

KUTAK ROCK LLP
SUITE 1000
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-4374
202-828-2400
FACSIMILE 202-828-2488
www.kutakrock.com

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MEMORANDUM

TO: ADC BOARD OF DIRECTORS
TIM FORD
TODD HERBERGHS
RANDY FORD
DAN COHEN

FROM: MR. SCHLOSSBERG
MR. PERSKY, LEGISLATIVE PROGRAM MANAGER

DATE: DECEMBER 20, 2012

RE: FUNDING AND PROVISIONS IN THE FY 2013 NATIONAL DEFENSE
AUTHORIZATION ACT CONFERENCE REPORT

Introduction

The conference committee on the National Defense Authorization Act for Fiscal Year 2013 (H.R. 4310) adopted its final report (112-705) on December 18, 2012.

The House and Senate are expected to adopt the measure this week, sending it to the President's desk for signature.

This memorandum provides a summary of various programs of interest, funding levels and provisions as contained in the report.

Funding Highlights

The conference report authorizes \$633.3 billion for national defense programs (\$1.7 billion more than the President's request), including:

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- \$527.4 billion for DOD base budget (\$2.1 billion more than the request);
- \$88.5 billion for overseas contingency operations (the amount of the request); and
- \$17.4 billion for Department of Energy national security programs and the Defense Nuclear Facilities Safety Board (\$395 million less than the request).

The report provides \$10.4 billion for military construction and family housing projects (\$800 million less than the request).

BRAC

As expected, the report declines to authorize additional rounds of Base Realignment and Closure (BRAC), rejecting the President's request.

The report does contain a number of provisions related to base realignment and closure, including modifications to 10 U.S.C. § 2687 and a requirement for the Government Accountability Office (GAO) to review the systems and processes by which DOD determines that infrastructure is excess to its needs.

Section 331, Intergovernmental Support Agreements with State and Local Governments

This section has long been championed by the Association of Defense Communities and the House Defense Communities Caucus.

Air Force Structure

Throughout the report, there are numerous changes to the structure of the Air Force, highlighted by the establishment of the National Commission on the Structure of the Air Force.

Additional Provisions

See a table of additional provisions included in the report on page 4.

Veto Threat

The White House has issued a veto threat against the bill for containing a section that places restrictions on transferring Guantanamo detainees, among other provisions.

White House press secretary Jay Carney said on Thursday that veto threats issued against previous versions of the bill remain in force against the current version.

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Senate Armed Services Chairman Carl Levin (D-MI) said that he does not believe the President will veto the bill.

If you have any questions concerning this information, please call George Schlossberg directly at (202) 828-2418 or email him at george.schlossberg@kutakrock.com, or call Eli Persky directly at (202) 828-2465 or e-mail him at eli.persky@kutakrock.com.

A handwritten signature in black ink, appearing to read "Eli Persky". The signature is written in a cursive style with a large, sweeping flourish at the end.

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KC-46A Tanker Funding Authorization

The report cuts \$77.1 million in “excess prior year funds” of \$1,815.6 million requested to continue development of the KC-46A..

Guam Military Construction Funding Authorization

The report funds Guam Military Construction at the President’s request of \$102 million:

- \$67.5 million for the Defense Logistics Agency’s Fuel Pipeline Upgrade project at Andersen AFB
- \$25.904 million for the Navy’s North Ramp Parking project (Increment 2) at Andersen AFB
- \$8.5 million for the Army National Guard’s Barrigada Joint Force Headquarters phase 4 improvement project

Section 112, Reports on Airlift Requirements of the Army

The Secretary of the Army shall submit annual reports to Congress through 2017 on the time-sensitive or mission-critical airlift requirements of the Army in the prior fiscal year, including a breakdown of the number of sorties that were operated by aircraft of the Army, Air Force, contractors and other organizations. Further, for all sorties using non-Air Force aircraft, the report shall include an explanation for why the Secretary did not use aircraft of the Air Force.

Section 141, Reduction in Number of Aircraft Required to Be Maintained in Strategic Airlift Aircraft Inventory

10 U.S.C. § 8062, *Policy; composition; aircraft authorization*, is amended to decrease the strategic airlift aircraft minimum requirement from 301 to 275.

The section also directs the Director of Cost Assessment and Program Evaluation and the Chairman of the Joint Chiefs of Staff, in coordination with the Commander of the United States Transportation Command and the Secretaries of the military departments, to conduct a study that assesses the end-to-end, full-spectrum mobility requirements for all aspects of the National Military Strategy.

The section also requires the Secretary of the Air Force to preserve each C-5 aircraft that is retired during a period in which the total inventory of strategic airlift aircraft of the Secretary is less than 301.

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Section 142, Retirement of B-1 Bomber Aircraft

10 U.S.C. § 8062, *Policy; composition; aircraft authorization*, is amended by adding a new section, restricting the Secretary of the Air Force from retiring more than six B-1 aircraft.

The section also requires the Secretary of the Air Force to maintain in a common capability configuration not less than 36 B-1 aircraft as “combat-coded aircraft.” Combat-coded aircraft means aircraft assigned to meet the primary aircraft authorization to a unit for the performance of its wartime mission.

Section 154, Limitation on Availability of Funds for Retirement of RQ-4 Global Hawk Unmanned Aircraft Systems

This section restricts fiscal year 2013 funds from being used to retire, prepare to retire or place in storage any RQ-4 Block 30 Global Hawk unmanned aircraft system. Further, during the period preceding December 31, 2014, the Secretary of the Air Force shall maintain the operational capability of each RQ-4 Block 30 Global Hawk unmanned aircraft system belonging to the Air Force or delivered to the Air Force during such period.

Section 211, Next-Generation Long-Range Strike Bomber Aircraft Nuclear Certification Requirement

The Secretary of the Air Force shall ensure that the next-generation long-range strike bomber is (1) capable of carrying strategic nuclear weapons as of the date on which such aircraft achieves initial operating capability; and (2) certified to use such weapons by not later than two years after such date.

Section 311, Training Range Sustainment Plan and Training Range Inventory

Extends from 2013 through 2018 the requirement for the Secretary to develop a comprehensive plan for using existing authorities available to the Secretary of Defense and the Secretaries of the military departments to address training constraints caused by limitations on the use of military lands, marine areas and airspace that are available in the United States and overseas for training of the Armed Forces.

Section 312, Authority of Secretary of a Military Department to Enter into Cooperative Agreements with Indian Tribes for Land Management Associated with Military Installations and State-Owned National Guard Installations

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16 U.S.C. § 670c-1, *Cooperative and interagency agreements for land management on installations*, is amended to add Indian tribes as an eligible entity with which the Secretary of a military department may enter into a cooperative agreement for:

(1) The maintenance and improvement of natural resources on, or to benefit natural and historic research on, military installations and State-owned National Guard installations; or

(2) The maintenance and improvement of natural resources located off of a military installation or State-owned National Guard installation if the purpose of the cooperative agreement or interagency agreement is to relieve or eliminate current or anticipated challenges that could restrict, impede, or otherwise interfere with, whether directly or indirectly, current or anticipated military activities.

Section 313, Department of Defense Guidance on Environmental Exposures at Military Installations and Briefing Regarding Environmental Exposures to Members of the Armed Forces

This section requires the Secretary to issue guidance to the military department and defense agencies regarding environmental exposures on military installations. This guidance shall address:

(A) The criteria for when and under what circumstances public health assessments by the Agency for Toxic Substances and Disease Registry must be requested in connection with environmental contamination at military installations, including past incidents of environmental contamination;

(B) The procedures to be used to track and document the status and nature of responses to the findings and recommendations of the public health assessments of the Agency of Toxic Substances and Disease Registry that involve contamination at military installations; and

(C) The appropriate actions to be undertaken to assess significant long-term health risks from past environmental exposures to military personnel and civilian individuals from living or working on military installations.

Section 316, Sense of Congress on Protection of Department of Defense Airfields, Training Airspace, and Air Training Routes

It is the sense of Congress that:

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(1) Department of Defense airfields, training airspace, and air training routes are critical national assets that must be protected from encroachment or mission degradations to the maximum extent practicable;

(2) placement or emplacement of obstructions near or on Department of Defense airfields, training airspace, or air training routes has the potential of increasing risk to military aircraft and personnel as well as impacting training and readiness; and

(3) in the context of a Department of Defense operational risk assessment and the Department of Defense Siting Clearinghouse, the Department of Defense should develop and promulgate comprehensive guidance to assess the degree to which the potential encroachment of a project significantly impairs or degrades the capability of the Department to conduct missions or maintain readiness to the extent of presenting an unacceptable risk to national security with strong consideration given to the input provided by the military services.

Section 331, Intergovernmental Support Agreements with State and Local Governments

This section has long been championed the Association of Defense Communities and the House Defense Communities Caucus.

“The Secretary concerned may enter into an intergovernmental support agreement with a State or local government to provide, receive, or share installation-support services if the Secretary determines that the agreement will serve the best interests of the department by enhancing mission effectiveness or creating efficiencies or economies of scale, including by reducing costs.”

“Notwithstanding any other provision of law, an intergovernmental support agreement (A) may be entered into on a sole-source basis; (B) may be for a term not to exceed five years; and (C) may use, for installation-support services provided by a State or local government, wage grades normally paid by that State or local government.”

“An intergovernmental support agreement may only be used when the Secretary concerned or the State or local government, as the case may be, providing the installation-support services already provides such services for its own use.”

“The authority provided by this section and limitations on the use of that authority are not intended to revoke, preclude, or otherwise interfere with existing or proposed mutual-aid agreements relating to police or fire protection services or other similar first responder agreements or arrangements.”

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“Funds available to the Secretary concerned for operation and maintenance may be used to pay for such installation-support services. The costs of agreements under this section for any fiscal year may be paid using annual appropriations made available for that year. Funds received by the Secretary as reimbursement for providing installation-support services pursuant to such an agreement shall be credited to the appropriation or account charged with providing installation support.”

“The Secretary concerned shall ensure that intergovernmental support agreements authorized by this section are not used to circumvent the requirements of Office of Management and Budget Circular A-76 regarding public-private competitions.”

Sections 361–367, National Commission on the Structure of the Air Force Act of 2012

This Act establishes the National Commission on the Structure of the Air Force to undertake a comprehensive study of the structure of the Air Force to determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the Air Force in a manner consistent with available resources.

The Commission shall give particular consideration to evaluating a structure that:

(A) meets current and anticipated requirements of the combatant commands; (B) achieves an appropriate balance between the regular and reserve components of the Air Force, taking advantage of the unique strengths and capabilities of each; (C) ensures that the regular and reserve components of the Air Force have the capacity needed to support current and anticipated homeland defense and disaster assistance missions in the United States; (D) provides for sufficient numbers of regular members of the Air Force to provide a base of trained personnel from which the personnel of the reserve components of the Air Force could be recruited; (E) maintains a peacetime rotation force to support operational tempo goals of 1:2 for regular members of the Air Forces and 1:5 for members of the reserve components of the Air Force; and (F) maximizes and appropriately balances affordability, efficiency, effectiveness, capability, and readiness.

The Commission shall submit a report to President and Congress by February 2014 regarding these matters, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study.

Section 1052, Interagency Collaboration on Unmanned Aircraft Systems

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This section enhances interagency collaboration to conduct research and seek solutions to challenges associated with the safe integration of unmanned aircraft systems into the National Airspace System.

The Secretary shall submit a report to Congress addressing:

(A) progress in accomplishing the goals of the unmanned aircraft systems research, development, and demonstration as related to the Department of Defense Final Report to Congress on Access to National Airspace for Unmanned Aircraft Systems of October 2010, and any ongoing and collaborative research and development programs with the Federal Aviation Administration and the National Aeronautics and Space Administration;

(B) estimates of long-term funding needs and details of funds expended and allocated in the budget requests of the President that support integration into the National Airspace; and

(C) progress in sharing with the Federal Aviation Administration safety operational and performance data as it relates to unmanned aircraft system operation and the impact on the National Airspace System.

Section 1059, Limitations on Retirement of Fixed-Wing Intra-Theater Airlift Aircraft for General Support and Time Sensitive/Mission Critical Direct Support Airlift Missions of the Department of Defense

During fiscal year 2013, the Secretary of the Air Force shall retain an additional 32 fixed-wing, intra-theater airlift aircraft beyond the number of such aircraft proposed to be retained in the Secretary's total force structure proposal provided to the congressional defense committees on November 2, 2012.

Section 1068, Report on Military Resources Necessary to Execute United States Force Posture Strategy in the Asia Pacific Region

The Secretary of Defense shall, in consultation with the Chairman of the Joint Chiefs of Staff, conduct a comprehensive review of the national defense strategy, force structure, force modernization plans, infrastructure, budget plan, and other elements of the defense program and policies of the United States with regard to the Asia Pacific region to determine the resources, equipment, and transportation required to meet the strategic and operational plans of the United States.

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This review shall address the specific capabilities, including the general number and type of specific military platforms, their permanent station, and planned forward operating locations needed to achieve the strategic and warfighting objectives identified in the review.

Section 1698, Small Business HUBZones

A covered base closure area shall be treated as a HUBZone for purposes of the Small Business Act during the 5-year period beginning on the date of enactment of this Act.

Section 2712, Revised Base Closure and Realignment Restrictions and Comptroller General Assessment of Department of Defense Compliance with Codified Base Closure and Realignment Restrictions

10 U.S.C. § 2687, *Base closures and realignments*, is amended by adding a new subsection stating that no closure or realignment action may be taken against an installation within five years after the date on which a decision is made to reduce civilian personnel thresholds below the levels prescribed in subsection (a).

GAO is also directed to submit a report to Congress reviewing the process and criteria used by the Department of Defense to make decisions relating to closures and realignments at military installations, including closures and realignments occurring both above and below the threshold levels specified in 10 U.S.C. § 2687.

Section 2802, Preparation of Master Plans for Major Military Installations

This section requires the commander of each major military installation under the jurisdiction of the Secretary to ensure (at an interval prescribed by the Secretary, but not less frequently than once every ten years) that an installation master plan is developed to address environmental planning, sustainable design and development, sustainable range planning, real property master planning and transportation planning.

The transportation component of the master plan for a major military installation shall be developed and updated in consultation with the metropolitan planning organization designated for the metropolitan planning area in which the military installation is located.

Section 2803, Oversight and Accountability for Military Housing Privatization Projects and Related Annual Reporting Requirements

10 U.S.C. § 2885, *Oversight and accountability for privatization projects*, is amended to address (1) the financial health and performance of the privatization project, including the debt-

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coverage ratio of the project and occupancy rates for the housing units and (2) an assessment of the backlog of maintenance and repair of the housing units.

Further, if the debt service coverage for a military housing privatization project falls below 1.0 or the occupancy rates for the housing units of the project are below 75 percent for more than one year, the Secretary concerned shall require the development of a plan to address the financial risk of the project.

The section also alters annual reporting requirements for alternative acquisition and improvement of military housing.

Finally, the section requires the Secretary to submit an annual report on the status of oversight and accountability measures under section 2885.

Section 2805, Comptroller General Report on In-Kind Payments

This section requires GAO to submit a report to Congress on the construction or renovation of Department of Defense facilities with in-kind payments. The report shall cover construction or renovation projects begun during the preceding two years.

GAO is to provide annual updates, covering projects begun since the last report, for three years.

Section 2811, Clarification of Parties with Whom Department of Defense May Conduct Exchanges of Real Property at Certain Military Installations

10 U.S.C. § 2869, *Exchange of property at military installations*, is amended by changing the party with whom the Secretary may enter into an agreement from “any eligible entity” to “any person.”

Section 2813, Report on Property Disposals at Certain Closed Military Installations and Additional Authorities to Assist Local Communities in the Vicinity of Such Installations

This section requires the Secretary to submit a report to Congress on the disposition of any not yet completed closure of an active duty military installation since 1988 in the United States that was not subject to the property disposal provisions contained in the Defense Base Closure and Realignment Act.

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Section 2821, Congressional Notification for Contracts for the Provision and Operation of Energy Production Facilities Authorized to be Located on Real Property under the Jurisdiction of a Military Department

10 U.S.C. § 2662, *Real property transactions: reports to congressional committees*, is amended by adding an additional condition that requires congressional notification:

(A) any transaction or contract action for the provision and operation of energy production facilities on real property under the jurisdiction of the Secretary of a military department, if the term of the transaction or contract exceeds 20 years.

Section 2822, Availability and Use of Department of Defense Energy Cost Savings to Promote Energy Security

10 U.S.C. § 2912, *Availability and use of energy cost savings*, is amended to enable energy cost savings to be used for energy security in addition to additional energy conservation.

Section 2824, Guidance on Financing for Renewable Energy Projects

This section requires the Secretary to issue guidance about the use of available financing approaches for financing renewable energy projects and to direct the Secretaries of the military departments to update their department-wide guidance accordingly.

Additionally, the Secretary is required to issue guidance that clearly describes the processes used by the military departments to select financing approaches for renewable energy projects to ensure that business case analyses are completed to maximize cost savings and energy efficiency and mitigate drawbacks and risks associated with different financing approaches.

Finally, the Secretary is required to develop a formalized communications process, such as a shared Internet website, that will enable officials at military installations to have timely access on an ongoing basis to information related to financing renewable energy projects on other installations, including best practices and lessons that officials at other installations have learned from their experiences in financing renewable energy projects.

Section 2825, Energy Savings Performance Contract Report

This section requires the Secretary to submit a report to Congress on the use of energy savings performance contracts awarded by DOD during calendar years 2010, 2011 and 2012.

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Section 2831, Certification of Military Readiness Need for a Live Fire Training Range Complex on Guam as Condition on Establishment of Range Complex

This section prohibits the establishment of a live fire training range complex on Guam until the Secretary certifies that there is a military training and readiness requirement for the complex.

Section 2832, Realignment of Marine Corps Forces in Asia-Pacific Region

This section restricts the use of funds to implement the realignment of Marine Corps forces from Okinawa to Guam or Hawaii until certain plans and assessments are provided.

DOD is also restricted from transferring funds to another agency that would result in the development of public infrastructure on Guam.

Funding may be used to complete additional analysis or studies required under the National Environmental Policy Act for proposed actions on Guam or Hawaii; to initiate planning and design of construction projects at Andersen Air Force Base and Andersen South; and to carry out military construction projects authorized by the Fiscal Year 2013 National Defense Authorization Act.

Section 2851, Modification of Notice Requirements in Advance of Permanent Reduction of Sizable Numbers of Members of the Armed Forces at Military Installations

10 U.S.C. § 993, *Notification of permanent reduction of sizable numbers of members of the armed forces*, is amended by adding that, in calculating the number of members to be reduced, the Secretary shall take into consideration both direct reductions and indirect reductions.

The notice requirement is amended so that no irrevocable action may be taken to effect or implement a reduction described in the section until:

(1) the Secretary of Defense or the Secretary of the military department concerned (A) submits to Congress a notice of the proposed reduction and the number of military and civilian personnel assignments affected, including reductions in base operations support services and personnel to occur because of the proposed reduction; and (B) includes in the notice a justification for the reduction and an evaluation of the costs and benefits of the reduction and of the local economic, strategic, and operational consequences of the reduction; and

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(2) a period of 90 days expires following the day on which the notice is submitted to Congress.