To provide deployment criteria for the National Missile Defense system, and to provide for operationally realistic testing of the National Defense system against countermeasures.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

Mr. Markey introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on Rules, and International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide deployment criteria for the National Missile Defense system, and to provide for operationally realistic testing of the National Defense system against countermeasures.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.
This Act may be cited as the “National Missile Defense Deployment Criteria Act of 2001”.

SEC. 2. FINDINGS.
The Congress makes the following findings:
(1) The 1972 Anti-Ballistic Missile (ABM) Treaty prohibits the development or deployment of space-based, air-based, sea-based, or mobile land-based antiballistic missile defenses and limits the deployment of fixed land-based defenses to no more than 100 interceptor missiles deployed at a single site.

(2) Without the restrictions imposed by the ABM Treaty, it is unlikely that the United States and Russia would have been able to have concluded arms control agreements that have limited and significantly reduced the numbers and capabilities of strategic ballistic missiles deployed by both countries.

(3) Developing and deploying a National Missile Defense system would require the United States to either withdraw from the ABM Treaty or reach agreements to modify the treaty to allow for such defenses.

(4) Before any decision is made by the United States to further proceed with the development, procurement, and deployment of a National Missile Defense system, it is essential that the President and the Congress agree that such actions are necessary to the national security of the United States.
(5) In assessing the necessity and desirability of such defenses, the President and Congress must consider the nature of the threat, the feasibility of the technology to be used to respond to the threat, costs and impact upon other key defense programs, and the overall impact on national security, including arms control.

SEC. 3. LIMITATION ON DEPLOYMENT PENDING CERTIFICATION AND APPROVAL BY LAW.

The National Missile Defense Act of 1999 (Public Law 106–38) is amended—

(1) in section 2—

(A) by striking “as soon as is technologically possible”; and

(B) by striking the period at the end and inserting “, but only if—

“(1) the system is technologically feasible;

“(2) the cost of the system in relation to other priorities of the Department of Defense will not lead to an overall reduction in national security by reducing resources available for other defense priorities, including force preparedness and structure, programs to protect against weapons of mass destruction delivered by means other than ballistic missiles,
maintenance of existing weapons systems, and introduction of new or modernized weapons systems;

“(3) the system will not diminish overall United States national security, including arms control agreements that have reduced or eliminated numbers and types of nuclear weapons;

“(4) the system will not threaten to disrupt relations with nuclear allies of the United States, European allies of the United States, Russia (particularly with respect to entry into force of the second and third Strategic Arms Reduction Treaties and the 1972 Anti-Ballistic Missile Treaty), the People’s Republic of China (particularly with respect to increased nuclear arms production), and other nations; and

“(5) the threat of a long-range ballistic missile attack from a nation of concern is clearly demonstrated.”; and

(2) by adding at the end the following new section:

“SEC. 4. LIMITATION ON DEPLOYMENT PENDING CERTIFICATION AND APPROVAL BY LAW.

“(a) LIMITATION.—The President may not direct the Department of Defense to deploy a National Missile Defense system unless and until—
“(1) the President submits to Congress a report concerning deployment of the National Missile Defense system that includes a certification described in subsection (b); and

“(2) a joint resolution concurring in the President’s certification in such report is enacted as provided for in this section.

“(b) PRESIDENTIAL CERTIFICATION.—A certification described in this subsection is a certification by the President that each of the deployment conditions specified in paragraphs (1) through (5) of section 2 has been met.

“(c) EXPEDITED PROCEDURES FOR JOINT RESOLUTION.—(1) For purposes of subsection (a)(2) and this subsection, the term ‘joint resolution’ means only a joint resolution introduced by a qualifying Member specified in paragraph (2) after the date on which the report of the President under subsection (a)(1) is received by the Congress—

“(A) the matter after the resolving clause of which is as follows: ‘That the Congress hereby concurs in the certification of the President relating to deployment of a National Missile Defense system as submitted to Congress pursuant to section 4(b) of the National Missile Defense Act of 1999.’;

“(B) which does not have a preamble; and
“(C) the title of which is as follows: ‘Joint resolution relating to deployment of a National Missile Defense system.’.

“(2) For purposes of this subsection, a qualifying Member described in this paragraph is—

“(A) in the case of the House of Representatives, the majority leader or minority leader of the House of Representatives or a Member of the House of Representatives designated by the majority leader or minority leader; and

“(B) in the case of the Senate, the majority leader or minority leader of the Senate or a Member of the Senate designated by the majority leader or minority leader.

“(3) The provisions of paragraphs (3) through (8) of section 4(e) of the National Missile Defense Deployment Criteria Act of 2001 shall apply to a joint resolution under this subsection in the same manner as to a joint resolution under such section.”.

SEC. 4. LIMITATION ON OBLIGATION OF FUNDS FOR PROCUREMENT FOR NATIONAL MISSILE DEFENSE SYSTEM.

(a) LIMITATION.—No funds appropriated to the Department of Defense for procurement may be obligated for the National Missile Defense system unless—
(1) the President submits to Congress a report concerning testing of the National Missile Defense system against countermeasures that includes a certification described in subsection (b); and

(2) a joint resolution concurring in the President’s certification in such report is enacted as provided for in this section.

(b) PRESIDENTIAL CERTIFICATION.—A certification described in this subsection is a certification by the President that—

(1) an adequate testing program for the National Missile Defense system is in place to meet the threats identified in the report required under section 3(c);

(2) adequate ground and flight testing of the system has been conducted against the countermeasures that are likely to be used against the system and that other countries have or likely could acquire.

(c) EXPEDITED PROCEDURES FOR JOINT RESOLUTION.—(1) For purposes of subsection (a)(2) and this subsection, the term “joint resolution” means only a joint resolution introduced by a qualifying Member specified in paragraph (2) after the date on which the report of the
President under subsection (a)(1) is received by the Congress—

(A) the matter after the resolving clause of which is as follows: “That the Congress hereby con-
curs in the determination of the President relating to the establishment of a program for operationally realistic testing against countermeasures for a Na-
tional Missile Defense system as submitted to Con-
gress pursuant to section 4 of the National Missile Defense Deployment Criteria Act of 2001.”;

(B) which does not have a preamble; and

(C) the title of which is as follows: “Joint reso-
lution relating to establishment of a program for operationally realistic testing against counter-
measures for a National Missile Defense system.”.

(2) For purposes of this subsection, a qualifying Member described in this paragraph is—

(A) in the case of the House of Representatives, the majority leader or minority leader of the House of Representatives or a Member of the House of Representatives designated by the majority leader or minority leader; and

(B) in the case of the Senate, the majority leader or minority leader of the Senate or a Member of
the Senate designated by the majority leader or minority leader.

(3) If a committee to which is referred a joint resolution described in paragraph (1) has not reported such joint resolution by the end of 60 legislative days of continuous session of Congress beginning on the date of its introduction, such committee shall be discharged from further consideration of such joint resolution and such joint resolution shall be placed on the appropriate calendar of the House involved.

(4)(A) A joint resolution described in paragraph (1) shall be considered in the House of Representatives in accordance with this paragraph. When the committee to which such a joint resolution was referred has reported, or has been discharged from further consideration of, the joint resolution, it shall be in order, on or after the third calendar day thereafter (excluding Saturdays, Sundays, or legal holidays, except when the House of Representatives is in session on such a day) for any Member of the House to move to proceed to the consideration of the joint resolution, but only on the day after the calendar day on which the Member announces to the House the Member’s intention to do so. Such motion is privileged and is not debatable. The motion is not subject to amendment or to a motion to postpone. A motion to reconsider the vote by which
the motion is agreed to shall not be in order. If a motion
to proceed to the consideration of the joint resolution is
agreed to, the House shall immediately proceed to consid-
eration of the joint resolution, which shall remain the un-
finished business of the House until disposed of.

(B) Debate on the joint resolution, and on all debat-
able motions and appeals in connection therewith, shall be
limited to not more than two hours, which shall be divided
equally between those favoring and those opposing the
joint resolution. An amendment to the joint resolution is
not in order. A motion further to limit debate is in order
and is not debatable. A motion to table, a motion to post-
pone, or a motion to recommit the joint resolution is not
in order. A motion to reconsider the vote by which the
joint resolution is agreed to or disagreed to is not in order.

(C) Appeals from the decisions of the Chair with re-
spect to the procedure relating to a joint resolution de-
scribed in paragraph (1) shall be decided without debate.

(5) A joint resolution described in paragraph (1) shall
be considered in the Senate in accordance with the provi-
sions of section 601(b)(4) of the International Security

(6) If, before the passage by one House of a joint
resolution of that House described in paragraph (1), that
House receives from the other House a joint resolution
described in paragraph (1), then the following procedures shall apply:

(A) The joint resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a joint resolution described in paragraph (1) of the House receiving the joint resolution—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii) the vote on final passage shall be on the joint resolution of the other House.

(C) Upon disposition of the joint resolution received from the other House, it shall no longer be in order to consider the joint resolution that originated in the receiving House.

(7) In the computation of the period of 60 days referred to in paragraph (3)—

(A) a legislative day, with respect to a committee of either House to which a joint resolution was referred, is a calendar day on which that House is in session; and
(B) continuity of session of Congress is broken only by an adjournment sine die at the end of the second session of a Congress.

(8) The provisions of this subsection are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and, as such, shall be considered as part of the rules of either House and shall supersede other rules only to the extent they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules so far as they relate to the procedures of that House at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 5. OPERATIONALLY REALISTIC TESTING AGAINST COUNTERMEASURES FOR NATIONAL MISSILE DEFENSE.

(a) Testing Requirements.—The Secretary of Defense shall direct the Ballistic Missile Defense Organization—

(1) to include in the ground and flight testing of the National Missile Defense system that is con-
ducted before the system becomes operational any countermeasures (including decoys) that—

(A) are likely, or at least realistically possible, to be used against the system; and

(B) are chosen for testing on the basis of what countermeasure capabilities a long-range missile could have and is likely to have, taking into consideration the technology that the country deploying the missile would have or could likely acquire; and

(2) to determine the extent to which the exoatmospheric kill vehicle and the National Missile Defense system can reliably discriminate between warheads and such countermeasures.

(b) FUNDING REQUIREMENTS.—The Secretary, in consultation with the Director of the Ballistic Missile Defense Organization, shall—

(1) determine the amount of additional funding, if any, for the National Missile Defense system (in addition to that previously programmed) that may be necessary for the Secretary to fulfill the requirements set forth in subsection (a) in fiscal years after fiscal year 2002; and

(2) submit that determination to the congressional defense committees at the same time that the
President submits the budget for fiscal year 2003 to Congress under section 1105(a) of title 31, United States Code.

(c) REPORT BY SECRETARY OF DEFENSE.—(1) The Secretary of Defense shall submit to Congress, not later than April 15 each year, an annual report on the Department’s efforts to establish a program for operationally realistic testing of the National Missile Defense system against countermeasures. The report shall be submitted in both classified and unclassified form.

(2) Each such report shall include the Secretary’s assessment of the following:

(A) The countermeasures available to foreign countries with ballistic missiles that the National Missile Defense system could encounter in a launch of such missiles against the United States.

(B) The ability of the National Missile Defense system to defeat such countermeasures, including the ability of the system to discriminate between countermeasures and reentry vehicles.

(C) The plans to demonstrate the capability of the National Missile Defense system to defeat such countermeasures and the adequacy of the ground and flight testing to demonstrate that capability.
(3) No annual report is required under this sub-
section after the National Missile Defense system becomes
operational.

(d) **INDEPENDENT REVIEW PANEL.**—(1) The Sec-
retary of Defense shall seek to arrange for the National
Academy of Science to establish an independent panel to
be composed of scientific and technical experts.

(2) The Panel shall assess the following:

(A) The countermeasures available for use
against the United States National Missile Defense
system.

(B) The operational effectiveness of that system
against those countermeasures.

(C) The adequacy of the National Missile De-
fense flight testing program to demonstrate the ca-
pability of the system to defeat the countermeasures.

(3) After conducting the assessment required under
paragraph (2), the Panel shall evaluate—

(A) whether sufficient ground and flight testing
of the system will have been conducted before the
system becomes operational to support the making
of a determination, with a justifiably high level of
confidence, regarding the operational effectiveness of
the system;
(B) whether adequate ground and flight testing
of the system will have been conducted, before the
system becomes operational, against the counter-
measures that are likely, or at least realistically pos-
sible, to be used against the system and that other
countries have or likely could acquire; and

(C) whether the exoatmospheric kill vehicle and
the rest of the National Missile Defense system can
reliably discriminate between warheads and such
countermeasures.

(4) Not later than April 15 each year, the Panel shall
submit to the Secretary of Defense and to Congress a re-
port on its assessments and evaluations. The report shall
include any recommendations for improving the flight test-
ing program for the National Missile Defense system or
the operational capability of the system to defeat counter-
measures that the Panel determines appropriate.

(e) COUNTERMEASURE DEFINED.—In this section,
the term “countermeasure”—

(1) means any deliberate action taken by a
country with long-range ballistic missiles to defeat or
otherwise counter a United States National Missile
Defense system; and

(2) includes, among other actions—
(A) use of a submunition released by a ballistic missile soon after the boost phase of the missile;

(B) use of anti-simulation, together with such decoys as Mylar balloons, to disguise the signature of the warhead; and

(C) use of a shroud cooled with liquid nitrogen to reduce the infrared signature of the warhead.