



United States House of Representatives

HOUSE ARMED SERVICES COMMITTEE **DEMOCRATS**

Adam Smith, Ranking Member

Fiscal Year 2012 National Defense Authorization Bill Conference Report Summary

The President's budget request for national defense discretionary programs within the jurisdiction of the Armed Services committees for fiscal year 2012 was approximately \$689 billion. The request included roughly \$553 billion for the Department of Defense (DOD) base budget, \$117.8 billion for overseas contingency operations, and \$18.1 billion for the defense activities of the Department of Energy and the Defense Nuclear Facilities Safety Board.

The bill would authorize approximately \$662.4 billion in budget authority for national defense discretionary programs within the committees' jurisdiction. It includes roughly \$530 billion for the DOD base budget, \$115.5 billion for overseas contingency operations, and \$16.9 billion for the defense activities of the Department of Energy and the Defense Nuclear Facilities Safety Board.

The bill would also support nearly \$6.3 billion in direct spending for mandatory programs within the committees' jurisdiction.

General Policy Provisions

Central Bank of Iran:

- The conference report establishes sanctions on foreign financial institutions that conduct significant business with the Central Bank of Iran and other Iranian financial institutions. 60 days after enactment, the provision would prohibit any foreign financial institution from conducting business in the United States if the President concludes that the institution has conducted or facilitated a significant financial transaction with the Central Bank of Iran or other sanctioned Iranian financial institutions. Sanctions would apply to transactions involving the sale of oil or petroleum products if the President concludes that there is enough extra capacity in the oil markets to allow consumers to find suppliers of oil other than Iran without significantly raising oil prices. The provision exempts the export of food, medicine, and medical devices to Iran. The provision would also grant the President a national security waiver and exempt countries from sanctions if they act to significantly reduce their purchases of Iranian oil over the previous 180 days.

Defense of Marriage Act:

- The 2012 National Defense Authorization Act does **NOT** include any provisions that related to the Defense of Marriage Act.

Afghanistan:

- The conference report requires the President to develop options to accelerate the expansion of the capacity of the Afghan National Security Forces (ANSF). The goals of these options would be to enable the Government of Afghanistan to take responsibility for security throughout Afghanistan, to assist in achieving U.S. national security objectives in Afghanistan, and to enable the United States to move to an enduring partnership with the Afghan government. The provision requires the President to develop benchmarks measuring progress in these goals and to report them regularly to the Congress.

Insider Threat Detection:

- In the wake of the recent Wikileaks issue, the report contains a provision that would require the Secretary of Defense establish a program for greater information sharing protection and insider threat mitigation.

Global Security Contingency Fund:

- A fund jointly administered by the Secretary of State and Secretary of Defense to provide assistance to foreign countries to build the capacity of their military and other security forces, and to enhance their justice sector, rule of law programs and stabilization efforts under conditions of conflict or instability. It includes specific authority for the security forces of Yemen and Horn of Africa countries. The DoD is limited to \$200M, but the fund itself is limited to \$350M in FY12 and \$300M thereafter until 2015.

Lord's Resistance Army:

- \$35M to provide for logistical support, services and supplies to foreign national military forces assisting in counter-LRA missions.

State Partnership Program:

- Authorizes the National Guard to use up to \$3M to pay certain costs of the SPP. Also requires a GAO report on the SPP.

Detainee Provisions

Mandatory Military Custody (Sec. 1022)

- Senate provision (Sec. 1032) required mandatory military custody for narrow category: 1) aliens; 2) AQ/associated forces; and 3) an active terrorist attack. US citizens not subject to this provision and lawful resident aliens only subject to extent Constitution permits. SECDEF had authority to waive provision for national security interests. President would have broad authority to issue implementation procedures.
- No underlying House provision.
- **Veto threat** by White House based on broad objections by law enforcement and intelligence community regarding FBI/domestic law enforcement operational concerns.
- Conference modified Senate proposal to address Administration concerns regarding impact on FBI/domestic law enforcement operations, including: 1) changing national security waiver authority from SECDEF to POTUS; 2) added statutory language specifying that statute not intended to affect existing FBI/domestic law enforcement authorities over covered persons, including prior to capture; and 3) emphasizing that statute won't interfere with ongoing interrogation activity.
- Changed title to "Military Custody for Foreign AQ Terrorists" to emphasize narrowness of section.

Affirmation of Authority of Armed Forces to Detain Covered Persons Pursuant to Authorization for Use of Military Force (AUMF) (Sec. 1021)

- Rejected broad House language and accepted narrower Senate language that codifies ability to detain under AUMF (P.L. 107-40) and states nothing in section intended to expand scope of AUMF or to affect existing law relating to detention of US citizens.
- There is no legal black-hole for US citizens: they will receive habeas if detained in US and Congress will be notified of every person detained pursuant to this authority.

Periodic Review of Continued Detention of GTMO detainees (Sec. 1023)

- Rejected House language requiring statutory re-write of President's March 2011 Executive order and accepted Senate language requiring Administration to submit procedures for implementation of the EO. Broadens periodic review to include future GTMO detainees (if any).
- Under President's Executive Order GTMO detainees have a file review every 6 months and a full review every three years. Standard is "significant threat."

Status Determinations Under Military Custody Detention (Sec. 1024)

- Adopted Senate provision (S.1036) that would require Secretary of Defense to establish procedures for status determination for any person held long-term in military custody under the provisions of Sec. 1021, see above. These procedures include access to a military judge and a military lawyer.
- Does not apply to detainees who already have habeas review.
- Prospective, but SECDEF may review to see if procedures apply to current detainees.
- SECDEF to define “long-term”
- Detainees in Afghanistan receive a status determination 60 days after capture and every 6 months after that but only have a personal representative, not a military lawyer. DoD will adopt new procedures to determine how this provision fits in with current practice.
- Between habeas, periodic review of GTMO detainees, and this proposal, **there appears to be no “black-hole” for detainees.** However we will work with DoD to make sure there are no remaining gaps in coverage.
- As stated above, Congress will receive notification of all detainees held under military custody pursuant to the AUMF

Prohibitions Relating to Transfer/Release of GTMO Detainees to Foreign Countries (Sec. 1028)

- Current law requires SECDEF to make 6 certifications regarding a foreign country related to: terrorism, detention facilities, control over detainees, potential threat to US, reengagement, and information sharing. SECDEF has stated current certification requirements are almost impossible to meet.
- House agreed with amendment to Senate provision that would continue existing requirements regarding transfer of detainees at GTMO to foreign countries but allow the SECDEF greater flexibility in certification requirements. Agreement allows SECDEF to waive threat/reengagement certification if alternate actions are considered and concerns are substantially mitigated. Any waiver must be reported to Congress.
- Conference added language requiring SECDEF to include assessment of the capacity, willingness, and past practices of a foreign country regarding any previous GTMO detainees sent to that country.

Prohibition on the Transfer or Release of GTMO Detainees to United States (Sec. 1027)

- Adopted but narrowed House provision (no similar Senate provision) extending current law barring transfer of GTMO detainees to US for one-year. Conference deleted language that would have extended the ban to any detainees held overseas pursuant to AUMF.
- Retains ability to transfer detainees captured abroad to US for criminal prosecution (Warsame case).

Prohibition on Use of Funds to Construct/Modify US Facilities for GTMO Detainees (Sec. 1026)

- Both House and Senate had similar provisions. Agreed to one-year ban on use of DoD funds to construct or modify facilities in US to house GTMO detainees. Extends current law one year.

Security Protocols at GTMO (Sec. 1025)

- Adopted House provision with amendment (Sec. 1035) requiring Secretary of Defense to submit to Congress one national security protocol regarding legal communications (meetings with attorneys, legal mail, phone calls, video teleconferences, etc.) for GTMO detainees. House provision would have required a separate protocol for each GTMO detainee.

Requirement for DOJ Consultation Regarding Prosecution of Terrorists (Sec. 1029)

- Adopted House provision with an amendment (Sec. 1042) that would require Attorney General to consult with Secretary of Defense and Director of National Intelligence before initiating a prosecution in federal court of an alien for a terrorist offense.
- Amendment narrowed consultation requirement to: (1) a person who is determined to be a foreign AQ terrorist pursuant to the requirements of Sec. 1021 (see above) and 2) any other person who is held in military detention outside of the US pursuant to the AUMF.

Clarification of Right to Plead Guilty in Capital Trials by Military Commissions (Sec. 1030)

- Both House and Senate had substantially similar provisions clarifying the right of a defendant to plead guilty in a trial of a capital offense by a military commission. House provision adopted.

Amendments Relating to Military Commissions Act of 2009 (Sec. 1034)

- Adopted Senate provision (Sec. 1042) making technical corrections to MCA of 2009 regarding appellate court judges and review of final Military Commission convictions by the US Court of Appeals for the DC Circuit.

Military Construction and Family Housing Provisions

- \$11.3 billion for FY2012 military construction;
- \$1.683 for military family housing;
- \$323.5 million for Base Closure and Realignment (BRAC) activities;
- Requires an independent assessment of overseas basing to include the current condition and capacity of overseas facilities and training ranges, the cost of maintaining such infrastructure, a determination of the amounts received in direct payments or in kind contributions from host-nations, a determination of the amounts paid by the U.S. for the use of facilities, ranges, and lands, and an assessment on the advisability of the retention, closure, or realignment of overseas U.S. military facilities;
- Recognizes that transportation issues have been an issue in recent base realignments, the agreement includes a provision which directs the Secretary to determine the what improvements are required to address any significant transportation impacts to accessing a military reservation that are generated by the realignment
- When considering and selecting a military installation for closure or realignment, the agreement adds a requirement that that Secretary consider the ability of infrastructure (including transportation infrastructure) of both the existing and receiving communities to support forces, missions and personnel as a result of a closure or realignment. The agreement also requires an assessment of the costs associated with community transportation infrastructure improvements as part of the evaluation of cost-savings or return on investment of such a decision.

Guam:

- The conferees continue to support a comprehensive approach in the Pacific that supports our strategic interests. Guam is an essential element in the framework of our theater security plan, but the continued lack of a comprehensive master plan and the inability of the Government of Japan to demonstrate tangible progress for the Futenma Replacement Facility provide additional risk in our ability to quickly move forward with the realignment. Therefore, the agreement delays further implementation of the realignment of U.S. forces from Japan to Guam until a series of requirements is met.

Emerging Threats and Capabilities Provisions

Cyber:

- Requires SecDef to develop and implement a strategy to acquire advanced threat discovery capabilities in current cyber security systems.
- Creates a cyber-security fellowship within DoD to allow members for foreign military forces attain education and training against cyber threats
- Requires a Memorandum of Agreement between DoD and DHS to facilitate cyber security collaboration and cooperation

Science and Technology

- Provides \$200 million for the Rapid Innovation Program
- Expands developmental test and evaluation oversight for major defense acquisition programs.
- Extends specific authorities to help improve the health of defense laboratories
- Expands pilot program for the integration of technology protection features during research and development to include contractor cost-sharing
- Directs the budget and program execution of the Historically Black Colleges and Universities and Minority Serving Institutions program to the Office of the Secretary of Defense

Counter-terrorism:

- Increases from \$45M to \$50M amount available for “1208” programs, or assistance to foreign forces assisting U.S. Special Operations Forces, and extends the authority through 2015. Additionally, extends the authority to provide rewards for information or other assistance in counter-terrorism operations through 2014.

Support for Small Business

- Includes a 6 year reauthorization of the Small Business Innovation Research (SBIR) Program and the Small Business Technology Transfer (STTR) programs.
- SBIR allocation will increase incrementally from 2.5% to 3.2%;
- STTR allocation will increase incrementally from .3% to .45%;
- Expands the venture capital change to also allow participation by firms majority owned by multiple hedge funds or private equity firms.
- Five-year extension of the DoD Mentor-Protégé program. The DoD Mentor-Protégé Program assists small businesses (protégés) successfully compete for prime contract and subcontract awards by partnering with large companies (mentors) under individual, project-based agreements.

Military Personnel Provisions

- End strength for the active force Army 562,000; Navy 325,739; Marine Corps 202,100; and Air force 332,800.
- Provides limited authority for voluntary retirement incentives (no more than 675 members) and expires on December 31, 2018, and temporary early retirement authority to assist members as the Services begin to drawdown their forces.
- Requires the Chief of the National Guard Bureau to serve on the Joint Chiefs of Staff.
- Authorizes the reserves to provide assistance in response to a major disaster or emergency.
- Requires the Secretary of Defense to enhance suicide prevention programs through information and resources, in consultation with public and private entities.
- Allows service members to designate an individual to direct the disposition of remains regardless of the relationship of the designee to the decedent.
- Requires the Secretary of Defense to carry out a pilot program to assess the feasibility and advisability of permitting enlisted members to obtain civilian credentialing or licensing for skills required for military occupational specialties or qualifications.
- Allows Service Secretaries to permit members to participate in an apprenticeship program that provides employment skills training.
- Allows the Secretary of Defense to administer and fund the Troops-to-Teachers program in fiscal year 2012 and report on the funding and effectiveness of the program.
- Provides \$30 million for DOD Impact Aid, \$10 million in Impact Aid for local educational agencies impacted by BRAC and force structure, and \$5 million for children with disabilities.
- Requires the Secretary of Defense to provide a report on the autism pilot and demonstration projects.
- Direct the Comptroller General to conduct a review of military spouse employment programs.
- Makes significant enhancements to the sexual assault and harassment policies of the Department of Defense, including requiring that the Director of the Sexual Assault Prevention and Response Office be a general or flag or SES employee of the Department, requires full-time sexual assault coordinators and victim advocates who are also members or federal employees, ensure access to legal assistance, sexual assault coordinators and victim advocates, retention of certain document and evidence, allows for the consideration of a permanent change of station for a victim of sexual assault, and requires training and education programs for members.
- Establishes a military adaptive sports program for wounded and injured members.
- Limits future TRICARE Prime enrollment fees to increases in military retired pay cost of living adjustments.

- Allows the Secretary of Defense to provide access to mental health assessments to reserve component members during scheduled unit training and assemblies, and requires the Secretary to provide psychological health programs and training on suicide prevention and post-suicide response during scheduled unit training.
- Prohibits Medicare-eligible military retirees from enrolling in the Uniformed Services Family Health Plan, effective October 1, 2012.
- Requires that TRICARE network providers are not subcontractor for the purposes of the FAR or any other law.
- Prohibits the Secretary of Defense from moving forward on any restructuring or reorganization of the military health care system until a study is completed on the alternatives that were considered by the Task Force, and the Comptroller General reviews the study.
- Allows DOD civilian and other health care professional credentialed and privileged at a federal health care institution or location to practice at any location, regardless of where the health care professional or patient are located, as long as the practice is within the scope of the authorized federal duties.
- Authorizes the Secretary of Defense to provide active-duty members with rehabilitative equipment, including recreational sports equipment.
- Expands Operational Hero Miles to allow receipt of points or awards for free or reduced accommodations or other commercial facilities.

Energy Provisions

- Does not include the exclusion to section 526 of the Energy Independence and Security Act
- Modifies the responsibilities of the Assistant Secretary of Defense for Operational Energy, Plans, and Programs to develop and provide oversight of alternative fuels activities and streamline alternative fuels investments
- Requires training for Department of Defense energy managers
- Requires the Secretary of Defense to report on energy-efficient standards used for military construction and prohibits funds to obtain LEED certification for fiscal year 2012 unless there is no cost for such certification

Operation & Maintenance Provisions

- Clarifies the definition of “depot-level maintenance and repair” and revises requirements for core capability determination, establishment, and reporting to ensure Department retains a ready and controlled source of repair for equipment needed to support combatant command operations and contingency plans
- Provides permanent authority for Army military industrial facilities to enter into public-private partnerships with non-Army entities
- Designates Army arsenals as Centers of Industrial and Technical Excellence
- Requires DOD to implement GAO recommendations regarding material degradation and corrosion mitigation in the F-22 and F-35 aircraft
- Authorizes \$7.2 billion for refurbishment and maintenance of equipment in Afghanistan and equipment returning to the United States from Iraq; authorizes \$13.2 billion for depot-level maintenance of other military equipment

Civilian Personnel Provisions

- Requires federal agencies to assign a post-combat care coordinator to civilian employees who have suffered injuries or illness as a result of service in a combat zone
- Extends premium pay for two years for federal civilian employees deployed to Central Command
- Allows federal employees to designate anyone they choose to receive a death gratuity if the employee dies of injuries connected to service in a combat zone
- Requires the Department of Defense to review and manage its military, civilian, and contractor manpower needs through a total force management approach

Seapower and Projection Forces Provisions

- \$14.9 billion and support for 10 new construction ships in the budget request.
- Places restrictions on the 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 (domestic requirements) and Title 10 United States Code intra-theater airlift requirements that support critical missions of combatant commanders and State executives.
- Allows retirement of 6 B-1 aircraft in an incremental manner, but maintains combat-coded B-1 aircraft at the current level of 36 aircraft for FY12.
- Restricts funding for the current AAV except for survivability improvements until an analysis of alternatives is submitted.
- 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.

- 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.
- Authorizes the Navy to purchase two high speed "super ferries" from the Maritime Administration.
- 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.

Tactical Air and Land Forces Provisions

Major Air Force Issues:

- Senate F-35 bill language requiring fixed price contracts and no cost sharing on overruns was retained, but implementation was delayed one year to lot 6 of the aircraft to avoid immediate disruption to the production line
- The F-35 budget request was for 32 aircraft, the conference report authorizes 31 aircraft
- The budget request for \$9.7 billion for F-35 development and procurement was reduced by \$384 million
- The conference report includes House language requiring DOD to preserve F-136 components, with changes. DOD is allowed to dispose of F-136 equipment 30 days after submitting report.
- The conference report includes Senate language requiring Joint Surveillance Target Attack Radar (JSTARS) re-engining, with changes. Only one aircraft now required to be upgraded.
- The budget request for \$718.4 million for F-22 upgrade R&D was reduced by \$147.0 million.

Major Army Issues:

- The conference report increases funding for Abrams tank production by \$255.0 million for 49 tanks
- The Ground Combat Vehicle (GCV) budget request for \$884.4 million was reduced by \$435.0 million, due to program delays.
- The Joint Light Tactical Vehicle (JLTV) budget request for \$220.0 million was reduced by \$88.0 million, due to program delays.
- The Joint Tactical Radio System budget request for \$688.2 million for R&D was reduced by \$12.0 million, due to GMR termination.
- The Joint Tactical Radio System budget request for \$775.8 million for Procurement was reduced by \$348.7 million, due to GMR termination and AMF delays.
- The conference report includes House language limiting Stryker vehicle production pending additional information on requirements.

- The conference report includes House language limiting Joint Tactical Radio System procurement pending revised competition acquisition strategy.
- The conference report includes House language limiting the Individual Carbine program pending updated business case analysis.

Major Navy Issues:

- Budget request for \$2.4 billion for F/A-18 E/F Super Hornets reduced by \$126.5 million, no change in number of aircraft.
- Budget request for \$2.2 billion for V-22 aircraft reduced by \$25.5 million, no change in number of aircraft.
- Budget request for \$700.3 million for UH-1Y/AH-1Z helicopters was reduced by \$47.8 million, no change in number of aircraft.

Strategic Forces Summary

Atomic defense activities, nuclear deterrence and nonproliferation:

- Authorizes a total of \$11.1 billion for Atomic Energy Defense activities (\$700 million below the House NDAA), including \$7.06 billion for weapons activities (\$565 million reduction), \$2.3 billion for defense nonproliferation (\$250 million reduction) and \$1.1 billion for naval reactors (\$74 million reduction), and \$5 billion for defense environmental clean-up (\$384 million reduction), in line with Appropriations.
- Authorizes up to \$125 million in transfer from DOD funds to DOE for nuclear weapons activities as part of reprogramming authority subject to Congressional approval, to make up for shortfall in appropriated funds.
- Requires a yearly report to measure progress and gaps on nuclear nonproliferation efforts as reducing the risk of nuclear terrorism remains a national security priority.
- Requires detailed reporting to ensure that we maintain a safe, secure, and reliable yet affordable nuclear deterrent that meets DOD requirements, as the United States moves toward further progress on reducing the number of nuclear weapons. These include a net assessment if the president makes nuclear weapons reductions, a report on modernization of the nuclear delivery vehicles, an annual update of the “1251” report on nuclear weapons and delivery vehicles, an explanation of any modification to the nuclear targeting policy and guidance and a report on New START Treaty implementation.

Missile defense:

- Authorizes approximately \$10 billion for missile defense programs, approximately \$300 million below House NDAA level.
- Fences 75% of the \$390 million authorized for Medium Air Extended Defense System (MEADS) pending the submission of a report on how the DOD plans to close out this program through termination or restructuring with the amount authorized for FY12.
- Requires a report on the Ground-based Midcourse defense test failures and corrective action.
- Requires annual submission of a baseline acquisition report for missile defense, and review by GAO, to increase accountability and transparency.
- Requires a homeland missile defense hedging strategy.

Military Space Assets:

- Authorizes approximately \$10 billion for military space, including funding for Deep Space Climate Observatory (DSCOVR) satellite launch to pave the way for improved competition in space launch and \$25 million increase for Operationally Responsive Space (ORS) Office to provide rapid response space capabilities.
- Authorizes procurement and incremental funding to purchase two advanced enhanced high-frequency (AEHF) satellites through a fixed-price block-buy contract that would save at least 20% in costs and not exceed \$3.1 billion.
- Re-designates Evolved Expendable Launch Vehicle (EELV) program as a major subprogram and requires a report on EELV acquisition implementation pursuant to GAO recommendations.
- Prohibits the Federal Communication Commission from lifting condition on commercial terrestrial operations until concerns about widespread harmful interference to military Global Positioning System (GPS) receivers are resolved, and requires a regular updates by the Secretary of Defense.