



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

July 15, 2009  
(Senate)

## STATEMENT OF ADMINISTRATION POLICY

### S. 1390 – National Defense Authorization Act for Fiscal Year 2010

(Sen. Levin, D-Michigan, and Sen. McCain, R-Arizona)

The Administration supports Senate passage of S. 1390, the National Defense Authorization Act for Fiscal Year 2010. The Administration appreciates the Senate Armed Services Committee's continued strong support of our national defense, including its support for the Department's topline budget requests for both the base budget and for overseas contingency operations.

The Administration appreciates, among other things, the leadership of the Committee in supporting many of the President's initiatives to terminate or reduce programs that have troubled histories or that failed to demonstrate adequate performance when compared to other programs and activities needed to carry out U.S. national security objectives. In addition, the Administration appreciates that the Committee included some authorities that are important to field and combatant commanders, such as the Commanders' Emergency Response Program, the Security and Stabilization Assistance program, and the extension of Contingency Construction Authority.

The Administration believes that the Committee has identified many of the key elements that need to be changed in the existing law with respect to military commissions in order to make the commissions an effective and fair system of justice, and looks forward to continuing its close cooperation with the Congress to further refine any issues of potential concern.

While there are many areas of agreement with the Committee, the Administration nonetheless has serious concerns with a number of provisions that could constrain the ability of the Armed Forces to carry out their missions, depart from the President's Fiscal Year 2010 Budget, which carefully balanced fiscal constraints, program performance, strategic needs and capabilities, or raise other issues. The Administration looks forward to working with the Congress to address these concerns, some of which are outlined below, and to refine this legislation to align it more closely with national defense priorities.

F-22 Procurement: The Administration strongly objects to the provisions in the bill authorizing \$1.75 billion for seven F-22s in FY 2010. The collective judgment of the Service Chiefs and Secretaries of the military departments determined that a final program of record of 187 F-22s is sufficient to meet operational requirements. As the President wrote in his letter to the Chairman and Ranking Member of the Senate Armed Services Committee on July 13, if the final bill presented to him contains this provision, the President will veto it.

F-35 Joint Strike Fighter (JSF) Program: The Administration strongly objects to the addition of \$438.9 million for development of the alternative engine program. The Administration also objects to provisions of the bill that mandate an alternative engine program for the JSF. The current engine is performing well with more than 11,000 test hours. In addition, the risks

associated with a single engine provider are manageable as evidenced by the performance of the F-22 and F/A-18E/F, Air Force and Navy programs supplied by a single engine provider. Expenditures on a second engine are unnecessary and impede the progress of the overall JSF program. The Air Force currently has several fleets that operate on a single-engine source. The Administration also objects to the limit on the obligation of overall JSF development funding to 90 percent of the amount authorized until the Secretary of Defense submits a written certification that sufficient funds have been obligated in FY 2010 for the alternative engine program. If the final bill presented to the President would seriously disrupt the F-35 program, the President's senior advisors would recommend a veto.

Interrogation Duties: The Administration objects to section 823 in its current form, which would prohibit contractor personnel from interrogating persons detained during or in the aftermath of hostilities under any circumstances. In some limited cases, a contract interrogator may possess the best combination of skills to obtain critical intelligence and this provision, therefore, could prevent U.S. Forces from conducting lawful interrogations in the most effective manner. The Administration fully supports the application of ordinary Defense Department rules and regulations to contractors engaged in interrogations (as contemplated in subsection (a)(2) of the current section 823), and could support a revised version of the section that would apply such provisions to contractors who participate in interrogations. The Administration also would object to any amendment requiring video recording of all intelligence interrogations. Although the Administration is open to studying a possible video recording requirement, implementing a mandatory requirement at this time would be imprudent, unduly burdensome, and could risk significant unintended consequences in current and future military operations.

Pakistan Counterinsurgency Fund: The Administration objects to the requirement in section 1517(a)(2) for a report to Congress prior to use of the funds. This reporting and determination requirement (which includes matters that may be beyond the Secretary of Defense's purview) would delay the release of vital funds for Pakistan's counterinsurgency efforts. It also duplicates other reporting requirements in section 1116 of the Supplemental Appropriations Act, 2009 (Public Law 111-32), which require extensive justification and are due at a later date.

Building Partnership Capacity: The Administration urges the inclusion of its proposals to build the capacity of partner-nation special and conventional forces in order to enhance and increase coalition participation in Afghanistan and Iraq. These initiatives will directly reduce the pressure on U.S. forces. These limited, one-year proposals, developed in close partnership with the Department of State, are necessary for timely implementation of the Administration's new Afghanistan policy. Without these authorities, the United States would lose precious time in increasing the capacity and participation of our partners in that conflict and put additional U.S. personnel at risk.

Future Combat Systems: The Administration objects to the removal of \$324 million for Future Combat Systems (FCS) Manned Ground Vehicles and \$58 million for Non-Line of Sight Cannon termination costs. The termination costs for FCS Manned Ground Vehicles cannot be fully paid with FY 2009 funds.

Strategic Airlift Force Levels: The Administration objects to provisions in the bill that prohibit retirement of strategic airlift aircraft. The Department assesses aircraft requirement based on capability, not aircraft numbers. A restriction not tied to an airlift requirement will drive unnecessary costs and reduce the efficiency of the overall fleet. The restriction impairs the

Department's ability to manage the fleet and respond to combatant commanders' request for forces.

Joint Tactical Ground Station: The Administration objects to the deletion of funding for the Joint Tactical Ground Station (JTAGS) program. JTAGS is essential to the warfighters because it supports simultaneous operations in multiple theaters and provides a direct downlink for in-theater, assured missile warning to global and regional combatant commanders. Four units are permanently forward-stationed on overseas locations and serve as the primary means for transmitting missile warning to U.S. Soldiers, Sailors, Airmen, and Marines.

Guam Realignment: The Administration objects to the \$211 million reduction for Navy construction on Guam. The Government of Japan has demonstrated its commitment to the Realignment Roadmap and Guam International Agreement by appropriating \$336 million to transfer to the United States to help fund Guam development in Japan's current fiscal year. Failure of the Congress to provide a comparable amount for FY 2010 will place Japan's \$6 billion financial commitment to Guam at high risk. Furthermore, reductions to the program will increase the U.S. total cost of the realignment. The Administration looks forward to working with the Congress to provide additional details on program implementation to address concerns identified in the report.

Deputy Under Secretaries of Defense and Assistant Secretaries of Defense: The Administration has significant concerns with this provision as currently written. The elimination of non-statutory Deputy Under Secretary of Defense positions in section 901 would be detrimental to the continuity and operation of the Department and severely hamper the Secretary of Defense's ability to effectively organize, structure, and manage the Department.

National Security Personnel System: Although the Administration appreciates that S. 1390 provides the Secretary the opportunity to complete the program review and make informed decisions about the future of the program, the Administration objects to section 1101 because legislative action on the National Security Personnel System (NSPS) is premature given the ongoing review by DoD and the Office of Personnel Management.

Constitutional Concerns: Several provisions of the bill (sections 244, 341 and 1221) are phrased in a manner that could be construed to require the Executive Branch to disclose information about ongoing diplomatic negotiations or certain sensitive national security information, in which case they would intrude on the President's discharge of his constitutional authorities.

Imagery Satellite: The Administration has concerns with the Committee's approach to the National Geospatial-Intelligence Agency's imagery satellite acquisition program.

Full Funding: The Administration is concerned that S. 1390 authorizes incremental funding of military construction projects. As a matter of fiscal prudence, the Administration encourages full funding of these programs, consistent with the President's Budget.

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