

Background

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The Defense Authorization Bill: A Survival Guide

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The U.S. House of Representatives and the U.S. Senate have completed their respective versions of the defense authorization bill for fiscal year 2005 (H.R. 4200 and S. 2400). This important legislation authorizes defense spending and provides guidance for the Department of Defense and some other federal agencies that are vital to national security. It is therefore one of the primary vehicles through which Congress influences overall defense policy and national security. Once President George W. Bush signs the bill, its mandates become the policy of the United States.

Congress's final stage in this process involves a House–Senate conference committee that will resolve the differences between the House and Senate versions of the bill. As in the past, some of the differences between the two versions could have far-reaching implications for national security, depending on which provisions are reported out of the conference committee for final passage by the House and Senate. Some of the most important differences that must be resolved include the issues of:

1. Missile defense,
2. Base Realignment and Closure (BRAC),
3. The U.N. Oil-for-Food scandal,
4. U.S.–Taiwan military-to-military exchanges,
5. Rapid Acquisition Authority (RAA), and
6. “Buy America” and other protectionist purchasing requirements.

Talking Points

As the conference committee reconciles the House and Senate versions of the 2005 defense authorization bill, it should:

- Reject the House provision that would delay Base Realignment and Closure until 2007. Maintaining excess base infrastructure drains much-needed resources.
- Adopt the language in Senator Ensign's Oil-for-Food amendment.
- Include the House language that regularizes U.S.–Taiwan military-to-military exchanges. Higher-level U.S.–Taiwan defense cooperation is crucial to a credible deterrent in the Taiwan Strait.
- Include the Rapid Acquisition Authority provision, which authorizes the Secretary of Defense to establish an efficient and timely acquisition process for battlefield-related items during times of emergency.
- Include the Senate language that permits the Secretary of Defense to waive Buy America restrictions for six U.S. allies.

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Missile Defense

House Version. The House version of the defense authorization bill approves the Bush Administration's request for \$10.2 billion for the overall ballistic missile defense program in FY 2005, including the Administration's plan to put the necessary elements of the ballistic missile test bed in place to allow for the declaration of an operational capability to defend U.S. territory against limited ballistic missile attacks by later this year.

Senate Version. The Senate version provides for the ballistic missile defense program in a way that is generally consistent with the Bush Administration's request and the House version.

Recommendation. The conference committee's report should authorize full funding for the Bush Administration's missile defense program request and express support for the declaration of an operational capability. Looking ahead, however, the conference report should also include language that encourages the Administration to pursue a more aggressive approach to researching and developing space-based interceptors.

This is particularly the case regarding those capable of intercepting ballistic missiles in their boost phase. Space-based interceptors will prove to be the most capable in defending the U.S. and its friends and allies against ballistic missile attack, including attacks with missiles carrying decoys and countermeasures. The Bush Administration's current approach to researching and developing space-based interceptors does not match the potential benefit of fielding these kinds of defensive systems.

Base Realignment and Closure

House Version. The House version would delay the BRAC process until 2007 by requiring a series of Pentagon reports that will be due between January 1, 2006 and March 15, 2006.

Senate Version. The Senate version keeps BRAC on track for a round in 2005.

Recommendation. In order to stay on schedule for a new BRAC round in 2005, the conference committee should reject the House version. The Pentagon has been arguing for additional rounds of BRAC since 1998, and the conference report

should reflect that there is no good reason to delay further. The primary arguments for delaying BRAC are that:

1. More study is needed before cutting infrastructure;
2. Foreign bases should be closed before closing domestic bases; and
3. America needs a larger force and therefore should not cut infrastructure.

All of these arguments are false. The Pentagon has been in a state of continuous review for a number of years and has a sound understanding of its force requirements. Where America's military bases are built should depend on how they enhance national security, not on whether or not they are in the United States. Furthermore, whether or not the military needs more troops, it certainly does not need 25 percent more troops, which is the amount of excess infrastructure that the Pentagon currently maintains.

Before transformation of the military can fully succeed, the Pentagon must make the best use of its scarce resources and create an environment that invites and supports change. BRAC sets a good example in this regard and increases overall flexibility.

First, BRAC facilitates joint operations. Restructuring the Department of Defense's support infrastructure can compel the armed services to work together more closely. Another emerging problem for the Pentagon is encroachment. Expanding populations are encroaching on many of America's bases, and the result will be reduced training opportunities and reduced readiness. BRAC can help secure future training opportunities by closing those bases most affected by encroachment and expanding those that are least affected. BRAC will also increase efficiency and save money because maintaining excess base infrastructure drains much-needed resources.

Although saving money and improving efficiency should not drive the BRAC process, they should play a major role. Indeed, a characteristic of a transformed force is that it is also much more efficient.

U.N. Oil-for-Food Scandal

The Oil-for-Food fraud has become an issue of well-founded, serious concern on Capitol Hill. It is potentially the biggest scandal in the history of the United Nations and one of the greatest financial scandals of modern times.¹ The U.S. General Accounting Office estimates that the Saddam Hussein regime generated \$10.1 billion in illegal revenues by exploiting the Oil-for-Food program.²

House Version. The House version does not address the U.N. Oil-for-Food scandal.

Senate Version. The Senate version includes Amendment 3440, which addresses the U.N. Oil-for-Food scandal.

Recommendations. Senate Amendment 3440, introduced by Senator John Ensign (R-NV), was unanimously adopted following bipartisan consultations and modifications. It is critical that the conference committee include the language of Amendment 3440 in its report.

Amendment 3440 requires key departments within the Administration to take steps to ensure that all documents needed to conduct Oil-for-Food investigations are collected and secured. Specifically, Amendment 3440:

- Requires the Department of Defense to secure documents previously held by the dissolved Coalition Provisional Authority;
- Requires heads of U.S. executive agencies to provide prompt access to documents and information to congressional committees with relevant jurisdiction;
- Directs the Secretary of State to use American power at the U.N. to provide the U.S. with audits and vital documents related to the Oil-for-Food program; and
- Requires the Comptroller General to review U.S. oversight of the Oil-for-Food program,

underscoring that the Comptroller General should have full and complete access to U.N. documents and financial data.

Furthermore, recent developments may necessitate that the conference committee revise and update the amendment's language. The conference committee may also want to consider strengthening the language to increase the likelihood that the amendment's intent will be successfully achieved.

U.S.–Taiwan Military-to-Military Exchanges

House Version. Section 1215 of the House version mandates that the Secretary of Defense inaugurate an exchange program between the United States and Taiwan for senior military officers and senior civilian defense officials. It defines “senior military officer” as a general or flag officer on active duty and “senior official” as a civilian official at the level of Deputy Assistant Secretary of Defense or above. The House version would require that the exchanges focus on defending Taiwan against potential submarine missile attacks; threat analysis; military doctrine; force planning; logistical support; intelligence collection and analysis; and operational tactics, techniques, and procedures.

Senate Version. The Senate version does not address U.S.–Taiwan military-to-military exchanges.

Recommendations. The conference committee should adopt the language of Section 1215 of H.R. 4200. There is an urgent need to regularize command-level contacts between U.S. and Taiwan military headquarters and to improve access in Taiwan's high command for senior Pentagon operations and planning officers. Section 1215 is a responsible way to do this.

After 1999, when Chinese air and naval forces began regular and aggressive challenges to Taiwan's ships and aircraft, the Pentagon significantly stepped

1. For further background, see Nile Gardiner, Ph.D., and James Phillips, “Investigate the United Nations Oil-for-Food Fraud,” Heritage Foundation *Background* No. 1748, April 21, 2004, at new.heritage.org/Research/InternationalOrganizations/bg1748.cfm.

2. Joseph A. Christoff and Davi M. D'Agostino, “Recovering Iraq's Assets: Preliminary Observations on U.S. Efforts and Challenges,” testimony before the Subcommittee on Oversight and Investigations, Committee on Financial Services, U.S. House of Representatives, GAO-04-579T, March 18, 2004, at financialservices.house.gov/media/pdf/031804gao.pdf (June 21, 2004).

up its contacts with Taiwan counterparts. Although Taiwan and U.S. military-to-military exchanges have expanded dramatically since 1999, they are arbitrarily limited to contacts at and below the 0–6 level (GS–15) under self-imposed restraints drafted 25 years ago by the Department of State. U.S. theater commanders and senior Pentagon planners are banned from visiting Taiwan, despite universal concern that the Taiwan Strait is one of the world's crisis "flashpoints." Moreover, there are concerns in the Pentagon that U.S. military teams do not have adequate access to Taiwan's civilian defense and national security leaders and cannot communicate the urgency and importance of critical intelligence on China's rapidly modernizing military force.

High-level U.S.–Taiwan military exchanges and dialogue about contingencies serve two purposes: They are a political signal to Beijing that a military adventure against Taiwan could have the most severe consequences; and, in the event that U.S. intervention does become necessary, they provide a mechanism for success. The conference report should include the House language, and the Administration should use it as leverage to persuade the Chinese that there are serious consequences to their increasingly provocative military challenges in the Taiwan Strait.

Rapid Acquisition Authority

House Version. The House version includes the Rapid Acquisition Authority provision, which would authorize the Secretary of Defense to establish an efficient and timely acquisition process for battlefield-related items during times of emergency.

Senate Version. The Senate version does not address Rapid Acquisition Authority.

Recommendations. The conference report should include Rapid Acquisition Authority for the Secretary of Defense. Cumbersome and time-consuming bureaucracy should not prevent the Secretary of Defense from providing urgent supplies to war fighters in a timely manner. The result would be a better supplied fighting force and fewer casualties.

Equipment would be relevant under this authority only when there had already been a

capability deficiency resulting in combat fatalities. It would be used only to attain the minimum amount of material necessary until existing acquisition statutes could fulfill the needs. If the authority were invoked, the goal would be to award a contract within 15 days of a commander's request. Upon implementation of the RAA, the Secretary of Defense could obtain items outside of the normal procurement bureaucracy when, if not fulfilled immediately, a combatant commander's unfulfilled requests for equipment would result in additional combat fatalities.

Rapidly acquiring time-sensitive, critical material would clearly minimize combat casualties in future combat scenarios. The reality is that the lengthy, bureaucratic procurement process that impedes procurement during peacetime is unacceptable in times of war. The House proposal would also be funded from existing military budgets. It is vital to America's troops and to the war on terrorism that the conference report include this measure.

"Buy America"

"Buy America" and other protectionist provisions prohibit the Pentagon, subject to certain caveats, from purchasing foreign goods and services if these are also grown, reprocessed, reused, or produced in the U.S.

House Version. The House bill tightens current Buy America restrictions by requiring notifications of exemptions, creates a \$50 million subsidy program for American defense contractors to prevent outsourcing, and instructs the Pentagon to weigh job creation in the United States as a factor in the competitive bid process. The House bill also prohibits the Pentagon from procuring any defense article or service from a foreign firm unless the country in which that company conducts substantially all of its manufacturing, research, and production conforms its "offset" requirements to those of the United States.

Senate Version. The Senate version would permit the Secretary of Defense to waive domestic source requirements for six or seven countries (the United Kingdom, Sweden, Spain, Australia, the Netherlands, Norway, and possibly, Italy) that have

a “declaration of principles” committing them to purchase equipment to increase interoperability with U.S. forces.

Recommendations. Of the two versions, the Senate language is superior and should be adopted by the conferees. Instead of protecting U.S. national security, protectionism impedes the ability of the Department of Defense to field the best forces, equipment, policies, and programs by restricting the technology and products available to American forces.

Moreover, the legislation would anger America’s allies by running counter to current rules and understandings. Adopting additional restrictions on defense procurement could lead to retaliatory measures and undermine interoperability by exacerbating the growing gaps between U.S. forces and their allies.

It would also increase costs. Current restrictions already obligate the Pentagon to purchase defense goods from American sources, subject to specific exemptions. Increasing restrictions on those purchases will drive up the cost of already expensive

military equipment and limit access to global goods and services. Limiting America’s ability to tap into global resources puts undue restraint on the Pentagon’s ability to acquire the best military equipment.

Prudence dictates that the U.S. ensure that foreign suppliers are contractually obligated to meet their obligations, regardless of circumstance, and that any cooperative program must include commitments not to violate U.S. export control standards. Subject to these caveats, a global defense industrial base (based on free trade) is the best way to secure America’s future.

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