



Legislative Bulletin.....May 17, 2012

Contents:

Amendments to H.R. 4310 – Fiscal Year 2013 National Defense Authorization Act

The following Legislative Bulletin contains information on the amendments about to be considered and a summary of potential amendments RSC staff has reviewed.

Order of Business: Consideration on the amendments to H.R. 4310, the FY 2013 National Defense authorization Act, began on Wednesday, May 17, 2012, and will be considered throughout the remainder of the week. The rule on amendments provides for consideration under a structured rule. It makes in order only those amendments printed in the report. Each amendment will have 10 minutes for debate, except for #158, Connolly’s amendment to withdraw troops from Afghanistan, which shall receive 20 minutes for debate.

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SUMMARY OF AMENDMENTS SCHEDULED PART II: 40-69 AMENDMENTS

40-49 Amendments

40. Bishop (D-NY) and Hanna (R-NY). This amendment would honor air raid wardens of WWII and other volunteers of the Office of Civilian Defense, and encourages them to record their own stories for future generations. An air raid warden was a civilian charged with directing civilian efforts of defense in the event of an attack on American soil during the war, in conjunction with police and military forces. This amendment would not carry the force of law, but instead would honor those civilians who served in America’s home defense during WWII.

Read amendment [here](#).

41. Mack (R-FL). This amendment would add language to the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 in an attempt to bring the section about sunken military craft back to the original intent of the law. The amendment would change the definition of ‘sunken military craft’ from ‘any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government on military noncommercial service when it sank’ to ‘any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government that was on military noncommercial service when it sank,’ clarifying the meaning by adding ‘that was’ before ‘on military noncommercial service.’ Additionally it would add a comma in the following paragraph before the phrase ‘that was owned or operated,’ leaving the language now reading ‘any sunken military aircraft or military spacecraft, that was owned or operated by a government when it sank.’

Read amendment [here](#).

42. Barbara Lee (D-CA) and Frank (D-MA). This amendment would authorize the President to make reductions in the amount appropriated by this law in any manner he sees fit, with a few exceptions, up to a total reduction of \$8.23 billion from the defense appropriations total. However it would not allow him to cut funds for the accounts of military personnel, reserve personnel, and National Guard personnel, nor would he be allowed to reduce the funds for the Defense Health Program account. Conservatives may be concerned that this would be used to weaken our military capabilities, and that top-down military cuts by the President, particularly those not authorized by Congress, could have a detrimental effect on our armed forces.

Read amendment [here](#).

43. Ellison (D-MN). This amendment creates a new section of the bill prohibiting the use of DoD funds to provide tear gas and other riot-control items to Middle East and North African countries undergoing democratic transition unless the Secretary of Defense certifies to the appropriate congressional defense committees that the security forces of such countries are not using excessive force to repress peaceful, lawful, and organized dissent.

Read amendment [here](#).

44. Granger (R-TX): This amendment directs the President to carry out the sale of no fewer than 66 F-16C/D multirole fighter aircraft to Taiwan. Rep. Granger has introduced similar legislation as H.R. 2992.

On August 1, 2011, a bipartisan group of 181 members of the House of Representatives [sent this letter](#) to the President, expressing support for the sale of F-16C/Ds to Taiwan. On May 26, 2011, a bipartisan group of 45 members of the Senate [sent this letter](#) to the President, expressing support for the sale. In September, the Obama administration announced they were moving forward with a \$5.9 billion arms sale for Taiwan. However, the administration did not approve the sale of F-16C/Ds, which are the most technically advanced model of the fighter jet. The DoD, in their 2011 report on China’s military capabilities, noted that China’s air force will remain focused on “building the capabilities required to post a credible military threat to Taiwan and U.S. forces in East Asia, deter Taiwan independence, or influence Taiwan to settle the dispute on Beijing’s terms.” Additionally, China has more than 1,400 missiles aimed at Taiwan

and continues to add to this total. China is forging ahead and deploying next generation military technology. Military experts both in Taiwan and in the United States have raised alarms that Taiwan is losing its qualitative advantage in defensive arms that have long served as a primary military deterrent. [Heritage Action for America](#) has announced they are key voting this amendment.

Read amendment [here](#).

45. Gohmert (R-TX)/Landry (R-LA)/Rigell (R-VA)/Duncan (R-SC)/Barletta (PA). This amendment attempts to “clarify” that the FY2012 National Defense Authorization Act and the 2001 Authorization for Use of Military Force (AUMF) do not deny the writ of habeas corpus or deny any constitutional rights for persons detained in the United States under the AUMF who are entitled to such rights.

Currently, H.R. 4310 contains some text intended to address the controversy over the detainee provision in the FY 2012 NDAA. But these provisions, in H.R. 4310, are merely Congressional findings, not any express prohibitions on the laws implementation.

These finding largely include quotations from the *Hamdi* decision and they also explain that the legislation abides by the Constitution.

Some Members disagreed with this section last year. Here the Congressional findings in H.R. 4310’s does not substantively change last year’s provisions (see [Section 1021/1022](#)). This amendment intends to resolve this issue by revising the language from last year’s NDAA to more specifically limit the power to indefinitely detain American citizens.

Read amendment [here](#).

46. Smith (D-WA)/Amash (R-MI)/Berman (D-CA)/Garamendi (D-CA)/Duncan (R-TN)/Johnson (D-GA)/Gosar (R-AZ)/Hirono (D-HI)/Paul (R-TX)/Jackson Lee (D-TX)/Tipton (R-CO)/Labrador (R-ID). This amendment strikes section 1022 of the FY2012 National Defense Authorization Act and amends Section 1021 to eliminate indefinite military detention of any person detained under the 2001 Authorization for Use of Military Force in U.S. territories or possessions by providing immediate transfer to trial and proceedings by a court established under Article III of the U.S. Constitution or by an appropriate state court. As explained above, the Congressional findings in H.R. 4310’s do not substantively change last year’s provisions (see [Section 1021/1022](#)). This amendment intends to resolve this issue by removing the language from last year’s NDAA involving indefinite military detention.

Read CRS report on “[Detention of U.S. persons as enemy belligerents](#)” for more information.

Read amendment [here](#).

47. Duncan (R-SC): This amendment prohibits funding for any institution or organization established by the United Nations Convention on the Law of the Sea. This includes prohibiting funding to the International Seabed Authority, the International Tribunal for the Law of the Sea, and the Commission on the Limits of the Continental Shelf.

Many conservatives have long advocated against Senate ratification of the United Nations Law of the Sea Treaty. On February 17, 2012, Rep. Flake, and 65 other Members of Congress, sent a letter to Senate Majority Leader Reid and Senate Minority Leader McConnell opposing the U.N. Convention on the Law of the Sea Treaty. Ratification of the treaty would subject the U.S. to another international organization which, like the United Nations, **would not** make safeguarding U.S. interests its priority. Adherence to the treaty would place costly requirements on U.S. businesses and industry seeking to mine the ocean floors that would result in additional cost that U.S. industry would have to bear. With the United States being responsible for paying for 25 percent of the budget of the regulatory regime established by the treaty, known as the International Seabed Authority, the treaty would also place an additional and ill-timed burden on U.S. taxpayers. Additionally, the treaty codifies permissible sea-related military activities that all treaty parties are expected to observe. Some of these provisions could result in an erosion of U.S. sovereignty or endanger our military operations at sea. This letter can be [viewed here](#). More information on this vital initiative can be [found here](#). [FreedomWorks](#) has encouraged their members to mobilize and urge their respective Senator's to [oppose LOST](#). The [Cato Institute](#) has also written on the destructive consequences of ratifying LOST.

President Reagan refused to sign the treaty in 1982. According to [Investor's Business Daily](#), Reagan even fired the State Department staff that negotiated the treaty. RSC Chairman Jordan is a cosponsor of this amendment. [Heritage Action for America](#) has announced they are key voting this amendment.

Read amendment [here](#).

48. Coffman (R- CO)/ Polis (D-CO): The amendment requests and authorizes the President to end the permanent basing of U.S. Armed Forces units in European member nations of the North Atlantic Treaty Organization (NATO). The President also requests and authorizes the President to return the four Brigade Combat Teams that are currently stationed in Europe to the United States.

The amendment states that it is U.S. policy that the deployment of units of the U.S. Armed Forces on a rotational basis at military installations in European NATO member nations is a force-structure arrangement sufficient to permit the U.S. to:

- “Satisfy the commitments undertaken by United States pursuant to Article 5 of the North Atlantic Treaty, signed at Washington, District of Columbia, on April 4, 1949, and entered into force on August 24, 1949 (63 Stat. 2241; TIAS 1964);
- “Address the current security environment in Europe; and
- “Contribute to peace and stability in Europe.”

Read amendment [here](#).

49. Barbara Lee (D-CA) and Conyers (D-MI). This amendment would appoint a high-level U.S. representative or special envoy for Iran whose duties would include facilitating bilateral negotiations with Iran to ease tensions, leading diplomatic efforts with the country, and acting as a liaison with the United States and Iran. The envoy would end the ‘no contact’ policy preventing

DOD employees from direct contact with Iran, and would submit a report every 180 days to the Congress.

The amendment would express that it should be the policy of the United States to prevent Iran from acquiring a nuclear weapon, and to inspect cargo to and from the country while pursuing sustained bilateral negotiations with Iran without preconditions. It further states that all diplomatic tools should be used, and that opportunities to foster sustained relations in good faith should be pursued, further stipulating that no funds should be made available to carry out a military operation against Iran unless the President determines that it is warranted.

Read amendment [here](#).

50-59 Amendments

50. Lamborn (R-CO). This amendment would prevent any funds from this Act being used for Cooperative Threat Reduction with Russia until 30 days after the Secretary of Defense certifies several issues. Russia must no longer be providing direct aid to Syria's suppression of its population, or transferring technology or equipment to Iran, North Korea, or Syria which has the potential to be used to develop advanced weaponry. It also specifies that these funds can only be used for threat reduction activities and not for new activities, or anything which extends beyond FY2013. The Secretary of Defense may waive the limitation on the funds regarding what must be certified if he determines that national security interests make such an action necessary, and then can receive a waiver 90 days after briefing the appropriate committees.

Read amendment [here](#).

51. Carnahan (D-MO). This amendment would combine potentially overlapping or duplicative functions related to contingency operation planning and oversight. It would create the Office for Contingency Operations, which would absorb all of the functions, personnel, and liability of the Bureau of Conflict and Stabilization Operations. A report would be written on this transfer. The Director, along with the Director of the Office of Management and Budget and the Director of the Office of Personnel Management may transfer to the OCO any personnel, functions, etc. that they deem appropriate. The amendment creates the office along with a system of evaluation requirements. The President is granted power to declare a "stabilization and reconstruction emergency," in which case the Office for Contingency Operations would coordinate all federal efforts with respect to such a stabilization and reconstruction emergency, with or without compensation. The Director has sole control over the Office for Contingency Operations.

Read amendment [here](#).

Petri (R-WI) and Hank Johnson (D-GA). The amendment simplifies the definition of renewable energy source so that direct use solar energy technology is considered a renewable energy source for the purposes of the requirement that Defense Department obtain 25% of its facility energy from renewable sources by 2025.

53. Bartlett (R-MD). This amendment would require a report by the Marine Corps on the proposed land transfer for the development of a new training range next to the Marine Corps Ground Air Combat Center Twenty Nine Palms, CA. The Secretary of the Navy would be

prevented from spending money for this land transfer until such a report had been submitted to Congress, unless there is an urgent national need, in which case the Secretary of Defense would be allowed to waive the report requirement.

Read amendment [here](#).

54. Franks (R-AZ). This amendment prohibits any defense nuclear nonproliferation funding in the bill for nuclear nonproliferation activities with the Russian Federation until 30 days after the Secretary of Energy certifies to congressional defense committees that Russia is no longer providing any support to Syria's suppression of Syrian people; transferring weapons equipment or technology to Iran, North Korea, or Syria; and that nonproliferation funds with the Russian Federation are strictly for project closeout activities and will not be used for new activities or activities that will extend beyond fiscal 2013. The sponsor's Dear Colleague states that the Pentagon acknowledged Russia is supplying Syria with arms and continues "to supply weapons and ammunition to the Assad regime" with evidence that some of these arms are being employed against Syria's civilian population. It further states that "U.S. taxpayers should not be put in the position where they are indirectly subsidizing the mass murder of Syrian citizens who only want to exercise their right to liberty and democracy." The amendment includes waivers to allow funding to finish current activities scheduled to be completed in FY2013 unless the Secretary of Defense finds national security interests against it.

Read amendment [here](#).

55. Pearce (R-NM)/ Markey (D-MA). This amendment strikes section 3156 of the bill, which authorizes the Secretary of Energy to make available up to \$150 million for the development and demonstration of domestic national-security-related enrichment technologies. According to the sponsor's Dear Colleague, section 3156 directs the Department of Energy (DOE) to provide "\$150 million to bailout" the United States Enrichment Corporation ([USEC](#))—a company the amendment sponsor states reported a net loss of \$540.7 million in 2011.

According to the bill's sponsor:

"Section 3156 of the National Defense Authorization Act (NDAA) includes a \$150 million subsidy to the private uranium enrichment company, United States Enrichment Corporation (USEC). This \$150 million comes in addition to the billions of dollars in taxpayer funds that have gone to perpetuate USEC's failing business model. And, this is language that has shown up in everything from the Highway Bill to Energy Appropriations.

In 2011 alone, USEC reported a net loss of \$540.7 million. To put that in perspective, it took Solyndra two years to record this type of loss. No one would consider providing Solyndra more federally backed loans, so why should USEC be any different?

Instead of allowing USEC's fate to rise or fall on the wisdom and skills of its management and owners in a competitive marketplace, the government has intervened at every turn to ensure that USEC would not fail. This company is worth less than \$120 million and it is asking for \$2.5 billion in government backing. I doubt any member of Congress would invest his or her own

money in a company which saw a 46% decline in profitability within 3 year of its initial public offering. So why is USEC any different?

The answers should be – it isn't. However, the administration and members of Congress from both parties have come up with excuse after excuse why it is.

Some say it is an issue of national security due to the production of tritium at USEC. However, the National Nuclear Security Administration (NNSA) testified that tritium production would not be affected if USEC failed. Essentially, national security would not be undermined in any way if USEC were to terminate operations as a result of a government decision to cut off further subsidies.” (read rest [here](#)).

Opponents of this amendment argue that national security interests trump any business inefficiencies. According to the House Armed services Committee:

“Section 3156 of the bill would protect the U.S. taxpayer by ensuring that, if this funding is provided to a private company for technology development and that company fails to meet certain technical milestones, the intellectual property and certain real property associated with the technology development effort would revert to the federal government.

- Under Section 3156, a royalty-free license to use associated intellectual property would be granted to the USG at the outset of any agreement with a private company that receives these funds.
- Section 3156 requires DOE to select a company to receive this funding based on merit-based procedures.

URENCO USA (formerly LES), a subsidiary of a European company, operates a uranium enrichment plant in southern New Mexico. This plant provides nuclear fuel for power reactors and other purposes.

- Because URENCO is foreign-owned and uses foreign-owned technology, international agreements prevent the U.S. government from purchasing enriched uranium from it for military or defense purposes.
 - Note: the USG is also be precluded from using such “restricted” uranium to produce tritium for use in nuclear weapons.
- In the near future, the U.S. will need a fully domestic source of “unrestricted” enriched uranium, based on domestically-developed technology, to support the nuclear weapons program and Navy nuclear reactors program.
 - The \$150M in funds is intended to help develop this domestic source.
 - Down-blending and other options could extend this date somewhat, but are not ideal.”

Read amendment [here](#).

56. Heinrich (D-NM)/Lujan (D-NM). This amendment creates a new section in the bill authorizing the Secretary of Energy to carry out a two-year competitive pilot program involving one non-profit entity and a national laboratory within the National Nuclear Security Administration for the purpose of accelerating technology transfer from national laboratories to the marketplace. The amendment states that, “The Secretary of Energy shall use the pilot

program's results as the basis for informing key performance parameters and strategies that could be implemented in various national laboratories across the country." It also requires a report to congressional committees, the Committee on Science and Technology in the House, and the Committee on Commerce, Science, and Transportation in the Senate, within a year of enactment (and a final report 90 days after its completion) that provides updates on the implementation of the pilot program.

Read amendment [here](#).

57. Turner (R-OH). This amendment would amend sections 3115 and 3202 to clarify that ensuring "adequate protection" is the applicable nuclear safety standard for defense nuclear facilities, that nuclear safety policies, regulations, analysis, and recommendations should be risk-based, and that nothing in these sections shall be construed to require a reduction in nuclear safety standards.

Read Amendment [here](#).

58. Tierney (D-MA). This amendment requires the Secretary of Defense to submit a report to Congress assessing the manufacturing industry in the United States. This report should include:

- An assessment of the current manufacturing capacity, as it relates to "civilian and defense needs."
- An assessment of the tax, trade, and regulatory policies of the United States as such policies impact the growth of the United States.
- An analysis of the factors leading to the increased outsourcing of manufacturing processes to foreign nations.
- An analysis of the strength of the United States defense industrial base, including the security and stability of the supply chain and assessment of the vulnerabilities of that supply chain.

Read amendment [here](#).

58. Rehnberg (R-MT)/ Lummis (R-WY). This amendment would ban any reductions to the strategic nuclear triad unless the Secretary of Defense certifies that:

- 1) Further reductions in the Russia Federation's arsenal are needed for compliance with New START limits
- 2) Russia is not developing or deploying nuclear delivery systems not covered by New START limits.
 - a. "The Russian Federation must make a commensurate reduction, conversion, or decommissioning pursuant to the levels set forth under such treaty; and
 - b. "The Russian Federation is not developing or deploying a strategic delivery system that is:
 - i. "Not covered under the limits set forth under such treaty; and
 - ii. "Capable of reaching the United States."

This amendment would also protect all three legs of the nuclear triad from elimination.

Heritage Action, key-voting this amendment, explains that:

“During the 2010 lame duck session, the Senate ratified the New START Treaty, which significantly reduced America’s ability to develop and use our missile defense capabilities. This amounts to unilateral disarmament, putting ourselves at a disadvantage in an increasingly dangerous world when the U.S. and our allies are threatened by unfriendly nations developing their own nuclear capability – like Iran and North Korea. The treaty also did nothing to reduce the disparity between Russia’s tactical nuclear weapon advantage and ours.

An overlooked aspect of New START was its limitation on the development and deployment of America’s conventional weapons, which further diminishes our ability to defend ourselves and our allies.

The Rehberg Amendment at least ensures America does not act unilaterally on a treaty that already favors Russia, which will do anything it can to put America a disadvantage.”

Read amendment [here](#).

60-69 Amendments

60. Carson (D-IN). This amendment would require that the Department of Defense conduct a survey on the equipment used by the armed forces. This anonymous survey would include current and former members of the armed forces who were deployed after September 11th, 2001, and would focus on the types of equipment used by our soldiers. The purpose of the survey is to determine whether or not the members of our armed forces are properly equipped in the field. The results of the survey would then be put into a report, along with explanations and recommendations based on these findings, and submitted to Congress within 180 days.

Read amendment [here](#).

61. Garamendi (D-CA). This amendment requires an assessment of existing challenges in the United States’ manufacturing ability to produce three-dimensional integrated circuits and a general analysis on potential ways to overcome these challenges and encourage their domestic commercial development for military purposes.

Read amendment [here](#).

62. McDermott (D-WA). This amendment would require a status report on the sharing of environmental exposure data with the Secretary of Veterans Affairs on an ongoing basis for use in medical and treatment records of veterans, including such data in determining the service-connectedness of health conditions and identifying the possible origins and causes of disease.

Read amendment [here](#).

63. Smith (D-WA). This amendment would authorize the Secretary of a military department to enter into cooperative agreements with Indian tribes for land management associated with military installations and state-owned National Guard installations.

Read amendment [here](#).

64. Pierluisi (D-PR). This amendment would express the sense of Congress regarding decontamination of and removal of unexploded ordnance from the former bombardment area on the island of Culebra, Puerto Rico.

Read amendment [here](#).

65. Bordallo (D-GU)/ Wilson (R-SC). This amendment would make funds appropriated to the DoD available to pay for the State Partnership program to support the objectives including that:

- Of the commander of the combatant command for the theater of operations in which activities are conducted.
- Of the United States chief of mission of the partner nation with which contacts and activities are conducted.

Read amendment [here](#).

66. Altmire (D-PA). This amendment would require the Secretary of Defense to submit a report on the feasibility of providing market-rate or below-market rate telecommunications service (phone, VoIP, video chat, or a combination).

Read amendment [here](#).

67. Kind (D-WI). This amendment would provide funding assistance through a special military cooperative agreement for the operation and maintenance of any State training center certified by FEMA as capable of providing emergency response training. This is for the purpose of improving the training of National Guard units and “Federal agencies performing homeland defense activities.”

Read amendment [here](#).

68. Tierney (D-MA). This amendment requires the Secretary of Defense to submit an annual report to Congress on the status of targets listed in “[Operational Energy Strategy: Implementation Plan, Department of Defense, March 2012](#).”

Read amendment [here](#).

69. Cravaack (R-MN): The amendment contains a sense of Congress that “fighter wings performing the 24-hour Aerospace Control Alert missions provide an essential service in defending the sovereign airspace of the United States in the aftermath of the terrorist attacks upon the United States on September 11, 2001.”

Read amendment [here](#).