



APPENDIX R

PROPOSED LEGISLATIVE CHANGES TO THE 2005 DEFENSE BASE CLOSURE AND REALIGNMENT ACT OF 1990

(PUBLIC LAW 101-510), AS CODIFIED AT 10 U.S.C. 2687
NOTE, AS AMENDED BY FY 2002 DEPARTMENT OF
DEFENSE AUTHORIZATION ACT (PUBLIC LAW 107-107)

EXPLANATORY STATEMENT OF PROPOSED LEGISLATIVE CHANGES

The 2005 Defense Closure and Realignment (BRAC) Commission is including proposed legislative changes to the current statute, the 2005 Defense Base Closure and Realignment Act of 1990, as amended (the “BRAC statute”), in order to consolidate and conform related sections of the statute and eliminate redundancies and inconsistencies in the text. The discussion below provides a strategic overview of certain structural changes that have been proposed, and also suggests minor revisions in order to streamline and rationalize the BRAC process in the future.

STRATEGIC OVERVIEW

TIMING AND SEQUENCING

The foundation for the BRAC process is grounded in an overall strategic vision for a national defense strategy. The strategic backdrop for the 2005 BRAC round was based on the National Military Strategy (2004) that both supports the National Security Strategy (September 2002), and implements the National Defense Strategy (2004). Other key elements included the November 15, 2002 memorandum issued by the Secretary of Defense (the “Secretary”), “Transformation Through Base Realignment and Closure,” and the Department of Defense’s Integrated Global Posture and Basing Strategy (IGPBS) as set forth in the Department’s Report to Congress entitled, “Strengthening U.S. Global Defense Posture,” (September 2004).¹

Under Section 2912 of the current BRAC statute, the Secretary is required to certify the need for an additional BRAC round, as necessary, along with his submission of the Department of Defense (the “Department”) proposed budget for Fiscal Year 2005. This budget submission includes the force structure plan that is based on a 20-year threat assessment, and an infrastructure inventory.

¹ Indeed, Secretary Rumsfeld underscored the importance of linking the BRAC process to the global military basing posture by testifying before the Senate Armed Services Committee that:

The global posture decision process and Base Realignment and Closure (BRAC) are tightly linked, indeed, they depend on each other. They are both key components of the President’s transformation agenda, and they both will be critical instruments for stability in the lives of service members and their families. Together, they will help to provide more predictability in assignments and rotations. Testimony of Secretary Rumsfeld Before the Senate Armed Services Committee, Global Posture (September 23, 2004).

In the view of the Commission, the threat assessment could be strengthened by requiring the Director of National Intelligence, in consultation with the Department and other defense intelligence agencies, to produce a separate, stand-alone threat assessment *before* the Department issues the force structure plan. If Congress adopts this approach as set forth in Section 2903(a)(1)(A)(i) of the proposed legislation, the threat assessment submitted by the Director of National Intelligence will permit Congress to obtain an independent view of the strategic threats confronting the nation which takes into account overarching military, economic and diplomatic factors. This will help broaden the analytic foundation for the Department's force structure plan, thereby strengthening the entire BRAC process.

In sum, while the force structure plan and the infrastructure inventory were very important tactical considerations in the 2005 BRAC round, the strategic considerations supporting the current BRAC process could have been strengthened if the 2005 Quadrennial Defense Review (QDR) had been in place.

QUADRENNIAL DEFENSE REVIEW

Specifically, the 2005 QDR will be issued by the Secretary after the completion of the Commission's work, and the issuance of the BRAC's final recommendations to the President. In other words, the Commission's final recommendations are issued on September 8, 2005, and thus precede the Secretary's release of the QDR. The last QDR was issued on September 30, 2001, and the Secretary of Defense is statutorily required to submit a new QDR every four years. (See 10 U.S.C. § 118 (2005)). Thus, if the 2005 QDR is issued September 30, 2005, the BRAC Commission's work and recommendations will have been finalized and enacted into law (barring a joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission), well before then.

The QDR is important in this context because the QDR is required to provide a comprehensive examination of several key elements, including the national defense strategy, force structure, force modernization plans, infrastructure, and budget plan of the defense program and policies of the Department of Defense, with a view to establishing the U.S. defense strategy and program for the next 20 years. Although the submission of the force structure plan and infrastructure inventory by the Secretary pursuant to Section 2912(a) of the current BRAC statute is designed to provide a concrete basis for the Commission's review, these are only a few elements of the overarching view provided by the QDR.

Since the BRAC Commission is also designed to eliminate excess force structure in order to establish a realigned military force and infrastructure, a more comprehensive review of the underlying strategic issues that is to be set forth in the QDR may have better informed and assisted the Commission in making its final recommendations. This is particularly true since the Commission is tasked, as the QDR review is, with taking a 20-year prospective view of a national defense strategy. The detailed and comprehensive approach of the QDR may have provided a more solid analytical foundation to the Commission's work.

Thus, if there is an additional BRAC round in the future, the Commission respectfully suggests that the QDR be put in place before the next round is initiated. In fact, initiating a new BRAC round should be considered by the Secretary of Defense in eight-year intervals following every alternate QDR. Since the QDR is required by statute, it should be the first element in place in a domino of necessary actions triggering the next BRAC round.

Accordingly, in the proposed changes to the BRAC statute that follow, the timing and sequencing of initiating a new BRAC round hinges on the issuance of the QDR on September 30, 2013, as required by statute. Based on the expectation that the Secretary will submit the Department's budget submission for FY 2015 in February 2014, or thereabouts, the Secretary is required under the current statutory scheme to submit the force structure plan along with the budget. This element has been preserved in the proposed legislation.

While the draft legislation preserves the current law describing the elements of the force structure plan, it is very probable that it will change substantively in the future. Therefore, this language appears in the draft legislation, but it may easily be deleted and amended later to include a revised description of what the force structure plan should contain. Further, the draft legislation provides that the force structure plan may be finalized by the Secretary of Defense no later than October 1, 2014.

The proposed legislation then requires the Secretary to certify the need for a new round by March 15, 2014. This is followed by draft selection criteria being published in the *Federal Register* no later than April 15, 2014, with final criteria being released on June 30, 2014. The proposed revised Act also provides for amending it to include the new selection criteria.

The President will then be required under the proposed legislation to nominate the new Commissioners for an additional BRAC round no later than September 30, 2014. The BRAC list will then be required to be issued by the Secretary on November 30, 2014. A final report shall be issued by the Commission on June 30, 2015, giving the Commission, in effect, seven months in which to complete its work. This is in contrast to the current statutory scheme where the Commission had

to produce its report to the President in less than four months from the Secretary's release of the BRAC list. The new timeline in the proposed legislation takes into consideration the difficulty of meeting the statutory deadlines during the 2005 BRAC round, and extends the timeframe in order for both the GAO and the Commission the opportunity to meet their internal timelines with greater ease. A full timeline of the entire BRAC process, as proposed, is set forth below in Section C.

In conclusion, the initiation of an additional BRAC round, the timing and sequencing of events, and the strategic foundation of the BRAC process has been modified by the proposed legislation to strengthen the BRAC process and facilitate the greater administrative ease of the Commission and the agencies involved, while preserving the salient elements of the overall statutory scheme.

EXTENDING THE LIFE OF THE BRAC COMMISSION

Another difficulty faced by the 2005 BRAC Commission was meeting its staffing needs in a timely manner in order to fulfill its statutory duties. Since the 1995 BRAC Commission had been disbanded, there was no pre-existing support structure to manage the administrative start-up needs of the Commission such as recruiting and hiring, leasing space and equipment, and other administrative issues. Since the Commission was already operating under a foreshortened timeframe, the complex task of establishing the Commission from the ground up was exceedingly difficult.

Thus, assuming that Congress does not enact a joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission, the proposed legislation suggests keeping the Commission in place until March 15, 2014, or the date by which the Secretary of Defense must certify whether there is a need for an additional BRAC round. This will allow two objectives to be met. First, it will keep a structured Commission in place (with a Chairman,² Executive Director, and a limited staff) to allow greater ease in assembling a new augmented BRAC staff should another round be initiated; and second, to permit the Commission to produce annual, special and final reports to Congress and the President on the implementation of the 2005 BRAC recommendations, as described in the proposed legislation. This will enable both the Department and Congress to better gauge the progress made on these recommendations, and to determine whether further changes to the U.S. military basing posture need to be made in the future.

Further, the proposed legislation expands and clarifies the role of the Executive Director in new Section 2902(h). While the proposed legislation in Section 2902(d) permits the Commissioners to stay with the Commission for a period not to exceed eight months from the date the final Commission report is submitted to the President (as may be modified), they are expected to depart. This means that the Commission will not have a full complement of eight Commissioners, excluding the Chairman, unless another BRAC round is authorized.

However, during that period and under the guidance of the Chairman, the Commission will be able to examine and report on implementation issues. This will provide, in effect, "one-stop shopping" for the Congress and the President in terms of tracking, monitoring and evaluating the effectiveness of the implementation of the 2005 BRAC Commission's final recommendations. Although the Comptroller General of the United States and the Department's military service branches all have implementation responsibilities and in some cases, reporting requirements, this information is scattered, diffuse and uneven.

REPORTS

The annual and final reports of the Commission, if this new statutory scheme is accepted by Congress, will, *inter alia*, track and, where appropriate, monitor the following: (1) the uses of the Department of Defense Base Closure Account 2005 as described in section 2906A of the BRAC statute;³ (2) the implementation by each branch of the armed services of the recommendations made by the Commission, including any annual net savings thereof; (3) the implementation of privatizations-in-place by local redevelopment authorities or private entities; (4) the environmental remediation undertaken by the Department of Defense, and the costs thereof; and (5) the impact of closures or realignments on international treaty obligations of the United States, if any.

The tracking of the implementation of the 2005 BRAC round may be especially important since the Secretary issued 190 recommendations with over 1,000 actions affecting 33 major (and hundreds of smaller) military installations, each one of

² If this approach is accepted and acted upon by Congress, please note that Section 2902(d)(2) of the current BRAC statute provides that, "The Chairman of the Commission shall serve until the confirmation of a successor."

³ The proposed legislation does not advocate tracking the uses of the 1990 BRAC Account, as described in Section 2906 of the current BRAC statute, by the Commission. However, if in the view of Congress this would be a worthwhile endeavor, the scope of the proposed legislation could be expanded to cover this aspect of implementing the recommendations of prior BRAC rounds.

which involves a great deal of detailed movements of military missions, personnel and related functions. In fact, certain recommendations have conditions precedent attached to them whereby if the conditionality is not met by the concerned parties, the recommendation shall revert to the Secretary's original recommendation. There is no true oversight for this type of recommendation. Other examples include recommendations that may be the subject of third party litigation whose outcome has not been finally determined by the end of the BRAC process. Again, there is no tracking of this process to make a final determination on whether the Commission's recommendations were implemented or not.

Moreover, the number and complexity of the recommendations involved in the 2005 BRAC round make its implementation and the accountability for full implementation, including fiscal accountability, more difficult to achieve. If Congress entrusts the Commission to track the full implementation of the 2005 BRAC round, this will be a focused means of imposing accountability in the BRAC process on the Department, its service branches, the local redevelopment authorities, and other involved parties. Ultimately, this may be a significant cost-saving measure that will help ensure that further public resources are not devoted to making duplicative or conflicting recommendations in future BRAC rounds.

SPECIAL REPORT

Further, the proposed legislative language requires the Commission, presuming that Congress does not enact a joint resolution disapproving the recommendations of the 2005 BRAC Commission, to produce a special report. If enacted by Congress, the Commission will be tasked with issuing, no later than June 30, 2007, a special report that describes an overall strategic approach to implementing BRAC closures and realignments.

This special report will take into consideration and analyze the differing nature and needs of the military properties that are the subject of BRAC closures or realignments. The discussion below divides such properties into three basic categories: (1) those properties that are attractive for immediate re-use or local redevelopment purposes; (2) properties that need financial intermediation in order to prepare for a transfer to the private sector; and (3) "challenged" properties that pose long-term remediation issues and problems.

(1) Local Redevelopment Authorities. In the first instance, military properties that are subject to closure (and partial realignment in certain cases) may be attractive for re-use or redevelopment purposes. In such cases, local redevelopment authorities may be given, for example, up to two years from actual closure to negotiate a satisfactory early transfer agreement with the Department and accept legal title in the property concerned. It is for this reason that the proposed legislation advocates making the existing two-year authority for the Department to enter into environmental cooperative agreements into a permanent authority. (See Section 2905(f)). However, once this two-year time period expires, the Department will no longer be required to work with or through the local redevelopment authority, and may seek other private sector partners with whom to enter into negotiations to transfer title and undertake other tasks.

If environmental clean-up or remediation, if required, is completed within a reasonable time period of say, five to seven years, then the Department may then enter into contracts with private environmental insurance carriers to mitigate its risk of financing further environmental clean-up if problems are discovered after the initial clean-up has been completed. Although the Department assumes full legal liability throughout the process and continues to remain legally liable after the environmental remediation process is completed, the use of private insurance may nevertheless mitigate its risk. The idea of developing an insurance program for the Department's use, and exploring the possibility of bundling policies for greater economic efficiencies, is one issue that may be explored by the Commission.

(2) Privatizations-in-Place. Another issue that may be the subject of the Commission's special report is to develop a financial "toolbox" for the Department to use in creating economic incentives to close, realign and otherwise dispose of properties that are the subject of the Commission's recommendations. This toolbox could include, for example, giving the Department special authorities to enter into contracts, leases, loans, loan guarantees and investments in the form of an acquisition of a limited partnership interest to purchase stock, equity positions or other equitable instruments, bonds or other debt instruments by the United States.

Indeed, forming strong public-private partnerships between the Department and private entities may facilitate the process of base closures. The Commission's special report could explore the feasibility of entering into such privatizations-in-place as a pilot program. If legislation for this were approved by Congress, with appropriate Congressional Notification requirements in place, this could be a pilot program limited to one service branch and a select number of military installations scheduled for closure under the 2005 BRAC round.

In fact, Congress could consider creating a separate government corporate entity to exercise these functions, and the Department, for example, could assign and transfer its title and interests in military installations scheduled for closure and realignment under this BRAC round to this stand-alone corporation. Of course, this corporation, if established by Congress,

would have its own governing board of directors that would manage and oversee the use of financial options to remediate or otherwise prepare military properties for transfer to the private sector. If such a stand-alone corporation were established by Congress, legal title to such military properties (if not the actual legal liability for environmental remediation) could be shifted from the Department to this new corporate entity. Thus, the Department would be relieved of the burden of the day-to-day management of these military properties.

The financial “toolbox” discussed above may also provide structured finance options that can be used to support the environmental remediation and transfers of closed military installations to the private sector. For example, if the Department is prepared to remediate the military property in question to meet industrial use standards yet the local community would like to rezone it for residential use, the Department may find it very useful to have a financial “toolbox” available to it. In that situation, the Department may seek to enter into public-private partnerships to finance (through the issuance of environmental bonds or other options) the additional clean-up costs.

By sourcing a private developer that is willing to assume greater commercial risk than a local redevelopment authority, the Department may be authorized by Congress to enter into a limited liability corporate structure that will enable it to seek private financing to issue bonds or other debt (or even equity) instruments. The bond proceeds (held by a trustee) may finance the excess clean-up costs and create an income stream to qualified institutional investors once the property starts to generate income from commercial and/or residential uses.

For example, both the States of New York and Pennsylvania have issued state-issued municipal Superfund bonds and brownfield bonds to encourage public participation in the clean-up of superfund sites. In the 2005 BRAC rounds, at least 14 of the military installations are National Priorities List (NPL) sites. Perhaps the Commission’s special report could explore the feasibility of issuing tax-free revenue Superfund environmental bonds. Indeed, tax credits for such bond purchases may already be available for this purpose.

The Department could also be authorized to issue loan guarantees to enable the private developer to obtain better terms (i.e., interest rates and repayment terms) on financing such a redevelopment project. Title to the property could be assumed by the limited liability, special purpose venture established for this purpose. The Department could also, via the special purpose vehicle, take an equity position in the venture as an additional financing option. These are but a few of the options that may be considered by the Commission in enlarging the financial “toolbox” made available for the Department’s use in implementing 2005 BRAC closures and realignments.

(3) Establishing a Trusteeship. Finally, for military properties that are scheduled for closure or realignment in this round, or that have failed to close from previous BRAC rounds, the Commission’s special report could explore the possibility of setting up an independent trusteeship to function as a receivership. The trusteeship could help prevent encroachment on these “challenged” military properties that have unexploded ordinances on them, or chemical and other dangerous weapons that have not been demilitarized. While it may be unlikely that such properties can ever be readied or transfer to the public domain or for private use, a trusteeship to manage these properties for conservation or related purposes may be an option to further the BRAC process.

Moreover, the trusteeship, if established, may assume legal title from the Department (e.g., the Army) and assume land management and conservation responsibilities, in coordination with the Bureau of Land Management, Department of the Interior, as necessary. In fact, the trusteeship could be organized as a government foundation with significant grant-making authority to fund conservation and natural habitat creation in partnership with not-for-profit organizations. This, of course, is a long-term (if not permanent) commitment, and a corporate structure that exceeds the current authority of the Commission would have to be established by Congress in order for such an arrangement to be possible.

INTERNATIONAL TREATY OBLIGATIONS

On a different note, one other aspect that seems to have been overlooked in the BRAC process is tracking the compliance of the United States with its international treaty obligations as it may be impacted by the BRAC process. In certain cases, closures and demilitarization of chemical and other weapons are actually being executed pursuant to international treaty obligations. The proposed legislation advocates coordination between the Commission and the Arms Control and Disarmament Agency (ACDA) to help track, monitor and report on the interface of such international obligations with the BRAC process. This report will provide Congress with a fuller picture of the underlying international law issues and aspects that may be connected to the BRAC process.

TACTICAL CONCERNS

Finally, some elements of the current BRAC statute, e.g., a supermajority vote of the Commissioners to add military installations for consideration, and to add to the Secretary's list of recommended closures or realignments, have been retained. However, the proposed language does address some concerns that specifically derived from the 2005 BRAC round.

Most importantly, if the Department does not release the certified data justifying the recommendations in a timely fashion, the BRAC process will automatically terminate. (See Section 2903(2)(B)). This proved to be a difficult issue in the 2005 BRAC round and could have had a deleterious effect on the Commission's ability to complete the analysis underlying its recommendations in a timely manner. The Commission has also been granted subpoena power in case it cannot procure the information it needs by other means. (See Section 2902(q)).

The draft legislation makes the Commission's General Counsel its sole ethics counselor, thus, eliminating the need for the Office of Government Ethics, the Department's Office of the General Counsel, and the White House Counsel's office to provide ethics support to the Commission when Commissioners are being nominated, and afterwards. Since the Commission will have a General Counsel on staff, there should be no need to use outside sources of ethics counseling.

Under the proposed legislation, the new BRAC Commission will be exempt from the Federal Advisory Committee Act, but will conform to the requirements, in substance, of the Freedom of Information Act and the Government in the Sunshine Act. (See Sections 2902 (n), (o) and (e)).

In sum, the draft proposed legislation is designed to eliminate redundancies and inconsistencies and to consolidate the current legislation. The proposed legislation, by tasking the Commission with producing a special report to Congress, explores the options of providing more financial flexibility to the Department in implementing 2005 BRAC round recommendations. Finally, the proposed legislative revisions address strategic and tactical concerns, and enlarge the scope of the advisory function of the Commission. Overall, these changes are being proposed with a view towards ensuring greater accountability and transparency in the BRAC process for Congress and the general public.

TIMELINE OF PROPOSED FUTURE BRAC PROCESS

30 SEPTEMBER 2013	SECRETARY ISSUES THE QDR
31 JANUARY 2014	DIRECTOR OF NATIONAL INTELLIGENCE ISSUES THREAT ASSESSMENT REPORT
27 FEBRUARY 2014	SECRETARY SUBMITS BUDGET, WITH FORCE STRUCTURE AND INFRASTRUCTURE INVENTORY
15 MARCH 2014	SECRETARY CERTIFICATION FOR ADDITIONAL BRAC ROUND
15 APRIL 2014	SECRETARY PUBLISHES DRAFT SELECTION CRITERIA PUBLISHED IN <i>FEDERAL REGISTER</i>
30 MAY 2014	GAO REPORT ON FORCE STRUCTURE
30 JUNE 2014	FINAL SELECTION CRITERIA PUBLISHED IN <i>FEDERAL REGISTER</i>
30 SEPTEMBER 2014	PRESIDENT NOMINATES BRAC COMMISSIONERS, OR BRAC PROCESS TERMINATES
01 OCTOBER 2014	SECRETARY SUBMITS FINAL VERSION OF FORCE STRUCTURE PLAN
30 NOVEMBER 2014	SECRETARY ISSUES BRAC LIST
07 DECEMBER 2014	SECRETARY ISSUES CERTIFIED DATA, OR BRAC PROCESS TERMINATES
15 JANUARY 2015	GAO TRANSMITS REPORT ON BRAC LIST TO CONGRESS AND THE BRAC COMMISSION
30 JUNE 2015	BRAC COMMISSION ISSUES REPORT
15 JULY 2015	PRESIDENT APPROVES/DISAPPROVES OF COMMISSION'S RECOMMENDATIONS, AND INFORMS CONGRESS
45 LEGISLATIVE DAYS	IF BRAC RECOMMENDATIONS ARE APPROVED BY THE PRESIDENT, CONGRESS MAY ISSUE A VOTE OF DISAPPROVAL AND THE BRAC PROCESS TERMINATES
15 AUGUST 2015	IF BRAC RECOMMENDATIONS ARE DISAPPROVED BY PRESIDENT, COMMISSION SUBMITS REVISED RECOMMENDATIONS TO THE PRESIDENT
30 AUGUST 2015	PRESIDENT TRANSMITS REVISED RECOMMENDATIONS TO CONGRESS, OR THE BRAC PROCESS TERMINATES
45 LEGISLATIVE DAYS	IF BRAC RECOMMENDATIONS ARE APPROVED BY THE PRESIDENT, CONGRESS MAY ISSUE A VOTE OF DISAPPROVAL, AND THE BRAC PROCESS TERMINATES

PROPOSED LEGISLATIVE CHANGES TO THE 2005 DEFENSE BASE CLOSURE AND REALIGNMENT ACT OF 1990

(PUBLIC LAW 101-510) AS CODIFIED AT 10 U.S.C. 2687 NOTE, AS AMENDED BY FY 2002 DEPARTMENT OF DEFENSE AUTHORIZATION ACT (PUBLIC LAW 107-107)

To amend the Defense Closure and Realignment Act of 1990 to provide for the continuance of the Commission established therein, and to expand its authorities and functions.

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

The Defense Base Closure and Realignment Act of 1990 is amended--

SECTION 2901. SHORT TITLE AND PURPOSE.

- (a) **SHORT TITLE.** By striking ‘This part may be cited as the “Defense Base Closure and Realignment Act of 1990” and inserting ‘This Act may be cited as the “Defense Base Realignment and Closure Authorization Act of 2008.”’

SECTION 2902. THE COMMISSION

In section (a) **ESTABLISHMENT.**—By striking “Defense Base Closure and Realignment Commission” and inserting “Defense Base Realignment and Closure Commission.”

In section (c) **APPOINTMENT.**—(1)(A) By renumbering it as section (1) and striking ‘eight members’ and inserting ‘nine members,’ and by deleting section (1)(B) and section (1)(C). In section (c)(3) by striking ‘for each session of Congress referred to in paragraph (1)(B).’ In section (c) by inserting a new provision, ‘(c)(4) The General Counsel of the Commission shall provide exclusive ethics guidance and counseling to the Chairman and the Commissioners before, during and after the nomination process. The General Counsel shall also have all other duties appurtenant to the office.’

In section (d) **TERMS.**—By deleting it and replacing it with ‘Each member of the Commission, not including the Chairman, shall serve up to eight months from the date of submitting the Commission’s report to the President, unless reappointed.’

(e) **MEETINGS.**—(1) By deleting this subsection, and renumbering the following section as ‘(1)(A)’ and inserting ‘If another round is authorized pursuant to section 2903, the Commission shall conduct meetings and hearings open to the public, unless the Chairman determines that such hearings should be closed to the public for reasons of national security. The Commission shall issue public notices of its meetings and hearings by publication in the *Federal Register* not less than ten days before the dates or such meetings and hearings, except for emergency meetings in which case notice may be issued not less than three days before the date of such a meeting with an explanation on why an emergency meeting is necessary under the circumstances. Where such meetings or hearings are closed to the public, the public notice shall specify the reasons therefor. All testimony presented at open public hearings before the Commission shall be made under oath. Official transcripts, certified by the Chairman, of such public meetings and hearings shall be made available to the public within 90 days of the meeting or hearing taking place.’

(h) **DIRECTOR OF STAFF.**—By inserting ‘(h)(3) The Director shall be authorized to continue performing the duties of the office until the termination of the Commission, and may designate the necessary staff of not more than 50 persons, to conduct the affairs of the Commission as long as Congress fails to enact a joint resolution of disapproval as provided in Section 2904(b).’

‘(h)(4) The Director may request the head of any Federal department or agency to detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this Act, and shall request the Comptroller General of the United States, the head of the Environmental Protection Agency (EPA) and the head of the Arms Control and Disarmament Agency (ACDA) to detail one or more employees, at the Director’s discretion, to assist the Commission in discharging its duties, pursuant to an agreement entered into by the Comptroller General of the United States, EPA and ACDA, respectively, with the Commission. The detailee(s) assigned by the Comptroller General of the United States shall be responsible for tracking and monitoring, as appropriate, uses of the Department of Defense Base Closure Account 2005, as set forth in section 2906A; the EPA detailee(s) shall be responsible for tracking and monitoring, as appropriate, environmental restoration, remediation and compliance, as set forth in section 2905; and the ACDA detailee(s) shall monitor compliance of international treaty obligations of the United States as may be affected by realignments and closures recommended by the Commission.’

(i) **STAFF.**—by deleting (i)(5) and (i)(6).

(k) **FUNDING.**—(1) By striking ‘part’ and inserting ‘Act.’

(2) By deleting (k)(2) and inserting ‘If no funds are appropriated to the Commission by the end of the second session of the 114th Congress for the activities of the Commission in 2015, the Secretary may transfer to the Commission for purposes of its activities until its termination, as specified in this part, such funds as the Commission may require to carry out such activities. The Secretary may transfer these funds from any funds that may be available to the Secretary. Funds so transferred shall remain available until expended.’

(3) By deleting (k)(3) and inserting ‘If another round is authorized, there are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties. Such funds shall remain available until expended.’

(l) **TERMINATION.**—by striking ‘shall terminate on December 31, 1995’ and inserting ‘shall terminate on March 31, 2014, or the date by which the Secretary of Defense must certify that an additional BRAC round is needed under section 2903(b)(1).’

In Section 2902, by inserting ‘SECTION 2902(n). **EXEMPTION FROM FACAs.** The Commission shall be exempt from the Federal Advisory Committee Act, 5 U.S.C. app. (2005).’

In Section 2902, by inserting ‘SECTION 2902(o). **RECORDS AND RECORDKEEPING.** (1) The records, reports, transcripts, minutes, correspondence, working papers, drafts, studies or other documents that were furnished to or made available to the Commission shall be available for public inspection and copying at one or more locations to be designated by the Commission. Copies may be furnished to members of the public at cost upon request, may also be provided via electronic media in a form that may be designated by the Commission.

(2) The Commission shall keep records and fully disclose the disposition of any funds, including travel funds, which are made available to the Commission in discharging its duties.

(3) The disposition, retention and destruction of all official records of the Commission, electronic and otherwise, shall be made pursuant to the Federal Records Act, 44 U.S. Code, Chapter 33.’

In Section 2902, by inserting ‘SECTION 2902(p). **REPORTING REQUIREMENTS.** (1) **ANNUAL REPORTS.** The Commission shall furnish annual reports to Congress and the President no later than October 31 of each calendar year concerning the implementation of the Commission’s final recommendations made to Congress on September 8, 2005, [insert date of final recommendations if revisions were provided to the President] providing that Congress has not enacted a joint resolution of disapproval pursuant to section 2904(b). Such report shall track and monitor the uses of the Department of Defense Base Closure Account 2005 as described in section 2906A; the implementation by each branch of the armed services of the recommendations made by the 2005 Defense Base Closure and Realignment Commission, including any annual net savings thereof; the implementation of privatizations-in-place by local redevelopment authorities; environmental remediation under taken by the Department of Defense, and the costs thereof, and the impact of closures or realignments on international treaty obligations of the United States.’

‘(2) **SPECIAL REPORT OF THE COMMISSION.**—The Commission shall be authorized to conduct a thorough study and detailed analysis of the implementation of the 2005 Defense Closure and Realignment Commission’s recommendations as long as Congress fails to enact a joint resolution of disapproval as provided in Section 2904(b). The study, to be issued at the discretion of the Commission but, in any case no later than June 30, 2007, to Congress and the President shall identify and discuss the feasibility of categorizing military installations scheduled for closure and realignment, where appropriate, into properties: (a) that are the subject of negotiations with local redevelopment authorities or other parties for re-use or rezoning and may require special finance vehicles such as loans, loan guarantees, investments, environmental bonds and insurance, or other options to successfully transfer title and use to municipal, State or private sector entities; and (b) that are National Priorities List (NPL) sites or that have significant environmental remediation problems requiring long-term management and oversight. The Commission shall consult with the Department of Defense and its military service branches, the Comptroller General of the United States and the Environmental Protection Agency, and the Bureau of Land Management, Department of the Interior, in making its study.

‘(3) **FINAL REPORT.** The Commission shall furnish a final report to Congress and the President no later than October 31, 2011, concerning the implementation of the Commission’s final recommendations made to Congress on September 8, 2005, [insert date of final recommendations if revisions were provided to the President] as long as Congress has not enacted a joint resolution of disapproval pursuant to section 2904(b).’

In Section 2902, by inserting ‘SECTION 2902(q). **SUBPOENA POWER.** The Commission shall have the power to issue subpoenas to compel the disclosure of testimony, documentary, electronic or other types of evidence and the testimony of the custodians thereof. Such subpoenas shall be enforceable by a federal district court with jurisdiction over the matter.

In Section 2903 by striking ‘**PROCEDURE FOR MAKING RECOMMENDATIONS FOR BASE CLOSURES AND REALIGNMENTS**’ and inserting ‘**PROCEDURE FOR INITIATING AN ADDITIONAL ROUND OF BASE CLOSURES AND REALIGNMENTS.**’

By deleting section 2903(a) and inserting ‘**SECTION 2903(a) FORCE-STRUCTURE PLAN AND INFRASTRUCTURE INVENTORY.—**

(1) PREPARATION AND SUBMISSION.—As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for fiscal year 2015, the Secretary shall include the following:

‘(A) A force-structure plan for the Armed Forces based on (i) an assessment provided to the Secretary by the Director of National Intelligence, in consultation with the Secretary and other national intelligence agencies, no later than January 31, 2014, of the probable threats to the national security during the 20-year period beginning with fiscal year 2014, taking into account military, economic and diplomatic factors; (ii) the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) needed to meet these threats; (iii) mobility capabilities and (iv) the anticipated levels of funding that will be available for national defense purposes during such period.

‘(B) A comprehensive inventory of military installations world-wide for each military department, with specifications of the number and type of facilities in the active and reserve forces of each military department.

(2) RELATIONSHIP OF PLAN AND INVENTORY.—Using the force-structure plan and infrastructure inventory prepared under paragraph (1), the Secretary shall prepare (and include as part of the submission of such plan and inventory) the following:

‘(A) A description of the infrastructure necessary to support the force structure described in the force-structure plan.

‘(B) A discussion of categories of excess infrastructure and infrastructure capacity.

‘(C) An economic analysis of the effect of the closure or realignment of military installations to reduce excess infrastructure.

(3) SPECIAL CONSIDERATIONS.—In determining the level of necessary versus excess infrastructure under paragraph (2), the Secretary shall consider the following:

‘(A) The anticipated continuing need for and availability of military installations outside the United States, taking into account current restrictions on the use of military installations outside the United States and the potential for future prohibitions or restrictions on the use of such military installations.

‘(B) Any efficiencies that may be gained from joint tenancy by more than one branch of the Armed Forces at a military installation.

(4) REVISION.—The Secretary may revise the force-structure plan and infrastructure inventory; If the Secretary makes such a revision, the Secretary shall submit the revised plan or inventory to Congress not later than October 1, 2014. For purposes of selecting military installations for closure or realignment under this Act in 2014, no revision of the force-structure plan or infrastructure inventory is authorized after that date.

(b) CERTIFICATION OF NEED FOR FURTHER CLOSURES AND REALIGNMENTS.—In order to initiate an additional round of base closures and realignments on the basis of the force-structure plan and infrastructure inventory and the economic analysis of the effect of the closure or realignment of military installations to reduce excess infrastructure prepared under subsection (a), and as part of the submission of the plan and inventory, the Secretary of the Department of Defense shall certify no later than March 15, 2014 –

(1) That a need exists for the closure or realignment of additional military installations;

(2) That an additional round of closures and realignments would result in annual net savings for each military department beginning not later than fiscal year 2021; and,

- (3) That the certification is based on the force-structure plan and infrastructure inventory, including a 20-year projected threat assessment, and consideration of the Quadrennial Defense Review for 2013, issued by the Secretary pursuant to 10 U.S.C. Section 118(a), and the overseas global basing posture.

‘(c) **EFFECT OF FAILURE TO CERTIFY.**—If the Secretary does not certify the need for closures or realignments of military installations as referred to in paragraph (b), the process by which military installations may be selected for closure or realignment under this Act shall be terminated.’

In Section 2903 by renumbering section (b) as ‘(d) **SELECTION CRITERIA.**—(1) and striking ‘December 31, 1990,’ and inserting ‘April 15, 2014.’ In section 2903(2)(A) by striking ‘February 15, 1991’ and inserting ‘June 30, 2014’, and by striking ‘March 1991’ and inserting ‘as long as Congress fails to enact a joint resolution of disapproval as provided in Section 2904(b) herein.’ And, in section 2903(2)(B) by striking ‘January 15 of the year concerned’ and inserting ‘August 15, 2015’ and by striking ‘enacted on or before February 15 of the year concerned’ and inserting ‘as long as Congress fails to enact a joint resolution of disapproval as provided in Section 2904(b) herein.’ And by inserting as a new sentence at the end of section 2903(2)(B) ‘This Act shall be further amended to add the final selection criteria, as published in the *Federal Register*, within 120 days of such publication.’

In section 2903, by inserting section ‘(e) **COMPTROLLER GENERAL EVALUATION.**—

‘(1) **EVALUATION REQUIRED.**—If the certification is provided under subsection (b), the Comptroller General shall prepare an evaluation of the following:

‘(A) The force-structure plan and infrastructure inventory prepared under subsection (a) and the final selection criteria referenced in subsection (d), including an evaluation of the accuracy and analytical sufficiency of such plan, inventory, and criteria.

‘(B) The need for the closure or realignment of additional military installations.

‘(2) **SUBMISSION.**—The Comptroller General shall submit the evaluation to Congress not later than 60 days after the date on which the force-structure plan and infrastructure inventory are submitted to Congress.’

In section 2903, by inserting section ‘(f)(1) **APPOINTMENT OF COMMISSIONERS FOR AN ADDITIONAL ROUND.**—Subject to the issuance of certifications by the Secretary as required under subsection (b), the President may commence an additional round for the selection of military installations for closure and realignment under this Act by transmitting to the Senate, not later than September 30, 2014, nominations pursuant to section 2902(c) for the appointment of new members to the Defense Base Realignment and Closure Commission.

‘(2) **EFFECT OF FAILURE TO NOMINATE.**—If the President does not transmit to the Senate the nominations for the Commission by September 30, 2014, the process by which military installations may be selected for closure or realignment under this Act in 2014 shall be terminated.’

In section 2903 by striking ‘(c)’ and inserting ‘(g) **DOD RECOMMENDATIONS.**—(1) If the Secretary makes the certifications required under subsection (b), the Secretary shall publish in the *Federal Register* and transmit to the congressional defense committees and the Commission, not later than November 30, 2014, a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and infrastructure inventory prepared by the Secretary under subsection (a)(1), and the final selection criteria specified in subsection (d).

‘(2)(A) The Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation for each installation, including a detailed justification for each recommendation. This justification shall include sufficient detail, including minutes of meetings for Department of Defense executive group sessions, including presentations made to the Department of Defense Infrastructure Executive Council and the Infrastructure Steering Group, along with complete cost data in order to enable the Commission to consider and propose alternatives to the recommendations proposed by the Secretary.

(B) The Secretary shall certify and transmit to the congressional defense committees and the Commission the summary and detailed justification matters referred to in paragraph (A) in full, complete and accurate form, fully disaggregated, as necessary, into unclassified and classified databases, not later than 7 days after the date of the transmittal to the congressional defense committees and the Commission of the list referred to in paragraph (1). Additionally, the Secretary shall make available to the public a copy of the unclassified portions of the summary and detailed justification within 7 days after the Secretary transmits the list referred to paragraph (1). If the Secretary does not certify and transmit the summary and

justification for the list of recommendations as described in this section, the process by which military installations may be selected for closure or realignment under this Act shall be terminated.

(3)(A) CONSIDERATION OF U.S. MILITARY INSTALLATIONS.—In considering military installations for closure or realignment, the Secretary shall consider all military installations inside the United States equally without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department.

‘(B) In considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of an installation.

‘(C) For purposes of subparagraph (B), in the case of a community anticipating the economic effects of a closure or realignment of a military installation, advance conversion planning-

(i) shall include community adjustment and economic diversification planning undertaken by the community before an anticipated selection of a military installation in or near the community for closure or realignment; and

(ii) may include the development of contingency redevelopment plans, plans for economic development and diversification, and plans for the joint use (including civilian and military use, public and private use, civilian dual use, and civilian shared use) of the property or facilities of the installation after the anticipated closure or realignment.

(4) CONSIDERATION OF LOCAL GOVERNMENT VIEWS.—(A) In making recommendations to the Commission in 2014, the Secretary shall consider any notice received from a local government in the vicinity of a military installation that the government would approve of the closure or realignment of the installation. ‘(B) Notwithstanding the requirement in subparagraph (A), the Secretary shall make the recommendations referred to in that subparagraph based on the force-structure plan, infrastructure inventory, and final selection criteria otherwise applicable to such recommendations.

‘(C) The recommendations shall include a statement of the result of the consideration of any notice described in subparagraph (A) that is received with respect to a military installation covered by such recommendations. The statement shall set forth the reasons for the result.’

(5) SECRETARY’S USE OF INFORMATION.—In addition to making all information used by the Secretary to prepare the recommendations under this subsection available to Congress (including any committee or member of Congress), the Secretary shall also make such information available to the Commission and the Comptroller General of the United States.

(6)(A) CERTIFICATION OF INFORMATION.—Each person referred to in subparagraph (B), when submitting information to the Secretary of Defense or the Commission concerning the closure or realignment of a military installation, shall certify that such information is accurate and complete to the best of that person’s knowledge and belief.

(B) Subparagraph (A) applies to the following persons:

(i) The Secretaries of the military departments.

(ii) The heads of the Defense Agencies.

(iii) Each person who is in a position the duties of which include personal and substantial involvement in the preparation and submission of information and recommendations concerning the closure or realignment of military installations, as designated in regulations which the Secretary of Defense shall prescribe, regulations which the Secretary of each military department shall prescribe for personnel within that military department, or regulations which the head of each Defense Agency shall prescribe for personnel within that Defense Agency.

(7) TRANSMITTAL OF CERTIFIED INFORMATION.—Any information provided to the Commission by a person described in paragraph (6)(B) shall also be submitted to the Senate and the House of Representatives to be made available to the Members of the House concerned in accordance with the rules of that House. The information shall be submitted to the Senate and House of Representatives within 48 hours after the submission of the information to the Commission.’

In section 2903, by striking ‘(d)’ and inserting ‘(h) **REVIEW AND RECOMMENDATIONS BY THE COMMISSION.**—(1) After receiving the recommendations from the Secretary pursuant to subsection (g), the Commission shall conduct public hearings on the recommendations. All testimony before the Commission at a public hearing conducted under this paragraph shall be presented under oath.

‘(2)(A) The Commission shall, by no later than June 30, 2015, transmit to the President a report containing the Commission’s findings and conclusions based on a review and analysis of the recommendations made by the Secretary as

transmitted on November 30, 2014, together with the Commission's recommendations for closures and realignments of military installations inside the United States.

(B) Subject to subparagraph (g), in making its recommendations, the Commission may make changes in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria referred to in subsection (a) in making recommendations.

(C) In the case of a change described in subparagraph (D) in the recommendations made by the Secretary, the Commission may make the change only if the Commission—

(i) makes the determination required by subparagraph (B);

(ii) determines that the change is consistent with the force-structure plan and final criteria referred to in subsection (c)(1);

(iii) publishes a notice of the proposed change in the *Federal Register* not less than 30 days before transmitting its recommendations to the President pursuant to paragraph (2); and

(iv) conducts public hearings on the proposed change.

(D) Subparagraph (C) shall apply to a change by the Commission in the Secretary's recommendations that would—

(i) add a military installation to the list of military installations recommended by the Secretary for closure;

(ii) add a military installation to the list of military installations recommended by the Secretary for realignment; or

(iii) increase the extent of a realignment of a particular military installation recommended by the Secretary.

(E) In making recommendations under this paragraph, the Commission may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of a military installation.

(3) AVAILABILITY OF RECOMMENDATIONS TO CONGRESS.—After June 30, 2015, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

(4) LIMITATIONS ON AUTHORITY TO CONSIDER ADDITIONS TO CLOSURE OR REALIGNMENT LISTS.—The Commission may not consider making a change in the recommendations of the Secretary that would add a military installation to the Secretary's list of installations recommended for closure or realignment unless, in addition to the requirements of section 2903(h)(2)(C)—

(A) the Commission provides the Secretary with at least a 15-day period, before making the change, in which to submit an explanation of the reasons why the installation was not included on the closure or realignment list by the Secretary; and

(B) the decision to add the installation for Commission consideration is supported by at least seven members of the Commission.

(5) TESTIMONY BY SECRETARY.—The Commission shall invite the Secretary to testify at a public hearing, or a closed hearing if classified information is involved, on any proposed change by the Commission to the Secretary's recommendations.

(6) REQUIREMENTS TO EXPAND CLOSURE OR REALIGNMENT RECOMMENDATIONS.—In the report required under section 2903(h)(2)(A) that is to be transmitted under paragraph (1), the Commission may not make a change in the recommendations of the Secretary that would close a military installation not recommended for closure by the Secretary, would realign a military installation not recommended for closure or realignment by the Secretary, or would expand the extent of the realignment of a military installation recommended for realignment by the Secretary unless—

(A) at least two members of the Commission visit the military installation before the date of the transmittal of the report; and

(B) the decision of the Commission to make the change to recommend the closure of the military installation, the realignment of the installation, or the expanded realignment of the installation is supported by at least seven members of the Commission.

(7) The Commission shall explain and justify in its report submitted to the President on June 30, 2014, any recommendation made by the Commission that is different from the recommendations made by the Secretary pursuant to subsection (g). The Commission shall transmit a copy of such report to the congressional defense committees on the same date on which it transmits its recommendations to the President.

(8) When the Commission transmits recommendations to the President under this subsection, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

(9) The Comptroller General of the United States shall—

(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Secretary pursuant to subsection (C); and

(B) by no later than January 15, 2015, transmit to the Congress and to the Commission a report containing a detailed analysis of the Secretary's recommendations and selection process.'

In section 2903 by striking '(e)' and inserting '(i) **REVIEW BY THE PRESIDENT.**—(1) The President shall, by no later than July 15, 2015, transmit to the Commission and to the Congress a report containing the President's approval or disapproval of the Commission's recommendations.

(2) If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of such approval.

(3) If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall then transmit to the President, by no later than August 15, 2015, a revised list of recommendations for the closure and realignment of military installations.

(4) If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to the Congress, together with a certification of such approval no later than August 30, 2015.

(5) If the President does not transmit to the Congress an approval and certification described in paragraph (2) or (4) by August 30, 2015, the process by which military installations may be selected for closure or realignment under this Act shall be terminated.

(6) A report of the President under this subsection containing the President's approval of the Commission's recommendations is deemed to be a report under section 2903(e) for purposes of sections 2904 and 2908.'

In section 2904(a)(3) by striking '2005 report' and inserting '2015 report,' and striking 'section 2903(e)' and inserting 'section 2903(i).'

In section 2905(b)(4)(B)(ii) by deleting 'a reasonable period of time' and inserting 'two years,' and by inserting a new sentence to follow the first sentence, 'If the requirements of this subsection are not met, the Department shall be free to negotiate with parties other than the redevelopment authority.'

In section 2905 by inserting new section '(f) **ENVIRONMENTAL COOPERATIVE AGREEMENTS.**—By making section 311 of the Fiscal Year 2003 National Defense Authorization Act (Public Law 107-314) a permanent authority permitting the Secretary of Defense to enter into and fund cooperative agreements for environmental purposes with Federal, State and local agencies as well as Indian tribes, in carrying out the Defense Environmental Restoration Program (Title 10, U.S. Code, Section 2701).'

In section 2909(a), by striking 'during the period beginning on November 5, 1990, and ending on April 15, 2006, this part' and inserting 'this Act.'

By deleting section 2909(c)(1).

In section 2910(1), by striking 'the Department of Defense Base Closure Account 1990 established by section 2906(a)(1)' and inserting 'the Department of Defense Base Closure Account 2005, established in section 2906A.'

By deleting Sections 2912-2914.