Case Number: 2016-0152-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the Clinton Presidential Library Staff.

Folder Title: Chron File - August 1994 #1 [1]
Staff Office-Individual: Defense Policy-Bell, Robert
Original OA/ID Number: 265

Row:	Section:	Shelf:	Position:	Stack:
31	3	4	3	V

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Legislative Referral Memorandum LRM #M-1682. [CIA Act] [partial] (1 page)	07/28/1994	P3/b(3)
002. memo	Legislative Referral Memorandum LRM #I-3454. [CIA Act] [partial] (1 page)	07/28/1994	P3/b(3)

COLLECTION:
Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 265

FOLDER TITLE:
Chron File - August 1994 #1 [1]

2016-0152-F
vz4605

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD ID: 9420915
RECEIVED: 02 AUG 94 14

TO: ITOH

FROM: CUSHING, M

DOC DATE: 01 AUG 94
SOURCE REF:

KEYWORDS: DEFENSE POLICY
INTELLIGENCE
PDD

PERSONS:

SUBJECT: OPM COMMENTS ON DRAFT PDD ON NATL SECURITY POLICY COORDINATION

ACTION: FOR RECORD PURPOSES

DUE DATE: 05 AUG 94 STATUS: C

STAFF OFFICER: MISLOCK

LOGREF: 9420743

FILES: IFD NSCP: CODES:

DOCUMENT DISTRIBUTION

FOR ACTION	FOR CONCURRENCE	FOR INFO
		BELL
		MISLOCK
		NSC CHRON
		TENET

COMMENTS:

DISPATCHED BY DATE BY HAND W/ATTCH

OPENED BY: NSKDB CLOSED BY: NSKDB

DOC 12 OF 12

RECORD ID: 9420915

ACTION DATA SUMMARY REPORT

DOC	ACTION OFFICER	CAO	ASSIGNED	ACTION REQUIRED
001		X	94080214	FOR RECORD PURPOSES
002		X	94080216	FOR RECORD PURPOSES
003		X	94080314	FOR RECORD PURPOSES
004		X	94080314	FOR RECORD PURPOSES
005		X	94080316	FOR RECORD PURPOSES
006		X	94080515	FOR RECORD PURPOSES
007		X	94080518	FOR RECORD PURPOSES
008		X	94080909	FOR RECORD PURPOSES
009		X	94080909	FOR RECORD PURPOSES
010		X	94080909	FOR RECORD PURPOSES
011		X	94080911	FOR RECORD PURPOSES
012		X	94081010	FOR RECORD PURPOSES

20915

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

AUG 1 1994

Mr. William H. Itoh
Executive Secretary
National Security Council
Washington, DC 20506

Dear Mr. Itoh:

Thank you for your memorandum of July 18, 1994, in which you requested our comments on the Draft Presidential Decision Directive on National Security Policy Coordination. We are pleased to see the Office of Personnel Management's role in security policy will be retained through representation on the Security Policy Forum.

We have two comments which are editorial in nature. First, the second sentence in the second paragraph on page 3 refers to a "National Policy Board." As this term is contained in a paragraph about the Security Policy Board, and appears nowhere else in the draft, the word "National" may be inappropriate.

Second, the word "principals" in the last line of the draft, if referring to the four tenets identified at the top of page 2, should be "principles."

We look forward to contributing to the development and implementation of a new security process.

Sincerely,

Michael C. Cushing

Michael C. Cushing
Chief of Staff

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

August 1, 1994

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT BELL RGB

FROM: JIM SEATON JBS

SUBJECT: Defense Proposed Testimony on Status of National Guard Technicians

At Tab II DOD forwards their proposed testimony before the Subcommittee on Civil Service concerning National Guard Technicians. DOD opposes legislation transforming National Guard technician billets into competitive civil service slots. At present, National Guard technicians concurrently perform full-time civilian work in their units and conduct military training and duty within those same units (in the same fashion as regular Guard members). DOD argues that the state characteristics of the National Guard are jeopardized by making this a civil service program as it upsets the Guard's unique federal/state relationship.

Concurrence by: LDD Bill Danvers

RECOMMENDATION

That you sign the memorandum at Tab I concurring with the Department of Defense comments.

Attachments
Tab I Memorandum for Signature
Tab II Incoming Correspondence

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

MEMORANDUM FOR JANET R. FORSGREN

FROM: WILLIAM H. ITOH

SUBJECT: Defense Proposed Testimony on Status of National Guard Technicians

The National Security Council staff concurs with the proposed DOD testimony.

6208

URGENT

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

August 1, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-16 7

TO: Legislative Liaison Officer -

JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
VA - Robert Coy - (202)273-6666 - 229
NSC - William H. Itoh - (202)395-3723 - 249
OPM - James N. Woodruff - (202)606-1424 - 331
MSPB - Susan L. Williams - (202)653-7175 - 303
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226

FROM: JANET R. FORSGREN (for) Janet R. Forsgren
Assistant Director for Legislative Reference

OMB CONTACT: Melissa COOK (395-3924)
Secretary's line (for simple responses): 395-7362

SUBJECT: DEFENSE Proposed Testimony on Status of National Guard Technicians

DEADLINE: 5:00pm August 1, 1994

COMMENTS: This testimony is for a H. Civil Service Subcommittee hearing on Aug. 3rd. Therefore, the deadline is FIRM; if we do not hear from you by the deadline, we will assume that you concur with the testimony.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

Phobe Vickers
Mary Jo Siclari
Wendell Waites
Tom Lewis
Bob Rideout
Ray Kogut
David Zavada
Joe Lackey

Bob Damus
Cookie Walden
Clarissa Cerda
Lorraine Miller
Jennifer Palmieri
Jim Murr
Janet Forsgren

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: Melissa COOK (395-3924)
Office of Management and Budget
Fax Number: (202) 395-6148
Analyst/Attorney's Direct Number: (202) 395-3924
Branch-Wide Line (to reach secretary): (202) 395-7362

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: DEFENSE Proposed Testimony on Status of National Guard Technicians

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No objection

_____ No comment

_____ See proposed edits on pages ______________

_____ Other: ______________________

_____ FAX RETURN of _____ pages, attached to this response sheet

STATEMENT OF THE

DEPUTY ASSISTANT SECRETARY, MANPOWER AND PERSONNEL
OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
FOR RESERVE AFFAIRS

MR. FRANCIS M. RUSH, JR.

BEFORE THE

HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

SUBCOMMITTEE ON CIVIL SERVICE

IN CONNECTION WITH

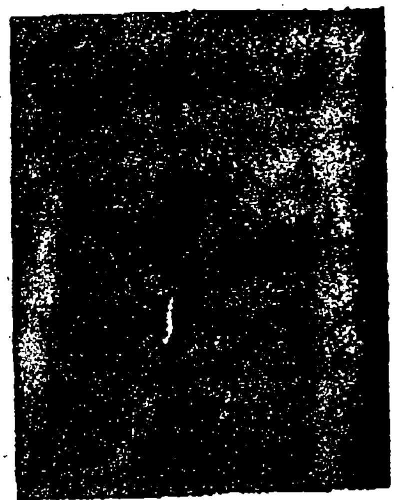
NATIONAL GUARD TECHNICIANS

AUGUST 3, 1994
10:00 AM

FOR OFFICIAL USE ONLY
UNTIL RELEASED BY THE
HOUSE COMMITTEE ON POST OFFICE
AND CIVIL SERVICES
SUBCOMMITTEE ON CIVIL SERVICES

FRANCIS M. RUSH, JR.

DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR RESERVE AFFAIRS (MANPOWER AND PERSONNEL)



Mr. Rush was appointed Deputy Assistant Secretary of Defense for Reserve Affairs (Manpower and Personnel) on May 1, 1994. He serves as the principal staff advisor and assistant to the Assistant Secretary of Defense for Reserve Affairs for all National Guard and Reserve manpower, personnel and compensation matters affecting the National Guard and Reserve Components.

Mr. Rush was born in Des Moines, Iowa on November 19, 1934. He received a Bachelor of Arts Degree from Drake University in 1956 and a Master of Public Administration from Auburn University in 1975. He has completed additional graduate studies at the George Washington University, University of California (Berkeley), and the University of Illinois in industrial relations and public administration. He has also completed the Harvard University Program for Senior Executives in National and International Security, the Program for Government Executives in Scientific and Technical Management (University of Wisconsin), and the Economics of National Security Program of the Industrial College of the Armed Forces, and is a graduate of the Air Command and Staff College.

Mr. Rush served as Consultant in National Defense, Congressional Research Service, The Library of Congress, in 1988-1989, and as the Director of the Sixth Quadrennial Review of Military Compensation from 1986 to 1988. From 1978 to 1986, Mr. Rush served in various positions in the Office of the Secretary of Defense and on the Air Staff.

Mr. Rush's awards include the Secretary of Defense Medal for Meritorious Civilian Service, the Defense Superior Service Medal, the Air Force Meritorious Service Medal with two oak leaf clusters, the Air Force Commendation Medal with two oak leaf clusters, the National Guard Bureau Eagle Award, and the Patrick Henry Citation of the National Guard Association of the United States.

Mr. Rush is married to the former Mary Ann Stookey of Des Moines, Iowa. They have two sons, Francis and Sean, and a daughter Mary Catherine.

Mr. Chairman and members of the Subcommittee:

It is a pleasure for me to appear before this committee to present the testimony on the status of National Guard military technicians. I am accompanied this morning by Major General D'Araujo, Acting Chief of the National Guard Bureau.

As you know, National Guard technicians serve as federal employees, section 709 of title 32, United States Code, for the purpose of administration and training of the National Guard, and maintenance and repair of supplies and equipment issued to the National Guard or the armed forces. These positions are outside the competitive service if the technician is required, as a condition of employment, to be a member of the National Guard and hold the military grade specified for that position.

The National Guard technicians are a critical element of the full-time support programs of the Army National Guard and the Air National Guard. The objective of full-time support programs in the Department of Defense is to enhance the readiness of reserve forces, and this program is largely responsible for enabling these forces to perform the expanded missions they have been assigned under the Total Force policy. The cadre of military technicians plays an especially important role in providing support at unit level. Nearly 60 percent of the full-time support in the Army National Guard is provided by military technicians. In the Air National Guard, military technicians provide 70 percent of full-time support. The military technician force is critically important to the readiness of the National Guard and hence to the Army and the Air Force.

The National Guard Technician Act of 1968 provides the basis for today's military technician program in the National Guard. The objective of that legislation was to provide retirement and benefits programs on a uniform national basis for technicians. The concept of the Technician Program under the Act is that the technicians will serve concurrently in three different ways: (a) perform full-time civilian work in their units; (b) perform military training and duty in their units; and (c) be available to enter active Federal service at any time their units are called. It is the military status of the technician that is paramount. Unlike typical civil service employees, technicians are required to be active members of the National Guard; required to be promptly terminated upon loss of their military membership for any reason; required to be in compatible military and technician assignments and required to be available for mobilization with their National Guard units.

The DoD is opposed to any legislation that would undermine the readiness of the Army and Air National Guard by deemphasizing the military nature of the technician program. We are also concerned that such legislation would offset the authority of the states to train the militia. It was recognition of the unique military requirements and state characteristics of the National Guard that prompted Congress to exempt the military technicians from various provisions of title 5, United States Code. The present law is a delicate balance of state and federal authority that has worked well and should not be disturbed.

National Guard technicians are appointed, employed and managed by a state official, the Adjutant General , who is the final appeal authority for adverse actions. Technicians are specifically excluded by section 709 of title 32, United States Code, from application of parts of title 5 of the code, such as veterans preference provisions and reduction in force procedures. The provisions of title 5 made inapplicable were those deemed necessary to accommodate the overriding military requirements of the technicians employment or to assure management control at the state level by the Adjutant General.

Competitive service status for National Guard military technicians, coupled with the repeal of certain provisions of section 709 of title 32, would significantly impact the authority of the Adjutant General, adversely impact mobilization capabilities and weaken discipline and esprit de corps. Bringing technicians into the competitive service is not in the best interest of the military technician program for the following reasons:

a) It would erode the Adjutants General control of the military technician program uniquely designed to serve the needs of both the states and the Federal government by providing appeal rights to the Merit Systems Protection Board. Legislation that would grant technicians adverse action appeal rights beyond the Adjutant General of the jurisdiction concerned would remove one of the pillars upon which the National Guard technician program was constructed. This would dilute the command and management authority of the office responsible for the training and readiness of the National Guard of each state and thus could significantly diminish the Guard's readiness and mobilization capability.

b)It would provide veterans preference for employment in the States' National Guard which could give preference to employment to those who have served on active duty over long standing state Guard personnel who have not served on extended active duty.

c) It would impose certification and qualification requirements for employment in the technician program identical to those established by title 5 of the United States Code which would eliminate many of our drilling Guard personnel from employment due to lack of creditable experience. Most occupations require several years of experience to qualify. Drilling National Guard personnel who attend three to four month military school and then train one weekend a month and serve a two week tour each year would not qualify for employment for many years. Thus, the National Guard's principal recruiting source would be diminished.

d) It would make Reduction-in-Force (RIF) rules applicable to the technician program. RIF rules work well in a traditional civilian service, but would be adverse to the National Guard. Our system best guarantees a vital force by basing retention on both performance and seniority.

The National Guard Bureau has established adverse action procedures which grant technicians considerable due process rights. The procedures stated in regulations provide technicians with the right to an advance written notice of proposed actions, as well as reasons for the action and opportunity to review the material which forms the basis for the proposed action. Technicians are granted the opportunity to answer the charges and appeal any final adverse action taken to a higher management official than the one who proposed the original action. On the appeal the decision is subject to further review through an administrative hearing process which provides the technicians an opportunity to present witnesses, and to cross-examine agency witnesses. Base upon a report of findings and recommendations developed by the hearing examiner, the Adjutant General issues a final decision. The hearing Examiner process protects the individual from arbitrary or capricious action while retaining the Adjutant General as the final authority and the individual responsible for management of the State National Guard. Judicial review of those state actions is available to aggrieved technicians in many cases. Appeals of state actions to federal courts would not appear to raise the troubling constitutional concerns that could be implicated by appeals and administrative agencies.

In conclusion, the Department of Defense is opposed to legislation that would grant technicians adverse appeal rights beyond the Adjutant General of the jurisdiction concerned. The National Guard Technicians Act, Public Law 90-486 of 1968, is a carefully constructed compromise which balances the interests of the technicians with the military requirements and constitutional prerogatives of the states. The experience of the last 25 years shows that the program has worked well and as it was intended by the Congress when it enacted this Law. Traditional civil service rules which were developed for application in a Federal civil service arena cannot reasonably be expected to have practicable application in what is principally a military arena serving concurrently in a federal/state relationship. Congress granted technicians Federal employee status on the condition that the state retain the military controls which they had prior to the Act. These were explicitly stated in section 709(e)(1)-(5) of title 32. Courts have recognized and approved the compromise nature of the legislation. Proposing new legislation to remove these state characteristics of the National Guard would destroy the balance and the purpose of the Technician Act.

This concludes my opening statement to the subcommittee.

20909

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

August 1, 1994

ACTION

MEMORANDUM FOR NANCY E. SODERBERG

FROM: ROBERT G. BELL RGB

SUBJECT: Request for Leave

Request I be authorized annual leave August 4, 1994. I will be at home or on beeper.

RECOMMENDATION

That you approve and sign the attached "Application for Leave" form for annual leave requested above.

Approve ________ Disapprove ________

Attachment as stated

cc: NSC Administration

SF 71
(Revised 3/79)
OFFICE OF PERSONNEL MANAGEMENT
FPM Supple. 990-2, § 2-9

71-11

APPLICATION FOR LEAVE

INSTRUCTIONS: Please complete Items 1-8 after reading the Privacy Act Statement shown below.

1. Name *(Print or type—Last, First, M.I.)*
BELL, ROBERT G.

2. Employee I.D. Number

3. Organizational Unit
National Security Council

4-A FROM: Month Aug Day 4 Hour 0900 A.M.

4-B TO: Month Aug Day 4 Hour 1730 P.M.

4-C Total Number of Hours: 8

5. I hereby request *(If more than one box is checked, explain in Item 6, Remarks):*

- [X] Annual Leave. *(Annual leave requested may not exceed the amount available for use during the leave year.)*
- [ ] Sick Leave. *(Complete reverse side of form.)*
- [ ] Leave Without Pay.
- [ ] Compensatory Time.
- [ ] Other. *(Specify)*

6. Remarks

7. Employee's Signature Robert G. Bell

8. Date (Month, Day, Year) 8-1-94

OFFICIAL ACTION ON APPLICATION

- [ ] Approved
- [ ] Disapproved *(If disapproved, give reason. If annual leave, initiate action to reschedule.)*

Signature *(Annual leave approved may not exceed the amount available for use during the leave year.)*

Date (Month, Day, Year)

NSN 7540-00-753-5067

Please detach this notice before submitting SF 71.

PRIVACY ACT STATEMENT

Section 6311 of Title 5 to the U.S. Code authorizes collection of this information. The primary use of this informatio[n] is by management and your payroll office to approve and record your use of leave. Additional disclosures of th[e] information may be: To the Department of Labor when processing a claim for compensation regarding a jo[b] connected injury or illness; to a State unemployment compensation office regarding a claim; to Federal Lif[e] Insurance or Health Benefits carriers regarding a claim; to a Federal, State, or local law enforcement agency whe[n] your agency becomes aware of a violation or possible violation of civil or criminal law; to a Federal agency whe[n] conducting an investigation on you for employment or security reasons; to the Office of Personnel Management o[r]

(Continued on Reverse)

SF 71
(Revised 3/79)
OFFICE OF PERSONNEL MANAGEMENT
FPM Supple. 990-2, S 2-9

71-112

APPLICATION FOR LEAVE

INSTRUCTIONS: Please complete Items 1-8 after reading the Privacy Act Statement shown below.

1. Name *(Print or type—Last, First, M.I.)* BELL, ROBERT G.			2. Employee I.D. Number	
3. Organizational Unit National Security Council	4-A Month FROM: Aug	Day 4	Hour 0900 A.M. P.M.	4-C Total Number of I
5. I hereby request *(If more than one box is checked, explain in Item 6, Remarks)*:	4-B Month TO: Aug	Day 4	Hour 1730 A.M. P.M.	8
[X] Annual Leave. *(Annual leave requested may not exceed the amount available for use during the leave year.)* [ ] Sick Leave. *(Complete reverse side of form.)* [ ] Leave Without Pay. [ ] Compensatory Time. [ ] Other. *(Specify)*	6. Remarks 7. Employee's Signature Robert G. Bell			8. Date *(Month, Day, Year)* 8-1-94

OFFICIAL ACTION ON APPLICATION

[ ] Approved [ ] Disapproved *(If disapproved, give reason. If annual leave, initiate action to reschedule.)*	Signature *(Annual leave approved may not exceed the amount available for use during the leave year.)*	Date *(Month, Day, Year)*

NSN 7540-00-753-5067

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(Continued on Reverse)

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

August 1, 1994

Dear ~~Mr. Moskos~~ Charlie:

I read with interest your recent interview published in the July issue of The American Legion regarding our All-Volunteer Force (AVF). I noted, in particular, your concern that we must avoid a "citizenship disconnect" with our all-volunteer force. In this regard, I thought you might be interested in the President's findings earlier this year regarding the continued need for draft registration and the Selective Service System (SSS). In his May 18 letter to the Hill (attached), the President makes the same point about the importance of maintaining the link between the AVF and our society at large.

In our NSC-led interagency review, one of the intangible concerns raised was that terminating draft registration might psychologically "decouple" our military forces from the nation they serve. The Interagency Working Group (IWG) found that as fewer and fewer members of our society have direct military experience, it is important to maintain the link between the AVF and the society at large that draft registration provides. It is equally important that the men and women in our volunteer forces know the general population stands behind them, committed to serve, should the preservation of our national security require it.

For that reason, the President was heartened by the recent floor votes in both the House and Senate in favor of maintaining draft registration and the Selective Service System.

I appreciate your informed comments concerning our military and civil-military relations. I hope you will find the attached letter of interest.

Sincerely,

Bob

Robert G. Bell
Special Assistant to the President
and Senior Director for Defense
Policy and Arms Control

Attachment as stated

P.S. We should discuss, also, your June 18 memo to Geigen which contained several excellent ideas.

Dr. Charles Moskos
Department of Sociology
Northwestern University
Evanston, Illinois 60206-1330

THE WHITE HOUSE

WASHINGTON

May 18, 1994

Dear Mr. Speaker:

On February 18 of this year I transmitted then Secretary of Defense Aspin's report on the continued requirement for peacetime draft registration. At that time, I advised you that draft registration and the Selective Service System (SSS) would be continued while the National Security Council conducted an interagency review of the SSS.

That review has now been completed. I have decided that it is essential to our national security to continue draft registration and the Selective Service System. While tangible military requirements alone do not currently make a mass call-up of American young men likely, there are three reasons I believe we should maintain both the SSS and the draft registration requirement:

- Maintaining the SSS and draft registration provide a hedge against unforeseen threats and a relatively low cost "insurance policy" against our underestimating the maximum level of threat we expect our Armed Forces to face.

- Terminating the SSS and draft registration now could send the wrong signal to our potential enemies who are watching for signs of U.S. resolve.

- As fewer and fewer members of our society have direct military experience, it is increasingly important to maintain the link between the All-Volunteer Force and our society at large. The Armed Forces must also know that the general population stands behind them, committed to serve, should the preservation of our national security so require.

As part of this decision, I am directing the Secretary of Defense to update our mobilization requirements and timelines for the SSS based upon current threat scenarios, re-examine the timelines for how quickly manpower must be provided, consider the possibility of selective call-up of skilled personnel (such as medical personnel) and continue to review the arguments for and against continuing to exclude women from registration now that they can be assigned to combat roles other than ground combat.

I believe our FY 1995 request of $23 million is essential to our defense needs and urge Congress to approve this request. At the same time, we will continue to seek additional economies and operating efficiencies at the Selective Service System.

Sincerely,

Bill Clinton

The Honorable Thomas S. Foley
Speaker of the House of Representatives
Washington, D.C. 20515

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

August 1, 1994

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT G. BELL RGB

FROM: STEVEN R. JONES

SUBJECT: NASA Proposed Report on Title III of H.R. 4489, Landsat Amendments (LRM #M-1682)

OMB has requested NSC views on the proposed NASA report on the H.R. 4489 Landsat legislation. The NSC staff concurs with the changes included in the NASA report.

Concurrence by: Bill Danvers

RECOMMENDATION

That you sign the memorandum at Tab I.

Attachments
Tab I Memorandum for Signature
Tab II Incoming Correspondence

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

MEMORANDUM FOR JAMES J. JUKES

FROM: WILLIAM H. ITOH

SUBJECT: NASA Proposed Report on Title III of H.R. 4489, Landsat Amendments (LRM #M-1682)

The National Security Council staff has no objections to the proposed NASA report on the subject Landsat legislation.

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Legislative Referral Memorandum LRM #M-1682. [CIA Act] [partial] (1 page)	07/28/1994	P3/b(3)

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National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 265

FOLDER TITLE:
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2016-0152-F
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P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
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Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

6170
11pgs

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

July 28, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-1682

TO: Legislative Liaison Officer -

COMMERCE - Michael A. Levitt - (202)482-3151 - 324
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
INTERIOR - Danny Consenstein - (202)208-6706 - 329
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
STATE - Julia C. Norton - (202)647-4463 - 225
NEC - Sonyia Matthews - (202)456-6630 - 429
NSC - William H. Itoh - (202)395-3723 - 249
OSTP - Roselis D'Allessandro - (202)456-6014 - 288
CIA - (b)(3) [001]

FROM: JAMES J. JUKES (for) Jiz
Assistant Director for Legislative Reference

OMB CONTACT: Jeffrey WEINBERG (395-3457)
Secretary's line (for simple responses): 395-3454

SUBJECT: NASA Proposed Report on Title III of HR 4489, Landsat Amendments

DEADLINE: NOON August 1, 1994

COMMENTS: NASA staff understand that the Landsat provisions could go to the House floor soon.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
Ken Schwartz
Harry Meyers
Jeff Payne
Jack Fellows
Sarah Horrigan
Scott Cameron
Tony Wu
Bruce McConnell
Peter Weiss
Matthew Blum
Ed Rea

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: Jeffrey WEINBERG (395-3457)
Office of Management and Budget
Fax Number: (202) 395-3109
Analyst/Attorney's Direct Number: (202) 395-3457
Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: NASA Proposed Report on Title III of HR 4489, Landsat Amendments

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No objection

_____ No comment

_____ See proposed edits on pages __________

_____ Other: ______________________

_____ FAX RETURN of _____ pages, attached to this response sheet

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001

Reply to Attn of:

July 21, 1994
8

NOTE TO: Jeff Wainberg

FROM: Barbara Cherry Barbara Cherry
NASA Legislative Affairs

SUBJECT: DRAFT letter to Congressman Brown transmitting the Administration's comments on Title III of H.R. 4489, the FY 1995 NASA Authorization Bill.

The enclosed draft letter to Chairman Brown outlines the Administration's comments on Title III of H.R. 4489, the FY 1995 NASA authorization bill, which amends the Land Remote Sensing Policy Act of 1992 (P.L. 102-555) as reported by the Committee on Science, Space and Technology on July 20, 1994. There are a number provisions of Title III on which we do not feel it is appropriate for NASA to comment, and would defer to other Agencies. These areas include the licensing provisions and the implementation of Agreement amendment offered by Mr. Walker at the full Committee markup.

I have included a copy of Title III to H.R. 4489 and the amendment offered by Mr. Walker at the full Committee markup for your review.

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001

Reply to Attn of:

The Honorable George E. Brown, Jr.
Chairman
Committee on Science, Space
and Technology
House of Representatives
Washington, DC 20515

DRAFT

Dear Mr. Chairman:

Title III of H.R. 4489, the FY 1995 NASA Authorization bill contains revisions to the Land Remote Sensing Policy Act of 1992. I would like to share with the Committee the results of the Administration's review of Title III.

Generally, NASA and the Administration support the Committee's proposed changes to P. L. 102-555, which bring the revised Landsat Program as outlined in the May 5, 1994, Presidential Decision Directive/NSTC-3 and P.L. 102-555 into compliance with one another. Title III removes the Department of Defense from the Landsat Program Management and specifies that NASA and NOAA comprise the Landsat Program Management. The Administration recommends that language be added which reflects the membership of the Landsat Program Management as NASA, the Department of Commerce, the Department of the Interior and any other Agency designated by the President. The Committee reported bill specifies that the Landsat Program remain under the policy guidance of the Office of Science and Technology Policy. The Administration recommends that the Landsat program remain under the policy guidance of the National Science and Technology Council.

In addition, the Administration also recommends that a section be added which would provide authority to NOAA to recover and use foreign ground station access and distribution fees to offset operations costs of Landsat 7, thereby reducing the amount of funding which NOAA must request to support operations.

The Administration appreciates the support which the Committee has shown for the Landsat Program and the leadership role which you have played to insure the continuity of this important data stream for global change research, commercial purposes and other Government applications.

Sincerely,

DRAFT

TITLE III—REVISIONS TO LAND REMOTE SENSING POLICY ACT OF 1992

SEC. 301. AMENDMENTS.

The Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5601 et seq.) is amended—

(1) by amending section 2(9) to read as follows:

"(9) Because Landsat data are particularly important for global environmental change research, the program should be managed by an integrated team consisting of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration and coordinated by the Office of Science and Technology Policy.";

(2) in sections 3(6)(A), 101 (a) and (b), 103(b), and 504, by striking "Secretary of Defense" and inserting in lieu thereof "Secretary";

(3) in section 3(6)(B), by striking "Department of Defense" and inserting in lieu thereof "Department of Commerce";

(4) in section 101(b)(1), by striking ", with the addition of a tracking and data relay satellite communications capability";

(5) in section 101(b)(2), by striking all after "baseline funding profile" and inserting in lieu

thereof "for the development and operational life of Landsat 7 that is mutually acceptable to the agencies constituting the Landsat Program Management;";

(6) in section 101(b), by inserting after paragraph (4) the following:

"The Director of the Office of Science and Technology Policy shall, no later than October 1, 1994, transmit the management plan to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.";

(7) in sections 101(c)(3), 202(b)(1), 501(a), and 502(c)(7), by striking "section 506" and inserting in lieu thereof "section 507";

(8) in section 102(b)(1), by striking "by the expected end of the design life of Landsat 6" and inserting in lieu thereof "by the predicted end of life of Landsat 5, or as soon as practicable thereafter";

(9) in section 103(a), by striking "section 105" and inserting in lieu thereof "section 104";

(10) by striking section 104 and redesignating section 105 as section 104;

(11) in section 201(c)—

(A) by striking "120 days" and inserting in lieu thereof "90 days"; and

(B) by amending the second sentence thereof to read as follows: "If the Secretary determines that the license requested by the applicant should not be issued, the Secretary shall inform the applicant within such 90-day period of the reasons for such determination and the specific actions required of the applicant to obtain a license.";

(12) in section 202(b)(6), by inserting ", other than for the sale of data generated by the system in accordance with the license, that" after "of any agreement";

(13) in section 204, by striking "may" and inserting in lieu thereof "shall";

(14) by inserting at the end of title II the following new section:

"SEC. 206. NOTIFICATION.

"(a) LIMITATIONS ON LICENSEE.—Within 30 days after any determination by the Secretary to require a licensee to limit collection or distribution of data from a system licensed pursuant to this title, the Secretary shall report to the Congress the reasons for such determination, the limitations imposed on the license, and the period during which such limitations apply.

"(b) TERMINATION, MODIFICATION, OR SUSPENSION.—Within 30 days after any action by the Secretary to seek an order of injunction or other judicial determination pursuant to section 203(a)(2), the Secretary shall notify the Congress of such action and provide the reasons for such action.";

(15) in section 302—

(A) by striking "(a) GENERAL RULE.—"; and

(B) by striking subsection (b); and

(16) in section 507, by striking subsection (a) and subsection (b)(1) and inserting in lieu thereof the following:

"(a) RESPONSIBILITY OF SECRETARY OF DEFENSE.—The Secretary shall consult with the Secretary of Defense on all matters under this Act affecting national security. Within 30 days after receiving a request from the Secretary, the Secretary of Defense shall recommend any conditions for a license issued under title II, consistent with this Act, that the Secretary of Defense determines are needed to protect the national security of the United States. If no such recommendations have been received by the Secretary within such 30-day period, the

Secretary may deem activities proposed in the license application to be consistent with the protection of the national security of the United States.

"(b) RESPONSIBILITY OF SECRETARY OF STATE.—(1) The Secretary shall consult with the Secretary of State on all matters under this Act affecting international obligations of the United States. Within 30 days after receiving a request from the Secretary, the Secretary of State shall recommend any conditions for a license issued under title II, consistent with this Act, that the Secretary of State determines are needed to meet existing international obligations of the United States. If no such recommendations have been received by the Secretary within such 30-day period, the Secretary may deem activities proposed in the license application to be consistent with existing international obligations of the United States.".

TITLE IV—AERONAUTICAL RESEARCH AND TECHNOLOGY

SEC. 401. FINDINGS.

The Congress finds that—

(1) the United States aeronautics industry has provided a major contribution to the competitiveness of the United States, and has accounted for over $80,000,000,000 in annual sales and over $20,000,000,000 in positive balance of trade;

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HLC 13

AMENDMENT TO H.R. 4489
OFFERED BY MR. WALKER

Page 50, line 5, through page 52, line 21, redesignate paragraphs (10) through (16) as paragraphs (11) through (17), respectively.

Page 50, after line 4, insert the following new paragraph:

(10) by adding at the end of section 103 the following new subsection:

"(c) IMPLEMENTATION OF AGREEMENT.—If negotiations under subsection (a) result in an agreement that the Landsat Program Management determines generally achieves the goals stated in subsection (a)(1) through (8), the Landsat Program Management shall award an extension, until the practical demise of Landsat 4 or Landsat 5, whichever occurs later, of the existing contract with the Landsat 6 contractor incorporating the terms of such agreement.".

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9406140
RECEIVED: 28 JUL 94 14

TO: PETERSON, R

FROM: ITOH

DOC DATE: 01 AUG 94
SOURCE REF:

KEYWORDS: DEFENSE BUDGET

LEGISLATIVE REFERRAL

PERSONS:

SUBJECT: JUSTICE PROPOSED RPT RE HR-4301 NATL DEFENSE AUTHORIZATION ACT FY 95

ACTION: SENS SCD MEMO

DUE DATE: 28 JUL 94 STATUS: C

STAFF OFFICER: HAHN

LOGREF:

FILES: WH NSCP: CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION	FOR CONCURRENCE	FOR INFO
		BELL
		EXECSEC
		HAHN

COMMENTS:

DISPATCHED BY MBN DATE 8/1/94 BY HAND W/ATTCH

OPENED BY: NSDRS CLOSED BY: NSMBN DOC 3 OF 3

UNCLASSIFIED

NATIONAL SECURITY COUNCIL
WASHINGTON. D.C. 20506

August 1, 1994

MEMORANDUM FOR RONALD K. PETERSON

FROM: WILLIAM H. ITOH

SUBJECT: Justice Proposed Report RE: HR 4301, National Defense Authorization Act for Fiscal Year 1995

The National Security Council staff concurs in the proposed Justice report.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

July 28, 1994

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT BELL

FROM: KEITH HAHN

SUBJECT: Justice Proposed Report RE: HR 4301, National Defense Authorization Act for Fiscal Year 1995

Tab II provides Justice Department objections to five provisions of the National Defense Authorization Act. In the case of provisions concerning ABM Treaty modifications, negotiation restrictions with regard to certain radar jammers, burdensharing with allies and requirements to negotiation with North Korea, Justice opposes current wording on the grounds that it violates the separation of powers. With regards to provisions of intelligence and other assistance where drug trafficking threatens national security, Justice proposes several modifications to current provisions.

Concurrences by: Alan Kreczko and Bill Danvers

RECOMMENDATION

That you sign the memorandum at Tab I concurring in the proposed Justice report.

Attachments
Tab I Memorandum for Signature
Tab II Incoming Correspondence

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. memo	Legislative Referral Memorandum LRM #I-3454. [CIA Act] [partial] (1 page)	07/28/1994	P3/b(3)

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 265

FOLDER TITLE:

Chron File - August 1994 #1 [1]

2016-0152-F
vz4605

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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

URGENT

July 28, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-3454

TO: Legislative Liaison Officer -

DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
STATE - Julia C. Norton - (202)647-4463 - 225
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
TREASURY - Richard S. Carro - (202)622-1146 - 228
CIA - (b)(3) [002]
ONDCP - Babette Hankey - (202)395-6739 - 257
NSC - William H. Itoh - (202)395-3722 - 249

FROM: RONALD K. PETERSON (for) Ronald K Peterson
Assistant Director for Legislative Reference

OMB CONTACT: Genevieve SIRI (395-6194)
Secretary's line (for simple responses): 395-6194

SUBJECT: JUSTICE Proposed Report RE: HR 4301, National Defense Authorization Act for Fiscal Year 1995

DEADLINE: 5:00 P.M. July 28, 1994

COMMENTS: We understand Conference is near conclusion, and accordingly, we will assume your agency has no comment if you do not respond by the deadline.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
D. Gessaman
J. Duke
J. Fish
K. Scheid
R. Adkins
S. Aitken
B. Damus
K. Schwartz
J. Schuhart
C. Cerda

& DOD.

LRM #I-3454

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

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TO: Genevieve SIRI
Office of Management and Budget
Fax Number: (202) 395-5691
Analyst/Attorney's Direct Number: (202) 395-6194
Branch-Wide Line (to reach secretary): (202) 395-6194

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: JUSTICE Proposed Report RE: HR 4301, National Defense Authorization Act for Fiscal Year 1995

The following is the response of our agency to your request for views on the above-captioned subject:

_______ Concur

_______ No objection

_______ No comment

_______ See proposed edits on pages ______________

_______ Other: ______________________

_______ FAX RETURN of _____ pages, attached to this response sheet

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Ronald V. Dellums
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This presents the views of the Department of Justice on H.R. 4301, the "National Defense Authorization for Fiscal Year 1995," as passed by the Senate. We have comments on four provisions of the bill.

Sec. 225 (Senate Advice and Consent on Agreements Modifying the ABM Treaty). This section provides that the United States may not be bound by any international agreement negotiated by the President that would substantively modify the current Anti-Ballistic Missile Treaty (ABM Treaty) unless such agreement is entered into pursuant to the formal treaty provisions of Article II, section 2 of the Constitution (including the requirement for the Senate's "advice and consent"). Although an agreement substantively expanding obligations under an existing formal treaty would normally be subject to the formal Senate approval process, there may be emergency or special circumstances where the President's power and responsibilities in foreign affairs and in his role as Commander-in-Chief necessitate his taking action (including entering into other agreements) that has the effect of abrogating or otherwise modifying existing treaty obligations. See, e.g., Goldwater v. Carter, 617 F.2d 697 (D.C. Cir.), vacated and remanded on grounds of nonjusticiability, 444 U.S. 996 (1979). Moreover, this Office has previously expressed the view that an agreement that reduces United States obligations under an existing treaty, rather than expanding them, may not be subject to the Article II advice and consent requirements.[1] Section 225 of the bill fails to account for such circumstances. Accordingly, unless it is modified to accommodate such

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[1] See Memorandum for Counsel to the President, from Theodore Olson, Assistant Attorney General, Office of Legal Counsel, re: "Proposed Withdrawal of United States Reservation to Chapter II of the Patent Cooperation Treaty" 7-8 (July 23, 1984).

circumstances, or expressed as a "Sense of the Senate" measure, section 225 is objectionable on separation of powers grounds.

Sec. 251(a) (Negotiation Restrictions). This provision purports to prohibit the Secretary of Defense from negotiating or entering into any agreement with, or accepting funds from, any foreign government for a joint program for the development of certain radar jammers, until 30 days after the Secretary of Defense (in consultation with the Secretary of State and other officials) conducts a review of the program and submits a report on that review to designated congressional defense committees. The President is the Nation's sole organ in the conduct of foreign affairs and diplomacy, see, e.g., United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319-20 (1936), and he is constitutionally empowered to undertake negotiations with foreign states at times of his own choosing, without congressional restriction. Accordingly, section 251(a) is objectionable on separation of powers grounds.

Sec. 1017 (Burdensharing Policy). This section declares that it is "the policy of the United States" that NATO allies should assist the U.S. in paying the incremental costs it incurs in maintaining U.S. Armed Forces personnel on permanent duty in Europe to perform U.S. obligations in support of NATO. The section goes on to provide that, "The President shall take all necessary actions to ensure the effective implementation of the burdensharing policy set forth in subsection (a)." This section thus purports to enact a binding congressional declaration of U.S. foreign policy and to require the President to implement that congressional foreign policy.[2] Congress is not constitutionally empowered to establish U.S. foreign policy by legislation or to require the President to implement a congressionally-declared foreign policy. The President is the sole organ of the Nation in the field of foreign affairs. United States v. Curtiss-Wright Export Corp., 299 U.S. at 319-20. Section 1017 would therefore be objectionable on separation of powers grounds unless it is expressed in hortatory terms or as a "Sense of the Senate" measure.

Sec. 1074(b)(2) (Requirement to negotiate with North Korea). Section 1074(b)(2) of the bill purports to require that the Secretary of Defense "shall . . . actively seek to establish a joint working level commission with North Korea, consistent with the recommendations of the Select Committee on POW/MIA Affairs of the Senate . . . , to resolve the remaining issues relating to

---

[2] This comment implies no view regarding the soundness of the policy position expressed in section 1017 or whether it is consistent with the President's policy in this area. The comment is addressed solely to the respective constitutional roles of the President and Congress in the area of foreign policy and foreign relations.

United States personnel who became prisoners of war or missing in action during the Korean conflict." (emphasis added). Under the Constitution, the President has sole authority to determine whether, and under what circumstances, to undertake negotiations with foreign states; he is also constitutionally responsible for determining the substantive position of the United States in such negotiations. Curtiss-Wright, 299 U.S. at 319 ("T]he President alone has the power to speak or listen as a representative of the nation. He makes treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude . . . ."). Therefore, unless changed from a requirement to a recommendation, section 1074(b)(2) of the bill would also be objectionable on separation of powers grounds.

Sec. 1089 (Provision of Intelligence and Other Assistance Where Drug Trafficking Threatens National Security). This provision, which is supported by the Administration, is primarily designed to carve out a limited exception to 18 U.S.C. § 32, which in general makes it a crime willfully to damage or destroy civil aircraft. The provision would provide that it shall not be unlawful for authorized employees or agents of a foreign country to damage, render inoperative, or destroy an aircraft in that country's territory or airspace, if that aircraft is reasonably suspected of being primarily engaged in illicit narcotics trafficking, provided that the President determines that such actions are necessary because of the extraordinary threat to that country's national security posed by drug trafficking, and that the country has appropriate procedures in place to protect against innocent loss of life. The provision would also make it lawful for authorized employees or agents of the United States to provide assistance for such operations of foreign countries.

We recommend certain changes in the drafting of this provision to ensure that it accomplishes its purpose of enabling authorized United States Government personnel to furnish assistance to the aerial drug interdiction programs of foreign countries without exposing themselves to the risks of criminal or civil liability under United States law. The language we recommend is included in the attached draft bill.

First, to make certain that United States military personnel are explicitly protected from possible liability, we recommend that the two references to "employees or agents of the United States" in subsection (b)(2) be clarified to say, "including members of the armed forces." Absent that clarification, the language of the bill might be construed to reach only civilian personnel. Because United States military personnel have a vital part in furnishing assistance to foreign aerial drug interdiction programs, it is essential to achieving the purpose of this legislation that its language leave no doubt that the exemption it creates will apply to the armed forces as well as to civilian personnel.

Second, we recommend that the reference in subsection (a) to "employees or agents of a foreign country" also be clarified by adding, "including members of the armed forces." This change will make clear that the intended exemption from criminal liability extends to foreign military personnel, who of course might play a major role in any aerial drug interdiction program, as well as to civilian employees and agents of foreign countries.

Third, we recommend substituting the single term "illicit drug trafficking" for the terms "illicit narcotics trafficking" in subsection (a) and "drug trafficking" in subsection (a)(1). We also recommend inclusion of a new section defining "illicit drug trafficking." Apart from securing consistency in the use of terms, these changes will ensure certainty and uniformity in the understanding and application of the law.

The definition we propose for "illicit drug trafficking" would lend greater precision to the legislation by referring to internationally used definitions of such activities set forth in international conventions, including the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, S. Treaty Doc. No. 4, 101st Cong., 1st Sess., 28 I.L.M. 493 (1989) [done at Vienna, Dec. 20, 1988, entered into force Nov. 11, 1990]. This approach has been used in other legislation setting forth the obligations of the United States with respect to international drug trafficking. See, e.g., 22 U.S.C. § 2291(e) (definitions section of International Narcotics Control Act). The proposed definition would also incorporate by reference the definitions of illicit trafficking under the domestic law of the country or countries in which the aerial drug interdiction programs are occurring. Together, these changes will make it clear that it is not a violation of United States law for foreign government personnel to damage or destroy civil aircraft (or for United States Government personnel to assist them in doing so) when those aircraft are suspected of trafficking in drugs that are illicit either under applicable international narcotics control agreements, or under that country's own law.

Fourth, we recommend the inclusion of "training" in subsection (b) among the forms of assistance that the United States will be enabled to furnish. Training is an important component of United States assistance to aerial drug interdiction programs, and should be mentioned explicitly.

Two other minor recommendations may be noted. First, to correct an apparent typographical error, we recommend substituting "administrative" for "administration" in subsection (b). Second, we recommend that the phrase "prior to the actions described in this subparagraph being taken" either be deleted or be placed immediately before, rather than immediately after, the phrase "the President of the United States."

We look forward to continuing to work with you on this legislation. Please call on us if we may be of further assistance.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Sheila F. Anthony
Assistant Attorney General

Proposed amendment to 18 U.S.C. § 32:

(d) Notwithstanding any other provision of law, it shall not be unlawful for authorized employees or agents of a foreign country, including members of the armed forces, to damage, render inoperative, or destroy an aircraft in that country's territory or airspace, or to attempt to do so, if that aircraft is reasonably suspected of being primarily engaged in illicit drug trafficking, *provided that* the President of the United States has determined:

(1) that such actions are necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country, and

(2) that the country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground, which shall at a minimum include effective means to identify and warn aircraft prior to the use of force.

(e) It shall not be unlawful for authorized employees or agents of the United States, including members of the armed forces, to provide assistance, including, but not limited to, operational, intelligence, training, logistical, technical, and administrative assistance, for the actions of foreign countries described in subsection (d), nor shall the provision of such assistance give rise to any civil action seeking money damages or any other form of relief against the United States or its agents or employees, including members of the armed forces.

(f) For purposes of this section, the term "illicit drug trafficking" means illicit trafficking in narcotic drugs, psychotropic substances, and other controlled substances, as such activities are described by any applicable international narcotics control agreement or domestic law of the country or countries in which the activity is occurring.

RECORD ID: 9405953
RECEIVED: 22 JUL 94 13

TO: JUKES, J

FROM: ITOH

DOC DATE: 01 AUG 94
SOURCE REF:

KEYWORDS: SPACE POLICY

LEGISLATIVE REFERRAL

PERSONS:

SUBJECT: REVISED NASA RPT RE S-1881 NASA TECHNOLOGY INVESTMENT ACT

ACTION: ITOH SGD MEMO

DUE DATE: 25 JUL 94 STATUS: C

STAFF OFFICER: JONES

LOGREF:

FILES: WH

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO
BELL
DANVERS
EXECSEC
KRECZKO
SEATON

COMMENTS:

DISPATCHED BY ______________________ DATE __________ BY HAND W/ATTCH

OPENED BY: NSDRS CLOSED BY: NSDRS DOC 3 OF 3

RECORD ID: 9405953

ACTION DATA SUMMARY REPORT

DOC	ACTION OFFICER	CAO	ASSIGNED	ACTION REQUIRED
001	JONES	Z	94072213	PREPARE MEMO ITOH TO JUKES
001		Z	94080117	ACTION TRANSFERRED
001	BELL	X	94080117	PREPARE MEMO ITOH TO JUKES
002	ITOH	Z	94080116	FOR SIGNATURE
003		X	94080117	ITOH SGD MEMO

DISPATCH DATA SUMMARY REPORT

DOC	DATE	DISPATCH FOR ACTION	DISPATCH FOR INFO
003	940801	JUKES, J	

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9405953
RECEIVED: 22 JUL 94 13

TO: ITOH

FROM: JUKES, J

DOC DATE: 22 JUL 94
SOURCE REF: I-3381

KEYWORDS: SPACE POLICY

LEGISLATIVE REFERRAL

PERSONS:

SUBJECT: REVISED NASA PROPOSED RPT RE S-1881 NASA TECHNOLOGY INVESTMENT ACT

ACTION: PREPARE MEMO ITOH TO JUKES

DUE DATE: 25 JUL 94 STATUS: S

STAFF OFFICER: JONES

LOGREF:

FILES: WH NSCP:

CODES:

D O C U M E N T   D I S T R I B U T I O N

FOR ACTION	FOR CONCURRENCE	FOR INFO
JONES	DANVERS	BELL

COMMENTS: DUE 2PM JULY 25

DISPATCHED BY ______________________ DATE ____________ BY HAND W/ATTCH

OPENED BY: NSDRS CLOSED BY:

DOC 1 OF 1

UNCLASSIFIED

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

August 1, 1994

MEMORANDUM FOR JAMES J. JUKES

FROM: WILLIAM H. ITOH

SUBJECT: Revised NASA Report RE: S-1881 NASA Technology Investment Act

The National Security Council staff defers to the OGE and DOJ recommended wording.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

July 25, 1994

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT BELL RGB

FROM: JIM SEATON

SUBJECT: Revised NASA Proposed Report RE: S-1881 NASA Technology Investment Act

At Tab II NASA forwards their proposed position on S-1881 to the Senate Conference Committee. NASA has reached agreement with other agencies on all issues except NASA's desired amendment requesting special exemptions to statutes governing violations of ethics requirements. OGE and DOJ strongly object to the NASA proposal, arguing that it is not needed. While NASA would like to pursue the special protection provided in their proposed amendment, they are amenable to dropping the section under disagreement if it will permit clearance of their letter to the Senate.

Concurrences by: Bill Danvers and Alan Kreczko

RECOMMENDATION

That you sign the memorandum at Tab I deferring to the OGE and DOJ wording.

Attachments
Tab I Memorandum for Signature
Tab II Incoming Correspondence

23 pgs

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

July 22, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-3381

TO: Legislative Liaison Officer -

COMMERCE - Michael A. Levitt - (202)482-3151 - 324
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
ENERGY - Bob Rabben - (202)586-6718 - 209
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
STATE - Julia C. Norton - (202)647-4463 - 225
TREASURY - Richard S. Carro - (202)622-1146 - 228
[illegible]
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
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NEC - Sonyia Matthews - (202)456-6722 - 429
NSC - William H. Itoh - (202)395-3723 - 249
OPM - James N. Woodruff - (202)606-1424 - 331
OSTP - Roselis D'Allessandro - (202)456-6014 - 288
USTR - Fred Montgomery - (202)395-3475 - 223
OGE - Jane Ley - (202)523-5377 - 261
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226

FROM: JAMES J. JUKES (for) [signature]
Assistant Director for Legislative Reference

OMB CONTACT: Jeffrey WEINBERG (395-3457)
Secretary's line (for simple responses): 395-3454

SUBJECT: REVISED NASA Proposed Report RE: S 1881, NASA Technology Investment Act

DEADLINE: 2PM July 25, 1994

COMMENTS: NASA advises that S 1881 could be marked up on Tuesday, July 26th. This is a further revision of the letter that was circulated on June 3rd.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
Greg Simon
Jeff Hofgard
Ray Kogut

LRM #I-3381

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: Jeffrey WEINBERG
Office of Management and Budget
Fax Number: (202) 395-3109
Analyst/Attorney's Direct Number: (202) 395-3457
Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: REVISED NASA Proposed Report RE:
S 1821, NASA Technology Investment Act

The following is the response of our agency to your request for views on the above-captioned subject:

______ Concur

______ No objection

______ No comment

______ See proposed edits on pages ______________

______ Other: ______________________

______ FAX RETURN of _____ pages, attached to this response sheet

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001

Reply to Attn of: L

July 22, 1994

To: Jeffrey Weinberg
Legislative Reference Division
Office of Management and Budget

From: Karl Stehmer
Legislation Division
Office of Legislative Affairs
(202) 358-1925

Subject: NASA's proposed letter to Senate Commerce Committee on S. 1881, the NASA Technology Investment Act of 1994

We have been informed by the Science, Technology and Space Subcommittee that Chairman Rockefeller intends to markup this bill soon, perhaps early next week (much depends on whether the Committee is still busy with the telecommunications bill). Whether or not it's next week, Sen. Rockefeller has let it be known that he wants to move this bill.

We would like to have a cleared position on the bill. I think most of the issues raised by other agencies with our draft letter have been resolved, except one.

I have been in touch with Doug Selin at the USTR and we have agreed on language regarding objectionable ownership requirements in sections 103 and 111, dealing with eligibility criteria and the definition of eligible firms. We have agreed to use the same language that had previously been used by Dr. Gibbons in his testimony on H.R. 820. See pages 5 and 12 of the attached revised letter. Doug said this should be acceptable to State as well (they had raised the same concern).

The one unresolved issued regards our suggested amendment to section 108, dealing with personnel incentives. We had expressed a concern about potential allegations of violations of ethics requirements, and suggested language providing exceptions to the statutes. Both the Department of Justice and the Office of Government Ethics raised strong objections to this. Our General Counsel, Ed Frankle, has had several discussions with representatives from these two offices, without reaching any agreement. NASA would still like to pursue protection in this area, while OGE and DOJ do not believe there is a problem. If necessary in order for OMB to clear our letter, we would drop all but the last paragraph (which deals with a different matter) of the discussion of section 108 (beginning on page 10).

I have revised our letter pursuant to the comments from other agencies which you had forwarded to me and my discussion with Doug Selin at USTR. It is attached hereto. We are not opposing the bill--it really matches up quite well with ongoing activities, plus Administrator Goldin in talks with Sen. Rockefeller has given a general approval--but we would like to provide the Committee with an approved position prior to their markup.

Your cooperation and assistance in clearing this revised letter would be most appreciated.

9/22/94
NASA DRAFT REPORT TO OMB
103rd Congress, 2nd Session

L:KHS

The Honorable Ernest F. Hollings
Chairman
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

On March 1, Senator Rockefeller, on behalf of himself and Senator Burns, introduced S. 1881, the "National Aeronautics and Space Administration Technology Investment Act of 1994," intended to help strengthen the link between NASA programs and economic growth. In his appearance March 2, before the Subcommittee on Science, Technology, and Space, chaired by Senator Rockefeller, NASA Administrator Goldin expressed his general support of the bill's objectives and told the Subcommittee that after a more complete review NASA would provide the Committee with our recommendations for changes in some of its provisions. We have since had an opportunity to thoroughly review S. 1881 and would like to share our views and comments with your Committee.

The relevance of government and its programs to the economic challenges facing America is a recurrent concern of this Administration, the Congress and the public. The Administration is committed to a government that is relevant to

America. NASA is committed to a balanced space and aeronautics program that supports meaningful science and technology and will contribute to the U.S. economy. We believe that the budget which we have requested for fiscal year 1995 accomplishes these goals. S. 1881 is consistent with the direction NASA has taken in all of its programs.

The Administration has formed an Interagency Working Group on Aeronautics, chaired by OSTP, of which NASA is a member. This Working Group is directly dealing with most of the issues addressed in this bill. NASA's aeronautics programs in particular have always been planned and conducted in support of the global competitiveness of United States industry. In addition, we have increased our emphasis on technology transfer beyond the primary mission of our programs, and are utilizing multiple mechanisms--including industry-led consortia--to facilitate such transfer. We are very supportive of the philosophy and concept behind S. 1881 and its application to all aerospace programs.

In fiscal year 1994 NASA was appropriated $20 million for a technology program with industry, which has been titled the Aerospace Industry Technology Program (AITP). The AITP is being planned to include strong and active involvement of industry, with a major focus on creation of industry-led consortia. The projects supported by the AITP will be designed by industry, competitively selected by NASA, managed through cooperative agreements and focus on development of technology which will have high commercial benefit and applicability. The fiscal year 1995 budget request includes $10.9 million for this effort.

The program proposed by S. 1881 would generally provide legislative support for continuation and expansion of this effort. There are, however, difficulties with several of the bill's provisions which should be addressed before this legislation is enacted. We have attached hereto our specific comments on the bill's provisions, and will be happy to work with the Committee to craft a bill that will achieve our common goals and objectives.

I hope the enclosure will be helpful to the Committee. The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely,

SPECIFIC COMMENTS ON

S. [illegible], THE "NATIONAL AERONAUTICS AND SPACE ADMINISTRATION TECHNOLOGY INVESTMENT ACT OF 1994"

As a general matter, several provisions of the proposed bill require NASA to make assessments which, in our view, we cannot make without consulting with other appropriate departments or agencies, since they are not within NASA's expertise.

- Section 103 requires the Administrator to invest in a project if the project will "advance the competitiveness of United States industry," and that the Administrator consider "each project's potential to advance technologies that enhance the competitiveness of United States industry in global markets." The section should recognize that the Administrator will have the discretion to consult with, or defer to, the U.S. Trade Representative or the Secretary of Commerce, as appropriate.

- In defining "eligible firms" for Title I, Section 111 requires NASA to make assessments of a foreign country's funding of consortia and protection of U.S. intellectual property rights, assessments which would seem to be more properly the responsibility of the United States Trade Representative, Department of State or the Department of Commerce. Not only does

23pgs

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

July 22, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-3381

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-3381

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USTR - Fred Montgomery - (202)395-3475 - 223
OGE - Jane Ley - (202)523-5377 - 261
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226

FROM: JAMES J. JUKES (for)
Assistant Director for Legislative Reference

OMB CONTACT: Jeffrey WEINBERG (395-3457)
Secretary's line (for simple responses): 395-3454

SUBJECT: REVISED NASA Proposed Report RE: S 1881, NASA Technology Investment Act

DEADLINE: 2PM July 25, 1994

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CC:

LRM #I-3381

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Fax Number: (202) 395-3109
Analyst/Attorney's Direct Number: (202) 395-3457
Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

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S 1881, NASA Technology Investment Act

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______ Concur

______ No objection

______ No comment

______ See proposed edits on pages ______________

______ Other: ______________________

______ FAX RETURN of ____ pages, attached to this response sheet

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001

Reply to Attn of: L

July 22, 1994

To: Jeffrey Weinberg
Legislative Reference Division
Office of Management and Budget

From: Karl Stehmer
Legislation Division
Office of Legislative Affairs
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7/22/94
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103rd Congress, 2nd Session

L:KHS

The Honorable Ernest F. Hollings
Chairman
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

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- In defining "eligible firms" for Title I, Section 111 requires NASA to make assessments of a foreign country's funding of consortia and protection of U.S. intellectual property rights, assessments which would seem to be more properly the responsibility of the United States Trade Representative, Department of State or the Department of Commerce. Not only does

NASA lack expertise to make such judgments, but technologies that may meet these provisions may not be technology of interest or relevance to NASA programs, technology, or expertise. This provision should recognize that NASA will consult with these other agencies, and will only make judgments on technologies within NASA's expertise.

Section 3: Technology Investment Policy

This section sets out a Technology Investment Policy. Paragraphs 4 and 5 establish significant direct roles for U.S. industry in this policy, but there is no direction here or elsewhere as to how this is to happen. In addition, paragraph 5 refers to "industry-led" consortia, while all other paragraphs refer only to U.S. industry.

With respect to paragraph (5), we recommend adding "alliances, or other entities" after the word "consortia" in order to avoid any unnecessary constraints that might derive from a narrow definition of a consortium.

TITLE I: ROLE OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION IN TECHNOLOGY INVESTMENT

Section 101: Amendments to National Aeronautics and Space Act

Removing the specific references to ground propulsion systems and advanced automobile propulsion in sections 102(e) and (f) and replacing them with alternative language that addresses the overall goals of economic growth, competitiveness and productivity is a good improvement. NASA, of course, already conducts its activities in such a manner.

Section 102: Technology Development and Commercialization Goals

This section would require that NASA measure and evaluate potential commercialization of technology for funded and "planned" projects. It is not clear how or whether NASA could make such measurements for "planned" projects, or when a project is sufficiently "planned" to be subject to these measures. It is also not clear what would be considered "funded", as opposed to "unfunded", proposals. Projects may be privately or publicly funded, selected for funding, or under consideration for funding. Therefore, we suggest deletion of "funded and planned".

The scope and content of the technology plan that would be required by paragraph (1) should be described. Some suggested contents of such a technology plan might include deliverables such as a proof of concept design; a market research and or analysis of probability of commercialization. Finally, the word "ensure" should be replaced with the word "require".

Section 103: Technology Investment Program With Industry

Subsection (a) requires the Administrator to establish a "competitive" program, but does not define "competitive." There is the possibility that only one proposal meeting all criteria will be recieved, in which case selection should not be subject to a "competitive" requirement. In addition, the competition requirements of the Competition in Contracting Act would apply if contracts are to be awarded under this program, unless there is a statutory exception for the awards pursuant to this program.

As currently worded, subsections 103(a) and (b) are confusing. Subsection (a) requires the Administrator to invest in "any project proposed by an eligible firm" (emphasis added) if that project meets the listed criteria. This could be read as what amounts to an entitlement to an investment, rather than permitting the Administrator to select the best proposals from among those that meet the criteria in subsection 103(a), or permitting the Administrator to impose additional criteria. However, subsection (b) includes additional criteria which the

Administrator is to "weigh and consider." In order to clarify this section and to avoid what appears to be three sets of criteria a proposal must meet, we would recommend that the criteria in Section 103(a) be deleted altogether and proposals from eligible firms be selected based on the criteria in section 103(b).

If section 103(a) is not deleted in its entirety, then we recommend that at the very least subsection 103(a)(2) be amended to delete "as evidenced by the conduct of a significant level of its research, development, engineering, or manufacturing activities in the United States" following "the United States". This language only provides an example of one type of evidence relevant to this determination, and may imply that this is the only evidence relevant to this determination.

Furthermore, although the Administration clearly does not object to taking the national interest into consideration, it does oppose a standard that requires significant activities to be carried out in the United States, because this standard imposes performance requirements. The United States has sought, in its bilateral investment treaties, NAFTA, and the Uruguay Round to eliminate performance requirements in other countries, and has pledged not to impose performance requirements here at home.

We recommend replacing the word "funding" in subsection 103(b)(1) with the word "resources." Industry contributions can take many forms in addition to new money, including people, hardware, and facility time.

Subsection (c), Cost Sharing, is confusing. The Federal Government's share seems to be limited to 50%; of the amount provided by "non-Federal participants", no less than 25% must be provided by "industry". Where does the other 25% come from? We suggest that a simple 50-50 cost sharing would be more clearly understood. Perhaps it would help if "participants" is defined in Section 111. In addition, there is no discussion as to whether "in-kind" contributions may be considered in determining the funding provided by a participant.

The relation between this subsection and the GATT is unclear. Based on this concern, we recommend that this subsection require only a review or investigation of the possibility of cost-sharing, to allow NASA and other interested agencies and departments to resolve how best to meet the intent of this legislation without violating other applicable laws, including GATT.

Subsection (d) encourages "the use of the authority" of "section 203(c)(5)" of the Space Act. Section 203(c)(5) is NASA's authority for entering into agreements other than procurement contracts. While we have no objection to such a provision, it serves no purpose. However, it may be the case that this subsection was intended to encourage NASA to use the authority in section 203(c)(5) of the Space Act to enter into "other transactions", or agreements commonly referred to as "Space Act Agreements." If this is the case, it is not apparent why a Space Act Agreement is preferable to other types of agreements, or why it is desirable to award such agreements to "non-aerospace firms" as required by this subsection.

Subsection (e) requires NASA to issue regulations. NASA strongly objects to a requirement for regulations. Regulations limit the flexibility available under the Space Act. Any necessary implementing procedures can be explained in a brochure. In addition, the Administration has directed agencies to reduce by 50 percent the number of internal regulations, and such a provision would be inconsistent with the intent if not the letter of the Executive Order.

Section 104: Role of Procurement in Technology Investment

As a general matter, NASA already considers the items listed as a part of the procurement process, and this section is not necessary.

Furthermore, the proposed role of procurement seems to cover all procurement activities undertaken by NASA in furtherance of its mission, including even all small purchases. Such broad application may cause conflicts with other acquisition statutes, regulations, OMB Circulars, OFPP Policy Letters, etc. The proposed language does not limit the contemplated role of procurement to those procurement acquisitions in furtherance of the technology investment objectives of the bill. A bill focusing on a small part of the agency's overall mission should not be used as the vehicle to seek significant agency-wide procurement reform that may subject NASA procurement to procedures not applicable to other agencies.

Section 105 Coordination with Other Federal Programs

Subsection (a) is not necessary, in that NASA already coordinates its technology programs with other programs.

Subsection (b) requires the Administrator to identify funding received from other Federal agencies "to manage and carry out technology investment and development." This requirement is too vague and ambiguous, making it impossible for NASA to know what funding we are required to identify. More specific language is necessary.

Section 106: Interagency Technology Initiatives

This section requires NASA to submit as part of its annual budget request to Congress a report on the details of each interagency technology project. Many of our programs are conducted in close cooperation with other government agencies, most notably the Department of Defense and the Federal Aviation Administration. Details of these cooperative efforts are already available in other forms. This additional reporting requirement is not necessary nor particularly helpful. We would prefer to draw upon existing reports, and perhaps modify them to achieve the purposes of this section. The section should be amended to simply require NASA to meet this reporting requirement through reports already required to be submitted to the Congress.

Section 107: Coordination With Other NASA Programs

Subsection 107(a) requires coordination with NASA's Small Business Innovation Research program "to increase the effectiveness of funding to small businesses...". This may appear to suggest some form of set-aside for small businesses, contrary to the full and open competition suggested elsewhere. The subsection should be clarified to indicate that no such set-aside is intended.

Subsection 107(b) requires the Administrator to "identify all funds reimbursed to contractors of [NASA] for activities commonly referred to as "Independent Research and Development...". The language seems to misconstrue the nature of "Independent Research and Development" (IR&D). Those amounts are sums invested in R&D by a company and allocated by the company as an indirect General and Administrative (G&A) cost to its entire business base. Therefore, NASA would not be in a position to "reimburse" funds expended for IR&D. The company, once it expended funds from its IR&D account, could receive some of it back via G&A costs allocated to Government contracts, but the amount would be dependent upon the total IR&D expended, the work, and the percentage of NASA work within the contractor's government business base.

Section 108: Personnel Incentives

Paragraph 3 authorizes the Administrator to provide NASA personnel paid leave, sabbaticals, or intergovernmental personnel transfers to other Federal agencies or the private sector to pursue technology innovation and development. Additional language is necessary to address potential allegations of violations of ethics requirements which apply to Federal employees. Language is necessary because it is quite possible that personnel on such technology and innovation and development assignments will have a need to represent an outside entity (such as a university or research institute) before an agency of the U.S. Government. Therefore, we would recommend that the current Section 108 be made subsection (a), with the following language inserted as subsection (b):

"(b) Activities conducted in furtherance of such technology innovation and development assignments shall not be subject to the provisions of sections 203 and 205 of Title 18."

In addition, depending on the nature of financial interests that may be spawned by the cash incentives included in the redesignated subsection (a), it may be desirable to grant some relief to federal employees from 18 U.S.C. § 208 concerning financial interests.

This section is also unclear as to how and from what source the proposed personnel incentives would be funded. Language should be added that specifies that the proposed personnel actions be in accordance with existing agency personnel regulations and procedures.

Section 111: Definitions

The definition of "eligible firm" contained in paragraph (1) should either be eliminated or changes to remove ownership criteria, since the present definition may be inconsistent with international obligations and other agreements to which the United States is a party.

The definition of "eligible firm," which uses the terms "business entity" and "company" would appear to exclude non-profit organizations which should be eligible.

<u>TITLE II: NATIONAL AERONAUTICS FACILITIES</u>

<u>Section 201: Findings</u>

We recommend that paragraph (4) be amended as follows, to more accurately reflect the current facilities situation:

> "(4) the national civil and military aeronautics facilities of the United States are aging and, with few exceptions, cannot be modified to [~~test new technologies in aircraft and engine design~~] *adequately simulate the flight conditions that will be required for highly* productive aircraft *design* and *development*; and"

Section 202: Policy

Paragraph (4) directs that industry and government cost-sharing for facilities construction and use be investigated. Issues to be investigated should include title and property rights issues with regard to the constructed and rehabilitated facilities. It is not clear who would own such facilities. Further, would NASA be authorized to utilize any funds other than the extremely limited Construction of Facilities funds for this purpose? New facilities would require significant investment in fiscal year 1996 and beyond.

We also note that in both section 202 and section 203 the words "aerospace" and "aeronautics" are used. These terms must be clearly understood. "Aerospace" includes both aeronautics and space facilities and is a more inclusive term. This is important because in section 202 the language shifts from "aerospace" to "aeronautics" between paragraphs (1) and (2), and also because paragraph (3) of section 203 asks for a determination of cost savings for closing of aeronautical facilities only. The recent National Facilities Study includes savings achievable by closing of both aeronautics and space facilities.

Section 201: Worldwide Facilities Assessment

This section requires the President to conduct a "Worldwide Facilities Assessment" of aeronautics facilities. As mentioned above, the National Facilities Study, led by NASA and coordinated with other Federal agencies, should be very useful to such a worldwide study.

In gathering information to determine "strengths and weaknesses", as contemplated in paragraph (2), it should be recognized that detailed data on foreign facilities is often proprietary, and it may not be possible to compile an extensive inventory of specific foreign facility strengths and weaknesses. Developing general descriptions of capabilities should not, however, present such problems. We recommend that the words "strengths and weaknesses" be replaced with "capabilities".

ADDITIONAL AMENDMENTS TO THE SPACE ACT

To increase access to computer programs developed by Federal employees under Space Act agreements, we recommend inclusion of the following amendment to the Space Act by designating the current provisions in section 101 as subsection (a) and adding the following new subsection:

"(b) The National Aeronautics and Space Act of 1958 (42 U.S.C. 2451) is amended by adding a new section 312, as follows:

(a) The Administration is authorized to secure copyright on behalf of the United States as author or proprietor in any computer program prepared in whole or in part by employees of the United States Government in the course of work under an agreement entered into under the authority of Sections 203(c)5) and (c)(6) notwithstanding the limitations contained in section 105 of title 17, United States Code; and may grant or agree to grant in advance to a collaborating party, licenses or assignments for such copyrights, or options thereto, and may retain a nonexclusive, nontransferable, irrevocable, paid-up license to reproduce, prepare derivative works, translate, distribute, and publicly perform or display the computer program throughout the world by or on behalf of the Government and such other rights as NASA deems appropriate.

(b) 'Computer program' means a computer program, as defined in section 101 of title 17, United State Code, and any associated documentation, supporting materials, or user instructions.

(c) Any royalties or other income received from the licensing or assignment of copyright under agreements shall be retained by NASA and shall be disposed of by the Administration in a like manner to royalties received from the licensing of patents.

National Security Council
The White House

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A = Action I = Information D = Dispatch R = Retain N = No Further Action

cc: VP McLarty Other

Should be seen by: (Date/Time)

COMMENTS:

DISPATCH INSTRUCTIONS: