

107TH CONGRESS  
1ST SESSION

# H. R. 2786

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

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

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

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Missile De-  
5 fense Deployment Criteria Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

1           (1) The 1972 Anti-Ballistic Missile (ABM)  
2 Treaty prohibits the development or deployment of  
3 space-based, air-based, sea-based, or mobile land-  
4 based antiballistic missile defenses and limits the de-  
5 ployment of fixed land-based defenses to no more  
6 than 100 interceptor missiles deployed at a single  
7 site.

8           (2) Without the restrictions imposed by the  
9 ABM Treaty, it is unlikely that the United States  
10 and Russia would have been able to have concluded  
11 arms control agreements that have limited and sig-  
12 nificantly reduced the numbers and capabilities of  
13 strategic ballistic missiles deployed by both coun-  
14 tries.

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

20           (4) Before any decision is made by the United  
21 States to further proceed with the development, pro-  
22 curement, and deployment of a National Missile De-  
23 fense system, it is essential that the President and  
24 the Congress agree that such actions are necessary  
25 to the national security of the United States.

1           (5) In assessing the necessity and desirability of  
2 such defenses, the President and Congress must con-  
3 sider the nature of the threat, the feasibility of the  
4 technology to be used to respond to the threat, costs  
5 and impact upon other key defense programs, and  
6 the overall impact on national security, including  
7 arms control.

8 **SEC. 3. LIMITATION ON DEPLOYMENT PENDING CERTIFI-**  
9 **CATION AND APPROVAL BY LAW.**

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

12           (1) in section 2—

13               (A) by striking “as soon as is techno-  
14 logically possible”; and

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

17                   “(1) the system is technologically feasible;

18                   “(2) the cost of the system in relation to other  
19 priorities of the Department of Defense will not lead  
20 to an overall reduction in national security by reduc-  
21 ing resources available for other defense priorities,  
22 including force preparedness and structure, pro-  
23 grams to protect against weapons of mass destruc-  
24 tion delivered by means other than ballistic missiles,

1 maintenance of existing weapons systems, and intro-  
2 duction of new or modernized weapons systems;

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

7 “(4) the system will not threaten to disrupt re-  
8 lations with nuclear allies of the United States, Eu-  
9 ropean allies of the United States, Russia (particu-  
10 larly with respect to entry into force of the second  
11 and third Strategic Arms Reduction Treaties and  
12 the 1972 Anti-Ballistic Missile Treaty), the People’s  
13 Republic of China (particularly with respect to in-  
14 creased nuclear arms production), and other nations;  
15 and

16 “(5) the threat of a long-range ballistic missile  
17 attack from a nation of concern is clearly dem-  
18 onstrated.”; and

19 (2) by adding at the end the following new sec-  
20 tion:

21 **“SEC. 4. LIMITATION ON DEPLOYMENT PENDING CERTIFI-**  
22 **CATION AND APPROVAL BY LAW.**

23 “(a) LIMITATION.—The President may not direct the  
24 Department of Defense to deploy a National Missile De-  
25 fense system unless and until—

1           “(1) the President submits to Congress a report  
2           concerning deployment of the National Missile De-  
3           fense system that includes a certification described  
4           in subsection (b); and

5           “(2) a joint resolution concurring in the Presi-  
6           dent’s certification in such report is enacted as pro-  
7           vided for in this section.

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

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

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

25                 “(B) which does not have a preamble; and

1           “(C) the title of which is as follows: ‘Joint reso-  
2           lution relating to deployment of a National Missile  
3           Defense system.’.

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

6           “(A) in the case of the House of Representa-  
7           tives, the majority leader or minority leader of the  
8           House of Representatives or a Member of the House  
9           of Representatives designated by the majority leader  
10          or minority leader; and

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

15          “(3) The provisions of paragraphs (3) through (8)  
16 of section 4(c) of the National Missile Defense Deploy-  
17 ment Criteria Act of 2001 shall apply to a joint resolution  
18 under this subsection in the same manner as to a joint  
19 resolution under such section.”.

20 **SEC. 4. LIMITATION ON OBLIGATION OF FUNDS FOR PRO-**  
21 **CUREMENT FOR NATIONAL MISSILE DE-**  
22 **FENSE SYSTEM.**

23          (a) LIMITATION.—No funds appropriated to the De-  
24 partment of Defense for procurement may be obligated for  
25 the National Missile Defense system unless—

1           (1) the President submits to Congress a report  
2           concerning testing of the National Missile Defense  
3           system against countermeasures that includes a cer-  
4           tification described in subsection (b); and

5           (2) a joint resolution concurring in the Presi-  
6           dent's certification in such report is enacted as pro-  
7           vided for in this section.

8           (b) PRESIDENTIAL CERTIFICATION.—A certification  
9           described in this subsection is a certification by the Presi-  
10          dent that—

11           (1) an adequate testing program for the Na-  
12          tional Missile Defense system is in place to meet the  
13          threats identified in the report required under sec-  
14          tion 3(c);

15           (2) adequate ground and flight testing of the  
16          system has been conducted against the counter-  
17          measures that are likely to be used against the sys-  
18          tem and that other countries have or likely could ac-  
19          quire.

20          (c) EXPEDITED PROCEDURES FOR JOINT RESOLU-  
21          TION.—(1) For purposes of subsection (a)(2) and this  
22          subsection, the term “joint resolution” means only a joint  
23          resolution introduced by a qualifying Member specified in  
24          paragraph (2) after the date on which the report of the

1 President under subsection (a)(1) is received by the  
2 Congress—

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

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

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

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

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

23 (B) in the case of the Senate, the majority lead-  
24 er or minority leader of the Senate or a Member of



1 the Senate designated by the majority leader or mi-  
2 nority leader.

3 (3) If a committee to which is referred a joint resolu-  
4 tion described in paragraph (1) has not reported such joint  
5 resolution by the end of 60 legislative days of continuous  
6 session of Congress beginning on the date of its introduc-  
7 tion, such committee shall be discharged from further con-  
8 sideration of such joint resolution and such joint resolu-  
9 tion shall be placed on the appropriate calendar of the  
10 House involved.

11 (4)(A) A joint resolution described in paragraph (1)  
12 shall be considered in the House of Representatives in ac-  
13 cordance with this paragraph. When the committee to  
14 which such a joint resolution was referred has reported,  
15 or has been discharged from further consideration of, the  
16 joint resolution, it shall be in order, on or after the third  
17 calendar day thereafter (excluding Saturdays, Sundays, or  
18 legal holidays, except when the House of Representatives  
19 is in session on such a day) for any Member of the House  
20 to move to proceed to the consideration of the joint resolu-  
21 tion, but only on the day after the calendar day on which  
22 the Member announces to the House the Member's inten-  
23 tion to do so. Such motion is privileged and is not debat-  
24 able. The motion is not subject to amendment or to a mo-  
25 tion to postpone. A motion to reconsider the vote by which

1 the motion is agreed to shall not be in order. If a motion  
2 to proceed to the consideration of the joint resolution is  
3 agreed to, the House shall immediately proceed to consid-  
4 eration of the joint resolution, which shall remain the un-  
5 finished business of the House until disposed of.

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

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

19 (5) A joint resolution described in paragraph (1) shall  
20 be considered in the Senate in accordance with the provi-  
21 sions of section 601(b)(4) of the International Security  
22 Assistance and Arms Export Control Act of 1976.

23 (6) If, before the passage by one House of a joint  
24 resolution of that House described in paragraph (1), that  
25 House receives from the other House a joint resolution

1 described in paragraph (1), then the following procedures  
2 shall apply:

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

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

11                 (i) the procedure in that House shall be  
12 the same as if no joint resolution had been re-  
13 ceived from the other House; but

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

16           (C) Upon disposition of the joint resolution re-  
17 ceived from the other House, it shall no longer be  
18 in order to consider the joint resolution that origi-  
19 nated in the receiving House.

20           (7) In the computation of the period of 60 days re-  
21 ferred to in paragraph (3)—

22                 (A) a legislative day, with respect to a com-  
23 mittee of either House to which a joint resolution  
24 was referred, is a calendar day on which that House  
25 is in session; and

1 (B) continuity of session of Congress is broken  
2 only by an adjournment sine die at the end of the  
3 second session of a Congress.

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

6 (A) as an exercise of the rulemaking power of  
7 the House of Representatives and the Senate, re-  
8 spectively, and, as such, shall be considered as part  
9 of the rules of either House and shall supersede  
10 other rules only to the extent they are inconsistent  
11 therewith; and

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

17 **SEC. 5. OPERATIONALLY REALISTIC TESTING AGAINST**  
18 **COUNTERMEASURES FOR NATIONAL MISSILE**  
19 **DEFENSE.**

20 (a) TESTING REQUIREMENTS.—The Secretary of De-  
21 fense shall direct the Ballistic Missile Defense  
22 Organization—

23 (1) to include in the ground and flight testing  
24 of the National Missile Defense system that is con-

1 ducted before the system becomes operational any  
2 countermeasures (including decoys) that—

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

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

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

15 (b) FUNDING REQUIREMENTS.—The Secretary, in  
16 consultation with the Director of the Ballistic Missile De-  
17 fense Organization, shall—

18 (1) determine the amount of additional funding,  
19 if any, for the National Missile Defense system (in  
20 addition to that previously programmed) that may  
21 be necessary for the Secretary to fulfill the require-  
22 ments set forth in subsection (a) in fiscal years after  
23 fiscal year 2002; and

24 (2) submit that determination to the congress-  
25 sional defense committees at the same time that the

1 President submits the budget for fiscal year 2003 to  
2 Congress under section 1105(a) of title 31, United  
3 States Code.

4 (c) REPORT BY SECRETARY OF DEFENSE.—(1) The  
5 Secretary of Defense shall submit to Congress, not later  
6 than April 15 each year, an annual report on the Depart-  
7 ment's efforts to establish a program for operationally re-  
8 alistic testing of the National Missile Defense system  
9 against countermeasures. The report shall be submitted  
10 in both classified and unclassified form.

11 (2) Each such report shall include the Secretary's as-  
12 sessment of the following:

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

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

21 (C) The plans to demonstrate the capability of  
22 the National Missile Defense system to defeat such  
23 countermeasures and the adequacy of the ground  
24 and flight testing to demonstrate that capability.

1       (3) No annual report is required under this sub-  
2 section after the National Missile Defense system becomes  
3 operational.

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

8       (2) The Panel shall assess the following:

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

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

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

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

19           (A) whether sufficient ground and flight testing  
20 of the system will have been conducted before the  
21 system becomes operational to support the making  
22 of a determination, with a justifiably high level of  
23 confidence, regarding the operational effectiveness of  
24 the system;

1           (B) whether adequate ground and flight testing  
2 of the system will have been conducted, before the  
3 system becomes operational, against the counter-  
4 measures that are likely, or at least realistically pos-  
5 sible, to be used against the system and that other  
6 countries have or likely could acquire; and

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

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

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

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

24           (2) includes, among other actions—



1           (A) use of a submunition released by a bal-  
2           listic missile soon after the boost phase of the  
3           missile;

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

7           (C) use of a shroud cooled with liquid ni-  
8           trogen to reduce the infrared signature of the  
9           warhead.

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