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

November 10, 2003
(Senate)

STATEMENT OF ADMINISTRATION POLICY

S. 1585, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, FY 2004

(Sponsors: Stevens (R), Alaska; Byrd (D), West Virginia)

While the Administration supports Senate passage of the FY 2004 Commerce, Justice, and State Appropriations Bill, the Administration has numerous concerns with the bill and does not support it in its current form.

The Administration will work with the Congress to ensure that the FY 2004 appropriations bills ultimately fit within the top line funding level agreed to by both the Administration and the Congress. The President supports a discretionary spending total of $786.0 billion, along with advance appropriations for FY 2005 -- in accordance with his Budget, the FY 2004 Budget Resolution, and the agreement between the Administration and the Congress. Constraining the overall growth of government spending is critical to the Nation's ability to provide needed resources for national priorities while encouraging continued economic growth. The Administration is committed to working with the Congress to ensure that its priorities are met within that overall total.

Federal Communications Commission (FCC)

The Committee bill contains a provision blocking implementation of a Federal Communications Commission (FCC) rule establishing a new national television ownership cap. The Administration believes that the new FCC media ownership rules more accurately reflect the changing media landscape and the current state of network station ownership, while guarding against undue concentration in the marketplace. If this provision or a provision like it with respect to any one of the other FCC rules is contained in the final legislation presented to the President, his senior advisors would recommend that he veto the bill.

Protection of Children

The Administration strongly opposes Section 412 of the bill, which prohibits the Secretary of State from carrying out the President's directive of August 29, 2003 that protects unborn children in the granting of U.S. foreign aid for voluntary population planning. If the bill presented to the President contains such a prohibition, the President's senior advisors will recommend that he veto the bill.

Competitive Sourcing

The Administration strongly opposes section 108 of the bill that would restrict the ability of the Office of Justice Programs or its components from seeking improvements in management and delivery of various services through competitive sourcing for the benefit of the American public. The Administration seeks to improve the performance of government services based on the commonsense principle of competition – a proven way of protecting taxpayers' dollars while providing better service and performance enhancements. Now is the wrong time to short-circuit implementation of this principle, especially since numerous agencies are starting to make real progress. Prohibiting funding for public-private competitions is akin to mandating a monopoly regardless of the impact on services to citizens and the added costs to taxpayers. If the final version of the bill were to contain such a provision, the President's senior advisors would recommend that he veto the bill.

Additional Administration views regarding the Committee's version of the bill are:

Department of Commerce (DOC)

The Administration objects to the bill's inclusion of more than $450 million above the Administration's request for the National Oceanic and Atmospheric Administration (NOAA), largely for unrequested projects, while it cuts priority operational activities, such as the Climate Change Research Initiative and World Weather Building construction. In addition, the Administration encourages the Senate to fully fund NOAA's all-hazards warning network, a necessary element of a comprehensive nationwide homeland security warning system currently under development. The bill also provides objectionable funding for new awards under the Advanced Technology Program, and technology, broadcasting, and economic development grants. The priority should be full funding of the fundamental research as requested in the core programs and construction at the National Institute of Standards and Technology. The Administration also opposes the extension of the Emergency Steel Loan Guarantee Program. The Administration is also concerned with several fisheries management provisions in the bill, which address issues not contained in the Administration's proposals.

The Administration appreciates the full funding for the Bureau of Economic Analysis. However, the Administration urges the Senate to restore the $111 million reduction in requested funding for the Census Bureau. This reduction would severely impact the Economic Census, the 2010 Census reengineering effort, and other important activities to improve the availability and quality of our Nation's key economic, social, and demographic statistics.

The Administration also encourages the Senate to fund adequately E-government initiatives, information technology security and critical infrastructure protection, and renovation planning for the Herbert Hoover building. In addition, the Senate is urged to restore funding for the Office of the Under Secretary/Office of Technology Policy. The Administration is also disappointed that the bill does not provide sufficient funds for the Patent and Trademark Office to adequately improve patent and trademark quality, reduce pendency, and make operations fully electronic. The Administration urges the Senate to support the associated fee reform legislation, which will provide the additional fee revenue needed to support these operational improvements.

Trade Negotiations

The Administration opposes the provisos on trade negotiation in the Office of the United States Trade Representative (USTR) and Department of Commerce/International Trade Administration sections of the bill, which could produce counterproductive results including promotion of unwarranted subsidies abroad.

The Administration strongly objects to section 214, which would prohibit USTR and other agencies from using FY 2004 funds to negotiate or enter into any trade agreement that includes immigration provisions or that amends current immigration law. The Administration is committed to appropriate consultation on such matters, but does not support prohibiting discussion on this entire topic prior to the initiation of a negotiation. In any event the two provisos in section 214 would impermissibly interfere with the President's constitutional authorities to conduct the nation's foreign affairs, participate in international negotiations, and supervise the unitary executive branch.

Department of Justice (DOJ)

The Senate is urged to provide full funding of Presidential priority initiatives, including: the DNA initiative, the Volunteers in Police Service program (VIPS) and Neighborhood Watch (both part of the President's USA Freedom Corps initiative), Project Safe Neighborhoods, corporate fraud investigations, Drug Courts, Residential Substance Abuse Treatment Program, and Southwest Border prosecutions.

The Administration objects to the diversion of the FY 2003 supplemental appropriation to fund FY 2004 Federal Bureau of Investigation (FBI) base programs. This action would have a significant negative impact on the FBI's counterterrorism operations, including the new Terrorist Threat Integration Center. In addition, the Administration urges the Senate to remove the requirements on the FBI personnel assignments to the Counterterrorism Division, which restrict the FBI's flexibility to address critical threats.

The Administration is disappointed in the $50 million rescission from the Counterterrorism Fund, which would eliminate key flexibility in the Administration's terrorism response capabilities.

The Administration objects to the Committee's plan to remove the Foreign Terrorist Tracking Task Force (FTTTF) from the FBI. The FTTTF coordinates and draws upon all components of the FBI including the National Joint Terrorism Task Force, and greatly increases the Nation's capability to track foreign terrorists and their supporters. Transferring the FTTTF would fracture program management, disintegrate established relationships, and hinder efforts to share information with Federal, State, and local officials.

The Committee bill reduces the requested funding for drug control initiatives by $300 million. In particular, the Interagency Crime and Drug Enforcement account is funded $127 million below the President's request and does not include the requested funding for the Internal Revenue Service or components of the Department of Homeland Security. Failure to include funding for these agencies would halt sensitive, comprehensive drug investigations.

The Administration is concerned that the bill has significantly underfunded the Federal Prison System and the Marshals Service. Given the growing Federal inmate population, a substantial reduction in funding would have a dramatic adverse impact on the staff and inmate safety at existing facilities. The Administration strongly urges the Senate to restore funding for prisons at the level and in the manner included in the President's budget request. In addition, the Committee provides additional responsibility to the Marshals Service for fugitive investigations and cases without providing associated resources.

The Administration appreciates the Committee's support for interoperable communications grants. However, unified responsibility for first responder programs is essential to accomplishing the Nation's preparedness goals. Therefore, the Administration urges the Senate to provide funding for such first responder programs within the Department of Homeland Security.

The bill does not include the Administration's budget restructuring proposals. This restructuring would provide the Administration and the Congress a performance-based budget linked to mission and outcomes, consistent with the President's Management Agenda and the Government Performance Results Act. Failure to implement the proposal in the FBI, for example, will preclude the use of a budget structure that mirrors the FBI's strategic plan and could hinder their flexibility in executing their counterterrorism and national security strategy.

Department of State

The Administration strongly objects to the more than $600 million reduction to the President’s request for the Department of State including reductions to: Diplomatic and Consular Programs; Educational and Cultural Exchange Activities; Embassy Security, Construction, and Maintenance; Contributions to International Organizations; and other programs. The funding levels proposed would seriously harm the Department of State's ability to conduct diplomacy, carry out effective student and professional exchange programs, and address vital security and overseas facility needs. The Department would be unable to maintain its current level of operations including overseas guard programs, and would not have the resources to fund the third year of the Diplomatic Readiness Initiative. Funding levels fail to fully meet our current international obligations to the United Nations (UN), affiliated organizations, and peacekeeping, and do not provide the initial assessment associated with rejoining the UN Educational, Scientific, and Cultural Organization.

The bill also contains numerous objectionable provisions, including section 407, which permanently prohibits the use of the Department of State funds to construct secure facilities that protect employees of the U.S. Agency for International Development; section 410 which mandates the transfer of funds to consular activities from other diplomatic programs in the event of a drop off in fee collections; section 621 which mandates the transfer of international oceans and environmental programs, as well as other action taken in the bill that transfers the international fisheries commissions to the Department of Commerce; section 406 which arbitrarily caps the personnel assigned to Paris and Berlin; section 411 that would deny visas based on administrative processing delays; and section 403 that restricts reprogramming requests. In addition, the Administration notes several other unacceptable and untenable provisions in the bill and Senate report, including elimination of funding for the Department’s Legal Adviser and Office of Legislative Affairs, direction that expands the scope of reprogramming procedures, as well as numerous unrequested earmarks that would further magnify the impact of the bill's funding reductions.

The Administration supports retention of the contracting authority in section 2502 of Public Law 108-11 for the Centers for Disease Control and Prevention in its international health activities, such as fighting HIV/AIDS. Section 409 of the bill would repeal that authority. The

Administration recommends striking Section 409, or revising it to provide only that section 2502(b) is amended to make section 2502(a) subject to section 207 of the Foreign Service Act (22 U.S.C. 3927), preserving ambassadorial authority.

Federal Communications Commission (FCC)

In addition to the concerns expressed above, the Administration strongly opposes any amendment that restricts the FCC's ability to assign, via competitive bidding, spectrum licenses that could be used by terrestrial (i.e., non-satellite) services. In particular, the Administration objects to Section 626 of the Senate-reported bill.

This provision would preempt a FCC-sponsored spectrum auction that is scheduled to take place in January 2004, provide an undeserved windfall projected by the Congressional Budget Office to be as much as $100 million to one company, which would be the sole beneficiary of this provision, and deprive other companies that intend to compete in the January auction of access to the spectrum in question. Auction-based spectrum policy has been a mainstay of wireless services for a decade. Interfering with the efficient allocation of Federal spectrum licenses by directing the award of licenses to a particular company would undermine the Federal auction system and establish a damaging precedent.

The Administration strongly urges the Committee to restore the FCC's authority to fund its spectrum auctions program from auction receipts. The Committee's proposal reduces the FCC's available funding by 25 percent. Absorbing the costs of the auctions program into the proposed appropriated funding level could require the FCC to furlough large numbers of staff for several months in FY 2004 and would essentially bring the auctions program to a halt for a year or more through cancellation of contracts critical to auctions operations, resulting in the loss of hundreds of millions of dollars in auction receipts, and the delay of auctions of spectrum valued in the billions of dollars.

International Broadcasting Operations

The bill would reduce requested funding for the Broadcasting Board of Governors International Broadcasting Operations account by $7 million. The report requires the continuation of Voice of America and Radio Free Europe/Radio Liberty European language services that were not included in the FY 2004 request in order to fund high-priority broadcasting in the Middle East. This, combined with other report language earmarks, would require reductions in high-priority broadcasts.

Small Business Administration (SBA)

The Administration is concerned that the reductions in SBA's administrative funding levels will negatively impact management of the agency's programs and impede progress on much needed financial management reforms. The Committee bill provides $49 million less than the President's request while containing $22 million in unrequested earmarks.

Equal Employment Opportunity Commission (EEOC)

The Administration appreciates that the Committee provided the President's overall request of $335 million for the EEOC.

<u>The Judiciary</u>

The Administration supports the Committee's provision (Sec. 305) that increases Judicial pay. This provision would assist efforts to attract and retain high quality judges.

<u>Infringements on Executive Authority</u>

The Administration objects to section 607 in the bill, which purports to restrict the use of funds for U.N. peacekeeping missions that involve U.S. Armed Forces under the command or control of a foreign national, and places unconstitutional conditions on the President's authority to command the armed forces. In addition, section 405, which would require the President to take a particular position on the status of Jerusalem, is an unconstitutional condition on the exercise of the President's power to control the recognition of foreign governments and to formulate the position of the United States.

The Administration opposes section 208 of the bill, which purports to prohibit the Secretary of Commerce from making certain funding requests. The Executive Branch would construe the provision in a manner consistent with the President’s constitutional authority to obtain opinions from the heads of departments and to make such recommendations for the consideration of Congress as the President judges necessary and expedient.

The Administration objects to a number of provisions in the bill that would purport to require Committee approval before Executive Branch execution. The Administration will interpret these provisions to require only notification of Congress, since any other interpretation would contradict the Supreme Court ruling in *INS v. Chadha*.