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APPROVED

SEP 30 1976

*Statement issued
9/30/76*

9/30/76

THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: October 1

September 28, 1976

*Posted
9/30/76*

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON *J.C. Cannon*

SUBJECT:

H.R. 14846 - The Military Construction Authorization Act, fiscal year 1977

*archives
9/30/76*

Attached for your consideration is H.R. 14846, sponsored by Representative Ichord.

The enrolled bill authorizes appropriations for FY 77 for new construction for Defense, the military departments and the Reserve Components, aggregating \$3,323,989,000.

The enrolled bill is identical to H.R. 12384, which you vetoed on July 2, 1976 except for four changes to the base realignment section. You vetoed H.R. 12384 because it contained one highly objectionable provision which would have placed unacceptable delays and reporting requirements on decisions to close or realign certain military installations.

A detailed discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Kilberg), NSC and I recommend approval of the enrolled bill and the proposed signing statement which has been cleared by the White House Editorial Office (Smith).

RECOMMENDATION

That you sign H.R. 14846 at Tab B.

That you approve the *statement* at Tab C.

Approve *J.C.*

Disapprove _____





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

SEP 23 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 14846 - The Military
Construction Authorization Act, fiscal
year 1977
Sponsor - Rep. Ichord (D) Missouri

Last Day for Action

October 1, 1976 - Friday

Purpose

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

Agency Recommendations

Office of Management and Budget	Approval (Signing State- ment attached)
Department of Defense	Approval
Department of Justice	No objection
Department of Housing and Urban Development	No objection
National Security Council	No objection (Informally)
Environmental Protection Agency	No objection (Informally)
General Services Administration	Cites concerns

Discussion

On July 2, 1976, you vetoed H.R. 12384, the Military
Construction Authorization Act, because it contained
one highly objectionable provision (Section 612) which
would have placed unacceptable delays and reporting
requirements on decisions to close or realign certain
military installations. A copy of our memorandum

to you regarding that bill is attached. On July 22, the House overrode your veto by a vote of 270 to 131, but the Senate sustained it by a vote of 51 to 42.

With the exception of Section 612, the base realignment section, H.R. 12384 was generally acceptable. H.R. 14846 is identical to the bill you vetoed except for four changes to the base realignment section.

- The provisions of the vetoed bill applied to major base realignments initiated before October 1, 1981; in the enrolled bill, these provisions apply only to base realignments which require funds authorized by this Act;
- The provisions of the bill which you vetoed required at least a nine-month waiting period after the notification of Congress that an installation is a candidate for realignment and before the submission to the Congressional Armed Services Committees of the final decision (with justification) to close or significantly reduce an installation. During this period, the military department concerned was to identify the full range of environmental impacts required by the National Environmental Policy Act. This nine-month waiting period is not in the enrolled bill. Instead, H.R. 14846 would require that in the period after announcing that an installation is a candidate for realignment and before conveying a final realignment decision to the Congressional Armed Services Committees, the Secretary of Defense or of the military department concerned must comply with the National Environmental Policy Act;
- The vetoed bill specified that no major base realignment action could be taken until ninety days after the final base realignment decision, with justification, is conveyed to the Congressional Armed Services Committees. The enrolled bill would reduce this waiting period from ninety to sixty days; and,
- The vetoed bill specified that justification for base realignment sent to the Congressional Armed Services Committees include a statement of "economic" consequences of the proposed realignment.

The enrolled bill specifies that the justification should include "local economic" consequences.

The net effect of this revised Section 612 would be to establish in law the administrative procedures currently employed by the Department of Defense in effecting base realignments, with two substantial additions:

- A sixty-day delay would be required for all major base realignments unless you certify to Congress that such realignments must be implemented for military emergency or national security reasons. Present law generally requires a minimum thirty-day delay between the announcement of a base closure decision and its implementation; and,
- The justification, which the Department of Defense would have to submit to Congress, would have to contain estimated local economic consequences of the proposed realignment.

Views and Recommendations

The Senate Armed Services Committee's report on this bill states:

"Despite the position taken by the Defense Department, the Committee remains convinced that codification of base realignment procedures is necessary and can only serve to improve the management of the Defense Department in this area ..."

Moreover, in floor debate, Senator Symington, Chairman of the Military Construction Authorization Subcommittee, stated:

"I do not know if the President will veto this bill again or not. We have accommodated his most serious objections with changes to Section 612. We are not trying to usurp his prerogatives. We remain convinced that formalizing current base realignment procedures is necessary and proper."

In its enrolled bill letter, the Department of Defense recommends approval of this bill, but continues to express serious concerns regarding Section 612. The Department contends that current procedures provide sufficient time for Congress and other interested parties to review base realignments and points out that the sixty-day delay required by H.R. 14846 would waste resources better invested in improving our defense readiness posture and military capabilities. The Department is also concerned that unfavorable local economic impacts should not dictate Defense decisions concerning base realignments.

The Department of Justice, in its attached enrolled bill letter, expresses no objection to H.R. 14846. The Department notes that you vetoed H.R. 12384 "because it would have required a year's delay prior to closure of military installations. The present enrolled bill in contrast sets a shorter delay period."

In his enrolled bill letter, the Administrator of the General Services Administration repeats the concerns he raised with respect to the bill you vetoed -- that certain provisions in this bill and other provisions in prior year Military Construction Authorization Acts will seriously erode existing authorities for centralized management and disposal of Federal real property by GSA. We agree that these provisions raise legitimate concerns and we are continuing to look into the matter.

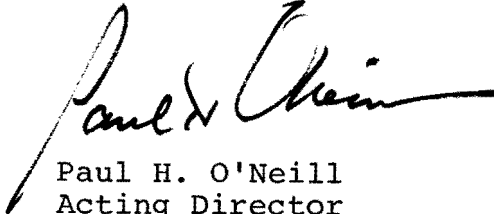
We view H.R. 14846 as a substantial improvement over the bill which you vetoed, and recommend your approval. The sixty-day delay and the requirement for studies of local economic impact are objectionable, but on balance, we regard the bill as an acceptable compromise. Existing procedures normally involve a lapse of 6-9 months from the date a candidate for realignment is announced until the decision is made. The provisions of H.R. 14846 would, in most cases, create an additional delay of two months, compared with the three to six month delay in the bill you vetoed.

The contrast between the views of the Department of Justice on this bill and its views on the bill you vetoed is also significant. Justice found that the issues raised in the bill you vetoed were similar to the issues that occasioned President Johnson's veto of the Military Construction Authorization Act in 1965. Regarding the bill you vetoed, however, Justice said:

" ... Constitutional arguments for opposing such a provision turn on the question of 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"

In contrast, Justice's letter on H.R. 14846 merely notes the shorter delay period and does not raise constitutional questions.

Finally, Defense has recommended that you issue a signing statement which makes certain points concerning implementation of the base realignment provisions. We concur in this recommendation, and accordingly, have prepared the attached signing statement for your consideration.



Paul H. O'Neill
Acting Director

Enclosure

STATEMENT BY THE PRESIDENT

I am today signing H.R. 14846, the Military Construction Authorization Act for fiscal year 1977. H.R. 14846 provides a comprehensive construction program for fiscal year 1977 keyed to recognized military requirements.

Three months ago, I vetoed its predecessor, H.R. 12384, because it contained highly objectionable provisions that would have delayed for at least a year almost any action to close or realign a major military installation. Such unnecessary delay would have wasted defense dollars which are needed to strengthen our military capabilities and would also have substantially limited my powers as Commander-in-Chief over our military installations. This was obviously unacceptable and Congress sustained my veto.

The bill which I am signing today represents a substantial compromise on behalf of the Congress and refreshes my faith in the system of checks and balances established by our Constitution. The requirement of a year's delay which I vetoed has been replaced in H.R. 14846 by a sixty-day waiting period. While I believe that current procedures provide adequate time for the Congress and other interested parties to review base realignment actions, the sixty-day waiting period represents a compromise which I accept.

Since the sixty-day delay is imposed after the completion of required studies and the announcement of the official realignment decision, further delay would waste essential defense resources. Thus, I am directing the Secretary of Defense to implement realignment plans at the conclusion of this sixty-day period.

Finally, my concern for the economic difficulties faced by individuals and communities affected by defense realignments is well-known. On July 12 of this year, I directed the heads

of twenty Federal departments and agencies to strengthen their efforts to deal with all aspects of the problem. It should be noted that concerned departments and agencies have worked effectively with 136 communities in forty States over the past 6 years and have achieved notable results.

I am equally committed, however, to the principle that our economic adjustment efforts in communities affected by realignments must remain separate from national defense decisions to realign military installations. This legislation does not make base realignment decisions contingent upon the economic impact such decisions may have upon communities where affected bases are located. In this regard, the Senate Committee report on this bill states:

"... the decision to close or reduce a military installation must be based on military necessity with due regard for environmental impact. Military bases cannot be maintained to support other than national defense requirements."

In summary, H.R. 14846 provides a satisfactory and much needed military construction program for fiscal year 1977. I am confident that the bill will enable us to meet our essential military requirements in a responsible and cost-effective manner.

THE SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

SEP 23 1976

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

Dear Mr. Lynn:

I refer to your request for the views of the Department of Defense with respect to the enrolled enactment on H.R. 14846, 94th Congress, an Act "To authorize certain construction at military installations, and for other purposes." H.R. 12384, the predecessor of this enrolled enactment, was vetoed by the President on 2 July 1976.

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 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. This Act is virtually identical to H.R. 12384, except for section 612.

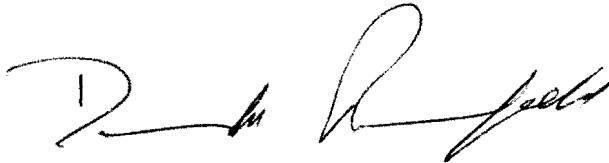
As with the preceding legislation, we believe that this bill provides a satisfactory military construction program for fiscal year 1977. However, the new section 612 raises serious questions about the future realignment or closure of Defense installations. Nevertheless, the Department of Defense recommends the President's approval of H.R. 14846.

Section 612 has a mandatory sixty-day delay from the point of final decision before a base realignment decision can be implemented, the objective being to allow the Congress an opportunity to review the action. Such delays waste Defense resources that could otherwise be used to improve the Defense readiness posture and increase military capabilities. We consider that current procedures provide sufficient time for the Congress and other interested parties to review base alignment actions. Under present procedures the Congress and the public are informed of base realignment candidates and the associated studies are provided for their review and comment. In addition, the provisions of Section 613, P.L. 89-458, requiring a thirty-day notice before a base closure, provide the Congress with the legislation needed to perform its oversight responsibility.

The proposed amendment would also require an evaluation of specific local economic impacts--and impliedly local economic recovery potential-- at the same time the realignment/Military requirement decision is being considered. While we realize the potential serious local economic consequences of a major base realignment, decisions concerning the utilization of Defense resources should not be dependent upon the effects of the realignment on a particular community. As you know, the President has made a clear and unequivocal commitment of available Federal resources and assistance to communities affected by a major realignment. However, it is the position of this Department that economic recovery of the affected communities must not become a pre-condition to the commitment of Defense resources for the protection of the national security; nor should it become a trade-off or inducement for Congressional or community approval of Department of Defense realignments.

Notwithstanding the presence of section 612, the Department of Defense recommends approval of H.R. 14846. However, we also recommend that the President include the attached points concerning implementation of section 612 in his signing message to the Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Rumsfeld". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Suggested Points for a Presidential Signing Statement

1. One of the main reasons that I am signing this bill with its questionable provisions relating to base realignments is the urgent need to implement the more vital military construction contained in the bill, further delay of which would increase the cost of this construction to the taxpayer and result in adverse impact on the construction industry.
2. The sixty-day delay mandated in section 612 is imposed after the completion of the Department of Defense decision-making process. Since further unnecessary delay at this time could only result in the waste of essential Defense resources, I am ordering the Secretary of Defense to immediately implement his realignment plans at the conclusion of this sixty-day period, unless by the expiration of such period a law has been enacted to the contrary.
3. Subsection (a)(B) generally reaffirms the Department of Defense's responsibility to comply with the National Environmental Policy Act. I interpret this provision as imposing no new or special environmental requirements upon the Department of Defense.
4. Compliance with the procedural requirements of section 612 involves matters solely between the Executive branch and the Congress. The section does not establish a justiciable cause of action for any private party.
5. It is my understanding that this legislation does not expand the Department of Defense economic adjustment responsibilities.
6. The economic recovery decisions related to those communities affected by a base realignment and the national defense decision to realign a military installation should be treated as separate issues and not tied to one another. Both issues are deserving of their own special and concentrated attention. However, the economic recovery of affected communities must not become a pre-condition to the commitment of Defense resources for the protection of the national security.

Department of Justice
Washington, D.C. 20530

September 23, 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 a facsimile of the enrolled bill "To authorize certain construction at military installations, and for other purposes." (H. R. 14846).

The enrolled bill authorizes a variety of military construction projects. Several provisions require reports to congressional committees and a thirty-day delay prior to implementation of the construction. Section 612 of the bill requires that Congress also be notified of proposed closures of military bases, together with the justification therefor, and requires a sixty-day delay following such justification before "irrevocable action" is taken.

President Ford vetoed an earlier military construction bill (H. R. 12384) because it would have required a year's delay prior to closure of military installations. The present enrolled bill, in contrast, sets a shorter delay period.

This Department has no objection to H. R. 14846, however, we defer to the Department of Defense as to whether this bill should receive executive approval.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General

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

SEP 23 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 14846 - The Military
Construction Authorization Act, fiscal
year 1977

Sponsor - Rep. Ichord (D) Missouri

Last Day for Action

October 1, 1976 - Friday

Purpose

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

Agency Recommendations

Office of Management and Budget	Approval (Signing State- ment attached)
Department of Defense	Approval
Department of Justice	No objection
Department of Housing and Urban Development	No objection
National Security Council	No objection (Informally)
Environmental Protection Agency	No objection (Informally)
General Services Administration	Cites concerns

Discussion

On July 2, 1976, you vetoed H.R. 12384, the Military
Construction Authorization Act, because it contained
one highly objectionable provision (Section 612) which
would have placed unacceptable delays and reporting
requirements on decisions to close or realign certain
military installations. A copy of our memorandum



To: J. Johnston
9-24-76
5:30 P.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

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.

(Signed) James T. Lynn

Director

Enclosure

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

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 24

Time: 530pm

FOR ACTION: NSC/S *AK*
Max Friedersdorf *MF*
Bobbie Kilberg *BK*
Robert Hartmann *RH*

cc (for information): ~~520pm~~ Marsh
Jim Connor
EJ Schmulktss

FROM THE STAFF SECRETARY

DUE: Date: September 23

Time: 500pm

SUBJECT:

H.R. 14846-The Military Consttuction 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



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

SEP 20 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. 14846, 94th Congress
Enrolled Enactment

This is in reply to your request for the views of this Department on the enrolled enactment of H. R. 14846, an Act "To authorize certain construction at military installations and for other purposes."

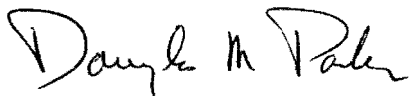
The enrolled enactment would authorize the provision of various facilities for the military departments and the Office of the Secretary of Defense. It also would authorize the construction or acquisition of approximately 1,100 military family housing units, after consultation by the Secretary of Defense 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 Department of Housing and Urban Development has no objection to the approval of this enrolled enactment.

Sincerely,



for Robert R. Elliott

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



September 23, 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. 14846, an act "To authorize certain construction at military installations, and for other purposes."

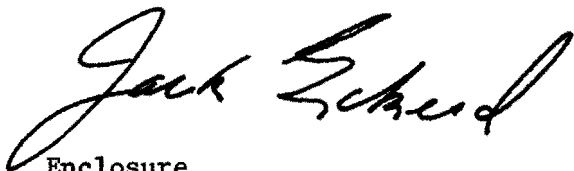
Section 614 of the subject enrolled bill is identical to that of the previous military construction authorization (MILCON) bill (H.R. 12384) which was vetoed by the President. That section would amend Title 10 U.S.C. 2662a(a)(5) so that a Secretary of a military department must certify that land excess 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. In our original comments on this legislation, submitted to your office on June 25, 1976, we stated that such language could enable the Department of Defense (DOD) to justify holding all property which it no longer needs for an indefinite period of time, thus circumventing the Property Act by never reporting property to GSA as excess to DOD's needs. This situation would also, in effect, fragment the disposal authority of the Federal Property and Administrative Services Act of 1949 which places such authority solely in the Administrator of General Services.

Additionally, section 610 of the enrolled bill 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. We addressed this problem in our letter of June 25, 1976, to the Honorable James T. Lynn, Director, Office of Management and Budget (copy attached) in response to a request from that office for GSA's views on the previously enrolled MILCON bill (H.R. 12384) which was subsequently vetoed by the President. As stated in that letter, the effect of the above referenced sections of the subject enrolled bill 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 Action 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.

We are not opposed to re-use studies as proposed in section 610. However, in the Senate Report on H.R. 14846 numbered 94-1233 dated September 13, 1976, the Senate Armed Services Committee recognized that re-use and economic adjustment studies should not be undertaken by DOD. It appears that section 610, which authorizes appropriations for such studies by DOD, was overlooked by Congress when rewriting the bill after the Presidential veto. We also believe re-use and economic adjustment studies should not be undertaken by DOD and to that extent agree with the statement in the Senate Report. We recommend that GSA assume responsibility for accomplishing such studies and that appropriate funding necessary to carry out these additional functions be allocated to GSA, the only Federal agency with enough general authority and oversight to efficiently re-distribute resources and insure a more economical and efficient execution of the program objectives outlined in the President's memorandum of March 4, 1970.

Sincerely,

A handwritten signature in cursive script, reading "Jack Scheid". The signature is written in dark ink and is positioned above the word "Enclosure".

Enclosure

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 24

Time: 530pm

FOR ACTION: NSC/S
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann

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

FROM THE STAFF SECRETARY

DUE: Date: September 27

Time: 500pm

SUBJECT:

H.R. 14846-The 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

approve
Kilberg 9/27/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please

James M. Cannon
For the Director

THE WHITE HOUSE

WASHINGTON

September 27, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *MLF*
SUBJECT: HR 14846 - Military Construction Authorization
Act, FY 77

The Office of Legislative Affairs concurs with the agencies
that the subject bill be signed.

Attachments

9/24/76 - 6:00 pm
w

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 24

Time: 530pm

FOR ACTION: NSC/S
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann

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

FROM THE STAFF SECRETARY

DUE: Date: September 27

Time: 500pm

SUBJECT:

H.R. 14846-The 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

9/24/76 - copy sent for researching. nm
9/27/76 - Researched copy returned. sp

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please

James M. Cannon
For the

9/24/76 - 6:00 pm

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

OK
CHM

Date: September 24

Time: 530pm

FOR ACTION: NSC/S
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann

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

231
to Rep
9-27 9:00
GJM

to DJS
9-27 11:36
GJM

FROM THE STAFF SECRETARY

DUE: Date: September 27

Time: 500pm

SUBJECT:

H.R. 14846-The Military Construction Authorization Act, FY 77

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

X For Your Comments

___ 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

James M. Cannon

OK
CHM

STATEMENT BY THE PRESIDENT

O'Neil
memo

I am today signing H.R. 14846, the Military Construction Authorization Act for fiscal year 1977. H.R. 14846 provides a comprehensive construction program for fiscal year 1977 keyed to recognized military requirements.

H.R. 12384
Veto memo.

Three months ago, I vetoed its predecessor, H.R. 12384, because it contained highly objectionable provisions that would have delayed for at least a year almost any action to close or realign a major military installation. Such unnecessary delay would have wasted defense dollars which are needed to strengthen our military capabilities and would also have substantially limited my powers as Commander-in-Chief over our military installations. This was obviously unacceptable and Congress sustained my veto.

H.R. 12384
Veto memo

O'Neil
memo

The bill which I am signing today represents a substantial compromise on behalf of the Congress and refreshes my faith in the system of checks and balances established by our Constitution. The requirement of a year's delay which I vetoed has been replaced in H.R. 14846 by a sixty-day waiting period. While I believe that current procedures provide adequate time for the Congress and other interested parties to review base realignment actions, the sixty-day waiting period represents a compromise which I accept.

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Since the sixty-day delay is imposed after the completion of required studies and the

announcement of the official realignment decision, further delay would waste essential defense resources. Thus, I am directing the Secretary of Defense to implement realignment plans at the conclusion of this sixty-day period.

Finally, my concern for the economic difficulties faced by individuals and communities affected by defense realignments is well known. On July 12 of this year, I directed the heads of twenty Federal departments and agencies to strengthen their efforts to deal with all aspects of the problem. It should be noted that concerned departments and agencies have worked effectively with 136 communities in forty States over the past 6 years and have achieved notable results.

I am equally committed, however, to the principle that our economic adjustment efforts in communities affected by realignments must remain separate from national defense decisions to realign military installations. This legislation does not make base realignment decisions contingent upon the economic impact such decisions may have upon communities where affected bases are located. In this regard, the Senate Committee report on this bill states:

"... the decision to close or reduce a military installation must be based on military necessity with due regard for environmental impact. Military bases cannot be maintained to support

President's memorandum

*Status of Com. Prog.,
Econ. Adjust Com.,
11/75*

*Report to
accompany
H R 14846*

OK

OK

OK

OK

OK

OK

OK

OK

OK

other than national defense require-
ments." ✓

*O'Neil
Memo*

In summary, H.R. 14846 ✓ provides a satisfactory
and much needed military construction program for
fiscal year 1977. ✓ I am confident that the bill
will enable us to meet our essential military
requirements in a responsible and cost-effective
manner.



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

SEP 23 1976

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. 14846, "To authorize certain construction at military installations and for other purposes."

The Environmental Protection Agency has no objection to this bill. We generally support section 607 of the bill which provides construction funds for solar heating and cooling equipment at military bases. We also support section 610 of the bill which authorizes the Secretary of Defense to comply with the National Environmental Policy Act when a military installation is closed and a reuse is contemplated. Finally, section 612 provides a reasoned approach to the problem of closure or significant reduction at military installations.

We appreciate the opportunity to review H. R. 14846, and we have no objections to the bill.

Sincerely yours,


Russell E. Train

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

MEMORANDUM

NATIONAL SECURITY COUNCIL

5361

September 27, 1976

MEMORANDUM FOR: JAMES M. CANNON

FROM: Jeanne W. Davis *WJ*

SUBJECT: *for* H. R. 14846 - The Military
Construction Authorization
Act, Fiscal Year 1977

The NSC Staff concurs in the Enrolled Bill H. R. 14846 -
The Military Construction Authorization Act, Fiscal Year
1977.

COMPARISON OF THE MILITARY CONSTRUCTION AUTHORIZATION BILLS
H. R. 12384 AND 14846

The bills are identical except for Section 612, the base realignment section which caused the President to veto H. R. 12384.

The following table compares current base closure procedures to those contained in H. R. 12384 and H. R. 14846.

<u>Subject</u>	<u>Current Procedures</u>	<u>H.R. 12384 (Vetoed)</u>	<u>H.R. 14846</u>	<u>Comment</u>
Funding Limitation	None	No action can be taken to implement closures and realignments through Oct. 1, 1981 unless Section 612 is complied with.	No funds in this act may be used for realignment unless Section 612 is complied with.	H.R. 14846 would restrict only the use of military construction funds and would apply for a period of one year. H.R. 12384 would apply to all Defense funds for five years.
Waiting period	Comply with the National Environmental Protection Act (NEPA); no waiting period.	Must comply with NEPA and wait nine months after announcing the possibility of realignment or closure.	Comply with NEPA; no waiting period.	H.R. 14846 avoids a built in waiting period. However, current NEPA procedures average 6-9 months to complete.
Implementation of closure action	After final decision for closure (not realignment) 30 days must expire.	After reporting to the House and Senate, Defense would have to wait an additional 90 days before implementation.	A report must be submitted to the House and Senate with an additional 60 day delay before final implementation.	H.R. 14846 reduces the delay from 90-60 days.

9/29/76

STATEMENT BY THE PRESIDENT

I am today signing H.R. 14846, the Military Construction Authorization Act for fiscal year 1977. H.R. 14846 provides a comprehensive construction program for fiscal year 1977 keyed to recognized military requirements.

Three months ago, I vetoed its predecessor, H.R. 12384, because it contained highly objectionable provisions that would have delayed for at least a year almost any action to close or realign a major military installation. Such unnecessary delay would have wasted defense dollars which are needed to strengthen our military capabilities and would also have substantially limited my powers as Commander-in-Chief over our military installations. This was obviously unacceptable and Congress sustained my veto.

The bill which I am signing today represents a substantial compromise on behalf of the Congress and refreshes my faith in the system of checks and balances established by our Constitution. The requirement of a year's delay which I vetoed has been replaced in H.R. 14846 by a sixty-day waiting period. While I believe that current procedures provide adequate time for the Congress and other interested parties to review base realignment actions, the sixty-day waiting period represents a compromise which I accept.

Since the sixty-day delay is imposed after the completion of required studies and the

announcement of the official realignment decision, further delay would waste essential defense resources. Thus, I am directing the Secretary of Defense to implement realignment plans at the conclusion of this sixty-day period.

Finally, my concern for the economic difficulties faced by individuals and communities affected by defense realignments is well known. On July 12 of this year, I directed the heads of twenty Federal departments and agencies to strengthen their efforts to deal with all aspects of the problem. It should be noted that concerned departments and agencies have worked effectively with 136 communities in forty States over the past 6 years and have achieved notable results.

I am equally committed, however, to the principle that our economic adjustment efforts in communities affected by realignments must remain separate from national defense decisions to realign military installations. This legislation does not make base realignment decisions contingent upon the economic impact such decisions may have upon communities where affected bases are located. In this regard, the Senate Committee report on this bill states:

"... the decision to close or reduce a military installation must be based on military necessity with due regard for environmental impact. Military bases cannot be maintained to support

other than national defense requirements."

In summary, H.R. 14846 provides a satisfactory and much needed military construction program for fiscal year 1977. I am confident that the bill will enable us to meet our essential military requirements in a responsible and cost-effective manner.