

STAT

11.11.410

16 August 1988  
OCA 2771-88

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MEMORANDUM FOR: C/L&PD/OGC  
PMS/OL (Attn: [redacted])

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FROM: [redacted] Legislation Division  
Office of Congressional Affairs

SUBJECT: Defense Consultant Reform Act of 1988,  
H.R. 5016 and Registration of Consultants  
Amendment to Senate DOD Appropriations Bill,  
H.R. 4781

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1. By memorandum dated 8 August 1988, [redacted] pointed out several problems with H.R. 5016, the Defense Consultant Reform Act of 1988. These concerns relate to information required when consultants register with the Department of Defense. Senator Pryor later introduced a similar amendment to the Department of Defense Authorization Bill, which was passed. Attached are copies of H.R. 5016 and the Pryor amendment. I have drafted the following language for the House bill to protect the Agency's interests:

H.R. 5016

(h) NONDISCLOSURE OF CLASSIFIED INFORMATION. -- This section shall not apply to the disclosure of information concerning a contract, including the parties, when either the subject matter of the contract, or the fact of the contractual relationship between the consultant and any other person for whom he performs consulting services, is classified pursuant to Executive Order 12356 and its successor orders or is otherwise protected from unauthorized disclosure by statute.

2. Section (f)(1) of the amendment to H.R. 4781 contains an exception for a contract which involves "sensitive foreign intelligence or foreign counterintelligence activities." Please advise me as to whether this exception is adequate and, if so, whether it should be used in lieu of the draft language provided above. You may contact me on [redacted] with your comments.

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[redacted]

Attachments

STAT SUBJECT: Memo for C/L&PLD/OGC and PMS/OL (Attn. [redacted] re  
Defense Consultant Reform Act of 1988, H.R. 5016 and  
Registration of Consultants Amendment to Senate DoD  
Appropriations Bill, H.R. 4781

STAT OCA/RMH:bsb [redacted] 16 Aug 88

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# House Modifies, Passes Base-Closing Bill

The House July 12 passed a bill designed to ease the process of closing outdated, unneeded military bases, with little congressional say over which facilities would be shut down.

By a 223-186 vote, the lawmakers agreed to a substitute amendment by Dick Armev, R-Texas, the measure's sponsor. (*Vote 223, p. 1996*)

The amendment replaced the entire text of the bill (HR 4481), which had been reported by four committees — Armed Services, Government Operations, Merchant Marine and Rules. Final passage was by voice vote.

Armev characterized his substitute as a "clean base-closing bill" and argued that the bill as reported by the committees had been radically changed from his original version introduced in April. (*Weekly Report p. 1909*)

Les Aspin, D-Wis., chairman of the House Armed Services Committee, who had managed the version reported by the Rules Committee, said after the vote that he was happy to have any version passed.

Proponents of the measure said closing outmoded bases would save the Defense Department between \$2 billion and \$5 billion annually.

Contending that the current system for closing military bases was too political for Congress to handle, Armev recommended in his bill that a base-closing commission decide which facilities to shut down. That part of his proposal won agreement from all the committees. And in all versions of the measure, neither the administration nor Congress could change the commission's list of bases targeted to be shut down.

But in his original measure, Armev did not require congressional review of the commission's recommendations. The committee versions would have given Congress a say: some versions required approval, others allowed disapproval.

Armev compromised in his substitute by allowing Congress to vote to disapprove the list of bases targeted for closure.

And he also agreed to a partial waiver of certain environmental regulations that had been used in the past to block the closure of bases. His original bill had waived completely the requirement for such environmental-impact studies.

These two changes made his substitute language closer to the committee version as amended during the two days of House debate.

It also brought the measure closer to a base-closing provision approved by the Senate on its defense authorization bill (S 2355). (*Weekly Report p. 1361*)

But Armev's substitute also did away with certain provisions of the committee-approved bill. The Armev substitute, for example, would not require that certain overseas bases be considered for closure.

It also would not specify that a socioeconomic study on the loss of jobs and revenue to the local community be conducted for each base on the closure list or require the commission to hold public hearings on the list.

The Armev substitute would authorize new appropriations of \$300 million in fiscal 1989 for base closings. In following years, funding would come from three sources — new appropriations, transfer from Defense Department accounts and proceeds from the sale of military base properties.

The only amendment to the Armev substitute was offered by John Edward Porter, R-Ill., providing that not more than half of the commission's professional staff be individuals who have been employed by the Department of Defense during 1988. Porter's amendment was approved by voice vote.

—By Christine C. Laurence

wait at least two years after they leave the government before taking jobs with firms with which they had negotiated.

Bennett also has introduced HR 5016 requiring all consulting firms hired by the Pentagon to disclose their other clients and barring the employment of any consultant with a conflict of interest.

While decrying the current lack of financial disclosure by Pentagon consultants, Sen. Carl Levin, D-Mich., has taken a different tack. Testifying before a Senate Government Affairs subcommittee July 8, he argued that at a minimum, the Defense Department should require consulting firms, under existing regulations, to file financial-disclosure forms and should establish conflict-of-interest rules for such companies. "There are times when you knowingly will want to hire somebody as a consultant who has other private interests," Levin said.

"'Knowingly' is the key word."

Testifying July 12, Carlucci strongly opposed overly restrictive limits on the post-government employment by defense-procurement experts and on the Pentagon's use of consultants. "The tradeoff for unnecessarily tight career restrictions on acquisition officials may well be [loss of] quality and expertise available to our nation's overall defense effort," he warned.

## Czars and Corps

A second front in the brewing battle over defense-procurement legislation will focus on Hill efforts to separate management of weapons-purchasing from the military services:

• Sen. Alan J. Dixon, D-Ill., has introduced S 2621, a measure that would make the under secretary of defense for acquisition "a true acquisition and procurement czar," in Dixon's words, with direct authority over top pro-

urement managers in the services.

• Rep. Dennis M. Hertel, D-Mich., has introduced HR 4950 to create a Defense Procurement Agency within the Defense Department, manned by an elite corps of civilian procurement specialists to conduct all contracting.

• Boxer plans to introduce a bill to create a Procurement Agency entirely independent of the Defense Department.

On July 12, Carlucci strongly opposed any steps to insulate the design and procurement of weapons from the military personnel who would use them. "Our military people have a vital interest in the quality of those systems and in how efficiently we buy them," Carlucci said. "We must retain user involvement in military acquisition." The under secretary for acquisition had adequate authority under current law to "supervise" the services' purchasing chiefs, he said.

100TH CONGRESS  
2D SESSION

# H. R. 5016

To regulate the use and obligations of consultants in the Department of Defense  
and in defense contracting.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 12, 1988

Mr. BENNETT introduced the following bill; which was referred to the Committee  
on Armed Services

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## A BILL

To regulate the use and obligations of consultants in the  
Department of Defense and in defense contracting.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Defense Consultant  
5 Reform Act of 1988".

6 **SEC. 2. REGULATION AND CONFLICTS-OF-INTEREST OF**  
7 **CONSULTANTS.**

8 At the end of chapter 141 of title 10, United States  
9 Code, insert the following new section:

1 "SEC. 2410. REPORTING, REGISTRATION AND REGULATION OF  
2 CONSULTANTS, AND PENALTIES.

3 "(a) CONTRACTOR REPORTING ON USE OF CONSULT-  
4 ANTS AND PENALTIES FOR MISINFORMATION.—Any firm  
5 receiving a contract with the Department of Defense, or any  
6 of its agencies or personnel, shall certify at the time of con-  
7 tract award as to which consultants, if any, the firm uses or  
8 expects to use. Failure to furnish such information accurately  
9 may be the basis for cancellation of any contract entered into  
10 with said firm.

11 "(b) PROHIBITION ON AWARD OF CONTRACTS.—The  
12 Department of Defense or any of its agencies or personnel  
13 thereof shall not enter into any contract for consulting serv-  
14 ices with, or use services provided on an advisory basis  
15 (whether compensated or uncompensated) by, a consultant  
16 under circumstances that might make the award of such con-  
17 tract or the use of such consultant improper by reason of a  
18 conflict of interest, or by reason of other considerations  
19 deemed appropriate by the Secretary of Defense.

20 "(c) REGISTRATION REQUIREMENT.—Within sixty  
21 days of enactment of this Act, and by March 1 of each year  
22 following the year in which this Act is enacted, any covered  
23 consultant shall register with the Secretary of Defense in the  
24 manner described under subsection (d).

25 "(d) INFORMATION REPORTED UNDER REGISTRA-  
26 TION.—In registering with the Secretary of Defense, a cov-

1 ered consultant shall provide under oath his name and busi-  
2 ness address, the name and address of the firm or Govern-  
3 ment office by whom he is employed, a list of all of those for  
4 whom he performs consulting services, and a list of those by  
5 whom he or his employer is paid or is to be paid.

6 “(e) DEFINITIONS.—In this section, the term ‘covered  
7 consultant’ shall mean any person who provides consulting  
8 services to a firm that is a contractor with the Department of  
9 Defense, or with any agency or personnel thereof (if such  
10 consulting services relate to such firm’s defense business), or  
11 who receives a contract to provide consulting services to the  
12 Department of Defense or to any agency or personnel there-  
13 of, or who serves on any advisory board of the Department of  
14 Defense or any agency thereof, including service that is un-  
15 compensated.

16 “(f) PENALTIES.—If any covered consultant fails to  
17 register as required under subsection (a), or to provide accu-  
18 rate information in such registration, the Secretary of De-  
19 fense shall suspend any contract of the Department of De-  
20 fense with such consultant for a period of not less than three  
21 years, and such consultant shall be fined not more than  
22 \$100,000.

23 “(g) DEPARTMENT OF DEFENSE REPORT ON USE OF  
24 CONSULTANTS.—The Secretary of Defense shall provide to  
25 Congress by April 1 of each year a list of all persons provid-

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1 ing consulting services to the Department of Defense, includ-  
2 ing services provided for any advisory committee relating to  
3 the Department of Defense on a compensated or uncompen-  
4 sated basis.”.

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