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## **Military Base Closures: A Historical Review from 1988 to 1995**

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# Military Base Closures: A Historical Review from 1988 to 1995

## Summary

The United States has experienced difficulty in closing military bases to match the requirements of downsized forces with changed composition. During the decade of the 1980s, major military base closures were seriously hampered by procedural requirements established by Congress, to the point that none occurred. The mismatch between real estate assets and defense requirements grew with the military downsizing that began late in the Reagan Administration and continued under Presidents George H. W. Bush and Clinton.

After several legislative efforts to break the deadlock had failed, Congress established a new base closure procedure in P.L. 100-526, enacted October 24, 1988. The statute provided for a bipartisan commission, appointed by the Secretary of Defense, to make recommendations to Congress on closures and realignments to be voted down or accepted as a whole. The process was successfully implemented, but produced complaints of partisanship in selecting bases for closure. P.L. 101-510, enacted November 5, 1990, provided new authority for additional base closure recommendations by a series of presidentially appointed commissions (with the advice and consent of the Senate), commonly called Base Realignment and Closure (BRAC) commissions. These commissions were to operate in 1991, 1993, and 1995, after which the authority of the final base closure commission would end.

The four commissions recommended closure of 98 major bases and hundreds of smaller installations, and the realignment of many other bases and facilities. These recommendations were estimated to be implemented and completed by the year 2001. The Department of Defense at one time estimated savings of about \$57 billion over 20 years.

At the community level, in turn, implementation of the base closure process commenced. Congress has amended the base closure legislation several times to protect and assist communities as they adjust to the social and economic stress caused by the loss of military installations. Many, but by no means all, communities appeared to be succeeding in local efforts to replace defense jobs and find new uses for former military lands and buildings.

After expiration of the authorizing legislation, a number of influential leaders recommended establishment of a new commission and the closure of additional bases and facilities. These advocates included the chairman of the 1995 commission, Alan Dixon, former Defense Secretary William Perry, and Joint Chiefs of Staff Chairman John Shalikashvili. In Congress, many felt that infrastructure costs diverted money from modernization and sapped the readiness of America's armed forces. Against these pressures to cut military real estate further was caution concerning further military cuts, as well as the traditional reluctance of Senators and Representatives to lose federal jobs and disrupt communities in their state or district.

Subsequently, new authorizing legislation by the Congress was required to reconstitute base closure and realignment through the commission approach.

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# Military Base Closures: A Historical Review from 1988 to 1995

## Introduction

This report<sup>1</sup> discusses a concerted effort to close unneeded military bases as part of wide-ranging efforts during the 1980s and 1990s to balance the budget. This effort had been supported by a broad consensus that, among the approximately 3,800 military bases (1990 est.) in the United States, many could be closed without significant detrimental effect to national security. This view became more pronounced in the wake of the Soviet Union's breakup and collapse of the Warsaw Pact military threat. While most analysts agreed that the Department of Defense's (DOD's) base structure was larger than necessary to meet the department's needs, there were differences concerning which, if any, additional bases should be closed, at what speed, and what criteria should be used for making those decisions.

Significantly, the impact of a specific base closing would be keenly felt in one Member's state or district, but benefits in terms of savings could be spread widely among all citizens and taxpayers. In combination, these two factors — (1) the narrowly felt pain from an individual base closing and (2) the widely diffused benefits from closing many bases to save taxpayer funds — produced strong incentives for coalitions of Members of Congress to bargain in the legislative process to protect many bases from closure.<sup>2</sup>

A statutory provision enacted by Congress in 1977 (10 U.S.C. § 2687), required procedures which made closing a base very difficult, and no major bases were closed between 1977 and 1991. During the late 1980s, several bills were introduced in Congress to relax the statutory restrictions. The first proposal that actually broke the deadlock was the elaborate scheme prescribed by the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (P.L. 100-526; 102 Stat. 2623, at 2627). The procedure established under that statute — its principal

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<sup>1</sup> This report was written by George Siehl, formerly a Specialist in Natural Resources Policy at CRS. Mr. Siehl has since retired, but the other listed author updated the report and is available to answer questions concerning its contents. Clinton T. Brass, Analyst in American National Government at CRS, contributed to the updated report.

<sup>2</sup> For example, one scholar expressed his view that ... in 1997, the Secretary of Defense and every member of the Joint Chiefs of Staff proposed shutting down a number of obsolete military bases. They were opposed by a congressional coalition of legislators whose districts included the various bases. The members of this coalition acted to retain each other's military installations, at the expense of taxpayers in districts who would not benefit. See Harvey S. Rosen, *Public Finance*, 5<sup>th</sup> ed. (Boston: Irwin/McGraw Hill, 1999), p. 121.

innovations were to rely on the services of an independent commission and a fast track, no-amendment vote — proved so successful that a later statute, the Defense Base Closure and Realignment Act of 1990 (Title XXIX of P.L. 101-510; 104 Stat. 1485, at 1808), created three subsequent commissions. This occurred notwithstanding the arguments of some Members against the legislation on grounds that base closings were, in fact, occurring without the legislation, and that the legislation was an abdication of congressional responsibilities, under the Constitution, to the executive branch.<sup>3</sup>

A major reason for the complex procedures in the 1988 and 1990 statutes was the congressional concern that DOD might close, or not close, bases for political reasons. In the past, high-level representatives of the Defense Department, in soliciting congressional support for favored programs, reportedly might imply that if a Member of Congress voted against the program, a base might be closed in the Member's district. For example, Representative Richard K. Armey stated:

The fact is, unfortunate as it is, that historically base closings have been used as a point of leverage by administrations, Republican and Democratic administrations, as political leverage over and above Members of Congress to encourage them to vote in a manner that the administration would like.<sup>4</sup>

The 1977 measure, P.L. 95-92, provided a safeguard against arbitrary closure; it required the Secretary of Defense to submit a request for closure or realignment as part of the annual appropriations request; the request was to be accompanied by evaluations of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of closure or realignment. To whatever extent concerns about politically biased closures were well-founded, it was clear that a workable legislative remedy must be insulated from political considerations. Thus, the 1988 and 1990 statutes provided for the creation of bipartisan commissions and set forth complicated procedures to insulate realignment and closure recommendations from politics (including recommendations based on specified criteria, with adequate justification), avoid potential vote-trading that could undermine chances for change, and also accomplish the legislation's substantive goal of saving funds.

Among other things, the 1990 version of the law provided for three successive, eight-member commissions that would operate in 1991, 1993, and 1995, with all eight members of each commission appointed by the President, by and with the advice and consent of the Senate.<sup>5</sup> The President was also given authority to

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<sup>3</sup> See Rep. Gillespie V. (Sonny) Montgomery, remarks in the House, *Congressional Record*, vol. 134, Jul. 7, 1988, p. 17060, and Rep. Jack B. Brooks, remarks in the House, *Congressional Record*, p. 17063.

<sup>4</sup> Rep. Richard K. Armey, remarks in the House, *Congressional Record*, vol. 134, July 7, 1988, p. 17072.

<sup>5</sup> An amended version of the BRAC statute (P.L. 107-107; 115 Stat. 1342) is being used to govern the "2005 round." For more information on changes to the statute (e.g., retaining the Senate confirmation requirement for the President's appointees and increasing the commission's size from eight to nine members) and current developments, see CRS Report (continued...)

designate each commission's chairman. When selecting the commission members, the statute stated that the President "should consult" with the Speaker of the House of Representatives concerning the appointment of two members, the majority leader of the Senate concerning the appointment of two members, and each of the minority leaders of the House of Representatives and the Senate, respectively, concerning the appointment of one member (for a total of six consultations). This framework did not explicitly require that the commission be composed of equal numbers of Democrats and Republicans.

The statutes and the Base Closure and Realignment (BRAC)<sup>6</sup> commissions succeeded in effecting the selective closure of many military bases and the reduction of military infrastructure. The "process" was instrumental in forcing this outcome, since, once set in motion, closure recommendations were very difficult to stop. This impetus resulted from the fact that overall dollar savings from the package outweighed the "pain" associated with an individual installation closure or downsizing.

Specifically, under the 1990 BRAC legislation, congressional review and action took place after an extended and multi-tiered review and recommendation process. DOD was required to submit its recommendations to the commission, which in turn was required to submit its own report and recommendations, which could differ from DOD's recommendations, to the President. After the commission received DOD's recommendations, the General Accounting Office (GAO; now the Government Accountability Office) was required to transmit a report to Congress and to the commission analyzing DOD's recommendations and selection process. The President could elect to either transmit the commission's recommendations to Congress, with no opportunities for changing them, or disapprove the commission's recommendations and not submit them to Congress. If the commission's recommendations were disapproved by the President, the commission would be required to revise its recommendations and resubmit them to the President. If the President disapproved the commission's revised recommendations, that year's round of the BRAC process would cease. Furthermore, the BRAC statute provided for expedited congressional procedures to disapprove commission recommendations regarding base realignments and closures, with a straight up or down vote and no possibility for amending the list. Upon receiving the commission's recommendations from the President, Congress would need to pass a joint resolution of disapproval of the recommendations within 45 days, or else the commission's recommendations would go into effect. In sum, the key elements of this process were:

- *The DOD proposes, the commission disposes.* The Secretary of Defense made the initial recommendations for closure or

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<sup>5</sup> (...continued)

RL30051, *Military Base Closures: Agreement on a 2005 Round*, by David E. Lockwood; CRS Report RS21822, *Military Base Closures: DOD's 2005 Internal Selection Process*, by Daniel Else and David Lockwood; and CRS Report RL32216, *Military Base Closures: Implementing the 2005 Round*, by David E. Lockwood.

<sup>6</sup> The *BRAC* acronym refers equally to two different word orderings: "base closure and realignment commission" and "base realignment and closure commission."

realignment. The commission could, and did, add to and delete from these recommendations. Both DOD and commission proposals had to conform with the force structure plan developed by DOD.

- *The President can seek changes in commission recommendations.* No President ever challenged a commission over its recommendations, although the law provided this opportunity. If a deadlock had occurred over the closure list, the process would have terminated with the President's refusal to forward the list to Congress.
- *Congress must pass a joint resolution of disapproval of the recommendations list within 45 days, or the recommendations for closure and realignment go into effect.* This was the only action allowed to Congress under the base closure law: a straight up or down vote, with no changes permitted in the list of actions by the commission.

Under the BRAC law, the Secretary of Defense was obligated to implement the closure and realignment recommendations if Congress did not disapprove them. Another forcing mechanism in the law was the requirement that the selected bases close within six years from the time Congress voted upon the recommendations.

The statute further required that proceedings, information, and deliberations of the commission be open to various chairmen and minority ranking members of congressional committees or their designees, upon request.<sup>7</sup> Heads of federal departments and agencies were allowed to detail personnel to the commission, upon the commission director's request, and the Comptroller General was required to provide assistance to the commission (including the detailing of GAO employees) in accordance with an agreement with the commission.

Congress amended the BRAC laws over the years to lessen the economic and social disruption in base closure communities. These amendments included the transfer of personal property (such as furniture and equipment), below cost sales or transfers of real property to communities, and technical assistance in land planning and base reuse.

## **Report of 1988 Base Closure Commission**

On December 29, 1988, the first base closure commission (with its 12 members appointed by the Secretary of Defense Carlucci) issued its report. It recommended the closure, in part or in whole, and realignment of 145 bases. The commission projected that this would improve the effectiveness of the base structure, and would save an estimated \$693.6 million a year in base operating costs. After various procedural requirements of the statute were met, culminating with Congress's tacit

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<sup>7</sup> In practice, the commission stated that its activities and documentation were open to the public.

approval by not adopting a joint resolution of disapproval, the Secretary of Defense was required to close or realign the listed bases by September 30, 1995. The first base — Pease Air Force Base, NH — was closed in the spring of 1991.

One commission member, former Senator Thomas Eagleton, criticized the cooperation of the services in the process, singling out the Navy for “stonewalling” and “getting away with it.” In his additional views in the 1988 report, he suggested starting with the Navy in any future base closing effort.

While the commission approach taken in the 1988 statute was generally regarded by Congress as successful, DOD took the position that the closure of military bases is essentially an executive branch function. Accordingly, early in 1990, Secretary of Defense Richard Cheney issued another list of bases which Congress should consider for possible closure. Representative Les Aspin of Wisconsin, chairman of the House Armed Services Committee, rejected the list as including a disproportionate number of bases in Democratic districts, and stated that the only fair way to develop a new list of base closures was to enact legislation creating another commission. Such a commission was then created by P.L. 101-510, dated November 5, 1990. The earlier commission had been disbanded after the submission of its final report.

## **Creation of 1991 Base Closure Commission**

As provided for by statute, the new commission consisted of eight members appointed by the President, with the advice and consent of the Senate. In selecting individuals to be nominated for membership on the commission, the President was directed to consult with the Speaker of the House of Representatives concerning the appointment of two members; the majority leader of the Senate concerning the appointment of an additional two members; and the minority leaders of the House and Senate for one member each. As noted, the commission was to meet in 1991 and, as reconstituted, again in 1993 and 1995. Another requirement was that not more than one-third of the personnel employed by or detailed to the commission staff could be on detail from DOD.

The procedures provided by the 1990 law were substantially more complicated than those set forth by its predecessor. The major difference lay in the fact that the initial recommendations on base closures made under the new statute were to be made by the Secretary of Defense.

For example, in the 1991 round of base closure recommendations, DOD’s recommendations were transmitted to the commission, where they were reviewed. The commission’s own recommendations, which differed in several important respects from DOD’s, were then sent to the President (July 1, 1991). After his review and approval, the President transmitted the commission’s report to Congress. If he had not approved of the report, in whole or in part, the President would have been obliged to explain his reasons for disapproval to both Congress and the commission. The commission would then have transmitted to the President a revised list of recommended closures. The procedure was, in fact, somewhat more



complicated than this description — for example, the Comptroller General was directed to assist the commission — and there was considerably more detail set forth in the current statute than there was in the earlier one. However, it may be said, in general, that the changes were designed (1) to insulate the entire process even further from political considerations, as indicated by the provisions requiring that the commission meet only during the non-election years 1991, 1993, and 1995; and (2) make the process more open to the public.

P.L. 101-510 included other provisions of significance to the base closure program. For one thing, it directed the Secretary of Defense to ensure that the environmental restoration of the closed bases took place as soon as possible. Secondly, it specifically authorized the Secretary to provide “outplacement assistance” to civilian employees of the Defense Department at installations being closed.

A third important difference lay in the way overseas bases were treated. These bases were not within the commission’s jurisdiction; their closure was an important issue, but, presumably, not affected by the same political considerations that would require the appointment of a bipartisan commission. The 1990 statute, nevertheless, contained a policy statement that did not appear in the previous one (P.L. 100-526). First, it was declared to be the “sense of Congress” that military operations at overseas bases be terminated at the discretion of the Secretary of Defense “at the earliest opportunity.” Secondly, it was the sense of Congress that, in providing for termination, the Secretary of Defense “should take steps to ensure that the United States receives, through direct payment or otherwise, consideration equal to the fair market value of the improvements made by the United States at facilities that will be released to host countries.” In practice, if the decision to close an overseas base was made, there were negotiations with the host nation weighing the U.S. costs of constructing and improving the facilities against the estimates for environmental or other remediation required at closing. These last considerations would be under the terms of the host nation agreement when the U.S. built or took over the facility.

Another feature of the statute was the establishment of a “base closure account,” into which revenues generated from the sale of closing bases would be placed; the funds could then be used to pay for the expenses associated with the relocation of forces, such as new construction or rehabilitation of existing facilities at receiving bases.

There were also several provisions designed to assist DOD in carrying out Congress’ base closure policy. The 1990 statute required the Defense Department to publish its proposed criteria for selecting bases to be closed. These proposed criteria were included in the *Federal Register* for November 30, 1990. There followed a period during which public comments were received, and then on February 15, 1991, the final criteria, which contained a few changes, were published. These final criteria were subject to congressional disapproval by joint resolution until March 15, 1991, but no such resolution was adopted. The language included in the *Federal Register* stated that, in selecting military installations for closure or realignment, DOD was to consider the following: military value, return on investment, and impact.

**Military Value**

1. Current and future mission requirements and the impact on operational readiness of the Department of Defense's total force.
2. Availability and condition of land, facilities and associated airspace at both the existing and potential receiving locations.
3. Ability to accommodate contingency, mobilization, and future total force requirements at both the existing and potential receiving locations.
4. Cost and manpower implications.

**Return on Investment**

5. Extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the cost.

**Impact**

6. Economic impact on communities.
7. Ability of both the existing and potential receiving communities' infrastructure to support forces, missions, and personnel.
8. Environmental impact.

**Secretary of Defense Cheney's Proposed List**

After the publication of these criteria, the Secretary of Defense, on April 12, 1991, announced a new list of proposed base closures. Analysts on the staff of the House Armed Services Committee estimated that the closings would eliminate approximately 70,000 military and civilian jobs by 1997, or 3.3% of the military's 2.1 million personnel. A number of Senators and Congressmen objected to proposed closures in their various jurisdictions, but in general Congress appeared to find the list more acceptable than the one announced by Secretary Cheney in January 1990. Representative Aspin stated that the list "at first glance appears to be fair." On the other hand, Representative Joseph Moakley of Massachusetts concluded that: "It almost looks like the Democratic strongholds have been hit the worst." Secretary Cheney, claiming that he did not know how many bases were in Democratic and how many in Republican districts, asserted that: "There is nothing to be gained by a secretary of defense trying to play base closings for some political purpose."

## 1991 Base Closure Commission's Report

The second phase in the base closure process was then initiated, with the commission holding a number of statutorily mandated public hearings in various parts of the country. Many Members of Congress, as well as other witnesses, testified regarding the process, merits, and impacts of the possible closings. Press accounts of commission hearings indicated that much of the testimony by Members of Congress objected to a specific, individual closure. The commission report noted that "Community and elected leaders were tireless advocates for their military installations." One objection was that there was too little time, and too little independent expertise in the commission, to permit a complete evaluation of DOD's recommendations. However, the commission chairman, James Courter (a former Republican representative from New Jersey), indicated that complying with the July 1 deadline was not a problem. He had also stated, on several occasions, that the commission was an independent body, and that it would not rubber-stamp DOD's recommendations.

On May 31, 1991, the commission issued a list of "preliminary candidates for base closure." Subsequently, after concluding its deliberations, the commission released its "final" list of 82 proposed closures and realignments on July 1, 1991. In its recommendations, the 1991 base commission largely accepted the list proposed by Secretary of Defense Cheney. However, it made a few significant changes — the most important involving six bases selected by DOD for closure. The commission recommended that Ft. Chaffee (AR) and Ft. Dix (NJ) be realigned, and that Fort McClellan (AL), Naval Training Center Orlando (FL), Naval Air Station Whidbey Island (WA), and Moody Air Force Base (GA), remain open.

An important aspect of the base closure statute was the mandated role for GAO. GAO issued a report, dated May 1991, containing detailed comments about the various methods used by DOD as a basis for its recommendations. The report, *Military Bases: Observations on the Analyses Supporting Proposed Closures and Realignments*, also contained important information about individual bases. The report is too lengthy to permit an adequate summary here, but it is noteworthy that (1) the Army's recommendations were found by GAO to be "well supported"; (2) in the case of the Air Force, GAO found generally that "the rationale was adequately supported by documentation"; and (3) as regards the Navy, GAO found that it used "inadequate documentation," so that "GAO was unable to independently evaluate the relative military value of the bases considered."

### Congressional Actions on 1991 Recommendations

On July 10, 1991, President George Bush approved the independent commission's recommendations for closure, in compliance with the procedures prescribed by law, and transmitted them to Congress. The closings proposed by the commission would, by its estimate, cost \$4.1 billion from 1992 to 1997, but would save about \$1.5 billion a year thereafter. The statute gave Congress 45 days to overturn the recommendations by joint resolution. No such action took place.

Many Members of Congress expressed concern over the impact of new closures on the lives of people in their districts and states. Concern with the possibility of widespread unemployment in certain affected communities and with the validity of military valuations of competing bases prompted calls for reversal of commission decisions in a number of specific cases. Members stated these and other arguments during House floor debate (see the *Congressional Record* of July 30, 1991). Recommendations to close the Philadelphia Naval Shipyard and Naval Station and Loring Air Force Base in Maine drew extended comment from Members. A more broadly based reaction on Capitol Hill was to seek increased funding for programs which would provide an economic "safety net" for those adversely affected by closures (see CRS Report 96-562, *Military Base Closures Since 1988: Status and Employment Changes at the Community and State Level*, by George H. Siehl and Edward Knight).

Earlier, on July 23, the House Armed Services Subcommittee on Military Installations and Facilities voted to support the recommendations of the Defense Base Closure and Realignment Commission. Before the vote, the subcommittee heard testimony from several Members of Congress in opposition to the commission's recommendations. In general, they objected to the lack of coordination between the three military departments in making their recommendations to the commission. There were also specific complaints that the closure of certain medical facilities would result in inconvenience and higher medical costs to persons currently using those facilities. Most of these concerns and examples would be raised again in floor debate the following week.

On July 24, 1991, the House Committee on Armed Services favorably adopted the report of its subcommittee, and endorsed the commission's recommendations. On July 30, by a vote of 60 to 364, the House rejected a resolution disapproving (and, thereby, tacitly approving) the recommendations of the commission. The Senate then had no need to consider their resolution of disapproval, as rejection of the commission's recommendations required both bodies to agree to override.

The Senate 1992 Defense Authorization bill, S. 1507, contained several provisions that would have facilitated transfers of real property at closing bases to local communities. These provisions were contained in the Johnston-Breaux amendment, which the Senate had adopted after its introduction on the floor. The amendment would have made two major changes in existing law: (1) it would have provided that if a community near a closed base was significantly harmed, local governments would have first priority in obtaining excess property located there, although for the past forty years other federal agencies have been given this priority by statute; (2) it would have provided that these recipients would be offered the property at no cost, although in the past such transfers have generally been made on a reimbursable basis. These provisions were deleted in conference, however. The conference report, H.Rept. 102-311, acknowledged the existing obstacles to base reuse, but found that the proposed changes raised other problems: loss of revenue from property sales, displacement of existing land allocation priorities, and conflicts with environmental laws, among others. The committees of jurisdiction had not considered the changes, the report said, but added that the House of Representatives pledged to review the matters in 1992.

The conferees clarified the congressional intent that civil works, river and harbor projects, and other activities of the U.S. Army Corps of Engineers, were to be excluded from the base closure program.

## **Environmental and Other Considerations**

The impending closure of substantial numbers of bases raised several difficult environmental problems. Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as “Superfund,” the U.S. Government could not transfer land outside federal ownership until it agreed that all remedial action necessary to protect human health and the environment had been taken. Since the communities adjoining bases programmed for closure generally wish to obtain the land quickly, while the decontamination process found necessary to restore the environment could be time-consuming, serious conflicts between the interests of economic development and the interests of environmental restoration could occur.

There have been many federal environmental statutes enacted in recent years, and there are also a number of relevant state laws. In general, Congress and the courts have made it fairly clear that federal facilities must comply with state and local environmental requirements, but until recently it was not entirely clear that state authorities could impose penalties on federal facilities that were in violation. This problem was addressed by the Federal Facilities Compliance Act, which specifically provides that states and municipalities have this authority.

As the base closure program accelerated, it became increasingly important to convert the bases to nonmilitary use as expeditiously as possible. It has been DOD policy to negotiate with a local organization, often referred to as a “reuse committee,” that represents the various community interests, but at some bases the competing cities and counties have found themselves unable to cooperate even to the extent of forming such an organization. In one case, where the base was included on the 1988 list, and the closure actually took place in 1992, lawsuits among local jurisdictions delayed implementation of a reuse plan until February 1995.

## **Creation of 1993 Base Closure Commission**

On January 5, 1993, President Bush submitted a list of eight nominees for appointment to a newly reconstituted Base Closure and Realignment Commission. He selected James Courter, the 1991 commission chairman, to be head of the new group. These were subsequently confirmed by the Senate. The 1993 commission, after reviewing DOD’s list of recommended closures (submitted on March 12, 1993) and holding extensive public hearings, recommended closing 130 bases and realigning 45 others. Congress acceded to the commission’s recommendations by declining to pass a joint resolution of disapproval. These actions were expected to result in savings of approximately \$4 billion between FY1994 and FY1999, after one-time closure costs of approximately \$7 billion, and additional annual savings in the range of \$2.3 billion thereafter.

## **Other Significant Developments (1993-1994)**

### **Supreme Court Decision on Judicial Review**

On May 23, 1994, the Supreme Court unanimously decided that decisions to close military bases were not subject to judicial review. Chief Justice Rehnquist, writing the opinion of the Court, held that although the Administrative Procedure Act provides for judicial review of a “final agency action,” the President was not an agency within the meaning of that statute, and his decisions were therefore not reviewable. In the lower court decision which the Supreme Court reversed, it was suggested that the President’s authority to close bases was limited to those situations where there had been “compliance with statutory procedures” by the Secretary of Defense and the base closure commission. Attorneys arguing for judicial review contended that “the commission used improper criteria, failed to place certain information in the record until after the close of public hearings, and held closed meetings with the Navy.” The Supreme Court, was not, however convinced by these arguments, and held that “The President’s authority to act is not contingent on the secretary’s and commission’s fulfillment of all the procedural requirements imposed on them by the 1990 [base closure] act.”

In a concurring opinion, Justice Souter, joined by three other justices, examined the legislative history of the base closure statute and made specific reference to the fact that “Congress was intimately familiar with repeated, unsuccessful, efforts to close military bases in a rational and timely manner.” Accordingly, Congress adopted the complicated procedures of the base closure act to “bind its hands from untying a package of [base closures].” Consequently, “Congress did not mean the courts to have any such power through judicial review.” On June 23, 1994, Senator Arlen Specter of Pennsylvania, who had argued unsuccessfully in the Supreme Court that base closure decisions were subject to judicial review, introduced an amendment to the defense authorization act which would have provided for such review in certain cases where there was evidence of “fraudulent concealment” of information relevant to a particular decision. The amendment was rejected by a tabling motion, after debate. Opponents argued, among other things, that the amendment would open a “Pandora’s box,” in which virtually all aggrieved communities would initiate lawsuits.

### **Changes in Statutory Law**

As the process of closure and realignment took place, generally in accordance with announced schedules, several changes in statutory procedure were enacted in FY1994 and FY1995 defense authorization bills — as well as in other bills. Notable among these was the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (PL 103-421). It reduced the scope of the McKinney Homeless Assistance Act provision that gave organizations that served the homeless a priority claim to federal property that was declared surplus. Under the new law, local communities would exercise a greater degree of influence and control over disposition of surplus property through their redevelopment planning process. The process included consideration of homeless needs in the community, and that portion of the reuse plan was subject to review by the Secretary of Housing and Urban

Development. Additional details on this aspect of base reuse are found in the Department of Housing and Urban Development March 1966 publication, *Guidebook on Military Base Reuse and Homeless Assistance*.

## Reports on Base Closure Implementation

An October 1994 report, *Uncovering the Shell Game: Why Military Facilities Don't Stay Closed*, issued by Business Executives for National Security, a Washington, DC, independent study group, claimed that of the 67 major bases scheduled to be closed, 26 had reopened, or else were never closed in the first place. As a result, the report went on to state, the substantial savings originally envisaged were not achieved. DOD argued that some of the figures used in the report were wrong. For example, in the case of Carswell AFB, which the Air Force had intended to close, the BENS report stated that maintenance of the base cost an annual \$197 million. On the other hand, DOD claimed that the costs were only \$15 million. The BENS report, also, noted that after Carswell was closed by the Air Force, it was reopened by the Navy as the Fort Worth Naval Air Station. DOD argued that the Navy achieved savings through this action by consolidating its activities previously located at Detroit, Memphis, and Dallas, and closing those stations.

In November 1994, GAO's report *Military Bases: Reuse Plans for Selected Bases Closed in 1988 and 1991*, analyzed reuse plans of 37 major closed military bases. It pointed out that although DOD originally estimated it would realize \$4.1 billion in property sales revenue from closed bases, in 1994 the estimate was reduced to \$1.2 billion. The most important reason for this change, according to the report, was that:

Consistent with federal regulations, the vast majority of the disposed property is being retained by DOD or transferred to other federal agencies and states and localities at no cost.

The GAO report noted that widespread use of no-cost transfers was greatly facilitated by the enactment of provisions in the FY1994 DOD authorization act, which authorized such transfers where the property was to be used for economic development. When the base closure program was initiated in 1988, considerable emphasis was placed on the substantial revenues to be deposited in the base closure account from the sale of surplus bases. However, this emphasis shifted to assisting the economic recovery of communities affected by a closure. This was evidenced by the provisions adopted in the FY1994 DOD authorization act (Title XXIX of PL 103-160). The major impact was probably from section 2903, which provided for a transfer of real property to a redevelopment authority "for consideration at or below the estimated fair market value," but other provisions were part of the same general scheme. Section 2904 provided for "expedited determination of transferability of excess property;" and section 2906 provided for the outleasing of property at bases to be closed, pending final disposition.

The GAO report discussed other aspects of the base closure program, such as the large amounts of military land that were severely contaminated. Apart from decontamination, other types of improvement might be found necessary: for instance, sewage and electrical systems might require upgrading and buildings might have to

be brought into compliance with local, state, and federal standards. Finally, the report indicated that of the property remaining in federal ownership, 50% would go to the Fish and Wildlife Service, 22% to the Bureau of Land Management, and 24% would remain with the Department of Defense. Smaller acreages would go to the Bureau of Prisons, NASA, and the National Park Service.

## **1994 Elections and the 104th Congress**

While the basic statutory scheme for determining which installations were to be closed was generally the same as it was in 1990, the 104<sup>th</sup> Congress came under Republican control. Several issues associated with base closure, including costs and savings, were included on the oversight plan filed by the House National Security Committee at the start of the new Congress, holding out the possibility of changes. An important development took place on January 26, 1995, when Secretary of Defense William J. Perry, addressing the nation's mayors, stated that the final round of closings "will not be as large as the last one." He also commented, in connection with the base closure program, that "we have closed all of the bases that were relatively easy to close," but that DOD still "need(s) to close more bases from the point of view of saving infrastructure..."

## **Creation of 1995 Base Closure Commission**

Former Senator Alan Dixon of Illinois was nominated and confirmed as chairman of the 1995 commission in October 1994, before the 103<sup>rd</sup> Congress adjourned.

On February 7, 1995, President Clinton announced the following appointments to the final Base Realignment and Closure Commission authorized by P.L. 101-510:

Al Cornella, a Vietnam veteran who runs a refrigeration business in Rapid City, SD;

Rebecca G. Cox, a vice-president of Continental Airlines who, during the Reagan Administration was director of the White House Office of Public Liaison and Deputy Assistant Secretary of Transportation for Public Affairs;

Retired Air Force Gen. J.B. Davis, a former combat fighter pilot who became Chief of Staff at Supreme Headquarters, Allied Powers, Europe;

S. Lee Kling, a former finance chairman of the Democratic National Committee who is chairman of the board of Kling Rechter & Co., a merchant banking company in Missouri;

Retired Rear Admiral Benjamin F. Montoya, president of Public Service Co. of New Mexico;



Wendi L. Steele, who served in 1991 as Senate liaison to the Commission;

Michael P. W. Stone, former Secretary of the Army, who is a director of BEI Electronics in San Francisco. *This nomination was subsequently withdrawn.*

Retired Army Major General Josue Robles, Jr., was later nominated to replace Stone.

These nominees were confirmed by the Senate on March 2, 1995. Earlier, on December 1, 1994, President Clinton submitted a “dummy” list of commissioners, including Deputy Defense Secretary John Deutch. This met the requirement for submission of a list of candidates prior to the January 3 deadline set by law, and allowed the White House and new Republican majority in Congress to consider other names, later.

## **Actions in 1995**

The Department of Defense on February 28, 1995 released the *Base Closure and Realignment Report* setting out proposed actions affecting 146 military installations for the consideration of the BRAC Commission. Thirty-three major bases were listed for closure, and 34,200 civilian jobs would be lost under the recommendations. Although former Secretary of Defense Les Aspin had suggested that the 1995 BRAC round would be “the mother of all base closure rounds,” the actual recommendations touched fewer bases than did the 1993 round. Secretary Perry stated in his press conference of February 28 that reduction of infrastructure significantly lagged personnel reduction, 21% versus 33% through the first three closure rounds. DOD estimated aggregated savings of about \$57 billion over 20 years, from this and the previous three rounds.

On May 10, the commission added 31 installations to the list of bases to be considered for possible closure or realignment. The chairman emphasized that inclusion of a base on the list did not mean the base would close or be realigned, but would allow a fairer assessment of closure candidates. Indeed, in 1993, the commission added 70 bases for further consideration, but, in the end, made few final recommendations that differed from the DOD list. Nevertheless, the commission’s views seemed somewhat different from DOD’s. For example, the DOD list included only one major shipyard (Long Beach, California) for closure, but the commission added Portsmouth shipyard in Kittery, Maine for consideration. The commission also added Air Force depots at McClellan AFB, California and Kelly AFB, Texas. The latter additions would prove to be more momentous.

During May and June — and prior to its final vote on June 22 — the commission held numerous regional hearings. One of the commissioners stated that between 70 and 80 installations had been visited. In one major difference, although the Air Force had recommended retaining all five maintenance depots, with a reduced workload, the commission put all the depots on a list to be considered for possible closure or realignment.

On June 22, the commission began its final vote, and announced its first set of recommendations on closures and realignments, after reviewing 40% of the recommendations submitted by DOD. It made substantial changes in several of the Air Force recommendations: the Air Force had wanted to close Rome Laboratory, NY, but the commission voted to keep it open. The Air Force also wished to retain all five of its maintenance depots while reducing their workloads, but under the commission's plan, both Kelly AFB, TX, and McClellan AFB, CA, would be virtually closed. Kelly itself would remain open, although the depot would close; McClellan would close entirely. A number of Navy laboratories were also scheduled to be closed.

On June 30, the Defense Base Closure and Realignment Commission sent its *1995 Report to the President* to President Clinton. The report recommended the closure of 79 bases (including 28 major ones), the realignment of 26 bases (including 21 major ones), and a number of disestablishments or relocations. Chairman Dixon stated that implementing these actions would save \$19.3 billion over 20 years, but would cost an estimated 94 thousand jobs. The biggest closures would be McClellan AFB, CA, Long Beach Naval Shipyard, CA, and Fort McClellan, AL. The two California senators urged President Clinton to reject the commission's recommendations. On the other hand, several Republican congressmen stated that rejection of the report would impair the integrity of the base closure process (see, for example, *CQ*, July 1, 1995, pp. 1939-1941); no report had been rejected since the base closure program was initiated in 1988. The 1995 report, however, was the first in which the commission had recommended more savings than those proposed by the Administration.

On July 13, President Clinton approved the commission's report, as submitted. In his transmittal message to Congress, he expressed serious reservations because of the severe economic impact that would be suffered by California and Texas. He stated that California had already suffered disproportionately by bearing about half the defense job losses in the three previous rounds, and the latest recommendations would also result in California losing about half the jobs, although it was responsible for only about 15% of the military work force. In its initial report to the commission, the Defense Department had strongly opposed the closing of McClellan Air Force Base, Sacramento, Ca., and Kelly Air Force Base, San Antonio, Tx., for the reason that closure would disrupt Air Force operations and undermine the Air Force's ability to carry out some of its modernization programs.

In his July 13, 1995 transmittal message Clinton defended privatization. He said he would view as a violation of the base closure law any effort by Congress to restrict privatization after approving the base closure package. Representative James V. Hansen stated a contrary view in remarks contained in H.Rept. 104-220, which accompanied the resolution of disapproval, H.J.Res. 102. He said, in part, "the President's direction to 'privatize-in-place,' and the Pentagon's plan for implementation, appear to be in violation of several sections of current law."

On July 26, the House National Security Committee rejected, by a vote of 43-10, a resolution introduced by Representative Frank Tejeda (D., Tx.) that would have overturned the commission's base closure and realignment recommendations. On September 8, the House rejected the resolution of disapproval by a vote of 345-75.

The administration plan for privatizing some of the operations at Kelly AFB, Texas, and McClellan AFB, California was a point of controversy.

President Clinton told Kelly AFB workers in an October 17, 1996 speech that, “for five more years, Kelly will keep the jobs that would be here if closure had not been recommended, and even eight years from now, more than two-thirds of Kelly’s jobs will still be here.” Employment at Kelly when it was recommended for closure was about 16,000.

At McClellan AFB, some 8,700 of the 11,000 jobs were to be protected for the next five years, after which privatization would take place, with the expectation that as many as 4,300 jobs will shift to non-government employers, according to DOD estimates. In 1996, the Air Force identified work at the two depots to be bid competitively as part of the privatization effort.

Critics contended that the two depots were recommended for closure by the 1995 BRAC Commission because the five Air Force depots had excess capacity, and that the closures would shift work so as to more fully utilize the capacity of the remaining open depots. Continued operation with privatization, they contended, would continue the overcapacity and undercut the commission’s projected savings from closure of McClellan and Kelly.

## **Subsequent Closure Activity**

In conformance with the authorizing statute, by December 31, 1995, the commission completed its mission and went out of existence. Creation of a new BRAC commission would require new authorizing legislation by Congress.

The process of closing previously selected military bases continued. Congress amended the base closing statute a number of times in order to help local communities shift quickly to new economic uses of the land and resources left behind. The National Defense Authorization Act for FY1996 (P.L. 104-106), for instance, added several base closure provisions which addressed such subjects as environmental remediation, the lease back of property to the federal government, and the performance of police and similar services at closed installations. Additional changes were contained in the FY1997 National Defense Authorization Act (P.L. 104-201): principally, bases from the 1988 closure round were made eligible for several provisions available for bases closed under later rounds. More detail on the closure process and Congress’s continued role in facilitating that process is contained in CRS Report 96-562 F, *Military Base Closures Since 1988: Status and Employment Changes at the Community and State Level*, by George H. Siehl and Edward Knight.

The RAND National Defense Research Institute has also studied the impact of base closures, concentrating on several non-metropolitan communities in California. Their 1996 report, *The Effects of Military Base Closures on Local Communities: A Short-Term Perspective*, concluded that “While some of the communities did indeed suffer, the effects were not catastrophic (and) not nearly as severe as forecasted,” and,

“the burden of defense cuts falls on the individual worker or firm rather than the community.” (p.xii)

There is a wide variety among military bases, ranging from those with a training mission and a high percentage of military personnel to support facilities such as shipyards and depots staffed primarily with civilians. There are great differences in the settings in which military installations are found, from lightly populated rural areas to robust, economically diversified metropolitan centers. Base closure impacts clearly differ with individual circumstances. Thus, RAND noted, “(C)losures of major facilities such as Mare Island or Long Beach may have serious effects on the displaced workers, but the effects on the local community are muted by the fact that the community is embedded in a much larger economy...” (p.12)

It was clear to many observers that individual workers and firms would be adversely affected as the base closures and realignments laid out by the four commissions were completed. Their communities, possibly suffering at least initial disruption, however, might gain in the long run. Emerging experience indicated that more jobs, not less, followed many, but not all, closures.