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*VETOED
7/2/76
Delivered to Clerk
of House
4:50 pm*

8/2/76

ACTION

THE WHITE HOUSE

WASHINGTON


July 1, 1976

Last Day: July 2

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON 

SUBJECT:

H.R. 12384 - Military Construction
Authorization Act, fiscal year 1977

Attached for your consideration is H.R. 12384, sponsored by Representatives Ichord and Whitehurst, which authorizes appropriations for FY 77 for new construction for Defense, the military departments and the Reserve Components aggregating \$3,323,989,000.

Because of a rider (section 612) most of your advisers recommend veto of the enrolled bill. Section 612 would establish detailed procedures to govern certain base closures, reductions or alignments. A detailed discussion of this section and agency comments on it is provided in OMB's enrolled bill report at Tab A.

OMB, Defense, NSC, Bill Seidman and Max Friedersdorf recommend that you veto H.R. 12384. Max states: "Veto cannot be sustained. Recommend veto, however, on principle of intrusion on Executive."

Counsel's Office (Lazarus) recommends approval for the following reasons:

1. As a matter of law, section 612 would not appear to infringe upon any of the President's constitutional powers;
2. As a matter of policy, section 612 may lead to some unnecessary expenditures but the case would not appear to be made here for a veto on that basis, especially in view of the overwhelming Congressional approval of the measure in its current form."



3. Moreover, although somewhat objectionable for the reasons expressed above, section 612 could, over the long run, result in some benefits to the extent it may depoliticize and regularize the matter of military base closings.

DECISION

Approve H.R. 12384 at Tab B (Counsel's Office).

Approve _____ Disapprove _____

Disapprove H.R. 12384 and sign veto message at Tab C (Friedersdorf, Defense, NSC, OMB, Seidman). The Editorial Office (Smith) has approved the veto message.

Approve RF _____ Disapprove _____





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

JUN 29 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12384 - Military Construction Authorization Act, fiscal year 1977
Sponsors - Rep. Ichord (D) Missouri and Rep. Whitehurst (R) Virginia

Last Day for Action

July 2, 1976 - Friday

Purpose

Authorizes appropriations for fiscal year 1977 for new construction for Defense, the military departments, and the Reserve Components aggregating \$3,323,989,000.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto Message attached)
Department of Defense	Disapproval (Veto Message attached)
National Security Council	Disapproval (Informally)
Department of Justice	Defers to Defense and OMB
Department of Housing and Urban Development	No objection
Environmental Protection Agency	No objection
General Services Administration	Expresses concern with certain provisions

Discussion

Military construction requirements for fiscal year 1977 were developed by identifying the primary missions of our military forces and assigning to these forces the weapons, equipment and facilities



necessary to discharge effectively these assigned mission responsibilities.

The \$3,323,989,000 authorization for new construction is \$49,626,000 less than the \$3,373,615,000 requested by the Administration. In general, the reduction comprises a number of relatively minor changes throughout the program.

A comparison of the Administration's amended request to the amounts authorized in H.R. 12384 is set forth, by major program category, in the attachment which also shows amounts for deficiency authorizations.

General Provisions

Most of the general provisions reflect, with minor changes, the Administration's request and are substantially similar to provisions contained in the Military Construction Authorization Act of 1976. Others are additions made by the Congress which have no significant impact on Administration policy. One rider, however, is particularly troublesome and is discussed separately below.

Section 612 of the bill would establish detailed procedures to govern certain base closures, reductions or realignments. In general, the bill would require the expiration of a period of at least one year before such actions could be effected. Its provisions would apply to any military installation located in the United States, the District of Columbia, Puerto Rico or Guam at which not less than 500 civilian personnel (i.e., direct-hire, permanent Defense civilian employees) are authorized to be employed.

Unless the bill's procedures were followed, no action could be taken prior to October 1, 1981: (1) to close any such military installation; (2) to reduce the authorized level of civilian personnel at any such installation by more than 1,000 or 50 percent of the authorized level (e.g., 250 personnel in the case of a facility with an authorized level of 500 civilians); or (3) to carry out any construction, conversion or



rehabilitation at any other military installation that would be required as a result of relocating civilian personnel to such other installation due to a closure or reduction described above.

Under the bill, the Secretary of Defense or the Secretary of the concerned military department would be required to notify Congress in writing of any covered military installation that is a candidate for closure or significant reduction. For at least nine months following such notification, the department concerned would be required to evaluate the proposed closure or reduction in accordance with the National Environmental Policy Act of 1969 (NEPA). Subsequently, the final decision to effect such closure or reduction, and a detailed justification for the decision, "together with the estimated fiscal, economic, budgetary, environmental, strategic and operational consequences of the proposed closure or reduction," would have to be transmitted to the House and Senate Armed Services Committees. No action to implement the decision could be taken until 90 days after the justification had been submitted to the committees.

The bill's provisions would not apply if the President certifies to Congress that a proposed closure or reduction must be implemented for reasons of military emergency or national security. Closures or reductions publicly announced prior to January 1, 1976, would also be exempt.

In 1965, President Johnson vetoed the fiscal year 1966 military construction authorization bill because it contained a provision similar to section 612 of H.R. 12384. That bill would have prohibited certain base closures or reductions until 120 days after the Secretary of Defense reported the proposed action to the Armed Services Committees and would have permitted the Secretary to make such reports only during the first four months of each calendar year. In his veto message, President Johnson stated that:

"The limitations upon the Commander in Chief and the executive branch of the Government here sought to be imposed are



a clear violation of separation of powers. The Attorney General has so advised me. The Congress enacts the laws. Their execution must be left to the President. The President must be free, if the need arises, to reduce the mission at any military installation in the country if and when such becomes necessary."

By exercising his veto, Johnson stated that he did not "mean to imply that a reasonable reporting requirement, consistent with the legislative powers of Congress, would warrant a veto."

In addition to the constitutional principle involved, Johnson noted that effective national defense requires flexibility to manage defense installations, including the assignment of their respective missions. He also cited the significance of the base closure program in achieving economies in the defense establishment.

The conference committee report on H.R. 12384 states:

"The primary intent of Section 612, as finally approved by the conferees, is to put into law a procedure and a schedule whereby the Department of Defense can effect base realignments. The conferees were quite emphatic that the record must be clear that decisions on base realignments are made by the Department of Defense and not by Congress, but that Congress does have a constitutional obligation to review the justification for such decision just as the Congress reviews the justification for any Department of Defense budget request.

"This provision does establish a base realignment schedule insuring that the persons affected, the courts,



and the Congress know precisely where they stand regarding any potential action.

* * * * *

"The conferees are confident that this provision will improve base realignment procedures. It does not represent a violation of the principle of the separation of powers. It bears no resemblance to the highly restrictive provision in the fiscal year 1966 Military Construction Authorization Bill that resulted in President Johnson's veto."

Justice's letter to the Office of Management and Budget on the current enrolled bill states:

"While the details of section 612 differ from the provision which occasioned the 1965 veto, the element of substantial delay in implementing Presidential decisions is the same and the objections set forth in the 1965 veto message are equally applicable to the enrolled bill.

"Nevertheless, since the constitutional arguments for opposing such a provision turn on the question whether the delay required is so unreasonable as to effectively thwart the execution of the laws by the President and the carrying out of his responsibilities as Commander-in-Chief, the Department of Justice defers to your views and those of the Department of Defense as to whether the enrolled bill should receive executive approval."



Defense recommends disapproval of H.R. 12384. The Department's letter argues that the effect of Section 612 would be to arbitrarily delay for at least one year proposed closures and reductions affecting installations covered under the bill and concludes that:

"Even though the remainder of the Bill is satisfactory, we believe that Section 612 constitutes an arbitrary restriction upon the President's authority to fulfill his constitutional responsibilities as Commander-in-Chief and executive manager of Defense programs."

In addition to the constitutional objection, Defense believes the bill is undesirable on other grounds. Defense points out that the bill's requirement for compliance with NEPA is redundant since the Department already must meet the NEPA provisions. Defense states that in most instances, the nine months required under the bill would not normally be needed to accomplish NEPA compliance. Furthermore, Defense finds particularly troublesome the implication that the Department has the primary responsibility for the social or "economic" impact of its actions. In this connection Defense states:

"In the broadest interpretation, it could be demanded that Defense base its economic analysis on all Federal, State, and local social program cost impacts, not just on DOD cost implications. Under this possibility the incentive to increase efficiency within the Defense program could be significantly reduced."

Finally, Defense argues, based on a preliminary evaluation, that Section 612 would increase the fiscal year 1978 Defense budget requirements by \$150 million and that 11,300 military and



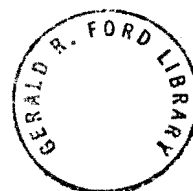
civilian personnel positions now planned to be abolished would have to be retained in 1977.

We agree with the Justice view that the constitutional arguments for opposing Section 612 turn on the question of whether the delay it would impose is so unreasonable as to effectively thwart the President from executing the laws and carrying out his responsibilities as Commander in Chief. We believe Defense overemphasizes the unreasonableness of the bill's one year waiting period.

The bill President Johnson vetoed in 1965, prior to enactment of NEPA, could have caused delays of well over a year in several situations. Defense has advised us informally, however, that with respect to installations covered by the current bill, its existing procedures, which include compliance with NEPA, would normally involve a lapse of 6-9 months from the date a candidate for closure or reduction is announced publicly to the time an actual decision to implement such action is made. Thus, enactment of Section 612 of the bill would, in most cases, create an additional delay of only 3-6 months.

It could be possible to argue that such a delay in certain circumstances would constitute an unreasonable interference with the President's constitutional duties as Commander in Chief and his responsibilities to execute the laws. We doubt, however, that this provision raises as clearly the constitutional objections cited by President Johnson in his 1965 veto, especially in view of the waiver authority provided in the current bill for reasons of military emergency or national security.

Nevertheless, we do believe that the bill is highly objectionable as a matter of policy. The bill would substitute an arbitrary time limit and set of requirements for the current procedures for base closures that adequately take into account all relevant considerations and afford extensive opportunity for public and congressional review. This substitution would, as Defense notes,

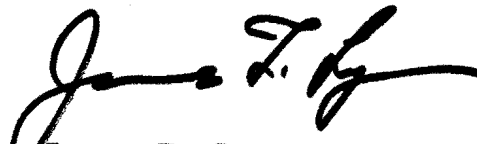


generate a budgetary drain caused by unnecessary delays in base closures when the Defense dollar should be used to strengthen our military capabilities.

We should point out that the conferees eliminated some of the more undesirable features of the individual base closure provisions included in the House and Senate versions of H.R. 12384. Nonetheless, for the reasons stated above, we recommend that you disapprove H.R. 12384. We have prepared a veto message (attached) for your consideration which is not based on the constitutional issue as is the version proposed by Defense.

The House originally adopted H.R. 12384 by a vote of 299-14; the Senate by a vote of 80-3. No recorded votes were taken on the separate base closure provisions in the House and Senate versions of the bill. The conference report on the bill passed the House, 375-20; no vote was recorded in the Senate.

In his views letter on the enrolled bill, the Administrator of the General Services Administration expresses concern that certain provisions in this bill and prior-year Military Construction Authorization Acts will seriously erode existing authorities for centralized management and disposal of Federal real property by GSA. These provisions involve grants of authority to the military departments to exchange Government-owned lands to acquire lands for authorized military purposes, to make land exchanges generally, even though not expressly authorized, or to lease land excess to military requirements under certain conditions. We agree that these provisions raise legitimate concerns and will follow up on GSA's request to apprise Defense of this serious matter and to ask Defense representatives to work with GSA to lessen the impact of these provisions.


James T. Lynn
Director

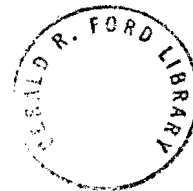
Enclosures



FY 1977

Military Construction Authorization

	Amended Request <u>(In thousands of dollars)</u>	<u>Enacted</u>
Army	616,500	584,498
Navy	526,913	500,936
Air Force.	735,633	736,409
Defense Agencies	<u>64,650</u>	<u>32,946</u>
Active Forces	1,943,696	1,854,789
Family Housing	1,302,847	1,304,523
Reserve Forces		
Army National Guard	40,817	54,745
Army Reserve.	37,655	44,459
Naval and Marine Corps Reserve.	15,300	21,800
Air National Guard.	24,300	33,900
Air Force Reserve	9,000	9,773
Reserves	<u>127,072</u>	<u>164,677</u>
New Authorization		
for Appropriation	3,373,615	3,323,989
Deficiency Authorization		11,000
Total Authorization.	3,373,615	3,334,989



Department of Justice
Washington, D.C. 20530

June 24, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request we have examined section 612 of the facsimile of the enrolled bill, "To authorize certain construction at military installations and for other purposes." (H.R. 12384)

Section 612 of the enrolled bill would require nine months advance notice to the Congress of an intention to close military installations or make alterations in such installations in a manner that would reduce the number or result in the relocation of civilian personnel. Further, 90 days advance notice of final action by the Secretary of Defense would be required. The effect of this provision would be to delay action on closure or alteration of military installations for one year except in circumstances in which the President certifies that a military emergency or national security require prompter action.

In 1965 President Johnson vetoed a military construction bill containing a similar provision on the grounds that it violated the separation of powers generally and interfered with the President's constitutional authority as Commander-in-Chief by imposing unreasonable delays on actions which the President was lawfully authorized to undertake. While the details of section 612 differ from the provision which occasioned the veto, the element of substantial delay in implementing presidential decisions is the same and the objections set forth in the 1965 veto message are equally applicable to the enrolled bill.



Nevertheless, since the constitutional arguments for opposing such a provision turn on the question whether the delay required is so unreasonable as to effectively thwart the execution of the laws by the President and the carrying out of his responsibilities as Commander-in-Chief, the Department of Justice defers to your views and those of the Department of Defense as to whether the enrolled bill should receive executive approval.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General
Office of Legislative Affairs





THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

JUN 25 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. *Jim* Lynn:

I refer to your request for the views of the Department of Defense with respect to the enrolled enactment on H.R. 12384, 94th Congress, an Act, "To authorize certain construction at military installations, and for other purposes."

The purpose of the Act is to provide new construction and other related authority for the military departments and the Office of the Secretary of Defense, within and outside the United States, and for the Guard and Reserve Components for the fiscal year 1977 in the total amount of \$3,323,989,000. This amounts to \$44,226,000 less than requested by the President in his FY 1977 budget.

Most of the general provisions are substantially unchanged from last year's Military Construction Authorization Act (P.L. 84-107). However, the incorporation of one provision, section 612, compels the Department of Defense to recommend veto of the bill, for the reasons discussed below.

Section 612

Section 612 applies to any military installation or facility in the United States, the District of Columbia, the Commonwealth of Puerto Rico, and Guam, at which more than five hundred civilian employees are authorized to be employed. Indirectly, the section would also affect certain construction, conversion, or rehabilitation of facilities at any military installation in the world, regardless of the civilian employment level.

The effect of section 612 would be to delay arbitrarily for at least one year: (1) the closure of any military installation to which the section applies; (2) a reduction in the level of authorized civilian personnel of more than 1000 or 50%, whichever is smaller, at any military installation to which the section applies; or (3) construction,



conversion, or rehabilitation of facilities, anywhere in the world, necessitated by the relocation of civilian personnel from any installation to which the section applies.

The one-year minimum delay begins at the time the Department of Defense notifies the Congress that a particular installation is being considered for possible closure or reduction. During the first nine months of the one-year delay, the section requires that the Department comply with the provisions of the National Environmental Policy Act (NEPA). The Department must meet the NEPA provisions in any case; however, one might infer from section 612 that Congress may be putting itself in the position to judge whether or not we are in compliance with the NEPA provisions. In any case, in most instances nine months would not normally be needed to accomplish NEPA compliance. Following the nine-month period the Department must submit a detailed justification to the Committees on Armed Services for each realignment and closure decision; a minimum of three months is then provided for Congressional review.

An exception to the delay may be granted for a military emergency or other national security exigency, but only after the President "certifies" the exigency to the Congress.

Finally, section 612 also requires Defense to describe the "economic" consequences of each specific base closure or realignment action.

Impact

A preliminary evaluation of the impact that section 612 would have on DoD initiatives already announced for study indicates that the FY 1978 Defense Budget would have to be increased by \$150 million and that approximately 11,300 military and civilian personnel positions now planned to be abolished would have to be retained through FY 1977.

The implication that Defense has the primary responsibility for the social or "economic" impact of its actions is particularly troublesome, and could well prove to be the most significant aspect of the proposed law. In the broadest interpretation, it could be demanded that Defense base its economic analysis on all Federal, State, and local social program cost impacts, not just on DoD cost implications. Under this possibility the incentive to increase efficiency within the Defense program could be significantly reduced.

Even though the remainder of the Bill is satisfactory, we believe that section 612 constitutes an arbitrary restriction upon the President's



authority to fulfill his constitutional responsibilities as Commander-in-Chief and executive manager of Defense programs.

Accordingly, the Department of Defense recommends that the President disapprove H.R. 12384.

Sincerely,

Bill Clement





THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

JUN 25 1976

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Attention: Miss Martha Ramsey

Dear Mr. Frey:

Subject: H. R. 12384, 94th Congress
Enrolled Enactment

This is in reply to your request for the views of this Department on the enrolled enactment of H. R. 12384, an Act "To authorize certain construction at military installations and for other purposes."

The enrolled enactment would authorize the provision of various facilities for the military departments and the Office of the Secretary of Defense. It also would authorize the construction or acquisition of approximately 1,100 military family housing units, after consultation by the Secretary of Defense with the Secretary of Housing and Urban Development as to the availability of adequate private housing in any location in the United States designated for construction of new units. In addition, appropriations would be authorized for use by the Secretary of Defense for payments, on behalf of servicemen, of mortgage insurance premiums due with respect to mortgages insured by this Department under section 222 of the National Housing Act.



The enrolled enactment also contains a provision which authorizes the Secretary of Defense to acquire sole interest in privately owned or Department of Housing and Urban Development held family housing units in lieu of new construction. Such units could not be acquired under eminent domain authority and would not be permitted to exceed cost limits established by the enrolled enactment.

The Secretary of Defense would be required to encourage utilization of solar energy as a source of energy for projects authorized by the enrolled bill, where practical and economically feasible. The enrolled bill would also establish procedures governing the closure of or reduction in civilian personnel at any military installation and would authorize studies concerning the reuse of certain military installations where a final decision to close the installation has been made.

The Department of Housing and Urban Development has no objection to the approval of this enrolled enactment.

Sincerely,


Robert R. Elliott





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 25 1976

OFFICE OF THE
ADMINISTRATOR

Dear Mr. Lynn:

This is in response to your request for the Environmental Protection Agency's views concerning the enrolled bill, H.R. 12384, "To authorize certain construction at military installations, and for other purposes."

The Environmental Protection Agency has no objection to this bill, but there are several comments we wish to make on provisions of particular interest to EPA. We support section 607 of the bill which provides construction funds for solar heating and cooling equipment at military bases. It is our opinion that the Federal government should be a leader in the development of pollution free energy sources.

We also support section 610 of the bill which directs the Secretary of Defense to comply with the National Environmental Policy Act (NEPA) when a military installation is closed and a reuse is proposed. We support the concept of the application of NEPA to any significant defense realignment, but we question the wisdom of what would appear to be excessive procedural delays set out in section 612(a)(3)(B) and (D).

We appreciate this opportunity to review H.R. 12384 and we have no objections to the bill.

Sincerely yours,


Russell E. Train
Administrator

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503



UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, D.C. 20405



June 25, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, DC 20503

Dear Mr. Lynn:

Your office requested the views of the General Services Administration (GSA) on enrolled bill H.R. 12384, an act "To authorize certain construction at military installations and for other purposes". GSA is particularly concerned with several sections of this Act which will impact severely upon our ability to carry out the responsibilities as defined in the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 471 et. seq.

Sections 501 and 601 of the subject Act purportedly authorize the Secretary of each military department "... to acquire land, and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise. (Emphasis added.) The authority in Section 501 is general in scope and relates to the Defense Family Housing program. Section 601 on the other hand relates to those real estates projects authorized in the preceding sections of the Act. While these authorizations are more or less standard provisions and have appeared in the Military Construction Acts (MCA) for the past several years without causing difficulties, recent trends and other amendments to the law appearing in previous MCA's have caused great concern.

Section 614 of the subject Act amends 10 U.S.C. 2662 and provides that a Secretary of a military department must certify that land excess to military requirements has been considered for use by the Secretary concerned for exchange to acquire real property authorized for acquisition for military purposes, and that he has determined that the property to be declared excess is not suitable for such purposes. (Emphasis added.) Additionally, Section 610 authorizes appropriations for the purpose of land re-use study of military installations that are to be excessed to military requirements and for the Secretary of Defense to make recommendations to the President and the Congress regarding the possible re-use of such installations. The effect of the above referenced sections of the subject Act is to dictate a priority for disposal of excess military held land to any private interests who happen to own land authorized for acquisition without regard to the availability of appropriations and the present priority of disposal as provided in the Federal Property and Administrative Services Act of 1949, as amended and related statutes. These sections would also circumvent existing legislative authority regarding the utilization of excess and disposal of surplus federally owned property by substituting re-use determinations based upon studies made by the Defense Department.

Keep Freedom in Your Future With U.S. Savings Bonds

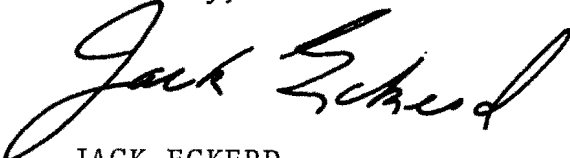


Two other recent amendments to Title 10, Sections 2667 and 2672a, further disrupt the orderly process of sound utilization and disposal and impinge upon my prerogatives. Public Law (PL) 94-107, October 7, 1975, the previous MCA, authorizes the Secretary of Defense to lease land excess to military requirements under certain conditions. The use of land excess to military requirements by the public is an area intended to be within my sole responsibility under the 1949 Act. When the above provisions are read together with the provisions of 601 and 610 of the subject Act, the Secretary of a military department will be; (1) authorized to withhold from excessing any military held land for exchange purposes; (2) authorized to provide for interim use pending disposal which will be; (3) either by the Secretary of Defense or predicated upon his recommendations for re-use. The overall effect of these provisions would be to preclude the exercise of my responsibility under the law with respect to properties in the military inventory.

PL 94-107, the MCA for Fiscal Year 76, amends 10 U.S.C. 2672 and practically authorizes the Secretary of military departments to make exchanges generally for the acquisition of land even though such acquisition of land has not been expressly authorized in the usual budget process. GSA is deeply concerned with the continuing erosion and contradiction of the sound legislative policy of the Federal Property Act by the amendments which appear in greater numbers in the MCA. If this trend is permitted to continue, the real property holdings of military departments will be excluded from the provisions of law of general application which will impact adversely upon the public benefit programs of the Department of Health, Education, and Welfare; Federal Aviation Administration; Department of the Interior; and Executive Order 11724. The structure of the Property Act, the Executive Order and regulations promulgated by the General Services Administration were designed to assure the fullest use of federally owned property and that real property assets of the Federal Government are judiciously and equitably managed or disposed of in a manner which serves the best interest of all Government programs and the general public. If GSA is to be expected to continue to administer the utilization and disposal program of the Federal Government, the real estate holdings of the executive agencies and particularly those of the Department of Defense must be subject without exception to the provisions of the 1949 Act.

I urgently request that the Secretary of Defense be apprised of the seriousness of this matter and that his representatives be directed to work with GSA toward a lessening of the impact of these provisions on GSA's management of the real property utilization and disposal program and a reversal of this obvious intrusion into areas within our jurisdiction.

Sincerely,



JACK ECKERD
Administrator



RECEIVED OMB/LRD
JUNE 25, 1976
3:40 pm

TO THE HOUSE OF REPRESENTATIVES

I am returning herewith without my approval H.R. 12384, a bill "To authorize certain construction at military installations and for other purposes."

I regret that I must take this action because the bill is generally acceptable, providing a comprehensive construction program for fiscal year 1977 keyed to recognized military requirements. One provision, however, is highly objectionable, thus precluding my approval of the measure.

Section 612 of the bill would prohibit certain base closures or the reduction of civilian personnel at certain military installations unless the proposed action is reported to Congress and a period of nine months elapses during which time the military department concerned would be required to identify the full range of environmental impacts of the proposed action, as required by the National Environmental Policy Act (NEPA). Subsequently, the final decision to close or significantly reduce an installation covered under the bill would have to be reported to the Armed Services Committees of the Congress together with a detailed justification for such decision. No action could be taken to implement the decision until the expiration of at least ninety days following submission of the detailed justification to the appropriate



committees. The bill provides a limited Presidential waiver of the requirements of ~~Section~~ 612 for reasons of military emergency or national security.

This provision is ^{also} unacceptable from the standpoint of sound Government policy. It would substitute an arbitrary time limit and set of requirements for the current procedures whereby base closures and reductions are effected, procedures which include compliance with NEPA and adequately take into account all other relevant considerations, and afford extensive opportunity for public and congressional involvement. By imposing unnecessary delays in base closures and reductions, the bill's requirements would generate a budgetary drain on the defense dollar which should be used to strengthen our military capabilities.

Insert →

The Department of Defense has undertaken over 2,700 actions to reduce, realign, and close military installations and activities since 1969. These actions have enabled us to sustain the combat capability of our armed forces while reducing annual Defense costs by more than \$4 billion. For realignment proposals already announced for study, ~~Section~~ 612 could increase fiscal year 1978 budgetary requirements for defense by \$150 million and require retention, at least through fiscal year 1977, of approximately 11,300 military and civilian personnel positions not needed



for essential base activities.

The nation's taxpayers rightly expect the most defense possible for their tax dollars. I am certain Congress does not intend unnecessary or arbitrary increases in the tax burden of the American people. Numerous congressional reports on national defense demonstrate the desire by the Congress to trim unnecessary defense spending and personnel. I cannot approve legislation that would result in waste and inefficiency at the expense of meeting our essential military requirements.

THE WHITE HOUSE

June , 1976



Insert

To be added as 5th paragraph:

Moreover, section 612 raises serious questions by its attempt to limit my powers over military bases. The President must be able, if the need arises, to change or reduce the mission at any military installation if and when that becomes necessary.

RF



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: June 29

Time: 1000am

FOR ACTION: NSC/S
Max Friedersdorf
Ken Lazarus
Robert Hattmann (veto message attached)

cc (for information) Jack Marsh
Jim Cavanaugh
Ed Schmults

admitted

FROM THE STAFF SECRETARY

DUE: Date: June 30

Time: 1100am

SUBJECT:

H.R. 12384 - Military Construction
Authorization Act, FY 77

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

please return to Judy Johnston, Ground Floor West Wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

6/29 - 10:20 am

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: June 29

Time: 1000am

FOR ACTION:

NSC/S
Max Friedersdorf
Ken Lazarus
Robert Hartmann (veto message attached)

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: June 30

Time: 1100am

SUBJECT:

H.R. 12384 - Military Construction
Authorization Act, FY 77

*LAST DAY FOR President
TO ACT 7/2*

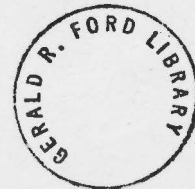
ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to Judy Johnston, Ground Floor West Wing

6/29 - sent copy for researching. mm
6/30 - Researched copy returned. mm



*OK
RJ*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H. Cannon
For the President

6/29 - 10:20 am

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: June 29

Time: 1000am

FOR ACTION: NSC/S
Max Friedersdorf
Ken Lazarus
Robert Hartmann (veto message attached)

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

*to RLO 12:25
6/29 GAMS* *to DSS
6/30 10:49 GAMS MB*

DUE: Date: June 30

Time: 1100am

SUBJECT:

H.R. 12384 - Military Construction
Authorization Act, FY 77

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to Judy Johnston, Ground Floor West Wing

ok/mb



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James M. Cannon
For the President

TO THE HOUSE OF REPRESENTATIVES

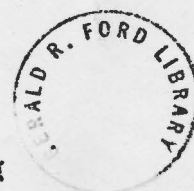
Back up up

I am returning herewith without my approval H.R. 12384, a bill "To authorize certain construction at military installations and for other purposes."

I regret that I must take this action because the bill is generally acceptable, providing a comprehensive construction program for fiscal year 1977 keyed to recognized military requirements. One provision, however, is highly objectionable, thus precluding my approval of the measure.

11

Section 612 of the bill would prohibit certain base closures or the reduction of civilian personnel at certain military installations unless the proposed action is reported to Congress and a period of nine months elapses during which time the military department concerned would be required to identify the full range of environmental impacts of the proposed action, as required by the National Environmental Policy Act (NEPA). Subsequently, the final decision to close or significantly reduce an installation covered under the bill would have to be reported to the Armed Services Committees of the Congress together with a detailed justification for such decision. No action could be taken to implement the decision until the expiration of at least ninety days following submission of the detailed justification to the appropriate



ch
committees. The bill provides a limited Presidential waiver of the requirements of ~~Section 612~~ for reasons of military emergency or national security. *ch*

This provision is unacceptable from the standpoint of sound Government policy. It would substitute an arbitrary time limit and set of requirements for the current procedures whereby base closures and reductions are effected, procedures which include compliance with NEPA and adequately take into account all other relevant considerations, and afford extensive opportunity for public and congressional involvement. By imposing unnecessary delays in base closures and reductions, the bill's requirements would generate a budgetary drain on the defense dollar which should be used to strengthen our military capabilities.

ch
The Department of Defense has undertaken over 2,700 actions to reduce, realign, and close military installations and activities since 1969. These actions have enabled us to sustain the combat capability of our armed forces while reducing annual Defense costs by more than \$4 billion. For realignment proposals already announced for study, ~~Section 612~~ could increase fiscal year 1978 budgetary requirements for defense by \$150 million and require retention, at least through fiscal year 1977, of approximately 11,300 military and civilian personnel positions not needed



THE WHITE HOUSE
WASHINGTON

LWS
Information
LOG NO.: *Copy*

ACTION MEMORANDUM

Date: June 29

Time: 1000am

FOR ACTION: NSC/S
Max Friedersdorf
Ken Lazarus
Robert Hartmann (veto message attached)

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults
Bill Seidman

FROM THE STAFF SECRETARY

DUE: Date: June 30

Time: 1100am

RECEIVED

SUBJECT:

JUN 29 10
N

H.R. 12384 - Military Construction
Authorization Act, FY 77

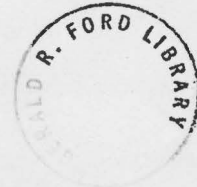
ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

please return to Judy Johnston, Ground Floor West Wing

Disapprove (Bill)
Approve (Veto Statement)



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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James M. Cannon
For the President

THE WHITE HOUSE
WASHINGTON

30-76

Date

6.29

TO:

Staff Secretary

FROM: Max L. Friedersdorf

For Your Information

✓

Please Handle

Please See Me

Comments, Please

Other

Veto cannot be sustained. Recommend veto, however, on principle of intrusion on Executive.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: June 29

Time: 1000am

FOR ACTION: NSC/S
Max Friedersdorf
Ken Lazarus
Robert Hartmann (veto message attached)

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: June 30

Time: 1100am

SUBJECT:

H.R. 12384 - Military Construction
Authorization Act, FY 77

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks



REMARKS:

please return to Judy Johnston, Ground Floor West Wing

Congressman Bob Wilson R-Cal has told us that the chances of sustaining this veto in the House is very poor.

RKW

Senator Tower's L.A. also called saying that Tower also recommends - signing of the Bill. Tower feels it will be next to impossible to sustain the bill in the Senate

RKW

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James M. Cannon
For the President

NATIONAL SECURITY COUNCIL

June 30, 1976

MEMORANDUM FOR: JAMES M. CANNON

FROM: *fr* Jeanne W. Davis *WJD*

SUBJECT: H. R. 12384

The NSC staff believes the President should veto H. R. 12384. The staff feels that the constitutional issue raised in this bill is central to the President's ability to exercise his responsibilities in the making of national security policy. This objection to the bill's limitations on the powers of the Commander-in-Chief should be a central part of any veto message, the economic arguments should follow from this. We, therefore, suggest that the following paragraph be included between paragraphs ~~two and three~~ of the OMB draft veto statement.

three & four

Insert after para 3 of OMB draft:

in new

Section 612 raises serious ~~constitutional~~ *policy* questions ~~through~~ *by*

its attempt to ~~arbitrarily~~ limit my powers ~~as Commander-in-~~ *over military bases*

Chief. I cannot sign into law a bill which ~~substantially inhibits~~ *denies me*

needed latitude in this area. ~~me from performing those duties.~~ The President must be

able, if the need arises, to change or reduce the mission at

any military installation if and when that becomes necessary.

We defer to the White House Counsel regarding a legal interpretation of this constitutional issue. However, we wish to point out what we believe are serious national security implications of this issue.

Handwritten notes on left margin:
H. R. 12384
The bill for
economic
we believe
be 5-14
Paragraph



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO..

Date: June 29

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FOR ACTION: NSC/S
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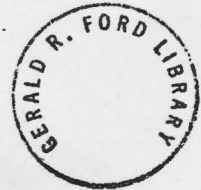
FROM THE STAFF SECRETARY

DUE: Date: June 30

Time: 1100am

SUBJECT:

H.R. 12384 - Military Construction
 Authorization Act, FY 77



ACTION REQUESTED:

- | | |
|---|---|
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| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

please return to Judy Johnston, Ground Floor West Wing

Counsel's Office recommends approval of the measure for the following reasons: (1) As a matter of law, Section 612 would not appear to infringe upon any of the President's constitutional powers; (2) As a matter of policy, Section 612 may lead to some unnecessary expenditures but the case would not appear to be made here for a veto on that basis, especially in view of the overwhelming congressional approval of the measure in its current form. (3) Moreover, although somewhat objectionable for the reasons expressed immediately above, Section 612 could, over the long run, result in some benefits to the extent it may depoliticize and regularize the matter of military base closings.

The authorization is \$50 million under the Administration request. Although this reduction in spending authorization is apparently not a fundamental defect in the legislation, it should be noted in a veto message should the President decide on such a course of action.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

Ken Lazarus 6/30/76

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
 For the President

STATEMENT BY THE PRESIDENT

I regret that I must return H.R. 12384 without my approval. The Attorney General has advised me that enactment of the bill would constitute a violation of the fundamental doctrine of separation of powers between the Legislative and Executive branches.

The bill authorizes a military construction program for FY 1977. Except for one section, the bill is an acceptable piece of legislation, providing a comprehensive construction program keyed to recognized military requirements. Therefore, it is with considerable disappointment that I must tell you that the objectionable provisions of section 612 preclude my approval of this bill.

Section 612 seeks to impose an arbitrary restriction upon my ability to fulfill the President's constitutional responsibilities as Commander-in-Chief. It seeks to do this by imposing upon the Executive a requirement to refrain for one year from closing or reducing military installations, and requires the Executive to submit, during that year, a detailed justification for each affected installation to the Committees on Armed Services.

A similar provision was recommended to President Johnson in the FY 1966 Military Construction Act. President Johnson felt compelled then, as I feel compelled now, to veto the bill because of the unconstitutional provision. In his message to Congress, President Johnson stated:

"By the Constitution, the executive power is vested in the President. The President is the Commander-in-Chief of the armed forces. The President cannot sign into law a bill which substantially inhibits him from performing his duty.... The President must be free, if the need arises, to reduce the mission at any military installation in the country if and when such becomes necessary."

The Department of Defense has undertaken over 2700 actions to reduce, realign, and close military installations and activities since 1969. These actions have reduced annual Defense costs by more than \$4 billion. The resultant savings have thus enabled us to sustain the combat capability of our armed forces at reduced cost to the taxpayer. For realignment proposals which have already been announced for study, section 612 could require an increase in the FY 1978 Defense budget of \$150 million, and the restoration, at least through FY 1977, of approximately 11,300 military and civilian personnel positions not required in essential base activities.

I am certain the Congress does not intend unnecessary or arbitrary increases in the tax burden of the American people. The Nation's taxpayer is seeking the most defense possible for his tax dollar. Numerous Congressional oversight reports on National Defense demonstrate the desire by the Congress to trim unnecessary defense spending and personnel. I can, and will, accept legislation that establishes proper Congressional oversight. However, I cannot approve a legislative provision, such as section 612, which encourages waste and inefficiency and which inhibits the President from performing his constitutional duties.

For these reasons, I am compelled to return this bill without my approval.



To -
J. Conaway
6-29-76
9:45 A.M.



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

JUN 29 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12384 - Military Construction Authorization Act, fiscal year 1977
Sponsors - Rep. Ichord (D) Missouri and Rep. Whitehurst (R) Virginia

Last Day for Action

July 2, 1976 - Friday

Purpose

Authorizes appropriations for fiscal year 1977 for new construction for Defense, the military departments, and the Reserve Components aggregating \$3,323,989,000.



Agency Recommendations

Office of Management and Budget	Disapproval (Veto Message attached)
Department of Defense	Disapproval (Veto Message attached)
National Security Council	Disapproval (Informally)
Department of Justice	Defers to Defense and OMB
Department of Housing and Urban Development	No objection
Environmental Protection Agency	No objection
General Services Administration	Expresses concern with certain provisions

Discussion

Military construction requirements for fiscal year 1977 were developed by identifying the primary missions of our military forces and assigning to these forces the weapons, equipment and facilities

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith without my approval H.R. 12384, a bill "To authorize certain construction at military installations and for other purposes."

I regret that I must take this action because the bill is generally acceptable, providing a comprehensive construction program for fiscal year 1977 keyed to recognized military requirements. One provision, however, is highly objectionable, thus precluding my approval of the measure.

Section 612 of the bill would prohibit certain base closures or the reduction of civilian personnel at certain military installations unless the proposed action is reported to Congress and a period of nine months elapses during which time the military department concerned would be required to identify the full range of environmental impacts of the proposed action, as required by the National Environmental Policy Act (NEPA). Subsequently, the final decision to close or significantly reduce an installation covered under the bill would have to be reported to the Armed Services Committees of the Congress together with a detailed justification for such decision. No action could be taken to implement the decision until the expiration of at least ninety days following submission of the detailed justification to the appropriate committees. The bill provides a limited Presidential waiver of the requirements of section 612 for reasons of military emergency or national security.

This provision is also unacceptable from the standpoint of sound Government policy. It would substitute an arbitrary time limit and set of requirements for the current procedures whereby base closures and reductions are effected, procedures which include compliance with NEPA and adequately take into account all other relevant



considerations, and afford extensive opportunity for public and congressional involvement. By imposing unnecessary delays in base closures and reductions, the bill's requirements would generate a budgetary drain on the defense dollar which should be used to strengthen our military capabilities.

Moreover, section 612 raises serious questions by its attempt to limit my powers over military bases. The President must be able, if the need arises, to change or reduce the mission at any military installation if and when that becomes necessary.

The Department of Defense has undertaken over 2,700 actions to reduce, realign, and close military installations and activities since 1969. These actions have enabled us to sustain the combat capability of our armed forces while reducing annual Defense costs by more than \$4 billion. For realignment proposals already announced for study, section 612 could increase fiscal year 1978 budgetary requirements for defense by \$150 million and require retention, at least through fiscal year 1977, of approximately 11,300 military and civilian personnel positions not needed for essential base activities.

The nation's taxpayers rightly expect the most defense possible for their tax dollars. I am certain Congress does not intend unnecessary or arbitrary increases in the tax burden of the American people. Numerous congressional reports on national defense demonstrate the desire by the Congress to trim unnecessary defense spending and personnel. I cannot approve legislation that would result in waste and inefficiency at the expense of meeting our essential military requirements.



JULY 2, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE HOUSE OF REPRESENTATIVES:

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more



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GERALD R. FORD

THE WHITE HOUSE,
July 2, 1976

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