherwise disposed or scrapped. The cost to provide maintenance and safe stowage runs tens of thousands of dollars per year per ship. This cost is borne by the annual Operations and Maintenance, Navy, appropriation.

For both types of ships, the next step in the transfer process involves coordinating with other nations to determine which ships they would like to receive and whether they have the funds to acquire and reactivate the ships.

At this point, the procedures for transferring the two types of ships diverge. For ships under 3,000 tons and over 20 years of age, the Navy prepares a list of ships proposed for transfer to each nation and obtains the required approvals from within the Navy and the Department of Defense. Once these approvals have been obtained, the Navy notifies Congress and proceeds to wait thirty in-session days. If a member of Congress objects to a proposed ship transfer, the Navy consults with that member to resolve the objection or scuttles that proposed transfer.

For ships over 3,000 tons or under 20 years of age, the Navy must follow a more elaborate procedure. Approximately one year before Congress is expected to pass a law authorizing the transfer of these ships, the Navy must prepare a list of them, obtain Navy and Department of Defense approvals, coordinate with and obtain the approval of the Departments of State and Commerce, and then submit them to Congress as proposed legislation. The proposed ship transfer legislation is then reviewed and considered by the Congress. It eventually debates the proposed legislation and typically enacts a provision authorizing most or all of the proposed ship transfers. During the period when the proposed legislation is with Congress, some nations change their requests and want different ships, no ships, fewer ships, or more ships. For instance, in the past five years budgetary constraints and political changes have required Argentina, Brazil, Chile, the Philippines, Mexico, and Egypt to modify their initial ship transfer requests after proposed ship transfer legislation had been forwarded to Congress or, in some cases, after Congress had enacted ship transfer legislation. Each modification effectively restarted the ship transfer procedure within the Navy for the affected ships, resulting in continued maintenance and safe stowage costs for the Navy.

Even after Congress approves ship transfer legislation, recipient nations are usually given one to two years in the legislation to sign a Letter of Offer and Acceptance for the transfer to take effect. During this one- or two-year period nations occasionally change their requests and want different ships or more ships or no ships or fewer ships. However, they often use the entire one

or two year period to change their request. During this period the Navy does not have authority to transfer the ships to another nation; it must propose different ship transfer legislation after finding another nation and staffing the new proposed legislation through the Navy, the Department of Defense, and Congress. Throughout this period the Navy's maintenance and safe stowage costs continue.

The proposed change to 10 U.S.C. 7307 will allow the Navy to act more quickly in consummating ship transfers. The current process of enacting ship transfer legislation for ships over 3,000 tons or less than 20 years of age will be reduced with this repeal. The one or two year post-legislation period for recipient nations to sign a Letter of Offer and Acceptance would be eliminated. The Navy would be able to apply more leverage to other nations to sign the Letter of Offer and Acceptance or to lose the opportunity to receive the ship(s) the Congress did not object to during the 30 in-session day period. When a nation needs to change its request, the Navy can accommodate that change much more quickly and would not need new legislation.

The flexibility may also allow the Navy to consummate more "hot transfers" of ships where ships reaching the end of their active life in the Navy fleet may be transferred without the Navy first having to deactivate the ship. Deactivation is a significant cost to the Navy and reactivation is a significant cost to the recipient of the ship. If these significant costs may more easily and frequently be avoided, the Navy may be able to transfer more ships and maintain fewer ships at the NISMFs.

Ultimately, Congressional oversight and control will remain in effect because it (the Senate Armed Services Committee and the House of Representatives Committee on National Security) will receive notice and have 30 in-session days to query the Navy regarding the proposed transfers and to force the Navy to scuttle any objectionable proposed transfers. Historically, there have been very few proposed ship transfers that have been rejected by the Congress. Nonetheless, Congress will retain this opportunity to oversee and control the ship transfer process.

Congress (Senate Foreign Relations Committee, the House of Representatives Foreign Affairs Committee, and the Appropriations Committees of both Houses) will also receive notice under Section 516 of the Foreign Assistance Act of the proposed ship transfers because the ships are "significant military equipment." The Section 516 notice must be given at least 30 days before any transfer. In addition, the Congress (Speaker of the House of Representatives and Senate Foreign Relations Committee) will receive notices under Section 36(b) of the Arms Export Control Act for proposed sales of ships classified as "major defense equipment" over \$14,000,000 in value. This classification applies to approximately half of the ships that have transferred in the past with statutory authorization. The Section 36(b) notice must be given at least 15 or 30 days before the proposed sale, depending on the recipient nation. Finally, under Section 62 of the Arms Export Control Act, Congress (Speaker of the House of Representatives, Senate Foreign Relations Committee, and Senate Armed Services Committee) receives similar notice for all proposed leases of ships for more than a one year period, and there are similar 15

and 30 day waiting periods.

The proposed amendment of 10 U.S.C. 7307 would provide the Navy with greater flexibility in satisfying other nations' requests for ship transfers and will help reduce the costs of maintenance and safe stowage for inactive ships. At the same time, the proposed amendment will maintain Congressional oversight and control of the ship transfer process.

This provision has no effect with regard to the transfer of naval vessels that is ongoing for fiscal year 2002. Its application would be for any future transfers.