



Legislative Bulletin.....September 24, 2008

Contents:

S. 3001—National Defense Authorization Act for Fiscal Year 2009

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: Numerous

Total Cost of Discretionary Authorizations: \$600 billion in FY 2009

Effect on Revenue: \$0

Total Change in Mandatory Spending: Unknown

Total New State & Local Government Mandates: Unknown

Total New Private Sector Mandates: Unknown

Number of Bills Without Committee Reports: 1

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

**S. 3001—National Defense Authorization Act for Fiscal Year 2009
(Levin, D-MI)**

Order of Business: S. 3001 is scheduled for consideration on Wednesday, September 24, 2008, under a suspension of the rules.

Background: On May 21, 2008, the House passed H.R. 5658, the National Defense Authorization Act for Fiscal Year 2009 (NDAA), by a vote of [384-23](#). The Senate, however, did not pass S. 3001, its version of the NDAA, until September 17, 2008. Due to the late passage of

the Senate bill and the fact that the Senate did not appoint conferees, the House will consider an amended version of the Senate bill. S. 3001 will be considered with an amendment in the nature of a substitute. The substitute consists of the Senate-passed bill with House amendments that were agreed upon by both bodies. Thus, the bill would effectively be a Conference Report. The bill would likely pass in the Senate without amendment before Congress adjourns. S. 3001, as amended, is supported by House Armed Services Committee Chairman Skelton and Ranking Member Hunter.

Summary: S. 3001 would authorize \$600 billion for Department of Defense and the national security functions of the Department of Energy. S. 3001 includes \$531.4 billion in budget authority for the DOD and \$68.6 billion for ongoing military operations in Iraq and Afghanistan. The summary that follows contains descriptions of major provisions in the bill and an outline of the major authorization levels in the bill.

Provisions of Note:

- ***Adjusted Personnel Levels:*** S. 3001 increases the authorization for personnel in the Army by 7,000 (from 525,400 to 532,400) and the Marine Corps by 5,000 (from 189,000 to 194,000). The bill reduces the authorization for personnel in the Navy by 2,775 (from 329,098 to 326,323) and the Air Force by 12,601 (from 329,651 to 317,000).
- ***Service Member Pay Raise:*** S. 3001 would raise the pay rates of members of the armed forces by 3.9%—0.5% higher than the budget request.
- ***Prohibits TRICARE Fee Increase:*** S. 3001 would prohibit the Department of Defense (DOD) from increasing premiums and fees associated with TRICARE, the military's health plan for active duty and retired personnel. The DOD had proposed the increase to slow the growth in military health care costs and restore funding to the Defense Health Program.
- ***Extended Health Care Option:*** The bill would increase the cap on of families in the Extended Health Care Option program to \$36,000 annually.
- ***Interrogation of Detainees:*** S. 3001 would require the Secretary of Defense to revise its regulations to prohibit the use of private contractors to interrogate detainees. The bill would also include a sense of Congress stating that the interrogation of detainees is an inherently governmental function.
- ***Prohibition Against Permanent Bases:*** S. 3001 extends the current ban on the DOD from establishing a permanent military installation in Iraq. To determine whether a base is "permanent," the bill requires the DOD to set a date when each installation in Iraq will be vacated. If an installation does not have a set exit date, it will be considered a "permanent base." The latter provision was has not been included in previous DOD authorization bills.

- ***Detainee Policy:*** The legislation requires the Secretary of Defense to notify Congress and wait 60 days before it may implement a new policy regarding detainee treatment to replace Army Regulation [190-8](#) (not to be confused with the Army Field Manual). S. 3001 would also require a DOD study on detainee operations in Iraq and Afghanistan in relation to the counter-insurgency operations being conducted.
- ***Section 526—Unconventional Fuels:*** Rather than repeal or modify Section 526 of the recently enacted energy law (Public Law 110-140, the Energy Independence and Security Act of 2007), which prohibits the federal government from procuring certain alternative or synthetic fuels, including fuels produced from nonconventional petroleum sources, the amended bill merely requires that the Defense Department study and report to Congress on alternatives to reduce the lifecycle emissions of alternative and synthetic fuels (including coal-to-liquid fuels). Most conservatives would regard a study as either unnecessary or inadequate.
- ***KC-45 Tanker:*** The bill would require the Air Force to review the potential impact of any subsidies received by a large aircraft manufacturer that the World Trade Organization has determined were illegal. The Air Force would be required to agree on how to remove the “unfair impact” of an illegal subsidy from the KC-45 procurement process.
- ***Cost Sharing with the Iraqi Government:*** S. 3001 alters the way that funds are disbursed from the [Commanders Emergency Response Program](#) (CERP) in Iraq by implementing a cost-sharing requirement. Under the new provision, the U.S. government would have to supply \$2 to the CERP fund for every \$1 supplied by the Iraqi government.
- ***Prohibition on Certain CERP Projects:*** The bill would ban all CERP projects that cost more than \$2 million unless Secretary of Defense issues a waiver for the project. The bill would also require certification for any project over \$1 million.
- ***European Missile Defense Sites:*** S. 3001 reduces the requested amount of funding for long-range missile defense sites in Europe by more than half, from a requested level of \$712 million to an authorized level of \$341 million.
- ***Space Test Bed:*** S. 3001 eliminates funding for a requested “Space Test Bed,” a space-based ballistic missile defense program.
- ***Third Generation Infrared Surveillance (3GIRS):*** The bill reduces funding for the 3GIRS program by nearly half, from \$149 million to \$75 million. The program develops technology that helps troops identify threats using infrared equipment.

Provisions Not Included in S. 3001:

- ***Alternative Fuel Requirement:*** The House version of the bill included a section that would specify certain circumstances in which federal agencies could waive Section 526 of the Energy Independence (which stifles the Defense Department’s plans to buy coal-

to-liquids” jet fuels). By outlining specific parameters for when the DOD could waive the requirements, the House bill effectively barred the DOD from purchasing certain fuel in any other circumstances. S. 3001 does not include this provision. However, Section 526 would still apply to DOD fuel procurement. According to the Joint Explanatory Statement provided by the House Armed Services Committee, “Section 526 was not intended to preclude the Department of Defense from purchasing the fuel that it needs for the national defense from the generally-available fuel supply. We expect the Department to continue making such purchases.”

- **Public-Private Competition:** H.R. 5658 contained a section requiring the DOD to suspend public-private competitions (as required by [OMB Circular A-76](#)) for three years and a section that continued a moratorium on cost effectiveness studies. S. 3001, as amended, does not include either of these provisions.
- **Davis-Bacon Requirement for Restationing to Guam:** S. 3001 initiates the movement of troops from Okinawa, Japan, to the U.S. territory of Guam. The House version of the bill stipulated that any funds used from the account must adhere to Davis-Bacon wage requirements. S. 3001 does not include a Davis-Bacon Requirement.

Authorization Levels:

- S. 3001 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 A—Procurement

- **Army.** Aircraft--\$4.91 billion; Missiles--\$2.2 billion; Weapons and Tracked Combat Vehicles--\$3.5 billion; Ammunition--\$2.2 billion; Other Procurement--\$11.2 billion; Joint Improvised Explosive Device Defeat Fund--\$228 million.
- **Navy.** Aircraft--\$16.6 billion; Weapons (including missiles and torpedoes)--\$3.5 billion; Shipbuilding and Conversion--\$12.9 billion; Other Procurement--\$5.4 billion; Ammunition (Navy and Marine Corps)--\$1.1 billion.
- **Marine Corps.** \$1.3 billion
- **Air Force.** Aircraft--\$12.6 billion; Ammunition--\$943 million; Missiles--\$5.5 billion; Other Procurement--\$16.1 billion.
- **Defense-Wide Activities:** \$3.4 billion.

Division A—Research, Development, Test, and Evaluation

- **Army.** \$10.6 billion
- **Navy.** \$19.7 billion

- **Air Force.** \$28.2 billion
- **Defense-Wide Activities.** \$21 billion (\$188 million reserved for Operational Test & Evaluation, Defense-Wide).
- **Defense Science and Technology.** Reserves \$12 billion of the above funds for the Defense Science and Technology Program.

Division A—Funding for Operations and Maintenance

| | |
|---|----------------|
| Army | \$31.7 billion |
| Navy | \$34.8 billion |
| Marine Corps | \$5.5 billion |
| Air Force | \$35 billion |
| Defense-Wide Activities | \$25.8 billion |
| Army Reserve | \$2.6 billion |
| Naval Reserve | \$1.3 billion |
| Marine Corps Reserve | \$213 million |
| Air Force Reserve | \$3.2 billion |
| Army National Guard | \$5.9 billion |
| Air National Guard | \$5.9 billion |
| U.S. Court of Appeals for the Armed Forces | \$13 million |
| Army Environmental Restoration | \$447 million |
| Navy Environmental Restoration | \$290 million |
| Air Force Environmental Restoration | \$496 million |
| Defense-wide Environmental Restoration | \$13 million |
| Formerly Used Defense Sites Environmental Restoration | \$257 million |
| Overseas Humanitarian, Disaster, and Civic Aid Programs | \$83 million |
| Cooperative Threat Reduction Programs | \$445 million |
| Overseas Contingency Operations Transfer Fund | \$9 million |

Division A—Military Personnel Authorization Levels

Authorized personnel levels as of September 30, 2009:

| | |
|--|---------|
| Army | 532,400 |
| Navy | 326,323 |
| Marine Corps | 194,000 |
| Air Force | 317,050 |
| Army National Guard, Selected Reserve | 352,600 |
| Army Reserve, Selected Reserve | 205,000 |
| Naval Reserve, Selected Reserve | 66,700 |
| Marine Corps Reserve, Selected Reserve | 39,600 |
| Air National Guard, Selected Reserve | 106,700 |
| Air Force Reserve, Selected Reserve | 67,400 |
| Coast Guard Reserve, Selected Reserve | 10,000 |
| Army National Guard, Full-Time Duty | 32,060 |
| Army Reserve, Full-Time Duty | 17,070 |
| Naval Reserve, Full-Time Duty | 11,099 |
| Marine Corps Reserve, Full-Time Duty | 2,261 |

| | |
|--|--------------------|
| Air National Guard, Full-Time Duty | 14,337 |
| Air Force Reserve, Full-Time Duty | 2,733 |
| Army National Guard, Dual-Status Technicians | 27,210 |
| Army Reserve, Dual-Status Technicians | 8,395 |
| Air National Guard, Dual-Status Technicians | 22,452 |
| Air Force Reserve, Dual-Status Technicians | 10,003 |
| Army Reserve, Non-Dual-Status Technicians | No more than 595 |
| Army National Guard, Non-Dual-Status Technicians | No more than 1,600 |
| Air Force Reserve, Non-Dual-Status Military Technicians | No more than 90 |
| Air National Guard, Non-Dual-Status Military Technicians | No more than 350 |
| Total Authorized Personnel Level | 2,365,393 |

- **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.** \$124.6 billion—increased from \$117.09 billion in FY 2008.

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.** \$79.9 million
- **Strategic Nuclear Arms Elimination in Ukraine.** \$6.4 million
- **Nuclear Weapons Storage Security in Russia.** \$24.1 million
- **Nuclear Weapons Transportation Security in Russia.** \$40 million
- **Weapons of Mass Destruction Proliferation Prevention in the Former Soviet Union.** \$70.2 million
- **Biological Weapons Proliferation Prevention in the Former Soviet Union.** \$184.4 million
- **Defense and Military Contacts.** \$8.0 million
- **Chemical Weapons Destruction.** \$1 million
- **New Cooperative Threat Reduction Initiatives.** \$10 million
- **Other Assessment/Administrative Support.** \$20.1 million

Division A—Other Authorizations

- **Defense Working Capital Funds.** \$198.1 million
- **Defense Working Capital Fund Defense Commissary.** \$1.29 billion
- **National Defense Sealift Fund.** \$1.4 billion
- **Defense Health Program.** \$24.7 billion
- **Chemical Agents and Munitions Destruction.** \$1.48 billion

- **Defense Wide Drug Interdiction.** \$1.06 billion
- **Defense Inspector General.** \$273.8 million
- **Armed Forces Retirement Home.** \$63 million
- **National Defense Stockpile.** Authorizes \$41.1 million from the National Defense Stockpile Transaction Fund for the operation and maintenance of the National Defense Stockpile for FY 2008. Permits the use of additional funds for “extraordinary or emergency conditions” 45 days after a notification to Congress.

Division A—Authorization of Additional Appropriations for Operation Iraqi Freedom and Operation Enduring Freedom

PROCUREMENT:

- **Army.** Aircraft--\$84 million; Weapons and Tracked Combat Vehicles--\$822 million; Ammunition--\$46.5 million; Other Procurement--\$1.2 billion;
- **Navy.** \$476.2 million
- **Marine Corps.** \$565.4 million
- **Air Force.** Aircraft--\$4.62 billion; Other Procurement--\$1.5 billion
- **Joint Improvised Explosive Device Defeat Fund.** Procurement--\$2.49 billion
- **Rapid Acquisition Fund.** \$102 million
- **Defense-Wide Activities.** Procurement--\$177.2 million

RESEARCH, DEVELOPMENT, TEST, and EVALUATION:

- **Navy.** \$113.2 million
- **Air Force.** \$72 million
- **Defense-wide.** \$202.5 million

OPERATION & MAINTENANCE:

- **Army.** \$37.3 billion
- **Navy.** \$3.5 billion
- **Marine Corps.** \$2.9 billion
- **Air Force.** \$5 billion
- **Defense-Wide Activities.** \$2.64 billion
- **Army Reserve.** \$79.2 million
- **Navy Reserve.** \$42.4 million
- **Marine Corps Reserve.** \$47 million
- **Army National Guard.** \$333 million
- **Air Force Reserve.** \$12.3 million
- **Air National Guard.** \$55.6 million

OTHER AUTHORIZATIONS:

- **Defense Health Program.** \$1.1 billion
- **Drug Interdiction & Counter Drug Activities.** \$188 million
- **Iraq Security Forces Fund.** \$1 billion
- **Afghanistan Security Forces Fund.** \$2 billion
- **Military Personnel.** \$1.19 billion
- **Mine Resistant Ambush Protected Vehicle Fund.** \$2.61 billion

Division B—Authorization of Appropriations for Military Construction

- **Army.** \$6 billion
- **Navy.** \$3.99 billion
- **Air Force.** \$1.96 billion
- **NATO Security Investment Program.** \$240.8 million
- **Army National Guard.** \$628.6 million
- **Army Reserve.** \$282.6 million
- **Naval and Marine Corps Reserve.** \$57 million
- **Air National Guard.** \$142.8 million
- **Air Force Reserve.** \$30 million

Division C—Department of Energy National Security Programs

- **Weapons Activities.** \$6.6 billion
- **Defense Nuclear Nonproliferation.** \$1.45 billion
- **Naval Reactors.** \$828 million
- **Office of Administrator for Nuclear Security.** \$409 million
- **Defense Environmental Cleanup.** \$5.31 billion
- **Other Defense Activities for National Security.** \$1.32 billion
- **Defense Nuclear Waste Disposal.** \$274 million
- **Energy Security and Assurance Programs.** \$7.6 million

Division C—Maritime Activities

- **Operations and Training Activities.** \$117.8 million
- **U.S. Flag Merchant Fleet.** \$193.5 million
- **Maritime Security Reimbursements.** \$3.5 million
- **Assistance to Small Shipyards.** \$25 million
- **Disposal of Obsolete Vessels.** \$18 million

Cost to Taxpayers: A CBO estimate for S. 3001 was not available. The bill would authorize \$600 billion in defense spending in FY 2009, which includes \$68.6 billion for the ongoing military operations in Afghanistan and Iraq.

Administration Position: A Statement of Administration Policy (SAP) was not available at press time.

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?: Unknown.

Constitutional Authority: A Committee report citing constitutional authority was unavailable.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits (House Rule XXI, Clause 9): However, Armed Services [Committee Report 110-652](#) (pages 595-630), which accompanied the House version of the bill, listed 546 earmarks totaling at least \$9.9 billion (with individual earmarks ranging from \$200,000 to \$3.9 billion).

RSC Staff Contact: Andy Koenig; andy.koenig@mail.house.gov; 202-226-9717

###