

Legislative Bulletin.....December 22, 2010

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S. 3481 - Amending the Federal Water Pollution Control Act to Clarify Federal Responsibility for Stormwater Pollution (*Sen. Cardin, D-MD*)

Order of Business: The legislation is scheduled to be considered on Wednesday, December 22, 2010, under a motion to suspend the rules and pass the bill.

Summary: S. 3481 amends the Federal Water Pollution Control Act (also known as the Clean Water Act) to clarify federal responsibility for stormwater pollution. Under current law “each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government” engaging in any activity resulting in discharge or runoff of pollutants is subject to all federal, state, and local requirements, authority, process and sanction regarding the control and abatement of water pollution that nongovernmental entities are subject to, including “reasonable service charges.”

Specifically, the bill provides that “reasonable service charges” applicable to federal entities for water pollution also apply for the purpose of stormwater management. The fees must be based on a fair approximation of the proportionate contribution of the entity to stormwater pollution and must be used to “pay or reimburse the costs associated with any stormwater management program.” Provides that such a fee or assessment may be paid using appropriated funds, provided in advance, but may not come from any permanent authorization account.

Potential Conservative Concerns: Some conservatives may be concerned that while S. 3481 intends to ensure that fees are paid with existing appropriated funds (identified as a line item), the overall appropriated funding amount may increase without any corresponding offset.

Committee Action: S. 3481 was introduced on June 6, 2010, and referred to the Senate Committee on Environment and Public Works where it was reported by Senator Boxer

without amendment. On December 21, 2010, the Senate passed the bill with an amendment by unanimous consent.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: A CBO score is unavailable.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

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S. 372 - Whistleblower Protection Enhancement Act (Sen. Akaka, D-HI)

Order of Business: The bill is scheduled to be considered on Wednesday, December 22, 2010, on a motion to suspend the rules and pass the legislation.

Summary: S.372 increases whistleblower protections for federal employees who report abuse, fraud, and waste involving government activities. These protections are not extended to employees of certain intelligence agencies, including: the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Office of the Director of National Intelligence, and the National Reconnaissance Office. However, this legislation does extend coverage to employees and applicants of the Transportation Security Administration.

The legislation defines disclosure as a “formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences:

- “Any violation of any law, rule, or regulation, except for an alleged violation that is a minor, inadvertent violation, and occurs during the conscientious carrying out of official duties; or
- “Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.””

S. 372 covers the following types of disclosures:

- When an employee makes the disclosure in person;
- When an employee makes the disclosure during the normal course of their duties;
- When the disclosure is not in writing; and
- When the disclosure was made while the employee was off duty;

The legislation expands damage awards beyond travel expenses to include “any other reasonable and foreseeable consequential damages, and compensatory damages (including interest, reasonable expert witness fees, and costs).”

This legislation would also require federal agencies to advise their employees on how they may lawfully disclose information related to national defense or foreign affairs.

S. 372 also expands on employees prohibited practices to include implementing or enforcing any nondisclosure policy, form, or agreement.

Additional Information: The National Taxpayers Union is supports S. 372, and they state: in a recent letter to Congress: “Roll call votes on S. 372 will be significantly weighted in our annual Rating of Congress.”

Committee Action: S. 372 was introduced on February 3, 2009, and referred to the Senate Committee on Homeland Security and Governmental Affairs. It was amended and passed the Senate on December 10, 2010, by unanimous consent. The legislation was then held at the desk.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: The CBO score available on LIS reflects the language that was reported by the Senate committee on Homeland Security and Governmental Affairs, on July 29, 2009. Since then, the legislation has been amended and it is the RSC Staff’s understanding that the cost to taxpayers would be lower than that reported by CBO. There is no estimate of cost to taxpayers for the language that the House is expected to consider today. CBO had previously estimated that implementing S. 372 would cost \$54 million over the 2010-2014 period.

Does the Bill Expand the Size and Scope of the Federal Government? Yes. S. 372 expands whistleblower protection to certain federal employees.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? [Senate Report 111-101](#) does not contain a statement regarding earmarks/limited tax benefits/limited tariff benefits.

Constitutional Authority: Although [Senate Report 111-101](#) does not explicitly address constitutional authority, it does state that the Senate Select Committee on Intelligence described its consideration of constitutional and other ramifications of the legislation. That Committee concluded that the regulation of national security information, while implicitly in the command authority of the President, is equally in the national security and foreign affairs authorities vested in Congress by the Constitution. The Intelligence Committee, furthermore, was convinced that the provision was constitutional because it did not prevent the President from accomplishing his constitutionally assigned functions, and it was justified by an overriding need to promote the objectives within the constitutional authority of Congress.

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Senate Amendment to H.R. 6523—Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (*Rep. Skelton, D-MO*)

Order of Business: The bill is scheduled to be considered on Wednesday, December 22, 2010, under a motion to suspend the rules and pass the bill.

Summary: The bill contains a number of provisions passed in the May NDAA ([H.R. 5136](#)). The bill does not address funding for the F-35 alternative engine. Additionally, the bill does NOT contain provisions involving DADT or taxpayer funding for abortions in military hospitals contained in the Senate version of the NDAA. **The Senate amendment removed a provision that included funding to pay war reparations to Guam residents that suffered mistreatment during World War II.**

The bill reportedly authorizes a total of \$725 billion in spending for FY 2011; this is a 7% increase over FY 2010 levels. A few highlights of the policy provisions of note are as follows:

- **Personnel:** The bill provides a pay increase of 1.4% and impact aid to local schools with a high enrollment of military children. Additionally, the NDAA extends the period of eligibility of when a dependent can receive TRICARE Reserve Select coverage to age 26 and requires the Secretary of Defense to administer the TRICARE program. The bill also requires each service branch to increase the number of authorized mental health providers by twenty-five percent and increase the number of Health Professions Scholarship and Financial Assistance Program (HPSP) scholarships for mental health providers.
- **Missile Defense:** The bill authorizes more than \$10 billion for missile defense; this is approximately 11 percent more than the FY 2010. The bill prohibits the use

of funds for the construction of interceptor missile defense sites on European land unless a host nation has ratified a missile defense basing agreement and a status of forces agreement authorizing the deployment of such interceptors. Additionally, the Secretary of Defense is required to submit to the Congressional defense committees a report on the independent assessment of alternative missile defense systems in Europe required under the 2010 NDAA. The bill requires the Missile Defense Agency to establish and maintain a detailed acquisition baseline for each program element of the ballistic missile defense system. The NDAA allows the Secretary of Defense to carry out a program to provide a ballistic missile shared early warning capability for the United States and the Czech Republic. However, the bill remains silent on a cooperative agreement to place a defense missile shield in the Czech Republic. The NDAA requires the Secretary of Defense to issue a detailed report to Congress on the phased, adaptive approach to missile defense in Europe. Additionally, the bill requires the Secretary of Defense to select an appropriate entity outside the Department of Defense to conduct an independent review and assessment of the ground-based midcourse defense system. The bill allows the Secretary of Defense to provide up to \$205 million to Israel for the Iron Dome short-range rocket defense.

- **Cybersecurity:** The bill requires the Defense Department (DoD) to issue a report to Congress on cyber warfare policy that includes a review of legal issues, strategy, and doctrinal issues. The bill also requires the DoD to create demonstration projects to assess the feasibility of using business models to identify commercial technologies and apply them to cybersecurity requirements. The bill also requires the DoD to develop an acquisition process for cyberspace and to identify software vulnerabilities and supply-chain risk mitigation strategies.
- **Defense Acquisition Reform:** The bill implements a number of recommendations for DoD acquisition reform, including the creation of a program to improve the planning and oversight processes for the acquisition of major automated information systems by the Department of Defense.
- **Iraq & Afghanistan:** The NDAA authorizes \$158.7 billion in funding specifically for the wars in Afghanistan, Iraq and other provisions within the bill to fight the on going war against terrorism. These funds will be obligated for construction projects, training of local police, purchasing additional mine resistant vehicles, and other equipment needs.

Guantanamo Bay: According the House Armed Service Committee, the suspension will be amended on the House Floor with a provision to change Section 1032 to reflect the same language Rep. Forbes (R-VA) that passed during debate on the original NDAA passed in May. The [MTR](#) placed a complete prohibition on the transfer of GITMO detainees to the United States. However, the language in H.R. 6523 only places a ban on transferring prisoners through FY 2011, instead of a permanent ban.

The bill reported to be considered, had numerous concerns because it did *not prohibit funds* from being used to *transfer or release prisoners* held at Guantanamo Bay, Cuba into the United States or territories. However, the Forbes language should fix this, however, only through FY 2011.

Potential Conservative Concerns:

- **Process:** A defense authorization bill, particularly a new 921 page bill introduced less than 36 hours ago, that no one has had time to fully review, should not be done by suspension of the rules in a lame duck session. Particularly a bill that is so important because it affects the mission and benefits of the more than 2.2 million men and women defending our nation. The confusion over the last minute GITMO language only reiterates this problem, a recurring theme during the Democratic controlled 111th Congress.
- **Limits Public-Private Competition:** Some conservatives may be concerned that Section 322 of the bill limits (A-76) public-private competition for Department of Defense contracts. Some conservatives may be concerned because public-private competition has historically lowered contracting costs while increasing efficiency.

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 A—Procurement

- **Army.** Aircraft--\$5.91 billion; Missiles--\$1.67 billion; Weapons and Tracked Combat Vehicles--\$1.66 billion; Ammunition--\$1.95 billion; Other Procurement--\$9.76 billion.
- **Navy.** Aircraft--\$18.88 billion; Weapons (including missiles and torpedoes)--\$3.36 billion; Shipbuilding and Conversion--\$15.72 billion; Other Procurement--\$6.38 billion; Ammunition (Navy and Marine Corps)--\$818 million.
- **Marine Corps.** \$1.30 billion
- **Air Force.** Aircraft--\$14.67 billion; Ammunition--\$672.42 million; Missiles--\$5.44 billion; Other Procurement--\$17.85 billion.
- **Defense-Wide Activities.** \$4.4 billion.

Division A—Research, Development, Test, and Evaluation

- **Army.** \$10.1 billion
- **Navy.** \$17.9 billion
- **Air Force.** \$27.3 billion
- **Defense-Wide Activities.** \$21.3 billion (\$195 million reserved for Operational Test & Evaluation, Defense-Wide).

Division A—Funding for Operations and Maintenance

<i>Army</i>	<i>\$33.9 billion</i>
<i>Navy</i>	<i>\$38.23 billion</i>
<i>Marine Corps</i>	<i>\$5.59 billion</i>
<i>Air Force</i>	<i>\$36.82 billion</i>
<i>Defense-Wide Activities</i>	<i>\$30.56 billion</i>
<i>Army Reserve</i>	<i>\$2.88 billion</i>
<i>Naval Reserve</i>	<i>\$1.37 billion</i>
<i>Marine Corps Reserve</i>	<i>\$285 million</i>
<i>Air Force Reserve</i>	<i>\$3.4 billion</i>
<i>Army National Guard</i>	<i>\$6.6 billion</i>
<i>Air National Guard</i>	<i>\$6.0 billion</i>
<i>U.S. Court of Appeals for the Armed Forces</i>	<i>\$14 million</i>
<i>Acquisition Development Workforce Fund</i>	<i>\$217 million</i>
<i>Army Environmental Restoration</i>	<i>\$445 million</i>
<i>Navy Environmental Restoration</i>	<i>\$305 million</i>
<i>Air Force Environmental Restoration</i>	<i>\$502 million</i>
<i>Defense-wide Environmental Restoration</i>	<i>\$10.7 million</i>
<i>Formerly Used Defense Sites Environmental Restoration</i>	<i>\$297 million</i>
<i>Overseas Humanitarian, Disaster, and Civics Programs</i>	<i>\$108 million</i>
<i>Cooperative Threat Reduction Programs</i>	<i>\$522 million</i>

Division A—Military Personnel Authorization Levels

Authorized personnel levels as of September 30, 2010:

<i>Army</i>	<i>569,400</i>
<i>Navy</i>	<i>328,700</i>
<i>Marine Corps</i>	<i>202,100</i>
<i>Air Force</i>	<i>332,200</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>65,500</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>71,200</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>10,688</i>
<i>Marine Corps Reserve, Full-Time Duty</i>	<i>2,261</i>
<i>Air National Guard, Full-Time Duty</i>	<i>14,584</i>
<i>Air Force Reserve, Full-Time Duty</i>	<i>2,992</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>22,394</i>
<i>Air Force Reserve, Dual-Status Technicians</i>	<i>10,720</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 350</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 1,600</i>
<i>Total Authorized Personnel Level</i>	<i>2,411,826</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: \$138,540,700,000

Division A—Cooperative Threat Reduction with States of the Former Soviet Union

From funds allocated for operation and maintenance above:

- **Strategic Offensive Arms Elimination in Russia.** \$66.7 million
- **Strategic Nuclear Arms Elimination in Ukraine.** \$6.8 million
- **Nuclear Weapons Storage Security in Russia.** \$9.6 million
- **Nuclear Weapons Transportation Security in Russia.** \$45 million
- **Weapons of Mass Destruction Proliferation Prevention in the Former Soviet Union.** \$79.8 million
- **Biological Weapons Proliferation Prevention in the Former Soviet Union.** \$209 million
- **Chemical Weapons Destruction.** \$3 million
- **Defense and Military Contacts.** \$5.0 million
- **Global Nuclear Lockdown:** \$74.5 million
- **Other Assessments/Administrative Costs:** \$23 million

Division A—Other Authorizations

- **Defense Working Capital Funds.** \$160.97 million
- **Defense Working Capital Fund Defense Commissary.** \$1.27 billion
- **National Defense Sealift Fund.** \$934.87 million
- **Defense Health Program.** \$30.96 billion
- **Chemical Agents and Munitions Destruction.** \$1.46 billion
- **Defense Wide Drug Interdiction.** \$1.16 billion
- **Defense Inspector General.** \$317.2 million
- **Armed Forces Retirement Home.** \$71.2 million

- **National Defense Stockpile.** Authorizes \$41.2 million from the National Defense Stockpile Transaction Fund for the operation and maintenance of the National Defense Stockpile for FY 2011.
- **Operations in Afghanistan, Iraq, and Haiti:** Increases FY 2010 authorization levels for military and humanitarian operations.

Division B—Military Construction Authorizations

Division B—Military Construction

- **Army.** \$4.57 billion
- **Navy.** \$4.1 billion
- **Air Force.** \$1.9 billion
- **NATO Security Investment Program.** \$259 million
- **Army National Guard.** \$850 million
- **Army Reserve.** \$289 million
- **Naval and Marine Corps Reserve.** \$57.5 million
- **Air National Guard.** \$178 million
- **Air Force Reserve.** \$3.4 million

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

Division C—Department of Energy National Security Programs

- **Weapons Activities.** \$7 billion
- **Defense Nuclear Nonproliferation.** \$2.7 billion
- **Naval Reactors.** \$1 billion
- **Office of Administrator for Nuclear Security.** \$448.3 million
- **Defense Environmental Cleanup.** \$5.6 billion
- **Other Defense Activities for National Security.** \$878.2 million
- **Energy Security and Assurance Programs.** \$6.2 million

Additional Background: On May, 28, 2010, the House passed the 2011 National Defense Authorization Act ([NDAA](#)) by a vote of 229-186. Final passage of the measure was widely opposed by conservatives because an amendment repealing the military’s so-called “Don’t Ask, Don’t Tell” (DADT) policy was adopted during floor consideration. The Senate could not agree to vote on the NDAA because of the DADT issue. Many conservatives have expressed concern that enacting a major cultural change in the military during the operation of two wars is a risk that we should not take. On December 15, 2010, the House passed the Don’t Ask, Don’t Tell Repeal Act (Senate Amendment to [H.R. 2965](#)) as a stand alone measure. Conservatives expressed concern that prioritizing the passage of DADT over the Defense authorization bill sends the message to our troops that Congress cares more about enacting a social change than providing them with the vital tools and resources they need to fight and win the wars in Afghanistan and Iraq.

However, with DADT now passed by the House in separate fashion, House Democrats are willing to bring the NDAA up for consideration under suspensions of the rules. H.R. 6523 was introduced late Wednesday night and contains hundreds of policy provisions to guide policies involving fighting the war on terrorism, missile defense, procurement issues, and personnel levels. Congress has passed a defense authorization bill every year since 1952.

Committee Action: None. On December 15, 2010, the bill was introduced and referred to the House Committee on Armed Services, which took no further action. The House passed the bill on December 17, 2010, by a vote of 341-48. The Senate then passed the bill with an Amendment on December 22, 2010, by unanimous consent.

Administration Position: In a Statement of Administration Policy (SAP) is unavailable.

Cost to Taxpayers: A CBO score for H.R. 6523 is unavailable at press time.

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 Expand the Size and Scope of the Federal Government?: Yes, the bill creates several new programs within the Department of Defense.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? A committee report citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available. However, such a report is technically not required because the bill is being considered under a suspension of the rules.

Constitutional Authority: A committee report citing constitutional authority is unavailable for H.R. 6523. However, Article I, Section 8, Clause 1 grants Congress the power to “provide for the common Defense and general welfare of the United States.” Article I, Section 8, Clauses 12 through 16 grant Congress the power “To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years; To provide and maintain a Navy; To make Rules for the Government and Regulation of the land and naval forces; To provide for calling forth the Militia to execute the Laws of the Unions, suppress Insurrections and repel Invasions; To provide for organizing, arming, and disciplining, the Militia and for governing such Part of them as may be employed in the Service of the United States...” In addition, Article I, Section 8, Clause 17 provides that Congress shall have the power “To exercise exclusive Legislation in all Cases whatsoever...over all Places purchased by the Consent of the Legislature of the state in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful buildings.”

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