



Legislative Bulletin.....December 14, 2011

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Conference Report on H.R. 1540—Fiscal Year 2012 National Defense Authorization Act

Conference Report on H.R. 1540—Fiscal Year 2012 National Defense Authorization Act (McKeon, R-CA)

Order of Business: The bill is scheduled to be considered on Wednesday, December 14, 2011, under a structured rule that waives all points of order against the conference report and against its consideration. The rule provides for one hour of debate, and allows one motion to recommit if applicable.

According to Section 2, the rule provides that it shall be in order at any time through the remainder of the first session of the 112th Congress for the Speaker to entertain motions that the House suspend the rules, as though under clause 1(c) of rule XV, if the text of the measure proposed in a motion is made available on the calendar day before consideration.

According to Section 3, the rule provides that on any legislative day of the first session of the 112th Congress after December 16, 2011: (1) the Journal of the proceedings of the previous day shall be considered as approved; (2) the Chair may, at any time, declare the House adjourned to meet at a date and time, within the limits of clause 4, section 5, article I of the Constitution, to be announced by the Chair in declaring the adjournment; and (3) bills and resolutions introduced during the period addressed by this section shall be numbered, listed in the Congressional Record, and when printed shall bear the date of introduction, but may be referred by the Speaker at a later time.

According to Section 4, the rule provides that on any legislative day of the second session of the 112th Congress before January 17, 2012: (1) the Speaker may dispense with organizational and legislative business; (2) the Journal of the proceedings of the previous day shall be considered as approved if applicable; and (3) the Chair at any time may declare the House adjourned to meet at a date and time, within the limits of clause 4, section 5, article I of the Constitution, to be announced by the Chair in declaring the adjournment.

According to Section 5, the rule authorizes the Speaker to appoint Members to perform the duties of the Chair for the duration of the period addressed by sections 3 and 4 as though under clause 8(a) of rule I.

Summary: H.R. 1540 authorizes funding for national defense at \$554 billion for the base budget. According to the House Armed Services Committee (HASC), this is \$19 billion less than the \$705 billion appropriated for 2011. The authorization includes \$530 billion for the Department of Defense and \$11.1 billion for the Department of Energy's National Nuclear Security Administration. Additionally, the bill authorizes \$115.5 billion in overseas contingency operations for the wars in Iraq and Afghanistan. Lastly, according to HASC, "the National Defense Authorization Act extends vital troop pay and war-related authorities scheduled to run out in the next several weeks". Highlights of major policy provisions of note are as follows:

➤ **Key Values Provisions**

- **Conscience Clause Protection for Military Chaplains:** The bill includes a provision that protects chaplain's rights to not perform same sex marriages. The legislation stipulates that a military chaplain who, as a matter of conscience or moral principle, does not wish to perform a marriage may not be required to do so.
- **Prohibition on Sodomy:** The legislation retains current Uniform Code of Military Justice prohibition on sodomy and bestiality. The Senate version of the NDAA included language that repealed the current prohibitions on sodomy.
- **Transportation Benefits:** The Conference report excluded any language that granted transportation benefits for same sex partners and keeps current law in place. Current law ensures that transportation benefits, including family relocations, are not inadvertently extended to same sex partners.
- **START Treaty:** The Conference Report retains provisions to implementation of the New Start Treaty not later than 30 days after the date of enactment of this bill into law. The bill **excluded** the House provisions in H.R. 1540 that prohibits the use of funds to be used through 2017 to retire any covered nuclear system under the New START Treaty without a certification to Congress from the secretaries of Defense and Energy that modernization plans for the U.S. nuclear weapons complex were being implemented described under another section (1053) of H.R. 1540.
- **Iraq:** The bill authorizes the Secretary of Defense to support United States Government transition activities in Iraq by providing funds for the following:
 - Operations and activities of the Office of Security Cooperation in Iraq;

- Operations and activities of security assistance teams in Iraq.

The operations and activities for which the Secretary may provide funds under the authority may include life support, transportation, personal security, facility renovation and construction activities. The bill authorizes that not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretary of State, submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a report on the activities of the Office of Security Cooperation in Iraq. The report shall include the following:

- A description, in unclassified form (but with a classified annex if appropriate), of any capability gaps in the security forces of Iraq, including capability gaps relating to intelligence matters, protection of Iraq airspace, and logistics and maintenance;
- A description of the manner in which the programs of the Office of Security Cooperation in Iraq, in conjunction with other United States programs such as the Foreign Military Financing program, the Foreign Military Sales program, and joint training exercises, will address the capability gaps if the Government of Iraq requests assistance in addressing such capability gaps.

➤ **Pakistan:** The legislation extends previously authorized law by one year to provide assistance to the security forces of Pakistan to build and maintain counterinsurgency capability. However, the bill limits the obligations to 40 percent of the funds authorized to be appropriated for the Pakistan Counterinsurgency Fund (PCF) until the Secretary of Defense submits a progress report on:

- a strategy to utilize the Fund and the metrics used to determine progress with respect to the Fund;
- and a strategy to enhance Pakistani efforts to counter improvised explosive devices (IEDs);
- the strategy to utilize the fund;
- review of the terrorist or extremist groups that the United States encourages Pakistan to combat;
- the gaps in capabilities of Pakistani security units, and how assistance provided utilizing the fund will address these capability gaps.

The legislation freezes nearly \$700 million in aid to Pakistan pending DOD delivery of a strategy for improving the effectiveness of such assistance and assurances that Pakistan is countering IED networks in their country that are targeting coalition forces. This freeze includes the majority of the \$1.1 billion in Pakistan Counterinsurgency Funds that was authorized in the original House bill.

- **Iran:** The legislation designates the financial sector of Iran, including the Central Bank of Iran, as a primary money laundering concern for purposes of section 5318A of title 31, United States Code, because of the threat to government and financial institutions resulting from the illicit activities of the Government of Iran, including its pursuit of nuclear weapons, support for international terrorism, and efforts to deceive responsible financial institutions and evade sanctions. Therefore the Conference Report requires the President shall, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block and prohibit all transactions in all property and interests in property of an Iranian financial institution if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

The Conference report includes a provision requiring the President to sanction entities, including state central banks, engaging in financial transactions with the Central Bank of Iran. The legislation requires that beginning on the date that is 60 days after the date of the enactment of this Act, the President:

- shall prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by a foreign financial institution that the President determines has knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another Iranian financial institution designated by the Secretary of the Treasury for the imposition of sanctions pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.);
- and may impose sanctions pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) with respect to the Central Bank of Iran.

The legislation also retains the annual DOD reporting requirement on Iranian military power, which includes a review of Iran’s nuclear capabilities, force structure, and operations against the armed forces of the United States in Iraq and Afghanistan.

- **China:** According to the HASC, the Conference Report:
- “requires the Secretary of Defense, in consultation with other key departments and agencies, to assess the threat posed by the amount of US national debt held by China;
 - “amends the requirement for the annual Chinese Military Power Report to include an extensive analysis of a potential cyber threat;
 - “withholds funds from the joint Chinese, Department of Defense, Department of Energy Center of Excellence for Nuclear Security until the Secretary of Defense assures Congress the center will curb China’s proliferation of nuclear technology and is consistent with U.S. national

security interests. This includes a specific prohibition against construction of any facility in China until the requirements of the provision are met.”

- **China & Iran:** The bill requires the Comptroller General to submit a classified study to the congressional defense committees not later than January 31, 2013, undertaken by an independent body, evaluating the gaps between conventional and anti-access capabilities of Iran and China and the ability for U.S. forces’ to overcome them.
- **War on Terror:** The legislation allows Congress to affirm that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) includes the authority for the Armed Forces of the United States to detain covered persons such as:
 - A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.
 - A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.

The disposition of a person under the law of war may include the following:

- Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force;
- Trial under chapter 47A of title 10, United States Code (as amended by the Military Commissions Act of 2009 (title XVIII of Public Law 111–84));
- Transfer for trial by an alternative court or competent tribunal having lawful jurisdiction;
- Transfer to the custody or control of the person's country of origin, any other foreign country, or any other foreign entity.

The legislation requires that nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States. Section 1022 reaffirms to detain a person in military custody under this section does not extend to citizens of the United States and does not extend to a lawful resident alien of the United States on the basis of conduct taking place within the United States, except to the extent permitted by the Constitution of the United States.

The legislation requires the Armed Forces of the United States to hold a person who is captured in the course of hostilities authorized by the Authorization for

Use of Military Force (Public Law 107–40) in military custody pending disposition under the law of war. This provision applies to any person who is determined:

- to be a member of, or part of, al-Qaeda or an associated force that acts in coordination with or pursuant to the direction of al-Qaeda;
- and to have participated in the course of planning or carrying out an attack or attempted attack against the United States or its coalition partners.

Lastly, the Conference Report allows the President to waive the new requirement for military custody if the President submits to Congress a certification in writing that such a waiver is in the national security interests of the United States.

- **Missile Defense:** The Conference Report authorizes approximately \$10 billion in funding for missile defense development and deployment. The bill also authorizes the Ground Based Midcourse Defense missile program is [funded](#) at a total of \$1.16 billion, almost 200 million less than the bill reported out of the House. The legislation authorizes \$2 billion for Aegis Ballistic Missile Defense and \$235 million for joint US-Israeli missile defense programs. The Conference Report excluded the House provision that requires the DoD to provide a report with an overview of technical and operational considerations with developing and operating space based missile defense interceptor capability.
- **Guantanamo Bay:** The Conference Report requires the Secretary of Defense to submit a national security protocol covering governing communications of each individual detained at Guantanamo Bay, Cuba, and to provide a review evaluating whether the continued detention of individuals detained at Guantanamo Bay is necessary to protect U.S. national security. The bill also prohibits the use of federal funding to detain, transfer, or release prisoners currently held at Guantanamo within the U.S. and its territories. The bill also prohibits the release of a prisoner to any foreign country unless the Secretary of Defense, in consultation with the Secretary of State, certifies the transfer would be in the national security interests of the United States and certifies that the other requirements specified in the bill are met. The FY12 NDAA would prohibit the Secretary of Defense from using any of the funds available in FY2012 to modify or construct any facility in the United States to house any detainee transferred from U.S. Naval Station, Guantanamo Bay, Cuba for the purposes of detention or imprisonment in the custody or effective control of the Department of Defense
- **Youcut Winner:** According to the HASC, “The FY12 NDAA incorporates H.R. 1246, which passed the House unanimously earlier this year. The provision calls for a 10 percent reduction of the printing and reproduction budgets for each of the military departments and the defense agencies. The provision generates over \$30 million in savings from the President’s FY12 budget request.”

- ***Shipbuilding Program:*** The Conference Report reinstates the requirement for annual delivery of the Navy’s 30 year shipbuilding plan.
- ***Military Pay & Benefits:*** The bill contains an across-the-board pay raise of 1.6 percent for members of the uniform services, effective January 1, 2012. The legislation also caps future health care fee increases to cost of living adjustments. Last year, the NDAA authorized a 1.4 percent pay increase for FY 2011.
- ***Political Influence in Defense Contracting:*** According to the HASC, “In order to keep the acquisition process free from political influence, the FY12 NDAA eliminates requirements mandated by the White House that would require potential contractors to first declare their political contributions before applying for business with the Department of Defense.”
- ***Fort Hood:*** The bill requires the Secretary of Defense to produce guidelines to ensure military and civilian law enforcement responsibilities for the protection of U.S. military installations receive “Active Shooter Training.” This was a recommendation in the review of the Fort Hood terrorist attack by the DoD.
- ***BRAC:*** The bill provides the Secretary of Defense with the authority to extend the completion of up to seven recommendations under the 2005 BRAC process for up to a year, through September 2012. Locally, there has been concern by the State of Virginia that it didn’t have the authority to delay moving 6,400 defense workers to the Mark Center in Alexandria by September 15, 2011, as required under current law.
- ***Counternarcotics:*** According to the HASC, “The bill explicitly reauthorizes DOD Counter-Narcotics (CN) authorities for FY 2012. Included are authorities to assist other agencies in their CN efforts, especially with respect to narco-trafficking activities on the U.S. southern border. Also included are authorities to assist Colombia and other countries in disrupting the nexus between narco-trafficking and terrorist activity. This authority is extended to thirteen countries not previously authorized.”

Authorization Highlights: This authorization measure sets the spending levels for all DoD programs and sets military strength levels. What follows are *highlights* of authorization levels of the three divisions (Dept. of Defense, Military Construction, and Dept. of Energy & Others) in the bill.

Division A = Department of Defense Authorizations

Division B = Military Construction Authorizations

Division C = Department of Energy National Security Authorizations and Other Authorizations

Division E = SBIR and STTR Reauthorization

Division A—Department of Defense Authorizations

Division A—Procurement

- **Army**. Aircraft--\$5.36 billion; Missiles--\$1.46 billion; Weapons and Tracked Combat Vehicles--\$2.05 billion; Ammunition--\$1.88 billion; Other Procurement--\$7.91 billion.
- **Navy**. Aircraft--\$17.67 billion; Weapons (including missiles and torpedoes)--\$3.21 billion; Shipbuilding and Conversion--\$14.91 billion; Other Procurement--\$5.99 billion; Ammunition (Navy and Marine Corps)--\$626.8 million.
- **Marine Corps**. \$1.77 billion
- **Air Force**. Aircraft--\$12.34 billion; Ammunition--\$499 million; Missiles--\$5.92 billion; Other Procurement--\$17.4 billion.
- **Defense-Wide Activities**. \$4.82 billion.
- **Subtotal**. \$103.58 billion

Division A—Research, Development, Test, and Evaluation

- **Army**. \$8.45 billion
- **Navy**. \$17.38 billion
- **Air Force**. \$26.11 billion
- **Defense-Wide Activities**. \$19.44 billion
- **Operational Test & Evaluation**. \$191 million
- **Subtotal**. \$71.57 billion

Division A—Funding for Operations and Maintenance

<i>Army</i>	<i>\$30.5 billion</i>
<i>Navy</i>	<i>\$38.1 billion</i>
<i>Marine Corps</i>	<i>\$5.3 billion</i>
<i>Air Force</i>	<i>\$35.0 billion</i>
<i>Defense-Wide Activities</i>	<i>\$29.9 billion</i>
<i>Army Reserve</i>	<i>\$3.1 billion</i>
<i>Naval Reserve</i>	<i>\$1.3 billion</i>
<i>Marine Corps Reserve</i>	<i>\$271 million</i>
<i>Air Force Reserve</i>	<i>\$3.3 billion</i>
<i>Army National Guard</i>	<i>\$6.1 billion</i>
<i>Air National Guard</i>	<i>\$6.2 billion</i>
<i>U.S. Court of Appeals for the Armed Forces</i>	<i>\$13 million</i>
<i>Acquisition Development Workforce Fund</i>	<i>\$105 million</i>
<i>Army Environmental Restoration</i>	<i>\$346 million</i>
<i>Navy Environmental Restoration</i>	<i>\$309 million</i>
<i>Air Force Environmental Restoration</i>	<i>\$525 million</i>
<i>Defense-wide Environmental Restoration</i>	<i>\$10.7 million</i>
<i>Formerly Used Defense Sites Environmental Restoration</i>	<i>\$276 million</i>
<i>Overseas Humanitarian, Disaster, and Civics Programs</i>	<i>\$108 million</i>
<i>Cooperative Threat Reduction Programs</i>	<i>\$508 million</i>

<i>Subtotal</i>	<i>\$162.19 billion</i>
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Division A—Military Personnel Authorization Levels

Authorized personnel levels as of September 30, 2012:

<i>Army</i>	<i>562,000</i>
<i>Navy</i>	<i>325,700</i>
<i>Marine Corps</i>	<i>202,100</i>
<i>Air Force</i>	<i>332,800</i>
<i>Army National Guard, Selected Reserve</i>	<i>358,200</i>
<i>Army Reserve, Selected Reserve</i>	<i>205,000</i>
<i>Navy Reserve, Selected Reserve</i>	<i>66,200</i>
<i>Marine Corps Reserve, Selected Reserve</i>	<i>39,600</i>
<i>Air National Guard Reserve, Selected Reserve</i>	<i>106,700</i>
<i>Air Force Reserve, Selected Reserve</i>	<i>71,400</i>
<i>Coast Guard Reserve, Selected Reserve</i>	<i>10,000</i>
<i>Army National Guard, Full-Time Duty</i>	<i>32,060</i>
<i>Army Reserve, Full-Time Duty</i>	<i>16,261</i>
<i>Navy Reserve, Full-Time Duty</i>	<i>10,337</i>
<i>Marine Corps Reserve, Full-Time Duty</i>	<i>2,261</i>
<i>Air National Guard, Full-Time Duty</i>	<i>14,833</i>
<i>Air Force Reserve, Full-Time Duty</i>	<i>2,662</i>
<i>Army National Guard, Dual-Status Technicians</i>	<i>8,395</i>
<i>Army Reserve, Dual-Status Technicians</i>	<i>27,210</i>
<i>Air National Guard, Dual-Status Technicians</i>	<i>22,509</i>
<i>Air Force Reserve, Dual-Status Technicians</i>	<i>10,777</i>
<i>Army Reserve, Non-Dual-Status Technicians</i>	<i>No more than 595</i>
<i>Army National Guard, Non-Dual-Status Technicians</i>	<i>No more than 1,600</i>
<i>Air Force Reserve, Non-Dual-Status Technicians</i>	<i>No more than 90</i>
<i>Air National Guard, Non-Dual-Status Technicians</i>	<i>No more than 350</i>

Maximum numbers of reservists who may be serving at any time on full-time operational support duty:

- Army National Guard: 17,000
- Army Reserve: 13,000
- Naval Reserve: 6,200
- Marine Corps Reserve: 3,000
- Air National Guard: 16,000
- Air Force Reserve: 14,000

Authorization of Appropriations for Military Personnel: \$141.99 billion

Division A—Other Authorizations

- **Defense Working Capital Funds.** \$198 million

- **Defense Working Capital Fund DECA.** \$1.38 billion
- **National Defense Sealift Fund.** \$1.10 billion
- **Defense Health Program.** \$31.84 billion
- **Chemical Agents and Munitions Destruction.** \$1.54 billion
- **Defense Wide Drug Interdiction.** \$1.15 billion
- **Defense Inspector General.** \$332.9 million
- **Armed Forces Retirement Home.** \$71.2 million

Division B—Military Construction Authorizations

Division B—Military Construction

- **Army.** \$3.01 billion
- **Navy.** \$2.24 billion
- **Air Force.** \$1.13 billion
- **NATO Security Investment Program.** \$247 million
- **Army National Guard.** \$773 million
- **Army Reserve.** \$281 million
- **Naval and Marine Corps Reserve.** \$26.3 million
- **Air National Guard.** \$116 million
- **Air Force Reserve.** \$33.6 million

Division C—Department of Energy National Security Authorizations and Other Authorizations

Division C—Department of Energy National Security Programs

- **Energy Security & Assurance:** \$0
- **Weapons Activities.** \$7 .27 billion
- **Defense Nuclear Nonproliferation.** \$2.33 billion
- **Naval Reactors.** \$1.08 billion
- **Office of Administrator for Nuclear Security.** \$410 million
- **Defense Environmental Cleanup.** \$5.02 billion
- **Other Defense Activities for National Security.** \$823 million

Division E – SBIR and STTR Reauthorization

Summary: The Conference Report reauthorizes the Small Business Innovative Research Program (SBIR) and the Small Business Technology Transfer Program (STTR) for six years until 2017. These programs have previously been extended **numerous** times in recent years and are now set to expire without reauthorization on December 31, 2011.

In 1982, Congress created the SBIR program to increase participation of small innovative companies in federally funded Research & Development (R&D) within major federal research R&D agencies. Federal agencies with R&D budgets of \$100 million or more are required to allocate a portion of these funds to finance SBIR activity. According to the

Congressional Research Service (CRS), over 112,500 awards have been granted by federal agencies totaling close to \$27 billion.

Congress first authorized the STTR program in 1994 to require federal agencies with annual appropriations for “extramural research” of more than \$1 billion to allocate a portion of their research budget for cooperative research between small businesses and universities, federal laboratories, or nonprofit research institutions. STTR’s purpose is to develop commercially viable, cutting-edge products from concepts and applications tested and designed in a lab environment.

➤ *Highlights of this provision:*

- Increases Venture Capital Participation – Expands SBIR access to include participation by firms that are majority owned by one or more venture capitalist, private equity, or hedge fund. Current regulations require at least 51% majority-ownership by an individual or individuals. Some conservatives assert that the SBIR/STTR programs were designed to seed those enterprises where private capital is lacking, so permitting venture capital majority-ownership of SBIR applicants is at best contrary to the purpose of SBIR/STTR and at worst tantamount to providing federal funding to entities who do not need the funding;
- Increased Award Levels – Increases both Phase I and Phase II award levels from \$100,000 to \$150,000 and \$750,000 to \$1 million;
- Increased Allocations – Increases the SBIR program allocation from 2.5% to 3.2 % and the STTR allocation from .3% to .45 % throughout the reauthorization;
- Small Business Efficiency Changes – Standardizes some of the application processes across federal agencies and requires greater coordination between the Small Business Administration and participating agencies to combat waste, fraud, and abuse within the SBIR and STTR programs. Lastly, the provision requires most agencies to complete applications within 90 days (or 180 days if an extension is granted); and
- Performance-Based Standards – Creates new standards to incentivize small businesses to focus on commercialization through later phases of the SBIR and STTR programs.

Additionally, this provision of the conference report requires 3% of SBIR funds (reports estimate this to be \$66 million based off of 2010 levels) to be used for agency administration at the 11 federal agencies that participate in the SBIR program.^[1] Some

^[1] The 11 participating agencies are the Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services (NIH),

conservatives believe this requirement diverts necessary federal funding to agency bureaucracy as opposed to small business SBIR participants.

Potential Conservative Concerns: Some conservatives may be concerned that the conference report does not contain provisions from the House passed H.R. 1540, which prohibits the use of military facilities for same-sex marriage ceremonies, and prohibits Defense Department employees from conducting same-sex marriage ceremonies. The provision also defines marriage as between a man and a woman for the purposes of military benefits and policy. No part of the Conference Report contravenes or amends the Defense of Marriage Act, nor is the Department of Defense relieved from the prohibition on federal recognition of same sex marriage therein.

Cost to Taxpayers: CBO estimate for the conference report is unavailable. However, CBO estimated that House-passed H.R. 1540 “would authorize \$690 billion over the FY 2012 – 2016 period. That total includes \$119 billion that would be authorized for 2012 overseas contingency operations - primarily for military operations in Iraq and Afghanistan.”

Committee Action: H.R. 1540 was passed the full House on May 26, 2011, by a vote of 322-96, and was received in the Senate on December 1, 2011. On December 1, 2011, the bill passed the Senate with an amendment by Unanimous Consent. On December 12, 2011, House and Senate conferees filed the Conference Report to Accompany H.R. 1540.

Administration Position: While a Statement of Administration Policy (SAP) is not available at press time, the Obama Administration has legislation that will allow the government to detain American citizens without charge or trial and officials have threatened a veto of the bill over the issue.

Does the Bill Expand the Size and Scope of the Federal Government? No, the bill authorizes less than what was appropriated in FY 2011.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment? No. Providing for the common defense is a primary constitutional duty of the federal government.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? According to Committee Report 112-78, which accompanied H.R. 1540, “this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the bill provides no federal intergovernmental mandates.”

However, “Section 573 would preempt state laws governing child custody if they are inconsistent with or provide less protection to the rights of a parent who is a service member than those provided under the bill.”

Constitutional Authority: According to Rep. McKeon’s statement of constitutional authority which accompanied H.R. 1540, the constitutional authority on which this bill rests is the power of Congress to “provide for the common defense,” “raise and support armies,” and “provide and maintain a navy,” as enumerated in Article I, Section 8 of the United States Constitution.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits (House Rule XXI, Clause 9)?: Yes, according to committee report [112-78](#), which accompanied H.R. 1540, H.R. 1540 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

RSC Staff Contact: For questions concerning the FY12 NDAA please contact Ja’Ron Smith, ja'ron.smith@mail.house.gov, (202)226-2076. For questions concerning the SBIR and STTR Reauthorization please contact Joe Murray, joe.murray@mail.house.gov, (202)226-0678.
