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Legislative Bulletin.....July 29, 2009

**H.R. 3326 — FY 2010 Department of Defense Appropriations Act**

**BY THE NUMBERS:**

*In Millions of Dollars*

	<b>FY09</b>	<b>FY10 Request</b>	<b>FY10 Committee</b>	<b>Cmte v. Request</b>	<b>Cmte v. FY09</b>
<b>Appropriations</b>	489,025	511,540	508,046	-3,494	19,021
<i>War Funding</i>	<i>147,638</i>	<i>128,602</i>	<i>128,247</i>	<i>-355</i>	<i>-19,391</i>
Total	636,663	640,142	636,293	-3,849	-370

**Excluding Emergency Appropriations, the Committee Bill is:**

- **\$3.5 billion or 0.7% less than the request**
- **\$19.0 billion or 3.9% more than last year**
- **\$48.7 billion or 10.6% more than FY 2008**

**Spending Discussion:** The bill provides a total funding level in FY 2010 of \$636.3 billion—\$508.0 billion of regular appropriations funding, and \$128.2 billion of funding for overseas deployment. Per the FY 2010 budget resolution (S.Con.Res.13), the \$128.2 billion of funding for overseas deployments is *not* counted against the 302(a) allocation set by the budget resolution.

The \$508.0 billion of regular funding is **\$19.0 billion** or **3.9%** more than last year. Of the twelve FY 2010 bills that will have passed the House by the end of this week, *nine* provided a larger funding increase (in percentage terms) than the Defense bill. Only the FY 2010 Homeland Security and Energy and Water bills provided lower spending increases (in percentage terms). Compared to FY 2008, the bill is a **\$48.7 billion** or **10.6% increase**. Under the Democrats' 302(b) allocation (which sets the spending plan for the FY 2010 appropriations process), all twelve bills will receive spending increases, with a total spending level of \$1.089 trillion—an increase of \$77 billion or 7.6% compared to last year.

**Order of Business:** H.R. 3326, the Department of Defense Appropriations Act, 2010 (sponsored by *Rep. Murtha, D-PA*), is scheduled to be considered on the House floor on Wednesday, July 29, 2009 under a restrictive *structured rule* ([H.Res. 685](#)) that provides one hour of general debate, provides the bill be considered as read, and waives all points of order against the bill's consideration, except for clauses 9 (the earmark rule) and 10 (PAYGO) of Rule XXI. The rule also waives points of order against the bill itself for failures to comply with various rules for appropriations bills (such as prohibitions on appropriating funds to unauthorized programs).

The rule prohibits re-votes on amendments and allows the Chair to reduce to two minutes the time for electronic voting. Only the Appropriations Committee Chairman or his designee could offer a motion that the Committee of the Whole rise (i.e. stop considering amendments). The Minority would get one motion to recommit the bill, with or without instructions. The structured rule makes just sixteen amendments in order, which will be analyzed in a subsequent RSC Legislative bulletin.

**Funding Summaries:**

*Dollars in Thousands*

	FY 2009 Enacted	FY 2010 Request	FY 2010 Cmte	Cmte Vs. FY 2009	Cmte Vs. Request	Cmte Vs. FY 2009	Cmte Vs. Request
<b>Regular Funding</b>							
Military Personnel, Total.....	114,443,890	125,264,942	122,378,016	7,934,126	-2,886,926	6.9%	-2.3%
Operations and Maintenance, Total.....	152,949,705	156,444,204	154,176,741	1,227,036	-2,267,463	0.8%	-1.4%
Procurement, Total.....	101,051,708	105,213,426	104,837,809	3,786,101	-375,617	3.7%	-3.6%
Research, Develop., Test & Evaluation, Total	80,520,837	78,634,289	80,237,955	-282,882	1,603,666	-0.4%	2.0%
Revolving and Management Funds.....	3,155,806	3,119,762	3,147,762	-8,044	28,000	-0.3%	0.9%
Defense Health Program.....	25,825,832	27,903,163	29,891,109	4,065,277	1,987,946	15.7%	7.1%
Joint Improvised Explosive Device Fund.....	----	564,850	364,550	364,550	-200,300	NA	-35.5%
Office of the Inspector General.....	271,845	272,444	288,100	16,255	15,656	6.0%	5.7%
Chemical Agents.....	1,505,634	1,560,760	1,510,760	5,126	-50,000	0.3%	-3.2%
Drug Interdiction.....	1,096,743	1,058,984	1,237,684	140,941	178,700	12.9%	16.9%
Related Agencies (Intelligence, etc.).....	989,242	963,712	901,902	-87,340	-61,810	-8.8%	-6.4%
<b>Overseas Deployment Funding</b>							
Military Personnel, Total.....	----	13,586,341	16,224,549	16,224,549	2,638,208	NA	19.4%
Operations and Maintenance, Total.....	----	80,793,497	80,543,756	80,543,756	-249,741	NA	-0.3%
Procurement, Total.....	----	22,206,228	20,384,128	20,384,128	-1,822,098	NA	-8.2%
Research, Develop., Test & Evaluation, Total	----	310,254	241,354	241,354	-68,900	NA	-22.2%
Revolving and Management Funds.....	----	396,915	412,215	412,215	15,300	NA	3.7%
Defense Health Program.....	----	1,155,235	1,155,235	1,155,235	----	NA	----
Drug Interdiction.....	----	324,603	317,603	317,603	-7,000	NA	-2.2%
Joint Improvised Explosive Device Fund.....	----	1,535,000	1,490,000	1,490,000	-45,000	NA	-2.9%

**Items of Note:**

**F-22 Funding:** The bill provides \$368.8 million, of advance funding in FY 2011, for the procurement of 12 F-22 A Raptor aircraft. The bill also prohibits funds in the bill from

being used to approve or license the sale of the F-22A advanced tactical fighter to any foreign government.

**Outsourcing/A-76 Activities:** The bill prohibits funds in the bill from being used to convert to contractor performance an activity or function of the Department of Defense that is currently performed by more than 10 Department of Defense employees (with certain exceptions outlined in the bill).

The bill prohibits unobligated funds dedicated to the Department of Defense in the so-called “stimulus” from being used under OMB Circular A-76 (governing the federal government’s outsourcing policies) to implement any pending or future competitive sourcing for work performed by federal employees. In other words, this provision would prohibit federal employees from having to compete with private-sector entities for certain non-inherently governmental functions of the agencies (like food service and lawn-mowing).

The bill also prohibits funds from being used to perform any cost study pursuant to the provisions of OMB Circular A-76 (governing the federal government’s outsourcing policies) under certain conditions specified in the bill.

**Prohibition on Funding to North Korea:** The bill prohibits any money made available by this bill from being spent on assistance to North Korea, unless the money is specifically appropriated for this purpose.

**Guantanamo Bay:** Prohibits funds from being used to release an individual who is detained, as of April 30, 2009, at Naval Station, Guantanamo Bay, Cuba into the continental U.S., Alaska, Hawaii, or the District of Columbia, and the U.S. territories. H.R. 3326 also prohibits funds from being used to transfer an individual who is detained at Guantanamo Bay, Cuba into the continental U.S., Alaska, Hawaii, or the District of Columbia (but not to other U.S. territories) for the purposes of detaining or prosecuting such an individual until 2 months after the President submits in writing “a comprehensive plan regarding the proposed disposition of each individual who is detained...” The legislation also prohibits funds from being used to transfer or release an individual held in Guantanamo Bay, Cuba (as of April 30, 2009) to the country of the individual’s residence (or to any other country) unless the President at least 30 days beforehand submits information to Congress as outlined in the bill.

**Earmarks:** The bill includes a list of 1,102 earmarks in the [committee report](#).

**Administration Position:** The Statement of Administration Policy ([SAP](#)) expresses the Administration’s support for passage of the bill, but also contains veto threats against several provisions in the bill, including:

- The \$368.8 million of FY 2011 funding for the F-22;
- The \$560 million of funding for production and development of the Joint Strike Fighter (F-35) Alternative Engine; and

- The \$400 million of funding for the VH-71 helicopter.

**Committee Action:** H.R. 3326 was reported out of the House Appropriations Committee as an original measure on July 24, 2009.

**Cost to Taxpayers:** The bill appropriates a total of \$636.3 billion in FY 2010.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill increases spending for programs in the FY 2010 bill (not counting the \$128.2 billion “overseas deployment” funding ) by \$19 billion or 3.9% over last year.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No CBO score is available listing any possible mandates.

**Constitutional Authority:** The committee report cites Clause 7 of Section 9 of Article I of the Constitution which states: “No money shall be drawn from the Treasury but in consequence of Appropriations made by law...”

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