

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

ATLANTA
CHICAGO
DENVER
DES MOINES
FAYETTEVILLE
IRVINE
KANSAS CITY
LITTLE ROCK
LOS ANGELES
OKLAHOMA CITY
OMAHA
PHILADELPHIA
RICHMOND
SCOTTSDALE
WICHITA

MEMORANDUM

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

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

DATE: DECEMBER 20, 2013

RE: FY14 BUDGET AND DEFENSE AUTHORIZATION UPDATE

Introduction

This memorandum contains an update on the fiscal year 2014 budget process. 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”). After months of waiting, both pieces of legislation are moving.

The President is poised to sign the NDAA (H.R. 3304) into law, as Congress has already passed it, while lawmakers have started work on an omnibus appropriations package that will be revealed in early January to replace the stopgap funding that expires on January 15.

A third piece of legislation, the Fiscal Year 2014 Budget Resolution (H.J. Res. 59), enabled this progress. Congress cleared the Budget Resolution this week, sending it to the President for his signature, and setting topline spending levels for FY 2014 and 2015.

Lawmakers still must pass the 12 annual appropriations bills (MilCon is one of them) that fund the government, however, that job will be much easier with agreement on topline spending. The Budget Resolution also rolls back sequestration for two years, setting a topline of \$1.012 trillion for FY 2014 compared to the continuing resolution level of \$986 billion and the sequestration cap of \$967 billion.

FY14 BUDGET AND DEFENSE AUTHORIZATION UPDATE

Page 2.

FY14 Funding Table

Account	Request	Agreement Authorization	House Approps	Senate Approps	Omnibus Approps
Military Construction and Family Housing	\$11.01 billion	\$10.37 billion	\$9.95 billion	\$10.69 billion	?
BRAC Activities	\$451.36 million	Same as request			?

Provisions Adopted in the NDAA (see detailed descriptions below)

- Prohibition on conducting additional Base Realignment and Closure round (sec. 2711)
- Notification of modifications to Army force structure (sec. 1074)
- Report on 2005 base closure and realignment joint basing initiative (sec. 2713)
- Application of cash payments received for utilities and services (sec. 2804)
- Policies and requirements regarding overseas military construction and closure and realignment of United States military installations in foreign countries (sec. 2807)
- Development of master plans for major military installations (sec. 2811)
- Authority for acceptance of funds to cover administrative expenses associated with real property leases and easements (sec. 2812)
- Modification of authority to enter into long-term contracts for receipt of utility services as consideration for utility systems conveyances (sec. 2813)
- Report on efficient utilization of Department of Defense real property (sec. 2814)

Provisions Not Adopted in the NDAA (see detailed descriptions below)

- Consideration of the value of services provided by a local community to the Armed Forces as part of the economic analysis in making base realignment or closure decisions

Provisions Adopted in the NDAA: Detailed Descriptions

Prohibition on conducting additional Base Realignment and Closure (BRAC) round (sec. 2711)

This provision makes clear that nothing in this Act shall be construed to authorize a future BRAC round.

Notification of modifications to Army force structure (sec. 1074)

This provision require the Secretary of the Army to certify that Army force structure changes authorized as of the date of the enactment of this Act comply with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The provision also requires that as part of any congressional notifications of future force structure changes, in accordance with section 993 of title 10, United States Code, the Secretary should include an assessment whether or not such changes require an Environmental Assessment or Environmental Impact Statement.

Report on 2005 base closure and realignment joint basing initiative (sec. 2713)

This provision requires the Deputy Under Secretary of Defense for Installations and Environment to submit a report to the congressional defense committees on the 2005 BRAC joint basing initiative.

Application of cash payments received for utilities and services (sec. 2804)

This provision authorizes the secretaries of the military departments, beginning fiscal year 2014, to credit cash payments received as compensation for utilities or services provided to eligible entities that operate family or military unaccompanied housing projects to the appropriation or working capital account currently available for the purpose of furnishing such utilities or services.

Policies and requirements regarding overseas military construction and closure and realignment of United States military installations in foreign countries (sec. 2807)

This provision requires all future military construction projects funded using in-kind payments pursuant to bilateral agreements with partner nations be submitted for congressional authorization in the Military Construction Authorization Act. The provision would also require that DOD include operational expenses funded through residual value payments in-kind in the budget justification documents submitted to Congress in connection with the annual budget request. The provision would also repeal section 2921 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510) and consolidate the requirements of overseas basing notification process in section 2687a of title 10, United States Code.

Development of master plans for major military installations (sec. 2811)

This provision requires the consideration of additional elements as part of master plans for major military installations.

FY14 BUDGET AND DEFENSE AUTHORIZATION UPDATE

Page 4.

Authority for acceptance of funds to cover administrative expenses associated with real property leases and easements (sec. 2812)

This provision amends section 2667 of title 10, United States Code, to allow for the use of proceeds from leases and easements to be used to offset administrative costs incurred by the military departments in assessing, negotiating, executing and managing such leases and easements.

Modification of authority to enter into long-term contracts for receipt of utility services as consideration for utility systems conveyances (sec. 2813)

This provision amends section 2688(d)(2) of title 10, United States Code, by requiring the Secretary of a military department, prior to conveying a utility system under this section, to obtain an independent estimate of the level of investment that should be required to maintain adequate operation of the utility system over the term of the conveyance.

Report on efficient utilization of Department of Defense real property (sec. 2814)

This provision requires a report on the utilization of real property across the Department of Defense.

Provisions Not Adopted in the NDAA: Detailed Descriptions

Consideration of the value of services provided by a local community to the Armed Forces as part of the economic analysis in making base realignment or closure decisions

The House bill contained a provision (sec. 2713) that would require the Secretary of Defense to include an accounting of the value of services that are provided by the local community to the military as part of the economic analysis conducted in making any base realignment or closure decision.

The Senate committee-reported bill contained no similar provision.

The agreement does not include this provision.

“We believe that to the extent services provided by a local community directly reduce the cost of Department of Defense operations at a particular installation, such savings should be included in the evaluation of the fiscal consequences of proposed base closures and realignments under sections 993 and 2687 of title 10, United States Code. We note that sections 993 and 2687 of title 10, United States Code, apply to the Department’s authorities to carry out base closures and realignments below certain thresholds, not a formal base realignment and closure process which would have to be specifically authorized by Congress.”

FY14 BUDGET AND DEFENSE AUTHORIZATION UPDATE

Page 5.

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

A handwritten signature in black ink, appearing to read "Eli Persky". The signature is written in a cursive style with a long, sweeping underline that extends to the right.