

Legislative Bulletin.....May 24, 2011

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H.R. 1540—Fiscal Year 2012 National Defense Authorization Act

**H.R. 1540—Fiscal Year 2012 National Defense Authorization Act
(McKeon, R-CA)**

Order of Business: The bill is scheduled to be considered on Tuesday, May 24, 2011, under an expected structured rule that provides for one hour of general debate and makes in order a number of approved amendments.

Summary: H.R. 1540 authorizes a total of \$690.1 billion for Fiscal Year 2012 for Department of Defense programs within the jurisdiction of the Armed Services Committee. According to CBO, this is \$15 billion less than the \$705 billion appropriated for 2011. Specifically, the bill authorizes \$553 billion for Department of Defense (DoD) routine defense spending, the same amount as the Obama Administration’s request. The bill also authorizes \$18.1 billion for additional defense programs at the Department of Energy for military related nuclear weapons activities, DoD environmental restoration programs, and other defense activities. Additionally, the bill authorizes \$117.8 billion in overseas contingency operations for the wars in Iraq and Afghanistan. The bill passed out of the House Armed Services Committee by a vote of 60-1. Highlights of major policy provisions of note are as follows:

- ***F-35 Joint Strike Fighter Alternative Engine (F136):*** The bill allows for the continued development of the F136 alternate engine program administered by General Electric and Rolls Royce. The bill does not authorize any funding to restart the F 136 program. The bill allows GE to continue to have access to DoD equipment, facilities, and personnel to proceed with the continued development of the engine.

Specifically, the bill requires the Secretary of Defense to develop and carry out a plan and issue a report within 45 days for the preservation and storage of property acquired under the F136 propulsion system development contract. The property must be stored in a manor that:

- “allows the development of the F136 propulsion system to be restarted after a period of idleness;
- “provides for the long-term sustainment and repair of such property; and
- “allows for such preservation and storage to be conducted at either the facilities of the federal government or a contractor under such contract.”

Additionally, the bill requires the Secretary - at no cost to the government - to provide support and allow access to such property to enable the contractor to continue development testing of the system if the activities are self-funded by the contractor.

H.R. 1540 contains an additional provision (Section 215) regarding the F 136 engine program that prohibits funding for performance improvements for the F 136 engine in FY 2012, unless the Secretary of Defense ensures the competitive development and production of such propulsion system. This section would define the term “performance improvement,” under the F 136 program, as an increase in fan or core engine airflow volume or maximum thrust in military or afterburner setting for the primary purpose of improving the take-off performance or vertical load bring back of such aircraft, and would not include development or procurement improvements with respect to weight, acquisition cost, operations and support costs, durability, manufacturing efficiencies, observability requirements, or repair costs.

H.R. 1 ended funding for the F 136 alternate engine program for the rest of FY 2011, and as a result, the DoD cancelled the F 136 program. GE has [stated](#) they will pay for the cost of continuing to develop the F 136 engine on their own through FY 2012.

Additional background on the F-136 engine program, along with conservative views in support and against the program, can be viewed by reviewing the [RSC legislative bulletin](#) for amendments to H.R. 1.

- ***Don't Ask, Don't Tell:*** The bill makes several changes to the implementation of the repeal of the military's “Don't Ask, Don't Tell” policy rescinded last year during the lame duck session. Under current law, certification to end the DADT policy must come from the president, the defense secretary and the Joint Chiefs chairman. H.R. 1540 also requires the Chief of Staff of the Army, the Chief Naval Operations, the Commandant of the Marine Corps, and the Chief of Staff of the Air Force to certify the end of the ban will not “degrade the readiness, effectiveness, cohesion, and morale of combat arms units and personnel of their respective armed force that are engaged in combat, deployed to a combat theater, or preparing for deployment to a combat theater.”

Additionally, H.R. 1540 prohibits the use of military facilities for same-sex marriage ceremonies, and prohibits Defense Department employees from conducting same-sex marriage ceremonies. The legislation also defines marriage as between a man and a woman for the purposes of military benefits and policy.

- ***START Treaty:*** The bill prohibits the use of funds to be used through 2017 to retire any covered nuclear system under the New START Treaty without a certification to Congress from the secretaries of Defense and Energy that modernization plans for the U.S. nuclear weapons complex were being implemented described under another section (1053) of H.R. 1540. If those plans are not being developed, the bill does not allow funds to be obligated for 180 days following the date on which the President submits the report for the modernization plan. If the notice describes that such a plan is being carried out, no funds could be obligated or expended for a period of 30 days.

H.R. 1540 also prohibits the reduction, consolidation, or withdrawal of nuclear weapons based in Europe unless either the reduction, consolidation, or withdrawal of these

weapons is requested by the government of the host nation or the President certifies that NATO supports the action.

- **526 Repeal:** The bill contains language exempting the Department of Defense from section 526 of the Energy Independence and Security Act. The RSC's Consumer Relief for Pain at the Pump Act ([H.R. 1777](#)) repeals section 526 of the 2007 energy bill, which bars federal agencies from buying alternative or synthetic fuels if they have higher lifecycle greenhouse gas emissions than conventional petroleum fuels. These resources are abundant in North America and should be utilized rather than sending taxpayer dollars overseas to pay for foreign petroleum fuels. The federal government should embrace, and not prohibit the use of, advanced alternate fuels.
- **Iraq:** The bill requires the Secretary of Defense to provide Congress with notification if the U.S. and Iraq complete an agreement permitting the United States to maintain a force presence in Iraq above that envisioned for the Office of Security Cooperation-Iraq. Additionally, the bill authorizes the Secretary of Defense to support activities to carry out transition needs in Iraq, including life support, transportation, personal security, facility renovation and construction activities. The bill would use funds authorized for operations and maintenance by the Air Force and expressly prohibits funding to be used to pay the salaries and expenses of personnel of the Department of State.
- **Pakistan:** H.R. 1540 extends previously authorized law by one year to provide assistance to the security forces of Pakistan to build and maintain counterinsurgency capability. However, the bill limits the obligations to 25 percent of the funds authorized to be appropriated for the Pakistan Counterinsurgency Fund (PCF) until the Secretary of Defense submits a progress report on the strategy to utilize the fund, review of the terrorist or extremist groups that the United States encourages Pakistan to combat, the gaps in capabilities of Pakistani security units, and how assistance provided utilizing the fund will address these capability gaps. Additionally, the bill authorizes approximately \$1.1 billion to train, advice, and support Pakistani military personnel.
- **Libya:** The bill requires the Secretary of Defense to notify Congress within 72 hours if any asset of the Department of Defense (DOD) is tasked to Libya that was originally tasked to support ongoing contingency operations in Afghanistan or Iraq. Additionally, the Secretary is required to report the deployment of any U.S. military personnel or Department of Defense civilians to any part of Libya.
- **China & Iran:** The bill requires the Secretary of Defense to submit a classified study to Congress within 270 days, undertaken by an independent body, evaluating the gaps between conventional and anti-access capabilities of Iran and China and the ability for U.S. forces' to overcome them.

Additionally, the bill would require, within 120 days, the Secretary of Defense, in consultation with the Director of National Intelligence, to provide a report to Congress evaluating the national security risks to the impact of outstanding debt and interest payments on debt held by China. The bill also requires the Congressional Budget Office to make public the total amount of interest on U.S. debt paid to China over last five years.

- **War on Terror:** Section 1034 of the bill specifically affirms that Congress recognizes the United States is in engaged in an armed conflict with al-Qaeda, the Taliban and acknowledges President has the authority to use all necessary and appropriate force under

the Use of Military Force Act to address the continuing and evolving threat posed by these groups. Additionally, the provision clarifies the President has the authority to detain belligerents, including those supporting, al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, until the termination of hostilities.

- **Missile Defense:** H.R. 1540 requires the DoD to provide a report with an overview of technical and operational considerations with developing and operating space based missile defense interceptor capability. Additionally, the Ground Based Midcourse Defense missile program is [funded](#) at a total of \$1.3 billion, an increase of \$100 million from the request for the ground-based midcourse defense system to accelerate resolution of the exo-atmospheric kill vehicle failure, restore delays in testing, restore other program delays described above, and begin acquisition of long-lead components, deemed not part of the December 2010 failure, for additional Ground Base Interceptors.
- **Guantanamo Bay:** H.R. 1540 requires the Secretary of Defense to submit a national security protocol governing communications of each individual detained at Guantanamo Bay, Cuba, and to provide a review evaluating whether the continued detention of individuals detained at Guantanamo Bay is necessary to protect U.S. national security. The bill also prohibits the use of federal funding to detain, transfer, or release prisoners currently held at Guantanamo within the U.S. and its territories. The bill also prohibits the release of a prisoner to any foreign country unless the Secretary of Defense, in consultation with the Secretary of State, certifies the transfer would be in the national security interests of the United States and certifies that the other requirements specified in the bill are met.
- **Armored Vehicles of Note:** The bill authorizes \$453.3 million for Abrams tank upgrade programs to procure additional versions of the Abrams tank under current multi-year contracts and to replace the M1 tank in the Army National Guard or prepositioned equipment sets. The bill also authorizes \$403.7 million for continued production line operations and to bridge the gap for the industrial base to restart production of upgraded Bradley vehicles in the future. Additionally, the bill also authorizes \$685.8 million for the procurement of 100 additional Stryker NBC reconnaissance vehicles and to provide modifications to existing Stryker vehicles. However, the bill limits the procurement of Stryker Combat Vehicles to not more than 100 vehicles unless the Secretary of the Army submits a waiver.
- **Shipbuilding Program:** H.R. 1540 provides an authorization of \$14.9 billion for Shipbuilding and Conversion in the Department of the Navy.
- **Military Pay & Benefits:** The bill contains an across-the-board pay raise of 1.6 percent for members of the uniform services by 1.6 percent, effective January 1, 2012. Last year, the NDAA authorized a 1.4 percent pay increase for FY 2011.
- **TRICARE & Survivor Benefit:** H.R. 1540 limits future increases in TRICARE Prime enrollment fees for military retirees and their dependents to the annual cost-of-living adjustment (COLA) for military retirement annuities beginning in 2013. Additionally, according to the committee report, the bill would increase existing monthly amounts and establish additional monthly amounts paid under the Special Survivor Indemnity Allowance to surviving spouses or former spouses of deceased service members who are

denied the full amount of their annuity under the Survivor Benefit Program (SBP) due to the offset.

- **Fort Hood:** The bill requires the Secretary of Defense to produce guidelines to ensure military and civilian law enforcement responsibilities for the protection of U.S. military installations receive “Active Shooter Training.” This was a recommendation in the review of the Fort Hood terrorist attack by the DoD.
- **BRAC:** The bill provides the Secretary of Defense with the authority to extend the completion of up to seven recommendations under the 2005 BRAC process for up to a year, through September 2012. Locally, there has been concern by the State of Virginia that it didn’t have the authority to delay moving 6,400 defense workers to the [Mark Center](#) in Alexandria by September 15, 2011, as required under current law.

Authorization Highlights: This authorization measure sets the spending levels for all DoD programs and sets military strength levels. What follows are *highlights* of authorization levels of the three divisions (Dept. of Defense, Military Construction, and Dept. of Energy & Others) in the bill.

Division A = Department of Defense Authorizations

Division B = Military Construction Authorizations

Division C = Department of Energy National Security Authorizations and Other Authorizations

Division A—Department of Defense Authorizations

Division A—Procurement

- **Army.** Aircraft--\$6.55 billion; Missiles--\$1.46 billion; Weapons and Tracked Combat Vehicles--\$2.36 billion; Ammunition--\$1.99 billion; Other Procurement--\$9.51 billion.
- **Navy.** Aircraft--\$18.59 billion; Weapons (including missiles and torpedoes)--\$3.41 billion; Shipbuilding and Conversion--\$14.89 billion; Other Procurement--\$6.29 billion; Ammunition (Navy and Marine Corps)--\$720 million.
- **Marine Corps.** \$1.39 billion
- **Air Force.** Aircraft--\$14.12 billion; Ammunition--\$539 million; Missiles--\$6.49 billion; Other Procurement--\$17.6 billion.
- **Defense-Wide Activities.** \$5.14 billion.
- **Subtotal.** \$111.39 billion

Division A—Research, Development, Test, and Evaluation

- **Army.** \$9.77 billion
- **Navy.** \$18.01 billion
- **Air Force.** \$27.75 billion
- **Defense-Wide Activities.** \$19.86 billion
- **Operational Test & Evaluation.** \$191 million
- **Subtotal:** \$75.58 billion

Division A—Funding for Operations and Maintenance

<i>Army</i>	<i>\$34.8 billion</i>
<i>Navy</i>	<i>\$37.7 billion</i>

<i>Marine Corps</i>	<i>\$5.9 billion</i>
<i>Air Force</i>	<i>\$36.2 billion</i>
<i>Defense-Wide Activities</i>	<i>\$30.5 billion</i>
<i>Army Reserve</i>	<i>\$3.1 billion</i>
<i>Naval Reserve</i>	<i>\$1.3 billion</i>
<i>Marine Corps Reserve</i>	<i>\$271 million</i>
<i>Air Force Reserve</i>	<i>\$3.3 billion</i>
<i>Army National Guard</i>	<i>\$7.1 billion</i>
<i>Air National Guard</i>	<i>\$6.2 billion</i>
<i>U.S. Court of Appeals for the Armed Forces</i>	<i>\$13 million</i>
<i>Acquisition Development Workforce Fund</i>	<i>\$305 million</i>
<i>Army Environmental Restoration</i>	<i>\$346 million</i>
<i>Navy Environmental Restoration</i>	<i>\$309 million</i>
<i>Air Force Environmental Restoration</i>	<i>\$503 million</i>
<i>Defense-wide Environmental Restoration</i>	<i>\$10.7 million</i>
<i>Formerly Used Defense Sites Environmental Restoration</i>	<i>\$276 million</i>
<i>Overseas Humanitarian, Disaster, and Civics Programs</i>	<i>\$108 million</i>
<i>Cooperative Threat Reduction Programs</i>	<i>\$508 million</i>
<i>Subtotal</i>	<i>\$171.12 billion</i>

Division A—Military Personnel Authorization Levels

Authorized personnel levels as of September 30, 2012:

<i>Army</i>	<i>562,000</i>
<i>Navy</i>	<i>325,739</i>
<i>Marine Corps</i>	<i>202,100</i>
<i>Air Force</i>	<i>332,800</i>
<i>Army National Guard, Selected Reserve</i>	<i>358,200</i>
<i>Army Reserve, Selected Reserve</i>	<i>205,000</i>
<i>Navy Reserve, Selected Reserve</i>	<i>66,200</i>
<i>Marine Corps Reserve, Selected Reserve</i>	<i>39,600</i>
<i>Air National Guard Reserve, Selected Reserve</i>	<i>106,700</i>
<i>Air Force Reserve, Selected Reserve</i>	<i>71,400</i>
<i>Coast Guard Reserve, Selected Reserve</i>	<i>10,000</i>
<i>Army National Guard, Full-Time Duty</i>	<i>32,060</i>
<i>Army Reserve, Full-Time Duty</i>	<i>16,261</i>
<i>Navy Reserve, Full-Time Duty</i>	<i>10,337</i>
<i>Marine Corps Reserve, Full-Time Duty</i>	<i>2,261</i>
<i>Air National Guard, Full-Time Duty</i>	<i>14,833</i>
<i>Air Force Reserve, Full-Time Duty</i>	<i>2,662</i>
<i>Army National Guard, Dual-Status Technicians</i>	<i>8,395</i>
<i>Army Reserve, Dual-Status Technicians</i>	<i>27,210</i>
<i>Air National Guard, Dual-Status Technicians</i>	<i>22,313</i>
<i>Air Force Reserve, Dual-Status Technicians</i>	<i>10,777</i>
<i>Army Reserve, Non-Dual-Status Technicians</i>	<i>No more than 595</i>
<i>Army National Guard, Non-Dual-Status Technicians</i>	<i>No more than 1,600</i>
<i>Air Force Reserve, Non-Dual-Status Technicians</i>	<i>No more than 90</i>
<i>Air National Guard, Non-Dual-Status Technicians</i>	<i>No more than 350</i>

Maximum numbers of reservists who may be serving at any time on full-time operational support duty:

- Army National Guard: 17,000
- Army Reserve: 13,000
- Naval Reserve: 6,200
- Marine Corps Reserve: 3,000
- Air National Guard: 16,000
- Air Force Reserve: 14,000

Authorization of Appropriations for Military Personnel: \$142.16 billion

Division A—Other Authorizations

- **Defense Working Capital Funds.** \$198 million
- **Defense Working Capital Fund DECA.** \$1.38 billion
- **National Defense Sealift Fund.** \$1.13 billion
- **Defense Health Program.** \$30.96 billion
- **Chemical Agents and Munitions Destruction.** \$1.54 billion
- **Defense Wide Drug Interdiction.** \$1.15 billion
- **Defense Inspector General.** \$290.5 million
- **Armed Forces Retirement Home.** \$71.2 million

Division B—Military Construction Authorizations

Division B—Military Construction

- **Army.** \$3.3 billion
- **Navy.** \$2.5 billion
- **Air Force.** \$1.33 billion
- **NATO Security Investment Program.** \$273 million
- **Army National Guard.** \$823 million
- **Army Reserve.** \$281 million
- **Naval and Marine Corps Reserve.** \$26.3 million
- **Air National Guard.** \$134 million
- **Air Force Reserve.** \$44 million

Division C—Department of Energy National Security Authorizations and Other Authorizations

Division C—Department of Energy National Security Programs

- **Energy Security & Assurance:** \$6.2 million
- **Weapons Activities.** \$7 .63 billion
- **Defense Nuclear Nonproliferation.** \$2.55 billion
- **Naval Reactors.** \$1.15 billion
- **Office of Administrator for Nuclear Security.** \$450 million
- **Defense Environmental Cleanup.** \$5.41 billion
- **Other Defense Activities for National Security.** \$860 million

Cost to Taxpayers: According to CBO, total authorizations for H.R. 1540 are \$690,268,000,000 over the FY 2012 – 2016 period. “Compared to the 2011 level of appropriations enacted for DoD’s base budget, the \$553 billion that would be authorized for 2012 represents an increase of \$24 billion (5 percent). The categories of DoD funding that would receive increases are procurement at \$12 billion (11 percent), operation and maintenance at \$9 billion (5 percent), military personnel at \$4 billion (3 percent), and research and development at \$1 billion (1 percent). Authorizations for military construction and family housing would be \$2 billion (11 percent) less than the current-year appropriations for those activities.

“For DOE and other programs, the \$18 billion that would be authorized for 2012 represents a \$2 billion (9 percent) increase over the level appropriated for 2011. Several provisions in H.R. 1540 would affect direct spending. CBO estimates that, on net, those provisions would decrease direct spending outlays by \$3 million over the 2012-2021 period.

“The \$119 billion that would be authorized for 2012 overseas contingency operations - primarily for military operations in Iraq and Afghanistan - represent a decrease of about \$40 billion (25 percent) compared to the \$159 billion appropriated for 2011. That authorized level would be consistent with the Administration’s budget request, which assumes a drawdown of all U.S. troops in Iraq by December 31, 2011, and a reduction of force levels in Afghanistan. Authorizations for all categories of contingency funding would be decreased—operation and maintenance by \$20 billion (18 percent), procurement by \$13 billion (46 percent), military personnel by \$5 billion (31 percent), and the remaining categories by a total of \$2 billion.”

Committee Action: H.R. 1540 was introduced on April 14, 2011, and referred to the Committee on Armed Services. On May 4, 2011, the bill was referred to each Armed Services subcommittee, which each held mark-ups, amended the bill, and forwarded to the full committee by voice vote. A full committee mark-up was held on May 11, 2011, and the bill was reported, as amended, by a vote of 60-1.

Administration Position: A Statement of Administration Policy (SAP) is not available at press time.

Does the Bill Expand the Size and Scope of the Federal Government? The bill authorizes approximately \$15 billion less than what was appropriated in FY 2011. However, the \$553 billion that would be authorized for DoD programs only represents an increase of \$24 billion (5 percent) over last year.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment? No. Providing for the common defense is a primary constitutional duty of the federal government.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? According to Committee Report [112-78](#), “this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the bill provides no federal intergovernmental mandates.”

However, CBO states “Section 573 would preempt state laws governing child custody if they are inconsistent with or provide less protection to the rights of a parent who is a service member than those provided under the bill.”

Constitutional Authority: According to a statement in the Congressional Record placed by the bill’s sponsor, the constitutional authority on which this bill rests is the power of Congress to “provide for the common defense,” “raise and support armies,” and “provide and maintain a navy,” as enumerated in Article I, Section 8 of the United States Constitution.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits (House Rule XXI, Clause 9)?: Yes, according to committee report [112-78](#), H.R. 1540 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

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