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Senate

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

(Continued)

AMENDMENTS NOS. 4007 AND 4046

Mr. REED. Madam President, I rise to reiterate my support for Senator LEVIN's second-degree amendment. Senator WARNER's amendment directs that any savings from inflation should be used in one of two ways: for the research and development of missile defense or for combating terrorism. However, Senator WARNER's amendment does not choose which area is more worthy of attention, and therefore it risks compromising both.

Our job in deciding the budget is about making hard choices. Senator LEVIN's amendment simply sets priorities and it states that combating terrorism should be this administration's top priority.

I do not think this is a difficult decision. We must remember that this amendment only authorizes funding for fiscal year 2003. And in the next 18 months, the citizens of the United States are going to be anxious, and even afraid, of a car bomb, an explosion in a harbor, an explosion in a mall, a dirty bomb, a biological attack. I think the way to protect Americans is clear: put resources into counterterrorism.

The senior Senator from Virginia has been assured by the Office of Management and Budget that there will be over \$800 million in inflation savings at the midsession review. At that time, the President will have a choice. He can invest \$800 million more into a missile defense program that has already been robustly funded at \$6.8 billion or the President can invest the funds in the \$1 billion of counterterrorism requirements that the military has asked for and not received.

The Levin amendment expresses the views of Congress, and I believe the views of the American people, that resources directed toward the most immediate need, the most immediate threat, fighting terrorism, will best

protect the United States and its citizens.

Mr. KERRY. Madam President, I would just like to take a moment to express my thanks to Senator LEVIN and Senator WARNER for working with me to clear this amendment in such a timely fashion. I think special thanks should also go to Senator CARNAHAN, a member of both the Senate Committee on Small Business and Entrepreneurship and the Senate Armed Services Committee for her support of this amendment. Senator CARNAHAN's work was vital to this amendment's acceptance by the Armed Services Committee, and I thank her for her assistance as well as for her continuing interest and advocacy for America's small business Federal contractors. I would also like to thank Senator BOND for his help on the Republican side. Concern for our Nation's Federal contractors remains an important area of bipartisan interest on the Small Business and Entrepreneurship Committee, and I am pleased to have his support on this amendment.

Briefly, our amendment requires the Secretary of the Army to conduct a study on the impact the creation of an Army Contracting Agency will have on small business participation in Army procurement, especially at the local level where many small businesses provide support services to Army installations. When we first received word of Secretary of the Army Thomas E. White's plan to consolidate army procurement activities into a central location, I was very concerned about its possible affects on small businesses. And despite briefings from Army personnel and assurances that small business participation will not be negatively affected, I remain concerned as do my colleagues. This is a critical time for our armed forces, and I do not wish to cause any confusion in the procurement process that could affect our military preparedness. Therefore, we are taking a "wait and see" approach to the Army's plan.

Our amendment will help monitor the situation at the Army by requiring them to keep track of small business participation in their procurement, especially at the local level. The amendment requires the Army to track any changes in the use of bundled contracts, sometimes called consolidated contracts, as a result of this new procurement agency, as well as track small business access to procurement personnel.

Let me be clear. Removing contracting authority from Army installations and centralizing it will result in less small business participation, but steps can be taken to overcome this. These steps must be proactive and represent a real commitment to maintaining small business access to procurement opportunities. And while I do not believe Congress should dictate every detail of how the Army chooses to structure itself for procurement purposes, Congress must be concerned about the consequences of that structure.

I look forward to working with the Secretary to ensure that an appropriate level of small business participation in Army procurement is maintained.

Once again, I would like to thank Senator BOND and Senator CARNAHAN for their support on this issue, as well as Senator LEVIN and Senator WARNER for accepting this amendment.

Mr. WARNER. Madam President, I am pleased that Chairman LEVIN and I have been able to come to agreement on my amendment to restore \$814 million that the President can allocate to ballistic missile defense and to activities of the Department of Defense to counter terrorism and on Chairman LEVIN's second-degree amendment.

Prior to their approval, I would like to offer some clarifying remarks concerning the intent and effect of these two amendments.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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The underlying Warner amendment takes advantage of the fact that the Office of Management and Budget is undertaking a midyear reassessment of the inflation assumptions built into the administration's fiscal year 2003 budget. I was informed 2 weeks ago that this reassessment will result in a new estimate that inflation in 2003 will be lower than earlier thought. What this means, in practical terms, is that the Department of Defense budget has an inflation "bonus" built in less funding will be required to purchase the goods and services in the Department's budget. Since these funds are excess to the Department's needs, there is no programmatic impact resulting from the inflation savings being used for other purposes.

Thus the Warner amendment will allow the President to reallocate, as he determines to be in the national interest, \$814 million toward two of the highest defense priorities, ballistic missile defense and DOD activities to combat terrorism, with no other programmatic impact.

This amendment will provide the President the option to restore all the missile defense funds that were cut by the Armed Services Committee. In my view, these reductions would impede progress, increase program risk, and undermine the effort to provide for the rapid development and deployment of missile defenses for our Nation, our allies and friends, and our soldiers, sailors, marines, and airmen deployed overseas. I believe that the President would be completely justified in using the authority provided in this amendment for the missile defense effort.

I believe that Senator LEVIN shares this opinion of my amendment, even in light of the effect of his second degree amendment. Our colloquy this afternoon indicates clearly that the chairman's intent is not to restrict the President's options in any way.

Again, I am please that Chairman LEVIN and I were able to come to agreement on this difficult issue.

I would ask unanimous consent to print in the RECORD a letter Chairman LEVIN and I received this afternoon from the Office of Management and Budget stating the view of the Director of OMB that the president retains the options of using the funds provided in my amendment on missile defense.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT
AND BUDGET,

Washington, DC, June 26, 2002.

DEAR CHAIRMAN LEVIN AND SENATOR WARNER: It is the understanding of the Office of Management and Budget, based on the Levin-Warner colloquy, that if the Levin 2nd degree amendment is adopted, the funds provided in the underlying Warner amendment, if appropriated, could be expended on missile defense and other activities determined by the President.

Sincerely,

MITCHELL E. DANIELS, JR.

Mr. LEVIN. Madam President, the second degree amendment which I have offered expresses the determination and decision of Congress that the war on terrorism should be "the top priority" for spending the additional funds identified by the pending Warner amendment. The Warner amendment specifies two possible purposes for the expected additional funds following the inflation recalculation in the midsession review. The first specified purpose is ballistic missile defense programs. The second specified purpose is combating terrorism at home and abroad.

My amendment is based on the large number of unmet needs in our war against terrorism, including those identified by the members of the Joint Chiefs of Staff. We should put additional resources where the greatest threats exist, and the terrorist threat is clearly the number one threat that we face.

There have been a number of efforts in the last twenty-four hours to persuade me to weaken my amendment or to dilute its intention away from focusing resources on combatting terrorism. I, along with my colleagues, including Senators HARRY REID and JACK REED, have resisted these efforts. We will soon determine whether my amendment is adopted by voice vote or whether there will be a rollcall on it. But whichever way we decide to proceed, one thing needs to be clear, which is that the express language and intent of my amendment is that Congress speak clearly as to what it views as the top priority for the expenditure of any additional funds from the inflation recalculation. That priority is "combating terrorism at home and abroad."

I urge my colleagues to support my second-degree amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam president, I ask unanimous consent that Senator LEVIN's amendment No. 4046 be agreed to; Senator WARNER's amendment No. 4007, as amended, be agreed to; that the motion to reconsider be laid upon the table; and that the preceding all occur without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Madam President, not to object, I just ask unanimous consent that Senator KAY BAILEY HUTCHISON be added as a cosponsor to my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there objection to the request?

Hearing none, it is so ordered.

The amendment (No. 4046) was agreed to.

The amendment (No. 4007), as amended, was agreed to.

Mr. WARNER. Madam President, I would like to take a few moments to discuss an important issue that is covered in this bill: the need for the Department of Defense, as well as the en-

tire Federal Government, to have the capability to continue essential operations after a direct attack on primary facilities. The importance of ensuring Continuity Of Operations (COOP) is a lesson that we all elevated in priority after September 11, 2001. Many of us in Congress and the Federal Government had begun to recognize the vulnerability of our critical infrastructures—especially our information networks—to disruption or destruction, prior to 9/11. I had even initiated an information assurance scholarship program to begin developing a cadre of professionals in DOD to address this potential problem area.

There were, however, many in private industry that learned this same lesson almost 10 years earlier, and as a result, were far more prepared than the Federal Government when terrorists attacked the World Trade Center.

The financial services industry is one that has historically handled an extraordinary amount of information. They track and record every financial transaction that occurs each day on Wall Street. In addition to an enormous amount of information, the financial services industry deals with information that is extremely critical in nature.

After the terrorist attacks on the World Trade Center in May, 1993 this industry asked the question: "What if the terrorists had been successful in bringing down these buildings?" Their conclusion was sobering. It would have resulted in an extraordinary disruption of the U.S. economy for years.

Accordingly, the New York financial institutions tasked the data storage industry to develop a technology that would allow information to be stored, in a second-by-second identical state, in two geographically separate locations. The goal was for each financial entity to have a primary data center in the city and a secondary "mirrored-site" in another State. If there was ever an outage at the primary location, no financial transaction would be lost, and all of the systems and networks could "fail-over" to the secondary center outside of the city and immediately put to use.

In 1994 this technology was developed, validated and delivered. For the first time, information of all types, coming from computer systems of all makes and models could be replicated between two geographically separate locations. The "mirrored" data center, using sophisticated remote data storage technologies, had been born.

No one ever envisioned that this remote data storage technology would be tested to the degree it was on September 11, 2001. The financial services industry's dedicated focus to protecting Wall Street's financial information resulted in that industry being more prepared than any other to handle an unanticipated natural or man-made disaster. As the World Trade Center towers collapsed, tragically ending the lives of thousands of hard working

Americans, numerous data centers containing massive amounts of financial information vanished in an instant. The institutions utilizing this technology, however, did not lose a single piece of information and the financial markets were able to reopen almost immediately. Some could have opened that same afternoon.

On the opposite end of the spectrum of information assurance readiness, unfortunately, is our Federal Government. Many of our key government agencies have their information backed-up only through out-dated tape systems, and with the back-up tapes stored on site, they would also be destroyed in any deliberate attacks. If destroyed, that information could never be recovered or restored.

For years, agencies within the Federal Government have neglected the requirement to make the necessary investments in back-up data centers and remote data storage technology. At the same time, however, every Federal agency has grown extremely dependant on their data centers and the information contained within. The Department of Defense creates, disseminates, and relies more and more on electronic information to execute its mission and manage its organizations and people. The loss of a critical database and the information it contains could be catastrophic for our national security. We must ensure that the U.S. military has the same level of capability that was resident in the data centers of the financial institutions operating in the World Trade Center.

Nothing can diminish the tragedy that occurred on September 11 or erase the pain that so many suffered. The foresight of private industry, however, in developing the capability to "mirror" information between geographically separate locations, resulted in protecting trillions of dollars in financial transactions and other critical records—the loss of which would have crippled the American, as well as the global economy, for years. I commend the exceptional competency of American industry's engineering talent, as well as the commitment of the private sector's leadership to invest the millions of research and development dollars to develop this capability. I also look forward to working with my colleagues in the U.S. Senate to ensure that the "mirror" capability is expeditiously and thoroughly employed within the Department of Defense. The protection of our critical information infrastructure is something we all need to be mindful of, and an area that deserves our best efforts to ensure its security.

Mr. ROBERTS. Madam President, I commend ranking member WARNER for his stewardship of the fiscal year 2003 defense budget process in the Senate. We face many challenges to our national security in this day and age and I am thankful for his leadership.

One of those emerging challenges we face is the terrorist threat to our food

supply, specifically U.S. agriculture. On the Federal, State, and local level, we need to establish procedures to detect, deter, and respond to large scale coordinated attacks against livestock and agricultural commodities.

Toward that end, I ask the Senate to support my amendment to authorize, with an offset, \$1,000,000 for research, development, test, and evaluation, defense-wide in-house laboratory independent research, PE 0601103D8Z, for research, analysis, and assessment of efforts to counter possible agroterrorist attacks. It is my hope that universities with established expertise in the agricultural sciences can conduct studies and exercises that lead to better coordination between Federal, State, and local authorities as they attempt to detect, deter, and respond to large-scale coordinated attacks on U.S. agriculture.

Most importantly, I envision universities assisting the Department of Defense in determining what role, if any, our military or Defense agencies play in countering agroterrorism. I ask my colleagues to support my amendment.

Mr. HOLLINGS. Madam President, the administration version of the Department of Defense authorization bill included a provision that would modify the Marine Mammal Protection Act, MMPA, with respect to "military readiness activities." While acknowledging the need for a well-trained military, it is my strong view that this provision should not be included in the bill.

The administration proposal on MMPA would alter the current definition of "harassment" for "takings" of marine mammals under the MMPA—a cornerstone of the statute. Action on this provision via the Department of Defense authorization bill is problematic for several reasons.

First, the MMPA is a complex statute. These provisions have not been appropriately examined in a Senate hearing—no testimony is in the record from experts and others who need to consider the validity of the issues raised and the ramifications of the proposed language.

Second, the MMPA has many stakeholders and end users. It would be inappropriate to alter the statute for one set of users and not others. The MMPA needs to be taken as a whole, and not amended piecemeal.

Third, it is not clear that these changes are needed, or that the proposal brought forward by the administration would be the correct way to address concerns.

For these reasons, I want to make it clear that I oppose inclusion of this provision in the Department of Defense authorization bill—whether via floor amendments or via conference with the House. The committee of jurisdiction—the Committee on Commerce, Science and Transportation of which I am chairman—is the appropriate venue for considering the military's concerns and any proposals for change.

NAVY AIRBORNE RADAR TECHNOLOGY CAPABLE OF ALL-WEATHER ATTACK ON TIME CRITICAL TARGETS AND ENEMY MOBILE GROUND FORCES

Mr. LIEBERMAN. Madam President, I come to the floor today to discuss with the distinguished chair of the Emerging Threats Subcommittee, Senator LANDRIEU, and the senior Senator from Connecticut, Mr. DODD, about developing Navy airborne radar technology capable of all-weather attack of time critical targets and of the enemies' mobile ground forces.

Mr. DODD. I thank my good friend for bringing this issue to the attention of the Senate. This research area is important to the Navy and the defense of the United States. Technology being developed to support this capability is currently planned to be ready for transition to Navy aircraft in the fiscal year 2006 time frame, but can be completed sooner with additional funding in fiscal year 2003. The House of Representatives included an additional \$9 million for this purpose in its version of the Defense authorization bill.

Ms. LANDRIEU. I am delighted to discuss this important technology area with my good friends from Connecticut.

Mr. LIEBERMAN. Technologies associated with one of the Navy's designated Future Naval Capabilities, "Time Critical Strike," are being implemented through a team effort at the Office of Naval Research in conjunction with the responsible acquisition program management organizations within the Navy. This technology area addressed the documented requirement for reducing the target cycle to below 10 minutes and enhancing the ability to detect, locate and strike these targets under all weather conditions—a current operational deficiency.

Mr. DODD. As I mentioned earlier, the House bill includes \$9 million for this purpose. My understanding, however, is that at least \$12 million in fiscal year 2003 funding is needed to fully accelerate this program.

Mr. LIEBERMAN. That is my understanding as well. In light of recent hostilities, this technology area is an excellent example of the things the military will need to defeat a highly mobile enemy. We certainly hope that we can work with the distinguished chairman to provide necessary resources for the development of these capabilities when we conference this bill with the House.

Ms. LANDRIEU. I am aware of the value of time critical to strike the war fighter and look forward to working with my good friends from Connecticut on this important issue as we move to a conference with the House.

Mr. DODD. I thank my good friend for her support for this program.

SECTION 241

Ms. MIKULSKI. Madam President, I am pleased to join the chairman of the

Armed Services Committee in a colloquy regarding the extending authorization of pilot programs for revitalizing Department of Defense laboratories. I seek to clarify the congressional intent of Section 241 of the bill before the Senate.

Mr. LEVIN. Section 241 is part of the Senate's continuing efforts to improve the Department's labs and test centers. This pilot program expands and authorizes a number of innovative business practice and personnel demonstrations that are very important to developing the technological superiority that our military needs. The legislation will extend the time period for the pilot program authority for three years. This extension is consistent with the Department of Defense's legislative proposals that the Armed Services Committee received. I would like to thank Senator LANDRIEU, chair of the Emerging Threats and Capabilities Subcommittee, for taking the lead in developing this legislation.

Ms. MIKULSKI. The language stipulates that not more than one partnership may be established as a limited liability corporation, or LLC. Has that site been designated?

Mr. LEVIN. If he choose to establish an LLC as part of the program, the Secretary of Defense will designate its location from among the DoD organizations participating in the pilot program.

Ms. MIKULSKI. I understand that the Aberdeen Test Center in Maryland has invested great effort into pursuing this opportunity. I also note that the Secretary of the Army has approved Aberdeen's LLC program as one of the new initiatives under the Army's Business Initiative Council to improve efficiency in business operations and processes.

Mr. LEVIN. I am familiar with the Aberdeen proposal and this legislation could be used to implement their plans, if the Secretary of Defense designates it.

Ms. MIKULSKI. How will the membership from the private and academic sectors be determined?

Mr. LEVIN. A competitive process will be used to select participants in any of the partnerships established by the legislation.

Ms. MIKULSKI. The legislative language permits the members of the LLC to "contribute funds to the corporation, accept contribution of funds for the corporation, and provide materials, services, and use of facilities for research, technology, and infrastructure of the corporation," if doing so will improve the efficiency of the performance of research, test, and evaluation functions of the Department of Defense.

Mr. LEVIN. Yes, you are correct. The committee believes that innovative partnerships, better business practices, and the continuation and expansion of the innovative personnel demonstrations authorized in this and other programs are all important for the revitalization of the Department's labs and test centers.

Ms. MIKULSKI. I thank the chairman for his support on this important issue.

Mr. SMITH of New Hampshire. Madam President, I support the Hutchison-Bingaman amendment and am pleased to cosponsor it.

The purpose of my addressing the issue is two fold: One, to impress upon my fellow Members that if Congress intends to have input into the BRAC process, the only real time to do this is during the current session. While "BRAC 2005" leads people to believe that we have several years before we have to worry about this, the truth is that the criteria must be published prior to the end of 2003, and hence we should provide our input in 2002; two, this legislation, sponsored by Senator KAY BAILEY HUTCHINSON sets up criteria that must be met before consideration in closing a military facility. We are not eliminating the ability of DoD to run the process, we are pursuing legislation that will clarify the process. To bring the process out into the open allowing us all to see how a decision was derived and these are decisions that affects thousands of people and cost many millions or billions of dollars.

It is time to bring—businesslike competitive accounting into the consideration process when dealing with issues of BRAC. The Hutchison legislation will accomplish that by simply establishing some minimal, measurable, and articulated standards to be used in making major decisions. Some of these issues are: environmental costs, costs of Federal and State environmental compliance laws; costs and effects of relocating critical infrastructure; anticipated savings vs. actual savings; current or potential public or private partnerships in support of Department activities; capacity of State and localities to respond positively to economic, and this bill requires the SecDef to publish the formula to which different criteria will be weighed by the DOD in making its recommendations for closure of realignment of military installations.

Not only do I support this move on its stand alone merit of bringing accountability and transparency to major defense and economic decisions, I also support it as a Senator who has had personal experience with the secretive BRAC process as it affects my own constituents and friends.

The Portsmouth Naval Shipyard is a national asset to the defense industry and naval service. It has a long history of supporting the U.S. Navy, yet despite this long history, it has appeared on the DoD BRAC his list. Having seen the work this facility and its people contribute I will continue to support and work to enhance PNSY's capabilities. Its outstanding work performance, value to the Navy, and value to the America people are critical in ensuring national defense, and continue to examine innovative roles PNSY can perform in addition to its critical job

of keeping America's nuclear submarines at sea.

If the Secretary of Defense chooses to examine facilities across the country, he may do so and I encourage his attempts at streamlining DoD and enhancing its financial practices—to make sure the taxpayers get the most for their hard-earned dollars. However, clearly defined standards of accountability, and the decisionmaking process itself, should be open to congressional scrutiny and openness.

NINTH CIRCUIT COURT OF APPEALS DECISION

Mr. LIEBERMAN. Madam President, I yield the floor to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Madam President, I wanted to ask this of my friend from Connecticut, who I think has variously served in so many different role models to the Senate, variously described as the Senator who is the conscience of the Senate, certainly as a former attorney general of his State, someone who understands the legal ramifications of arguments such as this.

In my earlier comments today, I had said that I thought there was in law, and the development of law, and the development of the Constitution, which you and I both quoted from, the Declaration, a clear distinction, as the distinguished Senator has noted, of the freedom of religion. And that part of that body of law that would make up that freedom, that religious freedom, would be a freedom to worship as one would want, if at all, and that that is a right we jealously protect, just as we protect the other freedoms—freedom of speech, freedom of the press, freedom of assembly, and so forth—and that when you look at this freedom, there is a distinct difference, as the case law has developed, of the separation of church and state which would embody that idea that we don't cram religion down anybody's throat, that we leave it up to them individually to express their own beliefs, if they want to at all, and to believe as they want to, if at all. That is the concept of separation of church and state, as distinguished from there not being necessarily a separation of the state and of God.

Quite to the contrary, on these historical documents, as I pointed out in that statement above the center door, in the fact that we elevate the Chaplain in the opening prayer, in the very formal and dignified opening ceremonies of the Senate, that the Chaplain is elevated on the top level and the Presiding Officer, while the Chaplain offers the prayer, is on a lower level, the fact that we have minted in our coins, "In God we trust."

I would ask the distinguished Senator from the great State of Connecticut if he would share with us his commentary about that separation of those two concepts.