

Calendar No. 164

107TH CONGRESS
1ST SESSION**S. 1439**

To provide and revise conditions and requirements for the ballistic missile defense programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2001

Mr. LEVIN introduced the following bill; which was read the first time

SEPTEMBER 20, 2001

Read the second time and placed on the calendar

A BILL

To provide and revise conditions and requirements for the ballistic missile defense programs, and for other purposes.

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 “Ballistic Missile De-
5 fense Act of 2001”.

1 **SEC. 2. PRESIDENTIAL CERTIFICATION AND EXPEDITED**
2 **CONGRESSIONAL APPROVAL PROCESS FOR**
3 **CERTAIN USES OF BALLISTIC MISSILE DE-**
4 **FENSE FUNDS.**

5 (a) LIMITATION.—No funds authorized to be appro-
6 priated for ballistic missile defense under the National De-
7 fense Authorization Act for Fiscal Year 2002 may be obli-
8 gated or expended for any activity that would be incon-
9 sistent with the requirements of the Anti-Ballistic Missile
10 Treaty of 1972 (as in effect on August 1, 2001), as deter-
11 mined by the President with the advice of the Secretary
12 of State and the Secretary of Defense, unless—

13 (1) the ABM Treaty has been modified or su-
14 perseded by a new strategic framework or other
15 agreement in a manner that, as determined by the
16 President with the advice of those officials, permits
17 such activity; or

18 (2)(A) the President submits a certification to
19 Congress in accordance with the requirements of
20 subsection (b); and

21 (B) there is enacted a joint resolution specifi-
22 cally authorizing the obligation or expenditure in ac-
23 cordance with the expedited procedures specified in
24 subsection (c).

1 (b) PRESIDENTIAL CERTIFICATION.—(1) A certifi-
2 cation satisfies the requirements of this subsection if the
3 certification states that—

4 (A) the President has endeavored in good faith
5 and for a reasonable period to negotiate a new stra-
6 tegic framework or other appropriate modification to
7 the ABM Treaty, but has been unable to do so;

8 (B) further efforts to negotiate such framework
9 or other modification are not likely to be successful
10 within a reasonable period; and

11 (C) it is in the national security interest of the
12 United States to conduct activities that would be in-
13 consistent with the requirements of the ABM Trea-
14 ty.

15 (2) The President shall submit to Congress, with a
16 certification under subsection (a)(2)(A), a written state-
17 ment that—

18 (A) sets forth the basis for the President's de-
19 termination to certify the matters in the certification
20 under subparagraphs (B) and (C) of paragraph (1);
21 and

22 (B) specifies each activity for which the Presi-
23 dent has determined that it is in the national inter-
24 est to conduct with funds authorized to be appro-
25 priated by the National Defense Authorization Act

1 for Fiscal Year 2002, notwithstanding the inconsis-
2 tency of the activity with the requirements of the
3 ABM Treaty.

4 (c) EXPEDITED APPROVAL PROCEDURES.—(1) A
5 joint resolution referred to in subparagraph (B) of sub-
6 section (a)(2) means only a joint resolution introduced
7 after the date on which a certification of the President
8 pursuant to subparagraph (A) of such subsection is re-
9 ceived by Congress—

10 (A) the title of which is as follows: “A joint res-
11 olution approving the expenditure of funds for activi-
12 ties proposed by the President on _____.”, the
13 blank space being filled in with the date on which
14 the President submitted the certification;

15 (B) which does not have a preamble; and

16 (C) the text of which only approves the activi-
17 ties specified by the President in the written state-
18 ment submitted with the certification pursuant to
19 subsection (b)(2)(B) by providing after the enacting
20 clause only the following: “That Congress approves
21 the expenditure of funds for activities proposed by
22 the President on _____, notwithstanding the in-
23 consistency of such activities with the requirements
24 of the Anti-Ballistic Missile Treaty of 1972.”, the

1 blank space being filled in with the date on which
2 the President submitted the certification.

3 (2) A joint resolution described in paragraph (1) shall
4 be considered in a House of Congress in accordance with
5 the procedures applicable to joint resolutions under para-
6 graphs (3) through (8) of section 8066(c) of the Depart-
7 ment of Defense Appropriations Act, 1985 (as contained
8 in section 101(h) of Public Law 98–473; 98 Stat. 1936),
9 except that—

10 (A) the committee to which the joint resolution
11 is referred under this paragraph in the Senate shall
12 be the Committee on Armed Services of the Senate,
13 and the committee to which the joint resolution is
14 referred under this paragraph in the House of Rep-
15 resentatives shall be the Committee on Armed Serv-
16 ices of the House of Representatives; and

17 (B) the limitation on total time for debate
18 under section 8066(c)(5)(B) of the Department of
19 Defense Appropriations Act, 1985, as applied to a
20 joint resolution under this paragraph, shall be 20
21 hours instead of 10 hours.

22 (d) RELATIONSHIP TO ABM TREATY.—Nothing in
23 this section shall be construed—

24 (1) to limit the authority of the United States
25 to withdraw from the ABM Treaty at any time upon

1 a decision for the United States that extraordinary
2 events related to the subject matter of the Treaty
3 have jeopardized its supreme interests in accordance
4 with Article XV of the Treaty; or

5 (2) to authorize any obligation or expenditure
6 of funds for activities that would be inconsistent
7 with the requirements of the ABM Treaty, if the
8 United States has not withdrawn from the Treaty in
9 accordance with Article XV of the Treaty.

10 (e) ABM TREATY DEFINED.—In this section, the
11 terms “Anti-Ballistic Missile Treaty of 1972” and “ABM
12 Treaty” mean the Treaty Between the United States of
13 America and the Union of Soviet Socialist Republics on
14 the Limitation of Anti-Ballistic Missile Systems, signed at
15 Moscow on May 26, 1972, and includes the Protocol to
16 that treaty, signed at Moscow on July 3, 1974.

17 **SEC. 3. PROGRAM ELEMENTS AND PROCUREMENT BUDGET**

18 **DISPLAYS FOR BALLISTIC MISSILE DEFENSE**

19 **PROGRAMS.**

20 (a) PROGRAM ELEMENTS.—Section 223 of title 10,
21 United States Code, is amended—

22 (1) by redesignating subsections (b) and (c) as
23 subsections (d) and (e); and

24 (2) by striking subsection (a) and inserting the
25 following:

1 “(a) PROGRAM ELEMENTS SPECIFIED.—In the budg-
2 et justification materials submitted to Congress in support
3 of the Department of Defense budget for any fiscal year
4 (as submitted with the budget of the President under sec-
5 tion 1105(a) of title 31), the amount requested for activi-
6 ties of the Ballistic Missile Defense Organization shall be
7 set forth in accordance with the following program ele-
8 ments:

9 “(1) Ballistic Missile Defense system.

10 “(2) Terminal Defense segment.

11 “(3) Mid-Course Defense segment.

12 “(4) Boost Defense segment.

13 “(5) Sensors.

14 “(6) Technology.

15 “(b) ADDITIONAL INFORMATION REQUIRED.—(1)
16 Within each program element set forth in paragraphs (2)
17 through (5) of subsection (a), the budget justification ma-
18 terials submitted to Congress shall separately specify the
19 amounts requested for specific categories of systems, as
20 follows:

21 “(A) Land-based systems.

22 “(B) Sea-based systems.

23 “(C) Air-based systems.

24 “(D) Space-based systems.

1 “(2) Within the amounts specified pursuant to para-
2 graph (1), the budget justification materials shall sepa-
3 rately set forth amounts requested for established pro-
4 grams, as follows:

5 “(A) Within the amount specified for land-
6 based systems in the Terminal Defense segment, the
7 materials shall set forth the amount requested for
8 the Theater High-Altitude Area Defense system and
9 the amount requested for the Arrow system.

10 “(B) Within the amount specified for sea-based
11 systems in the Mid-Course Defense segment, the
12 materials shall set forth the amount requested for
13 the Navy Theater Wide system.

14 “(C) Within the amount specified for air-based
15 systems in the Boost Defense segment, the materials
16 shall set forth the amount requested for the Air-
17 borne Laser system.

18 “(D) Within the amount specified for space-
19 based systems in the Boost Defense segment, the
20 materials shall set forth the amount requested for
21 the Space-Based Laser system.

22 “(E) Within the amount specified for space-
23 based systems in the Sensors segment, the materials
24 shall set forth the amount requested for the Space-
25 Based Infrared System Low Component and the

1 amount requested for the Russian American Obser-
2 vation Satellites (RAMOS) system.

3 “(c) LIMITED AUTHORITY TO VARY INDIVIDUAL
4 AMOUNTS.—(1) Subject to paragraphs (2) and (3), in any
5 case in which the Secretary of Defense determines that
6 it is necessary to do so in the national interest, the Sec-
7 retary may obligate amounts authorized to be appro-
8 priated for an established program or class of systems de-
9 scribed in subsection (b) in excess of the amount specifi-
10 cally authorized for such program or class of systems.

11 “(2) An obligation of funds for a program or class
12 of systems described in subsection (b) in excess of the spe-
13 cific amount authorized for such program or class of sys-
14 tems may be made under the authority of paragraph (1)
15 only after—

16 “(A) the Secretary submits to Congress a noti-
17 fication of the intent to do so together with a com-
18 plete discussion of the justification for doing so; and

19 “(B) 15 days have elapsed following the date of
20 the notification.

21 “(3) The Secretary may not, under the authority of
22 paragraph (1)—

23 “(A) obligate an amount for any program or
24 class of systems described in subsection (b) that is
25 in excess of the lesser of—

1 “(i) the amount that is 115 percent of the
2 amount specifically authorized for such pro-
3 gram or class of systems; or

4 “(ii) the amount that is \$100,000,000
5 more than the amount specifically authorized
6 for such program or class of systems;

7 “(B) reduce the amount that is available for ob-
8 ligation or expenditure for any such program or
9 class of systems below the higher of—

10 “(i) the amount that is 85 percent of the
11 amount specifically authorized for such pro-
12 gram or class of systems; or

13 “(ii) the amount that is \$100,000,000 less
14 than the amount specifically authorized for such
15 program or class of systems; or

16 “(C) obligate amounts for any program element
17 described in subsection (a) in excess of the amount
18 specifically authorized for such program element.”.

19 (b) REPEAL OF PROCUREMENT BUDGET DISPLAY
20 REQUIREMENT.—(1) Section 224 of such title is repealed.

21 (2) The table of sections at the beginning of chapter
22 9 of such title is amended by striking the item relating
23 to section 224.

1 **SEC. 4. BALLISTIC MISSILE DEFENSE RESEARCH AND DE-**
2 **VELOPMENT PROGRAM BASELINE DOCU-**
3 **MENT.**

4 (a) **REQUIREMENT FOR BASELINE DOCUMENT.**—Not
5 later than February 1, 2002, the Secretary of Defense
6 shall submit to the congressional defense committees a
7 baseline document for the ballistic missile defense research
8 and development program through the period covered by
9 the future-years defense program that is submitted to
10 Congress that year under section 221 of title 10, United
11 States Code.

12 (b) **CONTENTS OF BASELINE DOCUMENT.**—The
13 baseline document required by subsection (a) shall, at a
14 minimum, include the following matters:

15 (1) A statement of the objectives of the ballistic
16 missile defense research and development program,
17 including, at a minimum, a specification of—

18 (A) the country or countries the program
19 is intended to protect;

20 (B) the type or types of missile threat the
21 program is intended to protect against, includ-
22 ing the number of ballistic missiles and types of
23 countermeasures to be addressed; and

24 (C) the level of success and degree of con-
25 fidence that are the intended standards for de-

1 termining whether and when the objectives are
2 achieved.

3 (2) For each established program and each
4 class of systems identified under section 223(b) of
5 title 10, United States Code—

6 (A) each major technology to be pursued;
7 and

8 (B) an explanation of how each such tech-
9 nology relates to the objectives of the ballistic
10 missile defense research and development pro-
11 gram.

12 (3) For each technology identified pursuant to
13 paragraph (2)(A)—

14 (A) a technical baseline that identifies re-
15 search and development objectives and program
16 requirements for the technology;

17 (B) a schedule baseline for the period cov-
18 ered by the baseline document, including the
19 specific key program milestones and when the
20 program is expected to achieve each milestone;

21 (C) a cost baseline that includes estimates
22 of the total life-cycle costs and specifies for
23 each year of such period the costs for research
24 and development of the technology; and

1 (D) a testing baseline for such period that
2 specifies—

- 3 (i) key test events for the program;
4 (ii) when the tests are to be con-
5 ducted;
6 (iii) the purposes of the tests; and
7 (iv) whether the tests are expected to
8 conflict with existing United States obliga-
9 tions under international law.

10 (c) CONSULTATION REQUIREMENTS.—In developing
11 the baseline document required by subsection (a), the Sec-
12 retary shall ensure that—

13 (1) the technical baseline required by subsection
14 (b)(3)(A) is developed in consultation with the Joint
15 Requirements Oversight Council and the Director of
16 Program Analysis and Evaluation of the Depart-
17 ment of Defense;

18 (2) the schedule baseline required by subsection
19 (b)(3)(B) is developed in consultation with the
20 Under Secretary of Defense for Acquisition, Tech-
21 nology, and Logistics and the Director of Program
22 Analysis and Evaluation of the Department of De-
23 fense;

24 (3) the cost baseline required by subsection
25 (b)(3)(C) is developed in consultation with the Cost

1 Analysis and Improvement Group of the Department
2 of Defense; and

3 (4) the testing baseline required by subsection
4 (b)(3)(D) is developed in consultation with the Di-
5 rector of Operational Testing and Evaluation and
6 the Treaty Compliance Review Group of the Depart-
7 ment of Defense.

8 (d) ANNUAL UPDATES TO BASELINE DOCUMENT.—
9 Beginning in 2003 and ending with 2010, the Secretary
10 shall—

11 (1) update the baseline document each year to
12 cover the period covered by the future-years defense
13 program that is submitted to Congress that year
14 under section 221 of title 10, United States Code;
15 and

16 (2) submit the updated baseline document to
17 the congressional defense committees not later than
18 February 1 of that year.

19 **SEC. 5. ANNUAL PROGRAM PLAN FOR BALLISTIC MISSILE**
20 **DEFENSE RESEARCH AND DEVELOPMENT**
21 **PROGRAM.**

22 (a) REQUIREMENT FOR ANNUAL PROGRAM PLAN.—
23 With the submission of the program baseline document,
24 and with each annual update of the program baseline doc-
25 ument, required under section 223, the Secretary shall

1 submit to the congressional defense committees each year
2 a program of activities planned to be carried out during
3 the fiscal year in which submitted and the two fiscal years
4 following such fiscal year.

5 (b) CONTENT OF ANNUAL PROGRAM PLAN.—Each
6 program plan required by subsection (a) shall include, at
7 a minimum, the following matters:

8 (1) A funding profile that includes, for each
9 major technology identified in the program baseline
10 document, an estimate of—

11 (A) the total expenditures to be made in
12 each fiscal year covered by the program plan;

13 (B) the expenditures to be made for each
14 procurement or military construction activity to
15 be conducted in such period;

16 (C) the expenditures to be made for each
17 ballistic missile defense flight test to be con-
18 ducted in such period;

19 (D) the expenditures to be made for each
20 other test activity to be conducted in such pe-
21 riod; and

22 (E) the expenditures to be made for each
23 research and development activity to be con-
24 ducted in such period.

1 (2) A program schedule that identifies, for each
2 major technology identified in the program baseline
3 document—

4 (A) the planned schedule for each procure-
5 ment or military construction activity to be con-
6 ducted during the period covered by the pro-
7 gram plan;

8 (B) the planned date of each ballistic mis-
9 sile defense flight test to be conducted in such
10 period;

11 (C) the planned schedule for each other
12 test activity to be conducted in such period; and

13 (D) the planned schedule for each research
14 and development activity to be conducted in
15 such period.

16 (3) A legal compliance plan that includes a pre-
17 liminary assessment by the Treaty Compliance Re-
18 view Group of the Department of Defense regarding
19 whether each expenditure included in the funding
20 profile and each activity included in the schedule is
21 likely to be consistent with existing United States
22 obligations under international law.

23 (c) INTERIM PROGRAM PLAN.— Not later than 60
24 days after the date of the enactment of this Act, the Sec-
25 retary shall submit to the congressional defense commit-

1 tees an interim program plan covering planned program
2 activities for fiscal years 2002 and 2003. The interim pro-
3 gram plan shall contain the information required by sub-
4 section (b) for such fiscal years, and shall govern program
5 activities until the Secretary submits the program baseline
6 document and program plan that are required to be sub-
7 mitted on February 1, 2002.

8 (d) MODIFICATIONS.—The Secretary may modify a
9 program plan submitted to the congressional defense com-
10 mittees pursuant to subsection (a) at any time. A modi-
11 fication to a program plan shall become effective 30 days
12 after the date on which the congressional defense commit-
13 tees are notified of the modification. Each notification
14 shall include a description of how the plan is to be modi-
15 fied and an explanation of the reasons for the modifica-
16 tion.

17 (e) REQUIREMENT THAT OBLIGATIONS AND EX-
18 PENDITURES BE CONSISTENT WITH PROGRAM PLAN.—

19 (1) Not more than 25 percent of the funds authorized to
20 be appropriated for ballistic missile defense research, de-
21 velopment, test, and evaluation under section 201(4) of
22 the National Defense Authorization Act for Fiscal Year
23 2002 may be obligated or expended before the date on
24 which the interim program plan required by subsection (c)
25 is submitted to the congressional defense committees.

1 (2) Not more than 50 percent of the funds authorized
2 to be appropriated for ballistic missile defense research,
3 development, test, and evaluation under section 201(4) of
4 the National Defense Authorization Act for Fiscal Year
5 2002 may be obligated or expended before the date on
6 which the program baseline document required by section
7 4 and the first program plan required by subsection (a)
8 are submitted to the congressional defense committees.

9 (3) After the date on which the interim program plan
10 required by subsection (c) is submitted to the congress-
11 sional defense committees, none of the funds authorized
12 to be appropriated for ballistic missile defense research,
13 development, test, and evaluation may be obligated or ex-
14 pended for an activity unless—

15 (A) the cost of the activity is specifically identi-
16 fied in the funding profile included in an interim
17 program plan, program plan, or modification to a
18 program plan in accordance with subsection (b)(1);

19 (B) the date or schedule for the activity is spe-
20 cifically identified in an interim program plan, pro-
21 gram plan, or modification to a program plan in ac-
22 cordance with subsection (b)(2);

23 (C) a preliminary assessment of the legal status
24 of the activity is specifically included in an interim
25 program plan, program plan, or modification to a

1 program plan in accordance with subsection (b)(3);
2 and

3 (D) the interim program plan, program plan, or
4 modification to a program plan has been submitted
5 to the congressional defense committees and be-
6 comes effective in accordance with the requirements
7 of subsection (a), (c), or (d), respectively.

8 **SEC. 6. CONGRESSIONAL DEFENSE COMMITTEES DEFINED.**

9 For purposes of this Act, the term “congressional de-
10 fense committees” means—

11 (1) the Committee on Armed Services and the
12 Committee on Appropriations of the Senate; and

13 (2) the Committee on Armed Services and the
14 Committee on Appropriations of the House of Rep-
15 resentatives.

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