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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: JUNE 10, 2014

RE: FY15 DEFENSE POLICY AND BUDGET UPDATE

Introduction

This memorandum contains an update on the fiscal year 2015 budget process, including a description of policy provisions, funding levels and report language included by the House and Senate. The two most important pieces of legislation in this regard are the National Defense Authorization Act (“NDAA”) and the Military Construction and Veterans Affairs Appropriations Bill (“MilCon Appropriations”).

Status:

- The House passed its version of the NDAA (H.R. 4435, House Report 113-446) on May 22, 2014
- The Senate Armed Services Committee passed its version of the NDAA (S. 2410, Senate Report 113-176) on June 2, 2014; the full Senate still must pass the bill

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- The House passed its version of the MilCon Appropriations Bill (H.R. 4486, House Report 113-416) on March 30, 2014
- The Senate Appropriations Committee passed its version of the MilCon Appropriations Bill (H.R. 4486, Senate Report 113-174) on May 22, 2014; the full Senate still must pass the bill)

BRAC Request Denied, Although Congress Provides Path Forward

While the House and Senate NDAA place a prohibition on conducting additional BRAC rounds, sections within each version of the bill show Congress is increasingly open to the idea. There is even an indirect path for the final, enacted version of the fiscal year 2015 National Defense Authorization Act to authorize an additional BRAC round in 2017, per the President's request.

The "***Force-Structure Plans and Infrastructure Inventory and Assessment of Infrastructure Necessary to Support the Force Structure***" section in the House NDAA would require the Secretary of Defense to detail (1) a 20-year force structure plan, (2) a comprehensive inventory of worldwide infrastructure, and (3) a comparison of the first two items to determine categories of excess infrastructure. Additionally, the Secretary must certify "whether the need exists for the closure or realignment of additional military installations."

If the stars align, this section would allow conferees to insert language authorizing a 2017 BRAC round into the final NDAA during the House-Senate reconciliation process.

Additionally, the House MilCon Appropriations Bill contains a recommendation regarding changes to BRAC criteria (regarding the consideration of intellectual capability). In previous years, Congress has been hesitant to include such language, partially out of concern that such action would be construed as tacit support for a new BRAC round. It appears Congress is increasingly willing to consider a future that contains a new BRAC round.

Intergovernmental Support Agreements Clarified

As requested by the Association of Defense Communities ("ADC"), the "Clarification of Authority Relating to Provision of Installation-Support Services through Intergovernmental Support Agreements" section in the House NDAA would make technical changes to the United States Code section that authorizes military installations to partner with military communities for the procurement of installation support services.

The section would additionally define "intergovernmental support agreement" as "a legal instrument reflecting a relationship between the Secretary concerned and a State or local government that contains such terms and conditions as the Secretary concerned considers

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appropriate for the purposes of this section and necessary to protect the interests of the United States.”

Additional Items of Interest

Bill text and report language is provided for additional items in the attached exhibit.

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.

G.R.S. & E.W.P.

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Exhibit to the FY15 Defense Policy and Budget Update Memorandum:
Bill Text and Report Language for Additional Items of Interest

Bill Text and report language is provided for the following items:

- Section 2711—Prohibition on Conducting Additional Base Realignment and Closure (BRAC) Round
- Base Realignment and Closure 2018
- Base Closure and Realignment Disposal Assessment
- Section 2721—Force-Structure Plans and Infrastructure Inventory and Assessment of Infrastructure Necessary To Support the Force Structure
- Section 2702—Prohibition on conducting additional base realignment and closure (BRAC) round
- Section 420—Restriction on a new BRAC round
- Facility closures
- BRAC criteria
- Topline MilCon Budget Recommendation with Commentary
- Base Closure Account Environmental and Maintenance Overview
- Section 351—Clarification of Authority Relating to Provision of Installation-Support Services Through Intergovernmental Support Agreements
- Section 418—Restriction on Maintaining and Improving real property with a zero percent utilization rate
- Section 2722—Modification of Property Disposal Procedures Under Base Realignment and Closure Process
- Property Disposal Methods (McKinney-Vento Homeless Assistance Act)
- Section. 2819. Indemnification of Transferees of Property at Military Installations Closed Since October 24, 1988 That Remain Under the Jurisdiction of the Department of Defense
- Section 311—Method of funding for cooperative agreements under the Sikes Act
- Legacy BRAC sites
- Section 323—Elimination of authority to abolish arsenals
- Section 2813—Arsenal Installation Reutilization Authority
- Facilities Modernization Model
- Joint Base Closure and Realignment Recommendations
- Army Supplemental Programmatic Environmental Assessment
- Army force structure and installation alignment
- Sections 1701-1709—National commission on the future of the Army
- Section 1050—Conditions on Army National Guard and Active Army Force Structure Changes Pending Comptroller General Report

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- Real Property Management
- Section 2801—Prevention of Circumvention of Military Construction Laws
- Section 2816—National Security Considerations for Inclusion of Federal Property on National Register of Historic Places or Designation as National Historic Landmark under the National Historic Preservation Act
- Section 903—Assistant Secretary of Defense for Installations and Environment
- Section 311—Elimination of Fiscal Year Limitation on Prohibition of Payment of Fines and Penalties from the Environmental Restoration Account, Defense
- Section 2817—Sense of Congress on National Security and Public Lands
- Facilities Sustainment
- Use of power purchase agreements to meet requirements for Military installations
- Clarification on the use of energy savings performance contracts
- Section 2703—HUBZones
- Section 2811—Deposit of reimbursed funds to cover administrative expenses relating to certain real property transactions
- Report on military construction unfunded requirements
- Real property utilization
- Defense Access Roads FYDP
- Defense Access Roads project timeline
- Military construction priorities
- Aging infrastructure
- Army Privatized Lodging Program
- Redevelopment Potential for Military Properties and Facilities
- Air Force Infrastructure Consolidation
- European Infrastructure Consolidation [EIC] Study
- Energy Conservation Investment Program
- Facilities Sustainment, Restoration and Modernization
- Air Force Strategic Basing Process
- Section 142—Sense of Congress Regarding the OCONUS Basing Of The F-35A
- Report on National Commission on the Structure of the Air Force Recommendations
- Section 1044—Repeal of Authority Relating to Use of Military Installations by Civil Reserve Air Fleet Contractors
- Section 1075—Unmanned Aircraft Systems and National Airspace
- KC-10 Aerial Refueling Aircraft Force Structure
- KC-46 Aerial Refueling Aircraft program
- Section 134—Limitation on Availability of Funds for Divestment or Transfer of KC-10 Aircraft

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- Section 132—Limitation on availability of funds for retirement of Air Force aircraft
- Section 135—Limitation on transfer of KC-135 tankers
- Air Force KC-46A Pegasus procurement
- Section 351—Repeal of authority relating to use of military installations by Civil Reserve Air Fleet contractors
- Section 1061—Reports on recommendations of the National Commission on the Structure of the Air Force
- Air traffic control towers
- Infrastructure Deficiencies of Dining Facilities
- Section 2818—Use of Former Bombardment Area on IsLand Of Culebra, Puerto Rico
- Section 316—Decontamination of a portion of former bombardment area on island of Culebra, Puerto Rico
- Laboratory revitalization

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Section 2711—Prohibition on Conducting Additional Base Realignment and Closure (BRAC) Round¹

This section would affirm congressional intent to reject the budget request to authorize another Base Realignment and Closure round in 2017.

Base Realignment and Closure 2018²

The President's budget request included \$4.8 million, in Operation and Maintenance, Defense-wide, to support a request to conduct a new round of Base Realignment and Closure (BRAC) to align infrastructure with planned force structure changes. The requested funds would be used to develop recommendations and to manage BRAC efforts.

The committee recommends no funds to support the development of infrastructure recommendations prepared in the context of a new BRAC authorization.

Base Closure and Realignment Disposal Assessment³

The committee notes that the Department of Defense has requested authority to conduct another round of defense base closures and realignment (BRAC) in 2017. BRAC is often cited as a means of saving significant defense dollars in a time of declining budgets. The committee is concerned that efficiencies associated with the BRAC process are offset with the inability to quickly dispose of excess property and the potential lack of overall savings to the federal government. For example, there are numerous instances where the Department of Defense conveyed excess property to other Federal agencies and the overall Government may not have saved money.

Therefore, the committee directs the Secretary of Defense to submit a report to the congressional defense committees by March 1, 2015, as to the overall effectiveness of the property disposal process. The report should specifically assess each prior BRAC round (1988, 1991, 1993, 1995, and 2005), by military department, and provide the following:

- (1) A listing, by acre, of property disposed to: other Federal agencies; state and local agencies; non-profit entities; and the private sector;
- (2) A list of remaining acreage to be disposed;
- (3) An assessment of land sale revenues realized from prior property disposal actions;
- (4) An assessment of environmental expenditures and caretaker services expended; and

¹ House NDAA

² House NDAA

³ House NDAA

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(5) An assessment of remaining environmental remediation costs to complete and associated caretaker services anticipated during the environmental remediation.

Section 2721—Force-Structure Plans and Infrastructure Inventory and Assessment of Infrastructure Necessary to Support the Force Structure⁴

This section would require the Secretary of Defense to submit a report as part of the budget justification documents submitted to Congress in support of the President’s budget for the Department of Defense for fiscal year 2016 that details (1) a 20-year force structure plan, and (2) a comprehensive inventory of worldwide infrastructure. The report shall also compare these two items to determine categories of excess in the Department of Defense infrastructure. The Secretary of Defense shall also certify whether the need exists for the closure or realignment of additional military installations and whether the Secretary anticipates that each Base Closure and Realignment recommendation would result in annual net savings for each of the military departments within 6 years after the initiation of the additional round of closures and realignments. This section would also require that within 60 days of submission of the Secretary of Defense report, the Comptroller General of the United States shall evaluate the accuracy and analytical sufficiency of the plan and inventory.

Section 2702—Prohibition on conducting additional base realignment and closure (BRAC) round⁵

The committee recommends a provision that would make clear that nothing in this Act shall be construed to authorize a future Base Realignment and Closure (BRAC) round. Elsewhere in the bill, the committee recommends a reduction of \$4.8 million for BRAC planning activities.

Section 420—Restriction on a new BRAC round⁶

None of the funds made available by this Act may be used to propose, plan for, or execute a new or additional Base Realignment and Closure (BRAC) round.

Facility closures⁷

The Committee is concerned that the Department of Defense will authorize the closure of military installations under Title 10 USC 2687, without adequate Congressional consultation. The Department is reminded that only Congress can authorize a Base Realignment and Closure

⁴ House NDAA

⁵ Senate NDAA

⁶ House MilCon Appropriations Bill

⁷ House MilCon Appropriations Bill

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(BRAC) round. Therefore, the Committee directs the Secretary of Defense to consult with the Committee in advance of any use of title 10 USC 2687.

BRAC criteria⁸

The Committee is concerned that the Department of Defense (DOD) does not consider the intellectual capabilities of a region when evaluating the criteria for BRAC. The Committee recommends that the DOD clearly establish an intellectual capabilities criteria consideration, especially when considering academic and technical institutions, in addition to the already established BRAC final selection criteria. The Committee believes that DOD should not solely focus on cost analysis and military training value when going through the BRAC process, but should heavily consider the importance and cost of intellectual capabilities of a region, especially with military academic and technical organizations.

Topline MilCon Budget Recommendation with Commentary⁹

The total recommended funding level for military construction and family housing is \$6,557,447,000 [the Senate Appropriations Committee recommends \$6,559,000,000], which is \$3,250,553,000 below the fiscal year 2014 enacted level and the same as the budget request. During hearings, the Department testified that while this budget reduction assumes some risk, the Services chose to take risk in the military construction program in order to reduce risk in readiness accounts. The Services also noted that many factors are currently under review, such as force structure and European basing, which may impact construction needs. The Committee, while concerned by the reduction, acknowledges the merit of these issues.

Base Closure Account Environmental and Maintenance Overview¹⁰

The Committee recommends \$380,085,000 for the Base Closure Account for fiscal year 2015 [The House recommends \$270 million, the same as the budget request]. This is \$110,000,000 above the Administration's request and is intended to expedite the environmental remediation of military installations closed or realigned through the BRAC process. The current cost to complete environmental remediation of military installations closed under the five previous BRAC rounds totals nearly \$3,000,000,000, yet the budget request included only \$270,000,000 for BRAC clean up, 40 percent below the fiscal year 2014 enacted level.

The Committee is aware of the lengthy process involved in cleaning up environmental contamination at military installations due to the highly toxic and unique nature of some of the contaminants. However, environmental remediation remains a major impediment to the transfer

⁸ House MilCon Appropriations Bill

⁹ House MilCon Appropriations Bill

¹⁰ Senate MilCon Appropriations Bill

and reuse of property. The Committee believes that it is essential for the Department of Defense to expedite where possible the environmental cleanup of closed bases. The additional funding provided in this account includes \$25,000,000 for the Army, \$60,000,000 for the Navy and \$25,000,000 for the Air Force.

Section 351—Clarification of Authority Relating to Provision of Installation-Support Services through Intergovernmental Support Agreements¹¹

This section would transfer and redesignate section 2336 of title 10, United States Code, to chapter 159 of such title. This section would also define an intergovernmental support agreement and provide other technical changes.

Section 351 Bill Text

(i) TRANSFER OF SECTION 2336 TO CHAPTER 159.—

(1) TRANSFER AND REDESIGNATION.—Section 2336 of title 10, United States Code, is transferred to chapter 159 of such title, inserted after section 2678, and redesignated as section 2679.

(2) REVISED SECTION HEADING.—The heading of such section, as so transferred and redesignated, is amended to read as follows:

“§ 2679. Installation-support services: intergovernmental support agreements”.

(b) CLARIFYING AMENDMENTS.—Such section, as so transferred and redesignated, is further amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “The Secretary concerned” and inserting “Notwithstanding any other provision of law, the Secretary concerned”; and

(B) in paragraph (2)—

1 (i) by striking “Notwithstanding any other provision of law, an” and inserting “An”;

(ii) by striking subparagraph (A); and

(iii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B) respectively; and

(2) by adding at the end of subsection (e) the following new paragraph:

“(4) The term ‘intergovernmental support agreement’ means a legal instrument reflecting a relationship between the Secretary concerned and a State or local government that contains such terms and conditions as the Secretary concerned considers appropriate for the purposes of this section and necessary to protect the interests of the United States.”.

(c) CLERICAL AMENDMENTS.—

¹¹ House NDAA

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(1) The table of sections at the beginning of chapter 137 of such title is amended by striking the item relating to section 2336.

(2) The table of sections at the beginning of chapter 159 of such title is amended by inserting after the item relating to section 2678 the following new item:

Section 418—Restriction on Maintaining and Improving real property with a zero percent utilization rate¹²

None of the funds made available by this Act may be used to maintain or improve Department of Defense real property with a zero percent utilization rate according to the Department's real property inventory database, except in the case of maintenance of an historic property as required by the National Historic Preservation Act (16 U.S.C. 470 et seq.) or in the case of maintenance to prevent a negative environmental impact as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Section 2722—Modification of Property Disposal Procedures Under Base Realignment and Closure Process¹³

This section would authorize the local government, in whose jurisdiction the military installation is wholly located, to be recognized as the local reuse authority for purposes of managing Base Closure and Realignment (BRAC) reuse planning. This section would also require the Secretary of Defense to submit a report to the congressional defense committees as to excess BRAC property that has not been declared surplus by the Federal Government.

Property Disposal Methods (McKinney-Vento Homeless Assistance Act)¹⁴

The committee seeks a greater understanding of the Department of Defense's implementation of homeless assistance, pursuant to the McKinney-Vento Homeless Assistance Act (Public Law 100-77), via property disposal actions that the Department of Defense completes through the Base Realignment and Closure Act of 1990 (Public Law 101-510), as amended. Therefore, the committee directs the Comptroller General of the United States to submit a report to the congressional defense committees by March 1, 2015, on the findings of a review of the effectiveness of implementation of the relevant statutory provisions by the Department of Housing and Urban Development and the Department of Defense.

Section. 2819. - Indemnification of Transferees of Property at Military Installations Closed Since October 24, 1988 That Remain Under the Jurisdiction of the Department of Defense¹⁵

¹² House MilCon Appropriations Bill

¹³ House NDAA

¹⁴ House NDAA

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Provides Section 330 indemnification to military installations, still under the jurisdiction of the Department of Defense, to facilities closed other than pursuant to base closure law.

Section 2819 Bill Text

Section 330(a) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C.2687 note) is amended—

(1) in paragraph (1)—

(A) by striking “paragraph (3)” and inserting “paragraph (4)”; and

(B) by striking “paragraph (2)” and inserting “paragraph (3)”;

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(3) in paragraph (4), as redesignated, by striking “paragraph (2) contributed to any such release or threatened release, paragraph (1)” and inserting “paragraph (3) contributed to any such release or threatened release, paragraph (1) or (2)”; and (4) by inserting after paragraph (1) the following new paragraph (2):

“(2) The responsibility of the Secretary of Defense to hold harmless, defend, and indemnify in full certain persons and entities described in paragraph (3) also applies with respect to any military installation (or portion thereof) that—

“(A) was closed during the period beginning on October 24, 1988, and ending on the date of the enactment of this paragraph, other than pursuant to a base closure law; and

“(B) remains under the jurisdiction of the Department of Defense as of the date of the enactment of this paragraph.”.

Section 311—Method of funding for cooperative agreements under the Sikes Act¹⁶

The Sikes Act (16 U.S.C. 670a–670o) provides the secretary of a military department the authority to enter into cooperative agreements with the states, local governments, Indian tribes, nongovernmental organizations, and the heads of other federal departments and agencies to maintain and improve the natural resources on or off military and National Guard installations.

The committee recommends a provision that would amend this section of the Sikes Act (16 U.S.C. 670c–1) to allow the funds for such a cooperative agreement to be paid in a lump sum that includes an amount to cover future costs of the activities provided for under the agreement. The provision would also allow the funds be placed in an interest-bearing account provided that the interest or income is applied for the same purpose as the principal.

¹⁵ House NDAA

¹⁶ Senate NDAA

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Legacy BRAC sites¹⁷

As the Committee has previously noted in H. Rept. 112–94, the Committee remains extremely concerned regarding the current pace of Legacy BRAC site clean-up. The fiscal year 2013 National Defense Authorization Act combined the 2005 and 1990 BRAC accounts so the resources in the 2005 BRAC account could be used to clean up Legacy BRAC sites. However, it is unclear to the Committee how these resources shall be used. Therefore, the Committee directs the Department of Defense to report back to the Committee within 90 days of enactment of this Act its plan to expedite and expand clean-up activities of BRAC legacy bases and how it will fully utilize the funds previously appropriated.

Section 323—Elimination of authority to abolish arsenals¹⁸

The committee recommends a provision that would amend section 4532 of Title 10, United States Code, the Arsenal Act, and eliminate the ability of the Secretary of the Army to abolish any U.S. arsenal considered to be unnecessary. The provision would also make it the objective of the Secretary of the Army, in managing the workload of the arsenals, to maintain the critical capabilities identified in the Army Organic Industrial Base Strategy Report, and to ensure cost efficiency and technical competence in peacetime, while preserving the ability to provide an effective and timely response to mobilizations, national defense contingency situations, and other emergent requirements.

Section 2813—Arsenal Installation Reutilization Authority¹⁹

This section would modify section 2667 of title 10, United States Code, to provide the authorities to lease real or personal property contained in such section to the commander of military manufacturing arsenals or, if part of a larger military installation, the installation commander for the purposes of leveraging private investment at military manufacturing arsenals through long-term facility use contracts, property management contracts, leases, or other such agreements. This section does not supersede authorities in section 4544 of title 10, United States Code, and is designed to give the commander of military manufacturing arsenals or, if part of a larger military installation, the installation commander, greater flexibility to utilize unused administrative and warehouse space at military installations.

¹⁷ House MilCon Appropriations Bill

¹⁸ Senate NDAA

¹⁹ House NDAA

Facilities Modernization Model²⁰

The committee notes that the Department of Defense's real property management process requires extensive oversight to maintain more than \$850.0 billion in infrastructure at an annual cost of nearly \$60.0 billion. As part of its overall effort to maintain facilities, the Department of Defense is required to modernize certain facilities to make sure that they meet current standards. To assist in this process, the Department of Defense developed its Facilities Modernization Model which predicts the average annual dollar amount required for the Department to modernize its inventory of facilities on an ongoing basis.

The Facilities Modernization Model parallels the Facilities Sustainment Model. In 2008, the Government Accountability Office reported that although the sustainment model provides a consistent and reasonable framework for preparing estimates of the Department of Defense's facility sustainment funding requirements, there were issues with some of the model's key inputs, affecting the reliability of the model's estimates. As the Modernization Model should always be used in conjunction with the Facilities Sustainment Model, the committee is concerned that similar issues may affect the reliability of the Facilities Modernization Model's estimates. Therefore, the committee directs the Comptroller General of the United States to submit a report to the congressional defense committees by March 1, 2015, on the Facilities Modernization Model to include the following:

(1) What are the main inputs into the Facilities Modernization Model and to what extent have the Department and the military services validated these inputs?

(2) To what extent are the services funding facility modernization at levels determined by the model; how are decisions made to deviate from the models? recommendations if needed; and what is the impact if modernization funding is not provided at the recommended levels?

Joint Base Closure and Realignment Recommendations²¹

At the request of the committee, the Government Accountability Office has issued reports on the status of Department of Defense's joint basing initiative. However, the committee remains concerned that efforts to implement Base Closure and Realignment (BRAC) 2005 recommendations that required the military services to merge or consolidate functions to become more joint were not effectively implemented, obviating certain cost saving opportunities. Therefore, the committee directs the Comptroller General of the United States to submit a report to the congressional defense committees by March 1, 2015, on the status of Department of Defense actions to implement its BRAC 2005 recommendations that meet these goals of reducing infrastructure and promoting "jointness." The report should address the following questions:

²⁰ House NDAA

²¹ House NDAA

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(1) To what extent has the Department of Defense identified benefits, cost savings, and/or cost avoidances resulting from implementing these recommendations?

(2) To what extent has the Department achieved enhancements to joint operations from establishment of joint centers of excellence or joint training activities or achieved other operational efficiencies from such consolidations?

(3) What challenges has the Department experienced in implementing these initiatives and to what extent has the Department of Defense resolved these challenges?

Army Supplemental Programmatic Environmental Assessment²²

The committee notes that the Army has used a stationing strategy, called Army 2020, to analyze the various options available to the Secretary of the Army to implement a reduction in force structure. The Army 2020 process used key inputs including a Programmatic Environmental Assessment, a military value analysis, community listening sessions, and an analysis of other stationing factors. Additionally, military judgment, utilizing a variety of planning and steering committees was incorporated into the final decision to reduce specific Brigade Combat Teams (BCTs). As a result of the Army 2020 process, the Army inactivated 12 BCTs and reorganized the remaining BCTs by adding a third maneuver battalion to armor and infantry brigades located in the continental United States. On February 6, 2014, the Army announced plans to implement a Supplemental Programmatic Environmental Assessment (SPEA), to analyze the reduction of the Active Component below 490,000 soldiers. However, the Army is proceeding with the SPEA before fully implementing the results of Army 2020.

The committee believes it is appropriate for the Secretary of the Army to use the results of the Army 2020 analysis as the baseline input of the SPEA. Therefore, concurrent with the release of the draft SPEA, the committee directs the Secretary of the Army to brief the House Committee on Armed Services by September 1, 2014, on the baseline for the SPEA and any deviation from the Army 2020 analysis. If the Secretary is compelled to deviate from the Army 2020 analysis, the Secretary should provide the committee an explanation of why such deviation is appropriate.

Army force structure and installation alignment²³

The committee is aware of the Army's end strength and force structure reductions and changes made last year in accordance with the January 2012 Defense Strategic Guidance (DSG). The DSG directed the reduction of Army active end strength to 490,000 soldiers and the inactivation of eight combat brigades.

²² House NDAA

²³ Senate NDAA

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In this regard, the Subcommittee on Airland, in a March 2013 letter, requested a Government Accountability Office (GAO) assessment of the Army's analysis and decision-making processes associated with planned force structure reductions and their alignment with installations. The GAO's assessment, reported in December 2013, noted that the Army used a variety of analyses to inform its decision-making processes, including "obtaining input through open meetings with communities around installations being considered for stationing changes." The GAO recommended that the Army needed to update and document its rules for future analysis of force structure realignments and stationing decisions.

The committee notes that, in order to meet Budget Control Act caps, the Army plans the additional active Army end strength reductions to 450,000 soldiers by fiscal year 2017. This will result in additional unit inactivation's at Army posts around the country. The committee is interested to learn how the Army has updated its analysis and decision-making processes and how it will incorporate its 2013 decisions for force realignments into another round of reductions. Accordingly, the Secretary of the Army, or designee, shall provide a report to the congressional defense committees, not later than April 30, 2015, that:

- (1) Identifies the analytical methodology and decision-making processes that will be used for force structure reductions related to active end strength of 450,000 soldiers or less by 2017 or beyond;
- (2) Identifies the changes to the methodology or process, as recommended by the GAO;
- (3) Details the schedule for conducting its analysis, including completion of environmental assessments and planned public meetings or information sessions with installations' communities;
- (4) Details how implementation of force realignment decisions made in 2013 are being or will be executed, and how uninitiated, incomplete, and planned force realignments will be incorporated into the assessment of installations; and
- (5) Certifies that the Army will comply with the requirements of chapter 55, title 42, United States Code, (National Environmental Policy Act), and with the requirements of section 993, title 10, United States Code, for prompt congressional notification of additional force structure modifications, reductions, and additions.

Sections 1701-1709—National commission on the future of the Army²⁴

The committee recommends a provision that would create a commission to study the size and force structure of the Army, including active-duty forces, the U.S. Army Reserve (USAR), and the Army National Guard (ARNG). The committee is aware that the Army and the Department of Defense continue their analysis, course of action development, and decision-making process with respect to the distribution of reductions of both end strength and force structure necessary to achieve the savings required by the Budget Control Act of 2011. The

²⁴ Senate NDAA

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committee believes that under these circumstances an independent and objective review of Army size and force structure by a national commission is worthwhile. The commission would be required to submit a report to the congressional defense committees not later than February 1, 2016.

The provision would prohibit the use of funds in fiscal year 2015 to reduce the end strength of the regular Army, ARNG, or USAR below the levels provided in the budget request. The provision would also prohibit the use of funds in fiscal year 2015 to divest, retire, or transfer any AH-64 Apache aircraft assigned to the ARNG. An exception to this aircraft prohibition, however, would allow the transfer of up to 48 Apache aircraft from the ARNG to the regular Army.

The commission would be made up of four members appointed by the chairman and ranking members of the Committees on Armed Services of the Senate and the House of Representatives and four members appointed by the President.

The commission would undertake a comprehensive study of the structure of the Army and policy assumptions related to the size and force mixture of the Army. In addition to the review of the Army's structure, the commission would conduct a study of plans to transfer Apache aircraft from the ARNG to the regular Army. The commission would also evaluate the distribution of responsibility and authority, as well as the strategic basis or rationale, analytical methodology, and decision-making process, related to the allocation of ARNG end strength and force structure to the states and territories.

In its assessment of the Army's size and structure, the commission should also consider the need for any changes to existing legislation—such as the Militia Act of 1903, the National Defense Act of 1920, the National Security Act of 1947, and the Goldwater- Nichols Act of 1986—that establishes the roles and missions of the active and reserve components.

The committee notes the difficulties expressed by the National Commission on the Structure of the Air Force associated with the Department of Defense's (DOD) interpretation and application of the Federal Advisory Committee Act (FACA) as amended (Public Law 92-463). The commissioners stated in their report that, "As the Commission proceeded with its work, it became increasingly clear that the DOD's interpretation of FACA's purpose would have a significant, and frequently negative, impact on the Commission's work." It is apparent from the views of the commissioners that the Department's interpretation of the oversight safeguards intended by the FACA may have unnecessarily complicated the conduct of their study. The committee expects the Secretary of Defense to support the National Commission on the Future of the Army in a balanced manner and in a spirit consistent with congressional intent and appropriate FACA oversight while avoiding the negative impacts that were experienced by the Air Force Commission.

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The committee is also aware that certain aspects of the Army's "1993 Offsite Agreement" pertaining to reserve component core competencies has, in part, for the last 20 years, guided its analysis and decision-making with respect to reserve component force structure. This agreement, between senior leadership of the regular Army, ARNG, USAR, and the associations representing their members, guided the realignment of combat arms, combat support, and combat service support force structure between the ARNG and USAR. The agreement provides that the ARNG should retain a mix of combat arms and support structure while the USAR would divest its combat arms and retain combat support and combat service support capabilities. In this manner the core competencies of the Army's reserve components are established: for the ARNG a balance of combat and supporting arms, and for the USAR combat support and service support.

By and since this agreement, therefore, the ARNG has been and remains the reserve component within which the Army places those combat arms capabilities to reinforce, supplement, or compliment the combat capabilities of the active Army. The committee notes that, as appropriate and necessary to address the national security and support for civil authorities requirements of the United States, there are several examples of units and capabilities in the regular Army that are not in the reserves, as well as units and capabilities in the reserves that are not in the regular Army.

This system for the alignment of core capabilities among the Army's reserve components has served the Nation, the Army, and the domestic support and public safety needs of the states very well ever since. The committee recognizes the success of this agreement, as evident by the successful partnerships in combat, security, and support missions by active and reserve service members in the conflicts in Afghanistan and Iraq. The committee encourages the Army to continue to maintain the reserve components as an operational reserve and manage the distribution of combat arms, combat support, and combat service support capabilities and forces consistent with and respectful of the intent of its "1993 Offsite Agreement" regarding reserve component core competencies.

Section 1050—Conditions on Army National Guard and Active Army Force Structure Changes Pending Comptroller General Report²⁵

This section would prohibit the Secretary of Defense and Secretary of the Army, during fiscal year 2015, from reducing the end strength for active duty personnel of the Army below 490,000; reducing the end strength for Selected Reserve personnel of the Army National Guard below 350,000; or transferring AH-64 attack helicopters from the Army National Guard to the regular Army.

²⁵ House NDAA

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This section would also require the Comptroller General of the United States to assess and validate the methods the Army and the Department of Defense Office of Cost Assessment and Program Evaluation used to determine the future force structure of the Army, to include the appropriate mix between Active, Guard, and Reserve Component forces and submit a report to the congressional defense committees not later than March 1, 2015.

Elsewhere in this Act, the committee describes its larger concerns regarding the Army's end strength and force structure reductions. As a result of these concerns, the committee also recommends increases in funding for procurement and operation and maintenance accounts to accelerate the conversions of UH-60A to UH-60L Black Hawk helicopters, and additional funding to procure six additional UH-60M Black Hawk helicopters to address Army National Guard modernization shortfalls. Finally, the committee recommends additional funding for operation and maintenance readiness accounts to increase overall training opportunities and increase depot-level maintenance in the Army National Guard.

Real Property Management²⁶

The committee is concerned about the Department of Defense's management of real property resources. In an era of declining resources, the committee is concerned by decisions made by the Department of Defense to retain underutilized real property. The committee is supportive of real property authorities that provide the Secretary concerned the authority to outlease non-excess properties, but believes that there are instances where the Department has not fully utilized these authorities to manage its real property assets. For example, the committee notes that the Secretary of the Air Force is responsible for Keesler Air Force Base and certain noncontiguous properties in the area. A former base housing area called Harrison Court was destroyed by Hurricane Katrina and the 40 acre parcel remains vacant 9 years since Hurricane Katrina. The committee notes that the Air Force continues to expend funds to maintain the vacant property while the local community expresses interest in developing the property for economic or public use purposes. Therefore, the committee directs the Secretary of the Air Force to assess the value of certain noncontiguous properties in the Keesler Air Force Base area and to provide a report to the congressional defense committees by March 1, 2015, that determines whether there remains a continued requirement for the Air Force to maintain these properties, the feasibility of an enhanced use lease, or the Secretary's intent to initiate excess proceeding for these properties.

²⁶ House NDAA

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Section 2801—Prevention of Circumvention of Military Construction Laws²⁷

This section would amend section 2802 of title 10, United States Code, to clarify that certain military construction projects, land acquisitions, and defense-access roads projects must be specifically authorized in a Military Construction Authorization Act.

Section 2816—National Security Considerations for Inclusion of Federal Property on National Register of Historic Places or Designation as National Historic Landmark under the National Historic Preservation Act²⁸

This section would prohibit the designation of Federal property as a National Historic Landmark or for nomination to the World Heritage List if the head of the agency managing the Federal property objects to such inclusion or designation for reasons of national security. This section would also authorize the expedited removal of Federal property listed on the National Register of Historic Places if the managing agency of that Federal property submits a request to the Secretary of Interior for such removal for reasons of national security.

Section 903—Assistant Secretary of Defense for Installations and Environment²⁹

This section would establish the position of the Assistant Secretary of Defense for Installations and Environment. The position would be appointed by the President, by and with the advice and consent of the U.S. Senate. The committee recognizes that the responsibilities of this organization already exist within the Department of Defense, reporting to the Under Secretary of Defense for Acquisition, Technology, and Logistics. The creation of this Assistant Secretary of Defense position shall ensure no net growth in personnel or resources for the organization, and shall not be exempt from any directed headquarters reductions.

Section 311—Elimination of Fiscal Year Limitation on Prohibition of Payment of Fines and Penalties from the Environmental Restoration Account, Defense³⁰

This section would eliminate a sunset date for the requirement for the Department of Defense to obtain congressional authorization before paying fines and penalties under the requirement set forth in section 2703 of title 10, United States Code. The current requirement for congressional authorization does not apply to funds authorized to be appropriated to the Environmental Restoration Account, Defense after fiscal year 2010. This section would strike any such date limitation.

²⁷ House NDAA

²⁸ House NDAA

²⁹ House NDAA

³⁰ House NDAA

Section 2817—Sense of Congress on National Security and Public Lands³¹

It is the sense of Congress that—

(1) national defense should be the top priority for all aspects of the Federal Government;
and

(2) national security functions, such as military training and exercises, should be the top priority, particularly with regard to the use of land owned by the United States.

Facilities Sustainment³²

The committee recognizes that facilities sustainment funding is often deferred in difficult budget times in favor of other priorities. However, underfunding of facilities sustainment accepts greater risk that facilities will fail prematurely and, in the longer term, result in higher restoration and replacement costs. The committee notes that requested funding for facilities sustainment has fallen from \$8.5 billion in fiscal year 2013 to \$6.4 billion for fiscal year 2015, a decrease of 25 percent in only 3 years.

On April 2, 2014, the Acting Deputy Under Secretary of Defense for Installations and Environment testified before the committee that, “Sustainment represents the Department’s single most important investment in the condition of its facilities . . . While the Department’s goal is to fund sustainment at 90 percent of modeled requirements, the funding level noted above supports an average DOD-wide sustainment funding level of 65 percent of the Facilities Sustainment Model requirement.”

The committee believes that the dramatic decrease in facilities sustainment funding represents an unacceptable risk to the readiness of Department of Defense facilities. Therefore, the committee recommends an additional \$105.0 million in Operation and Maintenance for facilities sustainment across the active, guard, and reserve components.

Use of power purchase agreements to meet requirements for Military installations³³

The committee notes that on April 16, 2014, the Acting Deputy Secretary of Defense signed out Department of Defense (DOD) Directive 4180.01, “DOD Energy Policy,” to provide a common energy framework to guide the full range of defense energy activities, including operational energy, facilities energy, and energy-related elements of mission assurance. The Directive established the DOD policy to enhance military capability, improve energy security, and mitigate costs in its use and management of energy.

³¹ House NDAA

³² Senate NDAA

³³ Senate NDAA

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The committee notes that in support of this policy, the DOD has increased the use of Power Purchase Agreements (PPA), in conjunction with the authority provided by section 2922a of Title 10, United States Code, to enter into long-term contracts of up to 30 years in order to generate or provide power for a military installation. These contracts have the potential to achieve cost savings while improving energy security by ensuring a reliable power supply to a military facility or installation.

The committee believes that PPAs, like authorities provided for military housing and other utilities, offer a substantial benefit to DOD by addressing the need for a reliable energy source with no upfront capital costs. The private sector finances and installs an energy generating system on land owned by DOD or on private land. A private entity owns, operates, and maintains the system and DOD agrees to purchase the power generated by the system over the life of the contract. A PPA generally shifts performance risk of the project from the government to the contractor. DOD is able to establish a known long-term electricity price for a portion of site load. A PPA provides a reliable power supply at a predictable cost for budget stability.

The committee notes that DOD guidance on the use of section 2922a recognizes the authority to enter into a contract for energy generating projects without the capital costs of construction either on a military installation or on private property. The committee also notes that, like housing privatization, regional or portfolio approaches in a contract that will provide energy to more than one military installation may offer the potential for greater savings and best value. DOD also has the flexibility to enter into contracts that consider the availability of regional resources and use more than one energy source to achieve greater efficiencies and lower costs. In addition, section 2922a does not direct that a dedicated transmission line or other additional infrastructure be required for projects on private property if the availability and use of existing power distribution infrastructure will result in a lower cost over time. The committee encourages DOD to use the flexibility contained within the authority to maximize the efficiency and effectiveness of each contract.

The committee recognizes that Part 41.201 of the Federal Acquisition Regulations requires DOD to obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service. While electricity prices are subject to market pressures, locking in a reasonable rate over a longer period of time will protect DOD from rate volatility. To that end, DOD guidance for the approval by the Secretary of Defense of the use of section 2922a requires the military service or defense agency to provide an economic/business case analysis summary to include the energy project cash flow display for each fiscal year included within the contract. The committee believes this analysis is critical to ensure that the projects enhance military capability, improve energy security, and mitigate costs.

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The committee encourages DOD to continue to use PPAs and the flexible authorities contained in section 2922a to take full advantage of private sector financing for projects that offer economy and reliability of service over time and ensure rates equal to or lesser than projected energy rates over the life of the contract.

Clarification on the use of energy savings performance contracts³⁴

The committee notes that section 8287 of title 42, United States Code, provides authority for energy savings performance contracts (ESPC). The committee believes that ESPC are a tool that has proven effective in reducing both cost and energy use by leveraging third-party private financing.

The committee has attempted to clarify when it is appropriate to use such contracts in both section 828 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111– 383) and section 2825 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239).

While ESPC are not available for constructing new buildings or facilities, the committee notes that in some cases, the installation of equipment meeting the standard of section 8287 requires the modification or repair of existing facilities, or the construction of facilities or infrastructure that provide necessary support to the primary function of the operating equipment. In such cases, ESPC may be used.

The committee applauds the Army for their aggressive use of ESPC. According to testimony by the Assistant Secretary of the Army for Installations, Energy, and Environment on April 2, 2014, “The Army has the most robust ESPC program in the Federal Government. The ESPC program has more than 180 Task Orders at over 75 installations, representing \$1.32 billion in private sector investment. . . . We have additional ESPC projects in development, totaling over \$400.0 million in private investment.”

The committee understands that the Army’s use of ESPC has resulted in energy savings of almost 9 percent of their fiscal year 2013 facilities energy consumption and an annual utility cost avoidance of more than \$168.0 million.

The committee notes that while the Navy and the Air Force have also made use of ESPC, they have done so on a much smaller scale. The committee urges the Navy and the Air Force to adopt the Army’s best practices wherever possible to similarly increase their use of ESPC.

³⁴ Senate NDAA

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Section 2703—HUBZones³⁵

The committee recommends a provision that would modify section 632 of title 15, United States Code, to expand the area around former military installations closed under the Base Realignment and Closure process that can be considered for purposes of satisfying employee residency requirements under the HUBZone program and would extend the period of applicability from 5 to 8 years.

Section 2811—Deposit of reimbursed funds to cover administrative expenses relating to certain real property transactions³⁶

The committee recommends a provision that would allow for reimbursements paid by non-federal persons or entities for administrative expenses incurred by the military departments for certain real property transactions to be merged with those in the current appropriation, fund, or account used by the military departments for payment of such expenses.

Report on military construction unfunded requirements³⁷

The committee notes that the Department of Defense's (DOD) military construction (MILCON) request for fiscal year 2015 is 40 percent less than was requested for fiscal year 2014. In particular, the Army's MILCON funding request declined by 52 percent compared to its request for fiscal year 2014.

As the Deputy Under Secretary of Defense for Installations and Environment testified on April 2, 2014, "infrastructure degradation is not immediate, so DOD Components are taking more risk in the MilCon program in order to decrease risk in other operational and training budgets. This funding will still enable the Department to respond to warfighter requirements and mission readiness. However, the reduced budget will have an impact on routine operations and quality of life as projects to improve aging workplaces are deferred."

The committee is concerned about the significant cuts to MILCON and their likely impact of increasing the number of facilities in poor to failing condition. The committee is concerned that MILCON cuts will ultimately lead to lasting negative impacts to our military's readiness and their ability to effectively respond to crisis abroad and at home.

These concerns apply not only to the active component, but to the guard and reserve as well. The committee believes that MILCON funding should be equitably distributed among each service's active, guard, and reserve components based on a comprehensive MILCON strategy.

³⁵ Senate NDAA

³⁶ Senate NDAA

³⁷ Senate NDAA

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Furthermore, the committee would like to have a better understanding of how National Guard MILCON funding is prioritized and distributed among the States.

Therefore, the committee directs the Deputy Under Secretary of Defense for Installations and Environment, in coordination with each of the Service secretaries, to submit to the congressional defense committees a report on DOD MILCON requirements, with focus on each of the Services—active, guard, and reserve facilities. The report shall include, at a minimum: an accounting of unfunded MILCON requirements over the future years defense program by Service, component, and State; an assessment of the risk to readiness assumed by not funding these requirements; a review of the procedures the Army and the Air Force, in collaboration with the National Guard Bureau, use to allocate National Guard MILCON funding among the States; and procedures used by each Service and their components to prioritize and allocate MILCON funding and balance risk across the active, guard, and reserve components.

Real property utilization³⁸

The Committee is concerned that the Department of Defense (DOD) is not be updating [sic] in a timely fashion its non BRAC Real Property Inventory Database, creating a significant obstacle to DOD's ability to maximize the utility of existing real property and to reduce taxpayer expenses. To address this concern, the Committee urges the Secretary of Defense to report to the Committee no later than 90 days after enactment of this Act on (1) the Department's strategy for maximizing utilization of existing facilities, progress implementing this strategy, and obstacles to implementing this strategy; (2) efforts of DOD's to systematically collect, process, and analyze data on real property utilization to aid in the planning and implementation of the strategy referred to in (1); (3) the number of underutilized Department facilities, to be defined as facilities rated less than 66 percent utilization, and unutilized DOD's facilities, to be defined as facilities rated at zero percent utilization, in the Real Property Inventory Database of DOD; (4) any mitigating factors for why facilities in the Database may be listed as zero percent utilization; (5) the annual cost of maintaining and improving underutilized and unutilized DOD facilities; and (6) efforts of the DOD to dispose of underutilized and unutilized facilities. The report may include a classified annex if necessary to fully describe the matters listed above.

Defense Access Roads FYDP³⁹

The Committee is concerned about the lack of future planning for Defense Access Roads (DAR) and transportation infrastructure needs around bases beyond fiscal year 2014. The Committee urges the Secretary of Defense to work with the Secretary of Transportation to prioritize DAR certified roads and projects in the outyears 2015–2018, specifically examining bases in communities that have contributed to transportation infrastructure that benefits bases

³⁸ House MilCon Appropriations Bill

³⁹ House MilCon Appropriations Bill

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and report to the congressional defense committees no later than 30 days after enactment of this Act on its findings.

Defense Access Roads project timeline⁴⁰

The Committee is very concerned about the lack of use of the Defense Access Roads program within the Department of Defense. The Committee has heard of many worthwhile road construction/expansion projects in and around military installations that are in great need of funding. These projects would provide a great benefit to the installations and the surrounding communities. Therefore, the Committee directs the Department to review needed projects around military installations as well as a timeline on when those projects will be completed and report back to the Committee not later than 30 days after enactment of this Act. If the Department cannot provide a timeline, they should explain how the program can be changed to meet those requirements.

Military construction priorities⁴¹

The Committee is concerned that the Department of Defense does not give the highest priority to projects that directly impact the safety and health of our service members. The Committee believes that the Department of Defense should consider more than the mission requirements and training objectives of installations when prioritizing MILCON projects. The safety and health of our service members is and will always be the top priority of this Committee. The Committee requests the Department submit a report to the Committee along with its annual budget submission that prioritizes projects that impact health and safety of our service members.

Aging infrastructure⁴²

The Committee recognizes the need to fully support the Department of Defense's (DOD) requirement to replace the aging infrastructure at installations deemed critical in executing the current Defense Strategic Guidance. These installations support missions critical to our Nation's military pivot to the Pacific region and our Nation's reliance on these installations' ability to execute their assigned missions will undoubtedly increase in the future. This further highlights the necessity of DOD to ensure that such installations infrastructure is fully capable to support service requirements.

Army Privatized Lodging Program⁴³

⁴⁰ House MilCon Appropriations Bill

⁴¹ House MilCon Appropriations Bill

⁴² House MilCon Appropriations Bill

⁴³ House MilCon Appropriations Bill

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While the Committee has been supportive of the Army's Privatized Lodging Program (PAL), the Committee is very concerned that the Army has not been as forthcoming when communicating with local communities regarding economic and related impacts of such facilities. There is a concern of local Hoteliers that these facilities will gain an unfair advantage by being able to offer rooms on Army bases to the general public while also benefiting from the Army policy of directing some transient soldiers to stay at on-post facilities when possible. The Committee believes that the Army needs to better address these concerns and therefore directs the Secretary of the Army to develop a proactive outreach and communication program with local communities with respect to the impact of both new and existing lodging facilities. The Department of the Army is directed to submit an outreach plan for such a program not later than 90 days after enactment of this bill.

Redevelopment Potential for Military Properties and Facilities⁴⁴

The Committee directs the Department of Defense to report to Congress within 120 days after enactment of this act on steps DOD could take to assess the local redevelopment potential for military properties and facilities. Prior to approving new construction or upgrades, the Department should consider local interest, property value, and related cost savings that could result from the transfer and disposal of facilities or properties.

Air Force Infrastructure Consolidation⁴⁵

The Committee recognizes the Air Force's efforts to reduce overhead throughout its budget. As the Air Force continues to scrutinize its infrastructure for savings, the Committee recommends that the Air Force pay special attention to consolidating infrastructure and commands on its installations, including, but not limited to, communications, civil engineering, and administrative facilities.

European Infrastructure Consolidation [EIC] Study⁴⁶

The Committee is aware that the Department of Defense is conducting an EIC study in an effort to reduce excess DOD infrastructure in Europe. However, the study has not yet been finalized, nor have the recommendations been presented to Congress or to the host nations. Moreover, the timeline for completing that process remains uncertain.

As noted last year, the Committee continues to question the rationale for funding certain projects in Europe before DOD has determined the overall outcome of this study.

⁴⁴ Senate MilCon Appropriations Bill

⁴⁵ Senate MilCon Appropriations Bill

⁴⁶ Senate MilCon Appropriations Bill

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In particular, the Committee is interested in the savings-to-investment ratio of the EIC. The fiscal year 2015 budget request includes \$92,223,000 for the first of a three-phase Joint Intelligence Analysis Center at Royal Air Force Base Croughton in the United Kingdom. The project would consolidate U.S. intelligence gathering operations for the European [EUCOM] and Africa [AFRICOM] Commands and establish a NATO Intelligence Fusion Center. The overall cost of this three-phase project is estimated to be in excess of \$300,000,000.

The Committee is concerned that reliance on new construction to consolidate facilities as a means to reduce excess infrastructure can come with a heavy price tag. This is particularly troubling during a time in which the Defense Department is strapped for cash, and the military construction budget request for fiscal year 2015 plunged 40 percent from the fiscal year 2014 request.

While the Committee recognizes the importance of having a modernized intelligence center in Europe, it is concerned about the full cost and scope of this project, the rationale for an AFRICOM component when the AFRICOM headquarters in Stuttgart, Germany, is still being analyzed, and the associated costs of significantly expanding the U.S. military and family population at RAF Croughton, which is likely to require additional family housing, schools, health facilities, commissaries, and exchange facilities.

For this reason, the Committee has fenced funding for the Croughton project until the European Infrastructure Consolidation Study is transmitted to Congress and the Secretary of Defense certifies in writing to the Committees on Appropriations of both Houses of Congress the requirement for this project. This restriction is consistent with the restrictions on funding included in the fiscal year 2014 Military Construction and Veterans Affairs, and Related Agencies Appropriations bill for projects in Germany and England associated with the EIC.

The Committee further believes that the Department's request for another round of base closures within the United States is premature until DOD completes a thorough review of all overseas bases and determines that all facilities that are operationally prudent to close are done so before assessing which bases in the United States should be closed or realigned. The Committee urges the Secretary of Defense to ensure that the European Infrastructure Consolidation Study and all overseas basing studies are conducted without predetermined outcomes and will represent a thorough evaluation of the needs of the Department of Defense.

The Committee also directs the Department to provide to the Committees on Appropriations of both Houses of Congress a savings- to-investment report on the EIC proposal, detailing the metrics and assumptions used to determine the savings associated with the EIC. This report should accompany the submission of the final EIC recommendations to Congress.

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Energy Conservation Investment Program⁴⁷

The Committee recommends the requested level of \$150,000,000 for the Energy Conservation Investment Program [ECIP], and \$10,000,000 for ECIP Planning and Design [P&D]. The Committee commends DOD for including a separate line item for ECIP planning and design in its fiscal year 2015 budget justification materials, and fully funds the request to help ensure that adequate funds are available for future ECIP project design.

In an era of declining defense budgets, and in an environment in which energy efficiency, security, and renewable energy investments are mission-critical requirements, ECIP is an important component of the Department of Defense's [DOD] energy strategy, and its only dedicated stream of funding for energy projects. DOD is the largest consumer of energy in the Federal Government, accounting for nearly 80 percent of the government's total energy consumption. Currently, the Department spends nearly \$4,000,000,000 per year on facility energy, or almost a quarter of its total energy costs. The Committee encourages the transition of ECIP from funding small, rapid pay-back projects, such as isolated heating, cooling and lighting efficiencies, to playing a central role in leveraging larger energy security and renewable energy projects. As such, the Committee urges DOD and the services to compete projects that will produce significant "game-changing" improvements to reduce carbon emissions, energy consumption, and energy costs, as well as projects to enhance installation energy security.

Projects such as energy security microgrids, net-zero facilities, and renewable energy projects have the potential to offer long term pay-back that far exceeds initial investment, while concurrently driving innovation. In an environment of heightened security risks and growing concern over carbon emissions, it is more important than ever for DOD to maintain robust investment in ECIP to reduce installation energy expenses, limit carbon emissions, and enhance installation energy security.

While the Committee strongly supports ECIP, it also believes that an updated evaluation of the program's impact on DOD energy consumption and efforts to reduce energy costs is warranted. Therefore, the Committee directs the Comptroller General of the Government Accountability Office [GAO] to examine DOD's use of ECIP funding for energy-related projects and the extent to which ECIP investments reduce the Department's use of energy and energy costs. DOD selects ECIP projects in part based on their projected Savings-to-Investment Ratio, an estimate of a project's return on investment within a 10-year payback period. DOD estimates that ECIP investment has resulted in a cost savings of approximately \$2,000,000,000 since 2001. As DOD continues to make ECIP investments in projects to reduce energy consumption, save money, and increase the use of renewable energy, the Committee directs the Comptroller General to verify the energy savings associated with ECIP by addressing the following issues: (1) to what extent have ECIP funded projects reduced the Department's use of energy or its

⁴⁷ Senate MilCon Appropriations Bill

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energy costs; (2) how does DOD's estimated return on investment and energy savings for ECIP projects compare with actual savings; (3) to what extent has DOD realized the projected return on investment, energy savings, or cost savings of ECIP projects during the 10-year payback period, and (4) to what extent do renewable energy projects funded by ECIP conform to the 10-year payback period. The Committee directs GAO to provide this assessment, using a representative sample of ECIP funded projects, no later than 180 days after enactment of this act.

Facilities Sustainment, Restoration and Modernization⁴⁸

The Department of Defense is directed to continue describing on form 1390 the backlog of FSRM requirements at installations with future construction projects. For troop housing requests, form 1391 should describe any FSRM conducted in the past two years. Likewise, future requirements for unaccompanied housing at the corresponding installation should be included. Additionally, the forms should include English equivalent measurements for projects presented in metric measurement. Rules for funding repairs of facilities under the Operation and Maintenance accounts are described below:

(1) components of the facility may be repaired by replacement. Such replacement can be up to current standards or codes;

(2) interior arrangements and restorations may be included as repair;

(3) additions, new facilities, and functional conversions must be performed as military construction projects. Such projects may be done concurrently with repair projects as long as the final conjunctively funded project is a complete and usable facility; and

(4) the appropriate service secretary shall notify the appropriate committees 21 days prior to carrying out any repair project with an estimated cost in excess of \$7,500,000. The Committee strongly encourages the services and defense agencies to indicate the plant replacement value of the facility to be repaired on each such notification.

Air Force Strategic Basing Process⁴⁹

The committee notes that the Air Force has plans to divest legacy aircraft from its Active Duty and Reserve Component force structure over the Future Years Defense Program. While divesting of legacy aircraft, the Air Force will also conduct strategic basing reviews to determine where to locate new units and missions, such as the F-35A and the KC-46A, in the coming years. The committee is supportive of the Air Force's strategic basing process and believes that it provides a thorough, consistent, and transparent process for basing decisions. When evaluating candidate bases for new units and missions, the committee believes that it is appropriate for the Air Force to consider infrastructure supporting aircraft to be divested from its force structure as

⁴⁸ House Military Construction Appropriations Bill

⁴⁹ House National Defense Authorization Act

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being available to support new units and missions should the scheduled divesture occur before the scheduled arrival of the new unit or mission.

Section 142—Sense of Congress Regarding the OCONUS Basing Of The F-35A⁵⁰

Expresses the Sense of Congress that the Secretary of the Air Force should place emphasis on strategically significant criteria when basing the OCONUS F-35A, which includes access to sufficient range capabilities and space for training, the ability to robustly train with our international partners, the presence of existing facilities to support operations, limited encroachment, and the minimization of costs.

Report on National Commission on the Structure of the Air Force Recommendations⁵¹

The National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239) established the National Commission on the Structure of the Air Force to evaluate the Total Force force structure of the Active, Guard, and Reserve Components of the Department of the Air Force.

The committee is grateful for the time, effort, dedication, and expertise of all the commissioners and their staff that was applied to the development of the commission’s report, despite the burdensome and arcane interpretation and application of the Federal Advisory Committee Act (Public Law 92–463) to the commission’s deliberations. The committee thanks the commissioners and staff for their many years of distinguished service in key leadership positions of the national security apparatus.

Section 1044—Repeal of Authority Relating to Use of Military Installations by Civil Reserve Air Fleet Contractors⁵²

This section would repeal section 9513 of title 10, United States Code, relating to the use of military installations by commercial air carriers doing business with the Department of Defense. Under this program, the Secretary of the Air Force was authorized for Air Force installations, or in coordination with the Secretary of the other military services for other than Air Force military installations, to enter into contracts with air carriers authorizing the use of designated installations as a weather alternative, as a technical stop not involving the enplaning or deplaning of passengers or cargo, or, in the case of an installation within the United States, for other commercial purposes but was never utilized.

⁵⁰ House National Defense Authorization Act

⁵¹ House National Defense Authorization Act

⁵² House National Defense Authorization Act

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Section 1075—Unmanned Aircraft Systems and National Airspace⁵³

This section would allow the Secretary of Defense to enter into a memorandum of understanding with a non-Department of Defense entity that is engaged in the test range program authorized under section 332(c) of the Federal Aviation Administration Modernization and Reform Act of 2012 (Public Law 112–95). Such entity would be allowed access to non-regulatory special use airspace if such access is used by the entity as part of such test range program and does not interfere with the activities of the Secretary or otherwise interrupt or delay missions or training of the Department of Defense.

KC–10 Aerial Refueling Aircraft Force Structure⁵⁴

The committee notes that the President’s request for the Future Years Defense Program 2016–19 did not take into account Budget Control Act of 2011 (Public Law 112–25) sequestration level Department of Defense spending limitations.

The committee understands that if the spending limitations in Public Law 112–25 are imposed on the Department of the Air Force beyond fiscal year 2015, then additional reductions in critical capabilities and aircraft force structure will likely be necessary in order for the Department of the Air Force to comply with its share of spending authority. The committee understands from briefings and discussions with Air Force officials that the KC–10 Stratotanker aircraft could succumb to sequestration impacts. The committee is concerned that a divestment of a high-demand, low-density aircraft such as the KC–10 could have detrimental impacts for the Department of Defense in meeting its global reach and global power objectives, as it relates to supporting the 2012 Defense Strategic Guidance.

The committee also notes that the Commander, U.S. Transportation Command (CUSTC) has validated that the requirement for aerial refueling aircraft capability is 567 aircraft. The Department of the Air Force currently has only 454 aerial refueling aircraft, resulting in a deficit of 113 aircraft short of the CUSTC requirement. The Air Force is not projected to have 567 aerial refueling tankers in its inventory, assuming that no KC–10 or KC–135 are divested, prior to delivery of the 112th KC–46 tanker aircraft in the next decade.

Therefore, elsewhere in this title, the committee includes a provision that would prohibit the Secretary of the Air Force from using any funds or taking any action during fiscal year 2015 to divest or transfer, or prepare to divest or transfer, any KC–10 aerial refueling aircraft of the Air Force. In addition, if the President’s request for fiscal year 2016 proposes to divest the KC–10 aerial refueling aircraft from the Department of the Air Force, the committee directs the Commander, U.S. Transportation Command, in coordination with the Chairman of the Joint

⁵³ House National Defense Authorization Act

⁵⁴ House National Defense Authorization Act

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Chiefs of Staff, to submit to the congressional defense committees at the time of the fiscal year 2016 budget submission, an operational risk assessment and mitigation strategy that evaluates the military's ability to meet the requirements and objectives stipulated in the Department's Guidance for Employment of the Force, the Joint Strategic Capabilities Plan, and all geographical combatant commander steady-state rotational and warfighting surge contingency operational planning documents.

KC-46 Aerial Refueling Aircraft program⁵⁵

The budget request contained \$1.6 billion for KC-46 Low-Rate Initial Production Lot 1 (LRIP 1) procurement of seven aircraft.

The committee notes that the KC-46 program has been executing to date without any requirements changes, and appreciates the requirements discipline that the Secretary of the Air Force has maintained since the beginning of the program. The committee supports the KC-46 program and the capability the aircraft will bring to the Air Force when it is eventually fielded. The committee

also realizes that fiscal efficiencies can be garnered from the program at this point in time without a significant impact to program execution.

Therefore, the committee recommends \$1.4 billion, a decrease of \$226.1 million, for KC-46 LRIP 1 procurement of six aircraft to support higher priorities contained elsewhere in this Act. The committee expresses that the Secretary of the Air Force should not consider this as punitive action against the KC-46 program, and the committee expects the Secretary to maintain the same Future Years Defense Program procurement quantity of aircraft despite the one aircraft decrease in the fiscal year 2015 budget. The committee understands from discussions with Air Force program officials that a decrease of 1 aircraft in LRIP 1 will not have a significant impact to program execution and should not hinder the ability for 18 KC-46 aircraft to be delivered by the contractual required assets availability date of the fourth quarter of fiscal year 2017.

Section 134—Limitation on Availability of Funds for Divestment or Transfer of KC-10 Aircraft⁵⁶

This section would prohibit the Secretary of the Air Force from using any funds or taking any action during fiscal year 2015 to divest or transfer, or prepare to divest or transfer, any KC-10 aerial refueling aircraft of the Air Force.

Section 132—Limitation on availability of funds for retirement of Air Force aircraft⁵⁷

⁵⁵ House National Defense Authorization Act

⁵⁶ House National Defense Authorization Act

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The committee recommends a provision that would require the Secretary of the Air Force to submit a report including an analysis and recommendations for not less than 80 percent of the Air Force missions and aircraft before retiring any Air Force aircraft. The Secretary of the Air Force and the Chief of Staff of the Air Force testified to the committee that the Air Force would complete an analysis of 80 percent of the Air Force missions and aircraft by the end of calendar year 2014. That ongoing analysis is assessing the appropriate contributions of the regular Air Force, the Air National Guard, and the Air Force Reserve to the total force structure of the Air Force. The National Commission on the Structure of the Air Force found that the Air Force could save as much as \$2.0 billion per year by realigning its forces between the active and reserve components. The committee wants to ensure that any planned retirements are reassessed in view of any savings that may be achievable as a result of that analysis.

Section 135—Limitation on transfer of KC-135 tankers⁵⁸

The committee recommends a provision that would delay the Air Force's plan to transfer KC-135 aircraft from Joint Base Pearl Harbor-Hickam, pending a report on the costs and benefits of that transfer.

It has come to the attention of the committee that the Air Force intends to move four KC-135 tanker aircraft from a forward-based position at Joint Base Pearl Harbor-Hickam to base in the continental United States (CONUS).

With the administration's stated goal of rebalancing to the Asia-Pacific region and the continued need for tanker support throughout the region, the Air Force's planned transfer may not make economic sense.

With the Department of Defense's emphasis on energy and costs efficiencies, the Air Force should consider the resources required to move CONUS-based KC-135s to the Asia-Pacific region for exercises and requirements versus the cost of maintaining the assets in theater.

RQ-4⁵⁹

The budget request included \$54.5 million in Aircraft Procurement, Air Force for the RQ-4 Global Hawk program. These funds are not to buy new air vehicles, but are intended for miscellaneous procurement, to include equipment to support depot activation, initial spares, support to complete delivery of Global Hawk vehicles on contract, sensor operator trainer, and procurement to replace equipment supported by disappearing manufacturing sources. The

⁵⁷ Senate National Defense Authorization Act

⁵⁸ Senate National Defense Authorization Act

⁵⁹ Senate National Defense Authorization Act

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committee believes that the sensor operator trainer is being requested ahead of need, and recommends a reduction of \$10.0 million to the budget request.

Air Force KC-46A Pegasus procurement⁶⁰

The committee notes that the KC-46A Pegasus remains one of the Department of Defense's most successful and important acquisition programs. The Chief of Staff of the Air Force described aerial refueling tankers as the lifeblood of the Joint Force's ability to respond to crises and contingencies around the world. The KC-46A will replace the Air Force's 1960s era KC-135s and will significantly enhance our current capability. The Chief of Staff of the Air Force has consistently stated that the KC-46 is the Air Force's highest acquisition priority, and essential to the future of the Joint Force.

The committee also notes that the development of the KC-46As continues to meet its technical performance goals on time and under budget. In April 2014, the Government Accountability Office (GAO) reported that the KC-46's development cost has changed less than 1 percent since 2011, despite funding reductions in fiscal year 2013 associated with the Budget Control Act. Moreover, the aircraft's fixed price incentive contract shifts liability for any future cost growth to the contractor. This structure not only incentivizes the contractor to cut costs in order to generate additional profits, it also ensures maximum value for the government and the taxpayer. To date, the Air Force reports it has saved \$900.0 million in the KC-46 Aircrew Training System and other program risk adjustments compared to previous estimates.

The committee notes that disrupting this well-performing program would negatively affect the ongoing development of the KC-46s and our national security. The Air Force estimates that reducing procurement from seven aircraft to six in fiscal year 2015 would yield near-term savings of \$139.6 million. However, the Air Force projects that this reduction in quantity would adversely affect contractual cost factors over the life of the program, ultimately increasing the cost to the taxpayer by more than \$640.0 million. A reduction would also impose severe risk on the contractor's ability to meet its contractual requirement to deliver 18 aircraft by August 2017. Also, the government could risk losing the very favorable production pricing under the KC-46 contract by not living up to the government's responsibilities under the contract to provide resources matched to contractor progress. In order to ensure the KC-46 program continues to meet its cost, schedule, and performance objectives, and ultimately meet our national defense requirements, the committee recommends fully funding the President's request for procurement of seven KC-46 aircraft in fiscal year 2015, and keeping the program on a stable funding path.

Section 351—Repeal of authority relating to use of military installations by Civil Reserve Air Fleet contractors⁶¹

⁶⁰ Senate National Defense Authorization Act

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The committee recommends a provision that would repeal section 9513 of title 10, United States Code, relating to the use of military installations by commercial air carriers doing business with the Department of Defense. Under this program, the Secretary of the Air Force has been authorized to enter into contracts with air carriers authorizing the use of designated installations as: (1) Weather-related landing alternatives; (2) Technical stops not involving the enplaning or deplaning of passengers or cargo; or (3) In the case of an installation within the United States, for other commercial purposes. While the legislation envisioned such agreements as a potential incentive for obtaining air carrier commitment to the Civil Reserve Air Fleet program, the Secretary's authority has not resulted in a single contract in its almost 20 years of existence.

Section 1061—Reports on recommendations of the National Commission on the Structure of the Air Force⁶²

The committee recommends a provision that would require the Secretary of the Air Force to submit annual reports for each fiscal year from 2016 through 2019 on how the Air Force is implementing the recommendations of the National Commission on the Structure of the Air Force. In the first such report, the Secretary would be required to establish milestones for the Air Force's review of the Commission recommendations, and a preliminary implementation plan for such recommendations that do not require further review. Subsequent reports would identify progress in achieving milestones established in previous reports and establish milestones for implementing those recommendations for which analysis of the recommendation had been completed since the previous report.

The Air Force staff indicates that the Air Force: (1) Agrees with 10 recommendations now; (2) Agrees in principle with 26 other recommendations, but requires some further clarification on those; (3) Has no position on 5 recommendations that will require further analysis; and (4) Disagrees with one recommendation. The recommendation with which the Air Force disagrees is one to disestablish the Air Force Reserve Command, which would require a change in legislation. The Air Force staff further indicates that they will have completed roughly four-fifths of their reviews of the other 41 recommendations by the end of calendar year 2014. Therefore, the committee expects that the Secretary's first report will establish milestones for most, if not all, 41 Commission recommendations.

Air traffic control towers⁶³

Air traffic control towers are a critical component of safe and efficient operation at Air Force and Army installations with aviation assets. These facilities ensure the safety of service

⁶¹ Senate National Defense Authorization Act

⁶² Senate National Defense Authorization Act

⁶³ House Military Construction Appropriations Bill

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members and the aircraft they operate, while preventing collisions which would also be dangerous for surrounding communities near Air Force or Army bases. The Committee strongly encourages the Air Force and the Army to prioritize the funding of replacement air traffic control towers where existing facilities may have obstructed views of their airfields or where structural, mechanical, or electrical components of a facility are severely deficient and impact its full operations.

Infrastructure Deficiencies of Dining Facilities⁶⁴

The committee is aware of serious infrastructure deficiencies of dining facilities at installations administered by the Air Force. The failure or unavailability of a dining facility would result in mission degradation, and greater risk exists at dining facilities constructed several decades ago or those originally intended to be temporary structures. Further, relative to the total cost of training operations and in the context of critical training missions, the committee believes that replacing severely deficient dining facilities is an appropriate, cost-effective method of preserving mission capabilities. The committee encourages the Air Force to take into consideration the necessity of reducing risk of mission stoppage by investing in the replacement of dining facilities that have infrastructure deficiencies which could cause health and safety issues.

Section 2818—Use of Former Bombardment Area on IsLand Of Culebra, Puerto Rico⁶⁵

Modifies a statutory prohibition on federally-funded environmental cleanup of certain property on the island of Culebra, Puerto Rico to enable DoD to remove unexploded ordnance resulting from former DoD training activities and posing a public safety risk.

Section 2818 Bill Text

(a) SENSE OF CONGRESS.—It is the sense of Congress that the statutory prohibition restricting environmental cleanup of the former bombardment area on the island of Culebra, Puerto Rico, is a unique anomaly for the Department of Defense and its formerly used defense sites.

(b) MODIFICATION OF RESTRICTION ON FEDERAL DECONTAMINATION AUTHORITY.—Section 204(c) of the Military Construction Authorization Act, 1974 (Public Law 93–166; 87 Stat. 668) is amended by adding at the end the following new sentence: “The first sentence of this subsection shall not apply to the portions of the former bombardment area that were identified as having regular public access in the Department of Defense study entitled ‘Study Relating to the Presence of

⁶⁴ House NDAA

⁶⁵ House National Defense Authorization Act

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Unexploded Ordnance in a Portion of the Former Naval Bombardment Area of Culebra Island, Commonwealth of Puerto Rico’ and dated April 20, 2012, which was prepared in accordance with section 2815 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4464).’

Section 316—Decontamination of a portion of former bombardment area on island of Culebra, Puerto Rico⁶⁶

The committee recommends a provision that would express the sense of Congress that certain limited portions of the former bombardment area on the Island of Culebra should be available for safe public recreational use while the remainder of the area is most advantageously reserved as habitat for endangered and threatened species.

The provision would also change a legislative restriction in section 204(c) of the Military Construction Authorization Act, 1974 (Public Law 93–166) which provides that section shall not apply to the beaches, the campgrounds, and the Carlos Rosario Trail, as defined in the provision.

The provision would also allow, notwithstanding the quitclaim deed, the Secretary of the Army to expend funds available in the Environmental Restoration Account, Formerly Used Defense Sites (FUDS), established pursuant to section 2703(a)(5) of title 10, United States Code, to decontaminate the beaches, the campgrounds, and the Carlos Rosario Trail of unexploded ordnance.

The committee notes that the purpose of this provision is to lift the statutory restriction that is barring the Secretary of the Army from decontaminating this part of Culebra Island. This decontamination project should be prioritized within the regular process with all other FUDS.

Laboratory revitalization⁶⁷

Historically, Department of Defense (DOD) laboratory facilities and test centers have not fared well in the internal competition for limited military construction and facility sustainment funds. The committee notes that the maintenance and construction of worldclass research and development (R&D) facilities is an important part of ensuring that the best new technologies and capabilities are delivered to warfighters, and that reports indicate that global competitors are investing increased resources in advanced research infrastructure. The quality of these facilities is also key to efforts to attract and retain world-class technical talent at all experience levels in DOD organizations.

⁶⁶ Senate National Defense Authorization Act

⁶⁷ Senate National Defense Authorization Act

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For fiscal year 2015, the Department's budget request includes \$116.4 million for R&D facilities out of a total military construction request of \$6.56 billion. Neither the Army nor the Air Force included any funding for R&D facilities in their budget requests for either fiscal years 2014 or 2015. The committee remains concerned about the adequacy of recapitalization rates of these facilities and has provided a number of tools, including expanded minor military construction authorities and the ability for DOD laboratories to accumulate funds, known as section 219, for up to 5 years for revitalization projects up to \$4.0 million in cost.

The committee also notes that section 2805 of title 10, United States Code, required the Secretary of Defense, not later than February 1, 2014, to provide a report to the congressional defense committees on the use of expanded minor military construction authority for laboratory revitalization. The committee encourages DOD to complete and submit the required report as soon as possible.