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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ballistic Missile De-
fense Act of 2001”.

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SEC. 2. PRESIDENTIAL CERTIFICATION AND EXPEDITED CONGRESSIONAL APPROVAL PROCESS FOR CERTAIN USES OF BALLISTIC MISSILE DEFENSE FUNDS.

(a) LIMITATION.—No funds authorized to be appropriated for ballistic missile defense under the National Defense Authorization Act for Fiscal Year 2002 may be obligated or expended for any activity that would be inconsistent with the requirements of the Anti-Ballistic Missile Treaty of 1972 (as in effect on August 1, 2001), as determined by the President with the advice of the Secretary of State and the Secretary of Defense, unless—

(1) the ABM Treaty has been modified or superseded by a new strategic framework or other agreement in a manner that, as determined by the President with the advice of those officials, permits such activity; or

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

(B) there is enacted a joint resolution specifically authorizing the obligation or expenditure in accordance with the expedited procedures specified in subsection (c).
(b) Presidential Certification.—(1) A certification satisfies the requirements of this subsection if the certification states that—

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

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

(C) it is in the national security interest of the United States to conduct activities that would be inconsistent with the requirements of the ABM Treaty.

(2) The President shall submit to Congress, with a certification under subsection (a)(2)(A), a written statement that—

(A) sets forth the basis for the President’s determination to certify the matters in the certification under subparagraphs (B) and (C) of paragraph (1); and

(B) specifies each activity for which the President has determined that it is in the national interest to conduct with funds authorized to be appropriated by the National Defense Authorization Act
for Fiscal Year 2002, notwithstanding the inconsist-
ency of the activity with the requirements of the
ABM Treaty.

c) Expedited Approval Procedures.—(1) A
joint resolution referred to in subparagraph (B) of sub-
section (a)(2) means only a joint resolution introduced
after the date on which a certification of the President
pursuant to subparagraph (A) of such subsection is re-
ceived by Congress—

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

(B) which does not have a preamble; and

(C) the text of which only approves the activi-
ties specified by the President in the written state-
ment submitted with the certification pursuant to
subsection (b)(2)(B) by providing after the enacting
clause only the following: “That Congress approves
the expenditure of funds for activities proposed by
the President on ________, notwithstanding the in-
consistency of such activities with the requirements
of the Anti-Ballistic Missile Treaty of 1972.”, the
blank space being filled in with the date on which
the President submitted the certification.

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

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

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

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

(1) to limit the authority of the United States
to withdraw from the ABM Treaty at any time upon
a decision for the United States that extraordinary
events related to the subject matter of the Treaty
have jeopardized its supreme interests in accordance
with Article XV of the Treaty; or

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

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

SEC. 3. PROGRAM ELEMENTS AND PROCUREMENT BUDGET

DISPLAYS FOR BALLISTIC MISSILE DEFENSE

PROGRAMS.

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

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

(2) by striking subsection (a) and inserting the
following:
“(a) Program Elements Specified.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the amount requested for activities of the Ballistic Missile Defense Organization shall be set forth in accordance with the following program elements:

“(1) Ballistic Missile Defense system.

“(2) Terminal Defense segment.

“(3) Mid-Course Defense segment.

“(4) Boost Defense segment.

“(5) Sensors.

“(6) Technology.

“(b) Additional Information Required.—(1) Within each program element set forth in paragraphs (2) through (5) of subsection (a), the budget justification materials submitted to Congress shall separately specify the amounts requested for specific categories of systems, as follows:

“(A) Land-based systems.

“(B) Sea-based systems.

“(C) Air-based systems.

“(D) Space-based systems.
“(2) Within the amounts specified pursuant to paragraph (1), the budget justification materials shall separately set forth amounts requested for established programs, as follows:

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

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

“(C) Within the amount specified for air-based systems in the Boost Defense segment, the materials shall set forth the amount requested for the Airborne Laser system.

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

“(E) Within the amount specified for space-based systems in the Sensors segment, the materials shall set forth the amount requested for the Space-Based Infrared System Low Component and the
amount requested for the Russian American Observation Satellites (RAMOS) system.

“(c) LIMITED AUTHORITY TO VARY INDIVIDUAL AMOUNTS.—(1) Subject to paragraphs (2) and (3), in any case in which the Secretary of Defense determines that it is necessary to do so in the national interest, the Secretary may obligate amounts authorized to be appropriated for an established program or class of systems described in subsection (b) in excess of the amount specifically authorized for such program or class of systems.

“(2) An obligation of funds for a program or class of systems described in subsection (b) in excess of the specific amount authorized for such program or class of systems may be made under the authority of paragraph (1) only after—

“(A) the Secretary submits to Congress a notification of the intent to do so together with a complete discussion of the justification for doing so; and

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

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

“(A) obligate an amount for any program or class of systems described in subsection (b) that is in excess of the lesser of—
“(i) the amount that is 115 percent of the amount specifically authorized for such program or class of systems; or

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

“(B) reduce the amount that is available for obligation or expenditure for any such program or class of systems below the higher of—

“(i) the amount that is 85 percent of the amount specifically authorized for such program or class of systems; or

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

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

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

(2) The table of sections at the beginning of chapter 9 of such title is amended by striking the item relating to section 224.
SEC. 4. BALLISTIC MISSILE DEFENSE RESEARCH AND DEVELOPMENT PROGRAM BASELINE DOCUMENT.

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

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

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

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

(B) the type or types of missile threat the program is intended to protect against, including the number of ballistic missiles and types of countermeasures to be addressed; and

(C) the level of success and degree of confidence that are the intended standards for de-
terminating whether and when the objectives are achieved.

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

(A) each major technology to be pursued; and

(B) an explanation of how each such technology relates to the objectives of the ballistic missile defense research and development program.

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

(A) a technical baseline that identifies research and development objectives and program requirements for the technology;

(B) a schedule baseline for the period covered by the baseline document, including the specific key program milestones and when the program is expected to achieve each milestone;

(C) a cost baseline that includes estimates of the total life-cycle costs and specifies for each year of such period the costs for research and development of the technology; and
(D) a testing baseline for such period that
specifies—

(i) key test events for the program;

(ii) when the tests are to be con-
ducted;

(iii) the purposes of the tests; and

(iv) whether the tests are expected to
conflict with existing United States obliga-
tions under international law.

(c) Consultation Requirements.—In developing
the baseline document required by subsection (a), the Sec-
retary shall ensure that—

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

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

(3) the cost baseline required by subsection
(b)(3)(C) is developed in consultation with the Cost
Analysis and Improvement Group of the Department of Defense; and

(4) the testing baseline required by subsection (b)(3)(D) is developed in consultation with the Director of Operational Testing and Evaluation and the Treaty Compliance Review Group of the Department of Defense.

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

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

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

SEC. 5. ANNUAL PROGRAM PLAN FOR BALLISTIC MISSILE DEFENSE RESEARCH AND DEVELOPMENT PROGRAM.

(a) REQUIREMENT FOR ANNUAL PROGRAM PLAN.— With the submission of the program baseline document, and with each annual update of the program baseline document, required under section 223, the Secretary shall
submit to the congressional defense committees each year a program of activities planned to be carried out during the fiscal year in which submitted and the two fiscal years following such fiscal year.

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

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

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

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

(C) the expenditures to be made for each ballistic missile defense flight test to be conducted in such period;

(D) the expenditures to be made for each other test activity to be conducted in such period; and

(E) the expenditures to be made for each research and development activity to be conducted in such period.
(2) A program schedule that identifies, for each major technology identified in the program baseline document—

(A) the planned schedule for each procurement or military construction activity to be conducted during the period covered by the program plan;

(B) the planned date of each ballistic missile defense flight test to be conducted in such period;

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

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

(3) A legal compliance plan that includes a preliminary assessment by the Treaty Compliance Review Group of the Department of Defense regarding whether each expenditure included in the funding profile and each activity included in the schedule is likely to be consistent with existing United States obligations under international law.

(e) INTERIM PROGRAM PLAN.— Not later than 60 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense commit-
tees an interim program plan covering planned program activities for fiscal years 2002 and 2003. The interim program plan shall contain the information required by subsection (b) for such fiscal years, and shall govern program activities until the Secretary submits the program baseline document and program plan that are required to be submitted on February 1, 2002.

(d) MODIFICATIONS.—The Secretary may modify a program plan submitted to the congressional defense committees pursuant to subsection (a) at any time. A modification to a program plan shall become effective 30 days after the date on which the congressional defense committees are notified of the modification. Each notification shall include a description of how the plan is to be modified and an explanation of the reasons for the modification.

(e) REQUIREMENT THAT OBLIGATIONS AND EXPENDITURES BE CONSISTENT WITH PROGRAM PLAN.—
(1) Not more than 25 percent of the funds authorized to be appropriated for ballistic missile defense research, development, test, and evaluation under section 201(4) of the National Defense Authorization Act for Fiscal Year 2002 may be obligated or expended before the date on which the interim program plan required by subsection (c) is submitted to the congressional defense committees.
(2) Not more than 50 percent of the funds authorized to be appropriated for ballistic missile defense research, development, test, and evaluation under section 201(4) of the National Defense Authorization Act for Fiscal Year 2002 may be obligated or expended before the date on which the program baseline document required by section 4 and the first program plan required by subsection (a) are submitted to the congressional defense committees.

(3) After the date on which the interim program plan required by subsection (c) is submitted to the congressional defense committees, none of the funds authorized to be appropriated for ballistic missile defense research, development, test, and evaluation may be obligated or expended for an activity unless—

(A) the cost of the activity is specifically identified in the funding profile included in an interim program plan, program plan, or modification to a program plan in accordance with subsection (b)(1);

(B) the date or schedule for the activity is specifically identified in an interim program plan, program plan, or modification to a program plan in accordance with subsection (b)(2);

(C) a preliminary assessment of the legal status of the activity is specifically included in an interim program plan, program plan, or modification to a
program plan in accordance with subsection (b)(3);

and

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

SEC. 6. CONGRESSIONAL DEFENSE COMMITTEES DEFINED.

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

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

(2) the Committee on Armed Services and the
Committee on Appropriations of the House of Rep-
resentatives.
A BILL

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