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Fiscal Year 2013 National Defense Authorization Act Conference Report Summary

The National Defense Authorization Act is vital to our national security and provides our men and women in uniform with the tools they need as well as the benefits and support that they have earned and deserve.

The bill authorizes approximately \$633.3 billion in budget authority for national defense discretionary programs within the committees' jurisdiction. It includes roughly \$527.5 billion for the Department of Defense base budget, \$88.5 billion for overseas contingency operations, and \$17.4 billion for the defense activities of the Department of Energy and the Defense Nuclear Facilities Safety Board.

Key Highlights

- **Pay Raise for Troops:** Provides for a 1.7 percent basic pay raise for military service members
- **Afghanistan Timeline:** Endorses the President's plan in Afghanistan to transition lead responsibility for security to the Afghans by mid-2013
- **Women and Children in Afghanistan:** Requires that the Departments of Defense and State explain how they are, and can, help secure women and children in Afghanistan
- **Special Operations Forces:** The bill authorizes nearly \$11 billion, almost \$160 million more than President's budget request, for US Special Operations Command, which has been a key component of the war against violent extremists.
- **Shaheen Amendment:** Allows Department of Defense funds to be used to pay for abortions female service members and female dependents of service members in cases of rape or incest
- **Sexual Assault:** Requires the following additional elements to be included in the Department of Defense comprehensive policy on sexual assault prevention: (1) that the service secretaries initiate, and retain for a specified period of time, a record on the disposition of allegations of sexual assault; (2) that commanders of certain commands and units conduct within 120 days of assuming command and at least annually thereafter a climate assessment for the purposes of preventing and responding to sexual assaults; (3) to post and widely disseminate resources to report and respond to sexual assaults; and (4) for a general education campaign to notify service members of the authorities available for the correction of military records when a member experiences any retaliatory personnel action for making a report of sexual assault or sexual harassment

- **Iron Dome:** Authorizes nearly \$480 million for US-Israel missile defense cooperation, including \$211 million for Iron Dome, and reaffirms the US-Israel ties on missile defense.
- **Iran Sanctions:** Determines that Iran's energy, shipping, and shipbuilding sectors and Iran's ports are facilitating their nuclear proliferation activities and designates them as entities of proliferation concern
- Imposes sanctions on any person involved in supplying precious metals to Iran, any material to be used in connection with the sectors listed above, any material sold to someone on the Treasury's list of specially designated nationals and blocked persons list
- Imposes sanctions on any person providing underwriting services or insurance or reinsurance for any activity sanctioned under this or any other prior law related to Iran sanctions
- Requires the President to prohibit the opening or maintaining of correspondent accounts of anyone who has facilitated a significant financial transaction on behalf of any Iranian person on the specially designated nationals or blocked persons list
- Requires the President to impose Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) sanctions on the Islamic Republic of Iran Broadcasting and the IRIB's President for human rights abuses

Key Military Personnel Subcommittee Related Provisions

End Strength:

- Limits the end strength reduction for active Marine Corps and Army to 5,000 and 15,000, respectively, from 2014 through 2017
- Requires the Secretary of Defense, in consultation with the Secretary of State, to develop and implement a plan to increase the Marine Corps Embassy Security group by up to 1,000 personnel

Mental Health Related:

- Codifies the Suicide Prevention and Community Health and Response Program for the National Guard and reserves and requires the Secretary of Defense to provide training on suicide prevention, resilience and community health and response at Yellow Ribbon Reintegration Program events and activities
- Expands the scope of providers who may conduct pre-administrative separation medical examinations for post-traumatic stress disorder to include licensed clinical social workers and psychiatric advanced practice registered nurses

Additional Sexual Assault Related Provisions:

- Prohibits granting waivers for commissioning or enlisting individuals who have been convicted of certain sexual offenses under federal or state law
- Requires the Services to establish special victim capabilities for the investigation, prosecution and victim support in connection with child abuse, serious domestic violence or sexual offenses under the Uniform Code of Military Justice

Other Personnel Matters:

- Requires Secretary of Defense to brief the committee on a plan to establish prevention of hazing in the Armed Forces, including recommendations for changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, and requires the establishment of a database to track respond to and resolve hazing incidents in the Armed Forces
- Requires the Secretary of Defense and the Secretary of Homeland Security to develop and implement a plan to accurately measure their efforts to achieve a force structure reflective of the diverse population of the United States
- Requires the Armed Forces to accommodate the beliefs of a service member and chaplain reflecting the service member's or chaplain's conscience, moral principles or religious beliefs, and in so far as practicable, would prohibit use of such beliefs as the basis for any adverse personnel action, discrimination, or denial of promotion, schooling, training or assignment. The protection does not protect the speech or conduct of an individual, and preserves the authority to take disciplinary or administrative actions that threaten good order and discipline

Pay and Benefits:

- Extends TRICARE Standard coverage and TRICARE dental coverage for an additional 180 days for members of the selected reserve who are involuntarily separated
- Requires the Secretary of Defense to submit a report setting forth the policy on the future of TRICARE Prime for eligible beneficiaries in all regions, including a description of a plan to provide assistance to affected individuals who are being transitioned from TRICARE Prime to Standard under the new contracts
- Increases the cost-sharing rates under the TRICARE pharmacy benefits program and limits any annual increase to retiree cost-of-living adjustments for fiscal years 2014-2022

Key Readiness Subcommittee Provisions

General Readiness:

- Authorizes \$175.6 billion for Operation and Maintenance in fiscal year 2013, \$700 million more than the President's Budget request
- Authorizes \$62.1 billion for Overseas Contingency Operations and Maintenance, including the war in Afghanistan, \$400 million less than the President's Budget request

Force Structure:

- Requires the Air Force to retain additional aircraft for intra-theater airlift in support of the Army's direct-support/time-sensitive airlift mission; conference report restores 77 aircraft and 3,313 personnel across the Air Force
- Prohibits the retirement or inactivation of U.S. Navy Ticonderoga-class cruisers or amphibious landing ships in the current fiscal year (2013)

Civilian Workforce:

- Requires a percentage reduction in the civilian and service contractor employee workforces that is proportional to the reduction in military end strength over a five-year period but stipulates that it must be implemented in compliance with Total Force Management statutes and policy

Military Construction:

- Authorizes \$8.54 billion for Military Construction activities, \$1.65 billion for Military Family Housing, and \$476 million for previous Base Realignment and Closure (BRAC) activities for fiscal year 2013
- Prevents the Department from carrying out additional BRAC rounds in the current fiscal year (2013)

Energy:

- Prohibits the obligation or expenditure of Defense Production Act (DPA) funding for fiscal year 2013 for the construction of a biofuel refinery until DOD receives matching DPA contributions from the Department of Energy and equivalent contribution from the Department of Agriculture
- Authorizes a specific list of Energy Conservation Investment Program (ECIP) energy projects by installation
- Continues the limitation on the use of funds for LEED gold and platinum certifications for fiscal year 2013 until the submission of the required report and updated policy guidance from the Department of Defense
- Includes consideration of energy security in the Department of Defense energy cost savings proposals

Key Emerging Threats and Capabilities Subcommittee Provisions

Cyber:

- Enhances oversight of DOD cyber offensive and defensive operations through quarterly briefings
- Establishes criteria and procedures for DOD contractors to rapidly report cyberattacks
- Requires Air Force to identify short- and long-term cyber needs – workforce, systems, and facilities – and produce a strategy to recruit and retain a highly skilled cyber workforce

Special Operations Forces (SOF):

- Authorizes an additional \$159 million to provide for high-definition Intelligence, Surveillance, and Reconnaissance capabilities
- Maintains incentives for assistance against terrorism by extending authority to reward combating terrorism
- Demonstrates commitment to Allies by extending authorization for the NATO Special Operations Headquarters

Homeland Defense:

- Restores authorized weapons of mass destruction (WMD) Civil Support Teams to better support response to WMD incidents
- Improves oversight of chemical agent and munitions destruction through requiring reporting on all destruction technologies

Key Strategic Forces Subcommittee Provisions

Cost of nuclear weapons:

- The bill requires a Department of Defense and independent cost assessment for maintaining and deploying nuclear weapons

Nuclear weapon pit study:

- Requires an assessment of cost and benefits, include potential cost savings of re-using plutonium pits and how this would inform nuclear infrastructure modernization needs.

Missile Defense:

- Requires DOD to evaluate three potential sites to inform an environmental impact study related to deploying an additional ground-based interceptor site in the United States, including evaluating two sites on the East Coast, and requires contingency plans
- Prohibits funding for Medium Extended Air Defense System (MEADS)

NNSA oversight:

- Does not include the most controversial House provisions that could have weakened health, safety and security oversight, and establishes a congressionally-appointed commission to assess options for NNSA governance and oversight. Authorizes \$29.4 million for the Defense Nuclear Facilities Safety Board

Non-Proliferation:

- Restores a ban on the export of highly enriched uranium for purposes of making medical isotopes seven years after enactment, and provides specific Department of Energy authority under the Global Threat Reduction Initiative to develop a domestic source of medical isotopes that are used for cancer screening and other procedures. Similar Markey-Upton legislation was passed previously in the House.

Major Procurement Provisions

Global Hawk:

- Prohibits retirement of Global Hawk Block 30 aircraft in FY 2013 and requires Air Force to continue to operate Global Hawk Block 30s to meet combatant command requirements through the end of 2014. The provision is based on concerns regarding unmet demand for intelligence, reconnaissance, and surveillance (ISR) capability, and the fact that the Global Hawks are brand new aircraft that cost more than \$100 million each.

M1 Abrams Tank:

- Authorization for \$135.0 million above the budget request for additional M1 Abrams tank upgrades. This increase is intended to delay the shutdown of the Abrams line based on members' desire to provide upgraded tanks to the Army National Guard and to preserve the armored vehicle industrial base.

Joint Tactical Radio System (JTRS):

- Does not include Senate language restricting funding for Joint Tactical Radio System (JTRS) production. The restriction was not retained due to confirmation of DOD and Army plans to conduct full and open competition for full-rate production of JTRS radios in FY 2013.

Air and National Guard Manpower:

- The original FY13 budget proposal would have cut 287 aircraft and 11,600 personnel from the overall Air Force (active, guard, reserve). Of those total cuts, 196 aircraft and 7,500 personnel were from the Air National Guard and Air Force Reserve. The remainder were from the active duty Air Force.
- In response, both the House and Senate authorizing bills put a total “freeze” on aircraft retirements and transfers in the Air Force for FY13. In addition, the Senate NDAA proposed an independent commission to study the Air Force’s structure. The cost of this one-year “freeze” on retirement/transfer of Aircraft to the USAF was ~ \$1.4 billion.
- In response to Congress’ concerns, in November the Air Force presented a modified plan for FY13. The proposed changes put back 74 aircraft and 4,400 personnel into the Air National Guard and Air Force Reserve (to do so, the modified plan cut more from the active duty Air Force).
- The conference report allows the modified Air Force plan for FY13 to move forward (it lifts the “freeze” on FY13 retirements/transfers), but goes a step further and requires the Air Force to keep in service an additional 32 airlift aircraft (C-130s or C-27s) and 1,000 personnel. The Air Force is left to decide which aircraft in which locations. The net cost to the USAF of the final NDAA outcome is ~\$400 million in FY13 (compared to \$1.4 billion for a total freeze on retirements/transfers).
- Overall, compared to the Air Force’s original FY13 plan, the conference report requires the Air Force to restore 106 aircraft and ~5,400 personnel to the Air National Guard and Air Force Reserve. That is more than 50% of the aircraft and 72% of the personnel originally proposed for elimination from the Air National Guard and Air Force Reserve.

Key Provisions of Interest

Export Control Reform:

- Reforms satellite export control by repealing Section 1513(a) of the Strom Thurmond NDAA for FY99, which essentially restores the authority of the President to move satellites and related items from the United States Munitions List to the Commerce Control List. The provisions would prohibit the export, re-export of such items to certain countries and provides for interagency reviews and reporting requirements in order to ensure accountability with respect to the export of satellites and related items. The provisions would maintain the existing security and monitoring provisions of the Strom Thurmond Act.

More on Afghanistan:

- Provides \$4.7 billion for the Afghan National Security Forces (ANSF)
- Requires the President to keep the relevant committees informed about negotiations with Afghanistan on the Status of Forces Agreement (SOFA) and to make the final text available for viewing

Syria:

- Requires a report on options in Syria to stop the Asad regime from using airpower to kill civilians

Title XVI – Small Businesses:

- Title 16 of the bill includes several provisions intended to enhance the opportunity and capabilities of U.S. small business to successfully compete for and perform Department of Defense contracts. For example, one such provision would strengthen incentives for federal agencies to contract with small business by recodifying certain provisions relating to small business contracting goals, tightening procedures for establishing such goals, and requiring federal agencies to develop concrete plans to meet such goals. Another would raise the maximum surety bond amount that may be guaranteed by the Small Business Administration.

Trial, Transfer and Other Detainee Provisions:

- Includes a provisions that states that nothing in the Authorization for the Use of Military Force (AUMF) or the FY 2012 National Defense Authorization Act (NDAA) shall be construed to deny the availability of the writ of habeas corpus or to deny any Constitutional rights in a court ordained or established by or under Article III of the Constitution to any person inside the United States who would be entitled to the availability of such writ or to such rights in the absence of such laws.
- Does not include a House provision (sec. 1088) that would have prohibited the trial of any foreign terrorist who is subject to trial by military commission by any court or tribunal other than a military commission
- Extends ban on Guantanamo Bay detainee transfers to United States for one year
- Struck provision in current law exempting transfers for military commission pre-trial agreements made prior to 2012 from the certification requirements and replaced it with a provision requiring assessing cooperation with prosecutors pursuant to pre-trial agreements
- Extends for one year, the construction ban regarding facilities for Guantanamo Bay detainees in United States

- Requires the Secretary of Defense to ensure that specified assessments regarding transfer of third country detainees from Afghanistan are conducted prior to the transfer of any third-country national, but eliminated the requirement that the assessments or certifications relating to those assessments be submitted to Congress as part of the transfer notification
- Requires a report from the Director of the Defense Intelligence Agency to assess the factors causing or contributing to the recidivism of Guantanamo detainees that are released or transferred and requiring the Secretary of State to assess the effectiveness of the agreements with other countries relating to the transfer or release of Guantanamo detainees
- Requires reports on the use of naval vessels for detention
- Requires a report relating to the recidivism of individuals formerly detained at Parwan.