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The National Defense Authorization Act for Fiscal Year 2012 Highlights of the Conference Report

The National Defense Authorization Act (NDAA) for Fiscal Year 2012 is a key mechanism by which the Congress of the United States fulfills its primary constitutional responsibilities, pursuant to Article 1, Section 8 of the Constitution; to “provide for the common defense.” This bill would mark the 50th consecutive enactment of the National Defense Authorization Act. The House version of the bill, H.R. 1540, passed the House Armed Services Committee in May by a vote of 60-1 and the full House by a vote of 322-96. The Senate passed their version, S. 1867, on Dec. 1st by a vote of 93-7.

In the legislation, Chairman McKeon and members of the House Armed Services Committee show their commitment to:

- Ensure our troops deployed in Afghanistan, Iraq, and around the world have the equipment, resources, authorities, training, and time needed to successfully complete their missions and return home;
- Provide our warfighters and their families with the resources and support they need, deserve, and have earned; and
- Invest in the capabilities and force structure needed to protect the United States from current and future threats.

AUTHORIZED FUNDING LEVELS—The bill would bring the total authorized **funding for National Defense to \$554 billion** for the Base Budget, and **\$115.5 billion for overseas contingency operations**. The authorization includes \$530 billion for the Department of Defense and \$11.1 billion for the Department of Energy’s National Nuclear Security Administration.

Funding levels authorized by the FY 12 NDAA have been reduced significantly from the original House-passed version to comply with the first tier of the Budget Control Act’s requirement to cut Defense spending by an estimated \$465 billion over ten years. Authorized funding has been **reduced \$19 billion** from the FY 11 NDAA, **\$21.8 billion** from the House-passed version of the FY12 NDAA, and **\$24.1 billion** from President Obama’s budget request for FY 12. Under sequestration, an additional \$500 billion will be cut over ten years, beginning in 2013.

VITAL AUTHORITIES—The National Defense Authorization Act extends vital troop pay and war-related authorities scheduled to run out in the next several weeks. Without immediate passage, troop pay and benefits could be suspended for our forces. Other vital authorities include enlistment and reenlistment bonuses, retention and accession pay for critical skills, and pay for hazardous duties.

Full Committee:

AFGHANISTAN— In addition to vital authorities to prosecute the war in Afghanistan, the bill allocates \$115.5 billion for contingency operations, including in Afghanistan. The FY12 NDAA ensures that any withdrawal of forces from Afghanistan is conditions-based rather than arbitrary. At the request of General Petraeus, the Conference Report contains new specific authorities for commanders to terminate or void contracts without penalty if it is determined that such a contract provides funding for groups supporting an insurgency. The Report also provides additional access to contractor and subcontractor records to ensure that funding from U.S. contracts is not aiding the insurgency.

IRAN — The Conference Report reflects the widely held bipartisan proposition that those who would do business with Iran, including for the purchase of petroleum through its central bank, have to choose which they prefer: access to the \$14 trillion economy of the United States or access to Iran's \$250 billion economy. The Conferees included a Senate-passed amendment to require the President to sanction entities, including state central banks, engaging in financial transactions with the Central Bank of Iran. In addition, the bill:

- Retains the annual DOD reporting requirement on Iranian military power, which includes a review of Iran's nuclear capabilities, force structure, and operations against the armed forces of the United States in Iraq and Afghanistan.
- Requires an independent review of current U.S. capability gaps to counter Iran and China.

CHINA—Noting the strategic challenges associated with a rising China, the Conference Report takes concrete steps to ensure that the United States is fully prepared to defend our vital interests against an emerging competitor. The bill:

- Requires the Secretary of Defense, in consultation with other key departments and agencies, to assess the threat posed by the amount of US national debt held by China;
- Amends the requirement for the annual Chinese Military Power Report to include an extensive analysis of a potential cyber threat;
- Withholds funds from the joint Chinese, Department of Defense, Department of Energy Center of Excellence for Nuclear Security until the Secretary of Defense assures Congress the center will curb China's proliferation of nuclear technology and is consistent with U.S. national security interests. This includes a specific prohibition against construction of any facility in China until the requirements of the provision are met.

IRAQ— The bill authorizes funds and authority for the Office of Security Cooperation- Iraq. The FY12 NDAA requires a report on how the OSC-I will address capacity shortcomings within the Iraqi Security Forces as well as plans for training assistance and joint exercises.

PAKISTAN – Freezes nearly \$700M in aid to Pakistan pending DOD delivery of a strategy for improving the effectiveness of such assistance and assurances that Pakistan is countering Improvised Explosive Devices networks in their country that are targeting coalition forces. This freeze includes the majority of the \$1.1 billion in Pakistan Counterinsurgency Funds.

DETAINEES—The FY12 NDAA includes critical provisions to clarify and reaffirm the military's responsibility and authority to detain al Qaeda terrorists. Ten years after September 11, 2001, the extremist and terrorist threat against the United States and our allies continues to evolve. As we begin drawing down forces in Afghanistan, and conscious of the rise of al Qaeda affiliates in places like Yemen, the FY12 NDAA recognizes that the war against terrorism and violent extremism is broader than operations in any one country. The bill strengthens policies and procedures used to detain, interrogate, and prosecute al Qaeda, the Taliban, affiliated groups, and those who substantially support them.

The Conferees balance this approach with the conviction that the erosion of citizens' civil liberties in the pursuit of security constitutes a victory by the enemy. To that end, **these provisions do not extend any new authorities to detain U.S. citizens and explicitly exempt U.S. citizens from provisions related to military custody of terrorists.** The FY 12 NDAA:

- Prohibits the transfer or release of Guantanamo detainees to or within the United States.
- Prohibits the use of funds to house Guantanamo detainees in the United States.
- Reaffirms the lawful detention of individuals from al Qaeda, the Taliban, and associated forces engaged in armed conflict with the United States, *without extending new authority to detain U.S. citizens.*

- Requires military custody for al Qaeda and associated terrorists who are captured plotting an attack on the United States, except where the Secretary of Defense waives this requirement as not being in the national security interest of the United States. **This provision explicitly exempts U.S. citizens.**

WIKILEAKS— Requires the Secretary of Defense to establish a comprehensive program to detect unauthorized uses of classified information. Requires technological solutions, updated policies and procedures, and enforcement measures to assist with detection of such unauthorized activities.

AUDIT READINESS – Requires the Department to establish a specific plan, with interim objectives and milestones, for meeting the September 30, 2014 deadline for an audit-ready Statement of Budgetary Resources statement, to develop metrics and mitigating strategies for missed milestones and program delays, and to report to Congress on the steps to be taken.

CRITICAL REPAIR CAPABILITIES (DEPOTS)—Clarifies the definition of “depot-level maintenance and repair” activities and revises requirements for core capability determination, establishment, and reporting to ensure we continue to maintain a ready and controlled source of repair for equipment needed to support combatant command operations and contingency plans. The bill also requires core depot-level maintenance requirements to be identified and incorporated into acquisition decision milestones, to ensure that life-cycle sustainment planning is done early in weapon system development efforts. These provisions resulted from the recommendations made in the study on Future Depot Capability required by Section 322 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009.

POLITICAL INFLUENCE IN DEFENSE CONTRACTING—In order to keep the acquisition process free from political influence, the FY12 NDAA eliminates requirements mandated by the White House that would require potential contractors to first declare their political contributions before applying for business with the Department of Defense.

COUNTERNARCOTICS—The bill explicitly reauthorizes DOD Counter-Narcotics (CN) authorities for FY 2012. Included are authorities to assist other agencies in their CN efforts, especially with respect to narco-trafficking activities on the U.S. southern border. Also included are authorities to assist Colombia and other countries in disrupting the nexus between narco-trafficking and terrorist activity. This authority is extended to thirteen countries not previously authorized.

YOUCUT WINNER – The FY12 NDAA incorporates H.R. 1246, which passed the House unanimously earlier this year. The provision calls for a 10 percent reduction of the printing and reproduction budgets for each of the military departments and the defense agencies. The provision generates over \$30 million in savings from the President’s FY12 budget request.

TOUGH CHOICES –Congressional authorizers began the year determined that the Department of Defense would not be exempt from the tough choices required to restore the nation’s fiscal health. To date, over half of all deficit reduction efforts have come out of the military, with another \$500 billion scheduled under sequestration. In addition to reducing costly reporting requirements, setting new standards for financial management at the Pentagon, and incentivizing competition as a means to reform defense acquisition; conferees were forced to make further tough choices to comply with the Budget Control Agreement:

- Overseas Bases -An independent panel to review overseas bases, ahead of an anticipated reduction of America’s global posture.
- Service Member Benefits- Measures to protect individual member benefits when manpower reductions require early separation.
- R&D- Though Research and Development programs have been reduced to comply with the Budget Control Act, the bill provides R&D funding for critical capability. Further reductions under sequestration would force investment to be near-term focused and hurt overall innovation within the defense sector.

- Military Construction – Reduced \$1.7 billion in military construction, a reduction of approximately 10% of the overall account. This includes a specific reduction in Guam military construction of \$280 million.
- Flight Hours – funding levels are insufficient to enable the full execution of flight operations across the all four services and the Guard and Reserve.

Military Personnel:

A decade into the war on terror it is more important than ever that Congress recognize the service and sacrifice of the men and women who wear America's uniform and their families. The conferees agreed to a **1.6 percent increase in military pay**. In recognition of the fact that the service of our armed forces constitutes a down payment for their healthcare benefits, the conference **agreement caps future health care fee increases to cost of living adjustments**. The conferees also agreed to the following major initiatives:

- Making the Chief of the National Guard Bureau a member of the Joint Chiefs of Staff, and providing a Vice Chief of Staff in the leadership of the Bureau.
- Creating a statutory framework for the management, administration, and oversight of Arlington Cemetery.
- Making necessary changes to the Uniform Code of Military Justice in matters related to rape and sexual assault, while retaining the prohibition on sodomy.
- Providing legal counsel for sexual assault victims and ensuring requests for transfer by said victims are considered by their commander within 72 hours.
- Authorizing \$45 million to help local educational agencies heavily impacted by military dependents, base closures, and military unit realignments.
- Authorizing mental health assessments for the reserve components during unit training.
- Enabling the federal reserves, such as the Army Reserve and Air Force Reserve, to provide assistance to states during natural and manmade disasters, and providing authority for governors and designated National Guard officers to exercise control over federal military forces in such disasters.
- Authorizing new authorities such as a voluntary separation incentive and temporary early retirement to help minimize involuntary separations in any future manpower reductions the services might undertake.
- Authorizing increased number of Marine Corps officers in grades major, lieutenant colonel, and colonel.
- Consolidating and reforming transformation and travel authorities to simplify and increase efficiency.

DEFENSE OF MARRIAGE ACT— No part of this act contravenes or amends the Defense of Marriage Act (DOMA), nor is the Department of Defense relieved from the prohibition on federal recognition of same sex marriage therein.

CONSCIENCE CLAUSE PROTECTION FOR MILITARY CHAPLAINS – Includes a provision to protect chaplains' rights to not perform same sex marriages on the basis of their conscience or moral principles. This would be the first such conscience clause enacted.

UCMJ ARTICLE 125 PROHIBITION ON SODOMY – Retains current prohibition on sodomy.

Emerging Threats:

Research and innovation often face the most pressure when defense resources become constrained. Yet , threats against America and our allies continue to emerge. These require a force that is adaptable and fully capable to meet wide-ranging challenges such as terrorism, cyber attacks and weapons of mass destruction. Accordingly, the FY12 NDAA recognizes the importance of investing in future capability and technology and of ensuring DOD has robust capabilities, especially those residing within **Special Operations Forces**, to meet emerging challenges on the battlefield of today and in the future:

- Extends important budget authorities to allow defense laboratories to recruit and retain the brightest scientists.
- Expands developmental test and evaluation management for major defense acquisition programs.

- Directs an assessment of mechanisms to employ non-U.S. citizens with critical scientific and technical skills.
- Expands pilot program for the integration of technology protection features during research and development to include contractor cost-sharing.
- Extends Defense mentor-protégé program and extends and expands Defense small business programs to foster innovation and a healthy industrial base.
- Provides \$200 million for the Rapid Innovation Program.
- Increases section 1208 authority from \$45 million to \$50 million through fiscal year 2015 for support to Special Operations Forces in combating terrorism.
- Extends important Combating Terrorism rewards to persons providing information and non-lethal aid to U.S. Personnel.
- Establishes increased oversight mechanisms on U.S. Special Operations Command undersea mobility and non-standard aviation programs.

Readiness:

Historically when defense budgets are reduced, proper training for our troops and maintenance of their equipment and facilities suffers. The House Armed Services Committee is committed to ensuring that as funds for defense are drawn down and the status of future funding remains uncertain, the readiness of our forces will suffer as little as possible. To this end, the defense bill includes:

- \$248.4 billion for **Operation and Maintenance** (O&M), including funding for Overseas Contingency Operations. This figure supports the daily operations, training and administration of U.S. armed forces and includes the following:
 - \$22.8 billion for the training of all active-duty and reserve forces to increase readiness as troops experience greater dwell time following the Iraq drawdown.
 - \$6.3 billion, an increase of \$150 million, to additionally fund Navy ship and aircraft depot maintenance for both the active and reserve components.
 - \$4.5 billion for Army and Marine Corps equipment reset and depot maintenance.
 - \$7.7 billion for Air Force weapon system sustainment.
 - Just under \$1 billion to support the Army's planned return to full-spectrum training with fewer units committed to Iraq for combat operations.
- \$13.0 billion for **Military Construction**, base realignment and closures, and military family housing.

Maintenance and Repair – The bill improves logistics and sustainment by strengthening maintenance and repair in the military departments' depot repair and Army industrial facilities. Recognizing their valuable service in ongoing contingency operations, the bill takes steps to protect the benefits and services available to DOD civilian employees deployed to combat zones.

Corrosion Mitigation—While maintaining core readiness priorities, the bill identifies areas for significant savings. This bill includes several provisions that reverse years of DOD underfunding and provide a sustained focus on corrosion mitigation that costs taxpayers \$22.9 billion annually. The bill also codifies the requirements for discharge of waste by vessels of the armed forces at sea to ensure minimum impact on the environment while protecting Navy operational readiness. This provision averts \$2.0 billion of expenses for Navy fleet modifications.

Seapower and Projection Forces:

The NDAA addresses major Navy challenges while also mandating greater efficiencies in the services. The bill requires DOD to integrate a competitive acquisition strategy for the main propulsion turbomachinery of the **Next Generation Bomber** as an avenue to foster competition and maintain a robust industrial base for military engines absent a clear industrial base strategy from the Department of Defense. The bill also extends the multi-year funding authority for the second and third **Ford-class aircraft carriers** from four to five years of incremental

funding authority. These and other items in the bill ensure our military has the equipment and support they need to ensure success today and in the future. Other highlights of the bill include:

- \$14.9 billion and support for 10 new construction ships in the budget request.
- Places restrictions on the shortsighted retirement of C-23 Sherpa aircraft by offering State executives first right of refusal for title of the aircraft. The provision also requires a comprehensive study, currently lacking by the Department of Defense, of Title 32 and Title 10 United States Code intra-theater airlift requirements that support critical missions of combatant commanders and State executives.
- Requires a cost benefit analysis on maintainability and sustainability for the Littoral Combat Ship, while requiring more detailed breakout of LCS module funding in budget documentation.
- Continues support for mixed conventional load upgrade and modernization efforts for the bomber inventory.
- Allows retirement of 6 B-1 aircraft in an incremental manner, but maintains a combat-coded aircraft at the current level of 36 aircraft.
- Restricts funding for the current AAV except for survivability improvements.
- Requires GAO to conduct an annual review and report on progress of the KC-46 tanker program.
- Supports and enables effective and efficient execution of the Navy's Future Unmanned Carrier-based Strike and Surveillance System by requiring the Navy to maintain a competitive environment and construct a risk-prudent acquisition strategy for success.
- Requires the Navy to maintain an aircraft carrier air-wing force structure and associated command structure commensurate to effectively support aircraft carrier force structure requirements.
- Reinstates the requirement for annual delivery of the Navy's 30 year shipbuilding plan.
- Authorizes the Navy to procure two high speed "super ferries" from the Maritime Administration.
- Includes a provision that would require the Navy to describe its process for the naming of ships.
- Authorizes appropriations for the activities of the Maritime Administration.

Strategic Forces:

Through a bipartisan effort, we have been able to invest in our nuclear deterrent by **funding the National Nuclear Security Administration's request** to support its modernization plans. Maintaining this nation's nuclear deterrent is important for the security of our homeland and our allies. The bill requires accountability, identifies opportunities for cost savings and efficiencies, focuses on enhancing and evolving existing capabilities, and seeks to foster competition while also sustaining the industrial base and intellectual capital which supports our nuclear weapons infrastructure. Other key areas include:

- Authorized \$7.3 billion for Department of Energy nuclear weapon activities, to ensure America's nuclear deterrent continues to be safe, secure, and reliable.
- Mandates that the Defense Department provide Congress a report on development of a new ballistic missile submarine.
- Ensures health of US nuclear stockpile by requiring DOD provide to Congress detailed plans and cost estimates for sustaining and modernizing the nuclear stockpile and the infrastructure that supports it, reports on plans to retire nuclear assets.
- Imposes Congressional oversight on plans to further reduce the U.S. nuclear deterrent, by requiring the Administration to reveal its future plans for reductions, by requiring notification to Congress before nuclear weapons reductions are made, and codifying the requirement that changes to the nuclear war plan of the United States be briefed to the Armed Services Committees.

Separate from the nuclear enterprise, the bill authorizes approximately \$10 billion in funding for missile defense development and deployment.

- Missile defense authorization includes \$1.16 billion for ground based mid-course defense and \$2 billion for Aegis Ballistic Missile Defense.

- Enhances missile defense cooperation with critical partners like Israel, authorizing \$235 million for joint US-Israeli missile defense programs, more than doubling what the President requested for Israeli missile defense.

Tactical Air and Land Forces:

The FY12 NDAA provides critical needs to America's warfighter in light of a difficult fiscal climate. It mandates crucial upgrades to the ground vehicles, provides our troops necessary protection against the threat of Improvised Explosive Devices, and offers pragmatic modernizations to our aircraft fleet. Though the significant cuts to the defense budget will have a profound effect on the defense industrial base, the bill will adequately sustain critical assembly lines, shipyards, and manufacturing expertise that keep our wartime military properly equipped and supplied.

- \$325 million for National Guard and Reserve Equipment.
- \$3 billion to support urgent operational needs and counter-IED activities in Iraq and Afghanistan.
- \$255 million to support Abrams Tank industrial base and National Guard modernization.
- \$2.7 billion to support Mine Resistant Ambush Protected Vehicle modernization and survivability enhancements.
- \$2.4 billion for Army and Marine Corps Tactical Wheeled Vehicles.
- \$449 million for the Army's Ground Combat Vehicle program.
- \$8.5 billion for F-35 Joint Strike Fighter development and procurement for the Navy, Marine Corps, and Air Force.
- \$1.0 billion for EA/ 18Gs Growlers and \$2.2 billion for F/A-18Es and Fs Super Hornets for the Navy.
- \$2.1 billion for the MV-22 Ospreys for the Marine Corps and \$339 million for CV-22s Ospreys for the Air Force.

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**COURTESY OF HOUSE ARMED SERVICES COMMITTEE
CHAIRMAN BUCK MCKEON (R-CA)**