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MEMORANDUM

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

FROM: MR. SCHLOSSBERG
MR. PERSKY, LEGISLATIVE ASSISTANT

DATE: DECEMBER 9, 2011

RE: SENATE PASSES FY12 NATIONAL DEFENSE AUTHORIZATION ACT

Introduction

On December 1, the Senate passed its version of the Fiscal Year 2012 National Defense Authorization Act (S. 1867). The House passed its version of the annual defense authorization bill (H.R. 1540) in May.

The Senate Armed Services Committee reported an earlier version of the bill (S. 1253) in June, but that was before new security spending caps were set under the Budget Control Act of 2011 (P.L. 112-25) in August.

Senate authorizers revisited the issue in November, trimming \$21 billion in authorizations from their earlier measure, including a \$527 million reduction to the \$11.4 billion military construction account. The changes were reported to the full Senate in the form of S. 1867.

Veto Threat over Detainee Language

Consideration of S. 1867 on the Senate floor focused on language mandating military (as opposed to civilian) custody and prosecution of suspected terrorists. President Obama has threatened to veto the measure over the detainee language. The House measure contains a similar provision, which also elicited a veto threat from the President.

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Next Stop Conference Negotiations

House and Senate defense authorizers will now take their versions of the FY12 National Defense Authorization Act to conference, aiming to send a compromise bill to the President by the end of December.

Relevant Policy Provisions and Report Language in the Bill

Amendment Adopted on Senate Floor

- Commission to Study United States Force Posture in East Asia and the Pacific Region (section 1079).....3

Provisions in Bill¹:

- Authority to Accept Contributions of Funds to Study Options for Mitigating Adverse Effects of Proposed Obstructions on Military Installations (section 344)..... 5
- Report on Integration of Unmanned Aerial Systems into the National Airspace System (section 1078).....5
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¹ Unless otherwise noted, language contained within the “Provisions in Bill” and “Items of Special Interest” sections is excerpted from Senate Report 112-26 to S. 1253. The underlying bill text for these sections remains unchanged in S.1867.

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AMENDMENT ADOPTED ON SENATE FLOOR

**Commission to Study United States Force Posture in East Asia and the Pacific Region
(section 1079)**

(a) INDEPENDENT ASSESSMENT.—

(1) IN GENERAL.—The Secretary of Defense shall establish a commission to conduct an independent assessment of America’s security interests in East Asia and the Pacific region. The commission shall be supported by an independent, non-governmental institute which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, and has recognized credentials and expertise in national security and military affairs with ready access to policy experts throughout the country and from the region.

(2) ELEMENTS.—The commission established pursuant to paragraph (1) shall assess the following elements:

(A) A review of current and emerging United States national security interests in the East Asia and Pacific region.

(B) A review of current United States military force posture and deployment plans, with an emphasis on the current plans for United States force realignments in Okinawa and Guam.

(C) Options for the realignment of United States forces in the region to respond to new opportunities presented by allies and partners.

(D) The views of noted policy leaders and regional experts, including military commanders in the region.

(b) MEMBERS OF THE COMMISSION.—

(1) COMPOSITION.—For purposes of conducting the assessment required by paragraph (a), the commission established shall include eight members as follows:

(A) Two appointed by the chairman of the Committee on Armed Services of the House of Representatives.

(B) Two appointed by the chairman of the Committee on Armed Services of the Senate.

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(C) Two appointed by the ranking member of the Committee on Armed Services of the House of Representatives.

(D) Two appointed by the ranking member of the Committee on Armed Services of the Senate.

(2) QUALIFICATIONS.—Individuals appointed to the commission shall have significant experience in the national security or foreign policy of the United States.

(3) DEADLINE FOR APPOINTMENT.—Appointments of the members of the commission shall be made not later than 60 days after the date of the enactment of this Act.

(4) CHAIRMAN AND VICE CHAIRMAN.—The commission shall select a Chairman and Vice Chairman from among its members.

(5) TENURE; VACANCIES.—Members shall be appointed for the life of the commission. Any vacancy in the commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(6) MEETINGS.—

(A) INITIAL MEETING.—Not later than 14 days after the date on which all members of the commission have been appointed, the commission shall hold its first meeting.

(B) CALLING OF THE CHAIRMAN.—The commission shall meet at the call of the Chairman.

(C) QUORUM.—A majority of the members of the commission shall constitute a quorum, but a lesser number of members may hold hearings.

(c) REPORT.—Not later than 270 days after the date of the enactment of this Act, the commission shall provide to the Secretary of Defense an unclassified report, with a classified annex, containing its findings. Not later than 90 days after the date of receipt of the report, the Secretary of Defense, after consultation with the Chairman of the Joint Chiefs of Staff, shall transmit the report to the congressional defense committees, together with such comments on the report as the Secretary considers appropriate.

[ADMINISTRATIVE PORTIONS OF SECTION 1079 DELETED]

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PROVISIONS IN BILL

Authority to Accept Contributions of Funds to Study Options for Mitigating Adverse Effects of Proposed Obstructions on Military Installations (section 344)²

A provision, as requested by the Department of Defense, that would make a technical amendment to section 358(g) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383) to clarify that contributions received under that provision from developers remain available until expended. The purpose of such voluntary contributions is to offset the cost of measures undertaken by the Secretary of Defense to mitigate adverse impacts on military operations, readiness, and the cost of studying options for impact mitigation for projects that may pose an obstruction to military installations.

Report on Integration of Unmanned Aerial Systems into the National Airspace System (section 1078)³

A provision that would require the Secretary of Defense, in consultation with the Administrator of the Federal Aviation Administration and on behalf of the Unmanned Aerial Systems (UAS) Executive Committee, submit to the appropriate committees of Congress a report setting forth: (1) A description and assessment of the rate of progress in integrating unmanned aircraft systems into the national airspace system; and (2) An assessment of the potential for one or more pilot program or programs on such integration at certain test ranges to increase that rate of progress. Included in the term “test ranges” for the purposes of this provision would be test facilities, training facilities, or other facilities.

Guam Realignment (section 2208)⁴

A provision that would require the Commandant of the Marine Corps to provide the congressional defense committees with his preferred force lay-down to implement the

² The House authorization bill includes a related provision (Modification of Department of Defense Authority To Accept Voluntary Contributions of Funds)

³ The House authorization bill includes a related provision (Unmanned Aerial Systems and National Airspace)

⁴ The House authorization bill includes four related provisions: 1) Use of Operation and Maintenance Funding to Support Community Adjustments Related to Realignment of Military Installations and Relocation of Military Personnel on Guam, 2) Medical Care Coverage for H-2B Temporary Workforce on Military Construction Projects on Guam, 3) Certification of Military Readiness Need for Firing Range on Guam as Condition on Establishment of Range, and 4) Repeal of Condition on Use of Specific Utility Conveyance Authority Regarding Guam Integrated Water and Wastewater Treatment System and related report language (Cooperative Agreements to Facilitate Defense Posture Review Initiatives); the House appropriations bill includes two pieces of related report language: 1) Guam and 2) Missile Defense within U.S. Pacific Command Area of Responsibility; the Senate appropriations bill includes two related pieces of report language: 1) U.S. Pacific Command Transformation and 2) Japan/Okinawa/Guam

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realignment of Marine Corps forces from Okinawa to Guam. The provision would also require the Secretary of Defense to provide a master plan to implement this lay-down.

Exchange of Property at Military Installations (section 2811)

A provision that would allow for certain exchanges of real property at military installations. This section would cut out preference for communities in property exchange deals at military installations.

Bill Text

SEC. 2811. EXCHANGE OF PROPERTY AT MILITARY INSTALLATIONS.

(a) EXCHANGE AUTHORITY.—Section 2869 of title 10, United States Code, is amended—

(1) in the section heading, by striking “Conveyance of property at military installations to limit encroachment” and inserting “Exchange of property at military installations”; and

(2) in subsection (a)—

(A) in the subsection heading, by striking “CONVEYANCE AUTHORIZED; CONSIDERATION” and inserting “EXCHANGE AUTHORIZED”; and

(B) in paragraph (1), by striking “to any person who agrees, in exchange for the real property, to carry out a land acquisition” and inserting “to any eligible entity who agrees, in exchange for the real property, to transfer to the United States all right, title, and interest of the entity in and to a parcel of real property, including any improvements thereon under their control, or to carry out a land acquisition”.

(b) EXTENSION OF AUTHORITY.—Such section is further amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 169 of such title is amended by striking the item relating to section 2869 and inserting the following new item:

“2869. Exchange of property at military installations.”.

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United States Code Section to read as amended:

§ 2869. Conveyance of property at military installations to limit encroachment

(a) Conveyance Authorized; Consideration.—

(1) The Secretary concerned may enter into an agreement to convey real property, including any improvements thereon, described in paragraph (2) to any person who agrees, in exchange for the real property, to carry out a land acquisition, including the acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of this title to limit encroachments and other constraints on military training, testing, and operations.

(2) Paragraph (1) applies with respect to real property under the jurisdiction of the Secretary concerned that—

(A) is located on a military installation that is closed or realigned under a base closure law; or

(B) is located on a military installation not covered by subparagraph (A) and is determined to be excess to the needs of the Department of Defense.

(b) Conditions on Conveyance Authority.— The fair market value of the land to be obtained by the Secretary concerned under subsection (a) in exchange for the conveyance of real property by the Secretary under such subsection shall be at least equal to the fair market value of the conveyed real property, as determined by the Secretary. If the fair market value of the land is less than the fair market value of the real property to be conveyed, the recipient of the property shall pay to the United States an amount equal to the difference in the fair market values.

(c) Limitation on Use of Conveyance Authority at Installations Closed Under Base Closure Laws.— The authority under subsection (a)(2)(A) to convey property located on a military installation may only be used to the extent the conveyance is consistent with an approved redevelopment plan for such installation.

(d) Advance Notice of Use of Authority.—

(1) Notice of the proposed use of the conveyance authority provided by subsection (a) shall be provided in such manner as the Secretary of Defense may prescribe, including publication in the Federal Register and otherwise. When real property located at a military installation is proposed for conveyance by means of a public sale, the Secretary concerned may

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notify prospective purchasers that consideration for the property may be provided in the manner authorized by such subsection.

(2) The Secretary concerned may not enter into an agreement under subsection (a) for the conveyance of real property until—

(A) the Secretary submits to Congress notice of the conveyance, including—

(i) a description of the real property to be conveyed by the Secretary under the agreement;

(ii) a description of the land acquisition to be carried out under the agreement in exchange for the conveyance of the property; and

(iii) the amount of any payment to be made under subsection (b) or under section 2684a (d) of this title to equalize the fair market values of the property to be conveyed and the land acquisition to be carried out under the agreement in exchange for the conveyance of the property; and

(B) the waiting period applicable to that notice under paragraph (3) expires.

(3) If the notice submitted under paragraph (2) deals with the conveyance of real property located on a military installation that is closed or realigned under a base closure law or the conveyance of real property under an agreement entered into under section 2684a of this title, the Secretary concerned may enter into the agreement under subsection (a) for the conveyance of the property after a period of 21 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title. In the case of other real property to be conveyed under subsection (a), the Secretary concerned may enter into the agreement only after a period of 60 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 45 days has elapsed from the date on which the electronic copy is provided.

(e) Deposit and Use of Funds.— The Secretary concerned shall deposit funds received under subsection (b) in the appropriation “Foreign Currency Fluctuations, Construction, Defense”. The funds deposited shall be available, in such amounts as provided in appropriation Acts, for the purpose of paying increased costs of overseas military construction and family housing construction or improvement associated with unfavorable fluctuations in currency exchange rates. The use of such funds for this purpose does not relieve the Secretary concerned from the duty to provide advance notice to Congress under section 2853 (c) of this title whenever the Secretary approves an increase in the cost of an overseas project under such section.

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(f) Sunset.— The authority to enter into an agreement under this section shall expire on September 30, 2013.

(g) Description of Property.— The exact acreage and legal description of real property conveyed under subsection (a) shall be determined by surveys satisfactory to the Secretary concerned.

(h) Additional Terms and Conditions.— The Secretary concerned may require such additional terms and conditions in connection with a conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

Clarification of Authority to Limit Encroachments (section 2812)⁵

A provision that would amend the Readiness and Environmental Protection Initiative (REPI) program. The REPI program is designed to limit the development or use of property in the vicinity of military installations to protect the military mission while also preserving the environment. The amendment would clarify that certain agreements entered into can provide for enforcement of environmental covenants and easements to protect DOD interests and would allow payments by the United States to be made in a lump sum and to be placed in an interest bearing account with the interest being available to be applied for the same purposes as the principal. Also, the amendment would authorize DOD to enter into agreements without a “reverter” clause so long as certain conditions are met.

ITEMS OF SPECIAL INTEREST

Guard and Reserve Budget Requests

The committee recognizes that in the past, Congress has chosen to increase National Guard and Reserve military construction budgets above the amounts requested by the President. For example, in fiscal years 2008–2010, the last 3 fiscal years funded with congressional additions, the Air Force National Guard and Reserve appropriations more than doubled over the budget request. In fiscal year 2011, Congress added over \$300.0 million to the President’s request for all of the reserve components; and in 2010, Congress added approximately \$600.0 million, 60 percent above the President’s request.

We are concerned that the Department has, in previous years, under-budgeted National Guard and Reserve military construction accounts. Therefore, the committee directs each of the

⁵ The House authorization bill includes a related provision (Limitations on Use or Development of Property in Clear Zone Areas)

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services to review the future-years defense program for National Guard and Reserve military construction to determine if currently projected funding levels, if enacted into law, will result in infrastructure funding deficiencies for these components.

Military Commuter Centers⁶

Force structure changes, base realignment and closure, community growth and off-base housing projects have resulted in increased traffic congestion on local transportation systems and on the authority to take pro-active actions, many bases and facilities inhabited by Department of Defense (DOD) personnel lack a central office or designated official responsible for providing individuals with the information and resources to carpool, vanpool, or utilize mass transit. Utilization of commuter options would decrease local traffic congestion and decrease energy consumption, thereby working towards energy efficiency goals of the military services.

The committee therefore encourages the Deputy Under Secretary of Defense for Installations and Environment, in conjunction with the Director of the Office of Economic Adjustment, to take appropriate steps to promote the utilization of carpools, van pools and mass transit options at military installations and facilities with a substantial DOD civilian or military presence and workforce. Such steps should include, in appropriate cases, the designation of a central office or designated official responsible for providing information and resources needed to encourage the use of such transportation options.

Report on the Feasibility of Moving Marine Corps Aviation on Okinawa from Marine Corps Air Station Futenma to Kadena Air Base

The committee believes that the proposed plan for the relocation of Marine Corps Air Station (MCAS) Futenma, located on the island of Okinawa, has become untenable and must be resolved sooner and more economically than the current plan will allow.

The construction of a new Marine Corps air station on Okinawa at Camp Schwab to replace MCAS Futenma was agreed to by the United States and Japan as part of the Defense Policy Review Initiative as detailed in the 2005 U.S.-Japan Alliance Transformation and Realignment for the Future and the U.S.-Japan Roadmap for Realignment Implementation agreement (“Roadmap agreement”) of 2006, and reaffirmed in an agreement between the two allies in May 2010. The committee notes that of the 19 major initiatives that came out of these U.S.-Japan transformation and realignment agreements, the vast majority are being implemented as planned. The implementation of the agreement to build a Futenma Replacement Facility (FRF), however, stands in stark contrast to these other successful initiatives.

⁶ The House appropriations bill includes related report language (Base Realignment and Closure 2005 [Transportation Infrastructure Improvements]) and a related provision (Defense Access Road Program Enhancements); the Senate appropriations bill includes related report language (Defense Access Roads)

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Although detailed cost and time estimates for construction of a FRF are unavailable, it appears that, even under the most reasonable circumstances, the FRF, as envisioned by the Roadmap agreement, would likely take at least 7 to 10 years to complete at a cost to the Government of Japan of approximately \$5.0–10.0 billion dollars. As envisioned by the Roadmap agreement and the associated Agreed Implementation Plan, the FRF involves land-filling a massive area of Henoko Bay immediately adjacent to Camp Schwab, an existing Marine Corps base in the Henoko area of Okinawa. While it appears that such an enormous undertaking is technically achievable, the reality is that the cost and time required to complete it, combined with the substantial local political and public opposition to the plan, make it clear that the project will likely never be finished; and, even if it is, it will cost more and take longer than even the most conservative estimates have projected to date. In the meantime, Marine Corps aviation on Okinawa would continue to operate from MCAS Futenma in a congested area of Okinawa that presents aviation safety and noise concerns for local residents.

Complicating the matter is the fact that the Roadmap agreement ties the movement of about 8,000 Marines from Okinawa to Guam to “tangible progress” toward the completion of the FRF. Moreover, the committee understands that the Commandant of the Marine Corps has proposed to the Secretary of the Navy a lay-down of Marines on Guam that differs from the lay-down planned under the Roadmap agreement implementation plan and it is unclear how a change in the Marine Corps lay-down on Guam would impact the buildup planned for Guam.

The committee believes that the challenges of building large new U.S. military facilities on both Okinawa and Guam, in a time of severe fiscal constraints and in the face of mounting political and public opposition, are too substantial to overcome in a realistic timeframe. A reasonable alternative to the FRF that warrants further examination is the movement of Marine Corps aviation assets currently at MCAS Futenma to Kadena Air Base (AB) in central Okinawa, and the possible dispersal of some or all of the Air Force missions now at Kadena AB to other existing U.S. air bases in the region.

The committee directs the Secretary of Defense to study the feasibility of relocating Air Force assets at Kadena AB and moving Marine Corps aviation assets currently at Futenma on to Kadena rather than building an expensive replacement facility at Camp Schwab, with the goals of maintaining mission integrity, minimizing cost to the United States and Japan, returning land occupied by MCAS Futenma to Okinawa expeditiously, and reducing noise impacts on the people living in the areas around Kadena.

The study, which should seek to strengthen or maintain the defensive capabilities of the U.S.-Japanese alliance, shall include, at a minimum:

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1. An examination of the requirements to move the Marine Corps aviation assets currently at MCAS Futenma to Kadena AB.
2. An examination of where U.S. Air Force assets currently at Kadena AB could be moved, including other existing air bases in Japan or other locations in the Pacific, such as Anderson Air Force Base in Guam.
3. An analysis of the costs associated with moving Marine Corps aviation from MCAS Futenma to Kadena AB.
4. Estimates for the length of time it would take to accomplish the necessary steps to move Marine Corps aviation to Kadena AB and to then close MCAS Futenma.
5. An examination of what would be required to move the Marine Corps aviation mission to Kadena AB without increasing noise levels in and around the Kadena AB area, and what would be required to reduce noise levels at Kadena AB, if Marine Corps aviation at MCAS Futenma moved to Kadena AB.
6. The views of United States Pacific Command and United States Transportation Command on this study and, specifically, their views on the impact of such moves on operational plans in the region.

The Secretary shall report the results of this study to the Committees on Armed Services of the Senate and the House of Representatives by December 1, 2011.

The committee reaffirms its appreciation for the important contributions of the U.S.-Japanese alliance to peace and security in the Asia-Pacific region. The committee urges the Secretary of Defense to consult with the Japanese Minister of Defense in the preparation of this report.

Report on Using Flying Operation Costs in the Air Force's Strategic Basing Process⁷

The committee commends the Air Force for its commitment to developing and maintaining a transparent, repeatable, and effective strategic basing process. The committee is aware that the Air Force has developed a process that consists, in part, of establishing basing criteria, developing a preliminary list of candidate bases based upon those criteria, and selecting final bases following a detailed evaluation of a smaller group of installations.

The committee notes that the basing criterion typically includes an evaluation of the relative cost of basing aircraft at each candidate base, which typically represents 5 percent or less of the total score for candidate bases. For instance, the F-35A basing criteria provided a maximum of 5 points out of 100 points for those candidate bases with the lowest evaluated costs.

⁷ The Senate appropriations bill includes related report language (Evaluation of Operational Costs in Air Force Strategic Basing Process)

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In addition, the evaluation of the relative cost of each candidate base during the strategic basing process has typically consisted of an evaluation of (1) local military construction costs, as determined by the July 2009 Office of Secretary of Defense pricing guide, and (2) costs related to the basic allowance for housing for personnel associated with the basing decision.

The committee notes that the cost criteria do not appear to include the relative operational costs that may vary from each candidate base. Given the high cost of operating aircraft and the fact that these flying operation costs are recurring, the committee believes these costs warrant examination in the strategic basing process.

These flying operation costs include, at a minimum, the costs associated with the additional flying time resulting from a candidate base's relative distance to (1) operational training areas for fighters and training aircraft, (2) operational refueling tracks for tankers, and (3) critical logistic centers for strategic and tactical airlift aircraft.

The committee therefore directs, no later than 180 days after the enactment of this Act, the Secretary of the Air Force to review and report on the role that the efficiency of flying operation costs should play in the strategic basing process and any steps that it plans to take to capture these costs in evaluating candidate bases in that process.